

**POINTS OF VIEWS;
IN TWO VOLUMES;
VOL. II**

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Points of views; in two volumes; Vol. II by Viscount Birkenhead

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VISCOUNT BIRKENHEAD

**POINTS OF VIEWS;
IN TWO VOLUMES;
VOL. II**

POINTS OF VIEW

BY

VISCOUNT BIRKENHEAD
LORD HIGH CHANCELLOR OF GREAT BRITAIN

IN TWO VOLUMES

VOL. II

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X

COURTS-MARTIAL

THE unexpected nature and extent of the administrative problems which faced army chiefs as the late War unfolded its course have been a constant subject of discussion and illustration in the hands of both military and civil narrators of war experiences. The creation of services and departments hardly dreamt of before the War by even the most imaginative of staff officers had, at its close, produced much amazing improvisation, absorbed much man-power, and added greatly to the congeries of employments which so long defied the efforts of the demobilisation branch of the War Office. But at the outset the necessary services were slow to realise a tenth part of the changes which modern warfare demanded. The military mind notoriously runs in grooves, and, whatever the vigour and initiative displayed in progress along an established track, the first start in a fresh direction is too often a slow and uneasy effort. Army reform is indeed as difficult as law reform, and the conservatism of lawyers is matched by that of soldiers.

It will not, I think, be without interest to trace the progress and effect of what was at once both a military and a legal reform, the development,

X.

x. namely, of a special military service which, though small by comparison with others, provided at the end of the War sufficient contrast with its modest beginning.

The original Expeditionary Force of six Divisions took with it, attached to Sir John French's Headquarters Staff, a single adviser in military law; officially he was the Deputy of the Judge-Advocate-General who remained at home, and his prospective existence had been recognised in a single paragraph in *Field Service Regulations*. The "D.J.A.G."¹ in due course established himself as a well-recognised official, helpful, diligent, unprejudiced, and experienced in both civil and military law.

The system of law he was called upon to administer needs an explanation which must in some degree be technical. A soldier upon enlistment provides the clearest modern instance in English law of a distinct legal status such as Roman law defined with so much care. He is not the only instance, for he shares the distinction with infants, lunatics, and trade unions. Without losing in all respects his status as a civilian, he acquires a new status which it is the main function of military law to define and regulate. It is with the internal rather than with the external aspect of this status that military law deals. The relation of the soldier to the civilian remains, for the most part, regulated by ordinary law.

Yet military law is, in its origin and authority and from a technical standpoint, ordinary law. Apart from some few surviving elements of the

¹ Brigadier-General Mellor, K.C.

Royal prerogative it is all based on statute. It is in the Army Act that the soldier (if he ever look) finds his duties and his rights; and that Act is, of course, as good law as any other Act of Parliament. But the status it establishes is a thing apart. Once enlisted the soldier has by law—Act of Parliament, that is—to be where he is wanted. Absence from that place (unlike the absence of the office boy whom the attractions of a Wednesday football match have drawn away from the call of his employer's bell) may entail, upon conviction by court-martial, a punishment of two years' imprisonment with hard labour. The soldier must obey orders of superiors; the result of failure again may differ widely from that of the civil breach of the contract of service which a workman commits when he disobeys his foreman's orders; if committed "in such a manner as to show wilful defiance of authority" when on active service, it may indeed entail a sentence of death. The mere display of a lack of moral quality—courage—may in similar circumstances have a similar result. Such results are not imposed upon soldiers by the arbitrary will of their commanders (as is sometimes ignorantly supposed), but by the positive enactment of an Act of Parliament.

Rights as well as duties are dealt with and defined by the same statute. The soldier's pay is a statutory right, and cannot be withheld at the caprice of his commander. His status itself is in many ways safeguarded. A soldier once appointed a non-commissioned officer cannot arbitrarily be reduced. A conviction for an