

“50 Lashes on the Back Well-Laid On”: Crime and Punishment in the American Army during
the American Revolution

By

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On January 8, 1778, an aide-de-camp entered the following brief account in the Brigadier’s Orders of the Day in the Orderly Book of General George Weedon:

At a Brigade General Court Martial whereof Colonel Syme was President appeared Timothy Driskill of the 2nd Regiment Charged with attempting to desert to the enemy found guilt of the Charge and Sentenced to receive 100 lashes. The General approves the sentence and orders it to be put in execution forthwith.¹

Accounts such as these fill the records of military activities from the American Revolution. The American Army struggled with the difficult predicament of establishing a system of order and discipline while fighting a war against one of the best armies in the world at that time. This attempt was impeded further by a lack of funds, supplies, and legal authority to make the independently-minded volunteers from the newly formed states remain to continue fighting.² The Army’s administration attempted to utilize a system that reflected an amalgamation of British military law and colonial practice³, yet as historian William Generous,

¹ *Valley Forge Orderly Book of General George Weedon* (United States: Arno Press, Inc., 1971), 187.

² For more information on the conditions of the American Army during the American Revolution, see Lynn Montross’ *Rag, Tag and Bobtail: The Story of the Continental Army, 1775-1783* (New York: Harper & Brothers Publishers, 1952).

³ British military code provided a precedent for the American Army to ape; its regulations, however, were more severe. The code details four levels of courts-martial: field general, general, district, and regimental. The level of court-martial required depended on the rank of the offender and the type of crime committed. British soldiers were also subject to civil law, and could not be tried for treason, murder, manslaughter or rape, if the offenders could be tried in a civil court. British punishment standards were typically harsher. American military codes, influenced by

Jr. states, an “attempt to graft onto courts-martial certain concepts borrowed directly from civilian law might raise its own set of problems.”⁴ And it frequently did; regional differences in colonial law and custom caused conflict among the ranks. Among New Englanders, the democratic spirit created enthusiastic Patriots, but did not inspire respect for authority; they frequently regarded their officers as equals, a condition that the Southerner General Washington deplored.⁵ Throughout the long years of the war, the American Army underwent a slow process of standardization and uniformity in military code to clarify the expectations of a soldier and an officer, and instill order and discipline in both ranks. In order to maintain good order and discipline in the face of the unique circumstances in which the newly formed American Army found itself, class structure was maintained through the adoption of civilian colonial and British military penal law, thereby meting out punishment in consideration of the severity of the offense and the military rank of the offender. This paper will discuss the origins of American military law and order, and the application and impact of these laws on the individuals of the Army, as well as the reaction and possible resistance of those individuals to the laws imposed on them. An examination of the inconsistent distribution of punishment will endeavor to enlighten the factors contributing to that phenomenon, and explain why this occurrence did not change even as standardization of the Army and its judicial policy progressed during the course of the war.

“A Dreadful Scourge”: the Portrayal of the American Army

civilian colonial penal laws, instituted only two levels of courts-martial, but were still subject to civil law. Punishment reflected civilian colonial penal codes; however, the amount of lashes inflicted was increased from 39 lashes to 50, then 100 and 200 as the war progressed. J.E.R. Stephens, “English and Continental Military Codes,” *Journal of the Society of Comparative Legislation*, vol. 5, no. 2 (1904), 244-252; Paul G. Atkinson, Jr., *The System of Military Discipline and Justice in the Continental Army: August 1777-June 1778* (Valley Forge National Historical Park: May 1972).

⁴ William T. Generous, Jr., *Swords and Scales: The Development of the Uniform Code of Military Justice* (Port Washington, NY: Kennikat Press, 1973), 4.

⁵ Sidney Kaplan, “Rank and Status Among Massachusetts Continental Officers,” *The American Historical Review* vol. 56, no. 2 (Jan. 1951), 322-323.

Given the nature of the American Army during the American Revolution- under-supplied, newly established, and commanded by an officer corps with little experience- two images of the military appear in the historical literature.⁶ This is due in part to the nature of the records from which the popular images arise. As a primarily civil war, families took sides, and strong partisanship resulted accordingly in biased accounts of experiences with the soldiers. Those loyal to the British crown were more likely to portray the Army as a lawless rabble that preyed upon the civilians and committed atrocities. Those who supported independence more often provided accounts of the long-suffering troops as patient, orderly, and committed. As a result, the historiography and military accounts provide images that fail to reconcile these two polar positions.⁷

The image of the patient, long-suffering troops arises from accounts by civilians who interacted with the soldiers. Accounts of their privations are calculated to inspire sympathy, and in this light certain crimes appear less heinous. Even General Washington, who tended to exaggerate the severity of crime's impact in his addresses to the Army, sympathized with the under-supplied men; his letters to the Continental Congress provide a glimpse of his understanding, though not approval, of his men's tendency to crime in order to survive.⁸

According to other historical portraits of the Army, however, their crimes were not limited to those intended to ensure survival. Accounts of a "lawless rabble," committing the

⁶ Montross, *Rag, Tag & Bobtail*, 39, 245; Robert Middlekauff, "Why Men Fought in the American Revolution," *Huntington Library Quarterly*, vol. 43, no. 2 (Spring 1980), 135-148.

⁷ Wayne K. Bodle argues in his book *The Valley Forge Winter: Civilians and Soldiers in War* that the two images are not necessarily "mutually exclusive," but that the images of obedient, hardy veterans and of a rabble of sick and mob-like civilians with no military discipline seem incompatible if not carefully examined. Wayne K. Bodle, *The Valley Forge Winter: Civilians and Soldiers in War* (University Park: The Pennsylvania State University Press, 2002).

⁸ In a letter sent to the Continental Congress on 16 February, 1778, General Washington wrote: "Naked and starving as they are, we cannot enough admire the incomparable patience and fidelity of the soldiery, that they have not been ere this incited by their suffering to a general mutiny and dispersion." Washington's letters to Congress frequently praised the endurance of his Army while simultaneously stressing the constant threat of disorder due to lack of supplies and support. Montross, *Rag, Tag and Bobtail*, 245.

most horrifying acts of violence and rapacity, reflect a complete absence of order and discipline, unchecked by any sort of acknowledged source of command. According to this image, the American soldier was a tameless warrior, who “despised both discipline and routine.”⁹ The disorderly “rabble in arms”, and the perception as such by colonists, greatly disturbed those in command, as one officer noted: “...an Army, even a friendly one, if any can be called so, are a dreadful Scourge to any people-- you cannot conceive what Devastation and Distress mark their steps...”¹⁰

“Troublesome Times for Us All But Worse for the Soldiers”

In order to understand the crimes committed by persons serving in the American Army and the rationale for the punishments served, the context of the American Army’s situation during the American Revolution must be seriously considered. There was a unique circumstance.¹¹

For the American Army, this was a seriously under-supplied conflict, a deeply ironic condition given the war’s location on domestic soil. Despite large bounties and better pay than the British Army received, the pay to the American soldier often came late and in Continental currency, paper money that depreciated throughout the war and was practically worthless by war’s end.¹² The Army’s supplier, the Continental Congress, had delegated itself too little power to effectually demand aid from the states, and resorted to bonds and begging. Furthermore, given the thirteen rebelling colonies’ distaste for the British Army’s presence in America, Congress hesitated in funding a standing army for the new nation, fearing disastrous

⁹ Montross, *Rag, Tag & Bobtail*, 37.

¹⁰ Letter from Jedediah Huntington to his father, 7 January 1778, of the John Reed Collection. Wayne K. Bodle and Jacqueline Thibault, *Valley Forge National Historical Research Project*. United States Department of the Interior, National Park Service. Valley Forge National Historical Park (May 1980), 156.

¹¹ James C. Neagles, *Summer Soldiers: A Survey and Index of Revolutionary War Courts-Martial* (Salt Lake City, UT: Ancestry Inc., 1986), 16, Robert Middlekauff, “Why Men Fought in the American Revolution,” *Huntington Library Quarterly*, vol. 43, no. 2 (Spring 1980), 146-148.

¹² Montross, *Rag, Tag, & Bobtail*, 46; Neagles, *Summer Soldiers*, 24.

consequences. Soldiers frequently received less than full rations, and their clothing was usually insufficient and ragged. In a letter to Congress dated December 23, 1777, General Washington stated in no uncertain terms the precariousness of the American Army's condition:

Sir: Full as I was in my representation of matters in the Commys. departmt. yesterday, fresh, and more powerful reasons oblige me to add, that I am now convinced, beyond a doubt that unless some great and capital change suddenly takes place in that line, this Army must inevitably be reduced to one or other of these three things. Starve, dissolve, or disperse, in order to obtain subsistence in the best manner they can; rest assured Sir this is not an exaggerated picture, but [and] that I have abundant reason to support what I say.¹³

These undersupplied soldiers were hardy individuals, often artisans, farmers and sailors.¹⁴ According to muster rolls, diaries and letters most were literate.¹⁵ Often from rural areas, they provided for themselves and their families while cooperating with far-flung neighbors for survival, fostering an independent spirit.¹⁶ The abundance of independent spirit was in part due to the large numbers of New England troops. Nearly 68,000 men enlisted from the former colony of Massachusetts, a region characterized by a democratic "town meeting" style of government; these men insisted on choosing peers for officers and as such were reluctant to adopt a submissive attitude toward the higher ranks.¹⁷ This independent spirit did not coincide well with the submission and discipline expected of a soldier in a professional army. Foreign officers seeking a commission with the American Army were astounded by the character of the American soldiers. Prussian soldier and Inspector General of the American Army, Baron

¹³ General George Washington, Letter to Continental Congress, 23 December 1777. Archival Collection, Valley Forge National Historical Park.

¹⁴ James C. Neagles, *Summer Soldiers*, 2; David McCullough, *1776* (New York: Simon and Schuster, 2005), 34

¹⁵ Montross, *Rag, Tag, & Bobtail*, 6.

¹⁶ David J. Rothman, *The Discovery of the Asylum: Social Order and Disorder in the New Republic* (New Brunswick: Aldine Transaction, 2008), 12.

¹⁷ Sidney Kaplan, "Rank and Status among Massachusetts Continental Soldiers," *The American Historical Review*, vol. 56, no. 2 (Jan. 1951), 318-320.

Friedrich Wilhelm Augustus von Steuben admitted his surprise to a fellow Prussian soldier in a letter dated 1778:

In the first place, the genius of this nation is not in the least to be compared with that of the Prussians, Austrians or French. You say to your soldiers, 'Do this,' and he doeth it; but I am obliged to say, 'This is the reason why you ought to do that,' and then he does it.¹⁸

This individualistic spirit, while difficult to govern, by its very nature required discipline and punishment. The commanders of the Army had to instill a sense of camaraderie and dependence among the enlisted; this would result in obedience to orders and a bond to their fellow soldier that in theory discouraged desertion. Among the commissioned officers, a sense of class distinction and appeal to honor was necessary, in order to facilitate enough pressure to cause the officers to act as role models for the lower ranks. A Revolutionary War soldier, Private Joseph Plumb Martin from Connecticut, recorded in his memoir that "the men were confused, being without officers to command them... how could the men fight without officers? The man [enlisted soldier] who represented himself as being so valiant was a braggadocio, and I never yet met with one of that class who was not at heart a sheer coward."¹⁹ In this sense, the commanders of the American Army drew from the civilian patriarchal social structure, a condition more distinctly visible in the Southern colonies and from where the majority of the officers hailed, to maintain order among former civilian men already accustomed more or less to that structured system.²⁰ Developing this "class" of officers who could command the respect of individualistic New England soldiers proved difficult, as these officers not only learned through trial and error on the field, but also contended with the influence of civilian life and order among the ranks.

¹⁸ Montross, *Rag, Tag and Bobtail*, 269.

¹⁹ Joseph Plumb Martin, *Private Yankee Doodle: Being a narrative of some of the adventures, dangers and suffering of a Revolutionary Soldier* (Boston: Little, Brown and Co., 1962), 41.

²⁰ Kaplan, "Rank and Status," 322-323.

The enlisted, while there to collect a pay, were essentially volunteers at first, fighting a war of defense like an elaborated militia. As such, an adoption of a pure military structure of law and order did not sit well with the men; however, in the war's progression enlistments grew longer, creating a new set of conditions and circumstances.²¹ As General von Steuben had to appeal to their reason, so did the officers struggle to instill a martial spirit among men whose grip on civilian legal precepts portrayed their interest in defending their way of life and lack of interest in a military career, and who could simply leave and not return at the end of their enlistment if they were made to feel alienated by a system so wholly different from civilian law.

The commissioned officers were primarily of the middle to upper sorts, usually either owning property or the proprietors of successful businesses.²² These officers received written commissions from Continental Congress and were expected to provide their own equipment and supplies.²³ The primary motives for these men to engage in the conflict for independence stemmed largely not in hopes for greater freedom; as members of the higher levels of society, they were already privy to a higher standard of living as well as eligible for positions of power. Instead, a powerful incentive to preserve their way of life and establish themselves in a new power structure goaded many to the cause. In addition, for those of the "better sort" who were younger sons or could afford the luxury of adventure, a commission in the Army provided opportunities to establish a reputation, prove one's honor, and possibly establish a military career as an officer. It was to this honor that General Washington appealed, in his hopes to create a proper leading class of officers. Loathing the egalitarian nature of the enlisted northerners as an

²¹ Bodle, *Valley Forge Winter*, 28.

²² Kaplan, "Rank and Status," 322-323.

²³ An officer's commission during the American Revolution was an order from the Second Continental Congress authorizing the individual to hold a position of authority. With position came certain duties and obligations depending on the rank of the individual. In that time, there was no form of training for newly commissioned officers. The absence of standard requisites attracted foreign officers seeking to sell their credentials, faked or otherwise, in order to gain a position; unfortunately for them, pay was in depreciated currency and notoriously late--not the conditions for fortune that they had expected.

affront to his gentlemanly status as a southern planter, Washington encouraged the officers to set themselves apart as leaders, in order to tamp down on those egalitarian tendencies.²⁴ Through a proper sense of status and authority, he believed that his officers could instill the amount of discipline necessary for a proper army.

This same class situation also provided the incentive for crimes committed by an officer. Officers were predominantly from the higher classes and therefore able to afford relatively comfortable circumstances; however, long periods of time from home created financial hardships for some.²⁵ Foreign officers found themselves particularly hard-hit, as pay from Congress came slowly if at all, and much-needed money from home took months to arrive.²⁶ John Laurens, son of the President of Congress Henry Laurens and aide-de-camp to Washington, routinely received care packages from his father containing accoutrements and small necessities.²⁷ For many, the high expectations as a role model and an administrator were too strenuous, and slip-ups took the form of conduct unbecoming an officer or mismanagement of those under his command; for others, the financial rewards of embezzlement alleviated the personal expenses of a commission.²⁸

²⁴ Bodle, *Valley Forge Winter*, 29.

²⁵ Frequently, those whose absence from the family home created a financial hardship were forced to resign and return home to tend to their families and businesses. On more than one occasion General Washington pleaded with the Continental Congress to improve the pay and timeliness of pay delivery for officers, so as to prevent the necessity of the officers' resignations.

²⁶ Paul Lockhart, *The Drillmaster of Valley Forge: The Baron de Steuben and the Making of the American Army* (New York: HarperCollins Publishers, 2008), 198-199.

²⁷ Correspondence between John Laurens and his father indicates the request and reception of such small articles as shirts and accoutrements for his rank. In a letter dated 9th February 1778, Laurens wrote: "I have to thank you, my dear father, for two shirts, and a piece of scarlet cloth. I wrote to James for some hair powder and pomatum, but received only the latter with a comb... and I must beg the favour of you to write to some friend in South Carolina, to procure me these articles. A pair of gold epaulettes and a saddle cloth may be added, if not too expensive. If you should give me leave to execute my black project, my uniform will be a white field (faced with red), a color which is easiest kept clean, and will form a good contrast with the complexion of the soldier." The Army correspondence of Colonel John Laurens in the years 1777-8 microform : now first printed from original letters to his father, Henry Laurens, President of Congress. New York: 1867. Accessed at Bucknell University.

²⁸ Neagles, *Summer Soldiers*, 31; *Valley Forge Orderly Book*, 13.

An enlisted soldier was typically of the “lower sort”, usually without property, and often younger, ages ranging from 18-21.²⁹ The Army provided an opportunity to travel, expenses paid, and an adventure to the young, as well as a possible career. In addition, bounties and land grants provided incentives. Finally, for some, wealthy landowners paid them to go in their stead.³⁰

Survival motivated most crimes committed by an enlisted soldier. The lack of supplies and the seemingly endless hardships took their toll on the troops physically and morally. It is not difficult to consider as plausible the desire to provide for oneself where the Army cannot when these men came from self-reliant, resourceful backgrounds.³¹

“Such Depraved and Base Behavior”: Crime in the Army

As the motive for crime varied by rank, so too did the types of crimes committed. Among officers, whose need for property was not as great as that of the enlisted, crimes typically consisted of conflict with other officers, mismanagement of those under his command, embezzlement of troop funds and conduct unbecoming an officer.³² After the Paoli “Massacre” of September 20th, 1777, in which British Light Infantry led a bayonet attack under cover of nightfall, killing and wounding the troops under the command of General Anthony Wayne, Wayne stood trial on October 25th, 1777 to acquit himself of the charge of mismanagement of his troops.³³ Another officer, Lieutenant McGibbeney of the 4th Carolina Regiment stood trial for “Embezzeling [sic] or misaplying the Money which he was intrusted with for enlisting men

²⁹ Alfred Fabian Young, *Masquerade: The Life and Times of Deborah Sampson, Continental Soldier* (New York: Alfred A. Knopf, 2004), 105.

³⁰ Middlekauff, “Why Men Fought,” 145.

³¹ Neagles, *Summer Soldiers*, 2.

³² Neagles, *Summer Soldiers*, 29-31.

³³ General Wayne was acquitted, with honors. *Valley Forge Orderly Book*, 101.

Rank of Accused	Number of Accused
Enlisted Men	
Private	85
Corporal	1
Sergeant	5
Commissary	3
Wagonmaster	2
Total	96
Commissioned Officers	
Ensign	19
Adjutant	6
Lieutenant	60
Captain	38
Doctor	2
Major	7
Lieutenant Colonel	6
Brigadier General	2
Major General	1
Total	147

The tables show the breakdown of crime by rank and the most common types of crimes committed. Atkinson, Paul G., Jr. *The System of Military Discipline and Justice in the Continental Army: August 1777- June*

into the service,” as well as taking bribes to procure discharge papers for already enlisted men.³⁴ Captain Thomas Lucas of Colonel Varnum’s Regiment was found guilty of illegally discharging a soldier and receiving money for the act, and returning the soldier’s name to the muster roll after the discharge.³⁵ One character in particular seems to have committed every possible type of crime generally attributed to officers, and then some. On February 8th 1778 it was recorded in the General Orders that

At a General Court Martial whereof Colonel Proctor was President Held February 5th Lieutenant Guy of Colonel Lambs [sic] Regiment of Artillery, Tried for absenting himself from Camp with out Leave being guilty of theft and other behavior unbecoming the Character of a Gentleman and an Officer found guilty of unGentleman Unofficer like behavior in absenting himself from Camp without Leave Associating himself with a Private Soldier, Robbery [sic] and Infamously stealing ...³⁶

In contrast, the enlisted man’s motivation of survival necessitated an entirely different variety of crimes. The most common offense committed was desertion. This particular crime was often instigated by the conditions of the soldier’s family left behind. The loss of a husband, father, or brother to the army created financial hardships for the family who may or may not have been able to fend for themselves.³⁷ Those who lived on the frontier feared for their family’s safety, for attacks from Native Americans were common; those

³⁴ Lieutenant McGibbeney was also unanimously acquitted at his trial on January 19th, 1778. *Valley Forge Orderly Book*, 204.

³⁵ Captain Lucas was dismissed. Neagles, *Summer Soldiers*, 26.

³⁶ *Valley Forge Orderly Book*, 225-226.

³⁷ Bodle, *Valley Forge Winter*, 126.

in more settled areas still had legitimate concern for their family's wellbeing as the British Army and their unreliable allies, the Hessian mercenaries and Native American tribes, moved through the states during the conflict. Others simply left to Army to plant the new crop, and then returned under condition of amnesty.³⁸ Those who deserted had one of three typical intents: a simple desertion, in which the individual simply left; desertion with intent to reenlist with another company, in order to receive another bounty; and desertion to the enemy.³⁹ Other crimes included petty theft and insubordination. A court-martial found Private Stephen Rice of the 8th Virginia Regiment guilty of plundering the goods of the inhabitants of the surrounding countryside, "being a breach of the 15th Article 13th Section of the Articles of War."⁴⁰ At left is a table showing the distribution of crime by rank. In a ten-month period including the encampment at Valley Forge in the winter of 1777-1778, the courts-martial councils saw 284 individuals for a total of 424 charges. The greatest number of crimes was committed in the months of January through May, during which the troops suffered the greatest deprivation.⁴¹

"50 Lashes on the Back, Well Laid-On:" Punishment in the American Army

In reading accounts of crimes and punishments dealt with by the courts-martial council of the American Army during the American Revolution, the most striking observation is that the punishments appear inconsistent. A charge of simple desertion may result in 50 lashes, 100 lashes, 200 lashes, or death.⁴² One must not forget, however, the context of the situation. Historical perspective is often biased by contemporary conditions, or in this case, civilian status. As noted earlier by historian William Generous, there are serious implications in the act of

³⁸ Neagles, *Summer Soldiers*, 16.

³⁹ Neagles, *Summer Soldiers*, 33.

⁴⁰ Private Rice received 100 lashes on his back, "well laid on" for his conviction. *Valley Forge Orderly Book*, 213.

⁴¹ Atkinson, *The System of Military Discipline*, 16-18.

⁴² For examples of the variety of sentences passed for simple desertion, desertion with intent to reenlist, and desertion to the enemy, see *Valley Forge Orderly Book of General George Weedon*.

amalgamating civilian law and military justice. In his book *Swords and Scales: The Development of the Uniform Code of Military Justice*, he notes:

There are limits on the extent to which the essentially autocratic armed forces are able to adopt notions regarded as precious by a democratic society. And there are limits on the extent to which civilian society will accept whatever such adaptations the services attempt, however much in good faith the military may be acting. The tension between *discipline* -- regarded as indispensable in a military force -- and *justice* -- similar respected in the civilian community -- may help to determine where those boundaries lie.⁴³

The inconsistency in punishment in reality reflected the offender's circumstances, and within the context of the Army, a clearer picture of the military judicial system at that time begins to appear.⁴⁴

The orderly books of the brigades provide considerable, detailed evidence of the crimes and punishments heard by the courts-martial.⁴⁵ Each court-martial was required to meet the standards set forth by the Articles of War of 1776.⁴⁶ Through these courts-martial records we

⁴³ Generous, *Swords and Scales*, 4.

⁴⁴ According to Lawrence Friedman, English law was the basis for civil colonial law, altered to accommodate colonial circumstances. The social and physical environment, from Native American relations and the institution of slavery to the rural and frontier communities, presented new problems that a strict interpretation of English law could not address. Furthermore, the influence of ideology, particularly for the Puritan and Quaker communities, impacted the eventual shape of civil colonial law. This phenomenon of altering law to fit the circumstances is repeated by the American Army to address the unique circumstances of war and life on the march during the American Revolution. Neagles' *Summer Soldiers* provides an Index of the names of all those who stood at court-martial for various charges in the American Army during the American Revolution, according to the Orderly Books that survive. Perusal of these accounts-- the charges, ruling, and sentence if applicable-- facilitate a general pattern of response to specific charges and offenders based on the severity of the crime and rank of the offender. Lawrence Friedman, *Crime and Punishment in American History* (New York: BasicBooks, 1993), 22-23; Neagles, *Summer Soldiers*, 68-280.

⁴⁵ An orderly book contains the orders issued for the day, as well as a record of the activities of the day, particularly those of judicial concern. Each day's account included a parole and countersign for the pickets, the General's Orders which applied to the entire Army, an announcement of who would stand as Major General for the following day, as well as Orders for specific Divisions, Brigades and Companies. The field orders were supplemental commands and regulations made in addition to the Articles of War of 1776, intended to maintain efficiency and ensure health and safety of the officers and enlisted men. These orderly books provide details of the court-martial makeup, including the names of the offenders, the charges, and the penalties if any. *Valley Forge Orderly Book*; Neagles, *Summer Soldiers*, 6-7.

⁴⁶ A court-martial was required to have a certain number of council members present, who were selected by the Commander in Chief and listed in the General Orders of the Day. The Articles of War of 1776, modeled after the British Military Code, mandate legal limits on the length of confinement prior to trial. After the trial the court issued a finding that had to be approved by the commanding general, and the sentence was executed only by the

can begin to understand the nature of the hierarchical makeup of the Army and the measures taken to maintain order and discipline.

The rank of the offender, which reflected his social status outside of the Army, determined the nature of the punishment. Corporal punishment was reserved for the enlisted soldier, while officers typically received verbal reprimands and cashiering.⁴⁷ Punishment of offenses closely reflected and resembled the civilian colonial law. Loss of property through fines and reputation through verbal reprimands highlight the priorities of the upper sorts who had the luxury of property and reputation. For officers, the verbal reprimand held special sting, as the respect of the enlisted hinged greatly on the reputation of the officer. For the enlisted soldier, corporal punishment reflected the typical consequences found in civilian colonial law. Whipping, the pillory and stocks, and execution proved more effective than fines and verbal reprimands, as those of the lower sort, who constituted the majority of the colonial population, did not have property to lose or the means to pay fines. Thus bodily pain was used to inflict punishment. By mirroring the punishments usually dealt in civilian colonial court, the American Army maintained a level of consistency that the soldiers, new to the world of military life, could understand and accept. The original orders of regarding flogging mandated thirty-nine lashes with a cat-o'-nine tails, or flayed whip; after deeming it ineffective, the lash limit increased to fifty, then one hundred and two hundred as the war progressed.⁴⁸

general's order. These sentences were published in the Orderly Books, and their execution was also published in the orders of the day in which it occurred. *Neagles, Summer Soldiers*, 6-7.

⁴⁷ For examples of the different punishments for various crimes depending on the offender's rank, see *Valley Forge Orderly Book*.

⁴⁸ Unlike the British Military Code, which permitted up to 1,000 lashes, the original Articles of War for the American Army limited lashes to 39, the traditional civilian code. The 39 lashes "were not taken seriously as punishment," so in the 1776 version of the Articles of War the limit was raised to 100. Later in the war it was again raised to 200. The executor of the flogging was typically the drummer, a historical practice also borrowed from the British military precedence. *Neagles, Summer Soldiers*, 35-37; *Montross, Rag, Tag, & Bobtail*, 44.

The seeming inconsistency of punishment for crimes did not become more consistent throughout the course of the war as might be expected. This is in part due to the major reason that it was inconsistent at the start. The constantly changing situations in terms of supply, enlistment terms, and major victories or losses, greatly impacted the courts-martial's ability to mete out justice. Every punishment, excepting high-level cases, had to be approved by General Washington.⁴⁹ When the size of the army was perilously small due to the end of enlistment terms for large numbers of soldiers, deserters received relatively light punishments, so as not to deter others from reenlisting. Similarly, extremely harsh situations, such as the miserable winter encampments at Valley Forge and Morristown, resulted in large numbers of courts-martial for desertion and theft, but relatively mild sentences. Furthermore, in the case of desertion, the position of the soldier heavily influenced the sentence. An infantry man may receive 50 lashes, but a matross would receive death, as his skills were more valuable to the American Army and could be a possible asset to the enemy that the American Army could not afford to allow.⁵⁰

Finally, on more than one occasion General Washington issued a general pardon for those awaiting a death sentence. These usually coincided with a special event such as the French Alliance of 1778.⁵¹ Similarly, individual pardons were also granted, though only at the last moment. Staying the execution saved the Army another soldier, and the scene of near-execution made the point clear to the troops watching.⁵²

⁴⁹ Neagles, *Summer Soldiers*, 7.

⁵⁰ A matross was a soldier who was a member of the artillery crew, ranking below a gunner. The matross assisted the gunner in loading the cannon. He was also issued a firearm and assigned guard duty over the field pieces. Thomas Roch, a matross, was convicted of desertion and attempting to go to the enemy on October 26th, 1777. His execution was scheduled for the next day, but was immediately extended three days. He was eventually pardoned, on November 1st. *Valley Forge Orderly Book*, 106, 114.

⁵¹ *Valley Forge Orderly Book*, 309-310.

⁵² According to historian Neagles, "Washington used the death sentence primarily as an example to the others and philosophically believed that deterrence was the exclusive reason for any punishment." Pardon usually came at the last moment; frequently, a few were shot and the rest were pardoned. Neagles, *Summer Soldiers*, 37.

In contrast, the typical forms of punishment for officers were verbal reprimand, fines, and the most severe, cashiering, in which the officer was essentially discharged in a very publicly humiliating ceremony. These punishments were typically used for conduct unbecoming an officer, cowardice, and poor management of those under his command.

The orderly books are cluttered with cases of officers charged with conduct unbecoming an officer. In his General Orders of the Day, General Washington more than once lamented the frequent petty charges leveled against one another by officers and their lapses in judgment, and exhorted them to be better role models. On 22 August, 1777, General Washington stated in his General Orders of the Day:

The Commander in Chief regrets that he is so frequently oblig'd [sic] to censure Officers in General orders for neglect of Duty and other offences [sic], wishes earnestly that by an attentive and punctual discharge of their Duty they would save him from a task so painful and disagreeable, Officers should in their conduct set examples before the men of Diligence and a strict compliance to every order.⁵³

On another occasion, Washington encouraged his officers to consider themselves as a “band of Brothers, cemented by the Justice of the Common Cause,” not to be divided by petty disputes.⁵⁴

The second most common offense, cowardice, was a far more serious concern, and more frequently resulted in cashiering. In one instance, a court-martial sentenced Lieutenant Colonel John Markham of the 8th Virginia Regiment to be cashiered for leaving the regiment in time of action (at the Battle of Germantown, October 4th, 1777), and for delay in following orders.⁵⁵ Cashiering, a public, extremely humiliating process, entailed breaking the sword of the offending officer over his head, a slow procession out of the camp in full view of the troops assembled, “to the slow beat of the drum,” and notifying the news outlets in the offender’s hometown of his

⁵³ *Valley Forge Orderly Book*, 13.

⁵⁴ *Valley Forge Orderly Book*, 281.

⁵⁵ *Valley Forge Orderly Book*, 105.

crime, thereby destroying his reputation not only with the Army but with his peers. The threat of losing face among his comrades and hometown peers often provided enough incentive for officers to keep in line.⁵⁶

Occasionally the politics of Congress interfered with the order and discipline of the American Army; this was reflected in several of the cases of poor management or misuse of

power. Major General Benedict Arnold frequently instigated trouble with Congress; in 1780 he was court-martialed by request of Congress on four counts of misuse of power. He was sentenced to receive a reprimand from the Commander in Chief. Major General Charles Lee received a worse fate for his bungling at the Battle of Monmouth in June 1778 and disrespect to General Washington after the battle, sentenced to twelve-month suspension from the Army.⁵⁷

The enlisted, on the other hand, most often received flogging, discharge and death as punishment. For the six-month encampment at Valley Forge in the winter of 1777-1778, the courts-martial councils saw 284 individuals for 424 charges, and found the accused guilty in 258 of the cases, a conviction rate of 60.8%. The high number of convictions and sentences administered seems harsh at first. However, upon closer

Punishment	Number Issued Punishment
Lashes	66
Discharge	34
Cashiered	18
Reprimand	41
Imprisonment	15
Death	10
Fines	4
Reduced to Private	3
Clemency	3
Forfeit Pay	3
Apologize	1
Run the Gauntlet	4
Drummed out of Army	3
Tarred and Feathered	2
Sword Broken Over Head	1
Total	220 Punishments

Variety and Distribution of punishments administered during the Valley Forge encampment of 1777-1778. Atkinson, Paul G., Jr. *The System of Military Discipline and Justice in the Continental Army: August 1777- June 1778*. Valley Forge National Historical Park, May 1972.

⁵⁶ Neagles, *Summer Soldiers*, 31-32.

⁵⁷ Neagles, *Summer Soldiers*, 44-46, 48-49.

scrutiny, the majority of punishments applied to officers, to maintain order among the leadership; punishments for the enlisted served to deter others from slipping into the three fears that Washington had described to Congress. The table at left shows the variety and distribution of punishments administered in the sentence.⁵⁸

Desertion was a serious crime, and the most frequently committed. In the winter of 1779-1780 alone, 1,066 soldiers deserted.⁵⁹ Deriving what percentage of the total strength of the Army this figure represents is difficult; the size of the Army fluctuated as enlistments ended, new recruits arrived, and deserters returned. Nevertheless, whether of 6,000 or 15,000 total troops, the number of deserters was a grave problem, not only for the loss of manpower but also for the infectious nature of such a temptation for the remaining men. Punishing desertion was a delicate concern, influenced by the condition of the army and the seriousness of the offense; those deserting to the enemy were more likely to receive a severe sentence. For example, a soldier convicted of deserting from the guard and taking two prisoners with him was sentenced to death; later on that same winter, another soldier deserted from the Provost Guard and took a prisoner with him, receiving for his conviction one hundred lashes. Another court-martial found a private guilty of deserting his detachment, yet received only thirty nine lashes.⁶⁰ These punishments varied in consideration of the loss to the Army's strength, and the potential gain to the enemy's power.

Theft was a less serious offense, and one more frequently borne out of desperation than malicious will. Thus the punishment was usually flogging, the number of lashes dependent on

⁵⁸ Atkinson, *The System of Military Discipline*, 16-18.

⁵⁹ Dr. George J. Svejda. *Quartering, Disciplining and Supplying the Army at Morristown, 1779-1780*. (Division of History, Office of Archaeology & Historic Preservation, Feb. 23, 1970. United States Department of the Interior, National Park Service. Washington, D.C.), 108.

⁶⁰ On the same day that the soldier deserted the Provost Guard and took one prisoner with him, another soldier of the Artillery, Robert Gest, attempted to desert to the enemy; unlike the matross who received the death sentence, Gest, who was a drummer for the unit, received only fifty lashes "on Account of his Youth." *Valley Forge Orderly Book*, 184, 213-214, 311.

the severity of the crime. On January 26th, 1778 the Court Martial standing reviewed several cases of theft. Private William McIntire, found guilty of robbing a load of wheat from the supply wagons, was sentenced to thirty lashes. At the same time, a court-martial found William Dearlove guilty of stealing money from a fellow soldier. He received one hundred lashes.⁶¹

Finally, mutiny was a very serious crime, yet had to be treated delicately with the enlisted. In most cases, the causes of mutiny were understandable to those in command; the privations affected them all. Scarcity of food reduced some to boiling leather for broth; others were wrapped in rags for lack of proper clothing. Late pay prohibited soldiers from buying provisions they did not receive from the commissary general of the Army. This naturally tried the patience of men who had volunteered to risk their personal comfort at home to fight with the Army, and frustrating for those who had joined to better their previous circumstances. Mutiny could turn into mass desertion, so the most effective means of dealing with the mutineers after a quelled mutiny was to execute the ringleaders in a public setting, so as to set an example for the rest. In May 1780, the death sentence of eleven men convicted of desertion instigated two Connecticut regiments to threaten to desert; only a desperate speech by their commanding officer kept them from leaving. At the end, only 4 of the doomed men were executed. The most famous mutiny of the American Revolution occurred in January, 1781, by the Pennsylvania Line, commanded by General Anthony Wayne. 1,500 men left camp, shooting three officers and a soldier in the process, and marched from Morristown, New Jersey to Princeton, where they demanded supplies and adequate pay from the Continental Congress. After receiving their demands, the soldiers went back to their encampment. The only persons charged or prosecuted for wrongdoing were two British spies discovered by the mutineers, who were hanged. Months later, the same Pennsylvania Line refused to march to Virginia. General Wayne managed to

⁶¹ *Valley Forge Orderly Book*, 213.

avoid a repeat occasion by identifying six of the ringleaders, court-martialing them and sentencing them to death by firing squads picked from the units of those sentenced. Four were shot, two were pardoned, but Wayne ordered the entire line to march past the bodies of the dead.⁶² Their compliance after the episode speaks to the power of example that officers utilized to teach a lesson and use as deterrence.

These accounts provide the means by which we can begin to understand the nature of the power structure of the American Army during the American Revolution and the use of penal practices to ensure that the power structure remained intact. Despite their unique circumstances, the regulations set forth at this time not only established a system of discipline and military justice that colonial soldiers could understand and obey, but also a precedence upon which successive generations of military administrators in peacetime and wartime could structure their forces. The relative division of rank along class lines and the adoption of military discipline codified these class and rank differences into an accepted system of obedience, into which recruited military personnel now understands his or her place, a circumstance that did not exist at the outset of the American Revolution. The experiences of the American Army during the War for Independence as a case study shows both the influence and limit of civil colonial law, as well as the limited extent to which previous European statutes could be applied to the new nation.

⁶² Neagles, *Summer Soldiers*, 58-63.

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