

REVIEWS

Civilians Under Military Justice. FREDERICK B. WIENER. University of Chicago Press, Chicago and London, 1967. Pp. 346. \$11.50.

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This is a unique and extremely valuable book touching on an important area of military law. Its author, our foremost military law authority, was an advocate in some of our leading Supreme Court decisions dealing with the problem.¹ His credentials do not stem from his briefs in those cases alone. Rather, the book is a pioneer work, truly revealing newly discovered chronicles dating back to the first British Mutiny Act of 1689.

Those who have worked in this field will be amazed by the nature, quality, and depth of the new materials now presented. They were overlooked by Holdsworth, Fortescue, and Clode. Mr. Wiener found them in scattered sources, and dirtied his hands working through them. One source was the headquarters order books of the British Army in North America, preserved at the University of Michigan in Ann Arbor. Another was the records of trials recorded in the War Office court-martial books in the Public Record Office in London. The leads supplied there led into correspondence files and secondary sources. The totality of the new finds corroborates the Supreme Court decision that in time of peace the military have no jurisdiction to try civilians.

Three heads of jurisdiction emerge over the two and a half centuries of British and American law examined in the volume: (1) the law governing the armed forces; (2) military government or the law of belligerent occupation; and (3) martial law or the use of military means to preserve the domestic peace in a county, state, or nation. The treatment given in this book to the latter is mainly confined to the status of British law. The other two heads of jurisdiction are related both to American and British history, with perhaps the bulk of it being American. But the Anglo-American problems in all three areas have such common sources and parallel each other so closely that the book will be a classic both in England and in this country.

Prior to Wiener we had two eminent military law authorities. One

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¹ *Grisham v. Hagan*, 361 U.S. 278 (1960); *Kinsella v. United States ex rel. Singleton*, 361 U.S. 234 (1960); *McElroy v. United States ex rel. Wilson*, 361 U.S. 281 (1960); *Reid v. Covert*, 354 U.S. 1 (1956); *Kinsella v. Krueger*, 354 U.S. 1 (1956).

was General E. H. Crowder, who was responsible for the Articles of War enacted by Congress in 1916. That enactment granted jurisdiction to the military over all civilians accompanying the armed forces in time of peace outside the territorial jurisdiction of the United States. Col. William Winthrop, our other eminent military law expert, had strongly maintained that no such law was constitutional.

Winthrop's views were vindicated by the Supreme Court, though the opposing view was so strongly held and so eminently sponsored that Britain adopted it in the 1950's. But there is no British court to say that the law is unconstitutional; and Wiener's researches show that that head of British jurisdiction has not been oppressively used.

The golden thread running through all the chronicles and letters which this diligent researcher has dug up is the fear of military power and the deepseated enduring desire for civilian control. We as a people are in greater danger today than ever before, because of the huge proportion of our budget claimed by the Pentagon and because of the ominous military-industrial complex that President Eisenhower warned against in his farewell message.

This book therefore fits the current mood and is an indispensable reference work as well. It has an excellent index, a complete bibliography, and four appendices: Illustrative Documents, Trials of Civilians by British General Courts-Martial during the War of American Independence, Trials of Civilians by General Courts-Martial Noted in Wellington's General Orders, 1809-1818, and a digest of the American law on the subject of military trials of civilians during time of peace. There are also a Table of Statutes and a Table of Cases, both highly useful.