

University of Chicago Law School

Chicago Unbound

Journal Articles

Faculty Scholarship

1927

Domicile, Double Allegiance, and World Citizenship

Ernst Freund

Follow this and additional works at: https://chicagounbound.uchicago.edu/journal_articles



Part of the [Law Commons](#)

Recommended Citation

Ernst Freund, "Domicile, Double Allegiance, and World Citizenship," 22 Illinois Law Review 174 (1927).

This Article is brought to you for free and open access by the Faculty Scholarship at Chicago Unbound. It has been accepted for inclusion in Journal Articles by an authorized administrator of Chicago Unbound. For more information, please contact unbound@law.uchicago.edu.

4. A Mussolini, with a Fascism, would relieve us from this incubus.

But he must be a constitutional Mussolini. Can this be expected? We believe it can be. We believe that Mazzini's definition of democracy (quoted by Dr. Butler), "Democracy is the progress of all under the *leadership* of the wisest and best," supplies the clue. What this nation needs is *leadership*, but leadership under the Constitution.

Is it possible for an American President to act as a Mussolini within the framework of the Constitution? Does our Constitution permit genuine leadership?

Certainly it does. Theodore Roosevelt gave us leadership. Grover Cleveland gave us leadership. The times demand it today in a form even more dominating than in their day. It can be done constitutionally, if the men are at hand to do it.

Where are the men?

JOHN H. WIGMORE.

CORRESPONDENCE

COMPULSORY CITIZENSHIP

To the Editors of ILLINOIS LAW REVIEW:

It is to be regretted that Dean Wigmore in his article on Domicile and World Citizenship in the April number of the ILLINOIS LAW REVIEW should have seen fit to revive the old charge that the German law of 1913 was "a treacherous plan directly aimed at securing world dominion," a charge which ten years ago may have served well enough the purposes of war propaganda, but which seems somewhat of an anachronism today.

Even while the war was in progress, the Yale Law Journal published a scholarly and exhaustively documented article on the German law,¹ which convincingly shows that there is no positive proof to support any sinister interpretation put upon the act, and one cannot but wonder whether Mr. Wigmore has studied that article with sufficient care. Nor does Mr. Flournoy's article in 8 American Journal of International Law, p. 477, to which Mr. Wigmore refers, support his view, except for a quotation from a German commentator who speaks of fostering "Deutschtum" abroad. In the nature of things there can be at best only internal evidence of

1. "Dual Allegiance in the German Law of Nationality and American Citizenship" by Theo. H. Thiesing of the District of Columbia Bar, 27 Yale Law Jour. 479-508.

alleged "treacherous" designs of any piece of legislation, for they are not apt to be avowed either in parliamentary debates or in the official "motives" by which foreign governments support bills which they submit to legislative bodies.

As regards internal evidence, the third paragraph of Mr. Wigmore's quotation from the German law: "The consul at the foreign city is to record and report on such names" would be a strange provision in a law designed against the security of a foreign state, for while consular archives may enjoy diplomatic immunity, they would not be likely to be openly proclaimed as places for registering disloyal citizens. Mr. Wigmore says: "we translate the text directly from the 'Reichsgesetzblatt' of 1913." This journal is not at present accessible to me; the text of the law as printed in the "Gesetzsammlung für Preussen 1911-1914," which purports to be a true transcript from "Reichsgesetzblatt" 1913, No. 4263, p. 583, does not, except as to the first paragraph, accord with Mr. Wigmore's translation; it merely provides that before the German home government gives the authorization, "the German consul shall be heard." If Mr. Wigmore is right in his text, his case is correspondingly weakened, while the currently accepted text permits no inference whatever.

Mr. Wigmore's reference to the law as "a treacherous device to undermine the professed loyalty of the naturalized American citizen" (with more to the same effect) should be disposed of by section 36 of the German act (which he fails to quote) providing that "treaties concluded by member states with foreign states prior to the taking effect of this law remain unaffected." A note in the text of the "Gesetzsammlung" refers to the treaty between the North German Confederation and the United States of February 22, 1868, the so-called Bancroft treaty, as the only treaty applicable.

It has always been the theory of the German law that renunciation of allegiance was not at the option of the citizen or subject, while Congress, irrespective of foreign laws, by act of July 7, 1868 (R. S., s. 1999), declared expatriation to be a natural and inherent right of all people—a declaration inconsistent with our own subsequent legislation. The German law of 1870 provided for loss of citizenship by absence abroad for ten years, while our naturalization law grants citizenship after five years' residence and upon express renunciation of foreign allegiance. The Bancroft treaty provides that German citizens who have been naturalized in the United States and have uninterruptedly resided there for five years shall be held to be and treated as American citizens (15 St. L. 615). Germany, in other words, solved the conflict by foregoing the principles of her law in favor of ours. The treaty provision was saved both in the law of 1870 (s. 21) and in the law of 1913. The American government would have stultified itself, had it, as Mr. Wigmore suggests, denounced the German law of 1913 at the outset.

ERNST FREUND.