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Crime and punishment in the British army, 1815-1870

DESPITE the interest recently displayed by historians in criminal law and penal practice in nineteenth-century Britain, very little has so far been written about military crime and punishment. This neglect is at first sight surprising. Military men wrestled with many of the same penal problems as their civilian contemporaries. Discussion in army circles could not but be influenced to some degree by the currents of thought and reformist energies which coursed through English society, as well as by changes in the methods of punishing civil crime. As military administrators, officers, and commentators gave increasing consideration in the decades after 1815 to the character and causes of crime among soldiers, the forms of punishment and means of prevention, they too debated, within a military context, the mitigation of harsh penalties, the imperatives of deterrence and reformation, the substitution of imprisonment for corporal punishment and transportation, and the resort to specially designed prisons with a regime of hard labour, 'less-eligible' conditions, separation, silence, and religious instruction. But if the similarities and cross-currents are apparent, so too are the differences in the nature and treatment of military crime; and it may well be the uniqueness and peculiarities of the army which have discouraged investigators, until now at last military historians have turned to exploring the life of the soldier and the army as a social institution.¹

As the history of crime and punishment in the Victorian army aptly illustrates, part of the army's uniqueness lay in the extent to which conservatism was entrenched. An authoritarian, hierarchical, and largely self-contained institution, the army was well insulated against the pressures for reform active in civilian society. Its operations and ethos were controlled by a small, closely-knit body of senior officers, personified by the Horse Guards, who evinced an unyielding traditionalism and an unquestioning adherence to Wellingtonian practices. They were more concerned with discipline and order, as the necessary basis of military efficiency and morale,

1. Useful information on military crime and punishment is contained in E. M. Spiers, *The Army and Society 1815-1914* (London, 1980) and A. R. Skelley, *The Victorian Army at Home, 1859-1899* (Montreal, 1977). More enlightening than a general study of punishment, like S. Claver, *Under the Lash. A History of Corporal Punishment in the British Armed Forces* (London, 1954), is J. R. Dinwiddy, 'The early nineteenth-century campaign against flogging in the army', *ante*, xcvi (1982), 308-31. On the wider issue of army reform, Hew Strachan offers a suggestive analysis in 'The early Victorian army and the nineteenth-century revolution in government', *ante*, xcv (1980), 782-809.

than with the welfare and living conditions of the common soldier, for whom their sympathies were remote and impersonal. The power of the traditionalists was also decisively reinforced by a cumbersome, hydra-headed system of military administration. Especially before the reorganization prompted by the débâcle of the Crimean War, the division of responsibility for army affairs among six major departments of state not only produced inertia and procrastination but afforded military leaders sufficient independent authority to thwart or delay proposals and policies they disliked. Impervious and unsympathetic to 'the march of mind', they also appealed with effect to superior professional expertise in order to fend off meddling politicians, whom they denounced for perennial parsimony and indifference to the army's true welfare. With respect to crime and punishment as with other major military questions of the day, therefore, the process of change in the nineteenth-century army was slow, piecemeal, and uneven. Another characteristic of military reform was that in order to overcome the forces of complacency, habit, and conservatism, countervailing pressures were needed, whether they were generated within the army or came from civilian society, and whether they took the form of urgent practical necessity as in wartime, the dictates of economy or efficiency, a widely articulated and compelling demand, or imperative considerations of humanity. Within the armed forces, such pressures had to come principally from individual commanding and regimental officers of a paternalist disposition or reformist leanings like Sir John Moore and Sir Charles Napier, Lieutenant-Colonels Henry Oglander and Armine Mountain of the 26th Foot, and Arthur Torrens of the 23rd. Reformers also found a valuable sounding-board for their views and grievances in the lively military press of the day. Through such professional publications as the *United Service Journal* (later the *United Service Magazine*) and the *Naval and Military Gazette*, officers and other ranks could bring issues to wider notice and cumulatively work up a campaign against 'intolerable conditions', which might attract attention within the army and among concerned civilians. Pressure of a different kind for change, and operating in a different fashion, came from the rank and file. The ordinary soldier had no direct influence over conditions of service, and gatherings for discussion were forbidden. Soldiers could not therefore hope to generate a concerted, constructive movement for reform from the ranks, even had they been so minded. Nevertheless, as the study of military crime graphically demonstrates, they could and did protest in the negative, unconstructive forms open to them against the harassments and monotony of army life and service: they resorted to unruly behaviour, drunkenness, and desertion. Indirectly, and over the long term, these protests were effective because the military authorities had to take cognisance of such major challenges to discipline. The

initial response at regimental and higher levels might be harsh and oppressive, but during the second quarter of the nineteenth century a gradual shift occurred from sheer mindless repression, first to anxious questioning, and then to new penal practices and preventive measures.

In the case of crime and punishment, moreover, the active concern of politicians and civilians generally was aroused by the emotional issue of flogging. Usually the unfamiliar affairs of the soldier attracted too spasmodic and half-hearted an interest among Englishmen at large to create a compelling external force for military reform. Middle class campaigners – philanthropists, Benthamites, and sanitarians – showed a curious neglect of the soldier's welfare and made no effort until the 1850s to launch on his behalf pressure groups of the kind which accomplished so much for civilian society. Parliament, for its part, complained repeatedly about the size and expense of the army but otherwise displayed a massive indifference towards the soldier in peacetime. In the case of corporal punishment, however, public and parliamentary opinion kept discussion alive and put pressure on beleaguered traditionalists. Indeed the story of crime and punishment in the British army after 1815 illustrates what could be achieved when military reformers were able to appeal to a wider public sentiment and capitalize on the ideas and practices current in civil society. By 1870 these forces had brought about a striking reduction in the incidence of military offences and the brutality of military punishment, though much still remained to be done to improve the soldier's lot.

When contemporaries speculated on the causes of military crime, they advanced two categories of explanation, not dissimilar to those adopted for the civilian criminal: some ascribed it to the moral degeneracy of the common soldier; others blamed the conditions of army life. Instinctive and temperamental rather than factually based, these two approaches were not mutually exclusive and some commentators held both without any consciousness of incompatibility. In the years after 1815 the emphasis tended to shift in favour of environmentalist explanations. This may in part reflect a change in the general climate of opinion in a society that grew accustomed to notions of reform and improvement and accepted the possibility of individual rehabilitation through moral discipline and education. But other forces were at work within the army, including such eminently practical concerns as how to attract more and better recruits.

Military traditionalists in the early and mid-Victorian period attributed crime among soldiers to constitutional depravity or inherited degeneracy. If there was not exactly a criminal class in the army, there was a 'criminal' element – scoundrels who would have been congenitally incapable of behaving themselves whether as

civilians or as soldiers. 'Men of loose and unstable principles', asserted Major Edwardes, governor of Fort Clarence military prison, 'must constitute a *very* large element in our army. Poverty forces these characters to enlist, and exposed to the low temptations of our garrison towns, they naturally revert to their former habits.'¹ Soldiers' delinquencies seemed to many contemporaries to be the unavoidable result of the type of men who enlisted and of their reasons for joining. Voluntary enlistment was thought to produce an inferior body of troops in point of character and conduct to the conscript armies of Continental Europe. 'The French system of conscription', Wellington observed, 'brings together a fair sample of all classes; ours is composed of the scum of the earth – the mere scum of the earth.'² Some recruits might have nursed a predilection for army life or a desire for glory and adventure, but the vast majority of the rank and file found themselves in the army unwillingly, through force of adverse circumstances. Pressure of economic necessity was the most effective recruiting sergeant, especially in times and in areas of high unemployment, when the army seemed the last resort short of the workhouse or starvation. Contemporary comment suggests that these compelling forces were more influential than the security afforded by food and shelter, pay and pension, which must have attracted some idle characters as well as the indigent.³ The army also served as a means of escape or refuge for a variety of inadequates, misfits, and rascals: drunkards, adulterers, bigamists, debtors (all debts under £30 were remitted on enlistment), criminals, and those who had quarrelled with family, friends, or employers. According to Wellington in 1829, 'men enlist from having got bastard children – some for minor offences – many more for drink.' Little had apparently changed forty years later when a writer on short-term enlistment in 1870 despaired that 'The ranks in this country will always be filled, as they were filled in times past, with the dissolute, the idle, and the unfortunate from among the humbler classes.'⁴

In the view of contemporaries, the composition of the army was also decisively affected by the prevailing methods of enlistment in which liquor and deception played a prominent part. Recruiting sergeants, who received a fee for every man attested, unscrupulously duped the credulous and the besotted with false stories of high pay and luxurious living, glamour and excitement, as well as promises of substantial cash bounties: 'The great attraction to these men was

1. Report on military prisons, *Parliamentary Papers* (hereafter PP) 1868–9 (4209) xxx, 576.

2. Philip, Earl Stanhope, *Notes of Conversations with the Duke of Wellington* (London, 1888), p. 14.

3. For example, 'A Glance at Some Defects in Our Military System', *United Service Journal* (hereafter *USJ*), xxxii (1840, Pt. 1), 2.

4. Stanhope, *Conversations*, p. 18; 'The Army Enlistment Act', *Blackwood's Edinburgh Magazine*, cviii (1870), 18.

a set of clever lying sergeants, whose duty it was to personify the sensual indulgences and brutal license which formed, to most of these men, their sole idea of happiness. No lying was too gross for the ignorant ruffians for whom it was intended, or too flagrant to be justified by the end. The doors of the beerhouse and the brothel were the common gates of admission into the military service of the State.¹ Though the regular resort to 'seduction, debauchery, and fraud' was persistently criticized,² the traditional methods of inveigling 'the foolish, the drunken, the ungodly, and the despairing' into the army were not abandoned until after 1867.³ Never able to raise a sufficient number of men, the army authorities were not particular how the ranks were filled. A minimal degree of physical fitness and a certain minimum height were virtually the only qualifications needed for a military career.

The evils of the recruiting system were compounded by the low opinion of the common soldier entertained by the general public. The army was an alien institution to civilians who knew little about the soldier's actual life. Indeed, bemoaned one staff sergeant, 'the mass of society are quite as familiar with the history of the Russian serf, or the South Sea islander, as they are with his.'⁴ The citizenry was also noted for its rooted distrust of standing armies and for an undisguised hostility to the conduct of troops, whether acting in aid of the civil power or frequenting taverns. Throughout the nineteenth century civilians in all ranks of society, who had the highest regard for sailors, held soldiers in low esteem. Soldiering was not considered a popular or honourable occupation: on the contrary, going for a soldier remained a matter of shame and disgrace in even the poorest families. As Samuel Haden, secretary to the Army and Navy Pensioners Employment Society, told a royal commission on recruiting in 1867, 'I have heard mothers solemnly declare that they would prefer to hear that their sons were dead, rather than that they were enlisted'.⁵ A similarly disparaging view of the ordinary soldier was evinced by many senior military officers. Though valorous and disciplined in battle, the rank and file were often regarded and treated as the dregs of society, characterized by vicious, dissolute behaviour. Wellington himself declared that 'the man who enlists into the British army is, in general, the most drunken and probably the worst man of the trade or profession to which he belongs, or of the village or town in which he lives. There

1. P. Onslow, 'The Philosophy of Recruiting', *Contemporary Review*, xii (1869), 548.

2. Colonel Firebrace, 'On the Errors and Faults in our Military System', *Colburn's United Service Magazine* (hereafter *CUSM*), xlii (1843, Pt. 2), 203.

3. 'Our Military System', *CUSM*, xcvi (1861, Pt. 1), 13. Also the royal commissions on recruiting, *PP* 1861 (2762) xv, and 1867 (3752) xv.

4. J. M. MacMullen, *Camp and Barrack-Room* (London, 1846), p. 144.

5. Royal commission on recruiting, *PP* 1867 (3752) xv, 100-1. For a typical contemporary account, *A Soldier's View of Empire: the Reminiscences of James Bodell 1831-92*, ed. K. Sinclair (London, 1982), pp. 20-23.

is not one in a hundred of them who, when enlisted, ought not to be put in the second or degraded class of any society or body into which they may be introduced; and they can be brought to be fit for what is to be called the first class only by discipline, and the precept and example of the old soldiers of the company, who, if not themselves in that same second or degraded class, deserve to be placed there for some action or other twenty times in every week.¹ Indeed, the Iron Duke and others claimed that, like 'a huge and extravagant reformatory', the army provided a valuable service to the nation by withdrawing such undesirable elements out of civilian society and corralling them in the armed forces where they could be watched and disciplined.² Such attitudes, persistent though never universal, had an adverse effect on both the conduct of soldiers and the reaction of the military authorities to that conduct. As Staff Sergeant J. M. MacMullen explained in 1846, 'the British soldier is a neglected man. He is looked on in every country as a being of inferior species: as a paria[h] of the body politic; and thought to be almost incapable of moral or social improvement. His own officers despise him, and the public at large despises him. Surely then, when he finds himself treated with universal contempt, it cannot be a matter of surprise that he loses all self-respect, and becomes the reckless and degraded being that he is.'³ These prejudices and preconceptions were of cardinal importance when the debate arose inside and outside the army over the causes of military crime and the methods of combatting it. Traditionalists tended to look on private soldiers as incorrigible reprobates who required stiff doses of punishment to keep their animal instincts in check.

The views of military traditionalists concerning the causes of crime among soldiers did not go unchallenged. Reformers stressed the special nature of crime in the army and the need to distinguish it from crime in civil society. The aim of military law was to enforce the discipline deemed essential to military efficiency and victory in battle and to the cultivation of high morale and *esprit de corps*. In contrast to 'social law', concerned with 'crime in its moral sense', 'the object of military law is not to punish moral delinquencies, in other words to make men virtuous and good, but to produce prompt and entire obedience; hence a military offence may not be a crime in its moral sense.'⁴ Since the vast majority of military offences constituted breaches of a strict disciplinary code and were not

1. Memorandum on the proposed plan for altering the discipline of the army, 22 Apr. 1829, *Despatches, Correspondence, and Memoranda of Field Marshal Arthur Duke of Wellington*, ed. by his son, v (London, 1873), 594.

2. 'Our Military Reforms of Late Years and What They Have Done for Us', *CUSM*, xciv (1860, Pt. 3), 481.

3. MacMullen, *Camp and Barrack-Room*, pp. 141-2.

4. H. Marshall, *Military Miscellany* (London, 1846), pp. 116-17. Also C. J. Napier, *Remarks on Military Law and the Punishment of Flogging* (London, 1837), p. 6.

directed against persons or property, they were not to be judged by the moral criteria applied to the felonies and misdemeanours committed by civilians. Even traditionalists, who were disinclined to regard military crime in this morally neutral light, often objected to the confinement of soldiers in civil gaols where they would be contaminated by common criminals.¹ Against the notion that the British army was composed of irredeemable degenerates, reformers emphasized the environmental factors which influenced soldiers' conduct. This view was repeatedly expressed in the 1840s by Henry Marshall, a retired deputy inspector-general of army hospitals and a prolific writer on military affairs:

Hitherto it has been too much the practice for officers to characterize the men who volunteer for the Army as the very dregs of the population, – ignorant, vicious, and idle . . . Now, I do not think that recruits are, as a body, more ignorant, more vicious, or more idle, than the majority of the class from which they are taken, although it must be admitted that some of them become more disorderly after enlistment . . . The existence of a considerable degree of delinquency and insubordination in the Army may be easily accounted for, without attributing any unusual moral depravity or propensity to vice in the men who enlist as recruits . . . The Army presents easy opportunities and great incentives to licentiousness, together with numerous concomitant irregularities.²

Marshall and other reformers claimed that it was the nature of military service and the conditions of army life which prompted individuals to commit offences, for a 'certain number, and a certain order of crimes, are the necessary result of the organization, discipline, usages, and services of the army'.³ Many soldiers found the sharp discipline, monotonous routine, and petty restrictions of military life irksome or unbearable. Some were provoked into committing offences by the treatment they received from domineering officers or vindictive NCOs. These pressures were often strongest on new recruits who found it hard to adjust to the strangeness of army life or were disillusioned with their surroundings, their pay, or their regimentation.⁴ As instinctive reactions or conscious protests, they resorted to insubordinate behaviour or even desertion, offences that were prevalent among raw recruits and young soldiers. Older, more seasoned campaigners with several years' service became accustomed or inured to the demands of barrack life, though their rankling discontent and frustrations might well be manifested in drunkenness or unruliness.

1. See, for example, 'Present Discipline of the British Army', *USJ*, xv (1834, Pt. 2), 80.

2. 'Historical Details Relative to the Military Force of Great Britain', *United Service Magazine* (hereafter *USM*), xxxviii (1842, Pt. 1), 178, 180.

3. Marshall, *Military Miscellany*, pp. 117–18.

4. See, for example, MacMullen, *Camp and Barrack-Room*, pp. 22–6.

From these conditions and circumstances stemmed a wide variety of petty delinquencies, minor infractions of regulations and orders, real or imaginary, which were punished summarily by commanding officers and entered in the regimental defaulters' books. More serious breaches of discipline were covered by offences enumerated in the Mutiny Act and punishable by courts martial. Aside from mutiny, a very rare occurrence in peacetime, the major indictable crimes relating to indiscipline were insubordination, including violence to superior officers, and disobedience, two separate offences until they were reclassified in 1881. The term 'insubordination' was sufficiently comprehensive to embrace multifarious delinquencies. In 1833, for example, Private Edward Connor, 95th Foot at Chatham, was charged with refusing to do drill and get ready for dinner, Private Joseph Bromley, 3rd Dragoon Guards at Birmingham, with using abusive language at punishment drill and making threatening gestures at the adjutant, and Private James Valney, 8th Hussars at Gloucester, with refusing to blow his trumpet and trampling it on the ground. Among Royal Artillery gunners in Canada in 1849, Joseph Connor was charged with trying to evade taking medicine in hospital and Robert Tait with wearing new trousers outside the barrack gates while drunk.¹ Statistics of soldiers in Britain imprisoned by courts martial between 1831 and 1837 show that insubordination was twice as common an offence as disobedience, and that together they accounted for 9.2 per cent of the 18,808 offences committed. Among troops serving overseas insubordination was three or four times as common as disobedience, and together they constituted 12.7 per cent of 31,780 offences between 1831 and 1838 and 11.2 per cent of 22,020 offences between 1839 and 1843. Perhaps the incidence of these crimes declined thereafter, since by 1865-7 they comprised only 5.9 per cent of 77,024 offences in the whole British army. Far less prevalent throughout the period was the separate crime of quitting or sleeping on a post. The 523 soldiers imprisoned in Britain 1831-7 on this charge accounted for 2.8 per cent of offences. In the colonies 824 culprits made up 2.6 per cent of offenders 1831-8, and the 469 men in 1839-43 2.2 per cent. This crime, too, may have become less common, involving only 1.9 per cent of offences at home and abroad by the mid-1860s.²

1. Correspondence and reports of courts martial, War Office Records, Public Record Office, London (hereafter WO), WO 3/541 and WO 55/1929.

2. Statistics from *PP* 1838 (584) xxxvii; 1841 (242) xiv, 6-7; 1845 (308) xxix, 4; 1868-9 (4114-1) xii, 145. Unfortunately, statistics of crime and punishment in the early Victorian army are scattered and incomplete, particularly before 1830 and for colonial garrisons. Parliamentary returns are insufficiently comprehensive, detailed, and consistently compiled, and the wealth of information contained in extant records of courts martial and regimental defaulters' books has yet to be tabulated. Despite limitations, available statistics indicate generally the incidence and patterns of the major military crimes. Offering explanations for discernible trends is more difficult in the imperfect state of current knowledge. As in civilian society, the incidence of crime in the army was affected by such imponderables as changes in the law, chances of detection, degrees of enforcement, types of jurisdiction, and forms of

More widespread forms of protest against the conditions of army life were absence without leave and desertion (which absence became after twenty-one days, or in 1845 after two months).¹ Numerically, these constituted major crimes among troops in Britain and at some overseas garrisons, principally British North America where the haemorrhage of manpower through desertion was continuous, substantial, and seemingly unstaunchable.² Though absence might often be occasioned by accidental circumstances rather than deliberate attempts to flee the colours, the opportunities in these two countries for absconding and avoiding recapture were sufficiently great to induce large numbers to desert every year. In 1843, for example, battalions at home lost 3,000 men through desertion, or one man in every fourteen.³ In North America the 3,994 deserters in the Canada command between 1816 and 1836 represented 5.8 per cent of the average annual force, though during and after the Canadian rebellions the rate fell temporarily to around 3 per cent, the figure which generally prevailed in the Nova Scotia command. The proportion of escapees reunited with their regiments in Canada was small; and while in Britain perhaps half of all deserters might be recaptured or return voluntarily, the drain on manpower and the slur it cast on military service profoundly worried the authorities.⁴ Those who rejoined their units kept the military tribunals busily employed. Between 1831 and 1837, 4,831 soldiers in Britain were gaoled for going absent without leave and 2,584 for deserting, 37 per cent of all offences committed. For the years 1847-54 the 7,545 men charged with absence and the 8,514 with desertion comprised 57 per cent of 28,144 offences and involved 2.8 per cent of the average annual force at home. By 1855-6 the figures had risen to 7,338 and 13,736 respectively, or 63 per cent of 33,403 offences, affecting 4.2 per cent of the force. The late 1850s also saw the desertion rate in North America surge to 18 per cent in the Canada command and 7.5 per cent in the Nova Scotia command among troops fearing despatch to the Crimea or India. By that time, too, the Australian gold discoveries and the expansion of settlement in New Zealand had quickened desertion in those countries. Between

punishment. Interpreting the evidence concerning indictable military crimes may in some respects be less problematic because of the army's authoritarian structure, communal living, watchful supervision, insistence on discipline, tendency to punish even minor infractions, more precise categories of offences, greater powers of arrest, and ease of bringing prosecutions.

1. T. F. Simmons, *Remarks on the Constitution and Practice of Courts Martial* (London, 1852), p. 49; Horse Guards Circular, 26 Nov. 1845, British Military Records, Public Archives of Canada, Ottawa, Series RG 8 (hereafter RG 8), Vol. 175, p. 274.

2. See P. Burroughs, 'Tackling Army Desertion in British North America', *Canadian Historical Review*, lxi (1980), 28-68.

3. 'Notes on Desertion in the Army', *CUSM*, xliii (1843, Pt. 3), 543.

4. North American desertion figures from monthly returns, 1815-65, WO 17/1519-69, 2362-412, and 2243-93, tabulated in Burroughs, 'Tackling Army Desertion in British North America', 30-31. For rates of recapture of deserters in Britain, *PP* 1867 (3752) xv, 297, 306.

1865 and 1867, 11,121 soldiers in the British army were court-martialled for absence without leave and 5,833 for desertion, together comprising 22 per cent of 77,024 offences.¹ If this suggested that the peak was passed, military commentators of the early 1860s were up in arms about the vast scale of desertion and the inaction of the authorities to remove a disgraceful stain on the army's character.² Most deserters must have wished to escape the thralldom of military service or join family or friends, but there were always those who planned to re-enlist in order fraudulently to obtain the bounty money.³ In North America the dazzling, if often delusive, prospects of high wages, cheap land, and unlimited opportunities afforded by the United States powerfully attracted the enterprising or discontented soldier with his one shilling a day. Many officers claimed that it was the worst type of soldier who deserted, shiftless men of incorrigibly bad character, recidivists who had previously required much disciplining, Irishmen of notorious habits and mutinous disposition – men whose early departure might in fact be secretly greeted by their commanders with feelings of relief.⁴ Other officers questioned this assumption, for desertion was 'a military delinquency which is not confined to immoral men or soldiers of irregular habits'.⁵ By far the most prone to desert were young men and recent recruits. Out of 11,328 deserters in Britain in 1859, for example, 2,482 absconded between enlistment and attestation, 2,516 between attestation and joining their corps, and 2,820 within the first six months' service, often 'occasioned by the fatigue and irksomeness of the Drill to which they are, necessarily, subjected'.⁶ Scattered statistics and contemporary observations suggest that deserters were mostly men under twenty-five years of age and with few years of service; the longer a soldier served, accustoming himself to military life and thinking of his approaching pension, the less likely was he to abscond.⁷

1. Statistics from *PP* 1838 (584) xxxvii; 1856 (2136) xxxv, 323; 1861 (2900) xxx, 6; 1867 (3752) xv, 307; 1868-9 (4114-I) xii, 145.

2. For example, 'Our Military Administration – The Recruiting of the Army', *CUSM*, lxxxix (1859, Pt. 1), 510-11; 'Desertion – The True Method for Effectually Checking it', *CUSM*, xci (1859, Pt. 3), 94-102; An Old Dragoon, 'Suggestions for Preventing Desertion from the Army', *CUSM*, xcii (1860, Pt. 1), 272-4; 'The Recruiting of the Army', *CUSM*, xcvi (1861, Pt. 2), 167. Although the circumstances are not strictly comparable, of the 102,392 charges laid against the 54,623 sailors in the Royal Navy in 1862 (the earliest year of a complete parliamentary return), 774 involved the second-degree offence of desertion and 40,800 the third-degree offence of absence without leave. There were 6,064 charges of insubordination, 677 of theft, 10,375 of drunkenness, and 43,648 minor offences; *PP* 1865 (115) xxxv, 113.

3. See report on military prisons, *PP* 1868-9 (4209) xxx, 562.

4. Grierson to Eden, 23 Jan. 1833, *RG* 8, Vol. 171, p. 88; J. E. Alexander, 'On Desertion in Canada', *USM*, xxix (1842, Pt. 2), 471-2.

5. H. Marshall, 'A Historical Sketch of Military Punishments', *CUSM*, xliii (1843, Pt. 3), 113-14.

6. Royal commission on recruiting, *PP* 1861 (2762) xv, 14-15.

7. Hughes to Eden, 21 Jan. 1833, *RG* 8, Vol. 171, pp. 96-7; Colborne to Somerset, 11 May 1837, *RG* 8, Vol. 1277, pp. 186-7.

For those who did not desert, the sheer boredom of dispiriting, humdrum routine and the long hours of leisure without facilities for their profitable enjoyment drove men to drink. Cooped up in Irish towns or exiled for long periods in colonial garrisons, was it surprising, enquired a writer in 1840, 'that a thoughtless, ignorant, and idle lad should have recourse to drinking, gambling, or any other excitement, to escape from such an unnatural and irksome state, and to occupy the hours which hang so heavily on his hands?'¹ Again military reformers maintained that the army uniquely afforded both the inducements and the opportunities to indulge what were termed 'sensual gratifications' – principally immoderate drinking, which everyone agreed was a major cause of indiscipline and delinquency. As in civilian life so in the army, repetitive labour, cheerless living conditions, and absence of recreational amenities encouraged individuals to seek diversion and escape, comfort and conviviality, in the resort to liquor. Often this led to intoxication, which was viewed seriously by the authorities. For

habits . . . prejudicial both to the health and prosperity of the individual, are to be deprecated in a tenfold degree when existent in the soldier, and considered with reference to the results which might so readily spring from the temporary absence or suspension of the controlling power of reason, in one, upon whose conduct and vigilance, the safety and lives of thousands may depend.²

Though the authorities continually deplored intemperance and recognized its link with indiscipline, it was the persistent complaint of reformers that traditional military practices positively and perniciously promoted drunkenness. On the questionable assumption that soldiers needed liquor to sustain and invigorate them, troops in Britain received 1d a day beer money, and at garrisons abroad daily rations of spirits, rum, or wine were issued. Until 1863 regimental canteens were leased to private contractors who single-mindedly exploited their captive clientele and readily extended them credit. In these, as in so many other ways, the army seemed to reformers to be actively encouraging the commission of crime. This impression was set in sharper relief by the apparent reluctance of the Horse Guards to sanction such ameliorative measures as barrack libraries, schools, and savings banks which might tackle constructively the problems of intemperance and misspent leisure.

In the absence of preventive measures, the crime of being drunk on duty, on parade, or on a march ensnared large numbers of soldiers each year. In 1831 the more serious offence of habitual drunkenness was defined for those arraigned on four charges of drunkenness within a twelve-month period.³ Among soldiers imprisoned in

1. 'A Glance at some Defects in our Military System', *USJ*, xxxii (1840, Pt. 1), 4.

2. 'Notes on Desertion in the Army', *CUSM*, xliii (1843, Pt. 3), 539.

3. Horse Guards Circular, 22 Jan. 1831, cited in F. A. Griffiths, *Notes on Military Law; Proceedings of Courts Martial* (Woolwich, 1841), p. 153.

Britain 1831-7, 1,869 had been court-martialled for being drunk on duty and 2,626 for habitual drunkenness, representing 23.9 per cent of offences committed. Between 1847 and 1854 British military prisons held 6,313 soldiers on drink charges or 22.4 per cent of offenders, involving 1.1 per cent of the average annual force. The proportion of drunken offenders rose to 11.9 per cent in the late 1850s and 23.2 per cent in the 1860s. Troops stationed abroad, often in hot climates, might supposedly have been more susceptible to drink-related charges. For 1831-8 the 3,619 individuals charged with being drunk on duty and the 5,312 with habitual drunkenness together constituted 28.1 per cent of all offences committed overseas, a ratio rising to 38.6 per cent in the early 1840s. By 1865-7 the 4,626 men court-martialled in the British army for being drunk on duty and the 25,710 for habitual drunkenness together comprised 39 per cent of offences.¹ What made intoxication such a major cause of crime was that other offences were more readily committed by those incapacitated by drink. A drunken spree often led to involuntary absence and sometimes to desertion by those anxious to avoid the consequences of their earlier delinquencies. As the records of courts martial show, many charges of drunkenness were associated with disobedience to orders, violence to superiors, sleeping on duty, or making away with army property. 'If drunkenness alone was the result of drinking', commented a veteran campaigner in 1835, 'I should not, perhaps, say what I do; but to gratify that passion the soldiers sell their necessaries, and when in a state of intoxication become insubordinate, and are as ready to knock down officers as serjeants; in fine, it leads to a variety of crimes, and, unfortunately, to a repetition of them.'² Drunkenness, reported a royal commission in 1868, was 'a lamentable, and disgraceful blot on the military character and connected with the vast majority of crimes tried by courts martial'.³ Whether attempting to raise funds for drink or desertion, or simply exhibiting carelessness, many men were charged with the offence of 'making away with necessaries', that is, losing or selling arms, accoutrements, or clothing. As Wellington remarked, 'the Soldier's necessaries are his cheque-book, and when pushed for money he will have recourse to drawing his drafts, or in other words, pawning his clothes'.⁴ In Britain, 1,712 soldiers were imprisoned on this charge between 1831 and 1837, or 9.1 per cent of offenders. In the colonies during the same period the ratio stood

1. Statistics from *PP* 1838 (584) xxxvii; 1841 (242) xiv, 6-7; 1845 (308) xxix, 4; 1861 (2900) xxx, 6; 1865 (3567) xxv, 318; 1868-9 (4114-I) xii, 145.

2. A Veteran Soldier, 'Memoranda upon the Subject of Corporal Punishment', *USJ*, xviii (1835, Pt. 2), 383.

3. Royal commission on courts martial and punishment, *PP* 1868-9 (4414) xii, 139.

4. Evidence before the royal commission on military punishments, *PP* 1836 (59) xxii, 354, Q. 5870, as quoted in 'Remarks on the Report of the Committee of Military Inquiry', *USJ*, xii (1836, Pt. 3), 196.

at 13.5 per cent, falling to 8.6 per cent in the early 1840s. The proportion for the whole army in the mid-1860s was 10.5 per cent.¹

While making away with necessaries constituted an offence against property as well as against discipline, just as insubordination might involve violence against the person, most of the non-disciplinary crimes committed by soldiers were encompassed by the rubric of 'disgraceful conduct'. The Mutiny Act specified such offences as theft, fraud, and embezzlement, malingering and self-mutilation, and 'indecent or unnatural conduct' – a euphemism for the sexual offences of sodomy, rape, and indecent assault on children. Although the Horse Guards counselled commanding officers that, in framing charges of disgraceful conduct, 'the indiscriminate use of the term tends to weaken its moral effect',² the phraseology was sufficiently flexible to embrace all kinds of unsoldierlike behaviour: Private William Russon, Rifle Brigade, counterfeiting coin in 1846; Privates Hugh Goodwin and James Martin, 63rd Foot, riotously setting fire to a guardhouse in 1858; Private William Cassidy, 62nd, surreptitiously exchanging flannel drawers with Private Osland in 1858; Bombardier Charles O'Donnell, Royal Artillery, breaking windows (a favourite form of military recreation) in the town in 1863; Sapper Jonathan Broughton, Royal Engineers, purloining bottles of porter from a blazing hospital in 1866.³ The hundred or so soldiers imprisoned each year in Britain for some species of disgraceful conduct accounted for just over 4 per cent of offences in the 1830s and 1840s, a ratio rising to 5 per cent in the late 1850s and falling to 3 per cent in the early 1860s. In the colonies the ratio averaged about 5 per cent in the 1830s and 1840s. For the whole British army 1865-7 the offence had declined to 2.4 per cent of crimes committed.⁴

Minor disciplinary offences were punished summarily by commanding officers. They were empowered to restrict men to barracks, confine them in the defaulters' room for specified periods, or incarcerate them for short spells in solitary cells or black holes (cells without windows or light). They might prescribe additional parades, guard duties, fatigues, forced marches, or punishment drill. Among other favoured resorts were 'wearing the jacket inside out, drinking salt water, bread and water diet, stopping a man's ration of grog, or diluting it . . . Trotting round in a circle, standing fully equipped in heavy marching order with the face to a wall; parading at the guardroom fully equipped every hour during the day'.⁵ One

1. Statistics from *PP* 1838 (584) xxxvii; 1841 (242) xiv, 6-7; 1845 (308) xxix, 4; 1868-9 (4114-1) xii, 145.

2. Horse Guards Circular, 19 Nov. 1849, RG 8, Vol. 176, p. 107.

3. Reports of courts martial in the 1850s and 1860s, RG 8, Vols. 1452-1452A, and WO 90/2.

4. Statistics from *PP* cited in n. 1, p. 556 *supra*.

5. Marshall, *Military Miscellany*, p. 204.

commanding officer in the 1820s liked to consign drunken soldiers to hospital for a course of emetics and a low diet for several days, charging them on release for the cost of medicines and washing sheets.¹ The diverse experience of regiments, and of the same battalion under several commanding officers, suggest that the volume of punishment was affected as much by the temperament and whims of individual commanders as by the conduct of soldiers. Cornet Anstruther Thomson found a tolerant spirit among officers of the 9th Lancers: 'the men were a wildish lot, and very often late for watch-setting, but as long as the duty was well done not much notice was taken.' William Lucas, on the other hand, an officers' waiter in the Inniskillings, unable to supply the mess president with a bottle of soda water at 10 pm, was given 48 hours' solitary confinement, his hair to be cropped, five days' marching order drill, fourteen days' confinement to barracks, forfeiture of two days' pay, and return to troop duty.² Considerable debate naturally raged over the respective merits of severity and leniency. Disciplinarians asserted that 'it is quite a mistake to imagine that you can prevent crime and maintain discipline in a regiment, by what is called lecturing the soldiers, and by forbearance. It is too true that men are only to be governed by the hope of reward and the dread of punishment.' More benevolent or easy-going officers shunned what they called 'tormenting' the men, and argued that 'Experience has proved that military laws may be invigorated, and rendered more efficacious in repressing delinquencies and sustaining discipline, by rendering them more lenient and more accordant with popular feeling.' A few commanders, like Arthur Torrens and John Rolt, believed that the 'moral influence' exerted by an officer was the key to discipline.³

This difference of approach, which animated discussion of particular methods of punishment, was also closely connected with the differentiation between the summary powers of commanding officers and the jurisdiction of courts martial. Summary penalties speeded the process of justice and eased the burden on military courts of minor delinquencies, but administrators at both the Horse Guards and the War Office were careful to circumscribe the discretionary authority of commanding officers relating both to the summary punishments they could inflict and to the offences which had to be submitted to courts martial. There was a recognition that such powers might be abused and inconsistently or capriciously applied,

1. A Veteran Soldier, 'Memoranda upon the Subject of Corporal Punishment', *USJ*, xviii (1835, Pt. 2), 385.

2. J. A. Thomson, *Eighty Years' Reminiscences* (London, 1904), i, 40; Marquess of Anglesey, *A History of the British Cavalry 1816 to 1919* (London, 1973), i, 140-1.

3. A Veteran Soldier, 'Memoranda upon the Subject of Corporal Punishment', *USJ*, xviii (1835, Pt. 2), 384; Marshall, *Military Miscellany*, p. 216; A. W. Torrens, *Six Familiar Lectures, for the use of young military officers* (London, 1851), p. 2; J. Rolt, *On Moral Command* (London, 1842), p. 4.

without sufficient check, appeal, or redress. In 1830 the Horse Guards abridged the summary powers of commanding officers by limiting imprisonment in cells to seven days, solitary confinement to 48 hours, and restriction to barracks to two months.¹ The effect of this measure seems to have been a sharp increase in the number of cases referred to courts martial for offences which had previously been dealt with summarily. Many officers condemned these changes as highly injudicious: they weakened the direct control of commanders over the discipline of their men, delayed the infliction of punishment, and, with the replacement of general regimental courts martial by district or garrison courts martial, placed adjudication in the hands of a remoter tribunal less sensitively attuned to the particular circumstances and needs of the regiment. Repeated demands were made for a restoration of commanding officers' discretionary powers over common offences and methods of punishment. One writer in 1836 wanted them given authority to confine delinquents in black holes for a week, lay men in irons for three days, and 'Erect under a shed in a retired part of every barrack, three or four pair of stocks for men addicted to idle and slovenly habits, or whose language to serjeants is apt to verge on insolence.'² The critics of undue severity and regimentation, however, continued to stress the prejudices and capriciousness of commanding officers against which soldiers had to be protected. 'I think', wrote Sir Charles Napier, 'a greater discretionary power would only produce petty tyrants, who will torment the soldiers into desertion, and drinking ... he is merely a zealous fool, hot after unimportant minutiae, in the exact execution of which he considers the fate of the nation to depend.'³ The military authorities inclined towards this view until the 1860s, when concern over the proliferation of courts martial and the efficacy of punishment in military prisons, especially for tackling drunkenness, led to a more sympathetic reconsideration of the commanding officer's authority. This trend to some extent paralleled the growth in the summary jurisdiction of civil magistrates under the Criminal Justice Act of 1855, and perhaps reflected similar thinking. In 1868 a system of fines for drunkenness was instituted, which gave commanding officers a new responsibility. They were certainly kept busy. In 1869, 28,374 fines were imposed on 20,680 soldiers in the British army, and a total of 247,908 minor punishments inflicted by order of commanding officers at home and abroad in a force of 176,459 men.⁴

1. Horse Guards Circular, 24 June 1830, cited in H. Marshall, 'A Historical Sketch of Military Punishments', *CUSM*, xliii (1843, Pt. 3), 390.

2. 'Remarks on the Report of the Committee of Military Inquiry', *USJ*, xxii (1836, Pt. 3), 367; also royal commission on military punishments, *PP* 1836 (59) xxii, 22.

3. Napier, *Remarks on Military Law*, p. 143; also Marshall, *Military Miscellany*, pp. 217-18.

4. Royal commission on courts martial and punishment, *PP* 1868-9 (4114-I) xii, 148-9, 151; general annual return of the British army, *PP* 1875 (1323) xliii, 432-3.

More serious offences were brought before a court martial. As reorganized in 1829, the three grades of tribunal consisted of regimental, district or garrison, and general courts martial, each differing in its composition, jurisdiction, and powers of punishment.¹ The sentence passed by each tribunal had to be confirmed by the appropriate superior authority and the cases were reviewed for irregularities or excessive punishments by the judge advocate general's department. The ultimate sanction at the disposal of general courts martial was the death penalty, but in contrast to practice in the French army, British soldiers were very seldom shot in peacetime. As in civil society, reductions in the scope and frequency of capital punishment led at first to a corresponding increase in the transportation of military offenders. After 1816 delinquents were transported for service overseas in suitably named 'condemned corps', usually in unhealthy locations like West Africa. This form of banishment to colonies where the ravages of disease and climate made it equivalent to a death sentence was abandoned in 1826 as militarily inefficient as well as inhumane.² By that time military offenders were being consigned to convict hulks in Bermuda and, in far greater numbers, to the penal settlements of Australia. In 1839, for example, transportation for terms ranging from seven years to life was the punishment inflicted on a large proportion of those convicted of desertion, disobedience, striking NCOs, leaving their posts, abusive and threatening language, drunkenness with violence, robbery, and rape.³ The numbers declined with the discontinuance of transportation to New South Wales in 1840 and the growth of a popular opinion, among soldiers and civilians alike, that free passages to a land of opportunity were more to be sought as a boon than dreaded as a punishment.⁴ In 1857 the sentence of transportation was abolished and penal servitude substituted.

Transportation declined as a military punishment because of doubts concerning its effectiveness as a deterrent, irrespective of whether or not antipodean exile contributed to the rehabilitation of offenders. It was the contentious issue of flogging, which, in the case of the army, principally focused contemporary debate on the purposes, nature, and effects of punishment. In the 1820s flogging with the 'cat of nine tails' in front of the assembled regiment remained the punishment most favoured by military men. A virtually unrestricted number of lashes could still be inflicted for an almost

1. For the composition, procedures, jurisdiction, and powers of courts martial, Simmons, *Remarks on the Constitution and Practice of Courts Martial*; royal commission on courts martial and punishment, PP 1868-9 (4114-1) xii, 143-4.

2. C. M. Clode, *The Military Forces of the Crown* (London, 1869), i, 23; statistical report on the sickness, mortality, and invaliding among the troops in West Africa ..., PP 1840 (228) xxx, 22-4, 35-6, 42-3.

3. Reports of courts martial, WO 90/2.

4. Eden minute, 13 Sept. 1836, RG 8, Vol. 172, pp. 64-65; Rowan to Brown, 25 Jan. 1851, RG 8, Vol. 1281, p. 352.

unlimited range of misdemeanours. Traditionalists staunchly maintained that corporal punishment acted as a powerful deterrent to the commission of crime and that no alternative penalty yet devised would be as efficacious. Discipline, they asserted, could not be preserved without the lash in an army raised by voluntary enlistment from among the riff-raff of society. In every regiment, declared a medical staff officer as late as 1848, 'there is always a proportion of them who are turbulent, drunken, and immoral characters, who at times, even under the best management, are apt to break out and show themselves. With such evidence as to the necessity of having an effectual controlling power, it is astonishing that any officer should entertain the opinion that corporal punishment might be dispensed with.'¹ Flogging, as a public ritual, its supporters argued, was an exemplary punishment which could not fail to have a salutary impact on the captive audience. They denied that it was degrading or left a lasting stigma, for 'it is *the crime* and *not the punishment* by which a soldier loses the esteem of his comrades; to maintain the contrary is quite as absurd as to imagine a boy flogged at Eton for anything but what disgraces his character, is anyway despised or avoided by his associates.'² While the painful experience at the halberds might not reclaim offenders, the army was more concerned to uphold discipline for the benefit of well-conducted soldiers than to reform individual delinquents. With the efficiency and traditions of the Wellingtonian army apparently at stake, disciplinarians condemned the 'humanity-mongers' for 'maudlin sentimentality'. They deplored public agitation of the issue as 'one of the morbid symptoms of the times', and denounced popularity-seeking politicians who in all other respects displayed hostility to the army and the true interests of soldiers.³

From the 1810s, and more vociferously the 1820s, criticism of flogging in the army began to grow in parliament and the press. It was condemned as barbarous and brutalising, out of keeping with the more humane spirit of the times and the 'march of mind' which reform of criminal law seemed to represent. Critics also asserted that the lash was totally ineffective for restraining indiscipline, and far from being exemplary, the spectacle of a flogging often sickened and angered those in the watching ranks and bred animosity towards authority. More crucially, corporal punishment did not reform offenders. 'I have closely watched the career of many of the recipients of this degrading punishment', Private Buck Adams, a spectator of over a hundred floggings, wrote after twenty-three years in the

1. 'Corporal Punishment', *CUSM*, lvi (1848, Pt. 1), 249; also J. Anton, *Retrospect of a Military Life* (Edinburgh, 1841), p. 11.

2. 'Remarks on the Report of the Committee of Military Inquiry', *USJ*, xxii (1836, Pt. 3), 196.

3. Letter from 'Miles Secundus', Nov. 1830, in *USJ*, iv (1830, Pt. 2), 877; Wellington's memorandum, 22 Apr. 1829, in *Despatches*, v, 594-5.

army, 'and I can safely say that I never knew not even one that it made any improvement in, either his moral character or as a soldier.'¹ Moreover, critics contended that the penalty was indiscriminately used, often disproportionate to offences, and quite ill-suited to dealing with human failings like drunkenness. In response to the claim that the lash could not be dispensed with in the present unregenerate state of the army, opponents insisted that it positively discouraged a better type of recruit, and that crime among the ranks could be tackled only 'by treating men as reasonable beings, not as brutes; by raising them in the scale of society'. With this long-term aim in view, public agitation played a vital role. Habit and conservatism were such potent, entrenched forces in the army, Colonel Firebrace maintained, that 'any reform that is required must be produced by "pressure from without", and that if left to the discretion of those who are supposed to have the power, it will be postponed *sine die*'.²

The effect of public criticism was to place advocates of flogging squarely on the defensive. In 1831 the adjutant-general refused to debate corporal punishment, 'a subject of vital delicacy', with one commanding officer, because 'it cannot be but apparent to Military Men, that the more they themselves invite fresh discussions upon it, the more they inculcate the belief that it continues to be unjustly administered, and that its abolition would consequently be desirable'.³ Under growing pressure in parliament and the press the military authorities felt obliged to accept reductions in the scope and severity of flogging in order to preserve it. In 1829 district or garrison courts martial were restricted to a maximum of 500 lashes and regimental courts martial to 300, figures further reduced in 1833 to 300 and 200 respectively. The same year the offences subject to this penalty were limited to mutiny, desertion, insubordination and violence, disgraceful conduct, and stealing army property.⁴ Nevertheless, senior military officers fought a vigorous rearguard action to preserve the lash for serious crimes. They noted with concern that the tendency of courts martial to resort to alternative penalties had apparently coincided with a steep rise in the commission of offences. Between 1826 and 1834, when the number of courts martial

1. *The Narrative of Private Buck Adams on the Eastern Frontier of the Cape of Good Hope 1843-1848*, ed. A. Gordon-Brown (Cape Town, 1941), pp. 221-2; also MacMullen, *Camp and Barrack-Room*, pp. 21-22; John Shipp, *Memoirs of the Extraordinary Military Career of John Shipp* (London, 1829), iii, 160-234. Among almost annual Commons debates, 1824-38, 19 June 1832 and 23 and 8 Aug. 1834, *Hansard*, 3rd series, xiii, 874-97, and xxv, 367-77, 1102-11. See also Dinwiddy, 'The early nineteenth-century campaign against flogging in the army', 308-31.

2. H. Marshall, 'A Historical Sketch of Military Punishments', *CUSM*, xliii (1843, Pt. 3), 114; Colonel Firebrace, 'On the Errors and Faults in our Military System', *CUSM*, xlii (1843, Pt. 2), 199.

3. Macdonald to Dalbiac, 23 Apr. 1831, WO 3/82.

4. Stanley to Hill, 26 July 1833, WO 6/127.

doubled, sentences of corporal punishment declined from 2,722 to 1,057, while those involving other penalties grew from 2,653 to 8,946.¹ Many officers drew a direct connection between these trends, arguing that fewer floggings had unleashed brutish passions. In fact the increase in courts martial probably reflects the changes in commanding officers' summary powers in 1829-30 and the re-organization of military tribunals. But military men in the 1830s were under the impression that crime in the army had grown substantially since the end of the Napoleonic Wars, in the same way that Englishmen generally assumed that civil crime had risen steeply during those same years.² A further disturbing piece of evidence in the case of the army seemed to be the greater number of repeat offenders among soldiers imprisoned than among those flogged. Of 9,591 soldiers sent to prison by courts martial between 1831 and 1835, 68.5 per cent were gaoled once, 18.6 per cent twice, 7.0 per cent thrice, and 5.8 per cent from four to ten times; whereas 85.2 per cent of the 1,440 men flogged during those years received the lash once, 11.9 per cent twice, 2.2 per cent thrice, and 0.6 per cent four or five times. Similar comparative figures emerged from the 28,190 men imprisoned and the 3,356 flogged between 1839 and 1843.³ Statistics such as these reinforced the conviction of those who considered the lash the most effective deterrent.

In order to allay criticism in the Commons and justify continuance of corporal punishment on a reduced scale for major crimes, the Whig ministry in 1834 appointed a royal commission to investigate the whole question of military punishments. Its report two years later defended the practice but favoured extended experimentation with alternative penalties, especially imprisonment, and urged the prevention of crime by improving the conditions of army life.⁴ Lord Howick, who as secretary at war at once sought to implement the commission's recommendations, and others of his contemporaries who regarded flogging as a regrettable temporary necessity, endorsed this gradualist, indirect approach, thinking that the practice would slowly wither away through diminishing use. To hasten the tendency Howick cut the maximum sentences at the disposal of the three grades of courts martial to 200, 150, and 100 lashes respectively. He also considered flogging a wholly inappropriate and inoperative deterrent to desertion, and by 1840 that offence was no longer punishable by the lash.⁵ By the time that the maximum number of

1. Hill to Ellice, 26 July 1834, WO 43/591; royal commission on military punishments, PP 1836 (59) xxii, 555.

2. See D. Philips, *Crime and Authority in Victorian England: the Black Country 1835-1860* (London, 1977), pp. 13-16.

3. Statistics from PP 1836 (131) xxxviii; 1845 (308) xxix.

4. Royal commission on military punishments, PP 1836 (59) xxii.

5. Howick to Hill, 22 Jan. 1836, WO 43/745; memorandum, 1 Oct. 1840, RG 8, Vol. 1151, No. 36.

strokes was further reduced to 50 in 1846, the tally of soldiers flogged had fallen to 652, and the annual totals continued to decline until the Crimean War. In 1855, 2,217 floggings were inflicted (1,117 of them in the Crimea), and because of the Indian Mutiny the figure stood at 918 in 1858, though in subsequent years it averaged 300–400. In 1867 the penalty was restricted to mutiny and violence to superiors, and the following year to troops on active service.¹ With a final flourish in 1878–9 to maintain discipline among forces fighting in South Africa, corporal punishment was abolished in 1881.

Since the Mutiny Act of 1823 an alternative punishment had been imprisonment. Whatever the uneasiness of senior officers about the suitability and efficacy of this form of penalty, the readiness of courts martial to award prison sentences created practical problems. With one soldier in ten in Britain coming before military tribunals in 1833, Lord Hill, the commander-in-chief, wondered how appropriate custody could be found for the 2,725 soldiers sentenced to solitary confinement and the 1,552 to imprisonment with hard labour.² Most barrack cells and black holes were intended only for 48-hour custodial sentences and few stations had enough of them to accommodate a flood of prisoners on this scale. One recourse, already widely followed, was to confine soldiers in civil gaols. In the eighteen months to February 1835, 3,018 military offenders served their sentences in some forty British gaols and houses of correction.³ But the authorities disliked subjecting soldiers to the nefarious influences of petty criminals, and hard-pressed gaolers and visiting magistrates in the home counties and towns elsewhere near army barracks began protesting to the War and Home Offices in the late 1830s against the overcrowding of civil gaols by delinquent, unruly soldiers. To resolve these difficulties, Hill proposed the erection of 400 single cells at the major depots in Britain and eleven military prisons, a programme endorsed by the royal commission on punishments.⁴ Both Howick and Lord John Russell as home secretary shied away from substantial expenditure on prison building and agreed with the inspectors of civil prisons that military offenders should be confined in suitable barrack cells under a more rigorous regime.⁵ The War Office eventually persuaded the Treasury to spend £10,000 on constructing 71 new cells and adapting existing buildings at the principal barrack stations to provide facilities for hard labour and separate confinement for soldiers undergoing sentences of imprisonment exceeding 28 days. The government also

1. Horse Guards Circular, 10 Aug. 1846, WO 32/6045. Statistics from *PP* 1856 (2136) xxxv, 325; 1861 (2900) xxx, 7; 1868–9 (4209) xxx, 568; 1875 (1323) xlii, 430.

2. Hill to Ellice, 26 July 1834, WO 43/591.

3. *PP* 1835 (167) xxxviii.

4. Hill to Howick, 5 July 1836, WO 43/591; *PP* 1836 (59) xxii, 22; Macaulay to Normanby, 29 Nov. 1839, WO 4/264.

5. Second report of the inspectors of prisons, *PP* 1837 (89) xxxii.

tried the unsuccessful experiment in the late 1830s of employing one pentagon of the Millbank penitentiary as a military prison for regiments serving in the south of England.¹ But as plans to make barrack cells more readily available were beset by difficulties and delays, caused chiefly by the Ordnance department, and civil gaols meanwhile became ever more crowded with soldiers, the idea of forming separate military prisons revived, especially with the appointment of a senior officer, Sir Henry Hardinge, as secretary at war in 1841. Hardinge favoured specialized institutions dispensing severe discipline geared to the needs and habits of soldiers, embracing hard labour and sharp drill, and 'never losing sight of the important principle that the object of military punishment consists not only in the repression of Crime, but in effecting that object in the shortest possible space of time'.² Supported by the home secretary, Sir James Graham, and the detailed recommendations of a committee of inquiry in 1844 under Lieutenant-General Earl Cathcart, Hardinge was now able to capitalize on the contemporary enthusiasm for prison building, which saw over fifty new civil gaols erected in the 1840s, as well as the fashionable notions of punishment which the model penitentiaries were designed to enforce.³ Beginning in 1846 district military prisons were opened at major depots in Britain: Chatham, Gosport, Devonport, Weedon, Greenlaw, Dublin, Limerick, Cork, Athlone, and later Aldershot. To establish a complete and uniform system of imprisonment as regiments changed stations, similar institutions were gradually brought into operation overseas at Quebec, Montreal, Halifax, Kingston, Bermuda, Vido in the Ionian Islands, Malta, Gibraltar, Mauritius, and later Barbados.⁴

District prisons were intended for offenders sentenced by courts martial to terms of imprisonment exceeding 42 days, accompanied invariably by hard labour and sometimes by solitary confinement in short spells. The maximum sentence was normally six months, because prolonged detention was thought to deprive the punishment of its moral effect and would keep soldiers away too long from duty with their units. Generally, labour consisted of monotonous military tasks like shot drill or working heavy guns but stone-breaking was performed at some institutions. Though classification of civil prisoners according to their crimes had been repudiated by most penologists of the day, military offenders were placed by governors in one of

1. Byham to Somerset, 23 Aug. 1837, Howick memorandum, 14 Nov. 1837, and War Office memorandum, 2 Nov. 1839, WO 43/191; Macdonald memoranda, 22 Jan. 1838, WO 3/285, and 26 June 1840, WO 3/291.

2. Hardinge to Graham, 22 Feb. 1844, WO 4/267.

3. Report on the discipline and management of military prisons, PP 1849 (1110) xxvi, 303-5; J. J. Tobias, *Crime and Police in England 1700-1900* (London, 1979), pp. 172-3.

4. Because of deficiencies in construction or the regime practised, district military prisons abroad were never considered by the authorities as being as effective and suitable as those in the British Isles. See Jebb's comments in his annual reports as inspector-general of military prisons, PP 1854 (1832) xxxiii, 521, and 1854-5 (1991) xxv, 11.

three categories on the basis of such considerations as the crime committed, previous convictions, record of character, and age. The third class comprised 'the worst characters, incorrigible and hardened offenders, and Prisoners who have recently been subject to corporal punishment'. The second embraced the majority of men on arrival, and the first those of 'quiet, orderly habits, and general good conduct'. The purpose of the classification was 'to protect the young Soldier and the less hardened offender, from the mischievous consequences of association with worse characters', and 'to hold out an inducement to all the Prisoners to behave well in Prison, by the hope of reward and the fear of punishment, in being either promoted to a higher Class, or degraded to a lower one'.¹ An individual's ranking affected many aspects of the daily regime: the imposition of shot drill and the weight of the shot lifted, the employment of the two hours between supper and lights-out in reading or picking oakum, the availability of books, the permission to converse, and the daily diet. Initially, breakfast consisted of twelve ounces of oatmeal or bread, with half a pint of milk, and dinner of five pounds of potatoes and one pint of milk, first-class prisoners being allowed meat for dinner on Sundays. While the men had to be maintained in good health for rejoining their corps, the esteemed principle of 'less-eligibility' demanded that the meals should be more unappetizing than those ordinarily enjoyed by soldiers. Medical officers supervised the health and exercise of inmates; chaplains ministered to their spiritual needs. For infraction of prison rules or indiscipline the governor might degrade the delinquent or place him in solitary confinement up to 72 hours on a diet of bread and water. If the offence warranted harsher punishment, the case was submitted to a prison visitor, who could authorize close confinement up to 28 days or 36 strokes of the lash (or 50 strokes by a board of visitors).

In the years after 1846 considerable debate arose among military men concerning the appropriate degree of severity which should animate the regime of these specialized institutions. Was the labour sufficiently irksome and the conditions sufficiently spartan, compared with the circumstances of ordinary soldiers, to act as an effective deterrent to the commission of crime? Alternatively, could the discipline be safely relaxed and the amount of unprofitable labour reduced in favour of more instruction and moral training? Although chaplains dispensed religious books to well-conducted prisoners and by 1853 ninety minutes a day were set aside for schooling, Major Joshua Jebb, the first inspector-general of military prisons, gave priority to punishment over reformation. Because of the particular demands of the army, prison sentences were necessarily short and any easing of the stringent regime might entail longer periods of

1. The purposes and regime of the prisons are outlined in Jebb's report, *PP* 1849 (1110) xxvi, and the rules and regulations of 1845 in *WO* 44/732.

confinement. The average length of sentences in fact fell from about 100 days in 1846-8 to about 50 days in the late 1850s, rising to some 60 days during the 1860s. Jebb also stressed the importance of exemplary punishment, especially in the army:

When ... it is remembered that the offences committed by soldiers are usually against good order and military discipline only, and that there does not exist, therefore, in their case, the deterring influence of public opinion, nor to the same degree the disgrace of being committed to prison, it will be admitted that *exemplary* punishment, with a view to deter soldiers generally from the commission of such crimes, is essential to the preservation of discipline.¹

Moreover, Jebb pointed out, the 3,533 men consigned to military prisons in Britain in 1849, or the 3,331 in 1853, constituted only 5 per cent of the troops. If the rigorous regime was relaxed for such a small minority, the salutary dread of imprisonment among the vast majority would be lessened. As evidence of the effectiveness of his policy, he was claiming by the early 1850s that recidivism among offenders in British military prisons had declined. In 1850, 1,268 or 35.5 per cent of the 3,565 men admitted were repeat offenders; by 1853 only 3,958 or 12.8 per cent of the 30,854 soldiers who had passed through the prisons since their inception were recommitments.² Jebb also noted with satisfaction that, with the opening of district military prisons, the average number of soldiers in Britain undergoing punishment at any one time for indictable offences had fallen to 13 per 1,000, as compared with 20 per 1,000 in 1843.³ He cited evidence, too, that these institutions were unpopular with soldiers. An officer at Woolwich reported in 1850 that

the men who have been discharged from Fort Clarence [Chatham], have returned so disgusted with prison fare and prison discipline, that they are not likely to be caught there again; and the salutary dread amongst the men in the detachments, from their reports, is so great, that any temporary inconvenience the Service may suffer from the loss (of the services) of a few men, is not to be weighed against the high advantage of possessing a means of deterring from the commission of crime, at once certain, safe, and in keeping with the general expression of public opinion.⁴

Despite the confident tone of Jebb's annual reports, the 1850s and 1860s saw a tendency towards greater rigour in the regime of

1. Jebb's report, *PP* 1850 (1241) xxix, 36. For Jebb's career, especially his involvement in civil prison administration, see S. McConville, *A History of English Prison Administration*, i (London, 1981), pp. 171-217; J. Carlebach, 'Major-General Sir Joshua Jebb, 1793-1863', *Prison Service Journal*, iv (Apr. 1965), 20-30.

2. Jebb's reports, *PP* 1851 (1411) xxviii, 335, and 1854 (1832) xxxiii, 518.

3. Jebb's reports, *PP* 1849 (1110) xxvi, 310, and 1857-8 (2299) xix, 537.

4. Jebb's report, *PP* 1851 (1411) xxviii, 338.

district prisons. Many critics asserted that, even if military gaols did not quite match the supposedly luxurious 'palaces' inhabited by civil offenders,¹ their facilities and comforts sometimes seemed to surpass those found in ordinary barracks. A faultfinder complained in 1850 of 'the great superiority which prisons possess over barracks, in their construction, and the greater care and expense lavished on their fitting up. Nothing seems to be grudged on the gaol, while the soldiers' domicile on the contrary is fitted up in the most niggard manner.'² The diet laid down in 1845 also appeared to be more ample than prisoners needed or deserved. Medical officers, who kept a careful check on the weight of soldiers on admission and discharge, soon found, not surprisingly, that with daily meals of porridge, potatoes, and bread, varied at some institutions with suet puddings, cornmeal, pease-pudding, or rice and molasses, a fair proportion of inmates gained weight during their stay, despite daily doses of hard labour. With medical officers and others recommending a reduced diet to sharpen punishment and save expense, prisoners' rations were accordingly cut in 1850-1 by about a third.³ A more critical review of the prisons was also prompted by an upsurge in the rate of military crime which accompanied the increased recruiting and large forces needed to meet emergencies in the Crimea, India, and North America. Previously, between 1846 and 1854, discussion of the effectiveness of military prisons had proceeded against the background of a crime rate steady at about 7 per cent. Now the proportion of soldiers court-martialled rose to 8.4 per cent in 1858 (18,433 convictions among 219,739 men) and 10.5 per cent in 1865 (20,817 convictions among 198,048 men). A peak for the whole century was reached in 1868 (coincidentally, the year which saw the largest number of summary and indictable committals to trial in civil society), with a percentage of 13.7, or 25,612 convictions among a force of 186,508 men, who also amassed that year some 250,000 summary punishments for minor offences.⁴

This worrying wave of delinquency reanimated the debate over forms of punishment and the efficacy of district prisons in particular. More insistent demands were made for reinforcing the severity of

1. See, for example, H. M. Tomlinson, "'Prison Palaces': a Re-appraisal of Early Victorian Prisons, 1835-77", *Bulletin of the Institute of Historical Research*, li (1978), 60-71.

2. A Medical Staff Officer, 'On Punishment and Crime', *CUSM*, lxii (1850, Pt. 1), 178-9.

3. Jebb's report, *PP* 1852-3 (1678) lii, 463.

4. Statistics from *PP* 1861 (2900) xxx, 7; 1868-9 (4209) xxx, 568; 1875 (1323) xliii, 433; V. A. C. Gattrell and T. B. Hadden, 'Criminal Statistics and their Interpretation', in *Nineteenth-Century Society. Essays in the use of quantitative methods for the study of social data*, ed. E. A. Wrigley (Cambridge, 1972), p. 394. Their statistical tables preclude the drawing of contrasts and comparisons between soldiers and civilians, if indeed such an exercise would be valid and useful, given the unique nature of military crime and of the context within which it was committed. Among delinquent sailors in the Royal Navy in 1862, with an average force of 54,623, 1,012 were flogged, 1,730 imprisoned, 2,222 confined in cells on board ship, 17 sentenced to penal servitude, 6,663 deprived of rank or good-conduct badges, 331 discharged, and 91,353 given minor punishments; *PP* 1865 (115) xxxv, 113.

prison discipline, a view which received a more sympathetic response when supervision of military prisons passed from Jebb to Lieutenant-Colonel Edward Henderson in 1863 and his deputy and eventual successor Captain Edward Du Cane, later a noted disciplinarian in his management of civil prisons.¹ Reflecting the new thinking, the daily stint of hard labour was increased in 1865 by cutting down the amount of time 'frittered away on parades' and the excessive number of hours spent in bed.² The senior administrators also decided, the rising rate of crime notwithstanding, that they were now dealing with a small group of hard-core offenders for whom a harsher regime, and perhaps longer sentences, would be appropriate. Penal servitude, as defined in recent Prison Acts, might be unsuitable for soldiers, but something analogous to the severer stages of penal servitude was needed for hardened offenders committing serious crimes hitherto punishable by flogging or transportation, perhaps enforced in a special military prison. Existing institutions, Henderson and Du Cane became increasingly aware, could not dispense sharp punishment because of structural and disciplinary deficiencies, as well as a serious lack of uniformity. In particular, the shortage of separate cells at many prisons meant that association of inmates was the rule rather than the exception. This dismayed Du Cane. Association, he declared in 1864, was 'a system of prison management which is well known to be subversive of all proper discipline, and which has therefore been so repeatedly condemned by all authorities that there are very few prisons in this country in which the separate system has not been substituted'.³ The same view was taken by a royal commission on military punishments which in 1868 judged that the discipline was not now as severe in military as in civil gaols. In the latter each offender had a separate cell in which he worked, ate, and slept, leaving it only for exercise, whereas about half the military prisoners lived and slept in dormitories, unsupervised at night, and worked together at shot drill and picking oakum, forms of unremunerative labour which did not permit the necessary gradations of punishment. The commission recommended the erection of a central military prison built on a cellular pattern, with separation and hard labour as laid down in the 1865 Prison Act, in which 'the punishment of imprisonment should be made as severe and deterrent as a due regard for the health of the prisoner and the laws of humanity will permit'.⁴ This particular suggestion was not adopted by the government, but during the next few years those district military prisons which lacked separate cells and could not be converted were closed down. With

1. See McConville, i, chs. 12-13.

2. Henderson's report, *PP* 1866 (3734) xxxviii, 313.

3. Du Cane's report, in *PP* 1864 (3405) xvi, 130.

4. Royal commission on courts martial and punishment, *PP* 1868-9 (4114) xii, 138.

some additional building, chiefly at Aldershot, a smaller number of redesigned prisons came to cater for military needs.

These institutional changes, which brought the theory and practice of military prisons more closely into line with those of civil gaols, did not exhaust contemporary discussion of soldiers' crime and methods of deterrence and prevention. By the 1860s the approach was more specific and statistically informed than it had been two or three decades earlier. Even if there was not, as some military men insisted, a small criminal element nefariously and disproportionately at work, a few particular crimes now accounted for the bulk of offences committed, and the range of available punishments was more limited. With drunkenness withdrawn from the canon of indictable offences and made subject to summary fines in 1868, the one major crime of substantial proportions was desertion. In a bid to stamp out this heinous and flourishing crime, the punishment of 'branding' or tattooing gained a new lease of life and popularity with military commentators. This practice had long formed part of the penalty imposed on deserters, who had been stamped on the left side of the chest with the letter 'D', or in extreme cases with the letters 'BC' for those adjudged to be bad characters who had acted with premeditation. In the mid-1840s over two-thirds of those convicted of absconding were branded, though not young men of previous good conduct who had behaved impulsively and who might thus be thought capable of mending their ways. By the early 1850s some 400 men a year were being branded, but between 1855 and 1869 the annual figures ranged from 1,136 to 2,642.¹ Though long condemned by critics as singularly humiliating, the military authorities continued to justify the practice as a cheap, quick method of identifying deserters and unmanageable rogues, preventing fraudulent enlistment, and protecting the public from criminals. The royal commission on punishments endorsed branding on these grounds in 1869, but two years later the War Office abandoned it as part of an attempt to popularize the army.²

Certainly the British army needed popularizing, as contemporaries acutely appreciated whenever they considered the feasibility of discharging unregenerate offenders from the ranks with ignominy. This ultimate penalty had much to recommend it as a means of ridding the force of incorrigible delinquents, but the authorities feared to make discharge too easy lest this encourage malcontents to commit the necessary crimes to secure their release. The punishment was therefore generally reserved for a hundred or so of those

1. Statistics from *PP* 1856 (2136) xxxv, 325; 1861 (2900) xxx, 7; 1865 (3567) xxv, 319; 1868-9 (4209) xxx, 568. Branding was effected by a spring-loaded instrument consisting of a bunch of needles dipped in a mixture of gunpowder and durable ink which punctured the skin in the shape of one-inch letters, following the practice for marking children in the Foundling Hospital at Dublin. See correspondence in *WO* 44/541.

2. Royal commission on courts martial and punishment, *PP* 1868-9 (4114-1) xii, 149-50.

indicted each year of disgraceful conduct, and imposed in conjunction with a long sentence of transportation or later penal servitude. It could not seemingly be rendered a more common form of punishment until the day when dismissal from the army became a matter of dread and disgrace. That day was slow to dawn, for it depended on the increased attractiveness and popularity of military service. This was a crucial factor both in obtaining more and better recruits and in tackling the causes of military crime. At least from the 1830s onwards military reformers, stressing prevention rather than punishment, had persistently argued that improvements in the terms of service and conditions of army life provided the key to reducing the incidence of crime. Slowly and gradually, their campaign made some headway as the authorities conceded good-conduct pay and savings banks, libraries and schools, evening meals and coffee-rooms, better barracks and married quarters. But it was an uphill struggle against the forces of tradition and complacency. The enthusiasm for army reform generated by the Crimean War proved to be short-lived, and in any case it did little to make soldiering more popular among the labouring classes. Royal commissions on recruitment and on military punishments in the 1860s continued to regret the poor image and limited appeal of the army, but at least they now proposed long-overdue changes which, if indirectly and secondarily, went to the heart of the problem of military crime. The steady decline in the incidence of offences which occurred after 1870 can be ascribed in large measure to the conjoint effects of such changes as improved recruiting procedures in 1867 and the introduction of short-term enlistment in 1870. Certainly these reforms altered the composition of the British army, and for the first time since the end of the Napoleonic Wars both the community of military offenders and the context within which their offences were committed underwent a significant transformation.