The Regimental Courts Martial in the Eighteenth Century British Army

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In the eighteenth century, most military crimes were tried at the Regimental level. In theory, the military law of the day decreed that the General Courts Martial be reserved for major offenses: those that might result in capital sentences or lashings of great magnitude. Murder, rape, robbery, and other crimes deemed capital under eighteenth century civil law, were tried at the General Courts Martial, as were specific military crimes that seriously affected the ongoing life of the armed forces—mutiny, desertion, and the like. As one would expect, there were many more petty crimes than major offenses. Still, the General Courts Martial books show a surprisingly small number of cases, even in wartime, when the army grew precipitously to meet a military threat.

For most soldiers, crime and punishment was administered by the Regimental Courts, yet we know very little about them. There are no Regimental Courts Martial records to speak of and few surviving accounts of their procedures. What we do know suggests that they were very important to those military officers who were responsible for the order and discipline of the British army.

Until 1718, the rules and procedures governing Regimental Courts Martial were vague and uncertain. In that year, a modest attempt was made to codify RCM procedures. It was decreed that the RCM could inflict corporal punishment for such crimes as neglect of duty and disorderly conduct in quarters, among others, and that all such trials had to be conducted by five commissioned officers. Conviction was decided by a plurality of votes.[1] Significantly, the oath, used previously when officers were called upon to serve as judge and jury, was eliminated in Regimental Courts Martial cases. As a result, the Judge Advocate noted some years later, "since that time the Prisoner has not had the benefit of that great and I may say, only security to be fairly and impartially tried."[2] Apart from the

[1]Articles of War, 1718. W.O. 72/2.
[2]Hughes to Pelham, 31 Aug. 1729. W.O. 71/17.

two crimes mentioned, the jurisdiction of the Regimental Court was left undefined—deliberately, no doubt—and no mention was made of the maximum sentences it could inflict on a convicted soldier. It was very clear that the RCM was to operate in a relatively informal way, without much attention to traditional legal practice in General Courts Martial, much less to that of the civil law courts.

While the RCM may have offered some protection to soldiers at its inception, by the 1720s it was used for entirely different purposes. On March 3, 1723, Judge Advocate General Hughes wrote to the Secretary at War that the intention of the Crown with respect to Regimental Courts Martial was being violated by regimental officers. Hughes noted that

> Officers have tryed men for Desertion under pretence of neglect of duty, whereby they have evaded the bringing of Offenders to Tryal before a General Court Martial....[3]

Further, Hughes wrote, the Regimentals "have often inflicted such unmerciful corporal punishments which have made even Death more desirable." In order to stop this practice, Hughes requested that the Secretary at War "obtain His Majesty's direction that no Corporal punishment may exceed 100 lashes at Piquet, without His Majesty's particular order...."[4] Hughes observed that

> ...such severities as these are injurious to His Majesty's Service & likely to produce the Censure of Parliament. His Majesty hath not even for the highest offenses against himself that I know of, on the Sentence of General Courts Martial permitted any person to suffer such severe Punishment as has been inflicted by these Regimental Courts Martial.[5]

In spite of this strong protest, it is clear that the practice continued of charging soldiers with lesser crimes to retain jurisdiction for the Regimental Courts and then punishing them more severely than would have been the case under the more serious indictment. On October 31, 1729, Hughes wrote to Secretary at War Pelham:

> The day before, I went out of Town to Bath, where I have been for my health...looking out on the Parade I saw a soldier tied to a halberd, and a body of Guards in a Round, the Soldier was stript, and the Drums with switches whiped him 200 lashes, and as I am informed a few days after 200 more, and few days after 200 more, in all 600 executed by ten drums, I caused an Enquiry and was informed, it was ordered by the sentence of a Regimental Court Martial held in the Tower, on one Dun-

[3]Hughes to Secretary at War, 3 Mar. 1723. W.O. 71/15.
[4]Ibid.
[5]Ibid.

> can Sheriz a Corporall in Col. Guize's Company in the First Regiment of Foot Guards, for that he in a letter to Colonel Guize accused Sergeant Sinclair of defrauding the Col. of several men—which on examination he could not make out.[6]

Hughes compared this sentence with one of a General Court Martial held recently where a William Clarke had been convicted of "a high offense against his Royal Family." Clarke's sentence was reduced from 900 to 600 lashes by the King.[7] Further, these informal Courts Martial proceedings were being substituted for General Courts Martial and, as a result, from the regiments situated in England, "no more than Four proceedings of Courts Martial have been returned to this office, and of the Guards, only four soldiers have been tryed here in that time."[8]

Hughes recommended that the Regimental Courts Martial be brought in line with the General Courts Martial practice. Most important, Court Martial Board members should be sworn, as customary in all other English courts, and the minutes of these trials should be recorded so that a permanent record would be available for perusal later. This would help to insure that a prisoner would receive a fair and proper hearing. These changes, together "with some limitations to the exorbitant corporal punishments," Hughes deemed essential not only for humane and legal reasons, but also to avoid Parliamentary interference in the Crown's prerogatives in military affairs on the grounds of unjust and inhumane treatment of soldiers.[9]

It is not difficult to understand why the military favored the Regimental Courts Martial system of 1718. Under a thin veneer of legality, it gave the officers of the regiments freedom to punish soldiers without regard for law, procedure, or even equity. Given the choice between charging a soldier with desertion or neglect of duty, the officers found the latter indictment had many attractions. A desertion charge meant a General Court Martial, with thirteen—as opposed to five—officers brought together to conduct a formal hearing under oath. To some extent, traditional English legal procedures had to be respected, and in the end, the punishment might not be different from that of a Regimental Court's decision. Of even greater significance was the fact that all General

[6]Ibid.
[7]Ibid.
[8]Ibid.
[9]Ibid. "Some thoughts of Mr. Hughes the Judge Advocate General on the Martial Law humbly offer'd."

Courts Martial proceedings had to be written down and forwarded to the Judge Advocate General and the King for review and formal approval. Allowing an outsider—and a lawyer at that—to examine the Regimental Court's records opened the door to dismissal of charges because of procedural violations. Royal review—mandatory in civil cases—meant that a pardon or, at the very least, a reduction of the sentence awarded by the General Court was a distinct possibility. The Regimental Court Martial was the device by which the army punished men without having to worry about the prying eyes of outsiders intent on ensuring that "due process" was followed and that, in some rough fashion, the punishment fit the crime.

In the first half of the eighteenth century, a number of changes were made in the Articles of War to improve justice at the regimental level. In 1728, it was decreed that the Regimental Courts Martial be called "within the space of eight days at the farthest after confinement of any such offender...."[10] In a further attempt to insure a speedy trial and avoid long periods of confinement for men who might well be innocent, the 1735 Articles stated that Courts Martial could be held by three commissioned officers when it was not possible to assemble the usual five—a provision of mixed benefit to the prisoner, to say the least. The only protection offered to the prisoner from arbitrary and capricious punishment was a 1736 addition to the Articles that the sentence of Regimental Courts Martial could not be put into effect until approved by the commanding officer, who was specifically excluded from serving on the Court Martial Board.[11] This was as close to "outside review" as the Crown and the military allowed in the eighteenth century.

Since Regimental Courts Martial were not recorded, it is difficult to assess them properly as legal institutions. What information we do possess suggests there were many abuses. B.J. Rialton, writing in the late 1730s, said that military officers frequently tried deserters at the Regimental level, contrary to military law,

> ...afterwards giving them the choice, whether they will undergo severe punishment, and suffer the disgrace of being drumm'd out of the Regiment like Thieves, with Halters about their neck, or consent to be transported to some Regiment abroad.[12]

[10]Articles of War, 1728. W.O. 72/2.
[11]Ibid., 1736.
[12]B. J. Railton, *The Army's Regulator of the British Monitor* (London, 1738), p. 15.

References to Regimental Courts Martial in the General Courts Martial records show that punishments were often very severe. No doubt the number of lashes awarded in General Courts Martial was higher—sentences of 1000 and 1500 lashes were not uncommon—but at the same time, mitigation by the King was a good possibility. It is likely that a higher percentage of Regimental Courts Martial sentences were fully carried out, because there was no extra-military authority to review cases. While most sentences were probably less, Sergeant William Brittin was given 500 lashes by a regimental Court for being absent from quarters, selling his arms, and embezzling the pay of his men.[13] In 1777, Elijah Reeves received 500 lashes for visiting a whore house that had been declared "off limits."[14] John Ledger was sentenced to 400 lashes for striking his sergeant in 1770 (he could have been tried by a General Court Martial for this offense), and William Turner was given 400 lashes for applying for redress irregularly.[15]

Unlike the General Court Martial, which restricted its punishments, by and large, to death and the lash, the Regimental Court Martial offered a much more varied list of possible sentences. We are fortunate in having a list of twenty regimental trials entered in the General Court Martial Book for 1722. The following chart summarizes these cases.

While some of these sentences are relatively mild by army standards, the gauntlet and lashing by each of the guards were harsh punishments. One surviving account of the gauntlet, for example, that of Levi Hanford, suggests that it could lead to serious injury or even death.[17] The variance in degree of punishment to the seriousness of the crime is also very interesting.

[13]William Britton Court Martial, 24 April 1761. W.O. 71/97.

[14]Elijah Reeves Court Martial, 24 April 1777. W.O. 71/79.

[15]John Ledger Court Martial, 17 Aug. 1770, W.O. 71/77, and William Turner Court Martial, 16 Aug. 1765, W.O. 71/50.

[16]W.O. 71/15. Eighteenth century military punishments may be unfamiliar to modern readers. Piqueting was the practice of suspending a soldier by the arms over a sharp pointed stake. Sometimes it resulted in permanent lameness. The wooden horse was a device that resembled a carpenter's saw horse, with the crossbar suitably shaved to a sharp edge. The convicted soldier had to sit astride the horse for the prescribed period, often with weights tied to his legs to increase the pain. The piqueting punishments mentioned here may simply have involved tying a man to the stake and having him lashed.

[17]*A Narrative of the Life and Adventure of Levi Hanford, A Soldier of the Revolution* (New York, 1865). Hanford's description of the gauntlet may be found in *Journal of Army Historical Research*, Vol. LI, No. 168 (Dec. 1963): 220.

Table I

DATE	NAME	CRIME	PUNISHMENT
22 July	John Fisher	Drunk and insulting an officer	Run gauntlet
1 Aug.	William Draper	Insolence to officer	Ride wooden horse for one hour
1 Aug.	Samuel Bull	Absent with prisoner under his charge	Ride wooden horse with firelock
14 Aug.	Joseph Wood	Insolence to superior officer	Tied to piquet and lashed by each guard
14 Aug.	Joseph Ball	Insolence to Adjutant	Tied to piquet and lashed by guards
14 Aug.	Charles Wallor	Selling lace from his hat	Run gauntlet twice and drummed out of camp
14 Aug.	Andrew Linden	Drawing bayonet and stabbing man in face	Acquitted
14 Aug.	John Hubbard, Robert Anderson	Lying out of camp at night	Ride wooden horse half hour
14 Aug.	John Sims and five others	Lying out of camp at night	Sims to ride wooden horse
14 Aug.	Ralph Lugg, John Rattington	Absent when Lord Cardogan reviewed	Rattington to ride wooden horse
14 Aug.	Abr. McDaniel	Absent from tower guard	Tied neck and heels for one quarter hour
22 Aug.	Philip Williams	Defied orders and threatened officer	Gauntlet
22 Aug.	James Pile	Lying out of camp	Lead through guards with mounted halberds, one lash each, two successive days
5 Sep.	Edward Wool	Striking officer	Walk through guards, one lash each, two successive days

Table I (continued)

DATE	NAME	CRIME	PUNISHMENT
5 Sep.	Tho. Smith	Striking officer	Ask pardon of Adj. at head of Regt.
5 Sep.	John Crisp	Went out of camp	Wooden horse with firelock for one half hour
5 Sep.	Henry Warren, John Webb	Going off duty	Wooden horse, one half hour
13 Sep.	Anthony Hooper	Absent from camp	Tied to halberd and lashed by each guard
13 Sep.	William Barker	Neglect of duty	Lead through guard with halberds before him and lashed on each of two days
13 Sep.	Charles Brady	Abusing wife of another private	Lead through guards with halberds and lashed
26 Sep.	Peter Oldfield	Assaulting a lady	Lead through guards and lashed on two successive days

The normal channel of redress from the sentences of Regimental Courts Martial was an appeal to a General Court Martial, but the extent to which this channel was open was ambiguous throughout the eighteenth century. Even writers on military law were uncertain as to the precise rights of soldiers with respect to appeals to a GCM board. Simes believed that after the decision of a Regimental Court Martial, "either party may, if he thinks himself still aggrieved, appeal to a General Court Martial...," but he says nothing about the procedures and regulations governing such an appeal.[18] Alexander Tytler was more specific: "No military person is therefore of absolute right entitled to demand the assembling of a general Court-Martial," for all requests had to be submitted to the Commander-in-Chief, "who otherwise, can either grant or refuse it, as he shall think proper."[19] Francis Gross, writing in 1801, simply noted that "...the right of a soldier to appeal from the sentence of a regimental to a General court-martial is now pretty universally denied," but like Simes, he did not elaborate on the conditions under which such appeals might be allowed.[20]

The reasons for this uncertainty and lack of precision are not difficult to ascertain. While appeals were considered in theory necessary and proper to insure that some redress from capricious and arbitrary punishment be allowed, the spectre of endless and groundless appeals frightened both the military and the Judge Advocate General. Charles Gould, the Judge Advocate General for many years, summed up the official position of the military very well when he noted, in 1778:

> In what cases precisely an appeal from a Regimental to a General Court Martial is admissable or of right claimable is not quite a settled point, nor is it perhaps expedient, that the question should be agitated. If it should once be declared, that an appeal lyes in all cases indiscriminately, the Service might be impeded by the frequency of General Courts-Martial, or discipline would suffer much, as soldiers would be tempted to appeal of the Halberts merely for the sake of procrastinating the day of Punishment. On the other hand, if it should be laid down, that appeals would lye in such and such certain Cases, and in no other, mischief might accrue to the Soldiers who now desire some protection from the idea that the Proceedings of Regimental Court Martial may undergo a Review, and if improper, may subject the

[18]Thomas Simes, *The Military Medley* (London, 1778), p. 252.

[19]Alexander Tytler, *An Essay on Military Law and the Practice of Courts Martial* (London, 1880), pp. 338-9.

[20]Francis Gross, *Military Antiquities*, 2 vols. (London, 1801), p. 78.

> Members who compose them, to censure upon an appeal to a Superior Court. It seems therefore best that the matter should remain in suspense, and that each Case, as it arises, should rest upon its own particular circumstances.[21]

To avoid appeals from the Regimental Court Martial, as the statement above illustrates, the process was kept shrouded in mystery. Common soldiers were not told the grounds for appeal, nor is it likely that they were given any information on procedure. If a soldier did appeal his case—a rare occurrence—the military, very often with the cooperation of the Judge Advocate General, worked to quash it before the General Court Martial was convened. In 1762, for example, William Chadbourn appealed from a Regimental decision, and Charles Gould suggested a "mitigation of the punishment generally as an Act of His Majesty's clemency to avoid any discussion of that subject [GCM appeals]."[22] Arguing along similar lines in 1799, Judge Advocate Morgan stated:

> I am persuaded if Sentences were of that severity by Regimental or Brigade Courts Martial should become frequent, it will give occasion to the introduction of a positive provision into the Mutiny Act that soldiers shall have a right of appeal in all cases to a General Court Martial, and the impediment and inconvenience of which to the Service is most obvious.[23]

Unlike Gould, however, Morgan did try to define the conditions under which an appeal might be entertained by the Commander-in-Chief. He suggested in 1795 that appeals should be allowed when "a doubt arises whether the offense be not beyond the jurisdiction of the Regimental Court," and "in cases where it becomes a question whether a soldier has been accounted with for his pay."[24]

In general, however, rulings by the Judge Advocate General were of less importance than the methods used by the military to discourage soldiers from appealing. It was likely that the common soldier would proceed in a way that would be judged irregular by the military authorities, and General Courts Martial had the power to punish soldiers for frivolous and unjustifiable appeals. A few cases will demonstrate the dangers of appealing sentences in the eighteenth century.

William Turner, a private in the 71st Regiment, went on furlough from his unit in 1765 and, while on leave, developed a leg

[21]Gould to Lord Rivers, 26 Aug. 1778. W.O. 81/13.
[22]Gould to Townsent, 27 Sep. 1762. W.O. 81/10.
[23]Morgan to Maj. Gen. Gordon, 29 April 1799. W.O. 81/24.
[24]Morgan to Gen. Johnston, 3 Aug. 1795. W.O. 81/20.

injury, As was legal and proper under these circumstances, he went to a Justice of the Peace and received an extension of his furlough, after which time he returned to his unit. Soon afterward, he was informed that he would not be paid for the time he overstayed his furlough. His Captain informed him that "he would not give him a farthing" of this sum, and Turner, in response, got someone to write for him a complaint to the Secretary at War. Needless to say, his captain, Northey, was furious and threatened to have Turner tried before a General Court Martial, adding that "before a Soldier should get the better of him, he would send his Commission to Hell." Turner was brought up before a Regimental Court Martial, where he was "told of no Crime nor what he had been confined for...." According to Captain Northey, Turner was tried and convicted and sentenced to 400 lashes. Northey testified at the General Court Martial trial,

> that on the Prisoner being brought to receive his Punishment he had appealed to a General Court Martial, on which he went along with Lieutenant Gahan, and asked the prisoner if he did appeal, representing to him the consequences of such appeal, and telling him he had better receive his punishment. To this the Prisoner replied, he was resolved to abide by his Appeal, let the consequences be what they would....[25]

Under normal circumstances, Turner's appeal would have been rejected, but since he had written to the Secretary at War, it was difficult to simply brush the matter under the proverbial rug, and his appeal was granted. At his trial Turner testified to the pressures "brought on him for appealing his case and for insubordination in general."

> During his confinement for these nineteen weeks he was never told what his Crime was, that he was ordered to a very narrow space of confinement and that for the space of Eight weeks he was shut up in a Black Hole at Bristol, with orders for no Person to have access to him, that this was by order of Captain Northey without Consent of the Colonel....[26]

The Court ruled that Turner should receive his fifteen days' pay, a recognition that Northey had been in error in stopping his pay, but found Turner guilty of "applying irregularly for redress in his Case, of Maliciously endeavoring to hurt Captain Northey's Character, of Insolence to the Officers, who composed the Board of Enquiry...," and sentenced him to 500 lashes. The sentence was remitted by the King and Turner was drummed out of the Regiment. The army had

[25]Turner Court Martial, 16 Aug. 1765. W.O. 71/50.
[26]Ibid.

little taste for "troublemakers." Most significantly, though, by insisting on a General Court Martial and publicizing his case by writing to the Secretary at War, Turner was able to escape the sentence of the Regimental Court and receive the King's pardon from his General Court Martial sentence. This, of course, was precisely what the military wanted to avoid.

In other cases, soldiers were not as fortunate as Turner. Alexander Duncan was tried before a General Court Martial for "refusing to submit to the sentence of a Regimental Court Martial, and for behaving in an insolent and mutinous manner." Duncan received an additional 100 lashes for his appeal, and this was upheld by the King.[27] In 1777, Elijah Reevers was "accused of insolence at the head of [his] regiment and charging the Regimental Court Martial that sat on his tryal of doing him an injustice." On the day of his punishment—500 lashes—Reeves complained that he had been unjustly treated and would seek satisfaction from the General Court. When he was tried before a GCM, he was sentenced to another 500 lashes for insolence on regimental parade and because his "manner of applying for a General Court Martial was criminal."[28] A letter from Judge Advocate General Gould on the James Wilkinson case is revealing:

> I am now commanded to make known to you His Majesty's pleasure, that when six hundred lashes shall have been inflicted, *being one hundres lashes more than were awarded by the Regimental Court Martial*, it be announced to the Prisoner that in consideration of the long confinement which he sustained although occasioned by his groundless appeal, His Majesty has most graciously remitted the remainder of the corporal punishment. [Italics mine][29]

In a 1772 case, five men were tried before a Regimental Court for complaining to their commanding officer that they had not been granted a discharge after serving the three years of their original enlistment term. The men had been drafted into another regiment, and the colonel took the position that their willingness to go abroad with another unit cancelled the original contract. The sentences of the RCM were confirmed by the General Court, which also added a sentence that they "be reprimanded" at the head of the regiment for making a groundless appeal.[30]

[27]Duncan Court Martial, 24 April 1761. W.O. 71/47.
[28]Reeves Court Martial, 23 Sep. 1777. W.O. 71/79.
[29]Gould to Elliott, 28 June 1788. W.O. 71/63.
[30]James Rice *et.al.* Court Martial, 2 July 1772, W.O. 71/52. This decision was overturned by the King and the men were discharged.

From 1729 to 1752, there was a spate of appeals from RCMs to GCMs in Halifax, Novia Scotia. The military authorities, for whatever reason, seem to have sanctioned appeals to an extent that was unusual in the eighteenth century. As a result, we have fifteen cases, including one from North Britain, in this period, which give us some indication of punishments at mid-century at the RCM level and of the consequences of appeal.

If we use "lash average" as a measure, the original sentences were 238 lashes per man. The lash average for those soldiers who appealed to the GCM level was 450. In other words, soldiers who appealed from the Regimental to the General Courts Martial level received an *additional* 212 lashes each for "vexatious and groundless" appeals.[32] In twelve out of fifteen cases, or eighty percent, the sentence was increased, and in only one case was the appeal even partially successful. On February 15, 1750, Sergeant Samuel Burgoyne appealed to a General Court Martial after having been convicted on the regimental level of absence without leave and "drawing a hanger on John Day in his house." The second charge was dismissed by the GCM and, as a result, his 100 lash sentence was withdrawn and his only punishment was reduction in rank. This limited success seems to have made Burgoyne overconfident, for in December he again appealed an RCM sentence, but this time, was sentenced by the GCM to an additional 200 lashes on the usual grounds of vexatious and groundless appeal.

This is not to say that in some cases an appeal did not result in a reduction of sentence or even the overturning of a Regimental Court decision. The Turner case shows that this was always a possibility. Another example is the John Ledger case of 1770. Ledger had been severely beaten by his drill sergeant, and when his commanding officer refused redress, he appealed to the Lieutenant Governor of Gibraltar. For this "irregular appeal," Ledger was tried before a Regimental Court Martial and sentenced to receive four hundred lashes. He again appealed, and his commanding officer granted him a General Court Martial. At his trial, Ledger said that "...the reason of his making complaint was that he thought no Serft. had a right to strike a soldier under arms on any account whatsoever." Ledger was found guilty of making an "unjust com-

[31]W.O. 71/40.

[32]The range of punishments at the Regimental level seems to have narrowed considerably by mid-century. Early eighteenth century devices, such as the wooden horse and the piquet, have been largely replaced by the lash by that time.

Table II

DATE	NAME	CRIME	SENTENCE	APPEAL RESULT	BASIS OF GCM ACTION
17 Aug 1749	Richard Jarrett	Absent from work and Insolence	300 lashes	300 more lashes	Vexatious and groundless appeal
19 Dec. 1750	John Bird	AWOL two days and laying out of barracks at night	100 lashes	300 more lashes	"
15 Feb. 1750	Sgt. Samuel Burgoyne	AWOL and drawing hanger on John Day in his house	100 lashes and reduced in rank	Not guilty of second charge	Not a ground-less appeal
16 July 1750	James Ferguson	Neglect of Duty	100 lashes	200 more lashes	Vexatious and groundless appeal
16 July 1750	George Weston	Abusing Sgts. and threat-ening to kill one of them	400 lashes	100 more lashes	"
12 Dec. 1750	Samuel Burgoyne	Refusing Duty and abusing Cpl.	Ride wood horse	200 lashes	"
5 Jan. 1751	John Wilson	Stealing a shirt	400 lashes	200 more lashes	"
3 June 1751	John Crow	Disobedience to orders	300 lashes	200 more lashes	"
3 Aug. 1751	Joseph Birch	for Suttling	Reduced to Matross	No penalty	"
5 Oct. 1751	David Hasty	Drunk and Abused Sgt. Major	200 lashes	200 more lashes	

5 Oct. 1751	Samuel Hosler	Drunk and Abused Sgt. Major	200 lashes	200 more lashes	
5 Oct. 1751	Robert Walker	Drunk, Drawing Bayonet, Disturbance	200 lashes	100 more lashes	"
26 Nov. 1751	George Perfect	Refusing duty	200 lashes	Sentence confirmed (later pardoned for good behavior)	"
16 May 1752	Thomas Morrison	Rum Smuggling	100 lashes	200 more lashes	"
10 Oct. 1752	John Robertson	AWOL	600 lashes	400 more lashes	"

plaint," but unlike similar cases, the RCM sentence was reduced from four hundred to three hundred lashes, no doubt because there was some sympathy for the beating he had received from the drill sergeant.[33]

Reform of the Regimental Courts Martial came slowly in the nineteenth century, and the reasons are revealed in the 1805 Parliamentary debate which centered on requiring oaths from Regimental boards and witnesses. The defenders of this modest reform argued that oaths would add "gravity and dignity" to trials, and that elementary legal protection would lead the common soldiers to "a more cheerful compliance with their decisions."[34] Those who opposed the bill expressed fear that, somehow, the introduction of legal paraphernalia of this sort would hurt the efficiency and inpugn the honor of the Officer Corps. Colonel Franklin said that oaths were

> ...likely to breed great dissentions and promote disputes and unhappiness amongst the men, who would be thus encouraged to threaten their comrades with indictments for perjury if they gave evidence unfavorable to the accused.[35]

Sir John Wrottes argued that "pettyfogging attorneys" would always be lying in wait to interfere with military justice, even to the extent of filing "prosecutions for perjury."[36] It was important that the military be free of civilian interference and civilian legal methods threatening to military discipline. One of the bills defenders in the House of Lords, Hawkesbury, expressed the same suspicion of civilians when he told the House that oaths were necessary to "check and control...improper evidence on the part of persons not military."[37] The Duke of Cumberland objected to the bill as "more likely to tend to an increased severity." Without oaths, he felt, Regimental Court members were inclined to "a more lenient mode of proceedings," and formality—in ways not made clear—would bring tougher RCM decisions in its wake.[38] Cumberland seems to be suggesting that benign and paternalistic officers, operating solely from motives of honor, made legal protections for the common soldier unnecessary. The dangers of uncontrolled Regimental

[33]Ledger Court Martial, 17 Aug. 1772. W.O. 71/77.

[34]*Parliamentary Debates*, 1st Series, Vol. 3, 1805, col.859. See also P.S. Scott, *The Military Law of England* (London, 1801), p. 61.

[35]*Parliamentary Debates*, 1st Series, Vol. 3, 1805, col. 860.

[36]Ibid.

[37]Ibid., Vol. 4, 1805, col. 27.

[38]Ibid.

Courts Martial, however, were set down by Lord de Blaquiers, when he echoed Judge Advocate General Hughes' earlier complaints. It is essential, he said,

> ...to confine the jurisdiction of Regimental Courts-Martial to trifling offences, instead of trying, as they do now, offences of mutiny, desertion &c. under names that did not belong to them. He wished to have limited also the question of the punishment they should be entitled to inflict, for he had seen a man sentenced by a Regimental Court-Martial to receive one thousand strokes for an offence, which on board a ship would not have been punished with more than a dozen lashes.[39]

The bill was passed in Parliament by a twenty-two to thirteen margin.[40]

By mid-century, limits had been placed on the sentences that could be awarded by Regimental Courts Martial and, gradually, appeals procedures were codified and humanized. In 1830, a soldier making an appeal could still be punished for making a "vexatious and groundless" appeal, but he had to be *convicted* of this charge in addition to the original offence. Punishment for appealing could no longer simply tacked on to his sentence by the General Court Martial board. In 1841, the Judge Advocate General ruled that such charges had to be tried as a "separate and substantive offence."[41]

The eighteenth century soldier did not have these basic protections, and as a result, he was victimized by a cruel and capricious court system that could hand out sentences of appalling magnitude. In the navy, by way of contrast, there was no equivalent to the Regimental Courts Martial system. Mariners were either formally tried by a General Court Martial, or were informally punished out of hand without a trial. There was a maximum of twelve lashes per offense for this kind of summary punishment, but the limit was often ignored. On the surface, this appears more reprehensible than army justice, because "petty crimes tried by the army in its lesser courts were, in the navy, handled by the Ship's Captain. In actual fact, however, the mariner was probably better off without a Regimental Court system. If there had been no Regimental Courts Martial, the army would have been compelled to try soldiers for petty crimes at the General level, where they would have received some legal protection and reivew. What is more likely, petty crimes would have been handled informally, as in the navy, and it is unlikely that

[39]Ibid., Vol. 3, 1805, col. 860.
[40]Ibid., Vol. 4, 1805, col. 27.
[41]Thomas Simmons, *Remarks on the Constitution and Practice of Courts Martial* (London, 1852), pp. 73-76.

public opinion in England would have tolerated sentences of hundreds of lashes without *any* legal process at all. Indeed, it is quite probably that restrictions on lash sentences would have been introduced much earlier. The Regimental Courts were a convenient "legal" device for punishing soldiers without being overly concerned with the niceties of English civil, or even military, law. It provided a blanket under which soldiers could be severely punished in what *seemed* like a court system, but was in reality only a dubious variation on the arbitrary "justice" of the Ship's Captain. As such, it hampered the growth of minimum standards of justice in the army for many years.