

# Wartime Exile

## The Exclusion of the Japanese Americans From the West Coast



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## CHAPTER V

### DUAL CITIZENSHIP

Until the American-born citizens of Japanese ancestry began to come of age, the Japanese minority in the United States, because of the law which denied naturalization to oriental aliens, was without a vote, a fact that made the Japanese group a convenient political football. With the maturing of the citizen children of these Japanese nationals, however, this group began to have a voice. Each year, as more of the citizen children came of age, that voice would increase in volume. Nothing short of a revision of the Federal Constitution could deprive American-born children of any ancestry of their right to vote. It may be recalled that the chairman of the Japanese Exclusion League, who was also the controller of the State of California, stated openly in 1921 that the next objective to be achieved by his group, after further immigration should be prohibited, was "the amending of the Constitution of the United States to the effect that children born in this country of parents ineligible to citizenship, themselves shall be ineligible to citizenship."

The crusade to effect such a change in the Constitution depended for success upon its ability to discredit the citizenship of the Nisei. The crusaders argued that all American-born children of Japanese parents held dual citizenship; that dual citizenship of Japanese Americans implied dual allegiance, with first allegiance, not to the United States as the country of their birth, but to the Japanese Empire as the country of their ancestry. It was charged that Japanese law made every child of a Japanese father a citizen of Japan and that all such children were incontrovertibly loyal to the Emperor of Japan. It was made to appear that Japan was unique among the nations in holding as its subjects the children born in foreign countries to Japanese nationals, and that of all the varieties of second generation immigrant stock in the United States, only the Nisei suffered conflicting loyalties. Only was it rarely admitted that a conflict could trouble the minds and hearts of the Nisei, because it was asserted that the Nisei were born with a peculiar capacity for passionate and enduring loyalty to a country which they had never seen and which lay six thousand-odd miles removed from their homes, and it was maintained that the Nisei were born without that capacity, taken for granted in the offspring of non-oriental immigrants, for loyalty to the country of their birth. V. S. McClatchy, pillar of the exclusion leagues and executive secretary for life of the California Joint Immigration Commission, set forth these arguments in detail in his speech made before the Honolulu Rotary Club in 1921 and in even greater detail in his "Skeleton Brief," which was prepared for the indoctrination of Congress.

The campaign never achieved its ultimate goal, but it was remarkably successful in generating suspicion of the Nisei. By 1942 enough suspicion of the loyalty of these American citizens of Japanese ancestry had been generated by pressure group propaganda to obtain the signature of the President of the United States upon the executive order which allowed the wartime mass exclusion of all persons of Japanese ancestry from the Pacific Coast region. The logic and the facts which the racist campaign overrode in roughshod fashion demand serious consideration, belated though such consideration is. Earlier awareness of the over-looked facts might well have spared the United States a costly experiment with human lives.

In the first place, dual citizenship results from a conflict between the nationality laws of the country of a child's ancestry and the country of his birth. If the country of his birth claims him as a citizen regardless of his ancestry, and if at the same time the country of his ancestry claims him as a citizen regardless of his place of birth, the child involuntarily holds dual citizenship. Since the United States does not recognize the claim of any other nation to the allegiance of American-born children--with the exception of children born in embassies--the duality lacks substance and need not inconvenience the holder so long as other American citizens, many of whom have or have had dual citizenship themselves, refrain from making capital of this tie with a foreign country which, according to United States law, does not exist.

Countries of the modern world inherit their way of determining citizenship at birth from two sources. Some countries favor one, some another, but traces of both are perceptible in the nationality laws of most countries. One of these sources is Roman law of the ancient world; the other is the common law of the mediaeval world. By Roman law, the citizenship of the child followed that of the father. Common law, founded in this detail "on feudal considerations," claimed for the realm every child born therein. The Roman or civil law ruling on the determination of citizenship at birth is known as "jus sanguinis," the law of descent or blood, and the common law ruling as "jus soli," the law of the soil or place of birth.<sup>14</sup>

Durward V. Sandifer, formerly of the Department of State, made a thorough study of the nationality laws of the world, in 1935, and reported that no country relies solely on the rule of jus soli, for to do so would be to deny citizenship to the children of nationals unavoidably detained in a foreign country.<sup>15</sup> Children born in foreign embassies have from ancient times been excepted from the application of the rule of jus soli, since embassies are not within the jurisdiction of the country in which they are located but are under the jurisdiction of the country which they represent. In the United States, the first

Congress, in an act of March 26, 1790, provided for the retention of citizenship by children born abroad to American citizens.

To quote from Mr. Sandifer:

" \* \* \* it seems apparent that the rule of jus sanguinis is considerably more extensive and has much greater influence in the determination of nationality than the rule of jus soli. The validity of this statement becomes more apparent if the extent be recalled to which the countries with laws based principally on jus soli include provisions based on jus sanguinis. The problem created by this situation is rendered even more significant when it is noted that most of the jus soli countries are new countries, and until recently, countries of extensive immigration. As most of the countries of emigration follow the rule of jus sanguinis, the result is a multiplication of instances of dual nationality. Although the mere fact of a widespread status of dual nationality acquired at birth, with such a status continuing for a number of years during minority does not, in itself, present an especially serious problem, the urgent necessity to which this situation points is the development of sound rules for the termination of dual nationality at an age set or that at which competing claims by two countries to the allegiance of the same man may be calculated to cause serious friction."<sup>15-a</sup>

His research into this subject showed that of 79 countries--not including the United States--48 followed principally the rule of jus sanguinis, 29 that of jus soli, and 2, both equally. The British Empire and the two Americas "form the stronghold of the law of jus soli."<sup>15-b</sup> Up to World War II only 33 countries had provided a method for the termination of the status of dual citizenship for foreign-born children of nationals, and of these 33, 22 were countries whose laws are based principally on jus sanguinis. Japan was one of the 22 countries. Until 1940 the United States made no provision for the termination of the American citizenship acquired at birth by its foreign-born children of nationals.

Japan did not codify nationality laws until 1899. Mass emigration had not been authorized until 1884, and it was slow to gather momentum. It was not until women began to emigrate to join their husbands and establish homes that the question of the status of foreign-born children of Japanese parents arose. "Since most of her trade and political contacts were with European powers at that time, Japan

borrowed the Continental jus sanguinis rule, providing that 'A child is a Japanese if his or her father is a Japanese at the time of his or her birth.'\*\*

It happened, however, that Japanese emigrants in general went not to European countries which operated under the same rule but to countries of the Western Hemisphere which operated under the jus soli. Thus their children were born to a position of duality as regards citizenship. The Nisei were particularly conscious of discomfort in this position because they were singled out from other second generation Americans who were born to the same involuntary duality, for the special attention of West Coast jingoists. As early as 1914 and 1915, the maturing Japanese Americans began to petition the Japanese Government to change the law.<sup>17</sup>

It was in response to these petitions that the Japanese Government, on March 15, 1916, made the first of two moves toward releasing its foreign-born children from the obligations of their involuntary Japanese citizenship. This was the promulgation of the Japanese law of expatriation, effective about a year later. The following translation of the law was made by Y. S. Kuno and Max C. Baugh.

"A.

"1. When a Japanese woman marries a foreigner and thereby obtains the right of citizenship or subjectship in the nation to which her husband belongs, she is expatriated.

"2. When a Japanese subject obtains of his or her own accord the right of citizenship or subjectship of a foreign nation, he or she is expatriated.

"Note.—A male subject of the Japanese empire who is over 17 years of age, will not be allowed to expatriate himself until he has completed active military service in the Japanese army or navy or he is known to be free from military duty (on account of physical disability, long residence in a foreign country, etc.).

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\*Law No. 66, March 16, 1899. Japanese Civil Code, Vol. III.

"3. Those who have been expatriated on account of marriage may be allowed to be repatriated through permission of the State Minister of Home Affairs, provided she or he domiciles in Japan after the dissolution of the marriage.

"B.

"1. Foreign born male or female Japanese subjects may be allowed to expatriate through the State Minister of Home Affairs, in the Imperial Japanese government, provided he or she domiciles in the country where he or she was born and thereby and therein obtains the right of citizenship or subjectship.

"Note 1—It is imperative that the step be taken by his or her legal representative when the applicant is under 15 years of age.

"Note 2—It is imperative that he or she, though over the age of 15 but under legal age, or a person adjudged incompetent, shall take this step only with the consent of his legal representatives.

"TRANSLATOR'S NOTE.—Because the Japanese government thus claims foreign born Japanese as subjects of the empire, though not so stated, it is reasonable to say that Japanese born in America must conform strictly to the provisions in the note under A.2. That is, unless such native son expatriate himself from Japan before the age of 17, he can not expatriate himself until he has satisfied the military requirements.

"C.

"1. Those Japanese who have expatriated themselves on the ground of being foreign born or of their own accord may repatriate when they establish their domiciles within the dominion of the Japanese empire.

"2. Foreign naturalized subjects, their children, or foreign males or females who have been naturalized by virtue of adoption by Japanese families, or who have married a Japanese man or woman and assumed the family name of said man or woman, will under no circumstances be permitted to again become Japanese subjects if they once forfeit the naturalization right thus obtained."9-a

Although this law constituted a step in the right direction, the procedures were cumbersome and time consuming. Japanese law required the presentation of a birth certificate before expatriation could be approved, and many of those of the right age to be eligible to expatriate at the time when the law went into effect could not meet the requirement.16-a Birth certificates were not a commonplace in the first decade of the twentieth century—or even in the second decade, for that matter—especially in rural communities. Even if a birth certificate existed, papers had to be sent to Japan for consideration and processing before approval or disapproval was official. According to statements made by Nisei who experienced these procedures, the time consumed between filling in the first form and receiving official approval of expatriation amounted to at least a year and frequently to as much as 2 years.

The California State Board of Control, treating the subject of dual citizenship in 1920, headed the section with the caption: "Once a Japanese, Always a Japanese." The first two paragraphs, not entirely accurate at the time, and definitely untrue after the 1924 revision of the Japanese nationality law, contain the essence of all arguments developed by the anti-Japanese element up to and including the present time.

"Every Japanese, wherever born, is a citizen of Japan unless expatriated. Every Japanese in the United States, whether American-born or not, is a citizen of Japan and as such is subject to military duty to Japan from the age of seventeen years until forty years of age, unless expatriated. The American-born Japanese holds dual citizenship: first, allegiance to Japan with compulsory military service; and second, rights of citizenship in America. Under such circumstances, a Japanese, though born in America and thereby acquiring all the rights and privileges of an American citizen, owes his first obligation of allegiance and military service to Japan. It is contended by writers on international law that because our country is cognizant of this dual citizenship with its requirement of compulsory military service to Japan,

the United States, in event of war with Japan, could not demand military service from the American-born Japanese but would be obliged to permit them to return to Japan, there to render military service in behalf of Japan. American-born Japanese would appear to be enjoying all the advantages of American citizenship without assuming the most important responsibilities of such citizenship.

"Once a Japanese, always a Japanese, unless each individual Japanese renounces allegiance in the manner prescribed by the Civil Code of Japan and his renunciation is accepted by the Japanese government. No matter how many successive generations of American-born Japanese there may be, none of the children born in America are relieved of allegiance to Japan unless the parent has renounced allegiance to Japan and had his renunciation accepted by the Japanese government."9-b

The above statement was followed closely by the comment: "So far as could be learned, none of these [renunciations] have been accepted by the Japanese government."

The implications of such statements disturbed a great many people back in 1920, when the United States was not in a state of war. They were understandably much more alarming when thrust upon the West Coast populace 22 years later from the front pages of West Coast papers, by courtesy of the Dies Committee, whose members, at this time when thoughtful people were reluctant to disavow the rights of American citizens on the basis of ancestry, felt moved to publicize the report which they had contrived before the United States entered the war against Japan and which Congress had refused to approve for publication at Government expense. In 1943 the report was finally published as an official document by the Government Printing Office. However, it was early in 1942, when officialdom was holding back from sanctioning the forced evacuation of the Japanese Americans from their homes along the Pacific Coast, that the committee released its more inflammatory conjectures to the press. Such details of the Dies Committee report on dual citizenship as have any relation to fact have it only in an anachronistic sense. The writers of the report juggled time and place, presenting as if they had bearing on conditions of the forties statements which had some application to conditions of the years between 1916 and 1925.

As background for appreciation of Chapter XXIII of the Dies "Yellow" Report—the chapter, one page in length, devoted to the subject of dual citizenship—the following factual and documented

account of what had happened to affect the dual status of the Nisei since the Japanese Government first revised its nationality law in 1916, is offered.

After the first modification of the Japanese nationality law, the Americans of Japanese ancestry were increasingly dissatisfied with their status and increasingly aware of the suspicions directed against their Americanism. As early as 1919 the rising generation began to petition the Japanese Government to make further changes in the law which, they protested, had been inadequately modified in 1916. The number of petitions mounted steadily until, in 1924, the Japanese Government responded with a liberalization of the expatriation law. A portion of one of these petitions offers a fair sample of the thinking of the young citizens of this minority group:

"We are all men of Japanese parentage, born on the soil of the United States, and who have been educated in the schools of that country. We wish to be considered citizens of the country in which we are now living, and to show that men of Japanese ancestry can be as loyal to the country of their adoption as men of other ancestry residing therein \* \* \*. The question of dual citizenship and the criticisms which have been made against American-born Japanese have caused us to feel that some legislation should be passed by the country of our ancestors that will free us of any obligation to it, and allow those of us, who have located within the United States with the purpose and intention of remaining and interesting ourselves in the affairs of that country, to show that we can be good and loyal citizens of the country of our adoption \* \* \*. We respectfully petition that at the coming session of the Japanese Parliament, a law be enacted, whereby those of Japanese descent can select their own citizenship without restriction of law, and, having once made such decision, can remain citizens of that country without any question of dual allegiance."17-a

In response to such petitions as the one just quoted,

" \* \* \* the special session of the Japanese Diet in the summer of 1924 amended the Law of Nationality, and the amended law went into force on December 1, 1924. According to this new law, a child born of Japanese parents in the United States, Canada, and certain South American countries which hold to the principle of jus soli is not claimed as a subject

by the Japanese government unless it declares, within 14 days after birth, through its legal representative, its intention of retaining Japanese nationality. Moreover, even if such a declaration of intention to retain Japanese nationality has been filed, the person may abandon it at any time by making a simple notification. Furthermore, the law is retroactive, providing that even those who were born prior to the adoption of the law and who consequently possess dual citizenship, may at any time cancel their Japanese citizenship by a mere notification. Thus, Japanese born after December 1, 1924, automatically possess simple American citizenship, and those born prior to December 1, 1924, are enabled to cancel their dual citizenship in favor of simple American citizenship by mere notification."<sup>18</sup>

In view of the statement of the Dies Committee, to be quoted presently, it is pertinent to stress the fact that Japanese law did not, after 1924, require that children born to Japanese nationals in foreign countries operating under the principle of jus soli should be registered with the Japanese consul. It is true that parents who specifically wanted their American-born children to hold Japanese citizenship had provision made for permitting this retention. However, even before 1924, Japanese parents in America had begun to ignore or defy the older Japanese law which required them to register their children at birth with the consul. An investigation of Japanese American births in the State of Washington during the years 1915 to 1917 showed that of 2,345 Japanese births in that State, only 1,770 were registered with the consul. In other words, in the period when the Japanese nationality law was most rigid, the parents of 670 children in Washington alone defied that law.<sup>19</sup>

Professor Strong, of Stanford University, found in 1930 that two-thirds of the Japanese American children born since the ordinance of 1924 had never been registered with the consul and thus had American citizenship only. Of those born prior to the ordinance of 1924, 40 percent had divested themselves of their Japanese citizenship. The Japanese consular reports for 1930 for California showed that 22,027 Nisei of all ages had dual citizenship, while 24,263, more than half, had only American citizenship.<sup>20</sup>

Because of interpretations put upon the law, and because older Nisei who had no birth certificates remained unable to divest themselves of their Japanese citizenship, Japanese Americans continued to petition the Japanese Government for further relaxation of the law. A paper prepared by the research branch of the Civil Affairs Division of

the Western Defense Command, on the subject, "Dual Citizens and the Japanese Draft Law" suggests some of the problems of the dual citizen:

"Nisei with dual citizenship who have reached the age of 20 years are subject to service in the Japanese Army under the provisions of the compulsory service law. If the Nisei lives on foreign soil, however, he may apply to the proper authorities, either the Japanese Consulate or the local Japanese Association, for deferment by reason of his foreign residence. Application for such deferment must be renewed every year until he reaches the age of 37 years. A deferment granted to a Nisei in a foreign country because of his residence is not valid if the Nisei goes to Japan for more than three months. New application for deferment must be made for some other reason, such as attendance at a school. Students are granted educational deferments if they are under 22 years of age and in high school, under 25 years of age and in junior college, college, or preparatory school, and under 27 years of age and in the university. The student who is over these age limits must report for induction regardless of his student status.

"During the 1930's the secretary of the Japanese Consulate in Los Angeles decreed that renouncement of Japanese citizenship could be made only by a person living on foreign soil. Early interpretation of this was to the effect that Nisei studying in Japan were legal residents there, and so could not expatriate. A later interpretation has allowed the acceptance of the address of the parents as the legal address of the Nisei, so that Nisei in Japan may now expatriate at any time before they reach legal draft age. Nisei permanently exempted from the draft for any reason may expatriate at any time. The same freedom of expatriation at any time applies to girls inasmuch as they are not affected by the draft laws.

"If the dual citizen residing for a time in Japan does not renounce his Japanese citizenship and is drafted, he will lose his American citizenship as a result of his service in the Japanese Army. To avoid this, Nisei coming to Japan are urged to expatriate their Japanese citizenship before leaving the United States. The feeling of the Japanese is that Nisei born in the United States have a greater job in the development

of Japanese welfare in the United States than in serving in the Japanese Army."<sup>21</sup>

Early in 1941, 20,000 Japanese Americans in the Hawaiian Islands petitioned the Secretary of State to request the Japanese Government to simplify further procedures for expatriation of its dual citizens. Lieutenant General C. D. Herron, then commanding the Hawaiian Department of the United States Army said in reference to this action:

"In the willingness of the younger Japanese to sign this petition and in their loyal and eager compliance with the draft, as in the attitude of the older generation in accepting the new order [selective service] for their children, there is complete refutation of the suspicion of their loyalty."<sup>22</sup>

At this point, the Dies Committee's summing up of the dual citizenship of Japanese Americans is quoted in full:

"Dual citizenship is insisted upon by all the totalitarian governments. The Japanese Government has the following law on its statute books with reference to the citizenship of Japanese:

"A child is Japanese if his or her father is a Japanese at the time of his or her birth. (Civil Code of Japan, vol. 3, art. 66.)

"The Japanese Government requires that every child of Japanese extraction shall be registered at birth with the Japanese consulate if that child is born in a foreign country. The registration is then forwarded to Tokyo, and the Japanese Government considers the child to be just as much a Japanese citizen as if born in Japan.

"From the committee's investigation it would appear that the Japanese residing on the West Coast, to whom this law also applied, carried out not only the letter of the law, but the spirit of the law as well. This law operates among the Japanese despite the fact that all Japanese children who are born in the United States or its possessions are automatically American citizens. They are citizens by accident of birth.

"It is impossible to ascertain how many Japanese in the United States hold dual citizenship status. However, Shiro Fujioka, executive secretary of the Central Japanese Association, southern California branch, made the following statement with reference to dual citizenship:

'Of the 50,000 American-born Japanese who returned to Japan (Kibei), the great majority are dual citizens.'\*

"This same percentage would undoubtedly hold true with reference to the Japanese Americans who did not go to Japan to be educated there.\*\* It has been conservatively estimated that about 75 percent of the Nisei, or American-born Japanese, have dual citizenship.\*\*\*

"The Committee has in its files a copy of a set of expatriation blanks which can be executed by American-born Japanese in order to become expatriated from Japan. The 'Statement of Expatriation' must be filled out in duplicate. Very pertinent questions are required to be answered regarding the prefecture from which the subject's parents came, name of father, reason for expatriation, by whom the application is made, etc. The applicant also must receive recent confirmation of date of birth from the Minister of State in Japan, where births of all Japanese children

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\*The WRA Historian wrote to Mr. Fujioka, residing at the time at Heart Mountain Relocation Center, asking him if he recalled making such a statement and if so, was the figure an estimate, and did it include Nisei from Hawaii. A letter written for Mr. Fujioka by his daughter Kaoru Peggy Fujioka, dated August 14, 1945, contained the following: "It is true that father did make such a statement. He points out, however, that the figure is an exceedingly rough estimate. Others have observed the number as more closely approximating 30,000. It is very difficult to say which of the two figures is more accurate as no official record was ever kept. Furthermore, this figure represents the number of those returning to Japan in the twentieth century from both the continental United States and Hawaii—with the greater majority leaving from the latter place."

\*\*It should be observed that the basis for this assumption is not indicated.

\*\*\*It would be interesting to know who estimated—let us omit the "conservatively"—this percentage.

throughout the world are registered through their local consular offices. In this connection, the committee learned that Japanese consuls and consular aides did everything in their power to dissuade applicants from expatriating from Japan. According to a Japanese informant there has not been a single instance where Japan has actually released an American-born Japanese from dual-citizenship status. The committee's investigation revealed that not many American-born Japanese ever made any attempt to become expatriated from Japan."23

Here, as in subsequent investigations, the committee was more interested in concealing than in revealing facts. In this instance their attempt moved them to quote without acknowledgment from the 1920 report of the State Board of Control that item referring to the Japanese Vice Consul's statement that as yet no application for renunciation of Japanese citizenship had been approved by the Japanese Government. In other words, the Dies Committee introduced a statement made in good faith of contemporary conditions by a vice consul in 1919, or possibly 1920, as evidence to support their misrepresentation of conditions existing 20 years later.

Finally, to bring common sense to bear on the question of Nisei dual citizenship, counsel for Korematsu said, in his brief presented before the Supreme Court of the United States in the Korematsu case:

"The United States disavows the claims of all foreign governments to the allegiance of our citizens. 8 USCA, Section 800. There is neither a legal nor a moral duty imposed upon a native-born American to divest himself of the citizenship which a foreign country may bestow upon him by virtue of its jus sanguinis. Why should he disavow that which he refuses to recognize? Should he spend time and money simply to notify a foreign government that he does not recognize its jus sanguinis and then take trouble to extricate himself from its futile claims by a complicated legal procedure? An American consul in Japan in peace time owes the American-born citizen there the full protection guaranteed by the jus soli of the United States under international law and this nullifies any claim Japan might assert as to jurisdiction over him arising out of its jus sanguinis. Why should we ask these people to go to the trouble of voiding a citizenship Japan confers when they do not even accept it? Refusing to recognize it or

ignoring it is in itself a repudiation. We do not ask the descendants of European aliens here to renounce citizenship arising from the jus sanguinis of European governments and we do not accuse them of disloyalty arising out of the fact of dual citizenship or failure to renounce it. Dual citizenship is not dual allegiance and does not create disloyalty to this nation. It is significant that Japanese descended persons have done more to shake off the dual citizenship they never solicited than have European descended citizens. Since 1924 the sole method by which an American-born Japanese can obtain rights to Japanese citizenship is by being registered within 14 days after birth with a Japanese consular official.\* \* \* Such registration, however, could not constitute acceptance of Japanese citizenship by an infant who is not sui juris and is powerless to prevent the idle act.\* \* \* If we are to suspect citizens of disloyalty simply because the country of their ancestors looks upon them as entitled to the benefits of citizenship under its law we must necessarily suspect all German and Italian descended citizens of disloyalty. We must also entertain serious doubts about the loyalty of all of our citizens of foreign stocks, which means of all our citizens, for we are all descended from foreign stocks \* \* \*. All that the silly suspicion of these people arising out of the charge of dual citizenship proves is that there is a lot of nonsense in prejudiced skulls.#24