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Separating the Soldier from the Citizen: Ideology and Criticism of Corporal Punishment in the British Armies, 1790-1815

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E. E. Steiner

**Separating the soldier from the
citizen:
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Corporal punishment in the armies was, as J. R. Dinwiddy has recently shown,¹ a significant political issue in early-nineteenth-century Britain. From Southey to Burdett, the politically active were provoked by this issue to exercise their pens and voices. While taking note of the variety of ideologies involved in the early-nineteenth-century anti-flogging movement, Dinwiddy has argued that it received its most vital impulse from 'liberal-minded Whigs' actuated by 'simple feelings of compassion and repugnance and concern for human dignity'.² In this account of the reform agitation, 'radical political analysis' is said to have played 'a relatively small part'.³ 'Men in official and ministerial positions' are seen as even less important, appearing in no more than a cameo role. For Dinwiddy, the 'Tory' interpretation of social reform is clearly inapplicable to the campaign against the lash.⁴

Whatever the merits of Dinwiddy's argument for British anti-flogging activity after 1815, it is the contention of this essay that humanitarian, 'liberal-minded Whigs' were overshadowed as critics of military corporal punishment in the years 1790 to 1815 by political radicals who employed in argument a complex ideological amalgam of Neo-Harringtonian and common law themes. It is further suggested that Dinwiddy's 'liberal-minded Whigs' were equalled in anti-flogging activity by an influential Secretary of War, William Windham of the Ministry of All Talents, and by a number of commissioned army officers primarily concerned with

* I would like to thank Doug Hay, David Spring, J. R. Dinwiddy and Phil Morgan for comments on earlier drafts. The aid of R. A. Mason and Alison Smith was indispensable.

¹ J. R. Dinwiddy, 'The early nineteenth-

century campaign against flogging in the army', *English Historical Review*, xcvi, 383 (April 1982), 308–31.

² *Ibid.*, 308, 330.

³ *Ibid.*, 325.

⁴ *Ibid.*, 308, 326–7.

practical problems of recruitment and discipline. Few Whigs, 'liberal-minded' or otherwise, exerted themselves strenuously against severe military beatings before 1815. The silence of the abolitionist Evangelicals, who often were aligned with the Whigs in Parliament, was particularly conspicuous. Brougham, himself a Whig anti-flogging advocate, twitted Wilberforce for his reticence in 1811, recalling that the Evangelical member for Yorkshire 'had recently expressed himself strongly in abhorrence of the flogging of negroes... Why not, when it came nearer home, and among a gallant and manly race of beings' like British soldiers?⁵

I

Concepts from three distinct intellectual traditions organized criticism of military corporal punishment c. 1790. The first of these traditions was the Neo-Harringtonian or 'Country' ideological tradition which Pocock and others have shown to have animated political discourse throughout the English-speaking world in the eighteenth century.⁶ Among its chief tenets was the proposition that a 'standing army' of paid (or mercenary) soldiers operating under executive-branch authority 'was politically dangerous, economically costly, socially menacing and morally hazardous'.⁷ To avoid these perils, free nations depended for defence upon militias of citizen-soldiers, controlled and commanded by local landowners.

A 'standing army' was, however, but one of the means an expanding executive might devise to undermine the liberty and property of the citizenry. Increases in war-related 'commerce' and the concomitant rise of financial institutions like the Bank of England tended invariably to 'corrupt' the body politic. The executive, or 'Court', might further 'corrupt' political life by exercising its patronage powers – it could offer places and pensions to MPs in return for politically compliant behaviour. With this possibility in mind, English advocates of citizen-soldiery typically extolled the virtues of frequent elections and other political devices by which Parliament might be preserved or reclaimed from 'corruption'.⁸

⁵ *Parliamentary Debates (PD)*, ser. 1, xx (13 June 1811), 708.

⁶ J. G. A. Pocock, *Politics, Language and Time: Essays on Political Thought and History* (New York, 1973), 104–47; J. G. A. Pocock, *The Machiavellian Moment* (Princeton, 1975). Pocock's description of the 'Country' political vision is quite useful. For the 'Country' ideologue: 'Society is made up of court and country; government, of court and Parliament; Parliament, of court and country members. The court is the administration. The country consists of the men of independent property; all others are servants. The business of Parliament is to preserve the independence of property, on which is founded all human liberty and all human excellence... But the executive possesses means of distracting Parliament from its proper function; it seduces members by the offer of places and pensions, by retaining them to follow ministers and

ministers' rivals, by persuading them to support measures – standing armies, national debts, excise schemes – whereby the activities of administration grow beyond Parliament's control. These means of subversion are known collectively as corruption, and if ever Parliament or those who elect them – for corruption may occur at this point too – should be wholly corrupt, then there will be an end of independence and liberty... The standing army appears in this context as an instrument of corruption rather than of dictatorship' (*Politics, Language and Time*, 124–5).

⁷ L. G. Schworer, 'No Standing Armies!': *The Antiarmy Ideology in Seventeenth-Century England* (Baltimore, 1974), 3.

⁸ Pocock, *Politics, Language and Time*, 104–47; A. O. Hirschman, *The Passions and the Interests: Political Arguments for Capitalism Before Its Triumph* (Princeton, 1977).

When the Neo-Harringtonians first assailed the 'standing army' in the 1690s, they were not much concerned with flogging. Trenchard and Moyle ignored the topic in their classic tract, *An Argument Shewing that a Standing Army is Inconsistent with a Free Government* (1697), concentrating instead on the immediate danger to liberty posed by William III's mercenary troops and on the virtues of an imagined past, when there 'was no difference between the Citizen, the Soldier and the Husbandman'.⁹ Andrew Fletcher of Saltoun, the Scots republican, even urged that punishments for indiscipline be 'much more rigorous' in his ideal militia than those used by the law of the land to punish similar infractions.¹⁰

Indifference to flogging ended among 'Country' ideologues by the mid-eighteenth century. The 'standing army' had by that time become a permanent fixture in British life. Among its more noticeable features was the institution of sanguinary corporal punishment: the average number of lashes inflicted on the disobedient under general court-martial sentences had risen to over 600.¹¹

The anonymous author of *A Plan for Establishing and Disciplining a National Militia* (1745) signalled the shift in emphasis when he criticized severe corporal punishments as an appurtenance peculiar and appropriate to the tyranny of a 'standing army'. 'Free-born Britons', he suggested, justly detested flogging, knowing that subjection to 'the lashes of martial law' transformed men into 'real slaves'. Accordingly, the militia that the author had designed to replace the 'standing army' was to be disciplined by a complex scheme of rewards and monetary penalties, not by periodic beatings.¹²

Others worked variations on this new 'Country' theme. Lord Egmont, in one of several debates in Parliament on the extension of martial law to forces in the colonies and in India, complained of the 'many cruel whippings' soldiers in the 'standing army' endured. The anonymous author of a pro-militia tract published in 1751 lamented the tendency of British courts martial to circumvent an accused's common-law procedural protections and then to impose brutal sentences of 'one, two or three thousand Lashes'.¹³

In this way Neo-Harringtonian criticism of flogging was interwoven with arguments taken from a second intellectual tradition – the English common law. By

⁹ J. Trenchard and W. Moyle, *An Argument Shewing that a Standing Army is Inconsistent with a Free Government* (Exeter, 1971), 7. The failure of 'Country' ideologists in the 1690s to concern themselves with flogging in their anti-standing army works does not reflect the absence of that mode of punishment. Cf. F. Grose, *Military Antiquities* (1801), II, 106 with J. Shadd, 'Advice to a soldier in two letters' (c. 1680), *Harleian Miscellany* (1808), I, 481.

¹⁰ A. Fletcher, *Selected Political Writings and Speeches* (Edinburgh, 1979), 21–2.

¹¹ See the 3 articles by A. N. Gilbert, 'British military justice during the American Revolution', *The Eighteenth Century*, xx (1979), 24–43; 'The regimental courts-martial in the eighteenth-century British army',

Albion, VIII (1976), 50–66; 'Military and civilian justice in eighteenth-century England: an assessment', *Journal of British Studies*, xvii (1978), 41–65.

¹² Col. Martin [?], *A Plan for Establishing and Disciplining a National Militia in Great Britain, Ireland and in All the British Dominions in America* (1745), xvi, 46–7.

¹³ *Cobbett's Parliamentary History*, xv (8 February 1754) 250–4; Anon., *A Seasonable Letter to the Author of 'Seasonable and Affecting Considerations on the Mutiny Bill, Articles of War, and Use and Abuse of a Standing Army'* (1751), 11. For an interesting response to 'Country'/common-law attacks on military law, see Anon., *The Ancient and Present State of Military Law in Great Britain Considered* (1740).

1750 common law antipathy to martial law had had a long and illustrious history. Coke and the other framers of the 1628 Petition of Right demanded revocation and annulment of commissions Charles I granted to his political supporters in the counties, which empowered them to try accused miscreants 'by such summary course and order as is agreeable to martial law'.¹⁴ Martial law offended the common law mind in two ways: it removed the accused from Magna Carta's procedural protections and also owed its existence and shape solely to the royal prerogative. Thus, Lord Chief Justice Hale could declare that martial law was in reality not law, but an inferior system tolerated only in wartime, when the common law courts were closed.¹⁵

The legal system regulating military life continued to be suspect in the eyes of common lawyers even after it had been put on a statutory basis in the annual Mutiny Acts. Blackstone, to take a famous example, did not distinguish eighteenth-century statutory military law from earlier, prerogative-spawned martial law, condemning both as 'built upon no settled principles' and as 'entirely arbitrary' in their decisions.¹⁶ The broad discretionary powers enjoyed by court-martial panels reduced persons subject to their jurisdiction to a kind of servitude. A court-martial panel's 'unlimited power to create crimes, and to annex to them any punishments' that seemed warranted short of death, a power afforded it by Parliament's permissive legislation, especially disturbed the author of the *Commentaries*.¹⁷

Given the antipathetic weight of common law authority, the late-eighteenth-century attempts of Stephen Adye, Deputy Judge Advocate for British North America, Alexander Tytler (later Lord Woodhouselee) and others to disarm common law critics by assimilating statutory military law and its institutions to the common law should have failed. Surprisingly, they did not fail.¹⁸

The measure of Adye and Tytler's success can be seen in the leading court case of *Grant v. Gould*.¹⁹ In 1792, Samuel Grant brought an action in the Court of Common Pleas to obtain a writ of prohibition: he hoped with that writ to prevent execution of a 1,000-lash sentence passed against him by a court martial at Chatham. Formerly a Westminster victualler, Grant entered late in 1790 into a partnership to recruit (or 'crimp') men for East India Company military service and also for the 74th and 76th regular army regiments of foot. As consideration

¹⁴ 3 Car. I. c. 1, Sections 7, 10; F. H. Relf, *The Petition of Right* (Minneapolis, 1917).

¹⁵ Sir M. Hale, *History of the Common Law* (1673), reprinted as an appendix in W. S. Holdsworth, *History of English Law* (1924), v, 499–513.

¹⁶ Sir W. Blackstone, *Commentaries*, 1, ch. 13.

¹⁷ *Ibid.*

¹⁸ S. P. Adye, *A Treatise on Courts Martial* (1785); A. F. Tytler, *An Essay on Military Law and the Practice of Courts Martial* (1800). The most important moves in the assimilatory game were (1) likening the court-martial panel

of officer-jurors to the common-law jury and (2) likening the military court of enquiry to the common law grand jury proceedings. Tytler's work was later adopted for American use; A. Macomb, *A Treatise on Martial Law and Courts-Martial as Practised in the United States of America* (Charleston, 1809). For the experience of the young American republic with flogging in the army, see the materials cited in fn. 85.

¹⁹ The case is reported at H. Blackstone, *Reports of Cases Argued and Determined in the Courts of Common Pleas and Exchequer Chamber* (Dublin, 1796), II, 69–108.

for his efforts on behalf of the foot regiments, he received from regimental paymasters 'a salary equal to *the pay and cloathing of a serjeant*'.²⁰ Grant's legal problems began when he (inadvertently or otherwise) recruited two Coldstream Guard drummers for East India Company service. Soon thereafter, a court martial convened at the request of a Coldstream Guard officer found Grant guilty as charged of encouraging the drummers' desertion, a deed which constituted an express violation of the Mutiny Act.

Grant's counsel in Common Pleas, Serjeant-at-law Marshall, tried to win the writ of prohibition by playing on traditional common law antipathy to martial and military law: he recited in turn the arguments of Coke, Hale and Blackstone. Combining 'Country' and common law themes for a moment, Marshall stressed the 'great jealousy of *standing armies*, and particularly of *martial law*' Englishmen had 'always' entertained.²¹

All this was to no avail: Lord Loughborough brushed Marshall's arguments aside when he delivered the court's opinion. In the court's view, Grant was clearly within the Jurisdiction of the Chatham court martial because he had freely accepted serjeant's pay from the regular army regiments of foot. The fact that he had never formally enlisted was irrelevant. Loughborough's opinion then echoed Adye's work – which had been cited before the court – when Serjeant Marshall's anti-martial law contentions were addressed. Unlike Blackstone, Loughborough was able to distinguish the arbitrary, prerogative-based martial law known to and detested by Coke and Hale from the allegedly more benign statutory military law of the 1790s.²² As established by the annual Mutiny Acts, statutory military law was, in Loughborough's mind, part of the law of the land. Therefore, an appeal to common law courts was not to be permitted if the sentencing court martial acted within its statutory jurisdiction, which the court believed it had in Grant's case. And in the absence of egregious procedural defects in court-martial proceedings, no writ of prohibition to prevent the execution of a flogging sentence would ensue.²³

Grant v. Gould was a most influential case in the legal profession. Crown law officers in particular relied upon it, regarding it as a controlling precedent in related legal contexts.²⁴ However, the common law critique continued to find supporters among non-lawyers, as will be seen below. And lawyers, upset by the brutality of military flogging, could and did turn to an alternative legal critique. This critique

²⁰ *Ibid.*, 74.

²¹ *Ibid.*, 85.

²² *Ibid.*, 87, 98–9. To distinguish martial and military law in this way became commonplace. See Major V. Kennedy, *Practical Remarks on the Proceedings of General Courts Martial* (1825), IV: Blackstone 'did not sufficiently discriminate between the Law Martial, as it existed previous to the passing of the Mutiny Act, and the Military Law, which has been subsequently established upon that act'.

²³ Grant contended that the court martial's

exclusion of evidence favourable to his cause, including evidence about Grant's character, constituted reversible error. Loughborough agreed that the exclusion was erroneous, but asserted that it was not so serious as to amount in law to prejudicial error.

²⁴ R. G. Buckley, *Slaves in Red Coats: The British West India Regiments, 1795–1815* (New Haven, 1979): *Grant v. Gould* held to control the Crown law officers' decision to apply regular army discipline to black slave-soldiers instead of the colonial slave codes.

was grounded in the third intellectual tradition, Beccarianism – the systematic attack on uncertainty and severity in criminal punishments. While British Beccarians were understandably preoccupied with reducing the number of common-law capital offences, a preoccupation which oft times led them to urge infliction of substantial corporal punishments as a substitute for the gibbet,²⁵ some Beccarians were impelled by the logic of proportioning punishments to crimes to comment adversely on severe military corporal punishments. Adye, the successful assimilator of military and common law, attacked flogging's severity in an explicitly Beccarian 'Essay on Military Punishments and Rewards'. He wrote that 'corporal punishments... should be sparingly made use of', as it was not 'the number of lashes, but the shame that must attend it, that constitutes the punishment'.²⁶ Adye contended that too many lashes were in fact counterproductive, evoking pity in the spectators (the assembled regiment in ordinary cases) and retarding the development of shame in the offender.

A more comprehensive Beccarian critique of flogging was provided in Leicester Stanhope's *Military Commentator* (1813).²⁷ Stanhope, later the 5th Earl of Harrington, contrasted British military law and its administration to continental European systems and found the former wanting in humanity. There were, he thought, far too many floggings ordered for the most trivial offences. Stanhope singled out the French system of military law for special praise: it accorded well 'with the prescription of Beccaria, who is the highest authority to be found on the original principles of law'.²⁸

II

Criticism of military flogging in the period 1790–1815 and the problem of fashioning British land forces capable of defeating French Revolutionary and Napoleonic armies were related to one another in several interesting ways. The practical business of recruitment and discipline in the ranks forced at least one government minister and numerous British army officers to re-examine the existing scheme of military corporal punishment, while radical attacks on flogging frequently constituted an integral part of a general political critique of the growing British military establishment and the government which financed it.

William Windham, the 'Alarmist' anti-puritan MP for Norwich, was obsessed with recruitment of adequate numbers of proper personnel for British armies long before he became War Secretary in the Ministry of All Talents in 1806. He noted in 1803 that recruitment for the regular army had 'long stood still' due to the greater eligibility of service in volunteer and other irregular military units.²⁹

²⁵ Sir L. Radzinowicz, *A History of English Criminal Law* (1948), I, 231ff.; A. H. Manchester, *Modern Legal History* (1980), 240–6; Dinwiddy, *op. cit.*, 319.

²⁶ Adye, *op. cit.*, 260 (the Beccarian essay was an appendix to the larger apologetic for statutory military law).

²⁷ L. Stanhope, *The Military Commentator, Or Thoughts Upon the Construction of the Military Code of England* (1813). I would like to thank Dr Dinwiddy for this reference.

²⁸ *Ibid.*, 42–3.

²⁹ W. Windham, *The Substance of the Principal Speeches* (Norwich, 1804), 4.

Enlistment for life and poor disability and survivors' pensions deterred many from enlisting. In 1805, Windham took another step along this path of analysis by linking severe corporal punishments to morale and recruitment problems.³⁰

As War Secretary, Windham offered the Commons a package of reforms on 30 May 1806 specifically intended to increase the quantity and quality of British army recruits. Included in this reform package was a proposal to lessen the severity of military discipline, a proposal which entailed changes in military law. An evil 'that called loudly for remedy', the 'very severity' of military punishment had 'prevented respectable people from entering' the armies, 'when otherwise they might have done it'.³¹ Although this pragmatic call for military law reform – which may have had its roots in a comment by Edmund Burke in 1797³² – did not produce legislation in 1806, Windham's proposal was well remembered and was often favourably noted by later anti-flogging advocates of all ideological colours.³³

The proposal to lessen flogging's severity for recruitment's sake was probably familiar to the majority of Windham's MP auditors. Windham's entire reform package, including the anti-flogging provision, closely resembled a scheme William Cobbett, in 1806 at the end of his Windhamite phase, had published several months earlier in the *Political Register*.³⁴ Flogging's adverse effects on troop recruitment and morale also figured prominently in *Outlines of a Plan for the General Reform of the British Land Forces* (1805), a tract written by Brigadier General William Stewart.³⁵

The pragmatic argument about flogging and recruitment seems to have origi-

³⁰ W. Windham, *Speeches in Parliament* (1812), II, 288–9. Cf. Earl of Rosebery (ed.), *The Windham Papers* (1913), II, 283.

³¹ Windham, *Speeches in Parliament*, II, 354–5, 426.

³² J. P. Gilson (ed.), *Correspondence of Edmund Burke and William Windham* (Cambridge, 1910), 241–2 (letter from Burke to Windham dated 26 April 1797): 'the ministers must overthrow the whole legal establishment of their Army, and that speedily, else nothing can be done agreeably to our plans'.

³³ With mixed feelings, Cobbett recalled Windham's 1806 proposals in 1810; J. M. and J. P. Cobbett (eds), *Selections from Cobbett's Political Works* (1847), III, 395–409. For other recollections of Windhamite anti-flogging proposals, see *Monthly Review*, new ser., LXVI (1811), 69–70 (review of Capt. E. Sterling, *View of Military Reform* (1811): 'Captain S. is an enemy to the use of the lash, and indulges the hope that Lord Palmerston's bill may lead to the abolition of that practice. Of the regulations introduced by the late Mr Windham for abridging the obligations &c. he speaks in the highest terms of approbation'. *PD*, ser. I, XXIV (9 March 1813) I, 163; H.

Grey Bennett – a Whig critic of military flogging – invokes Windham's 1806 example.

Windham's close identification with anti-flogging c. 1806–15 helps to explain Wilberforce's notorious indifference to that cause. Windham was an apostate from the abolitionist faith: he and Wilberforce probably clashed (as the latter had with Pitt) over purchase of slaves by the British government for use as foot soldiers in the British West Indies; see Buckley, *op. cit.*, 50–63. Wilberforce opposed such purchases, although he admitted that slave-soldiers were better treated than were field hands. Wilberforce also had a naive view of military life, and was not likely to see the need for reduced corporal punishment; R. I. and S. Wilberforce (eds), *The Correspondence of William Wilberforce* (1840), II, 25–6.

³⁴ Cobbett and Cobbett (eds), *op. cit.*, III, 401–9. See also Earl of Rosebery (ed.), *op. cit.*, II, 285–6, 295 (letters from Cobbett to Windham dated 10 February 1806 and 23 February 1806).

³⁵ Hon. Brig. Gen. W. Stewart, *Outlines of a Plan for the General Reform of the British Land Forces* (1806).

nated in the more radical mind of Lt Colonel Sir Robert Wilson. Later a Radical Whig MP for Southwark, Wilson had close ties both with the Duke of York, the acting Commander-in-Chief, and with the leading Whig families when he wrote *An Enquiry into the Present State of the Military Forces of the British Empire* in 1804.³⁶ In this tract, the pragmatic argument was interestingly supplemented by a more abrasive Beccarian critique. Decrying the 'flippancy with which the cat-o-nine-tails' was employed, Wilson urged a 'revision of the military penal code...to diminish the frequency of corporal punishment'.³⁷ After this code revision was completed, the essential Beccarian point that punishments were to be tailored to crimes was to be hammered home by placing a copy of Beccaria's treatise, *Of Crimes and Punishments*, in each commissioned officer's hands.³⁸

The small number of Whig opponents of flogging found the second, more abrasive half of Wilson's analysis especially persuasive. When they criticized flogging prior to 1815, Whig anti-flogging advocates typically invoked diluted Beccarian tropes in combination with either pragmatic or, less often, common law arguments.³⁹ It is important at this point to note that there was no official Whig position on this issue, as opponents of military flogging in the party were offset by indifferent Whigs and Whig-affiliated politicians like Erskine and Wilberforce who would not suffer themselves to be diverted from the prevention of cruelty to domestic animals and slaves.⁴⁰ It was a rare occasion when ten of the more than 100 Whig MPs would divide against flogging.⁴¹ Moreover, even had an official Whig position been formulated, the party leadership was too weak, especially after Fox's death in 1806, to have enforced unanimity.⁴² Whig anti-flogging advocates

³⁶ M. Glover, *A Very Slippery Fellow: The Life of Sir Robert Wilson* (Oxford, 1978); Lt Col. R. T. Wilson, *An Enquiry into the Present State of the Military Force of the British Empire* (1804). One printed response to Wilson made much of his evident hostility to militia and other irregular military units. The anonymous author of this response, *A Letter to Lt Col. Sir Robert Wilson* (1804), defended the militia in quasi-'Country' terms. However, he agreed with Wilson's anti-flogging arguments; *ibid.*, 54: 'There are few who will dispute the propriety of most of your objections to corporal punishment, as still existing in our army; they will, doubtless, occupy the attention of government'.

³⁷ Wilson, *op. cit.*, 72-3.

³⁸ *Ibid.*, 75.

³⁹ See e.g., *PD*, ser. 1, xxiv (9 March 1813), 1, 163 (H. Grey Bennett). See also the text to notes 43-50. Some Whig anti-flogging advocates used a stronger Beccarianism in their critique; see, Sir S. Romilly, *Memoirs...with a Selection from His Correspondence* (Shannon, Ireland, 1971), 1, 83, 90-1; II, 245, 295-6, 368; III, 27, 157, 182-3.

⁴⁰ *PD*, ser. 1, xii (15 May 1809), 567 (Erskine and cruelty to animals); *PD*, ser. 1, xx (13 June 1811), 704 (Burdett on Wilberforce and military flogging); see fn. 5 above.

⁴¹ *PD*, ser. 1, xx (13 June 1811), 710 (division of ten Whig MPs against flogging's existing practice); M. Roberts, *The Whig Party, 1807-1812* (1939), 333-4 (150 Foxite Whig MPs in Parliament c. 1807-12).

⁴² For biting satiric sketches of the Whig leadership, see T. Barnes, *Parliamentary Portraits; Or Sketches of the Public Character of Some of the Most Distinguished Speakers of the House of Commons* (1815), 25-6 (early nineteenth-century Whigs described as 'dull and pompous Aristocrats'), 29-30 (Ponsonby's 'habitual and apparently incurable indolence'), 31 (remarking of Ponsonby: 'this leader of a party could not prevail upon himself to rise a dozen times during the whole season...questions of vast importance were suffered to pass without one single observation'), 55ff. (Tierny's fall from popular favour and 'utter want of weight in the House of Commons'); L. Mitchell, *Holland House* (1980), 59; 'The Whig performance at

like Sir Samuel Romilly, H. Grey Bennett and Samuel Whitbread acted only for themselves and on behalf of their chosen cause and not for the Whig party.

Whitbread, the Foxite brewer-MP for Bedford, is an instructive example of the Whig anti-flogging mainstream. Unlike a common-law critic of military whipping, Whitbread paid little attention to the matter of procedural protections.⁴³ In fact, he seems to have paid almost no attention to the scant protection military law procedure offered soldiers when he acted as commander of a Bedfordshire militia regiment. In the case of *Warden v. Bailey*, Whitbread's adjutant faced assault and illegal imprisonment charges brought by one of that regiment's NCOs. The adjutant, Bailey, was the named defendant in the action, but it was clearly Whitbread who was on trial.⁴⁴ Whitbread, in a fit of reforming zeal, had required all NCOs to attend a night-school, for which 'privilege' 8d. was deducted from each week's pay. One NCO, Richard Warden, declined to attend classes. Whitbread construed this refusal as an act of mutiny and therefore ordered Bailey to confine Warden in the Bedford town jail until a court martial could be convened. Although section 23 of the Mutiny Act forbade confinements of more than eight days, Warden rotted in jail for over fifty days. When a court martial was finally convened, Whitbread's mutiny charge was unceremoniously 'laughed out of court'.⁴⁵

A master carpenter in civilian life, Warden then filed suit against Bailey seeking money damages for the illegal imprisonment. At the Bedford Assize, the court of first instance, Warden's ill-briefed barrister noted the recent parliamentary opposition to flogging, in which Whitbread had participated. He commended moderate criticism of severe beatings but also expressed the hope that arbitrary and illegal confinements were not going to 'be substituted for the ignominy of corporal punishment'.⁴⁶ The barrister then indulged in the speculation that most of the enlisted men in the Bedfordshire regiment would actually *prefer* 'corporal punishment in the face of day' to 'a dungeon out of sight'. Whitbread's failure to follow proper procedures proved harmless at the Bedford Assize: on appeal to the Court of Common Pleas, however, Warden prevailed.⁴⁷

Henry Brougham, an important reformer of English law and a Whig MP, also deserves brief detailed treatment. Brougham did not, like most Whig critics, ground his opposition to military corporal punishment primarily in a vague Beccarian penology. He was far more eclectic. Called upon to defend two printers accused of seditious libel for printing anti-flogging materials in 1811, he

Westminster and in the constituencies was often incoherent and feeble. They argued about tactics and found it almost impossible to find satisfactory leadership'.

⁴³ *PD*, ser. 1, XXI (13 March 1812), 1,288-9 (Whitbread on flogging); R. Fulford, *Samuel Whitbread, 1764-1815: A Study in Opposition* (1967).

⁴⁴ Anon., *The Trial of an Action for False Imprisonment Brought by Serjeant Richard Warden* (1811). The preface to the tract reveals that Whitbread paid for its publication 'for general information'; *ibid.*, (unpaginated pre-

face). See also Stanhope, *op. cit.*, 4-6, for a possible reference to Whitbread's high-handed acts in this matter.

⁴⁵ Anon., *The Trial of an Action*, 10-24.

⁴⁶ *Ibid.*, 46.

⁴⁷ *Ibid.*, 47. In the end, Warden was awarded £134 damages, which Whitbread probably paid for Bailey. The brewer-MP later rewarded Bailey for his faithfulness in the affair by appointing him jailer of the new-modelled Bedford town jail; E. Stockdale, *A Study of Bedford Prison, 1660-1877* (1977).

concentrated on freedom of speech and freedom of the press in oral argument. Brougham mentioned the merits of the flogging issue only to show the jury that well-regarded, well-affected public figures like General Stewart could be in opposition to the practice of whipping soldiers.⁴⁸ In the Commons, Brougham combined common law and constitutional positions by asserting that flogging, a 'cruel and unusual punishment', violated the English Bill of Rights.⁴⁹ However, he also made occasional use of 'Country' arguments about the inappropriateness of whipping citizen-soldiers and uttered cryptic remarks like 'It was not the degree, but the kind of severity he reprobated'.⁵⁰

Neither the pragmatic critique nor the quasi-Beccarian Whig agitation against flogging captured the political imaginations of Britons in the way that the Neo-Harringtonian or 'Country' analysis used by political radicals did. The radical-'Country' attack on military corporal punishment was, unlike dilute Beccarianism, an integral part of a more general political critique: it formed an important segment in the argument against the expanding British military establishment and against the Tory governments which financed and supported it. Hostility to the 'standing army', which had diminished somewhat after a peak in the 1750s, revived in the years 1790-1815 as British armies increased dramatically in size.⁵¹ Administrative innovations intended to accommodate this larger force accentuated the separation of soldiers from citizens which so worried Neo-Harringtonians. Barracks had been erected for soldiers who otherwise would have been billeted in common inns. The scope of military law jurisdiction had been expanded as well in the 1780s, taking militia NCOs outside the common law in most matters throughout the year.⁵²

The first wave of this revived Neo-Harringtonianism coincided with the ascent of Paineite ideas. Paineite and 'Country' ideas were interwoven in pamphlets like *Letters on the Impolicy of a Standing Army* (1793), while Trenchard and Moyle's classic treatise on 'standing armies' was reprinted in 1795 in the Jacobin *Philanthropist*.⁵³ Charles Piggott, a sophisticated Paineite radical, included a number of recognizably 'Country' entries in his *Political Dictionary* (1796). For example, he defined 'Army (*standing*)' as an 'engine employed in monarchies, by which nations are enslaved'.⁵⁴

Paineite radicals specifically reiterated the Neo-Harringtonian critique of flog-

⁴⁸ Lord Brougham, *Works* (1857), IX, 1-70, especially 18 ff.

⁴⁹ *PD*, ser. 1, xx (13 June 1811), 708.

⁵⁰ *PD*, ser. 1, xxii (15 April 1812), 374 ff.; *PD*, ser. 1, xxi (6 March 1812), 1,206; see generally, A. Aspinall, *Lord Brougham and the Whig Party* (1927).

⁵¹ J. R. Western, *The English Militia in the Eighteenth Century* (1965), 438-41; M. Peters, *Pitt and Popularity: The Patriot Minister and London Opinion During the Seven Years' War*

(Oxford, 1980); Major J. Cartwright, *A Letter to the Electors of Nottingham* (1803), 25 and footnote.

⁵² Western, *op. cit.*, 419-20; *PD*, ser. 1, xix (12 March 1811), 361; E. M. Spiers, *The Army and Society, 1815-1914* (1980), 36.

⁵³ E. P. Thompson, *The Making of the English Working Class* (Harmondsworth, 1962), 88, 142.

⁵⁴ C. Piggott, *Political Dictionary* (1796), 6.

ging. A committee of the London Corresponding Society asserted in 1794 that flogging was inappropriate to citizen-soldiers. If Britain's soldiers were represented in Parliament, the committee continued, they would become 'true republicans' who would not need lash-discipline. 'Convince a Briton, that he is about to fight for a country in which his rights are duly represented, and the cat of nine tails may be burnt by the hands of the common hangman.'⁵⁵

Paineite radicals also used Neo-Harringtonian talk about flogging in their attempts to encourage desertion from British army ranks. Among the 'Papers found upon Richard Fuller for the Seduction of the Soldiery' was an attack on flogging as part of 'the practice of tyrants to separate' the British soldier from his civilian 'brothers and . . . country'. Flogging in this view was just one of the many ways Pitt's government strove to deny Britons the 'Rights of Man'.⁵⁶

Government repression of the network of radical political organizations in the late 1790s virtually fractured this ideological construct. At that point, Paineite political language became less attractive as a medium of *public* discourse.⁵⁷ Neo-Harringtonianism, on the other hand, had a long history of loyal use in British politics and was not exclusively associated with Jacobin treason. Therefore, and despite the fact that it was pregnant with ambiguity and nuance that political radicals could exploit,⁵⁸ Neo-Harringtonianism weathered repression to become the primary element in the complex ideological amalgam of 'Country' and common-law themes which dominated early-nineteenth-century radicalism.⁵⁹ The principal radicals of the years 1800-15, Sir Francis Burdett, Major John Cartwright and William Cobbett, have all been identified as 'Country' ideologues.⁶⁰ A further and quite revealing indication of the pre-eminence of 'Country' elements in early-nineteenth-century political radicalism is Montgailliard's *Situation of Great Britain in the Year 1811* (1812), a French government propaganda tract which focused on Viscount Bolingbroke's 'Country' ideas rather than on Paine's thought to rally the British opposition to Perceval's Tory government.⁶¹

In this light, it is not surprising that Sir Francis Burdett, easily the most vocal early-nineteenth-century parliamentary critic of flogging, condemned lashings as

⁵⁵ Great Britain, Parliament, House of Commons, *Report of the Committee of Secrecy* (1799), 4-5.

⁵⁶ *Ibid.*, 25-6; cf. Anon., *Extracts from the Dublin Press* (Philadelphia, 1804), 301-2 (reprint of an article dated 20 January 1798: Irish attempts to seduce British soldiers in Ireland from posts noting flogging and other incidents of British military life).

⁵⁷ A. Goodwin, *The Friends of Liberty* (1799), 412 ff., especially 467-80; J. Belchem, 'Republicanism, popular constitutionalism and the radical platform in early nineteenth-century England', *Social History*, vi (1981), 1-32.

⁵⁸ *Ibid.*, 9; 'The radicals did not need to appeal to an alternative value system to legitimize insurgency: they simply exploited

normative ambiguities'.

⁵⁹ *Ibid.*, 5 (c. 1815, British radicalism 'was moderate, peaceable and constitutional, [its] values inculcated by Major Cartwright . . . by William Cobbett . . . and by . . . Sir Francis Burdett'); cf. G. Rudé, *Ideology and Popular Protest* (New York, 1980) (fusion of various ideological elements, including 'Country' ideology, in the ideology of popular protest c. 1800-15).

⁶⁰ J. R. Dinwiddy, 'Sir Francis Burdett and Burdettite radicalism', *History*, LXV (1980), 17-31; J. W. Osborne, *John Cartwright* (Cambridge, 1972); G. D. H. Cole, *The Life of William Cobbett* (1924); Pocock, *The Machiavellian Moment*, 547.

⁶¹ M. Montgailliard, *The Situation of Great Britain in the Year 1811* (1812).

part of his more general 'Country' attack on 'standing armies'.⁶² An advocate of defence by militias, which he described as 'Defence on right principles by armed property', Burdett made his first substantial anti-flogging speech in the Commons during a debate on the organization of local militias.⁶³ Observing the miserable failure of 'mere mercenary armies' against Napoleon's forces, he asserted that reduction of flogging might make a British citizen army possible:

he wished, by the abolition of the disgraceful penalties attached to the condition of a British soldier, to make the situation such as a British freeman might, without impropriety, be placed in.⁶⁴

In any event, Burdett proclaimed that he could not 'allow Britain to be a flogged nation'.⁶⁵

The assault on the 'standing army' continued the next year when, in 1809, the Westminster Committee heard Burdett, their MP, utter the following words:

I wish to see Britain's defence entrusted only to its own people. I wish to see it entrusted to the honest farmer – to country gentlemen – to tradesmen... I should like to see that sort of force, instead of a miserable, weak, contemptible defence, such as is at best ineffectually obtained by a standing army.⁶⁶

In 1810, the same audience heard him attack the 'erection of barracks all over the country'. This construction and the importation of large numbers of German mercenary troops, being measures which separated Britain's soldiers from its citizenry, constituted a 'warning of the decay of the health and vigour of the Constitution'.⁶⁷

The implications of flogging for citizen-soldiers, for Britons 'compelled to serve in the local Militia', led him to introduce the topic of military punishments in the Commons in May 1811: 'flogging was as unnecessary as it was cruel.' British officers had not needed beatings and the threat of beatings to discipline German and Portuguese soldiers they had trained. Why, then, did they require them when training Britain's own sons?⁶⁸ Burdett's emphasis was always on the inappropriateness of flogging to citizen-soldiers. He contended that 'the strongest part' of his anti-flogging argument 'rested on the liability of a whole population to be called out as soldiers. The father of a family might be dragged from his house to serve in the ranks, and put in a situation in which he would be subject to military flogging.'⁷⁰

Burdett further embellished this theme in his violent response to the Prince Regent's Address of January 1812. The following lengthy quotation should make

⁶² Dinwiddy, 'Sir Francis Burdett', 29; 'Thus opposition to corporal punishment was connected to a broader critique of the use of a "standing army"'

⁶³ J. S. Jackson, *The Public Career of Sir Francis Burdett: The Years of Radicalism, 1796-1815* (Philadelphia, 1932), 62-3.

⁶⁴ *PD*, ser. 1, xi (2 May 1808), 107.

⁶⁵ *Ibid.*, 106.

⁶⁶ Westminster Committee, *The Plan of Reform Proposed by Sir Francis Burdett* (1809), 11-12.

⁶⁷ Westminster Committee, *Reform in Parliament: Proceedings of the Electors of the City and Liberties of Westminster* (1810), 25-7.

⁶⁸ *PD*, ser. 1, xx (25 May 1811), 320 ff.

⁶⁹ *PD*, ser. 1, xx (11 June 1811), 704.

⁷⁰ *PD*, ser. 1, xxi (13 March 1812), 1,273.

it clear that Burdett regarded the flogging issue as but one aspect of the larger problem of the 'standing army' in a free state:

We have seen the increase of military force, and the multiplication of means calculated to divest the soldier of all fellow-feeling with the citizen. Cooped up in Barracks and Depots, flogged for the most trifling offences, the former loses, by degrees, all regard for those rights of which he is deprived, all attachment to that constitution out of the pale of which he is placed, and becomes the passive and unconscious instrument of tyrannical coercion. But, mistrustful of Englishmen's feelings, many thousands of German and other foreign mercenaries have been introduced and placed on our military establishment with privileges not possessed by the troops of our own country; whole districts of England and large portions of the English army have been put under the command of German officers; and, the more effectually to estrange the people from the native soldiers, the latter have, in many instances, been compelled to assume a German garb... The Militia, having been long perverted from its legitimate purpose, has... been converted... into the too convenient instrument of... oppression... In the institution of the local Militia, we behold all the severities of a military conscription without its impartiality and without a chance of rewards... We see every man in England... liable to exposure to the degradation and torture of the lash.⁷¹

The 'standing army's' institutions and practices alienated soldiers from citizens, while at the same time estranging citizens from the soldiery. Both the estrangement and the flogging which helped precipitate it were highly objectionable to a 'Country'-radical like Burdett.

Two other things remain to be said about Burdett and flogging. First, like most other radicals, he occasionally used common law themes, as when he quoted from Blackstone on the diminished legal credibility of witnesses who had been previously whipped.⁷² Second, and more important, he perceived flogging and the entire 'standing army' menace as but one of a number of threats to the liberty and property he thought guaranteed by the British Constitution. Burdett inveighed against political 'corruption' in all its forms, believing that a reform of the Commons was necessary to restore political well-being.⁷³

All this could be said as well of Major John Cartwright, the author of *An Appeal to the Nation By the Union for Parliamentary Reform According to the Constitution* (1812). This tract was an extended paean to the Saxon or 'English Proper Militia', in which the 'obligation of every individual to be constantly armed, to qualify himself for using his arms in defence of the community, and to be ever at the call

⁷¹ *PD*, ser. 1, XXI (7 January 1812), 29-30.

⁷² See, e.g., *PD*, ser. 1, XXI (13 March 1812), 1,264.

⁷³ Westminster Committee, *The Plan of Reform*, 1-3. Notwithstanding Burdett's radicalism, he approved of Windham's 1806 reforms based on the pragmatic argument;

PD, ser. 1, XI (10 June 1808), 854. Cobbett approved of Burdett's politics as early as 1804, when he was still a Windhamite; K. Bourne (ed.), *Letters of the Third Viscount Palmerston to Lawrence and Elizabeth Sullivan* (1979), 30 (letter dated 5 September 1804), 31 (letter dated 30 September 1804).

of the magistrate, who was also his military commander, was self-evident'.⁷⁴ Mercenary soldiers in the 'unbalanced standing army' were not disciplined by neighbouring JPs but by strangers with purchased commissions. As a result, they were frequently and 'ignominiously *whipped* – a punishment so abhorrent' to their common-law worshipping 'ancestors that (according to their "liberties and free customs", so repeatedly dwelt upon in *Magna Carta*) it was inflicted only upon Bondmen'.⁷⁵ The only remedy for such deeply embedded brutality was a return to the 'English Proper Militia', which event would ideally occur together with a reform of Parliament.

William Cobbett, who may be regarded as the bellwether of early nineteenth-century anti-flogging opinion, had by 1809 moved from his earlier Windhamite position to a 'Country' stance in fundamental accord with that taken by Burdett and Cartwright.⁷⁶ The 1 July 1809 number of the *Political Register* provocatively presented the story of five English militiamen who had been severely flogged for allegedly mutinous behaviour at Ely. What made this particular beating so odious was the fact that it had been ordered and executed by German mercenary troops, thus realizing a tableau that haunted the imagination of the 'Country' ideologue.⁷⁷ The article, vintage Cobbett, with its vivid, tough prose, was well received by the *Register's* many readers: a good indication of this favourable reception is the fact that provincial newspapers hastened to reprint the piece.

Perceval's government also noticed it. Complaining that Cobbett had traduced the army and thereby encouraged future mutinies, the attorney-general, Sir Vicary Gibbs, prosecuted him for seditious libel. Found guilty by a special jury in King's Bench, he was sentenced to two years in Newgate (from which he continued to publish the *Political Register*) and was also fined £1,000.⁷⁸ Cobbett maintained that his anti-flogging pieces, both of 1806 and of 1809, were intended only 'to make those engaged in the military service the object of respect and affection amongst the people in general'.⁷⁹ In a word, they were calculated to reconcile the interests of British soldiers and British citizens.

III

Despite all the words spoken and printed in opposition to military flogging in the years 1790–1815, the practice was not abolished. Generally, Burdett's contentions or those of the Whig critics in Parliament were met by assertions by officer-MPs

⁷⁴ Major J. Cartwright, *An Appeal to the Nation By the Union for Parliamentary Reform According to the Constitution* (1812), 5–7. I owe this attribution to Dr Dinwiddy. For more on Cartwright and militias see his *A Letter to the Electors of Nottingham*.

⁷⁵ Major J. Cartwright, *An Appeal to the Nation*, 44–5, 67–8; Major J. Cartwright, *A Letter to the Electors of Nottingham*, 25–6 (quoting Blackstone in a militia context).

⁷⁶ Cole, *op. cit.*, 13: 'this story of Cobbett's life... is also in great measure the story of the England of his time'; 111–12: Cobbett's movement towards Cartwright's 'Country' position on militia issues in 1806.

⁷⁷ *Cobbett's Political Register*, xv/26 (1 July 1809).

⁷⁸ Cobbett and Cobbett (eds), *op. cit.*, 111, 374–92.

⁷⁹ *Ibid.*, 111, 409.

that the lash was essential to the maintenance of proper discipline in the ranks.⁸⁰ These assertions were given added plausibility by the fact that none of Windham's successors as War Secretary used the pragmatic argument in an effort to mitigate flogging's severity.⁸¹

This is not to say that anti-flogging agitation had no effect on British military administration. In 1807 a General Order, which Dinwiddy believes was largely ignored, was issued limiting sentences to a maximum of 1,000 lashes.⁸² A confidential circular from the Duke of York in 1812 set a new, lower maximum sentence for trivial offences.⁸³ Mutiny Acts after 1811 included punitive alternatives to corporal punishment, including imprisonment and monetary fines.⁸⁴ Perhaps most significant is the substantial evidence that early nineteenth-century British army officers who personally struck soldiers or who had them flogged without observing the procedures of statutory military law were regularly court-martialled.⁸⁵

However, in the final analysis, flogging's pre-1815 critics failed. Their lack of success can be attributed in large part to political weakness. The pragmatic critique became less persuasive when it was ignored or rejected by the Secretaries of War succeeding Windham. The diluted Beccarian critique urged by a number of Whig

⁸⁰ See, e.g., *PD*, ser. 1, XXI, (13 March 1812), 1,263-92. Commissioned officers continued to produce literary work condemning flogging; see *Edinburgh Review*, XII (1808), 416 ff. (review of Capt. Birch, *Memoir on the National Defence*).

⁸¹ The next Secretary of War interested in reform of military corporal punishment, Hobhouse in 1832, was purportedly forced out by hostile War Office officials: see, Bourne (ed.), *op. cit.*, 250-1.

⁸² Dinwiddy, 'The early nineteenth-century campaign', 311.

⁸³ Anon., *General Regulations and Orders for the Army* (1822), 188-203.

⁸⁴ Imprisonment was introduced as an alternative in the 1811 Act. The 1815 Act permitted the fining of NCOs instead of flogging or imprisonment; 55 Geo. III, c. 108, §24. War Secretary Palmerston's autograph copies of the Mutiny Acts and Articles of War are in the Yale Law School library: they contain no marginalia.

⁸⁵ Major C. James, *A Collection... of General Courts Martial* (1820), 166, 175-85, 210-15, 306, 440-6, 489-92, 494-6, 513-15, 605-8. See also Capt. W. Hough and G. Long, *The Practice of Courts Martial* (1825), 378-9 (reprint of Lord Chief Baron McDonald's charge to the jury in the famous Governor Wall case of 1802, in which a colonial governor was sentenced to death for flogging an NCO to death). The American experience with military

flogging provides an instructive contrast. The Continental Congress, after heated debate, adopted Articles of War modelled after the British version in 1776; there was imposed, however, a 100-lash maximum sentence; W. C. Ford (ed.), *Journals of the Continental Congress, 1774-1789* (New York, 1968) v, 670-1, 806. General Washington wanted a 500-lash limit; J. E. Ferling, *A Wilderness of Miseries: War and Warriors in Early America* (Westport, 1980), 116. Flogging was, within this framework, the 'preferred form of punishment'; *ibid.*, 116-18. In 1806 a revised set of War Articles was passed by Congress, with an apparently unchanged lash limit. During 1812, however, while the 'Old Republicans' attacked the new national 'standing army', the Senate quietly attached an amendment to an appropriations bill abolishing 'corporal punishment by stripes or lashes', which became law; *The Debates and Proceedings of the Congress of the United States*, xxiv (14 May 1812), 1,428; Twelfth Congress, Sess. I, c. 86, §7. There is no printed legislative history which would afford the historian an insight into the ideologies involved. Given the general predominance of 'Country' ideology in American politics before 1815, a 'Country'-based anti-flogging politics would not be unexpected: see L. Banning, *The Jeffersonian Persuasion: Evolution of a Party Ideology* (Ithaca, 1978).

politicians, never exactly inspiring, was further weakened by its inability to become an official party position. Thus deprived of party support, the Whig critics of flogging neglected as well to join forces with the more radical critics of flogging in Parliament: Whigs in the age of Holland House found co-operation with radicals quite difficult.⁸⁶ Had a stronger Beccarian analysis of the flogging problem been made by Whig critics, that analysis would have been more forceful. Yet it probably would have had no greater success. The 'political nation', at least, would have regarded it as alien.⁸⁷

The radical-'Country'/common law amalgam sounded by Burdett, Cartwright, Cobbett and others was more familiar to the Commons and far more popular than its pragmatic or Beccarian rivals 'without doors'. It touched upon notions of liberty and propertied independence close to the hearts of early-modern Britons, from artisans to country gentlemen MPs.⁸⁸ However, the amalgam's chief parliamentary exponent, Sir Francis Burdett, offered so violent a version of the position that few MPs felt it proper to support his anti-flogging motions with their votes. Indeed, Burdett's impassioned response to the Prince Regent's 1812 Address drew scant support in a packed Commons.⁸⁹ The attractiveness of 'Country' anti-flogging ideas to MPs was further diminished by their association with radical ideas of parliamentary reform, an association which Burdett, colleagues like Colonel Wardle and Burdett's backers in Westminster did absolutely nothing to discourage.

On the other hand, while Burdettite radicalism was a bit too much for most MPs, Burdett's hesitancy about engaging in extra-parliamentary politics – a trait particularly evident in July 1810 – made the amalgam's appeal 'without doors' remain more or less unexploited.⁹⁰ In short, under Burdett's leadership, the

⁸⁶ The lack of co-ordination between radical 'Country' ideologues and politicians and 'liberal-minded Whigs' on the flogging issue was well known to contemporaries; Stanhope, *op. cit.*, 111 ('the rare union of patriotism and philanthropy'); see also Bourne (ed.), *op. cit.*, 72 (letter of 20 November 1806 describing Foxite criticism of Burdett); Mitchell, *op. cit.*, 74–8 (severe Holland House–radical tensions, especially on important political matters like Parliamentary reform).

⁸⁷ Lord Palmerston, *The New Whig Guide* (1819), 25–6 (parody of Romilly: 'Tho' in our own days we have seen all mankind/To philosophy deaf, and to theory blind,/Both Monarchs and peoples combining their powers,/To build up *their* laws on the model of ours – /Notwithstanding all this – I assert, on the word/Of a saint and a sage, that the law is absurd!/And, tho' some dull bigot my ears may assail/With COKE, and with BLACKSTONE, with FOSTER and HALE,/YORKE, CAMDEN or MANSFIELD – I have to confront 'em,/MONTEQUIEU, BECCARIA and JEREMY BENTHAM').

⁸⁸ I. J. Prothero, *Artisans and Politics in Early Nineteenth-Century London: John Gast and His Times* (Baton Rouge, 1979), 27–8 ('independence' valued by artisans), 83–4 (Gast's early adherence to Burdettite radicalism replaced afterwards by Paineite adherence); Rudé, *op. cit.*, 32 ('medley of loyalties' in radicalism), 152 ('Old Corruption', Cobbett and radical popular protest c. 1800); Dinwiddy, 'Sir Francis Burdett', 23–5.

⁸⁹ Only one MP actually voted for Burdett's motion; Burdett and Lord Cochrane were tellers.

⁹⁰ Dinwiddy, 'Sir Francis Burdett', 20; see also assessments of Burdett by disillusioned radicals, e.g. W. H. Chaloner (ed.), *The Autobiography of Samuel Bamford* (1967), 11, 21; J. Wade, *New Parliament: An Appendix to the Black Book* (1820), 7–8. The potential in the flogging issue for popular politics can be seen in H. Hunt, *Memoirs* (1820), 11, 378–9: (rescue by the citizens of Bath of a number of Somerset militiamen who were about to be flogged).

considerable ideological assets of the 'Country'-based radical attack on military flogging were wasted.

The anti-flogging campaign achieved more substantial legislative and administrative results in the two decades after 1815, perhaps due, as Dinwiddy has suggested, to the essentially non-ideological efforts of 'liberal-minded Whigs'. However, before 1815, anti-flogging was primarily a political radical's cause. It is imperative to recognize the differences between the pre-1815 and the post-1815 anti-flogging movements, differences both in the results achieved and in the ideological and political impulses involved.

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