

"Bloody Provost"

Discipline during the War of 1812

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As a young subaltern, John Le Couteur, of the 104th Foot, left a lengthy record of his service in Canada between 1812 and 1817. In an entry dated 5 February 1813, when frequent inspections of the guard may have given him cause to reflect upon his men, Le Couteur wrote:

On one occasion at Fredericton, a private of the Light Company had offended deeply. He was condemned to receive three hundred lashes. He was paraded and placed on the Triangle close in front of the Light Company. He was a stout fellow, on bon point. The lash lacerated his back speedily and the blood flowed freely. He stood close in front of me, the inward groan, at each lash, from being stifled, went sufficiently to my heart, but soon after, the Drummer, in swinging his Cat of Nine Tails, switched a quantity of blood over my Face and Belts. I fainted away like a Sick girl to my own great horror and Confusion, but it was not unnatural after all. The Officers laughed at me but the men did not.¹

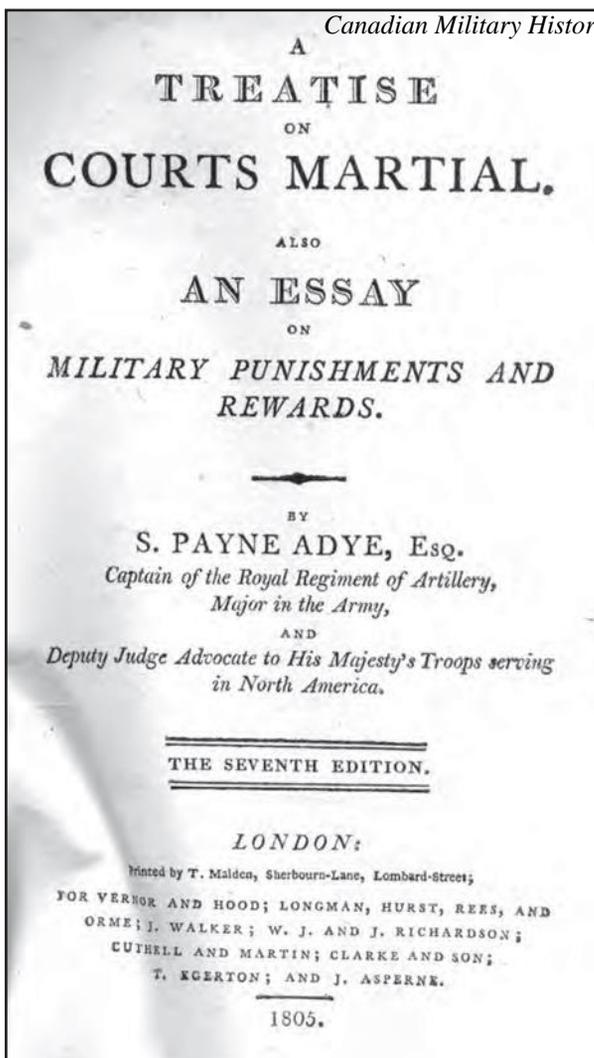
In the British Army of the early nineteenth century, discipline had two meanings. The first was that it "signifies the instruction and government of soldiers." "Bravery," wrote Charles James in 1802, "will perchance gain a battle; but everyone knows that by discipline alone the long disputed prize of a war can be ultimately obtained." Military discipline was "the authoritative declared laws for the guidance of all military men, and all military matters," and "the obedience to, and exercise of those laws." It was the "soul of all armies; and unless it is established amongst them with great resolution, soldiers become a contemptible rabble, and are more dangerous to this very state that maintains them."²

This article will examine the military discipline of the British Army in British North America during the War of 1812. This is but a summary

of preliminary findings, as the records of the 100 plus British, foreign, allied and Canadian units³ that served in Canada between 1812 and 1815 have not all been examined, nor have American records been studied to the same detail. It seeks to determine the application of disciplinary measures within the overall context of the British Army, and relative to the only other large field force deployed by the British, Wellington's Allied Army in the Iberian Peninsula. Was it indeed discipline that soldiers were subjected to, or merely terror? Are our perceptions of the stern discipline faced by officers and men mere stereotype? Were the Irish "wild," foreigners difficult, and the Canadians, particularly the Catholic ones, unruly? Were officers cruel? This study will also compare British discipline relative to that of their enemy, the United States Army. What is apparent from even this cursory glance is that courts martial were a matter of routine and the punishments awarded were the result of many factors and not normally just harsh attitudes.

Military discipline was maintained through the laws and practices established by royal and parliamentary authorities. *The Rules and Articles for the Better Government of all His Majesty's Forces*, better known as the Articles of War formed the basis of military law and were first promulgated in 1663. These are distinct from the Articles of War used by the Royal Navy, which appeared in 1661. *The Rules and Articles* provided general instructions on the procedures should an officer or soldier be arrested or placed in custody. The mechanism for dealing with them was the court martial.⁴

As a royal decree, the Articles of War and the sentences issued by courts martial were not enforceable without the authority of Parliament.



Author's collection

An 1805 treatise on courts martial which aided officers with matters of military discipline. Many books such as these were privately published, making up for the lack of official manuals.

Provost could issue and carry out an immediate sentence, otherwise a matter of evidence went to court martial. Hence the term, "bloody Provost."⁶

A court martial is a body convened to try an offence against military discipline, or against the ordinary law, committed by a person in one of the armed services. There were three types, each with different composition and scales of punishment.

A regimental court martial was composed of three to five officers, preferably an odd number, headed by a captain with lieutenants as the other members. It had no authority to try capital offenses or officers. Sentences were confirmed by the commanding officer.

The garrison court martial had similar composition and authority, but its members came from various regiments. The governor or garrison commander approved its decisions.

Lastly, the general court martial was composed of not less than 13 members. It was headed by a judge advocate and could impose capital punishment or try an officer. Judgements of death had to have the concurrence of nine of the 13 members of the court, or a two-thirds majority when more members were present.⁷

By 1812, the provisions surrounding courts martial were elaborate – administration of an oath, proper drafting of charges, examination of witnesses, use of written evidence and adjournment to allow the prisoner to prepare his defence or gain counsel. These procedures were sufficient to make any parliamentarian happy but did little to help an illiterate soldier who found himself subject more often to custom than law.

Newly-arrived officers in a battalion were trained in these procedures by attending all unit courts martial for at least three months before they could be permitted to be members of such courts.⁸

Charges could involve many things: desertion, insubordination, infractions contrary to standing orders, embezzlement, drunkenness, sexual

This came with the passage of the Mutiny Act in 1689, which established military law in war and peace, allowing the punishments under the Articles of War to be enforced and introducing the taking of life or limb where warranted. The Mutiny Act was renewed annually, making it the most scrutinized of all laws in the realm. Nevertheless, the prerogative power of the Crown continued until 1803, when a revised form of the Mutiny Act made the Articles of War statutory, once and for all asserting the authority of Parliament over the army.⁵

The Articles of War were applicable in Great Britain and Ireland, the dominions beyond the seas and foreign places dependent upon Britain. They were applicable to every officer, non-commissioned officer, soldier, volunteer, and, in some cases, civilian attached to an army. They were read once in every two months – often monthly – to the officers and men, along with "whatever parts of the present or future general orders are meant to regulate the conduct of officers and men." If an officer, NCO or soldier was caught red-handed in the act of a crime, the

crimes and many more.⁹ The level of court martial and the punishment issued generally fit the crime. Le Couteur believed the punishments throughout the army were "tremendous in the extreme,"¹⁰ but much depended on the quality and attitude of the officers making up the board, the intent of the accused and most important, whether the crime involved violence.

In cases where the death penalty was not applicable, punishments for the rank and file could include imprisonment, condemnation to serve overseas for a fixed period or for life, extra drill and duty or labour, fines or as so often was the case, flogging. Punishments for minor infractions included carrying weights, "riding the horse," restriction of privileges or various forms of public embarrassment, which appears to have been greater motivation to act properly than corporal punishment.¹¹

If a soldier was flogged, the maximum penalty was 1,200 lashes, a sentence issued nine times over six years in the Iberian Peninsula. Another 50 soldiers received 1,000 lashes. From 1811 onwards, two other methods of dealing with serious crimes were added. The first was for soldiers who deserted but did not go over to the enemy. Their punishment was service in a colonial corps, such as in Africa or New South Wales. The second, reserved for repeat offenders or for theft without violence, involved penal servitude.

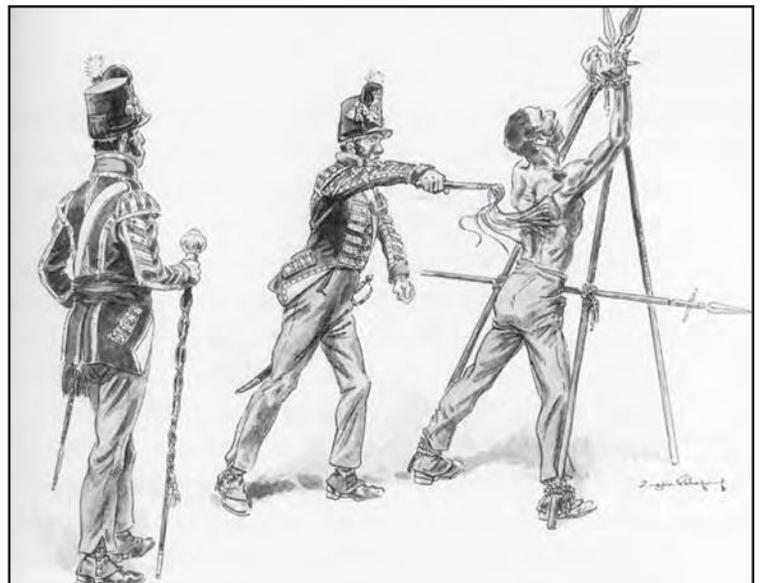
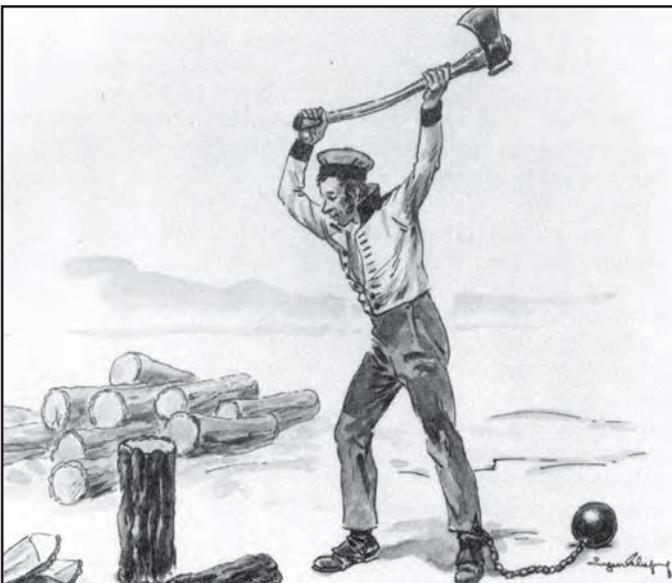
If violence was involved, then the offender came nearer to the gallows or 1,000 lashes.¹²

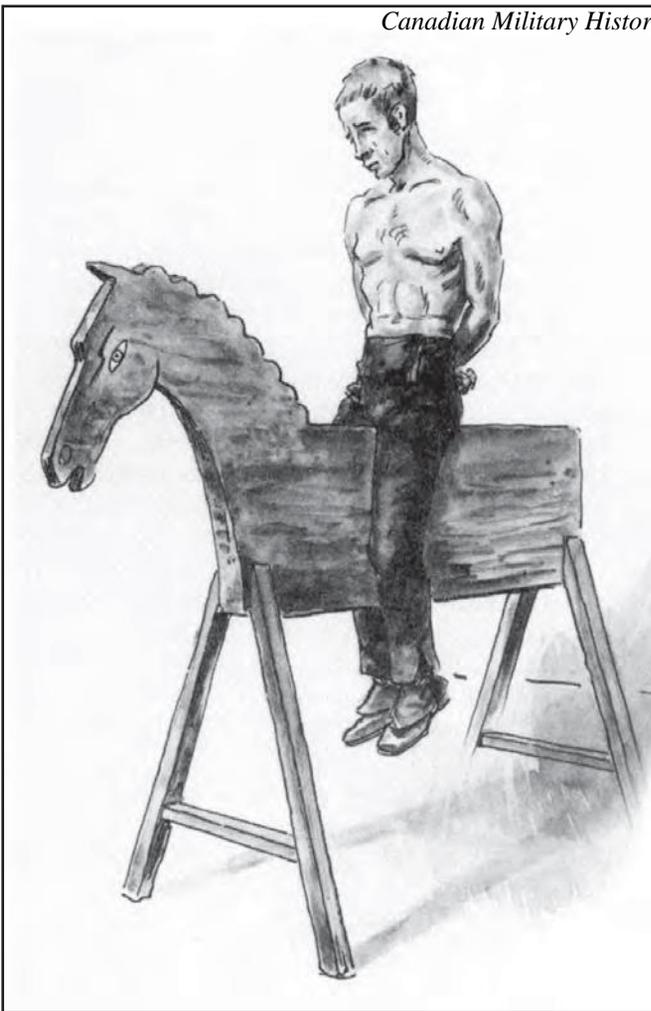
Officers could be cashiered, receive suspension of pay or rank or lose their rank – in the age of purchase, this meant a valuable commission could not be sold. A captaincy in a regular regiment of infantry came at a price of £1,500, while a majority in the foot guards cost £6,300. Other punishments included reprimand, or discharge from the service with ignominy. Some 30 combatant officers were cashiered in Iberia for cowardice, swindling merchants, embezzling public funds, insulting or disobeying a commanding officer, drink, brawling, tyranny and immorality, just to name a few. An equal number of persons from the civil department – commissaries, purveyors, surgeons, hospital mates, etc – were also cashiered.¹³

There was no permanent police in the army and only during war would a provost marshal, an officer of field rank, be charged to "secure deserters, and all other criminals." The provost marshal, or his subordinates, were to "go round the army, hinder the soldiers from pillaging, indict offenders, execute the sentence pronounced, and regulate the weights and measures used by the army in the field." In the Iberian Peninsula, a provost marshal served at Wellington's headquarters, and each of the British divisions had an assistant-provost marshal and

Flogging (below right) was a common punishment normally administered before the offender's regiment or garrison and delivered by the regimental drummers. Labour (below left) was another punishment given for less serious transgressions.

Drawings by Eugene Lelievre, courtesy Parks Canada





later a detachment of the Cavalry Staff Corps. The latter was a temporary, *ad hoc* unit created in April 1813 with four 132-man troops in Spain and two more in Britain.¹⁴

While maintenance of discipline in Spain was challenging, it was even more difficult in North America, where the vastness of the territory resulted in many small, isolated detachments among which communication was extremely difficult. British North America comprised the two Canadas, New Brunswick, Nova Scotia, the Islands of Prince Edward and Cape Breton, Newfoundland and the Bermudas. The forces assigned to the Captain-General and Governor in Chief, Lieutenant-General Sir George Prevost, also grew considerably during the course of the war. With fewer than 10,000 troops in 1812, Prevost had by December 1814 almost 50,000 men, not counting Canadian regulars or militia.¹⁵

Prevost had four officers serve as deputy-judge advocate on his staff at various times during the war, while there was an acting provost marshal and a provost of prison for the militia in Upper Canada. In Lower Canada, several junior officers served as deputy-judge advocate on the



Left: Many commanding officers found public embarrassment enhanced discipline better than corporal punishment. Here a Canadian soldier displays discomfort as he “rides the horse.”

Above: High illiteracy resulted in officers routinely reading out the Articles of War to their personnel. As a result, ignorance of the law was not an acceptable defence. This image shows personnel from the Canadian Voltigeurs.

staff. There was no equivalent to the Cavalry Staff Corps or Provost in the field, although embodied cavalry may have been assigned this role on occasion.¹⁶

The paucity of officers in some localities created problems in enforcing discipline. In 1812, General Brock reported having too few regular officers to sit on courts martial and sought permission for Canadian militia officers to sit for personnel of line units. He also inquired whether he had the properly constituted authority to approve court martial proceedings of the militia, which was particularly important as Brock found the militia to be “unruly.”¹⁷

Although complete statistics have not been compiled, a brief survey of specific disciplinary problems offers several interesting insights. It must be emphasized that while the death penalty was given to regular soldiers serving in Canada, there is no record of that sentence being given to any member of the militia, even though they were subject to it under the provincial Militia Acts and offences did occur specifically calling for it.¹⁸ The focus of this study lies with British and Canadian regular units and embodied and provincial units formed for the duration of the war and, to all intents and purposes, treated as regular troops and subject to the Articles of War.

The Glengarry Light Infantry was raised in 1812 as a “regular” Canadian regiment in British service until it was disbanded in 1816.

The unit's first inspection report for July 1812 reported regular courts martial, with corporal punishments commuted to solitary confinement in jail.

During the war, at least 22 Glengarries were charged with desertion. Three were sentenced to death and their sentences were remitted to transportation or return to regimental duty. Private John Mitchell was sentenced to death, but his sentence was commuted, in recognition of his distinguished service at Fort George in 1813. Six other Glengarries were transported to New South Wales.¹⁹

Private Davis deserted late in 1814, returned to the regiment in January 1815 and was sentenced to 300 lashes. Private Varnham received 105 of 250 lashes awarded for one crime, only to receive another 300 for desertion and theft. Varnham and Davis deserted again and both were sentenced to transportation for life.²⁰

Sergeant John McGinnis and Private John Peachy came to the attention of their commanding officer, Lieutenant-Colonel Battersby, and the commander in Upper Canada, Major-General de Watteville, over a song they had composed, which Battersby claimed was disrespectful of the Glengarries. De Watteville did not agree, but concurred the pair should be court martialled. Peachy's fate is not recorded, but McGinnis was reduced to private.²¹

Courts martial continued well after the war ended and in the first six months of 1816, the Glengarry's reported no less than 53 regimental courts-martial alone!²²

The Provincial Corps of Light Infantry or the Canadian Voltigeurs were known for their strict discipline. Their commander, Lieutenant-Colonel Charles-Michel de Salaberry, was stern, a characteristic gained from his service with the 60th

Desertion was a serious crime resulting in service in a colonial corps or penal servitude.

Deserters who joined the enemy's ranks faced execution. During the war 1,570 British regulars deserted units in Upper and Lower Canada, while approximately 5,000 soldiers deserted from the US Army. Here members of the Canadian Voltigeurs search for deserters.

Foot and from campaigning at Martinique and Walcheren.²³

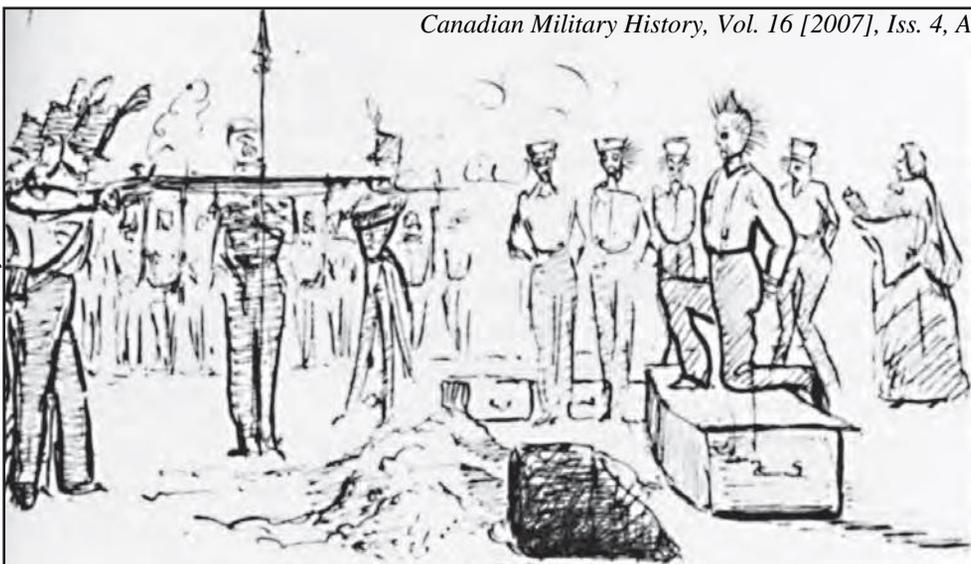
In 1812, the Voltigeurs experienced a mutiny due to false promises made by Captain Perrault while recruiting his company. Typical sentences included prison, heavy fines and hard labour. One deserter was forced to march through the ranks with a log attached to his feet. Absence without permission was punished by eight days of detention on bread and water. Detention could either be in the guardhouse or a brig at St. Jean. One voltigeur who insulted his officer, spent 18 months in jail.²⁴

Sometimes, disciplinary problems were dealt with in other ways. One soldier of the 104th thought he could negotiate the 80 or 90 miles of aboriginal forest of New Brunswick and reach the United States from Fredericton. He was close to death four days later when he was found by some natives who returned him to his barracks. Rather than lay charges, the colonel of the 104th waited until the man could walk again and brought him before the regiment. The colonel made a speech about the heinousness of desertion and then had the man march slowly between the ranks of the regiment, groaning most of the time, wearing the filthy overdress from his adventure over clean underclothes. Every part of the poor man's body had been prayed upon by flies, bugs and insects. His face was a mass of inflamed sores, no eyes distinguishable. After that, there were no more desertions through the woods.²⁵

Disciplinary measures were not restricted to the rank and file. As the 1st, 8th, and 100th Foot



Drawing by Eugene Lelievre, courtesy Parks Canada



Five men were executed at La Prairie on 2 November 1813 for desertion. Execution was the rarest form of punishment in the British Army and generally awarded to repeat offenders or for desertion to the enemy in time of war. Here, the sentenced soldier kneels on his coffin, while a chaplain reads a prayer, as the members of a regiment witness the proceedings.

moved onto the field at Chippawa on 5 July 1814, Lieutenant Michael O'Flanagan of the 8th Foot lagged behind and then lay down on the ground before disappearing. He was court-martialled and cashiered.²⁶ Another officer, Captain William Brereton, commanding a company in the 1st Foot, also fell behind, and his company went into action led by its senior subaltern. The court accepted Brereton's appeal that he had fallen behind due to exhaustion. One can imagine the tension during the general courts martial, given the number of officer casualties suffered during the battle.²⁷

As a young country, the United States looked abroad for inspiration in creating its army. The American Articles of War were created in 1776 and revised in 1804 to make them compatible with the Constitution. Limits were placed on corporal punishment – a maximum of 50 instead of 100 lashes were permitted. Further reforms introduced for 1805 provided a statute of limitation of two years, forbade "concubinage," playing at cards and dice and "frequent intoxication," none of which were accepted by Congress. Passage of the new bill was delayed for two years when an argument over ordering soldiers to cut or crop their hair crossed into the realm of federal authority. The new Articles of War were finally passed in 1806.²⁸

It is generally held that service in the United States Army was less harsh than that of Britain. The accepted narrative would suggest a more liberal approach towards discipline and in the case of corporal punishment this was true. However, during the War of 1812, federal service was unpopular, desertion rife and even though two blanket pardons were granted during the war, stiffer discipline was instituted which included beatings and other harsh treatment. At Regular

Army posts, it was customary to have a brick or wood dungeon, "usually dark, unheated, damp and without adequate ventilation," known as the "black hole."²⁹

During 1814, Brigadier-General Winfield Scott oversaw what was likely the most rigorous collective training camps conducted by the US Army. Discipline was strict. Units in camp "were broken into a habit of subordination" and the only trouble came from, as Scott wrote, "worthless miscreants."³⁰

The British did not flagrantly make use of the death penalty and considered corporal punishment as the last means of salvaging a poor soldier. Execution by firing party was reserved almost exclusively for deserting to the enemy, but could be awarded for mutiny and striking a sergeant or an officer. Hanging was for all capital offences except desertion to the enemy. During the Peninsular War, 78 British soldiers (52 British, the remainder foreigners), out of a maximum strength of approximately 60,000 total, were executed by firing squad. Another 40 caught *in flagrante delicto* committing crimes such as murder, theft or assault were hanged.³¹

American practise was different. Flogging was suspended – not outlawed – in 1812, but the death penalty was used much more readily. In 1812, when the American Regular Army numbered 19,000 troops, four sentences of execution were issued, with three being reprieved. The next year, with the army at 23,000 men, there were 43 executions authorised and 11 reprieved. During 1814, when the army reached a height in strength of about 31,000, 160 sentences of execution were made and only 14 reprieved. Finally in 1815, 53 soldiers were sentenced for execution and 29 reprieved. Being executed for



Although flogging had been suspended in the US Army as an inducement to recruiting, some officers, such as Brigadier-General Winfield Scott, devised punishments that were just as painful and used the death penalty more readily than their British counterparts.

an infraction was more likely in the United States Army at the time, than in the British.³²

Discipline was not reserved only for junior officers or the rank and file. Courts-Martial also involved senior officers. Following his defeat at the Battle of the Thames in the fall of 1813, Major-General Henry Proctor faced five charges of carelessness and gross incompetence. The court martial sat in Montreal from December 1814 to January 1815 and consisted of an impressive board of 16 officers, four of whom were major-generals. Included was Lieutenant-Colonel Charles de Salaberry, of Châteauguay fame. The board cleared Proctor of the first charge, and found him guilty of the remainder. They found Proctor had in many instances, been "erroneous in judgment," and in several cases, deficient. Proctor was sentenced to suspension from rank and pay for six months and public reprimand. The Prince Regent remitted the suspension from rank and pay, but upheld the public reprimand, which was read out before every regiment in the army. The reprimand expressed the Prince Regent's "high disapprobation" of Proctor's conduct and his

regret that any officer of the length of service, and of the exalted rank which he has attained, should be so extremely wanting in professional knowledge, and so deficient in those active and



Major-General Henry Proctor, who held senior command in Upper Canada, was tried for incompetence and received a public reprimand that was read out before every regiment in the British Army.

energetic qualities, which must be required for every officer, but especially of one in the responsible situation in which the Major-General was placed.

While one might conclude that the British were looking for a scapegoat, the composition of the board would suggest Proctor received a fair hearing from an intelligent and experienced group of officers, very much his peers.³³

The popular image of the British soldier is of a down-trodden figure, who had every advantage of service against him and facing brutal discipline. Hollywood and Wellington's detractors have contributed to this, regularly reminding us of a remark made privately by the Duke in November 1831 of how the army was recruited – "ours is composed of the scum of the mere scum of the earth," but they often forget to follow with "it is only remarkable that we should be able to make so much of them afterwards."³⁴ Discipline was harsh in the British Army, and, even more so in the United States Army. The level of discipline was the result of many factors, the character of the leaders being most important. Furthermore, as the Napoleonic Wars continued, the British

found they could not waste manpower by killing their soldiers or beating them to death, so found other means to maintain order. If an army from this period can be defined as a rabble waiting to be let loose, then perhaps this application of discipline was the most economical and in the end, the most just.

Notes

1. Donald E. Graves, ed., *Merry Hearts Make Light Days: The War of 1812 Journal of Lieutenant John Le Cotour, 104th Foot* (Ottawa: Carleton University Press, 1994), p. 80.
2. Charles James, *Military Dictionary* (London: Military Library, 1802), entry for Discipline.
3. Between 1812 and 1815, two British cavalry regiments, one or more battalions from 47 infantry regiments, 14 foreign and allied corps (including Canadian regular units), several battalions of Royal and Colonial Marines, 21 companies of Royal Artillery, a rocket troop, seven companies of Royal Sappers and Miners and various other minor units served in Canada. There were also numerous incorporated and provincial units raised for various periods of the war and units of the sedentary militia that served as well. See J. Mackay Hitsman, *The Incredible War of 1812*, edited and revised by Donald E. Graves (Toronto: Robin Brass Studio, 1999), pp. 299-301 for a list of these units. It should be noted that militia units in Atlantic Canada are not shown.
4. Arthur Swinson, *A Register of the Regiments and Corps of the British Army* - Appendix, "The Mutiny Act, 1689" (London: The Archive Press, 1972), pp.315-317; James, *Military Dictionary*, entry for Articles of War; N.A.M. Rodger, *Articles of War* (Kenneth Hampson, 1982), pp.7-8.
5. Richard Glover, *Peninsular Preparation: The Reform of the British Army, 1795-1809* (Cambridge: The University Press, 1963), pp.170-171.
6. James, *Military Dictionary*, entry for Articles of War; *Rules and Article for the Better Government of All His Majesty's Forces* (London, 1826), p.53.
7. James, *Military Dictionary*, entry for Courts Martial; Glover, *Peninsular Preparation*, p.171.
8. James, *Military Dictionary*, entry for Courts Martial.
9. Glover, *Peninsular Preparation*, p.174.
10. Graves, *Merry Hearts Make Light Days*, p.80.
11. Michelle Guitard, *The Militia of the Battle of the Chateauguay: A Social History* (Ottawa: Parks Canada, 1983), p.60; John S. Hare, "Military Punishments in the War of 1812," *Journal of the American Military Institute*, Vol.IV, No.4 (Winter 1940), p.230; Carol M. Whitfield, *Tommy Atkins: The British Soldier in Canada, 1759-1870* (Ottawa: Parks Canada, 1981), p.73.
12. Sir Charles Oman, *Wellington's Army, 1809-1814* (London: Greenhill Books, 2006), pp.238, 245.
13. Oman, *Wellington's Army*, pp.238-242.
14. General Orders, April 1813; S.G.P. Ward, *Wellington's Headquarters: A Study of the Administrative Problems in the Peninsula, 1809-1814* (London: Oxford University Press, 1957), pp. 153, 154, 161; Hitsman, *The Incredible War of 1812*, p.25; "Notes on Cavalry Staff Corps," Charles Hamilton Smith, *Wellington's Army* (London: Greenhill Books, 2002).
15. Hitsman, *The Incredible War of 1812*, pp.25, 295.
16. L. Homfray Irving, *Officers of the British Forces in Canada during the War of 1812-15* (Langley: Western Canadian Distributors Ltd., 1992), pp.19, 35, 102.
17. Brock to Baynes, 4 August 1812 and Brock to Prevost, 4 August 1812, in E.A. Cruickshank, ed., *Documents Relating to the Invasion of Canada and the Surrender of Detroit, 1812* (Ottawa: Government Printing Bureau, 1912).
18. Guitard, *Militia of the Battle of Chateauguay*, p.60; William Gray, *Soldiers of the King: The Upper Canadian Militia, 1812-1815* (Erin: Boston Mills Press, 1995), pp. 28, 29.
19. Winston Johnston, *The Glengarry Light Infantry, 1812-1816* (privately published), p.78.
20. *Ibid.*, p.78.
21. *Ibid.*, p.79.
22. *Ibid.*, p.78.
23. Stuart Sutherland, *His Majesty's Gentlemen: A Directory of British Regular Army Officers in the War of 1812* (Toronto: ISER Publications, 2001), entry for de Salaberry.
24. Guitard, *Militia of the Battle of Chateauguay*, pp.59-60.
25. Graves, *Merry Hearts Make Light Days*, p.81.
26. General Court Martial, Montreal, 18 February 1815, Library and Archives of Canada (LAC) RG 8, vol.167, p.197.
27. Torrens to Prevost, 17 June 1815, LAC RG 8, vol.167, p.79.
28. Theodore J. Crackel, *Mr. Jefferson's Army: Political and Social Reform of the Military Establishment, 1801-1809* (New York: New York University Press, 1987), pp.43, 85-87.
29. René Chartrand and Donald E. Graves, *The United States Army of the War of 1812, A Handbook*, (unpublished manuscript, 1986), p.51; Hare, *Military Punishments in the War of 1812*, p.231.
30. General Order, 31 May 1814, Left Division Order Book, New York State Library.
31. Oman, *Wellington's Army, 1809-1814*, pp.237, 239, 244-248.
32. Hare, *Military Punishments in the War of 1812*, p.238.
33. For an excellent summary and assessment of these proceedings, see Hitsman, *The Incredible War of 1812*, p.343. A different view is provided in Sandy Antal, *A Wampum Denied: Proctor's War of 1812* (Ottawa: Carleton University Press, 1997), pp.371-374.
34. Phillip Henry Stanhope, *Conversations with Wellington, 1831-1851* (London: Oxford University Press, 1938), p.178.

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