ing to expatriation; and returned to this country on an American passport." The question whether, on this record, Kawakita had intended to renounce American citizenship, said the Court, in sustaining conviction, was peculiarly one for the jury and their verdict that he had not so intended was based on sufficient evidence. An American citizen, it continued, owes allegiance to the United States wherever he may reside, and dual nationality does not alter the situation.[1437]

Doubtful State of the Law of Treason Today

The vacillation of Chief Justice Marshall between the *Bollman*[1438] and *Burr*[1439] cases and the vacillation of the Court in the *Cramer*[1440] and *Haupt*[1441] cases leave the law of treason in a somewhat doubtful condition. The difficulties created by *Burr* have been obviated to a considerable extent through the punishment of acts ordinarily treasonable in nature under a different label,[1442] within a formula provided by Chief Justice Marshall himself in *Bollman*. The passage reads: "Crimes so atrocious as those which have for their object the subversion by violence of those laws and those institutions which have been ordained in order to secure the peace and happiness of society, are not to escape punishment, because they have not ripened into treason. The wisdom of the legislature is competent to provide for the case; and the framers of our Constitution . . . must have conceived it more safe that punishment in such cases should be ordained by general laws, formed upon deliberation, under the influence of no resentments, and without knowing on whom they were to operate, than that it should be inflicted under the influence of those passions which the occasion seldom fails to excite, and which a flexible definition of the crime, or a construction which would render it flexible, might bring into operation."[1443]

[1437] 343 U.S. at 732. For citations in the subject of dual nationality, *see* id. at 723 n.2. Three dissenters asserted that Kawakita's conduct in Japan clearly showed he was consistently demonstrating his allegiance to Japan. "As a matter of law, he expatriated himself as well as that can be done." Id. at 746.

[1438] *Ex parte* Bollman, 8 U.S. (4 Cr.) 75 (1807).

[1439] United States v. Burr, 8 U.S. (4 Cr.) 469 (1807).

[1440] Cramer v. United States, 325 U.S. 1 (1945).

[1441] Haupt v. United States, 330 U.S. 631 (1947).

[1442] *Cf.* United States v. Rosenberg, 195 F.2d 583 (2d. Cir. 1952), *cert denied*, 344 U.S. 889 (1952), holding that in a prosecution under the Espionage Act for giving aid to a country, not an enemy, an offense distinct from treason, neither the two-witness rule nor the requirement as to the overt act is applicable.

[1443] *Ex parte* Bollman, 8 U.S. (4 Cr.) 126, 127 (1807). Justice Frankfurter appended to his opinion in Cramer v. United States, 325 U.S. 1, 25 n.38 (1945), a list taken from the government's brief of all the cases prior to *Cramer* in which construction of the Treason Clause was involved. The same list, updated, appears in J. Hurst, *supra* at 260–67. Professor Hurst was responsible for the historical research underlying the government's brief in *Cramer*.