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MILITARY PUNISHMENTS IN THE WAR OF 1812

BY JOHN S. HARE

THE War of 1812, the first of military importance after the close of the Revolution, was fought almost entirely by men drawn from the pursuits of peace time activities after hostilities became imminent. There were but few towns or cities, and the great part of the population was essentially rural. Most of the people lived on the frontier or what had been the frontier only a short time before, but they were frontiersmen in a limited sense of that term. They were abler with the ax than the rifle.

The occupants of the region back from the coastal plain were restless, unstable, and migratory in their tendencies. Here were to be found men of ability and worth, men who would develop into leaders as the area changed; but here also were the economic misfit, the ne'er-do-well, and the man who had left his former home only a few jumps ahead of the sheriff. Communication was difficult and each small community to a considerable degree was self-sufficient. The constant movement of population prevented the formation of strong commercial or social ties, and as a result there was a general lack of cohesiveness and of community of interest. Self-interest and egoism operated in this back country to make men resentful of direction or supervision and disinclined to submit to the control of others.

The protection of property, honor, and life lay largely with the individual. Gentlemen settled their differences with the pistol, the rifle, or the hunting knife under the dueling code. Those lower in the social scale were less formal; assassinations were not infrequent, and personal fights were common. Since few restraints existed as a result of either law or public opinion, these encounters were almost indescribably brutal. The vanquished sometimes had an eye gouged out or a nose or ear bitten off. Not infrequently the face or chest of a fallen foe was crushed in by the hob-nailed boot of the victor, and in some communities emasculation of a prostrate and helpless antagonist was not condemned by local sentiment.

If the individual was cruel and brutal in his passion, he but exemplified the spirit of his age. In a place and time of little money fines could not easily be collected; many communities did not possess jails, and those that did, found confinement an ineffective deterrent to lawlessness. Simon Kenton, as Justice of the Peace in western Ohio, sentenced minor offenders to be whipped with hickory switches. Obnoxious individuals were sometimes given a coat of tar and feathers and carried from the community astride a rail. The pillory, the stocks, and the whipping post were in general use or had only recently been abandoned. Cropping and branding were common, and there was always

a large audience to enjoy and applaud the execution of a malefactor by the hangman. Jails were veritable pest houses and sinks of iniquity. The insane were exposed, starved, frozen, and beaten, and the public had not yet awakened to the need for a change. Debtors died in prison and sailors were whipped to death at sea while popular opinion was indifferent. The sports of the people reflected this attitude of indifference to suffering; a dog match or a cock fight was easily arranged and enjoyed, and many a festive group applauded the victor in the gentle sport of gander pulling. Large quantities of whiskey were consumed by men alone or in groups. Standards of morality were not high; "woods colts" were numerous, and the regulations of the United States Army authorized the issue of rations to one "washerwoman" for every seventeen soldiers.

At the beginning of the war, the Regular Army was small, and the monetary inducements offered to recruits were not such as to draw into the ranks of the service many above the lowest social stratum. When the war opened and the number of men in service was increased by recruiting and by the mustering of the state militia into federal service, the Regular Army force was hopelessly unequal in number and in quality to the task of leavening the mass of new recruits and of infusing it with an *esprit de corps*. Generally, Regular and militia regiments served in the same contingents and maintained their original organizations intact. Militia regiments were under the command of officers elected by their subordinates without particular regard for their military qualifications. These officers were retained after their units were transferred to federal control, which meant that in the new organization inexperienced officers were faced with the herculean task of establishing and maintaining discipline among men to whom the very idea of restraint was repellant, and of doing this in the shortest possible time. To accomplish this any practice of rewards would have been hopelessly inadequate. Only a system of pains and penalties could get the necessary results, and the great deterrent of fear was relied upon.

The pressures brought to bear upon the recruit may be described loosely as extra-legal, quasi-legal, and legal. By extra-legal is meant the force of public opinion as represented by the approval or disapproval of the recruit's immediate associates in the ranks. This was manifested by the spirit of comradeship or the absence of it, by verbal criticism, by rude jokes, and not infrequently by physical violence. At Piqua, Ohio, in September 1812 a soldier who did not wish to march to the relief of Fort Wayne was, for his lack of courage and patriotism, hoisted on a rail by his comrades, carried to the Big Miami River, and unceremoniously thrown in.¹

The most important work of transforming the citizen into a soldier was done by the non-commissioned officers. Corporals and sergeants in immediate contact

¹ Robert B. McAfee, *History of the Late War in the Western Country* (Lexington, 1816; new ed., Bowling Green, 1919), p. 139.

with small groups of from four to eight men worked over this raw material until it took on military semblance. In the Army, then as now, efficient non-commissioned officers were essential to company and regimental discipline. The dearth of good experienced sergeants and corporals made the task of breaking in the new levies more difficult. They drilled the awkward squads, trained the recruit in the manual of arms, supervised his work as he policed the camp or labored to construct fortifications, and by strong language and the occasional use of their fists taught the recruit to adapt himself to Army life. It was the "non-com" who assigned the private to his daily task and many soldiers spent long hours wielding pick and shovel or swinging the ax because of sullenness, carelessness, or petty insubordination. If the recruit was carelessly dressed on parade or inattentive during company drill, he might be assigned to "kitchen police" duty and required to peel potatoes, carry water, or cut wood for the company cook. The duties were light but confining and drew upon the culprit the ridicule of his companions. It was a question whether a task might be assigned by a "non-com" or only by a commissioned officer as a penalty for the infraction of rules, but a soldier was dull indeed to whom there was not an evident relation between the non-commissioned officer's disfavor and the allotment of particularly disagreeable fatigue duty. Favoritism was undoubtedly common, but above the "non-coms" were the company officers, who were interested in the highest efficiency of their organizations and inclined to check the worst abuses resulting from poor judgment or bad temper. Not infrequently ill feeling developed between the petty officer and the private in the ranks, but the company officers were ready and willing to support their subordinates in all reasonable measures. The man in the ranks soon learned that he was caught in the machine, that resistance was hopeless, and that acquiescence and conformity represented the easiest routes to a happy Army life.

Occasionally the private soldier, more sullen or intractable than the average, resorted to violence and fought with a corporal or a sergeant; this usually resulted in bringing down upon the culprit the disapproval of his superior officer and might lead to charges of mutinous conduct and a hearing before a court martial. In such instances, whatever the provocation, the private was almost certain to be severely penalized, though there were exceptions to this rule.² Samuel Woods, for striking and maltreating a sergeant and attempting to bite his throat and gouge out his eye, was sentenced by a court-martial to sixty days' solitary confinement although a private and a lieutenant testified that the sergeant had knocked the prisoner down, striking him three times with a shovel. The lieutenant testified, "I believe he obeyed all orders received from the sergeant cheerfully enough." At this same sitting the court gave

² *Statutes at Large of the United States* (Boston and Washington, 1853-), II, 361. Death was the penalty for the disobedience of the lawful order of a superior and for striking or offering violence to a superior officer.

James Harris a like penalty for mutiny.³ At Fort Hawkins in March 1814 John Stockland, for disobedience of orders, was given a penalty of six months at hard labor with stoppage of his whiskey ration despite testimony as to his previous good character in service.⁴ Rhubin Aldridge, for behaving with contempt toward an officer, was sentenced to stand on a stump for one hour a day for six days.⁵ Moses Williams, for being absent from his post and for threatening to kick the corporal who ordered him back, was sentenced to hard labor for one month. He was, furthermore, to be confined in the black hole, and his liquor was to be stopped during his confinement.⁶

In contrast to the above, however, may be cited the cases of Thomas Russell, Phillip Johnson, and Henry Foot who were charged with striking, kicking, and otherwise beating Captain Joe Drew when he was officer of the day. The evidence showed that Captain Drew was probably intoxicated and had lost his head, ordered the soldiers to their rooms, and passionately attacked them. All three men were acquitted.⁷

The power of both non-commissioned and commissioned officers to inflict unauthorized penalties of a serious nature was generally held in check. Lieutenant Hoffman ordered that Private Dennis Baker be paddled. Before this the lieutenant had struck the private with a stick. Baker threatened Hoffman's life, and a court-martial resulted. The court, considering the unauthorized punishment of Baker by Hoffman, acquitted Baker.⁸

Sometimes extra-legal persecution and mistreatment by the superior officer led the recruit to desert. Upon apprehension punishment followed, though it is clear from the relatively mild penalty inflicted in such instances that the mitigating circumstances were taken into consideration. Private Hodderfield was tried at Charleston Harbor, October 14, 1813, for desertion. Hodderfield adduced that his superior, Lieutenant Bee, had struck him with a sword while they were drilling and that on another occasion the lieutenant had tied him astride a fence with a rail swinging from each foot. Hodderfield was sentenced to hard labor for one month with the stoppage of his liquor ration during this period and deprived of his pay for eight months—a rather light penalty for the grave crime of desertion.

At the same sitting of the court a similar sentence was given to Private Hunt. Hunt had deserted because he had been struck with a stick by his captain and on another occasion, by the captain's orders, had been tied to a tree for a whole day. The evidence given showed that upon this captain's personal

³ War Department, Office of the Judge Advocate General, records of general courts martial, Y-120 (hereafter cited as G. C. M.).

⁴ G. C. M., Y-47.

⁵ G. C. M., Y-115: Camp Hope, Georgia, September 26-27, 1813.

⁶ G. C. M., C-22: Charleston, May 8, 1813.

⁷ G. C. M., I-20.

⁸ G. C. M., Y-18: Chillicothe, Ohio, June 27, 1814.



PUNISHMENTS IN THE FRENCH ARMY, ABOUT 1715

From a drawing by JOB in Henri Bouchot, L'Épopée du Costume Militaire Française (Paris, 1898).

order another private had spent an hour and a half tied to a tree with his arms extended.⁹ It is impossible to determine from the evidence whether such instances represent well meant but injudicious actions of an inexperienced commander or merely the expressions of a nature essentially cruel and brutal. It is evident that the captain exceeded his authority in the penalty he imposed.

Extremely severe punishments for law violations were the rule of the age, here and abroad, and this was particularly true of naval and military service. In time of peace captains of merchant vessels were permitted under the law to whip members of their crew to the point of death. Evidently little protection was afforded to the soldier in service by the eighth amendment to the Federal Constitution. Though this amendment forbids cruel and unusual punishments, many penalties now regarded as inhumane were then not unusual and the term cruel was not capable of practical definition.¹⁰

⁹ G. C. M., H-32: Charleston Harbor, October 14, 1813.

¹⁰ The author found no evidence of the use of the strappado in the American service although it had been used at one time in the British service. In its severest form it consisted of fastening a man's hands behind his back and suspending him by a rope

In April 1812, evidently in anticipation of war and with the desire to make military service less unattractive, it was enacted by Congress that for a period of two years "no non-commissioned officer, musician or private belonging to . . . militia . . . ordered into actual service . . . shall be subject to corporal punishment by whipping" ¹¹ This seems to have been the only legal restriction then in effect upon the penalties that might be imposed by courts martial. An examination of the War Department records for this period shows that the ingenuity of the courts was equal to the problem of devising substitutes for the lash, a favorite instrument of punishment both before and after the two year period of restriction.

Penalties most commonly imposed for minor infractions of discipline involved loss of privilege or some form of degradation or humiliation. In one instance, for sleeping at his post, a private was sentenced to stand stripped for one hour. Before the punishment was carried out the time was reduced to five minutes. ¹² In a late spring month this would not involve very serious discomfort. In camp at Chillicothe, Ohio, a man found guilty of counterfeiting was sentenced to appear on parade from eight to ten o'clock three mornings in succession with a ladle, some lead, a pair of molds—apparently for molding counterfeit money—and a specimen of his work before him. His hands and face were blackened, and his coat was turned inside out. About his neck was hung a placard with the label, "Counterfeit money for sale." ¹³ A soldier who stole a duck had the dead duck hung about his neck and was paraded before his regiment all day wearing a placard, "I stole from a fellow citizen." ¹⁴

Benjamin Seigley, convicted of desertion, was sentenced to wear a paper cap labeled "Deserter"; his coat was to be turned with the lining outside, and he was to have a pair of large wooden spurs strapped to his heels. He was then to be mounted upon a wooden horse in front of the parade for thirty minutes on three successive mornings. In addition, his pay was to be stopped for four months. ¹⁵ John Goodson, found guilty of sleeping on his post, was sentenced to stand for two hours on a stump wearing a placard with the legend, "For sleeping on my post." ¹⁶ Corporal Nathan Nickerson was reduced to the

to the thong about his wrist. Inconceivably severe as mere suspension was when long continued, it was at times made even more brutal by lifting the victim a few feet and letting him drop with the inevitable result of broken bones and shoulder dislocation.

¹¹ *Statutes at Large*, II, 707. This act, approved April 10, 1812, automatically expired at the end of two years. By an act approved August 5, 1861, flogging was again prohibited, and this law is still in effect (*ibid.*, XII, 317).

¹² "Selections from the Gano Papers," *Quarterly Publication of the Historical and Philosophical Society of Ohio*, XV (January-June 1920), 65.

¹³ Duncan McArthur papers (MSS. in the Library of Congress), March 24, 1814.

¹⁴ Worthington (Ohio) *Freeman's Chronicle*, October 31, 1812.

¹⁵ G. C. M., Y-18: Chillicothe, Ohio, June 1814.

¹⁶ G. C. M., Y-115.

ranks for the crime of desertion. His eyebrows were shaved, his face blackened, and he was given thirty days at hard labor.¹⁷

Commissioned officers as well as the men in the ranks were subjected to penalties which may be regarded as mental or moral. Lieutenant Hopson was cashiered for unofficerlike conduct and for encouraging immorality and insubordination among his soldiers.¹⁸ Captain Fordice was deprived of his sword and suspended from command for forty-eight hours for leaving his post and suffering some of the guard to do the same.¹⁹ At Plattsburg, New York, in 1813 Lieutenant B. P. Barrett was cashiered for cowardice and for deserting his post in the presence of the enemy when an attack was expected. His sword was broken over his head before the division, and his name was ordered published as a coward in the newspapers of the vicinity and of his home state.²⁰

In instances where the humiliation in itself was not regarded as adequate to the offense some minor (or major) privilege dear to the soldier in the monotony of Army life, was withdrawn. Almost any offense might result in stoppage of the whisky ration, and deprivation of pay for one or more months was also a common penalty. The withdrawal of these privileges frequently accompanied the inflicting of other penalties in the same sentence.

At the Regular Army posts it was customary to provide a dungeon of brick or wood, usually dark, unheated, damp, and without adequate ventilation. This, in the parlance of the Army, was known as the "black hole." William Jackson, for sleeping on guard duty, was sentenced to thirty night's solitary confinement in the "black hole" and was deprived of his liquor rations and one-half of his pay for this period.²¹ Confinement in the "black hole" was commonly assigned along with other penalties. In the field, where confinement was not feasible, it was customary to sentence the culprit to wear ball and chain. When ball and chain were assigned as a penalty it nearly always meant that a twenty-four pound shot (sometimes a six pound ball) was attached to the prisoner's right ankle by a short chain. Waking and sleeping he had his burden with him, sometimes for a period as long as five years. If the prisoner was not careful the leg iron might break the skin with consequent infection and attendant suffering. Yet the ball and chain were by no means as severe in effect as the bilboes, then commonly used in marine service.²²

¹⁷ G. C. M., AA-4.

¹⁸ G. C. M., AA-6. In the Regular Army today officers in service may not communicate in any way with an officer who has been cashiered. This means permanent ostracism from his former professional and social associates.

¹⁹ "Selections from the Gano Papers," *loc. cit.*

²⁰ G. C. M., D-24.

²¹ G. C. M., R-19.

²² The bilbo was composed of a long bar of iron with sliding shackles and a lock at the end. It confined the legs of a prisoner in such a way as to make walking almost impossible. The author found no evidence of its use in the Army.

Another form of punishment which circumscribed the victim's liberty, at least for the time, was the requirement that he stand upon a barrel or stump. Like many others this ordeal was not unendurable for a brief time, but for long periods it constituted a fatiguing experience. James McCarty, for sleeping on sentinel duty, was sentenced to stand on a stump for one day.²³ Daniel Wilkinson, for the same offense, was sentenced to stand on a stump six feet high from sunrise to sunset with an hour off for each meal.²⁴

Andrew Clifford and William Martin, for stealing whisky from a contractor's house, were sentenced to solitary confinement for thirty days, to hard labor with ball and chain for nine months, and were deprived of four-fifths of their pay and of their liquor ration during the period of confinement.²⁵ From the severe nature of the penalties imposed in this and many similar instances it may be inferred that stealing whisky was regarded as a particularly heinous offense.

Two other penalties frequently given were "picketing" and "riding the wooden horse." Both had long been used as military punishments and when assigned for long periods may be regarded as extremely severe.²⁶ A man sentenced to be picketed was compelled to support his weight or most of it by his bare foot placed upon a wooden stake. In the past this had been a part of the punishment involved when a culprit was tied up by his thumbs or wrists with the opportunity to relieve the strain by resting a foot or a toe upon a sharp pointed stake. No instance was found of a man sentenced during the War of 1812 to be suspended by his thumbs. This is of interest because the penalty was commonly used later during the Civil War. The wooden horse was a board or rail supported on edge at such height above the ground that a man placed astride it could not reach the ground with his feet. The discomfort became excruciating with the passage of time. This was particularly true if the victim's hands were tied behind his back and a weight, such as a musket, was tied to each leg. Death has been known to result from injudicious use of this penalty.

At Buffalo, Edmund Fuller was picketed five minutes on three successive mornings for neglect of duty and for drunkenness.²⁷ At Lower Sandusky, Ohio, in August 1814 William Harris and John Grimm, for deserting the army in the vicinity of Urbana, were sentenced to be picketed for five minutes on two days, "*provided in the opinion of the Surgeon he is able to endure it for that length of time.*" If they were unable to endure the ordeal they were to be relieved at the discretion of the surgeon.²⁸ At Charleston in 1813 William

²³ G. C. M., AA-6.

²⁴ *Ibid.*

²⁵ G. C. M., R-19.

²⁶ Charles M. Clode, *The Administration of Justice under Military and Martial Law* (London, 1874), contains some information on this subject.

²⁷ G. C. M., Y-19: June 1814.

²⁸ G. C. M., Y-51. Italics are the author's.



THE WOODEN HORSE AS USED IN FRANCE, ABOUT 1715

From a drawing by JOB in Henri Bouchot, L'Épopée du Costume Militaire Française (Paris, 1898).

Brown, for drunkenness and mutinous conduct, was sentenced to one month of hard labor, to be confined at night during that period, and to be picketed for ten minutes.²⁹ John Adams, for sleeping at his post, was to be picketed for five minutes on seven successive days and to have half of his head shaved.³⁰ For desertion, John Yearn was sentenced to be picketed five minutes for three mornings in succession upon a picket one-half inch in diameter and to have half his pay stopped for six months.³¹

Sometimes a larger picket was used, but the time of the penalty was increased. James Jones, for sleeping on duty, was required to stand barefoot on a picket two inches square morning and evening of one day, fifteen minutes each time,

²⁹ G. C. M., C-22.

³⁰ G. C. M., Y-19.

³¹ Duncan McArthur papers, March 9, 1814. A similar sentence was given at Camp Covington, Georgia, to Robert Walker and Greene Newlan (G. C. M., AA-6).

with the privilege of suspending himself by the arm from some place fixed for the purpose.³² Jonathan Willis was given the same penalty for drunkenness and violent language to a superior officer.³³ That the punishment should be a little more severe, Joseph Snyder was sentenced to wear a gag during his allotted time on a picket.

David White, for desertion, was sentenced to ride a wooden horse for five minutes in front of his regiment.³⁴ Solomon Coker, for neglect of duty in allowing prisoners to escape near Raleigh, North Carolina, was sentenced to ride a wooden horse three days in succession, two hours each day, with a musket tied to each foot.³⁵ Thomas Welch and a private named Preston, who had deserted, were recaptured and sentenced to hard labor with ball and chain for one month. One-half of their monthly pay was stopped until the expenses incurred as a result of their act were defrayed. Their whisky ration was stopped for one month, and during this period they were to ride the wooden horse for one hour morning and evening every day. Ichabod Lords, for sleeping on his post, was sentenced to ride the wooden horse twice daily, one hour each time, for two months.³⁶

Sentences requiring the prisoner to walk his post for a given period with a twenty-four pound shot in his knapsack or with a knapsack of sixty pounds' weight were common. Gordon Allen, for leaving his post without being relieved, was sentenced to walk past the sentinel with a twenty-four pound shot in his knapsack for thirty nights, to endure solitary confinement during the day, and to be deprived of pay and whisky.³⁷

Imprisonment was frequently imposed as a penalty, though this did not necessarily mean solitary confinement. Imprisonment at hard labor was sometimes given for the more serious crimes, in some cases for long periods. Gideon Ellis, Bowden Eldridge, and Russel Harrington, three deserters, were sentenced to hard labor with ball and chain, for ten years, to be confined in the guard house, to wear fatigue clothing, and to be deprived of all their liquor ration and four-fifths of their pay during the period of the sentence. The same court, for a like offense, gave Benjamin Stocker a similar sentence, but for the shorter period of two years; Christopher Hawkins, for his second desertion, was given a like penalty of seven years. Evidently, mitigating circumstances not recorded brought the shorter sentences to Stocker and Hawkins.³⁸ For disorderly conduct, Joseph Harvey was sentenced to hard labor for six months.³⁹

³² G. C. M., Y-105: December 1814.

³³ G. C. M., AA-6.

³⁴ G. C. M., AA-4.

³⁵ G. C. M., D-14.

³⁶ G. C. M., A-22.

³⁷ G. C. M., R-19.

³⁸ *Ibid.*

³⁹ *Ibid.*

John Collins, for advising a private to desert, for planning to do the same himself, and for striking a fellow soldier with an ax, was sentenced to six months' hard labor with ball and chain and was deprived of his whisky ration for the duration of the sentence.⁴⁰

In that age both cropping and branding were not infrequently imposed as punishments for crimes by civil courts. The barbarous practice of cutting off a part of the culprit's ear was intended to give due notice to those with whom he might come in contact during the remainder of his life that he had been found delinquent and was henceforth a person suspect. The same end was achieved by branding an initial on the cheek or on the forehead. Sometimes the hot iron was applied to the hip instead of the face—a practice which was less serious in its later social effects. In other cases the initial was tattooed into the skin. If the purpose was to create merely a temporary embarrassment, it might be stamped on with India ink. Sometimes the branding was done to prevent desertion and reenlistment. Both branding and cropping were generally employed along with other penalties.

Alpheus Avery, for desertion, had both ears cropped and was sentenced to hard labor with ball and chain in some fort for the remainder of his enlistment period.⁴¹ Henry Delap and Henry Hoffman, for desertion, each had one-half of his head shaved, both ears cropped, and the letter "D" branded on the cheek.⁴² At Plattsburg, New York, in July 1814 Joe Brown was "branded to prevent reenlistment." For stealing clothing, Thomas Mount was branded with the word "Thief" on the right hip.⁴³

No direct evidence was found of "bucking," which consists of tying the feet together, tying the hands together, and requiring the victim to seat himself on the ground with his arms around his knees. A stick was then thrust through below his knees and above his arms, effectively pinning him in a bowed and huddled up position. The culprit was commonly gagged at the same time. (This punishment was used frequently in the period of the Civil War.) It is recorded that three prisoners were sentenced to be tied down with a gag in their mouths for one hour,⁴⁴ but it is not clear whether they were "bucked" or "spread eagled."⁴⁵

As an example of the unusual in penalties may be cited the case of Daniel Moses, who, for a minor offense, was tied to a sentry box and compelled to drink a quart of salt water. This may have acted as an emetic or a cathartic,

⁴⁰ G. C. M., Y-47.

⁴¹ G. C. M., D-22.

⁴² G. C. M., Y-19.

⁴³ G. C. M., Y-120.

⁴⁴ G. C. M., Y-111. Bucking and gagging and spread eagling were both in use in the Army as extra-legal or quasi-legal punishments as late as the Spanish-American War.

⁴⁵ As late as 1898 a man was "spread eagled" for forty-eight consecutive hours.

but it seems probable that the prisoner's greatest discomfort was a raging thirst.

When a detachment was located near water it was possible to sentence the culprit to be ducked. This meant that, with hands and feet securely tied and a weight attached to the latter, the victim would be lowered into deep water by a rope. After an interval a pull on the rope would bring him up for air. The severity of the punishment lay in the length of time he spent beneath the surface, or in the brevity of the period in which he was supposed to get his breath. At its best the procedure was little more than a joke; at its worst it was barbarous in the extreme. One private, for sleeping on his post, was "to be well ducked and receive five cobs." William Cotter, for being absent without leave, was sentenced to be ducked once and to receive ten cobs. The same court sentenced Harry Stephenson, for a like offense, to be ducked three times and to receive twenty-five cobs.⁴⁶

For a long time and in many places whipping has been regarded as the ideal punishment. From the switch which curbs childhood's errors to death under the knout in Czarist Russia seems a far cry, but the two punishments belong in the same class. A simple instrument, easily procured, the lash in its many forms has been universally used. In its ordinary form it consisted of a leather thong or piece of rope, generally the former; in its more complex form it became known as the "cat" (cat-o'-nine-tails)—a broad flat piece of leather with its end slit into separate thongs, or a handle or broad light board to which were attached leather thongs or pieces of rope, the latter sometimes weighted at the ends with wire or lead to make punishment more severe.

Prior to the law of April 10, 1812, and after its expiration two years later, the only restriction upon the use of the lash was that not more than fifty blows could be imposed in any one sentence.⁴⁷ During the two year period of its prohibition, the custom of cobbing (paddling with a board or strap) was generally in use. Lashing cut and bruised the flesh; cobbing, as a rule, only bruised it. Cobbing in its worst forms fell but little short of the cat or the lash in its effects.

Prior to the war, at the Washington Cantonment, Robert Smith, John Green, and Joseph Hast, charged with desertion, were sentenced to receive "fifty lashes on the bare back with wired cats, at five different times, ten lashes on each day and to have the expenses occasioned by their desertion, stopped from their pay." For insolence to an officer Jesse Harrington received the same penalty.⁴⁸ After

⁴⁶ G. C. M., X-120. In connection with this punishment may be cited the treatment of Dr. Mudd at Dry Tortugas and the "water cure" reported as used by American soldiers during the Philippine Insurrection.

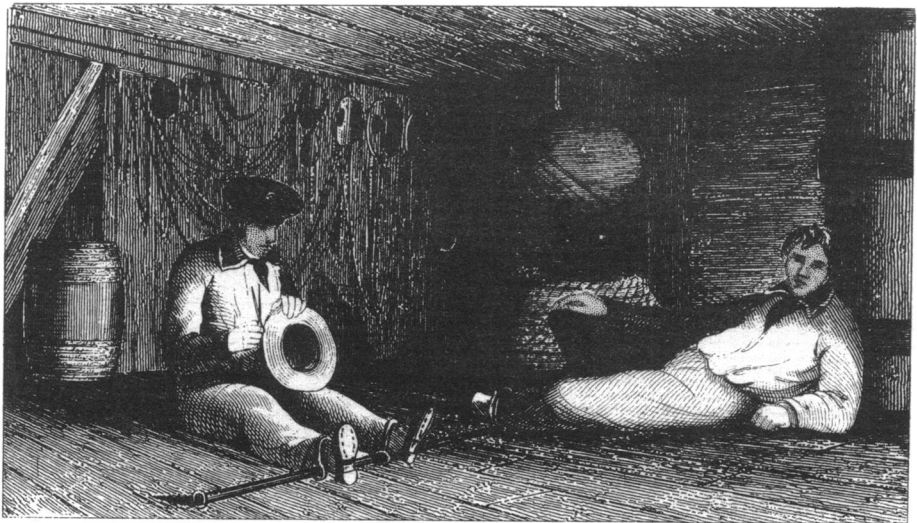
⁴⁷ *Statutes at Large*, I, 709. The law of March 2, 1799, had specified "not beyond twelve lashes on the bare back with a cat for any one offense."

⁴⁸ These are cited as examples of the penalties imposed in the Regular Army and prior to the law of April 10, 1812. While the law protected the militia only, no instance



A FLOGGING DURING THE MEXICAN WAR

From a contemporary sketch by Samuel E. Chamberlain, 1st U. S. Dragoons, in the collection of Mrs. T. P. Buxton. The trooper on the extreme left has been gagged as well as "bucked" with his companions.



USE OF LEG IRONS IN THE NAVY ABOUT THE TIME OF THE WAR OF 1812

From J. G. Heck, Iconographic Encyclopaedia (New York).

the above law went into effect, the lash fell into disuse even in the Regular Army organizations. No instance was found of the use of the lash between April 1812 and April 1814, though during this period cobbing was very commonly imposed as a penalty. At St. George in June 1813 William Bennett was given fifty cobs for being absent without leave, and Thomas Havler was sentenced to receive fifty cobs for four days for insubordination.⁴⁹ In September 1814 Milroy Johnson was sentenced to receive one hundred cobs and James Jackson to receive one hundred and fifty.⁵⁰ From the greater number of blows assigned for simple offenses it may be implied that cobbing was regarded as less severe than whipping with the lash or the "cat."

Desertion was a crime common in every division of the Army. It became worse late in the war as a result of war weariness or homesickness. Bounty jumping or desertion for the purpose of reenlisting to claim the monetary reward constituted one of the most serious problems faced by military authorities. In their efforts to stamp out the practice the courts martial became more severe and the death sentence was meted out without hesitation. A court martial at Chillicothe, Ohio, on July 1 and 2, 1814, sentenced eight men to be shot to death, all but one for desertion.⁵¹ The following is a summary of executions during the war years:

	1812	1813	1814	1815
Sentenced to death	4	43	160	53
Reprieved	1	11	14	29
Executed	3	32	146	24

The rapid rise in the use of this extreme punishment in 1814 is indicative of the importance of the problem of desertion since most executions were for that crime. The number reprieved is also significant. Whereas in 1812 and 1813 one-fourth of those sentenced were saved by the intervention of higher authority, of those sentenced in 1814 only one in ten failed to pay the extreme penalty for his crime. That the number of reprieves in 1815 reached more than one-half was undoubtedly due to the fact that the war was over and little purpose would be served by severity. The evidence seems to show that in all 260 men were sentenced to death and 205 actually executed during the four war years.⁵²

With certain exceptions the death sentence in the Army was carried into execution by shooting. The brigade, regiment, or battalion was drawn up to form three sides of a hollow square with the firing squad and prisoner in the otherwise open fourth side. The prisoner, blindfolded, sometimes faced the

was discovered of the use of the lash in the following two year period with the exception of an article in the Franklinton (Ohio) *Freeman's Chronicle*, April 1, 1814. As this paper was anti-war and anti-administration, its value as a source may be questioned.

⁴⁹ G. C. M., D-22.

⁵⁰ G. C. M., H-168.

⁵¹ G. C. M., Y-18.

⁵² War Department, Office of the Judge Advocate General, register of general courts martial, *passim*; Duncan McArthur papers.

firing squad erect and sometimes was seated on his coffin beside the open grave. At five paces few of the firing squad would miss, and death was instantaneous. No direct evidence was found of the well established tradition that one musket was loaded with a blank cartridge so that each member of the firing squad might always cherish the hope that he himself was not responsible for the death of a fellow man.

Occasionally when a reprieve had been granted the fact was not made known to the condemned man until all formalities of a regular execution had been complied with up to the command to fire. This command was withheld, and the reprieve was then read.⁵³ The revulsion of feeling must have been extreme. Delay in notifying the prisoner of his reprieve was apparently designed to bring home to him the seriousness of his offense.

Among the prisoners found after Perry defeated the British on Lake Erie were some deserters from the American service. They were denied the privilege of death by shooting—a soldier's death—and were sentenced to be hanged.⁵⁴

In the century and a quarter since the War of 1812 the soldier's lot has improved in many respects. To-day he has better clothing, food, arms, and equipment, but in no way is this change evidenced more than in the more humane treatment of violators of Army Regulations. "Cruel and unusual punishments of every kind, including flogging, branding, marking, or tattooing on the body, are prohibited. . . . Courts-martial will not impose any punishment not sanctioned by the customs of the service, such as carrying a loaded knapsack, wearing of irons, shaving the head, placarding, pillory, stocks, and tying up by the thumbs. . . . Solitary confinement, a bread-and-water diet, loss of good-conduct time, and the placing of a prisoner in irons will not be imposed as punishment by a court-martial."⁵⁵

The tendency away from severity and brutality in Army penalties has kept pace with public sentiment and with the similar change in penalties imposed by state courts. It came from within the service and has not been imposed from without. Congress from time to time has abolished outmoded punishments, but it has largely been because they were no longer necessary. In our civilian population of today, unlike that of the time of the War of 1812, the individual has been conditioned to cooperate. In both rural and urban life he is in closer association with his neighbors than was his pioneer prototype, and nearly always he is a product of our public school system. The recruit of today has initiative and resourcefulness in a high degree, but the violent reaction to control, so characteristic of the frontier, is gone. In the Army he is a better soldier, and in private life he is a better citizen.

⁵³ *Aurora* (New York) *General Advertiser*, August 29, 1813; *Worthington* (Ohio) *Freeman's Chronicle*, June 16, 1813; *Zanesville* (Ohio) *Express*, September 15, 1813.

⁵⁴ G. C. M., Y-20.

⁵⁵ *A Manual for Courts-Martial, U. S. Army* (Washington, 1927), p. 92.