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ADDRESS

by

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Nazi Germany, Fascist Italy and Japan are in the midst of a powerful drive to establish, as they describe it, a "new world order". There are, I know, some Americans who are so over-awed by the strongly centralized and impressive striking power of this new order that they let that obscure every other consideration. Some of these, in easy submission, even regard this new order as the "wave of the future". Most Americans looking at this new order as it exists abroad are filled with repulsion and loathing for its methods as well as its objectives. Yet, there are many of us who are somewhat at a loss to understand concretely what the existence of such a way of life in a good part of the world will come to mean for us in this country and for our way of life.

To delineate the contrast between the Nazi-Fascist system and the American way is a task beyond the limits of this occasion. But we, as American lawyers, are in a peculiarly advantageous position to see how utterly, by our own standards, this "new world" is a reversion from everything we believe in to the ancient abuses that lawyers fought against for generations.

The sinister meaning and implications of this new world order appear with dramatic emphasis wherever the American system of justice and law and order is paralleled by the procedures of Nazi Germany or Fascist Italy. It is on such occasions that we may obtain a vivid basis of comparison. Your Department of Justice, in obedience to law as well as in recognition of morality and enlightened policy, has tried to observe with the utmost fidelity the principle that in the administration of justice we will not discriminate against German or Italian nationals in this country, even though most of us, as Americans, view the enterprise in which those nations are now engaged as something worse than reprehensible.

Wherever Germans have violated our laws they have had the benefit of the principles of freedom which we apply to our own citizens. No German or Italian has at any time been arrested in this country except upon a specific charge set forth in writing. They have had the privilege of legal counsel as promptly and as fully as American citizens under similar circumstances would have. They have had the privilege of communicating with their consular officers promptly. Whenever German or Italian nationals have been held for trial, bail has been fixed and upon furnishing it they have been promptly admitted to their liberty the same as an American citizen would be. Their trials have been, and will continue to be, public, orderly, and there will be available to the German or Italian national every plea that will be available to our own people.

The Department of Justice has carried its efforts beyond the requirements of simple justice. I have personally repeatedly appealed to American employers that, except in defense industries where their employment might be inappropriate, German and Italian nationals, along with other aliens, be given the opportunity to be self-sustaining and self-respecting members of our community. We have intervened in situations where we owe no legal duty to prevent those peoples from being discriminated against economically and in their communities. In short, we have extended to German and Italian nationals in the United States every privilege, liberty, and protection afforded by our law to our own citizens in order that our record will be clear at the bar of history.

This dispassionate and indiscriminating administration of justice is at times attacked by the thoughtless as being too indulgent, but the lawyers of the United States know that it is in keeping with the highest and safest traditions of our profession and of our country. They know that whenever we have departed from such standards, we have made a record that was later viewed with shame.

The treatment of American citizens abroad is in marked contrast. American nationals have been seized in Germany without being informed of the charge against them. They have been detained in prison without the right of counsel, without the right of communication, and without the right of bail. Citizens of other countries have been forced into concentration camps, imprisoned, and deprived of liberty, property, and even of life, without trial, without an opportunity to meet their accuser, or to defend themselves. Moreover, they are forced into prison without having violated any rule that they could know in advance and avoid penalties by obeying. The only thing that the German and Italian governments can say for themselves is that they treat their own citizens as badly as they treat Americans who happen to be within their power. The contrast in treatment is thus made more significant.

We all know that this Nazi concept of justice is no wave of the future. It is a throw-back to the past. It is as old as the Tudors and the Stuarts and the same worship of force which the Nazis proclaim as a discovery was the basis of the revolt of English lawyers in their fight to establish a concept of justice which would be consistent with the dignity and decency of the individual human being.

There are people who believe that we can isolate ourselves so completely that this new world order can be accepted for Europe without affecting us here. Such people have little awareness of the pressures which one system exerts upon another and the great multitude of transactions which are affected by them.

Determined as we are to keep our own institutions and to admit no discrimination in the administration of justice because of race, nationality, creed or color, it is a question whether we could maintain a public sentiment that would sustain that position long in the face of such pressures. The Nazi and his new order are enemies of our concept of equal justice, as much in this country as in Germany itself.

No better instance of this can be cited than the recent case of the Nazi flier, von Werra, who made his way into this country after escaping from a Canadian prison camp. Having crossed our borders illegally, he at once claimed for himself the advantages of certain principles of international law which he invoked as applicable to his case. There was no discrimination against him because of his German nationality. He was allowed to post bail and was released to a German consular officer.

While his case was being given the most extended and generous consideration by the officials of both the State Department and the Department of Justice, von Werra jumped his bail and left the United States. We have positive evidence that this was done with the connivance and assistance of German consular officers, whose conduct has not been disavowed to this date by their country.

Von Werra's conduct was unlawful and ungracious. That he should have been encouraged and abetted in such a course by persons enjoying consular privileges within the United States is inconceivable. The breach of good faith was followed by a breach of propriety. After von Werra's escape, the German consular officer, when asked about von Werra's departure, said with a chuckle:

"I really can't say. When I last heard of him he was living in Westchester with one of our boys -- possibly writing his memoirs."

The incident epitomizes and vividly illustrates the utter futility of successful dealing between two antagonistic systems of law. Shall we plead for good faith? The Nazis would reply contemptuously that we were naive to believe in good faith, that it was an outmoded virtue in the "new world order". But, as Americans, we will refuse to play the role of the well-intentioned dupe. The result is that we would soon find ourselves matching barbarism with barbarism until we ourselves had destroyed the last vestige of the system we have fought so long to create.

That course, I think, Americans reject, and in rejecting it they recognize that decency and barbarism cannot exist together on equal terms and that if decency is to be preserved barbarism must be cast out.