

**Crime and the Soldier**  
**Identifying a Soldier-Specific Experience of**  
**Crime in the British Army, 1740-1830**

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### **Abstract**

Using the extensive military justice records held at the National Archives, in Kew, this thesis offers a survey of soldier offending and identifies and delineates a soldier-specific experience of crime in the British Army, both as perpetrator and victim, during the late eighteenth and early nineteenth centuries.

Through a detailed statistical analysis of records from three levels of military court martial, and drawing on a wide range of supporting materials, this thesis will demonstrate the ways in which the soldier experience of crime both overlapped with and differed from that of his civilian counterpart, how it was shaped and contextualised by military service and regimental life, as well as how that soldier-specific experience was itself differentiated and transformed by rank, for those soldiers who achieved non-commissioned officer status. In considering this experience, this thesis will explore what crime can tell us about soldiers' sense of identity as soldiers, and their relationships with authority, their service, each other and the wider civilian world. It will also show that at the meeting point between military and civilian worlds, as well as within regimental communities, there operated a thriving black market in stolen and military goods.

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## Abbreviations

OUP	Oxford University Press
LUP	Liverpool University Press
MUP	Manchester University Press
<i>EHR</i>	<i>English Historical Review</i>
<i>JSAHR</i>	<i>Journal of the Society for Army Historical Research</i>

NCO	Non Commissioned Officer
RSM	Regimental Sergeant Major
GCM	General Court Martial
RCM	Regimental Court Martial
GRCM	General Regimental Court Martial
ECCO	Eighteenth Century Collections Online
TNA	The National Archives (Kew)
PP	Parliamentary Papers
WO	War Office Collection
HO	Home Office Collection

**Note: Regimental Naming Conventions**

Although in some cases it is more appropriate to use longer forms of identification, for the most part this thesis uses the standard convention of referring to regiments of the line by their numbers: for example, the 33rd Regiment would be referred to as simply the 33rd. Similarly, where it is necessary to specify a battalion, the standard convention of numbering will be employed: for example, the First Battalion of the 34th Regiment, would be referred to as 1/34th.

## Introduction

In 1813, the Duke of Wellington wrote of his army: ‘We have in the service the scum of the earth as common soldiers.’<sup>1</sup> Though this complaint was due to the excesses of the British troops campaigning on the continent, it mirrored rather neatly the general view of the soldiery held by the British nation during the long eighteenth century. Poorly paid and subject to a military legal system which itself was seen as antithetical to liberty, the British soldier was a figure of derision and disdain right up until the fatal moment in which he was transformed by battle into a hero.<sup>2</sup> Such was the low standing of the regular army within Britain, that he retained his image as brutalised and disorderly well into the nineteenth century. Recent years have seen an attempt by historians to rehabilitate the eighteenth- and early nineteenth-century British soldier, to set him within a wider context and to understand the nature of his service beyond the picture painted by army regulations and the prosecution of large-scale wars.

Beginning in the 1960s and 1970s, with grand scale works such as Corelli Barnett’s, *Britain and her Army: A Military, Political and Social History of the British Army* and H.C.B Rogers’ comprehensive institutional analysis of *The British Army of the Eighteenth Century*, with its ‘socio-military’ approach to army life, and continuing into the 1980s with works such as John Brewer’s *Sinews of Power: War, Money, and the English State, 1688-1783*, this attempt to integrate the history of the British army into a wider political and social context was for a time labelled a ‘New Military History’; a moniker which, according to Will Tatum’s 2006 survey of the field, brought with it unhelpful academic divisions and methodological inconsistencies between ‘old’ and ‘new’.<sup>3</sup> In particular, Tatum considers

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<sup>1</sup> Arthur Wellesley Duke of Wellington, *The Dispatches of Field Marshal the Duke of Wellington, K.G.: During His Various Campaigns in India, Denmark, Portugal, Spain, the Low Countries, and France. From 1799 to 1818*, ed. by, John Gurwood, Volume 10 (London: Murray, 1834), p. 496.

<sup>2</sup> Stephen Brumwell, *Redcoats: The British Soldier and War in the Americas, 1755-1763* (Cambridge: Cambridge University press, 2002), p. 55; E. E. Steiner, ‘Separating the Soldier from the Citizen: Ideology and Criticism of Corporal Punishment in the British Armies, 1790-1815,’ *Social History*, 8 (Jan, 1983), 19-35 (p. 29).

<sup>3</sup> William Tatum III, ‘Challenging the New Military History: The Case of Eighteenth-Century British Army Studies’, *History Compass*, 5 (2006), 72-84

that the opening up of military subjects, by other historical schools, to methodologies unsuited to the analysis of military documents in some cases led to a less nuanced understanding of some aspects of military life. Tatum suggests key examples of this can be found in some of the 1980s through to the early 2000s scholarship on the role of women in the eighteenth-century British army, in which the methodologies of gender history applied to women in a military setting at times robbed their historical subjects of agency, even as they cast a brighter light on their roles and importance to the history of the British army. Similarly, he suggests that some of the attempts to analyse soldiers through the methodologies and models of cultural, and in particular, labour histories have further ingrained the image of the eighteenth-century British soldier as a particularly unfortunate and downtrodden example of his social class, even as they stripped away some of the old stereotypes of criminality and brutishness, moving away from assumptions of forced enlistment through the justice system and towards enlistment forced through economic or social distress.<sup>4</sup>

Tatum's call to abandon the divisions between 'Old' and 'New' military histories, in favour of a new division between the 'History of War', incorporating both the 'old' military campaign and battlefield histories and the impact of war on wider society and the political state, and the 'History of the Army' as an institution, incorporating both the traditional regimental and institutional histories, and the experiences of those who lived and served within, seems compelling. According to his analysis, whilst the

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(pp.74-76); also, Corelli Barnett, *Britain and her Army: A Military, Political and Social History of the British Army* (London: Cassel,1970); H.C.B. Rogers, *The British Army of the Eighteenth Century*, (London : Allen and Unwin, 1977); John Brewer, *The Sinews of Power: War, Money and the English State, 1688-1783* (London: Unwin Hyman, 1989).

<sup>4</sup> Tatum gives as an example of these problematic readings of military materials: the use of 'analytical approaches [...] not designed around military source materials', in Kathleen Wilson's work, and an over emphasis on 'the seeming helplessness of the enlisted man's experience' in Sylvia Frey's work. He does, however, note several examples of successful application of social history models, most notably, the work of Stephen Brumwell with 'the best synthetic volume to date on the army during the French and Indian War', and in contrast to Wilson, the much more successful application of gender history models in Fraser Easton's work: Tatum, pp.76-79; Kathleen Wilson, 'Britannia into Battle: Women, War and Identities in England and America,' in *The Island Race: Englishness, Empire, and Gender in the Eighteenth Century* (New York: Routledge,2003), 92–128 ; F. Easton, "Gender's Two Bodies: Women Warriors, Female Husbands and Plebeian Life," *Past & Present*, 180 (2003), 131–74; Brumwell, *Redcoats*.

‘New Military History’ of the 1960s carried with it a clear academic mission, the field beyond traditional military history later became fragmented and fractured. In particular, he suggests the lack of a unifying academic mission or understanding and the concomitant lack of academic debate around an identifiable core led to an even greater division between traditional, or ‘old’ military history and the successors to the ‘New Military History’, which became absorbed into non-military historical schools.

In the years since Tatum’s article, the field has changed again. In particular, the paucity, he noted, of ‘academic’ as opposed to popular work specifically on the eighteenth-century British army and the lack of discourse between the different approaches is much less apparent. Rather than a dangerous fragmentation, it would seem that this new scene offers instead a multi-faceted view of military lives and cultures. Far from denying agency, the work of social historians like Jennine Hurl-Eamon, with her focus on the economic survival strategies of soldiers’ and sailors’ wives, has offered new and dynamic interpretations of the roles and experiences of military and naval families.<sup>5</sup>

Approaching civilian evidence bases, such as the trial records of the Old Bailey, has allowed a greater understanding of lives lived at the border of military and civilian worlds and shown that, just as there may have been potential difficulties in utilising ‘foreign’ methodologies to analyse military records, there are also distinct dangers in allowing military records to stand alone as evidence for military lives. Indeed, Tatum’s suggestion that military records require a specialist approach seems something of an overstatement, as the same claim could easily be made for any evidence base, civilian or military. Carole Divall’s use of the 30th Regiment as a case study for an in-depth exploration of the professional lives of soldiers and officers, has reinvigorated the genre of regimental histories, with her approach to military sources through broader methodologies. Edward Coss’s *All for the King’s Shilling*, meanwhile, with a much a more traditional military history methodology, directly tackles the stereotypes of innate

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<sup>5</sup>Jennine Hurl-Eamon, ‘The Fiction of Female Dependence and the Makeshift Economy of Soldiers, Sailors and Their Wives in Eighteenth-Century London’, *Labor History*, 49 (2008), 481-501; ‘Insights into Plebeian Marriage: Soldiers, Sailors, and their Wives in the Old Bailey Proceedings’, *London Journal*, 30 (May 2005), 22-38.

criminality attached to the British soldier of the eighteenth and early nineteenth centuries.<sup>6</sup>

The shift in focus towards the eighteenth- and nineteenth-century soldier as more than either an embodiment and expression of martiality, or a simple manifestation of social displacement, and towards the army as more than a simply military machine, or expression of the national political will, has opened up new avenues of research and begun to offer a more nuanced understanding of the men, and women, who served during this period, as well as of the military institutions in which they served and lived. The work of Kevin Linch and Matthew McCormack, in particular, highlights the complications inherent in defining ‘soldiers’ and ‘soldiering’ in the context of a military system which incorporated very different forms of service, from the traditional regimental private enlisted for ‘unlimited service’ to the citizen-soldiers of the militia, chosen by ballot, and the part-time volunteers, with their local gentry officers and distinct regional loyalties.<sup>7</sup>

Their work raises important questions of identity and loyalism, and make evident a need for a third strand to military history: the history of the soldier, straddling the line between the divisions Tatum identified.<sup>8</sup> In the introduction to *Britain’s Soldiers: Rethinking War and Society, 1715 – 1815*, Linch and McCormack state the aims of the collection of essays to be an exploration of Britain’s military during a century of near constant warfare, ‘by focusing in detail upon its combatants’. They suggest that, whilst ‘war and society’ studies have been valuable, they have generally concentrated on the impact of war on civil society, and argue instead for a refocusing on war, ‘using the techniques from social and cultural history in

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<sup>6</sup> Carole Divall, *Inside the Regiment: The Officers and Men of the 30th Regiment During the Revolutionary and Napoleonic Wars* (Barnsley: Pen & Sword Military, 2011); Edward Coss, *All for the King’s shilling: the British Soldier under Wellington, 1808-1814*, (Oklahoma: University of Oklahoma Press, 2010).

<sup>7</sup> K. Linch, and M. McCormack, ‘Defining Soldiers: Britain’s Military, c.1740–1815’, *War in History*, 20 (2013), 144-159; also see Stephen Conway, *The British Isles and the War of American Independence* (Oxford: OUP, 2000; repr. 2002), pp. 102-103.

<sup>8</sup> Linch and McCormack, ‘Introduction’, *Britain’s Soldiers: Rethinking War and Society, 1715-1815*, ed. by Linch and McCormack, (Liverpool: LUP, 2014), pp. 1-14 (p. 3).

order to study the lives of its combatants, and to think about their place within society and culture'.<sup>9</sup>

Most importantly, perhaps, the academic dialogue has begun in earnest, bringing together historians from a variety of fields and perspectives within a more or less unified mission, fuelled largely by growing interest in the French Revolutionary and Napoleonic wars, their impact on society and the experiences of those involved. Conferences such as *War, Society and Culture in Britain, 1750-1850*, held at the University of Leeds in the summer of 2013 and its predecessor, *Britain's Soldiers, 1750-1815*, in 2011, both part of the AHRC funded project, *Soldiers and Soldiering in Britain, c.1750-1815*, saw the coming together of scholars from a wide variety of historical schools, and indeed academic disciplines, with a common but broad purpose in mind.<sup>10</sup> Far from a dangerous fragmentation, it would seem that this new scene offers instead a multi-faceted view of military lives and cultures.

And yet, as Coss points out in the introduction to his 2010 study of soldiers' combat motivations, the image of the 'redcoat' as essentially an outcast from civil society, either on the grounds of criminality and brutishness or stark poverty and social distress, still carries weight in popular history. In his analysis of the British soldier's campaign behaviours and motivations to fight, Coss explores what amounts to a two centuries long slander against the rank and file of Wellington's army.<sup>11</sup> This idiosyncratic acceptance amongst past historians across the field, of a characterisation that falls apart at the slightest scrutiny, is both intriguing and odd, and Coss makes a strong case for a thorough re-examination both of the eighteenth-century British soldier himself, and his place within the field as a historical subject. Coss's reappraisal of soldier motivations allows him to apply the same model of 'small group dynamics' to the eighteenth-century British army, company and regiment, which has been applied to other soldiers in other theatres of war.<sup>12</sup> Drawing from modern

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<sup>9</sup> Linch and McCormack, 'Introduction', *Britain's Soldiers*, ed. by, Linch and McCormack, p. 3.

<sup>10</sup> For details of the project and conferences: <http://redcoats.ning.com>.

<sup>11</sup> Coss, pp. 29-49.

<sup>12</sup> In defining and delineating groups, Coss draws on the work of Charles Cooley, whose writings in the early twentieth century set the foundation for modern

understandings of the psychology of warfare and small-group dynamics, Coss addresses the inherent flaw in the historical picture of the eighteenth- and early nineteenth-century British soldier: anti-social thugs do not make good soldiers.<sup>13</sup>

In exploring the disconnect between popular perception and historical reality, the field of military history has begun to incorporate a much wider range of approaches, shedding light on the cultural and social history of the soldier, even as they clarify his legal and political identity. The internal world of the regiments has become a particular focus for historians in this field, as has the often fraught relationship between the British nation and its armed forces. Studies of recruitment practices and desertion patterns have told us much about the social origins of the British soldiery, but have yet to fully answer the question of criminality; though Coss's study tackles the perception of the British soldiery as brutish, anti-social and violent, both in terms of forced enlistment through the justice system, and behaviour on campaign.

Arthur Gilbert, Glenn Stepler and Peter Burroughs, writing in the 1970s and 1980s, did much to illuminate the strengths and weaknesses of military justice, with their respective studies into the structures and practices of the courts martial system, its relationship to civil justice, sentencing practices and, in Gilbert's case, what those courts martial records can tell us about why some men chose to desert the army in which they had enlisted.<sup>14</sup> Hurl-Eamon's recent and current work, meanwhile, has contextualised crime as a survival strategy amongst soldiers' and sailors' wives in London, within the broader experience of their social class.

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understandings of the organisational features of social groups; though there may be potential dangers in assuming a universality to soldiering across different historical contexts: Coss, pp. 6-9.

<sup>13</sup> Coss, p. 4

<sup>14</sup> Arthur N. Gilbert 'Law and Honour among Eighteenth-Century British Army Officers', *Historical Journal*, 19 (March, 1976), 75-87; 'The Regimental Courts Martial in the Eighteenth Century British Army', *Albion*, 8 (Spring, 1976), 50-66; 'Military and Civilian Justice in Eighteenth-Century England: An Assessment', *Journal of British Studies*, 17 (1978), 41-65; 'Why Men Deserted the Eighteenth-Century British Army,' *Armed Forces and Society*, 6 (1980), 553-67; G. A. Stepler., 'British Military Law, Discipline, and the Conduct of Regimental Courts Martial in the later Eighteenth Century', *EHR*, 102, (Oct, 1987), 859-886; P. Burroughs, 'Crime and Punishment in the British Army, 1815-1870', *EHR*, 100 (1985), 545-571.

This thesis is intended to contribute to the ongoing mission to understand the British soldier of the long eighteenth century and in particular the role of crime in his personal and professional life. If we take as a starting point an understanding of the British soldier as not necessarily more criminal than his civilian counterpart, we can begin to ask questions about his experience of crime and the role it played in his life and service. Some work has been done in this area already, for example the aforementioned study by Coss, in which a strong case is made for soldiers engaging in acts of theft as a direct result of service conditions.<sup>15</sup>

Such studies have primarily focused on the soldier's campaign behaviour and experience of crime whilst on active service and it is considered that this has been amply demonstrated by Coss. Few historians would argue that theft and plunder amongst the soldiers who marched under Wellington in the Peninsula, for example, was anything other than a response to a highly specific context. Very little work has yet focused on the soldier's experience of crime during those months or years in which he was militarily inactive, arguably a more defining feature of army life than active campaigning ever was.<sup>16</sup> What work has been undertaken to understand crime in this context has tended to be tightly focused on individual regiments or locations, such as Hurl-Eamon's work on military and naval wives in London, and Carol Divall's study of life in the 30th.

Wellington's famously disparaging remark, which to a large extent set the standard for how those men have been viewed by historians for the past two centuries, underlines the image of the British redcoat as uniquely and particularly criminal in nature. Coss, Hurl-Eamon and others, have overturned many of the stereotypes surrounding the apparent criminality of eighteenth-century soldiers and military families. In this ongoing re-appraisal of the eighteenth-century British soldier, criminality appears less as a character trait common to those who enlisted, but rather a necessary component of military life, itself subject to a series of cultural regulations and 'group norms'.<sup>17</sup> Though as a counterpoint to that, Stephen Conway argues that, whilst in some respects the army may have been a 'school for

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<sup>15</sup>Coss, pp. 17-18.

<sup>16</sup> Linch and McCormack, 'Defining Soldiers', p. 145.

<sup>17</sup> Coss, pp. 17-18

crime', in other respects it may have acted to rehabilitate those soldiers who did enter as convicted criminals.<sup>18</sup> In Hurl-Eamon's analysis, soldiers and military families in eighteenth-century London can be seen to operate within a similar set of cultural norms to those of other plebeian groupings. Though subject to a particular and peculiar set of stressors, military families employed many of the survival strategies which can be seen to have been employed by other, non-military families, and in doing so displayed some of the same cultural understandings of and attitudes to crime. Coss's study, meanwhile, demonstrates how the exigencies of campaign life turned the crimes of looting and plundering, particularly of food or alcohol, into vital and much valued campaign survival skills, conducted within a strict moral framework of behaviour and governed by the 'group norms' of the military communities in which soldiers lived.<sup>19</sup> Between the two poles of domestic metropolitan living and life on the campaign trail in the Peninsular, there is a broad spectrum of military lives and experiences, and it could be argued that the 'typical' experience of the British soldier during this period lies somewhere between these two points. It is how crime features in this military experience that is of most interest to this study.

This thesis will provide a broad survey of soldier crime during this period, taking account not just of the desperate pilfering of half-starved marching soldiers, but the wider patterns of crime within British military communities. Broadly covering the period c.1740-1830, allows temporal as well as specific contextual factors to be taken into account, incorporating both the peacetime and wartime experiences of the British soldier. This period saw the British Army begin to take a more recognisably modern shape, with a drive towards professionalization, even as the image of the redcoat began to take on the aspects mentioned above.<sup>20</sup> At the same time the 'Redcoat Era' was largely one of continuity, with tactics and internal structures changing little between Cumberland's reforms of the mid-eighteenth century and the mass mobilisations of the Revolutionary and Napoleonic Wars.<sup>21</sup> Even with the rapid changes to recruitment and training

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<sup>18</sup> Conway, *The British Isles and the War of American Independence*, p. 101.

<sup>19</sup> Coss, pp. 17-18.

<sup>20</sup> Corelli, Barnett, *Britain and her Army: A Military, Political and Social History of the British Army* (London: Cassel and Co., 1970), pp. 168-70, 246-47.

<sup>21</sup> Barnett, p. 175.

practices during the Napoleonic Wars, continuity in key personnel and military philosophy ensured that the basic experience of the British soldier remained broadly similar to that of the previous generation, and would continue to do so until the reforms of the Victorian era. Such a timeframe allows a broader experience to be drawn, whilst at the same time offering specific periods within that to be examined. Whilst the earlier period will provide that sense of continuity, the years covering the Revolutionary and Napoleonic Wars, with their increase in record keeping, more formal approach to military justice and increase in soldier literacy levels, offer a more detailed picture of the soldier experience.<sup>22</sup>

An examination of crime and criminality is also an examination of a series of relationships. As Douglas Hay puts it, it is an examination of 'the structure of relationships that we call (in a moment of abstraction or generalization) "crime"'. Though Hay cautions the dangers of attempting to reconstruct complex relationships and circumstances through the 'archaic language and fossilized categories of the criminal law, written on a few desiccated slips of parchment', he also considers the value of the attempt.<sup>23</sup> By studying the soldier's experience of crime we can shed light on his relationships with other soldiers, with his family, with civilians and with various levels of authority. This thesis examines the role crime played in military life, its impact on individuals and even on the service itself, and considers what crime meant to the soldier either as perpetrator or victim. Along with establishing the kinds of crime prevalent within military communities, it will consider the ways in which military service shaped, and provided the context for, the soldier's experience of crime. It is important that whilst we recognise soldiers as belonging to discrete military communities, those communities often lived and worked alongside civilians, and as such the role of civilians in soldier crime is also an important consideration.

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<sup>22</sup>John E. Cookson, 'Regimental Worlds: Interpreting the Experience of British Soldiers during the Napoleonic Wars,' in *Soldiers, Citizens and Civilians: experiences and perceptions of the Revolutionary and Napoleonic Wars, 1790-1820* (Basingstoke : Palgrave Macmillan, 2009), ed. by, Alan Forrest, et al, pp. 23-39 (pp. 29-33); also, see William Spencer, *Army Records: A Guide for Family Historians* (Kew: The National Archives, 2008), pp. 11-14, 41-49.

<sup>23</sup>Douglas Hay, 'War, Dearth and Theft in the Eighteenth Century: The Record of the English Courts', *Past and Present*, 95 (May, 1982), pp. 117-160 (p. 118).

Relations between soldiers and civilians may not always have been comfortable, but they were nonetheless often close. With few barracks, the majority of soldiers during the eighteenth century would have found themselves living primarily within a wider civilian setting, either billeted with civilians, or in camps near to civilian communities.<sup>24</sup> When examining property crime in particular, it is useful to consider how that might have provided conduits between civilian and military worlds. This thesis considers the various forms of property crime to which soldiers were victim and which soldiers committed, their motivations for such crimes and common features which united those experiences, and also demonstrates the existence of a thriving black market, operating ‘across the borders’ of military and civilian worlds, and internally as a ubiquitous feature of army life. It considers crimes of violence within the regimental community, how that community responded to them and how they appear in the military justice records, and also demonstrates some of the distinctions between how violence was experienced by private soldiers and how it was experienced by non-commissioned officers (NCOs). Essentially it is the intention of this thesis to identify and characterise a common, soldier experience of crime, both as victim and perpetrator and to demonstrate how and in what ways military service and army life shaped and defined that experience of crime during the late eighteenth and early nineteenth centuries.

Additionally, a secondary aim of this thesis is to demonstrate the usefulness and value of a unique set of official documents, created by the determination of early nineteenth-century British military commanders to professionalise their institution and to document and record the judicial processes and service conditions of the men under their command. The majority of studies into military justice have tended to focus on one, or two levels of courts martial, examining either regimental, or general courts martial, or a combination of the two. In examining samples from all three levels of the courts martial system, this thesis will provide a much broader look at the way crime functioned in the lives and service of soldiers in the British army, across the whole service, as well as consider the experiences of individual soldiers and regiments.

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<sup>24</sup> Barnett, pp. 165-69; Brumwell, pp. 55-57.

## **Thesis structure**

Chapter One will introduce some of the main themes to be considered in this thesis, offer an explanation of terms and consider important questions of definition. It will also provide an introduction to the core sources used and a brief explanation of the military justice system. It will explain the methodology used in the statistical analysis of the three levels of courts martial records, as well as outline the headline findings of that analysis and introduce the three regiments used as case studies.

The chapters that follow will offer detailed analyses of particular categories of offence, with statistical analysis of offences represented in the courts martial records, and an exploration of other sources to explore how those offences featured in the lives and service of soldiers, as well as considering both the distinctions and areas of overlap between the soldier and civilian experiences of those offence types.

Chapters Two and Three will focus on military offences, with Chapter Two considering the crime of desertion and related offences such as suicide and self-harm and Chapter Three considering regulatory breaches and offences of disorder, such as mutiny, disobedience of orders, and irregular conduct.

Chapters Four and Five will focus on criminal offences, or those offences which would be recognised as criminal in both military and civilian spheres, and for which both soldiers and civilians might be prosecuted. Chapter Four will consider offences against the person, primarily violent crime and Chapter Five will consider offences against property, such as theft, and offences of dishonesty, such as fraud and embezzlement.

Two key areas of study arise from the statistical analysis of courts martial records and wider exploration of other official sources, soldier and officer memoirs and contemporary popular culture. The first is that, just as there was a soldier-specific experience of crime during this period, that experience was differentiated by rank, with NCOs experiencing crime in subtly different ways to the men under them. Chapter Six will consider this distinction and explore how NCOs experienced crime in different ways to privates, as victims of violent crime and as perpetrators of property crime

and dishonesty offences. The second key area is the apparent existence of a thriving black market operating within regimental communities and between military and civilian worlds. Chapter Seven will consider the informal regimental market place and black-market trading in stolen goods. In particular it will explore the black market in military goods and soldiers' necessities.

Finally, a short concluding chapter will draw together the main themes and patterns of crime and criminality explored in this thesis.

## Chapter One: Definitions and Sources

### Introduction

In order to understand the eighteenth- and early nineteenth-century soldier experience of crime, we must first consider what is meant by the terms ‘soldier’ and ‘crime’. As mentioned in the introduction to this thesis, the term ‘soldier’ was a far less simple category in this period than might at first be supposed, with a variety of service types and different degrees to which the ‘soldier’ identified, and was identified by others, as such.<sup>25</sup> Defining what is or was a crime is similarly deceptive in its superficial simplicity. Indeed, as John Rule suggests, ‘few forms of human behaviour are more complex than the criminal’, with definitions of crime varying across time, and different parts of society.<sup>26</sup> If understanding what was or was not considered criminal in the civilian sphere is complex, this is further complicated in the case of soldier crime, by the existence of two parallel judicial systems.

This chapter will consider some important questions of definition and historically specific contexts, and introduce the key sources and methodologies through which this study will examine the nature, prevalence and role of crime within the lives and service of late eighteenth- and early nineteenth-century British soldiers. It is also important to define what might be considered criminal in the context of the time and the historical actors involved, and to set those definitions within the methodological approaches used in this study. As well as introducing core concepts and definitions, this chapter will also offer a brief introduction to the organisation and practice of military justice during the period, and in particular the three-tiered courts-martial system from which the majority of the evidence used in this study is drawn. Finally, the chapter will offer a broad analysis of those sources and the key questions they raise.

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<sup>25</sup> Linch, and McCormack, 144-159.

<sup>26</sup> John Rule, ‘Social Crime in the eighteenth and early nineteenth centuries’ in John Rule and Roger A. E. Wells, *Crime, Protest and Popular Politics in Southern England, 1740-1850*, (London: Hambledon Press, 1997), pp. 153-158 (153).

### ‘Defining Soldiers’

It is necessary at this point to consider what is meant by the term ‘soldier’ within this study; a seemingly obvious identification to the modern mind, but one which for the period under study was rather less so. In their recent article, ‘Defining Soldiers: Britain's Military, c.1815 -1740’, Linch and McCormack explore some of the difficulties in defining who ‘soldiers’ were and indeed what constituted ‘military service’ in the context of the eighteenth- and early nineteenth-century British military. Alongside the regular army establishment, a proliferation of other service types existed, with varying degrees of recognition, legitimacy and inclusion within formal military structures.

Linch and McCormack make the point that, whilst during this period Britain’s armed forces went through a ‘massive and sustained expansion’, the majority of that expansion occurred ‘outside the British army’, so that of the more than half a million men under arms in 1805, only around twenty-three percent of them were ‘regulars’.<sup>27</sup> With the proliferation of non-regular regiments and services ranging from part-time volunteers, to citizen soldiers in the militia, and geographically limited service in the fencibles, the identification of ‘soldier’ necessarily encompassed a broad range of experiences.<sup>28</sup> For some, soldiering was an activity which ran alongside their main occupational identity, with weekend training exercises or parades and a readiness to take up arms in defence of their locales should the ever-feared threat of French invasion come to pass. For some, soldiering was a distinctly home-bound experience, acting, particularly with regards to the militia, as an ad-hoc police force in various parts of the country, whilst waiting for an invasion which in the end did not come.<sup>29</sup> For many, service was a voluntary addition to their day-to-day lives and occupations. But for some, soldiering was their central occupation and identity and, more importantly for this study, defined their legal status.<sup>30</sup>

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<sup>27</sup> Linch, and McCormack, p. 145.

<sup>28</sup> Linch, and McCormack., p. 6.

<sup>29</sup> *Ibid.*, p. 146; Tony Hayter, *The Army and the Crowd in Mid-Georgian England* (Basingstoke: Macmillan, 1978); Brumwell, *Redcoats*, p. 56.

<sup>30</sup> John Childs, ‘The Restoration Army, 1660-1702’, in *The Oxford History of the British Army* (Oxford: OUP, 1994), ed. by, David Chandler and Ian Beckett pp. 46-66 (p. 47); Richard Holmes, *Redcoat: The British Soldier in the Age of Horse and Musket* (London: Harper Collins, 2001),pp. 86-7.

One of the most fundamental ways in which the various kinds of service were differentiated was whether or not they placed the soldier under the Mutiny Act and the Articles of War. This provides a useful set of definitional parameters in which to work; however, even this distinction has its complications. In the political sphere and popular culture, the ‘citizen soldier’ was primarily differentiated from the regular soldier by virtue of his localism and his legal standing.<sup>31</sup> Though their regiments mirrored the regiments of the line in shape and structure, and in many ways offered a very similar experience of service in terms of camp life and training, militia soldiers retained the legal status of civilians except when they were on active service, or when the nation was at war.<sup>32</sup> This thesis is most concerned with those men for whom soldiering was their prime occupation, at least during the period of service, if not for life; in other words, those men who served under the aegis of the British Army as an institution, under the authority and command of the Horse Guards and whose lives were structured and bounded by army regulations and expectations. This would include men serving in militia regiments on active service, during the period of that activity. It would also include men serving in regular regiments providing support to the troops of the East India Company.

A further distinction is drawn in this study between ordinary-ranking soldiers and NCOs, the so-called ‘other ranks’, and the commissioned officers who commanded them. Although officers might be considered ‘soldiers’, their experience of soldiering and army service was highly differentiated from that of the other ranks, particularly, and most relevant here, in their experience of military justice. As Arthur Gilbert put it in his analysis of ‘Law and Honour Among Eighteenth-Century British Officers’: ‘those who joined the officers corps in the eighteenth century became members of an exclusive club’.<sup>33</sup> Primarily self-policed according to a strict ‘honour code’, which held, among other transgressions, ‘consorting in a familiar way with the rank and file’ to be a serious offence, their careers and the expectations of their service ran along wholly different tracks to those of

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<sup>31</sup> Holmes, *Redcoat*, pp. 86-7; Linch, ‘A Citizen and not a Soldier’: The British Volunteer Movement and the War against Napoleon’, in *Soldiers, Citizens and Civilians*, ed. by Alan Forrest, et al, pp. 205-221.

<sup>32</sup> Linch and McCormack, ‘Defining Soldiers’, p. 147.

<sup>33</sup> Gilbert, ‘Law and Honour’, p. 75.

the men they commanded. For an officer, after charges of cowardice, one of the most serious formal charges that could be levelled against him was that of ‘Conduct unbecoming an Officer and a Gentleman’: a catch-all charge covering everything from public misbehaviour, or fraternising with the men, to serious regulatory offences and even felonies. Gilbert gives several examples of serious law breaking being treated as a breach of honour through the use of this charge. For serving officers, the Court Martial was as much a ‘court of honour’ as it was a ‘court of justice’.<sup>34</sup>

Indeed, as Gilbert argues in his later assessment of the respective characters of military and civilian justice, it is almost a misnomer to refer to a military justice system at all, with the areas of ‘overlap’ between officers and men, in terms of both the kinds of charges faced and the kinds of punishments inflicted, so narrow as to have effectively created two different systems.<sup>35</sup> With such a different experience of justice and military culture, officers necessarily represent a distinct body, separate from the ordinary-ranking soldiers and as such warrant separate study in their own right. It is not the intention of this thesis to consider in any detail the commissioned officer’s experience of crime, except where it intersects with, and can assist in understanding, that of the men under their command.

By contrast, the NCOs who stood between officers and private soldiers, despite the separation of their rank in terms of messing and authority, remained a part of the cultural and social milieu of serving soldiers.<sup>36</sup> Like their superior officers, sergeants and corporals were expected to maintain a degree of distance from their men, and ‘fraternising’ with them was considered a breach of discipline; however, their experience of military justice was that of the soldier, not of the officer.<sup>37</sup> This study, therefore, includes NCOs along with the men in the ranks. That said, it is important to take account of some of the distinct elements of the NCOs’ service, and the ways in which that could shape and impact upon both the

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<sup>34</sup> Gilbert, ‘Law and Honour’, p. 77.

<sup>35</sup> Gilbert, ‘Military and Civilian Justice’, pp. 43-44.

<sup>36</sup> Charles M. Clode, *The Military Forces of the Crown: Their Administration and Government*, Volume 2 (London: John Murray, 1869), p. 124.; Stepler, pp. 879-80

<sup>37</sup> Stepler, pp. 879-80.

crimes they were likely to fall victim to and those they were likely to commit.

There is one further caveat to add, the rank-specific nature of military experience. Though it was largely the case that rank reflected civilian social class, with officers drawn from very different social backgrounds to those of private soldiers, this was not absolute, nor was it the case that all access to a commission was closed to men from the ranks.<sup>38</sup> By the same token, it was, whilst a rarity, quite possible for a disgraced, former serving officer to find himself enlisting as a private soldier. In *Twenty-Five Years in the Rifle Brigade*, William Surtees recalled having ‘several individuals serving in the corps as soldiers, who had been officers in the army during the late war, but who, from different causes, had been reduced to the necessity of enlisting as private soldiers.’<sup>39</sup>

### **Military justice in context and definitions of crime**

The military justice system differed in some ways to that of the civilian system; however, in other respects they were very much part of the same cultural milieu and therefore shared some important characteristics.<sup>40</sup> A key element of the civilian justice system was the role played by discretion.<sup>41</sup> At first glance the military system seems less inclined towards discretionary elements, but this is deceptive. In terms of written rules and ordinances, the military justice system appears rigid and entirely prescriptive; however, further examination shows that this is not always how the system worked in practice. Officers and soldiers practiced and experienced discretionary justice as an essential part of an ongoing quest for order on the one hand, and independence on the other.<sup>42</sup> Capital offences

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<sup>38</sup> Cookson, ‘Regimental Worlds’, p. 32; Brumwell, *Redcoats*, p. 82; Hew Strachan, *Wellington’s Legacy: The Reform of the British Army, 1830-54* (Manchester: MUP, 1984), p. 97

<sup>39</sup> William Surtees, *Twenty-Five years in the Rifle Brigade* (Edinburgh: William Blackwood; London: T. Cadell, 1833), p. 47.

<sup>40</sup> Burroughs, p. 545.

<sup>41</sup> Peter King, *Crime, Justice and Discretion in England, 1740-1820* (Oxford; New York: OUP, 2003).

<sup>42</sup> Gilbert ‘Why Men Deserted’, p. 557; also, Tatum, “‘The soldiers murmured much on Account of their usage’: Military Justice and Negotiated Authority in the Eighteenth-Century British Army’, in *Britain’s Soldiers*, ed. by, Linch and McCormack, pp. 95-113 p. 109.

and any charges serious enough to warrant transportation, lengthy prison sentences of above two years, or floggings of more than 150 lashes were supposed to be dealt with only at a General Court Martial. In practice such crimes were often dealt with at the lower levels of General Regimental, or Regimental Courts Martial, or at a sub-judicial level by officers on the ground.<sup>43</sup> How a particular crime was treated differed according to the personalities of the commanding officers involved, and to the particular military concerns and exigencies of the day.<sup>44</sup>

For soldier victims of crime, whether that crime was reported and to whom depended often on the soldiers' own relationships with each other and with their officers. According to Coss's study, the soldiers who served under Wellington in the Peninsula engaged in self-policing along company lines, with some crimes that transgressed their commonly held values incurring informal punishments, such as being shunned by the rest of the company. Coss illustrates this point with examples showing that soldiers saw little of concern with acts of simple theft against civilians, but found it difficult to accept violent robbery or rape.<sup>45</sup>

As in the civilian sphere, discretion played an important role within military justice, with the main difference being where and with whom that discretion lay. In the civilian system, the victim of a crime was, in most cases, personally responsible not just for the apprehension and arrest of the accused, but also the decision to prosecute and indeed the prosecution itself once any trial was undertaken. Speaking of property crime in particular, King explains that 'the central role was played by the victim,' who became, according to one contemporary observer, 'the sole arbiter of the fate of the offender'.<sup>46</sup> Within the military system, in crimes with a clear victim, the discretion of that victim remained in force only at informal, sub-judicial levels: the decision to report and thereby trigger formal action, or to deal with the offence at an unofficial level, in the manner Coss described. Once an offence had been reported, however, the location of discretion shifted away from the victim and passed into the hands of the officers of the regiment. At this point discretion became primarily a tool of pragmatism,

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<sup>43</sup> Gilbert 'Regimental Courts Martial', p. 51; Burroughs, pp. 557-59.

<sup>44</sup> Burroughs, p. 558.

<sup>45</sup> Coss, p. 114.

<sup>46</sup> King, p. 717.

with questions of morality and justice giving way almost entirely to concerns about discipline and good order, alongside personal considerations of jurisdiction on the part of officers: whether or not an offence was dealt with at a higher level of court martial often depended on the degree to which officers wished to keep matters within their battalion or regiment.<sup>47</sup>

One of the clearest distinctions between military and civilian justice would seem to have rested with overall intent and purpose. The offences which most perturbed the military, and with which they were most concerned, were those which related directly to military order and operational health.<sup>48</sup> Murder, robbery and rape were and would, when committed on home soil, usually be given over to the civilian courts, particularly when committed against a civilian victim.<sup>49</sup> Courts martial records at all three levels are dominated by regulatory offences and acts of disorder, with desertion and sale of soldiers' 'necessaries' featuring particularly heavily across the board.<sup>50</sup> Though Gilbert suggests that the army practice of 'drawing lots' in some capital cases involving multiple defendants was indicative of the 'capricious nature of military justice', it can equally stand as evidence for a fundamental pragmatism.<sup>51</sup> In such cases several defendants facing capital sentences could be offered the chance to draw lots in order to decide which of them might be spared, thereby allowing the army to retain soldiers who might otherwise have been executed, whilst at the same time providing a salutary lesson to others through the execution of one or more defendant.

Even at the highest level of military justice, pragmatic concerns necessarily dominated. As Gilbert points out, 'the army operated under a set of constraints - particularly during wartime - that were markedly different from those that existed in civilian courts.'<sup>52</sup> Marching regiments in particular were often far from home, and when on the march, speed was of the essence when it came to military justice.

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<sup>47</sup> Burroughs, pp. 558-9.

<sup>48</sup> Burroughs, pp. 545-6; Gilbert, 'Military and Civilian Justice', pp. 41-42.

<sup>49</sup> Gilbert, 'Military and Civilian Justice', p. 46.

<sup>50</sup> According to Gilbert, there were times when desertion trials represented ninety per cent of General Courts Martial: Gilbert 'Military and Civilian Justice', p. 43.

<sup>51</sup> *Ibid.*, p. 59.

<sup>52</sup> Gilbert, 'Military and Civilian Justice', p. 42.

The presence of many offences, which in civilian terms would not necessarily have been categorised as ‘crimes’, brings us to the problem of classification and definition. As with the civilian sphere, the people most likely to find themselves at the sharp end of the justice system were not the same people who decided what was, or was not criminal.<sup>53</sup> It is notable that one of the defining features of the different levels of courts martial was whether or not they had the right to try officers, with only the highest tier, that of General Court Martial, having that right. Both the level of court martial used and the kinds of punishments imposed reflected the ‘inequities of a society divided by class’.<sup>54</sup> Class distinctions in categorising and defining crime must be taken into account if we are to understand how it was experienced by the ordinary soldier, either as victim or perpetrator.

Interestingly, it is in these class-specific definitions that we can see some of the closest connections between civilian and military experiences of crime. In ‘Insights into Plebeian Marriage: Soldiers, Sailors, and their Wives in the Old Bailey Proceedings’ and again in ‘The Fiction of Female Dependence and the Makeshift Economy of Soldiers, Sailors and Their Wives in Eighteenth-Century London’, Hurl-Eamon outlines some of the economic survival strategies employed by military families in London, during the late eighteenth century. Many have their echoes in other pauper cultures, and raise important questions of definition. As Hurl-Eamon suggests, some of the wives who appear in the Old Bailey records were being tried for acts that they may not themselves have considered immoral, founded as some of their ‘crimes’ were on a sense of occupational, ‘plebeian entitlement’, no different in tone to that of the brick yard worker taking his share of ‘chips’.<sup>55</sup>

That we can see similar attitudes expressed by soldiers on trial for stealing from the king’s stores, or other corporate entities, serves as a useful reminder that, however distanced soldiers sometimes were from their domestic settings, they were still the products of civilian culture and retained some of the expectations of their civilian counterparts.<sup>56</sup> It is

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<sup>53</sup> Rule, *Albion’s People*, pp. 153-158.

<sup>54</sup> Stepler, p. 863.

<sup>55</sup> Hurl-Eamon, ‘The Fiction of Female Dependence’, p. 485.

<sup>56</sup> Hurl-Eamon, ‘Fiction of Female Dependence’, p. 485; also see, Linch, ‘Citizens Not Soldiers’, p. 214; Burroughs, p. 551; Peter Way, ‘Rebellion of the Regulars:

notable that one of the most commonly occurring offences was that of soldiers ‘making away with’, or selling their regimental ‘necessaries’. Though we will explore this crime in greater detail later in this thesis, it is useful to bear this in mind as we consider definitions of crime. ‘Necessaries’ were ostensibly provided by the army to each individual soldier for use in his service, though part of the cost of such provision was borne by the soldier himself through his initial bounty. The cost of replacing such items in the event of loss was initially borne by the regiment, but recovered from the soldier through the system of ‘stoppages in his pay’.

It is not difficult to see how a soldier might feel a sense of ownership of the shirt and coat he wore and which he had at least in part paid for. Referring to militia soldiers, but also relevant to the regular army, Matthew McCormack, suggests that the soldier’s uniform formed part of his ‘moral economy’.<sup>57</sup> However much a soldier may have recognised that such actions transgressed the rules by which he was governed, the extent to which he considered them criminal was often questionable.

For the purposes of this study, we will consider primarily those offences which, either to the offender or to the victim, even in cases where the ‘victim’ was the regiment or army as an institution, would be considered ‘criminal’: offences against the person, or against property. Offences against property, primarily refers in this thesis to acts of theft, fraud and embezzlement, or any offence in which the perpetrator acquired, attempted to acquire, or was party to an acquisition of goods or money through dishonest means. The definition of violent crime includes both violent actions and threats of violent action, as well as offences of sexualised violence. These categories do not, however, include destruction of property, rioting, or generalised calls to violent rebellion. Similarly, amongst the records is a small number of cases involving the mistreatment or maiming of animals, primarily cavalry horses. To the modern mind such acts may sit more comfortably within an analysis of violence, but for most of the period

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Working Soldiers and the Mutiny Act of 1763 – 1764’, *The William and Mary Quarterly*, 57 (Oct., 2000), 761-792 (p.761). For a critique of this analysis: see, Tatum, ‘Military Justice and Negotiated Authority’, p.100.

<sup>57</sup>Matthew McCormack, *The Material Life of the Militia Man*, IHR, British History in the Long 18th Century, 27 June 2012 <<http://www.history.ac.uk/podcasts/british-history-long-18th-century/material-life-militia-man>> [Accessed 15 February 2013].

under study would most likely have been viewed more in terms of property damage. Cruelty to animals did not become a crime in and of itself until 1822.<sup>58</sup> Such offences will therefore be grouped with other regulatory offences, such as the deliberate breaking of military equipment.

Offences of a purely military or regulatory nature, such as ‘disobedience of orders’ or ‘being drunk whilst on sentry’, will be considered primarily where they add to our understanding of more obvious criminality.<sup>59</sup> That said, we must bear in mind that whilst one party might consider an offence to be ‘criminal’, others involved in the case may not share that definition.

Within that category of ‘criminal’ offence, there are some obvious sub-categories. Property crimes and violent crimes, for example, offer very different lessons and experiences for study. To carry out a comprehensive analysis of all criminal offences would be too large a task for a study of this size, and indeed some types of crime can tell us little of a common, soldier experience of crime and criminality. Cases of murder appear in the records but with such infrequency that they should be considered highly unusual. Though such cases will be touched upon, they necessarily represent a very small part of this study, with more typical cases of non-fatal violent assault being more prominent.

In contrast, the particular prevalence of certain kinds of property crime and the high levels of contemporary concern over such offences, within both the civilian and military spheres, suggest they were central to contemporary experiences of crime.<sup>60</sup> Property crime, unlike violent crime, often consists of multiple acts and stages. Items pass from individuals or groups, to other individuals or groups, and beyond, through a series of interactions and relationships. If property crime is key to understanding the eighteenth-century experience of crime overall, its prevalence within the military records suggest it is equally instructive of the soldier experience of crime.

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<sup>58</sup> Godfrey and Paul Lawrence, *Crime and Justice*, p.176.

<sup>59</sup> Gilbert gives an excellent summary of the distinctions between military and criminal offences and how they were treated within the military justice system: Gilbert, ‘Military and Civilian Justice’, pp. 45-49.

<sup>60</sup> King, p. 6; Gilbert, ‘Military and Civilian Justice’, p. 64.

One act which arguably straddles our two definitions of regulatory and criminal offence is that of desertion. On the one hand, desertion was defined in law as criminal and indeed as a capital offence. Morally too, many contemporaries viewed the act of desertion as a disturbing and socially dangerous crime. On the other hand, it can also be seen in terms of contract breaking or a withdrawal of labour and was viewed by many other contemporaries as wholly distinct from other forms of criminality.<sup>61</sup> In his study of ‘Crime and Punishment in the British Army, 1815-1870’, Burroughs considers desertion, ‘unruly behaviour’ and drunkenness to have been the ‘negative, unconstructive forms [...of protest...] open to them against the harassments and monotony of army life and service.’<sup>62</sup> This seems to have applied particularly to those men who faced trial for desertion, rather than those who successfully deserted, many of whom were raw recruits who regretted enlisting once introduced to the rigours of army life.<sup>63</sup> Many of those facing trial appear not to have gone to the trouble of attempting to evade capture, and the number of repeat desertions suggest that this may indeed have been, in some cases, an expression of reckless dissatisfaction, rather than a concerted effort to leave the service.<sup>64</sup>

As an offence, desertion has been extensively studied and can most likely tell us a great deal more about labour relations within the army than can most other offences. By its nature the act of desertion, if not accompanied by reenlistment elsewhere in the armed forces, often represented an attempt to sever the soldier identity. Though considered a crime in both spheres, it nonetheless occupied a very different mental and moral space to that of other crime types. Simple desertions, with no other accompanying crimes, have therefore been treated in this study primarily as regulatory, or military offences. Similarly, rioting and other forms of rebellion or resistance, such as deliberately breaking regimental equipment, do not sit entirely comfortably in either regulatory or criminal categories.

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<sup>61</sup> Brumwell, pp. 55-57; Kevin Linch, ‘Desertion from the British Army at Home’ (From a working paper by Dr Kevin Linch), p. 24; Burroughs, p. 546.

<sup>62</sup> Burroughs, p. 546.

<sup>63</sup> Kevin Linch, *Britain and Wellington’s Army: Recruitment, Society and Tradition, 1807-13* (Basingstoke: Palgrave MacMillan, 2011), pp. 100-101.

<sup>64</sup> Gilbert, ‘Why Men Deserted’, 553-67 (p. 563).

The surviving military justice records of the eighteenth and early nineteenth centuries play a prominent role in the evidence base for this thesis. In order to get a sense of the shape of crime within the army, the patterns of criminality and the potential effects on both individuals and corporate function, few sources can offer quite so much detailed and extensive evidence. Alongside the corporate context, these records offer sometimes quite detailed glimpses of specific moments in individual lives. Though soldiers arguably differed from their civilian counterparts as to the level at which their lives were recorded as a matter of course, the same paradigm of only really becoming ‘visible’ to us when their lives intersected with officialdom holds true.<sup>65</sup>

The level of detail offered in deserter notices and courts martial transcripts far outstrips that offered by enlistment documents of individual soldiers who served without incident. In much the same way that the Old Bailey trial transcripts offer a window onto far more than just the crime in question, detailing as they do many very ordinary aspects of the day to day lives of accused and accusers, so the courts martial transcripts offer a window onto camp life, barracks life, and billeted life for ordinary soldiers serving across many theatres of operation.<sup>66</sup>

With the exception of the lowest tier of formal trial, the Regimental Court Martial, military justice had a much more centralised recording system than civilian justice, with all courts martial above regimental level recorded and submitted to the Judge Advocate General, for trials held in England, and his deputy for trials held abroad.<sup>67</sup> Set alongside the very measurable army population at any given time, and the specific details of regimental recruitment and retention, it is clear that this evidence base allows for a very detailed analysis of the prevalence of certain crime types within the military community and the ways in which soldiers committed and were victim to crimes.

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<sup>65</sup> Hurl-Eamon, ‘Fiction of Female Dependence’, p. 484.

<sup>66</sup> Stepler, p. 560; Gilbert, ‘Military and Civilian Justice’, p. 53.

<sup>67</sup> Gilbert, ‘Military and Civilian Justice’, p. 53.

### Introduction to key sources

The bureaucracy of military justice, and its gift to the historian is exemplified by the collated returns of all General Regimental Courts Martial conducted by the British Army during the years 1812 to 1829.<sup>68</sup> Collected in two ledgers, the records are in a tabular form, with each entry giving details of an individual soldier, tried by court martial for offences ranging from desertion and theft, to attempted murder and rape. The full charge faced by each soldier has been recorded, along with judgement and sentence, and in some cases there are further details as to whether that sentence was carried out in full or amended as a later act of mercy. In all, the trials of over 4000 serving soldiers and militia men on active duty are collated here, drawn from every theatre of operation. Given the size and scope of the register, it is an invaluable and relatively untapped resource for military historians, and lends itself very well to quantitative as well as textual analysis.

General Regimental Courts Martial (GRCM), introduced in 1812, represented the middle, or ‘intermediate’ tier of military justice in the early nineteenth century.<sup>69</sup> Though defined in a note within an 1821 volume of *Estimates and Accounts*, as ‘General Courts Martial within each regiment for the trial of serious and aggravated cases’, they had a slightly more limited jurisdiction than a General Court Martial (GCM).<sup>70</sup> Aside from being limited to trials of men within the designated regiment only, the GRCM was not supposed to try capital offences, nor any charges serious enough to warrant transportation, lengthy prison sentences of above two years, or floggings of more than 150 lashes.<sup>71</sup> It is highly unlikely therefore,

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<sup>68</sup> Kew, The National Archives (TNA), War Office Papers, WO 89/4, General Regimental Courts Martial 1812-1821 and WO 89/5, General Regimental Courts Martial, 1822-1829.

<sup>69</sup> From 1829 the GRCM was replaced by the District or Garrison Court Martial: House of Commons Parliamentary Papers (PP), Command Papers (CP), *Report from His Majesty's commissioners for inquiring into the system of military punishments in the army; with appendices*, 1836 (59), XXII.1, p. 25.; also see Burroughs, p. 560.

<sup>70</sup> *Estimates and Accounts: Two Volumes. (1.) Army; Navy; Ordinance; Chelsea Hospital; Ophthalmia; Commissariat; &c., Session 23 January.. to .. 11 July, 1821* (London: H.M. Stationery Office, 1821), p. 3.

<sup>71</sup> TNA, ‘British Army: courts martial and deserters, 17th-20th centuries’, *Military Records Information*, 22 (2010) <<http://www.national-archives.gov.uk/records/research-guides/army-courts-17th-20th.htm>> [accessed 10 August 2011], p. 2; also see Burroughs, p. 560. It should be noted though, that this supposed restriction notwithstanding, the limitation was in reference to the nature

that the 4000 cases included in the register will include more than an occasional and wholly anomalous trial for murder, rape or high-value theft. By the same token, many relatively minor offences would never have made it to a GRCM, being more commonly dealt with in the far less scrutinised setting of the Regimental Court Martial (RCM), or at a less formal, sub-judicial level by regimental officers.<sup>72</sup> What we see in the GRCM register, along with deserters, are primarily repeat regulatory offences, repeat minor offences and serious, but not capital offences. It is also important to note that non-military crimes would often be dealt with by the civilian legal system, particularly for those soldiers stationed at home.<sup>73</sup> This source cannot, therefore, offer a comprehensive picture of crime and criminality for the army. What it can do is indicate some interesting patterns and offer insights into a fairly broad band of crime within the army.

Given the size of the GRCM register, such a detailed transcription and categorising of all 4000 entries would be too large a task for an individual working within the timescale of a PhD, and would risk over-emphasising this middle tier of court martial at the expense of the upper and lower tiers. Instead, a sampling scheme is considered to provide both the necessary scope and manageability. Six years have been sampled, comprising three pairs of years, located near the start, middle and end of the register, at five year intervals: 1813-1814, 1819-1820, 1825-1826. This will form the main statistical analysis of the register entries; however, where needed, entries from other years have also been utilised, and the year 1818 has also been sampled for use with the GCM level sample. This will give some sense of offending patterns across different periods at this level, whilst also facilitating a number of case studies: a detailed examination of two years of serious offences for the whole service at GRCM and GCM level and a single year across all three levels of military justice for three different regiments.

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of the offence not the number of lashes the court was empowered to order and the actual number of lashes which could be awarded were considerably higher, at 500: see, 'Minutes of Evidence, Thursday, 12<sup>th</sup> March, 1835' in Report [...] into the system of military punishments, p. 25.

<sup>72</sup> Stepler, (1987), p. 863.

<sup>73</sup> Gilbert, 'Military and Civilian Justice', 41-65 (p. 46).

Alongside the GRCM register are two registers of General Courts Martial, with one listing all GCM trials confirmed at home, and the other all GCM trials confirmed abroad.<sup>74</sup> Two years of these registers have been sampled, covering the period 1st January 1818 to 31st December 1819. As the highest tier of military justice, the presence of ordinary-ranking soldiers and NCOs is much smaller in this sample, with far more soldiers tried at RCM or GRCM levels. The kinds of offences tried at this level tend to be more serious, or involve persistent offenders. In terms of format, the GCM registers are very similar to the GRCM registers, and therefore allow for a similar approach in terms of sampling and recording. The GCM sample has been used alongside the GRCM sample to form a more detailed picture of criminality for specific years, and to show how offences moved through the levels of courts martial.

For some of the period covered by the GRCM register, there are also surviving RCM registers included within the twice-yearly regimental returns submitted by individual regiments.<sup>75</sup> Regimental reports for three individual regiments, covering the twelve month period from September 1818 to October 1819, have been studied alongside the registers, allowing the three regiments to be used as case studies within the wider statistical analysis. As with the whole service GRCM and GCM registers, the trial details included in these individual regimental returns are frustratingly slight. When set alongside the registers, however, they can add depth to the picture of crime within individual regiments, as well as allowing an analysis of how crime appears across the three tiers of justice through which the military dealt with most soldier crime.

### **Registers of General Regimental Courts Martial, 1812 to 1829**

A simple spreadsheet database programme allows for a very flexible and multi-levelled analysis of the registers. The registers record the name, rank, regiment and date of trial for each entry. These have been transcribed,

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<sup>74</sup> TNA, WO 90/1, General courts martial registers, abroad, 1796-1825; WO 92/1, General courts martial register, confirmed at home, 1666 - 1704; 1806 – 1838.

<sup>75</sup> PP, CP, 1836 (59), XXII.1, Report [...] into the system of military punishments, p. 25: According to the report into the system of military punishments, the requirement for regiments to provide returns of all RCM trials, were by general order from 1819; however, they were applied retrospectively for the second half of 1818.

along with the charge and sentence summaries. Offences have been identified as one or more of the following: desertion; simple regulatory; theft; fraud or embezzlement; violent; sexual, and finally self-harm. Further category fields assess, where possible, the types of victim involved, with victims classified as: civilian; fellow soldier; officer or employer; NCO; member of another service (such as the navy or the marines), and lastly the regiment or the army as an institution. This allows a nuanced interrogation of the evidence, which takes account of important considerations, such as whether or not the perpetrator of a crime expected to remain within the military community at the time they committed the offence, and the extent to which crime was externally or internally focused.

### **Testing the method**

Alongside the six complete years sampled from the GRCM Register, which provide the core of the quantitative analysis for this study, an initial test sample of the first six months of the register is also of interest. Beginning midway through the year 1812, this six month period offers some intriguing results and provided some early avenues of enquiry for this investigation. Some of those initial findings are repeated in the larger sampling exercise, such as the prevalence of desertion and regulatory offences, the high numbers of property crime compared to violent crime, the apparent lack of violence between soldiers of equal rank and the disproportionate presence of NCOs as victims of violent crime. There are, however, a few differences, which serve well both to demonstrate the dangers of attempting to apply the results of a small sample to the greater whole, and to indicate areas of specificity.

For the last six months of the year 1812, there were 193 soldiers recorded as having been tried by GRCM, nine of whom were acquitted.<sup>76</sup> In 16 cases the charges were entirely of a regulatory nature, such as ‘disobedience of orders’, ‘Unsoldierlike Conduct’ and ‘being drunk and absent from the Evening Parade’, with no outright criminal behaviour indicated. Included in this category are the sometimes tragic attempts made by a few soldiers to ‘procure a discharge’ or ‘retard a cure’, such as that of Gunner Edward Barker, of the Royal Artillery, who was charged with

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<sup>76</sup> WO 89/4, General Regimental Courts Martial 1812-1821.

‘Having suffered some escarotic substance to be applied to his back to retard his Cure, being a Patient in the Hospital’, or Private William Playfoot of the 26th, tried at Gibraltar for having ‘Wifully fired a loaded musket depriving himself thereby of his left-hand’. Of the 184 soldiers convicted, 146 faced charges of desertion, with or without other charges:

**Table 1.1: GRCM convictions for 1812, by offence type - with and without desertion<sup>77</sup>**

Offence Type	Total	With	W/out Desertion
Desertion	146	n/a	n/a
Regulatory	31	6	25
Theft	46	34	12
Fraud/Embezzlement	12	10	2
Violent	9	0	9

In only 68 cases are there criminal charges beyond simple desertion or regulatory offences. Breaking down these 68 cases, we begin to see some intriguing aspects of soldier crime. By far the most common criminal charges relate to financial or property crime. Forty-six soldiers were convicted of various forms of theft and 12 were convicted of acts of fraud or embezzlement, including those who deserted and re-enlisted for additional bounties. In only 12 cases were charges of theft preferred against a soldier who was not also charged with desertion, and in only two cases were soldiers charged with fraud or embezzlement without also being charged with desertion. In very few cases do we see soldiers committing such acts without an intention to leave their regimental community. Acts of theft or fraud against fellow soldiers likewise appear a rarity, with only five charges of theft and only two of fraud or embezzlement against other soldiers.

Now this may simply reflect differences in opportunity, risk and reward. Soldiers in the ordinary ranks, on the whole, had very little to steal and theft from a fellow soldier may have offered very little reward for very high risk. In both fraud cases, the soldiers concerned had defrauded several other soldiers of their wages, and as such the potential reward was unusually

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<sup>77</sup> Figures taken from: WO 89/4.

high. But this disparity may also reflect some deeper attitudes towards authority, as well as class-distinct moral understandings of theft.

Similarly rare are cases featuring violence. Only nine cases involved violence of any kind. Intriguingly, unlike the cases involving theft or fraud, all nine involved soldiers intending to stay in service. Not one of the charges of violence accompanied desertion charges and seven involved violence against fellow soldiers. If we take a closer look at these cases of violence, however, we can see that five of the seven charges of violence against a fellow soldier relate to the same incident: five soldiers of the Clare Militia were tried at Woodbridge for being ‘out of quarters’ and ‘breaking into the hut of Driver Johnson of the Royal Horse Artillery’. Three were found guilty of ‘assaulting [Johnson] and his Wife’, and two of ‘ill-treating Driver Johnson’. It is also debatable to what extent soldiers from the Clare Militia Regiment would have considered a driver from the Royal Horse Artillery Regiment to have been a ‘fellow’. Given the unprecedented numbers of men in service at this time and given that most of these men would have been armed and trained in violence, such a small number of violent crimes seems surprising.

### **Overview of GRCM sampling exercise**

Having tested the method with the first half year of the GRCM register, the main sampling exercise was undertaken and the results show some similar patterns to the test sample. In the following chapters a more detailed analysis will be offered for each of the categories of offence; however, it is useful first to give an overview of the main findings. In total the six sampled years of the register contain 1589 trial entries, with 42 recording acquittals, leaving 1547 for analysis.

**Table 1.2: Total number of GRCM trials by sample set, with acquittals**

<b>Sample Set</b>	<b>No. of Entries</b>
1813 - 1814	474
1819 - 1820	324

removed<sup>78</sup>

1825 - 1826	749
Total	1547

The trials cover a wide geographical spread, with every location in which a British soldier may have found himself serving represented, although there is a definite weighting towards home trials. During the years 1813-1814, while much of the army was engaged in the Peninsular War, and the War of 1812, approximately 42% of trials listed were conducted either on the British mainland, Ireland, the Channel Islands or Gibraltar.<sup>79</sup> During the years 1819-1820, with the occupation of France ended, the army faced substantial troop reductions, thereby changing the balance of forces overseas, yet a similar proportion of trials, approximately 37%, were conducted at home.<sup>80</sup> For the years 1825-1826, however, after several years of relative inactivity in Europe and America, the number of trials the army conducted at home rose to almost 90%.<sup>81</sup>

In her study of life inside the 30th Regiment, Carole Divall makes a compelling case for a rise in crime amongst the battalion stationed in India compared with the crime rates in the battalion stationed at home, with the ‘extreme boredom’ of service in India cited as a possible cause.<sup>82</sup> If this was indeed the case, then one might expect to see trials from India disproportionately represented; however, when viewed across multiple years and regiments, this does not seem to hold true. During the years 1813-1814 approximately 16% of trials were conducted in India, rising to 20% during the years 1819-1820, and dropping to a mere 5% of the 1825-1826 trials. During the years 1818-1819, when our samples show the highest proportion of trials held in India, the proportion of the army stationed in India had risen

<sup>78</sup>Figures taken from: WO 89/4; WO 89/5, General Regimental Courts Martial, 1822-1829

<sup>79</sup>WO 89/4

<sup>80</sup> Haythornthwaite, *The Colonial Wars Sourcebook* (London: Arms and Armour Press, 1995), p. 18.

<sup>81</sup>WO 89/5

<sup>82</sup>Divall, p. 116.

to around 30%.<sup>83</sup> According to the estimates and accounts of the British army, as presented to Parliament in 1826, when the proportion of trials held in India fell to 5%, approximately 23% of the rank and file of the British army were stationed in India.<sup>84</sup>

In their analysis of *The Regimental Punishment Book of the Boston Detachments of the Royal Irish Regiment and 65th Regiment, 1774-1775*, Stephen Baule and Don Hagist make the case that high levels of crime in that regiment may not have been typical, or representative of a wider experience, given that the book concerns a ‘composite battalion’ made up of three different companies from the Royal Irish Regiment and two battalion companies from the 65th.<sup>85</sup> Along with Divall’s study this raises interesting possibilities and the potential impact of geographical location and specific regimental circumstances on levels and kinds of criminality must be taken into account. And it is certainly worth considering the extent to which boredom may have fed into rises in crime levels in locations where soldiers were more restricted in their social engagements and integration.

In terms of the personnel involved in the trials covered by the register, the majority concerned defendants of the ‘private’, or an equivalent, rank. This would include drummers and other musicians, riders and gunners from the artillery regiments, and ‘recruits’ to any regiment. As might be expected given their numbers within each regiment, NCOs accounted for a small minority of defendants overall. Of the 1547 trials sampled, only 56, or a little over 3.5%, concerned a defendant of non-commissioned officer rank. A detailed analysis of NCO defendants and the charges they faced will be covered in Chapter 6.

**Table 1.3: Defendant Rank by GRCM Sample Set<sup>86</sup>**

Defendant	1813 - 1814	1819 - 1820	1825 - 1826	Total
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<sup>83</sup> Haythornthwaite, *The Colonial Wars Sourcebook* (London: Arms and Armour Press, 1995), p. 18.

<sup>84</sup> *Journal of the House of Commons*, Volume 81 (London: H.M. Stationery Office, 1826), p. 42.

<sup>85</sup> Steven Baule and Don Hagist, ‘The Regimental Punishment Book of the Boston Detachment of the Royal Irish Regiment and 65th regiment, 1774-1775’, *Journal of the Society for Army Historical Research*, 88 (2010), 5-18.

<sup>86</sup> Figures taken from: WO 89/4; WO 89/5.

<b>Private / Equiv.</b>	442	315	734	1491
<b>NCO</b>	32	9	15	56

Victims of crime, as they appear in the register, were naturally drawn from a wider base, and individual army personnel represent around 20% of identifiable victims. Across the three sample sets, a total of 609 trial records show a clearly defined, or easily inferred victim, with by far the highest proportion of these being the regiment itself, or another part of the army as an institution. This would include theft of regimental equipment not stolen from an individual soldier, or officer, along with items stolen from places such as army supply depots, or the King's yards, and soldier's necessaries, which had been 'made away' with. Soldiers of the private rank appear as identifiable victims in only 23 cases across the three sample sets, and well over half of those are in the 1813-1814 set. Similarly infrequent are appearances of civilians or commissioned officers as victims; although it should be noted that the variance across the three sample sets is high, particularly in the case of civilian victims, which will be taken account of during the more detailed statistical analysis.

Intriguingly, of the four categories of military personnel, the most frequent to appear as an identifiable victim across all three sets is that of the NCO: all three sample sets show more NCOs as victims than privates and officers combined. These initial figures would seem to bear out the assumption that NCOs had a different experience of crime than did the ordinary-ranking soldiers, at least in terms of frequency. That said, a note of caution should be sounded as to whether this indicates frequency of experience, or frequency of official response, something which will be considered in more detail later.

**Table 1.4: Victim Type by GRCM Sample Set<sup>87</sup>**

<b>Victim Type</b>	<b>1813 – 1814</b>	<b>1819 – 1820</b>	<b>1825 – 1826</b>	<b>Total</b>
<b>Fellow</b>	14	4	5	23

<sup>87</sup> Figures taken from: WO 89/4; WO 89/5.

<b>NCO</b>	33	11	25	69
<b>Officer/Employer</b>	18	6	4	28
<b>Regiment/Army</b>	72	96	285	452
<b>Other service</b>	3	0	3	6
<b>Civilian</b>	23	1	7	31

In all three sample sets desertion represents the largest offence category, though the extent to which it dominates is different in each set. Of the 474 trials conducted during the years 1813-1814, and ending in conviction, 50% were for desertion, or included a charge of desertion along with other offences. For the period 1819-1820 this rose to almost 60%, and for the years 1825-1826, almost 75%. Regulatory offences, meanwhile, were mentioned in nearly 40% of trials conducted during the 1813-1814 period, 35% of the 1819-1820 trials, and 21% of trials in the 1825-1826 period. Of the offence types identified as criminal, rather than military, the most well represented in all three sets is that of theft, a category which includes cases of handling stolen goods and the sale or loss by soldiers of their regimental necessities. During the years 1813-1814, 26% of the listed trials included a charge of theft or handling stolen goods, for the period 1819-1820 this rose to 36%, and for the period 1825-1826 rose again to 43%. In comparison, violent crimes seem remarkably infrequent, with only 14% of the 1813-1814 trials including such a charge, 8% of the 1819-1820 trials and 6% of trials in the 1825-1826 sample:

**Table 1.5: Offence Type by GRCM Sample Set<sup>88</sup>**

<b>Offence Type</b>	<b>1813 - 1814</b>	<b>1819-1820</b>	<b>1825 -1826</b>	<b>Total</b>
<b>Desertion</b>	242	189	560	991
<b>Regulatory offences</b>	170	105	147	422
<b>Theft</b>	118	116	323	557
<b>Fraud/embezzlement</b>	17	11	4	32
<b>Violence</b>	66	25	45	136
<b>Sexual offences</b>	5	5	5	15
<b>Self-harm</b>	7	1	5	13

<sup>88</sup>Figures taken from: WO 89/4; WO 89/5.

### Overview of GCM register sample: 1818-1819

The main reason for including a sample of the GCM register, is to provide a single year of military justice records for the three regimental case studies, and as such the choice of dates has been dictated by the time period covered by the half-yearly regimental returns. These run from September 1818 to October 1819, and so the years 1818 and 1819 of the GCM register have been transcribed. This also allows an analysis of two full years of GCM trials, which overlap with a single year of the GRCM samples. Following the same methodology as the GRCM sample sets, with trials of commissioned officers and trials ending in acquittal both removed, there are 293 listings for the two years covered by the sample. As with the GRCM samples, privates outnumber NCOs, with NCO defendants appearing in a little over 8.5% of trials for 1818, and just over 2% of trials in 1819:

**Table 1.6: Defendant ranks by year at GCM Level <sup>89</sup>**

<b>Defendant</b>	<b>1818</b>	<b>1819</b>	<b>Total</b>
<b>Private /</b>	181	93	274
<b>NCO</b>	17	2	19

Very few of the GCM trial records give clear indication of the victims involved. Of those that do, a little over half show civilian victims. Many of these have been categorised as civilian victims because of the charge of burglary, which has been assumed to involve a civilian victim. It should also be noted that when adjusted for multiple defendants being tried for the same incident, the 29 cases from 1818 falls to 13. Nonetheless, this does suggest a flurry of incidents of criminality against civilians. Again though, this is a cautious assessment and it is important to note that of those 13 incidents, all but one were in Europe and most of those in France, where, in the context of the allied forces' occupation of France, the chances of crimes against civilians being tried within the military system were particularly high.

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<sup>89</sup>Figures taken from: WO 90/1: General courts martial registers, abroad, 1796-1825; WO 92/1, General courts martial register, Confirmed at Home, 1666 - 1704; 1806 – 1838.

**Table 1.7: Victim types by year at GCM level <sup>90</sup>**

<b>Victim Type</b>	<b>1818</b>	<b>1819</b>	<b>Total</b>
<b>Fellow</b>	3	1	4
<b>NCO</b>	4	3	7
<b>Officer/Employer</b>	1	3	4
<b>Regiment/Army</b>	5	2	7
<b>Other service</b>	1	0	1
<b>Civilian</b>	29	0	29

In terms of the spread of offence types, we can see a similar picture to that in the GRM samples. Desertion and regulatory offences dominate at this level, though not quite as much as they do at GRM level, with desertion charges appearing in 40% of trials and regulatory charges in 27%. The percentage of trials for property crime at this level is very similar to the GRM sample, with 29% of trials overall showing theft charges; however, looking at each of the two years we can see that much of that figure is due to a high level of theft charges in 1818: this includes the cases mentioned above, of multiple defendants charged with burglary, and the number of incidents falls to 35 when this is taken into account. As with the GRM sample, violence charges are much less present than property charges, with around 15% of trials showing charges of this nature. Again though, the high number of such trials in the 1818 sample includes trials of multiple defendants and the number of incidents of violence in 1818 falls to 20 with this taken into account:

**Table 1.8: Offence types by year at GCM level<sup>91</sup>**

<b>Offence Type</b>	<b>1818</b>	<b>1819</b>	<b>Total</b>
<b>Desertion</b>	61	56	117
<b>Regulatory offences</b>	61	18	79
<b>Theft</b>	75	10	85
<b>Fraud/embezzlement</b>	2	1	3
<b>Violence</b>	35	10	45
<b>Sexual offences</b>	1	6	7

<sup>90</sup> Figures taken from: WO 90/1; WO 92/1.

<sup>91</sup> Figures taken from: WO 90/1; WO 92/1.

<b>Self-harm</b>	1	3	4
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Taken together then, the two levels of court martial show a broadly similar spread of offence types, victim types, and defendants and offer a starting point for an analysis of soldier crime across the whole service.

### **Case Study: Three Regiments**

The three regiments chosen as case studies are the 33rd, 34th and 37th regiments of foot.<sup>92</sup> All three were single battalion infantry regiments and as such can be expected to share many aspects of service; however, they were located in different places, with the 33rd stationed primarily at home, the 34th stationed in India and the 37th in Canada and therefore offer an interesting comparison between similar regiments in very distinct locations.<sup>93</sup> According to the three October inspection reports, as of 25th September 1819, there were 671 men serving in the 33rd as privates, drummers, and NCOs, 910 men serving in the 34th, and 686 men serving in the 37th.<sup>94</sup>

Twelve months of regimental returns for each of the three regiments, when taken alongside the GRCM and GCM register entries for the same year can tell us much about how crime featured in those regiments and help to contextualise the wider findings of the statistical analysis for the army as a whole. Regimental returns were made every six months; however, they were not all sent at the same time and the half yearly returns sometimes overlapped, and this must be taken into account when comparing them to the GCM and GRCM registers.

The first return for the 33rd ran from 25th September 1818 to 24th March 1819 and the second return, dated 9th October 1819, ran from 'the 9th of March last'.<sup>95</sup> The first return of RCM for the 34th, dated 9th April

<sup>92</sup>Kew, TNA, WO 27/ 147, Inspection Returns 1819 1st Half-Year; WO 27/148, Inspection Returns, 1819 2nd Half-Year.

<sup>93</sup> The 34<sup>th</sup> and the 37<sup>th</sup> had previously been double battalion regiments; however by this time both the 2/37<sup>th</sup> and 2/34<sup>th</sup> had been disbanded: see entries for both under 'Famous Units': National Army Museum, 'Famous Units', at <http://www.nam.ac.uk/research/famous-units> [accessed: 12 September 2013].

<sup>94</sup>WO 27/148.

<sup>95</sup>WO 27/ 147; 27/148.

1819, states simply ‘since the last inspection’.<sup>96</sup> The official date of inspection, according to the returns of necessities and accoutrements and effective strength is dated 25th September, as standard for regimental returns; however, the confidential report refers to the previous report ‘in October’ and the first listing in the RCM returns is dated 4th November 1818.<sup>97</sup> The second set of returns for the 34th nominally runs from the 25th March 1818 to the 24th September 1819; again though, the actual dates of inspection may have been different.<sup>98</sup> The first set of returns for the 37th Regiment, dated 30th June 1819, ran from ‘last September’ and again the nominal date of inspection is given as 25th September 1818; however, the first trial listed in the returns is dated 3rd September 1818, and the return of effective strength gives the 4th September 1818 as the date the regiment was inspected.<sup>99</sup> The second set of returns runs from 30th June 1818 to 7th October 1819.<sup>100</sup>

Though there is great variance in the earliest dates of trials, with the 33rd beginning 25th September 1818, the 34th beginning 4th November 1818 and the 37th beginning 3rd September 1818, trials for all three sets of regimental returns end within a few days of each other at the end of September 1819. In order to give a more or less complete year, the matching analysis of the GRCM and GCM registers runs from 1st September 1818 to 1st October 1819.

Altogether, for the 33rd, there are 53 RCM trials ending in conviction, with one GRCM and one GCM, for the 34th there are 101 RCM, three GRCM and three GCM, and for the 37th there are 59 RCM, 10 GRCM and no GCM trials.<sup>101</sup> Looking at the kinds of offence we can see again a very similar picture within these three regiments to the wider picture of crime across the service. Taken together, desertion and regulatory charges account for a large number of offences followed by theft charges as the most prominent criminal offence, with violence charges again a much smaller presence. The apparently low number of desertion charges and

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<sup>96</sup>WO 27/ 147.

<sup>97</sup>WO 27/ 147.

<sup>98</sup>WO 27/148.

<sup>99</sup>WO 27/ 147.

<sup>100</sup>WO 27/148.

<sup>101</sup>WO 27/147; 27/148; 89/4; 90/1; 92/1.

correspondingly high number of regulatory charges in the 34th and 37th will be discussed in more detail in Chapter Three; however, it is worth mentioning here that this appears to be down to differences in reporting practices rather than differences in behaviour compared to the 33rd.

**Table 1.9: RCM Offence Type by Regiment<sup>102</sup>**

<b>Offence Type</b>	<b>33rd</b>	<b>34th</b>	<b>37th</b>	<b>Total</b>
<b>Desertion</b>	29	6	8	43
<b>Regulatory offences</b>	28	84	40	152
<b>Theft</b>	19	40	14	73
<b>Fraud/embezzlement</b>	2	0	1	3
<b>Violence</b>	6	16	4	26
<b>Sexual offences</b>	-	-	-	-
<b>Self-harm</b>	-	-	-	-

The proportions of victim types for the individual regiments are in some ways similar to those of the whole service register samples: the regiment or army as corporate employer is far more present than individual victims; however, the balance between civilian and military personnel as victims is quite different. The reasons for this will be discussed later, but it is worth noting here that location may well be a significant factor in this: for example, the 33rd shows no civilian victims, but as they were stationed at home, it is very likely that any offences committed against civilians by soldiers of the 33rd would have been passed to the civilian authorities.<sup>103</sup>

**Table 1.10: RCM Victim Type by Regiment<sup>104</sup>**

<b>Victim Type</b>	<b>33rd</b>	<b>34th</b>	<b>37th</b>	<b>Total</b>
<b>Fellow</b>	2	7	2	11
<b>NCO</b>	3	7	4	14
<b>Officer/Employer</b>	1	0	2	3
<b>Regiment/Army</b>	11	36	9	56
<b>Other service</b>	-	-	-	-
<b>Civilian</b>	-	6	1	7

<sup>102</sup> Figures taken from: WO 27/ 147; 27/148.

<sup>103</sup> Gilbert, 'Military and Civilian Justice', p. 46

<sup>104</sup> Figures taken from: WO 27/ 147; 27/148.

Examining all three levels of court martial allows a more complete sense of the shape of crime within individual regiments, but they also underline the need for caution. The regimental returns taken alongside the GCM and GRCM registers demonstrate the inconsistent application of the judicial boundaries between the three levels of courts martial. Looking at the kinds of charges that appear at each level for the three regiments, we can see very similar charges tried at different levels of court martial, sometimes within the same regiment. We also see the same behaviour characterised differently. The 34th tried one private, by RCM, for ‘Absenting himself from his Regt. without leave on the 18th March & not returning 'till brought back by an Escort about 17th April 1819’. Two months earlier, the regiment had tried another private by GRCM, for ‘Deserting [...] on the 8th of March 1819 and not returning until brought back in charge of a Sepoy on the 15th of the same Month’.<sup>105</sup> During the same twelve month period, the 34th also tried three soldiers at separate GCM trials, for desertion, apparently with no aggravating factors.<sup>106</sup>

In one instance, we can also see how charges might change as they moved through the different stages of reporting and recording. Along with RCM trials, the regimental returns also list some GRCM trials, and in the return for the 37th, the charges recorded for the GRCM trial of Private John Bland, were: ‘1st) Drunk on Parade on the 18th May and Striking Lance Serjeant McMuney in the execution of his Duty, 2nd) Making his escape from the Guard House at Isle Aux Noix on 16th May, and resisting Serj. Keogh in the execution of his Duty’.<sup>107</sup> By the time this trial was entered into the GRCM register, those charges had been simplified to read: ‘Drunk on Parade & escaping from the Guard House’.<sup>108</sup> Using the GRCM register alone this trial would be categorised purely as a trial for regulatory offences, but taking the regimental returns into account, the trial can be categorised as including both regulatory and violence charges. For the majority of the trials included in the sampled years of the GRCM register, we have only the register through which to categorise charges. It is reasonable to assume that some of those charges have been similarly simplified.

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<sup>105</sup> WO 27/147.

<sup>106</sup> WO 90/1.

<sup>107</sup> WO 27/147

<sup>108</sup> WO 89/4.

## Conclusion

Any study of military justice records must be approached with a degree of caution. Even more than for the criminal courts in eighteenth- and early nineteenth-century Britain, recording in the British military justice system was highly variable. As William Tatum suggests, ‘criminal labels [...] cannot be taken at face value’.<sup>109</sup> Nevertheless, a close study of the two registers and the three sets of regimental returns can provide an insight into some broad trends and common themes and features of soldier crime, and along with examples of GCM full trial transcripts can help us understand how crime featured in the lives and service of soldiers. Contextualised through administration records and memoranda from the War Office, along with soldiers’ journals, regimental order books, parliamentary records and civil justice records, the three tiers of military justice represent the key evidence base for this study, with the statistical analysis of the GRCM Register as its foundation.

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<sup>109</sup>Tatum, “Military Justice and Negotiated Authority”, p. 97.

## Chapter Two: Military Offences Part 1 - Desertion and Related Offences

### Introduction

Of all the possible offences, whether criminal or military, for which a soldier might be court-martialled in the eighteenth-century British army, desertion was the most common and is one of the most studied. As Gilbert contends, '[d]esertion was the pre-eminent crime of the rank and file' and at times accounted for 90% of GCM trials.<sup>110</sup> From contemporary concerns of military authorities, faced with the conundrum of how to prevent it, to the most recent studies of recruitment patterns in the British army, desertion looms large in the historiography of the soldier. In his study, 'Why Men deserted the Eighteenth-Century British Army', Gilbert explored many of the key features of this offence, examining courts martial records to understand both the military context and individual soldiers' experiences of deserting the army, delineating common features and systemic pressures at play in soldier desertion and comparing them with those of deserters during other periods in history.<sup>111</sup>

In his history of the *Reform of the British Army*, Hew Strachan considered the high levels of desertion amongst army recruits. This flashpoint of desertion has been further explored in studies of army recruitment, most recently by Linch, in his comprehensive study of recruitment practices in Britain between 1807 and 1815, a period of sustained military conflict which, Linch argues, had a 'lasting impact on the British army and its relationship to the state and society.'<sup>112</sup> Such a relationship, it must be said, is as illuminated by the history of desertion as it is by the history of enlistment. Thomas Agostini, approaching from a slightly different direction, considered the evidence of deserter notices in the British-American press, during the Seven Years War, to explore the methods used by army and civil authorities both to apprehend deserters and to prevent desertion, and most importantly the 'strategies and artifices'

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<sup>110</sup> Gilbert, 'Military and Civilian Justice', p. 43.

<sup>111</sup> Gilbert, 'Why Men Deserted the British Army'.

<sup>112</sup> Linch, *Britain and Wellington's*, p. 3; also, Strachan, *Reform of the British Army*, pp. 51-7.

soldiers used to get away and, for those who were successful, to remain free.<sup>113</sup>

Though well studied, there are still elements of soldier desertion which are less well understood, in particular the close relationship between this offence and offences of self-harm and how the act of desertion impacted upon the former comrades of those who deserted.<sup>114</sup> In many respects these offence types illuminate a very soldier-specific experience. Yet there are also ways in which they show elements of cultural continuity between soldiers and the communities from which they were drawn. This chapter will examine desertion and related offences as they appear in the courts martial records and popular culture, the ways in which these offences separated the soldier from his civilian counterpart and the ways in which they demonstrate a cultural link between them.

### **Defining desertion**

Desertion in some ways straddled the line between criminal and regulatory offence, and as can be seen by its close relationship to the charge of being absent without leave, desertion was primarily an offence of military disorder.<sup>115</sup> Unlike the charge of absence without leave, however, desertion was a potentially capital offence and recognised as criminal in both civil and military spheres. The soldier who deserted did not merely offend against his regiment, but against his king and country and in doing so breached the Articles of War in one of the most serious ways possible.

That said, the charge of desertion covered a wide range of actions, from deliberate attempts to leave the service and sever the relationship between the soldier and the army, to accidentally falling behind on a march, or overstaying a furlough by a few days.<sup>116</sup> We know from Gilbert's work in this area that many of the soldiers charged with desertion more than likely had not intended deserting at all: according to Gilbert, only around a quarter

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<sup>113</sup>Thomas Agostini, "'Deserted His Majesty's Service": Military Runaways, the British-American Press, and the Problem of Desertion during the Seven Years' War', *Journal of Social History*, 40 (2007) 957-985 (p. 958).

<sup>114</sup> One particularly useful examination of suicide among soldiers, however, and which has certainly gone some way to increasing understanding of soldier suicides, is: John H. Rumsby, 'Suicide in the British Army, c. 1815 – c. 1860', *JSAHR*, 84 (2006), 349 – 361.

<sup>115</sup> Stepler, p.876.

<sup>116</sup> Gilbert, 'Why Men Deserted', pp. 560-64.

of the 455 desertion trials he examined could be shown to be for clearly intentional and deliberate acts of desertion, with the rest either offering no explanation at all or showing clear indications of accidental desertion.<sup>117</sup> In some cases, desertion was simply an expression of discontent, part of a range of strategies employed by soldiers in their ongoing negotiation or navigation of service conditions.<sup>118</sup> In other cases desertion was a clear attempt by soldiers to sever their relationships with the army entirely.

### **Desertion in context – military and civilian attitudes**

Throughout the eighteenth and nineteenth centuries military authorities wrestled with the problem of high levels of desertion from the British army. This was consistent with a wider European military experience. Indeed, as Linch suggests, it was ‘almost an accepted facet of European military life’.<sup>119</sup> In his analysis of army casualty returns for the period 1807 to 1815, Linch demonstrates that the British army lost over 50,000 men to desertion, with an average of 5,574 men a year from the regulars alone.<sup>120</sup> Attempts by the Horse Guards to understand and stem the rates of desertion helped to shape the structures of soldier service in important ways, and had a profound impact on the relationship between the army and civilian communities in Britain.<sup>121</sup>

Under the Articles of War, desertion was a potentially capital offence throughout our period, but attitudes towards this offence were not static, nor were military authorities blind to the different ways in which it could occur. According to Charles Clode’s seminal history of military law, the status of desertion as an offence and the punishments recommended in

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<sup>117</sup> Gilbert ‘Why Men Deserted’, pp. 560-64; also see, Tatum, “Military Justice and Negotiated Authority”, p. 97.

<sup>118</sup> Burroughs, p. 546; for the difficulties in identifying desertion as an act of protest, see Tatum, “Military Justice and Negotiated Authority”, pp. 96-7.

<sup>119</sup> Linch, ‘Desertion from the British Army’, p. 1.; also, for similarly high levels of desertion in France, where ‘desertion was so common’ regular amnesties were required to ‘lure’ deserters back to their regiments, see Alan Forrest, *Conscripts and Deserters: The Army and French Society During the Revolution and Empire* (Oxford: OUP, 1989), p. 7.

<sup>120</sup> Linch, p. 1, also see Coss, p. 78.

<sup>121</sup> For the range of strategies employed to stem the tide of desertion, including increased oversight of regiments, the use of off shore facilities to house troops and the division of the UK into military districts, giving the Horse Guards a ‘permanent military presence that could be used to form parties to recapture deserters’: Linch, ‘Desertion from the British Army’, p. 7.

law changed considerably from the mid-eighteenth century through to the nineteenth: though for the early part of our period, desertion was the offence most likely to be met with a death sentence,<sup>122</sup> '[d]eath for desertion [...] was gradually withdrawn from the code', initially by giving courts martial discretion where they considered death too severe and by 1803, declaring it a '[f]elony, punishable with transportation', though with the caveat that should the deserter then wrongfully return to Britain, 'the Capital punishment was then to be inflicted'.<sup>123</sup> Linch argues that by the end of the Napoleonic Wars, official responses to desertion had changed considerably, with the army developing 'a reasonably sensible system for dealing with deserters', which recognised 'that in the majority of cases [...] desertion was underpinned by rational actions'.<sup>124</sup> Even so, for much of the eighteenth and early nineteenth centuries, soldiers tried for desertion could face severe punishments including death, particularly if the offence was repeated, or where the authorities felt a need to make an example of the offender in the face of high desertion rates. As Linch demonstrates, however, the majority of deserters did not face the full force of military justice, with only 'a tiny fraction of desertions' making it to a GCM trial and deserter trials 'infrequent' even at regimental level, with most deserters dealt with at an informal level of discipline, or formally but through the charge of absence without leave.<sup>125</sup>

Certain forms of desertion were viewed with almost uniform contempt, while other forms sometimes garnered more sympathy. A soldier who deserted to the enemy was often treated with hostility by other soldiers, no mercy by courts martial and little sympathy by civilians, particularly if the soldier had actively fought for the enemy against his former comrades.<sup>126</sup> Drawing from the memoirs of William Surtees, Coss gives the example of seven men whose execution for desertion Surtees had witnessed with some distress. As Coss puts it, though the men's excuse of having deserted out of desperation and hunger was most likely the truth, 'it did not

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<sup>122</sup> Gilbert, 'Why Men deserted', p. 556.

<sup>123</sup> Charles M. Clode, *The Administration of Justice Under Military and Martial Law: As Applicable to the Army, Navy, Marines and Auxillary Forces* (London: John Murray, 1874), p. 33.

<sup>124</sup> Linch, *Britain and Wellington's Army*, p. 145.

<sup>125</sup> Linch, 'Desertion from the British Army', p. 8.

<sup>126</sup> Coss, p. 119.

explain their active collaboration with the French; thus no mercy was shown'.<sup>127</sup> Indeed, the military justice system differentiated between simple desertion and desertion to the enemy both in their treatment under the Mutiny Act and in the manner of execution used. According to Charles Oman, during the Peninsular campaigns, '[s]hooting was almost exclusively reserved for the military offence of desertion to the enemy'.<sup>128</sup> Oman gives several examples, including the case of five soldiers taken prisoner during the storming of Ciudad Rodrigo, all of whom had been taken 'in the French ranks, fighting against their old comrades'.<sup>129</sup> That a sense of betrayal and disdain may have attached to such an act is unsurprising, and seems to have applied at the highest and lowest ranks of the army. In a General Order from October 1808, to be read to all troops in order to stem the tide of desertions, Wellington set out the manner in which deserters might expect to be treated by both the enemy to whom they deserted and the fellows whose trust they betrayed:

It is well known that nobody can trust men guilty of so base a crime; and notwithstanding the enemy's promises, those who have been guilty of it are employed only in services of the lowest and most laborious description, they are despised and shunned by all, even by those who profit by their crime, and that the soldiers who are prisoners of war will hold no communication with them.<sup>130</sup>

Though there is a danger in taking an order designed to discourage desertion entirely at face value, the treatment of deserters found in Rodrigo after the battle suggests that this attitude carried through to the ordinary soldier. In his memoir, *Adventures in the Connaught Rangers*, William Grattan described the scene, as 'groups of deserters from our army who, having taken shelter in Rodrigo during the winter [...were...] dragged from their

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<sup>127</sup> Coss, p. 119.

<sup>128</sup> Charles W. C. Oman, *Wellington's Army, 1809-1814*, (London: Edward Arnold, 1913), p. 243.

<sup>129</sup> Oman, p. 327; this was the same incident witnessed by Surtees, referred to by Coss.

<sup>130</sup> General Order 4th Oct 1813: *The Dispatches of Field Marshal the Duke of Wellington: During His Various Campaigns in India, Denmark, Portugal, Spain, the Low Countries, and France, from 1799 to 1818*, Volume 7 (London: John Murray, 1837), p. 35.

hiding places by their merciless comrades'.<sup>131</sup> Soldiers' attitudes towards desertion and the men who deserted were complex, however, and even a few soldiers executed for desertion to the enemy garnered sympathy. Edward Costello, referring to the same incident in Rodrigo, expressed bafflement at the pardoning of the corporal he understood to have been the ring leader of the deserters, and who had been seen heavily involved in the defence of the town against his former comrades, but sympathy for some others in the group who were shot for their crime.<sup>132</sup>

Understandably, desertion to the enemy, and desertion on campaign presented a much more worrying aspect to the serving soldiers who remained, and whose survival in part rested on their ability to trust and rely on their comrades.<sup>133</sup> For many soldiers, however, any desertion was a shameful act, and whilst they may have viewed those soldiers who deserted from desperation, alcohol, or love with a degree of sympathy, there was nonetheless often a sense of betrayal and anger for those who remained in service. Of all possible offences, at its core, desertion was the one which most obviously broke both the unwritten code by which soldiers lived, and the written laws by which they were governed.

Though they were written a few decades later than our period of study, two of Rudyard Kipling's stories, *On Greenhow Hill* and *The Madness of Private Ortheris*, exemplify this attitude. In his analysis of both stories, William Dillingham discusses the attitudes of three soldiers towards a 'native' deserter in *Greenhow Hill*, and the attitude of an older soldier towards a comrade who is considering desertion, in *Madness of Ortheris*. Though the former was criticized at the time for the 'bloodthirsty' tenor of the story, and the soldiers' 'lust to kill' the deserter, Dillingham argues that rather than Kipling attempting to show the soldiers as 'brutal and bloodthirsty', he was instead demonstrating that they were 'true to a creed of trustworthiness and fidelity'. In the *Madness of Ortheris*, meanwhile, we see a potential deserter shamed from his intended action by his older

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<sup>131</sup> William Grattan (Lieut), *Adventures of the Connaught Rangers: from 1808 to 1814*, Volume 1 (London: Henry Colburn, 1847), p.227.

<sup>132</sup> Edward Costello, *Adventures of a Soldier; or Memoirs of Edward Costello, K.S.F. Formerly a Non-Commission Officer in The Rifle Brigade...* (London: Henry Colbourn, 1841), pp. 158-9.

<sup>133</sup> For a full discussion of the mechanisms of group cohesion as a necessity for soldier survival, see Coss, pp. 111-114.

comrade and best friend, who claims such a desertion would be a ‘black shame’ on all of them.<sup>134</sup> As Dillingham explains, ‘In the culture of Tommy Atkins, a deserter was beneath contempt because he was seen as failing to stand by his fellow soldiers’.<sup>135</sup>

Even in *Greenhow Hill*, however, the eldest of the soldiers displays some sympathy for the possible causes of desertion, and in particular the role of love which he assumes a likely cause of the deserter’s actions. A degree of sympathy and understanding can also be found in many of the soldier and officer journals and memoirs of the nineteenth century. In his recollections of the Peninsular War, after describing the march to Ciudad Rodrigo, during which many men fell behind and were counted as deserters, Major Harry Ross-Lewin set out the problem in treating all desertions as equally reprehensible acts:

It is very true that no circumstances can ever render desertion justifiable, and all who were guilty of a crime so discreditable to the character of a soldier merited the severest censure and punishment; but to blame the men who left their ranks only when their physical strength no longer enabled them to keep their places on the march was the height of injustice; and the chief reason why so many did break down was the absence of the necessary supplies that should have attended the troops.<sup>136</sup>

Alongside sympathy for desertion as an act of desperation there was also for some soldiers an element of romance and heroism attached to the act. Linch draws attention to the experiences of Charles O’Neill, whose memoirs recount both his initial ‘burning desire’ to be a soldier, and his subsequent disappointment and dismay at the ‘rigid life of discipline’ which was the reality of a soldier’s life. As Linch explains, while O’Neill’s desire to be a soldier had originally been ‘fuelled by stories of adventure’, it was now the excitement of desertion which ‘enthralled’ him.<sup>137</sup> Though the immediate cause of his first desertion was an undeserved punishment, O’Neill had already formed a view of desertion as an exciting adventure primarily because of the stories told to him by older soldiers. O’Neill described ‘[t]he

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<sup>134</sup> William B. Dillingham, *Rudyard Kipling: Hell and Heroism* (Basingstoke: Palgrave Macmillan, 2005), pp. 113-16

<sup>135</sup> Dillingham, pp. 113-16

<sup>136</sup> Harry Ross-Lewin, *With "the Thirty-Second" in the Peninsular and Other Campaigns* (Dublin: Hodges, Figgis, 1904), p. 210.

<sup>137</sup> Linch, ‘Desertion from the British Army’, p. 19.

very romance connected with the undertaking and the thrilling interest that existed in listening to these adventures'.<sup>138</sup>

Such sympathy, and romantic admiration aside, returning deserters clearly presented soldiers with a dilemma. With survival largely dependent upon the ability of soldiers to form cohesive groups, supporting each other through any given hardship or danger, and adhering to implicit codes of behaviour, the deserter who returned to his regiment potentially endangered that group cohesion, regardless of any personal sympathy his fellows may have felt. Consequently, whether they had been caught and forcibly returned, or successfully evaded capture and chosen to return, former deserters often faced an uphill struggle to reclaim their places in their groups, and many were subject to the informal discipline of those groups. As Coss puts it, desertion even 'stigmatised those lucky enough to run away and return without arousing official notice'.<sup>139</sup> Returnees, forced or unforced, officially punished or unnoticed by authority, were often mocked and treated with disdain by the comrades whose comradeship they had deserted, and many faced 'ostracism', the very worst informal punishment available to soldier groups.<sup>140</sup> This informal response itself became, at times, a further spur to desertion, as can be seen in some of the soldier defence statements in desertion trial transcripts. Robert Shaw, a repeat deserter tried at Edinburgh Castle in 1757, claimed in his defence that he had deserted in order to enlist in another regiment that was due to go overseas, preferring to serve there, 'than in [his previous] regiment where he thought he would never be respected'.<sup>141</sup> Another soldier who deserted his regiment in India, claimed that as a new recruit to the regiment he had been caught 'lying out of the garrison all night' for which he was punished by order of a regimental court martial and that ever since, 'his fellow soldiers used to upbraid him for being a runaway and used him ill'.<sup>142</sup>

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<sup>138</sup> See Linch, p. 19; also Charles O'Neil, *The Military Adventures of Charles O'Neil, Who Was A Soldier In The Army of Lord Wellington During the Memorable Peninsular War And the Continental Campaigns from 1811 to 1815*. (Boston: Livermore, 1851), p. 19.

<sup>139</sup> Coss, p. 119.

<sup>140</sup> Coss, p. 119.

<sup>141</sup> WO 71/65, Trial of Robert Shaw, 10 October 1757.

<sup>142</sup> WO 71/65, Trial of John Coppengar, 14 October, 1757.

In the wider culture of eighteenth- and nineteenth-century Britain, desertion was one of the most complex offences to delineate, bringing with it a range of assumptions and attitudes which speak both to the soldier's experience of service and his perceived relationship to his former civilian culture. That many soldiers retained cultural links to their former communities may partly explain why desertion rates amongst regiments stationed at home far outstripped those of regiments abroad.<sup>143</sup> The ability of some soldiers to seamlessly reintegrate into civilian life was understandably more of a factor for regiments serving at home.<sup>144</sup> There was often a degree of sympathy and support to be found amongst civilians for those soldiers who deserted because they could no longer bear the privations of army life, because their families needed their presence and earning capacity at home, or for the forgivable madness of love.<sup>145</sup> In the popular culture of eighteenth- and nineteenth-century Britain, the figure of the deserter was more often cast as a tragic and sympathetic figure than as an unsympathetic criminal.<sup>146</sup> Community unease at recruiting practices of the army, and local sympathy for specific deserters played their parts and attempts by civil or military authorities to apprehend deserters at times provoked active resistance by civilians sympathetic to the deserters' plight.<sup>147</sup> For example, in September 1804, an attempt by Captain Shaw of the 81st, to retrieve an errant recruit from St Giles, London, exploded into a full scale riot and siege of the Horse-shoe Inn.<sup>148</sup> For many in civil society, the act of desertion was seen less as a crime than a repudiation of the soldier's 'unfree' status and as such there was often great reluctance on the part of civil authorities to apprehend and prosecute deserters.<sup>149</sup> Indeed, as

<sup>143</sup> Linch, 'Desertion from the British', pp. 2-3.

<sup>144</sup> In his analysis of desertion patterns during the years 1807 to 1815, Linch gives the example of the 1/6th of Foot, which suffered an average desertion rate of 3.2 % of its strength annually, whilst stationed at home, compared to an annual desertion rate of 0.8% whilst serving abroad; Linch, 'Desertion from the British Army', p. 3.

<sup>145</sup> Gilbert, 'Why Men Deserted'. p. 556.

<sup>146</sup> For an example of a sympathetic portrayal of deserters in popular culture see: Edward Jerningham, *The Deserter: a poem* (Dunbar, 1800), *ECCO*, < <http://0-galenet.galegroup.com.wam.leeds.ac.uk/servlet/ECCO> > [Accessed: 11 November 2009]; also, Danielle S. E. Coombs, 'Soldiers and Women: Female agency and 'domestic pull' in desertion from the British Army, c. 1740-1820' (Leeds: MA Thesis, 2010), pp. 64-68.

<sup>147</sup> Linch, 'Desertion from the British Army', pp. 22-3.

<sup>148</sup> *Times*, 18 September 1804, p. 3; Linch, 'Desertion from the British', pp. 22.

<sup>149</sup> The author discusses the idea of desertion as repudiation of soldier status in detail in: Coombs, *Soldiers and Women*, pp. 76-80; also, for soldier status, see

Linch argues, that reluctance to prosecute at times veered into outright collusion ‘by those whom the government expected to uphold the law.’<sup>150</sup>

This reflected the rather complex relationship that existed between the civil population and its army in Britain during this era, with many considering a professional army to be wholly at odds with notions of liberty. As Brumwell argues, ‘distrust of the soldier went to the very core of national character’, in eighteenth-century Britain.<sup>151</sup> Even when the British soldiery could claim the laurels of victory and be lauded for their bravery and sacrifice, ‘the Redcoat remained a sinister and despicable figure in the eyes of his countrymen, [... to whom...], the professional soldier was both unnecessary and un-English.’<sup>152</sup> Similarly, in his exploration of British military law in the eighteenth century, Stepler argues that, ‘Common soldiers were ridiculed, for being “bloody backs”, called “slaves”, and sneered at as men who had lost their rights as Englishmen.’<sup>153</sup> Such insults speak to a sense of a fundamental separation of the professional soldier from the perceived protections of civil society.<sup>154</sup> As such, it is unsurprising that there was often a degree of sympathy and tacit support for those soldiers who attempted to free themselves from this perceived tyranny. Paradoxically, some of the strategies employed by the army authorities to combat what amounted to the haemorrhaging of men from some regiments when stationed at home, served to highlight popular misgivings about standing armies, by dividing the UK into military districts, thereby giving the Horse Guards ‘a permanent military presence that could be used to form parties to recapture deserters’, and by the use of off-shore facilities to house troops, intensifying the notion, encapsulated in the common phrase ‘gone for a soldier’, that men who enlisted in the army were effectively lost to their home communities.<sup>155</sup>

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Steiner, pp. 19-20, 32-33; Brumwell, pp. 55-57; and for reluctance to apprehend and prosecute, see Linch, ‘Desertion from the British’, pp. 22.-24.

<sup>150</sup> Linch, ‘Desertion from the British Army’, p. 24.

<sup>151</sup> Brumwell, p. 55.

<sup>152</sup> Brumwell, p. 55.

<sup>153</sup> G. A. Stepler, p. 859.

<sup>154</sup> Steiner, p. 29.

<sup>155</sup> Linch, ‘Desertion from the British Army’, p. 7.

## Desertion as Contract Breaking

The role of employment legislation in the lives of working people may also have had an impact on popular perceptions of military desertion, both in terms of familiarising and demystifying the offence by relating it to a civilian experience, for which there was a highly variable level of consensus, and differentiating it from that experience in terms of the legal protections offered to both parties to an employment contract. Though not a capital offence, civil desertion was a criminal offence which could be and often was met with fines, corporal punishment or, less commonly, a custodial sentence. As Douglas Hay argues, ‘rather than civil remedies [...such penalties...] were deeply entrenched in English employment law’.<sup>156</sup> Desertion from the army was a form of contract breaking in some ways similar to civil desertion by servants or apprentices; however, the lack of a recognised limit to the soldier’s service naturally differentiated the offence. For apprentices and servants there was a specified and legally protected end to their service: upon reaching the age of twenty-one for apprentices, and unless stated otherwise in a mutually agreed contract, a period of one year for menial servants.<sup>157</sup> Though under certain circumstances, soldiers were allowed to enlist for fixed periods or for the duration of specific conflicts, for much of our period most enlistment into the British army was ‘unlimited’, with the soldier expected and legally obliged to serve for life, or until the army chose to dismiss him.<sup>158</sup> Even as late as 1819, when limited service had become much more readily available, a little over three quarters of the men serving in the 33rd were listed in the returns under unlimited service, while nearly all the men of the 34th and 37th were on unlimited service, at 97% and 90% respectively.<sup>159</sup>

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<sup>156</sup> Douglas Hay, ‘England, 1562-1875: the Law and its Uses’, Douglas Hay, Paul Craven (Eds.) *Masters, Servants, and Magistrates in Britain and the Empire, 1562-1955* (Chapel Hill: University of North Carolina Press, 2004), p. 61.

<sup>157</sup> William Blackstone, *Commentaries on the Laws of England in Four Books*, Volume 1, ed. by, W. Strahan, T. Cadell, and D. Prince (Oxford: Strahan, Cadell and Prince, 1783), p. 425.

<sup>158</sup> Limited enlistment became generally available in 1806; prior to that though resort to impressment under the Mutiny Act was infrequent, it did happen during times of particular need, for example during the period 1756 to 1757, and under that system such impressed men were expected to serve for five years or until the end of the war: Clode, p. 17; Gilbert, ‘Why Men Deserted’, p. 555; Cookson, ‘Regimental Worlds’, p. 26.

<sup>159</sup> WO 27/148.

Even for those soldiers who enlisted for limited periods, either for the duration of a conflict, as was often the case for those who enlisted from the American colonies, for example, or during the early nineteenth century when shorter enlistment periods became more generally available, the reality of military life could at times prolong that service beyond its intended limits. Reliant on a piece of paper, which in the very best of circumstances might easily be lost, and in the much less ideal circumstances of active campaigning was very likely to be, soldiers were at the mercy of an often ad-hoc approach to administration and some commanding officers simply refused to accept the validity of their claims.<sup>160</sup> Among the desertion trials from this period are many examples of soldiers who had been denied their right to a discharge having apparently served for the agreed period. For example, In July 1762, three soldiers from the 62nd were tried at Montreal for desertion.<sup>161</sup> All three had been recruited from the local area for a fixed term of three years, but had been denied their discharge at the end of that period because they had no certificates to prove their claims. There were also theoretical avenues for early discharge through the use of the substitute system, and in the latter stages of our period through the purchasing of a discharge.<sup>162</sup> Again, however, though soldiers had the right to request early discharge with the provision of a substitute or an offer of payment, the decision of whether to allow it rested wholly with the commanding officer of the regiment, and many soldiers were refused such requests.<sup>163</sup>

Popular attitudes towards the treatment of civil desertion were just as complex as attitudes towards military desertion, particularly during the latter part of our period. On the one hand, the popular view of the Masters and Servants acts benefited at times from the notion that it offered protection for workers against unfair treatment, with both parties required, for example, to offer a reasonable period of notice of termination of service or employment: in stark contrast to the entirely one-sided contractual obligations of the

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<sup>160</sup> Gilbert, 'Why Men Deserted', p. 555.

<sup>161</sup> WO 71/71, Trial of John Sedley, Henry Sampel, Edward Stork, 31 July 1762.

<sup>162</sup> Strachan, *The Reform of the British Army*, p. 102; Brumwell, *Redcoats*, pp. 131-2.

<sup>163</sup> Clode suggests that regimental officers had 'pecuniary' interest in not allowing discharges. He also offers his own experience of attempting to purchase a discharge for a soldier, which request was refused by the regimental commander: Clode, *Military Forces of the Crown*, pp. 24, 43.

soldier, who could be dismissed from the service at any time and without any period of notice.<sup>164</sup> The notion that all parties conducted their business under law and that all individuals had legally protected rights was a powerful part of the British self-identity. Hay argues that '[t]he law also gave remedies to workers', which was 'of great significance for the public perception of the law'.<sup>165</sup> On the other hand, the manner in which employment law was interpreted and practiced, primarily by lay magistrates, was uneven, at times unfair, and in many cases entirely corrupt.

Though the Master and Servant laws were 'preserved and legitimated' by the specificity of the local labour cultures in which they were embedded, Hay argues that in the early part of the nineteenth century, 'both the doctrine in the hands of judges and the nature of its enforcement by lay magistrates, including the use of imprisonment, became more inimical to labour, at a time of rapid industrialisation and increasing trade-union organisation.'<sup>166</sup> By the end of our period of study the 'coercive aspects' of employment law had become a serious matter for public concern and debate, and emblematic of the emerging trades union and labour movements.<sup>167</sup>

To an extent therefore, attitudes to soldier desertion can be seen not just as they relate to the military context, but also as they relate to the wider context of working people's responses to what they increasingly perceived as inequitable labour relations. Linch makes the case that volunteers would 'default to their civilian mentalities', when faced with what they considered unfair treatment.<sup>168</sup> Though the men in Linch's study were 'citizens not soldiers', the same transfer of civilian mentality to a military setting can be seen in the regulars.<sup>169</sup> That many men carried assumptions of employee rights into the service when they enlisted can be seen in some of the prisoner defence statements given by soldiers tried for desertion. Indeed,

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<sup>164</sup> For mutual rights to notice under the Master and Servant acts, see Blackstone, p. 425; for the army's right to dismiss soldiers, see Clode, *Military Forces of the Crown*, p. 3.

<sup>165</sup> Douglas Hay, 'England, 1562- 1875: The Law and its Uses', in (Eds.) Douglas Hay, Paul Craven, *Masters, Servants, and Magistrates in Britain and the Empire, 1562-1955* (Univ of North Carolina Press, 2004) p. 61.

<sup>166</sup> Hay, 'The Law and its Uses', p. 62.

<sup>167</sup> Hay, 'The Law and its Uses', p. 62.

<sup>168</sup> Linch "Citizens Not Soldiers", p. 214.

<sup>169</sup> Brumwell, p. 127.

Coss suggests that some soldiers deserted because they felt ‘that the army had broken its contract with them’.<sup>170</sup>

Though rarely accepted by courts martial as a reason, many soldiers expressed a sense of grievance at what they considered a breach of the verbal agreements made by recruiters during enlistment, a breach of contract by the army in failing to pay them properly or with the frequency expected, or in properly providing for their subsistence.<sup>171</sup> Private Sebastian Long of the 79th, tried in the East Indies by GCM in 1762, claimed in his defence that when he enlisted he was told by the Captain that he would be serving in a regiment bound for Hanover, and that ‘if he had known that he was going on a long voyage by sea he would not have enlisted’. Long also claimed that the Captain had ‘promised him ten Guineas Bounty and never gave him more than one Guinea and a crown’.<sup>172</sup> Henry Dorman, meanwhile, a corporal in the 60th, gave as his reason for desertion, a number of promises which ‘were not made good to him’, including a promised daily wage of six pence.<sup>173</sup> This fits very much with Gilbert’s study, which demonstrates the significance of ‘personal dissatisfaction’ and ‘problems of adjusting to army life’ as reasons for individual desertions as well as the ‘paradox’ of harsh military discipline as a spur to desertion.<sup>174</sup>

### **Desertion in the GCM, GRCM and RCM samples**

Of the 1547 trial listings for the six sampled years of the GRCM register, 991 include charges of desertion.<sup>175</sup> Returns from the 33rd, 34th and 37th regiments for the period September 1818 to September 1819 show a lower rate of desertion charges: out of 62 RCM trial listings for the 33rd, 28 include desertion charges, while returns for the 34th and 37th show only a single desertion charge each, both of which were tried at GRCM.<sup>176</sup>

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<sup>170</sup> Coss, p. 207.

<sup>171</sup> Gilbert, ‘Why Men deserted’, pp. 563-64; also for large numbers of soldiers deserting together as a response to breach of contract: see, Coss, p. 207.

<sup>172</sup> WO 71/71, Trial of Sebastian Long, 29 January 1762.

<sup>173</sup> WO 71/66, Trial of Henry Dorman, 30 August 1757.

<sup>174</sup> Gilbert, ‘Why Men deserted’, pp. 563-66.

<sup>175</sup> WO 89/4; 89/5.

<sup>176</sup> WO 27/147; 27/148.

During the same twelve month period, 143 soldiers were tried by GCM, with 57 facing charges of desertion.<sup>177</sup>

At first glance this suggests that desertion was much more prevalent in the 33rd than in either the 34th or the 37th; however, a closer examination of the returns shows that, though there were no RCM trials for desertion in the latter two regiments, there was a large number of RCM trials for charges of being ‘absent without leave’. Of the 106 RCM trial listings for the 34th Regiment, 25 show variations of this charge and of the 53 RCM trial listings for the 37th Regiment, 10 are for absenteeism. Though some of these do relate to absenteeism rather than desertion, some of the charges suggest that the soldiers had in fact deserted but had been charged with the lesser offence. For example, Private John Moor, of the 34th Regiment, was tried by RCM for ‘Absenting himself from his Regt. without leave on the 18th March & not returning 'till brought back by an Escort about 17th April 1819’.<sup>178</sup>

This may therefore reflect different styles of command and understandings of military jurisdiction, rather than any substantial differences in the behaviour of the soldiers of each regiment. This fits with Linch’s analysis of desertion which suggests that the true levels of desertion may be hidden by the use of such alternative charges.<sup>179</sup> Similarly, in the GRCM samples, 113 trial listings include charges of absenteeism of various forms, ranging from simple absence from roll call or tattoo, to what most likely amounted to an attempted desertion but had been classed as absence without leave. What is clear is that of all the possible military or criminal offences for which a soldier might be court-martialled in the British army during this period, desertion was the most common. That said, it is worth emphasising that whilst desertion was the most likely charge for a soldier to face, that did not in any way mean that most deserters were tried, even taking into account the possibility of the lesser charges of absenteeism.<sup>180</sup>

Taking a closer look at the trials in which desertion charges feature, several common themes become apparent. One of these is a tendency for some soldiers to desert in pairs or groups. Though it is often hard to identify

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<sup>177</sup> WO 90/1; 92/1.

<sup>178</sup> WO 27/148.

<sup>179</sup> Linch, ‘Desertion from the British Army’, p. 8.

<sup>180</sup> WO 89/4; 89/5.

whether or not soldiers were acting together, or simply being tried at the same court martial session for separate offences, there are some crude measures which suggest that this was a key element of soldier desertion. Throughout the GRCM register, there are groups of soldiers from the same regiment, or division, tried for desertion on the same date, often with identical standard charges, but with the entries listed separately with individual record numbers. There are also several examples of pairs and groups of soldiers tried on the same day, for the same or similar charges, but listed under the same record number. There is little reason to assume any greater level of consistency in reporting in this matter than in most other aspects of military justice, therefore it is likely that some of the soldiers tried on the same date under separate record numbers may indeed have been acting together. It is similarly likely that some of those listed under the same record number may have been acting separately.

Ignoring cases listed under separate numbers except where the particular charges strongly indicate collaboration, and ignoring cases listed under the same number where the charges strongly indicate a lack of collaboration, there are 46 instances of soldiers tried in pairs or groups, involving 107 men.<sup>181</sup> Given that there are many more instances of soldiers from the same regiment, tried on the same day for identical standard charges, this is likely to be an underestimate. This may reflect the sense of camaraderie, noted by Linch, in soldiers who deserted together, with the ‘risks of the initial act’ and the dangers of being ‘on the run’ prompting soldiers to act in groups.<sup>182</sup>

Though most of the register entries offer very little context to charges of desertion, analysis by Gilbert of the transcripts of desertion trials, suggests that alcohol may have been a significant factor in many desertions. Out of 455 prisoner defences examined by Gilbert, of soldiers convicted of desertion during the Seven years War, around thirty percent claimed alcohol as the cause of their desertion.<sup>183</sup> However, there are reasons for caution. As deserter trials primarily involved soldiers who had been apprehended, along with some who voluntarily returned to their regiments, they may have

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<sup>181</sup> WO 89/4; 89/5.

<sup>182</sup> Linch, ‘Desertion from the British Army’, p. 23; also see, Coss, p. 207.

<sup>183</sup> Gilbert, ‘Why Men deserted’, p. 560.

exhibited distinct behaviours and strategies for absconding from those who deserted successfully. In particular, Gilbert suggests that the men who deserted successfully were more than likely sober, with the men who had ‘found their courage in the bottom of a bottle’ far more likely to be caught.<sup>184</sup> It is also useful to bear in mind the potential for drunkenness to represent a form of ‘temporary madness’ and therefore be offered as a defence to mitigate the soldier’s actions, in the hope of mercy from the court.<sup>185</sup> That said, it is interesting to note that of the 113 cases of absenteeism in the GRCM sample, 13 included additional charges of drunkenness, or a description of the soldier as intoxicated on his return, as did 11 of the RCM trials for absenteeism.<sup>186</sup>

There are also some common themes in terms of accompanying charges, often relating to other regulatory offences, but also some criminal offences. Perhaps surprisingly, given the role of violence in soldiers’ resistance of authority and regimental boundaries, desertion charges are rarely accompanied by charges of violence. Out of 991 GRCM trial listings which include charges of desertion, only six carry additional charges of violence. Again, though, there is a need for caution: of the soldiers tried at GRCM for absenteeism, 25 faced accompanying charges of violence.

Even taking that into account, however, this still seems a fairly low figure. Far more common is the pairing of desertion with theft and fraud charges. Though a more detailed analysis of this charge pairing will be offered in Chapter Five, it is worth noting this common pairing within the courts martial records. Across the six years sampled, 564 soldiers were tried and convicted of theft, and 24 of fraud or embezzlement. Of those 564 convictions for theft, 409 were accompanied by convictions for desertion, and of the 24 fraud convictions, six involved soldiers who had also deserted. In the first sample pair of years, desertions accompanied half of all thefts

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<sup>184</sup> Gilbert, ‘Why Men Deserted’, p. 561.

<sup>185</sup> Gilbert, ‘Why Men Deserted’, pp. 560-61; It is also worth noting that changes in how drunkenness was viewed within the civilian sphere, between the seventeenth and eighteenth centuries, from an aggravating to a mitigating factor in crime seems to have led to an increase in civilian defendants offering drunkenness as an excuse in their defence statements: Dana Rabin, ‘Drunkenness and Responsibility for Crime in the Eighteenth Century’, *Journal of British Studies*, 44 (July 2005), 457-477 (p. 458).

<sup>186</sup> WO 89/4; 89/5; WO 27/147; 27/148.

and frauds, and in the second and third pairs twice as many theft charges were accompanied by desertion than not.

The 'theft' or 'loss' of regimental clothing and equipment in particular seem to have been a common accompaniment to desertion; however, it was also not unknown for absconding soldiers to steal the clothes and equipment of their fellows. For the soldier who deserted, or attempted to desert, the army entirely, if not for the soldier who deserted to a different regiment, desertion was a severing of his relationship with the military, and even for the soldier who bounty-jumped, it was a severing of his relationship with his original regiment. As such this provided a very different context for crime than acts committed when the soldier anticipated continued service and therefore the need to maintain working relationships with his fellows. This context, along with that of bounty jumping will be considered in greater detail in the discussion of theft and fraud crimes in Chapter Five; however, it is worth considering here that in some cases, theft and fraud may also have spurred, rather than merely accompanied the act of desertion.

In many of the GCM cases examined by Gilbert, in which fear of punishment was identified as a cause of desertion, this was precipitated by the loss, sale, or theft of soldiers' necessities, and it was the resultant deficiency in necessities which was to bring about punishment.<sup>187</sup> Several of the trials collated and transcribed by Helen McCorry, show a similar pattern. At a GCM trial held in Scotland, in July 1753, Private William Stickley, of Lord Viscount Bury's Regiment, was convicted of desertion, as well as the theft of his own and a comrade's necessities. In his defence Stickley claimed that: 'his cartridge box with ammunition was taken out of his quarters on Friday', and that: 'he lost his bayonet on Saturday evening when in liquor and being afraid of punishment he went of[sic]'.<sup>188</sup> There are numerous instances of soldiers having engaged in minor frauds or petty thefts, for whom fear of punishment for those acts was a clear factor in their decision to desert. A soldier from the 8th Regiment, for example, claimed at his trial for desertion in 1757, that he had 'made off' with his comrades

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<sup>187</sup> Gilbert, 'Why Men Deserted', p. 561

<sup>188</sup> Helen C. McCorry, "'Besides, he was very drunk at the time...': Desertion and Discipline, North Britain, 1751-53', *JSAHR*, 72 (1994), 142-59 (152).

money and then was afraid to return. Another soldier, from the 55th, told a complicated story about getting into debt, being unable to pay it back, stealing money and then deserting out of fear and drunkenness. A soldier from the 44th claimed that he had lost his coat and hat in a 'quarrel' and was scared to return without them.<sup>189</sup>

### **Related offences – suicide and self-harm**

Closely related to the offence of desertion were offences of suicide and self-harm, often in order to escape severe punishment, or to render the soldier unfit for further service. As with desertion these offences took many different forms, from attempted suicide, to cutting off thumbs or fingers. For the researcher of military history these are often heart-breaking cases to read, even when the charge is all that is left to us. It takes little imagination to consider the desperation of a soldier like Gunner Barker and his attempt to 'retard his Cure' whilst recovering in hospital from a flogging, most likely to postpone the remainder of his punishment.<sup>190</sup>

Self-inflicted injuries of various kinds occur at semi-regular intervals throughout the courts martial records, suggesting that they were an ongoing, intermittent problem for army authorities during the period. Indeed, by 1849, revisions to the Articles of War specified a wide range of possible infractions of this nature, from soldiers feigning illness entirely, or deliberately disobeying orders, 'thereby producing or aggravating disease or infirmity, - or delaying [a] cure', to wilfully maiming themselves or others 'with intent thereby to render [themselves] or any other soldier unfit for service.'<sup>191</sup> And in 1850 this list was expanded further to include any soldier who 'shall tamper with his eyes' to render himself unfit.<sup>192</sup> As with many military charges, however, for much of our period these offences could quite easily be covered by the catch-all charge of 'disgraceful conduct', with further definition applied in some, but not all cases and certainly not with any degree of consistency in reporting across different regiments and different courts martial.

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<sup>189</sup> WO 71/65, Trial of James Streatham, 12 August 1757; 71/66, Trial of Richard Belbin, 14 July, 1757; Trial of Marmaluke Smith, 5 November 1757; also, for Smith, see Gilbert, 'Why Men Deserted', p. 556.

<sup>190</sup> WO 89/4.

<sup>191</sup> Clode, Administration of Justice, pp. 46-7.

<sup>192</sup> Clode, Administration of Justice, pp. 46-7.

Across the six full years sampled from the GRCM register, there are 13 instances of soldiers charged with self-harm offences.<sup>193</sup> Of these, three were charged with attempting to maim, or disable themselves from further service, nine were charged with wilfully disabling, wounding, or maiming themselves, and one with ‘wilfully occasioning a sore to disenable himself from service’. In one of the cases the soldier concerned was charged with both ‘desertion’ and ‘attempting to disable himself from further service’. No such offences were recorded in the returns for the three regiments sampled; however, in the registers of GCM trials conducted during same the twelve month period covered by the regimental returns there are three cases of self-harm, with all three soldiers charged with ‘maiming’ themselves.<sup>194</sup>

With so few details, most of the trial entries can tell us little about the circumstances which precipitated these acts of self-harm. The transcripts of two GRCM trials, however, show the close relationship between this kind of offence and desertion. In both cases the soldiers in question had deserted from their regiments and in both instances the injuries involved damage to the hand. The first case concerns Thomas Housley, of the 36th Regiment of Foot. Having deserted from the regiment, Housley had been traced to his home by officers intent on his arrest. When the officers attempted to see him, his wife insisted he was not there. They went away and returned later. On their return they found Housley with his hand bandaged, a bucket full of blood and his wife insisting that she had cut off his thumb ‘and that she would cut his throat before he should serve for a soldier’.<sup>195</sup>

Housley was examined by a surgeon who, at the court martial, deposed that the injury could not have been done whilst he slept, as he had claimed, but had to have been done with both his knowledge and his cooperation. Husband and wife had clearly acted together to prevent him being sent for further service. An additional factor to consider in Housley’s case, is that he was not a long-serving soldier in his regiment. In fact, Housley had previously been a militia man, with the Tower Hamlets militia regiment, and had only recently enlisted in the 36th. According to the prosecution, Housley had deserted from the regiment, shortly after receiving

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<sup>193</sup> WO 89/4; 89/5.

<sup>194</sup> WO 90/1; 92/1.

<sup>195</sup> WO 71/233, Trial of Thomas Housley, 20 August 1813 ; also, see Linch, ‘Desertion from the British Army’ p. 21.

his bounty, and whilst en route with the recruiting party to the depot. This fits therefore, with the analysis of desertion as more of a factor for newly enlisted recruits, and strongly suggests that the difference in experience between militia and regular service may have been a factor in Housley's decision to desert.

In the second case, Private Jeremiah Buckley, of the 19th Foot, was charged with desertion, losing or selling his necessaries, and for 'wilfully maiming himself, by cutting off the first part of the right thumb [...] with a view of rendering himself unfit for the service'. Buckley pleaded guilty to the first charges, admitting that had swapped his uniform for civilian clothes and thrown his firelock into the river, but insisted that the removal of his thumb had been necessitated by an injury he had suffered whilst working in a quarry; a story disputed by the examining surgeon. In quite a damning testimony the officer who had apprehended Buckley deposed that he had asked whether the officer thought he might be discharged because of the injury. This case clearly fits the pattern of self-harm as a form of desertion, but it also offers another interesting piece of evidence: Buckley was initially apprehended as a deserter after a civilian passerby informed his officers of the presence of a man on the bridge who appeared 'sickly'. Despite Buckley being dressed in civilian clothes, the informant assumed he must be a soldier because, 'he had cut off his thumb'.<sup>196</sup>

That the civilian should make such an assumption of Buckley purely on the basis that he had cut off his thumb gives some indication that such an act was seen during this period as peculiar to soldiers. Indeed, self-inflicted injuries within civilian populations, though known and recognised, were generally understood in the eighteenth and early nineteenth centuries to be due to one very particular cause, that of hysterical insensitivity to pain, and were the subject of very little academic investigation until the period 1860 to 1900, when, as Sarah Chaney contends, 'the bulk of writing on self-mutilation outside a military context appeared'.<sup>197</sup>

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<sup>196</sup>WO 71/270, Trial of Jeremiah Buckley, 11 September 1826.

<sup>197</sup>Sarah Chaney, 'Anaesthetic Bodies and the Absence of Feeling: Pain and Self-Mutilation in Later Nineteenth-Century Psychiatry', *19*, 15 (2012), <<http://19.bbk.ac.uk/index.php/19/article/view/646>> [accessed 08 September 2014], p. 3.

Deliberate self-mutilation, though known to exist in the civilian context, was generally assumed to be primarily a soldier's act and the majority of writing on self-mutilation prior to 1860 reflects this.<sup>198</sup> In *Sketches of Imposture, Deception and Credulity*, published in the 1840s, Richard Davenport, a 'miscellaneous writer', dedicated a whole chapter to the subject of 'malingering' and self-mutilation in the army.<sup>199</sup> Most of the anecdotes Davenport related appear to have been reproduced in their entirety from the evidence offered by Dr John Cheyne, then Physician General in Ireland though formerly of the Medical Department of the Ordnance, in his 1824 *Medical Report on the Feigned Diseases of Soldiers*. Their inclusion in what amounts to a popular history of deception strongly suggests the common perception of malingering as a military experience. Along with attempts to feign various ailments, including deafness and lameness, Davenport claimed that soldiers found ingenious methods to bring about serious ailments, or the appearance of the same: '[r]emarkable ingenuity and a very considerable knowledge of the powers and effects of medicinal agents, have been shown by those who [...] would not be suspected of such information.' This suggestion casts a rather different light on the case above, of a soldier using 'some escarotic substance' to prevent his back from healing.

In the introduction to his report, Cheyne noted the extent of the problem of 'malingering', suggesting that 'in many corps, [...it was...] an intolerable nuisance'.<sup>200</sup> He also points out the lack of consistency with which regimental surgeons attempted to deal with the problem. Prior to the report, Cheyne circulated a series of queries 'among the staff and regimental officers on the Irish establishment' and his report was based largely on their

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<sup>198</sup> Though it should be noted that discussions of 'malingering' within the context of medical and psychiatric studies were also rare prior to the mid-nineteenth century: Pamela Moss, Michael J Prince, *Weary Warriors: Power, Knowledge, and the Invisible Wounds of Soldiers* (New York: Berghahn Books, 2014), p. 98.

<sup>199</sup> For characterisation of Davenport as a 'miscellaneous writer': H. J. Spencer, 'Davenport, Richard Alfred (1776/7–1852)', *Oxford Dictionary of National Biography*, Oxford University Press, 2004; online edn, (May 2009) <<http://0-www.oxforddnb.com.wam.leeds.ac.uk/view/article/7203>>, [accessed 8 Sept 2014], p. 131.

<sup>200</sup> John Cheyne M.D., 'Medical Report on the Feigned Diseases of Soldiers, in a Letter Addressed to George Renny Esq. M.D. Director General of Military Hospitals in Ireland &c.', in *Dublin Hospital. Reports and Communications in Medicine and Surgery, 1818-1830, Volume 4* (London: Longman, 1827), p. 124.

responses. Interestingly, according to Cheyne, soldiers not only engaged in deceptive practices, but systemized them into transferable information. Attributing this to a ‘kind of free masonry among soldiers’, he explained that he had ‘no doubt that these methods have been systematised, and that they are preserved in many regiments, and handed down for the benefit of those who may be inclined to make a trial of them’.<sup>201</sup> He gave as an example, the case of a soldier from the 18th Hussars who, having recently returned from the King’s Infirmary, was treated by the regimental surgeon for ‘a rupture’. The details of the case were forwarded to Mr Obre [...] Surgeon to the King’s Infirmary’, who, ‘in reply, inclosed a paper that had been picked up in the ward of the infirmary, in which this man lay, containing “a receipt for making a rupture”’.<sup>202</sup> The instructions, as set out by Cheyne, were very detailed and included the manner in which to ‘bring down the inflammation’ after the ‘rupture’ had served its purpose. A second example seems to offer similarly compelling evidence of information sharing between soldiers, and indeed a degree of collaboration from friends and family:

In the years 1804 and 1805, the great increase of ophthalmia in the 50th regiment, and the reported detection of frauds in other regiments led to suspicion in the mind of the surgeon of that corps, and consequent investigation, by which a regular correspondence was detected between the men under cure and their parents and friends. The ophthalmics requested that corrosive sublimate, lime, and blue stone might be forwarded to them, through which they hoped to get their eyes in such a state, as would enable them to procure their discharge.<sup>203</sup>

In this case the soldiers concerned were not merely attempting to secure a discharge, but rather, according to Cheyne, to secure a discharge with pension. A ‘rupture’ or an ailment like severe ‘ophthalmia’, were significantly less likely to raise suspicion than was a severed thumb and both were common ailments among soldiers. Given how difficult it was for soldiers, even if severely disabled in the line of duty, to be awarded a pension, this seems somewhat naive.<sup>204</sup> Though in both of these cases the

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<sup>201</sup> Cheyne, ‘Medical Report’, p. 127.

<sup>202</sup> Cheyne, ‘Medical Report’, p. 129.

<sup>203</sup> Cheyne, ‘Medical Report’, p. 130.

<sup>204</sup> For a discussion on the difficulties soldiers faced in accessing pensions, see Caroline Louise Nielson, ‘Disability, Fraud and Medical Experience at the Royal

intent was not to cause permanent damage, but to create the illusion of it, soldiers who attempted the above method of creating temporary damage to their eyes suffered extreme pain to create that illusion and ran the very real risk of permanently damaging their eyes, sometimes to the extent of blindness.<sup>205</sup>

It should be noted that, however endemic commentators like Cheyne may have considered the problem of malingering to have been, particularly in some regiments, it was nonetheless a minority of soldiers who engaged in such behaviour. Cuthbertson considered that for the majority of soldiers the army were likely to face the opposite problem: that of soldiers playing down or attempting to conceal illness and disease as a way of avoiding having to spend time in hospital.<sup>206</sup> That said, it would seem a minority of soldiers engaged in self-harm and dangerous practices in order to secure themselves a route out of military service.

Cheyne offered a caveat to his assertion that most soldiers engaging in malingering were doing so in order to escape duty, or secure a discharge. Some, he contended, were acting on ‘the same wayward fancies [...] which influence hypochondriack [sic] or hysterical patients in the middling and upper ranks of life’. He gave several examples of civilian patients engaging in the pretence of ill health, and some going to great lengths to feign symptoms; however, whilst Cheyne accepted that ‘a similar caprice’ might affect some soldiers, for whom there was ‘some unaccountable gratification in deceiving his officers, comrades or surgeon’, these seem to have accounted for a very small number of cases.<sup>207</sup> The majority, he suggested, had clear motives for feigning, or occasioning injury or ill-health. In particular, and somewhat echoing the findings of many studies into the causes of desertion, he suggested that in assessing the likelihood of malingering in a soldier, enquiries should be made into:

whether he has been much in hospital, is lazy and averse to his duty, which he is ever ready to evade; *whether the half yearly*

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Hospital of Chelsea in the Long Eighteenth Century’, in *Britain's Soldiers: Rethinking War and Society*, ed. by, Linch and McCormack, pp. 183-201.

<sup>205</sup>Cheyne, ‘Medical Report’, p. 130.

<sup>206</sup>Capt. Bennett Cuthbertson, *Cuthbertson's System for the Complete Interior Management and Oeconomy of a Battalion of Infantry* (London: Rouths and Nelson, 1776), P. 49.

<sup>207</sup>Cheyne, ‘Medical Report’, pp. 131-35.

*inspection is at hand, or he has exceeded the period of his furlough and is afraid to return to his corps. Whether he [...] has a prospect of lucrative employment if he were discharged, [...] whether he has any intentions of marriage. [author's italics]*<sup>208</sup>

A more drastic form of escape than self-harm or mutilation, suicide is a little more difficult to categorise. Suicide attempts appear much more rarely in the courts martial records than wilful maiming and indeed, whilst such cases are present in the wider military justice record, there are no such cases in the records sampled for quantitative analysis in this study. It is important to note, however, that such an act would only feature in a court martial trial if the attempt was unsuccessful. Many factors may have played a part in leading some soldiers to take, or attempt to take, their own lives, some of which may have had little direct relationship to service conditions.<sup>209</sup>

As with desertion, suicide was recognised as criminal within civil society and such acts were effectively prosecuted after death, with the estates or property of the deceased forfeited to the crown upon a verdict of suicide.<sup>210</sup> Suicide was a major concern for civil authorities in Britain. As Roland Bartel explains in his analysis of suicide in eighteenth-century England, ‘near the start of the eighteenth century the English people acquired a reputation [for suicide] that they came to regard as a major national problem’.<sup>211</sup> England was, incorrectly, considered by contemporary commentators to have the highest rates of suicide in Europe, so much so that Walpole dubbed suicide ‘death a l’Anglaise’.<sup>212</sup>

Soldier suicide in the eighteenth- and nineteenth- century British army is not a well studied subject; however, some work has been done in this area. In ‘Suicide in the British Army, c. 1815 – c. 1860’, John Rumsby explores some of the common features of soldier suicide, having discovered through an earlier study a particular propensity for suicide among the cavalry regiments in India.<sup>213</sup> Rumsby gives several examples of suicide

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<sup>208</sup> *Ibid.*, p. 135.

<sup>209</sup> Rumsby, pp. 353-356

<sup>210</sup> Frank McLynn, *Crime and Punishment in Eighteenth-Century England* (London: Routledge, 2002), p.51; also see Rumsby, p. 349.

<sup>211</sup> Roland Bartel, ‘Suicide in Eighteenth-Century England: The Myth of a Reputation’, *Huntington Library Quarterly*, 23 (Feb, 1960), 145-158 (p. 145.).

<sup>212</sup> McLynn, p. 53.

<sup>213</sup> Rumsby, p. 349-50.

among the soldiers of the 16th Lancers, with methods ranging from drowning, which was a very common method of suicide for both soldiers and civilians during this period, to soldiers turning their guns on themselves, often in full view of witnesses.<sup>214</sup> According to Rumsby, whilst overall the rates for suicide were much higher for soldiers than for civilians, even when serving at home, the highest rate by far was for soldiers serving in India, and the most likely arm of the service to experience high suicide rates was the line cavalry.<sup>215</sup>

Rumsby's analysis raises some intriguing questions about the soldier experience, not least of which is the seeming similarity between soldiers of cavalry regiments in India, and the particular civilian communities from which the majority of those men were drawn. As he explains, '[c]ivilian suicide rates amongst the artisanal and service occupations, classes heavily represented in the cavalry, were half as high again as for all occupied males.'<sup>216</sup> In contrast, the lowest levels of suicide recorded during this period were for the Household Cavalry, suggesting that different service types resulted in very different suicide rates.<sup>217</sup>

In some cases, there appears a very clear and direct relationship between the service experience of the soldier and the act of suicide. Drawing from military memoirs, Coss gives two examples of military personnel who seem to have committed suicide primarily to avoid the pain and humiliation of flogging. In one case, a comrade of Thomas Morris of the 73<sup>rd</sup> Regiment, having been sentenced by court martial to 300 lashes for what we are told was a relatively minor offence, chose instead to commit suicide with his musket, using a string attached to the trigger and his toe. In the second case, recorded by Judge Advocate Larpent in his journal, a commissariat clerk shot himself to avoid the pain and humiliation of corporal punishment for a fraud conviction.<sup>218</sup> Rumsby also gives several examples of suicide in the 16th Lancers which follow a similar pattern, with shame or fear of punishment clearly a factor.

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<sup>214</sup> Rumsby, p. 350.

<sup>215</sup> Rumsby, pp. 350-51.

<sup>216</sup> Rumsby, p. 354.

<sup>217</sup> Rumsby, p. 354.

<sup>218</sup> Coss, p. 140.

In her essay, 'Death by Suicide in the British Army, 1820-1900', Janet Padiak also considers both the high levels of suicide amongst serving and former soldiers and army responses to this problem. According to Padiak, the issue of soldier suicide became a matter of concern for army authorities during the nineteenth century, with the British army beginning to analyse newly collected data on soldier sickness and mortality in the 1830s and 1840s.<sup>219</sup> Their findings suggested that the mortality rate for soldiers stationed at home during peacetime was double the rate for civilian males of comparable age. These results came as a surprise at the time, with many analysts anticipating that soldiers in peacetime would have a lower mortality rate than their civilian counterparts because of the 'healthy warrior' effect. Soldiers were screened at enlistment for 'superior physique' and absence of disease. Once enlisted, soldiers were subject to a system designed to keep them healthy and battle ready, with 'superior nutrition' and 'comprehensive medical care'.<sup>220</sup>

Analyses of the data showed that suicides were clearly a factor, with suicide rates amongst soldiers in peacetime significantly higher than amongst civilians. Padiak explains that contemporary analysts posited the main reasons for high suicide rates amongst soldiers were likely to be 'a combination of factors, such as dislike of military life, long length of service, drunkenness and fear of punishment', all of which 'contributed to a soldier's despair'.<sup>221</sup> The similarity between these assumed reasons and those offered by many deserters to explain their actions is clear.

Along with the lack of reliable collated figures for specific causes of death among soldiers prior to the 1830s, the high levels of mortality due to disease throughout this period effectively masked the problem of suicide, with the pragmatism of the army leading to a much greater focus on disease as a more common and preventable cause of death.<sup>222</sup> Indeed, when the army began to keep accurate records of mortality for soldiers in 1818, they

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<sup>219</sup> Janet Padiak, 'Death by Suicide in the British Army, 1820 – 1900', in (Eds.) John Weaver, David Wright, *Histories of Suicide: International Perspectives on Self-destruction in the Modern World* (Toronto: University of Toronto Press, 2009), pp. 119-134 (p. 119)

<sup>220</sup> Padiak, p. 119.

<sup>221</sup> Padiak, p. 119; also see Rumsby, pp. 350-51.

<sup>222</sup> Padiak, p. 123; also, Rumsby suggests that even for civilians 'suicides were not regularly published until the late 1850s', see, Rumsby, p. 349..

omitted ‘accidental causes’ of death, including homicides, heart attacks, suicides and deaths whilst on furlough. ‘Suicide per se’, Padiak argues, ‘was not of interest to the army’ as a systemic issue at that time.<sup>223</sup>

However, though it was only in the early nineteenth century that the extent of soldier suicides began to emerge, specific instances of high suicide rates within parts of the service had been noticed much earlier. During a House of Lords enquiry into officer absences on Minorca in 1741, a key concern was a spate of soldier suicides and self mutilations. In their examination of Major General Anstruther, the Lieutenant Governor of Minorca, the questions asked by the House and the answers he gave made clear a causal relationship between the lack of relief for the regiments, two of which had not been relieved for over fifteen years and two more for twenty-six years, and the ‘many melancholy [sic] Instances’ of suicide and self harm. When asked about the nature and frequency of the incidents, Anstruther explained: ‘There have been a good many instances of soldiers upon that Island shooting off their Hands and some of them shooting off their Feet, and some shooting themselves through the Head, of those that have been the longest there; by which your Lordships will observe they will incapacitate themselves from earning their Bread at Home rather than continue there.’<sup>224</sup>

Padiak’s assertion that the army was not concerned with suicide prior to the 1830s, and viewed it as the result of personal weakness ‘aggravated by alcohol, idleness, or a tropical climate’ is well made; however, the evidence offered by Anstruther and the tone of the questions asked of him by the House of Lords committee suggests a degree of cognizance of, and even sympathy for the impact of army mismanagement on the soldiers’ state of mind and willingness to serve.<sup>225</sup>

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<sup>223</sup> Padiak, p. 123.

<sup>224</sup> The author is very grateful to both Susan Gane and Caroline Nielson for bringing the debates on officer absenteeism and self-harm within the Minorca regiments to my attention: *The Examination of Maj. Gen. Anstruther, Lieutnt Governor of Minorca; Before the H[ouse] of L[ords]; January 28, 1741. Together with the Resolution of the House on the Same. To which is Added, the Protest Thereupon* (London: R. West, 1741); also see, Alan Guy, *Oeconomy and Discipline : Officership and Administration in the British Army 1714-63*, (Manchester: MUP, 1985), p. 118.

<sup>225</sup> Padiak, p. 123.

Suicide as a means to escape punishment or as a result of ‘despair’ was by no means limited to soldiers. That said, the higher suicide rates among soldiers during the early nineteenth century, and indeed the apparent continued trend for high suicide rates among soldiers in the modern era, suggest that there were elements of the soldier experience which made them much more vulnerable to suicidal action.<sup>226</sup> As Padiak argues, the soldier may simply have had fewer options for resolving the problems that affected both soldiers and civilians. Alongside a lack of options, however, there may also have been particular stresses inherent in military service to which civilians were not subject, or to which they were less subject.

For example, the apparent relationship between high alcohol use and increased risk of suicide, noted by contemporary commentators and borne out in modern understandings of mental health is also a factor to consider and worth keeping in mind during the discussion of drunkenness as a common offence within the courts martial records.<sup>227</sup> As will be shown in Chapter Three, though drunkenness was a commonly cited problem within eighteenth- and nineteenth-century British society, there is evidence to suggest that alcohol was a particularly acute problem for the military and that alcohol use was an important element of soldier culture. There is a need for caution here, however, in ascribing alcohol as a cause of suicide. According to Rumsby, while alcohol played a part in many of the suicide cases he explored, the reasons for men taking their own lives were often complex, with a ‘tangle of motives’, some service related, and others not. Though alcohol may have been a ‘contributory factor’ in these cases, it ‘was unlikely to have been the root cause’.<sup>228</sup>

In the cases examined by Rumsby, the most common causes appear to have been crime related, with soldiers committing suicide out of shame at their offence, or fear of the resulting punishment, interpersonal problems ‘exaggerated’ by the close confines of the regimental community, and in a further echo of the most common reasons for desertion, ‘disappointment’ at the disparity between the expectations of service raised by the recruitment

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<sup>226</sup> Rumsby, pp. 349-353; also Padiak, p. 129.

<sup>227</sup> Padiak, p. 129.

<sup>228</sup> Rumsby, p. 353.

sergeants and the reality of service in the regiment, or simply an inability to adjust to or cope with service conditions.<sup>229</sup>

Along with an increased likelihood of suicide, military service shaped the methods used by soldiers to kill themselves. According to Rumsby, the most common method of suicide among soldiers was shooting themselves.<sup>230</sup> With Anstruther's evidence in mind, it seems that this may also have been a common feature of soldier suicide, and indeed self-mutilation, in the earlier part of our period; a point worth bearing in mind for the discussion of violent crime in Chapter Four. That this was similarly mirrored in the tendency for civilian suicides to utilise the tools of their trade again suggests that elements of the act of suicide were occupation specific.<sup>231</sup>

### **Conclusion**

Soldiers who deserted, whether by absconding or taking their own lives, or who rendered themselves unfit for further service through self-mutilation, were often responding to the particular context of military service. For most of the period under study, the nature of their service disallowed the legal withdrawal of their labour, and as can be seen from the case of the Minorca regiments they could be held to that service indefinitely, without the protections afforded to their civilian counterparts. Even for those soldiers who enlisted for limited periods, either for the duration of a conflict as was often the case for those who enlisted from the American colonies for example, or during the early nineteenth century when shorter enlistment periods became more generally available, the reality of military life could at times prolong that service beyond its intended limits.<sup>232</sup>

Soldiers were in some ways at the mercy of an often ad-hoc approach to administration at a regimental level and some commanding officers simply refused to accept the validity of their claims.<sup>233</sup> Among the desertion trials from this period are many examples of soldiers who had been denied their right to a discharge having apparently served for the

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<sup>229</sup> Rumsby, p. 359.

<sup>230</sup> Rumsby, p. 349.

<sup>231</sup> Rumsby, p. 352.

<sup>232</sup> Gilbert, 'Why Men deserted', p. 555.

<sup>233</sup> Glibert, 'Why Men deserted', p. 555.

agreed period: as for example, the three soldiers from the 62nd who were tried for desertion, having been denied their discharge. The power to impose often brutal physical punishments for even minor infractions, placed some soldiers in fear and was, for many of those who removed themselves from service through illegal means, a clear factor in their decisions to do so.<sup>234</sup> The higher rates of suicide among soldiers than among civilians, even when serving at home, along with the especially high rates of suicide among the cavalry regiments serving in India, and the spate of suicides in Minorca, is testament to the particular stresses of army service and the much narrower range of options available to soldiers to change their immediate circumstances, while the tendency noted by Rumsby, for soldiers to utilise their weapons as the most common method of committing suicide shows that military service fundamentally shaped the soldier's experience of suicide.<sup>235</sup> Though some of the motivations and impetus behind such actions had their analogue in civilian cultures, desertion, suicide and self-mutilation highlight a soldier-specific experience.

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<sup>234</sup> Gilbert, 'Why Men Deserted', p. 561; also, Rumsby, p. 353-54.

<sup>235</sup> Rumsby, p. 349-50; Padiak, p. 119.

## Chapter Three: Military Offences Part 2 - Disorder and Regulatory Offences

### Introduction

If soldiers were in effect subject to two distinct sets of law, civil and military, it is also fair to say that military justice served two distinct functions: the prosecution and punishment of criminal activity and the regulation and administration of military discipline.<sup>236</sup> Indeed, ensuring military discipline rather than the pursuit of justice was the prime concern for army authorities and many of the offences tried by court martial were wholly military in nature, and would not have been considered criminal in the civilian sphere: insolent language, sleeping on post, being drunk on duty, to name a few.<sup>237</sup>

Other offences of disorder, such as rioting or creating a disturbance would have been recognised as crimes of disorder or breaches of the peace in the civilian sphere. Alongside desertion, regulatory offences were the most common charge types preferred against soldiers by courts martial at all three levels, whether as standalone charges or accompaniments to other offences. For many soldiers, therefore, courts martial represented a response to breaches of discipline, rather than criminal activity.<sup>238</sup> This chapter will explore aspects of soldier disorder and consider what these offences can tell us about soldier-specific experiences of crime and justice, as well as some of the ways such offences demonstrated continuity with the civilian cultures from which soldiers were drawn.

### Defining regulatory offences

The range of regulatory offences that appear in the military justice records is extensive. As well as desertion and making away with necessaries, soldiers faced courts martial for many different military offences: falling asleep on sentry duty; being incorrectly attired when

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<sup>236</sup> Robert Henderson, “‘Terror of Example’ Crime and Punishment in the British Army in 1812 Part One: Capital Punishment”, *The War of 1812 Website*, at <http://www.warof1812.ca/punish1.htm> [Accessed 7 August 2014] (para. 4 of 12); also see Gilbert, ‘Military and Civilian Justice’, p. 43.

<sup>237</sup> Burroughs, p. 550.

<sup>238</sup> Burroughs, pp. 545-6; Gilbert, ‘Military and Civilian Justice’, p. 41.

inspected; overstepping the boundaries of camps; breaking or failing to adequately maintain equipment; disobeying or failing to properly carry out orders; insolence towards officers and NCOs; abusing military animals; firing off their muskets in camp; wasting ammunition, and the ever present charge of drunkenness. Often though, and particularly when the soldier was tried by RCM and no full transcript of the trial is available, it is impossible to know precisely what the offence was, with the charges stating simply 'unsoldierlike behaviour', or 'disgraceful conduct'.<sup>239</sup>

Where charges give more detail, some offences are fairly simple to categorise: soldiers charged with falling asleep at their post, or being drunk at parade had clearly transgressed the bounds of military order without necessarily acting in a criminal fashion. Other regulatory charges offer more of an interpretive challenge. Mutiny, for example, like desertion was an offence which could occur along a sliding scale of seriousness. Large-scale mutinies in the armed services were a cause of concern both to military and civil authorities, and popular reactions to such mutinies, particularly during times of war, were understandably negative.<sup>240</sup> Soldiers and sailors represented the nation's defence and a refusal by them to fight or adhere to the authority of their commanding officers by definition potentially threatened that defence. But much like the charge of desertion, the charge of mutiny could cover many actions, and its application within courts martial was far from consistent, particularly at the lower level of the RCM.<sup>241</sup> Refusing to obey an order, disrespectful language to a superior officer, making comments about service conditions could all lead to charges of mutiny, or the related charge of using mutinous expressions.

Unlike civilians, soldiers lived under martial law in times of peace and war, home and abroad. According to the Mutiny Act and the Articles of War, any form of mutiny could be met with a death sentence. In the practice of the law, military authorities distinguished between more and less serious forms of this offence. Of the many offences which could be considered capital under the act, striking a superior officer and sleeping on sentry duty, were some of the most common offences for which soldiers were court-

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<sup>239</sup> Burroughs, p. 557.

<sup>240</sup> Cookson, 'Regimental Worlds', p. 25.

<sup>241</sup> Tatum, "Military Justice and Negotiated Authority", p. 97; Burroughs, p. 560; Gilbert 'Regimental Courts Martial', p. 65.

martialled during the eighteenth and nineteenth centuries. Rarely though, were soldiers executed for these offences without there being some additional aggravating factor, or in response to a particular in-time need for the army to make an example of an unfortunate soldier.<sup>242</sup>

### **Regulatory offences in the GRCM, GCM and RCM samples**

Of the 1547 trial listings for the six sampled years of the GRCM register, 422 include regulatory offences, with 218 trials listing regulatory offences without other accompanying charges.<sup>243</sup> A similarly high proportion of the trials at RCM level record regulatory offences: out of 62 RCM trial listings for the 33rd, 27 include charges of regulatory offence, 18 of which had no other accompanying charges; of 101 trial listings for the 34th, there are 86 charges of regulatory offence, with 52 of these as standalone charges, and for the 37th, of the 53 listings, 38 show regulatory offences, with 35 as standalone charges.<sup>244</sup> During the same twelve month period, across the whole service, 143 soldiers were tried by GCM, with 38 facing regulatory charges.<sup>245</sup>

Many of these cases record fairly simple examples of irregular behaviour, such as the GRCM trial in 1814, of Private Jason Gallivin of the 1/73rd, for ‘Appearing in the Street irregularly dressed & refusing to go to the Guard Room’, or the RCM trial in 1819, of Private Samson Hollis of the 33rd, for ‘[I]aying down & quitting his Post when on Sentry’.<sup>246</sup> There are also numerous examples of soldiers falling asleep on duty, such as Private Timothy Moore of the 94th, who had been ‘[f]ound asleep on his post’, or Private Lawrence Parkinson of the 56th, who was ‘[f]ound asleep when on duty as Sentinel’, and many cases too of drunkenness.<sup>247</sup> In some of the cases though, we see a much more active picture of disobedience and unruliness, with soldiers ‘rioting in the barrack room’, or engaging in ‘mutinous conduct.’

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<sup>242</sup> Tatum, ‘Military Justice and Negotiated Authority’, p. 109.

<sup>243</sup> WO 89/4; 89/5

<sup>244</sup> WO 27/147; 27/148.

<sup>245</sup> WO 90/1; 92/1

<sup>246</sup> WO 89/4; 27/148

<sup>247</sup> WO 27/148

## Key features of disorder and regulatory offences

### Resisting authority

A common feature of many regulatory offences is their apparent role in the soldier's lexicon of resistance and negotiation and this has been the focus of some study in recent decades. Burroughs, for example, characterises insubordination as 'instinctive reactions or conscious protests' and considers desertion and absence without leave in particular as 'widespread forms of protest against the conditions of army life'. According to Burroughs, while desertion was a common response to dissatisfaction among younger soldiers, for older soldiers, though they were 'inured to the demands of barracks life [...]their rankling discontent and frustrations might well be manifested in drunkenness or unruliness'.<sup>248</sup> More recently, Will Tatum considered the negotiated nature of military authority. Rather than the apparently absolute authority of officers over men, Tatum's study demonstrates a more fluid relationship, in which 'the practical bounds' of that authority 'were the result of give-and-take interactions between officers and enlisted men', and identifies a range of strategies and behaviours, through which soldiers expressed their frustrations with specific and general conditions of service, creating the context for discourse with officers.<sup>249</sup> These strategies were at times a deliberate and direct attempt to force negotiation, and at others a less deliberate and direct response to service conditions. Taken together, Tatum argues that these behaviours demonstrate that soldiers, far from 'hapless victims' of overweening and arbitrary authority, as they have often been portrayed, were instead 'active agents' in the military system.<sup>250</sup>

Contemporary concerns over soldier behaviour and service conditions within the army also recognised in soldier crime elements of resistance to authority, though they framed the expression of that resistance in much more reactive terms. Proponents of reform, like Henry Marshall, for example, writing in the 1840s and arguing against the common perception of soldiers as, 'the very dregs of the population, - ignorant, vicious, and idle', considered that 'a certain order of crimes, [...were...] the

<sup>248</sup>Burroughs, p. 551.

<sup>249</sup>Tatum, 'Military Justice and Negotiated Authority', p. 95

<sup>250</sup> Tatum, 'Military Justice and Negotiated Authority', p. 96.

necessary result of the organization, discipline, usages, and services of the army'.<sup>251</sup> An advice book for soldiers and non-commissioned officers, also written in the 1840s, suggests that many men, particularly when drunk, were 'goaded' into committing crimes by overbearing NCOs.<sup>252</sup> In this case agency is ascribed to the NCOs, with advice against pushing the men under them to such extremes, and instead to act with 'forbearance'. It is notable that in the section of the book aimed particularly at private soldiers, passivity and acceptance are offered as the best defence against unfair treatment.<sup>253</sup> For Marshall and the author of the advice book, the peculiarities of army service and the system of authority under which soldiers lived were themselves the cause for a great deal of soldier offending.

Along with the rather oblique charge of 'disobedience of orders', which could cover a multitude of sins from accidental disobedience to outright defiance, charges such as that against Private Charles Barclay of the 2/18th, who was convicted in 1813 for 'Declaring he would never carry a firelock or do a day's duty' or the charges against Private James Wilks, of the 87th, for 'throwing down his Firelock and using mutinous language', seem to fit quite naturally into the category of active resistance and negotiation tactics identified by Tatum and Burroughs.<sup>254</sup> Most compelling is the intermittent appearance within the courts martial records of soldiers charged with writing letters or preferring complaints. Tatum suggests that soldiers often followed a pattern of escalation, beginning with attempts to seek solutions to problems through channels of communication with officers and the command structure. He gives several examples of groups of soldiers attempting to resolve their grievances through verbal and written communication with their immediate officers as well as the higher echelons of command, some of which resulted in those grievances being heard and

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<sup>251</sup> From Burroughs, p. 551.

<sup>252</sup> Anon., *Private soldiers, non-commissioned officers, and candidates for commissions, by an officer from the ranks* (London: Simpkin & Co., 1847), p. 26.

<sup>253</sup> Anon., *Private Soldiers*, p. 17.

<sup>254</sup> WO 89/4; Tatum lists a total of twenty-five different actions detailed in a Gibraltar orderly book covering an eighteen year period which were covered by 'disobedience of orders' charges: Tatum, 'Military Justice and Negotiated Authority', p. 36; Burroughs, p. 551.

responded to and others which, as he put it ‘fell on deaf ears’.<sup>255</sup> Verbal appeals to immediate officers, were followed by written appeals further up the chain of command, and when these avenues had proved unsuccessful, soldiers resorted to more drastic action, such as outright mutiny.

Throughout the courts martial records, there are examples of soldiers, and indeed officers, tried for preferring malicious accusations, or writing ‘improper letters’. In the six years sampled from the GRCM register, there are five cases of soldiers tried for making frivolous, improper, or malicious complaints, three for writing letters and one for making a malicious accusation against an officer. Though we do not know the content of the letter, the trial of John Martin, a militia soldier from Stockport, in 1813, demonstrates the dangers of engaging in this kind of negotiation strategy. Convicted of ‘Unsoldierlike Conduct in writing a Letter calculated to create bad order and insubordination’, Martin was sentenced to 700 lashes.<sup>256</sup> Similarly, Private Brian Docherty of the 28th, stationed in Corfu was convicted in 1825, of ‘Writing two Letters with a malicious intent’ and sentenced to four months imprisonment with hard labour.<sup>257</sup>

Whilst Tatum makes a compelling case for the structure of the system in which soldiers lived and served shaping their available options and responses in ways ‘that differed significantly from their civilian labourer counterparts’, it is important to take account of some of the parallels that did exist between military and civil employees.<sup>258</sup> Tatum’s criticism notwithstanding, Peter Way’s argument that soldiers’ ‘rhetoric’, ‘economic motivation’ and strategies, up to and including the ‘withholding of labour’, ‘echoed [...]plebeian crowd actions and early workplace disputes’, is not easily dismissed.<sup>259</sup>

Perhaps the biggest structural difference for soldiers was the existence of a strictly delineated chain of command;<sup>260</sup> however, though most civilians did not exist within such a chain of command, they nonetheless made use of some similar strategies to make their grievances

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<sup>255</sup> Tatum, ‘Military Justice and Negotiated Authority’, p. 101.

<sup>256</sup> WO 89/4.

<sup>257</sup> WO 89/5

<sup>258</sup> Tatum, ‘Military Justice and Negotiated Authority’, p. 96.

<sup>259</sup> Way, ‘Rebellion of the Regulars’, p.761; also, for Tatum’s criticism of Way’s approach: ‘Military Justice and Negotiated Authority’, p. 96.

<sup>260</sup> Tatum, ‘Military Justice and Negotiated Authority’, p. 96

known.<sup>261</sup> Where soldiers might, after finding no answer to a problem from their immediate superiors, send a letter further up the chain of command, civilian workers, faced with an insoluble problem with their employers, would sometimes seek redress from local justices or magistrates, and if that failed might collaborate on letters or petitions to parliament. John Rule gives several examples of such petitions, including that of the weavers of the West Country who petitioned Parliament in 1756, to seek redress for the reduction in wages imposed by their employers.<sup>262</sup> Though there are clear distinctions between a trade or industry representing themselves in this way and a small group of soldiers seeking redress from the higher echelons of command, there are also similarities, not least in that they demonstrate a sense of right to redress.<sup>263</sup>

Soldiers, though they existed within a very different framework of authority, nonetheless retained their sense of rights as employees. Soldiers brought with them a culture of workers' rights and continued to employ some of the methods and strategies used by their civilian counterparts when faced with what they considered unfair treatment.<sup>264</sup> An example from Tatum's study demonstrates both the pattern of escalation from initial to formal complaint and the sense of natural justice and employee rights felt by soldiers. Ten marines from General Wolfe's regiment were charged with mutiny for refusing to do any duty in the fleet until they had been paid their 'sea pay', which at that point was two years in arrears. In their defence statements the men set out the various steps they had taken to try to resolve their problem prior to resorting to mutiny as a last resort. First they spoke to the regiment's paymaster, who 'promised' that they would be paid. When that promise was not kept, they 'sent written petitions' to their colonel and the Secretary at War, and received no answer from either. Some of the men then 'engaged in additional acts of resistance at the time of their arrest'. One private 'flung down his hat in an insolent manner' another threatened to go

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<sup>261</sup> Way, p. 761.

<sup>262</sup> Rule, *Albion's People*, p. 120; also, see Way, p. 766.

<sup>263</sup> Brumwell, *Redcoats*, pp. 100, 127-9, 352; Linch "Citizens Not Soldiers", p. 214, Way, p. 761.

<sup>264</sup> Way, pp. 761-63.

over their officers' heads by writing to the Secretary at War 'to have one officer cashiered'.<sup>265</sup>

In *Redcoat: The British Soldier in the Age of Horse and Musket*, Richard Holmes also argues that mutiny and disobedience were often the result of a sense of grievance at a perceived 'breach of trust on the part of the authorities' and gives further examples of mutiny by soldiers in the face of unwarranted stoppages, or other perceived injustices.<sup>266</sup> The case of the Western Fencibles is a particularly interesting one. Their mutiny in 1779 was caused by anger at their commanding officer for having purchased sporrans from a London tailor at a much higher price than local tailors would have charged and then passed that cost onto the men through their stoppages.<sup>267</sup> Such disputes over cost and quality of items purchased or contracted on behalf of soldiers were far from uncommon. Given that soldiers had no personal purchasing power in such matters, but were nonetheless tied to those purchase decisions this seems an understandably fraught aspect of army life.

According to Gordon Bannerman, disputes over the quality of food provided by civilian contractors for camps at home were rare, at least during the mid-eighteenth century; however, for regiments serving overseas there were far more complaints, with suggestions that 'poor quality provisions were [...sometimes...] deliberately provided', and, 'old and new provisions blended together'.<sup>268</sup> Divall's study of the 30th Regiment suggests that these problems still existed in the nineteenth century, with 'many horror stories of adulterated food' and meat that was 'more bone than flesh': a serious matter for soldiers whose meat rations were based entirely on weight and who would, through stoppages, bear the cost of those rations.<sup>269</sup>

Tensions over food purchasing, both in terms of price and quality were therefore not uncommon, which may explain why several soldiers of the 34th faced RCM trials for refusing to accept meat from the commissary. In August 1819, privates William Noble and John Eagan were tried and

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<sup>265</sup> Tatum, 'Military Justice and Negotiated Authority'; pp. 100-101.

<sup>266</sup> Holmes, p. 308.

<sup>267</sup> Holmes, pp. 311-13.

<sup>268</sup> Gordon Bannerman, *Merchants and the Military in Eighteenth-century Britain: British Army Contracts and Domestic Supply, 1739-1763* (London: Pickering & Chatto, 2008), p.37.

<sup>269</sup> Divall, p. 49.

acquitted of ‘refusing to receive any of the meat supplied by contract’. Though acquitted, the fact that they were court-martialled at all suggests that this may have been a recurring problem, particularly when one considers the additional charge faced by Noble of, ‘saying he was one man who refused to take the contract meat [...] in front of the whole company’. A month later three privates were tried, and two found guilty of: ‘endeavouring to Administer an Oath to Certain Men of the first Company, binding them not to go to the Regimental canteen’.<sup>270</sup>

There is the danger of over-emphasising the degree to which some of these behaviours represent a firm expression of agency on the parts of soldiers. Those soldiers Tatum identifies as engaging in less deliberate forms of resistance and negotiation, responding immediately to service conditions in destructive and sometimes self-destructive ways, can also be seen to represent the lack of agency which characterised some aspects of soldier service. Though not ‘hapless victims’ of authority as they have often been depicted, they were nonetheless, in a very real sense, ‘trapped’ within the military system from the moment they enlisted: they were for the most part, soldiers for life, with no right to leave the service; they had ‘no direct influence over conditions of service, and gatherings for discussion were forbidden’, and the avenues for redress for soldiers who were subjected to unfair treatment or outright bullying were few and far between.<sup>271</sup> As Burroughs argues, some soldiers ‘were provoked into committing offences by the treatment they received from domineering officers or vindictive NCOs’.<sup>272</sup> Though this could still be characterised as a form of agency, and indeed Burroughs refers to such behaviour as ‘instinctive reactions or conscious protests’, it also underlines the lack of freedom inherent in soldier service, particularly when coupled with the potential for severe sentences for those soldiers who responded in this manner. In this sense, then, soldiers’ available options did indeed differ ‘significantly from their civilian labourer counterparts’.<sup>273</sup>

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<sup>270</sup>WO 27/148.

<sup>271</sup> Gilbert, ‘Why Men Deserted’ p. 554; Burroughs, p. 546.

<sup>272</sup> Burroughs, p. 551.

<sup>273</sup>Tatum, ‘Military Justice and Negotiated Authority’, p. 95.

Between the two extreme positions of mutiny and acceptance, there was ‘a shifting zone of negotiation’ between the men and their officers.<sup>274</sup> Though all the formal power and authority lay with officers, the relative rarity of death sentences for even the most serious mutiny charges shows the impracticality of exercising that absolute power whilst ignoring genuine grievances.<sup>275</sup> However differentiated by rank and authority, soldiers and their officers existed within a relationship, the successful functioning of which required a degree of mutuality. Consequently, the way in which mutiny or disobedience was treated by regimental authorities was highly contextual.<sup>276</sup>

Two examples of mutinous behaviour show this very clearly. The first comes from the recollections of Lieutenant John Shipp, formerly a soldier who rose through the ranks. In his memoirs, Shipp recalls an incident of mutiny in two companies of the 10th Regiment in India. It had become the custom, Shipp explains, for the men arriving at Fort William to have eight rupees stopped from their pay, with no explanation offered as to why this money had been stopped. The men, naturally upset at the loss of this money sought answers from their officers, who were themselves ‘in the dark’ as to why the deductions had been made. ‘The greater part of the two companies then marched, in a sober deliberate manner, towards Major-General Sir Hughe Bailey's quarters, to seek redress’.<sup>277</sup> It was explained to the men that the deductions had been made in order to ensure a proper burial should any of them be unfortunate enough to require one. Far from being satisfied with this explanation, the men returned to their barracks angry and proceeded to fuel their anger with alcohol, ‘till at length they became bent upon open rebellion and mutiny’. What makes this recollection so intriguing, is the role of the officers in attempting to quell the rebellion:

Both companies were doatingly [sic] fond of their officers, who took great pains to explain to them that violent measures, and taking the law into their own hands, would never be likely to get their wrongs redressed; but that, on the contrary, those very acts deprived them of the power of interceding for them, and

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<sup>274</sup> Tatum, ‘Military Justice and Negotiated Authority’, p. 109

<sup>275</sup> *Ibid.* p. 109.

<sup>276</sup> *Ibid.*, p. 109.

<sup>277</sup> John Shipp, *Memoirs of the extraordinary military career of John Shipp: late a lieutenant in His Majesty's 87th Regiment*, Volume 1 (London: Hurst, Chance, and Co., 1830), p. 117.

explaining to the proper authorities the grounds of their complaints.<sup>278</sup>

For most of the men this was enough to stem the tide of rebellion; however, some were still unhappy and, ‘spreading wide the infectious sparks of mutiny’. Again, the officers were called upon to intercede. The colonel of the regiment, who Shipp tells us the men ‘loved dearly’, arrived and ‘the men became passive’, but, when the ‘hated’ adjutant arrived, ‘the shouting of, " Kick him out!"—" Turn him out!" resounded through the barracks, and he had a narrow escape for his life’.<sup>279</sup> Once the adjutant left, the men settled down and the barracks were again peaceful. The following morning, the men were refunded their eight rupees. In this instance the relationship between the men and their officers was clearly crucial in restoring order. Recognition of a genuine grievance and a willingness by the officers to engage with the men, coupled almost certainly with a degree of pragmatism when faced with a fairly large number of unhappy soldiers, prevented the incident from escalating into something much uglier and more dangerous.

The second example of mutinous behaviour, from the recollections of William Surtees, occurred in a very different context and was handled in a very different manner. In this case, the incident occurred as the regiment was marching towards Orense, close behind the enemy’s rear guard: ‘[A]s our General was passing the column, a cry was passed from the rear to open out to allow him to pass, the road being very narrow. One of our men, as the General came near, happened to say, loud enough for him to hear, that “he had more need to give us some bread," or words to that effect’. In this instance, faced with a single soldier voicing his anger and frustration, in the context of a hard and dangerous march almost within sight of the enemy, the General’s response was wholly different to that of the Colonel in India. According to Surtees, the soldier’s words ‘so exasperated the General, that he instantly halted the whole brigade, ordered the man to be tried by a drum-head court-martial, and flogged him on the spot’.<sup>280</sup>

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<sup>278</sup> Shipp, *Memoirs*, p. 118.

<sup>279</sup> Shipp, *Memoirs*, p. 119.

<sup>280</sup> William Surtees, *Twenty-five Years in the Rifle Brigade* (London: William Blackwood, 1833), p. 91.

Most of the cases above clearly relate to soldiers responding to systemic issues. Sometimes, though, when soldiers resisted authority it was at a very individual and personal level. The chain of command was sacrosanct to the British army system, but as an organisation it was made up of people, not all of whom got along as individuals. Personal dislikes, disagreements and grievances played their part in prompting acts of rebellion or disobedience. As will be discussed further in Chapter Six, the relationship between soldiers and their NCOs was often one of particular tension. NCOs represented the immediate face of authority for ordinary-ranking soldiers, with a constant presence and supervisory role.<sup>281</sup> At the same time, NCOs were drawn from the ranks, and personal ties and enmities could easily carry forward into their application of, and the soldiers' acceptance of, authority.<sup>282</sup>

Though we have only the charges recorded and no trial transcript, the case of James Murphy of the 34<sup>th</sup> Regiment may reflect one such personal disagreement. According to the regimental returns, Murphy was tried by RCM for 'Coming to the Room of Corporal Bible after hours & attempting to break open his door', and then 'abusing' and 'hitting' Bible.<sup>283</sup> This is a fairly extreme example, with violence as well as harsh words, but it is a useful case to consider. Though we do not know whether Murphy's disagreement with Bible was of a professional or personal nature, unlike many of the cases of soldier violence or insolence to officers and NCOs, his actions do not appear to have been immediately precipitated by an unwanted or unwelcome command: Bible was not 'on duty' at the time, but in his room, nor does it seem that Murphy was being admonished or punished by Bible at the time.

### **Riotous behaviour**

Close kin to mutiny, the charges of rioting or riotous behaviour also appear intermittently throughout the courts martial records, and like mutiny, provide an intriguing insight into soldier cultures and their relationship to

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<sup>281</sup> For an excellent description of NCO roles within a regiment, see Divall, pp. 79-95.

<sup>282</sup> Tatum suggests personal ambition as well as personal relations may have been factors in soldiers' and NCO's decisions when it came to resisting or cooperating with authority.

<sup>283</sup> WO 27/147.

civilian cultures. As with most of the charges examined here, riot charges could cover a range of behaviours, some of which clearly fit the traditional legal definition of rioting, and some of which do not.

Altogether, in the GRM samples, there are 14 examples of soldiers convicted of rioting, or riotous behaviour, and seven examples in the GCM sample.<sup>284</sup> From the regimental returns, the 33rd convicted 2 soldiers of riot charges, the 34th convicted four soldiers, and three soldiers were convicted by the 37th.<sup>285</sup> Looking at the charges in more detail, however, emphasises the need for caution when dealing with court martial charges. The legal definition of rioting as an offence required the involvement of at least three people as well as the active committing of an illegal act.<sup>286</sup> As mentioned above, the use of the charge of rioting in the military setting may not always have corresponded to this legal definition, referring instead to the type of behaviour alone, with the number of people involved not considered relevant. This is particularly apparent in cases of individual soldiers charged with rioting or riotous behaviour: in such cases, either the unfortunate soldier concerned was being held solely responsible for group action, or his actions would not have met the legal definition of rioting. The charge of riotous behaviour is a particularly awkward charge to categorise in this context, seemingly treated by regimental commanders as an interchangeable charge with mutiny, as for example in the case of Private Michael McHugh, of the 37th, who was convicted of ‘Riotous and unsoldierlike conduct in attempting to strike Lieut. Johnson in the execution of his Duty’.<sup>287</sup> Recording vagaries aside, this offence type seems to have fulfilled a similar role to mutiny within the soldier’s lexicon of resistance and negotiation and indeed the two charges were often paired.<sup>288</sup> Unlike mutiny, however, riot

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<sup>284</sup> WO 89/4;89/5; 90/1; 92/1.

<sup>285</sup> WO 27/ 147; 27/ 148.

<sup>286</sup> For corresponding problems of interpretation of riot and unlawful assembly charges in the criminal justice system: see J. M. Beattie, ‘The Pattern of Crime in England, 1660-1800’, *Past and Present*, 62 (1974), 47-95 (63); also, Tony Hayter, *The Army and the Crowd in Mid-Georgian England* (London: Mamillan, 1978), p. 33.

<sup>287</sup> WO 27/148; for vagaries of terminology, see Burroughs, p. 557; Tatum, ‘Military Justice and Negotiated Authority’, p. 97; Gilbert ‘Military and Civilian Justice’, p. 48.

<sup>288</sup> Tatum, ‘Military Justice and Negotiated Authority’; Brumwell, pp. 128, 135; Way, pp. 780-781.

was a recognised criminal offence within the civilian sphere as well as an offence against order within the military.

Again, we see a continuity of civilian expectations into soldier culture. Just as rioting formed part of the soldiers' lexicon of resistance and negotiation with their officers and the military system, it also formed an important part of the political lexicon of the civilian communities from which those soldiers were recruited.<sup>289</sup> Riots were a common feature of eighteenth- and nineteenth-century Britain's informal political culture, indeed they were a common expression of popular discontent across Europe.<sup>290</sup> Tony Hayter suggests that this period was 'the high noon of mob disorder in England'.<sup>291</sup> Large-scale eruptions of popular discontent, such as the Gordon Riots, were so impactful and intertwined with national politics that they remain in the public consciousness even now. But the more common experiences of rioting during this period were smaller scale expressions of discontent over localised and immediate concerns. Food riots in particular were a common feature of the local political landscape, especially in response to specific shortages and rising prices, as was the case in the mid-1790s. According to Cynthia Bouton, from the mid-eighteenth century, food riots became, 'the most common form of popular protest' in England.<sup>292</sup>

Though rioting was an offence that demonstrated an element of cultural continuity between civil and military worlds, it was, for much of the eighteenth and even early nineteenth centuries, also an offence that literally separated the civilian and soldier, pitting the two against each other through the army's role in policing civil unrest. The use of soldiers to quell public disturbances heightened the tensions between civilians and the military in Britain, and indeed, during the earlier part of our period, in the colonies too. As Brumwell contends, 'the redcoated infantryman or dragoon was the ultimate defender of the state.'<sup>293</sup> At the same time, soldiers billeted in

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<sup>289</sup>Way, p. 761.

<sup>290</sup>Cynthia A. Bouton, 'Food Riots', in *Europe, 1450 to 1789: Encyclopedia of the Early Modern World* (2004), at *Encyclopedia.com* <  
<http://www.encyclopedia.com/doc/1G2-3404900387.html>> [Accessed: 3<sup>rd</sup>

February 2013], paras. 1-2.

<sup>291</sup>Hayter, *The Army and the Crowd*, p. 1.

<sup>292</sup>Bouton, 'Food Riots', para 2; also, Conway, pp. 106-07.

<sup>293</sup>Brumwell, p. 56.

towns and soldiers returning after periods of warfare were seen by many as a potential source of riot and disorder.<sup>294</sup> Soldiers were therefore seen variously as both the state response to and likely cause of civil unrest.

It is difficult to know what impact this position may have had on the soldier's attitude towards rioting, but it is clear that for some soldiers rioting held very different connotations than it did for civilians, particularly those civilians who shared their socioeconomic class. For many soldiers, and indeed their officers, this part of military service was both distasteful and a cause for 'shame'.<sup>295</sup> Brumwell gives several examples of soldiers and officers who expressed distaste for and unease at their roles in quelling riots. Private James Miller, of the 15th Foot, we are told 'clearly loathed' the duty, and whilst his military service abroad was a source of pride, 'his regiment's role [...in...] "quelling of mobs, and trifling riots"' [...were...] "disagreeable duties"' that 'brought him nothing but shame'.<sup>296</sup>

Clearly then, while mutiny and riot often represented a continuance of civilian culture in terms of soldier offending, they also represented a stark separation, at least in terms of civilians of a similar social class. It should be noted that for the business and civic leaders of towns, the role of soldiers in quelling disturbances was often met with gratitude, as demonstrated in J. E. O. Screen's study, 'The Eighteenth-Century Army at Home, as reflected in Local Records'. Screen gives several examples of soldiers being rewarded by civic leaders, either financially, or through gifts of clothes and shoes, such as the reward of 'twenty guineas to the Blues at Nottingham in July 1777'.<sup>297</sup>

### **Drunkenness**

Another clear pattern which emerges from the courts martial records is the prevalence of drunkenness both as a charge in its own right and a contributory factor to other charges, although the rate at which charges of this nature are brought differs between the levels of court martial.

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<sup>294</sup> Brumwell, 55-57; also, Conway, *The British Isles and the War of Independence*, pp. 108-09, 275-76; J. E. O. Screen, 'The Eighteenth-Century Army at Home, as Reflected in Local Records', *JSAHR*, 88 (2010), 217-236 (p. 229).

<sup>295</sup> Brumwell, p. 56.

<sup>296</sup> Brumwell, p. 57.

<sup>297</sup> Screen, pp. 226-27; also, see Brumwell, pp. 56-57.

Out of the 27 charges for regulatory offences from the 33rd, 10 involve drunkenness, with eight of those being variations on the charge of 'Drunk on Duty'. Similarly, 44 of the 86 trials for regulatory offences returned by the 34th include charges of drunkenness, with 28 being variations of the 'Drunk on Duty' or 'Drunk for Parade' charges, and of the 38 trials for regulatory offences returned by the 37th, 13 include charges of drunkenness, of which seven specify that drunkenness was whilst on duty or parade.<sup>298</sup> Of the 422 trial listings from the GRCM register which include regulatory charges, 122 involve charges of drunkenness, with only seven referring specifically to drunkenness on duty. This is a significant proportion, though lower than in the RCM returns.<sup>299</sup> By contrast, of the 38 GCM trials of privates and NCOs for regulatory offences between September 1818 and September 1819, only nine show charges of drunkenness.<sup>300</sup>

Again, this would suggest that drunkenness as a regulatory charge, and instances of drink-fuelled rule breaking, were much more likely to be dealt with at RCM than GCM or GRCM level. This suggests that whilst drunkenness was treated seriously by regimental authorities it was not considered a serious enough offence to warrant a full GCM, unless it was accompanied by other charges, part of a pattern of repeat offending, or perpetrated by a soldier holding some rank or engaged in a sensitive role, such as sentry duty. Divall suggests that whilst NCOs would often be acquitted by courts martial for other offences, this was not the case for those who faced charges of drunkenness.<sup>301</sup> Similarly, Paul Kopperman suggests that, during anti-drinking 'campaigns' by zealous commanding officers, whilst officers were at less risk of punishment than private soldiers, NCOs were 'very much at risk, as part of their responsibility was to set an example for the troops'.<sup>302</sup> This may in part explain the difference in the proportion of drunkenness as a regulatory offence between NCOs and privates: 41% of

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<sup>298</sup>WO 27/ 147; 27/ 148.

<sup>299</sup>WO 89/4; 89/5.

<sup>300</sup>WO 90/1; 92/1.

<sup>301</sup>Divall, pp. 81, 91.

<sup>302</sup>Paul E. Kopperman, 'The Cheapest Pay: Alcohol Abuse in the Eighteenth-Century British Army', *Journal of Military History*, 60 (July, 1996), 445-470 (p. 457).

NCOs court-martialled for regulatory offences faced alcohol-related charges, compared to only 27% of privates.

The problem of alcohol abuse amongst soldiers was a matter of concern and discussion by military authorities and commentators throughout the eighteenth and early nineteenth centuries, and was considered by many to be the root of most of the disorder and criminal offences committed by soldiers.<sup>303</sup> Though this mirrored a growing concern within the civilian sphere about drunkenness generally, there was a clear sense that the problems of alcohol abuse were magnified by military service.<sup>304</sup> In his evidence to an 1834 House of Commons enquiry into drunkenness in both civil and military spheres, Dr John Cheyne, who had served for fourteen years in the Medical Department of the Ordnance, and a further fourteen as Physician General in Ireland, claimed that, ‘nearly all the punishments in the army were referrible to the use of ardent spirits’. Having heard of the ‘temperance system in America’ and that three quarters of all punishments and disease in the American army were the result of alcohol, Cheyne circulated a request for information to all surgeons in the British army and received answers from almost every regiment. Their responses showed that ‘at least three-fourths of the punishments and diseases in the army’ were a direct result of alcohol consumption. When questioned further on the impact of addiction to alcohol, Cheyne claimed that, ‘abroad, it [...was...] the principle cause of [...] of the soldiers’ being invalided at an early period of life’.<sup>305</sup> The Duke of Wellington shared this view, claiming that alcohol was ‘the parent of every other military offence.’<sup>306</sup>

It would be difficult to overstate the importance of alcohol in the day to day lives of serving soldiers and the subject looms large in the memoirs of soldiers and officers alike. Coss gives many examples of tales of drunkenness and debauchery from the memoirs of soldiers who served in

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<sup>303</sup>Kopperman, ‘The Cheapest Pay’, p. 445; Burroughs, 547-48.

<sup>304</sup>Kopperman, ‘The Cheapest Pay’, p. 445; Burroughs, 548; also, for more on changing attitudes towards drunkenness amongst civilians, see Dana Rabin, ‘Drunkenness and Responsibility for Crime in the Eighteenth Century’, *Journal of British Studies*, 44 (2005), 457-477 <doi:10.1086/429705>.

<sup>305</sup> Evidence of John Cheyne, Esq., M. D., in *Evidence on drunkenness: presented to the House of Commons, by the Select Committee Appointed by the House to Inquire into this Subject, and Report the Minutes of Evidence, with Their Opinions Thereupon* (London: D. Martin, 1834), p. 392.

<sup>306</sup> Strachan, *Reform of the British Army*, p. 65.

the Penninsular, some of which were in the context of post-victory excesses, but some of which suggested that, for many soldiers, the ability to hold their drink was, along with plundering, a ‘learned avocation, in which [... they ...] put great stock’.<sup>307</sup> The propensity of soldiers to sell or exchange almost any item in order to procure alcohol is also a recurring theme. Indeed, in describing the high value of the Waterloo medal to those soldiers who received it, Rifleman Harris drew attention to the reluctance of soldiers to part with their medals even for drink, in terms which make clear that this was almost unique:

‘To shew [sic] the importance attached to such distinctions in our service, I may remark that, though the Waterloo medal is intrinsically worth two or three shillings, and a soldier will sometimes be tempted to part with almost any thing for drink, yet, during the fifteen years in which I remained with the rifles after Waterloo, I never knew a single instance of a medal being sold, and only one of its being pawned’.<sup>308</sup>

Interestingly, the single example of a medal being pawned was a soldier pawning his medal for wine. Alongside items of personal value, soldiers would also pawn or sell their necessaries and accoutrements, and it is very likely that this was at least partially responsible for the high numbers of soldiers charged with making away with or selling their necessaries.

Whether alcohol was indeed the ‘parent’ of most offences is difficult to ascertain, but it certainly seems to have been at the root of a large number of crime types, from making away with the soldier’s own necessaries, to burglary and theft from civilians. Indeed, Brumwell contends that, certainly for the mid to late eighteenth century, ‘it is unusual to find a court case in which alcohol does not play some part’.<sup>309</sup> With stoppages at times accounting for almost the entirety of the soldier’s daily pay, he was often in a position where the purchase of extra alcohol required outright criminal activity or creative use of occasional opportunities for profiteering.<sup>310</sup>

From the very start of their military career, alcohol consumption was central to the soldier’s experience. Recruiting sergeants, who themselves

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<sup>307</sup> Coss, p. 19; pp. 226, 231, 230, 341.

<sup>308</sup> Captain John Kincaid, *Random Shots from a Rifleman* (Philadelphia: Carey & Hart, 1835), p. 191.

<sup>309</sup> Brumwell, p. 105.

<sup>310</sup> Though aside from intermittent lack of funds, alcohol was very easy to acquire: Kopperman, ‘The Cheapest Pay’, pp. 445-46.

received money for each recruit they brought in, made liberal use of drink first to encourage and then to buttress men's decisions to enlist.<sup>311</sup> It is important to recognise that whatever individual reasons a soldier may have had to drink, whether to an ordinary or problematic degree, as a sociable activity, or a solitary vice, he did so in the context of a system which colluded in providing him with opportunities to drink, even as it struggled to temper alcohol use.<sup>312</sup> Soldiers were provided with alcohol as part of their rationed diets, primarily in the form of beer or rum, and for those serving overseas, particularly in warmer climates, alcohol played an important role in preventing scurvy.<sup>313</sup> Indeed, it would seem that, despite growing concerns over alcohol consumption and its perceived role in exacerbating crime and disorder, the quantity of alcohol included in soldiers' rations increased during the eighteenth century.<sup>314</sup>

It is also important to note that, whilst some officers and regimental commanders attempted to regulate or prevent drunkenness, the officer class itself was prone to heavy drinking. As Kopperman points out, just like the soldiers under them, 'subalterns were on occasion punished for misbehaving while drunk'.<sup>315</sup> In his recollection of service in the 54th Foot, in Canada in the 1780s, William Cobbett described what amounted to rampant drunkenness among the commissioned officers; a source of great annoyance to Cobbett, as Regimental Sergeant Major:

But I had a very delicate part to act with those gentry; for, while I despised them for their gross ignorance and their vanity, and *hated them for their drunkenness and rapacity*, I was fully sensible of their power [...] as I never disguised my dislikes, or restrained my tongue, I should have been broken and flogged for fifty different offences, had they not been kept in awe by my inflexible sobriety, impartiality, and integrity, by the consciousness of their inferiority to me, and by the real and almost indispensable necessity of the use of my talents. *They, in fact, resigned all the discipline of the regiment to me, and I very freely left them to swagger about and to get roaring drunk* [author's italics]<sup>316</sup>

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<sup>311</sup> Strachan, p. 55; Lynch, *Britain and Wellington's Army*, pp. 83-85; Brumwell, pp. 61-63.

<sup>312</sup> Kopperman, 'The Cheapest Pay', p. 457; Burroughs, p. 555

<sup>313</sup> Haytor, 'The Army and the First British Empire', p. 117.

<sup>314</sup> Kopperman, 'The Cheapest Pay', p. 457.

<sup>315</sup> Kopperman, 'The Cheapest Pay', p. 457.

<sup>316</sup> William Cobbett, *The Progress of a Ploughboy to a Seat in Parliament*, ed. by, William Reitzel, (Faber & Faber, 1933): quoted in John Lewis-Stempel, *The*

Though Cobbett's assessment of his officers is far from objective, it does underline the role some officers may have had in promoting a culture of drunkenness in their regiments, as indeed does Kopperman's assertion that some officers sold alcohol to the men in addition to their rations.<sup>317</sup>

The soldiers' desire for alcohol often went far beyond the accepted and mandated rations, straying into the much stronger drink. Even here though, the degree of collusion on the parts of officers and command was very high, despite the many attempts to curb levels of drinking among the troops. In his analysis of alcohol abuse in the eighteenth-century British army, Kopperman considers the degree to which officers colluded with soldiers' attempts to acquire alcohol, seemingly in direct contravention of their stated goals to the contrary. And in many cases, laudable attempts to prevent greater access to alcohol ran aground on the law of unintended consequences.<sup>318</sup> Some officers, for example, argued that soldiers' pocket money should be limited, as a way of preventing them getting drunk. Rather than force soldiers to embrace sobriety, however, this simply increased the need for both ingenuity and criminal activity. As John Bell, a former regimental surgeon, observed of the soldiers stationed in Ireland, 'The crimes most commonly committed by the men, were, pledging their necessaries for whiskey, and stealing those of their comrades for the same purpose.'<sup>319</sup> Even attempts by the army to mitigate the impact of alcohol by providing a milder rum to the troops in the West Indies, merely provided the soldiers with a new item to barter, as they exchanged their weak rum for the much stronger local variant.<sup>320</sup>

The kind of alcohol available to soldiers differed depending upon where they served, and geographical contexts certainly impacted in some ways on the degree to which soldiers 'needed' to drink. Many commentators suggested that soldiers stationed in India were more inclined to alcohol abuse than were soldiers stationed at home. Divall's study echoes this in her

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*Autobiography of the British Soldier: From Agincourt to Basra, in His Own Words* (London: Headline, 2007), p. 100.

<sup>317</sup> Kopperman, 'The Cheapest Pay', p. 445.

<sup>318</sup> Kopperman, 'The Cheapest Pay', p. 457-461.

<sup>319</sup> Kopperman, 'The Cheapest Pay', p. 451; also, see Burroughs, p. 555.

<sup>320</sup> Kopperman, 'The Cheapest Pay', p. 450.

comparison between the behaviours of two battalions of the 30<sup>th</sup> Regiment, one stationed in India, and the other remaining in Britain. The extent to which this plays out in the courts martial records is questionable, however. Looking at the sample sets from the GRCM register, the percentage of trials, held in India and South Asia, which include alcohol-related charges is variable: in the years 1819 to 1820, almost a third of the 92 trials were for alcohol-related offences, whereas for the years 1825 to 1826, only two of the 57 trials were for drunkenness. That said, such offences were rarely tried at this level in Britain: of the 124 British trials in the 1813 to 1814 sample, only five were for alcohol-related offences, with a single trial out of 69 in the 1819 to 1820 sample, and five of 209 in the 1825 to 1826 sample.<sup>321</sup> And looking purely at the individual regimental returns, alcohol charges do seem to have been a little more prevalent in the 34<sup>th</sup>, stationed in India, than in either the 37<sup>th</sup> in Canada, or the 33<sup>rd</sup> at home.<sup>322</sup>

Interestingly, in terms of percentages the soldiers most likely to be tried at GRCM for alcohol-related charges, appear to have been those stationed in Gibraltar: during the period 1813 to 1814, 3 of the 10 trials held in Gibraltar were for alcohol-related charges, five of the nine trials from 1819 to 1820 were for such charges, and 26 of the 67 trials for the years 1825 to 1826. If we look at a single year of GCM and GRCM trials held in Gibraltar, running from January to December, 1818, there were 11 soldiers tried by GRCM for alcohol-related charges, and 10 soldiers tried by GCM. Geographically, the highest number of cases at GCM level came from Malta, with half the trials for drunkenness that year held there; while at GRCM level, the cases are far more spread out, with three soldiers tried in Africa, two in Jamaica and one each in Canada, India, The Ascension Isles, Malta, France and Britain.<sup>323</sup>

The particular problem of alcohol offences among soldiers stationed in Gibraltar has been studied in some detail by Ilya Berkovich, as a case study in the effectiveness of military discipline and control. Though slightly earlier than the period covered by the GRCM and GCM samples, it would seem that very similar patterns of behaviour were in force, and most likely

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<sup>321</sup> WO 89/4; 89/5.

<sup>322</sup> WO 27/ 147; 27/ 148.

<sup>323</sup> WO 89/4; 89/5; 90/1; 92/1.

similar responses by military authorities. Most important for understanding alcohol offences was both the absolute ineffectiveness of attempts to curb soldiers' drinking and the completely contradictory approaches taken by those in command. Much as Kopperman notes that alongside attempts to stop the men drinking, officers and commanders simultaneously facilitated the same, so Berkovich demonstrates very clearly the constant and continuous mixed messages given to soldiers by their commanding officers in Gibraltar.<sup>324</sup>

The central role of alcohol in the soldier's life may have been in part a continuation of the role of alcohol in civilian culture, with drinking an important aspect of sociability as well as a way of ensuring a supply of safe drinking water. Hurl-Eamon draws an interesting comparison between the ritual of a recruit using his bounty to buy a round for his new comrades and a similar ritual for new apprentices.<sup>325</sup> But there were also aspects of military service which added to soldiers' seemingly unquenchable desire for alcohol. One reason for this put forward by many contemporary commentators was the boredom which was such a regular feature of army life. As Cheyne explained in his evidence: 'The soldier has a great deal of leisure time, and he has not much variety of occupation, and he seeks for excitement, as everyone would do who is unoccupied'.<sup>326</sup>

Despite the promises of excitement offered by recruiting sergeants, and indeed the flurries of high activity whilst on active service, a high proportion of the soldier's life was spent dealing with boredom and this was particularly acute for those soldiers serving in places like India and the Bahamas. According to Sir John William Fortescue, in his *Short Account of Canteens in the British Army*, whilst the soldier serving in 'temperate stations' was 'often employed in making roads and the like', for the soldier serving in 'hot climates [...] when once the morning parade was over, the men had little to do but sit and look at each other'.<sup>327</sup> Life in camps and in barracks, sometimes offered little in the way of diversion beyond military

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<sup>324</sup> Berkovich, 'Discipline and Control in Eighteenth-Century Gibraltar', in *Britain's Soldiers*, ed. by Linch and McCormack, pp. 123-28.

<sup>325</sup> Jennine Hurl-Eamon *Marriage and the British Army in the Long Eighteenth Century: The Girl I Left Behind Me* (Oxford: OUP, 2014), p. 209.

<sup>326</sup> Cheyne *Evidence on drunkenness*, p. 392.

<sup>327</sup> Sir John William Fortescue, *A Short Account of Canteens in the British Army* (Cambridge: CUP, 1924), p. 8; also see Burroughs, p. 555.

exercises and occasional employment in non-military occupations, and boredom was a regularly cited reason put forward by military commanders for the attraction of alcohol for their men.<sup>328</sup> Another contributory factor, and one which again may have been particularly impactful for soldiers serving overseas was the heavily salted food, which made up the mainstay of soldier's rations. Meat was preserved by 'steeping it copiously in brine' and as Tony Hayter puts it, the resultant salty meat 'caused agonies of thirst'.<sup>329</sup>

To the modern mind, there is a factor missing from contemporary analyses, and unfortunately it is one which is almost impossible to quantify: what would now be described as post traumatic stress. Hurl-Eamon discusses this aspect of the soldier experience briefly, in her study of soldier marriages in the eighteenth century, suggesting that for some soldiers this may have been a contributory factor in high levels of alcohol consumption, and social and domestic disturbance, and Rumsby likewise considered this a potential factor in soldier suicides.<sup>330</sup> Venning makes the point that both soldiers and their wives drank heavily, particularly on campaign, when they lived 'constantly in the presence of death and suffering' and so sought solace in the bottle.<sup>331</sup> Though the concept of post traumatic stress was not recognised at the time, we can nevertheless see a recognition of the impact of soldiering on the mental state of the soldier in the many references to 'despair' in contemporary analyses of soldiers' health and well-being, like the Minorca enquiry.<sup>332</sup> It is important to recognise that soldiers in the eighteenth- and nineteenth- century British army, like their modern counterparts, were subject to particular stresses and sometimes traumatic experiences as a natural and inevitable part of their service. That some soldiers may have sought solace in drink should come as little surprise.

As a caveat to this it is important to note that, just as there were officers who drank as heavily as the men, there were also soldiers who

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<sup>328</sup> Burroughs, p. 555.

<sup>329</sup> Tony Hayter, 'The Army and the First British Empire, 1714-1783', *The Oxford History of the British Army*, ed. by, David Chandler and Ian Beckett (Oxford: OUP, 2003), pp. 112-32 (p.117).

<sup>330</sup> Hurl-Eamon *Marriage and the British Army*, pp. 182, 210-11; also see Rumsby, pp. 356-57.

<sup>331</sup> Venning, *Following the Drum*, p. 134.

<sup>332</sup> *Examination of Maj. Gen. Anstruther*; also see Padiak, p. 119.

viewed drunkenness with just as much dismay as those commanding officers who sought to stem the problem. As Cobbett's recollections show, he himself was abstemious and the drunkenness of his superior officers was a source of annoyance for him. Similarly, other soldier memoirs stress their author's temperance, often in the face of ridicule; though, as Kopperman suggests, 'those who did [abstain] could play a significant role in shaping the drinking habits of their comrades'.<sup>333</sup>

### **Conclusion**

As with desertion in the previous chapter, it is with regulatory offences that we see some of the clearest distinctions between the civilian and soldier experiences of crime and justice. English employment law undoubtedly advantaged employers, placing a clear emphasis on the compliance of the employee, treating non-compliant employees as quasi-criminal and enshrining in law the rights of some employers to physically chastise them; nonetheless, employees in the civilian sphere were not at risk of loss of life or limb for disobedience, insolence or contract breaking. Yet, paradoxically, it is often regulatory offences that most clearly demonstrate a sense of cultural continuity between the ordinary soldiers and the working communities from which they came. The soldier's experience of mutiny and riot, disobedience and disorder, raise important questions of soldier identity: however separated by geography or military structures, soldiers brought with them elements of their civilian culture, often expressed in behaviour that was considered mutinous by military authorities.

This raises interesting questions about soldier identities, and suggests that, rather than a binary separation between civilian and soldier, enlistment complicated identity. What we see in the application by soldiers of similar strategies in employment disputes to those employed by civilians, is the negotiation of that identity, with soldiers at times leaning closer to a civilian mindset.

Another area of both continuity and distinction was in the role of alcohol in soldiers' lives. Though drunkenness was a serious concern for civilian authorities and alcohol an important part of civilian culture, in the soldier's world, it took on much greater importance overall. Different

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<sup>333</sup>Kopperman, 'The Cheapest Pay', p. 452.

regiments and locations played a part in creating different drinking cultures; however, these differences seem dwarfed by the general similarities in experience across the army as a whole. Despite the distinctions, if any experience in the British army could be said to have been almost universal, it was the apparent primacy of alcohol in the soldier's life. This was shaped and promoted by active and inadvertent collusion by officers, and contextualised by service conditions and structures. As well as an offence in its own right, drunkenness was clearly a contributory factor in some regulatory offences and soldier disorder, and its prevalence seems to have been a direct result of army service.

## Chapter Four: Violent Crime

### Introduction

So far we have concentrated on what might be termed military crimes, or those offences designated as such in the Mutiny Act. As well as military offences, soldiers were also court-martialled for many offences which would have been considered criminal under English law, and which fit the definitions of crime set out in the introduction<sup>334</sup> In this chapter we will consider the role of violent crime and crimes against the person in the lives of soldiers, its prevalence within the military justice records, its key characteristics, how it was treated and the responses it drew within regimental communities. Along with identifying and, to a limited extent, quantifying violent crime within a regimental setting, this section will also consider questions of victimhood and rank-specific experiences of violence and violent crime.

### Violent Crime in Context

In any discussion of soldier crime as a distinct phenomenon it is also necessary to consider crime in the civilian sphere. This would be a difficult enough proposition for property crime despite the eighteenth- and nineteenth-century preoccupation with questions of property and ownership, violent crime, however, presents its own range of distinct problems.<sup>335</sup> The point at which a violent act crosses over from being an unpleasant personal interaction to a crime is often culturally differentiated, with some level of violence accepted as a part of life depending on the cultural context.<sup>336</sup> Even when violence was recognised by the victim as criminal, the next steps of reporting and prosecuting may have proved difficult, or even impossible given the costs they were likely to incur. As Barry Godfrey and Paul Lawrence put it: ‘it was not until the early nineteenth century that local

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<sup>334</sup>Gilbert, ‘Military and Civilian Justice’, p. 46; ‘British Military Law’, p. 876; also, Burroughs, p. 550.

<sup>335</sup> King, p. 6;

<sup>336</sup>Clive Emsley, *Hard Men: Violence in England Since 1750* (London: Hambledon and London, 2005); also, J. M. Beattie, *Crime and the Courts in England, 1660-1800* (Oxford: OUP, 1986), p. 74.

county authorities began to take the burdensome costs of prosecution off the shoulders of individual crime victims'.<sup>337</sup>

Levels of reporting of violent crime cannot speak to the prevalence of violence within a society. For the period under study, this is further complicated by a lack of consistent reporting within the legal sphere. We have no reliable, official, collated figures for violent crime amongst civilians in Britain during the eighteenth century, or the first half of the nineteenth, though there are parliamentary reports from the early nineteenth century which attempted to collate general figures for criminal convictions in England and Wales.<sup>338</sup> Alongside the problems of reporting there are additional difficulties of definition, with the meaning of violence and its place in popular culture subject to shifts in emphasis and cultural importance.<sup>339</sup> In their analysis of crime in eighteenth-century Britain, Barry Godfrey and Paul Lawrence consider how those meanings may have changed, and raise the question of how they may have been affected in Britain by the high death toll wrought by epidemics, food shortages and a century of intermittent warfare, culminating in the Revolutionary and Napoleonic wars, with their unprecedented levels of recruitment and loss. Clive Emsley, meanwhile, in his study of violence in English culture, considers the ways in which the dichotomy of public and private contextualised and shaped those meanings, even in cases of fatal violence; a consideration which has particular resonance in the context of soldiers who, arguably, had fewer rights to privacy than their civilian counterparts.<sup>340</sup>

A handful of particularly gruesome murders, reported in shocking detail in newspapers and stamped onto the public consciousness through ballads and folk retellings, can give such crimes undue prominence in popular culture. Though the eighteenth- and nineteenth-century legal system was preoccupied with property crime, by the mid-nineteenth century popular conceptions of violent crime became dominated by 'the ultimate

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<sup>337</sup> Barry Godfrey and Paul Lawrence, *Crime and Justice, 1750-1950* (Willan Publishing: Cullompton, 2010), p. 99.

<sup>338</sup> Annual statistical measures only began in 1857: Godfrey and Lawrence, p. 89.

<sup>339</sup> John Rule, 'Social Crime in the eighteenth and early nineteenth centuries' in John Rule and Roger Wells, *Crime, Protest and Popular Politics in Southern England, 1740-1850* (London: Hambledon Press, 1997), p. 153.

<sup>340</sup> Emsley, *Hard Men*, pp. 9-11.

crime' of murder.<sup>341</sup> Yet violent crime occurred along a sliding scale of intensity and purpose, from crimes such as robbery with the threat of violent assault to unlawful killing. In addition, some relationships were defined in part by rights of violence held by one person over another. The prevalence of some forms of corporal punishment in the eighteenth century, both as an official tool of justice, and a personal mechanism of discipline within homes and workplaces further complicates the definition of violence as criminal.<sup>342</sup> In our analysis of violent crime in the British army, it is important that we take account of those culturally specific understandings of violence, and in particular the use of violence as a signifier of relationships of power, authority and control.<sup>343</sup>

Unlike property crime, in which possession may in some cases be proven without witnesses to the actual theft, in cases of violent crime, without witnesses to the event, any prosecution would rest on an attempt to set the word of the victim against the word of the defendant. In the context of eighteenth-century English justice, with its reliance on the concept of 'character', this systematically disadvantaged those of a lower social class if their word and character were weighed against those of a person of high social standing.<sup>344</sup> Though in legal terms an attack by one person upon another was the same regardless of the social status of the parties involved, in reality a lack of witnesses could mean a person of high social status might assault someone of lower social status with impunity.

In regimental communities, an understanding of authority was underlined and enforced through a rigid and formalised set of relationships. As Burroughs puts it, the army was an 'authoritarian, hierarchical, and largely self-contained institution'.<sup>345</sup> In such a context, a private soldier violently assaulting another private soldier and a private soldier violently assaulting an officer could not be considered the same act and were

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<sup>341</sup> Godfrey and Lawrence, p. 90; also Emsley, *Hard Men*, pp. 9-11.

<sup>342</sup> J. M. Beattie, *Crime and the Courts in England, 1660-1800* (Oxford: OUP, 1986), p. 74; Gilbert, 'Military and Civilian Justice', p. 42.

<sup>343</sup> Beattie, 'The Pattern of Crime', p. 74; also, for , 'the criminal law as a system of power', see Hay, 'War, Dearth and Theft', p. 118; and for how the use of corporal punishment in some civilian contexts might complicate our understanding of summary punishments in the military, see Gilbert, 'Military and Civilian Justice', p. 42.

<sup>344</sup> King, *Crime, Justice and Discretion*, pp. 33-5.

<sup>345</sup> Burroughs, (1985), p. 545.

differentiated within military law. In such cases, an attack by a private soldier against an officer was both a personal assault on the officer, and an attack on the office he held.

We should also consider the role of certain forms of violence in forging and expressing masculinity in eighteenth- and early nineteenth-century British culture. In *Hard Men: The English and Violence Since 1750*, Clive Emsley explores the changes in perceptions of violence and rates of violent crime in England during this period, and presents a picture of an England where both fights and violent physical sports were commonplace; though, attitudes towards such activities began to change from the middle of the eighteenth century.<sup>346</sup>

Even with attitudes changing, the shift was more in the tone of accepted violence than its incidence. The rise of the notion of ‘fair play’ as an essential component of acceptable masculinity, and in particular the masculinity of an English gentleman, may have subtly changed the shape of masculine violence, but it did not necessarily reduce it. Emsley contends that throughout the eighteenth and early nineteenth centuries, English men were viewed by foreign visitors as particularly and peculiarly given to fighting, with many visitors from continental Europe commenting on ‘the aggressive physicality of the English’ and their tendency to ‘settle quarrels with a fist fight in a ring made of bystanders’.<sup>347</sup> Interestingly, by this reading, violence appears not just as a private act of quarrelling, but a public expression of the masculinity of the quarrellers.

Perhaps even more telling of the role violence played in confirming and expressing masculinity was the popularity of fighting as a leisure pursuit. Fighting for prizes, just as fighting for honour or redress, drew audiences and provided some of the street scene entertainment of any busy city, as a form of entertainment which seemed to appeal across class boundaries. Emsley tells us, that George IV, ‘patronised pugilism and had eight champion pugilists decked out as pages at his coronation’.<sup>348</sup> Whilst, according to Robert McGregor, in George III’s reign, ‘a “Jack Tar”

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<sup>346</sup> Emsley, *Hard Men*, pp. 9-11; also, see John E. Archer, “Men Behaving Badly”: Masculinity and the Uses of Violence, 1850-1900’, in, *Everyday Violence in Britain, 1850-1950*, ed. by, Shani D’Cruze (Harlow: Pearson, 2000), pp. 41-2.

<sup>347</sup> Emsley, *Hard Men*, p. 41.

<sup>348</sup> Emsley, *Hard Men*, p. 41

masculinity [... associated primarily with the lower classes ...], was promoted [...by the press...] as an example for many in Britain to follow'.<sup>349</sup> This culturally accepted form of violence carried a high social cost, and deaths were not an uncommon result of such street fights. In London in particular, such violence led to considerable loss of life, with, 'kicks or punches inflicted in a fight', being 'the single most common form of death' leading to a coroner's inquest.<sup>350</sup>

Attitudes and responses to crime in general in Britain, changed considerably during the late eighteenth and early nineteenth centuries. Fears of revolution at home, in the wake of the French Revolution, and gathering disputes over food prices and working conditions heightened tensions, and partly in response our period of study saw the earliest iterations of what would later become a formal police force. Contemporary opinions expressed through print media and parliamentary speeches suggest that by the early nineteenth century it was a commonly held view that society was becoming more violent.<sup>351</sup> In a purely practical sense, the nature of violent crime was also changing, with new weapons becoming more readily available. It was in 1803 that Lord Ellenborough's Act made a capital offence of 'shooting with intent to kill'.<sup>352</sup>

Running alongside the growing cultural and political sensitivity to violent crime and disorder was an intensifying debate about the use of corporal punishment in the military, beginning in earnest in the latter decades of the eighteenth century and gaining prominence during the first decades of the nineteenth.<sup>353</sup> Regular soldiers were identified in part by the fact that they were subject to such punishment, and the impression given by some of the more polemic contributions to that debate is one of brutalised, as well as brutal men, living within an inherently violent system.<sup>354</sup>

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<sup>349</sup> Robert McGregor, 'The Popular Press and the Creation of Military Masculinities in Georgian Britain', in *Military Masculinities : Identity and the State*, ed. by, Paul R. Higate, frwd. by Jeff Hearn (Westport, Conn. ; London : Praeger, 2003), pp. 143-156 (p. 144).

<sup>350</sup> Emsley, *Hard Men*, p. 41.

<sup>351</sup> Godfrey and Lawrence, p. 96.

<sup>352</sup> Godfrey and Lawrence, p.97.

<sup>353</sup> Burroughs, pp. 561-64; also, Brigette Mitchell, 'The Debate in Parliament about the Abolition of Flogging during the Early Nineteenth Century with References to the Windsor Garrison', *JSAHR*, 88 (Spring 2010), 19-28.

<sup>354</sup> Linch and McCormack, 'Defining Soldiers'

Yet it is important not to assume for those soldiers an unconditional acceptance of authorised violence. As well as the strategies noted in the previous two chapters, when faced with what they perceived to be an injustice, some soldiers sought to use the official channels of the military justice system to their advantage. Though they are relatively rare, there are examples throughout the eighteenth and early nineteenth centuries of soldiers, tried and sentenced by regimental courts martial, requesting that their cases be reheard by a general court martial. The number of such requests granted by military authorities was low throughout this period, although in his analysis of eighteenth-century regimental courts martial, Gilbert notes a 'spate' of such cases in Halifax, Nova Scotia, between 1729 and 1752.<sup>355</sup>

According to Gilbert, military authorities consciously veiled the process of judicial review, providing soldiers with no information as to their rights in this area or the manner in which they should proceed. For the few soldiers who were granted recourse to a GCM the results were almost always negative. Appeals against regimental sentences were usually unsuccessful and indeed most often led to further punishment for the soldier concerned.<sup>356</sup> Yet, throughout the eighteenth century and into the nineteenth, when the process became on the one hand much more difficult to begin but on the other more robust once started, there was a small but constant presence of such cases at GCM level. This suggests that soldiers were more cognizant of their perceived rights under military law, than the brutalised contemporary image of them seems to show.<sup>357</sup>

### **'The Ultimate Crime'**

Despite its relative rarity as an act, the crime of murder has traditionally been used as the key indicator for violent crime levels within a society.<sup>358</sup> As with the civilian justice records for this period, murder and attempted murder appear infrequently in the military justice records. This appears to hold true at every level of the court martial system, with few

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<sup>355</sup> Gilbert, 'The Regimental Courts Martial', p. 61.

<sup>356</sup> Gilbert, 'Regimental Courts Martial', pp. 61-63.

<sup>357</sup> Gilbert, 'Regimental Courts Martial', p. 64; also, see Cookson, 'Regimental Worlds', p. 5.

<sup>358</sup> Emsley, *Hard Men*, p. 25.

general, or general regimental courts martial recording charges of this nature. Within the six years worth of records sampled from the GRCM register, there is only one recorded charge of murder. Private Thomas Carr, of the 56th, stationed in Mauritania, was tried and convicted of murder on the 15th March 1826.<sup>359</sup> Unfortunately, no indication is given as to the identity of Carr's victim, nor the circumstances in which the murder was committed. In addition to this single charge for murder, there are two other trials in the sample which record charges related to murder: an attempt by Lance Corporal Leonard, of the 69th on 'the life of a Private' and the trial of Private Thomas Laykin, of the 24th, tried in 1820 at Ghazepore, for 'Having his Musquet loaded with a design to commit murder'.<sup>360</sup> Though there are examples throughout the record of soldiers making threats on the lives of others, and in particular their superior officers, these three cases are the only examples in the six sample years of murder, attempted murder, or premeditated intent to murder.

Given the parameters within which each level of court martial was intended to function, and indeed the relationship between military and civilian justice, differentiated as it was between the service at home and the service abroad, we might reasonably expect that crimes of this nature would have been tried within the civil sphere if committed at home, and at a GCM when committed overseas. Interestingly, a collection of trial reports for GCM and GRCM trials conducted overseas during 1826, the same year as our single GRCM trial for murder, contains no trials of a similar nature, either for murder or attempted murder.<sup>361</sup> A note of caution is needed here, however. The collection of overseas court martial reports for 1826 gives little indication of completion. Many of the reports contained within it are damaged, with some almost completely illegible in places, though in most cases it is possible to read the charges, if not the evidence and defence put forward in the trial. It seems highly likely that some records from this collection may not have survived at all.

The two year sample of the GCM register covering the years 1818 and 1819, however, contains several cases of murder or attempted murder:

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<sup>359</sup> WO 89/5.

<sup>360</sup> WO 89/4.

<sup>361</sup> WO 71/270, Courts Martial proceedings: papers, 1826.

four soldiers were convicted of murder, with three acting together in a single incident, and one acting alone. A further three soldiers were tried for firing weapons at other people; however, whether their intentions were to commit murder is not known and none of them faced a specific charge of attempted murder.<sup>362</sup>

Though capital crimes committed by soldiers stationed at home would most likely have been prosecuted within the civilian justice system, such crimes when committed overseas would usually have remained within the military justice system.<sup>363</sup> According to Charles Oman, in his history of *Wellington's Army: 1808-1814*, there were 'six or eight instances' during the Peninsular campaigns, of men hanged for killing fellow soldiers. He also notes with some surprise that two soldiers who killed their officers 'were hanged, rather than shot', as might have been expected were their crimes acts of mutiny, rather than 'of private spite', further underlining the important role of personal relationships between soldiers and officers as a possible factor in resistance to authority, and the need for caution when ascribing systemic causes to what may have been personal disputes.<sup>364</sup>

Interestingly, though, and very much complicating the picture, one of the soldiers tried by GCM in Bangalore, for 'Firing a pistol at a private', was 'handed over to the civil powers' and his trial aborted because the offence was '[n]ot amenable for trial by court martial'.<sup>365</sup> In, *Inside the Regiment*, meanwhile, Divall gives several examples of soldiers, handed over by the 30th to the civil authorities, to face trials for murder. Though none of the cases are recorded in any of the regiment's returns, Divall identifies the details of two of them through other means. From a report in the *Leinster Journal*, there is the case of Sergeant Edward Laughron, 'hanged at Mullingar for the murder of his wife', and from the journal of an officer of the 30th, there is 'the case of a soldier who suddenly turned against an Indian, calling him a blackbird and shooting him.'<sup>366</sup>

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<sup>362</sup> WO 90/1; 92/1

<sup>363</sup> Gilbert, 'Military and Civilian Justice', p. 46.

<sup>364</sup> Oman, p. 244; also see Tatum, 'Military Justice and Negotiated Authority', pp. 102, 107-08.

<sup>365</sup> WO 90/1

<sup>366</sup> Divall, p. 134.

Even with the above caveats in mind, it seems clear that the number of soldiers prosecuted by the army for murder or attempted murder was low compared to trials for other criminal acts, suggesting a broadly similar experience of the ‘ultimate crime’ for civilian and soldier alike. In his assessment of ‘Military and Civilian Justice in Eighteenth-Century England’, Arthur Gilbert presents a breakdown of all capital crimes tried by General Court Martial in the British army between 1776 and 1782. Out of 461 trials for potentially capital offences, 36 were murder trials, and of the 350 trials ending in conviction, 14 were convictions for murder.<sup>367</sup> As Gilbert notes, finding reliable comparable figures for civilian trials and convictions is problematic; however, those studies which have been conducted on civilian capital trials and convictions seem to show a broadly similar, low incidence rate of this type of prosecution.<sup>368</sup> As a final caveat, we must remember that not all unlawful killings resulted in a prosecution for murder. As in the civilian sphere so in the military, a range of circumstances might prevent such a prosecution, from lack of a suspect, witnesses or evidence, to an unwillingness to class an act of killing as murder in legal terms.

Though the evidence is anecdotal, the memoir of William Surtees, *Twenty-Five years in the Rifle Brigade*, is particularly interesting in this light. In the memoir, Surtees recalls an incident involving a sergeant from his own regiment. A grenadier from another regiment had come over in the hope of persuading his wife, who had left him for the sergeant, to return with him. According to Surtees their conversation became heated, and the grenadier ‘became so exasperated at her continued refusal, that he, in a rage of jealousy and anger, drew his bayonet and plunged it in her bosom’.<sup>369</sup> Her cries drew people to them and the grenadier was confined to the prison tent. Surtees tells us: ‘I believe he was not brought to trial for it, as her ill conduct probably had been considered as in some measure palliating what he did, and that he might be supposed to have been irritated to a degree of madness when he perpetrated the fatal act.’<sup>370</sup>

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<sup>367</sup> Gilbert, ‘Military and Civilian Justice’, p. 58.

<sup>368</sup> Gilbert, ‘Military and Civilian Justice’, pp. 57-58.

<sup>369</sup> Surtees, *Twenty-Five Years in the Rifle Brigade*, pp. 157-58.

<sup>370</sup> Surtees, *Twenty-Five Years in the Rifle Brigade*, p. 158.

Surtees caveats his account with a degree of uncertainty. It was his ‘belief’ that there was no trial, and as such we cannot be sure this was the case. But the account is remarkably free of sensationalist language, and the use of such caveats is in keeping with much of Surtees’ writing. His language throughout the memoir is careful and seems always at pains to recognise the potential vagaries of memory. Whether the grenadier was or was not tried for the killing of his wife, and Surtees’ further recollection that he believed the man had gone on to serve in a distinguished fashion suggests one potential reason military authorities may not have sought to prosecute, the claim that he was not tried is put forward without any sense of surprise, or dismay. This account raises some interesting issues. First and most obvious is what it suggests about the different ways that fatal violence may have been viewed and treated, both at an individual and judicial level. It throws further doubt on the ability of prosecution rates to represent levels of violence and it complicates our understanding of what makes a violent act a violent crime.

Most importantly this case also shows elements of a soldier-specific experience of violence, which echoes Rumsby’s contentions about suicide in the army. Rather than some prosaic household object turned weapon, we have a soldier, armed with a bayonet, the deadly use of which, he was well trained in; a point to which we will return later in this chapter.<sup>371</sup> Though murder appears no more prevalent within military communities than within civil communities, the shape of such deadly violence was highly specific. In the following sections, this shaping of violence by the military experience will be explored as it relates to other, less deadly forms of violence.

### **Violent Crime in the GCM, GRCM and RCM samples**

An additional complication when attempting to categorise violent acts or threats within the trial records, lies in decoding the language used in the charges.<sup>372</sup> Some charge types are clearer and more informative than others. Thomas James, a private in the 1/73rd was tried in Sidney, on the 14th April 1814, for ‘[s]triking the Serjeant of the main Guard when on

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<sup>371</sup> Rumsby, p. 349.

<sup>372</sup> Gilbert suggests that definitions of military crimes were ‘notoriously vague’: ‘Military and Civilian Justice’, p. 43.

duty'.<sup>373</sup> This can be clearly and easily categorised as a violent act. In contrast, the trial of Private John Armstrong, of the 60th, in May of the same year, in which he was charged with '[b]eing Drunk and mistreating the Inhabitants', is a little less easily defined.<sup>374</sup> What exactly is meant by terms such as 'mistreating' or 'maltreatment' in each case is impossible to know for sure; however, its use in some instances strongly suggests that this is an indication of, if not outright violence, then certainly aggressive behaviour. Such cases have therefore been categorised as including a charge of violence.

Similarly ambiguous is the charge of 'using threatening language'. This could cover anything from directed threats to an unnamed individual, or generalised assertions of violent intent with no directly targeted individual, placing it more comfortably with offences such as mutiny and riot. This particular charge appears in several different forms, and in some cases the suggestion of violence is more clearly intimated. In order to categorise these charges, this analysis draws a distinction between the simple charge of 'using threatening language', which has not been included in the violence category, and more forthright charges, such as 'using very violent and threatening language', which have been included, alongside the use of threatening language against a named individual. The charge of 'robbery', meanwhile, is assumed to include a violent component according to the definition of that crime in English common law during the eighteenth century.<sup>375</sup>

Compared to regulatory offences and property crime, the number of trials involving violence is low. Across the three pairs of years sampled from the GRCM register there are 136 trials listed which show a violent component, ranging from threatening language or behaviour to actual bodily harm, and in one instance, murder.<sup>376</sup> Quantitative analysis of such a small number of cases must be approached with caution, and can only offer indications of possible patterns, rather than firm conclusions.

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<sup>373</sup> WO 89/4

<sup>374</sup> WO 89/4

<sup>375</sup> Sir Michael Hale, Sollom Emlyn, George Wilson, *Historia Placitorum Coronæ: The History of the Pleas of the Crown*, Volume 1 (T. Payne, 1800), p. 532.

<sup>376</sup> WO 89/4; 89/5.

**Table 4.1: Overview of Violence charges in GRCM sample<sup>377</sup>**

	<b>1813-1814</b>		<b>1819-1820</b>		<b>1825-1826</b>		<b>Total</b>
<b>No. of trial records</b>	271	203	150	174	377	372	1547
<b>No. of trial records with indication of violence</b>	33	33	12	13	25	19	135
<b>Percentage of trial records with indication of violence</b>	12%	16%	8%	7.5%	6.5%	6%	9%

It is important to remember that these figures show only the number of trial entries carrying charges of a violent nature, and what appears at first glance to be quite a large disparity between the first pair of years and the two that follow may be misleading. Multiple defendants were sometimes tried together for charges relating to a single incident. Similarly, multiple defendants would sometimes be tried separately for the same offence, or for related offences. For example, between the 9th and 20th of December 1813, five soldiers of the 84th, serving in Trichinopoly, were tried for disobedience, riotous behaviour, and various threats of violence.<sup>378</sup> Though they were tried individually, and each faced a slightly different set of charges, those charges suggest they may have been a closely related series of incidents. Such clusters of trials around single or related incidents occur twice as often in the first sample set than in the two that follow. In the first sample set there are two clusters of three and two pairs of defendants, while the second and third sample sets each contain a single pair and a single cluster of three.

Identifying the category of a defendant is a relatively simple task. Almost all of the trial records showing a violent component involve a defendant of the Private or equivalent rank, with only three cases of non-commissioned officers tried for violent offences. Identifying and categorising the victims of those crimes poses more of a challenge. Charges in the register do not always name or otherwise identify the victims involved. Even when they do give an indication of the victim, that indication is sometimes vague and unhelpful. For example, in the case of

<sup>377</sup> Figures taken from: WO 89/4; 89/5.

<sup>378</sup> WO 89/4.

John Connor, a private in the 47th, tried in Ava, in 1825, the charges refer to him '[a]ttempting to force the Sentry & assaulting several Persons'. Whilst it is easy to identify the sentry as a fellow soldier, we have no way of knowing for sure whether the 'several persons' Connor assaulted were civilians or other military personnel. Similarly, on 22 June 1820, Private Gottlieb Muller, of the 60th, was tried for 'Desertion & wounding a Person who brought him back'.

It seems likely that this refers to a civilian attempting to claim the reward for apprehending a deserter. Certainly, there seems an overall preference within the register for identifying whether or not the victim was a service man, if not giving the name, then usually the rank. However, many of the records also refer in more specific terms to civilians, usually referring to them as 'natives', 'inhabitants', or 'towns people'. Given the nature of the register, drawn as it was from the collated returns of trials held throughout the British army, the styles of the charges and terminology used vary considerably. In cases where the victim is not identified, but the victim type can be reasonably inferred, a victim category has been assigned. In the more oblique cases, or where there is no readily inferable victim, no victim category has been assigned. Altogether there are 124 trial records for violent offences, which show an identifiable or inferable victim type:

**Table 4.2: Victims of violent crime by GRCM sample<sup>379</sup>**

<b>Victim Type</b>	<b>1813-1814</b>	<b>1819-1820</b>	<b>1825-1826</b>	<b>Total</b>
Civilian	12	2	6	20
Fellow	8	1	5	14
Officer/Employer	10	7	3	20
NCO	29	10	25	64
Other Service	3	0	3	6

Of those 124 trial records, over half concern NCO victims, and NCOs are the largest category of victim in all three sets, a pattern which is repeated in the individual regimental returns of RCM trials, and which, taken alongside the surprisingly low number of NCO perpetrators, adds further emphasis to the need for a separate analysis of the NCO experience of crime.

<sup>379</sup>Figures taken from: WO 89/4; 89/5.

The remaining half of identified victim types shows very similar figures overall for officers and fellow soldiers, with equal numbers in the first year set, a higher proportion of officers in the second set, and a higher proportion of fellow soldiers in the third. Though by no means a large group, civilians represent a sizeable percentage of identifiable victims of violence or threat within the sampled records of the GRCM register. They are the second largest victim category overall and in two of the three sample sets. The smallest category of victim in all three sets is that of men from other services, such as the navy, or the marines.

It is important to reiterate, that this is likely to be an under-representation of civilian victims of violent crime, with violent assaults on civilians, and in particular assaults on civilians at home, far more likely to have been prosecuted through the civilian criminal justice system and therefore absent from these figures. It is noticeable that of the 20 cases with an identifiable civilian victim, 19 concerned soldiers serving overseas, in Europe, India, and North America, with the one remaining case coming from Birr, in Ireland. A single year of Regimental Courts Martial conducted in the 34th, whilst stationed in Bangalore, shows a fairly large proportion of civilian victims, at a little over a quarter of those identified. In the same year, the 33rd, stationed at home at Hilsea, recorded only six trials for violent crime, none of which involved a civilian victim.<sup>380</sup>

Figures for officer victims on the other hand may be over-emphasised: an assault on a superior officer represented both a criminal and a serious military offence.<sup>381</sup> As such, it would be in keeping with the broad divisions of jurisdiction according to seriousness of offence, that such cases may have more readily occasioned the convening of a GRCM or GCM, than a corresponding assault on a private soldier, for which an RCM may have been considered sufficient. That said, this may be offset by the charge of ‘insubordination’, which could refer to violence towards a superior officer, but which could also refer to non-violent non-compliance. As such, trials with the simple charge of insubordination have not been included in the officer victim category.<sup>382</sup>

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<sup>380</sup> WO 27/147; 27/148.

<sup>381</sup> Burroughs, p. 552.

<sup>382</sup> Burroughs, p. 552.

Looking at the three regiments for the period September 1818 to October 1819, taking account of RCM, GRCM and GCM, of six trials for violent offences recorded for the 33rd at Hilsea, five were conducted at the RCM level: two involved fellow soldier victims, and three involved NCOs. The sixth case, in which a private was convicted of ‘mutinous conduct in striking an officer’, was tried by GCM.<sup>383</sup> For the 34th in India, there are 16 trials for charges of a violent nature, including one with no identifiable victim, all tried at RCM level, with almost half of those involving an identifiable victim in the NCO category, none involving officers, and the remaining half split equally between fellow soldier and civilian categories. During the same period, the 37th Regiment, stationed in Canada, recorded four trials for violent offences, one involving an NCO victim, one a civilian victim, one a fellow soldier and one an officer.

The trial with an officer victim and the trial with an NCO victim were both conducted at GRCM level, but they were clearly not equivalent charges. The latter case we have already examined in terms of the way charges were recorded at different levels of court martial, but it also illustrates the lack of equivalence between NCO and officer victims. Private Bland was court-martialled for being drunk on parade and striking a lance sergeant in the execution of his duty, and also for escaping confinement two days earlier and resisting a sergeant, again in the execution of his duty. The trial of Private Michael McHugh, the following September, was on the single charge of ‘Riotous and unsoldierlike conduct in attempting to strike Lieut. Johnson in the execution of his Duty’.<sup>384</sup> The reasons for recourse to a GRCM level trial are clearly different in these two cases, with Bland’s trial being heard at this level because of the serious and aggravated nature of the violence, alongside other serious military offences, and McHugh’s because of the rank of his victim.

It would be a reasonable assumption, given the relationship between military and civilian jurisdictions at home, and given the close proximity of soldiers and civilians in that setting, that alongside the courts martial held at Hilsea, there may well have been some soldiers prosecuted through the

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<sup>383</sup> WO 90/1

<sup>384</sup> Both trials are recorded in the GRCM register; however, the charges as stated are taken from the regimental returns: WO 27/148.

criminal courts. It is correspondingly unlikely that there would be very many examples within the civilian sphere of assaults by private soldiers on their officers, which the military authorities were far more likely to treat as a serious breach of military order and discipline.

### **Soldiers and Civilians**

Though regimental communities included both soldiers and civilians, and soldiers were often billeted within civilian communities there is a natural division to be made between the two. As discussed in the introduction, the identity of soldiers as soldiers in some ways created a sense of cultural distinction, and placed them within a distinct set of rules and boundaries from civilians, regardless of physical proximity. As Burroughs suggests in his analysis of *Crime and Punishment in the British Army, 1815-1870*, ‘The army was an alien institution to civilians who knew little about the soldier’s actual life’.<sup>385</sup> In some ways soldier violence against civilians can often be seen to have been externally focused, that is focused away from the companies and regiments in which soldiers served, suggesting a potentially distinct set of motivations and contexts to those in effect when soldiers acted with violence against one another, or against those in positions of command authority over them.

A common factor throughout the military justice records relates to the role of civilians as conduits, both formal and informal, of supply to the military communities, and in particular the opportunities they offered for accessing alcohol. This is not a surprising trend: as discussed in the previous chapter, in most studies of soldier crime the role of alcohol is a commonly cited factor across a large range of soldier offending, from desertion to insubordination and from robbery to rape.<sup>386</sup> Burroughs makes the point that ‘[W]hat made intoxication such a major cause of crime was that other offences were more readily committed by those incapacitated by drink.’<sup>387</sup>

This trend of drunkenness as a factor in crime may have been exacerbated by the particular role civilian communities played in providing alcohol to soldiers, as well as the tendency, for most of the period, for

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<sup>385</sup> Burroughs, p. 549; Brumwell, p. 105.

<sup>386</sup> Burroughs, 1985, pp. 555-557.

<sup>387</sup> Burroughs, 1985, p. 556.

soldiers to be billeted in taverns and ale houses.<sup>388</sup> In over half of the cases of soldier violence against civilians recorded in the GRCM register for the sampled years, the primary motivation appears to have been theft rather than simple interpersonal violence, with alcohol a fairly common theme, either in terms of procurement as a motive, or of drunkenness as a contributing factor.

In such cases it seems soldiers often acted together. In the first GRCM sample set, covering the years 1813 to 1814, there were 12 recorded cases of soldier violence with civilian victims, relating to nine separate incidents. In five of the incidents, involving eight of the 12 soldiers, the violence accompanied acts of theft, whilst three of the cases involved individual soldiers and were fairly simple cases of theft with violence, or with the threat of violence. Private Richard Stump, for example, of the 62nd, was tried and convicted at Palermo, ‘For being concerned in knocking down an Inhabitant & taking money to the amount of Ten Dollars’.<sup>389</sup>

Two incidents involved several soldiers acting together and using violence to procure alcohol. Privates Patrick Crosby and Thomas Browne, of the 1/34th, were tried by GRCM at Secunderabad, for ‘Entering the Shop of a Native and forcibly taking Liquor’, whilst three soldiers of the 1/69th, also stationed in India, were tried for being ‘Absent from Hospital without Leave’ and for ‘obtaining Liquor from the Inhabitants by force & breaking their Chattels’. The second sample set had only two cases recording possible civilian victims. In one, the soldier concerned assaulted ‘a Person’ who had apprehended him as a deserter, and in the other, a drunken soldier was convicted of, ‘Wilfully firing Ball Cartridge at the Inhabitants & wasting the Ammunition’.<sup>390</sup>

In the third set, of the six records, covering five incidents, three relate to theft with violence or threat, and in one of these cases we see soldiers acting together. At Gibraltar, Privates Thomas Morrison and Thomas Patterson were tried separately for the same incident. Both faced the charge of being ‘Absent from Guard’, with Patterson facing the

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<sup>388</sup>Richard Holmes, *Redcoat: The British Soldier in the Age of Horse and Musket*, p. 266; Screen, p. 229.

<sup>389</sup>WO 89/4.

<sup>390</sup>WO 89/4.

additional charge of ‘Illtreating an Inhabitant & Wife’, and Morrison the additional charge of ‘Illtreatment & Theft’.<sup>391</sup>

These cases demonstrate both the attractions of civilian conduits of supply, and the group mentality of soldiers as distinct from their civilian victims. In Coss’s study, the group mentality of soldiers on campaign acted to protect civilians from violence, with theft deemed an acceptable form of ‘reconnoitering’, but theft with violence considered a breach of their unwritten code of behaviour.<sup>392</sup> At the same time, the formation of that group mentality, was because he was ‘[i]solated from civilian society [...and...], reordered his world around the small cadre of men with whom he endured campaign life and combat’.<sup>393</sup> Coss recognised the potential for this code to become weakened during periods of military inactivity when the survival of individual soldiers was less dependent on their fellows, as well as at times of fracture and dislocation as regiments and battalions were broken up or reassigned. Even so, for the majority of the men serving in the British army, violent acts of theft may have been a step too far, but where it did occur, it seems often to have followed a similar pattern of group identification fundamentally separating them from their civilian victims.

Another strand of violence which demonstrates this sense of cultural distinction between soldiers and civilians needs to be considered, though it is one which is almost entirely absent from the courts martial and regimental samples. Aside from the rather vague charge of ‘rioting’, very few of the trials listed in the GRCM, GCM and RCM samples mention acts of violence by soldiers against civilian authority figures. There was one case, however, from the GRCM sample, involving two gunners from the Royal Artillery, stationed at home. The two soldiers were tried together, clearly for the same incident. Both were charged with ‘making a disturbance’, whilst one faced the additional charge of ‘Ill-treating a constable’.<sup>394</sup>

Several cases of soldier violence against constables can be found in civilian system. A Quarter Sessions bundle, from 1805, held by the Essex Record Office contains a report of an ‘assault on parish constable of

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<sup>391</sup> WO 89/5.

<sup>392</sup> Coss, pp. 18-20.

<sup>393</sup> Coss, p. 15.

<sup>394</sup> WO 89/4.

Braintree by soldiers quartered at Swan Inn’.<sup>395</sup> Another case from Wandsworth, this time from 1783 and again contained in a Quarter Session bundle shows ‘William Banghan and Richard Radford, private soldiers in the Eighty-fifth Regiment of Foot, accused of assaulting the constables of Wandsworth while they were searching the ‘Two Brewers’ at Wandsworth’.<sup>396</sup> That they were searching a pub, most likely for deserters, suggests one possible reason for a clash of military and civil authority. Screen also gives several examples of soldiers acting violently against civilian authorities, including an incident in Kinsdale, in 1785, in which, ‘the elected head of the corporation [...] was “riotously attacked in the execution of his office by some soldiers of the fourth regiment of foot, now quartered at Charles Fort”’.<sup>397</sup>

Though much of the evidence in the military records points to a sense of cultural distinction between soldiers and civilians, this was not a universally applicable trend. In communities with a settled military presence the opportunities for a more cooperative relationship were far more apparent than in places where soldiers were temporarily stationed or simply passing through. Hurl-Eamon’s study of military families in London during the late eighteenth century demonstrates quite well the way in which soldiers and sailors along with their families represented a semi-permanent presence in the capital, and there are examples to be found within the *Proceedings of the Old Bailey* trial records and contemporary newspapers, of soldiers and civilians acting together in various forms of criminal activity, including robbery and assaults. In one case, for example, John Langar and William Dickinson, both soldiers, were tried at the Old Bailey for the assault and robbery of John Boulton, in which crime they were assisted by Thomas Cousins, who was ‘a bricklayer’ and apparently unconnected with the army.<sup>398</sup>

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<sup>395</sup> Essex Record Office (RO), Q/SBb 400/60, Quarter Sessions bundle.

<sup>396</sup> Surrey History Centre (HC), QS2/6/1783/Eph/82, Quarter Sessions bundle, Epiphany Sessions 178.

<sup>397</sup> Screen, p. 227.

<sup>398</sup> *Old Bailey Proceedings Online*, t17760221-18, Trial of James Langar and William Dickinson, February 1776, at [www.oldbaileyonline.org](http://www.oldbaileyonline.org) [accessed 15 August 2014].

### **Rape and sexual assaults**

After violent theft, the second biggest category of violent crime against civilians recorded in the GRCM samples was sexual assault or rape. Unlike the cases of violent theft, cases of rape and sexual assault recorded in the GRCM register all involved soldiers acting alone. In the first sample set, along with the five incidents of violence and theft, there were four incidents of violence without any accompanying charges of theft, with three of them relating to rape or sexual assault. Private John McCullion, of the 69th, was tried at Seringapatam, for ‘Attempting to violate a Native woman when he was on Sentry’. Private Thomas Barrett of the 30th, was tried at Cannonore, for ‘Attempting to abuse a Child, & striking the Sergeant’ and Private John Mulcahey of the 86th, was tried at Masulipatam for ‘attempting to commit a rape’. Intriguingly, two of these cases of sexual violence also carry charges of a military nature.<sup>399</sup> Barrett and Mulcahey were both sentenced to five hundred lashes, with Mulcahey also sentenced to six months solitary confinement.

In the third sample set there were three charges of violence against civilians without any indication of theft, two of which involved assaults on women. Private Gilbert Leavey, of the 41st, was tried at Prome, for ‘Assaulting a Burmese Woman & wounding a Native’. Samuel Earls, a sergeant in the 66th, stationed in Birr, was tried for being ‘Absent from barracks & Illtreating a Female’.<sup>400</sup> Taking all three GRCM sample sets together, out of 16 separate incidents of violent crime with civilian victims, over a third concerned assaults of this nature.

These are, however, still very small numbers and it is important to note that there are no examples of rape or sexual assault against civilians in the returns sampled from the three regiments, and only a single case of rape in the two year sample of GCM trials: Private Shaw, of the 29th, was convicted, 1 June 1818, on the single charge of rape.<sup>401</sup> With no other details included, however, it is unclear whether this was a rape committed against an uninvolved civilian, or a woman of the regiment.

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<sup>399</sup> WO 89/4.

<sup>400</sup> WO 89/5

<sup>401</sup> WO 90/1.

While rape and sexual assault account for a high proportion of violence charges in the GRCM samples, and appear intermittently throughout the military justice records, they were nonetheless a very small percentage of overall offending, which seems to accord with Coss's analysis of internally enforced 'group values'. Coss's study primarily focuses on soldiers on campaign in the Peninsula in the early nineteenth century; however, cases from earlier in our period show a similar sensibility.

A case of burglary and attempted rape from New York, in 1779, offers on the one hand an example of group action by soldiers against civilians in a violent act of theft, and on the other hand an example of a soldier attempting to enforce protection of a civilian victim from sexual violence. William Green of the Queen's Rangers, and Thomas Salem of the Bucks County Dragoons, were tried by GCM for burgling, along with several other men, three houses in Long Island, and 'grossly insulting the inhabitants'. According to one of the victims, during one of the three robberies, all of which involved some sort of violence or threat, an elderly woman was sexually assaulted by two of the gang, who had taken her off into another room in the house. They then returned to the room where the rest of the gang still were and an attempt was made to rape a young girl; however, at this point, 'fortunately, one of the gang interfered' and 'she escaped unhurt'.<sup>402</sup>

Though relatively infrequent, such cases appear at all three levels of military justice, and may have been an unavoidable consequence of soldiers and civilians living in close proximity or in shared communities. Whether regimental or divisional communities were separated from civilian communities, in camps, barracks, or forts, or were billeted within towns and civilian communities, women and children were part of the military scene. Victuallers, washerwomen, nurses and prostitutes, unofficial camp followers and recognised army wives, women formed an important part of the 'travelling city' that was the regiment.<sup>403</sup>

For a small number of men, army service meant the relocation of their families, rather than separation from them. Wives, or partners, along

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<sup>402</sup> WO 71/90, Trial of William Green and Thomas Salem, 21 October 1779.

<sup>403</sup> John A. Lynn II, *Women, Armies, and Warfare in Early Modern Europe*. (Cambridge: Cambridge University Press, 2008), pp. 130-38.

with their children accompanied soldier husbands and fathers on the march and into camp and some soldiers formed relationships with women and girls in the towns and cities to which they travelled. In his examination of the lives and roles of army women, Lynn suggests that along with the many dangers they shared with their men, for regimental women rape was an additional danger, ‘almost exclusively reserved for them’.<sup>404</sup>

For many of the wives and children who accompanied soldier husbands, regiments and companies represented, as Annabel Venning suggests, ‘an extended family’ and source of solace and support in times of difficulty; however, there were also times when this ‘broke down’ and the victims at such times were often the most vulnerable members of the community.<sup>405</sup> Though, there is good evidence to suggest that overall the men who served in the British army, were no more likely to be criminal than their civilian counterparts, there were nonetheless convicted criminals among them, and throughout the eighteenth century, men convicted of capital crimes might be offered military service as an alternative to capital punishment.<sup>406</sup> Whether this placed women and children at any greater risk of assault within regimental communities than they would have been in a civilian setting is debatable and certainly the risks of rape and assault were not exclusive to regimental communities. However, as Venning suggests, attacks on regimental children in particular would have been ‘shattering’, committed by comrades and members of their extended regimental family.<sup>407</sup>

Two cases from Gibraltar, both tried at the same General Court Martial session on the 8th August 1775, illustrate the particular dangers faced by the children of soldiers in regimental communities. Private Michael Gollougher of the 2nd, was tried and convicted of ‘attempting to carnally know, or abuse, Frances Berney, a child of nine years and an half old, & for giving her the venereal disorder’.<sup>408</sup> John Burrows of the same regiment was tried and convicted on identical charges, with his victim a five year old

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<sup>404</sup> Lynn, *Women Armies and Warfare*, p. 1.

<sup>405</sup> Annabel Venning, *Following the Drum: The Lives of Army Wives and Daughters Past and Present* (London: Headline, 2005), p. 98.

<sup>406</sup> Venning, p. 98.

<sup>407</sup> Venning, p. 98.

<sup>408</sup> WO 71/80 Trial of Michael Gollougher, and Trial of John Burrows, 8 August 1775; also, Venning, p. 98.

girl called Mary Hamilton. These trials relate to two separate, but similar incidents. In both cases the victims were soldiers' daughters. Frances was the daughter of Corporal Berney, of the 1st, and Mary the daughter of Private Hans Hamilton of the 39th.

In both cases the girls displayed a general familiarity with soldiers and the wider military community in which they lived. Regardless of social status or economic constraints, Mary, at five years old, was unlikely to have yet begun to read, but she was able to recognise specific regimental markings. When her parents questioned her, she identified that her attacker, 'was a man of the Queen's'. The elder girl, Frances, also showed familiarity with the community of soldiers. She told the court that along with her baby brother, carried in her arms, she 'went into the castle [...] and having seen the Prisoner there, she'd ask'd a nosegay of him'.

As the child of a serving soldier, and an NCO at that, her experience of the soldiers of her father's regiment was likely to have been positive. She had no fear or trepidation around Gollougher, trusting his word that he would give her a nosegay if she would only 'wait 'til after dinner'. Along with Frances' apparent ready trust of the soldier, witnesses at the trial who testified to seeing the girl, with her little brother in her arms, playing and picking flowers in the castle grounds, expressed no sense of surprise at such a sight. At no point in the trial did anybody express surprise at the children wandering in and out of a military installation.

As Venning points out in her analysis of the Berney case, whilst Gollougher was found guilty of molestation and sentenced to a thousand lashes, he was not drummed out of the regiment, and 'Frances Berney would have been forced to come face to face with her tormentor until either he or her father left Gibraltar'.<sup>409</sup> Burrows, possibly because of the very young age of his victim received a slightly more severe punishment: he was sentenced to eleven hundred lashes, and the humiliation of the first hundred being inflicted 'at the hands of the common hangman', with the rest by the drummers of his own regiment. Like Gollougher, though, Burrows was to remain with his regiment and this must have been a difficult and distressing situation for Mary and her family.

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<sup>409</sup> Venning, p. 98.

Though assaults on children are relatively rare within the courts martial records, they appear intermittently at GCM and GRCM levels, and it seems likely that such assaults were underreported, or largely unprosecuted. In both cases, the most important and damning evidence brought against the men was the presence of obvious signs of venereal disease on their victims along with the fact that they themselves had recently been treated for the same. Also in both cases, the victims did not immediately tell their parents, nor were there any witnesses to either assault. Without the evidence of venereal disease it is doubtful charges would have been levied in either case. Prosecutions for rape of adult women were likewise fairly rare. Again, this may in part be due to a lack of reporting, or the lack, in many cases, of enough evidence to proceed.<sup>410</sup> It is noticeable that in many of the prosecutions for rape or sexual assault, those charges are accompanied by additional charges of violence, often against individuals who attempted to intervene, or who were accompanying the woman at the time, as in the cases of Barrett and Leavey. Even taking into account the likelihood of under reporting, the number of violent sexual assault recorded in the GRCM register appears low. This fits the picture presented by Coss in his analysis of soldier behaviour. The group pressure against such acts was very strong.

In terms of the impact on regimental communities there are of course important distinctions between rapes and assaults committed against civilians outside of the military community, and those committed against female or younger members of the military community. Assaults on children who were not part of the community were not unknown, though were most often dealt with through the civilian justice system. For example, the Quarter Sessions of Surrey in 1791 record the case of Robert Wilkinson, a soldier who was billeted with a victualler and his family and who was accused of assaulting and ‘attempting to ravish’ the five year old daughter

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<sup>410</sup> The evidence required for rape convictions was such that in the civilian sphere there were few prosecutions, with the lesser offence of ‘assault with intent’ much more likely to lead to a conviction: Clive Emsley, Tim Hitchcock and Robert Shoemaker, "Crime and Justice - Crimes Tried at the Old Bailey", *Old Bailey Proceedings Online* (2011), <[www.oldbaileyonline.org](http://www.oldbaileyonline.org)> [Accessed 16 September 2014 ].

of his hosts.<sup>411</sup> Though nominally civilians, assaults like those committed against Frances and Mary would have had a profound impact on their soldier fathers. It seems reasonable, therefore, to include the particular dangers to female and younger members of the community as part of the soldier experience of violent crime. In both cases, the investigations of the assaults were undertaken by the girls' fathers, and it was they who pressed for prosecution in each case.

### **Army responses to violence against civilians**

Taking into account the likely under representation of attacks on civilians at home, the numbers of attacks on civilians nevertheless seem to have been relatively low and there is no doubt that military authorities treated such crimes very seriously.<sup>412</sup> This at times manifested in a willingness to hand offenders over to civilian authorities where possible and where appropriate. Divall suggests regimental commanders 'did their utmost' to honour this, and according to Charles Oman, Wellington was assiduous in recognising civil authority in cases of serious or aggravated criminality.<sup>413</sup> It also showed in severe sentencing and an assiduous approach to prosecution in cases that reached court martial stage, with the majority of such offences dealt with at GCM or GRCM level. Most importantly perhaps in the context of the soldier experience of crime, such offences were treated and viewed as serious by the rank and file, who exhibited a strong sense of their own codes of behaviour and enforced those codes through a very effective form of peer pressure.<sup>414</sup>

### **Civilian violence against soldiers**

One aspect of the soldier experience of violent crime which is highly unlikely to be illuminated by a study of military justice records is victimisation at the hands of civilian perpetrators. There are examples, however, of soldiers assaulted by civilians in court records and newspaper reports. For example, in Southampton, 1 April 1741, John Higgs, a soldier

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<sup>411</sup> Surrey HC: QS2/6/1791/Eph/76 (1791).

<sup>412</sup> Stepler, p. 879.

<sup>413</sup> Oman, p. 244-45.

<sup>414</sup> Coss, pp. 17-18.

in one of the marine regiments, made an official complaint regarding ‘an assault by one Matthew, surname unknown’.<sup>415</sup> Whilst in 1787, two men were tried and one convicted, at the spring assizes in Winchester, for, ‘an assault with intent to rob Joseph Patrick, [a soldier] who had just been refused lodgings at the Plymouth Arms, at midnight on 27 September 1786.’<sup>416</sup>

From an 1820 newspaper report, meanwhile, there is a fairly dramatic case, which demonstrates some of the tensions between soldiers and civilians, and how that could lead to soldiers being victimised. In this instance, the soldier, a private in the 2nd Regiment of Foot Guards, was assaulted, ‘in a most violent manner’, by two men, as he was walking home to his lodgings, late one evening. Prior to the assault, his attackers ‘walked behind him [and] used some very insulting expressions, such as “lobster”, “a shilling a day”’, before knocking him to the ground and kicking him until he ‘bled considerably from the injury he received’. Though the two attackers claimed their victim had tried to ‘inveigle a girl into an improper house’ and were protecting her chastity, the soldier’s claim to have given no provocation was confirmed by the constable, and when someone was sent to check the address they had given for her, there was nobody of that name living there.<sup>417</sup>

### **Violence in the Ranks**

Violent assaults by soldiers of the private rank against comrades of the same rank appear quite infrequently in the samples. If we look at the first sample set of the GRCM register, covering the years 1813 to 1814, of the eight records showing charges of violence against soldiers of the private or equivalent rank, six involved perpetrators of the same rank, with two perpetrators of the lowest NCO rank. From the 1819-1820 sample set there was just a single case of violence against a private, and there were five cases in the 1825-1826 sample set, all of which involved defendants of the same

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<sup>415</sup> Southampton Archives Office, SC9/4/204, Quarter Sessions papers 1741, Information of John Higgs, a soldier in Captain MacDonald's Company in Colonel Jefferys' Regiment of Marines.

<sup>416</sup> HO 47/11/39, Judges' Reports on Criminals, 5 June 1790, Report John Wilson Benjamin George, convicted at the Hampshire Spring Assizes at Winchester in 1787,

<sup>417</sup> *The Morning Chronicle*, Tuesday, April 27, 1830.

rank. In the two year GCM sample, there were only four cases of violence between soldiers of the same rank, and at RCM, for all three regiments a total of six cases.

Unlike the cases of violence against civilian victims, theft and procurement do not feature heavily as motivation. In only four of the cases were the charges of violence accompanied charges of theft, with the victim of violence also clearly the victim of theft in two cases.<sup>418</sup> In the two cases where the victim of violence was also clearly identifiable as the victim of theft, Bernard Kilroy, a bugler in the 42nd, was tried at Fuente Guinaldo, for ‘Making away with his Regimental Necessaries and robbing a Comrade’, whilst Lance Corporal C. Klages of the 1<sup>st</sup> Hussars King’s German Legion, was tried at an unspecified location, for ‘Robbing a comrade of one Dollar & sixteen Guineas’.<sup>419</sup>

In a third case the perpetrator also acted alone; however, it is unclear whether the victim of violence was also the victim of theft. The fourth case involving both theft and violence charges has been covered in the above section on violence against civilians, and is the only one in which soldiers acted together. Importantly, in this instance, though the victims of violence included fellow soldiers, the focus of both the theft and most of the violence was very clearly on the civilian inhabitants of Seringapatam: Patrick Delaney, Alex Pedon and Joshua McCrum, all privates in the 69th, were charged with being ‘Absent from the Hospital without leave, & obtaining Liquor from the Inhabitants by force & breaking their chattels’. McCrum, however, also faced the additional charges of ‘breaking Two Firelocks, & forcing & striking the Sentinel’.

The additional charges against McCrum underlines one of the most common reasons for violence between soldiers, and suggests a specific set of motivations for violent crimes distinct from those involving civilian victims. In this case, it is clear that the violence was perpetrated against another soldier because of his role as sentinel, and as part of the perpetrator’s resistance to regimental authority, rather than the motivation of theft or personal dispute.

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<sup>418</sup> WO 89/4.

<sup>419</sup> WO 89/5

Of the remaining four cases of violence against ordinary-ranking soldiers in the 1813-1814 sample set, three seem to conform to a similar pattern of resisting regimental authority, with the victims in two cases apparently performing their duty at the time of the offence. Private Edward Laskey, of the 25th Light Dragoons, was tried at Bangalore, for ‘Striking a Private on Sentry & refusing to return to the Court House’. Michael Connor, a gunner in the Royal Artillery, was tried at Woolwich for ‘Aiding Two of the Gunners in a riot & knocking down another in the execution of his duty’. Connor Dougherty, a private in the 18th, was tried in Jamaica, for ‘Striking one of the Private Soldiers & for riotous Conduct’.<sup>420</sup> In the third case, though there is no clear indication that the victim was performing a specific regimental duty at the time of the assault, the inclusion of the second charge of ‘riotous conduct’ suggests a similar theme of resisting regimental authority. Interestingly, in the second sample set covering the years 1819-1820, the single case of violence against an ordinary-ranking soldier also conforms to this pattern. Edward Field, a drummer in the 36th, was tried in Malta, for ‘Using very abusive language & drawing his knife with an intention to injure the men on Guard’.<sup>421</sup>

In only one case from the 1813-1814 sample set, do we see what could be a simple case of interpersonal violence, without either an accompanying act of theft, or an indication that the violence was directed at the victim’s regimental role, rather than the victim as an individual. Joseph Cole, of the 31st, stationed in Naples, was tried for ‘Wounding a Drummer with a Knife’.<sup>422</sup> Even in this case, however, that the victim was a drummer may well have been a factor, given the role of drummers in administering corporal punishments within regiments.

In the 1825-1826 sample set there are five cases with charges of a violent nature involving victims of private, or equivalent rank. Two of the cases follow a very similar pattern of resistance to regimental authority described above. Henry Walker, a private in the 19<sup>th</sup> regiment, stationed in Limerick, was tried on several charges of a regulatory nature, aggravated by violent resistance. Alongside charges of being ‘Absent from Roll call,

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<sup>420</sup> WO 89/4; 89/5

<sup>421</sup> WO 89/4

<sup>422</sup> WO 89/4.

opposing the Guard [...] and attempting to strike a Corporal’, there was an additional charge of ‘abusing a sentinel’. John Connor, a private in the 47<sup>th</sup> Regiment, was tried at Prome for ‘Attempting to force the Sentry and Wounding several Persons’.<sup>423</sup> Here the violence, or threat of violence against the soldier on sentry duty, is implied by the use of the term ‘force’, and as with the above cases, this offence was accompanied by other offences unrelated to the soldier victim. In all these cases it seems fairly clear that the violence or threats against fellow soldiers related to their function, or duty, at the time of the attack, rather than motivations of theft, or simple, personal disagreements.

This pattern of violence as response or resistance to regimental authority is even more apparent when considering instances of violence against regimental officers and NCOs and clearly forms a significant part of the soldier experience of violent crime. In the first GRCM sample set there are eight examples of violence against a victim from the ‘Officer or Employer’ category, only one of which does not follow the pattern of resisting regimental authority. In that case the soldier was tried for ‘Desertion and Robbing his Master’. In every other case the pattern of resistance is clear. A typical example of this is the case of John Costillion of the 104<sup>th</sup>, who was tried at Kingston, Jamaica in 1813 for, ‘Not proceeding on his March, insolent language, resistance to the Escort and threatening Lieut. Cready’.<sup>424</sup>

This pattern is repeated in the second and third sample sets, with a further seven incidents, most of which seem to have been clear cases of resistance to regimental authority. Altogether, of the 15 examples of violence against officers or employers, only four are unclear as to motivation and could potentially have been the result of personal grievances rather than resistance to authority; though, it is important to note that in two of these cases the soldiers were drunk at the time of the assault, and in two cases there were additional charges which strongly suggest the theme of resistance was still a factor. For example, James King of the 67<sup>th</sup>, was tried at Poonah, in 1825, for being ‘Drunk and striking his superior officer’ and Private Keaney of the 13<sup>th</sup> Light Dragoons was tried at Arcut, in 1819, for

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<sup>423</sup> WO 89/5

<sup>424</sup> WO 89/4.

‘Making false representations & threatening the Life of his superior’.<sup>425</sup> Of the two cases with no indication of motive and no additional charges beyond the actual assault, both are equally likely to have been acts of resistance. In one the soldier was charged with ‘Mutiny (Striking a superior Officer)’ and in the other the charge was ‘Striking Capt Reynaud of the same Regiment’.

In the majority of cases with an NCO victim, the pattern of resistance to authority is similarly clear, though the much larger number of cases involving NCO victims is something which will be discussed in detail in Chapter Six. As with the cases of violence against civilians, violent resistance to authority seems often to have been at least partly the result of drunkenness. According to one veteran, writing in the 1830s and quoted in Burrough’s article, ‘soldiers [...]when in a state of intoxication become insubordinate, and are as ready to knock down officers as Serjeants[sic]’<sup>426</sup>

When examining register entries, it is very difficult to get a sense of the context of violent assaults, though as we have seen, there are sometimes hints to the wider picture and sequence of events. Trial transcripts though can give a much clearer sense of some of the ways in which violent resistance to regimental authority could be triggered. Unsurprisingly, one of the flash points for such violence seems often to have been instances of discipline and punishment. If we consider the case of Richard Hyde, of Colonel Herbert’s Regiment, tried at Gibraltar in January 1753, there is a clear sequence of events leading up to the offence of ‘Stabbing Adjutant John Deaken, of the same regiment with a knife, the said Adjutant then in the prosecution of his duties’.

At the trial, five witnesses gave their versions of events, and the prisoner called upon a previous RCM to be brought in as evidence in his defence. According to the transcript, Hyde initially threatened Deaken, ‘offering to strike [him] with his Firelock’, for which he was tried by a RCM and sentenced to 500 lashes. At his first trial, Hyde ‘alleged that he had not received his full pay’, and it is not entirely clear why he thought the record of that trial might be useful to his defence at his second trial, given that the first had concluded that his complaint appeared ‘groundless’. It was as Hyde was about to receive his 500 lashes that the attack on Deaken had

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<sup>425</sup> WO 89/4; 89/5.

<sup>426</sup> Burroughs, p. 556.

occurred. According to the witnesses, Hyde had been brought to the head of the parade, where Deaken, acting in his capacity as Adjutant, was to read out the sentence of the Regimental Court Martial. One of the witnesses testified that: 'Before the sentence was read, the Prisoner said What I am to Die, am I? Let me die handsomely' and then after the sentence had been read, Hyde, 'ran at Mr Deaken', grabbing his collar with one hand, and stabbing him several times with a 'clasp knife' concealed in the other. Deaken attempted to get away from Hyde, twisting from his grip and running away, but Hyde pursued him and managed to stab him several more times, in the arm and the leg, before another private from the regiment, assisted by a sergeant, managed to wrestle the blade from Hyde and bring him under control.<sup>427</sup>

Hyde's case illuminates a number of issues around resistance violence in regiments: we see that he felt that he had been unfairly treated in the first instance, having not received his full pay; his response to that unfair treatment was to threaten the adjutant with violence, escalating the situation into a major disciplinary issue, and having been sentenced to severe punishment, for what he clearly considered to have been unfair treatment at the hands of the adjutant, he attempted to seek revenge against him. It also shows the level of violence that could easily erupt in such a heightened situation, which is worth bearing in mind when we consider the increased risk of violence faced by soldiers whose duties, or NCO rank placed them in positions of upholding systems of regimental discipline and control.

There are three other cases of violence against fellow soldiers in the GRCM sample sets. Daniel Curmane, of the 12th, was tried at Gibraltar in April 1825, for 'Striking a Private & using disrespectful language'. Similarly, during the same month, in the East Indies, Private Bernard Fallon of the 16th Lancers, was tried for 'Striking a Private & using threatening language'. In neither case do we have any further details or accompanying charges. It is impossible to know whether these acts of violence related to interpersonal disagreements, or resistance to regimental authority. A rather more serious example of violence can be seen in the case of James George, a private in the 69th, tried in India in 1825, for 'Using threatening language

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<sup>427</sup> WO 71/40, Trial of Richard Hyde, January 1753.

and shooting a Private through the hand'.<sup>428</sup> Again, there is little to indicate the motivation for violence in this case; however, the fact that George shot his victim 'through the hand' may complicate the issue. We do not know for sure that the 'threatening language' was directed at the soldier whose hand was shot. Whilst it is likely that such a thing would be indicated in the charge, it is nevertheless possible that this was not an act of violence against another soldier, but an attempt to assist that soldier in maiming himself to secure a discharge from the service.

For cases of violence between soldiers to reach the higher, GRCM level of military justice, it would generally be expected that: they involved offences of a very serious nature, such as attempted murder; there was significant bodily harm, such as the above case of shooting; they represented a significant breach of military order, as with the cases of resistance to authority, or they involved repeat offenders. It is reasonable to expect that we might gain a more representative picture of soldier on soldier violence from the lower, RCM, level of court martial. Even at this level, however, there is cause for caution: the number of trials for violence between soldiers was still very low.

The returns for our three case study regiments show a total of seven cases of violence against ordinary-ranking soldiers between September 1818 and October 1819, all tried at RCM level. From the 37th we have only a single instance of violence against a fellow soldier, in which, whilst the role of the victim was unspecified, the injury to him occurred in the context of 'Rioting in Barracks after hours': along with rioting, Thomas Wallace, a private in the regiment, was charged with 'Wounding' another soldier of the same regiment.<sup>429</sup> Of the two cases recorded by the 33rd, one suggests that the violence was personal, rather than generalised. Aaron Vaughan, a private in Captain Bennett's company, was charged with 'Stabbing Private William Taylor with his Bayonet'.<sup>430</sup> The second case of violence against a fellow soldier was much more in keeping with the pattern identified above: Private Charles Collinson, of Captain Hewett's company, was tried for

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<sup>428</sup> WO 89/5.

<sup>429</sup> WO 27/ 147.

<sup>430</sup> WO 27/ 147.

‘Taking away a Boat and rowing across the water after called to desist by the Sentry, and threatening to beat him’.<sup>431</sup>

Of the four incidents recorded by the 34<sup>th</sup> Regiment, three appear to have involved personal disputes, though some of the entries are only partially legible. Private William Hendman was tried ‘For taking a bayonet out of the Arms rack & [illegible] Private James Gaunt through the Barr(ks) & exclaiming he would give him a touch [illegible]’.<sup>432</sup> There are no accompanying charges of riot or disorder, nor is there any suggestion that this violence was inspired by alcohol, or focused on the victim’s regimental role at the time of the attack. Private Joseph Brown was tried ‘For unsoldierlike Conduct in drawing his bayonet on Private Cochrane & Mrs Boyten & attempting to Stab them on the 9th Instant’.<sup>433</sup> Again, there are no accompanying charges of riot, or disorder, nor any suggestion of drunkenness. We are left to wonder precisely what Brown’s relationship to Cochrane and Mrs Boyten was, but it seems likely that this was a purely personal dispute, and possibly the result of some kind of romantic entanglement; though, it is also possible that, given the role of women in regiments as sutlers, which will be discussed in greater detail in Chapter Seven, this could have been a dispute over alcohol. Of the remaining two cases, one may have been the result of personal dispute and both were clearly fuelled by alcohol. Private Timothy Donaghue was tried for being ‘Drunk & abusing Private [illegible] & insolence to Lieut. Simpkin’. Private James Griffiths was tried for being ‘Drunk in Barracks, striking one of the Company's Cooks & abusive language to Serj.[sic] Cunliffe in the execution of his duty’.<sup>434</sup>

Of the four cases from the GCM samples, one suggests resistance to authority. James Quinn of the 1/60th was tried in February 1818 for ‘Drunkenness, Drawing his bayonet on a serjeant, knocking down a private & losing his regimentals’. Again, alcohol was a clear factor in this case. One case clearly relates to an assault rather than resistance to authority; however, it is not clear whether the victims were truly ‘comrades’ or soldiers from another regiment. Jamie Dixon, of the 79th was tried in April 1818 for

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<sup>431</sup> WO 27/ 148.

<sup>432</sup> WO 27/ 147.

<sup>433</sup> WO 27/ 147.

<sup>434</sup> WO 27/ 147.

‘Violently & maliciously assaulting and wounding two soldiers’.<sup>435</sup> Neither of the other two cases do the charges give any indication of motive or context, with one soldier tried for ‘wounding a drummer’, and another for ‘firing a pistol at a private’; however, according to the accompanying notes, the latter culprit, Private Burnott, of the 25th Light Dragoons, was passed to the civil powers which strongly suggests that this may have been a personal, rather than professional dispute.<sup>436</sup>

Where personal disputes between soldiers of the same rank appear in the courts martial records, we can assume that they represent either unusually serious cases of violence, or breaches of the peace. Most soldier on soldier violence would not have made it to any of the three levels of court martial. Indeed, low levels of violence in the ranks would have been an accepted part of regimental life, and there is evidence to suggest that just as fist fights were an important element of civilian culture in Britain, they played an important part in soldier culture and group bonding, particularly during the early stages of a soldier’s enlistment into the regiment. Consider, for example this anecdote from the *Journal* of ‘Thomas’, who served in the 71st between 1805 and 1815:

A recruit who had joined at the same time with myself, was particularly active in his endeavours to turn me into ridicule. One evening, I was sitting in a side-window, reading. Of an old newspaper he made a fool's cap, and, unperceived by me, placed it upon my head. Fired at the insult, I started up and knocked him down.—"Clear the room; a ring, a ring,—the Methodist is going to fight," was vociferated from all sides. Repenting my haste, yet determined not to affront myself, I stood firm, and determined to do my utmost.

My antagonist, stunned by the violence of the blow, and surprised at the spirit I displayed, rose slowly, and stood irresolute. I demanded an apology.—He began to bluster and threaten, but I saw at once that he was afraid; and, turning from him, said, in a cool decided manner, "If you dare again insult me, I will chastise you as you deserve; you are beneath my anger." I again sat down, and resumed my reading, as if nothing had happened. *From this time I was no longer insulted; and I became much esteemed among my fellow-soldiers, who before despised me.* [author’s italics]<sup>437</sup>

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<sup>435</sup> WO 90/1.

<sup>436</sup> WO 90/1.

<sup>437</sup> The author of the journal chose to remain anonymous, giving only the name Thomas, though the editors of the original edition claim its authenticity and later

Shipp recounted a very similar experience during his first days after enlistment. In Shipp's case, having enlisted as a drummer at the age of ten, the 'soldiers' concerned were all fairly young boys; however, the similarity in terms of establishing relationships and status are clear:

Under this kind of [...taunting...] I reached my barrack, [...] till at length I got nettled, and told one of the boys, if he did not let me alone, I should take the liberty of giving him a good threshing. *This "pluck," as they termed it, silenced most of my tormentors,* and I was permitted, for a time, to remain unmolested. [...] the same boy came up to me, and called me a liar, stating that he had a great mind to thresh me [...] I got in a rage, and told him, if he ventured to touch me, I would fell him to the ground; when all the boys gathered round us, and said, "Well done, Johnny Raw!" [...]. Finding that I did not venture to strike the first blow, my antagonist called me a coward [...] I struck him, and to it we went in right earnest. After half a dozen rounds my opponent gave in. *This, my first victory, established that I was neither a coward nor to be hoaxed with impunity.* [author's italics]<sup>438</sup>

In both of these recollections we can see not only that fighting established new and young soldiers with their fellows, but that the response from the rest of their groups was very similar to the tendency noted by Emsley for civilian disputes to be settled by fist fights, around which a ring of bystanders would form. The emphasis on courage, or 'pluck', along with victory, and establishing that the author was not a 'coward', nor someone to trifle with, brings to mind the 'Jack Tar' masculinity of the Georgian popular press, noted by McGregor, with its emphasis on courage, independence and a willingness to fight, as well as the 'much vaunted idea of the duel to reclaim [...] honor', in the face of grave insult.<sup>439</sup>

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notes suggest his name may have been Thomas Pococke: *Journal of a Soldier of the 71st, Or Glasgow Regiment, Highland Light Infantry: From 1806 to 1815* (Edinburgh: Balfour and Clarke, 1819), p. 16.

<sup>438</sup>Shipp, *Memoirs*, pp. 37-38.

<sup>439</sup>McGregor, 'The Popular Press and the Creation of Military Masculinities in Georgian Britain', pp. 144-149; As an interesting aside, the fact that these young boys were all drummers and fifers, with the necessary emphasis on physicality, grace and rhythm required of their role, also calls to mind a very different aspect of military masculinity: see McCormack, 'Dance and Drill: Polite Accomplishments and Military Masculinities in Georgian Britain', *Cultural and Social History*, 8 (2011), 315-330; also see, Lynch and McCormack, 'Defining Soldiers', p. 155

Interestingly, and echoing the discussion, in Chapter Two, of the occupation-specific methods of suicide, of the four cases identified as personal, rather than institutional in nature, three of them involved the use of bayonets. As with the allegedly untried case of murder recalled by Surtees, the shape and contours of the violence here seem at least partially dictated by the nature of the soldiers' service, with readily accessible deadly weapons in the hands of men trained and accustomed to their use.

As noted by Hurl-Eamon, in her study of eighteenth-century army marriage, this seems a common theme, both in the military justice records and also civilian justice records of the time.<sup>440</sup> An example from the General Courts Martial records show how, as with the case recalled by Surtees, an instance of domestic violence was shaped by the presence of readily accessible weapons: on Tuesday 26th October 1779, William Whitlow, of the 44th regiment, was tried for 'having wounded his wife with a bayonet, of which wound she died'. In this instance, the prisoner and his wife were both on board a transport ship at sea, and having first been seen 'raising his fist' and shaking it at her several times, he then took 'a bayonet from of [sic] the deck' and stabbed his wife in the chest.

As with other examples of soldier violence, alcohol appears to have been a factor, with the prisoner counted a 'quiet', 'mild' and well-liked man when sober, but prone to fly into jealous rages when drunk. On previous occasions he had been seen beating his wife for perceived infidelity, despite all witnesses claiming that his wife had been loyal and not, as he thought, sleeping with the sailors. At the time Whitlow stabbed his wife, he had been 'sipping at a cup' and in his rage claimed he would kill his wife, his child and himself. Whitlow was found guilty of the charge against him, but as it appeared to the court that he was 'in a state of lunacy' at the time, he was acquitted of the crime of 'wilful murder'.<sup>441</sup>

This tragic case, made all the more so by his dying wife's forgiveness of him and claim that he 'loved her too much', highlights the inherent dangers of readily available weaponry, in this instance a rusty bayonet on the deck of the ship, as well as the trained competency in weapons use which went hand in hand with military service.

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<sup>440</sup> Hurl-Eamon, *Marriage and the British Army*, p. 212.

<sup>441</sup> WO 71/53 Trial of William Whitlow, 26 October 1779.

An example from the records of the Old Bailey, meanwhile, highlights the particular expectations of professional violence and competence with weapons that were arguably an inevitable aspect of soldier service. William Marshall, a former soldier, was tried at the Old Bailey in 1826 for ‘feloniously cutting and striking Mary Elizabeth Harding , with intent to kill and murder her’. In his defence Marshall told the court that, ‘he lifted up the sword to ward of [sic] the blows, and she might have received a cut, but not intentionally; for had he intended it, one blow must have been mortal’. Marshall was acquitted of the charges on the basis of his own evidence and that of his employer, who stated that ‘The prisoner has been an old soldier; and, if he had intended to give her a blow, he would have destroyed her instantly.’<sup>442</sup>

Examining domestic violence in eighteenth-century army families, Hurl-Eamon makes the case that, while violence and assaults within marriages seem to have been fairly common, with such behaviour largely ignored by others within the military communities, the number of fatal incidents was remarkably low given the requirement for soldiers to keep their weapons with them. This same logic applies more generally to murder, and serious assaults by soldiers: with weapons easily to hand, and men trained and inured to violence as a necessary component of their service, it is surprising that such cases were as infrequent as they appear to have been. Indeed, Hurl-Eamon suggests that soldiers may have actively sought ‘to control their fighting impulse’, and may have been more cognizant of the risks involved in using weapons.<sup>443</sup>

Not only, then, was the soldier’s experience shaped by his profession in terms of the kinds of weapons available to him, but it is also worth considering that soldier service may have made men less violent than their civilian counterparts, or at least more conscious of the potential effects of violence, and enabled, through their training to better exert greater control over their own violent impulses.

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<sup>442</sup>t18230409, *Old Bailey Proceedings Online*, , www.oldbaileyonline.org, April 1823. [Accessed 10 Oct 2014]

<sup>443</sup> Hurl-Eamon, *Marriage and the British Army*, p. 212.

## Conclusion

There are, as already noted, several reasons for caution in identifying the soldier experience of violent crime from the courts martial records. The number of cases, of any kind, is relatively low, compared to regulatory offences or property crime, which makes statistical analysis much less certain and the low number of cases may well reflect a lack of recording, rather than a lack of offending. Similarly, as in the civilian sphere, identifying violent crimes at all is problematic. Referring to analysis of crimes under English law, Beattie suggests that, ‘simple assault, [...is...] the least satisfactory category to deal with’, in part because of the multiplicity of meanings which could attach to such an offence, but also because in only a few cases, ‘can one learn from the indictment about the circumstances surrounding a case’.<sup>444</sup>

If such considerations complicate an analysis of assault by civilians, this must stand doubly so for assaults by soldiers, particularly if directed at their military superiors. Just as the numbers overall are very low, they are also likely to be heavily weighted towards violence against officers, NCOs and soldiers acting in an official capacity, whilst under representing both assaults on civilians and interpersonal violence between soldiers of the same rank. Additionally, the analysis here relates to both violent assault and threats of violence, so some of the cases we have examined may not reflect an actual intention to do violence on the parts of the perpetrators. Finally, the soldier experience of crime as victim may not be adequately reflected in military justice records, omitting as they do assaults by civilians. That said, some tentative suggestions can be made about the soldier experience of crime, and a number of apparent trends and common themes drawn.

The first broad trend relates to the role of alcohol in violent crime. As noted in Chapter Three, the notion that alcohol problems were both endemic in the army, and lay at the root of many criminal and disciplinary offences is not new. The GRCM and GCM samples and RCM returns seem to bear out this pattern. Given the earlier findings that some soldiers engaging in theft and resale were willing to be paid in alcohol for the goods they’d stolen, suggesting that even thefts of unrelated materials were

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<sup>444</sup> Beattie, ‘The Pattern of Crime in England’, p. 62.

sometimes still committed in order to procure alcohol, it is unsurprising to find evidence within the courts martial records of alcohol as a spur or precursor to some violent crime.

Another broad trend relates to the direction of soldier violence. Violent assaults, or threats considered serious enough by military authorities to warrant a formal court martial were much more likely to have been directed inwards against other members of the regimental community than outwards against non-regimental civilians. Though this may be partially accounted for by the practice of handing over offenders to the civilian authorities in cases with civilian victims, given the disparity between the results from 33rd at home, the 34th in India, and the 37th in Canada, it seems likely that this trend holds true for regiments serving in locations where handing offenders to civilian authorities was much less likely.

Just as the employment disputes suggest a leaning towards a civilian mindset, in violent crime we see evidence of a more ‘soldierly’ outlook. Taken alongside the apparent trend of soldiers acting together in some kinds of violent crime against civilians, such as the robbery of civilian shops, or obtaining alcohol by force, but primarily acting alone in other kinds of violent crime against civilians, particularly rape or sexual assault, this offers an insight into who and what soldiers considered ‘fair game’. Though the refined ‘group norms’ of battlefield companies may have been diluted or weakened in peacetime service, or through the breaking up of battalions and regiments, soldiers had a clear idea of what was or was not acceptable behaviour towards civilians according to their own unwritten rules.<sup>445</sup>

Serious violence and threats by soldiers were most likely to be directed upwards against representatives of regimental authority or control, rather than against each other. This would seem to fit well with Tatum’s and Burrough’s assertions about some of the negotiating strategies employed by soldiers and is something which will be considered in greater detail in Chapter Six. For now, though, it is important to note that the soldier’s experience of violent crime was highly contextual, not just in terms of his profession, but also in terms of his specific role within the regiment, and

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<sup>445</sup> Coss, p. 15- 20.

more importantly, that this experience altered in line with his career progression.

To conclude, we can see from these trends that while in broad terms violent crime for the soldier and civilian during this period was fairly similar, in some ways the soldier's experience was specific to his profession. The particular relationships that soldiers had with the chain of command, civilian populations from whom they were at times either physically or mentally separated, and each other as fellows and therefore arbiters of acceptable soldier behaviour, all played their part in creating a profession-specific experience of violent crime. Alongside these cultural factors, the availability of weapons and formal weapons training meant that violence, when it did occur, often took a very specific form and shape.

## Chapter Five: Property Crime and Offences of Dishonesty

### Introduction

A large proportion of the courts martial trials examined for this study concerned crimes of dishonesty, such as theft or fraud. Though this may seem the simplest category to assess, there are complicating factors that make defining such offences problematic. For example, as discussed in Chapter Two, the practice of ‘bounty jumping’, in which a soldier enlisted into a regiment, receiving a bounty for doing so and then deserted that regiment to enlist in another and receive another bounty, in some cases was a clear act of fraud. Some soldiers ‘jumped’ through multiple enlistments, effectively defrauding each new regiment of bounty payments. For some of the soldiers who deserted one regiment and reenlisted into another the case for fraudulent intention is much less clear. Similarly, the apparent theft of a soldier’s own necessaries may represent anything from a sense of moral ownership of the uniform for which he had himself paid, through to the deliberate defrauding of the regiment, to accidental loss.

Much of the recent scholarship looking at crime amongst soldiers has focused on them largely as an occupational group. Property crimes in particular seem to lend themselves to this interpretation. Hurl-Eamon’s work on military families in London, for example, demonstrates some compelling similarities between soldiers’ families and the workers and families of other trades. And the evidence from both courts martial records and soldier memoirs seem to confirm, that many instances of theft by soldiers were driven by a similar set of circumstances and contextualised within a similar set of cultural assumptions. Petty theft and minor fraud, particularly against employers, as well as a conflict between what was considered customary rights by employees and theft by employers featured in working civilians’ and soldiers domestic economies.<sup>446</sup> Low pay and insecure domestic economies were prime factors in both soldier and civilian theft. As Coss explains, the intermittent failure of the army to fully provide for soldiers’ basic needs, particularly whilst on campaign, inexorably led to a culture of plundering: ‘the British ranker’, he suggests, ‘had little choice

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<sup>446</sup>Rule, ‘Social Crime in the Eighteenth and Early Nineteenth Centuries’, pp. 152-54; Hurl-Eamon, ‘The Fiction of Female Dependence’, p. 485. ‘

but to become a consummate plunderer.’<sup>447</sup> In this chapter we will consider the role of property crime and crimes of dishonesty in the lives of soldiers, its prevalence within the military justice records, its key characteristics, how it was treated and the responses it drew within the regimental community. Along with identifying and, to a limited extent, quantifying such crimes within a regimental setting, this section will also identify some of the rank-specific elements of theft and fraud

### **Theft and fraud in context**

As with the analysis of violent crime in the previous chapter, to understand how theft and fraud featured in the lives of soldiers, it is also useful to understand how such crimes were viewed and treated in the civilian sphere. Property crimes of various kinds dominated the eighteenth- and early nineteenth-century judicial landscape in Britain, and at times represented the frontline in a definitional war between traditional working cultures and developing employment cultures.<sup>448</sup> It was during this period that the so-called ‘bloody code’ reached its heights in English law, as more property crimes were rendered capital offences.<sup>449</sup>

Attitudes towards property crime and the manner in which the law dealt with offenders shifted towards the end of the eighteenth and beginning of the nineteenth century, with calls for more humane treatment mirrored by similar discourse in military circles.<sup>450</sup> Paradoxically, as defendants in the civilian sphere became more likely to face capital charges for property crime, their chances of acquittal or of being found guilty of charges of reduced seriousness increased.<sup>451</sup> Some property crimes were relatively easy to categorise, and sit at the apex of eighteenth-century British conceptions of crime. Housebreaking and burglary, combining both an assault on property with an assault on privacy were both common offences and prominent in public discourse on crime. Frank McLynn argues that ‘[b]reaking and entering private property with felonious intent was the most commonly encountered capital crime of the eighteenth century’, with

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<sup>447</sup>Coss, p. 107.

<sup>448</sup>Godfrey and Lawrence, *Crime and Justice, 1750 – 1950*, p. 150.

<sup>449</sup>McLynn, pp. xi, xv, 89; also, Beattie, ‘Patterns of Crime in England’, p. 47-49.

<sup>450</sup>McLynn, , xiv; also, Strachan, pp. 80-83.

<sup>451</sup>Beattie, *Crime and the Courts in England, 1660-1800* (Oxford: OUP, 1986), p. 146; ‘The Pattern of Crime in England’, p.80-81; also, McLynn, p. 87

burglary and housebreaking representing ‘the humdrum, inert, unchanging rump of crime throughout the century’.<sup>452</sup> The horror with which this set of offences was viewed in eighteenth-century Britain, can be seen in how it was treated in law. Burglary was a recognised capital offence by 1688, and this was extended to aggravated housebreaking by day in 1708, and to shops and warehouses by 1763.<sup>453</sup>

Breaking into houses and stealing goods is a relatively simple crime to categorise, recognisable as criminal by most if not all contemporaries, regardless of class or station. Some offences, though, were not universally recognised as theft. As Rule suggests, some crimes ‘were not held to be crimes in the popular view’.<sup>454</sup> During the eighteenth century in Britain, the status of long held customary rights, based on residency, need, or employment, were challenged by the propertied and employer classes and in many cases overturned and recast as theft.<sup>455</sup> Conflicts erupted over the ‘perks’ that tradesmen and their families considered a natural part of their domestic economies.<sup>456</sup> In her examination of military families’ survival strategies, and in particular the role of women in those strategies, Hurl-Eamon utilises the Old Bailey trial records to demonstrate a number of key features of crimes involving military families. Through them a picture emerges of a much more subtle and graduated contemporary view of crime than the bald headlines of charge and sentence might suggest. For many of the women in Hurl-Eamon’s study, what in law was seen as theft, was for them the more forgivable act of ‘borrowing’, often mitigated by the use of pawnbrokers, rather than the outright sale of the goods.<sup>457</sup> That this mitigation was expected to be convincing can be attested by the number of times it was offered in defence.

In some cases, then, the definition of acts as criminal was contested, and in particular contested between members of the economic class most likely to commit those offences and members of the economic class most likely to prosecute them. As discussed in Chapter Three, though the

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<sup>452</sup> McLynn, p. 87; also see Beattie, *Crime and the Courts in England*, p. 148.

<sup>453</sup> McLynn, p. 87.

<sup>454</sup> Rule, ‘Social Crime’, p. 158.

<sup>455</sup> Rule, ‘Social Crime’, p. 158.

<sup>456</sup> Rule, ‘Social Crime’, pp. 152-54.

<sup>457</sup> Hurl-Eamon, ‘The Fiction of Female Dependence’, p. 485.

relationship between soldiers and their commanding officers was in many ways quite distinct from that of civilian employees and their employers, soldiers often carried aspects of those traditional cultural assumptions with them into the regiments, reshaping and adapting them to a military setting.

### **Theft and Fraud in the GRCM, GCM and RCM Samples**

As with violent crime, the courts martial records cannot give us a complete picture of theft and fraud by soldiers. In particular, the figures for theft from civilians may be less representative given the likelihood that some crimes would have been tried within the civilian justice system. Nevertheless, there are some patterns of behaviour which become apparent through the trial records, as well as features of soldiers' domestic economies, some of which show a clear continuance with civilian cultures, and some of which appear to show a distinct, soldier experience. They also indicate that the soldier experience of theft and fraud was in some respects distinguished by rank.

Across the six sampled years from the GRCM register, there are a total of 597 trials, ending with conviction, with charges of theft, fraud or embezzlement, including those showing a combination of two or more of these charge types.<sup>458</sup> A little over a quarter of the trials ending in conviction from 1813-1814 include charges for theft or handling stolen goods, a little over a third of the trials from 1819-1820 and just under half of the trials from 1825-1826. Frauds, in this analysis taken to include embezzlement and forgery, are much less frequent charge types, with only 11 such charges for the years 1813-1814 compared to 125 theft charges, 10 fraud charges for 1819-1820 compared to 116 theft charges, and just three fraud charges for 1825-26 compared to 323 theft charges. Across the two sampled years of the GCM register, a little under 30% of the entries concerned theft or fraud, with fraud accounting for only three of 86 such trials.

Looking at the three regiments, we see a similar picture. Approximately one third of the RCM trials recorded by the 33rd for the period September 1818 to September 1819 involved charges of theft or

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<sup>458</sup> WO 89/4; 89/5.

fraud, with the regiment also trying one soldier for theft at GRCM level and another at GCM. Around 40% of RCM trials recorded by the 34th for the same period were for theft or fraud, with two soldiers tried at GRCM level and none at GCM. And a third of RCM trials recorded by the 37th were for theft or fraud, with no soldiers tried at GRCM or GCM level. Again, theft charges greatly outnumber fraud charges in the RCM returns.<sup>459</sup>

For the statistical analysis of theft and fraud the same categories of victim have been identified as for the analysis of violent crime. Just as with violent crime, however, many of the charges do not specify a victim at all. In many cases the soldiers concerned faced simple charges of theft, with no additional information offered as to the nature of the crime or the kinds of goods stolen. In some cases the items stolen were recorded, but not the victim. Where there is sufficient reason to assume a likely victim type, the case has been assigned to a victim category. For example, the theft of a ‘great coat’, a staple of the soldier’s regimental necessaries, is assumed to have involved a victim from the fellow soldier category. On the other hand, where there are insufficient grounds to assume a victim type, none has been assigned. For example, in a case from 1814, in which Private Farrell, of the 26th was found in possession of stolen cheese, it is quite likely that the cheese was stolen from a civilian; however, it is equally possible that it was stolen from regimental stores, the officer’s mess, the company canteen, or the soldier’s employer.<sup>460</sup> In other cases, the type of charge has been taken to indicate a particular victim type. Much as the charge of robbery is assumed, because of its accepted meaning as a legal term, to involve an element of violence or threat, so the charge of burglary, as a crime committed in a private house, has been generally assumed to involve a civilian victim.

**Table 5.1: Victims of theft at RCM, GCM and GRCM** <sup>461</sup>

Victim Type	RCM 1818/19			GRCM			GCM	Total
	33rd	34th	37th	Set 1	Set 2	Set 3	1818-1819	
<b>Fellow</b>	1	3	1	9	3	0	0	17
<b>NCO</b>	0	0	2	4	0	0	0	6

<sup>459</sup> WO 27/147; 27/148.

<sup>460</sup> WO 89/5

<sup>461</sup> Figures taken from: WO 27/147; 27/148; 89/4; 89/5; 90/1; 92/1.

<b>Officer/Employer</b>	0	0	1	8	1	2	1	13
<b>Regiment/Army</b>	10	34	8	69	97	283	7	508
<b>Other Service</b>	0	0	0	2	0	0	1	3
<b>Civilian</b>	0	2	0	18	0	2	27	49

The overall balance between civilians and military personnel as victims of theft and fraud appears broadly similar for each of the sampled pairs of years from the GRCM register, with a sharp spike in both for 1813 to 1814. It should be noted that the spike in civilian victims was less sharp than it appears at first glance, given the much higher propensity of perpetrators to act together in thefts from civilians than in thefts from fellow soldiers: in terms of the number of incidents, the fellow soldier category drops to eight, NCO and officer categories remain the same and the civilian category falls to 12. Even with this adjustment, however, the rates of theft and fraud from both civilians and military personnel were significantly higher for this first pair of years. This seems to reflect a continuation of the high rates of theft and fraud from non-corporate, individual victims recorded in the first six months of the register, covering the second half of 1812.

On the other hand, the proportion of thefts and frauds from regiments or the army as corporate institution was significantly lower during this period. Both the spike in civilian victims and the lower levels of corporate victims make sense when considered alongside the unusually high proportion of Britain's army actively on campaign during this period. Regiments on the march were far more likely to resort to a court martial than hand the culprit over to the civil powers, even where the victim was a civilian. At the same time, both the opportunities for theft and the need for plunder often increased for soldiers on the march, passing through multiple towns and villages, and intermittently, but very seriously, failed by army supply systems.<sup>462</sup> Soldiers on campaign also seem to have been less likely to desert than when settled and continued possession of serviceable clothes and accoutrements was at a much greater premium, which would be expected to significantly reduce the number of soldiers charged with selling, or making away with their necessaries.

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<sup>462</sup> Coss,, p. 18.

One of the more difficult categories of victim to quantify through courts martial records is the civilian victim. Whilst some soldier on soldier thefts would be dealt with in the civilian system, particularly when they occurred in town billets, on the whole, thefts by soldiers from officers, fellow soldiers or the regiment would more often be tried within the military justice system. Thefts from civilian victims might be tried in either civilian or military systems, with a much greater chance that the perpetrator would be handed over to the civil powers in such cases.

Even taking this into account, bearing in mind the GRCM register includes trials in many of the places where passing the defendant over to a civilian authority was unlikely, the number of identified civilian victims of theft seems low. If, for example, we look just at GRCM trials held in Gibraltar where soldier offenders would almost always remain within the military justice system: in the 1813-1814 sample set, five of the trial listings from Gibraltar were for theft, only two of which involved identifiable civilian victims, both relating to the same incident. In the 1819-1820 set, two trials were for theft with no identifiable civilian victims and for the years 1825-1826, 15 of the Gibraltar trials were for theft offences, two of which involved possible civilian victims.<sup>463</sup>

Looking at the three sets of regimental returns for the year September 1818 to October 1819, we again see a similar spread of victims of theft. Given that at least half of the 33rd were stationed at home during the period covered by the RCM returns, it is to be expected that they may show fewer civilian victims of crime; however, no identifiable civilian victims for either the 33rd, or the 37th in Canada does seem surprisingly low, particularly given that a large detachment of the 33rd spent some of this period in Guernsey where a court martial would have been far more likely than a court case in the civilian sphere.<sup>464</sup>

At GCM level, the proportion of trials for theft or fraud, in which a victim is identifiable at all, is very low. The charges recorded in the GCM register are primarily very simple, with most stating charges of ‘theft’ or

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<sup>463</sup> WO 89/4; 89/5; Gibraltar had no independent civilian courts until the end of the Napoleonic Wars, and even then the island remained effectively under military rule: Ilya Berkovich, *Discipline and Control in Eighteenth-Century Gibraltar*, in *Britain's Soldiers*, ed. by Lynch and McCormack, pp. 114-130.

<sup>464</sup> WO 27/147; 27/148

‘robbery’. Of those that do specify a victim, or give enough information for one to be assumed, as in the case of burglary, the majority appear to have been crimes against civilians, though as with the GRCM figures, the tendency for soldiers to act together in offences against civilians inflates their presence: with this taken into account the number of civilian victims falls by almost two thirds to 11, whilst all other categories remain the same.

Thefts from the regiment or army as an institution account for only a quarter of identified victims in the GCM sample. This underlines the seriousness with which the army took offences against civilians, with such offences much more likely to be tried at GCM than GRCM, or RCM level. It also suggests that the ubiquitous offence of taking away necessities, which accounts for four of the thefts against the regiment, or army as institution, was treated far less seriously, and was more likely to be dealt with at the lower levels of military justice. With only a single instance of theft from an officer and a single incident of theft from a sepoy, it seems equally likely that thefts from individuals within the regimental communities were far more likely to be dealt with within the regiments themselves.<sup>465</sup>

Looking at all the samples together, with six years of GRCM and two years of GCM for the whole service and a single year of RCM for three regiments, adjusting for numbers of incidents, we can see that overall, regiments, or the army as an institution accounted for the vast majority of identifiable theft and fraud victims, with thefts from individual victims rare and almost equally split between civilians and military personnel. Interestingly, whereas NCOs appear to be disproportionately present within the courts martial records as victims of violence and threat, they are much less present as victims of theft or fraud, outnumbered by both privates and officers and accounting for around 15% of identifiable victims from the military personnel categories, a figure far more in line with their regimental presence than that for NCO victims of violent crime. The number of ordinary-ranking soldier victims, however, seems low compared to their presence in the regiment. That said, unlike NCOs, they seem more likely to

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<sup>465</sup> WO 90/1; 92/1.

have been victims of theft than of violent crime. A little under half of the military personnel identified as victims were privates.

There are some important caveats to this, though, and the picture that comes through the courts martial records can only be partial at best. If civilian victims are likely to be under represented due to some prosecutions taking place within the civil rather than military sphere, it is also likely that privates may be under represented as victims because of a lack of prosecution in many cases. We have already seen how low level violence among the men may have been accepted or ignored, and when recognised tackled at personal or sub-judicial levels, with both the soldiers' own informal codes and ad-hoc regimental discipline playing their parts, but leaving little trace in the records. For soldiers living together, in barracks, tents and billets, opportunities for petty theft and pilfering were manifold and anecdotal evidence from soldier memoirs suggests that such thefts were at least an occasional fact of army life. Unlike violent crime, much of this activity would have been unseen, with the loss of the stolen items known, but not the identity of the perpetrator. And as we will see in Chapter Seven, the black market, which operated within regiments and out into the civilian world, offered ample opportunity to dispose of stolen goods.

Even where the identity of the thief was known, soldiers may have been far more likely to seek justice through informal, or semi-formal mechanisms than through the formal military justice system. As Coss suggests these less formal mechanisms, centred on the soldier's own company and comrades, operated to regulate deviant behaviour for the sake of group cohesion and survival, and few acts went so far against that group cohesion than petty theft from comrades.<sup>466</sup>

The low numbers of thefts from fellow soldiers in the courts martial records may reflect a lack of recording, or a high rate of sub-judicial responses by officers, but they may equally reflect the success of self-policing within companies. In one of the entries to his *Military Bijou*, Shipp outlines in some detail, how this informal, or semi-formal system operated:

The most efficacious remedy, for redressing these little pilferings, is committing the delinquent to the castigation of his comrades, which they call, in the infantry, "cobbing," and

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<sup>466</sup> Coss, p. 19.

"booting," in the cavalry. The former is flogging with a belt; the latter, with the same implement, but on the sole of the foot. Besides these, castigations are used, in which every drum boy, of the troop or company to which the offender belongs, heartily joins. Previous to such inflictions, the delinquent is fairly tried by a president—the oldest soldier; members, two next oldest soldiers; youngest soldier; next youngest soldier.

In Shipp's opinion, this system worked well, and 'Theft in the army [...was...]less frequent than any other crime'<sup>467</sup>

The potential impact on a soldier's life of such thefts was in some ways the same as it would have been for anyone of his class. For those with very little, even a small theft could represent a major loss. But in some ways the soldier's experience differed from that of his civilian counterpart. Time after time we see in the records soldiers, like Private John Turner, of the 16th Foot, in Sunderland, convicted of 'Desertion and making away with his own & Comrades Regimental Necessaries'.<sup>468</sup> Set alongside that we also see, with regularity, soldiers convicted of 'losing their regimental necessaries' or 'being deficient in their regimental necessaries'. Two cases from the Boston order book seem to illustrate rather neatly the potential impact of the theft of regimental issue on the day to day life of a soldier. The first is an entry for the 23rd November 1774 and records the trial of Charles Neil of the 18th, 'on suspicion of making away with a Shirt of Jo. Scott's of sd. Comp.' for which crime he was sentenced to five hundred lashes.<sup>469</sup> The second case is a later entry from March 1775, which records the trial of Thomas Davis, also of the 18th Regiment, 'For lending a shirt to pass the Review.'<sup>470</sup> Davis was acquitted, but the fact that it made it to a court martial at all suggests that this would have seemed a credible charge to regimental officers. Being 'deficient' in the clothes and accoutrements which all soldiers were expected to keep had serious implications, particularly when soldiers faced inspection and review.

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<sup>467</sup>Shipp, *The Military Bijou; Or The Contents of a Soldier's Knapsack: Being the Gleanings of Thirty-three Years' Active Service*, Volume 1, (London: Whittaker, Treacher, and Company, 1831) p. 187; for the use of ostracism as a similar strategy for informal justice among soldiers, see Coss, pp. 7, 119.

<sup>468</sup>WO 89/4.

<sup>469</sup>Baule and Hagist, p. 14.

<sup>470</sup>Baule and Hagist, p. 17.

For soldier victims of theft, particularly where regimental necessaries were concerned, there were clear risks in reporting such a theft unless the victim had a good idea of who was responsible, because of the potential for drawing a charge of being ‘deficient in’ or having ‘lost’ their regimental necessaries and themselves having to face a court martial. From the *Proceedings of the Old Bailey*, the trial of John Antrobus, 26 October 1814, for the theft of several items of regimental issue, demonstrates this very well. This trial will be considered in more detail in Chapter Seven as it offers a good deal of insight into the black-market trade in soldiers’ necessaries, but it is also relevant here for what it can tell us about the risks faced by soldier victims of theft. One of the items stolen by Antrobus was a pair of regimental overalls, and as a result of that theft, John Sullivan, the soldier to whom they had belonged was punished and put under stoppages to the value of thirteen shillings and sixpence.<sup>471</sup> In this instance, the perpetrator was not a comrade of Sullivan, but the implications in terms of his being deficient in necessaries as a result of theft are no different because of this.

## **Key Features of Theft Crimes**

### **Burglary and Housebreaking**

In English law the offence of burglary was defined as ‘breaking into a dwelling house at night with intent to commit a felony (normally theft), or actually doing so’. House breaking, meanwhile, was the same offence carried out during daylight hours, though considered marginally less serious than burglary, in which the likely presence of the victim was assumed.<sup>472</sup> For the purposes of this chapter, the offences of burglary and housebreaking refer solely to acts, or intended acts, of theft. As with the most serious violence charges, such as murder, burglary and housebreaking were capital crimes and were therefore supposed to be tried only at GCM level. As such, their presence in the GRCM register and the RCM returns is small.

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<sup>471</sup> *Old Bailey Proceedings Online*. t18141026-119, Trial of John Antrobus, 26 October 1814, [www.oldbaileyonline.org](http://www.oldbaileyonline.org) [accessed 23 February 2013].

<sup>472</sup> Emsley, Hitchcock and Shoemaker, "Crime and Justice - Crimes Tried at the Old Bailey", *Old Bailey Proceedings Online* <[www.oldbaileyonline.org](http://www.oldbaileyonline.org)> [Accessed 16 September 2014 )

Looking at the GRCM register, only three entries show clear charges of burglary or housebreaking for the purpose of theft, with a further four which are unclear but may have involved acts of housebreaking or forced entry to a property: two privates were convicted of ‘plundering from an inhabitant’, for example, which may well have involved forced entry but which cannot be assumed as such.<sup>473</sup> Even at GCM level, where such offences were more likely to be heard, the figures seem low, bearing in mind McLynn’s contention that burglary and housebreaking represented the ‘rump’ of capital cases within the civilian sphere. Looking at the GCM trials conducted between 1 January 1818 and 31 December 1819, there were 20 convictions, which were clearly for burglary or housebreaking for the purpose of theft, with a further nine in which the charges may refer to such offences: three soldiers, from the 2nd Dragoons were tried for ‘feloniously stealing in a dwelling house’, for example, but whether they had entered the premises illegally is unstated.<sup>474</sup> Similarly, 10 soldiers were tried and seven convicted of ‘Entering a house and assaulting the inhabitants’, but whether the soldiers were intending to steal, or had entered the house specifically in order to carry out a violent assault is not known.<sup>475</sup> Even counting these less clear examples, when we take into account soldiers acting together, the number of individual incidents was small, with only 10 instances of burglary or housebreaking for the purposes of theft, and a further two possible incidents across two years of the GCM registers; a significant proportion of theft cases, perhaps, but given that the registers purport to list all the GCM trials conducted by the army at home and overseas, this seems lower than might be expected. One possible reason for this may be the likelihood of such offences involving a civilian victim and therefore the increased likelihood that the perpetrators would have been handed over for trial in the civilian system. It is notable, for example, that none of the incidents of burglary and housebreaking, recorded in either the GCM or the GRCM registers involved soldiers stationed at home, where the likelihood of such a crime being tried in the civilian justice system was highest.

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<sup>473</sup>WO 89/4.

<sup>474</sup>WO 90/1.

<sup>475</sup>WO 90/1.

Further, all of these incidents occurred in 1818, with no GCM burglary or housebreaking trials recorded for 1819. Of those 10 incidents, five occurred in France, whilst the allies were in occupation. There was also a single incident, recorded in the GRCM register for 1818, of an armed soldier ‘quitting the camp for the purposes of plundering’, again in France. Given the British army in France in 1818 numbered around 25,000 men, this is a very small number of incidents; however, it still represents a sharp increase. Accepting that the army, in this context, was far more likely to try offenders by court martial than pass them over to civilian authorities, and that incidents involving soldiers serving in other places may be less well represented, it still suggests that spikes in offending may reflect very specific conditions and circumstances.

It would be reasonable to expect that there may have been cases of burglary by soldiers, tried at the Old Bailey; however, even here the numbers are startlingly low for these years. Indeed, if we take a single year of courts martial records alongside the *Proceedings*, the number of soldiers tried for burglary or housebreaking seems vanishingly small. From September 1818 to September 1819, only one soldier was tried by GRCM for housebreaking, or more specifically, ‘forcibly entering a hut’.<sup>476</sup> During that same year, nine soldiers were tried by GCM for five incidents of burglary.<sup>477</sup> From our three sample regimental returns for the same twelve month period, there were no such offences recorded by the 33rd, nor were there any recorded for the 37th, while the 34th recorded a single clear example of housebreaking and a second case in which housebreaking was implied but in which theft may not have been the intention.<sup>478</sup> A search for the key words ‘soldier’ or ‘regiment’, in the *Proceedings of the Old Bailey* online collection, specifying the sub-categories of burglary and housebreaking for the same twelve month period identifies only two cases of soldiers tried for such charges: one was tried for burglary but acquitted and one who was tried for burglary on the reduced charge of stealing in a dwelling house.<sup>479</sup> Indeed, the same search applied to the six years

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<sup>476</sup> WO 89/4.

<sup>477</sup> WO 90/1; 92/1.

<sup>478</sup> WO 27/147; 27/148.

<sup>479</sup> Old Bailey Proceedings, t18190707-3, Trial of James Roberts, 7 July 1819; t18190217-6, Trial of Daniel M’Vey, 17 February 1819.

corresponding to the GRCM sample, identifies only a single case of a soldier convicted for either of these offences for the whole six year sample.<sup>480</sup> Clearly, this can only speak for cases in which the defendant has been identified as a soldier, and there is no way to know how many soldiers may have been tried without being identified as such, but it does seem to indicate a low presence overall.

Taking into account courts martial from outside the years covered by the sample, again it is clear that burglaries and housebreaking offences did occur intermittently. As noted in Chapter Four, there was a particularly dramatic case in New York, in 1779, in which several soldiers committed a series of burglaries, stealing a large quantity of goods, and using extreme violence against their victims including assaulting an old woman and attempting to rape a young girl. In the same year, another soldier in New York was convicted of house breaking, as was a soldier in Minorca.<sup>481</sup> But the relatively low frequency of these offences in the courts martial samples suggests that they were by no means a common occurrence.

### **Theft with Violence**

Setting aside the most serious kinds of violence, such as murder, even fairly mundane property crimes were generally considered more serious under English law than violence offences such as assault or intimidation; however, thefts which also involved acts of violence or threat were considered some of the most serious offences of all.<sup>482</sup> As such we might expect to see a similar placement of these charges within the different levels of courts martial as already noted for burglary and house breaking. In fact, cases of theft with violence are slightly less present in the GCM sample, wholly absent from the RCM samples, but far more present than burglary within the GRCM samples. Across the two years sampled from the GCM register, 16 soldiers were convicted of acts of theft with violence as a clear component of those acts. The number of separate incidents, however, was much lower: with only two of the soldiers having acted alone, the total

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<sup>480</sup> Old Bailey Proceedings, t18201028-53, Trial of Martin Feeley, , October 1820

<sup>481</sup> WO 71/90, Trial of Robert Disco, 15 November 1779,

<sup>482</sup> In their summary of the kinds of charges contained in the Old Bailey proceedings, Emsley, Hitchcock and Shoemaker consider that the offences of robbery and highway robbery were ‘some of the most serious tried by the court’, because of ‘the combination of violence and theft’.

number of incidents was just seven. Across the six years sampled from the GRCM register, 32 soldiers were convicted of theft with violence. Again soldiers primarily seem to have acted together in pairs or groups, bringing the number of separate incidents down to 18.

Over half of the charges give no indication of the victims of theft with violence and in only one of the GCM cases is there an identifiable victim: a quartermaster, of the 6th Dragoons, who was robbed by a deserting soldier. The cases from the GRCM register are a little more forthcoming, with a victim identified or indicated in 11 cases. With such a small proportion of identified victims it is difficult to say with confidence at whom this kind of offence was most directed; however, it is notable that with six civilian victims, three privates, a single officer, and one sailor, the proportions of civilians and military personnel are broadly similar to those of theft offences generally. Similar to burglary and housebreaking, it would be reasonable to expect that violent theft offences against civilian victims might have been more likely to have been tried in the civilian system, particularly for soldiers stationed in Britain.

Again, though, at least for the *Proceedings*, examples are few and far between. A search in the *Proceedings* for the terms ‘soldier’ or ‘regiment’, in the violent theft category shows only six soldiers tried and five convicted of ‘highway robbery’ for the six years corresponding to the GRCM sample, along with a further trial in which two defendants were described as having been dressed ‘like soldiers’, but who were not identified as soldiers during the trial.<sup>483</sup> The convictions relate to two incidents for the period 1813 to 1814 and a single incident in 1826; however, one of these involved a soldier violently robbing a drummer who was newly arrived to the same barracks.<sup>484</sup> In only two cases do the *Proceedings* indicate soldiers violently stealing from civilians.

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<sup>483</sup>For the soldiers who were convicted, see; *Proceedings*, t18140706-4, Trial of Michael Maroney and John Ashton, 6 July 1814; t18141026-3, Trial of Patrick Smith, 26 October 1814; t18260511-24, Trial of John Price and John Goodwin, 11 May 1826; for the soldier who was tried and acquitted, see t18141130-4, Trial of John M’Gawley, 30 November 1814; and for the two defendants dressed as soldiers, see t18141026-36, Trial of John Anderson and Thomas Dooley, 26 October 1814.

<sup>484</sup>t18141026-3, Trial of Patrick Smith.

Convictions in the civilian system are worth considering here. According to a parliamentary report on convictions in England and Wales for the period 1811 to 1817, 2% of all theft convictions were for theft with violence and 5% for burglary or housebreaking.<sup>485</sup> Across the three sets of courts martial samples 7% of theft convictions were for theft with violence and 3% for burglary or housebreaking. Taken together, with burglary and housebreaking included both as acts of violation of privacy and as potentially putting the occupants in fear, convictions of this kind accounted for around 10% of all theft cases, whilst the percentage of thefts which were violent in the parliamentary report is just under 7%.

At first glance this appears to show a higher propensity for soldiers to commit acts of violent theft; however, there are a number of complicating factors. In the parliamentary report the overall numbers of convictions increased steadily across the seven years covered, whilst the percentage of theft convictions that included violence or burglary charges also increased, though not quite as steadily: in 1811 the percentage was 5%, in 1812 it was 6%, in 1813 it was 7%, in 1814 and 1815 it was 5%, in 1816 it was 8%, and in 1817 it was 8.5%. The results from the courts martial records are far less steady. In the GRCM register sample, 12% of the theft charges for 1813 to 1814 were for violent theft or burglary, but only 2% of the theft charges for 1819-1820 and 4% for 1825-1826. In the GCM register sample, these offences accounted for an enormous 40% of all theft convictions, but they were all from 1818, with not a single example from 1819. Whereas, the court convictions show a low but constant presence of violent theft offences, the courts martial convictions show a generally very low presence with occasional peaks.

The reluctance of juries to convict capital charges and the apparent preference for conviction on lesser or partial charges also make it likely that burglary and violent thefts were under represented by convictions in the parliamentary report.<sup>486</sup> In 1817, for example, 373 people were convicted of burglary and 152 for house breaking, but there were also 143 people

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<sup>485</sup> House of Commons Papers (PP), *May 13, 1818* (289), *An account of the number of persons, who were committed to the different prisons in England and Wales, for trial at the assizes and sessions held for the several counties, cities, towns, and liberties therein, during the last seven years [...]*

<sup>486</sup> Beattie, 'The Pattern of Crime', p. 55.

convicted of stealing ‘in a dwelling house’. Similarly, whilst 154 people were convicted in that year for robbery, 257 were convicted of ‘Larceny from the person’. And as discussed in Chapter One, the various stages of discretion which lay with the victim, along with the onus of apprehension and the cost of prosecuting, meant that many of those accused of crimes, and who entered the judicial system on the way to prosecution, were never tried at all.<sup>487</sup> Table 3 of the parliamentary report records the number of people committed to prison, but for whom ‘no bills were found’ and who were therefore ‘not prosecuted’. This group accounted for around 16% of all those committed to prison in England and Wales, from 1811 to 1817.

Though both civilian and military systems were such that a large number of thefts and assaults would have gone unreported, the tendency, once a crime was reported, for the accused to be channelled back out of the system without a verdict was a much bigger factor in the civilian system. As Gilbert states, ‘the civilian practice of indicting men whose case might not come to trial has no precise military counterpart’.<sup>488</sup> Whilst petty theft and pilfering among soldiers was likely to be dealt with at a sub-judicial level, more serious offences were far more likely to be reported. Once reported, the choice not to pursue a prosecution was removed from the victim, by the military system. That same system also meant that the victim was not expected to pay for the prosecution. Thefts with violence may therefore be over represented as a proportion of all thefts within the courts martial record. In the civilian system convictions for theft were likely to more accurately reflect thefts against people for whom conviction was affordable than against those for whom prosecution was unaffordable.<sup>489</sup>

With all of this in mind it is worth considering that soldiers may have been less likely than civilians to commit acts of violent theft, particularly taking into account the soldiers’ own internally enforced codes of behaviour and the way in which these may have acted both to separate the soldier from civilians and also protect civilians from soldiers. At the same time, the tendency for soldiers to act in groups may have made such

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<sup>487</sup> King, p. 717.; also, Beattie, ‘The Pattern of Crime’, p. 62.

<sup>488</sup> Gilbert ‘Military and Civilian Justice’, p. 46.

<sup>489</sup> D. Hay, F Snyder, ‘Using the Criminal Law 1750-1850: Policing, Private Prosecution and the State’, in *Policing and Prosecution in England 1750-1850*, ed. by, Hay and Snyder (Oxford: Oxford University Press), pp. 3-52 (p. 27).

offences, when they did occur, more serious and dramatic. As Philip Haythornthwaite suggests, in *The Armies of Wellington*, soldier crimes were ‘sometimes magnified by the fact that gangs of soldiers could act together’.<sup>490</sup>

Coss’s work demonstrates that soldiers’ conceptions of themselves as separate often included a sense of responsibility towards non-military persons. From the perspective of a civilian victim of the kinds of crime endorsed by the soldiers’ codes of behaviour, it is likely that this would have offered scant comfort, but the subjects of Coss’s study clearly adhered to a set of parameters in which they might act, and which offered a degree of protection to non-military victims. A clever confidence trick or an adept theft of food, alcohol or clothing all fell within the acceptable parameters of the code; however, the use of violence or threat did not.<sup>491</sup> Haythornthwaite makes a similar point, and offers as an example of soldiers’ distaste for violent theft against civilians the case of two soldiers from the Tarbert Fencibles, who robbed and killed a ‘poor pedlar’ in 1800. Both soldiers were convicted, one executed and the other flogged and drummed out of the regiment. According to Haythornthwaite, their crime, ‘caused such outrage that the NCOs and men of the regiment subscribed half a day’s pay for Webb’s widow and family, and advertised in the press their detestation of the act of their fellow soldiers’.<sup>492</sup>

Similarly, though housebreaking and looting in the aftermath of a victory or siege were not uncommon, burglary and housebreaking in more peaceful times appear to have been a rarity and this may have been an extension of that protection from violence to include the violation of privacy and domestic safety inherent in the crime of burglary.<sup>493</sup> For soldiers, as for civilians, simple thefts, not aggravated by factors such as violence or threat, were the mainstay of property crimes.

As a caveat to this it is important to note that soldiers’ attitudes towards civilians did vary according to circumstance. Gavin Daily makes a

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<sup>490</sup> Haythornthwaite, p. 65.

<sup>491</sup> Coss, pp. 18-20.

<sup>492</sup> Haythornthwaite, *The Armies of Wellington*, p. 65.

<sup>493</sup> In the civilian sphere, burglary was considered generally to include an element, or threat of violence: Hitchcock, Shoemaker, Emsley, ‘Crimes Tried at the Old Bailey’, *The Old Bailey Proceedings Online*; also, for looting, with violence after a successful siege, see Coss, p. 234.

compelling case for soldiers' attitudes towards the civilian populations in Spain and Portugal during the Peninsular War being very much affected by 'an underlying contempt for much of the local culture and way of life [...] predicated on a bearing of national cultural superiority'.<sup>494</sup> In such a context, though violent theft was still considered unacceptable by most of the soldiers, plundering seemed to go far beyond simple need, with soldiers stealing from citizens almost as a matter of course, and the number who did act with violence towards the local citizenry seems to have been higher than at other times. That said, Coss's analysis does seem to show that, while the local citizenry of Spain and Portugal often saw the worst side of the British soldier, certainly in terms of theft and plunder, aside from very specific instances of violent excess, such as in the aftermath of the siege at Badajoz, the majority of British soldiers did not consider violence against the Spanish and Portuguese civilians acceptable.

Of the 500 GCM conducted by the British army, during the Peninsula War, after desertion and regulatory offences, which accounted for the vast majority of trials, the next biggest category was non-violent theft or plundering offences, with violent thefts significantly smaller in number.<sup>495</sup> Though Oman considered that, after desertion, 'the main offence [...] was robbery, of food from the Portuguese peasantry, often accompanied by violence, and now and then by murder', these accounted for a very small number of cases overall, with only 80 plundering cases for the six years of campaigning, out of 500 GCM trials. Altogether, 57 men were convicted of theft with violence, ranging from 'a blow with the butt-end of a musket', to murder; a little under 10 men for every year of the war.<sup>496</sup> According to Coss, for the most part, the British soldiers 'exhibited a fair amount of restraint'.<sup>497</sup>

### **Common items of theft**

Exactly what soldiers were stealing is not always clear from the charges, with many soldiers charged simply with 'theft', for having 'sundry

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<sup>494</sup> Gavin Daly, *The British Soldier in the Peninsular War: Encounters with Spain and Portugal, 1808-1814* (Basingstoke: Macmillan, 2013) p. 119.

<sup>495</sup> Daly, p. 119

<sup>496</sup> Charles Oman, *A History of the Peninsular War, 2* (Oxford: Clarendon Press, 1903), p. 454; also, Coss, p. 113; Daly. P. 119.

<sup>497</sup> Coss, p. 113.

items' in their possession, or for 'stealing from His Majesty's Stores'. Similarly, in fraud or embezzlement cases, it is not always clear whether the soldier has committed fraud in order to obtain goods or money. In some cases though, we are given a clear indication of what soldiers had stolen, and taken together they show some interesting trends. Altogether, the trial listings for the six sampled years of the GRCM registers, the single year of RCM returns from three regiments and the same year sampled from the GCM registers specified 373 items, including money, stolen or fraudulently obtained.

Breaking those down, we can see several common categories of theft item. Unsurprisingly, the biggest category was soldiers' own clothing or necessities, with the offence of 'making away' with regimental 'necessaries' or accoutrements accounting for 265 of the identified items. How many of these were indeed deliberate acts of taking away with a view to disposing of the items for personal gain is impossible to know. Though the army treated all such acts as a form of theft, for many of the soldiers concerned the items may have been lost, or stolen from them by others. Most of the prosecutions of this type detailed in the courts martial records were for charges of losing, 'taking' or 'making away with' necessities, or the even less helpful charge of being 'deficient in necessities'. In nine cases, the charges specify thefts of arms and ammunition, though seven of these refer to the soldiers' own bayonets and sit more comfortably alongside the charge of making away with necessities. Indeed, the term necessities may have been used at times to refer to both the soldier's uniform and arms. If we set aside the 265 cases of making away with necessities, an unknown proportion of which may have been conscious and deliberate acts of taking, the remaining 110 items offer a brief guide both to some of the most common opportunities for theft and the kinds of item which were most easily disposed of within the informal economies of regiments, or out into the civilian world.

The second highest theft item, after necessities was money, with 34 of the sampled trial listings specifying that soldiers obtained money through theft, fraud or embezzlement. This theft item appears across the board, at all three levels of court martial and in the GRCM register across all six years. In 11 trial listings the charges showing thefts of money also identify

individual victims: in only three cases was money identified as having been stolen from civilians, with the remaining eight cases spread almost evenly across the NCO, officer and fellow soldier categories. Aside from a case in which the four perpetrators burgled a house, taking money and goods, and another in which the perpetrator ‘defrauded his officer of the price of a horse’, most thefts from individuals appear to have been entirely opportunistic and unplanned. Private Seaford, of the 34th, for example, was tried in June 1819, by RCM, for ‘Unsoldierlike conduct in having taken money from Private Smith’s cot, when he, Private Smith, was in the guardhouse’, and a Royal Artillery gunner was tried by GRCM in September 1814, for ‘Clandestinely taking £6..1..6. from the Pocket of a Serjeant’.<sup>498</sup>

The vast majority of money theft and fraud concerned money stolen or embezzled from the army as an institution, usually from the soldier’s own regiment or company, but also including theft from depots and more ambiguous charges such as ‘drawing money on false pretences’. In six of the trial listings, the charges specify that the perpetrators had stolen or embezzled money ‘entrusted’ to them. The 33rd tried two men by RCM within a few weeks of each other, one for ‘Desertion and making away with his firelock and money entrusted to him’ and the other for having been ‘[a]bsent all night and making away with the mess money entrusted to his charge’.<sup>499</sup> In a further eight cases, money had been stolen or embezzled through the subversion or misapplication of regimental or company finances. It should be noted, however, that four of these trials concerned an apparent flurry, during the April of 1820, of fraudulent activity by three NCOs and a private from the same regiment. On 11th April, Sergeant Richard Maloney of the 57th was tried at Clonmel, by GRCM, for ‘[m]isapplication of Pay money’. Ten days later, at a GRCM held at Kilkenny, two colour sergeants were tried for ‘Embezzlement of Pay money, taking Discount from Tradesmen and charging the men extra for Necessaries’, and a private for ‘Embezzlement of Money entrusted to him to pay Tradesmen’. Another sergeant of the 57th was also tried around this

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<sup>498</sup> WO 27/148; WO 92/1.

<sup>499</sup> WO 27/148.

time for ‘Making false representations to deceive his Comm(g) officer’, which may or may not have been connected to this fraud.<sup>500</sup>

After money theft, the next most common category of item was fabrics or clothing, not including the soldiers’ own necessities, accounting for 23 of the specified items stolen by soldiers. Thefts of fabrics are present throughout the sampled registers and returns, appearing across all three levels of court martial, and in the GRCM register across all six years. Barrack sheets and comrades’ clothing seem to have been particularly tempting, accounting for six and five of the identified items respectively. But we also see the clothing of officers, cloth stolen from civilian shopkeepers, and several thefts of clothing in which the victim was unidentified. In a particularly gruesome incident, two privates from the 41<sup>st</sup> Foot in India, were tried in July 1825 for, ‘Opening a Grave & stealing the cloathes of a Corpse’ [sic].<sup>501</sup>

The next category of theft item was food and drink, including the theft of livestock. Unlike money and cloth, however, these are only found in the first GRCM sample, covering the years 1813 and 1814. In this two year period, 21 soldiers were tried and convicted at GRCM, for a variety of food, drink and animal thefts, including three men from the 1/69th in India, who were tried in July 1813, for ‘obtaining licquor [sic]from the inhabitants by force’, two men from the Hussars, in Villar de Ciervo , tried in March 1813, and one from the 28th in Coria, tried in April, for ‘sheep stealing’, and a man from the 26th, in Gibraltar, tried in May 1814 for, ‘having in his possession a stolen cheese’.<sup>502</sup>

Whether this spike in trials for food and drink thefts reflected an increase in this crime type, or an in-time determination on the part of the army authorities to clamp down on such activities is difficult to ascertain, but it is likely that food theft was more widespread than it appears from the GRCM register. Unsurprisingly, analyses of civilian crime in Britain during the eighteenth and nineteenth centuries have found the theft of food to have been fairly common among the working poor, though more common in rural than in urban settings, and other studies of soldier crime have found food to

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<sup>500</sup> WO 92/1.

<sup>501</sup> WO 89/5.

<sup>502</sup> WO 89/4

have been a common item of theft.<sup>503</sup> That said, theft of food by soldiers was an offence particularly associated with active service and campaign behaviour, driven by at best food insecurity, and at worst absolute deprivation. Several of the cases in the sample come from Spain and Portugal, and could well reflect the group survival strategy of ‘reconnoitering’, identified by Coss as very much a part of active campaigning. But this does not explain the apparent flurry of alcohol thefts in India, nor the several thefts of food in Gibraltar, both of which involved soldiers in settled garrisons with supply depots.<sup>504</sup>

Stephen Conway’s study of the social, cultural and political impact in Britain of the War of American Independence suggests that food thefts and pillaging habits formed on campaign could easily bleed into soldiers’ interactions with civil society at home and in peace time. According to Conway, ‘one officer noted how men who had been in North America were accustomed to taking what they wanted in the way of extra food; once they returned to Britain they continued to behave in the same way’.<sup>505</sup> Interestingly, Conway gives several examples of soldiers engaging in acts of food theft against civilians, most of whom were dealt with at RCM rather than being handed over to the civil powers, which suggests that, in such cases of minor theft, it may not be safe to assume a higher likelihood of soldiers being handed over to the civil powers when stationed at home, and also that food theft was more likely to be tackled at the lower, regimental level.<sup>506</sup>

The remaining 23 specified items covered a wide range of goods, the majority of which were primarily small personal items, easily hidden and easily disposed of: pocket books, watches and even a sponge. Watches in particular seem to have been something of a temptation, accounting for seven of those small personal items, and as will be discussed in Chapter Seven, changing hands with some regularity. But there were also a few

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<sup>503</sup> Beattie, *Crime and the Courts*, pp. 182-91; also Coss, p. 83

<sup>504</sup> Coss, p. 18.

<sup>505</sup> Conway, *The British Isles and the War of Independence*, pp. 108-109.

<sup>506</sup> Conway, *The British Isles and the War of Independence*, p. 109.

bigger items, such as a boat stolen by seven soldiers in an attempt to desert from Jersey, an unspecified quantity of iron, and several portmanteaus.<sup>507</sup>

For the most part, then, the items commonly stolen by soldiers appear broadly similar to the items most commonly stolen by civilians. Several studies of crime in eighteenth- and nineteenth-century Britain show the same trends: food and clothes, for example, were noted in both Matt Neale's study and John Beattie's as particularly common items of theft.<sup>508</sup> Though many of the charges of theft from the army do not specify the items stolen, instead simply stating that the culprits had broken into, or were in possession of 'sundry items' from 'His Majesty's stores', or 'the King's yards', it seems likely that some of these cases involved thefts of similar items to those noted in Neale's study of crime in eighteenth-century Bristol under the category of 'consumables', such as metals and building materials, particularly with the above theft of iron taken into account.<sup>509</sup>

Though not well-represented in the courts martial samples, aside from the thefts of arms and ammunition, courts martial transcripts from earlier trials suggest that there were also items of theft which were more military in nature, such as large quantities of fine grade gun powder. In July 1779, for example, two men were convicted at a trial in Gibraltar for, 'stealing powder, the property of the King'.<sup>510</sup> It is likely that some of the thefts from the 'King's yards', for example, recorded in the registers, may have involved such materials. This is something which will be considered in more detail in the discussion of regimental black markets in Chapter Seven.

What is interesting when considering the various kinds of items specified in the charges, is how they were stolen. Food and drink thefts, seem primarily to have involved soldiers acting together, as in the above case of three soldiers taking alcohol from inhabitants by force and that of the two soldiers 'concerned in sheep stealing'. This may be partly due to the

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<sup>507</sup> WO 90/1: for the deserters stealing a boat, and the theft of iron. Thefts of portmanteaus appear several times in both GCM and GRCM registers.

<sup>508</sup> Coss, p. 83; Beattie, *Crime and the Courts*, pp. 182-91; Matt Neale, 'Making Crime Pay in Late Eighteenth-Century Bristol: Stolen Goods, the Informal Economy, and the Negotiation of Risk', *Continuity and Change*, 26 (December, 2011), 439-459 (440).

<sup>509</sup> Neale, p. 440.

<sup>510</sup> Trial of Thomas Else and William Booth, 12<sup>th</sup> July 1779, WO 71/90, fols. 12-16.

high proportion of civilian victims in such cases, but even in the rare instances of food theft within the regimental community, this seems to hold true. Two gunners from the Royal Artillery, for example, appear to have conducted a rather audacious theft from the officers' mess; though, only one appears to have entered the mess and taken the 'sundry items', with the second helping him to 'convey' those items into town.<sup>511</sup> This suggests that even when regular access to food was more secure, soldiers' campaign attitudes towards food theft and 'reconnoitering' remained in force. Another example from Haythornthwaite of soldier offending, also suggests this may have been the case: the soldiers stationed at the Cork garrison having been 'prevented from ill-using traders in the market', had formed into gangs who 'roam[ed] outside the city, stopping incoming "country people" and compelling them to sell their potatoes at whatever small price the soldiers imposed'.<sup>512</sup>

Money, small personal items and clothing belonging to individuals, however, for the most part appear to have been stolen by soldiers acting alone and on the rare occasions we do see soldiers acting together to steal non-food items from individuals, they are generally cases involving a civilian victim. Similarly, fraud or embezzlement of money rarely involves soldiers acting together. With the above case from the 57th as an exception, these tended to be entirely opportunistic and individual crimes.

### **Soldiers and Civilians**

Despite the sense of separation engendered by the 'soldier' identity and the efforts to separate soldiers from their communities, particularly as recruits, proximity often defined the relationship between soldier and civilian far more than did separation; something which can be seen very clearly in the system of billeting.<sup>513</sup> For the majority of soldiers the system of billeting in towns would have been a familiar part of life in the army, and for many civilians, at home and in the colonial setting, soldiers would have been a familiar presence in their towns.<sup>514</sup> Along with producing some

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<sup>511</sup> WO 89/4.

<sup>512</sup> Haythornthwaite, p. 65.

<sup>513</sup> Stepler, p. 872; Brumwell, 55-57; Lynch and McCormack, 'Introduction', p. 7.

<sup>514</sup> Screen, pp. 217-220.

interesting and occasionally explosive social dynamics, this system also created opportunities for theft and fraud, for both soldiers and civilians. In 1753, at the Old Bailey, Thomas Carroll was indicted for the theft of a silver tankard, the property of Roger Peel. According to Peel's testimony, Carroll had stolen the tankard whilst lodged in their home, but that: 'the prisoner pretended to be a soldier (but he was not) and brought a false billet to my house, and had quarters there, from Thursday to Monday'.<sup>515</sup>

Legitimately billeted soldiers, meanwhile, also found their way to the courts, with petty theft and pilfering a seemingly common facet of billeted life, along with easy access to avenues of disposal. From the 1817 Quarter Sessions rolls in Bedfordshire, for example, we have the examination and evidence of John Barnacle, a postboy from Stoney Stratford, accusing private Edward Cogan of the 4th or 'King's Own' regiment of stealing 'Four waistcoats, a jacket, a pair of breeches, a shirt and a "Waggoners frock" from his bed chamber. Barnacle instantly suspected Cogan, one of several soldiers then billeted with his master, and followed him to Dunstable, where "The shirt was brought out of the cooks shop .... The waggoner's frock was recovered from Houghton Regis' and the rest of the clothes found with Mary Boxward, servant to Mrs. Gostelow of the Waggon and Horses.'<sup>516</sup>

The image of the soldier bringing uproar and crime to his civilian hosts is a familiar one, and the unease with which some of those hosts viewed their guests is apparent in the many complaints made against billeting during this period.<sup>517</sup> But soldiers billeted in taverns and hostleries were also at risk of theft by local civilians. In September 1818, Henry Hampton, a second-hand trader, was convicted of stealing a large number of items, all contained in a box, from the lodging room of George Nowell, of the 1st Regiment of Guards. Nowell's room was at a public house called the Duke's Head, and Hampton was a regular visitor there.<sup>518</sup> From time to time soldiers were victims of theft by those with whom they lodged. In

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<sup>515</sup> *Old Bailey Proceeding*, f17530502-1, Sessions Papers (PS) 2 May 1753.

<sup>516</sup> Bedfordshire and Luton Archives and Records Service: QSR/23/1817/235, Examinations and Depositions: Information of John Barnacle, Stoney Stratford, postboy...

<sup>517</sup> Brumwell, *Redcoats*, p. 55; Screen, pp.

<sup>518</sup> *Old Bailey Proceedings*, t18180909-271, Trial of Thomas M'Dermot, 9 September 1818.

1816, John Harris, of the Grenadier Guards, lodged at a house in Bloomsbury and was the victim of theft by a servant of the house, Mary Riley, who stole Harris's 'Waterloo Medal' and then sold it on to 'a refiner in Long Acre'.<sup>519</sup>

For soldiers billeted on foreign hosts, particularly during active campaigning, the picture was even more complex. Returning to the experiences of soldiers in the Peninsula War, the 'underlying contempt', exhibited by British soldiers towards the culture and lifestyle of their Spanish and Portuguese hosts, was itself a spur, or at least partial justification for criminal action against them, and in particular seems to have added an extra dimension to the art of plundering. As Daly explains, the picture painted by the memoirs of Peninsula veterans, like that of Sergeant Lawrence, is of soldiers who 'got the better of "Spanish wiles" proving more cunning than the Spanish themselves'.<sup>520</sup> Along with this sense of otherness in regard to their hosts, the particular context of the Peninsular War, in which the British soldiers were in Spain as liberators, gave them an additional sense of 'entitlement', and many expressed not just a sense of superiority, but also anger and disappointment at a perceived lack of gratitude or appreciation from the civilians they were there to liberate.<sup>521</sup>

Again, though, despite these attitudes being specific to Spain and Portugal during the Peninsula war, and recognising the added complexity such a context brought to soldier-civilian relations, much of the behaviour of the soldiers was very similar to that of soldiers stationed elsewhere. Though speaking particularly of the British soldiers billeted on Spanish and Portuguese hosts, Daly's contention that 'the billet and the question of hospitality brought cultural, military and civil identities into relief' could also be applied, to a degree, to soldiers billeted on other civilian communities, overseas or at home.<sup>522</sup> Soldiers may have been more inclined towards, or felt more justified in stealing from their Spanish hosts, but the

<sup>519</sup> *Old Bailey Proceedings*, t18160529-157, Trial of Mary Riley, 29 May 1816.

<sup>520</sup> Daly, p. 120.

<sup>521</sup> Daly, pp. 118-20; as a very interesting counterpoint to this experience with a different take on the 'otherness' encountered by some British soldiers during the Napoleonic Wars, this time fighting with the French forces, see, Graciela Iglesias Rogers, 'Soldiering Abroad: The Experiences of Living and Fighting Among Aliens During the Napoleonic Wars', in *Britain's Soldiers*, ed. by Linch and McCormack, pp. 39 – 55.

<sup>522</sup> Daly, p. 120.

examples of soldiers stealing from British hosts suggests that there may have been wider issues of soldier-civilian relations, beyond the specific context of war.

### **Desertion and Theft**

Across all six years sampled from the GRCM register, 564 soldiers were tried and convicted of theft, and 24 of fraud or embezzlement. Of those 564 convictions for theft, 409 were accompanied by convictions for desertion, and of the 24 fraud convictions, six involved soldiers who had also deserted. In the first sample set, desertions accompanied half of all thefts and frauds, and in the second and third sets the reverse was true, with twice as many theft charges accompanied by desertion than not. In the two years of GCM trials, 18% of theft charges were accompanied by desertion charges as was one of the two fraud charges. Looking at the three sets of regimental returns, for the 33rd, around a third of all thefts were accompanied by desertion charges as was one of the two fraud charges. Neither the 34th nor the 37th recorded any theft charges accompanied by desertion charges; however, as discussed in Chapter Two, whilst the 34th did not record any desertion trials, there were a very large number of absence charges, and a third of those were accompanied by theft charges.

The 'theft' or 'loss' of regimental clothing and equipment in particular seem to have been a common accompaniment to desertion and account for the vast majority of these cases; however, it was also not unknown for absconding soldiers to steal the clothes and equipment of their fellows. There are very few examples within the courts martial samples of soldiers stealing from their fellows, and as such, patterns of behaviour associated with this offence are difficult to identify. In the 1813-1814 GRCM sample, there were only eight cases of theft from comrades, a single case in the 1819-1820 sample, none in the 1825-1826 sample, and no cases in the GCM sample. There were only two cases from the three sets of regimental returns: neither of them showed desertion charges, but in one case the charges specified that the thief had tried to 'dispose' of the clothes. In two of the GRCM cases, the defendant was also charged with desertion.

Regimental clothes and equipment, whether their own or their comrades' effectively provided soldiers with a readily converted or bartered

resource, particularly though not exclusively, in cases of desertion. In the trial of Private William Coffee of the 19th Foot, when asked what he had done with his own clothing and that which he had stolen from a fellow soldier, said that he had sold them in Dublin.<sup>523</sup>

The connection between the two charge types is also illustrated very clearly in the case of Henry Galland, of Colonel Lascelle's regiment, tried at Fort Lawrence, Nova Scotia, in 1751, 'on suspicion of desertion'. Galland, was accused by Thomas Powell, of the same regiment, of having expressed an intention to desert. Giving evidence, Powell claimed that whilst drinking together Galland made his intentions clear, declaring it to be: 'the last time I shall drink with you anymore'. Powell sought clarification, before advising him to go to bed and forget about deserting. Galland's response is illuminating: along with his assertion that he 'would not lye another Night in the Fort, nor mount another Guard', Powell told the court that Galland: 'lifted up his Coat and shewed some Shirts and other Things in the Lining of his Coat *and said that was enough to serve him*' [author's italics].<sup>524</sup> With Powell's testimony in mind, Wellington's contention that the soldiers' necessaries were treated by the men as a 'cheque-book' on which they might draw is a compelling assessment and something to bear in mind when we consider informal economies and black markets in Chapter Seven<sup>525</sup>

### **Key Features of Fraud and Embezzlement**

As the most likely people to have had access to public or regimental funds, as well as responsibility for the overall management of regimental economies, much of the scholarship on fraud and embezzlement in the British army during this period has naturally focused either on the fraudulent activities of merchants, or on the 'sharp practices' of officers and regimental commanders.<sup>526</sup> The opportunities available to officers and regimental commanders for personal profit, through the misuse of public funds intended for the upkeep of the regiment, as well as those available to merchants and suppliers through abuses of the supply chain, were a matter

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<sup>523</sup>WO 71/270, Trial of Private William Coffee

<sup>524</sup>WO 71 65.

<sup>525</sup>Burroughs, p. 556.

of great concern to both public and military authorities throughout the eighteenth and early nineteenth centuries; though, such opportunities were much reduced and fraudulent practices much more heavily policed than in previous centuries. Guy's analysis of the *Oeconomy and Discipline* of the regiments, sets out some of the ways in which officers were able to subvert army systems for their own gain, with 'false mustering' as the offence which most concerned military authorities and parliamentary paymasters alike, though he makes a strong case for that particular offence being much less prevalent by the mid-eighteenth century, than the 'widespread' contemporary accusations of it would imply. According to Guy's analysis, many of the accusations of false mustering and some other kinds of fraud 'collapsed as soon as some witness or thwarted accomplice denounced them'.<sup>527</sup>

Other forms of fraud, however, do appear to have been widely practiced amongst officers and regimental commanders, and it is important to take these into account when we consider the culture of regiments and how they may have impacted on the expectations and behaviours of those lower down the chain of command. If we consider Strachan's description of 'the influences of the officers and of the regiment corporately' as an important factor in improving soldier discipline, and as something which was 'long in gestation and assimilation', then Guy's contention that "'The custom of the army'" was such a vital, anomalous and organic feature of regimental life that it was difficult to draw a clear line between legitimate profit and outright corruption', has serious implications for the fraudulent practices of some soldiers and in particular some NCOs.<sup>528</sup> If we consider the earlier examples of money theft and fraud, we can see the 'custom of the army' at play in some of the charges, in particular those for 'charging the men extra for Necessaries'. That such an atmosphere and culture of 'custom' occasionally merging into outright fraud existed at the very top of a regimental community may help to explain how a similar culture could exist at the bottom. In both cases there is a conflict between 'customary' rights and perquisites on the one hand, and legal obligations and

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<sup>527</sup>Guy, *Oeconomy and Discipline*, p.108.

<sup>528</sup>Guy, p.108; Strachan, p. 89.

responsibilities on the other, with both potentially informed in part by a sense of moral ownership or customary rights.

Fraud and embezzlement made up a very small percentage of property and dishonesty crimes overall, much smaller it seems than within the civilian system. The parliamentary report on committals to prisons shows that in total around 8% of all property crimes and crimes of dishonesty were for fraud, embezzlement, forgery or counterfeiting currency, with a fairly constant level throughout the seven years covered.<sup>529</sup> By contrast, the percentage in the courts martial samples is much lower. Taking all the courts martial samples together, fraud, embezzlement, forgery and counterfeiting accounted for only 4% of all property crimes. For the two years of GCM trials, the percentage was 3.5%, for the three sets of regimental returns it was 3%, and for the GRCM samples, the percentage ranged from a high of 12% for the years 1813-1814, to a low of 1.5% for the years 1825-1826. Again, this does suggest that, if not in terms of the kinds of offences soldiers committed, in terms of levels of offending the period 1813-1814 saw a sharp rise.

The soldiers who perpetrated such offences were disproportionately likely to be of NCO, rather than private rank, though the low numbers both of fraud cases and of NCO perpetrators overall necessitates some caution in this assessment: of the 592 property crime charges recorded in the six sample years of the GRCM register, only 26 were for fraud or embezzlement. Only 2% of property crime charges against defendants of the private rank were for fraud or embezzlement, compared to 45% of those against NCO defendants. Across the two years of GCM trials, there were 76 privates and seven NCOs convicted of theft, with only three convictions, for fraud, of two privates and one NCO. Looking at all three levels of courts martial for the three regiments, the 33rd convicted a total of 18 privates for theft and two for fraud, the 34th convicted 40 privates for theft, and the 37th convicted 14 privates for theft and one NCO for fraud.

For most ordinary-ranking soldiers, the opportunities for fraud or embezzlement are likely to have been limited and it is no surprise that where fraud and embezzlement cases did occur they were disproportionately likely

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<sup>529</sup>PP, May 13, 1818 (289).

to involve a defendant of NCO rank. This suggests that, whilst as victims of theft the NCO experience was very similar to that of the private soldier, as perpetrators of theft or fraud it was differentiated by their rank, and as such emphasises the need to examine the NCO experience as at least partly rank-specific.

In terms of the kinds of offences soldiers committed, many were similar to those committed by civilians: much as civilians might embezzle from their employer, soldiers embezzled from the army, or defrauded the supply systems. Indeed, many of the fraud and embezzlement charges in the courts martial samples involve soldiers subverting supply systems in one way or another. A lance corporal from the 89th in Jersey, for example, was convicted in 1813, by GRCM, of ‘Procuring sundry Articles with forged Orders’. In the same year, a sergeant in the Lancashire Militia was convicted of ‘making an improper charge for a knapsack’. In 1819, a private from the Rifles was tried for ‘Attempting to defraud with false certificates’, and in 1825, a private was convicted of ‘Taking money from the Depot with an intent to defraud’.<sup>530</sup> Of the three fraud charges recorded in the GCM sample, one involved a sergeant ‘Fraudulently altering receipts for carriage of baggage’.<sup>531</sup>

Though many of these offences were specific to army systems, they have their equivalents in the civilian sphere. The opportunities for some activities, however, seem to have been much lower in the military setting: charges relating to counterfeit currency, for example, form the mainstay of this category of offence in the civilian convictions, at a little over half of such crimes, but there are only four examples of counterfeiting charges against soldiers, across all of the samples.

### **‘Bounty Jumping’**

‘Bounty Jumping’, in which soldiers deserted their regiment and reenlisted in another in order to claim additional bounties was one of the few fraudulent practices that can be said to have been an exclusively military offence, with no equivalent in the civilian sphere. It was also an offence which seems to have been rank-specific. Though NCOs appear to

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<sup>530</sup>WO 89/4; WO 89/5

<sup>531</sup>WO 92/1.

have been more likely than privates to commit fraud or embezzlement offences, this particular offence was far more likely to be committed by lower ranking soldiers. The offence of bounty jumping potentially accounts for nine of the 26 fraud or embezzlement cases in the GRCM samples, with all nine involving a defendant of private or equivalent rank. This is unsurprising given its inherent connection to the offence of desertion and the much lower levels of desertion amongst NCOs than amongst Privates, something which will be discussed in more detail in Chapter Seven. Bounty jumping, though, is a difficult offence to identify with confidence. In some cases, the charges recorded against these soldiers make clear the fraudulent nature of the offence, specifying that they had deserted after receiving bounty. In most cases though the charges state simply that they had deserted and reenlisted in another regiment. As such it is difficult to assess the extent of this offence as a deliberate attempt to defraud.

It is clear, however, that the existence and level of bounties was seen by some contemporary authorities and commentators as a spur to desertion, with the issue becoming highly politicised, particularly during the Napoleonic Wars. William Windham, Secretary of War in the Ministry of all the Talents, specifically cited the high bounties available to recruits as a factor in high levels of desertion and was supported in this view by Henry Grattan, who suggested that they ‘operated as a premium for desertion’.<sup>532</sup> Windham and his supporters placed much of the blame for this on the recruitment policies implemented by the previous government, though as Linch suggests, the figures for desertion rates did seem to bear out this view.<sup>533</sup>

The two major pieces of legislation considered most responsible for creating this context for bounty jumping were the Army Reserve Act (1803) which was in effect for a little over a year and then after that was abolished by Pitt in 1804, its replacement, the Permanent Additional Forces Act (1805). Together they ‘inadvertently introduced an unregulated market for men to fill the quotas required under these acts’.<sup>534</sup> On taking the War Office in 1806, Windham dismantled the volunteers and revised recruitment

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<sup>532</sup>Linch, ‘Desertion from the British Army’, p. 4.

<sup>533</sup>*Ibid.*, p. 4.

<sup>534</sup>*Ibid.*, p. 4.

policies and as Linch demonstrates, whereas in 1806 the rates of desertion for men stationed at home reached a peak of 60 out of every 1,000, these rates began to fall year on year, with 50 out of every 1000 in 1808 and 40 per 1000 by 1809.<sup>535</sup> Whilst this did seem to add weight to Windham's argument, it is very difficult to know whether the reduction in desertion rates were specifically a result of the changes he brought in, running, as they did, alongside a raft of measures taken by the Horse Guards to try and reduce desertion rates.<sup>536</sup>

Whether bounty jumping was as prevalent as contemporary focus suggests is difficult to say. Some soldiers who engaged in that activity were charged with deserting and reenlisting, but we have no idea how many others, charged simply with desertion had intended or attempted to reenlist. It is likely that some of the soldiers charged with deserting several times may have been guilty of bounty jumping, but to assume so would be dangerous. Looking simply at those charged with desertion and reenlisting, the figures though by no means negligible are certainly not high and account for a fairly small percentage of overall desertion charges. Whilst this reflected the changes in recruitment policies, the continued presence of re-enlistment charges suggests that it may still have been a factor, however small.

Anecdotal evidence from memoirs does suggest that for some soldiers, serial desertion remained a potentially lucrative activity and the bounty a factor in some men's decisions to desert and re-enlist. When O'Neil was first considering the possibility of desertion, in 1810, along with the romantic appeal of high adventure and his feelings of dismay at having received unfair punishment, he also considered the potential for further bounty: 'It also occurred to me that should I still wish to continue in the service, I might go to another part of Ireland, where I was unknown, and again receive the bounty-money offered to all enlisting.'<sup>537</sup> Indeed, in the introduction to the modern reprint of O'Neil's memoir, Bernard Cornwell

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<sup>535</sup> *Ibid.*, pp. 3-4; also see Charles John Fedorak, 'In Defence of Great Britain: Henry Addington, The Duke of York and Military Preparations Against Invasion by Napoleonic France', in *Resisting Napoleon: The British Response to the Threat of Invasion, 1797-1815*, ed. by Mark Philips (Aldershot: Ashgate, 2006), pp. 91-101 (p. 107).

<sup>536</sup> Linch, 'Desertion from the British Army', p. 7.

<sup>537</sup> O'Neil, *Military Adventures*, pp. 18-9.

describes him as ‘a practised bounty jumper’ who ‘received a bounty of eighteen guineas from every regiment he joined’.<sup>538</sup>

As we saw in Chapter Two, though, some soldiers who benefited from the additional bounty may have been motivated less by financial gain than by a need for a change of scene and personnel, and even in O’Neil’s case, the potential for additional bounties was only part of his rationale for deserting. Returning to the case of Robert Shaw, whose multiple desertions and re-enlistments were noted in Chapter Two, we can see that, while his defence statement naturally tried to paint his actions in a forgivable light, they nonetheless show a very believable sequence of motivations beyond the promise of extra bounties. According to Shaw’s statement, his first desertion had been due to youth and advice from a grenadier who had also deserted. His second desertion was because he was afraid he would be found by his old regiment when they appeared in Ireland. And his third desertion was because he felt he would never be respected in his company, as a result of having been a deserter.<sup>539</sup>

In considering the courts martial samples as a whole, we can get a sense of the overall place of property offences in the soldier experience of crime, but this can also overemphasise such acts within the soldier experience of service. Looking at the three sets of regimental returns, however, underlines just how uncommon most of these offences were within any one regiment, how few of the soldiers appear to have engaged in theft and fraud, and how little of what was committed was directed at individual victims. For a single year, across all three levels of courts martial, 19 of the 671 soldiers serving in the 33rd were convicted of theft or fraud offences, of which five were for making away with necessaries without any other accompanying theft charges. As with the wider analysis of property crime, privates in the 33rd seem to have been considerably more likely to engage in such crimes than were the NCOs, with the number of convictions for theft accounting for around 3% of the men, and no such offences recorded for the NCOs. In 11 cases the victims are apparent or

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<sup>538</sup>Bernard Cornwell, ‘Introduction’, in O’Neil, *The Military Adventures of Charles O’Neil, Who Was A Soldier In The Army of Lord Wellington During the Memorable Peninsular War And the Continental Campaigns from 1811 to 1815*. (Worcester: Livermore, 1851; Repr. Worcester: Pickle Publishing, 2011), Kindle ebook.

<sup>539</sup>WO 71/65

implied, with all 11 showing the victim to have been either the regiment, or the company.

The 40 convictions for theft and fraud in the 34th, only 10 of which were for thefts other than the soldiers' own necessities, seem much more dramatic; however, taking into account repeat offenders, the number of men convicted of such charges drops to 31, out of 910 serving in the regiment. Just under 4% of the men below NCO rank were convicted of property crimes during the twelve month period. Again, there were no theft or fraud charges brought against NCOs in the regiment. All but two of the trial listings show an identifiable victim, though in several cases there were multiple victims, not all of which were identifiable: for example, where soldiers were charged with theft and making away with necessities as two separate charges. 35 cases show the regiment or company as victims, three cases show fellow soldiers as victims, and two cases show civilian victims.

The 37th recorded 15 convictions for theft and fraud. Adjusted for repeat offences, there were 11 men convicted out of the 686 who served in the regiment. Ten of those were privates or drummers, amounting to 1.5% of the rank and file, with a single NCO convicted of fraud. There are 11 cases in which the victims are identifiable, with six of those showing the regiment or company as victims, and a single case each for the fellow soldier, officer and NCO categories. Though technically the final victim should be classed as a civilian, in a sense it might also be counted as a theft from an NCO: the culprit was found to be 'in possession of several articles, the property of Serj. Hugh's Wife'.<sup>540</sup>

As a final caveat to the soldier experience of theft, it is also important to consider how crime may have affected those soldiers who committed offences. We have already seen that some soldiers deserted, or took their own lives for fear of punishment having committed acts of theft; however, for some soldiers that fear may have been accompanied by a sense of shame, not just because of the prospect of humiliating punishment, but also because of a sense of having let down themselves and their comrades. In his analysis of soldier suicides in the line cavalry in India, Rumsby gives several examples of soldiers for whom the sense of shame attached to

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<sup>540</sup> WO 27/147; WO 27/148.

criminal acts, minor rule breaking, or even just failure to fully live up to their responsibilities were at least partly causal factors in suicide. In one particularly tragic example, a private who harboured ambitions of progression was so distraught at having been found at parade to be missing a button and ordered to turn out again he, ‘returned to the barracks, loaded his pistol with two of his cuff buttons, and shot himself.’<sup>541</sup> Some of the soldier accounts of campaigning in the Peninsular War, though they exhibit a kind of gleeful exuberance in plundering, particularly of food, nonetheless express remorse, or a sense of shame at having resorted to theft.<sup>542</sup> Though, as Daly suggests, there are good reasons to question that remorse in the context of reminiscences intended for public consumption, Coss also gives examples of soldiers expressing a similar sense of shame and remorse in letters to their families.<sup>543</sup>

### **Conclusion**

In many respects, the soldier’s experience of property crime and crimes of dishonesty was very similar to that of his civilian counterpart. Soldiers and civilians often stole very similar items, and under very similar circumstances.<sup>544</sup> As with their civilian counterparts, soldiers were far more likely to be tried for property crime than for violent crime, and the prevalence of fabrics, food and small personal items as commonly noted targets for theft, holds true across both the civilian and military justice records. The manner in which thefts occurred also seem very similar, with many of the same concerns about ‘moral ownership’ apparent in civilian conceptions of ‘perquisites’ and soldiers’ sense of ownership of their uniforms and other regimental necessities.<sup>545</sup> Drawn from and often living among civilians, soldiers shared some of the same cultural assumptions and opportunities for petty theft, and indeed were at times victims of the same by both civilian thieves and fellow soldiers.

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<sup>541</sup> Rumsby, p. 355.

<sup>542</sup> Daly, p. 120.

<sup>543</sup> Coss, p. 10; Daly, p. 120.

<sup>544</sup> Emsley makes the case for such a broad similarity of experience between soldiers and civilians in the early part of the twentieth century: Clive Emsley, *Soldier, Sailor, Beggarman, Thief: Crime and the British Armed Services Since 1914*, (Oxford: OUP, 2013), pp. 14-16

<sup>545</sup> Cookson, ‘Regimental Worlds’, p. 26; McCormack, ‘Material Life of the Militia Man’.

In some ways, however, the soldier experience can be seen to have been distinct from that of the civilian. Soldiers were less likely to be tried for acts of fraud or counterfeiting offences, with such crimes far more prevalent as a percentage of property crime in the civil justice records than in the courts martial records. Though these findings can only be tentative, the soldier's sense of himself as distinct from his civilian peers, by virtue of his profession, may have reduced the likelihood of violent acts of theft against civilians, with such actions transgressing against the informal group codes of behaviour which were a vital part of soldier service. On the other hand, those same codes of behaviour seem both to have justified non-violent crime against civilians, particularly where food and alcohol were concerned, and also increased the likelihood of group offending when violence was used.<sup>546</sup>

Army life can also be seen to have provided specific opportunities for some kinds of property crime: the theft of military goods and materials, for example, which, as Chapter Seven will explore, found ready buyers in the civilian world, and the offence of bounty jumping, which had no clear equivalent in the civilian sphere. It is also clear, that in some ways the soldier experience of property crime and crimes of dishonesty was differentiated by rank. In general terms the rates of offending were far lower for NCOs than for privates, though they appear to have been at a similar level of risk as victims of theft. That said, NCOs seem to have been far more likely to commit fraud offences, with the exception of bounty jumping, which appears primarily to have been an offence committed by the rank and file.

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<sup>546</sup> Haythornthwaite, *The Armies of Wellington*, p. 65.

## Chapter Six: Opportunity and Risk - The NCO Experience of Crime

### Introduction

So far we have primarily considered a general, soldier experience of crime in the eighteenth- and early nineteenth-century British army; an experience which was broadly similar for men serving as privates and non-commissioned officers. Despite this similarity between the experiences of privates and NCOs, there are also some distinctions to be drawn.

As a distinct class of soldier in the British army, NCOs have received surprisingly little academic attention. Much of the work that has been done in this area has primarily been from an operational or institutional perspective, as a very small section, or minor mention in a greater work, with the focus on the mechanisms and systems of pay and promotion.<sup>547</sup> There are very few studies which focus on NCOs as a separate class of soldier, worthy in their own right of either a full study, or a substantial dedicated chapter in a larger work.

Two notable exceptions to this are Divall's study of life in the 30<sup>th</sup>, in which a chapter is dedicated to 'The Backbone of the Regiment', and examines the particular roles of NCOs and the individual service histories of several NCOs in the regiment, including all the colour sergeants, and J. D. Ellis's 'Promotion within the ranks of the British Army: a study of the non-commissioned officers of the 28th (North Gloucestershire) Regiment of Foot at Waterloo.', which, along with an examination of NCO rank, considers who the men chosen for promotion were, where they had come from in terms of occupation and class, why they were selected and the qualities they brought to the role.<sup>548</sup> Though the seemingly common experience of demotion as a result of rule breaking or criminal activity has been explored in detail, particularly by Divall, other ways in which rank changed the NCO experience of crime remain to be understood.

The statistical analysis of courts martial registers in Chapter Four showed NCOs to be disproportionately present as victims of violence and

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<sup>547</sup> For example, Strachan, *Reform of the British Army*, p. 100; Cookson, 'Regimental Worlds', pp. 32-33

<sup>548</sup> Divall, *Inside the Regiment*, pp. 79-96; J. D. Ellis, 'Promotion within the ranks of the British Army: a study of the non-commissioned officers of the 28th (North Gloucestershire) Regiment of Foot at Waterloo', *JSAHR*, 81, (2003), 216-227.

threat, and the violence they faced appeared often to be directly related to their roles as NCOs. Chapter Five showed NCOs to be disproportionately present as perpetrators of fraud and embezzlement, and the kinds of fraud they engaged in again seem often to have been directly related to their responsibilities as NCOs. In this chapter we will consider the roles of NCOs and how entry into the NCO ranks may have altered the soldier's experience of crime.

### **Defining Non-Commissioned Officers**

As a starting point it is important to understand what non-commissioned officers were, the roles they played within regimental communities, and also the place that promotion to a non-commissioned officer rank held on the career path of serving soldiers. As with many aspects of the British army in this period, this is complicated by the idiosyncratic nature of regiments and the somewhat organic fashion in which the British military developed across the eighteenth and nineteenth centuries. Definitions changed across time and were different in different parts of the service.

The simplest definition of a non-commissioned officer was an officer who did not hold a commission from the king; however, some such officers were classed as 'warrant' or 'staff' officers rather than non-commissioned officers. According to Captain George Smith's *Universal Military Dictionary* from 1779, warrant officers were those officers who had, 'no commissions, only warrants from such boards or persons, who [were] authorised by the King to grant them', while staff officers were 'the quarter-master general, and the adjutant general [in time of war only]; also the quarter-masters, adjutants, surgeons and chaplains of regiments'.<sup>549</sup> Non-commissioned officers were separately listed and defined as 'serjeant-majors, quarter-master-serjeants, serjeants, corporals, drum and fife-majors, who are nominated by their respective captains and appointed by the

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<sup>549</sup> Captain George Smith, *An universal military dictionary, or a copious explanation of the technical terms &c. Used in the equipment, machinery, movements, and military operations of an army. By Capt. George Smith, Inspector of the Royal Military Academy at Woolwich* (Whitehall: J. Millan, 1779), p. 201.

commanding-officers of the regiments'.<sup>550</sup> A much earlier military dictionary from the beginning of the eighteenth century had no listing for non-commissioned officers, instead defining 'warrant and staff officers', as those without a commission from the king, but who were 'appointed by the Colonels and Captains, as Quarter-masters, Serjeants, Corporals: And in the same Number [...were...] included Chaplains and Surgeons.'<sup>551</sup>

Clearly by the broad definition, officers without a commission included a range of roles, only some of which involved relationships of immediate authority and command and only some of which were generally accessible through promotion from the ranks. Indeed, in some cases, such as that of the quartermaster rank, the position was in some regiment types considered a very senior NCO rank, and in others a junior officer position usually held by someone with the rank of lieutenant.<sup>552</sup> To confuse matters further, the quartermaster had a different function in cavalry regiments, where each troop quartermaster was responsible for forage and oversight of the care of horses as well as training men in the care of them.<sup>553</sup>

At the other end of the scale, it is arguable to what extent a lance corporal could be properly described as an NCO: this was a nominal rank applied to a private who was acting in the role of corporal.<sup>554</sup> It is generally considered to have been the lowest NCO rank and as such will be included in this section, alongside the NCO rank of corporal and its equivalent in the artillery regiments, bombardier. Similarly, the rank of lance sergeant referred to a corporal who was acting in the role of sergeant.

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<sup>550</sup> Smith, *Universal Dictionary*, p. 201.

<sup>551</sup> J. W. Esq., *A military dictionary, explaining all difficult terms in martial discipline, fortification and gunnery. Useful For all Persons that read the Publick News, or serve in the Armies, or Militia, for the true understanding the Accounts of Sieges, Battles, and other Warlike Occurrences*, 4<sup>th</sup> edition, (London : printed for T. Read, [1730?])

<sup>552</sup> Charles James, *The Regimental Companion: Containing the Pay, Allowances and Relative Duties of Every Officer in the British Service*, Volume 2 (London: Military Library, 1811), p. 126; also 'Military Officers, Non-Commissioned Officers & Rank and File Soldiers', *The Lachlan & Elizabeth Macquarie Archive (LEMA)*, at <<http://www.lib.mq.edu.au/digital/lema/military/officers-and-soldiers.html#s>> {Accessed 15 August 2014}

<sup>553</sup> James, *Regimental Companion*, Volume 1, pp. 126-7.

<sup>554</sup> Though most military dictionaries and treatises from this period refer to corporals as full but junior NCOs, some publications such as the *Regimental Companion*, seem to separate them from NCOs; as with the sub heading: 'Punishments usually exercised in the British Service on Non-Commissioned Officers and Corporals': James, *Regimental Companion*, p. 454

For the purposes of this chapter, we will be taking the later definition of NCOs as separate from warrant and staff officers: so lance corporals, corporals, and lance sergeants as junior NCOs, sergeants and colour sergeants as senior NCOs and sergeant majors and quartermaster sergeants as high ranking NCOs.<sup>555</sup> Broadly speaking, the high ranking NCOs operated at a battalion or regimental level, with, for example, only a single sergeant major per battalion and a single quartermaster sergeant per regiment, while the senior and junior NCOs operated at troop and company levels, with around thirty corporals and thirty sergeants per regiment.<sup>556</sup> The focus of this chapter will primarily be upon these junior and senior ranks of NCO.

The highest ranking NCO in each regiment was the sergeant major, sometimes referred to as the regimental sergeant major (RSM). The RSM had managerial oversight of the NCOs in his battalion, or regiment, with responsibility for their conduct, power of arrest of sergeants and a great deal of influence with regimental officers as to their appointments. The RSM also had responsibility for the battalion's duty rosters, as well as ensuring that the NCOs and men were competent in drill and manoeuvres. A good RSM was a valuable resource for regimental officers, both in terms of their managerial duties, and their military experience: a particular concern for younger, inexperienced subalterns who were usually trained in drill by the RSM.<sup>557</sup>

Beneath the RSM were around thirty sergeants, depending on the number of companies in the regiment, most of whom performed the standard duties of a sergeant, with oversight and governance of the men in their companies. The sergeant's role, like that of most NCOs can be broken down into two distinct halves: they had a particular part to play in battlefield and parade formation, and they acted as the present officers for their companies in camp, garrison, billet and marches. For the purposes of this chapter, their role off the battlefield is of most interest. Much of the day to day activity of soldiers was directed, overseen and modified by sergeants,

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<sup>555</sup> The rank of colour sergeant was introduced in 1813, and as such applies to the period covered by the GRCM register, but not the earlier part of our period : Divall, p. 79.

<sup>556</sup> Divall, p. 80.

<sup>557</sup> Divall, p. 81.

following the regulations and orders laid down for them by the regimental officers. Sergeants maintained the order of their companies, checking each man's necessaries, noting down any absences, and reporting on all aspects of the company as a whole and the men as individuals.<sup>558</sup>

Sergeants needed to be literate, though some barely qualified as such, as they supplied many of the daily reports which formed the basis of the regiment's accounts and records. There were also several specialist positions, such as drill sergeant, pay master sergeant, and armourer sergeant, which were carried out by sergeants, usually for additional pay, and primarily having proved themselves in their rank. These were appointments rather than increases in rank; however, they were seen as a kind of promotion, or at least recognition of merit.<sup>559</sup>

Assisting the sergeants, and providing an NCO presence in their absence, such as at meal times when the sergeants would mess separately, were the corporals. As sergeants were to the company, the corporal was to the squad. Defined by James as 'a rank and file man with superior pay to that of the common soldiers, and with a nominal rank under a sergeant', the corporal had 'charge of one of the squads', and had the duty of placing and relieving sentries, keeping order in the guard, assembling his squad for inspection and preparing lists for the orderly sergeant for use in completing muster rolls.<sup>560</sup>

### **Career Prospects**

For some soldiers, particularly those with literacy skills, army careers would have included the prospect of promotion to non-commissioned officer status.<sup>561</sup> According to Brumwell's study of British soldiers serving in America during the Seven Years War and Cookson's analysis of regimental life in the British army during the Revolutionary and Napoleonic Wars, roughly one soldier in six achieved promotion to NCO ranks.<sup>562</sup> For ordinary-ranking soldiers, opportunities for promotion ran

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<sup>558</sup> Divall, pp. 81-82.

<sup>559</sup> Divall, p. 81.

<sup>560</sup> James, *Regimental Companion*, p. 134; also see Divall, p. 95.

<sup>561</sup> Cookson, 'Regimental Worlds', p. 32.

<sup>562</sup> Brumwell, *Redcoats*, p. 82; Cookson, 'Regimental Worlds', p. 32.

along a chain of command beginning with lance corporal or corporal and culminating in the advanced sergeant ranks. It should be remembered though, that the higher up that chain of promotion we look, the further away from the ordinary ranker's experience we move and the less precarious the positions seem. The high-ranking sergeant positions such as RSM and Quarter-Master Sergeant placed soldiers much closer to their commissioned superiors and they were generally treated as such by the military justice system, with higher ranking NCOs facing charges most often tried at GCM level and very unlikely to suffer corporal or degrading punishment.

It was also possible for soldiers to progress from the highest levels of NCO rank to the commissioned officer ranks, usually through promotion during active service; but, such a jump in status was often a fraught affair, and though some commanding officers were very supportive, it was actively disliked as a practice by many. According to Strachan, while on the one hand, the commanding officer of the 92nd, 'is said to have threatened to resign' unless he was allowed to 'reward deserving NCOs with commissions', on the other hand, 'Wellington, the military press and the punishment commission were all reluctant to encourage promotion from the ranks'.<sup>563</sup> This reluctance may not have been entirely misplaced in all cases: Colonel Mountain, despite his reputation as 'the archetypal soldier-philanthropist', eight of whose officers were originally from the ranks, considered that their presence had been disruptive to the regiment, and, 'reluctantly concluded that, "in nine cases out of ten a bad officer is made out of a good sergeant"'.<sup>564</sup>

It was also, for many NCOs a very unattractive prospect: for a soldier to reach the rank of sergeant-major required many years of service and promotion to the lowest officer rank of ensign put them side by side with men who were much younger, often inexperienced, but socially superior. One regimental colonel, reflecting on his RSM being given the commission, claimed that 'promotion from the ranks is bad in every way; bad for the officers who get a vulgar set amongst them [...], for the men who love little indulgences which other officers can give, and [...the former NCO...] cannot afford', and worst of all, it seemed, for the former NCO,

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<sup>563</sup>Strachan, *Reform of the British Army*, p. 97.

<sup>564</sup>*Ibid.*, p. 97.

who once promoted, was moved ‘out of a sphere from which [he] was calculated and into one for which [he was] not’.<sup>565</sup> Commission also required the former NCO to invest heavily in his new position, turning an apparent pay increase into a drop in income in real terms.<sup>566</sup> Not only did promotion move the NCO into a different social class, it effectively carried a financial penalty.

As a side point, it is worth also remembering that for many such NCOs a change in social standing would also have had an impact on their families, changing their position within the regimental ‘family’ and altering their social circle. In the advice offered to *Private soldiers, non-commissioned officers and candidates for commission*, the author, ‘an officer from the ranks’, set out the potential difficulties for the former NCO’s family:

But if you (as a Sergeant Major or Quarter Master Sergeant) are a family man then [...] the difficulties which I have pointed out will not only apply to yourself, but to your wife and every member of your family. It is not *one* person who has to be *newly moulded* but *four*, or *six* [...] the husband has daily – hourly opportunities of improving himself – the wife and children but few. What would be forgiven by his generous mess-mates in the man, would perhaps not be tolerated in his domestic circle by refined and accomplished ladies [...] the married man feels for his partner and her little ones who are naturally more anxious for, and dependent on, social enjoyments.<sup>567</sup>

For all these reasons, along with a dearth at times of vacancies, for which competition among the existing officer class was fierce, a fairly small number of NCOs were commissioned: by the 1830s, NCOs accounted for around 20 commissions a year.<sup>568</sup>

For most NCOs, the promotional journey began with corporal or lance corporal and ended at sergeant; though, for some it ended back at the private rank again. The NCO status of corporals and sergeants once achieved was not fixed and retaining their position was contingent upon a number of factors, some within their own control and some not. The factor most within the soldier’s own control, was his behaviour and conduct: the

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<sup>565</sup>*Ibid.*, p. 98.

<sup>566</sup>*Ibid.*, p. 97.

<sup>567</sup> Anon., *Private Soldiers*, p. 30.

<sup>568</sup> Strachan, *Reform of the British Army*, p. 98.

punishment of being ‘broken’ or ‘reduced to the ranks’ was far from uncommon, and indeed it was not unusual for a soldier to be promoted to NCO level, reduced to the ranks for an infraction and then regain their former position through later promotion.<sup>569</sup> Cookson makes the point that promotion for enlisted men was often a precarious business and so rank, with all that word implies, was a much less secure matter for the lower ranking NCO than it was for his commissioned superiors.<sup>570</sup> In his history of Wellington’s army, Sir Charles Oman considered that many of those promoted for ‘an act of courage, or of quick cleverness’ during the Peninsular War, had to be reduced because of ‘some hopeless failing’ on the part of the new NCO.<sup>571</sup> Sergeants and corporals were only ever a drunken fight, minor theft, or fraud away from being privates again. To add to that sense of rank insecurity NCO status could, until well into the nineteenth century, be removed entirely by the commanding officer’s decision, without recourse to a court martial.<sup>572</sup>

In many ways, then, the relationship between an NCOs career progression and his experience of crime were closely linked, with clear implications for his sense of identity as a soldier and an authority figure. The rank of non-commissioned officer was often a temporary or intermittent one and the cultural identity and sense of status that rank allowed necessarily fluid.

In many respects the position of an NCO was full of ambiguity and contradiction. Unlike even the lowest ranking commissioned officers, sergeants and corporals were not considered fundamentally and irreconcilably different from private soldiers. They were drawn from the ranks, could be returned to the ranks, and in many ways were still, if not

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<sup>569</sup>Divall tracked the careers of all the colour sergeants in the 30<sup>th</sup> after the introduction of that rank and most were reduced, usually reinstated, and some took this journey several times: pp. 86-95.

<sup>570</sup>John E. Cookson, ‘Regimental Worlds: Interpreting the Experience of British Soldiers during the Napoleonic Wars,’ in *Soldiers, Citizens and Civilians: experiences and perceptions of the Revolutionary and Napoleonic Wars, 1790-1820*, ed. by Alan Forrest, Karen Hagemann, Jane Rendall (Basingstoke :Palgrave Macmillan, 2009), pp. 23-39 p. 32.

<sup>571</sup>Oman, *Wellington’s Army*, pp. 216-17.

<sup>572</sup>The 1746 Mutiny Act gave the authority to colonels of regiments and remained in force until 1830: Charles M. Clode, *The Military Forces of the Crown: Their Administration and Government*, 2, p. 123.

entirely part of the ranks then certainly attached to them.<sup>573</sup> Corporals in particular were counted among the ‘Other Ranks’ in some sections of the official regimental returns, though they were listed separately in other sections.<sup>574</sup> The language of military instruction and advice, both in official legislation and informal training literature, often makes a clear distinction between officers on the one hand and NCOs and privates on the other. In his seminal work on the administration and government of the army, published in the late nineteenth century, Clode considered that ‘the status and rights of the Non Commissioned Officers are the same as those of Private Soldiers not of Commissioned Officers’.<sup>575</sup>

At the same time, however, their roles as conduits of command authority, overseers of and instructors in soldier performance, and enforcers of regimental discipline, necessitated a degree of separation from the men. As such, NCOs, particularly sergeants, were subject to rules and guidelines that separated them from private soldiers, up to and including regulations against ‘fraternising’ with the men, and there was clearly a sense that they were separate from both the men and the officers.<sup>576</sup> For the high level NCOs this put them far closer to officers than to the men, with regimental sergeant majors (RSM) having the particular duty to instruct new officers in matters of drill and exercise.<sup>577</sup> In barracks and camps, senior NCOs had their own messes separate from the men and the commissioned officers. Senior NCOs stood between the commissioned officers and the men, both in terms of their social standing and their place in the chain of command. But they were also part of the body of men, which as Cookson suggests ‘constituted a hierarchy of status and achievement’.<sup>578</sup>

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<sup>573</sup> Steppler, pp. 879-80

<sup>574</sup> WO 27/ 147; 27/148: In the first table of the inspection returns, recording the effective strength of the regiment at the time of inspection, with the numbers present, sick, absent or wanting, the last field is titled ‘Non-commissioned Officers, and Private Men’, with columns for Sergeants, Corporals, Drummers and Privates, on the same page, a table recording the increases and decreases of the different ranks since the last inspection, lists Sergeants, Drummers and Rank and File.

<sup>575</sup> Clode, *Military Forces of the Crown*, p. 124; Steppler, pp. 879-80.

<sup>576</sup> Divall cites ‘associating and drinking with private soldiers’ as one of the breaches of discipline for which the RSM might need to arrest and confine a sergeant: *Inside the Regiment*, p. 81.

<sup>577</sup> Divall, *Inside the Regiment*, pp. 80-81.

<sup>578</sup> Cookson, ‘Regimental Worlds’, p. 32.

Such ambiguity was reflected in experiences of crime and military justice. Unlike commissioned officers, NCOs could be tried by regimental court martial and could be sentenced to demotion and corporal punishment, and it is noticeable in the courts martial samples that the sentence of reduction to the ranks was often accompanied by a sentence of flogging. Stepler suggests that the army was always ‘very careful to break its non-commissioned officers first, before flogging them’; however, ‘there were to be no mistaken ideas as to their true social status’.<sup>579</sup>

Yet, as Divall points out in her study of the 30th Regiment, there was often a clear reluctance on the part of regimental officers to carry out such a sentence for fear of undermining regimental discipline, particularly when the offender was a sergeant. In the case of the 30th, that part of the sentence was ‘always altered to [...] solitary confinement’ and ‘no sergeant was sent to the halberds’. In Divall’s study NCOs were also far more likely to be acquitted or pardoned than soldiers of the private rank, except when facing charges of drunkenness.<sup>580</sup>

The regimental returns of the three regiments suggest that this reluctance to inflict corporal punishment on NCOs applied fairly widely. The 33rd recorded trials for two NCOs, a sergeant and a corporal, both of which resulted in a sentence of reduction, and both of whom were then pardoned. The 34th recorded six trials of NCOs, three of which ended in acquittal, and only one resulted in corporal punishment. Finally, the 37th recorded seven trials of NCOs, five resulting in sentences of reduction only, and two in sentences of reduction and corporal punishment. In both cases the corporal punishment was remitted. The only example from the three sets of regimental returns, of an NCO suffering corporal punishment, involved a Sergeant Halmeshaw, of the 34th, who had overstepped his authority in allowing two privates to be subjected to summary justice at the hands of their fellows, and who had already faced an RCM twelve days earlier for another incident in which he had confined a private without proper authority and out of personal animosity.<sup>581</sup>

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<sup>579</sup> Stepler, p. 880.

<sup>580</sup> Divall, *Inside the Regiment*, pp. 81, 91.

<sup>581</sup> WO 27/ 148.

In contrast, the sampled years of the GRCM register show very little of this tendency, with NCOs seemingly no less likely than privates to receive sentences of corporal punishment and no more likely to be pardoned or have sentences of corporal punishment remitted. This may reflect the increased seriousness attached to offences for them to be heard at the higher level of court martial, or the increased likelihood that such trials involved repeat offenders. That said, it may also reflect a lack of recording in instances of ‘dramatic last minute reprieves’.<sup>582</sup>

Pragmatic concerns about the internal discipline of the regiment may not have been the sole consideration in these decisions, however, with personal relationships between officers and sergeants likely playing a part in some cases. In Edward Costello’s tale of the adventures of Tom Plunkett, he relates an incident in which Plunkett, newly promoted to the rank of sergeant and having engaged in gross insubordination as a result of being very drunk, was tried by RCM and sentenced to be reduced and flogged. Costello explains that, whilst Plunkett was ‘a general favourite [...] his insubordination was too glaring to stand a chance of being passed over’, clearly implying that had his offence been less serious, he may well have escaped corporal punishment because he was a ‘favourite’. Plunkett, described by Costello as ‘the bravest soldier of [the] battallion’, was clearly respected and well-liked, both by the men and the officers, so much so that as word of his sentence spread, ‘there was a general sorrow felt for him throughout the regiment, particularly on account of the corporal punishment’. And Costello suggests that ‘[i]n this feeling [...]the officers participated almost as much as the men’. The buglers, whose task it was to see Plunkett stripped and bound to a tree for his punishment, ‘seemed to hesitate’, and as Colonel Beckwith ordered them to ‘do their duty’, his voice was ‘husky with emotion’.<sup>583</sup>

### **NCO authority and regimental culture**

Though their authority was heavily circumscribed, NCOs and sergeants in particular, had the power to make the lives of the soldiers under

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<sup>582</sup> Gilbert, ‘Military and Civilian Justice’, p. 55.

<sup>583</sup> Costello, *Memoirs*, pp. 20-22.

them more or less agreeable, or unpleasant.<sup>584</sup> They were the conduits and enforcers of regimental authority and the most immediately present face of such authority for the men of their companies. The potentially negative impact of an NCO on the service experience of individual soldiers can be seen in some of the prisoner defence statements in deserter trials. Richard Cousins, of Colonel Hodgson's Regiment, for example, was tried in 1758 for his third desertion and in his defence claimed that his sergeant 'used him ill' always putting him in mind of his former offences and calling him 'a dirty soldier.'<sup>585</sup> A series of incidents recalled by the former private soldier who rose through the ranks to an army commission similarly demonstrates the power of NCOs during this period. *Private Soldiers, Non-commissioned Officers and Candidates for Commission*, was written in 1847, and offered advice to soldiers based on the author's own experiences of twenty-five years of service in the army. Recalling incidents he witnessed during the early part of his career, the author assures his readers that the quality of NCOs has much improved and that men entering the service at the time of writing were unlikely to find themselves victims of such abuses of power.<sup>586</sup>

Nonetheless, he sets out some of the ways in which NCOs could still affect the quality of life, career progression and experiences of discipline and justice of private soldiers: 'The Sergeant or Corporal may give the soldier some petty annoyance in his barrack room; or he may undermine his character for a time, or perhaps manage to establish an apparently serious charge against him'. With what seems a rather naive assertion, the author reassures his readers that 'truth must triumph in the end'. Even so, the examples he gives of overbearing and 'tyrannical' NCO behaviour towards privates are quite shocking: a corporal 'knocking down a young soldier with his fist, saying he "would teach him to behave himself" and afterwards putting his victim in the black hole, and getting him six days' pack drill, for insubordinate conduct', and 'A Drill Sergeant striking another recruit at drill across the knuckles with his cane ; and then confining the lad in the guard room for dropping his firelock, which he could not hold, because of the pain

<sup>584</sup> As with Burroughs suggestion that many men were provoked into criminal action by 'vindictive NCOs': Burroughs, p. 551

<sup>585</sup> WO 71/45, Trial of Richard Cousins, 6 Dec 1758.

<sup>586</sup> Anon., *Private Soldiers*, p. 18.

occasioned by the blow'. In his advice to non-commissioned officers, the author warns against engaging with men who were drunk or in a rage, detailing some of the ways in which NCOs could provoke men into losing their temper; a dangerous thing indeed given the potential for severe or even capital punishment:

Many a man has been goaded on to the perpetration of some dreadful crime, which he never would think of in his cool and sober moments, merely through the indiscretion or ill temper of a Sergeant or Corporal. [...] I saw one man hung, and another shot, both of the same regiment ; and it is to be feared that in each case, the horrid catastrophe might have been prevented, by a little more good sense and forbearance on the part of the non-commissioned officers concerned.<sup>587</sup>

Such incidents, we are told, characterised NCO behaviour far more during the early part of the author's career than in later years, as there had been a 'vast improvement in the non-commissioned officers', which he considered to be primarily due to 'the men of the present day, being more enlightened, and partly to the improved system of governing the army'. If the author is to be believed, however, for much of our period, 'a non-commissioned officer was expected to be a tyrant or a bully'. Whether this assessment is fair, is difficult to say. Certainly, in the memoirs of soldiers, and the popular imaginary of the eighteenth and early nineteenth centuries, the figure of the sergeant in particular looms larger than life and carries many connotations of bullying and bluster. Though liked and even loved sergeants, such as Plunkett, also feature heavily.

As mentioned in Chapter Five, however, it is important also to remember the role played by commissioned officers in creating regimental cultures, and setting the standard for behaviour, and our anonymous 'Officer from the Ranks' makes this aspect of NCO authority clear, noting that 'such *little feats* will not be so much wondered at', given that they were 'performed almost simultaneously' with a series of very similar incidents of harsh and arbitrary punishment by commissioned officers.<sup>588</sup>

Perhaps more than any other time in their careers, in the early stages of the soldier's recruitment and training, the NCOs were the face of the regiment for the new recruit and abuses of power could have a profound

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<sup>587</sup> Anon, *Private Soldiers*, p. 26.

<sup>588</sup> Anon, *Private Soldiers*, p. 26

effect on the soldier's initial experiences of army life.<sup>589</sup> Of all the cultural images of the NCO, those of the recruiting sergeant and the drill sergeant seem the most potent. Farquhar's 1706 play, *The Recruiting Officer*, was restaged and reprinted many times over the eighteenth and nineteenth centuries, and the character of Sergeant Kite was a significant element of the popular perception of recruiting sergeants as untrustworthy predators.<sup>590</sup> Men could be and often were hustled into enlisting by the NCOs of recruiting parties, through the judicious application of alcohol and bravado, sometimes to the extent that men were kept in a state of intoxication until their cooling off period had elapsed and they were irrevocably enlisted.<sup>591</sup> Once enlisted, the new recruit, unfamiliar with the expectations and rules by which his service was governed, was peculiarly vulnerable to unscrupulous NCOs.

In his analysis of British army recruitment in the period 1807 to 1813, Linch details several ways in which the recruitment process could be subverted for personal gain by NCOs, at the expense of new recruits, including an example of a corporal defrauding new recruits of their marching money and extracting loans from what little remained of their bounties after the initial flurry of enlistment drinking.<sup>592</sup> Early training for recruits and acclimatisation to army life was very much in the hands of corporals and sergeants, and army authorities along with informed commentators recognised this as a key factor in the high levels of desertion amongst new recruits.<sup>593</sup>

Alongside the direct impact of their own behaviour and attitude towards new recruits, NCOs played an important role in setting the tone in companies and their constituent squads. While sergeants generally messed separately from the men, corporals provided an NCO presence at meal times, which, depending on the individual qualities of corporals and their relationships with the men, could make the difference between an orderly

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<sup>589</sup> Burroughs, p. 551; Linch, *Britain and Wellington's Army*, pp. 83-85.

<sup>590</sup> Strachan suggests this view was 'widespread', with the public 'fed on the image of sergeant Kite': Strachan, *Reform of the British Army*, p. 55.

<sup>591</sup> Strachan, *Reform of the British Army*, p. 55; Linch, *Britain and Wellington's Army*, pp. 83-85; also, for the same practices in the British army in America, see Brumwell, *Redcoats*, pp. 61-63.

<sup>592</sup> Linch, *Britain and Wellington's Army*, p. 100.

<sup>593</sup> Linch, *Britain and Wellington's Army*, p., Strachan, *Reform of the British Army*, p. 55.

and harmonious mess and a bear pit of bullying and peer pressure. Cuthbertson's *System for the Complete Interior Management and Oeconomy of a Battalion of Infantry*, emphasised the importance of NCOs creating, 'an early liking for the Corps', in recruits and advised that, along with ensuring that the recruit had, 'a good, old Soldier appointed for his comrade', NCOs were, 'to be watchful, that he is treated kindly by his mess-mates, and that they do not endeavour to impose on him'.<sup>594</sup>

Alongside the role of NCOs in supporting formal regimental discipline, they clearly also played their part in fostering or supporting informal strategies for group discipline amongst soldiers. We have already seen in Chapter Five that soldiers often preferred to deal with petty theft, for example, within their own companies, in the manner described by Shipp, and for many other infractions of their codes of behaviour through ostracism.<sup>595</sup> In the *Regimental Companion*, James described a semi-formal expression of company discipline, which he called a '[t]roop or company court martial' and which most likely preceded the decision to inflict punishment in cases like that described by Shipp. According to James, these company courts martial would 'assemble and punish delinquents for small offences, by the permission of the Captain', and would follow a very similar format to that of a RCM, with 'the president being a serjeant, and the court consisting of one corporal and three privates'. This expression of internal discipline was clearly taken very seriously by the soldiers and NCOs, who kept minutes of the proceedings, which they handed to the captain for him to 'sanction or annul' the 'court's' decision.<sup>596</sup>

Sometimes, though, the NCO's role in supporting informal strategies could be damaging, and effectively acted to endorse bullying behaviour among the men. The one instance noted above, of an NCO in the 34<sup>th</sup> being subjected to corporal punishment, concerned a sergeant who was found guilty of, 'conniving at and authorizing [...two soldiers...] to be privately and degradingly punished in their Barrack Room', for having transgressed

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<sup>594</sup> Bennett Cuthbertson, *Cuthbertson's System, for the complete interior management and œconomy of a battalion of infantry. A new edition, with corrections* (Bristol: Rouths & Co., 1776), p. 32.

<sup>595</sup> Shipp, *Military Bijou*, p. 187; Coss, pp. 7, 119.

<sup>596</sup> James, *Regimental Companion*, pp. 365-66.

an agreement made by the men not to go to the company canteen for their meat.<sup>597</sup>

There were many good, competent and humane NCOs, who were able to navigate their peculiar position within the regimental system and maintain order and discipline without recourse to brutality and petty tyranny. With the theoretical requirements for literacy as a necessary skill for NCOs, their recollections form the mainstay of non-officer, soldier memoirs from this period, and many of those memoirs demonstrate an acute understanding of the dangers of such tyranny, often gained during the early years of their service.<sup>598</sup> But the potential ramifications of an overbearing NCO for the soldiers under them, both in terms of company cultures and individual interactions, were a serious matter and may go some way to explaining the apparently common phenomenon of violent assaults and threats towards NCOs by lower ranking soldiers.

#### **NCOs in the GRCM, RCM and GCM samples**

Wellington's contention that NCOs were 'as little to be depended upon as the private soldiers themselves' and the tendency noted above for them to lose their rank for various infractions give an impression of NCOs, and sergeants in particular, as an unruly and incorrigible bunch.<sup>599</sup> But as Oman suggests, 'the ideal sergeant was not infrequently found', and the general expectation that they should be chosen from among the best soldiers seems generally borne out by their infrequent appearance in the courts martial samples.<sup>600</sup>

Of the 1547 trial listings in the GRCM, only 56 concerned a defendant of non-commissioned officer rank, putting them at just under 4% of the whole. This works out at roughly one NCO defendant for every 27 privates. In most regiments there were roughly six NCOs per company and companies could range from 30 to 100 privates. This meant there was usually one NCO for every 17 privates, and as such their presence in the GRCM register is lower than might be expected based purely on their

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<sup>597</sup> WO 27/ 148.

<sup>598</sup> Holmes, *Redcoat*, p. 7.

<sup>599</sup> Wellington, *Dispatches*, 9, p. 228.

<sup>600</sup> Oman, *Wellington's Army*, p. 217.

relative numbers in the service.<sup>601</sup> Breaking down the GRCM sample further shows that some NCO ranks are more present than others. Altogether there were 34 junior NCOs: 10 acting, or lance corporals and bombardiers, two lance sergeants and 24 full corporals and bombardiers. By comparison and with very similar numbers in the service, there were only 22 senior NCOs: 18 sergeants and four colour sergeants.<sup>602</sup>

In the two year sample from the GCM register, there is a higher presence of NCOs, possibly reflecting the greater likelihood of NCO offenders being tried at the higher level. At a little over 6% of defendants in the GCM sample, or one NCO for every 16 privates, this seems much more in keeping with their numbers in the service.<sup>603</sup>

Taking the regimental returns alongside these results suggests a low NCO presence in courts martial overall. Altogether, for the period November 1818 to October 1819, the 34th Regiment returned 110 trial listings, of which four were GRCM trials and the remaining 106 RCM. Of the 110 listings, six concern NCO defendants, with two of those acquitted and one tried twice for separate offences. There are 104 listings for privates, of whom four were acquitted, one was tried on four separate occasions, four were tried three times, and a further four tried twice. From the GCM register there are a further three listings for the 34th, all concerning soldiers of the private rank, of which only one concerned a soldier not also listed among the defendants in the RCM returns.

Therefore out of a complement of 816 privates and drummers, 90, or a little over 11% were convicted that year by RCM, GRCM, or GCM, compared to five NCOs out of a complement of 91, or a little over 5%. The 33rd shows a similar disparity, with a little under 9% of the rank and file convicted of offences, compared to just over 3% of NCOs. The 37th shows a different picture, with only 7.5% of the rank and file convicted of offences and 11% of NCOs; however, only one of the NCOs was convicted of a criminal offence, with the remaining six convicted of drunkenness. It is also

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<sup>601</sup> An average infantry regiment with a single battalion would have been made up of nine or ten companies, with each company made up of around seventy to a hundred privates, three commissioned officers, three sergeants and three corporals: Stuart Reid, *British Redcoat, 1740-93* (Oxford: Osprey, 1996), p.3

<sup>602</sup> WO 89/4; 89/5.

<sup>603</sup> WO 90/1; 92/1.

worth noting that NCO presence in the 37th return is heavily clustered into December and January: five of the six NCO convictions for drunkenness were tried during these two months.<sup>604</sup>

Though seemingly less likely than the privates under them to commit crimes or military offences serious enough to warrant a court martial, many aspects of the NCO experience of crime and military justice were broadly similar to that of privates. Like privates, NCOs were more likely to face regulatory than criminal charges, and they were more likely to be tried for property crimes than for violent offences. The common feature of drunkenness similarly suggests a common experience, with charges of being drunk on duty prevalent for both privates and NCOs. Looking at the regulatory charges, it is clear that in many cases there is little difference between the kinds of regulatory offences committed by privates and NCOs: charges such as ‘Absent from the Guard & getting Drunk’, preferred against Sergeant John Clarke, of the 64th in February 1816, were no different to charges of being ‘Absent from Parade & also Drunk’, preferred in February 1813, against James Greenham, a gunner in the Royal Artillery.<sup>605</sup> Indeed, in several cases we can see NCOs and privates acting together in disobedience and regulatory offences, and facing identical charges: a GRCM case from Mauritius, in 1814, for example, had two privates, two sergeants and a corporal from the 22nd all tried together for ‘Drunkenness & bad conduct on a march & losing their Regimentals’.<sup>606</sup>

Despite many similarities, there are some differences in how NCOs present in terms of regulatory offences, which underline both the authority NCOs were expected to hold and the ease with which that authority could slip. Though charges of drunkenness seem a common factor for both, NCOs also faced charges for having allowed men to drink, or accompanied them in their drinking. Corporal John McCole, for example, of the 26th, was tried by GRCM in January 1819, for being, ‘Drunk on duty’ and for ‘permitting men on Guard to get drunk’.<sup>607</sup> And while desertion-related offences do feature in the NCO experience, they appear far less likely than privates to

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<sup>604</sup> WO 27/147; 27/148; WO 89/4; 89/5; 90/1; 92/1.

<sup>605</sup> WO 89/4.

<sup>606</sup> WO 89/4.

<sup>607</sup> WO 89/4; also, for a similar tendency in the 30<sup>th</sup>: Divall, *Inside the Regiment*, p. 80-81.

have been tried for desertion. Whereas over half of the privates tried at GRM during the sampled years were charged with desertion, only a fifth of NCO defendants faced such charges. Given the apparent propensity for many recruits and new soldiers to desert, or attempt to desert, early on in their army career, it is likely that this has skewed the figures for private soldiers deserting and this may account for some of the disparity between NCOs and privates. If the most likely time for a soldier to desert was during the early weeks and months after enlistment, then the corollary of this would seem to be that the least likely time for a soldier to desert was at the height of his army career.<sup>608</sup>

That said, whilst desertion was far less common among more experienced soldiers and NCOs than among privates and new soldiers, where such cases did occur they appear to have followed a very similar pattern of behaviour. With only 12 examples from the GRM register of NCOs deserting, three from the GRM sample and none from the regimental returns, it is very difficult to compare patterns of NCO desertion with broader patterns of soldier desertion, particularly as all three GRM cases and five of the GRM cases offer only the simple charge of desertion. The seven remaining cases where other charges or additional details have been recorded, suggest some similarities though: in two cases the deserting NCOs made away with their necessaries and in a third with regimental money, and in four cases the charges of desertion were accompanied by charges of fraud.

### **NCOs and Property Crime**

The overall levels of property crime and fraud appear very similar for NCOs as for privates. A little over 40% of the NCOs tried by GRM during the six years sampled were charged with some form of theft, fraud or embezzlement. Similarly, around 37% of privates faced charges of this nature. NCO property crimes were more prominent at GRM level: a little over 30% of privates faced theft or fraud charges, compared to around 50% of NCOs. At RCM level, though, there was only a single example across all three sets of regimental returns of an NCO facing such charges, compared to around a third of privates.

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<sup>608</sup> Burroughs, p. 551.

A close examination of these charges again shows both similarities and differences. Both privates and NCOs were charged with ‘making away with’ their own necessaries, though it was much more prevalent for privates. If we take away those charges related to making away with the soldier’s own necessaries or clothing and consider acts of theft, possession of stolen articles, fraud and embezzlement, NCOs were far more likely to face such charges than were privates. Overall, around 10% of privates tried by GRCM faced such charges, compared to just under 40% of NCO defendants.

In terms of the kinds of behaviours the charges demonstrate, again we can see some similarities, but also some clear differences. The NCO and private experiences as perpetrators of simple theft seem broadly similar and were differentiated only by the prevalence of such crimes, which becomes very apparent when considering cases of NCOs and privates acting together, as Corporal Meacham and Private Dixon of the 95th did, when they ‘plunder[ed] an inhabitant’, in St Simons, in March 1814, and as Lance Corporal Bergman and Private Matthias of the 1st Hussars did, when they were both ‘concerned in sheep stealing’, in March 1813.<sup>609</sup>

As victims of theft, also, NCOs do not seem unusually prevalent within the register, appearing roughly as often as privates and commissioned officers, and the kinds of theft they were victim to seem broadly similar to those experienced by privates.

Where we begin to see a real difference in the NCO experience of property crime is when it comes to charges of fraud or embezzlement. Whilst the fraudulent activity of bounty jumping, which accounts for a possible 40% of fraud or embezzlement charges against privates, does not appear in charges against NCOs, NCOs were far more likely overall to be charged with fraud or embezzlement than were privates, and the kinds of charges they faced show the difference in opportunity that they had for such activities. Only 19, a little over 1%, of the trials of privates in the GRCM sample show charges of fraud or embezzlement, compared to roughly 23%, of trials of NCOs. Of the 19 privates, eight were soldiers who had deserted and reenlisted in other regiments. The remaining 11 faced more obvious fraud charges such as ‘Fraud and having in his possession several stolen

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<sup>609</sup> WO 89/4

articles', and 'Desertion and drawing £2 fraudulently', along with several cases in which the soldiers either passed counterfeit coins or were equipped with the means to make counterfeit coins and two cases of obtaining goods or money through fake certificates.

Though several of the fraud cases involving NCOs were quite similar, a number of them show the different levels of opportunity open to them as part of their roles within the regimental structure. As respected and often trusted members of the regiment, sergeants and their subordinate corporals were entrusted with elements of company supply and finance, and from time to time this presented a temptation too far: Sergeant Maloney, of the 57th, for example, was charged with 'Misapplication of Pay money' another sergeant from the Royal Artillery was charged with 'Embezzling of £5..13..1 ½ Levy money', and as we've already seen, two colour sergeants of the 57th were charged with 'Embezzlement of Pay money, taking Discount from Tradesmen and charging the men extra for Necessaries'.<sup>610</sup> The one example from the 37th of an NCO convicted of a criminal offence was Sergeant Chapman, who was convicted of 'Contracting Debts at Montreal on the account of the 1st Battn. Co., and Embezzling or misapplying the Money which he had received for the payment thereof'.<sup>611</sup>

### **Opportunities for fraud**

Along with opportunities to defraud their regiments and companies, some NCO's roles offered opportunities to defraud the men under their command. Charging men extra for their necessities, as the two colour sergeants from the 57th did, was far from unusual, but there were many other ways for an NCO to enrich himself at his men's expense. Of all the positions available to the NCO, the role of Pay Sergeant appears to have been a particularly lucrative one. The opportunities for self-enrichment afforded by such a role were manifold. Pay sergeants acted as conduits for supply of necessities to the men, but they also engaged in other activities essential to the internal economies of regiments. According to Shipp:

The post of pay-sergeant is certainly one of importance, and he who holds it a personage of no small consideration. He feeds

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<sup>610</sup> WO 89/5

<sup>611</sup> WO 27/148

and clothes the men; lends them money at moderate interest and on good security; and sells them watches and seals, on credit, at a price somewhat above what they cost, to be sure, but the mere sight of which, dangling from a man's fob, has been known to gain him the character of a sober steady fellow, and one that should be set down for promotion.<sup>612</sup>

A good and honest pay sergeant was a valuable member of the regimental community, aside from his formal role in distributing the men's pay, he performed the essential service of assisting soldiers in their personal finances and provided access to small luxuries for those who sought and could afford them. But the potential for 'chicanery' was great and the victims of unscrupulous pay sergeants were often the men under their command, as John Mercier McMullen, a former staff sergeant makes clear in his guide to life in the army, *Camp and Barrack Room, or the British Army as it is*:

When a man attains to the rank of pay-sergeant, it is almost unnecessary to say that his conduct should be guided in his pecuniary dealings with the men of his company, by the strictest honesty and most scrupulous integrity. Numbers, it is true, act quite the reverse of this, and endeavour to defraud those under their charge in every way that they think can possibly escape detection.<sup>613</sup>

As noted earlier, interaction with recruits also provided opportunities for fraud, and while privates were also engaged in the recruitment process, this was an area in which NCOs played a particularly prominent role.<sup>614</sup> Describing his enlistment as a drummer at the age of ten, Shipp offers an insight into one of the ways an NCO might profit from a new recruit. Having been dressed in his new and rather ill-fitting regimental uniform, the young Shipp left his recently bought civilian clothes with the drum-major, who 'put [...his...] leathers, &c. into his box, of which he took the key.' One of the more established drummers asked Shipp if he knew where to sell his 'coloured clothes', and offered to show him where to go and get the best deal. Shipp said he had left them with the drum major, and was sure that 'of course the drum-major would either sell them for my benefit, or permit me

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<sup>612</sup> Shipp, *Military Bijou*, pp. 115-16.

<sup>613</sup> John Mercier McMullen, *Camp and Barrack-Room, or the British Army as it is* (London: Chapman and Hall, 1846), p. 308.

<sup>614</sup> Linch, *Britain and Wellington's Army*, p. 3; also, Strachan, *Reform of the British Army*, pp. 51-7.

to do it; and, if the latter, that I should be thankful for his kindness'. His new friend was less convinced, explaining to Shipp that 'I know he has; but you see as how he has no business with them. Them there traps should be sold, and you get the money they brings; and if you don't keep your eye on the fogleman, he will do you out of half of them'.<sup>615</sup>

There were also other ways for NCOs to profit from their positions, some of which will be discussed in Chapter Seven when we look at informal regimental economies and black markets, but it is important to bear in mind that the men who chose to engage in such profiteering were expected to shoulder a great deal of responsibility, for a very modest increase in wages. Indeed, as Strachan points out, with the development of good conduct awards, in the 1830s and 1840s, some sergeants were actually financially disadvantaged compared to corporals and privates.<sup>616</sup> This disparity between the high level of additional responsibility and the low level of financial reward was recognised as a problem by army authorities. Wellington's assessment of NCOs as no more reliable than the men under their command, was offered as an argument for increasing the pay and status of NCOs, with their lack of reliability considered a direct result of their lack of reward.<sup>617</sup>

Returning to Cobbett's recollections of life as an NCO in the 54th, in the 1780s, it is clear that, even for a lowly corporal, the level of responsibility and work required, particularly if given additional duties, could be very high:

While I was Corporal I was made clerk to the regiment. In a very short time, the whole of the business in that way fell into my hands; and, at the end of about a year, neither adjutant, paymaster, or quarter-master, could move an inch without my assistance. The accounts and letters of the paymaster went through my hands; or, rather, I was the maker of them. All the returns, reports, and other official papers were of my drawing up<sup>618</sup>

Even the ordinary day to day duties of a corporal, without the additional clerk duties Cobbett took on, placed a great deal of responsibility onto the

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<sup>615</sup> Shipp, *Military Bijou*, p. 34.

<sup>616</sup> Strachan, *Reform of the British Army*, p. 100.

<sup>617</sup> Wellington, *Dispatches*, 9, p. 228; Strachan, *Reform of the British Army*, pp. 100 – 102; Peter Snow, *To War with Wellington* (London: John Murray, 2010), p. 153.

<sup>618</sup> Cobbett, *Progress of a Ploughboy*, in Lewis-Stempel, *Autobiography of the British Soldier*, p. 98.

shoulders of the men who held that rank, for which, as Cobbett explained, they received ‘twopence per diem , and a very clever worsted knot’ on their shoulder.<sup>619</sup> Little wonder then, perhaps, that some of the men who were presented with opportunities for profit and fraud took those opportunities and found themselves in front of a court martial.

### **NCOs and Violent Crime**

Given their low numbers compared to privates and the apparently low levels of violent crime amongst soldiers generally, it is not unreasonable to expect a very low number of NCO defendants on trial for violent crimes, and certainly the figures for the sampled years of the GRCM register along with the returns for the 33rd, 34th and 37th seem to bear this out. Indeed, there were proportionately far fewer NCOs tried for violent offences than we might expect to see, based on their numbers in regiments. Though less present than privates in the records, however, the experience of NCOs as perpetrators of violent crime seems similar. In the GRCM samples there were only four examples of NCOs tried for violent offences, whilst none of the three regiments tried any NCOs for violent offences during the sampled year at RCM or GRCM level. At GCM level, across two years, there were five cases recorded of NCOs facing charges of violence.

Of the four cases recorded in the GRCM register, three concern Lance Corporals, the lowest NCO rank, and arguably not a true NCO rank at all. In two of these cases, the violent offence accompanied other charges and in two cases the violence accompanied an act of theft: Lance Corporal Leonard, of the 69th, was tried in 1814, for ‘Theft and attempting the Life of a Private’; Lance Corporal Tolly Barry, of the 2nd, was tried in 1813, for being ‘Absent from Guard, drawing his Bayonet on Sergeant Ruslidge, abusive Language, &c’, and Lance Corporal Klages, of the 1st Hussars, was tried in 1814, for ‘Robbing a Comrade of one Dollar & sixteen Guineas’.<sup>620</sup> In Barry’s case, we can see that this fits the same pattern of resistance violence we might expect to see involving privates, focused as it was on a higher ranking NCO and accompanying a charge of absence, whilst the

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<sup>619</sup>Cobbett, *Progress of a Ploughboy*: quoted in Holmes, *Redcoat*, p. 122.

<sup>620</sup>WO 89/4.

combination of theft and violence in the other two cases also seems little different to similar cases involving private defendants. The fourth example of an NCO facing charges of violence concerned a sergeant in the 66th, tried in 1826, for ‘Being absent from barracks and Illtreating a Female’.<sup>621</sup> Again, in this case we see charges very similar in tone to some of the cases involving defendants of the private rank.

Of the five NCOs listed in the GCM sample, four were corporals, and the fifth a sergeant. All but one of the corporals were involved in robberies, either directly or indirectly, and the sergeant was tried with one of the corporals, with both facing a charge of ‘abetting a robbery’. In only one case was violence clear and a victim given, and again this case fits the pattern of upwardly directed resistance violence noted for privates: Corporal John Stephen of the 4/60th in Demerara was tried in March 1819, for ‘Striking a Serjeant’.<sup>622</sup>

With so few examples to draw from, the registers can tell us very little about how NCOs may have experienced violent crime as perpetrators. It seems unlikely, for instance, that Lance Corporal Leonard was the only NCO across the six years sampled to have committed a violent act against a lower ranking soldier. Minor acts of violence or threat by NCOs against the men under their command were far less likely to result in a court martial than violent acts by privates against NCOs, in which case we cannot know for sure how much low level violence by NCOs went unrecorded, though there is evidence to suggest there was a good deal: certainly, in the execution of their duty, sergeants in particular could and did use physical chastisement. Tatum gives an example of a case, which demonstrates both the low level violence meted out by sergeants in the course of their duties and the potential for that to provoke a much more violent response by the men under them. In July 1759, Thomas Reid, a private serving in the 17th, in Albany, was beaten by his sergeant. He then seized the sergeant’s cane and ‘beat him with it until the cane broke’.<sup>623</sup> It is worth noting, however,

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<sup>621</sup> WO 89/5.

<sup>622</sup> WO 90/1.

<sup>623</sup> Tatum, ‘Military Justice and Negotiated Authority’, p. 102.

that ‘striking and ill-treating a private’ was one of the offences for which an NCO could be confined and tried.<sup>624</sup>

What we can say with reasonable certainty, is that NCOs were far less likely than privates to find themselves facing a court martial for charges of a violent nature, but those who did faced very similar charges, relating to very similar behaviours.

### **The Dangers of Rank**

If the increased rank of an NCO gave him different temptations and opportunities for self-enrichment through fraud and embezzlement, it also made him far more likely to suffer violent assault, or threats of violence at the hands of other soldiers. Out of 124 trials for violent offences recorded in the GRCM register, in which the victim is identifiable, over half concerned NCO victims, and there were twice as many NCO victims as there were privates and officers combined. Given the likelihood that a large percentage of that violence was a form of resistance to regimental authority, we might expect to see NCOs and company-level commissioned officers as victims proportionate to their numbers, but, whilst there were generally twice as many NCOs as officers in each company, there were four times as many recorded as victims in the GRCM register.<sup>625</sup>

It may be, as explained in Chapter Four, that the increased seriousness with which the military viewed assaults on commissioned officers led to a greater proportion of such assaults being tried at the highest level of court martial, and therefore being far less present in the GRCM register. Looking at the two year GCM sample, this does seem to be borne out to a degree: there are four trial listings showing charges of violence against officers, and seven showing violence against NCOs. This is much more proportionate to their numbers in regiments.<sup>626</sup> At RCM level, there were 10 charges of violence against NCOs, across the three regiments, but no charges of violence against officers.<sup>627</sup> Taking all three sample sets

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<sup>624</sup> Divall, *Inside the Regiment*, p. 81.

<sup>625</sup> WO 89/4; 89/5.

<sup>626</sup> WO 90/1; 92/1

<sup>627</sup> WO 27/ 147; 27/148.

together, NCOs are disproportionately present in the records as victims of violence or threat.

Given the particular roles of the various NCO ranks and their numbers within any one regiment, we would expect to find a disparity between their experiences of violent crime and their presence in the records as victims and this certainly seems to be the case here. High ranking NCOs, such as sergeant majors and quartermaster sergeants, whose level of day to day contact with individual soldiers was much lower than that of company sergeants and corporals, and who generally only numbered one per battalion or regiment, feature very rarely as victims of violence or threat. For the six sampled years of the GRCM register, there is only one example of a high-ranking NCO victim, a sergeant major, who was subjected to a threat of violence rather than an act of violence.

More surprising, given their roughly equal numbers within most regiments, is the difference between senior and junior NCOs. Junior NCOs account for a little over a third of the NCO victims in the GRCM sample, with senior NCOs accounting for almost two-thirds. Turning to the three sets of regimental returns, however, the picture is slightly different. From September 1818 to October 1819, the 33rd court-martialled three soldiers for violence against NCOs, with two cases involving corporals and the third an unspecified 'non-commissioned officer'. The 34th tried seven soldiers for violence against five corporals, or lance corporals, one sergeant and one colour sergeant. Finally, the 37th recorded a single instance of violence against both a sergeant and a lance sergeant, which was tried at GRCM level and included within the RCM returns.<sup>628</sup> Taking the GRCM register and regimental returns together, it would seem that all NCOs of sergeant or lesser rank shared a high level of risk, but with senior NCOs outnumbering junior NCOs as victims of violence and threat.

Looking in more detail at the individual cases we can see that in many instances, we are dealing with threats, rather than acts of violence. In the GRCM register sample there are 64 incidents of violence against NCOs, with 11 of those involving the threat of violence and five involving unsuccessful attempts at violence. Similarly, of the seven incidents recorded

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<sup>628</sup>WO 27/ 147; 27/148.

by the 34th, two involved threats and one an attempt at violence. Across all the sampled records there were 30 examples of physical assault on senior NCOs, along with 11 threats or unsuccessful attempts at violent assault, 24 examples of physical assault on junior NCOs, with seven threats or attempts, and no examples of physical assault against higher ranking NCOs, but four cases of threatened violence.

By comparison, very few of the cases involving a victim of the private rank could be described as simple threats. This may well reflect the less serious nature of personal disputes between soldiers of the same rank, as compared to disputes between soldiers and their superiors; however, it may also reflect different relationships of power and authority, with threats being used by soldiers as a way to express dissatisfaction and register disapproval, as part of a strategy of resistance or negotiation.<sup>629</sup>

As mentioned in the discussion of soldier violence in Chapter Four, some caution needs to be employed when considering the nature of personal or professional disagreements between soldiers, whether they were of the same or different ranks. Courts martial records can offer some fascinating insights into many aspects of a soldier's life and motivations, but they can only give a partial picture at best, and at worst a potentially misleading one. With the anonymous former private soldier's advice in mind, we must consider that some of the violence that presents as specific or general resistance to regimental authority and boundaries may in fact represent personal resistance to the over stepping of their authority by NCOs. This is especially true of entries in registers and returns, in which there are usually very few details with which to contextualise violent acts or threats. But it is also a factor to consider when looking at more detailed records such as trial reports. In 'Murder in 42nd', Robert Burnham explores one example of a murder which, on the basis of the trial report and Judge Advocate Larpent's journal appears to be a simple, if extreme case of resistance violence towards a lieutenant of the regiment by a corporal under his command. Larpent's journal entry, from 27th March 1813, describes the incident:

[A] young corporal, M'Morran [...] was found fault with mildly by his officer, Lieutenant Dickinson, for neglect of duty ; he answered rather impertinently : he was then told to consider

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<sup>629</sup> See Tatum, 'Military Justice and Negotiated Authority', pp. 112-3

himself a prisoner, and to follow. Having walked a few yards, Lieutenant Dickinson looked round, and the corporal, having (no one knows how) loaded his musket, levelled it at him, and shot him dead through the heart. [...]The officer was a man of mild, humane character. The corporal made no defence : it seemed an excess of Scotch pride'.<sup>630</sup>

Though this seems a simple case of resistance violence, Burnham demonstrates that the details of the incident as they appeared to Larpent, may not have been entirely accurate. Instead, according to the diary of M'Morran's best friend and comrade in the service, the situation was altogether more complex. Seemingly, M'Morran had met and embarked on a romantic relationship with a young woman in the town of Aldea de Serra, where the 42nd were temporarily billeted. Dickinson, a young and inexperienced officer, left solely in command of their company, which had become isolated from the rest of the battalion, also took an interest in the young woman, but was rebuffed. His response, if M'Morran's friend is to be believed, was to seek vengeance. After a fairly minor, if ill-advised transgression by M'Morran, Dickinson 'threatened M'Morran in presence of the company, to have him sent prisoner to headquarters and broke; for some the accusation and judgment are -- broke -- flogged; pleasant enough words to all but a soldier; but he added broke and flogged and ordered M'Morran in to dress and come out to parade', and it was this that provoked M'Morran to act.

On the one hand, then, this is an example of a non-commissioned officer reacting with violence against his superior officer, as an act of resistance to military discipline. On the other, this is also clearly a personal dispute between two men of unequal rank, one of whom may have overstepped his authority and used his right to impose regimental discipline as a means of exacting personal vengeance against someone he considered to be a rival in love. At the same time, it highlights both the similarity of

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<sup>630</sup>As transcribed by Burnham: Robert Burnham, 'Murder in the 42<sup>nd</sup>', *Military Subjects: Organization, Strategy, Tactics, The Napolean Series*, <[http://www.napoleon-series.org/military/organization/Britain/Discipline/c\\_murder.html](http://www.napoleon-series.org/military/organization/Britain/Discipline/c_murder.html)> [Accessed 12 March 2012]

experience between NCO and private, in the face of a commissioned officer's authority, and the tentative and fragile nature of NCO status.

That the potential complexities of this case are not apparent in the official records, or the journal of such a key figure in the army's judicial system should give us pause when considering the nature of soldier violence as it appears in military justice records, even when we have a full trial report. With the registers and regimental returns, there is even greater need for caution. Some charges seem to offer a clear indication that the violence was aimed solely at the rank or role of the victim, particularly in cases where the victim was acting in a policing or interventionist role, or in which there were multiple victims: for example, 'Attempting to abuse a Child, & striking the Serjeant', or 'Absent from Roll call, opposing the Guard - abusing a sentinel, & attempting to strike a Corporal'.<sup>631</sup> In other cases, though the violence was effectively a form of resistance to authority and was certainly treated as such by the military, it is impossible to know what if any personal element might have contributed to that violence: for example, the GRCM charge against a private of the 92nd for 'Disobedience of orders & throwing a Serjeant down the Barrack Stairs', or the RCM charge against a private of the 33rd for 'Absenting himself from his Guard getting Drunk and striking the Corporal'.<sup>632</sup> With the example of M'Morran in mind, however, even a seemingly simple case of resistance violence should be treated with caution.

That said, the role of NCOs as conduits and enforcers of regimental discipline clearly placed them in a potentially difficult position and not all resistance to authority can be explained as a response to over bearing NCOs. Given the apparently low numbers of commissioned officers as victims of violence and threat, compared to NCOs, and with, in general, the sharp division in social class between the commissioned officers and the other ranks, it is worth considering that officers benefited, to a degree from a shield of deference. Cookson makes the point that many of the men who served in British regiments actively disliked officers who had been commissioned from the ranks, much preferring officers whose social status and upbringing corresponded with their military status and rank. And, just

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<sup>631</sup> WO 89/4; 89/5.

<sup>632</sup> WO 89/5; 27/147

as in civilian society, there were expectations of a reciprocal relationship of deference and paternalism.<sup>633</sup>

The protection afforded by rank alone, without the additional element of social deference, was not strong enough to prevent violence against NCOs. In his recollections of service in the 32nd, during the Peninsula War, Major Harry Ross-Lewin suggests that for some soldiers, violence against NCOs was not considered particularly serious offence. Though there is a strong element of anti-Irish sentiment to his words, and certainly, we should not accept at face value that the Irish soldiers were any more 'wild' than other soldiers, his contention that '[t]hey regarded an attempt at desertion as a very venial offence, and the knocking down of a staff-sergeant as a mere trifle', is interesting.<sup>634</sup>

We have seen already that in the culture of the barrack room, fighting was a way, not just of settling arguments, but also of establishing status and group bonds. And the regular appearance in courts martial, and indeed, courts of law, of soldiers charged with using their weapons in violent acts or threats, highlights the potential for quarrels to turn into instances of serious violence. For the NCOs, establishing and maintaining authority in such a context must at times have placed them in danger of physical assault, to a greater degree than their commissioned superiors. In a sense, just as they stood between the officers and men in terms of authority, they also stood between them in terms of risk. Theirs was, at times a difficult line to walk, invested with a degree of authority, but still subject to similar discipline, and without the shield of deference of which their superiors were beneficiaries.

Returning to the advice of the anonymous officer from the ranks, we have a description which sums up the difficulties and contradictions of life as an NCO: 'They have, perhaps, more to contend with than any other military class whatever, both from superiors and inferiors ; the former are often capricious and exacting — the latter, frequently turbulent intractable, and jealous of superior merit'.<sup>635</sup>

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<sup>633</sup> Cookson, 'Regimental Worlds', p. 30-31.

<sup>634</sup> Major Harry Ross-Lewin, *With "The Thirty-Second" In The Peninsular And Other Campaigns*, ed. by John Wardell (Dublin: Hodges, Figgis, 1904), p. 41.

<sup>635</sup> Anon, *Private Soldiers*, p. 21.

A final anecdote from Shipp, however, offers a more positive experience of NCO rank, and serves to illustrate the point that the cases examined here cannot stand as indicative of the NCO life as a whole. Though promotion to the NCO ranks brought with it dangers, it also, for some, brought affection and humour. It does, nonetheless, further illustrate the importance and occasional difficulty some NCOs, particularly those new to their roles, had in establishing authority over men with whom they had previously served as equals. The anecdote concerns Shipp's first experience of the parade ground as a newly minted corporal:

I was on the right of the company, being the tallest man on parade, when I was desired by the captain to fall out, and give the time. I did so, and never did a fogleman cut more capers; but here an awkward accident happened. In shouldering arms, I elevated my left hand high in the air; extended my leg in an oblique direction, with the point of my toe just touching the ground; but in throwing the musket up in a fogle-like manner, the cock caught the bottom of my jacket, and down came brown Bess flat upon my toes, to the great amusement of the tittering company.

I must confess, I felt queer; but I soon recovered my piece and my gravity, and all went on smoothly, till I got into the barracks, where a quick hedge-firing commenced from all quarters; such as, "Shoulder hems!" —"Shoulder hems" — "Twig the fogleman!" This file-firing increased to volleys, till I was obliged to exert my authority by threatening them with the guard-house, for riotous conduct; but this only increased the merriment, so I pocketed the affront, as the easiest and most good-natured mode of escape; my persecutors ceased, and thus ended my first parade as a non-commissioned officer.<sup>636</sup>

## Conclusion

Promotion to NCO rank for many, possibly most, of those who achieved it was a source of pride and a good deal of hard work. For some though, the temptations that came with their extra responsibilities led to criminal activity, in particular acts of fraud or embezzlement, sometimes at the expense of the men whose welfare and conduct was their responsibility. The position of the NCO was clearly a difficult one at times, presenting not just additional opportunities and responsibilities, but also additional dangers. If at times those additional dangers were the product of the NCO's

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<sup>636</sup> Shipp, *Memoirs*, p. 114.

own behaviour, they were also the product of his precarious position, and the difficulties in establishing and maintaining authority over men with whom he shared both culture and class: a factor highlighted by the similarity in behaviour between soldiers and NCOs in some of the cases we have examined, as well as the very real possibility that rank might be all too temporary.

It is difficult, and in many cases impossible, to know whether an individual case of violence by a private soldier against an NCO was precipitated by that NCO's own behaviour towards his subordinate, whether that directly related to the assault, or more generally created the context for it. We can tentatively conclude that the cases we have examined represent a mixture of personal and service related disputes, with these elements often overlapping. What is clear, however, is that NCOs, particularly sergeants, were at a much higher risk of violent assault within the army than were any other rank, below or above them. And though, given the number of soldiers serving, violent assaults in the army were not commonplace, they nevertheless represent a part of the soldier experience and in particular a part of the NCO experience. An important consideration then, is the way in which promotion and indeed demotion impacted on soldiers' experiences of crime and of service in the British army.

## Chapter Seven: Informal Regimental Economies and the Black Market

### Introduction

Studies of early modern armies have shown that informal market places sprang up in and around military encampments and ‘campaign communities’<sup>637</sup> And much of the scholarship on eighteenth-century army women has emphasised their roles in pillage, the informal economic strategies of army families, and the various opportunities available in regiments for trade through suttling.<sup>638</sup> Less well-studied, however, is the manner in which informal markets formed around the regimental communities of the late eighteenth- and early nineteenth-century British army and in particular the existence of a black market peculiar to those communities, serving and informed by the needs of soldiers and their families, and providing opportunities for civilian access to military goods. This chapter will consider several key elements of informal regimental economies and black-market trading, how they fed into and were fed by rule breaking and criminal activity, as well as what they can tell us about the relationships that existed within regiments and between regimental and civilian worlds.

### Defining informal economies

The term ‘informal economy’ was initially coined in relation to the undeveloped, pre-industrial, or ‘third world’ setting. Popularised in the early 1970s, it has since been applied more widely to societies past and present. According to the definition put forward by economic anthropologist, Keith Hart, the term can loosely be understood as, ‘a label for economic activities which take place outside the framework of corporate public and private sector establishments’.<sup>639</sup> The informal or semi-formal nature of much of

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<sup>637</sup> John A Lynn II, *Women, Armies, and Warfare in Early Modern Europe* (Cambridge: CUP, 2002), pp. 33-50.

<sup>638</sup> See, Lynn, pp. 33-50; Venning, *Following the Drum*, pp. 130-43; Kopperman, pp. 446 and 455.

<sup>639</sup> Keith Hart, ‘Informal Economies’, at *The Memory Bank: A New Commonwealth*, <http://thememorybank.co.uk/papers/informal-economy/> [accessed 25 November 2014]; for the original ‘Informal Sector’ model, see William Lewis, *The Theory of Economic Growth*, (London: Allen and Unwin, 1955); and for an example of its application to eighteenth-century British culture, see Matt Neal, ‘Making crime

the economic activity and day to day family survival strategies of working people, and particularly the working poor, in eighteenth- and early nineteenth-century Britain, has been well-studied, from the continued importance of informal methods of remuneration for workers in formal employment and the informal working activities of many people, to the licensed and unlicensed activities of second-hand traders and pawnbrokers.<sup>640</sup>

The concept of an ‘economy of makeshifts’, first coined by Olwen Hufton in relation to the survival strategies of French peasants, has since been widely applied to the eighteenth-century British working poor, and underlines the reactive opportunism and ingenuity that characterised the survival strategies of many working people during this period: an analysis which has also been applied more recently to the survival strategies of soldiers and their families.<sup>641</sup> John Beatty, in his analysis of crime in England during the eighteenth century, demonstrates the way in which informal economies developed into black markets, fuelling theft, with the kinds of items stolen indicative both of the opportunities for theft that were available to people depending on where they lived, and the ease with which such goods could be traded within the informal market place, in particular drawing a distinction between rural and urban settings.<sup>642</sup> Over the past twenty years there has been a growth in interest in second-hand markets, both legitimate and illegal; though, as Matt Neale contends, there has been a distinctly metropolitan focus to much of the scholarship on urban trading, with London’s far more evolved informal economy providing much of the evidence for such trading in Britain.<sup>643</sup>

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pay in late eighteenth-century Bristol: stolen goods, the informal economy and the negotiation of risk’, *Continuity and Change*, 26 (December, 2011), 439-459.

<sup>640</sup> One of M. J. Daunton’s key criticisms of attempts by economic historians to define and quantify living standards and ‘real wages’ for eighteenth-century British workers, is the essentially informal manner in which much of that work was rewarded, with money wages making up only a part of their earnings, even for formal employment; to the extent that for Daunton, such a focus on money wages is anachronistic: M. J. Daunton, *Progress and Poverty: An Economic and Social History of Britain, 1700-1850* (Oxford : Oxford University Press, 1995), p. 421; also, see Madeleine Ginsberg, "Rags to Riches: The Second-Hand Clothes Trade 1700–1978." *Costume*, 14(1), pp. 121–135; Hurl-Eamon,(2008), pp. 484-86.

<sup>641</sup> Lynn, pp. 33-50, 130-37; Hurl-Eamon, ‘Fiction of Female Dependence’, p. 486.

<sup>642</sup> Beattie, *Crime and the Courts*, p. 187; in Neale, ‘Making Crime Pay’, pp. 439-40.

<sup>643</sup> Neale, ‘Making Crime Pay’, p. 440.

By the middle of the nineteenth century, there were thriving markets for second-hand clothing in most major cities. Though a wide range of goods, whether legitimate or stolen, were traded, by far the most well-developed part of the second-hand marketplace, was the trade in second-hand clothes, and this is reflected in the prominence of clothes as a common item of theft. Beattie's analysis shows that the differences between urban and rural second-hand trading, and in particular the relationship between the second-hand trade and acts of theft, may partly lie in the 'more restrictive' nature of the rural setting, with criminal activity drawing 'immediate, personal and formidable' responses from the much more closed and close knit rural communities, as opposed to the urban setting with, 'the relative freedom of surveillance in the city'.<sup>644</sup> Such an analysis may also apply to regimental communities, particularly when on campaign, or stationed in barracks or camps rather than billeted in towns and cities.

Within the regimental communities of the eighteenth- and early nineteenth-century British army, there were opportunities for both formal and informal economic engagement. Soldiers served for pay, and some were also formally employed in a variety of non-military roles, as servants for officers, regimental tailors and cobblers, or day labourers.<sup>645</sup> There were opportunities for formal employment of regimental women, as nurses and laundresses, and of civilian suppliers as licensed sutlers.<sup>646</sup> NCOs had access to managerial responsibilities and distribution roles, which brought additional pay alongside their basic wages.<sup>647</sup> Soldiers, their families and other members of the regimental communities also supplemented their incomes through access to more informal economic activities, from ad-hoc trading or bartering of luxury items, or unlicensed sutling, to the hiring out of useful skills, such as letter writing, to others within their communities. The lines between formal and informal economies were often blurred,

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<sup>644</sup> Neale, p. 439, Beattie, *Crime and the Courts*, pp. 241

<sup>645</sup> Cookson, 'Regimental Worlds', p. 26.

<sup>646</sup> Lynn, pp. 119-26.

<sup>647</sup> Cookson, p.33.

particularly in the case of sutling, where both licensed and unlicensed, regulated and unregulated, trading was common.<sup>648</sup>

Soldiers and other members of regimental communities also engaged in black-market trading, with illicit or stolen goods bartered, or sold, both within regimental communities and out into the wider civilian world. Whilst in some cases soldiers stole goods for their own personal use or consumption, more often than not theft charges recorded against soldiers involved either the direct theft of money, or the theft of items for resale or barter.

By disposing of such items, or purchasing them, soldiers were accessing the black market. Both military and civilian justice records show a flow of such goods internally, between members of regimental communities and externally, between soldiers and civilians. Such a reliance on combinations of formal and informal activity was typical of eighteenth- and nineteenth-century economies more generally and as such largely mirrors the civilian world; however, the contours of informal regimental economies, and the ability of community members to engage in black-market trading were shaped and contextualised by the structures, needs and demands of regimental life. Though referring to the relationships between informal economies and states, Edgar L. Feige's model is useful in this context: 'The salience of informal activities derives from the fact that their existence is intimately connected with the institutional arrangements imposed by the state.'<sup>649</sup>

The existence of a black market, as opposed to merely an informal economy, within British regimental communities is difficult to identify, but there is evidence to suggest such a market operated. Surtees, for example, hints as much in his memoirs. Referring to the 'chicanery practised among the minor ranks in the army', he tells us that he 'never served in a company

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<sup>648</sup>For some of the ways in which those lines were blurred, see Kopperman, 'The Cheapest Pay', pp. 455-57; also, Berkovich, 'Discipline and Control in Eighteenth-Century Gibraltar', pp. 123-28.

<sup>649</sup>Edgar L. Feige, 'Defining and Estimating Underground and Informal Economies: The New Institutional Economics Approach', *World Development*, 19 (1990), 989-1002 (993).

in which every individual could not buy, sell, exchange, lend, and borrow, on terms peculiar to themselves.’<sup>650</sup>

The boundary lines between legitimate trade, informal activity and black-market chicanery were often blurred, with the sale of alcohol, food and small luxuries a particularly lucrative area.<sup>651</sup> The selling of goods and provisions within barracks, camps and garrisons, through which soldiers might resupply themselves with basic necessities and occasional luxuries, was considered an important part of regimental life. Indeed, as E. Samuel explained, in his treatise on military law, it was the duty of the regiments to ensure soldiers had access to such a legitimate supply line:

‘As a soldier [...] is not at liberty to quit his station, for the purpose even of supplying himself with the necessaries and conveniences of life, it is peculiarly incumbent on those set over him to furnish the means of supply, which he may be precluded from providing for himself, sufficient in their quantity, of a fit and proper quality, and at a reasonable rate.’<sup>652</sup>

Alongside the commissaries and contractors, the British army, like most armies of the day, relied very much on licensed ‘sutlers’ to ensure such access was available to its men. Sutlers, at least in theory, operated within strict guidelines, on penalty of losing their licence and being ‘drummed out of the regiment’; a particularly harsh penalty given that many of the licensed sutlers were soldiers’ wives and sweethearts.<sup>653</sup> Not all sutlers acted entirely within the terms of their licences, however, and the regular repetition in regimental orders, of warnings against unlicensed sutling suggests that not all those sutling had a right to do so.

### **The illicit alcohol trade**

One of the most worrisome areas for army authorities, unsurprisingly, was the degree to which men were supplied with alcohol,

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<sup>650</sup> Shipp, *Military Bijou*, p. 116.

<sup>651</sup> Lynn notes that for the early modern period, which overlaps with the period under study here, women in particular would actually set up small shops in and near camps: pp. 135-143.

<sup>652</sup> E. Samuel, *An Historical Account of the British Army: And of the Law Military, as Declared by the Ancient and Modern Statutes, and Articles of War for Its Government with a Free Commentary on the Mutiny Act, and the Rules and Articles of War; Illustrated by Various Decisions of Courts Martial* (London: Clowes, 1816), p. 439.

<sup>653</sup> Berkovich, pp. 126-28; Kopperman, p. 445; Lynn, pp. 137-43.

and in particular the likelihood that they might find night time access to large quantities and thereby be unfit for duty the next morning, or more than usually inclined towards ‘nocturnal disturbances’.<sup>654</sup> The Articles of War therefore prohibited any and all sales of alcohol to soldiers during the night, and deemed that:

the houses and shops of sutlers shall be closed at nine o’clock at night, and not opened, for the entertainment of soldiers, before the beating of the reveilles in the morning, and within the inclusive times, that no sutler shall be permitted to sell any kind of liquors or victuals, under the penalty of his being dismissed from all future sutling.<sup>655</sup>

The various attempts by regimental commanders to eradicate, or significantly reduce soldiers’ access to alcohol outside of permitted hours and in large quantities, however inconsistent and contradictory those efforts may have been, suggest that the selling of alcohol was a key component of informal regimental economies, drawing in participants of private and NCO rank, female members of the regimental communities, and opportunistic locals from wherever a regiment might be stationed. An interesting aspect of this part of the informal economy is the role of soldiers’ wives and sweethearts, which often combined both sutling and money lending.<sup>656</sup>

The presence of women travelling with, or residing with British regiments was being both reduced and formalised throughout the eighteenth and early nineteenth centuries, but their economic engagement within regimental communities remained an important element of regimental life.<sup>657</sup> Some of that engagement took the form of offering necessary services such as laundering clothes, or licensed sutling, but much took an informal, ad-hoc, opportunistic form, which at times breached the orders governing their communities. Brumwell’s study of the British soldier in the Americas, during the Seven Years War, demonstrates the common role of soldiers’ wives as suppliers of alcohol, much to the annoyance of the authorities. The ‘women of the Highlanders, & the Royals’, for example,

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<sup>654</sup> Samuel, *Historical Account of the British Army*, p. 440.

<sup>655</sup> Samuel, *Historical Account of the British Army*, p. 439.

<sup>656</sup> Brumwell, *Redcoats*, p. 125; Lynn, pp. 135-143.

<sup>657</sup> Lynn, pp. 33-50, 143.

had a particularly strong reputation as ‘outrageous sutlers’.<sup>658</sup> Amanda Venning’s *Following the Drum*, similarly demonstrates the perennial frustration of army commanders faced with women selling alcohol to the men, and indeed, drinking to excess themselves.<sup>659</sup>

Neither soldiers, nor officers had the right to engage in sutling, with such activity thought to encroach unfairly on the business of legitimate sutlers. Again, according to the Samuel’s reading of the Articles of War: ‘Liberty is granted [...to all military personnel...] to bring any quantity or species of provisions, eatable or drinkable’, providing that there were no existing contracts between regiment and contractor to supply those items. All food and drink, except alcohol, not covered by existing contract, could be ‘freely brought [...] within the walls of any fort or garrison’. But this only applied to goods intended ‘for the private use or consumption of themselves or their families respectively’ and they were not to be ‘transferred under colourable pretences to indifferent persons’.<sup>660</sup>

Yet, within regimental communities throughout the British army, informal trading of this nature continued to be an important and expected part of soldier life. Admonitions against such informal trading are to be found in several surviving order books, signalling their position as a concern for regimental commanders. One example in particular is instructive, as it demonstrates both the immediacy of the concern and a peculiarity of the informal regimental marketplace: that much of this illicit trade was the particular province of the NCO. A notebook thought to have belonged to an officer of the 65th, in the late 1770s, records the standing orders for the regiment and at number 28 the orders state that: ‘If any Non-Com(issione)d Off(ice)r is known to Suttle or sell Bread, Cheese, Liquor &c without leave or be any ways concerned with those that do, he may depend on being brought to a Court Martial & have no favour shown’.<sup>661</sup> Interestingly, the tone of this order, with the threat not just of a court martial, but also that no

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<sup>658</sup> Brumwell, *Redcoats*, p. 125; also, Kopperman, p. 445; Lynn, pp. 137-43; Berkovich, pp. 126-28

<sup>659</sup> Venning, *Following the Drum*, pp. 132-33.

<sup>660</sup> Samuel, *Historical Account of the British Army*, p.440.

<sup>661</sup> ‘Standing Orders for the 65th Regiment (of Foot)’, Trans by Walt Norris (1989), at *Genuki: UK and Ireland Geneology*, <  
<http://www.genuki.org.uk/big/eng/YKS/Misc/Military/65thFootStandingOrders.html>>, [Accessed 17 July 2013].

favour will be shown, is very similar to some of the Gibraltar orders against drunkenness, noted in Berkovich's case study: in that case the orders seemed to wax and wane as to the level and nature of the threat, often contradicting previous and still current orders. It seems highly unlikely that the 65th was any more successful in regulating alcohol use and provision than the Gibraltar garrison.<sup>662</sup>

NCOs, especially sergeants and indeed sergeants' wives, were particularly active in the alcohol trade within regiments.<sup>663</sup> A GCM, held in Canada in 1751 at the request of Bombardier Joseph Burch of the Royal Regiment of Artillery, in order to appeal the guilty verdict of a RCM for 'suttlng contrary to orders' and the subsequent sentence of reduction in rank for a period of three months, offers some intriguing insights into this particular part of the informal regimental marketplace. What makes this trial so interesting is that it demonstrates features of both licensed and unlicensed suttlng, involving both an NCO and a woman who was a licensed sutler, who may or may not have been his wife, and the potential impact of illicit alcohol trading on the smooth running of the regiment.

The first witness, Captain Charles Brome, set out that impact very clearly in his deposition, telling the court that another captain of the regiment had complained to him, one evening, that Burch, 'and all the men of the guard were gone from their guard, and that he imagined they were at the prisoner's house a drinking'. In response, Brome ensured that the men's attention was drawn to recently received orders from the Board of Ordnance which forbade 'any non-commissioned officers and others belonging to the board to suttle on any pretence'. Ten days later, Brome saw one of his men, 'with a pint of rum in a bottle, concealed under his coat' and who, when questioned said he had bought it 'at the prisoner's house': a claim the soldier then repeated to the court. Two more soldiers deposed that they had often drunk at Burch's house, and that they had paid for the drink.

Burch claimed in his defence that the licensed sutler, Mrs Hawthorne, was neither his wife, nor his business partner, calling on the owner of the house, to confirm he had no part in the renting of it, and the

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<sup>662</sup>Berkovich, pp. 123-28.

<sup>663</sup> For sergeants wives commonly suttlng in most early-modern European armies, see Lynn, p. 139.

alcohol supplier to confirm that he was not involved in buying any of the alcohol, and that the supplier would not consider him to be ‘indebted [...] for the liquor bought by Mrs Hawthorne’. However, both Captains and all three soldiers refer consistently to the premises as ‘Burch’s house’ and all three of the soldiers when questioned claimed to have seen Burch both ‘draw’ the rum and serve it to the drinkers. Even more tellingly, one of them claimed that he had ‘pay’d money both to the prisoner and Mrs Hawthorne for liquor, and he imagined it to be equal, which he paid’.<sup>664</sup> Whatever the truth of Burch’s relationship with Mrs Hawthorne, his attempts to distance himself from the business, either as partner or spouse, failed and the original verdict and sentence were both upheld.

The role of an NCO in caring for his men naturally opened up opportunities for personal gain, some of which have been covered in greater detail in Chapter Six. NCOs were the conduit for much of the officially sanctioned, formal supply of troops, from the distribution of new clothes to the men, to overseeing the supply of meat to the company canteen and serving out the allowed quantities of alcohol each day, and opportunities for a small profit were a natural and often tacitly accepted ‘perk’ of NCO rank, with the most lucrative position arguably that of pay sergeant. The line between acceptable perks and profiteering off the backs of the men could, however, be a thin one, and the repetition of admonitions against NCO profiteering within individual regiments may be a signal that line was being crossed with unusual regularity.

If alcohol was the ‘parent’ of many other military crimes, it was also a key spur for property crime and one of the foundation blocks of the informal regimental economy. To return to the words of Bell, in his observation of soldiers stationed in Ireland: ‘The crimes most commonly committed by the men, were, pledging their necessaries for whiskey, and stealing those of their comrades for the same purpose.’<sup>665</sup> We have seen already that even the alcohol provided for soldiers as part of their daily rations would at times be traded for other, usually stronger, drink. Goods, both owned and stolen, were sold by soldiers in order to procure alcohol and

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<sup>664</sup>WO 71/40, Trial of Joseph Burch, 3<sup>rd</sup> August 1751.

<sup>665</sup> Kopperman, p. 451.

sometimes, bypassing currency altogether, were swapped or bartered directly for a quantity of alcohol.

Though slightly outside our period, Former Staff Sergeant MacMullen's description of alcohol trading amongst the soldiers and regimental community of the 13th Light Brigade, during the early 1840s offers a fascinating glimpse of this part of the regimental marketplace. MacMullen attributed some of the vigour of the market in illicit alcohol to the regiment's location in India, claiming that 'the extent to which it is practised in regiments any length of time in India is truly surprising'.<sup>666</sup> The regiment attempted various means to control the levels of drinking amongst the men. Each soldier was issued with a ticket by their pay sergeant, which would entitle them to buy from the regimental canteen, at a reduced rate of around three pence, two drams of arrack, with one dram served in the morning and the second in the evening. Alongside this allowance, the canteen also offered wine and brandy, but at 'four pence half penny a dram without tickets [...] the high price of these liquors prevented the men from drinking them, unless when plentifully supplied with money.'<sup>667</sup> This attempt to effectively price soldiers out of drinking, rather than reducing their consumption, instead served to open up the informal market to lower priced, often locally produced alcohol. And it would appear many soldiers were active participants as both buyers and sellers. MacMullen's description also underscores the role of regimental women in alcohol trading: 'But canteens are not the only places in which soldiers obtain liquor; it is sold by most married women, and often by single men'.<sup>668</sup>

That it was sold by 'most married women' and in the absence of wives, 'often by single men', suggests that this was a valuable and important part of many individual soldiers' personal and family economies and as such it seems that many men and women risked the possibility of courts martial, and for the latter, expulsion. Alcohol trading was risky, but it was very lucrative. As MacMullen put it, 'the great profit induce[d] both parties to take the risk'.<sup>669</sup>

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<sup>666</sup> MacMullen, *Camp and Barrack-Room*, p. 139.

<sup>667</sup> MacMullen, p. 121; also see Venning, p. 133

<sup>668</sup> MacMullen, p. 139.

<sup>669</sup> MacMullen, p. 139.

MacMullen gives a detailed description of the illicit alcohol trade in the regiment, with ‘Dharoo’, a drink distilled from berries and similar to whiskey in taste and appearance, the main product sold. This was ‘generally purchased for six annas a bottle from the natives, and retailed at four annas a dram to the soldier’, which resulted in ‘a clear profit of three hundred per cent’. At times when ‘money was plentiful’ for soldiers, such as after the regiment had returned from combat in Afghanistan, the price per dram rose to as much as ‘eight annas’ and ‘so great was the demand for it, even at that price, that married men who did not join until 1842 had amassed sums of money, in some cases amounting to two hundred pounds sterling’, by the time MacMullen arrived with the regiment in 1844.<sup>670</sup>

A willingness to ‘suttle contrary to orders’ may also have flourished because, whilst the potential punishments for those who were caught were severe, most of those who engaged in this trade were not caught, or at least not prosecuted. MacMullen ascribed this to how ‘cunningly [...]they manage[d]’, but if his assessment of the ubiquity of the offence within the regiment is accurate, and given Kopperman’s and Berkovich’s findings, then a combination of pragmatism and ambivalence on the part of regimental commanders may also have played a part, with only the more egregious or blatant offenders being prosecuted as examples to the rest.<sup>671</sup>

### **Soldiers and civilians**

As discussed in Chapter Five, the soldier experience of theft, as both perpetrator and victim, illuminates the importance of relationships and interactions between soldiers and civilians in creating the context for some kinds of property crime; a context which relied on both the proximity between these two apparently different worlds, and the distinctions between them. In particular it seems that the close proximity and intertwined lives of civilians and soldiers, along with the opportunities peculiar to military service were key to the development of particular strands of black-market trading.

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<sup>670</sup>MacMullen, *Camp and Barrack Room*, p. 139.

<sup>671</sup>MacMullen, p. 140.

Unsurprisingly given the nature of their service, in legitimate trading, soldiers most often took the part of the buyer. Though there were exceptions to this. Whilst on active campaign, for example, victories at times brought booty which would be legitimately sold and the proceeds distributed as prize money. After a successful siege, when the violence and the drinking and the looting were over, camps would often take on the appearance of an ad-hoc marketplace.<sup>672</sup> In his memoirs of serving with the Connaught Rangers, William Grattan described the scene in camp on 9 April 1812, two days after the taking of Badajos: ‘the neighbouring villages poured in their quota of persons seeking to be the purchasers of the booty captured by our men, ...and our camp presented the appearance of a vast market.’<sup>673</sup>

Some soldiers too were able to maintain a secondary line of employment through the regiment. Tailors and shoemakers in particular brought valuable skills and such work offered opportunities for legitimate trade alongside military service.<sup>674</sup> More often, though, it is in illegal or illicit trading that we see soldiers acting as sellers and civilians as purchasers; a practice made possible and given context by the proximity of soldiers and civilians in almost every type of military setting. Hurl-Eamon’s study of the economic survival strategies employed by soldier’s and sailor’s wives in eighteenth-century London, shows very clearly that in many instances, ‘stolen’ goods, however they might have been rationalised or defined by those accused of taking them, commonly passed along chains of possession beginning with the initial taker or ‘finder’ of the goods and ending, often, with the pawnbroker, or ‘Uncle’.<sup>675</sup> Importantly these chains of possession seemed to pass between service families with such consistency of approach as to suggest a cultural norm in how they operated.

While Hurl-Eamon’s study focuses primarily on the actions of

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<sup>672</sup>Brian Sandberg, ‘“The Magazine of all Their Pillaging”: Armies as Sites of Second-Hand Exchange During the French Wars of Religion’, in (Ed. ) Laurence Fontaine, *Alternative Exchanges: Second-hand Circulations from the Sixteenth Century to the Present*, (New York: Berghahn, 2007), pp. 76-96 (pp. 79-80); also, Lynn, p. 21-22.

<sup>673</sup>William Grattan, *Adventures in the Connaught Rangers, From 1808 to 1814* (London: Colburne, 1847), p. 12.

<sup>674</sup>Cookson, ‘Regimental Worlds’, p. 26.

<sup>675</sup>Hurl-Eamon, ‘Fiction of Female Dependence’ p. 490; also, for more on importance of pawnbrokers to the ‘makeshift economy’, see, Ginsberg, p. 124.

soldiers' and sailors' wives within the metropolis, drawing on civilian justice records and locating the crime primarily within the domestic sphere, courts martial trial records allow us to trace some of those activities and chains of possession within the military world itself. Like the Old Bailey cases, courts martial were defence cases and as such what is most interesting and relevant is often less the facts of the case, than what the defendants considered might be convincing to the court.<sup>676</sup> An examination of surviving GCM transcripts reveals similar patterns of behaviour and similar chains of possession. If we consider, for example, the case of Thomas Connor, Randall McAllistor and John Breeze, tried at Rhode Island, in 1779, on charges of 'embezzling and selling powder and paper cartridges belonging to His Majesty's stores', we see some interesting similarities to the Old Bailey cases covered in Hurl-Eamon's study.

In one of the Old Bailey cases, the female defendant, whilst taking her shipwright husband some breakfast to where he was working at Chatham Docks, helped herself to a quantity of 'old lead' which she carried out in the empty food basket. This crime clearly falls into the category noted by Hurl-Eamon of goods being taken through a sense of plebeian entitlement, very similar in tone to the sense of entitlement shared by wives of non-military, working men.<sup>677</sup> That the defendant attempted to hide her takings, may have reflected a recognition of the illegal status of her act, but she may still have considered it morally acceptable as part of a working culture of perquisites. It is clear, however, that whereas in some cases the perpetrator acted within that traditional moral understanding, in other cases that older moral understanding was being stretched far beyond its intended limits or knowingly used as cover for acts of theft.

The court martial in Rhode Island is a much clearer case of theft. This was organised, intentional theft for the purpose of resale, and not the chips and scrapings taken by workers for their own use under the traditional understanding of perquisites. If the first witness in the trial is to be believed, the defendants ensured they had a buyer prior to taking the

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<sup>676</sup>Hurl-Eamon, 'Fiction of Female Dependence', p. 484; Gilbert makes a similar point for the defence statements of deserters: 'Why Men Deserted', pp. 553-67 (p. 560).

<sup>677</sup>Hurl-Eamon, 'Fiction of Female Dependence', p. 485; Rule, 'Social Crime in the Eighteenth and Early Nineteenth Centuries', pp. 152-54

powder. Across several days and four separate visits, the three defendants sold approximately 100 pounds of rough canon-grade powder, and ten pounds of fine powder to the witness. Everybody involved in the transactions appears to have been aware of the legal implications: when questioned as to the ‘danger attending the purchasing of it’, one defendant had assured the witness that ‘there was no danger if the cartridges were destroyed’. McAllister, though, who appears to have been the one to procure the powder in the first place, attempted to characterise the theft in similar terms to those of Hurl-Eamon’s study. Twice whilst questioning witnesses, McAllister asked: ‘Did I not ask the consent of the working party to take a little powder to give to a friend?’<sup>678</sup> That this is offered as a defence, suggests that small-scale taking would not have been unusual, and may have been more kindly regarded than outright theft.

This trial is interesting for a number of reasons. Alongside the apparent cultural continuity between soldiers and civilians, it also shows a flow of goods moving between the military and civilian worlds, with such interactions seemingly easy to arrange and lucrative for both parties. It was ‘some days after’ establishing with the witness that he would be willing and able to buy the powder from them that two of the defendants arrived at his house with the first two cartridges, each weighing ten pounds, and which he bought from them for eight dollars. With the kind of rare insights offered in such trials, we can see very clearly a chain of possession running from the initial act of theft, through the negotiation between soldiers and civilian of several sales, and further along again as the civilian purchaser then sold the powder onto a third party.

A second case from 1779, this time from Gibraltar, again shows soldiers stealing powder and then passing that powder onto a civilian. William Booth and Thomas Else, both of the Soldier Artificer Company, were tried by GCM for ‘stealing powder the property of the King’; somewhat ironically, given the Artificer company was established to work on the improvements to Gibraltar’s fortifications, precisely because of the unreliability of civilian labour. In this case the powder was clearly of a kind

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<sup>678</sup> WO 71/88, Trial of Thomas Connor, Randall McAllistor and John Breeze, 18<sup>th</sup> January 1779

used in construction, rather than the cannon grade or fine grade powder stolen by Connor, McAllister and Breeze. Again, though, access to the powder was an essential part of the soldiers' service. It had been stored, along with other construction materials, in a 'tent' near the 'new road leading up to the Moorish castle' on which some of the men were working. Booth and Else were employed at this time in 'blowing stones' and had been for six weeks.

On the day of the theft, both men were seen entering the tent, and then leaving, with one carrying a 'sand bag' under his arm. They then took the bag to 'a Jew's house' nearby, and a few moments later, were seen leaving the house without the bag. Two witnesses, also of the artificers, one of whom had left the powder in the tent for later use in their work on the road, had followed Booth and Else, and one of them went to the house and searched for the bag. In his initial search he found nothing, but returning later and 'asked the Jew's wife' for the bag which had been left there. This time the bag was produced and was found to contain, 'about two fulls of the crown of a hat of powder'.<sup>679</sup>

No mention was made in the trial of the civilians purchasing the powder, and it is possible that Booth and Else had merely asked them to hold onto it for them until they were able to collect it; however, many of the studies of second-hand trading among civilians in Britain and some parts of Europe, particularly note the role of Jewish immigrants, at least into the middle of the nineteenth century.<sup>680</sup> To what extent this reflects a real propensity for second-hand trading, or simply the nineteenth-century 'image of pawnbrokers' as 'typically Jewish', is difficult to say.<sup>681</sup> Lynn notes that, in the context of early modern European armies, the sutlers and *vivandieres*, who traded in various items, including second-hand and stolen goods, often passed them to more established traders and that these larger traders would

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<sup>679</sup> WO 71 90, Trial of William Booth and Thomas Else, 12<sup>th</sup> July 1779; also, Thomas William John Connolly, *The History of the Corps of Royal Sappers and Miners*, Volume 1 (London: Longman, 1855), pp. 1-5.

<sup>680</sup> Madeleine Ginsberg, 'Rags to Riches: The Second-Hand Clothes Trade 1700–1978' *Costume*, 14(1), 121–135 (124).

<sup>681</sup> Alannah Tomkins, 'Pawnbroking and the survival strategies of the urban poor in 1770s York', in (Eds.) Steven King and Alannah Tomkins, *The Poor in England, 1700–1850: An Economy of Makeshifts* (Manchester: Manchester University Press, 2003), pp. 166-198 (p. 168).

often be ‘identified as a Jew, a word wielded with an anti-semitic bite’.<sup>682</sup> Many of the courts martial transcripts from this period use the same terminology, and as such it seems likely that this was at the very least considered by the court to indicate some form of illicit and possibly organised trading was involved.

The chains of possession in these trials seem clear and travel from soldiers to civilian and, in the Rhode Island case, on into the wider community. Importantly, the goods being stolen and sold are materials common to the military and we can begin to see elements of the black market in military goods in operation. They offer few clues as to whether or not this could be considered an expression of a wider and more accepted black market within the regiments, however, or within military circles. In both cases, the soldiers concerned were from the same regiment, with the thefts made possible because they had been assigned to a work party at the yard, or in construction on the new road. Other cases, however, suggest such trading operated at a wider military level. In 1775, eight soldiers from four separate regiments were tried at Gibraltar, with seven facing charges of ‘stealing a quantity of lead from the King’s stores; or being accepting thereto,’ and one being charged with ‘buying a part of the said lead, knowing it to be stolen.’ As with the previous case, this was not a single act of theft, but rather a series of thefts, with ‘aprons of lead’ removed from the stores and secreted in various places around the yard ready to be picked up at a later time. Interestingly, it seems that one of the defendants, Samuel Parsons, sent his young son to sneak into the yard after hours and pick up the hidden aprons, throwing them over the wall to his waiting father.<sup>683</sup>

As with the previous case, a buyer appears to have been lined up in advance of the defendants collecting the aprons from the yard, though it is impossible to tell whether or not that buyer was already in place prior to the aprons being taken from the stores themselves. Certainly, it seems that one of the defendants, George Brown, considered that he would be able to sell the items and encouraged the other defendants to acquire the lead on that basis. Again we see a chain of possession leading from soldiers into the

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<sup>682</sup>Lynn, p. 143.

<sup>683</sup>WO 71/80, Trial of James Fitzacary, Archibald Dawson, Thomas Griffiths, Edward Bagly, Geo: Brown, John Meachon and Samuel Parsons, 29/30 May 1775.

civilian market, with the lead aprons eventually ending up in the possession of ‘a Jew’ in the local town. We can also see signs of adherence to some sort of code of conduct in the behaviour of the defendants, which would seem to tie in with Coss’s analysis. Having sold each quantity of lead, the proceeds were then shared equally amongst them, despite some clearly having taken greater risks than others. But this is not a ‘primary’ or even ‘secondary’ group dynamic. The soldiers in this trial shared neither company, nor regiment. Instead it seems a ‘tertiary’ group dynamic was in play, with soldiers relating to each other as members of a garrison community at a wider level than their own company loyalties. The involvement of Parson’s son meanwhile, brings to mind some of the cases explored by Hurl-Eamon, with their apparent cultural specificity.

It is also of interest that these trials share so many common features in terms of soldier behaviour and opportunities for theft and resale, given that they occurred in two very different locations. There were, arguably, similarities between Gibraltar and Newport, Rhode Island: in both cases the soldiers were garrisoned, in heavily militarised settings, and close to a civilian population. Even so, the similarity in behaviour, echoed in other trials from different locations, suggests a common experience.

What is absolutely clear from these cases is the fluidity with which goods passed between regimental and civilian worlds, showing just how porous the nominal borders between those two worlds could be. Importantly, at least one of the cases hints at a shared understanding between soldiers of different regiments and companies. Such a shared understanding may have contributed to an active black market within the civilian world, but may also have contributed to the development of an internal black market within the military itself.

The level of detail available in a court martial trial transcript allows us a unique insight into the specific mechanisms of black-market trading, far more so than the much less detailed information in courts martial registers. In the cases above we are able to see sequences of events and contextual details, different participants and their relationships to each other, and how all these factors fit together. But even in the courts martial registers and regimental returns, with their much less detailed charge listings a picture emerges both of soldiers conniving at the taking and disposing of goods, and

of the apparent movement of stolen goods between soldiers. For example, on 17th May 1814, in Canada, three privates from the same company and regiment were all tried at the same session for the theft and resale of several birds. The first was charged with having '[u]nlawfully possessed himself of Seven Fowls', the second with '[a]ccepting and disposing of four of the Fowls, knowing them to be stolen', and the third with '[t]aking charge and having sold Two of the Fowls, knowing them to be stolen'.<sup>684</sup>

Cases like these give clear indications of soldiers co-operating in the theft and sale of goods, and they show very clearly the traffic in goods at the meeting point of civilian and military communities, but where goods can be shown to pass between soldiers and other members of the military community, it is often unclear as to whether this represents a black-market trade, or an expression of the 'sharing' ethos Coss identified within soldier groups. We know from the GRCM register, for example, that Gunner Jason Thornton, of the Royal Artillery, was convicted in October 1813 of 'Stealing a barrack Sheet & a Great Coat'. In the same trial session, Gunner John Haggery, of the same battalion and regiment, was convicted of 'Selling a Great Coat knowing it had been stolen'.<sup>685</sup> We have no way to know what passed between the two Gunners, whether they had acted together but only one could be proved a thief, or whether Thornton had given or sold the coat to Haggery. Even when only a single soldier was involved, it is sometimes clear that stolen goods were being sold or passed along to others. For example, a private from the 37th was tried in March 1819, by RCM, for 'Unsoldierlike conduct in offering for Sale Articles the Property of Capt. Taylor'.<sup>686</sup> We do not know from the charge to whom Captain Taylor's property was offered for sale, however, and it is possible that this is another example of goods being sold out of the regiment.

Examples can be found, however, that would seem to indicate a functioning black market within regimental communities. One GCM trial in particular, from March 1779, is of interest here, as it offers evidence for both a sharing ethos within the group, and black-market trading within the regimental community, and fits very much with Lynn's assessment of

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<sup>684</sup> WO 89/4.

<sup>685</sup> WO 89/4.

<sup>686</sup> WO 27/ 147.

sutlers' roles in early modern campaign communities, as traders in second-hand goods and plunder.<sup>687</sup> Six soldiers of the 71st Grenadiers, were tried at Southampton, New York, for 'being absent from their Quarters without leave, and for Robbery'. According to the witnesses, including one involved soldier who appeared as King's Evidence against his former comrades, the men approached the house of Isaac van Schaie, a local inhabitant, dressed in uniforms and with their faces 'blackened' and attempted to gain entrance to the house under pretence of needing water. Having been refused entry, one of the soldiers forced the door open, and all but one of the defendants went into the house and proceeded to violently assault van Schaie, demanding that he give up any money he had in the house. During the robbery the soldiers ransacked the van Schaie household, breaking open and emptying two chests of money and stealing large quantities of male and female clothing, dressmaking cloth, shoe leather, ornate lace, and various other items.

What makes this case so interesting, though, is what the soldiers then did with their stolen goods. According to the testimony of Roderick Frazer, the soldier who turned King's Evidence against his comrades, when they left the van Schaie house, they first hid their loot in some woods near to their quarters in Sagg Harbour. Frazer testified 'that next day they brought them to their barracks where they divided them' and that three of the soldiers had 'offered the black lace mentioned in the evidence to a Sutler for sale'.<sup>688</sup> The Sutler in question, one William Demain, was also called as a witness, and deposed that he had indeed been offered black lace by soldiers of the 71<sup>st</sup> Grenadiers, though no mention is made as to whether or not he accepted that offer.

### **The Black Market Trade in Soldiers' Necessaries**

Much of this activity, and in particular the theft and trading of food and livestock, fits Lynn's analysis of early modern armies on campaign, with their 'pillage' economies. But there are also hints of a developing black-market trade in military goods. The borders between military and

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<sup>687</sup> Lynn, pp. 135-143

<sup>688</sup> WO 71/88, Trial of Alexander Cumming, Hugh Malloy, Allan Boyd, Archibald Campbell, Donald McDonald and Simon Frazer, 9 March 1779.

civilian experience were far from sharp. With civilians who were nominally part of regimental communities through occupation or family ties, serving soldiers living in rooms belonging to civilian hosts, former servicemen with a foot in each world, however much the military sought to separate and remove soldiers from their immediate social milieu, a key characteristic of military life throughout the eighteenth and early nineteenth centuries, was proximity to and inter-dependence on civil society. Though by no means the only expression of it, the black-market trade in regimental clothing epitomised this relationship. Perhaps most illustrative of this is the military offence of ‘selling’, ‘losing’, ‘taking’ or ‘making away’ with regimental necessaries or accoutrements.

According to James’s *New and Enlarged Military Dictionary*, soldiers’ necessaries were defined as ‘such articles as are ordered to be given to every soldier in the British service, at regulated prices’.<sup>689</sup> Some items were provided as part of the soldier’s initial enlistment, and though he paid towards the cost of these out of his bounty, later replacements were made at the cost of the public purse. Other items were to be paid for annually by the soldier, through the stoppages system. James gives a detailed description of ‘[t]he necessaries to be provided by stoppage from the pay of the soldiers of regiments of foot, militia and fencible infantry’, which ran to 25 items, including two pairs of shoes, a second pair of breeches, a foraging cap, two pairs of black gaiters, combs, powder and puff, a knapsack, a clothes brush, shoe brushes, a pair of stockings, and various other items considered necessary to the soldier, along with the cost of repairing and laundering. Some items were provided annually, and others at varying intervals: the knapsack for example was expected to last six years. Altogether, the annual cost to the soldier for this extensive list of goods was three pounds, sixteen shillings and a penny.

The interchangeability of the ‘making away with’ charges make it very difficult to know the extent to which this particular offence fed into the black market operating between and within civilian and regimental worlds. If, for example, we look at the GRCM register for the years 1813-1814, we

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<sup>689</sup>Charles James, *A new and enlarged military dictionary, or, alphabetical explanation of technical terms: containing, among other matter, a succinct account of the different systems of fortification, tactics, &c.* (London: Military Library, 1802).

can see that out of the 55 soldiers prosecuted for such offences, only two were specifically charged with having sold their necessaries. By far the largest group within this category were charged with ‘taking’ or ‘making away with’. A similar pattern can be seen across the years 1819-1820, during which only a single soldier was charged with having sold his necessaries, whilst a further 87 faced charges of ‘taking’ or ‘making away’ with theirs. During the years 1825 and 1826, only eight of the 283 charges of this type were specific charges of selling regimental necessaries.

How many of the soldiers’ necessaries found their way into civilian hands is therefore unknown, but there is evidence to suggest that it may have been fairly widespread, despite the harsh penalties that could be imposed on civilians found to be in possession of regimental clothing. The annual Mutiny Act specifically tackled the problem of civilians purchasing from soldiers, including it within the provision against persons aiding or abetting deserters, with the offender forfeiting ‘for every such Offence, the sum of Five pounds’, and with additional provision for imprisonment or whipping if the offender was unable to meet the fine.<sup>690</sup> And civilians could also be tried under criminal law for this offence. Anne Hennem, of Newport, for example, was prosecuted at the Quarter Sessions in 1806 for ‘receiving and detaining a shirt from Richard Hand, a private in the 56th Regiment of Foot’, for which offence she was fined five pounds.<sup>691</sup>

For those who both received regimental goods and removed the marks which identified them as such, the penalties were even harsher. Removing identifying marks from the ‘King’s property’ was a felony, and as such carried a very severe punishment. A report from Justice John Heath, into the trial and conviction at the Kent Assizes in March 1804, of a shoemaker named Amos Leeds, demonstrates just how devastating the consequences could be for those caught removing the king’s mark from regimental goods. According to the key witness, a soldier named George

<sup>690</sup> *Eighteenth Century Collections Online*, Geo.III.c.13, An act for punishing mutiny and desertion; and for the better payment of the army and their quarters (1791) <<http://0-find.galegroup.com/wam.leeds.ac.uk/ecco/infomark.do?&source=gale&prodId=EC CO&userGroupName=leedsuni&tabID=T001&docId=CW124284813&type=multi page&contentSet=ECCOArticles&version=1.0&docLevel=FASCIMILE>>.[accessed 10 January 2012]

<sup>691</sup> Isle of Wight Record Office, Newport Borough Quarter Sessions Records, NBC/36/14, Certificates of Conviction, 6 June 1807.

Stockdale, he had visited Leeds's shop in Kent, looking for a pair of shoes. Leeds showed him several pairs, which Stockdale found too expensive, before then bringing out, 'a pair of regimental shoes, marked G.R.'. When Stockdale questioned Leeds as to his possession of marked shoes, Leeds insisted he had bought them, but refused to say from whom. Stockdale took one of the shoes and made clear that he intended to seek out a justice of the peace and show it to them, then left the shop.

When he returned half an hour later, accompanied by a constable, the remaining shoe was 'lying on the counter', with 'part of the mark' removed and also lying on the counter. The jury found Leeds guilty of 'feloniously taking out from a shoe, a mark denoting the property of the King, for the purpose of concealing the King's property' and he was sentenced to transportation for fourteen years and the forfeiture of all his goods and chattels. Heath's report makes clear that as the presiding judge he had little choice but to impose such a sentence, as the statutory nature of the offence left him with no discretion, but he recommended Leeds for clemency on the grounds of his former good character and 'a deficiency in sense' and suggested a reduced sentence of six months imprisonment, 'as he was a Receiver, knowing the shoes to be the King's stores, and deserves to be punished as such'.<sup>692</sup>

From time, to time civilians were court-martialled for buying soldier's necessaries, and these cases can offer tantalising glimpses into the mechanisms and expectations of this part of the black market. At a General Court Martial held in New York, on 12<sup>th</sup> August 1779, Robert Reid, an inhabitant of Phillipsburg, was accused of 'selling Rum to the Soldiers, purchasing their Necessaries and enticing them to desert.' Reid denied the charge of enticement to desert, and no evidence being produced to prove that charge it was dismissed. For the other two charges, however, Reid, 'pleaded Guilty of buying a Shirt and Shoes of a Soldier and selling Rum to them.' This case offers a clear example of the two-way traffic of goods between military and civilian worlds. Reid both sold and bought contraband goods across the civilian-military divide. More importantly though, Reid's

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<sup>692</sup> TNA, Home Office (HO), 47/32/31, Report of John Heath on Amos Leeds, shoemaker, convicted at the Kent Assizes in March 1804, for removing the royal mark from a regimental shoe.

defence offers evidence for a much wider trade in regimental goods, as he claims that: ‘His buying a Shirt and the Shoes of a Soldier and selling Rum to them proceeded entirely from ignorance as he did not know that it was contrary to the Articles of War, *and as his neighbours practised the same thing* [author’s italics]’<sup>693</sup>

Though this claim should be treated cautiously, it can be assumed that the defendant at least expected that this would be readily believable to the court and the implication that this was a relatively normal part of civilian-military interactions is clear. The very fact that the Mutiny Act allowed for civilians to be prosecuted for buying a soldier’s necessities would seem to add weight to this impression. That such sales continued despite the potential for civilians to become embroiled in the military justice system may be testament to both the ease of the trade and the overall unwillingness of the military to focus on the civilian side of that transaction, preferring in most cases to prosecute the seller and not the purchaser. Isolated instances such as the Reid case, however, show the risks inherent in such activities: Reid suffered the ignominy of being tried as a civilian in a military court, and was sentenced to fifty lashes and a five pound fine.

A particularly illuminating example of the cut and thrust of soldier and civilian black-market trading comes from the trial of James Buckett, of the Royal Fusiliers, court-martialled at Gibraltar, in 1757, ‘For being concerned with others in several Robberies.’ Buckett and a comrade, now turned King’s Evidence, had been involved in a number of robberies, taking stockings and black ribbon from shopkeepers. So far, a fairly ordinary tale of robbery, but the culprits had also engaged in another activity, this time with ‘some other Soldiers of the Gang’. In this second scheme, two of the soldiers: ‘went Several times to Spaniards in the Streets, offering a Shirt to sell.’ Having bought the clothing, the Spaniard would then be approached by another member of the gang, ‘pretending to be a Corporal’, who would tell him that the shirt he was carrying had been stolen from the regiment and ‘threatend [sic] to take the Spaniard to the main Guard if he did not deliver

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<sup>693</sup>WO 71/90, Trial of Robert Reid, 12 August 1779.

up the Shirt.’ This, the court heard, they ‘always’ did, leaving the soldiers to go off ‘with the Shirt & the money.’<sup>694</sup>

This case is interesting on several levels. It speaks to an understanding on the parts of both soldiers and ‘Spaniards’ as to the nature of the black-market trade. That the soldiers had been able to effect this scheme ‘several times’ suggests a general readiness on the part of the civilians to purchase from soldiers, and the readiness of those same unwary customers to hand the goods over when challenged by a soldier claiming to represent the regiment, speaks just as clearly to a recognition of the dangers of such illicit trade. It also illuminates something of the continuity of the experience of crime in the British army. Coss describes a very similar kind of confidence trick, called ‘the calms’, played on the local peasantry in the Peninsular, half a century after Buckett and his gang were playing theirs on the inhabitants of Gibraltar:

The scam entailed exchanging blankets or some military issue item for local currency. At some point during the deal, a comrade wearing fake sergeant’s stripes on his arm, would interrupt the proceedings, declaring them illegal and demanding that the soldier return the money. In the confusion, the soldier would give back flattened uniform buttons, passing them off as shillings. The peasant, feeling lucky to avoid legal entanglements, would go on his way unaware he had been taken.<sup>695</sup>

Separated by half a century, the soldiers in mid eighteenth-century Gibraltar and those in early nineteenth-century Spain and Portugal were both able to use the same set of civilian expectations of trading with soldiers, and its dangers, to their advantage in very similar ways.

The black-market trade in necessities operated both at the meeting point of civilian and regimental worlds and also within regimental and garrison communities. A series of orders, recorded in an officer’s ‘orders and letter book’, from Gibraltar, covering the period 1787 to 1791, suggests that soldiers wives were particularly active in this part of the black market.<sup>696</sup> An order dated 29 June 1790, stated that ‘A Mrs Martha

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<sup>694</sup>WO 71/65. Trial of James Buckett, 19 December 1757.

<sup>695</sup>Coss, p. 109.

<sup>696</sup> Interestingly, in his examination of second-hand trading in the cities of central Europe, Georg Stöger suggests that soldiers wives were often active in trading second-hand clothes, and sometimes military uniforms: Georg Stöger, ‘Urban

Wilkinson' had incurred a fine of a little over twenty-five dollars, 'for buying two shirts from Hugh Lavit, of Captain William's company'. A few months later, an order dated 15 September 1790 stated that, 'Some of the Commanding Officers of corps, having represented to the General that soldiers' necessaries are frequently bought by women belonging to the troops in the garrison, he directs that whenever any women belonging to the troops is convicted of buying any part of a soldier's necessaries she should be sent out of the garrison by the first opportunity.'<sup>697</sup>

Soldiers did not just sell their own regimental necessaries and accoutrements, and it is likely that at least some of the soldiers listed in the GRCM register as having lost or otherwise misplaced their necessaries may themselves have been victims of theft by a fellow soldier. At a Court Martial, held in Halifax, Nova Scotia, 16th July 1750, John Willson, soldier in Colonel Warburton's Regiment, was tried for 'Absenting himself five Days and Nights from his Fort, Making away with his Watchcoat, and Robbing his Comrade's Haversack of two Shirts, one pair of white Geaters [sic] and one pair of Stockings'. Two local inhabitants each offered evidence for Wilson having sold them items from the haversack. John Deal, told the court that 'the Prisoner sold him a Shirt for half a Dollar and a Mugg of flisse [sic]'. Deal had questioned the prisoner as to whether the shirt was his to sell, clearly showing an awareness of the possible ramifications of buying stolen items, and was told that 'it was, and that he had right of them.' A second inhabitant, William Gales, deposed that 'the Prisoner came to his House with Two Sailors, and sold him a Shirt for half a Dollar'.<sup>698</sup>

Alongside the legitimate second-hand clothes trade, a black-market component to civilian trading in clothes existed, independent of any military presence. The Old Bailey proceedings and local quarter assize records are full of cases in which stolen clothing was sold by the thieves to clothes sellers. Beverley Lemire in her analysis of clothes theft and popular

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Markets for Used Textiles – Examples from Eighteenth-Century Central Europe', in *Selling Textiles in the Long Eighteenth Century: Comparative Perspectives from Western Europe*, ed. by Jon Stobart and Bruno Blondé (Basingstoke: Palgrave Macmillan, 2014), pp. 210-225 (214).

<sup>697</sup>The National Army Museum (NAM), 9106-38, 'Order Book kept by or for an unknown officer of the 32nd Foot in Gibraltar', 4 Feb 1787 to 1 Oct 1791.

<sup>698</sup>WO 71/40, Trial of John Willson, 16<sup>th</sup> July 1750.

consumerism, describes the demand for second-hand clothes within civilian communities in early modern England, which ‘functioned through a network of legal and illegal distribution’.<sup>699</sup> Georg Stöger has traced very similar networks in eighteenth-century central Europe, where ‘the exchange of used textiles was [...] omnipresent in pre-modern urban economies’.<sup>700</sup> Interestingly, Stöger also points out that a common concern for some civil authorities was the apparent prevalence of second-hand military uniforms: he gives the example of an investigation by the Viennese magistracies, in 1781, of the city’s main market place, as a result of which, ‘used uniforms and other military items were confiscated from 34 traders’. Though most of these items had been legitimately purchased by the traders from an army auction, some had been bought from ‘active or former soldiers’.<sup>701</sup>

The particular trade in regimental clothing and accoutrements naturally fed into this existing framework, but it has specific features which mark it as a distinct part of the black market, with a different set of risks and motivations.

Allowing for occasions of quality fraud or mismanagement, the quality and design of regimental clothing was micromanaged to a high degree from the centre. Design patterns and materials were examined in detail before tenders were awarded, and even during the early part of this period, suggestions that quality was lacking warranted a board of enquiry and regimental inspection reports.<sup>702</sup> On the 23rd of June 1756, for example, at a Meeting of the General Officers of the Army, at the Judge Advocate General’s Office in Privy Gardens, the ‘Articles of Agreement for furnishing cloathing[sic]’ for several regiments were examined along with certificates signed by the relevant authorities to confirm the acceptability of patterns and delivery schedules in each case. The same meeting also considered inspection reports from seven regiments, five of which reported ‘a compleat[sic] delivery’, none reported any deficiencies, and two specifically reported that the quality and fit were both ‘good’. One regiment

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<sup>699</sup>Ginsburg, ‘Rags to Riches’, pp. 121–135.

<sup>700</sup>Stöger, ‘Urban Markets for Used Textiles’, p. 211.

<sup>701</sup>Stöger, ‘Urban Markets for Used Textiles’, p. 214.

<sup>702</sup>For an example of the system failing very badly, see: Robert Henderson, ‘British Army Shirts 1803-1815’, *The War of 1812 Website*, <http://www.warof1812.ca/shirts.htm>, [Accessed: 27 August 2013].

not due to make an inspection report at that time was individually contacted by the War Office on the Judge Advocate's request and reported that no defects had been found in the clothing.<sup>703</sup>

Inasmuch as anything could be said to be a guarantee of quality the regimental mark was just that. Though soldiers were not provided with luxurious clothing, micro-managed patterns and designs, and the need for durability and functionality, meant that regimental clothing was of a known and almost guaranteed quality, certainly when compared to the ready-made 'slop' clothing that made up much of the market for new clothing;<sup>704</sup> though they were likely to be of a lower quality and price compared to the 'perquisite' cast-offs sold by servants.<sup>705</sup> At the same time, they were unusually easy to identify as illicit goods, with the same regimental mark that guaranteed durability also increasing the risks involved in the trade.

Soldiers' uniforms were designed to be hard wearing, because they were intended to be hard worn. Legitimate sales of old items, once replacements had been issued were possible, but by the time most of the items were replaced, the originals had usually been worn out and would fetch a very low price. As McCormack points out, while militia regiments were provided with new clothing every three years, when embodied for war 'they had to be replaced more frequently because they wore out', and the regulars were refitted annually, 'giving an indication of how long a garment would last'.<sup>706</sup>

This added impetus to the sale of new items, and it is noticeable that in several of the RCM trials recorded by the 34th, of soldiers who made away with their great coats, the charges specified that the coats were 'for 1819' when they were new and still considered valuable.<sup>707</sup> Soldiers were generally allowed to sell their old clothes, once new ones had been issued, however, and this added a layer of defence for the civilians who bought from soldiers. As we have seen in some of the cases, buyers often queried

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<sup>703</sup>WO 93/7, Letters (in and out) of estimates, official alterations, etc. , Minutes of a Meeting of the General Officers of the Army, at the Judge Advocate General's Office in Privy Gardens, 23 June 1756.

<sup>704</sup>Cheap, dull, ready to wear clothing: Ginsberg, 'Rags to Riches', p. 122; McCormack makes the point that coats for militia privates were usually made of 'kersey, a woollen cloth that was coarse and dense, but warm and hard wearing': McCormack, 'The Material Life of the Militia Man'.

<sup>705</sup> Ginsberg, p. 121.

<sup>706</sup>McCormack, 'The Material Life of the Militia'.

<sup>707</sup>WO 27/148.

the soldiers' right to sell the items, taking on faith that the coats or shirts were theirs to sell and not considered part of their current set of necessities.

For a final example of criminal activity and black-market trading fostered by the intertwining of military and civilian lives we return to the trial of John Antrobus, 'for feloniously stealing, on the 10th of October, one regimental jacket, value 8 s. and one pair of overalls, value 6 s. the property of our Lord the King.' This trial casts a light onto several different aspects of the black-market trade in regimental clothing, bringing together several of the characteristics we have discussed so far. In this case, the soldiers concerned were all accommodated in barracks, at the Tower of London, but the close relationship between soldiers and civilians is still apparent. John Sullivan, soldier in the third regiment of guards in his evidence told the court:

'I left my overalls in my room about one o'clock; the jacket did not belong to me, it was taken from the barrack room where I sleep in the Tower. My overalls were taken out my box under my own bed. I put them in my box on the 10th, about one o'clock in the afternoon; on the following morning I went to put them on to go on parade, they were gone. In the morning when I complained I had lost my overalls, a man complained he had lost his jacket.'<sup>708</sup>

Antrobus had, it seemed, engaged in something of a crime spree, stealing several items of clothing and regimental equipment from the barracks. Though there is no confirmation within the trial documents, Antrobus had claimed to Sullivan prior to the thefts that he was a newly discharged marine, thereby justifying his presence in the Tower. The regimental items Antrobus stole found their way to several civilians engaged in the second-hand clothing trade. More interestingly, one of those items then found its way back to the Tower, purchased by William Street, another soldier in the same regiment.

In a rare insight, the evidence presents not just the personal loss inherent in the crime of theft, along with the chain of sale and possession across the boundaries of civilian and military life, but also the impact of such theft on the soldier victim's professional life and the way in which being victim to it might paradoxically have further fuelled the need for this

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<sup>708</sup> Old Bailey Proceedings, t18141026-119, Trial of John Antrobus, 26 October 1814.

part of the black market. Sullivan, having been the victim of theft was then himself punished for the loss of regimental clothing: he told the court ‘I was stopped thirteen shillings and sixpence out of my pay for them.’ The consequences for a soldier of not having the correct clothing and accoutrements could be severe. A quick glance at any level of military justice records shows soldiers being incarcerated, flogged, demoted and put under stoppages for this offence in great numbers. Yet for two shillings and sixpence, William Street was able to avoid punishment and equip himself with a regulation regimental jacket, formerly in the possession of John Sullivan.

At the centre of this coming and going of regimental clothing between civilian and military hands, were two locations in close proximity: the barracks of the Tower of London on the one hand, and on the other a clothes shop, owned by Elizabeth North, who bought the stolen clothes from Antrobus, sold the jacket to William Street and sold the overalls to ‘an old clothes man’, who then presumably traded them on to somebody else. Almost every component of this part of the black market is represented in this trial, up to and including the return of regimental issue, previously stolen and sold into the civilian community, back across the border into regimental use. It also demonstrates how the close proximity and intertwined lives of civilians and soldiers fuelled and was expressed through a very specific set of black-market trading relationships.

Most importantly, when taken alongside the case from Boston, in 1775, of a soldier tried for ‘lending a shirt to pass the Review’, this case hints at the possibility that regimental clothes and equipment were often in motion, changing hands through theft, loan, or sale both out into the civilian world and amongst members of the regimental community.<sup>709</sup> The importance for soldiers of having a complete set of necessities, particularly during inspections and reviews, was potentially as much of a spur to the black-market trade in necessities as their need to acquire funds by selling the same.

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<sup>709</sup>From the transcript of the ‘Boston Punishment Book’: Baule and Hagist, p. 17.

## Conclusion

In many respects the soldier's experience of informal economic strategies, including black-market trading, was very similar to that of his civilian counterpart, but there were also some important distinctions between them. The soldier's relationship with his uniform, for example, was arguably very different from the civilian's relationship with their clothing. The civilian experience which comes closest to the soldier's in this respect was probably the liveried servant: McCormack, in his examination of the material culture of militia soldiers, makes the point that there are analogies to be drawn between the two. In terms of style and design, servants' liveries and some of the regimental uniforms were very similar. More importantly, the proprietorial relationship of regimental commanders, particularly in the militia, but also in the regular army, gave them a 'paternalistic control over their men's material lives [...which was...] amplified by [...] material and stylistic choices'. McCormack suggests that the model of 'involuntary consumption' applied by John Styles to liveried servants could be equally applied to soldiers, with design and purchasing decisions made, not by the soldier who would wear the clothing, but by his commanding officers. And like servants, soldiers had expectations of some right, as a customary perquisite, to the use or disposal of that clothing beyond their service, or its intended use.<sup>710</sup>

The soldier's uniform, though, went beyond identification of a paternalistic employment relationship. It was an important part of the 'package' of soldier identity. The visual impact of servant livery and soldier uniform though similar, invoked very different understandings of the people who wore them. Across the militia and the regular army, individual regimental uniforms differed, but they shared a unified purpose in presenting a 'soldierlike' appearance.<sup>711</sup> The terminology used by contemporaries to identify soldiers, as separate and distinct from civilians, was often focused on their uniforms: 'redcoats' and 'bloodybacks', for example.<sup>712</sup> And individual regiments or parts of the service were similarly identified by their colours, or features of their uniforms: the Royal Horse

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<sup>710</sup> McCormack, 'The Material Life of the Militia Man'.

<sup>711</sup> Linch and McCormack, pp. 149, 155-57.

<sup>712</sup> Linch and McCormack, pp. 149-50.

Guards, for example, were known to all as ‘the Blues’ because of the colour of their uniforms at the time the regiment was first formed, while according to Costello, ‘the Rifles, from the dark colour of their uniforms, and the total absence of all ornament, had gained the nick name of "Sweeps"’.<sup>713</sup>

Many of the memoirs of former soldiers from this period, describe their enlistment experiences, and the change from ‘coloured clothes’, or ‘civvies’ in modern parlance, is commonly presented as an important part of their entrance into military service and of their becoming soldiers. Possibly one of the most poignant examples of this is Shipp’s description of enlistment, as a ten year old boy, having his head shaved, being ‘deprived’ of his clothes and kitted out instead in ‘red jacket, red waistcoat, red pantaloons, and red foraging-cap’, after which, he recalled, ‘[t]he change, or metamorphosis, was so complete, that I could hardly imagine it to be the same dapper little fellow’.<sup>714</sup>

The evidence considered for this chapter cannot speak to the psychological impact of soldiers selling their identifying uniforms, but it is worth considering that the act of selling regimentals, though in many ways similar to any other sale of clothing, may have had an extra resonance for soldiers. On a purely practical level, the implications for soldiers who engaged in this trade were very different from those attending civilian second-hand clothes trading, both for the soldier who sold his necessaries and the soldier who was driven by need to buy replacement items, in order to pass a review and avoid punishment.

As a final point, the mechanisms and expectations of the black market in military goods to a large extent shaped the soldier’s experience of property crime, but it also underlines the need for caution in identifying a clear soldier identity. It is in the informal economies within regiments, and the black market which operated from and around regiments, that some of the closest connections can be drawn between soldiers and civilians, in

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<sup>713</sup> Costello, *Adventures*, p. 15; also, for the importance of uniforms as a signifier of regimental identity, as well as the pride men took in them, see Cookson, ‘Regimental Worlds’, pp. 35-36.

<sup>714</sup> Shipp, *Memoirs*, p. 34; also, Costello’s description of his delight ‘with the smart appearance of the men [...of his new regiment...] as well as their green uniforms’: Costello, *Adventures*, p. 3.

terms of behaviour, economic need, and adherence to a sense of 'moral economy'.

## Conclusion

The main aim of this thesis has been to identify and characterise the soldier's experience of crime in the British army during the period 1740 to 1830, and to delineate the ways in which that experience was soldier-specific. By examining the role that crime played in soldiers' lives and service, this study has illuminated some important aspects of the soldiering experience during this period, soldiers' self-identification as soldiers, and their relationships with each other, the command structure in which they lived and worked, and the civilian world from which they came, with which they were at times intimately connected and yet from which they were also at times distanced.

The secondary aim of this thesis has been to demonstrate the value of the courts martial registers and regimental returns when used together as a basis for analysis of soldier crime and soldier service. Quantitative studies of justice records must always be treated with caution, with the so-called 'dark figure' of crime an unknowable factor in any conclusions drawn.<sup>715</sup> This is even more the case for the justice records of the eighteenth- and early nineteenth-century British army, with the proportion of offending tackled by military authorities below the level at which a requirement for detailed reporting came into effect, significantly higher than the proportion tackled at or above that level. Gilbert suggests that we will never know the true extent, not just of offending, but of offending that was recognised as such and met with summary discipline.<sup>716</sup> Similarly, though the registers and returns consulted purport to collate listings of all trials held at the various levels across the service, we cannot be wholly sure that they are complete and accurate reflections of the numbers of trials held. However, as this study has demonstrated, using a similar methodological approach to those employed by scholars of eighteenth- and nineteenth-century British

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<sup>715</sup>The 'dark figure of crime', was originally coined by Adolphe Quetelet, in 1832, to distinguish between incidence of crime and officially recorded crime levels: Claire Berlinski, 'The Dark Figure of Corruption', *Policy Review*, ( June/July 2009 ) <http://www.hoover.org/research/dark-figure-corruption> [accessed 14 October 2014]; also, see Beattie, 'The Pattern of Crime in England', p. 53.

<sup>716</sup>Gilbert, 'Military and Civilian Justice', p. 42; also Stepler, 'The Conduct of Courts Martial', p. 863.

crime and justice, it is possible to identify some broad patterns and key features of the soldier experience of crime in the British army, from the mid-eighteenth to the early nineteenth century.

First, a general observation: crime and criminality are, as observed in the introduction complex aspects of human behaviour, and highly contextual. As such, there were clearly elements of crime which were context-specific and where experiences of crime differed according to particular service conditions, regimental cultures, type or location of service. The particular propensity for suicide, noted by Rumsby, for soldiers serving in the line cavalry in India, for example, and Dival's contentions regarding different levels of offending between the two battalions of the 30th, both speak to the importance of distinct regimental and service contexts. Baule and Hagist, likewise, suggest that the Boston punishment book may reflect an atypical situation given that the book concerns a 'composite battalion' made up of three different companies from the Royal Irish Regiment and two battalion companies from the 65th.<sup>717</sup>

Though the examination of the three case study regiments demonstrates a degree of specificity, it also shows continuity of experience across the three regiments. The 34th recorded a higher number of courts martial overall, though proportionate to the number of men serving in the regiment it was very much in line with the 33rd and 37th, and the percentage of soldiers serving in that regiment who were convicted by court martial was only marginally higher at a little over 8% than for the 33rd or 37th, both of which convicted a little under 8% of the men. With the 'dark figure' of crime in mind, this seems a statistically insignificant difference. Where we do see some differences is in terms of the balance of offence types. Military crimes, such as desertion and regulatory offences account for 88% of charges for the 33rd, 84% of charges for the 34th, and 70% of charges for the 37th. Given the tendency noted in Chapter Two, for regiments at home to have much higher desertion rates, the level is unsurprising for the 33rd, but the high level for the 34th suggests issues beyond the expected. Similarly indicative of possible issues in the regiment is that violence and threat charges feature far more heavily in the 34th, at

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<sup>717</sup> Baule and Hagist, pp. 5-7.

15% of all charges, compared to 9% for the 33rd, and 6% for the 37th. Though less stark a difference, the 34th also preferred a higher proportion of property crime charges, with 37%, compared to 32% for the 33rd and 22% for the 37th.<sup>718</sup>

The confidential inspection reports attached to the regimental returns for the 33rd and 37th reported no problems in either regiment, with both apparently functioning well and in accordance with the rules and regulations laid out for them, despite these two regiments recording different rates of some offence types. The report for the 34th, however, suggests there may have been issues at a command level. According to the report, the commanding officer of the 34th, Lieutenant-Colonel Dickens, had ‘not been present since the date of the last confidential report in October 1818’. Across the year, the regiment had two different acting commanding officers. The report then criticised Dickens for having repeatedly displayed ‘contempt, disrespect and neglect [...]’ to all official correspondence and in this respect reported him ‘unfit for the duties thereof.’<sup>719</sup> The report also stated that the officers of the regiment had paid attention to the discipline of the men and reported ‘progress’ in that, suggesting that there had previously been an issue with a lack of discipline. It is worth considering then that the disrupted nature of command in the 34th may have disrupted the regimental culture; though the impact in terms of offences tried by courts martial was slight.

From the quantitative study of the GRCM and GCM registers, it is also clear that certain periods and places saw different rates of some kinds of offending: for example, the flurry of food thefts in Spain and Portugal recorded in the GRCM register for 1813, and the burglaries in France recorded in the GCM register for 1819. The extent to which this reflected distinct behaviours as opposed to variations in reporting is difficult to know; however, it does suggest that soldiers were responding to the particular context of active campaigning for the former and military occupation for the latter. Berkowich’s study of the various attempts to curb drunkenness in Gibraltar, throughout the eighteenth century, demonstrates that increases in

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<sup>718</sup> WO 27/147; 27/148.

<sup>719</sup> WO 27/147, Half-yearly Confidential Report of His Majesty’s 34<sup>th</sup> Regiment, 1 May 1819.

official action against an offence can indicate both a specific problem of in-time behaviour, and the failure of those responses to answer a well established culture of offending.<sup>720</sup>

Though specific geographical and service contexts impacted on soldiers' experiences of crime, looking at the registers and returns, along with earlier extant courts martial transcripts and the recollections of serving soldiers, what is most noticeable is the high degree of commonality in the kinds of behaviours soldiers engaged in and the overall balance of offence types. For example, charges of making away with necessaries occur throughout the records, often involving very similar transactional relationships between soldiers and civilians, regardless of where or when the soldiers served. The confidence trick, played on civilians by soldiers in Gibraltar, in which they first sold shirts and then played on civilian fears of prosecution to retrieve the shirts and keep the money, was very similar to the confidence trick, known as 'the calms', noted by Coss, despite the soldiers concerned being separated from each other by half a century. Similarly, we have seen soldiers selling their necessaries in late eighteenth-century Britain, in Screen's 'The Army at Home', and in the courts martial cases from New York in the 1770s, and throughout the GRCM and GCM samples from the early nineteenth century.

Likewise, the analysis of the registers and returns seems to confirm the tendency, already noted by Coss and Haythornthwaite, for soldiers to act together in crime, particularly where the victims were civilians, and as in the case of burglary from New York in 1779, in which one of the culprits prevented their comrades from raping a young girl, and Haythornthwaite's guilt-ridden NCOs paying the widow of a peasant killed by one of their own, this tendency also acted in some ways to protect civilians. That this tendency can be seen to have operated in cases from the late eighteenth and early nineteenth centuries, again suggests that the core behaviours and attitudes of soldiers towards violent crime remained broadly similar throughout the period.

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<sup>720</sup> Berkovich, 'Discipline and Control in Eighteenth-Century Gibraltar', in *Britain's Soldiers*, ed. by Linch and McCormack, pp. 123-28.

Though in many respects, soldiers and civilians of an equivalent economic and social class experienced crime in very similar ways, there were clearly some aspects of the experience of crime which were soldier-specific, shaped by their service and by the cultures of which they were a part and which they themselves acted to form. For the regulars, and in particular those for whom army service was their primary occupation for life, the structures of command and authority in which they lived and served created the context for and shaped the mechanisms of criminal activity. Desertion, suicide and self-harm, all speak to the particular stresses of soldier service, coupled with the limited avenues available to soldiers to effect change in their material and emotional circumstances. High levels of alcohol-related offences, meanwhile, show the primacy of alcohol in the lives of many soldiers, and indeed in the culture of the army overall. Service in the army can be seen to have provided specific opportunities for some kinds of property crime, in particular the theft and resale of military goods, and the use of soldiers' own weapons, whether in suicide or violent actions against others, demonstrates how criminal acts, once engaged in, took particular forms shaped by army service.

Much of the scholarship on the eighteenth- and nineteenth-century soldier has framed his experience and identity in terms of being either primarily a soldier, culturally distinct from the civilian, or primarily a member of an occupational group, distinguished by the specifics of the soldiering profession, but with cultural continuity as the key component. The soldier experience of crime explored in this thesis, suggests that such a binary division is not appropriate. Instead, the soldier identity incorporated and negotiated elements of both cultures. The soldier's experience of crime was differentiated from that of his civilian counterpart by the structures and terms of his service, and by the distinct identity he formed as a soldier; however, it was also intimately linked to a civilian experience.

In 'Making New Soldiers: Legitimacy, Identity and Attitudes, c. 1740–1815', Linch explores some of the complexities of soldier identity, and in particular how that identity was formed and inculcated in the context

of ‘novel’ forms of service, such as the volunteers and fencibles.<sup>721</sup> Separate from the regular army, though much more numerous, the men who served in these different auxillary forces wrestled with an identity which was both ‘citizen’ and ‘soldier’. They utilised many of the same techniques for building soldierly attitudes and contexts, used by the regulars, but the absence, for many, of actual combat complicated their claim on a soldier identity. In legitimating that soldier identity, they incorporated the separation of soldiers’ ‘communal action’ in parades and training, while maintaining close links with their civilian communities.<sup>722</sup> For the soldiers of the auxillary forces, soldiering was part of their identity but not the whole of it, yet for soldiers in the regular forces the identity of soldier was expected to supersede and effectively replace their prior civilian identity.

Despite this expectation, however, we can see a similarly negotiated identity in the soldiers who served in the regular forces. The soldier experience of crime in particular, both as victim and perpetrator, complicates our understanding of soldier and civilian relations. Sometimes the experience of crime evinced a sense of clear separation between soldiers and civilians, most clearly demonstrated in the tendency to act in groups against civilians, but also in the protections afforded to them by those soldier groups. At other times soldier crime demonstrated a sense of cultural continuity between soldiers and civilians, seen most clearly in soldier responses to perceived injustice, or the ‘contractual failures’ of their regimental employers. Some cases show soldiers stealing from civilians, and others show soldiers as victims of civilian acts of theft.

Perhaps most indicative of the complex relations between soldiers and civilians are the cases which show soldiers and civilians acting in concert in property offences, both in terms of them acting together in thefts, and also as participants in illicit trading. In such cases, particularly those involving the theft and resale of military goods, we can see soldiers and civilians effectively combining efforts against regimental authority.

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<sup>721</sup> The ‘linguistic journey’ of the terminology of the auxillary forces is a significant part of the paper, and Linch explains that the term ‘fencible’ is often anachronistically employed for the earlier part of the period, gaining widespread use later’: Linch, ‘Making New Soldiers: Legitimacy, Identity and Attitudes, c. 1740 – 1815’ in, *Britain’s Soldiers*, p. 211.

<sup>722</sup>Linch, ‘making New Soldiers’, pp. 218-19.

Further complicating the soldier experience of crime, as well as what that can tell us about soldier identity and culture, is the question of rank. From the moment a new recruit enlisted in the army, he began a transformational journey, first from civilian to soldier, and then for some a transformation from soldier to holder of positions of authority or military rank.<sup>723</sup> This latter transformation altered many aspects of the soldier's service, including his experience of crime. We have seen in this study that the soldier experience of crime was not just differentiated from that of the civilian, but also according to rank and operational role. Additional responsibility or promotion to NCO rank offered particular opportunities for certain kinds of crime, in particular fraud and embezzlement; however, they also appear to have increased the soldier's risk of falling victim to violent assault.

The soldier's experience of crime therefore was not static. Neither, though, did it progress in a single direction. Some of the cases we have examined illuminate the complexity of the NCO position. On the one hand, cases of NCOs convicted for over-stepping the bounds of their authority demonstrate a sense of separation from and superiority over the men under their command. But we have also seen NCOs, not just committing similar offences to the ones committed by privates, but actively conspiring with the men under them, in criminal activity. And, just as the NCO role brought with it particular opportunities for criminal activity and illicit profiteering, it also made some behaviours less acceptable and NCOs seem to have fared much worse in the military justice system when charged with drunken behaviour. The tendency for NCOs to lose their status, and return to the ordinary ranks, also meant a return to a private's experience of crime.

Not only, then, was the eighteenth- and early nineteenth-century British soldier's identity a negotiation between civilian and soldier, it was also, for a significant minority, a negotiation between subordinate and superior. That this negotiation was ongoing and multi-directional is made evident by their experiences of crime.

Another key part of this study has been to demonstrate the existence and outline the features and mechanisms of the black market in soldiers'

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<sup>723</sup> Linch, 'Making New Soldiers', pp. 218-19.

necessaries and military goods, which operated both within regiments, between soldiers, and outside the regiments, between soldiers and civilians. The idea of armies as market places is by no means a new one. Lynn's study of women's roles within early modern armies, for example, explores the semi-formal activities of seamstresses and sutlers, the 'economy of makeshifts' that had soldiers' wives and partners engaged in wide ranges of ad-hoc money making, and the 'fencing' of pillaged goods amounting to what he terms a 'pillage economy'.<sup>724</sup> Less formally organised than later armies, the armies of early-modern Europe were 'mobile cities', with all that implies for trading opportunities. Sieges, meanwhile, with their almost settled encampments, became conduits for trade and supply between soldiers and civilians.<sup>725</sup> By the middle of the eighteenth century, the British army had significantly reduced both the size and importance of the 'mobile city', applying much greater controls to the supply and support systems needed to maintain its forces and reducing the presence of women and other non-military personnel.<sup>726</sup>

The informal marketplaces of regiments on campaign remained, however, and trading still characterised much of the relationship between soldiers and civilians. The ad-hoc trading of the 'pillage economy' remained an important part of soldiers' domestic economies, but along with greater levels of central control and a more systemized approach to supply and support, came a specific trade in military goods. By the first half of the twentieth century, this trade had developed into a sophisticated and ubiquitous feature of British army life. Clive Emsley contends that by the time of the second world war, '[e]verywhere servicemen developed their opportunities for working with the local black market or for selling, on their own account, petrol, tyres, spare parts for vehicles, vehicles themselves to anyone who could pay', and that 'on occasions, it assumed the major proportions of what is now labelled organized crime'.<sup>727</sup> Sitting somewhere between the 'pillage economy' of early modern armies on campaign and the 'organised crime' of Emsley's twentieth-century British soldiers, the regimental economies of the late eighteenth- and early nineteenth-century

<sup>724</sup> Lynn, pp. 145-51.

<sup>725</sup> Lynn, p. 135; also Sandberg, "'The Magazine of all their Pillaging'", pp. 79-80.

<sup>726</sup> Lynn, pp. 143, 150.

<sup>727</sup> Emsley, *Soldier, Sailor, Beggarman, Thief*, pp. 15, 85.

British army had already developed some of the features of a distinct black market in military goods and in particular military uniforms.

As a final caveat, it should be noted that for many, and very likely most, of the soldiers who served in the British army, during this period, the kinds of offending discussed in this study would not have formed a large part of their experience of service. Only a minority of soldiers found themselves in front of a court martial at any level. But even those who did not commit crimes, or who were not prosecuted for crimes, would have encountered criminal behaviour in others, may themselves have been victims of crime, and would almost certainly have been aware of, if not active participants in, the regimental black market. As such, a study of crime can tell us much about wider experiences of service and army life.

The ways in which the eighteenth- and early nineteenth-century soldier experienced crime, whether on the campaign trail, or in the informal marketplace of garrison or camp, offers insights into the complexities of his sense of identity, his relationships with his comrades, superiors and subordinates, and with civilians, both as victims and accomplices. His experience of crime carried with it elements of his civilian past, but also demonstrated elements of a civilian present. It was given context, shaped both in terms of the crimes he committed and the ways in which he committed them and sometimes even made necessary, by his service. Most of all, what comes through the military justice records is a complex and very human experience, on the one hand highly contextual and individual, and on other, strikingly institutional in nature.

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