

Other rights infringed.

It would seem also that Public Law No. 503 which, by its threat of prosecution for the exercise of lawful rights, gives effect to the exclusion orders under which appellant and thousands of citizens of similar ancestry have been interned in concentration camps, constitutes an infliction of an *infamous punishment* in violation of the *5th Amendment* and of a "*cruel and unusual punishment*" forbidden by the *8th Amendment*. The fine and imprisonment term fixed by the statute for a violation of exclusion orders to be thereafter executed by a different agency of government is also an excessive fine and penalty forbidden thereby.

Public Law No. 503 is designed to punish appellant for a failure to comply with Exclusion Order No. 57 which subjects him to internment in a concentration camp although he is guilty of no wrongdoing. In such a camp he is detained under armed military guard and is subject to restrictive military orders. The condition it imposes upon him is not distinguishable from a condition of slavery and involuntary servitude forbidden by the provisions of the *Thirteenth Amendment*. See *Slaughter-House Cases*, 83 U. S. 36; *Smith v. U. S.*, 157 Fed. 721, cert. denied, 208 U. S. 618, discussing *Civil Rights Statutes*, 18 U. S. C. A., Sec. 51, guaranteeing right to personal liberty.

It cannot be doubted that these discriminatory exclusion orders deprive these American citizens of most of the rights and liberties guaranteed by the Bill of Rights and the Constitution.

In her hours of greatest travail and direst peril England interned alien enemies but did not stoop to interning her own citizens who were of alien enemy ancestry. She refused to deprive them of citizenship rights. See *House Report* No. 2124, page 279 et seq. It was reserved for Nazi Germany and her satellites to penalize their citizens whose ancestors were Jews. It is unbelievable that America desires to imitate the vicious example of her enemies.

What the appellee herein asks of this Court is that it, as the judicial servant of the Republic that is the closest approximation of a true democracy on earth, uphold a statute and military orders discriminating against native born citizens on the basis of racial origin and thereby destroy the Constitution. It is an extraordinary request to say the least.

PROTECTIONAL CAMPS SHOULD HAVE BEEN ESTABLISHED.

Had the evacuation been *invitational* to American citizens of Japanese ancestry and aliens outside the statutory age limits of the Alien Enemy Act, and designed and carried out solely for the *physical protection* of those who were threatened with or who entertained fear of injury from lawless action upon the part of anti-social, irresponsible and criminally bent persons or groups there would be much to commend the action of the military and we would then have seen in operation a democratic state acting true to its political and social concepts. The appropriation of public

moneys and the use of Federal troops for such a purpose is authorized under the "general welfare" and "common defense" clauses of the Constitution. But what has here happened is that the evacuation was not "*invitational*"—it was intentionally compulsory—and accomplished under threat of military force and of punishment under Public Law No. 503. The evacuee citizens have been herded into concentration camps as though they were alien enemies. Detained as prisoners under armed military guard they are deprived of all, or most all, of the privileges of citizens to the everlasting shame of America.

When the Army intruded beyond the "*invitational*" stage it invaded the liberties of American citizens. A majority of its victims cheerfully and with good grace would have accepted an invitation to leave so as not to have been separated from members of their families who were aliens, and the democratic processes we prize and the democratic principles we profess and which are guaranteed by the Constitution would have been preserved. The departure did not evoke an admiration of military virtue. The victims left—inspired by a dread of military displeasure. When Public Law No. 503 and these exclusion orders are declared unconstitutional and void the Army will relax its rule and the concentration camps will be converted into "*protectional*" camps for those who believe they need such protection and democratic government will be re-established.

CITIZENS' RIGHTS ARE INDESTRUCTIBLE.

Loyalty is not a thing of race but of nationality. It attaches to the country where the individual's economic and political interests lie and to the nation which sustains and protects him. One's loyalty is to the government in which he has participation and which is devoted to his welfare. To distinguish themselves from others a few unhistorical-minded individuals pride themselves on their race and thereby confuse race for nationality. Hence the concept of a white race, the Caucasian, the Aryan of whom the proud but degraded Nazis not long since were wont to brag. The concept is utterly false. Between the extremes of albinism and negroism there are many shades of skin-pigmentation and it would be a person of extraordinary historical retrospect who would dare assert the blood that coursed his veins contained only that traceable to white stock. The sole claim that anyone can make for purity of the blood stream is that it is pure mongrel. The origin of all peoples inhabiting the earth today is clouded with great obscurity. This is true of the so-called whites in Europe and America whose ancestors' coloration varied from white to black. The origin of the Japanese is also clouded in like obscurity, the anthropological guess being they carry the blood of Chinese, Mongol, Malay, Indian, Samoyede, Finn, Hun, Tungu, Ainu and others. Their ancestors' coloration in any event varied from the white Ainu to the black Dravidian. The difference between a person of one stock and that of another lies not so much in superficial skin pigmentation as it does in

environment. Individuals in a similar environment act pretty much alike and their kinship and feelings for their fellow men is based primarily on nationality and intellectuality rather than on false ideas or theories of race, color or creed.

How many of our *whites* can distinguish those of Japanese ancestry from those of Korean, Manchurian, Malayan, Chinese, Tibetan, Samoyede, Hun, Finn, Tungu and Ainu ancestry? How many of them can identify a Japanese or a person of Japanese ancestry or even describe the physical appearance of one? In the United States the word *Japanese* and its contraction *Jap*, when applied to any of our citizens, is an opprobrious epithet as was the word *anarchist* in the nineties, the word *communist* in the twenties and the word *Jew* in modern Germany. There are no Japanese in America except they are aliens. Likewise there are no English, Irish, Scotch, Australians, French, Spanish, Portuguese, Italians, Russians, East Indians, Africans, South Americans or Asiatics here except they are aliens.

All citizens of this country are Americans. The appellant is an American citizen. His nationality is American. These citizens who have been evacuated and interned are nationals of the United States. They are loyal Americans. Neither the government nor any other citizen has the right to deprive them of the rights that inhere in and attach to all citizens. These rights are not dependent upon race, color or creed. They are indestructible.

ORDERS DEGRADE CITIZENSHIP.

Once upon a time, before these military orders issued, this country belonged to its citizens and not to their selected governmental servants. Then each citizen could be said to be a king and none a subject for all were equal in the eyes of the law and there existed no class distinctions. Then he went by the name of citizen which is a name or title of greater dignity and nobility than that of king. The citizens created this nation and established its Constitution. The citizens produce its wealth, fight its wars and determine its peace. No man is entitled to assert greater rights than those of a citizen. Regardless of his race, color and creed or the nationality of his progenitors each citizen is the legal equal of another—none is superior and none is entitled to greater rights, privileges and immunities. He is subordinate to none. He is supreme in America or rather was so until these military exclusion orders issued. These arrogant orders seem devised to supplant democratic government with authoritarianism—they impose military force for judicial order. The attaching by them of a suspicion of treasonable intent to a whole segment of our citizenry because of the geographical origin or old nationality of a few of their ancestors is not an exercise of discretion. It is the abuse of discretion. It is incredible that these innocent citizens could so ruthlessly be ground under the military heel and their feeble protests fall upon deaf ears. Does suspicion attach them to but not to alien enemies and other citizens? Are they more capable of subversive activities than others?

INTOLERANCE GLORIFIED.

The First Quarterly Report of the War Relocation Authority, page 26, containing a survey from March 18th to June 30, 1942, shows that approximately one-fourth of the total number of evacuees interned in these concentration camps are children under fifteen years of age. Little children have been seized and interned by executive officials of a Christian government heedless of the Sermon on the Mount to which these professed followers of Jesus render lip service. "*Do unto others as ye would have others do unto you*" and "*Suffer little children to come unto me*" have made little impression upon them. What Jesus preached by word and by example was here ignored. Would He have countenanced the drawing of distinctions between citizens based upon ancestral lines? Would He have drawn a line between children and children? What has come over us that we have made war against little native-born children? Did these innocents commit fault? No guilt was theirs. The guilt lies with those of blunted feelings who committed this wrong against them. The spirit of bigotry and intolerance has been loosed in America by these extraordinary orders. The violent uprooting of these people is the most odious and abominable crime ever committed in America. What can be said for a government which permits 73,000 of its own citizens, young and old, to be treated as a herd of insentient beings, condemns them to internment and reduces them to a state of shameful slavery simply because their ancestors whom they never selected were once nationals of Japan ?

What has here been done was worthy of a brutal Mongol Court of the 13th Century. Certainly it was unworthy of our vaunted democracy and unworthy of our generation. It is not justified by war. A state of war does not justify everything. If it is not war it is national emergency, national salvation, national survival, or reasons of state that is usually offered as the excuse for oppression. What strange excuses can be offered that innocent men and women, boys and girls and little children—all of whom are American citizens—can be uprooted by military force and be imprisoned when they have not been guilty of crime and no disloyalty upon their part has been evidenced? American babies are being born in these prison camps, and kept behind barbed wire while armed guards patrol the area. If they were white babies neither a military commander, the government nor the public would suffer the imprisonment to endure.

War does not excuse license. It neither excuses nor justifies the destruction of the personal liberties and property rights of a segment of our citizenry on a race discrimination basis. We are not at war for war's sake but for the sake of establishing a permanent and just peace. We are at war to liberate all oppressed peoples and to enable them to gain democratic rights. The military exclusion orders and the statute involved herein would kick all the great and noble concepts of freedom and the achievements of 167 years of a people's government into the rubbish heap of abandoned ideals, betrayed promises and forgotten hopes. Every true and loyal American citizen ought

to have raised his voice in great anger and wrath in protest over this terrible wrong so loudly that our government officials would have lent a willing ear and in great trepidation have made haste to right the wrongs committed in the name of the government.

GRIM PARALLELS.

A number of our administrative officials prate of the sanctity of minority rights the while they suffer minorities to be persecuted. While reverencing the form of the Constitution by declaiming pretty phrases in its praise others by their action do dishonor to its substance. What unholy motive impels a few intolerant souls to injure the helpless? Does this arise from delusions of self-importance and personal grandeur? Is this the mode by which they would attain a type of distinction and project their personal ego into the future?

A Machiavelli might grin with pride over what here was done. As Inquisitor General of Spain Tomás de Torquemada exiled one and a half million Jews from Spain for alleged "*reasons of state*"—and, as a result of the removal of those Spanish citizens from Spanish soil, executed by the military forces, Spain ever since has been an impoverished nation and her neighboring States who extended a welcome hand to the exiles were enriched by their presence and industry. The reasons of state professed for the removal was that the Jews were suspected of a lack of *limpieza*,

or racial purity, and heresies. A minority of Spain's citizens was plundered, Spanish industry subsided and Spanish culture declined. Torquemada is held in high esteem by the Nazis. Herr Hitler and his *herrenvolk* plundered, interned and exiled German citizens who, because they had ancestors who were Jews, were deemed disloyal.

Those who were initially responsible may smile in smug satisfaction and prattle of a false military necessity justifying this removal of innocent citizens but a government that makes war on its own citizens in the absence of rebellion is unworthy of the name of government. Military necessity has not caused the removal and internment of the 35,183 aliens and the 124,351 citizens of Japanese ancestry (H.R. 2124, p. 91) from the Hawaiian Islands although those far outposts were for a time the very battleground of this war and martial law had been proclaimed and its rule applied there. Here, in eight Western States, all within the continental limits of the United States, in the absence of martial rule and where, except for possible stray shellings, the safety of the inhabitants is assured by our military and naval might at home and in the far Western Pacific, military necessity cannot be magnified and exaggerated into establishing a fictitious theatre of war to justify the destruction of the civil rights and liberties of a whole segment of our citizenry.

Dictatorship on the March.

From these exclusion orders it appears they were executed under the presumption that, with few exceptions, the 1,000,000 Axis nationals here and the 11,000,000 native-born of German and Italian stocks are all devoted and loyal to the United States whereas these unfortunates who have been summarily evacuated and interned are disloyal. Obviously no government of a civilized nation interns 1,000,000 foreigners or 11,000,000 persons of alien stocks. It was reserved for us, however, to gather up a small minority of some 43,691 aliens and their 73,673 native-born offspring for internment—the political repercussions are comparatively negligible. What difference does it make to an apathetic government that the latter are citizens and impoverished as the result of this injustice when it can offer the fictitious plea that war is the justification?

If these dictatorial orders are valid each military commander who is ambitious can act as a diminutive feudal Shogun and, with impunity, disregard popular rights and enforce his own temporary brand of tyranny in his allotted military area. *Aut Caesar aut nullus*. All too dangerous to American democracy is the belief that executive officials who are servants of the people are the leaders and that the people are the led. The trend towards "leadership" leads to the idolization of leaders. The cult of leadership results in dictators. The world has had enough of dictators.

Dictatorship does not succeed under its own label. The post-war history of Italy and Germany since

1918 amply proves that it succeeds best under a fictitious label—that it comes under the guise of some sort of necessity, military necessity, national emergency or national salvation—but whatever label it bears the people all too soon feel its liberty crushing effect and find themselves thoroughly regimented and quite helpless. If we are not alive to the dangers presented by this wholesale invasion of the liberties of a minority of American citizens and do not call a halt to it we may be too late to preserve even a semblance of our constitutional form of government. Has America enjoyed the blessings of democracy so little she is willing to welcome dictatorship?

CONCLUSION.

Neither the President, the military authorities nor Congress appear to have been primarily responsible for this uprooting of some 73,000 American citizens. It seems to have been instigated by political pressure groups which used the war as an excuse to accomplish the banishment of these citizens along with alien Japanese. These groups would, if they could, likewise banish all other citizens who are descended from Oriental ancestors. Those upon whose shoulders the blame must finally fall would excuse the suffering they created by asserting these aliens and the ancestors of these citizens ought never to have been admitted here because they cannot be classified as whites and because of a possibility a few among their present ranks might prove subversive. Those who inspired

this malicious and inexcusable wrong may think themselves of heroic proportions but historically they will loom as dwarves. They were actuated by base and selfish motives and not by the noble purposes the Army professes. They sought political preferment, feared the economic competition of their victims and hoped for profit from the exclusion.

Usurpers of power have generally apologized for the tyranny they imposed by asserting their victims were unfit for liberty. Here we discover a novel excuse. A helpless minority of citizens is sacrificed on the pretext it might have subversive members in its ranks who endanger the public safety, a military commander being the sole and arbitrary judge of what the public safety requires to the exclusion of Congress. The victims of conscious cruelty or complete indifference are given no opportunity to prove their innocence, public opinion is offered no chance to express itself on the wisdom thereof and Congress maintains an indiscreet silence. This attaching of hate and a suspicion of disloyalty to citizens because of the accident of their ancestry; this offering up of the innocent and helpless, the honest and loyal, as a sacrifice to a spurious public clamor, artificially created, is not a new phenomenon but a peculiar characteristic of what, for want of a truer term, we deign to call our civilization.

These citizens submissively bent their necks when they saw the yokes their white brothers had fashioned for them and mutely submitted to indignities that never before have been visited upon any group of

citizens during our history. We had nothing to fear from them. Had a genuine fear of them or against any in their ranks been entertained loyalty-hearing boards could have been established to test their loyalty. Had there been any evidentiary basis for such a fear other than bare suspicion and mistrust of them on the part of a few ignorant agitators, cheap politicians seeking notoriety, political pressure groups and uniformed persons loyalty-hearing boards would have been set up. We are not at war against our own citizens. Thousands of these citizens now serve in our military forces in defense of our country, Constitution and Flag. If any fear of these citizens exists in the minds of their fellow citizens it is pure image-making. Do we think their unconscious minds recapitulate their historic racial past? If we do, remember they derive from a peaceful fisher-folk and that it is only in modern Japan, lately feudal, that the arts of war were cultivated on a national scale. Today the hapless people of Japan are held in the grip of a small group of feudal-minded parasitic scoundrels masquerading as war lords in uniform. Their grip is but temporary and will be loosened by our victorious armies and the victims will be released from their chains.

Does history offer a precedent for this terrible injustice? Yes, there is always a precedent for injustice. We need not look back to Attila, Genseric, Genghis Khan and Tamerlane. We find a few recent, conspicuous and frightening precedents. The communists in the Soviet Union, the fascisti in Italy, the

nazis in Germany and the militarists in Japan within the past quarter of a century seized the reins of their governments and rode to power over the ashes of civil liberties. Millions were imprisoned and reduced to a state of brutish slavery by them with a cruelty that evokes horror and beggars description. Not long ago we were wont to look askance and view with horror the barbarism displayed. Must America abandon her ideals and emulate these examples? Do we hold the rights and liberties of citizenship so lightly we are willing to surrender them whenever the bugles blow and the war drums beat?

What is it that the appellee actually contends in asking that this shameful action of the military be upheld? Is it not, in essence, that our Courts follow the example of the German Courts during the ascendancy of the Nazis to power? Does it ask this American Court to serve the whims and do the bidding of military commanders and trample upon civil rights and liberties? If so it contends that human liberties are of no consequence, that representative government is a failure and that our citizens were born to be slaves.

Liberty does not mean the power of a minority or of a majority of the people controlled either by an ignorant or prejudiced leadership to suppress the rights and privileges of any of our citizens. The Constitution was designed to protect the rights of the individual and of minorities against predatory action of the part of the government and majorities and to

protect the individual against oppression. If the rights and liberties which are a constitutional heritage and our pride be lost to the appellant and a minority of our citizens herein they are likewise lost to all citizens and a military dictatorship over this nation will be an established fact.

No individual who had a hand in this plot to wreck the lives of these innocent citizens will long be remembered but the injustice of a government that permitted it to occur will forever be enshrined in the hall of infamy as a symbol of bigotry, intolerance and oppression. When the carnage of war is over and the tumult has died down and sanity is recovered what will historians say of this outrageous action? The evil here done will live to be celebrated by universal condemnation. The finger of scorn will be pointed at those who caused it.

We are not yet deprived of all rights and liberties as are the helpless citizens of Germany in Hitler's Third Reich, the unfortunate citizens of Italy in Mussolini's Fascist State and the miserable citizens of Japan in Tojo's transitory Yellow Empire. This is still America, the cradle of Liberty, the home of Democracy and the land of the Free. These exclusion orders and this statute breed and nurture a military dictatorship. We desire neither a dictatorship nor the semblance of one in America. What the military commander herein has wrongfully done in the name of the government and the trial Court has upheld we demand that you undo in the name of the People.

Your mandate will be obeyed for the judgment of this Court is the judgment of the People to whom the military authorities are subordinate and answerable.

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