
Freedom and Subordination: Disciplinary Problems in the U.S. Army during the War of 1812



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Abstract

This essay examines the general court martial case files for enlisted men in the War of 1812. The defendants were a reasonably representative cross section of the enlisted men, desertion was the most frequent offense, and mistreatment by officers was the most common motive for deserting. Most defendants proclaimed their innocence, but guilt and conviction were invariably the outcome in their trials. Officers struggled to find effective punishments. The abolition of corporal punishment by the lash in 1812 reduced the army's disciplinary options, resulting in an increasing recourse to the death penalty. The army, however, shrank from executing all the condemned.

In the era of the bicentennial of the War of 1812, we still struggle to understand the American army that fought it. We know who the men were, both in the rank and file and in the officer corps.¹ We know too—from the literature on the American campaigns against Canada after 1812—that most of these officers and men, with the prominent exception of the Left Division on the Niagara Peninsula in the summer of 1814, could not fight successfully according to the military

1. For the enlisted men, see J. C. A. Stagg, "Enlisted Men in the United States Army, 1812–1815: A Preliminary Survey," *William and Mary Quarterly*, 3d ser., 43 (1986): 615–45; and Stagg,

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conventions of their time. A variety of factors has been adduced to explain that state of affairs—poor strategic decisions by the James Madison administration; an incompetent officer corps; a lack of systematic training for the enlisted men; and serious financial, logistical, and organizational difficulties to name only a few—but we have not yet exhausted the range of questions that might be asked about these problems. How far was it even possible to discipline the rank and file in ways that would have created a more effective national army? We need to know, therefore, more about the enlisted men, not as collections of numbers in static sociological categories but as individuals and groups who had to adjust to army life and submit to discipline—in both senses of the word as self-discipline and the ability to master the art of war—that would have allowed them to function as competent soldiers.

The difficulty is that common soldiers in this period—as opposed to officers and militiamen—left behind very little in the way of diaries and personal letters. Historians have had to divine the well-springs of their behavior from statistical evidence and from impressions about them that were conveyed by their superiors, usually their officers.² Reliance on such evidence has reinforced the stereotype—albeit one that has become suspect—that enlisted men were either ruffians with criminal tendencies or simply poor and marginal men who joined up to satisfy their limited material needs.³ But there remains a major body of neglected data

“Soldiers in Peace and War: Comparative Perspectives on the Recruitment of the United States Army, 1802–1811,” *William and Mary Quarterly*, 3d ser., 57 (2000): 79–120. For the officers, see William B. Skelton, “High Army Leadership in the Era of the War of 1812: The Making and Remaking of the Officer Corps,” *William and Mary Quarterly*, 3d ser., 60 (1994): 253–74; and Stagg, “United States Army Officers in the War of 1812: A Statistical and Behavioral Portrait,” *Journal of Military History* 76 (2012): 1001–34.

2. Donald E. Graves has noted that accounts by American and British enlisted men for the War of 1812 are “very rare” (see Graves, ed., *Soldiers of 1814: American Enlisted Men's Memoirs of the Niagara Campaign* [Youngstown, N.Y.: Old Fort Niagara Association, 1995], 5). In the Records of the Office of the Adjutant General (Record Group [RG] 94 in the National Archives and Records Administration [NARA]) there are a handful of inspectors' reports on the army, but these documents hardly cover the whole force and their authors were more concerned with the officers and the (generally sorry) condition of the army than they were with enlisted men as individuals.

3. Such stereotypes about enlisted men were challenged, for early American forces, by Charles Royster, *A Revolutionary People at War: The Continental Army and American Character, 1775–1783* (Chapel Hill: University of North Carolina Press, 1979), 373–78; and more generally by André Corvisier, *Armies and Societies in Europe, 1494–1789*, trans. Abigail T. Slidall (Bloomington: Indiana University Press, 1979), 143–48; as well as by Christopher Duffy, *The Military Experience in the Age of Reason* (London: Routledge and Kegan Paul, 1987), 79. More recent case studies have revealed situations of considerable complexity, with early modern armies being composed of a wide range of men from artisan, farming, and laboring backgrounds, with the proportions of men coming from rural and urban backgrounds varying, depending on how and where armies concentrated their recruiting efforts. In the case of France, armies after 1793 became much more representative of the male population at large, due to the imposition of the *levée en masse* and Napoleonic conscription. In the United States after 1800, the U.S. Army was

about American regulars during the War of 1812, namely the general court martial case files preserved in the Office of the Judge Advocate General (Record Group 153) in the National Archives and Records Administration of the United States (NARA), a repository that contains the transcripts of 1,685 general courts of enlisted men held between September 1812 and May 1815.⁴ These records contain a considerable wealth of detail about the problems of disciplining ordinary soldiers during the War of 1812.

Like any source, these transcripts can be questioned. Do they reflect only the dysfunctional behaviors of a minority of the troops? Do they reveal more about the concerns of the officers than they do about the lived experiences of the men? Perhaps, but opposed to these possibilities is the fact that to all outward appearances the offenders were a reasonably representative cross section of the rank and file. There is little to suggest that they were atypical in any important respects, and the range of offenses that brought them before a general court martial was entirely typical of the sorts of misconduct that can be found in both American and European armies in the early modern era between 1689 and 1815.⁵ If that is the case, there is little reason to doubt that an analysis of the offending patterns recorded in the transcripts can provide some insights into the state of the army as a whole. Indeed, it could even be maintained that the court martial, more so than the battlefield itself, constituted the largest arena in which the meaning and success of discipline was measured between 1812 and 1815.

Consequently, we can see in these trial records not only how the officers sought to control and judge their men but also much of the attitudes and behavior of the men as well. Men on trial often spoke out on their own behalf, and as they did so they can be seen employing the “weapons of the weak” against officers who

composed of a broad mix of farmers (or more likely their younger sons), downwardly mobile craftsmen, and laborers, with men from urban areas being more heavily represented than their rural counterparts. The percentage of immigrants in this force ranged from between 13 percent and 19 percent, with the largest single group of immigrants coming from Ireland (see Stagg, “Soldiers in War and Peace,” 114–20).

4. It is not claimed that 1,685 embodies the exact number of general courts for the army. Although the proceedings of general courts were supposed to be transmitted to the War Department, evidence from company and orderly books, as well as from collections of personal papers, reveals that there were at least a few courts for which the proceedings cannot be located in RG 153. Nevertheless, the number of 1,685 transcripts would seem to be sufficiently large to provide a fair picture of the patterns of serious misconduct in the ranks and how the officers responded to them.

5. This conclusion is, more or less, in harmony with a study of offending patterns during the Revolutionary War, namely that nothing in the varying backgrounds of the offenders “seemed to dictate whether a specific individual would commit a military transgression and end up a court-martial defendant, desert from the service, or join a band of mutineers. Rather, individuals seemed only to react to the unique situations in which they happened to find themselves” (see James C. Neagles, *Summer Soldiers: A Survey & Index of Revolutionary War Courts-Martial* [Salt Lake City, Utah: Ancestry Incorporated, 1986], 2).

had almost unrestrained power over their daily lives.⁶ And from these records we can, moreover, obtain some idea of how ordinary men made sense of their roles as citizens and soldiers in the early American republic. And if it be true that there is a close relationship between state formation, institutional development, and the emergence of a distinctive military culture, the extent to which early American regulars could combine the roles of citizen and soldier can also contribute to an understanding of how well the new nation was succeeding, both as a republic of virtue and as a nation-state that could project military power.⁷ Certainly, questions about how male citizens responded to the challenges of military service have been asked about almost every conflict in which the United States has ever been engaged, but we still lack a clear sense of what the answers might be for the nation's "second war for independence" against the former mother country.

II

Mobilization for war after June 1812 was slow and cumbersome, so it should be no surprise that the workings of the military justice system reflected the same difficulty. In March 1802, when the Thomas Jefferson administration reformed the military establishments created by the Federalists, the post of Judge Advocate General was abolished and, in its place, the president was authorized to appoint a person, or persons, to act in that capacity.⁸ Four years later, in April 1806, Congress altered the Articles of War by reducing the number of lashes that could be administered as corporal punishment from 100 to 50 and by stipulating that no sentence of death could be carried out until the secretary of war had laid the case before the president.⁹ In May 1812, to attract greater numbers of men into the ranks, Congress

6. The phrase "weapons of the weak" is borrowed from James C. Scott, who presented it in a theoretical manner in his *Domination and the Arts of Resistance: Hidden Transcripts* (New Haven, Conn.: Yale University Press, 1990). Scott explored the differences between the "public transcripts" of power—the notions of power relationships as these are propagated by those in positions of authority or class domination—and the "hidden transcripts" of power—the behavior of subordinate groups who wish to mitigate or resist, either actively or passively, the pressures of domination to which they are subjected. Although Scott noted that "armies are undone" by what he described as "the desertions of infrapolitics," he otherwise paid no attention to the armed forces, as opposed to such groups as castes, prisoners, serfs, and slaves. If we assume, however, that an army should display a "public transcript" of power which embodies a seamless chain of obedience and subordination in order to produce an effective fighting force, the transcripts of courts martial expose significant disruptions in that chain of subordination. They therefore provide important sources for historians (and others) who seek to understand what Scott has described as the "infrapolitics of the powerless" (see *Domination and the Arts of Resistance*, 183–201).

7. For a discussion of the relationship between institutional and cultural developments in the armed forces, see Peter H. Wilson, "Defining Military Culture," *Journal of Military History* 72 (2008): 11–41.

8. For the early history of the military justice system, see George J. Stansfield, "A History of the Judge Advocate General's Department United States Army," *Military Affairs* 9 (1945): 221–24.

9. For the act of 10 April 1806 making "Rules and Provisions for the Government of the Army," see *The Public Statutes at Large of the United States of America*, comp. Richard Peters, 17

abolished corporal punishment by “stripes or lashes,” a reform that was to cause some controversy and many difficulties.¹⁰ Then, after the declaration of war—to cope with an anticipated increase in the number of courts—the requirement that all death penalty cases be reviewed by the president was modified in September 1812 by allowing commanding generals to perform that function as well.¹¹

That it required time for a peace-time military justice system to adapt to a state of war can be seen in the rate at which general courts were held during the war. The records preserved in the Office of the Judge Advocate General yield no transcripts for courts between June and August of 1812 and then only 32 such courts between September and December of that year. In 1813, transcripts survive for 335 general courts; for 1814, the number is 983. The final two months of the war in January and February of 1815 coincided with the holding of 241 general courts. Forty-three additional courts relating to the War of 1812 were held between March and May of 1815, and there are transcripts for a handful of cases (51) that clearly belong to the era of the war but bear no date to indicate when they were held. There was, nevertheless, a marked tendency for sessions of general courts to cluster over the fall and winter months between October and April, undoubtedly because it was easier to assemble sufficient numbers of commissioned officers for trials during that period.¹²

What sorts of men appeared before a general court martial? Table I [see tables at end of text] reveals that in 97.8 percent of the cases in which the unit of the defendant is known (1,648), infantrymen accounted for nearly four-fifths of them (78.3 percent); artillerymen were 15.0 percent of them; dragoons were 3.0 percent; riflemen were 2.8 percent; and the remainder (0.9 percent) were sea fencibles. This breakdown conforms reasonably closely to the percentages of those troops in the army as a whole by 1814 (see Table II). In the final year of the war, four-fifths (forty-four or 80.0 percent) of the fifty-five regiments of the army consisted of infantry; just under 15.0 percent of the regiments (eight) were divided equally between the artillery and riflemen (7.3 percent in each case); two regiments of dragoons accounted for 3.6 percent of them; and 1.8 percent of them consisted of ten companies of sea fencibles. Infantrymen and sea fencibles were therefore slightly under-represented among the defendants and dragoons slightly over-represented; artillerymen were over-represented whilst riflemen were under-represented. The apparent anomalies

vols. (Boston, Mass.: Charles C. Little and James Brown, 1845–73), 1:359–71.

10. For the act of 16 May 1812 “making further provision for the army of the United States,” see *ibid.*, 1:735.

11. A general order to this effect was issued on 5 September 1812 (General Orders and Circulars of the War Department and Headquarters of the Army, Records of the Office of the Adjutant General, RG 94, NARA).

12. Garrison and regimental courts martial occurred on a more regular basis. For example, the army based at New Orleans held seventy garrison courts between February 1812 and January 1813, during which time 291 men were tried for a wide variety of petty offenses (see *Orderly Book of the Garrison at New Orleans, 1812–1813*, Records of United States Army Commands, 1784–1821, RG 98, NARA).

here are not too difficult to explain. Artillery regiments were fragmented into their component companies, most of which passed the war in permanent locations in forts where they seldom saw much action and their members were probably tempted into offending by the inactivity and boredom of garrison life.¹³ Riflemen, on the other hand, regarded themselves as an elite corps, to be distinguished from mere infantry, and it might be argued that a greater esprit de corps could explain their apparently lower rate of offending.¹⁴

Within the ranks, however, privates were more likely to be tried than their noncommissioned officers. A systematic sample of the men enlisted between 1812 and 1815 revealed that 7.1 percent of them (450 cases in 6,370) were noncommissioned officers, but only 80 such men (or 4.8 percent of them) went before a general court martial during the war. Sergeants were more than twice as likely to be tried as corporals (3.1 percent of the cases as opposed to 1.5 percent of them, respectively), perhaps because sergeants had a greater degree of power or discretion to abuse their authority in various ways. Privates, on the other hand—who amounted to 84.0 percent of all enlisted men—made up 95.2 percent of the men who appeared before a general court.

Another way of looking at the defendants is by their social origins. Table III reveals that these did not differ markedly from those of the enlisted men as a whole. Men from farming backgrounds and a loose assemblage of miscellaneous backgrounds—such as boatmen, cartmen, clerks, barbers, and teachers—were somewhat under-represented in the courts, while artisans, laborers, and seamen were slightly over-represented. In terms of their places of birth, immigrants were more likely than native-born men to come before a court; but among the immigrant groups, men of English, Scottish, and Welsh origin were slightly more likely to be tried than the Irish, who constituted the largest single immigrant group in the force. Respecting their ages, the mean age of the defendants was 26.6 years, slightly lower than the mean age for all recruits (26.8 years). The median age of the offenders was 25.4 years, somewhat higher than the median age of all recruits (24.7 years). It might be possible to argue on this basis that older men were more likely to offend than younger men, but it would probably be wrong to make too much of this difference.

13. That there was a high correlation between garrison duty and offending is suggested by the fact that nearly one-half (44.5 percent) of the offenses tried in general courts occurred in five regions—Boston, New York City, Philadelphia, Baltimore, and New Orleans, all locations where there were several fortified posts.

14. For the view that Riflemen formed an elite corps, see John C. Fredriksen, *Green Coats and Glory: The United States Regiment of Riflemen 1808–1821* (Youngstown, N.Y.: Old Fort Niagara Association, 2000), 12. However, Inspector General Josiah Snelling had a different explanation. He described the Riflemen as little better than an “armed mob,” adding that “if any system of discipline has been prescribed for this corps it has not come to my knowledge; certain it is they are without discipline, subordination, attention to dress or interior economy” (see Snelling to James Monroe, 25 January 1815 [Confidential Inspection Reports, 1812–1820, RG 94, NARA]).

III

What offenses brought men before a general court? Table IV shows that of a grand total of 1,941 charges that were leveled against the defendants—most of whom were charged with only one offense—by far the most frequent and serious charge was desertion or being absent without leave (1,181 charges, or 60.9 percent). Of the remaining charges, slightly less than one-fifth were brought either for “mutiny” and “mutinous language” or for men being found asleep at their post or having abandoned their post (190 and 150 charges or 9.8 and 7.7 percent, respectively). Slightly more than one-fifth of the charges (21.0 percent) were occasioned by combinations of neglect of duty, disobedience of orders, fraud, theft, bounty-jumping, intoxication, and bad language. The smallest category of offenses (12 charges or 0.6 percent) involved men who were accused of “going over” to the enemy, cowardice, gambling, and rape. Not all of these figures are necessarily indicative of the prevalence of such offending in the army—many instances of disorderly conduct, intoxication, and theft, for example, were more likely to have been dealt with by garrison and regimental courts—but they do suggest, nonetheless, the degree to which officers believed that these offenses had reached serious proportions.¹⁵

Even without statistical analysis, it might have been predicted that desertion would be the most frequently tried offense before general courts after 1812. After all, historians of regular armies in the early modern period of European history have uncovered similar results, often describing desertion as being of almost epidemic proportions and one of the most important factors undermining the “effective” strength of any fighting force between 1689 and 1815.¹⁶ The seriousness and the prevalence of the offense

15. It should also be noted that the 33d article of war stipulated that all offenses punishable by “the known laws of the land” should be tried in civil courts. One court martial for rape, therefore, is not a reliable indication of the extent to which soldiers might have committed that offense.

16. Desertion rates in European armies in the second half of the eighteenth century through the end of the Napoleonic era have been described as ranging from between 4 percent to over 40 percent, depending on the circumstances of time and place (see Hew Strachan, *European Armies and the Conduct of War* [Boston, Mass.: Allen and Unwin, 1983], 9, 31, 38–39). For the armies of pre-Revolutionary France, rates of 20 percent and above were not unknown (see André Corvisier, *L'Armée Française de la fin du XVIIe siècle au ministère de Choiseul: Le Soldat*, 2 vols. [Paris: Presses universitaires de France, 1964], 2: 736–47). After the revolution of 1789, desertions dropped to as low as two percent before rising again steeply toward the end of the Napoleonic Empire (see Jean-Paul Bertaud, *The Army of the French Revolution: From Citizen-Soldiers to Instruments of Power*, trans. Robert R. Palmer [Princeton, N.J.: Princeton University Press, 1988], 259–64; Alan Forrest, *Conscripts and Deserters: The Army and French Society During the Revolution and Empire* [New York: Oxford University Press, 1989], 70–72; Forrest, *Soldiers of the French Revolution* [Durham, N.C.: Duke University Press, 1990], 35). For the British army in the West Indies, the rates range between 3.3 percent and 23 percent; and for the same force in the Peninsula campaigns, estimates vary between 19.7 percent and 40.4 percent (see Roger Norman Buckley, *The British Army in the West Indies: Society and the Military in the Revolutionary Age*

notwithstanding, it is perhaps surprising that although “desertion” is mentioned in the 1806 Articles of War, it is nowhere given a single, coherent definition in those regulations. Rather, the articles include a number of stipulations regarding the legality of discharges, the authorization of absences and furloughs, the receiving of pay, and the non-attendance at, or the non-performance of, specified duties, the violation of which might be defined as “desertion.” As a consequence, desertion became an offense that was very much in the eye of the beholder, especially for officers who brought the charge. Of the 1,181 charges of desertion and absence without leave that were tried during the war, only 34 (2.9 percent) were for the latter offense; the remainder (97.1 percent or 1,147) were for “desertion.” That might suggest that regardless of the circumstances in particular cases, accusing officers regarded any unauthorized or unexplained absences by their men as desertion in the sense that they assumed the men had left and would not return.¹⁷

For the men, it was more complex. At first sight, desertions during the war might be described as a moderately serious problem—“moderate” in the sense that they were less frequent than they had been in the Continental Army during the Revolution and far less extensive than was to be the case in the post-war army of the 1820s and 1830s.¹⁸ A statistical analysis of the registers of enlisted men reveals that 12.7 percent of them were recorded as having deserted at least once and that the army experienced considerable difficulty in recovering them. Barely one-fifth (19.9 percent) of all deserters were “returned to the ranks.” In that sense, deserters were more likely to succeed than fail in their decision to abandon the army.¹⁹ More interesting is the fact that nearly two-thirds of these desertions (64.4 percent) occurred within six months of the men joining the force, suggesting

[Gainesville: University of Florida Press, 1998], 224; Edward J. Coss, *All For the King's Shilling: The British Soldier under Wellington, 1808–1814* [Norman: University of Oklahoma Press, 2010], 247; and Charles Oman, “Courts Martial of the Peninsula War, 1809–14,” *Journal of the Royal United Service Institution* 56 [1912]: 1709).

17. Before 1812 the army was more relaxed about conflating the offense of desertion with being absent without leave. Adjutant General Thomas Cushing, in a general order of 2 April 1805, cautioned courts against frequent floggings for men guilty of no more than being absent without leave (see the copy in the Orderly Book of Captain Matthew Arbuckle, 1804–1805, Records of United States Army Commands, NARA).

18. Estimates for desertion from the Continental Army range from 20 percent to 25 percent (see James E. Edmonson, “Desertion in the American Army during the Revolutionary War” [Ph.D. dissertation, Louisiana State University, 1971], 250–61). For the figures for the post-1815 army, see the articles by Mark A. Vargas, “The Military Justice System and the Use of Illegal Punishments as Causes of Desertion in the U.S. Army, 1821–1835,” *Journal of Military History* 55 (1991): 1–2; and Vargas, “The Progressive Agent of Mischief: The Whiskey Ration and Temperance in the United States Army,” *Historian* 67 (2005): 199.

19. See Stagg, “Enlisted Men in the U.S. Army,” 624. This calculation is probably a conservative one as it is clear that the registers of enlistment failed to incorporate data from the general court martial transcripts. Even so, it is unlikely that the desertion rate for the war exceeded 15 percent of the men enlisted.

that the transition from civilian to army life was often very difficult. That this was the case is confirmed in Table V, which shows that grievances arising from “ill-usage” by officers, including a variety of breaches of contract and arrearages in pay, were the most frequently given motives for desertion that defendants offered against this charge. Slightly more than one-fifth (20.3 percent) of deserters justified their behavior in this way, and that figure was significantly higher than the other leading factors that were presented to explain desertions—including family and health concerns, intoxication, over-staying furloughs and leave passes, and wrongful enlistment.

What constituted “ill-usage” for the men? In cases involving officers, it is relevant to note that many of the officers in closest contact with the men—that is, lieutenants and ensigns—were, on average, much younger than the men themselves.²⁰ The army suffered from a situation in which young and inexperienced officers struggled to control older men, and it is clear from the trial transcripts that a commission conferred little with respect to deference from the ranks toward their superiors.²¹ As Private Alanson Cogswell of the 11th Infantry Regiment, based in Burlington, Vermont, complained of his officers in June 1813: “Most of them are ignorant, willful, and ugly ill natured puppies.” Only one of them, he believed—Major Timothy Upham—“really deserves the name of officer.” Captain Lebbeus Egerton, he added, had once “looked to be a pretty likely man, but now there is not one in ten that likes him, and some would not lift their hand to save his life.”²² And Cogswell was twenty-one years old when he pronounced this judgment. Another soldier was so incensed by this problem that he wrote, pseudonymously, to the president from Sackets Harbor in July 1814 to protest “the outrageous conduct of some stripling officers” for knocking down “old Veterans for a very slight offense, and assign no reason why they did it.” This abuse explained why “there is so many

20. See Stagg, “United States Army Officers in the War of 1812,” 1008 and n. 19. Army inspectors frequently commented on the youth of the junior officers. Josiah Snelling, in his report of January 1815 on the Northern Army (see n. 14 above), remarked that many of the Artillery officers were “fine young men who may in time become ornaments to their profession, but . . . I know of no one individual who has arrived at years of discretion.” He added as well that “it is to be lamented . . . that some of them did not stay a little longer at school.”

21. The concept of “deference” is frequently invoked to explain how the relatively small elites of early America could exercise consensual control over much larger groups, especially adult white males, many of whom were enfranchised. The historical literature is too vast to list here, but recent work on the subject has called into question the extent to which elites could, in effect, command control as well as the willingness of the adult white male population to be controlled. For further discussion, see the following: Michael Zuckerman, “Authority in Early America: The Decay of Deference on the Provincial Periphery,” *Early American Studies* 1 (2003): 1–29; and the collection of essays headed “Deference in Early America: The Life and/or Death of an Historiographical Concept,” *Early American Studies* 3 (2005): 227–401.

22. See Wilmond W. Parker, ed., “Letters of the War of 1812 in the Champlain Valley,” *Vermont Quarterly* 12 (1944): 107–9. Cogswell added that these officers were “the most Ignorant and ugly parcel of rascals that [he] ever saw,—some of them are men tyrannical and swear worse than algerine pirates.”

deserters,” and he warned that “we can never Keep an army together at this rate.”²³ But the problem was not confined to the officers. Men also complained of “hard usage” and mistreatment by noncommissioned officers and their brother soldiers.²⁴

Among the most obvious causes of abusive treatment of enlisted men were bad temper and a lack of self-discipline on the part of the officers, which led to poor interpersonal relationships in the force. By the turn of the nineteenth century, it had become standard practice in drill manuals—in both Europe and the United States—to enjoin officers to treat men kindly and with respect (even as they also had to enforce harsh disciplinary regimes), but it is clear that many American officers could not balance these requirements.²⁵ John Caffery of the Sea Fencibles, for example, was rowing a boat from Fort McHenry in Baltimore in May 1814 but not to the satisfaction of his commanding officer, Lieutenant Caleb Robinson. According to Caffery, Robinson swore: “God damn you, if you don’t row better, I’ll throw you overboard and drown you and I’ll swear you died in a fit.” After putting Caffery ashore, Robinson continued: “Now, God Damn your soul, clear yourself and never let me see you anymore. If I do, I’ll shoot you.” Caffery took this as an invitation to leave the service, though whether he actually did so is unclear. He was, nevertheless, charged with desertion after he had been put ashore. If that was the case, it could be said that Caffery had been set up to desert, a practice that was by no means unknown throughout the army. It was one way of getting rid of undesirable recruits, and officers might also have been tempted by the monetary bonus of \$10.00 for retaking men described as deserters. Suspecting that Caffery was not responsible for his predicament, his court found him not guilty.²⁶

A more striking case occurred in September 1814 when John Smith—a twenty-eight-year-old, Scottish-born clerk who had enlisted in the Artillery

23. “A Soldier” to James Madison, 10 July 1814, Letters Received, Records of the Office of the Adjutant General, RG 94, NARA. Sergeant Erastus Roberts of the 6th Infantry Regiment also wrote the president on 2 September 1813, protesting that the treatment of men by their officers, especially “the infamous practice of cobbing,” was “disgraceful” and contrary to law (*ibid.*). The validity of these complaints was confirmed by several regimental adjutants who exhorted officers not to inflict illegal punishments or to punish men without the sanction of a court martial. See, for example, the general order issued at Plattsburgh on 16 July 1814, in which officers were warned not to chastise men in their private quarters. The severity of this offense was compounded by the officers “most guilty” of it, who were “frequently youths of the lowest grade” whose conduct merited the “strongest reprobation by every feeling man” (Northern Army Orderly Book, Library of Congress, Washington, D.C.).

24. Inspector General Josiah Snelling provided a graphic description of the men of the 15th Infantry Regiment as follows: “the men are filthy, thieves, and drunkards, without subordination or discipline; and at the last inspection . . . several were too drunk to come on parade, many who did come were intoxicated, and a large proportion were decorated with black eyes and bruises” (see n. 14 above).

25. For the directions given to American officers on this matter, see Stagg, “United States Army Officers in the War of 1812,” 1020–21.

26. General Court Martial Case Files, F-13.

Camp Fort George Sept 3. 1813—

To His Excellency James Madison

It cannot be unacceptable to you, as the guardian of a nation's rights and freedom, to learn the real situation of Soldiers in the American Army. I consider it a duty, and I perform it with pleasure, for I am not afraid to speak in the cause of humanity and for the honor of my country, to inform you of the practices of officers, disgraceful, in my opinion, of the national character. This moment Sir, I hear the groans of men in the Quarter guard suffering the infamous punishment of Clobbing; and before I proceed to accomplish the object of this communication I beg leave to premise—1st That in every Military establishment, subordination and rigid discipline must be established and enforced, and this I do not conceive debase courage, for in every Army we have seen the greatest actions performed by the troops where they have been introduced: beside, it has always been the pride and boast of America that her sons are as patient of fatigue and as anxious to gain true honor in the field, as any nation that has ever taken up arms in defence of civil liberty, and we glory in this good report although we are for petty foibles puffing under the lash of sanguinary and despotic men, and who violate daily the known law of the land—

In saying this much I hope I have not offended, for men left to act solely according to the dictates of their own passions, without any municipal law to controul their passions actions, most commonly transcend the limits of justice—there must be some rules prescribed in the infliction of corporeal punishment or our situation is far beneath the African Slave; the judge has already become the Executioner, and I blush to think the law of Congress has been so shamefully violated which has abolished that punishment formerly inflicted by stripes and lashes. That that part of the rules and articles of War still in force with its limitation, that not more than thirty-nine lashes shall be inflicted for one offence, we apprehend, the happiness of men whose civil rights are said to be suspended, must be considered on a more stable foundation for the following reasons:—1st It is true, and experience has

Erastus Roberts to James Madison, 2 September 1813 [Letters Received by the Adjutant General, RG 94, National Archives and Records Administration]

in 1812—was refused a pass to go from Fort Moultrie to Charleston in South Carolina. Smith left his post anyway, not because he was refused a pass but because a month earlier he had been “butchered”—that is, given sixty slaps on the buttocks with a hickory bat bored through with holes—by a junior officer without the benefit of a trial. Both Smith and the officer got more than they had bargained for. Smith furnished his court with a lengthy written defense, arguing that his punishment had been illegal, not simply because he was never tried but also because it violated the May 1812 ban on punishment by “lashes and stripes,” with Smith asserting that “cobbing” with a bat was “stripes.” Worse, he pointed out, private illegal punishments put the soldier “on the level with the Negro or savage,” an argument that was bound to resonate in a Southern state. And to reinforce the point, Smith wrote eloquently against the misuse of soldiers as “brutes” when “their skin and flesh [are] cut to pieces, their blood running in streams on the parade, in officer’s quarters, or whenever some officer orders such punishments to be inflicted.” Such misconduct, he asserted, “crushes the pride of men of feeling and looking at each other introduces the question: ‘Is Fort Moultrie a part of the Land of Liberty?’”

Smith did not stop here. He further argued that men were entitled not merely to better treatment but also to better officers—men who would abide by the law. It was to seek out a better officer—namely the captain who had enlisted him—that Smith had left his post and then surrendered to the authorities three days later. He believed, therefore, that he was guilty only of being absent without leave. His court was not convinced and sentenced him to be shot. Two months later, the assistant adjutant general of the Sixth Military District reviewed the case and concluded that no court could accept Smith’s defense as it impugned the character of an officer who was not on trial. Ultimately, Smith was lucky. He was not executed and he later deserted—again?—from Fort Moultrie in July 1815.²⁷ But the sentiments he voiced were not isolated ones. Corporal Eli B. Willey of the 31st Infantry Regiment, writing after the war as a “Soldier of the U.S. Army,” published a poem to his officers—whom he denounced as “a haughty crew” who scorned soldiers as “a dirty race/the discontented of each place”—in which he requested them to obey the law and punish only by “the martial clause” as opposed to taking the liberty “to kick or cuff / With feet or hands or any such stuff / Nor handle flesh and blood so rough / With whip or bat on butt or back / Bruise flesh and make the bones to crack / With pain and tribulation.”²⁸

Smith’s case, moreover, underlines that the question of how to inflict punishment in the early republic had become complicated by the issues of slavery and race. To the extent that it was becoming problematic to treat white men as little better than slaves, it also exposed the relatively small number of free black men in the army to forms of racial prejudice that could affect the terms of their

27. General Court Martial Case Files, N-25.

28. This poem, entitled “The Soldier’s Address to Officers and Soldiers,” was included in a collection of *Six Poems on different subjects, relative to events of the late war* (n.p., 1815).

John W. Smith
RG 153, N-25

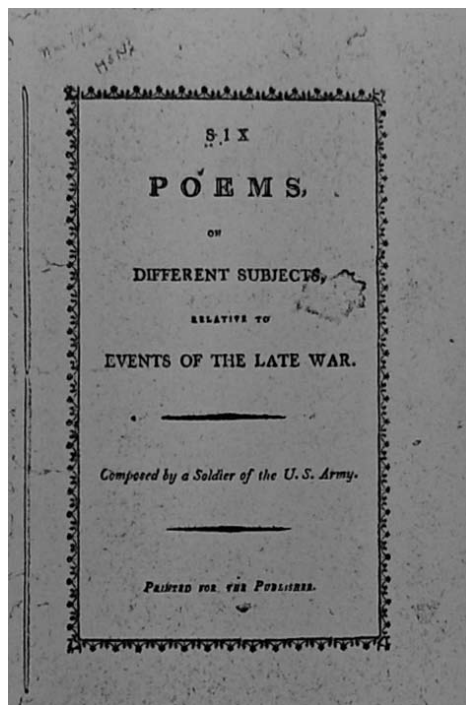
Smith's Defence -

On or about the 17th day of August 1814 I was butchered in a most cruel & inhuman manner at Ft. Moultrie with a *paddle by order of a subaltern Officer without the benefit of a Lt. Martial. Contrary to the Rules & regulations of the Army of the U. S., in consequence of which I was laid up for about twenty days, and for a week in that time every person that saw my wound expected that a mortification would take place, not being able to turn myself in Bed. - The Rules & Regulations of the Army are recorded & published for the Government of Officers as well as ^{private} soldiers, & when some Officers deviate from in many instances from the regular steps which they ought to take to punish their inferiors it is certainly showing a bad example within the post, camp, or military establishment wherein such irregularities exist; - The Martial Law expressly points out that Criminals shall be punished at the discretion of a Genl. Regiment or Garrison Lt. Martial as the case may be; Stripes excepted. The late practice of punishing soldiers privately at Ft. Moultrie is illegal in so much as there is no Act of Congress in force to carry such savage proceedings into effect. Cobbing in Stripes This disgraceful practice puts a soldier on a level with the

Written defense by John Smith (Artillery) in his trial for desertion in September 1814 [General Court Martial Case Files, N-25, Records of the Judge Advocate General, RG 153, National Archives and Records Administration]

service.²⁹ That this was so is suggested by many references in company orderly books and regimental adjutants' reports to the effect that such menial tasks as fatigue duty, including the digging and emptying of latrines, were assigned, to the

29. Sergeant Erastus Roberts reinforced this point to Madison when he wrote that the rules prescribing the infliction of corporal punishment must be observed or "our situation is far beneath the African slave" (see n. 23 above). However, racial prejudice extended far beyond the



Cover for Corporal Eli B. Willey's *Six Poems*, published in 1815 [Library of Congress]

extent that it was possible to do so, to black men.³⁰ And some black men protested the discrimination, as can be seen in the trial of five privates from New England—Samuel Minot, Nathan Gilbert, William Lynes, Daniel Thomas, and Samuel Job—who had enlisted in the 30th and 31st Infantry regiments. Only one of these recruits—Lynes—is described in the register of enlistments as having a “black” complexion, but that they were all “black” is evident from their court record. They had enlisted in Burlington, Vermont, in 1814 and had served together until they were relocated to Plattsburgh, New York, where they were separated from their companies on account of their race. “Supposing themselves considered more as a burden or disgrace than of any use as soldiers,” they deserted and pleaded guilty to doing so. Their court convicted them but acknowledged there were extenuating circumstances by sentencing them to no more than hard labor for the remainder of their terms—a comparatively light

treatment of slaves to anything that was associated with black people. Maj. Timothy Dix of the 14th Infantry reported that he had received some cloth known as “Negro cloth” for his troops, who had “too much pride to wear it.” Dix said he would prefer to see his men “sans culottes” rather than in this “degrading, unsoldierly dress” (Dix to Thomas Cushing, 20 January 1813, Letters Received by the Adjutant General, NARA).

30. See, for example, the general orders for 2 July 1814 (Northern Army Orderly Book, Library of Congress).

penalty.³¹ Less fortunate was Royal Dick, another New England black man in the 4th Infantry Regiment, who left because he was teased by his fellow soldiers for his “dark complexion” and “dull and stupid” character. Dick also admitted his guilt but was sentenced to lose all his pay, have his ears cropped, and be dismissed from the service after being drummed out of the camp. The commanding general approved the sentence, but remitted the cropping of the ears.³²

Far more frequent than these cases of abuse were instances where officers exploited or neglected their men in matters relating to the allowances they were entitled to receive after signing up. The supply of clothing, for example, was often an issue in desertion cases. It was a common practice for new recruits to sell their clothing to civilians after enlistment, on the assumption that they would be promptly provided with uniforms. When the supply system failed—as it often did—these men were left “naked” and in conditions of extreme want. Such was the case with four privates—John Walker, William Gregory, Matthew Childress, and Azariah Hite—who had enlisted in the 10th Infantry Regiment in North Carolina in 1812 and were tried in March 1813. All four told the same story—that they had left the army to return home for some clothing. All denied any intention to desert, even though Childress and Hite were captured at a distance of seventy-five miles from their camp in Salisbury, North Carolina. Found guilty, all received reprimands and the loss of one-half of their pay for two months (to recover the costs incurred in their arrest), and all were marched up and down the parade ground three times with the sign “DESERTER” affixed to their backs.³³

Food could be just as difficult a problem as clothing. Men left the army complaining about the “want” of provisions or about the “deficiencies” in them when they were supplied. Under optimal conditions, the food ration might have been adequate—consisting as it did of daily allowances of about one pound of either beef or pork, which was supplemented by eighteen ounces of bread or flour as well as one gill of hard liquor and some salt—but the army’s contractors were frequently tardy in delivering food and often cut corners with respect to its quality.³⁴ (The adulteration of flour with plaster of paris and other additives, for example, was by no means unknown.) Yet more than mere failures in the contracting system could be involved in these cases. Three privates in the 25th Infantry Regiment—John Clark, James Hoit, and Benjamin Utter—all deserted in July 1814 on the grounds that their company commander, Captain John

31. General Court Martial Case Files, N-22.

32. General Court Martial Case Files, O-15.

33. General Court Martial Case Files, A-4.

34. The food ration was specified in the 11 January 1812 act “to raise an additional Military Force” (see *The Public Statutes at Large of the United States of America*, 1:672). For additional supplies, such as vegetables, the enlisted men were dependent on sutlers. It is generally agreed that Americans were better nourished than Europeans in the early modern era, but as far as army rations were concerned, American troops may not have been much better off than their British counterparts. For comparable data about the inadequacy of British army rations, see Coss, *All For the King’s Shilling*, 86–122.

Thomas, had not only beaten them but also deliberately withheld their rations.³⁵ Sometimes the consequences of protesting such mistreatment could be serious. John Stuart of the 12th Infantry Regiment claimed he was denied rations because an injury to his right arm had rendered him unfit for service. He confessed to deserting and was sentenced to be shot.³⁶ John (or Jonathan) Keitha of the 8th Infantry Regiment suffered a similar fate in August 1813 when he deserted after receiving no rations. He compounded his offense by allegedly threatening the officer who confined him after his recapture. Keith was evidently provoked into this “mutiny” when the officer in question called him a “damn’d liar” for claiming that he had received no provisions.³⁷

Similar stories were told about pay and bounties. The trial records are replete with cases where men walked off after either receiving only portions of their pay and enlistment bounty or no pay and no bounty. This practice was particularly prevalent in 1814 when men had re-enlisted after the bounty for enlisting had been raised to \$124.00. The financial hardships resulting from these circumstances could also exacerbate other difficult situations with which enlisted men had to contend. Such was the case with Elisha Fields, a private in the Light Dragoons, who was charged with desertion when his company was on the march to Pittsfield, Massachusetts, in the summer of 1814. A local innkeeper testified that Fields had remained at the inn with his wife, saying that he would later rejoin his company. When he failed to do so, Fields argued that he had not received enough pay to leave his wife and family unsupported. Worse, his arm had been broken and he could neither march nor carry a weapon, a claim that was substantiated by a doctor. He was, nevertheless, found guilty and fined four months’ pay, a sentence the commanding general remitted.³⁸ But all these men argued that their failure to receive the money due to them amounted to a breach of contract that released them from any obligation to serve. Notions about the “moral economy” of contracts had long been deeply embedded in early American military service, but courts were generally unwilling to accept defenses based on such premises.³⁹

The notion that the hardships of army life could be construed as a breach of contract was also applied in cases when furloughs or leave passes were sought and denied, or even when they were granted and the men charged with desertion anyway. Many men also claimed that they had been enlisted under false pretenses. Usually, this did not mean that men had been enlisted while incapacitated by drink,

35. General Court Martial Case Files, S-39.

36. General Court Martial Case Files, Y-64. The sentence was not carried out.

37. General Court Martial Case Files, D-17. This sentence was suspended (see Francis Huger to Patrick Jack, 16 September 1813, Letters Sent, Sixth Military District, 1813–1815, Records of United States Army Commands, NARA).

38. General Court Martial Case Files, A-18.

39. The importance of contracts in military service pre-dated the American Revolution. For one discussion, see Fred W. Anderson, “Why Did Colonial New Englanders Make Bad Soldiers? Contractual Principles and Military Conduct during the Seven Years’ War,” *William and Mary Quarterly*, 3d. ser., 38 (1981): 395–417.

although alcohol often featured in such cases. Rather, it meant that recruiting officers had told men that they could serve under certain conditions, such as being allowed to practice their trade instead of performing the duties of a soldier, or that they might serve in a particular locality and not be removed from it. One defendant claimed that his enlisting officer had even promised he would receive a commission after signing up.⁴⁰ That defense might seem to strain credulity, but promises of this nature were among the “tricks of the trade” that might be resorted to by unscrupulous officers who needed to meet enlistment quotas. More typical was the case of John Dolan, an Irish-born laborer, who had enlisted in the 42d Infantry Regiment in 1814 on the understanding that he would remain in Newcastle, Delaware. When he learned that he was being marched to Canada, he told his commanding officer he would “quit him.”⁴¹ Courts almost never accepted this sort of defense and usually imposed punishment when it was offered, but in only one instance did a court issue a statement condemning “all private bargains or conditional enlistments.”⁴²

IV

After desertion, the next most serious categories of offending included combinations of “mutiny” and “mutinous conduct” (190 charges), “disorderly” or “riotous conduct” (89 charges), and “disrespectful language” (33 charges), which cumulatively made up 16 percent (312 charges) of the total number of charges brought against enlisted men in general courts. “Mutinous” or “seditious” conduct was covered under the 7th, 8th, and 9th articles of war, all of which allowed for the imposition of the death penalty or “other such punishment” as courts might inflict. It is clear, however, that the army between 1812 and 1815 saw no instances of “mutiny” in the sense that significant numbers of soldiers disobeyed orders to the point of refusing to fight the enemy. Only one case came close—that of Joseph Bly of the 35th Infantry Regiment in September 1814 for saying that if the British were to attack Craney Island with a superior force, then he would be “damned if he would not join them,” adding as he did so that his fellow soldiers should do the same and that if they “stacked arms,” the officers “could do nothing when there were so many soldiers against them.” Surprisingly, Bly was acquitted of “mutiny” while being punished for the misconduct specified in the charge. Less surprisingly, the local adjutant general disapproved of the sentence because he believed it was inadequate for the offense.⁴³

Otherwise, the nearest approximations to “mutiny” consisted of episodes where men “stacked arms” in the sense that they declined to pick up their weapons in order to do their duty and stated that they would not take them up again until

40. This promise was made to Private David McConnell of the 41st Infantry Regiment (see General Court Martial Case Files, Y-85).

41. General Court Martial Case Files, X-72.

42. See the case of Private Paul Brower of the 42d Infantry Regiment (General Court Martial Case Files, Y-85).

43. General Court Martial Case files, X-11.

some grievance had been redressed. And as had been the case with many desertions, problems with bounties, clothing, and pay were often at the heart of these disputes. Daniel Eaton of the 40th Infantry Regiment, for example, was charged with mutiny in January 1815 for inducing about thirty soldiers to lay down their arms and proclaiming that he would be “damned if he were to do any duty until he had received his pay.” Indeed, he even went so far as to assert that he would “rather be shot than do duty without receiving his pay.” He also refused to go into the guard house when ordered and claimed that his company had not been paid for about nine months. His court, sensitive to the widespread nature of the grievance, acquitted Eaton of mutiny and punished him only for disobeying orders.⁴⁴

Eaton was fortunate. James Straign of the 43d Infantry Regiment was placed on the same charge as Eaton in July 1814 when he was said to have told his fellow soldiers to “hold up their hats” and refuse to march from Raleigh, North Carolina, until they had received all of their bounty. Straign cried out: “Bounty Boys, Bounty Boys,” and another soldier, Thomas Vincent, followed Straign’s example, which resulted in him being charged with mutinous conduct as well. Vincent was found guilty and received a fairly severe sentence—hard labor with a ball and chain for a year as well as being picketed for five minutes—but Straign was sentenced to be shot. His defense, however, revealed a rather different story from the one outlined in his charge. Straign conceded that he believed his company would receive its bounty money before being ordered to march but denied that this belief had governed his conduct and certainly not to the point of mutiny. He claimed, instead, that whilst his company was striking its tents, the paymaster rode into the camp, leading Straign to announce: “Hurra Boys, here comes the Paymaster. All you who wish to receive your bounty . . . hold up your hats.” Straign, however, was not executed; he was pardoned and discharged at the end of the war.⁴⁵

Despite these examples—and there are many of them—the vast majority of instances of mutiny, mutinous conduct, and other forms of riotous and disrespectful conduct originated in circumstances when soldiers disobeyed a fairly simple order. That act of disobedience then escalated, often under the influence of alcohol, into something worse when officers resorted to physical and verbal abuse to enforce the order and the men tried to protect themselves by resorting to physical and verbal resistance. One sad case occurred in June 1814 when Joseph Bloodgood, a five-year veteran in the army, was charged with “mutinous conduct” for resisting arrest and charging his sergeant with a bayonet after the sergeant had ordered him out of bed and forcibly shaved him because Bloodgood, when drunk, was in the habit of wetting his bed. For this, he lost his re-enlistment bounty and half his pay, was sentenced to hard labor, and then was drummed out of the force.⁴⁶ Occasionally, though, charges of mutiny could arise from episodes that were relatively trivial. John Mounce, a corporal in the 18th Infantry Regiment,

44. General Court Martial Case Files, A-18.

45. General Court Martial Case Files, E-23.

46. General Court Martial Case Files, E-19.

was charged with mutinous conduct in March 1813 for allegedly mimicking his commanding officer on parade, Lieutenant Abner Neale, by pronouncing the command “steady” before the lieutenant had issued it. Not even a court of properly sensitive South Carolinian officers found much to take alarm at here. In the absence of corroborating evidence, they acquitted Mounce.⁴⁷

Usually, though, such matters became more serious because the officers, in trying to enforce obedience, invariably insulted the masculine pride and dignity of their men.⁴⁸ Abner Torrey, a private in the Light Artillery, was deemed to be “mutinous” for cursing his lieutenant, William Sumpter, and seizing him by the collar after Sumpter had called him “a worthless puppy.”⁴⁹ Sergeant Joseph Toy of the 21st Infantry Regiment was similarly charged at Fort Erie in October 1814 when he declined to oversee the punishment of some 250 militia volunteers in the army. The punishment in question, however, involved humiliation, not brutality. The men were sentenced to lay their heads on ground that had become badly muddied because of heavy rain. They refused and Toy defended them, not merely because they had not been given a trial but also because he said: “Damn any man who will treat soldiers in this way.” Toy then compounded his offense by stating that if he had his way, he would force the captain who had ordered the punishment to submit to the same treatment. He was found guilty and sentenced to be reduced to the ranks and suspended on the point of a picket for five minutes every day for a week.⁵⁰

Among the more dramatic cases that involved the issues of pride and masculinity was that of James Mitchell, an Irish-born shoemaker in the 35th Infantry Regiment on Craney Island in January 1814, who was already in confinement for desertion when he multiplied his difficulties by drinking and fighting in the guardhouse, assaulting a sergeant, and refusing to remain silent when so ordered. His enlisting officer, Captain Isaac Preston, admitted that Mitchell was a “bad man,” but he defended him on the grounds that many of his offenses were committed on an almost daily basis and were seldom severely punished, if at all. The root of the problem, however, was that when Major James Frailey of the 38th Infantry Regiment struck Mitchell with his shoe for disobeying the order to remain silent, Mitchell responded by calling the major “a damned whore’s son of a bitch” and a “damned whore’s son as that was the way whores fought in his

47. General Court Martial Case files, D-8.

48. For recent essays on the importance of masculinity in the armed forces, see the collection edited by Karen Hagemann et al., *Gender, War, and Politics: Transatlantic Perspectives, 1775–1830* (Basingstoke, U.K.: Palgrave Macmillan, 2010). For a classic study of how poorly chosen words could provoke discontent in the ranks, see Greg Denning, *Mr. Bligh’s Bad Language: Passion, Power, and Theatre on the Bounty* (Cambridge: Cambridge University Press, 1992).

49. General Court Martial Case Files, N-22. It might be noted that critiques of masculinity in this period did not necessarily require the imputation of “feminine” attributes to men so criticized. Equally if not more common was the contrast between “manliness” and “immaturity” or “childishness.” Consequently, one of the easiest ways to provoke a fight was to refer to a man as a “puppy” or a “child.”

50. General Court Martial Case Files, Y-97.

country.” Enraged, Frailey continued beating Mitchell with his shoe, and when he had tired of that, he took up a bayonet and struck him with sufficient force to “cut through” his ear. It was in vain that Preston argued that such punishment was illegal and a violation of Mitchell’s rights. The private was sentenced to be shot as well as fined \$3.00 to recover the costs of his recapture. The case was evidently regarded as controversial and went to Washington for review, but after an interval of three months, no further evidence was found to extenuate Mitchell’s conduct. He was executed on 11 April 1814.⁵¹

V

In matters involving breach of contract, illegal punishments, and “mutinous” conduct, it might be argued that the men were as much, or more, sinned against than sinning, but with respect to other offenses, the men themselves were largely responsible for their misfortunes. The third most commonly committed offense in general courts—to the total of 150 charges—was “sleeping while on post,” which was often coupled with the charge of being absent from that post. Such matters usually fell under the heading of “neglect of duty,” but they were also specifically outlawed in the 46th article of war, which provided for the death penalty or any “such other punishment as shall be inflicted by the sentence of a court martial.” Courts dealt with these matters expeditiously. Most trial transcripts contain little evidence about the details of these offenses. It was usually enough for an officer—commissioned or noncommissioned—to declare that he had been able to separate a soldier from his gun without encountering any resistance. Occasionally, additional evidence would be presented, such as the discovery of alcohol on the person of the soldier or whether he had been observed to have been snoring.

There seemed to be little room for negotiation here. Being asleep on duty threatened the security of an encampment, especially if an enemy force was nearby. This was one reason why it could be a capital offense, and many courts quickly disposed of the matter by finding the defendant guilty and sentencing him to be shot without further ado. Whether these sentences were carried into effect, however, was another matter, and it is not impossible that many courts simply followed the strict letter of the law in the expectation that a superior authority—either a commanding general or the administration in Washington—would take the responsibility for issuing a pardon in cases where there might have been extenuating circumstances.⁵² The defendants themselves were as likely

51. General Court Martial Case Files, S-44.

52. In one instance, Secretary of War John Armstrong overturned a death sentence on the technicality that it had not received a two-thirds vote from the members of the court (see General Court Martial Case files, Y-70). For a more general discussion, see the letter sent by Adjutant Francis Huger of the Sixth Military District to Col. William Drayton of the 18th Infantry Regiment on 23 July 1813 when he complained of a series of recent courts in which seven of the nine defendants were sentenced to death. “You will readily conceive,” Huger wrote, that “the Court probably thought there was no likelihood of the sentences of death being carried into

to admit their guilt as to deny it and then plead that there were understandable reasons for the lapse in their performance, such as sickness or extreme fatigue that resulted from their having been engaged in some arduous service prior to their being ordered on post. For example, Francis Brown, a private in the 5th Infantry Regiment, pleaded guilty to sleeping on his post at Fort George in Upper Canada immediately after his company had completed a march from Forty Mile Creek on the Niagara Peninsula in June 1813.⁵³ Equally common were defenses to the effect that the defendant was both youthful and a very recent recruit who had yet to form a proper understanding of the nature of his offense.

Nevertheless, even when these offenses were neither innocent nor defensible, not all courts automatically imposed the death penalty. In March 1814 Private Samuel Miller of the 14th Infantry Regiment left his post in Plattsburgh, New York, before being relieved in order to go to a “grogshop” that was some distance from the camp. As he was considered to have been a “good soldier,” he escaped quite lightly with a sentence of hard labor and loss of pay and liquor.⁵⁴ Mathias Martin, a Spanish-born laborer in the 2d Infantry Regiment, was found asleep at his post in Mobile in November 1814. A sergeant struck him in the face to wake him, only to hear Martin ask if there was anything wrong.⁵⁵ Three privates in the 4th Infantry Regiment—William Bartlett, James Healy, and Aaron Abel—were also found asleep, wrapped in blankets and away from their posts. Their sergeant kicked them awake, but they remained lying on the ground and denied they had ever been asleep.⁵⁶ Martin, Healy, and Abel—but not Bartlett—were all sentenced to death and shot. The case of Lewis Barbour of the 3d Infantry Regiment at Alabama Heights in late 1813 also resulted in his execution after it was discovered that he had committed this offense on two previous occasions.⁵⁷

To discipline men found asleep without imposing the death penalty, courts could resort to combinations of hard labor (sometimes with a ball and chain), solitary confinement, and loss of pay and liquor rations. They would also acquit men whom they suspected had been placed on sentry duty while already in a state of intoxication by officers who might have been trying to get the men punished for two offenses at the same time.⁵⁸ Nor would they always convict on the basis of evidence furnished by witnesses of “infamous character.”⁵⁹ Sometimes such leniency irritated commanding officers, as was the case at Governor’s Island in New York Harbor in

execution.” The consequence, he added, was “the most guilty escape with impunity. It is morally impossible,” he concluded, “in our service and circumstances to conform [to] the apparent rigor of courts” (see *Letters Sent, Sixth Military District, 1813–1815*).

53. General Court Martial Case Files, D-13.

54. General Court Martial Case Files, Y-1.

55. General Court Martial Case Files, F-3.

56. General Court Martial Case Files, A-29.

57. General Court Martial Case Files, Y-47.

58. General Court Martial Case Files, N-23.

59. General Court Martial Case Files, D-20.

June 1814 when the local commanding general, after approving a sentence of hard labor and solitary confinement, indicated that in the future he wished to see this offense punished in “the most exemplary manner.”⁶⁰ And when a rash of sleeping cases occurred at Sackets Harbor in January and February 1814, the courts dispensed with hard labor and fines and resorted to corporal punishment by sentencing the offenders to as many as fifty “cobs” on their “bare posteriors, well laid on.”⁶¹ This approach was taken to an extreme by the court of Samuel Emerson, a private in the 4th Infantry Regiment, who was convicted for being asleep at Champlain in August 1814, for which he was sentenced to be picketed for five successive mornings for as long as the surgeon thought he could bear it “without being killed, or injured so much as to be prejudicial to his future services.” He was also to be “suspended by the thumb of one hand, and the other hand tied to the opposite foot.”⁶²

VI

Charges of “neglect of duty” and “disobedience of orders” made up 5.2 percent (101) of the total number of charges brought against enlisted men. These embraced many forms of misconduct short of “mutinous conduct” and “sleeping while on post,” but like “mutinous conduct” they reveal that men were reluctant to accept many forms of discipline if they found the rules and regulations to be either inconvenient or unfair.⁶³ Men refused to be silent when ordered—admittedly acting under the influence of alcohol in many cases—and they refused to submit to arrest or to go to the guardhouse or some other place of confinement. Moreover, many men refused to perform tasks that were not directly related to the duties of a soldier, such as working on construction projects, fetching forage for horses or a boat for an officer, or moving officers’ baggage, or working on fatigue details. They would also refuse to turn out for parade and fail to report back after returning from a furlough or a leave pass. For the most part, courts punished these offenses with combinations of hard labor and a loss of pay and liquor rations.⁶⁴

But often the offenses were more serious, or at least potentially so. Frequently men, especially noncommissioned officers, would allow liquor to be brought into encampments for sale, a practice that was contrary to the spirit of the Articles of

60. General Court Martial Case Files, E-9.

61. See General Court Martial Case Files, N-21, where six men were tried for this offense.

62. General Court Martial Case Files, O-15. The commanding general overturned this sentence.

63. On taking command of the 9th Military District, Maj. Gen. James Wilkinson, in a general order of 23 August 1813, warned enlisted men not to assume that they had too many rights and cautioned them against “confounding republican freedom with military subordination, things irreconcilable as opposite elements, the one being founded in equality, and the other resting on obedience” (Orderly Books of the Adjutant General for the 9th Military District, August 1813–June 1815, Records of United States Army Commands, NARA).

64. Examples of these behaviors can be found in General Court Martial Case Files, A-2, A-4, A-21, D-8, E-19, and F-17.

War and usually forbidden in general orders.⁶⁵ Sentries were often negligent about security—either by failing to demand passwords and countersigns when they were approached or by improperly divulging this information. There were also instances when men on guard duty failed, either by design or by misadventure, to secure prisoners properly, thereby facilitating their escape. And they could handle their weapons in careless and irresponsible ways. Thomas Brown, an Irish-born recruit of mature years—he was thirty-six years old when he enlisted in 1814—not only challenged officers and men when he was on duty and before they had a chance to identify themselves but he also snapped his musket at officers, even after he had been ordered not to do so. He was, moreover, given to proclaiming loudly that “he would blow someone’s guts out!” For this, he was sentenced to death in January 1815, but he survived until the end of the war and was discharged six months later.⁶⁶

There were also other occasions on which neglect or disobedience earned the death penalty for offenders. James Whitlock, a sergeant in the 42d Infantry Regiment, abandoned a guard house on Staten Island in which prisoners were fighting. A nearby artillery officer, Lieutenant Charles Anthony, restored order and placed the prisoners in irons. Whitlock returned and countermanded Anthony’s orders, brandishing a bayonet as he did so. The sergeant, who had gone to a sutler to get some beer, then disputed with the officer whether the prisoners could be better controlled with, or without, irons. For these altercations, the court sentenced Whitlock to be shot, but as there was some dispute over whether he was acting under the influence of alcohol or under some misapprehension about the nature of his duties, the sentence was accompanied with a recommendation for clemency.⁶⁷ A somewhat similar scene was played out in Plattsburgh in February 1814 when Joseph Cutler, a private in the 29th Infantry Regiment, entered a tavern, dressed in civilian clothes, and began to dance. An officer present, Ensign Smith Newcomb, ordered him to stop and to leave the premises, apparently seizing him by the elbow as he did so. There ensued an exchange of blows, accompanied by much abusive language. It was unclear whether Cutler failed to recognize that Newcomb was an officer or whether he refused to recognize his authority, but the private was sentenced to be shot. He was, however, pardoned and returned to duty.⁶⁸

Underlying much of this disobedience—as had been the case with many other offenses—was the sense that military justice was too arbitrary and unfair. Private Stephen Shadrack of the 42d Infantry Regiment was passing by the officers’ quarters on Governor’s Island in April 1814 when he discovered that Captain John Biddle, of

65. See, for example, General Court Martial Case Files, D-23.

66. General Court Martial Case Files, H-25. Maj. Gen. Thomas Flourney, in the Mississippi Territory, also complained of the difficulty of enforcing discipline on men doing sentry duty. In a general order of 8 October 1813, he noted that “centinels are frequently seen in conversation with their fellows. Swearing, and quarrelling, laughing, and loud talking, not only amongst those not on duty but even amongst those on guard, and in the guard room” (see Thomas Flourney Orderly Book, July 1812–July 1815, Library of Congress).

67. General Court Martial Case Files, A-14. Clemency was granted in this case.

68. General Court Martial Case Files, X-161.

the same regiment, had been flogging two privates in his room. Unwisely, Shadrack thrust his head through the window “in a very impertinent manner” and inquired “what that child was making a noise about.” Biddle then ordered Shadrack into his room. Shadrack said he would be “damned if he would come in, unless he were dragged in.” He was, nonetheless, “dragged in” and Biddle administered thirty to forty lashes “on his bare back.” He then had Shadrack tried for disobedience of orders, but the court, in sentencing him to fifteen days confinement on bread and water, admitted that there were “extenuating circumstances.”⁶⁹

An even worse case occurred in Philadelphia in January 1815 when Private James Matthews of the 5th Infantry Regiment—who was already in confinement for absence without leave—was ordered into the presence of Captain John Corberly and told to remove his trousers. Asking if he were about to be “cobbed,” Matthews demanded a court martial, only to hear Corberly declare: “I will be your court martial.” When Matthews refused to accept punishment, Corberly struck him with some rods, abused him as a “damned rascal,” and called for a musket which he used to strike him repeatedly on the head, back, and shoulders, adding as he did so that now there was “one damned Englishman out of the service.” Corberly then consigned Matthews to the guardhouse, from where he was later released by a major. In the subsequent trial, no evidence was presented to suggest that Matthews had ever behaved aggressively, though there were signs that he might have been drunk and he did state that Corberly was unfit to be an officer. The captain responded that it was a rule of the garrison that punishments were to be “left to the discretion of the commanding officers of companies.” But not even the opinion of a surgeon that Matthews could have died at Corberly’s hands was enough to secure fair play for Matthews. He was acquitted of disobeying orders but punished for being intoxicated and mutinous with hard labor and loss of pay and bounty. He was then to be drummed out of the army “with ignominy.”⁷⁰

VII

Varieties of forgery, fraud, and theft made up 4.2 percent of the charges brought against enlisted men (82 cases), but to these offenses should also be added that of fraudulent re-enlistment, or “bounty-jumping” as the practice was more commonly described. This last offense added another 62 charges (or 3.2 percent) to the charges for various forms of fraud that came before courts martial during the war. In that context, fraud and theft constituted 7.4 percent (or 144 cases) of the charges heard by general courts.

When considering the matter of theft, it is difficult to determine how far enlisted men stole from one another and whether by doing so they undermined their collective interests and hindered the development of a greater sense of an esprit de corps throughout the army. The evidence from the general courts might suggest that this was not a widespread problem, though it should be borne in mind

69. General Court Martial Case files, A-14.

70. General Court Martial Case Files, I-13.

that most cases of petty theft would have been dealt with at the lower levels of garrison and regimental courts.⁷¹ The most serious case to come before a general court was that of Private Simon Mynderse, who was accused of taking \$95.00 from his sergeant while on the recruiting service in Montgomery County, New York, in 1814. It would seem that either the army or the local authorities had tried to prosecute Mynderse in the civil courts but without success as a grand jury failed to find a bill of indictment against him. The army therefore court-martialed him in November 1814. The defendant, who was described as a “bad character,” denied the charge, but a considerable sum of money was found on his person and he eventually returned \$95.00 to his sergeant. He was accordingly convicted and punished with hard labor.⁷² Most other thefts, by contrast, were on a far smaller scale. Private Benjamin Riley of the 16th Infantry Regiment, for example, was convicted at the same time as Mynderse for stealing \$2.00 from a fellow soldier. For this, he was both punished and humiliated—by having his coat turned and being branded on the forehead with the letter *T* (for thief) and being drummed out, after finishing his five-year term with hard labor.⁷³

But even if the men were not much given to stealing from one another, they had few scruples about stealing from others—from the public stores, from civilians, and from the local population in Canada whenever they entered enemy territory.⁷⁴ Men stole bread, flour, and sometimes spirits, from the army commissary, either for their own consumption or, more likely, for a quick sale to others to supplement their meager pay. An artilleryman, Jacob Gracy, even stole hospital instruments and other medical supplies, including two pounds of opium, to the value of \$200.00. He escaped remarkably lightly with hard labor and the requirement that he replace the value of the items he had taken.⁷⁵ Other thefts were more desperate. Another artilleryman was charged, though not convicted, for stealing wood from a garden fence at Fort Independence in Boston in January 1815, probably to heat the quarters that he shared with his wife.⁷⁶ And sometimes men stole clothing, as did Private Ethan Hunt of the Light Artillery, who, at the time of his discharge, sold the clothing of a fellow soldier, probably to finance his journey to another destination.⁷⁷

71. The figure of 4.2 percent for cases of theft and fraud in the general court transcripts might be compared, for example, with the records for garrison courts at New Orleans between February 1812 and January 1813 where charges of theft amounted to 12.3 percent of the charges brought against the 291 men tried in that period (see n. 12 above).

72. General Court Martial Case Files, P-5.

73. General Court Martial Case Files, P-3.

74. As one planter in Mississippi Territory complained to Maj. Gen. Thomas Flournoy in July 1814: “Nothing is sacred from your soldiers—cattle, corn, mellons, all suit them and if it continues I shall have no other remedy but that of abandoning my plantation, as I should be forced to by hostile troops” (copy in the Orderly Book, 7th Infantry, Records of United States Army Commands, NARA).

75. General Court Martial Case Files, A-11.

76. General Court Martial Case Files, A-18.

77. General Court Martial Case Files, A-20.

Canadian civilians who found themselves in the path of an American army also suffered. At the capture of York in May 1813, Private James Gallagher looted a pair of looking glasses from a Canadian lady, who complained that Gallagher had also shot at her. Gallagher denied shooting at her but admitted to shooting over her. His punishment was harsh in the extreme—branding with a hot iron on the cheek, 100 cobs with a bat spread over four days, and hard labor for the duration of his term.⁷⁸ More serious was the offense of Private Stephen Aken of the 37th Infantry Regiment, who bayoneted five sheep belonging to a farmer, Chester Wilson, near Odletown in March 1814. Aken denied the charge of theft but admitted to the bayoneting on the grounds that he was hungry. He was fined \$20.00 to replace the value of the sheep, but when Wilson protested that the sheep were worth \$25.00, the court raised the fine accordingly.⁷⁹ And also in Odletown in the same month, eleven privates, mostly from the 20th Infantry Regiment, confessed to breaking into the store of a local resident to take some beans, coffee, and rum. However, they denied breaking a window when entering the store, pointing out that the window was already open.⁸⁰

More frequent than all the thefts was forgery, sometimes by counterfeiting money but more usually by forging leave passes and discharge papers. In some cases, these men simply wanted a furlough for personal reasons, but officers often regarded the forgery of a pass as a prelude to desertion. Under these circumstances, defendants could find themselves charged with both forgery and desertion. Consequently, conviction for forgery could, at times, result in the death penalty, depending on how courts assessed the charge of desertion. Thus was Private James Croson of the 3d Artillery Regiment sentenced to death for both offenses in December 1813. His trial transcript recorded no details, or evidence, about either offense, both of which Croson denied. It remains unclear, however, whether this sentence was ever carried into effect.⁸¹

Multiple enlistments, or “bounty-jumping,” may have been slightly less frequently committed than other forms of fraud, but from the point of view of the army, the offense was more serious and was dealt with much more severely. In a few cases, these enlistments could have arisen from genuine misunderstandings about the obligations of military service or reflected an unwise decision made under the influence of drink. Private Isaac Blauvelt of the 42d Infantry Regiment, for example, freely admitted that he had enlisted again while on a drunken “frolic.” His court treated him relatively leniently by having him refund his second bounty and perform six months hard labor on half pay.⁸² More common were cases where men claimed they had been denied the full bounty from their first enlistment and that they therefore re-enlisted in an attempt to secure all the money to which they believed they were entitled. Such was the case when Martin Hoban, who had joined the 1st Rifle Regiment in 1814, was refused his

78. General Court Martial Case files, A-7.

79. General Court Martial Case Files, Y-75.

80. General Court Martial Case Files, Y-76.

81. General Court Martial Case Files, E-25.

82. General Court Martial Case Files, E-9.

full bounty by his company captain, and when he asked for a dollar more was told he could go away as the company had no desire to retain a soldier with “sore legs.” Hoban accordingly left and re-enlisted in the 29th Infantry Regiment.⁸³

There were also cases where men claimed to act from desperation—as did Edward Briggs of the Light Artillery, who said he needed two bounties because all of his cattle had been seized for debt⁸⁴—or they were manipulated by calculating relatives and masters who sought to deprive them of their bounties. Private Daniel Hill was both a minor and an apprentice who joined the 3d Artillery in March 1814 without the consent of his master. The master tracked him down and persuaded him to leave the Artillery and enter the 42d Infantry Regiment. In return for consenting to the second enlistment, the master received \$50.00 from Hill’s bounty. Almost certainly, the master believed the money was fair compensation for the loss of his investment in an apprentice, but the court dismissed the charge against Hill and left him in the infantry. For his part, Hill seems to have concluded that he had been cheated by all parties and he deserted again three weeks later.⁸⁵

In most instances, though, fraudulent re-enlistments were deliberate and calculated acts that reflected a determination to abuse the bounty system, especially after 1814 when the value of the bounty was raised to \$124.00, nearly all of which was paid when the men had enlisted and were mustered rather than at the end of their service.⁸⁶ Indeed, more than four-fifths of the trials involving bounty-jumping (87.0 percent) occurred in the period between January 1814 and February 1815. The secretary of war, John Armstrong, had previously advised Congress not to resort to this method of retaining men in the service—as the short-term enlistments of eighteen and twelve months that were available in 1812 and 1813 expired—for the very reason that it would encourage fraudulent enlistments on a large scale.⁸⁷ Congress ignored the warning and the military justice system was left to cope with the consequences. And while a few men were witless enough to re-enlist under the same name and even in the same regiment, most did not. The trial transcripts contain evidence of the widespread use of aliases as men chose to re-enlist in units other than those they had just left. It was for this reason that the offense of fraudulent re-enlistment was invariably associated with desertion, and several defendants were charged with both offenses. And regardless of the circumstances surrounding the offense, courts took a hard line in punishing it. Nearly one-third (30.6 percent) of those convicted were sentenced to death, two of them by hanging.⁸⁸

83. General Court Martial Case Files, H-5.

84. General Court Martial Case Files, A-18.

85. General Court Martial Case Files, Y-85.

86. See “An act making provision for filling the ranks of the regular army,” 27 January 1814 (*The Public Statutes at Large of the United States of America*, 2:95).

87. For Armstrong’s warning here, see his letter to David R. Williams, 10 February 1813, Reports to Congress from the Secretary of War, Records of the Office of the Secretary of War, RG 107, NARA.

88. Hanging, the fate of common criminals, was a more ignominious form of death than shooting, the normal method of execution in the army.

VIII

Drunkenness and “disrespectful language” were the next most frequently tried offenses, making up 2.1 percent (41 charges) and 1.7 percent (33 charges) of the cases before general courts, respectively. There was nothing unusual about drunkenness in the army. It was almost an occupational hazard of the profession of arms as soldiers—both officers and enlisted men—consumed liquor copiously for a variety of reasons: it was part of the men’s ration, it enhanced sociability, it dulled the harsher edges of army life, and it had medicinal uses as well. It also contributed greatly to the patterns of offending, both major and minor. Most minor cases were dealt with by regimental and garrison courts martial and the charge came up in general courts only when the habit of drinking was very pronounced—“beastly drunkenness” as it was often described—or when it influenced other serious offenses. Indeed, intoxication contributed to other offenses in more than one-tenth of the occasions (10.6 percent and 179 cases) on which enlisted men went before general courts, and it was cited as a major factor in 5.7 percent (61 cases) of the trials for desertion.

In other instances, men were tried for drunkenness when they were found to be unfit for duty or were found drunk while doing guard or sentry duty. The trial transcripts seldom provide much detail in such cases, but Private Daniel Moses, an artilleryman, was charged with being drunk while on post in Charleston, South Carolina, in March 1813 when he refused to allow a lieutenant to relieve him from duty. He compounded the offense by brandishing a bayonet after the lieutenant had tried to shame him for being drunk. Failing to accomplish that purpose, the lieutenant ordered Moses to remove his coat and go into the guardhouse or the “black hole,” admittedly for the purpose of stabbing him with a stick if Moses persisted in his “very noisy and turbulent” behavior. Moses then refused not only to be relieved but also to remove his coat, swearing that “By God he had worn the coat for twelve months . . . and that he thought he was entitled to wear it any place.” For this, he was sentenced to be tied to his sentry box for one night and his liquor ration was replaced by draughts of seawater.⁸⁹

Nor was there anything unusual about men using disrespectful or profane language. Some of this was little more than the use of insulting language in the course of altercations among the men themselves or between the men and their officers. Artillery Private Thomas Hitchen, for example, told a corporal and a sergeant in his company, in October 1812, that he “did not give a damn for either of them,” and Private David Ferry of the 42d Infantry Regiment informed his captain in April 1814 that “he knew his duty better than the captain did” and that the captain “might kiss his backside.”⁹⁰ A more remarkable instance of disrespect from an enlisted man took place in December 1814 when Marine Sergeant Grant Stiles wrote a letter calling his lieutenant, Barbin de Bellevue, a “liar” for having misinformed a major about aspects of Stiles’s conduct and then challenging the lieutenant to a duel. At the root of the quarrel was the fact that de Bellevue had

89. General Court Martial Case Files, D-8.

90. General Court Martial Case Files, A-6 and A-14.

been born in Sainte Domingue and Stiles believed that he was a “colored man” who should never have received a commission at all. Stiles offered to serve under another officer without pay, and he asked his court, should it sentence him to be shot, to allow him to give the word of command to the firing squad. The court declined to acknowledge this request. It reduced Stiles to the ranks, docked his pay, and set him to hard labor for the duration of his term.⁹¹

As the Stiles case suggests, bad language often contained implicit—and explicit—threats of violence and might, in some contexts, have been regarded as “mutinous,” “riotous,” or “seditious,” though officers did not always choose to see it in that light. And not infrequently, bad language was used in the course of a man’s disobeying an order, though men did not necessarily have to express themselves verbally to find themselves before a court. One sergeant in the 21st Infantry Regiment was tried in Plattsburgh in June 1814 for looking at an ensign in an “insolent” and “most menacing manner.”⁹² Bad language was also employed when soldiers tried to voice their disapproval when they saw their comrades being illegally or unfairly punished, as did Sergeant Walter Clarke of the 42d Infantry Regiment when he complained that it was a “damned shame” that a major should be allowed to flog men in his quarters. The court reduced Clarke to the ranks, docked his pay, and gave him thirty days in solitary confinement, remarking as it did so that the punishment was comparatively light because the offense had occurred in the presence of a lieutenant who had not disciplined the sergeant. Clarke might therefore have concluded that his language was “not such as would attach to him a high degree of criminality.”⁹³

A more interesting case occurred in October 1813 when Private Peter Whitmore of the 30th Infantry Regiment was tried for writing an “abusive and disrespectful” letter to Major General Wade Hampton—and doing so after his sergeant had warned him he would regret it. Although the contents of the letter were not recorded in the trial transcript, Whitmore was sentenced to be shot. The penalty was eventually remitted, however.⁹⁴ Nevertheless, officers were enjoined by the Articles of War to maintain good order in the ranks, and article 5 specifically prohibited men from speaking disrespectfully of the government of the United States and its officials. Consequently, Sergeant Joshua Lewis of the 40th Infantry Regiment was tried in January 1815 for declaring that the Madison administration and Congress were “a pack of damnd rascals,” and it was even alleged that he had said he would prefer to serve under the British rather than the Americans. Lewis claimed that he had made such remarks as a way of protesting the “tyrannical” behavior of his officers and had only wished that the United States “would treat their soldiers better.” Lewis escaped lightly. He was merely reduced to the ranks, a sentence which the commanding officer disapproved on the grounds that it was “trifling with justice.”⁹⁵

91. General Court Martial Case Files, Y-55.

92. General Court Martial Case Files, E-29.

93. General Court Martial Case Files, A-14.

94. General Court Martial Case Files, A-29.

95. General Court Martial Case Files, O-16.

Political criticism of the president, however, occasioned a very lengthy trial when Joseph Jackson of the 42d Infantry Regiment was charged for criticizing the fast day proclamation issued by President Madison in November 1814.⁹⁶ Jackson remarked that he could not read it “without smiling” as the contents were an apt commentary on the pitiful state to which the nation had been reduced by that “abject wretch” of a chief executive who should have been sent into exile with his “mercenary friend,” Napoleon Bonaparte. It did not help that Jackson had been born in England and claimed to be a lawyer. He disputed the legality of his trial on procedural grounds and called many character witnesses in his defense. It turned out that Jackson had experienced difficulties after moving to the United States in 1812, including the loss of goods he had brought with him—*forfeited* under the Non-Intercourse Law of 1811—and the illness of his wife. He had also been confined without being furnished with a list of the charges against him. As Jackson’s trial commenced as the news of the Treaty of Ghent reached New York City, he was lucky. He had enlisted only for the duration and the war, he pointed out, was now over. His court agreed and acquitted him of all charges, a verdict which earned the condemnation of the commanding general.⁹⁷

IX

If the sections above describe the vast majority and great variety of the offenses for which men were tried, how did the men respond to the charges and how were they punished? In nearly one-half of the general courts, 777 men (or 46.1 percent of them) pleaded guilty to part of, or all of, the charges against them. The remainder—908 cases or 53.9 percent of them—pleaded not guilty. It is difficult to be certain about how to interpret such evidence. In the most literal sense, it could be argued that a majority of the men denied the charges against them and believed they had not committed any offense at all. To that extent, they also rejected the authority of their officers to control their behavior. On the other hand, the chances for an acquittal were slim; guilt and punishment were an almost inevitable consequence of appearing before a court. Fully 85.0 percent (1,433) of the men on trial were found guilty and only 252 (15.0 percent of them) were found not guilty or had the charges against them dismissed for want of evidence. Alternatively, it could be suggested that nearly one-half of the men were prepared to plead guilty, either because they understood that they were indeed culpable or because they hoped that an admission of guilt might lead to a less severe punishment in a military justice system that was, for the most part, heavily stacked against them.

96. On 16 November 1814, Madison issued a proclamation calling for the observance of “a day of Public Humiliation and Fasting” on 12 January 1815 (Presidential Proclamations, RG 11, NARA). Private Jackson was probably amused by the extent to which the president called on the people to confess their “sins and transgressions” while reminding them at the same time of how grateful they should be to the “Great Sovereign of the Universe” for the health of the people and their enjoyment of “the abundant fruits of the season . . . , the progress of the arts . . . their comfort, their prosperity, and their security. . . .”

97. General Court Martial Case Files, G-6.

The matter of punishment was more complicated. Before 1812, army courts martial—at the garrison, general, and regimental levels—could draw on a repertoire of penalties to discipline offenders. These included corporal punishment (flogging with the lash or running the gantlet), fines, hard labor, picketing on the soles of the feet with a pointed stick, branding (by a hot iron or by caustic lye), mutilation (cropping of the ears), being attached to a ball and chain, riding the wooden horse, the loss of pay and liquor rations, and a variety of humiliating practices, such as requiring men to wear their coats turned inside out or to carry placards describing the nature of their offenses. Confinement in the “black hole”—a dark, dank, and unheated building—was also a possibility in army bases where such structures could be erected. The death penalty—usually by shooting—was reserved for the most serious offenses and could be imposed only by a general court martial. Courts, at all levels, usually resorted either to corporal punishment or to a combination of other penalties, most of which had the advantage that they could be inflicted relatively quickly and with minimal disruption to the routines of the force.⁹⁸

After May 1812, courts encountered more difficulty in carrying out punishments. The abolition of flogging by “stripes and lashes”—which deprived the army of its most frequent and easily administered form of discipline—created several awkward dilemmas that courts were never able to resolve.⁹⁹ For the most part in the years between 1812 and 1815, courts respected the law abolishing the lash, though the reform did not command universal assent throughout the officer corps, many of whose members resorted to the expedients of “cobbing” or “paddling” men—on the grounds that these measures did not amount to punishment by the lash—or they otherwise inflicted different forms of physical violence on the men by informal means.¹⁰⁰ Nevertheless, the loss of the lash compelled courts to resort to more complex combinations of confinement, hard labor, picketing, and the loss of liquor and pay in order to deal with offenders. These were not always so easy to administer, especially in situations where large numbers of men were on the march or lodged in temporary encampments created by the demands of the

98. For a general discussion of these matters, see John S. Hare, “Military Punishments in the War of 1812,” *Journal of the American Military Institute* 4 (1940): 225–39.

99. Some officers clearly sensed that the abolition of the lash would create difficulties in maintaining discipline. Lt. Col. Robert Purdy, in announcing the reform in a general order to the 7th Infantry on 13 August 1812, declared: “Let no soldier think that crimes and disorders are to go unpunished. Government has not designated it. Chains, picketing, and death are the evident substitutes” (copy in the Orderly Book of Captain Richard Oliver, Records of United States Army Commands, NARA).

100. Commanding generals repeatedly remonstrated against the practice of officers inflicting extra-legal physical punishments on enlisted men, as did Maj. Gen. Henry Dearborn when he wrote to Col. Jonas Simonds on 17 August 1812 to deplore the “unjustifiable and unofficer-like habit, which some officers indulge themselves (while under the influence of passion) of striking soldiers,” thereby degrading themselves while at the same time violating the “inherent and inalienable rights” of the men. These rights, Dearborn added, were “not surrendered by enlisting into the service of [the] country.” However, Dearborn immediately qualified his disapproval by adding that the subject was “too delicate . . . to be communicated in a public manner” (Letters Sent and Received, 6th Infantry, 1811–1813, Records of United States Army Commands, NARA).

war.¹⁰¹ Many officers sensed that these punishments were not sufficiently deterrent in their nature—indeed in the absence of the lash, there was often little to distinguish the punishments that a general court could order from those that might be imposed by garrison and regimental courts for less serious offenses—but without the lash, general courts had no other recourse beyond the ultimate one of the death penalty itself.¹⁰²

The imposition of the death penalty thus became a sensitive issue. Initially, courts were reluctant to sentence men to death. Between June 1812 and June 1813, only 7 such verdicts were recorded in the 1,685 trial transcripts preserved in the Office of the Judge Advocate General. But between June and December 1813, 59 death sentences were handed down. In 1814, the number rose to 217 and a further 34 such verdicts were rendered between January and March of 1815. In sum, at least 322 death sentences were given by general courts in the thirty-two months of the war, a number that amounts to 22.4 percent of the men found guilty of their offenses.¹⁰³ How many of these sentences were actually carried out, though, is another matter and one that is extremely difficult to determine.¹⁰⁴ In nearly one-fifth of these cases (62 or 19.2 percent), the courts recommended mercy for the condemned. Another one-fifth (65 or 20.1 percent) of the condemned were actually reprieved. And while slightly more than one-quarter (86 or 26.7

101. In a report on posts in the Fourth Military District, Assistant Inspector General Robert Sterry pointed to the ease with which men under arrest could escape confinement and disappear into the population of large cities such as Philadelphia. The army, he noted, lacked proper places to confine men, and he suggested that it was time “to erect a building on the plan of the state penitentiaries where military criminals may be confined for longer than their present sentences allow and they may be made to pay for their subsistence by the manufacture of such articles as may be used in the public service” (Sterry to John Armstrong 10 July 1814, Letters Received by the Office of the Adjutant General, NARA).

102. If there was a difference between the punishments handed down by garrison and regimental courts in contrast with those of general courts, it was that the latter often imposed fines and hard labor for longer periods of time than the lower courts. All these punishments, however, were of essentially the same kind.

103. That figure might well be compared with capital cases in the Union Army during the Civil War when the increase in the application of the death penalty rose from 3 percent to 8 percent of cases before general courts between 1862 and 1864 (see Steven J. Ramold, *Baring the Iron Hand: Discipline in the Union Army* [DeKalb, Ill.: Northern Illinois University Press, 2010], 328–29, 341).

104. According to Hare, the army carried out 205 executions during the war, from a total of 260 death sentences (see “Military Punishments in the War of 1812,” 238). These figures may be misleading. Hare’s calculations were taken from the Registers of Records of Court Martial Proceedings 1809–1890, Records of the Office of the Judge Advocate General, RG 153, NARA. That record is clearly incomplete in many respects, and it seems that Hare made no count of the number of death sentences recorded in the trial transcripts. Hare may also have assumed that if a condemned man was not reprieved, he would have been executed. That assumption is not necessarily correct. For many of the condemned, no records survive of the orders for their execution and evidence gleaned from orderly books and the registers of enlistments prove that many of them survived until the end of the war, after which they were not executed.

percent) of the death sentences were formally approved by a commanding general or the president, 11 (or 3.4 percent of them) were disapproved and another 24 (or 7.4 percent) of them were suspended pending further investigation. And if a condemned man had not been executed by the end of the war, his sentence was not carried out as the president, in July 1815, pardoned all men still under the sentence of death and ordered that they be dismissed in disgrace and sent home.¹⁰⁵

Or, to put it another way, it is possible that as many as 162 of the 322 death sentences (or 50.3 percent of them) were not carried into effect, and that of the remaining 160 only 51 (or 31.8 percent of them) can be said with absolute certainty to have been executed. That number may well be too low,¹⁰⁶ but the fact that large numbers of death sentences were probably never implemented is a further demonstration of the dilemmas faced by general courts as a result of the abolition of corporal punishment. Courts, beginning in the summer of 1813, resorted to the death penalty with increasing frequency as they experienced growing frustration at the rising rate of offending, especially desertions. This was particularly the case in 1814 when the bounty to re-enlist men was sufficiently generous to encourage larger numbers of desertions and multiple enlistments at a time when the army was also losing as many men as it was taking in.¹⁰⁷ Under these circumstances, courts wanted to make an example of deserters and other offenders, but the army hesitated to enforce the full severity of the law, probably because commanding generals and the War Department in Washington were uncertain whether a rigorous implementation of the death penalty would improve or worsen the prospects for recruiting and retaining the greater numbers of men who were needed to continue the war.¹⁰⁸

105. See the general order of 8 July 1815 (General Orders and Circulars of the War Department, NARA).

106. If it be accepted that 65 of the 322 condemned men were reprieved, that would indicate that no more than 257 of them could have been executed, a figure that is closer to Hare's count of 260 death sentences for the war. That might suggest that the actual number of war-time executions could have been greater than 51 but less than 257.

107. For the relationship between enlistments in, and departures from, the army after December 1813, see Staggs, "Enlisted Men in the United States Army, 1812–1815," 622.

108. Examples of the fluctuating policies pursued by commanding generals in such circumstances are numerous. Maj. Gen. Thomas Flournoy approved the death sentences for two privates convicted for desertion on 1 December 1813. Five days later, he pardoned six men whose death sentences had been under suspension, including one of the two privates he had ordered to be executed on 1 December. Flournoy stated that this exercise of clemency did not pledge him to pardon future offenders and that these would be treated with "rigor" (Thomas Flournoy Orderly Book, Library of Congress). Even that notoriously fierce disciplinarian, Maj. Gen. Andrew Jackson—who believed that volunteer militia as well as regular troops should be shot for desertion—pardoned more condemned men than he executed. In a series of general courts held at Mobile in October 1814, six army privates were sentenced to death for desertion. Jackson approved the sentences, but then pardoned four of them (see the general order of 17 October 1814 in Sam. B. Smith et al., eds., *The Papers of Andrew Jackson*, 8 vols. [Knoxville: University of Tennessee Press], 3:166–68).

X

If it be the purpose of systems of military discipline and justice to impose a uniform standard of strict obedience on an armed force in order to enable it to function effectively, how well did the 1806 Articles of War serve the U.S. Army between 1812 and 1815? The answer, at best, must be a very mixed one. After a slow and uncertain start in June 1812, the army eventually managed to establish and expand a system of general courts martial that embraced all units of the force across the nation by 1814. There were no mutinies in the army during the war, and in the realm of serious offending, desertions were only a moderately serious problem. These acts of desertion, moreover, tended to be isolated and individual ones, undertaken by the men for their own particular reasons. Occasionally, men went off in groups of two and three, sometimes even half a dozen, but there were no instances of large-scale mass desertions by the scores or the hundreds as could be found in European armies in this period.¹⁰⁹ Other offenses, such as riotous behavior, mutinous or bad language, fraud, theft, and intoxication were to be found in varying degrees in the U.S. Army, as they were in all European armies at the same time.

It should be remembered, though, that serious offending—as evidenced by the number of general courts—was only the tip of the iceberg in a sea of ongoing petty misconduct throughout the army, which was prevalent to an extent that is now probably impossible to measure with any high degree of accuracy.¹¹⁰ The surviving evidence on this last subject suggests that garrison and regimental courts martial were, at least, weekly occurrences throughout the army and that officers were required to pass judgment on a constant stream of offenses, such as assault, drunkenness, petty theft, and endless varieties of disorderly and riotous behavior. The officers, who were none too well disciplined themselves, would

109. Even under Napoleon, there are accounts of men deserting French armies by the hundreds on a daily basis (see Forrest, *Napoleon's Men: The Soldiers of the Revolution and Empire* [London: Continuum International Publishing, 2006], 179).

110. Records for garrison and regimental courts martial can be found in collections of personal papers and company and orderly books, which are scattered across a large number of repositories, with the largest single holding for the latter sources being in Records of United States Army Commands, RG 98 (NARA). A somewhat impressionistic survey of twenty-five of these company and orderly books, although one that was drawn from all regions of the nation throughout the war, provided a limited amount of detail about the garrison and regimental courts for 1,613 men serving in twenty units of the regular army. Although these records are very skeletal in their nature (and it is not clear that officers always kept them fully up to date), they provide a dreary picture of constant displays of drunkenness, gambling, absences from parade, absence without leave, theft, and disorderly conduct. The range of punishments available to garrison and regimental courts after May 1812 was no different from those available to general courts, but the rates of conviction and punishment were rather higher than those in general courts. In the garrison at New Orleans, for example, of the 291 men who were tried between February 1812 and January 1813, barely 10 percent (9.97 percent) of them were found not guilty (see n. 12 above). There is little to suggest, however, that men who went before garrison and regimental courts were any more likely than other men to appear before a general court.

have been less than human if they did not tire at the strain of controlling their men and become less tolerant of unruliness in the ranks. As a consequence, rates of conviction in all courts martial were very high and punishments were often administered in erratic and uneven ways. The problem here went beyond the fact that particular courts might exercise differing degrees of discretion according to the circumstances of individual cases. The abolition of corporal punishment by “stripes and lashes” in May 1812 reduced the range of punishments available to all courts by depriving them of their most effective and easily administered method for coercing conformity and obedience. Lesser penalties were generally less effective and it seems unlikely that they had any truly deterrent effect on the behavior of the men. As the rates of serious offending rose, general courts concluded they had little alternative but to resort to the death penalty, but the army hesitated to implement it to the fullest extent.

In all these ways and for these reasons, the effectiveness of the military justice system was compromised during the war, in part because many men were reluctant to adapt themselves to discipline or to accept that it was either necessary or fair. A well-trained officer corps, aided by a cadre of experienced noncommissioned officers, should have been able to master this situation, but the army between 1812 and 1815 simply lacked these prerequisites. Consequently, courts martial throughout the war were engaged in the business of “damage control” as much as anything else as their members struggled to restrain behaviors that arose from the rough plebeian culture that the enlisted men took with them into the service. This is not to say there were no exceptions—such as the case of the Left Division of the Northern Army on the Niagara Peninsula in the summer of 1814. But the army that was led by Jacob Jennings Brown and Winfield Scott was distinguished by its unusually rigorous training regime—certainly by American standards—and by Scott’s unrelenting attention to camp police (to ensure the health of the men) as well as by his willingness to use the death penalty to enforce obedience. As drummer Jarvis Hanks noted, the future “Old Fuss and Feathers” was “the most thorough disciplinarian I ever saw,” and he did not hesitate to intrude himself into almost every aspect of the lives of the men under his command.¹¹¹

We might conclude, therefore, that although the early American republic succeeded in creating new and enlightened political institutions for its governance, it could not be said that it accomplished the same when it came to establishing the U.S. Army. Many men might have enlisted in that army for honorable, patriotic, and virtuous reasons—as did the pseudonymous private who wrote to James Madison in July 1814 announcing that he had joined up not for “money” but “to retrieve the honor of [his] country” over the issues of “Free Trade and No Impressment.”¹¹² Another enlisted man had even been so optimistic as to hope that the abolition of corporal punishment would inaugurate a new era characterized by the emergence of “a Republican army . . . which would reflect great honor and credit on the nation,”

111. See the “Memoir of Drummer Jarvis Frary Hanks” in Graves, ed., *Soldiers of 1814*, 29.

112. See n. 23 above.

but such dreams were simply unrealistic.¹¹³ Of necessity, the armies of the European empires and monarchies still furnished the essential templates for the American army, even as it tried to devise its own compromises with these templates.

The result was an American army that was not much more than a pastiche of European precedents and a pale imitation of European institutions and practices that had too many of their vices and too few of their virtues. The early American army was never large enough and its units were too dispersed to provide a framework that would have facilitated the adaptation of significant numbers of raw recruits to army life, including the mastery of battlefield tactics. It had none of the traditions and customs—ranging from regimental cohesion to a distinctive military culture—that were to be found in the armies of Great Britain and other European nations. Its officers were deeply conflicted about the extent to which the rights of male citizens could be carried over into army life and too many of them remained convinced that brute force was essential to the maintenance of good order and discipline. And the enlisted men themselves were never “professionals” in the European sense of the word—men who served for long terms, even for life, and had acquired discipline and a certain esprit de corps.¹¹⁴ Overwhelmingly, American soldiers were short-term men who had difficulty in accepting the discipline needed to organize and fight effectively. They also sensed that there was a considerable gap between their notions of their rights as citizens and the harsher realities of army life that their officers tried to impose on them. The result was an army riddled with contradictions about its sense of purpose, or at least about how that purpose might be implemented on a routine, daily basis. It was an army that was, in too many respects, far from being ready to encounter an enemy in the field.

113. See Erastus Roberts to Madison, 2 September 1813.

114. This point can be reinforced by a comparison between the U.S. Army and the French armies under Napoleon, where an egalitarian and patriotic ideology, the cult of the emperor, a system of rewards and promotions based on merit, and a virile masculine sensibility all interacted to produce a high degree of cohesion, at least before the collapse of the empire in 1813–14 (see Michael J. Hughes, *Forging Napoleon's Grande Armée: Motivation, Military Culture, and Masculinity in the French Army, 1800–1808* [New York: New York University Press, 2012]). This is not to say that the early American republic lacked for popular songs and verse of a martial and patriotic nature, although much of this material was as likely to be British in origin as it was American (see, for example, the compilation published by John Bioren, *The Town and Country Song Book, A Collection of New, Favorite and National Songs* [Philadelphia, Pa., 1813]). Doubtless, many American soldiers would have been familiar with these songs and verse, but there is little evidence that such writings contributed much, if anything, to the formation of a distinctive and cohesive military culture between 1812 and 1815.

TABLES I through V

TABLE I: General Courts Martial, 1812-1815

No. of Regiments	% of Army	% of General Courts
Artillery (4)	7.3	15.0
Dragoons (2)	3.6	3.0
Infantry (44)	80.0	78.3
Riflemen (4)	7.3	2.8
Sea Fencibles (1)	1.8	0.9
Total (55)	100.0	100.0

Source: Francis B. Heitman, ed., *Historical Register and Dictionary of the United States Army, From Its Organization, September 19, 1789 to March 2, 1903*, 2 vols. (Washington: Government Printing Office, 1903), 2: 576–77.

TABLE II: Defendants in General Courts Martial

Unit	No.	%
Artillery	248	15.0
Dragoons	49	3.0
Infantry	1,291	78.3
Riflemen	46	2.8
Sea Fencibles	14	0.9
Total	1,648*	100.0

*There are 37 cases where the unit of the defendant is unknown.

TABLE III: Occupations of Defendants

Occupation	No.	% in Army	% Tried
Farmer	276	39.0	33.9
Laborer	123	14.2	15.1
Artisan	313	37.0	38.4
Seaman	72	5.1	8.8
Miscellaneous	31	4.7	3.8
Total	815	100.0	100.0

TABLE IV: Patterns of Offending

Offenses	No. of Cases	% of Cases
Desertion/Absent without Leave	1,181	60.9
Mutiny/Mutinous Conduct	190	9.8
Sleeping on Post/Leaving Post	150	7.7
Neglect of Duty/Disobedience	101	5.2
Disorderly/Riotous Conduct	89	4.6
Fraud/Theft	82	4.2
Bounty-Jumping	62	3.2
Intoxication	41	2.1
Bad Language	33	1.7
Going over to the Enemy	6	0.3
Cowardice	4	0.2
Gambling/Rape	2	0.1
Total	1,941	100.0

TABLE V: Defendant Motives for Desertion

Motives	No.	%
Ill-usage/ breach of contract	123	20.3
Over-staying Leave/Furlough	77	12.7
Personal and Family	75	12.4
Drunkenness/ Insanity	73	12.1
Wrongful Enlistment	60	9.9
Persuaded by Others	58	9.6
Ignorance of the Law	44	7.3
Left behind on March	30	5.0
Claimed Discharge	19	3.1
To Join the Enemy	14	2.3
Jailed by Civil Authority	10	1.7
Being a British Subject	10	1.7
Arrested while on Transfer	7	1.2
Got Lost	3	0.5
Going to "Necessary"	1	0.2
Total	604	100.0

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