

military rule no matter how direly in disorder the homeland might be. History bears out that today's popular understanding of the term "martial law" is totally at variance with the intended meaning of 1776. "Martial Law" in 1776 referred to the strict summary rules and procedures employed by the "Courts-Martial" for the discipline of naval and land forces. Article 32 declared in effect that while an enlisted man, by entering the armed service of state or country, subjected himself, for the sake of necessary military autonomy, to the jurisdiction of the military courts, no civilian could be denied the guaranteed due process of a civil forum. The "martial law" of 1776 is the "military law" of 1966.

Fifteen years after the adoption of this Article, Maryland ratified the Fifth Amendment to the United States' Constitution which provided that a person could be convicted for a serious crime only after grand jury indictment, "except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of war or public danger."⁴ On the floor of the Convention of 1864, it was urged by Delegate Daniel Clarke that the implied reference of Article 32 to Maryland's navy and other practical unrealities be amended.⁵ His suggested amendment adopted the language of the Fifth Amendment to the

⁴ Amendment V to the United States Constitution reads in part:

"No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising . . .," etc.

⁵ "I do not know how a regular soldier can be in the service of the State. It is only the United States that can keep a regular standing army. . . . The State of Maryland has no mariners and marines." 1 DEBATES OF THE MARYLAND CONSTITUTIONAL CONVENTION OF 1864, at 361 (R. Bayly ed. 1864).

Constitution of the United States,⁶ which Delegate Clarke, and apparently the Convention, assumed to embody the "right doctrine" of Article 32. Fifty years later, Judge Alfred S. Niles commented in his work on Maryland Constitutional Law that Article 32 "contains substantially, if not absolutely, the same provisions in regard to Maryland as are contained in reference to the federal government in the first clause of the Fifth Amendment."⁷

In the 1864 Convention Delegate George Peter of Montgomery County also took issue with the language of the Article, but only to reinforce what he believed to be its intended guarantee:

"I hold it to be well-substantiated law, that under all circumstances, excepting the case of direct-interference upon the part of a citizen with military affairs, he is entitled to a fair and impartial trial . . . [It is] one of our rights that we are entitled to be tried by the laws under which we live."⁸

The passing flurry created by Delegates Clarke and Peter is the only recorded instance of controversy over Article 32 in Maryland conventions. These delegates dissented from the constitutional *grammar*, while assuming and

⁶ Daniel Clarke's suggested amendment at the 1864 Maryland Constitutional Convention was,

"[N]o person shall be held to answer for any charge or crime before a Court Martial or Military tribunal, except in cases arising in the land and naval forces of the United States, or in the militia of the State when in actual service in time of war or public danger. *Id.* at 360.

⁷ A. NILES, MARYLAND CONSTITUTIONAL LAW 51-52 (1915).

⁸ *Ibid.* Mr. Peter wanted "shall" substituted for "ought" in the Article.