

jurisprudence became an occult science and its professors 'the most unlearned kind of most learned men.'"¹⁰ Against such a fate the reading and rereading of Maitland may protect lawyer and student alike. By studying what he wrote and above all how he wrote it, they may avoid the accusation he directed against the post-Edwardian judges and lawyers who "knew their own business very thoroughly, and they knew nothing else. Law was now divorced from literature; no one attempted to write a book about it."¹¹ Happily, many books on the law are being written today, but only seldom does one reveal the art of a Maitland.

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SOLDIERS OF THE STATES: THE ROLE OF THE NATIONAL GUARD IN AMERICAN DEMOCRACY. By William H. Riker. Washington: Public Affairs Press, 1957. Pp. 129. \$3.25.

PROFESSOR Riker presents his study of the National Guard as a contribution to the theory of federalism in American government. The subject is well chosen, for, as he points out, defense is one of the gravest problems of federal government, and the militia "is the only area in which the nation and the states have attempted to work together throughout most of our history."¹ In a compact and suggestive monograph of 117 pages, the author examines the central question whether federalism as a system of joint administration is worth the inefficiency which it occasions.

The author's answer is a qualified but resounding "No." It is furthermore a conclusion which he suggests has implications for other fields of joint federal-state administration in this age of technological and social complexities. Surveying the history of the militia from the eighteenth century to the present, Riker concludes that the militia and its modern successor, the National Guard, have made little or no contribution to national defense. In its most recent test, the second World War, National Guard divisions, as the *Gray Board Report* of 1948 observed, required two years of training before they were ready for combat—as much or more training than was required by selective service divisions raised from scratch. In theory, the National Guard is the first-line national reserve force; successive congressional enactments since the first Dick Act of 1903 have established and elaborated that role. In fact, the Guard, hamstrung between federal and state authorities, has in time of emergency never been found prepared to take up the role Congress made

10. P. 126.

11. P. 125.

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1. P. 9.

for it. Riker quotes with approval the trenchant observations of General Lesley McNair on the Guard's performance in World War II:

"The history of the National Guard, since its last induction into Federal service and until sweeping reforms were made, was one of unsatisfactory training, physical condition, discipline, morale and particularly leadership When it is considered that it was necessary to make almost 100% replacement of commissioned officers with troops from the grade of major general down through the grade of colonel and to replace an extremely high percentage of officers of lower rank, it can be seen that the structure of the National Guard was pregnant [*sic*] with disaster for the entire nation."²

Federal control of the Guard, it is true, has greatly increased since 1903. Federal grants-in-aid to the Guard today are probably ten times the size of appropriations by the several state legislatures for its support, and with the increasing financial interest of the federal government has come increasingly detailed supervision of Guard functions and training by Regular Army officers. But federal encroachment on the various state Guards has been resisted by state officials and, with particular success, by the powerful National Guard Association. The result has been compromise all along the line and a militia organization which, as the author ruefully admits, will not fit any known theory of federalism. The Guard, Riker concludes, "can thus be regarded as an undesired bequest from the political thought of the eighteenth century."³ As another student of Guard affairs has observed: "It is a Frankenstein monster created by the Constitution of the United States."⁴

Why, then, the National Guard? The answer is given by General Ellard Walsh of Minnesota, perennial president of the National Guard Association: "The Congress has ever been our refuge and our strength."⁵ Few lobbies have such influence as the NGA possesses and, from the first Dick Act of 1903 to the present, the NGA has fashioned a series of unbroken political successes on Capitol Hill. Opposed at every turn by the Army General Staff and the Administration—"When the General Staff get together making a study," one NGA president cried, "God help the militia!"⁶—the Guard has won compromise victories on every issue of military organization from the Continental Army Plan of 1916 to the National Reserve legislation of the fifties. Its most spectacular recent triumphs have been the gaining of control over Air National Guard units, a victory won over violent opposition of the whole Air Force staff, and the successful avoidance of any role in Civil Defense, a vital defense function which the Guard is perhaps more fitted than any other force to perform. When an assistant secretary of defense recently suggested that the Guard be used for Home Guard and Civil Defense duties,

2. P. 95.

3. P. 116.

4. HUNTINGTON, *THE SOLDIER AND THE STATE* 177 (1957).

5. P. 90.

6. P. 83.

President Walsh's rejoinder betrayed the vast power and confidence of NGA. "If they want war," the General said, with reference to domestic, not foreign, enemies, "let it begin here!"⁷

Obsolete and inefficient as a military weapon, thoroughly confused as a case study in federalism, the National Guard remains what it has always been—a political, not a military, phenomenon. Guard commissions and perquisites are an integral—and from the gubernatorial point of view, a very cheap—part of the spoils of state politics, the parochial equivalent of the "rivers and harbors bill" on the national level. As instruments of administration, state governments may be obsolete, as Professor Riker suggests in his conclusion. As basic and largely autonomous units of American politics, the states are still powerful, and the National Guard is the best proof of it. The author, primarily concerned with the theoretical and administrative aspects of the Guard, does not sufficiently develop the implications of this fact. Federalism in American government has always been less a system than a harsh political fact, indeed, a political imperative of successful, if rather inefficient, governance in a country as large and as disparate as the United States. Federalism has administrative implications; in National Guard, as in other, affairs, however, its meaning and its reasons are basically political.

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INTERNATIONAL LAW OPINIONS. By Lord [Arnold D.] McNair. New York: Cambridge University Press, 1956. Vol. I: PEACE, pp. xxvi, 380; Vol. II: PEACE, pp. viii, 415; Vol. III: WAR AND NEUTRALITY, pp. viii, 436. \$35.00.

IN these volumes, Lord McNair, long a leading English international law professor and formerly President of the International Court of Justice, renders an invaluable service by making available much source material on international law as viewed by the British government. In the international law system developed over the last several centuries, treaties and international

7. HUNTINGTON, *THE SOLDIER AND THE STATE* 176 (1957). The potent congressional influence of the Guard is revealed in an incident from the 1930's. General Milton Reckord of Maryland, the chief NGA lobbyist, discovered that the Senate Armed Services Committee contemplated a cut of \$700,000 in Guard appropriations, and, adding insult to injury, planned to spend \$400,000—to be added to the Guard bill—improving Fort Sill, Oklahoma, a Regular Army reservation. General Reckord in a speech to the NGA convention in 1937 related his transactions with Senator Copeland, Chairman of the Committee: "In a respectful but firm way I indicated to him that there might be a difference of opinion . . . and . . . we would not play ball that way It simply meant, gentlemen, that we were losing \$700,000 and they were adding an additional \$400,000 and charging it against us I begged and pleaded with him to delete it, and when he would not do that, and he would not restore the \$700,000, I called for assistance, and wires and letters went all over the United States, and very quickly the response came back to the Senators, and finally, on the floor, our \$700,000 was restored." Pp. 89-90.

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