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LAW AND HONOUR AMONG EIGHTEENTH-CENTURY BRITISH ARMY OFFICERS

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There can be no doubt that those who joined the officers corps in the eighteenth century became members of an exclusive club with its own distinctive values. These values were imposed on all members of the corps and, as is the case with most exclusive organizations, only a very few individuals were confident or perverse enough to challenge the group standards. The officers corps had an honour code; a set of principles which was informally enforced to ensure that each member soon learned proper from improper behaviour. When there were violations of the code the subaltern officers would bring peer group sanctions to bear in the form of social and professional ostracism until the offender cleared his name by removing the blot on his honour.

We can identify the major components of the code. One writer, Maurice Janowitz, has noted that to behave honourably meant that 'officers were gentlemen'. Further, 'fealty to the military commander was personal', and officers 'were members of a cohesive brotherhood which claimed the right of extensive self-regulation'. Finally, 'officers fought for the preservation and enhancement of traditional glory'.¹ It is possible to be much more specific than this. It is clear, for example, that army officers, as one would expect, prized courage above all other virtues. Any sign of cowardice was viewed as dishonourable and the offender would be punished by his peers. Further, in the status-conscious world of the army officer, it was clear that consorting in a familiar way with the rank and file was a serious offence. Since one's most precious possession was one's honour, any slight that could be viewed as character aspersion had to be answered. In particular, charges of lying, 'giving the lie' in eighteenth-century parlance, or publicly denouncing or slandering the name of a fellow officer called for immediate redress. We can add to this that defaming the character of a regiment or company was a code violation of a most serious nature.

Still, honour codes are vague by definition. While it is a simple matter to list code violations, in specific circumstances it was difficult to know what aspect of the code actually applied. As we shall see, the application of these

¹ Morris Janowitz, *The Professional Soldier: A Social and Political Portrait* (Glencoe, Illinois: The Free Press, 1960), p. 216.

general principles created difficulties, for the honour code was not a set of carefully defined regulations. Further, the honour code was often at odds with the law, the Articles of War. Indeed, just as there was often no simple and honourable road to follow, military officers sometimes had to choose between the code and the law.

The best surviving evidence of the dilemmas faced by military officers in interpreting the honour code, especially with reference to the prevailing legal regulations, is the Court Martial Records.² In particular, we can best understand the problems presented by the honour code by studying that classic 'honour' crime, 'conduct unbecoming an officer and a gentleman'.

Conduct unbecoming an officer and a gentleman was not defined in the Articles of War. By keeping it vague and indefinite, the charge remained flexible enough to change as ideas of honour changed. Equally important, such an indefinitely stated rule could be used as a device for disciplining officers for behaviour which was not criminal or even 'dishonourable', but which offended the officers of a particular regiment. In 1778, for example, the relevant Article of War simply read, 'Whatsoever commissioned Officer shall be convicted before a general Court Martial of behaving in a scandalous infamous manner, such as is unbecoming the character of an officer and a gentleman, shall be discharged from our service.'³ Around 1789 a clause was added which provided 'that in every charge preferred against an officer for such scandalous or unbecoming behaviour, the facts or fact wherein the same is grounded, shall be clearly specified'.⁴

Long before this clause was formally enshrined in the Articles of War, there was tension between some members of the military who were happy with this undefined crime and the Judge Advocate General who wanted a more precise definition. It was possible for a man to be charged with conduct unbecoming an officer and a gentleman without being presented with any specific complaint until he faced the prosecutor in Court. Needless to say, this made it difficult to prepare a proper defence. The Colin Campbell case illustrates this problem very well. Campbell was accused of unbecoming conduct in 1759 after a quarrel with a Lieutenant Monro. His principal prosecutor was his commanding officer, Brigadier Bryan Crump, who tried to introduce evidence of Campbell's shortcomings by reference to other incidents that had occurred since Campbell had joined the regiment.⁵ The Court Martial refused to accept this testimony

² In preparing this article I have examined The Court Martial Records (Series W.O. 71) with special emphasis on Courts Martials for 'conduct unbecoming an officer and a gentleman' between 1755 and 1775. It is safe to assume that most disputes involving the honour code and the law were settled out of court but that they were similar in nature to those discussed below.

³ *Rules and Articles for the Better Government of His Majesty's Horse and Foot Guards, etc.* (London, 1778), section xv, art. xxiii. Officers were rarely dismissed from the army when found guilty of this offence.

⁴ *Articles of War*, 1789, section xvi, art. xxii.

⁵ W.O. 71/45; Campbell Court Martial, July 1759.

on the grounds that these incidents had no bearing on the specific charge (the Monro dispute), and that Campbell could not defend himself properly against charges of which he was unaware.⁶ The Judge Advocate General's office agreed. Charles Gould wrote to the Secretary at War: the principal error appears to me to have been that of arraigning the Prisoner upon so general charge as 'behaviour unbecoming an officer and a gentleman' without assigning the particular facts proposed to be insisted on at the Tryal, as the substance of the charge. This is in all Cases essential, as well that the prisoner may know upon what points he is to prepare his defence, as to fix the attention of the Court and indeed without this no Order or Method can be observed.⁷

In another case, Gould noted that the lack of precision of the charge 'is a real inconvenience to the prisoner as it leaves the attack open for any matter whatever which has happened at any time since his coming into the service'.⁸

Even after the Articles of War required that the specific offence be spelled out in the charge, there were difficulties because some military officers preferred ambiguity. In objecting to a 1793 Court Martial case, the Judge Advocate General compared unspecified 'conduct' charges to civil procedures: 'To put this in a stronger point of view, I would suppose a prisoner indicted in the Ordinary Courts of Justice for felony, without stating the species of felony or wherein it consisted...in such case, how could a conviction be supported, or what judgement could be given?'⁹

In the larger sense, it was impossible to resolve the dilemma created by this particular offence because Courts Martial in the eighteenth century were not only courts of law but courts of honour, and these two functions were not the same.¹⁰ As we have noted, honour, by definition, is vague, imprecise and ever changing. Felonies, by way of contrast, are reasonably precise and constant. Alexander Tytler grasped the problem which the military faced in this area when he wrote:

But there are offences which admit of no precise definition, and yet which in the military profession are of the most serious consequence, as weakening and subverting that principle of honour on which the proper discipline of the army must materially depend. Of these a Court-Martial, which is in the highest sense a Court of Honour, are themselves appointed the sole judges, or rather the legislators: for it in their breasts to define the crime as well as to award punishment.¹¹

⁶ Ibid.

⁷ W.O. 81/9, Gould to Barrington, 9 August 1759.

⁸ Ibid., 25 September 1759.

⁹ W.O. 81/19, Morgan to Townshend, 12 September 1797.

¹⁰ It had long been held that the Court Martial was a direct descendant of the Court of Chivalry. This view has been challenged by G. D. Squibb, *The High Court of Chivalry* (London: Oxford University Press, 1959). Further, as D. B. Nichols, 'The Devil's Article', *Military Law Review*, xxii (Oct. 1963), 116–17, points out 'conduct unbecoming an officer and gentleman' emerged independently as a specific crime between 1700 and 1765. The use of Courts Martials as honour courts for officers seems to have been a response to specific eighteenth-century conditions.

¹¹ Alexander Tytler, *An Essay on Military Law and the Practice of Courts Martial* (Edinburgh, 1800), p. 117.

Since this charge was quite vague, one would expect to find some unusual Court Martial cases subsumed under this heading and, indeed, this is the case. On 3 August 1760 Lieutenant Thomas Hopson was charged with either urinating or spilling water through the floor of his quarters and wetting Captain Thomas Faulkner, who was unfortunate enough to be in the downstairs room.¹² Ensign Peter Cockey was dismissed from the service under the 'conduct' regulation when it was discovered that he had two wives.¹³

It should be noted, however, that this indictment was not used simply to punish officers for charges not covered by the Articles of War, but also to protect them from being charged with more serious offences such as embezzlement, fraud or even rape. As was common in eighteenth-century military law, one could be indicted in a number of ways for what was essentially the same offence.¹⁴ An indictment for unbecoming conduct was softer because it was more ambiguous than precise criminal acts. For example, Major Ralph Correy, known in the 28th Regiment as the 'peddling major', was accused of buying and selling goods illegally, among other things. He was tried, however, under the unbecoming conduct regulation, found guilty, and suspended from the army for six months.¹⁵ Ensign Charles Nethercoat was charged under the same regulation – rather than for embezzlement – for overcharging the Board of Ordnance for supplies, and subsequently acquitted.¹⁶ In one interesting case in 1773, Ensign William McDermott was tried and acquitted under the 'conduct' clause for molesting the child of an officer and, in the process, passing on a venereal disease.¹⁷

Generally speaking, however, accusations of unbecoming conduct can be grouped into a few broad categories. The largest and most important involved disputes between officers of similar rank, stemming from quarrels over women, real or imaginary slights, debts and financial transactions, and character aspersion. When the quarrels reached a point where duelling was a distinct possibility, the Court Martial was sometimes the only means of settling the issue once and for all. As noted previously, in these cases the Court Martial trial served as a Court of Honour. Indeed, in some cases of this type, the line between prosecutor and defendant was completely blurred. For if the defendant won his case, the prosecutor was as dishonoured as if he had been on trial himself. One man, Ensign Goddard Butler, described his experience as prosecutor at a Court Martial in this way:

¹² W.O. 71/70, Lt. Hopson Court Martial, August 1760.

¹³ W.O. 71/72, Ens. Cockey Court Martial, June 1762.

¹⁴ For example, an enlisted man could be charged with desertion or neglect of duty, depending on how his officers wanted him punished. Most of these cases occurred abroad where the army had jurisdiction for crimes which would have been tried in the civil courts at home.

¹⁵ W.O. 71/68, Major Correy Court Martial, May 1761.

¹⁶ W.O. 71/65, Ens. Nethercoat Court Martial, March 1758.

¹⁷ W.O. 71/79, Ens. McDermott Court Martial, October 1773.

On Monday Morning about Ten O'clock an Officer waited on Me, by Colonel Maddison's order, to conduct me as a Prisoner before this Court, but without my having received any Crime or Information what I was to be tried for. On my way down to this Place I was met by Lieutenant Colonel Maddison who then informed me I was at Large, and ordered me to attend here to prosecute Mr Murray, but for what I remained ignorant, till informed by this Court, that it was in consequence of expressions used by me in two Letters to Capt'n Knight.¹⁸

Murray had demanded a Court Martial for himself because he wanted to clear his name of certain charges Butler made against him in these letters. In this situation, the honour of Ensign Butler was as much at stake as that of the defendant, Murray. As Butler himself correctly noted, 'Though the declared business of this Court be to try Mr Murray for Ungentlemanlike behaviour, and that I appear here as a Principal Prosecutor, yet I am well aware, my own Tryal is not going on, less than his, and that my Prosecution is only my Defence.'¹⁹

To understand how the Court Martial trial functioned in honour cases and to illuminate the tension that existed between the honour code and the law, it is necessary to examine the major non-legal method of resolving disputes, the duel. Officially, duelling was forbidden in the eighteenth century by the Articles of War. The reasons why are obvious: constant duelling to settle private disputes among officers hurt the regiments – good officers could be lost in this fashion; it set a bad example for the men in the ranks; and it was the most glaring example of disharmony and disunity among the officers of the regiment, an organization which was supposed to be characterized by unity and brotherhood. Article XIX of the 1737 Articles of War is representative of the official position:

No officer or soldier shall use any reproachful or provoking speeches or gestures to another, upon pain of imprisonment, and asking Pardon of the Party offended, in presence of his commanding officer.

Nor shall any Officer or soldier presume to send a challenge to any other officer or soldier, to fight a duel, upon pain of being cashiered, if he be an officer, or suffering the severest corporal punishment, if a non-commission officer, or private soldier.²⁰

In order to protect men who were challenged to duels and refused to fight the Articles stated,

Nor shall any officer or soldier upbraid another for refusing a challenge, since according to these our orders, they do but the duty of soldiers, who ought to subject themselves to discipline; and we do acquit and discharge all men who have quarrels offered, or challenges sent to them, of all disgrace, or opinion of disadvantage in their obedience hereunto; and whosoever shall upbraid them, or offend in this case, shall be punished as a challenger.²¹

¹⁸ W.O. 71/80, Ens. Murray Court Martial, March 1775.

¹⁹ Ibid.

²⁰ *Rules and Articles for the Better Government of his Majesty's Horse and Foot Guards, and all others his land-forces in Great Britain and Ireland and dominions beyond the sea* (London, 1737).

²¹ Ibid.

It was one thing for the king to make pronouncements of this sort and quite another to put them into practice when the honour code dictated entirely different behaviour. Military officers might try to the best of their ability to encourage the peaceful settlement of disputes, but the officer who refused a challenge was subject to peer group ostracism that made the approbation of the king small consolation indeed.²²

The difficulty faced by an officer caught between the Articles of War and the honour code is revealed in David Scott's writings on Courts Martial. While paying his respects to the proscription against duelling, Scott goes on to note,

...with all the denunciations against 'the challenger' before his eyes, the officer who should permit the use of opprobrious expressions towards him, much less a blow, or indeed any conduct from another that should degrade him, or in the smallest degree impeach his courage, would be liable to be arraigned before a Court Martial for conduct unbecoming an officer and a gentleman; and at the least to a council of inquiry of his brother officers... whose decision could not amount to less than the resignation of his commission.²³

Further, Scott declared that 'notwithstanding the explicit declarations of the written law, the custom of the service would seem to demand a reference to arms...' and he proceeded to describe in great detail the procedures to be followed by principals and seconds in duels as prescribed by military custom.²⁴

The gap between the honour code and the law is well illustrated by the Court Martial of Captain Benjamin Beilby in 1766, on the island of Minorca. Beilby was accused of 'having repeatedly received from Captain Robinson... language unbecoming the character of an officer and a gentleman *without taking proper notice of it...*'.²⁵ Evidently Robinson had insulted Beilby on a number of occasions. Ensign Pierce Dalton testified that he heard Robinson say to Beilby on parade, 'Is that the way you march your guard, you shitten dirty fellow.' Another officer said that Captain Robinson also remarked '...is that the way you make your men slope their arms, you dirty dog...'.²⁶ As a result, the subalterns of the 11th Foot refused to associate with Beilby. It is important to note that the sanctions imposed by the officer corps were not directed towards Robinson for starting a quarrel in violation of the Articles of War, but against Beilby for allowing himself to be insulted. The officers, among

²² The Duke of Wellington, for example, tried to encourage officers to apologize for honour violations: 'The Officers of the army should recollect, that it is not only no degradation, but that it is meritorious in him who is in the wrong to acknowledge and atone for his error, and that the momentary humiliation which every man may feel upon making such an acknowledgement is more than atoned for by the subsequent satisfaction which it affords him, and by avoiding a trial and conviction of conduct unbecoming an officer.' Thomas Simmons, *Remarks on the Constitution and Practice of Court Martial* (London: Parker, Furnall and Parker, 1852), p. 320.

²³ David Scott, *The Military Law of England* (London, 1810), p. 30.

²⁴ *Ibid.*, pp. 31-5.

²⁵ W.O. 71/50, Beilby Court Martial, September 1766.

²⁶ *Ibid.*

other things, refused to dine with Beilby until he cleared his name and on one occasion, when he attempted to join the officers for dinner, he was turned away. Once again Robinson insulted him by saying 'By God he shall not dine here, nor any poodle dog like him...'.²⁷

The honour code called for a duel between Robinson and Beilby, but Beilby made no response. He was then visited by another officer in the regiment, Lieutenant Price, and the following conversation took place. Captain Beilby replied that he had sent a letter to Captain Robinson.

Mr Price said he knew it, But as he had not acted in consequence of that letter, the Regiment thought it not material.

Captain Beilby then said that he was sick.

Mr Price replied Captain Beilby the world in general thinks you are not sick, and that is my opinion in particular.

Captain Beilby said, Mr Baines knows that I am sick.

Mr Price replied, Mr Baines as a Physician may not chuse to give his opinion but in conformity to his Patient, As a man, I venture to say he is of mine.

Captain Beilby said, this is odd usage Mr Price.

Mr Price answered, not odder than your behaviour.²⁸

In his defence, Beilby claimed that he *was* sick, that he had not heard Robinson's insults, that he had demanded satisfaction from Robinson in a letter but that he (Robinson) had refused to receive it, and that Price had a grudge against him and was guilty of 'nursing cabals'.²⁹ Beilby was found guilty of neglect in not demanding an explanation from Robinson and, as a result, was suspended from pay and duty for one year. The Lieutenant-Governor of Minorca approved the suspension, but left the length of time up to the king. In England, the Judge Advocate General, after reviewing the minutes of the case, recommended that the conviction be reversed. He argued that the particular charge was not covered in the Articles of War: 'I do not conceive that the sentence of a Court of Justice can at any rate be supported which awards a punishment for neglecting to seek a method of redress forbidden as well by the military as the common law.'³⁰

In a similar case, Lieutenant Eubule Ormsby was put on trial for cowardice when he did not show up for a duel with Lieutenant Cornelius Lysaught. Lysaught had challenged Ormsby after a dispute over a debt. The officers of the corps again refused to rank with Ormsby because of this purported cowardly behaviour. At the trial Ormsby reported that he did not receive the note acquainting him with the time of the duel until it was too late for him to appear. When he did set out for the duel, he was stopped by another lieutenant who *threatened to arrest him* if 'he did not desist'. Ormsby was cleared of the charge against him, but once again we have an example of the tension between honourable and legal actions, and the role of the Court Martial in clearing a man not of any specific crime, but of dishonourable behaviour.³¹

²⁷ Ibid.

²⁹ Ibid.

³¹ W.O. 71/74, Lt. Ormsby Court Martial, August 1764.

²⁸ Ibid.

³⁰ W.O. 81/11, Gould to Barrington.

In honour trials, Court Martial Boards always faced a difficult task in determining precisely what constituted cowardice in an officer. In the Beilby case, the Board had to decide if the defendant was too ill to challenge Robinson and whether or not he had heard the insults that had been directed to him. In the Ormsby case, the officers had to decide whether Ormsby had behaved dishonourably in obeying the command of another officer who ordered him not to fight a duel – in the name of the law. The Conors and Robinson Court Martial in 1761 further illustrates the complex problems presented in honour-violation cases. Lieutenant Conors was having a party one evening when someone hit the outside of his tent. On receiving information that the guilty party was Lieutenant Robinson, Conors revenged himself by slacking some of the cords on the former's tent. The dispute escalated and Conors 'demanded satisfaction'. Conors described the duel at his Court Martial:

...a little before 5 I went to Lieutenant Robinson's Tent, and loaded my Pistols before him; observing he had his Sword on, I told him, he need not take his sword, as I should not carry any; to which he made no reply. I also observed him to take a stick with him; perceiving this, I went and got another Pistol to put myself in equality with him. We then went together to the ground, shook hands, and took five paces, we then faced about, and fired at each other, which missed, Lieutenant Robinson then presented a second Pistol, which flashed in the pan, after a long aim; I then fired my second Pistol, but did not hit him; on which he was priming again, and just as he was going to present, Lieutenant Maine came up, saying, for shame Gentlemen, desist etc. and seized the Pistols in Lieutenant Robinson's hands; after which Lieutenant Robinson drew his Sword, and flourished it, saying, draw Sir, and then called me a Rascal, also said, he would make an example of me; I told him, he behaved as a scoundrel to draw a sword on me, as he knew I had no Sword on; and desired Lieutenant Maine, who had hold of him, to let him come on, then presented a third Pistol, which was not loaded, saying I was ready for him, by which time some other officers came up, with Doctor Meredith, my Pistol was then seized by Lieutenant Maine, as also Lieutenant Robinson's Sword and himself. However he rushed from them, almost tripping Lieutenant Maine up, and ran towards me, tripped me up, struck me, and called me a rascal notwithstanding the endeavours of Lieutenant Maine to stop him.³²

As a result of this situation, the subaltern officers of the regiment refused to rank with Conors because he had not made a proper response when Robinson hit him with a stick during the duel. As is usual in cases of this sort, the 'honourable' course of action for Lieutenant Conors was not at all clear. On the one hand, he had not responded to Robinson's assault and was under censure from his fellow officers; on the other he was being pressured to make up the quarrel in order to avoid another duel or Court Martial action for sending a challenge and fighting with Robinson.

³² W.O. 71/69. It is interesting to note how close the two men were to each other when they fired – ten paces. Most of the duelling cases involved pistols and one has the feeling that the reason was that they were safer than swords. Of course, one had to train harder to master the sword as well.

Finally, through the mediation of the regimental surgeon, Conors opted to 'drink a friendly glass' with Robinson at the lodgings of a fellow officer. This was done with 'both affirming each had a right to concessions'. This might have settled the matter except for pressure from the subaltern officers who were not satisfied that Conors' honour had been vindicated. Both men were called before a meeting of the officers to resolve the dispute. It was agreed, as Conors reported, that Robinson,

...might make a proper concession to me, consistent with honour, which he objected to, as all the officers were not there. In the morning of the 24th there was another meeting of Officers about 10 o'clock, on the same subject, Lieutenant Robinson, and I were both ordered to attend; on Mr Robinson's consenting to ask my Pardon for the ill treatment showed me after the affair, provided I would make a concession for bringing a third pistol. I had some objection to it, till one of the Gentlemen put the question, where I could make such a concession consistent with honour, it being granted that I could, we then concluded the affair, in the manner agreeable to the gentlemen's opinion; and both of us waited, accompanied with Captain Martin, on the Brigadier, who was not pleased with the affair, and told us it could not be done consistent with honour; and that he must acquaint the General of the Affair, and have a General Court Martial on us; after which we were both ordered to our Marques.³³

The Conors and Robinson case is interesting for a number of reasons. We see the officers operating not only as a sanctioning body against Conors, but also as an informal mediating organization trying to resolve the honour violation problem to the satisfaction of the principal combatants. In this case, they failed because the Commander disagreed with the subaltern officers' views on how the honour problem could be resolved. While it was Conors who demanded satisfaction initially, the Court Martial Board acquitted him and found Robinson guilty. It is not clear on what grounds this sentence was passed. It is most likely that, rather than find Conors' purported cowardice dishonourable, they decided that Robinson's attack on Conors with a stick was conduct unbecoming an officer in duelling situations.

One last example of the honour problem in duelling is the Samuel Strode case. In 1762, Lieutenant Strode was involved in a dispute with the surgeon's mate of his regiment. At one point, Strode told the surgeon's mate that he was not a gentleman and the latter responded that the lieutenant was a 'rascal and took him by the collar and threw him down'.³⁴ The next day, Strode asked the surgeon's mate for an apology, but he refused, offering instead to 'give him any other satisfaction'. Strode refused because the surgeon's mate was not an officer. As a result, he was arrested and put on trial for not responding to the assault of the surgeon's mate. His dilemma was whether he should challenge to a duel a man who had assaulted him in order to remove the charge of cowardice, or refuse the duel because the man involved was, in his eyes, neither an officer or a

³³ Ibid.

³⁴ W.O. 71/71, Lt. Strode Court Martial, July 1762.

gentleman. Strode was found guilty, presumably for refusing to offer a challenge, but was released after a reprimand because of his 'youth and inexperience' and because he was arrested before he could decide how to act.³⁵ It was not made clear what the proper procedure was in cases where one's enemy was, perhaps, a gentleman, but not an officer.

Needless to say, Courts Martial trials did not result exclusively from duelling cases. Character aspersions which did not result in challenges were also resolved by these proceedings. These cases could be very complex because the Court Martial Board had to decide who delivered the first insult and what sorts of insults could legitimately be called character aspersion. Some examples will illustrate the difficulties in this area. In the Lieutenant George Orpen Court Martial, the officer was accused of calling Lieutenant Maxwell Boyle a liar, and of 'suspicion of cowardice'. In his defence, Orpen argued that he had called Boyle a liar only after the latter accused him of cowardice during the Battle of Minden. Evidently Boyle had seen Orpen bend down during the Battle and he interpreted this action as cowardice. Orpen stated 'that he never stooped...excepting to get his watch out of his breeches, which having fallen down to his knees he stopped to get it out'.³⁶ The court decided that calling Boyle a liar under the circumstances was justified and he was acquitted of all charges.

In some cases of character aspersion, the court simply found both men guilty and each had to make a public apology as a result. In the Dalrymple and Gaskell case, each accused the other of resembling a particular dog, and a dispute ensued over which of the officers was the handsomer and which could write better English. Dalrymple drew his sword on Gaskell in the midst of the quarrel, and for this he received a public reprimand on the Grand Parade and was forced to ask Gaskell's pardon. Gaskell was found guilty of character aspersion and was forced to ask Dalrymple's pardon, too.³⁷

By eighteenth-century standards, unkind remarks about an entire unit were quite as serious an offence as aspersion of the character of a fellow officer. These cases could be as complicated as those involving slights to individuals. Lieutenant Henry Watson was charged with 'aspersion of the Regiment of light infantry, or Royal Volunteers, by saying in Public Company, that Crawford's Corps behaved on the day of the landing at Belle Isle infamously and scandalously'.³⁸ Watson claimed that he had not insulted Crawford's Corps, but only those men in it who had refused to follow their commander during battle. Yet the aspersion of the honour of a military unit was so serious a matter that the Commander in Chief, Pulteney, reacted violently.

³⁵ Ibid.

³⁶ W.O. 71/69, Lt. Orpen Court Martial, September 1761.

³⁷ W.O. 71/77, Lt. Dalrymple and Ens. Gaskell Court Martial, September 1768.

³⁸ W.O. 71/68, Lt. Watson Court Martial, July 1761.

I have received your letter and think every minute long till justice is done to an injured Corps, so barbarously attacked, and aspersed in the only thing which is dear to them, their honour, and drove to the necessity of vindicating their conduct, instead of receiving the applause, they did their utmost to deserve.³⁹

The Court, however, agreed with the prisoner that he had not intended to 'abuse the whole regiment' but 'that part only of that detachment which refused to follow their officers...', and Watson was acquitted.

In another case Ensign Arthur Cole overheard a humorous reference by two fellow officers to the effect that the 28th regiment had been responsible for the Duke of Cumberland's death. Cole told some other officers of this conversation, but when pressed to reveal the names of the officers who had 'aspersed the regiment', he refused. As a result, the subalterns refused to associate with Cole, and after an acrimonious exchange of letters between Cole and his commanding officer Arthur Broome, the latter ordered a Court Martial. Cole argued that if he gave the names of the officers who had made these remarks he would be a 'tale bearer, or incendiary'. He told Major Broome, 'I did refuse to tell my author and do still, as I detest the Name of an Incendiary.'⁴⁰ Once again we have a clash of 'honour' principles. The Court was asked to decide if the path of honour was to 'turn in your comrades for apparently innocent remarks aspersing the name of the regiment, or to stand by your comrades because honour involved personal loyalty to these men'. The case was complicated by the fact that Cole behaved rather rudely to Major Broome in person and in the correspondence which passed between the two men. The Court Martial Board agreed with Cole that the remarks were said 'in a jocose manner', and he was acquitted.⁴¹

A third type of honour crime involved familiarity with the rank and file – the common soldier. Indeed, the seriousness with which this breach of behaviour was treated shows how great the gap between officers and men really was in the eighteenth-century army. In 1761, for example, Lieutenants Fireworker Sherwin and Glasgow had dinner at the house of Lieutenant Charles Wood. The first two soon after found themselves on trial 'for not getting up and leaving when discovering the nature of the company they were dining with'.⁴² In defending himself and his comrades, Glasgow argued,

that on the 24th of last month he asked Mary Collins to dine with him. She came, and brought this John Hayes dressed in every respect Genteel. She asked the prisoner if he would not ask him in, as it rained. He did but never looked on him or treated him as a gentleman, nor offered to introduce him, to any of his brother officers, as he did not think his being brought there by a whore was a sufficient sanction for so doing.⁴³

In the Lieutenant Richard Rose case, the prisoner was accused of

³⁹ Ibid.

⁴⁰ W.O. 71/75, Ens. Cole Court Martial, March 1766.

⁴² W.O. 71/71, Lt. Sherwin *et al.* Court Martial, July 1761.

⁴¹ Ibid.

⁴³ Ibid.

drinking with the common soldiers, and in his defence he argued that he had approached one William Hinxter in a punch house to inquire about a silver sword Hinxter wanted to sell, and sat down only because he had something in his shoe. It was at that moment that he was 'caught' by another officer.⁴⁴ In 1760, Ensign Hill was tried for 'drinking and lying with the private men'.⁴⁵ Hill admitted drinking with the men, but excused his conduct for these reasons.

...tho I condescended to drink with them, Yet it has appeared by the Evidence of the King's Witnesses that the Men continued to preserve that respect which is due to an officer and look'd upon and behaved to me as such during the whole time of my being with them.⁴⁶

On the charge of lying with a common soldier, Hill examined the corporal involved.

Q. Ensign Hill – Did I come into your Room the 24th July to go to Bed or to Drink with you.

A. Mr Hill came through the Room to go to Bed.

Q. Ensign Hill – was not the occasion of my staying in the Room to get you to pull off my Boots, as the Waiters and Hostlers were gone to Bed.

A. Ensign Hill staid in the room and I pull'd his Boots off for him.⁴⁷

These three cases show that, while it was considered dishonourable to consort with private soldiers, it was not always clear what this meant in practice. Under what circumstances could an officer sit down with common soldiers? Could he drink with them if they treated him with respect? In the last of these three cases, Hill was found guilty in spite of his spirited defence and forced to ask the pardon of the entire battalion publicly 'for the Dishonour this my Behaviour may have reflected on them...'.⁴⁸

The eighteenth-century army officer was caught between two conflicting modes of behaviour. To some extent he was torn between the past and the future. Personal defence of one's honour was giving way to the more dispassionate, and less bloody, legal resolution of disputes, but the relationship between the two was unclear.⁴⁹ For this reason, while conduct unbecoming an officer and a gentleman may not have been a crime by most legal standards of the day, it was essential to keep it on the books; without it there would have been no *legal* method of settling disputes of this nature when attempts at mediation failed. In an honour-conscious society where duelling had been the final solution to irreconcilable conflicts, the 'honour crime' was essential if the transition was going to be made from blood-letting to judicial decision, if legal confrontation was to

⁴⁴ Ibid., Lt. Rose Court Martial, April 1762.

⁴⁵ W.O. 71/47, Lt. Hill Court Martial, September 1760.

⁴⁶ Ibid.

⁴⁷ Ibid.

⁴⁸ Ibid.

⁴⁹ For a discussion of the nature of the officers corps in the eighteenth and nineteenth centuries see Samuel P. Huntington, *The Soldier and the State* (Cambridge: Harvard University Press, 1957), chapter 2, 'The Rise of the Military Profession'.

replace physical conflict. Legal experts argued against this most imprecise crime throughout the eighteenth century and *legally speaking* they were correct.⁵⁰ Much like un-American behaviour and other undefined crimes against the state in modern times, it opened the door to abuses of a serious nature. In theory, practically anything could be viewed as ungentlemanly conduct and it could be a convenient way of getting rid of unpopular officers. On the other hand, a more precise definition of conduct unbecoming an officer and a gentleman might have destroyed its role in settling disputes over honour violations. While honour was imprecise and elusive, it was not possible to wish it away or abolish it in the armed services. For better or worse, the officer corps was governed by the code as well as by legal principles. The very imprecision of the crime of unbecoming conduct allowed the military legal system to play a role in settling disputes about cowardice and character aspersion. This meant that these disputes would be placed under the aegis of Court Martial Boards who had to pay heed to generally accepted legal practices in both military and civil law. Personal animosity would be minimized, and the officer charged would have the benefit of a public forum at which he could make his case. Further, the findings of the Court Martial would be subject to outside review by commanding officers, governors, the Judge Advocate General, and, in some cases, the king. This gave the officer far more protection than if the settlement of disputes had been left to the subalterns – or the duel. In other words, the Court Martial could serve as a duelling substitute and play a role in settling disputes which might otherwise have ended in the death of one of the disputants.

Conduct unbecoming an officer and a gentleman served another function as well. The threat of legal action with its attendant publicity probably helped to pressure officers into settling their disputes privately. It is likely that the subaltern officers worked to resolve these conflicts more equitably because of the knowledge that an ostracized officer might call for a Court Martial hearing to clear his name. It may be true that ‘conduct unbecoming an officer and gentleman’ was inadequately defined from a legal point of view, but the charge seems to have been a necessary evil in the eighteenth-century army.

⁵⁰ For an example, see *Considerations on the Act for Punishing Mutiny and Desertion* (London, 1722), p. 36. For a discussion of the problems posed by ‘the general article’ in modern times, ‘Conduct to the Prejudice of Good Order and Discipline’, see Nichols, *op. cit.*, and J. A. Hagan, ‘The General Article: Elemental Confusion’, *Military Law Review*, vol. x (1960). One of the major difficulties centres around the fact that it is an undefined crime – like the eighteenth-century ‘conduct’ offence.