

AMERICAN CONSTITUTIONALISM
VOLUME II: RIGHTS AND LIBERTIES

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Supplementary Material

Chapter 8: The New Deal/Great Society Era—Criminal Justice/Infamous Crimes

Kawakita v. United States, 343 U.S. 717 (1952)

Tomoya Kawakita was born in California in 1921 and raised in the United States but traveled to Japan in 1939 (renewing his American passport while still there and pledging allegiance to the United States in the process). In 1940, he registered as an American citizen in compliance with Japan's alien registration law. Both of his parents were born in Japan, but Kawakita did not report this fact to Japanese authorities until he was beyond the age of mandatory military service in Japan. Under Japanese law, the nationality of his parents made Kawakita a Japanese national as well. Under American law, Kawakita's birth in the United States made him an American citizen. The United States recognized him as a dual citizen.

When war was declared between Japan and the United States in December 1941, Kawakita was a student at Meiji University in Tokyo. In 1943, he registered in the Japanese family census (declaring his Japanese nationality), removed his name from the alien registry, and got a job working as an interpreter for American prisoners of war assigned to work in a Japanese mine. When the war ended in 1945, he registered again as an American citizen with the United States consul, and the next year he returned to the United States. While in the United States, he was recognized by a former American prisoner of war, arrested and put on trial for treason. In the Nationality Act of 1940, Congress had provided that American citizens could expatriate themselves by taking oath of allegiance to a foreign state or joining its government service, and Kawakita argued that he had effectively renounced his American citizenship in 1943. Nonetheless, he was convicted of treason by a federal jury and sentenced to death. That conviction was affirmed on appeal. In a 4–3 decision, the U.S. Supreme Court affirmed as well, concluding that a dual citizen abroad nonetheless owed certain duties to the United States during wartime unless that individual had very clearly renounced their American citizenship.

His death sentence was commuted to life by President Dwight Eisenhower in 1953, and in 1963 he was paroled by President John F. Kennedy and deported to Japan as part of an effort to improve American–Japanese relations.

JUSTICE DOUGLAS delivered the opinion of the Court.

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The difficulty with petitioner's position is that the implications from the acts, which he admittedly performed, are ambiguous. He had a dual nationality, a status long recognized in the law. *Perkins v. Elg* (1939). The concept of dual citizenship recognizes that a person may have and exercise rights of nationality in two countries and be subject to the responsibilities of both. The mere fact that he asserts the rights of one citizenship does not without more mean that he renounces the other. In this setting petitioner's registration in the Koseki might reasonably be taken to mean no more than an assertion of some of the rights which his dual citizenship bestowed on him. The deposition of the Attorney General of Japan states that the entry of a person's name in the Koseki is taken to mean that one has Japanese nationality. But since petitioner already had Japanese nationality, he obviously did not acquire it by the act of registration. . . .

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As we have said, dual citizenship presupposes rights of citizenship in each country. It could not exist if the assertion of rights or the assumption of liabilities of one were deemed inconsistent with the maintenance of the other. For example, when one has a dual citizenship, it is not necessarily inconsistent with his citizenship in one nation to use a passport proclaiming his citizenship in the other. Hence the use by petitioner of a Japanese passport on his trip to China, his use of the Koseki entry to obtain work at the Oeyama camp, the bowing to the Emperor, and his acceptance of labor draft papers from the Japanese government might reasonably mean no more than acceptance of some of the incidents of Japanese citizenship made possible by his dual citizenship.

Those acts, to be sure, were colored by various other acts and statements of petitioner. He testified for example that he felt no loyalty to the United States from about March, 1943, to late 1945. There was evidence that he boasted that Japan was winning and would win the war, that he taunted American prisoners of war with General MacArthur's departure from the Philippines, that he expressed his hatred toward things American and toward the prisoners as Americans. That was in 1943 and 1944. This attitude continued into 1945, although in May or June, 1945, shortly before Japan's surrender, he was saying he did not care "which way the war goes because I am going back to the States anyway."

On December 31, 1945, he applied for registration as an American citizen, and in that connection he made an affidavit in which he stated that he had been "temporarily residing" in Japan since August 10, 1939. . . . and that he had "never been naturalized, taken an oath of allegiance, or voted as a foreign citizen or subject, or in any way held myself out as such."

. . . We think, in other words, that the question whether petitioner had renounced his American citizenship was on this record peculiarly for the jury to determine. The charge was that the jury must be satisfied beyond a reasonable doubt that during the period specified in the indictment, petitioner was an American citizen. We cannot say there was insufficient evidence for that finding.

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The Oeyama Nickel Industry Co., Ltd., was a private company, organized for profit. It was engaged in producing metals used for war under contracts with the Japanese government. In 1944 it was designated by the Japanese government as a munitions corporation and under Japanese law civilian employees were not allowed to change or quit their employment without the consent of the government. The company's mine and factory were manned in part by prisoners of war. They lived in a camp controlled by the Japanese army. Though petitioner took orders from the military, he was not a soldier in the armed services; he wore insignia on his uniform distinguishing him as nonmilitary personnel; he had no duties to perform in relation to the prisoners, except those of an interpreter. His employment was as an interpreter for the Oeyama Nickel Industry Co., Ltd., a private company. The regulation of the company by the Japanese government, the freezing of its labor force, the assignment to it of prisoners of war under military command were incidents of a war economy. But we find no indication that the Oeyama Company was nationalized or its properties seized and operated by the government. The evidence indicates that it was a part of a regimented industry; but it was an organization operating for private profit under private management. We cannot say that petitioner's status as an employee of a private company was changed by that regimentation of the industry.

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Petitioner contends that a person who has a dual nationality can be guilty of treason only to the country where he resides, not to the other country which claims him as a national. More specifically, he maintains that while petitioner resided in Japan he owed his paramount allegiance to that country and was indeed, in the eyes of our law, an alien enemy.

The argument in its broadest reach is that treason against the United States cannot be committed abroad or in enemy territory, at least by an American with a dual nationality residing in the other country which claims him as a national. The definition of treason, however, contained in the Constitution contains

no territorial limitation. "Treason against the United States, shall consist only in levying War against them, or in adhering to their Enemies, giving them Aid and Comfort". . . .

One who has a dual nationality will be subject to claims from both nations, claims which at times may be competing or conflicting. . . . But American citizenship, until lost, carries obligations of allegiance as well as privileges and benefits. For one who has a dual status the obligations of American citizenship may at times be difficult to discharge. An American who has a dual nationality may find himself in a foreign country when it wages war on us. The very fact that he must make a livelihood there may indirectly help the enemy nation. In these days of total war manpower becomes critical and everyone who can be placed in a productive position increases the strength of the enemy to wage war. Of course, a person caught in that predicament can resolve the conflict of duty by openly electing one nationality or the other and becoming either an alien enemy of the country where he resides or a national of it alone. Yet, so far as the existing law of this country is concerned, he need not make that choice but can continue his dual citizenship. . . . Of course, an American citizen who is also a Japanese national living in Japan has obligations to Japan necessitated by his residence there. . . . Such acts—if done voluntarily and willfully—might be treasonable. But if done under the compulsion of the job or the law or some other influence, those acts would not rise to the gravity of that offense. . . . In short, petitioner was held accountable by the jury only for performing acts of hostility toward this country which he was not required by Japan to perform.

If he can retain that freedom and still remain an American citizen, there is not even a minimum of allegiance which he owes to the United States while he resides in the enemy country. That conclusion is hostile to the concept of citizenship as we know it, and it must be rejected. One who wants that freedom can get it by renouncing his American citizenship. He cannot turn it into a fair-weather citizenship, retaining it for possible contingent benefits but meanwhile playing the part of the traitor. An American citizen owes allegiance to the United States wherever he may reside.

Circumstances may compel one who has a dual nationality to do acts which otherwise would not be compatible with the obligations of American citizenship. An American with a dual nationality who is charged with playing the role of the traitor may defend by showing that force or coercion compelled such conduct. The jury rejected that version of the facts which petitioner tendered. He is therefore forced to maintain that, being a national and a resident of Japan, he owed no allegiance to the United States even though he was an American citizen. That proposition we reject.

. . .

. . . One may think disloyal thoughts and have his heart on the side of the enemy. Yet if he commits no act giving aid and comfort to the enemy, he is not guilty of treason. He may on the other hand commit acts which do give aid and comfort to the enemy and yet not be guilty of treason, as for example where he acts impulsively with no intent to betray. Two witnesses are required not to the disloyal and treacherous intention but to the same overt act.

. . . There was evidence that he had no authority and no duties, as respects the prisoners, except as an interpreter. Yet the record shows a long, persistent, and continuous course of conduct directed against the American prisoners and going beyond any conceivable duty of an interpreter.

. . . A part of petitioner's conduct was swearing at the prisoners, beating them, threatening them, and punishing them for not working faster and harder, for failing to fill their quotas, for resting, and for slowing down.

. . .

Each of these acts was aimed at getting more work out of the prisoners—work that produced munitions of war for the enemy, or so the jury might have concluded. The increased efforts charged in overt acts (a) and (j) were small; the contribution to the war effort of the enemy certainly was minor, not crucial. . . . It is the nature of the act that is important. The act may be unnecessary to a successful completion of the enemy's project; it may be an abortive attempt; it may in the sum total of the enemy's

effort be a casual and unimportant step. But if it gives aid and comfort to the enemy at the immediate moment of its performance, it qualifies as an overt act within the constitutional standard of treason. . . .

. . .
Affirmed.

CHIEF JUSTICE VINSON, with whom JUSTICE BLACK and JUSTICE BURTON join, dissenting.

The threshold question in this case is whether petitioner renounced his United States citizenship and became expatriated by reason of acts committed in Japan during the War. Prior to 1943, petitioner was regarded by Japanese authorities as an enemy alien. In March, 1943, petitioner gave official notice of his allegiance to Japan by having his name registered in the family Koseki. Thereafter, petitioner had his name removed from police records as an enemy alien, secured employment subject to military control at a munitions plant, traveled to China on a Japanese passport, and prayed daily for the Emperor's health and a Japanese victory. These facts and petitioner's heinous treatment of American prisoners of war, recited in the opinion of the Court, convince us that petitioner, for over two years, was consistently demonstrating his allegiance to Japan, not the United States. As a matter of law, he expatriated himself as well as that can be done.

Petitioner's statements that he was still a citizen of the United States—made in order to obtain a United States passport after Japan had lost the War—cannot restore citizenship renounced during the War. . . .

JUSTICE FRANKFURTER and JUSTICE CLARK took no part in the disposition of the case.