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US

# It's Not About the Law, Unless You Count How It Can Be Used as a Weapon

The Trump administration\*'s newest excuse for the humanitarian crisis at the border is more nonsense.

BY CHARLES P. PIERCE JUN 19, 2018

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"We were yelled at and slapped. In the 3rd grade, I asked the teacher why she was teaching that Columbus discovered America when Indians were here first. She came over and slapped me across my face. To be humiliated in front of the class, I'll never forget that."

—Testimony of Edith Young, Survivor, U.S. Native American boarding school system.

"Then we were instructed to go stand at the front of the church, where a lot of adults



adults. Leo grabbed hold of my leg as a tall man dressed in overalls approached us. The man reached out and felt my arm, I stared straight ahead, “A bit scrawny,” he commented, then moved on down and chose number 30. Number 30’s face turned white as he left the line with the man...Two days later my brothers and I had survived several lineups in many different towns. Each time we were inspected I was terrified we’d be chosen, and then when we weren’t, I was angered and believed that people thought we weren’t good enough. But I was relieved that we were still together. I’d seen other brothers and sisters separated, and as I listened to their loud sobbing, I wondered “How can I stop them from separating us?” On the sixth day, in a small town in Texas, with only 23 children remaining in line, my worst fear was realized. A middle-aged couple chose Gerald. As the woman reached for him, Gerald eagerly jumped into her arms. But after the paperwork was completed, and they began going out the door, he looked over his new father’s shoulder and screamed for his ‘brovers.’

—[Testimony](#) of Lee Nailling, Survivor, Orphan Trains, 1926.

**N**ewt Gingrich [once called for the resumption of the orphan trains](#), which tells you all you need to know about Gingrich’s claim for being a public intellectual, let alone an actual historian. The orphan trains were creatures of the law, as were the Native American boarding schools.



In 1855, the duly elected legislature of the state of New York authorized the “binding out” of orphan children just as it was the duly elected Congress of the United States that authorized the Bureau of Indian Affairs to open the boarding schools in the years immediately preceding the Civil War. The involuntary transportation of children from New York or Boston to parts western and unknown was done perfectly within the law, as was the forcible Anglicization of the Native children in the boarding school. The legal principle, stated simply, was Kill The Indian, Save The Man. Laws were passed by democratically elected representatives based on that simple theory. The system, such as it was, worked.

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So, remember that when you hear the defenders of this administration\*'s cruel policies regarding the separation of migrant children from their parents take cover behind the fact that they are following the law. Remember that the law is a servant of their humanity, not its master, and that it is supposed to be a shield and not a sword. And if a people do not intend justice toward each other, the law is simply a blind, impersonal power that can be put to terrible use. The law is the beginning of justice, it is not its end. There's a reason why those people dedicated to the law as an end in itself are the heavies in all four of the Gospels. The law put Lee Railling on the train and sent Edith Young to school.





The Border Patrol Processing Facility in McAllen, Texas.

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And, of course, even if you don't believe all of that, the administration is plainly lying about what the law is in these cases, too. The simple fact is that there is no law that demands that the administration\* do what it is doing to these children. What is happening is the inevitable result of the administration\*'s decision to prosecute as many border-crossing cases as it can. The government can't prosecute children for this—as yet, anyway—so their parents get hauled off to jails and the children end up in dog-runs or under tents in the Texas desert. And, until this administration\* unleashed this policy, border-crossing was a mere misdemeanor.

But even Monday's robotic, administration\*-wide invocation of the law was undermined Tuesday afternoon, when the president\* went before the National Federation of Independent Business and mocked the whole notion of due process.



“Ultimately, we have to have a real border, not judges...Thousands and thousands of judges they want to hire. Who are these people? When we vet a single federal judge it goes through a big process...Seriously, what country does this? They said ‘sir, we’d like to hire 5,000 or 6,000 more judges. Now, can you imagine the graft that must take place?”

(The NFIB is one of the more underrated of the Beltway’s truly awful lobbying concerns. The audience for the president\*’s speech applauded him wildly, especially at the end, when the president\* hugged the flag, and that is not an exaggeration, either.)

It’s not about the law. It’s never been about the law. This president\* doesn’t care about the law. Stephen Miller, who shouldn’t be near the top of the organizational chart at a Dairy Queen, let alone at the White House, doesn’t care about it, either. To them, it is a simple thing. It builds nothing. It has no ultimate aim. It does not evolve, nor does it move toward justice. It simply is, its latent potential as a weapon fully realized by people who would wander into a church, pick up the chalice, and use it as a bludgeon.

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