
Law of Contempt: Under the Modern Application Every Federal Judge is a Tsar by Eugene V. Debs

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In these times of injunctions, proclamations and military display, and terrorism, the practice of punishing for contempt of court, that is to say, punishing men for violating an order of court, issued to prevent men from doing certain acts which the court deems wrongful, is claiming a large share of public attention and rightfully so, because the practice of the courts in numerous instances is as despotic as any act known to absolute rulers in any autocratic cursed land in the world.

If an American citizen, boastful of liberty, finds himself arrested, charged with violating an order of court, and is dragged before a judge possessed of a better set of bowels than brains, and demands a trial by a “jury of his peers” — of his fellow citizens — he is promptly told that constitution and statutes are all abrogated, wiped out, and that in his case he will have to submit to the decree of the court — that the judge is the autocrat and that his power is supreme; that any questions relating to the right of the judge to play tsar, sultan, or shah are so many impertinences calculated to irritate the autocrat, and that silence and submission will tend greatly to mitigate the vengeance of the ermined despot.

Nevertheless, men are asking from whence came this autocratic power of United States Judges, or the smaller fry, known as State Judges? When did the American people, by constitution or statutes, clothe these “sappers and miners” with power to strike down their inalienable rights, to play autocrat, and at their own sweet will, rob men of their liberties and their property? From whence do these judicial footpads derive power practiced only in lands where all power is vested in despots?

As we have asked, whence comes this power of the courts? The answer is from English jurisprudence, dating back for centuries and handed down from age to age, preserving all there is of autocratic power in the country.

In this connection a few excerpts from the writings of Thomas Jefferson will be read with interest. Mr. Jefferson early saw the danger lurking in the Supreme Court of the United States, a practically irresponsible branch of the government, appointed for life, and partisan, with rare exceptions to the core. Mr. Jefferson, in 1820, in a letter to Thomas Ritchie said:

“The judiciary of the United States is the subtle corps of sappers and miners, constantly underground to undermine the foundations of our federal fabric.”

Continuing, Mr. Jefferson said:

“Having found from experience that impeachment is an impracticable thing, they (the judges) consider themselves secure for life; they skulk from responsibility to public opinion, the only remaining hold on them. * * * An opinion is huddled up in conclave, perhaps by a majority of one, delivered as if unanimous, and with the acquiescence of lazy or timid associates, by a chief judge, who sophisticates the law to his mind by a turn of his own reasoning.”

Again, says Mr. Jefferson, in a letter to Archibald Thueet, written in 1821:

“The legislative and executive branches may sometimes err, but elections and dependence will bring them to rights. The judiciary branch is the instrument, which, working like gravity, without intermissions, is to press us at last into one consolidated mass.”

In writing to C. Hammond in 1821, Mr. Jefferson said:

“It has long, however, been my opinion, and I have never shrunk from its expression, that the germ of dissolution of our federal government is in the constitution of the federal judiciary; an irresponsible body, working like gravity, by night and by day, gaining a little today and a little tomorrow, and advancing its noiseless step like a thief over the field of jurisdiction, until all

shall be usurped from the states, and the government of all be consolidated into one.”

In 1823 Mr. Jefferson wrote to Mr. Coray as follows:

“At the establishment of our constitution, the judiciary bodies were supposed to be the most helpless and harmless members of the government. Experiences, however, soon showed in what way they were to become the most dangerous; that the insufficiency of the means provided for their removal gave them a freehold and irresponsibility in office; that their decisions, seeming to concern individual suitors only, pass silent and unheeded by the public at large; that these decisions, nevertheless, become law by precedent, sapping by little and little the foundations of the constitution, and working its change by construction before anyone has perceived that the invisible and helpless worm has been busily employed in consuming its substance. In truth, man is not made to be trusted for life, if secured against all liability to account.”

To read carefully what Mr. Jefferson’s opinions were of the Supreme Court of the United States — the federal judiciary — it will be conceded, in view of passing events, that he was gifted with prophetic vision. The “sappers and miners” have practically obliterated the rights of states. Encroachments, “little by little” have proceeded, until little is left of the old time boast, and what there is remaining is constantly menaced by the federal judiciary, which not only strikes at the rights of states, but at the constitutionally guaranteed rights of individuals, and already the boast of a strong, centralized government is heard on every hand.

The federal judiciary, as Mr. Jefferson says, issues decrees, having no relation under heaven to constitution or statute, which becomes superior to constitution and statute, “by precedent,” and the people submit to the outrages as if they were so many “dumb driven cattle,” along the highways to slaughter pens.

Recently, the country has had repeated doses of this judicial despotism, and the victims of this autocracy acquiesce, as if they were subjects of the tsar on their way to exile in Siberia. Bereft of property and liberty, denied a trial by a jury of their peers — here in the United States of America, this “land of the free and home of the brave” — nothing is more common than for some federal court autocrat, at the request of some plutocrat, to issue an injunction and then

by the aid of marshals and deputy marshals, armed with clubs, pistols, and other death-dealing weapons, drag before him men charged with violating his ukase, and when the handcuffed and manacled citizen demands a trial by jury to determine his guilt or innocence, the sacred “Magna Carta” right is denied by the arrogant despot, who, arrogating to himself the divine right to determine the fate of the citizen, tries, condemns, and punishes him as his wisdom dictates.

Occasionally the United States Judge, some little fellow, swollen with pride and arrogance, orders his victims to stand up and listen to a harangue in which the judge sets forth his power and the power which is behind him. The scene is picturesque. It is a combination of torture and terror — the cat playing with the mouse. The judge is the executioner. His axe is displayed so that the victim may gaze upon it, and contemplate his uncertain fate. The autocrat begins his tantalizing rant. Judge [John Harris] Baker¹ says:

“Whatever may be the view these men had of the courts, they certainly know that so long as the reign of law is supreme, that the courts — the United States Courts — have the power to enforce their orders. They have the ordinary officers of the courts, such as marshals and their deputies, and back of that and above it all the executive of the United States, who is bound by the constitution and the oath that he takes when he became President, to see that the laws be faithfully executed. These people know that until the government is overthrown and there is no longer law, but simply anarchy, that a contest between the courts and themselves is an unequal contest. It is a contest in which they cannot hope to win, because the court represents the national supremacy, and the court has behind it the pledge of the constitution that every power in the union, both its military and its naval power, if need be, will be brought into requisition for the purpose of enforcing the orders of the court. And it is a very right that it should be so, because the condition of the laboring men and of all men would be most intolerable if instead of our being under a government of law we were under a government of anarchy, where there is no law except the law of single individuals, and where no one had any right that was more valuable to him except what he could defend with his own hand.”

¹ **John Harris Baker** (1832-1915) was a judge of the United States District Court of Indiana, seated in Indianapolis. He was elected three times to the U.S. House of Representatives as a Republican from Indiana, serving in that capacity from 1875 until 1881.

It is seen that the judge may issue any order any order he may please, may strike down any right and every right of the citizen, may disregard constitution and law — like a “sapper and miner,” as Mr. Jefferson said — may attack and destroy the constitution, totally irresponsible from any power. The court makes its decree the law, and boasts of its power to enforce its decrees. It tells the cowering victim that behind the court is the army and the navy of the nation and that anyone is a fool if he thinks he can defeat the court, its marshals, deputy marshals, and the army and navy of the nation. The courts, says Judge Baker, “represent the national supremacy.” All power is in the court. It can do no wrong. And this he calls “being under a government of law,” when in fact, as he admits, it is a government of force — of despotism and tyranny — a government of the federal judiciary, which Mr. Jefferson saw would “undermine the federal fabric,” “the instrument, which, working like gravity, without intermission, is to press us at last into one consolidated mass,” “an irresponsible body working like a thief on the fields of jurisdiction,” “the most dangerous member of government.”

Judge Baker in addressing the culprits charged with violating his dragnet order, expressed the opinion that it is right and proper that the whole power of the government, army, and navy should be behind him to enforce his orders — because it would be “intolerable if instead of our being under a government of law we were under a government of anarchy.” Whether it were better to be under a despotic government, such as the federal judiciary frequently inaugurates, or under a government of anarchy, is certainly a debatable question. Nothing more infamous in government than despotism can be mentioned. Anarchy is bad but despotism is far worse, and in the United States we are having federal judge despotism in quantities and qualities to suit plutocrats — and despotism breeds anarchists, a class of men like Patrick Henry, who say: “Give me liberty or give me death!”

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Edited with a footnote by Tim Davenport

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