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Corporal and Dishonourable Punishments in the Union Army during the American Civil War in the Light of Army Regulations and Reports of the General Courts-Martial in the IX Corps of the Army of the Potomac[1]

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Introduction

Both armies and the soldiers serving in them have, since the earliest times, functioned according to army regulations and military law. The primary purpose of such regulations has been to ensure effective army management. One of the *sine qua non* conditions was the maintenance of iron discipline and unconditional obedience of subordinates to their superiors. Any actions that threatened this principle were seen as detrimental to the army. Hence, it is not surprising that in practically all such situations, soldiers who committed rule-breaking offences were brought before courts martial, tried and, if found guilty, convicted and punished according to the offence/crime committed. In this article, I would like to focus primarily on the various types of corporal and dishonourable punishments that were

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applied to soldiers during the American Civil War (1861–1865), most of which, from today's perspective, would be seen as torture. This issue will be presented on the basis of contemporary army regulations and the proceedings of general courts-martial, thus showing both the theoretical and practical side of the issue at hand.

American courts-martial – a historical overview

It is worth noting at the outset that American courts-martial are older than the United States itself, being, in a way, a carbon copy of the British judicial system. This fact was sanctioned by the Continental Congress, which adopted the first American Articles of War in 1775.[2] The regulation of courts-martial was somewhat expanded and modified with the adoption of subsequent Articles of War (1776,[3] 1786[4]).

The situation became somewhat more complicated with the adoption and coming into force of the US Constitution (1787–1789) and the subsequent introduction of the so-called Bill of Rights (1791).[5] Firstly, the Constitution itself gave Congress legislative powers to manage the military, including the creation of courts-martial. In contrast, the Fifth Amendment to the Constitution made a clear distinction between civil and military violations.[6] Significantly, however, Congress, by the Act of 29 September 1789, recognised that the armed forces should be administered under the existing army regulations and Articles of War.[7]

From the point of view of this article, the most relevant Articles of War are those enacted in 1806. In effect, these replaced all previous codes (1775, 1776 and 1786) and remained in force, in their essential form, for nearly seventy years, until 1874.[8] On the other hand, as far as army regulations are concerned, the most relevant for

[2] Piotr Derengowski, "Sprawiedliwość wojskowa w okresie wojny secesyjnej. Regulacje i procedury dotyczące sądów polowych – zarys problematyki" in *Wojna i prawo. Z dziejów wojskowości polskiej i powszechnej*, ed. A. Niewiński (Oświęcim: Napoleon V, 2020), 172; *Journals of the Continental Congress 1774–1789*, Vol. II (Washington: Government Printing Office, 1905), 111–123.

[3] *Journals of the Continental Congress 1774–1789*, Vol. V (Washington: Government Printing Office, 1906), 788–807.

[4] *Journals of the Continental Congress 1774–1789*, Vol. XXX (Washington: Government Printing Office, 1934), 316–322.

[5] That is, the first ten amendments to the US Constitution.

[6] *The Constitution of the United States (1787)*, Amendment V, in Eric Foner, *Give Me Liberty! An American History*, Vol. 1: *To 1877* (New York–London: W.W. Norton & Company, 2012), A28-A-29.

[7] *The Public Statutes at Large of the United States of America*, Vol. I (Boston: Charles C. Little and James Brown, 1845), 95–96.

[8] *The Public Statutes at Large of the United States of America*, Vol. II (Boston: Charles C. Little and James Brown, 1845), 359–372; Derengowski, "Sprawiedliwość wojskowa," 170.

us are those adopted on 10 August 1861[9] and their revised version of 25 June 1863.[10] These remained in force until 1881.[11] It is also worth noting that courts-martial are not considered part of the judiciary, but of the executive. They are a tool entrusted by Congress into the hands of the President, as Commander-in-Chief, to help him properly manage the army and navy by enforcing discipline.[12]

Moreover, courts martial are not courts in the full sense of the word. Although no judicial rules apply here, numerous analogies to civilian courts can be observed. Nevertheless, it was not only the highest but also the only court that had the right to hear cases involving violations of army regulations or Articles of War. It is also worth remembering that the verdict of a court martial was only considered a recommendation and did not take effect until it was approved by the relevant commander.[13] At this stage, the accused had the right to appeal to the President or the Secretary of War.[14] Once the court's verdict received such approval, it then became final and could not be annulled, apart from exercising the right of pardon or a special order.[15]

It is also worth noting that courts-martial were strictly criminal courts and had no civilian jurisdiction,[16] with any fines or penalties being awarded to the United

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[9] *Regulations for the Army of the United States, 1861* [hereinafter cited as: *Reg. 1861*] (New York: Harper & Brothers, Publishers, 1861). I would also like to indicate at this point the different form of notation of the references to the army regulations and the Articles of War. Roman numerals are used for the army regulations, while Arabic numerals used for the Articles of War.

[10] *Revised United States Army Regulations of 1861* [hereinafter cited as: *Rev. Reg. 1863*] (Washington: Government Printing Office, 1863).

[11] Derengowski, "Sprawiedliwość wojskowa," 171.

[12] *Ibidem*, 173; William Winthrop, *Military Law and Precedents* (Washington: Government Printing Office, 1920), 49.

[13] Derengowski, "Sprawiedliwość wojskowa," 173.

[14] See, among others things: Proceedings of the General Court Martial of Private Franklin Smith (28th USCT), National Archives, Washington [hereinafter cited as: NARA], Record Group [hereinafter cited as: RG] 153, Records of the Office of the Judge Advocate General Army, Court Martial Case Files 1809–1894 [hereinafter cited as: CMCF], LL-2394; Proceedings of the General Court Martial of 1st Sergeant Adam Laws (19th USCT), *ibidem*, NN-2392.

[15] However, there were procedural errors, such as in the case of the trial of Maj. Quincy McNeil, whose sentence was to be reprimanded in private by his commanding officer. In the opinion of the reviewing officer, however, the appropriate punishment for the officer's unworthy behaviour was expulsion from the service. Hence, a retrial was ordered. The court-martial reconsidered the major's case and handed down a sentence in line with the reviewing officer's suggestion, while adding a recommendation that McNeil should be pardoned in view of his service record. Although this was done, it was on account of the completion of the first sentence imposed (i.e. reprimand). See: General Court Martial Orders, No. 45 (Head-Quarters, Army of the Potomac, November 17th, 1864), NARA, RG 153, CMCF, NN-2556.

[16] Exceptions to this rule were civilians employed by the army but not serving as soldiers, as well as persons who in any way assisted the enemy (e.g. by hiding them) or maintained correspondence with them. This also applied to persons who had been expelled from the army (thus, formally, they were civilians) but were serving their sentences for crimes committed while serving. In addition, according to the law of 4 July 1864, inspectors and persons fulfilling contracts for the army were also subject to the jurisdiction of the general courts martial. Derengowski, "Sprawiedliwość wojskowa,"

States. The main task of courts-martial was, once the accused was found guilty, to impose a punishment appropriate to the offence.[17] As Gen. William T. Sherman correctly observed:

The main object of the civil law is to secure to every human being in a community all the liberty, security, and happiness possible, consistent with the safety of all. The object of military law is to govern armies composed of strong men, so as to be capable of exercising the largest measure of force at the will of the nation. These objects are as wide apart as the poles…[18]

During the American Civil War, four types of courts-martial were distinguished: 1) general; 2) regimental; 3) garrison; and 4) field officer's courts. The first three operated in the Articles of War from the very beginning. Field officer's courts, on the other hand, were only introduced during the war itself, by the Act of 17 July 1862,[19] thereby replacing previously operating regimental and garrison courts.[20]

General courts-martial

The right to convene a general court-martial in time of war was vested in the President of the United States and certain military commanders.[21] It was convened by order, which, in its usual form (pursuant to Article XXXVIII sec. 864),[22] specified not only the composition of the court, but also the time and place of the trial and the hours during which it was to take place.[23]

In accordance with Article XXXVIII sec. 861 of the Army Regulations of 1861 and Article 64 of the Articles of War, the general court-martial should consist of between five and thirteen officers, although it was recommended that it should

179; *The Statutes at Large, Treaties and Proclamations of the United States*, Vol. XIII (Boston: Little, Brown and Company, 1866), 394–398; Winthrop, *Military Law*, 86–107.

[17] Derengowski, "Sprawiedliwość wojskowa," 174; Winthrop, *Military Law*, 49–50, 53–55.

[18] Chris Bray, *Court-Martial. How Military Justice Has Shaped America from the Revolution to 9/11 and Beyond* (New York–London: W.W. Norton & Company, 2016), ix.

[19] This was not entered into the Articles of War until 1874.

[20] Derengowski, "Sprawiedliwość wojskowa," 173–174; *The Statutes at Large*, Vol. XII (Boston: Little, Brown and Company, 1863), 598; Winthrop, *Military Law*, 55.

[21] The President had the right to do so under the Constitution (as Commander-in-Chief of the armed forces), the Articles of War (Article 65) and, towards the end of the war, also under the Act of 3 March 1865. The right of commanders to convene a court was derived from the Articles of War (Article 65). Derengowski, "Sprawiedliwość wojskowa," 174; Winthrop, *Military Law*, 57–69; *Reg. 1861*, art. 65, 11 [Articles of War – hereafter AW] [since the Articles of War in the 1861 edition were included as an appendix to the Army Regulations and their pagination begins with 1, I have added a note to that effect here]; *Rev. Reg. 1863*, art. 65, 495; *The Statutes at Large*, Vol. XIII, 489.

[22] *Reg. 1861*, art. XXXVIII sec. 864, 110–111; *Rev. Reg. 1863*, art. XXXVIII sec. 883, 124.

[23] Derengowski, "Sprawiedliwość wojskowa," 180–181; Winthrop, *Military Law*, 158–160.

number no less than thirteen.[24] It should be noted, however, that a court composed of even the minimum permitted number of members was still considered entirely legal, and its decisions were as binding as those taken by a court-martial sitting in full.

Although, in theory, any officer remaining in active service was entitled to sit on the court, in practice, there were some restrictions. In the case of the trial of an officer, for example, it was recommended that all members of the court should be of equal or higher rank than the accused.[25]

The proceedings of the court were formally presided over by the president of the court, a position that, until 1828, was by appointment. Thereafter, in accordance with Article XXXVIII sec. 863, this position was held by the most senior member of the court.[26] The only statutory function of the president of the court mentioned in the Articles of War was to take the oath from the prosecutor (Article 69).[27] In addition to his duties and privileges as a member of the court, the president was also regarded as an organ of the court, responsible for the maintenance of order and the smooth running of the trial. It was he who opened, closed and adjourned sittings and saw to the proper conduct of those in the courtroom. According to Article XXXVIII sec. 872, both the president and the prosecutor also had to confirm with their signatures both the trial report and the final verdict.[28] The president, as an organ of the court, also served as a kind of "communication channel" between the court and the reviewing officer. It is worth noting, however, that according to Article XXXVIII sec. 869, the president of the court was treated like any other member of the court during any discussions held in the proceedings.[29]

Another key person for the conduct of the trial was the military prosecutor (judge advocate). According to Articles 69 and 73, it was he who swore in the members of the jury and the witnesses.[30] Originally, the officer holding this position would have had appropriate legal training. By the time of the Civil War, however, the selection of such a person was considered no longer of such importance. Indeed, the person appointed to this position was neither a judge nor a lawyer. Nevertheless, during the trial, the prosecutor had as many as four roles,

[24] *Reg. 1861*, art. XXXVIII sec. 861, art. 64, 110, 11 [AW]; *Rev. Reg. 1863*, art. XXXVIII sec. 880, art. 64, 124, 495.

[25] *Reg. 1861*, art. 75, 13 [AW]; *Rev. Reg. 1863*, art. 75, 497.

[26] *Reg. 1861*, art. XXXVIII sec. 863, 110; *Rev. Reg. 1863*, art. XXXVIII sec. 882, 124.

[27] *Reg. 1861*, art. 69, 12–13 [AW]; Rev. Reg. 1863, art. 69, 496–497.

[28] *Reg. 1861*, art. XXXVIII sec. 872, 111–112; *Rev. Reg. 1863*, art. XXXVIII sec. 891, 125.

[29] *Reg. 1861*, art. XXXVIII sec. 869, 111; *Rev. Reg. 1863*, art. XXXVIII sec. 888, 125; Derengowski, "Sprawiedliwość wojskowa," 175; Winthrop, *Military Law*, 170–172.

[30] *Reg. 1861*, art. 69, 73, 12–13 [AW]; *Rev. Reg. 1863*, art. 69, 73, 496–497.

namely: 1) prosecutor; 2) counsel for the court; 3) counsel for the accused;[31] and 4) court reporter.[32] Hence, for obvious reasons, such a person was still required to know the basics not only of military law but also of criminal law.[33]

However, it is worth noting that, as a general rule, all members of the court, regardless of military rank, had such rights and privileges, and their vote was equally valid. In all cases where a vote was necessary, a simple majority decided, the only exception being for offences punishable by death. In such cases, a qualified majority (⅔) was required.[34] Interestingly, in order to avoid any pressure, voting started with the lowest ranked members of the judiciary. It is also worth noting that no member could abstain from voting. In addition, any decision taken by vote (whatever the majority) was considered to be the decision of the court and not of the individual members.[35]

After completing the presentation of evidence and hearing any submissions, the court proceeded to issue a verdict, which consisted of two main elements, namely the finding and the sentence. Once all doubts had been discussed, a vote was taken, one which was customarily conducted by the prosecutor. It should be noted that in US military law there was no summary ruling. Indeed, rulings dealt separately with each specification and charge.[36] This was also how the vote was taken – first concerning the specification, then on the charge. The decision was made by a simple majority. Any tie votes were decided in favour of the accused.[37]

The simplest and most common form of verdict in military cases was "guilty" or "not guilty" (both on the specification and the charge). As it was possible for rulings to be different for the specification and the charge, consistency was necessary. Thus, a verdict of "guilty" for the specification and "not guilty" for the charge was allowed, but not vice versa.[38] It was also possible to rule "guilty without criminality,"

[31] This is one of the more imprecisely defined functions, in that it is not specified here, for example, to what extent the judge advocate should assist the accused. All that is known is that he could not act as a personal defender, as this would conflict with his function as prosecutor. *Reg. 1861*, art. 69, 12 [AW]; *Rev. Reg. 1863*, art. 69, 495; Derengowski, "Sprawiedliwość wojskowa," 177; Winthrop, *Military Law*, 196–199.

[32] Under the Act of 3 March 1863, the public prosecutor was given the right to employ a secretary (reporter). The Statutes at Large, Vol. XII, 736.

[33] Derengowski, "Sprawiedliwość wojskowa," 176–178; Winthrop, *Military Law*, 179–204.

[34] *Reg. 1861*, art. 87, 15 [AW]; *Rev. Reg. 1863*, art. 87, 498–499.

[35] Derengowski, "Sprawiedliwość wojskowa," 175; Winthrop, *Military Law*, 172–173.

[36] The form the charges took resembled an indictment known from the civilian judicial system. They contained a clearly defined charge (e.g. desertion) and a legal basis (the Article of War that was broken). The charge was accompanied by a so-called specification, which contained a detailed description of the offence. Derengowski, "Sprawiedliwość wojskowa," 180; Winthrop, *Military Law*, 132–150.

[37] Derengowski, "Sprawiedliwość wojskowa," 192–193; Winthrop, *Military Law*, 374–378

[38] The occurrence of such an inconsistency may have been the reason why the verdict was not approved and the relevant amendments had to be made. See, inter alia: Proceedings of the General Court Martial of Private Joseph Cook (36th USCT), NARA, RG 153, CMCF, OO-263.

which meant that the accused had admittedly committed the act charged, but without the intent or knowledge necessary to commit a military offence. The courts, albeit rarely, sometimes opted for this form of sentencing.[39] It was also possible to be convicted of a lesser offence than that charged, e.g. Pvt. Willis Burgin (114th USCT) was found "not guilty" of murder but convicted of "manslaughter."[40]

Punishments

After a guilty verdict had been issued on at least one of the charges, the court proceeded to formulate a sentence and order an appropriate punishment. Some Articles of War clearly specified the type of punishment to be imposed.[41] In such cases, there was no discussion, with the prosecutor simply recording the verdict in the court record. However, where the type of punishment was left to the discretion of the court, a discussion and vote was required.[42] Unlike the vote on the verdict, in the event of a tie, the vote on the sentence was repeated until a simple majority was achieved. The only exception was the vote on the death penalty for which a qualified majority ($^2/_3$) was required.[43]

In cases where the punishment was at the discretion of the court, it was to be guided by several basic principles. Firstly, the sentence had to be based on facts that had been proven during the trial. Hence, the previous good service or good character of the accused was not to influence the court's decision.[44] It was, how-

[39] See, inter alia: Proceedings of the General Court Martial of Private John H. Budd (23rd USCT), NARA, RG 153, CMCF, LL-2148; Proceedings of the General Court Martial of Sergeant William McGiffin (28th USCT), *ibidem*, LL-2394; Proceedings of the General Court Martial of Captain Thomas McBride (39th USCT), *ibidem*, NN-2459.

[40] Proceedings of the General Court Martial of Private Willis Burgin (114th USCT), *ibidem*, OO-450.

[41] See the Articles of War providing for predetermined punishment, namely: 2, 3, 14, 15, 16, 17, 18, 22, 25 (for officers), 29, 31, 33, 36, 39 (for officers), 45 (for officers), 48 (for non-commissioned officers), 77, 83, 84, 85, including the death penalty: 55, 101 sec. 2. *Reg. 1861*, 1 [AW], 4–10 [AW], 14 [AW], 18 [AW]; *Rev. Reg. 1863*, 485, 488–494, 497–498, 502.

[42] The Articles of War leaving the punishment to the discretion of the court are as follows: 4, 5, 6, 19, 21, 25 (for NCOs and soldiers), 26, 27, 28, 32, 35, 37, 38, 39 (for NCOs), 41, 42, 43, 44, 45, 47 (for soldiers), 48, 50, 54, 76, including those facing the death penalty: 7, 8, 9, 20, 23, 46, 49, 51, 52, 53, 56, 57, 59. *Reg. 1861*, 1–2 [AW], 4–10 [AW], 13 [AW]; *Rev. Reg. 1863*, 485–486, 488–494, 497.

[43] *Reg. 1861*, art. 87, 15 [AW]; *Rev. Reg. 1863*, art. 87, 498–499; Derengowski, "Sprawiedliwość wojskowa," 193–194; Winthrop, *Military Law*, 391–392.

[44] There were even times when the officer reviewing the sentence refused to approve it because, in his opinion, the court's sentence was too lenient, see Proceedings of the General Court Martial of Captain Thomas McBride (39th USCT), NARA, RG 153, CMCF, MM-1647) or too harsh (see Proceedings of the General Court Martial of Corporal Robert Bowser (38th USCT), NARA, RG 94, M1993, Civil War Service Records, Colored Troops 36th–40th Infantry, roll 54, Bowser, Robert, www.fold3.com, accessed on 12 July 2023.

ever, possible to attach a recommendation for pardon to the sentence.[45] In practice, however, this was often not the case and the courts passed sentences precisely on the basis of the soldier's previous impeccable service or character.[46] Secondly, when several soldiers were tried for the same offence, the degree of punishment depended on one's rank (the higher the rank, the harsher the punishment). It is also worth noting that, although most of the Articles of War gave the court quite a lot of discretion in determining the punishment, there were some limitations here as well. This is primarily the case regarding the Eighth Amendment to the Constitution, which prohibited excessive fines and cruel and unusual corporal punishment.[47] Significantly, however, here the term "unusual" referred to punishments not provided for by law. Hence, those that were provided for in the law (e.g. flogging) did not have the status of "unusual" punishments.[48]

The rank of the accused determined not only the degree of the punishment, but also its type. It is worth noting that, while corporal punishment was not applied to officers, the punishments imposed on them may have contained elements considered to be dishonourable. For example, the cases of Lt. Moses Powell (1st Michigan Sharpshooters), Capt. Hooker A. DeLand (1st Michigan Sharpshooters) and Maj. James H. Lane (31st USCT), who were not only dismissed from service, but also had their epaulettes and buttons torn off and sabres broken, all in front of their regiment. In addition, Lt. Powell and Capt. DeLand were ordered to have their sentence published in the newspapers of the county from which they came.[49] The other punishments provided for officers only (i.e. disqualification, suspension, loss of rank, demotion, reprimand, the requirement to issue an apology) were unlikely to contain elements intended to further humiliate the accused.[50]

Among the penalties imposed on both officers and soldiers, the death penalty was, of course, the most severe and was threatened for the violation of as many as fifteen articles. In two cases, namely Articles 55 and 101 sec. 2, a guilty verdict

[45] Interestingly, such a recommendation could be argued not only on the basis of an impeccable record of past service, (see, inter alia, Proceedings of the General Court Martial of Major Quincy McNeill (39th USCT), NARA, RG 153, CMCF, NN-2556, but also on the basis of the accused's complete ignorance, see Proceedings of the General Court Martial of Private William Keeler (51st Pennsylvania Infantry), NARA, RG 153, CMCF, LL-2364).

[46] See, inter alia, the case of Private William Hannah (27th USCT), next to whose sentence the court annotated that the sentence imposed was lenient due to the "apparent ignorance and imbecility of the prisoner." Proceedings of the General Court Martial of Private William Hannah (27th USCT), NARA, RG 153, CMCF, LL-2394.

[47] *The Constitution of the United States (1787)*, Amendment VIII, in E. Foner, *Give Me Liberty!*, A-29.

[48] Derengowski, "Sprawiedliwość wojskowa," 194; Winthrop, *Military Law*, 398–399.

[49] General Court Martial Orders, No. 27 (Head-Quarters Army of the Potomac, July 27th, 1864), NARA, RG 153, CMCF, NN-2188; *Reg. 1861*, art. 85, p. 14 [AW]; Proceedings of the General Court Martial of Major James H. Lane (31st USCT), NARA, RG 94, M1992, Civil War Service Records, Colored Troops 31st–35th Infantry, roll 9, Lane, James H., www.fold3.com, accessed on 4 April 2023.

[50] Derengowski, "Sprawiedliwość wojskowa," 195–197.

automatically meant a death sentence. Although American legislation did not indicate the form of execution to be carried out, the most common was, however, execution by firing squad (usually used for desertion, mutiny or other "purely" military offences) or hanging (for a non-military crime such as murder, rape, espionage, etc.).[51] However, there were exceptions. For example, privates Edward Rowe, Daniel C. Smith and Waterman Thornton of the 179th New York Infantry Regiment, were sentenced to death by hanging for desertion. In addition, in all three cases the execution was to be carried out in the presence of as many troops of the 2nd Division to which their regiment belonged.[52]

Another type of punishment that was applied to both officers and soldiers was imprisonment, sometimes also referred to as confinement. In the case of officers, this was almost always combined with expulsion from service (as in the case of Capt. DeLand). Hence, he served his prison/confinement sentence no longer as an officer, but as a criminal. For non-commissioned officers, imprisonment often entailed demotion (as in the case of Sgt. Adam Laws).[53] According to the Army Regulations of 1861, we can distinguish between three types of confinement, namely: 1) confinement; 2) confinement on bread and water diet; and 3) solitary confinement.[54] In addition, although formally the regulations defined "hard labour" as a separate punishment, in practice confinement at hard labour was also employed.[55] During the war, under the Act of 16 July 1862, confinement in penitentiary was also introduced, with the intention of allowing courts martial to punish offences of a civilian nature in this way, e.g. theft, robbery, murder, etc,[56] and was intended to be a dishonourable punishment. At least one IX Corps soldier was punished in this way, namely Pvt. Charles Hall (39th USCT), who was convicted of theft.[57]

Among the punishments provided for soldiers only, one can find dishonourable discharge, the equivalent of expulsion applied to officers. This was often handed

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[51] *Ibidem*, 197–198; Winthrop, *Military Law*, 417–419.

[52] Proceedings of the General Court Martial of Private Edward Rowe (179th New York Infantry), NARA, RG 153, CMCF, LL-2812; Proceedings of the General Court Martial of Private Daniel C. Smith (179th New York Infantry), *ibidem*; Proceedings of the General Court Martial of Private Waterman Thornton (179th New York Infantry), *ibidem*, LL-2924.

[53] Proceedings of the General Court Martial of 1st Sergeant Adam Laws (19th USCT), NARA, RG 153, CMCF, NN-2392.

[54] *Reg. 1861*, art. XXXVIII, sec. 876, 112; *Rev. Reg. 1863*, art. XXXVIII, sec. 895, 126.

[55] See, inter alia: Proceedings of the General Court Martial of Private James Palmer (19th USCT), NARA, RG 153, CMCF, NN-2158; Proceedings of the General Court Martial of 1st Sergeant Adam Laws (19th USCT), *ibidem*, NN-2392; General Court Martial Orders, No. 27 (Head-Quarters Army of the Potomac, July 27th, 1864), *ibidem*, NN-2188 [case of Captain Hooker DeLand (1st Michigan Sharp-Shooters)].

[56] The Statutes at Large, Vol. XIII, 589; Derengowski, "Sprawiedliwość wojskowa," 198; Winthrop, *Military Law*, 422.

[57] Proceedings of the General Court Martial of Private Charles Hall (39th USCT), NARA, RG 153, CMCF, LL-2554.

down in combination with a sentence of solitary confinement (such as in the case of the aforementioned Pvt. Hall or Pvt. James Kittleton of the 27th Michigan Infantry Regiment).[58] The execution of this punishment was often accompanied by dishonourable elements. In its mild form, the accused was stripped of all military insignia and marched in front of the unit with a placard indicating his offence, e.g. "coward" or "deserter,"[59] all of which was accompanied by a military orchestra playing "The Rogue's March." In extreme situations, corporal punishment was additionally used against the accused, e.g. Pvt. Hall not only had to march in front of the division with a barrel bearing the inscription "I robbed the mail. I am sent to Penitentiary for five (5) years," but had his head shaved in addition.[60]

An additional punishment prescribed by the regulations was shackling the prisoner to a ball and chain. This was mainly used for desertion and offences characterised by violence. It was often imposed in combination with a sentence of solitary confinement,[61] and could be imposed for all or part of the period served.[62] The weight of the ball ranged from 6 to 40 pounds (most commonly 24 pounds), while the length of the chain was generally about 3–6 feet.[63]

Another punishment imposed on soldiers was that of carrying weights. Although not mentioned either in the regulations or the Articles of War, this punishment was used quite frequently during the Civil War. A soldier would march from several days up to a week or two at fixed hours (e.g. for 8 hours, between 8 a.m. and 6 p.m.) and at a specific location (e.g. in front of the guardhouse or on the parade ground). The accused customarily carried either a rucksack loaded with bricks (possibly sand) or a log weighing about 20–30 pounds.[64]

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[58] *Ibidem*; Proceedings of the General Court Martial of Private James Kittleton (27th Michigan Infantry), *ibidem*, LL-2364.

[59] Proceedings of the General Court Martial of Private John Campbell (24th New York Cavalry), NARA, RG 153, CMCF, LL-2364; Proceedings of the General Court Martial of Private Squire Phillips (24th New York Cavalry); *ibidem*; Proceedings of the General Court Martial of Private James Kittleton (27th Michigan Infantry), *ibidem*.

[60] Proceedings of the General Court Martial of Private Charles Hall (39th USCT), *ibidem*, LL-2554.

[61] See, inter alia: Proceedings of the General Court Martial of Private Henry Jefferson (19th USCT), NARA, RG 153, CMCF, LL-2394.

[62] See, for example, the original verdicts in the cases of privates Albert Shess (22nd USCT) and Willis Burgin (114th USCT). Proceedings of the General Court Martial of Private Albert Shess (22nd USCT), NARA, RG 153, CMCF, OO-450; Proceedings of the General Court Martial of Private Willis Burgin (114th USCT), *ibidem*.

[63] Derengowski, "Sprawiedliwość wojskowa," 199, Winthrop, *Military Law*, 436; *Reg. 1861*, art. XXXVIII, sec. 876, 112; *Rev. Reg. 1863*, art. XXXVIII, sec. 895, 126.

[64] See, inter alia: Proceedings of the General Court Martial of Private John H. Budd (23rd USCT), NARA, RG 153, CMCF, LL-2148; Proceedings of the General Court Martial of Private Edwin Martin (43rd USCT); *ibidem*; Proceedings of the General Court Martial of Private David Butler (43rd USCT), *ibidem*; Proceedings of the General Court Martial of Private Ebenezer Moore (19th USCT), *ibidem*, NN-2158; Derengowski, "Sprawiedliwość wojskowa," 200; Winthrop, *Military Law*, 441.

Among the punishments that were definitely quite controversial was branding which consisted of burning a mark into the skin with a hot iron, usually a single letter corresponding to the crime committed, e.g. "D" – deserter or drunkard; "M" – mutineer; "C" – coward; "R" – robbery; "T" – thief. It is worth noting, however, that this punishment was used extremely rarely during the war. Much more often it was awarded in its milder form, such as placarding, namely the wearing of a placard with the offence written on it.[65] This punishment was often used as an additional dishonourable element to other punishments, e.g. dishonourable discharge from service,[66] demotion,[67] or loss of pay.[68]

Another, equally controversial punishment was flogging. Although this punishment was, admittedly, still permitted in the Army Regulations and Articles of War of 1861 (see Article XXXVIII sec. 867 and Article 87),[69] it was abolished at the very beginning of the war under the Act of 5 August 1861. This makes the frustration and dissatisfaction among soldiers (especially black soldiers) against whom this punishment was later applied all the more understandable.[70]

In addition to the above-mentioned punishments, others were also used which often verged on sadism. These included "bucking and gagging"[71] and the "spread eagle."[72] For obvious reasons, these punishments (as well as the aforementioned flogging) were resented by soldiers, both black and white. However, for African--Americans, especially former slaves, these punishments had a somewhat different connotation, for they not only constituted personal humiliation, but also very

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[65] P Derengowski, "Sprawiedliwość wojskowa," 200; Winthrop, *Military Law*, 440–442.

[66] See, inter alia: Proceedings of the General Court Martial of Private John Campbell (24th New York Cavalry), NARA, RG 153, CMCF, LL-2364; Proceedings of the General Court Martial of Private James Kittleton (27th Michigan Infantry), *ibidem*.

[67] See Proceedings of the General Court Martial of Corporal George Edwards (43rd USCT), *ibidem*, LL-2618.

[68] See Proceedings of the General Court Martial of Private Charles Hohn (46th New York Infantry), *ibidem*, LL-2373.

[69] *Reg. 1861*, art. XXXVIII, sec. 867, art. 87, 112, 15 [AW].

[70] "Freedom. A Documentary History of Emancipation 1861–1867, Series II" in *The Black Military Experience*, eds. Ira Berlin, Joseph P. Reidy, Leslie S. Rowland (Cambridge: Cambridge University Press, 2010), 438–439; The Statutes at Large, Vol. XII, 317.

[71] The convict was placed sitting on the ground with his knees drawn up to his chest. His hands were passed over his knees and tied at the wrists. In addition, a stick was placed below the knees and above the hands to further restrain the soldier's movements. The whole punishment was completed by the fact that the condemned person had his mouth gagged. Bell I. Wiley, *The Life of Billy Yank. The Common Soldier of the Union* (Indianapolis–New York: The Bobbs-Merrill Company, 1952), 118 (illustrations on page opposite), 200.

[72] If sentenced to the punishment of the "spread-eagle," he was tied in a straddle position with his hands raised in what resembled the letter "X." He spent several hours a day in this position, for several or more days in a row. See. Proceedings of the General Court Martial of Private Robert Barckley (43rd USCT), NARA, RG 153, CMCF, LL-2148.

clearly alluded to the much-hated institution of slavery (so-called slave punishments). For this reason, at least some of them were abandoned.[73]

Conclusion

As I mentioned earlier, one of the basic conditions for effective army management was the maintenance of discipline. In turn, any actions that threatened this principle were seen as dangerous and had to be met with an appropriate response. Hence the important role of courts martial, which, although not courts in the literal sense of the word, operated on the basis of specific rules (army regulations, Articles of War). Despite the fact there were, of course, abuses and blatant examples of injustice here too, it is worth emphasising once again that the main task of the courts martial was to maintain discipline in the army. This is why so many of the corporal and dishonourable punishments awarded by Civil War-era courts martial were delivered in public. It goes without saying that at least some of the punishments used at the time are, from today's perspective, more akin to torture. However, we must bear in mind that at the time they were perceived as most perfectly legal and therefore appropriate. Nevertheless, it is worth noting that the use of some of these punishments (e.g. flogging, or "bucking and gagging") had already been abandoned during the war.

SUMMARY

Both armies and the soldiers serving in them have, since the earliest times, functioned according to army regulations and military law. The primary purpose of such regulations has been to ensure effective army management. One of the *sine qua non* conditions was the maintenance of iron discipline and unconditional obedience of subordinates to their superiors. Any actions that threatened this principle were seen as detrimental to the army. Hence, it is not surprising that in practically all such situations, soldiers who committed rule-breaking offences were brought before courts martial, tried and, if found guilty, convicted and punished according to the offence/crime committed. This article will focus primarily on the various types of corporal and dishonourable punishments that were applied to soldiers during the American Civil War (1861–1865), most of which, from today's perspective, would be seen as torture. This issue will be presented on the basis of contemporary army regulations and the proceedings of general courts-martial, thus showing both the theoretical and practical side of the issue hand.

[73] Freedom, 438.