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# Disobedience, Discipline, and the Contest for Order in the Early National New England Militia

A dissertation submitted in partial satisfaction of the requirements for the degree of Doctor of Philosophy in History

by

Christopher Alan Bray

2012

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ABSTRACT OF THE DISSERTATION

Disobedience, Discipline, and the Contest for Order in the Early National New England Militia

by

Christopher Alan Bray

Doctor of Philosophy in History

University of California, Los Angeles, 2012

Professor Joan Waugh, Co-Chair

Professor Michael Meranze, Co-Chair

This dissertation examines conflict and discipline in the militias of five New England states during the years 1792 to 1826, describing local contests for order during a period of postrevolutionary testing and negotiation. While historians have argued that the model of universal white male militia service failed in the early republic because of legislative neglect and administrative inattention, this study argues that the men subject to militia service shaped the institution to a substantial degree through their willingness to dissent and disobey. They engaged in ordered disobedience, signaling their values and placing authority within the limits they made by their local action. Further, militia discipline eroded the boundaries between military affairs and social relations, making a state institution subject to broad sources of conflict and tension. Military character and social identity were inextricably intertwined. These conflicts in the militia were not conflicts

between order and disorder, as they are often depicted, but rather were competitions between competing conceptions of order.

The first chapter examines state courts martial as structured social trials, "conversations with verdicts." The second chapter examines contests over political and institutional boundaries, many of which related to questions of court martial jurisdiction and the limits of military authority, as when militia officers were tried by military courts for off-duty political speech. The third chapter examines contests over social honor that took place before state military courts, as militia officers stood accused of eccentricity, licentiousness, and other forms of poor character. The fourth and final chapter examines contests over the election of militia officers, particularly in Massachusetts, finding that the establishment of military authority in local militia units was often hampered by social conflict and disputes over the nature of proper authority.

The dissertation of Christopher Alan Bray is approved.

Joan Waugh, Co-Chair

Michael Meranze, Co-Chair

Geoffrey Robinson

Dora L. Costa

University of California, Los Angeles

2012

To my family, for their love and support.

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## ACKNOWLEDGEMENTS

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Michael Meranze joined this project as co-chair on the first day we met, and has also offered patient and generous guidance throughout the years that followed. He has a disturbing ability to find every last flaw in an argument, the result of the close and careful reading he gives to everything he reads. Again, I could not have completed this dissertation without his effort and insight.

Both have been more patient with this dissertation than I have, and I thank them.

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on militia courts martial. Finally, my thanks to Ruth Bloch and Ellen Dubois for their generous discussion of this research during a presentation to the History Department's Graduate Student Colloquium.

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## Introduction

> "I am forty-two years of age, have about half the period of my life been engaged in military duty, + have hitherto escaped censure in the execution of the various offices I have sustained in a regular progression in rank from a private to the office which I now hold, + the reputation acquired by punctuality + fidelity in the discharge of duty as a military officer being the principal claim to respectability I now hold (for I have no title to influence from wealth) when I contemplate the attack now made on my character by the charges exhibited before you, I feel no disposition to suppress what is indeed a most interesting fact, that the importance of a fair reputation to myself + a young family dependent on my standing in society for their own rank among their fellow citizens, makes the trial which I am now undergoing before you the most serious event of my life."
>
> -- Trial of Capt. Alpheus Shumway, 1820[1]

The history of the postrevolutionary American militia has been built around a paradox in which Americans feared the threat of a standing army, but the institution they intended as its alternative never cohered or functioned reliably as an instrument of armed force. Historians tell this story as a long episode of policy failure, legislative distraction, and the military incompetence of poorly trained part-time soldiers. Americans fatally neglected the thing they passionately favored. From time to time, the executive branch proposed militia reforms, but "Congress never acted. Instead, the militia continued to suffer the neglect of both the federal and state governments throughout the nineteenth century."[2] Consistently missing from this story of elite inattention and failures of disciplinary volition, however, are the experiences and arguments of the ordinary people who were subject to militia duty. Too often in historical narratives, the militia is a deracinated

[1] Trial of Captain Alpheus Shumway, 1820. Connecticut State Archives (CSA), RG 13, Box 48, Folder Ten.

[2] Max M. Edling, *A Revolution in Favor of Government: Origins of the U.S. Constitution and the Making of the American State* (New York: Oxford University Press, 2003), pg. 144. See also pg. 142: "Regardless of whether the reform proposal originated with a Federalist or a Republican administration and regardless of party strength in Congress, reform was always rejected."

institution, an organization to be acted upon, an aggregation of state subjects managed as discursive objects. Describing the complete failure of the 1826 board of officers convened by the War Department to propose national reform, the noted militia historian John Mahon long ago made this scope of examination particularly clear: "The factors in American society (whatever they may have been) which caused legislators and citizens alike to do no more than talk about the report of the Board, continued to operate on the militia system."[3] Legislative and administrative choices are frequently the center of the narrative, while other "factors in American society" are parenthetical.[4]

Refusing a top-down narrative founded on policy initiatives, legislative debate, and elite theory, this dissertation examines local militia service as an element of lived experience during a period of postrevolutionary testing and negotiation. Seeking local perceptions, the present study looks to places where questions of order were contested. It examines the substance and significance of local disobedience, dissent, and disorder in the state military forces of early national New England. This focus on militia contests does not mean that the following narrative narrowly describes military topics. Militia participants construed the category of military affairs broadly, filing formal complaints against officers over matters of personal character and general comportment. Military identities and social identities were interwoven, and arguments over martial status took place in a fluid exchange with broader social judgments.

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[3] John K. Mahon, "A Board of Officers Considers the Condition of the Militia in 1826," Military Affairs, Vol. 15, No. 2 (Summer, 1951), pg. 94.

[4] There are a far greater number of socially oriented examinations of the militia for the colonial and Revolutionary periods. See, for example, Kyle F. Zelner, *A Rabble in Arms: Massachusetts Towns and Militiamen during King Philip's War* (New York: New York University Press, 2009), Fred Anderson, *A People's Army: Massachusetts Soldiers and Society in the Seven Years' War* (Chapel Hill: University of North Carolina Press, 1984), and Steven Rosswurm, *Arms, Country and Class: The Philadelphia Militia and the "Lower Sort" during the American Revolution* (New Brunswick: Rutgers University Press, 1989), among others discussed later in this dissertation.

In this fluid environment, military disorder gradually helped to make new forms of social and political order, in a roughly emerging dialectic process that reconciled the organizing demands of officials and the expectations of the people who were subject to their disciplinary intent. Acts of refusal were sometimes constructive and communicative, pointing toward the social and institutional structures that could sustain the cooperation of ordinary people. The idea that apparently disordered acts could be intended to serve the cause of order echoes Wayne E. Lee's discussion of the "careful riot" in Revolutionary North Carolina, in which crowds engaged in "restrained, communicative violence" that stayed within the confines of "cultural legitimacy."[5] Men could simultaneously demand order and refuse obedience, pronouncing their superiors to be either personally unfit for their social and institutional rank or acting on improper constructions of formal power. They could construe dissent from the premises of mistaken authority as an ordering force. Arising from broad and disputed premises, state military discipline was not simply about military regulation, but represented a loosely bounded set of discussions about social values and the proper structure of government power.

Perspective shaped meaning. In the early national New England militia, events that appeared to involve disordering acts from above could look like the performance of ordering acts from below. Refusing obedience in deliberate and thoughtful ways, middling militia officers spoke for the men who had elected them to their offices. The limits of their willingness to obey, and the limits of their willingness to tolerate objectionable behavior from above, signaled a set of arguments about authority and

[5] Wayne E. Lee, *Crowds and Soldiers in Revolutionary North Carolina: The Culture of Violence in Riot and War* (Gainesville: University Press of Florida, 2001), pg. 5.

behavior in a post-revolutionary republic. Similar refusals to obey and forbear appear in the courts martial of middling officers on charges filed by men in the ranks. Charging other men with misconduct, militiamen and their local officers asserted claims about social, political, and institutional propriety. They defined good behavior by charging bad behavior or refusing obedience in its presence, in claims that were then argued and negotiated before courts that were also composed of middling militia officers. Courts martial were a social theater, one of the many forums in which men made their world while they gradually unmade the model of universal white male militia service. State military trials were also a political theater, revealing a quotidian stream of decentralizing arguments that grew from the "persistent localism" of the New England militia.[6] Many small nullification crises arose from conflicting political definitions of militia institutions, as officials regarded the militia as a statutory instrument of the state and militiamen regarded their companies and regiments as associational and community-centered.

This examination of contested order is based on a set of long-overlooked documents that reflect state efforts to establish disciplined armed forces: the records of state military courts. Specifically, this dissertation is based on the records of 329 courts martial and 37 courts of inquiry convened against militia officers by five New England states between

[6] T.H. Breen, *Puritans and Adventurers: Change and Persistence in Early America* (New York: Oxford University Press, 1980), pg. xvi, pp. 3-24, pg. 27, pg. 79, passim. Breen locates this persistent localism in seventeenth century Massachusetts, an earlier period than that of this study. But Breen describes deeply rooted persistence in the face of dramatic changes, writing that "colonial historians have overestimated the importance of change in pre-Revolutionary America. They are often too eager to hustle the colonists down the road toward modernization. As cultural anthropologists have shown, institutional forms can change in traditional societies, often quite dramatically, without altering the value systems upon which these institutions are based" (pg. xvi). With this language, Breen identifies something comparable to the description I intend here, looking for an apparent continuity of values in the context of institutional change. Reflecting the evidence of state courts martial, I believe the localism Breen describes persisted several decades into the nineteenth century.

1792 and 1826, and on a far smaller number of court cases in other venues.[7] These numbers reflect the survival of records, not the frequency of militia trials.[8] Records of state courts of inquiry in this region and period have survived only in Massachusetts, while trial records from New England courts martial have survived in substantial numbers only in Massachusetts and Connecticut.[9] A few court martial records are available from Rhode Island. No court martial records have survived in New Hampshire and Vermont; the few courts martial discovered from those states have been identified by references found in petitions, correspondence, and published reports. This availability of records is reflected in the distribution of cases between states: 247 courts martial in Massachusetts, 59 in Connecticut, 7 in Rhode Island, 5 in New Hampshire, and 11 in Vermont.[10]

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[7] This date range frames the study between the passage of the federal Militia Act, which was intended to establish nearly universal white male militia service and a uniform militia across the states, and the War Department inquiry of 1826 that acknowledged and examined that unmistakable failure. Historians have recognized this failed 1826 board of officers as a signal of the transition toward a volunteer militia, though the universal militia formally survived in state law into the 1840s and in federal law until the early twentieth century. Mahon, "A Board of Officers Considers the Condition of the Militia in 1826," pp. 85-94.

[8] I have counted the trial of each defendant as a court martial, but have counted courts of inquiry involving multiple subjects as a single event. Courts martial convened to try multiple defendants drew this distinction themselves, noting in their records that they were moving from one court martial to another, separate court martial. A panel convened as a "court martial" could, in effect, be many courts martial in sequence. As the quality of records varies, this count is my best estimate, and reflects debatable choices rather than a firm and precise tally. For example, a set of documents filed among the courts martial records at MNGMA, "Charges and specifications against Col. Stephen Bickford, 1817," contains no trial records, though it contains the documents that would serve as the foundation of a court martial. Not having clear proof that a trial took place, I have not counted this file among courts martial. At MNGMA, see the Oversize Box labeled, "Early Militia: Courts Martial, 1803, 1810, 1816."

[9] Even in these two states, it is clear that court martial records are missing. In 1810, for example, the judge advocate in a Massachusetts court martial referred to a legal standard demonstrated by the ruling of the court in "the trial of Capt. Howe, in the first division, in January last." But no records exist for the court martial of a Capt. Howe in any year. See *Trials by Court Martial of Capt. Samuel Watson 2d, David Livermore, Daniel Kent, and William Prouty* (Worcester: Henry Rogers, 1811), pp. 9-10. For another example, an 1820 court of inquiry in Massachusetts unanimously recommended the court martial of a captain, but no court martial record has survived to document that probable event. Court of Inquiry on Capt. Reuel Baker, 1820. MNGMA, Courts Martial, Vol. 11.

[10] See the complete list of New England state courts martial that I have identified during this period, Appendix A.

The survival of evidence reflects the condition of the state organizations that are examined in this dissertation, and suggests the significance of common themes found in divergent settings. As John Mahon noted, correspondents from different states described the characteristics of their militia organizations as they discussed proposals for military reform in 1826. The strongest opposition to a proposal to reform the militia along lines of age-based classification "came from Massachusetts and Connecticut. These two states already had effective systems, and did not wish to scrap them." On the other hand, the volume of letters sent to the War Department in response to a call for reform suggestions "indicated pretty well the condition of the several state militias," especially the "absence of even a scrap" of correspondence from New Hampshire and Vermont, "good negative evidence that the systems in those states were imperfectly organized." In a comment that reflected the substance of courts martial in Rhode Island, "the only Rhode Islander to reply...complained that the volunteer companies in his state were too independent, and ought to be better integrated with the rest of the militia."[11] Examining militia discipline in states with very different militia organizations makes it possible to test themes and patterns, seeing if militia officers in a highly organized state like Massachusetts held a fundamentally different view of their positions and obligations than officers in a state such as Rhode Island, with its strong tradition of independence and dissent. Comparison across different settings is especially important because events involving the New England militia in the early republic sometimes suggested strong regional differences,

[11] Mahon, "A Board of Officers Considers the Condition of the Militia in 1826," pp. 86-87, passim. "Massachusetts and Connecticut writers, in contrast to most of the others, described strong organizations" (pg. 87).

particularly between seaboard and western militia units.[12] But the records of state courts martial suggest a strong sharing of premises among militia officers and men in substantially different settings. In Boston and Great Barrington as on the Maine frontier or small-town New Hampshire, the men serving in the militia during the early republic expected to shape the terms of their service, and were willing to refuse their obedience when their military superiors failed to take that expectation into account.[13]

Despite the value of these records, legal historians of the military and historians of the militia have taken little notice of state courts martial, ignoring the topic or explicitly dismissing such trials as exceptional events.[14] Among those to make the latter argument was Mahon, who wrote, "Court martial records reveal extreme cases only, such as the captain in South Carolina who was cashiered for gouging out of its socket the eye of one of his men at a muster."[15] But the experience of historical actors does not reflect this

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[12] When the Massachusetts legislature passed a law limiting political speech among militia members during Shays' Rebellion, Leonard Richards writes, "militia units near Boston generally obeyed the law," while "those in the backcountry ignored it." Meanwhile, militia units in eastern counties responded to the state's call to guard courts, while members of western county militias marched against those same courts. Leonard L. Richards, *Shays's Rebellion: The American Revolution's Final Battle* (Philadelphia: University of Pennsylvania Press, 2002), pg. 18.

[13] Nor was this model of militia service limited to New England. In his recent book about the War of 1812, Alan Taylor notes the resistance of Canadian militiamen to the organizing demands of the British government. "Holding a contractual view of their service, these militiamen claimed the right to abscond if mistreated, just as they would quit working for an abusive employer." See Taylor's *The Civil War of 1812: American Citizens, British Subjects, Irish Rebels, & Indian Allies* (New York: Vintage Books, 2011 [2010]), pg. 297.

[14] A substantial body of recent scholarship on military courts focuses almost entirely on federal courts martial, and tends to be focused still more narrowly on military justice under the post-1951 world of the Uniform Code of Military Justice. A volume of collected essays on courts martial, published ten years ago, reveals the usual range of scholarly focus when its editors conclude that in addition to the attention we give the UCMJ, "we should also consider the military justice system as it existed at the dawn of the twentieth century." Eugene R. Fidell and Dwight H. Sullivan, eds., *Evolving Military Justice* (Annapolis: Naval Institute Press, 2002), pg. xvii.

[15] John Mahon, *History of the Militia and National Guard* (New York: Macmillan, 1983), pg. 57. Mahon had reviewed early Massachusetts court martial records, and is the only historian who has apparently done so. He dedicated a single brief paragraph to the topic in an earlier work, *The American Militia: Decade of Decision, 1789-1800* (Gainesville: University Press of Florida, 1960), pg. 37. Among other publications, a lengthy research guide on the American militia describes published court martial decisions as a possible source for historians, but makes no reference to archived court records, and suggests no secondary sources that have discussed the topic. See Jerry Cooper, *The Militia and the National Guard in America Since*

judgment on the part of historians. State officials decried the growing frequency of courts martial, as in an 1823 general order from New Hampshire Adj. Gen. Joseph Low that warned against "so frequent recurrence to their authority."[16] Historians have viewed militia courts martial as rare events of little significance; authorities in charge of the militia complained that militia courts martial were becoming increasingly frequent, costly, and disruptive during the years this study examines. To be sure, that perception reflected the relative frequency and disruption of an event they hoped to avoid altogether, and no evidence suggests that state courts martial became anything near constant. The available records describe an average of fewer than ten military trials per year throughout New England, though the actual number of such trials was surely higher.[17] But as I

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*Colonial Times: A Research Guide* (Westport: Greenwood Press, 1993), esp. pg. 161. Michael D. Doubler, *Civilian in Peace, Soldier in War: The Army National Guard, 1636-2000* (Lawrence: University Press of Kansas, 2003), is a detailed institutional history that makes only a brief reference to peacetime discipline in the early republic, focusing on fines for non-appearance among men in the ranks; see pg. 88. An earlier book, William H. Riker, *Soldiers of the States: The Role of the National Guard in American Democracy* (New York: Arno Press, 1979 [1957]), does the same, focusing on fines for non-appearance; see pp. 28-30. Richard G. Stone, Jr., *A Brittle Sword: The Kentucky Militia, 1776-1912* (Lexington: University Press of Kentucky, 1977), references courts martial merely to note that militiamen could only be tried by courts of other militiamen; see pg. 34. A legal history of the early militia, Saul Cornell's *A Well-Regulated Militia: The Founding Fathers and the Origins of Gun Control in America* (New York: Oxford University Press, 2006), examines statutory law and more than a dozen civil cases, but does not discuss state courts martial. C. Edward Skeen, *Citizen Soldiers in the War of 1812* (Lexington: University Press of Kentucky, 1999), does discuss courts martial throughout, but in the entirely different context of wartime discipline for militiamen in actual service. Institutional histories of the militia often evaluate the militia from the perspective of federal politics and policy, a perspective that precludes an examination of state-level quotidian discipline. See, e.g., Richard H. Kohn, *Eagle and Sword: The Federalists and the Creation of the Military Establishment in America, 1783-1802* (New York: Free Press, 1975), esp. Chapter 7, "The Murder of the Militia System." In an earlier moment and different context that still provides some useful comparisons, Fred Anderson has discussed courts martial among Massachusetts provincial forces during the Seven Years' War. See *A People's Army*, pp. 131-35. Finally, a dissertation on the militia claims, incorrectly, that "the only punishment that militia courts martial could impose was assessment of fines." Kenneth Otis McCreedy, *"The Palladium of Liberty: The American Militia System, 1815-1861* (Berkeley: University of California at Berkeley, 1991), pg. 36. I discuss court martial sentences in Chapter One.

[16] General Order, Adjutant General Joseph Low, Nov. 29, 1823. A printed copy appears in "Orderly Book, NH Militia, 18th Regiment, 1st Company, 1820-1824," NHHS.

[17] See Appendix B, "New England Courts Martial by Year." Court martial records suggest that these trials could be enormously disruptive and consequential in even small numbers, a fact that colors the analysis presented in this dissertation. While the chapters that follow include modest efforts to measure change by numbers, the available evidence resists anything more than brief quantitative analysis. Examining a few hundred cases in a population of a few thousand men, the measurement of state courts martial in the aggregate is made difficult by missing records, extremely small baselines, and the varying seriousness of

discuss in more detail throughout the chapters that follow, courts martial are important in part because they reveal types of conflict within the militia that were often resolved through social channels and informal efforts. The records of state courts martial point beyond the courtroom, suggesting the presence of a larger world of contention and negotiation. The shadow of larger patterns stretches beyond the light of the available records.

The intimacy of state court martial records also makes them a uniquely valuable resource for historians. In loosely formalized trials, men from varying social ranks and economic places had free-ranging discussions about the character and comportment of other men, placing them in their social context and identifying community expectations. State military trial records were closely kept and checked by every participant for accuracy.[18] To assist in the preparation of the written record, all questions, objections, and statements to the court were submitted in writing to the judge advocate, and many records include these original written statements as appendices to the transcript that incorporates them. Most usefully, closing statements from accusers and the accused were prepared outside of court, and often ran to dozens of pages. These commentaries on the

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the available courts martial. A few dozen trials were exceptionally important; the balance often addressed minor transgressions, and ended with acquittal, dismissal, or little more than nominal punishment, though their growing numbers over time still caused disruption. In this context, numerical changes can have little meaning outside of their larger context. In 1821, for example, the available records show two courts martial taking place in all of New England; in 1822, that number rose to 31; and in 1823, the number fell back to 4. But a single court tried twenty-two of those cases in 1822, and most were charged with minor offenses by a single accuser. A similar court martial tried charges against thirty officers in 1819, while a court convened in 1817 tried twenty-three defendants in similar circumstances. In February of 1815, a court martial in Connecticut tried every company officer from a single regiment, on charges filed by the regimental commander. In a system in which trials were generally infrequent, a single accuser could bring dozens of defendants before a court with one letter to a superior officer.

[18] Militia courts opened each day of proceedings by publicly reading aloud the prior day's trial record. For an example that can be found in the online Archive of Americana, see  See, for example, *Minutes and Proceedings of a Court Martial, Holden at Boston [for the trial of] Maj. Joseph Loring, Jr.* (Boston: Watson & Bangs, 1813). The passage regarding the opening of the court on the morning of Dec. 9, pg. 54, is typical: "The judge-advocate read the minutes and proceedings of the day preceding, which were declared to be correct."

cases before militia courts often began and ended with long thematic discussions on social themes related to honor and standing, turning to a close examination of evidence and testimony only secondarily. Parties to courts martial layered their evidence over a minutely constructed social framework, leaving us a record that explains how they saw their world, and their place in it.

## Historiographic Context

The evidence of conflict available in the record of state courts martial adds nuance to our understanding of the collapse of the model requiring nearly universal white male militia service in the early republic. Historians have told the story of this collapse in two ways.

First, the decay of the militia system is explained as a legislative and administrative failure in which governments provided an inadequate system of laws and rules to develop the institution. In a book chapter titled, "The Murder of the Militia System," Richard Kohn ascribed the decline of state military forces in the early republic to congressional failures in the framing of the Militia Act of 1792. "Nothing in the law...guaranteed training or even uniformity of structure and equipment," Kohn wrote. "The law contained no provision for classing or any procedure for enforcing national guidelines... If a state defied the national system, the federal government was impotent to intercede."[19] Federal impotence and state indifference grew from failures of political design, and ruined the

[19] Kohn, *Eagle and Sword*, pp. 128-38. Quote is from pg. 135.

militia.[20] Running throughout institutional histories is the presumption that the problems of the early national militia could have been solved through managerial intervention. State officials could have administered the system; the federal government could have undertaken potent intervention when instead they did not.

Second, the failure of the universal white male militia model is explained by historians as the product of a social change in which the martial order of a deferential republican culture shriveled before the emerging values of a democratizing society. In the crudest construction of this explanatory model, Andrew Jackson killed the militia: "Old Hickory's populist movement gave a wider range of Americans a voice in politics, and men no longer interested in militia service shared their opinions with elected officials."[21] Similarly, but more subtly, Marcus Cunliffe argued for a "seemingly casual yet fundamental shift of emphasis" in the 1830s and 1840s from universal obligation to personal choice.[22] Democratic culture would no longer support a model of universal

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[20] See also, for example, Skeen, *Citizen Soldiers in the War of 1812*, pg. 1, passim: "The militia system broke down at the state level largely because the Constitution divided responsibility for the militia." Similarly, Marcus Cunliffe wrote that "the American militia was never put on a satisfactory footing," in phrasing that makes the militia a thing to be acted upon or not acted upon from above. Instead, he writes, the condition of the militia was "one of the topics the nation yawned at." People put forward proposals for a better militia, but "Congress was too busy to pay attention to such proposals." See Cunliffe's *Soldiers and Civilians: The Martial Spirit in America, 1775-1865* (Boston: Little, Brown and Company, 1968), pp. 180-82, passim.

[21] Doubler, *Civilian in Peace, Soldier in War*, pg. 88. In a 1951 article on the War Department board of officers called in 1826 to examine the failure of the militia, John Mahon linked both top-down political failures and vague social factors as an explanation: "The obsolete Act of 1792 remained the basic law, and it went unenforced. The federal government left the states to do as they liked about the Citizen Soldier, and the net result was that he was neglected. The factors in American society (whatever they may have been) which caused legislators and citizens alike to do no more than talk about the operation of the Board, continued to operate on the militia system." Mahon, "A Board of Officers Considers the Condition of the Militia in 1826," pg. 94.

[22] Cunliffe, *Soldiers and Civilians*, pg. 203. Similarly, a dissertation on the early American militia tells a story of republican order that dissolved in a democratic collapse. McCreedy, *"The Palladium of Liberty*," depicts a relatively ordered militia that decayed in the face of social change: "The forces which joined to bring Andrew Jackson to power also combined to destroy the militia, an institution based on deference, compulsory universal obligation, and the persistent threat of attack arising from frontier conditions... Immigration and industrialization had begun to transform American society, affecting all institutions, including the militia" (from the abstract, pg. 1).

white male military subordination. The erosion of deference opened a hole for the collapse of a hierarchal organization's authority and standing.

But the records of state courts martial suggest a reality in which ordinary men always resisted even the relatively limited claims of authority that they faced under a weak system of federal and state militia organization. More aggressively framed laws would have been likely to provoke greater resistance and disobedience, not greater order. The militia was not a passive agglomeration to be acted upon by law. The men who were required to provide armed force under the aegis of state governments expected to frame the terms and conditions of their service. They perceived discipline and order as conversations, not lectures. Nor did this participatory expectation and associational ethic arise suddenly with the arrival of Jacksonian Democracy. In the postrevolutionary United States, men turning out for militia service in wartime or in peace were always alive to the premises of self-government. They expected to speak to their military superiors as citizens and as men, and they expected to be heard.[23] They were ready to actively disobey or complain if they believed that they were not. Though federal and state management of the militia was undertaken with a light hand, the evidence presented in this study suggests that it was still resented and contested. It cannot be proven that militiamen would have submitted to clearer policy founded in stronger assertions of power.

[23] David Hackett Fischer finds these premises at work in Lexington on the morning of April 19, 1775, in the relationship between Capt. John Parker and his company. Called to the Common by a pre-dawn alarm, he writes, "The men of Lexington did not assemble to receive orders from Captain Parker...Their minister wrote that the purpose of the muster was first and foremost to 'consult what might be done.' They gathered around Captain Parker on the Common, and held an impromptu town meeting in the open air." Fischer describes this gathering for discussion as "the product of many years of institutional development," a long and mindful process that gathered men under a covenant for the defense of their communities. But Fischer notes that the limits of that consensual covenant are also important. On the one hand, as British regulars approached, "The Lexington militia began to consult earnestly among themselves." On the other, Parker told his men in the final moments before the confrontation that "the first man who offers to run shall be shot down." Lexington's militiamen agreed to a common cause, giving their captain the authority to command them, but then he did command them; consent created justified authority. David Hackett Fischer, *Paul Revere's Ride* (New York: Oxford University Press, 1994), pp. 151-54 and pp. 188-89.

Further reflecting a discussion about administrative and political failures, the War of 1812 sits at the center of any discussion about the early national militia. But the significance of the war is in what it revealed about the militia, not in what it caused. In the only monograph that narrowly examines the performance of the militia in that war, C. Edward Skeen writes that "the militia system obviously failed to provide an adequate force, particularly to prosecute the war vigorously... It is well known that the state militias were not prepared to fight a war in 1812."[24] Skeen discusses a range of problems with the militia, including unresolved questions over state and federal authority, but concludes that the most serious problem with militia forces was "their ability to fight."[25] But Skeen begins his discussion of the War of 1812 with an examination of the militia before the war, showing clearly that the institution never began to work well.[26] In this context, the demands made on the militia during wartime brought existing failures to the foreground; the militia was like a broken ladder that was discovered to be broken when someone tried to climb it. The evidence of state courts martial suggests much the same point. Charges and trials became more common during and after the war than they had been before it, but they did not represent the emergence of new dynamics and fresh contests. Rather, the demands made on local militia units by war clarified and intensified an existing set of disputes. The war made it harder to ignore the longstanding social and political tensions that were already present when the fighting began. There were more state courts martial, but they hosted familiar discussions over old complaints.

[24] Skeen, *Citizen-Soldiers in the War of 1812*, pp. 1-2.
[25] Ibid. Quote is from pg. 2; regarding conflicts over state and federal authority, see esp. Chapter Eight, pp. 141-56.
[26] See for example, in ibid, the discussion of the militia in the Whiskey Rebellion, pg. 7.

## Chapters

This dissertation has four chapters.

Chapter One discusses state military courts as a legal system, describing courts martial as "conversations with a verdict": local, procedurally casual, substantially informed by social judgments, and not consistently attentive to, or closely bound by, statutory language. This discussion of military courts reflects John Phillip Reid's description of "common-sense jurisprudence" in the civil courts of early national New Hampshire.[27] Like other courts of their time, New England courts martial were not a forum for lawyers or legal formalism. To a substantial degree, neighbors judged neighbors, and did so by neighborly rules, creating a space for larger discussions about social character and institutional authority.

Chapter Two examines courts martial as a site for negotiation over the sources and boundaries of authority, describing contests over jurisdiction and the sources of law. When was a militiaman a soldier, subject to military discipline, and when was he a citizen, answerable only to civil courts? This question arose over and over again in the years following the passage of the Uniform Militia Act. Similarly, militia courts struggled to weigh conflicts between statutory law and social usage, uncertain if legislative action plainly trumped well-developed custom. Another contest centered on the differences between enrolled militia organized in standing companies, select militia units such as artillery and cavalry that chose their own members, and state-chartered independent military companies such as the Kentish Guard and the Salem Cadets. State officials often wished to blend these distinct forms of state military force, treating them all as militia

[27] John Phillip Reid, *Controlling the Law: Legal Politics in Early National New Hampshire* (DeKalb: Northern Illinois University Press, 2004), pg. 31.

units subject to the same kinds of regulation and discipline. That blending of distinct forms led to courts martial as men in select and independent companies refused to be treated as militia. State military trials are an important site for the development of answers to these disputes because they reveal the places in which middling militia officers challenged and refused authority, asserting premises from below that contradicted the premises asserted from above. Militia officers frequently disobeyed orders that they regarded as unlawful, unfounded, or inappropriate. Their arguments for the propriety of their disobedience, and the response of their accusers and judges, reveal the sides in a long argument over the nature of authority in a new republic.

Chapter Three examines socially founded, honor-focused complaints against militia officers filed against by other militia officers and men in the ranks, as well as an informal trial of a member of an independent military company that operated on the premises of gentlemanly status. It examines state military courts as social forums that policed character and comportment, evaluating the honor of defendants and accusers in ways that often blurred the boundaries between military and civil identities. It shows the social origins of many militia complaints, demonstrating that military trials sometimes proceeded from a foundation of personal distaste and the violation of community expectations. Class and gender assumptions established behavioral boundaries that militia officers could transgress without committing clearly military offenses, leading to a military trial for failures before civil society. Also, complaints against officers by men in the ranks revealed shared expectations about the nature of command and the foundation of authority, describing instances in which militiamen argued that their officers did not merit the rank they held.

Finally, Chapter Four is intended as institutional history that incorporates the themes of the prior chapters, examining the settlement of local authority in the militia system. This chapter focuses on courts of inquiry and courts martial related to the election of militia officers in Massachusetts. Here, complaints plainly related to military affairs. But the social rules and debated authority examined in the previous chapters underlie complaints over the contested conduct of official elections. Institutional regulation remained distinctly social and local.

## Chapter One: "Such Warring and Contradictory Judgments"

> "Here the evidence was closed and all but the Court retired. It was deemed proper that the officers should make known any facts within their own knowledge. Lieut. John Foster, stated that the accused has taken some prejudice against the Regimental Staff, and has said he would not do duty under them. Declared as a witness."
>
> **-- Trial of Lt. Jacob Robinson, 1822**[1]

As a division court martial opened in Worcester on November 12, 1810, the judge advocate asked to make some introductory remarks. Maj. Levi Lincoln, Jr., a future Massachusetts governor, congratulated the members of the court for their service on a panel guided by precise regulations and the deeply rooted science of military law. He warned them, though, that men accustomed to the procedures of civil courts, with their "eloquent appeals of counsel to the *heart* as well as to the *understanding*," would naturally feel uncomfortable with the "stiff and formal rules, which trammel all proceedings here." A few moments later, Lincoln laid out to the court the "feelings and passions" that should guide their task: "To enforce duty, and to vindicate honor; to chastise baseness, and to reward valor, is the province of the military judge. He passes between treachery and its accuser, and affixes infamy to merited conviction, between fidelity and its assailer, and bestows, by acquittal, on injured character, a higher lustre."[2] Pointing to cold science and stiff rules, insisting that appeals to the heart had no place in a military trial, and directing members of a court martial to be guided by their feelings and passions involving honor, baseness, valor, treachery, infamy, fidelity, and personal character, Lincoln illustrated the tensions and contradictions that ran through the system

[1] Trial of Lt. Jacob Robinson, 1822. CSA, RG 13, Box 48, Folder 13.
[2] *Trials by Court Martial of Capt. Samuel Watson et al*, pp. 5-10.

of state courts martial. His confidence that military trials operated on unambiguous and well-settled rules similarly suggests an act of will or hope rather than an expression of reality. Three years after Lincoln congratulated a Massachusetts court martial on their involvement in what could only be a rational effort to apply clear legal standards to their feelings, another Massachusetts militia officer opened a newly published handbook on courts martial by offering his hope that members of such courts would no longer be led by ignorance to "clog and impede their proceedings, to the injury of the public and every individual concerned." Brig. Gen. Isaac Maltby wrote that he had compiled the volume because the dismal record of the state's military courts had proven a clear need for it: "If officers will give themselves the necessary information, those disagreeable delays, so frequently witnessed at courts martial, will be avoided; the property of the government saved; erroneous decisions less frequent; and a more prompt and strict justice done, both to the accused, and to the government."[3] Separated by three years, these Massachusetts militia officers spoke of the strict and settled rules that guided well-ordered courts martial, and the passions that the members of those courts applied to the task of judgment, and the frequent errors that had caused erroneous decisions which injured every participant.

This chapter examines courts martial as they worked, looking inside the procedural order of state military trials. The chaos of clashing premises illustrated by the examples of Lincoln and Maltby defines the courts martial of early national New England. Militia trials were highly formalized and built around informal social judgments, elaborately

[3] Isaac Maltby, *A Treatise on Courts Martial and Military Law* (Boston: Thomas B. Wait and Company, 1813), introduction (two pages, unnumbered).

structured and procedurally casual in practice, built by states and run by communities.[4] Status shaped the system as much as the law established it. State courts martial operated as a formalized social forum by and for the coterie of militia officers, while privates and sergeants were subject to different forms of discipline.[5] Judging a narrowly drawn group by its own standards, state military courts muddled the public and the private. As the discrete legal venue of a small group of white men who saw themselves -- not always accurately -- as sharing a common identity and interests, the hundreds of militia courts convened in New England to try officers in the decades examined here delivered an increasingly haphazard application of gentlemen's justice. But the story of these courts is not precisely a story of decline, since no moment of cohesion and order appears as a starting point. Rather, New England military courts started in disorder and gradually failed to emerge from it, their failure as a legal forum becoming more obvious by the long shambles of their operation. The fog never lifted; a muddle of conflicting premises never clarified.

## "The body of the people assembled in arms"

This chapter will now discuss the historical background of militia discipline, describing a disciplinary exchange rather than a consistent application of top-down

[4] Particularly little evidence appears to describe the statutory construction of courts martial by states. State legislative records for the period studied here did not record debate, usually offering little more than brief descriptions of major actions. I have also not yet found legislative correspondence that would help to construct a statutory history. Nor did Isaac Maltby leave behind substantial correspondence of any kind, which I have looked for as I have researched the development of his manual on courts martial. Future research may help to fill in these absences, but I have made little progress in this area so far.

[5] Privates and sergeants were subject to state courts martial while in actual state service during wartime, and militia officers were amenable to the federal Articles of War when called to wartime federal service. I have found no records of state courts martial for privates and sergeants. I discuss the statutory basis for these distinctions later in this chapter.

discipline. American militias were intended to place much of the white male population under the organizing framework of military hierarchy and discipline. One recurring theory expressed in the early republic held that the marriage of martial culture and civil society would infect social relations with a military ethos. Men would learn to submit to their social betters, obey government, and live more ordered lives. Most famously, Secretary of War Henry Knox unsuccessfully proposed a militia plan that would require young men to attend annual "camps of discipline."[6] But the idea of social subordination through military training was shared outside military circles. "They who are now attempting to organize the Militia of Pennsylvania," wrote Philadelphia schoolmaster John Ely in 1800, "know very well, that men who have not been accustomed to military exercise, are not easily reduced to that state of subordination, which is absolutely necessary to render a militia respectable, or useful." Looking to his own city, Ely expressed contempt for "the *dead weight* that pulls her militia down," but he had a solution, proposing a military legion composed of boys "from twelve to fifteen years of age." Marching in ranks, and listening to lectures that "will forcibly point out to them their duties as sons, as citizens, and as soldiers," young men would learn proper social subordination and respect for state authority. They would grow into manhood trained to subordination, as military values colored their social world.[7] Whenever they began their

[6] Alan Taylor, *Liberty Men and Great Proprietors: The Revolutionary Settlement on the Maine Frontier, 1760-1820* (Chapel Hill: University of North Carolina Press, 1990), pg. 44. Edling, *A Revolution in Favor of Government*, pg. 124.

[7] John Ely, *A Plan to Render Our Militia Formidable*. Philadelphia, 1800. Curiously, Ely was a Quaker; his 1793 children's reader, *The Child's Instructor*, contains no hint of his later emphasis on martial discipline. See, e.g., Jacqueline S. Reinier, "Rearing the Republican Child: Attitudes and Practices in Post-Revolutionary Philadelphia," *The William and Mary Quarterly*, Third Series, Vol. 39, No. 1 (Jan., 1982), 155-6. Still, Ely's recommendation would have been less remarkable in its time. English children, including colonists, had been required to perform militia service, with varying degrees of enforcement, for centuries; the transition to later age requirements occurred gradually during the eighteenth century, particularly in the later decades. Holly Brewer, *By Birth or Consent: Children, Law, & the Anglo-American*

military training, men were to learn social and political lessons from it. The militia, in this model, would remain the "school of subordination" that Edmund Morgan describes in the colonial militia.[8]

In practice, broader social values were more likely to color the military world; civil society acted upon and shaped the militia more than the militia shaped civil society. As Henry Knox sought to create social subordination through military discipline, this imbalanced exchange had been evident in New England for a century and a half. Describing the "covenanted militia" of early colonial New England, Breen concludes that Puritan military affairs had reflected parallel civil concerns in a commonwealth constructed on a "contractual model." The men who composed Massachusetts trainbands in the 1630s and early 1640s expected to follow the officers they wished to follow, as "the spirit of participation which was evident in the election of ministers and magistrates infected the militia as well." Similarly, later moves to restrict the right of militiamen in colonial Massachusetts to choose their officers were "part of a larger effort to define the limits of voluntarism" in the face of declining social unity and a growing elite concern about order. Military affairs were wholly interwoven with the social and cultural contests of each historical moment.[9] Similarly, Kyle F. Zelner has found that the impressment of colonial militiamen for service in King Philip's War followed along the lines of local social concerns and, less prominently, "colony-wide values and ideas." Decisions about who would be forced into active military service, Zelner argues, "offer a rare glimpse into

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*Revolution in Authority* (Chapel Hill: University of North Carolina Press, 2005), pp 129-40.

[8] Edmund S. Morgan. *Inventing the People: The Rise of Popular Sovereignty in England and America* (New York: W.W. Norton & Company, 1988), pg. 169 and pg. 301.

[9] In addition to *Puritans and Adventurers*, cited above, see T.H. Breen, "English Origins and New World Development: The Case of the Covenanted Militia in Seventeenth-Century Massachusetts," *Past & Present*, No. 57 (Nov., 1972), esp. pg. 83 and pp. 94-96. Breen concludes, "The examples from church and state suggest that the various attempts to limit the military franchise, culminating in the law of I668, were an expression of a general movement to limit popular participation in public affairs."

the fundamental values of each colonial community," providing "an excellent indicator of the type of men that the community valued."[10] Finally, in an example particularly germane to a study of courts martial, Fred Anderson has found that American officers leading provincial troops during the Seven Years' War carefully manipulated the system of military discipline to evade the expectations of the British military system, which they regarded as being excessively harsh. Rejecting the practices of regular troops, Anderson writes, "Provincial disciplinary practices and the assumptions that underlay them reflected traditional New England ideals of community life -- that men ought to be knit together as one in the common pursuit of God's will."[11] The values and disciplinary premises of early American military organizations were the values and disciplinary premises of early American society. Armed force did not create a distinct social world, but grew from and shifted with that of its soldiers.

The social policing of authority was therefore a familiar function of the militia, as an established bridge between civil society and governmental authority. Early American militia organizations gathered a population of men who spent a significant portion of their adult lives in their ranks. Providing a shared experience and a collective structure, militia organizations gave their participants an institutional vocabulary they could use to express grievances. This development of a shared language to restrain authority was ironic in its effects, given that militia service was supposed to train men to the habit of subordination. Mutual and familiar, formally ordered but in many ways socially constituted, the militia was inherently mercurial, a basket of clashing purposes that often became informally what its formal composition did not suggest. Grievances widely

[10] Zelner, *A Rabble in Arms*, pg. 8.
[11] Anderson, *A People's Army*, pp. 121-41; quote is from 135.

shared by ordinary white men could become, in appearance, grievances of the militia, an armed and structured body. Late-colonial and early state militias challenged government while being organized under the aegis of governmental authority. To a governor, the militia was simultaneously an instrument of force under his command and an incipient mob against his power. Compelling men to arm themselves and gather under leaders, government officials created the possibility that they would be opposed by an organized group marching behind potent symbols of legitimacy and order. As Pauline Maier has writen, "insurrections could naturally assume the manner of a lawful institution" as mobs acted with concerted discipline toward a coherent purpose. Mobs could behave like militia organizations because sometimes they very nearly were militia organizations. Crowds of protestors could be made up of men who also mustered together in their local trainbands. While shared militia experience could help to restrain and order a mob, it could also help to raise one. As Maier writes, "the militia institutionalized the practice of forcible popular coercion and thus made the formation of extralegal crowds more natural." Men who were expected to gather in ordered groups became accustomed to gathering in ordered groups; a mob could be turned out and led for common political duty like a militia company. During Stamp Act riots, "Militias had either refused to do answer royal governors' calls for support or were so clearly behind the mobs that it seemed foolhardy to muster them."[12] The overlap between the militia and crowds made up of militiamen ate away the viability of colonial civil government.

[12] Pauline Maier, *From Resistance to Revolution: Colonial Radicals and the Development of American Opposition to Britain, 1765-1776* (New York: W.W. Norton & Company, 1991 [1972]), pp. 16-17 and pg. 92. For specific examples of well-ordered mob behavior, see pg. 67, pg. 97 ("Military discipline could contribute to this end..."), passim.

Structuring protest, the militia also gave it symbolic substance. When a Boston crowd marched against the Stamp Act on Nov. 5, 1765, the shoemaker Ebenezer Mackintosh, the "First Captain-General of the Liberty Tree," marched side by side with William Brattle, the commander of the Massachusetts militia. "By placing Mackintosh at the head of the column, the mob and the militia were equated as defenders of communal liberty (indeed, their membership overlapped considerably), and Mackintosh was granted equal symbolic generalship with Brattle."[13] The social authority of the militia was given out on loan to oppose excessive Parliamentary authority. That authority could also be borrowed without having been loaned, as when settlers on the New Hampshire Grants organized themselves as militia companies against the efforts of New York officials who wished to survey their land for sale; these ad hoc militiamen served under Colonel Ethan Allen, who appointed himself to that fictive rank.[14] Fighting the legal authority of courts and sheriffs, men could appropriate authority for their cause by claiming the status of a militia. They did so because the political value of militia structures and symbols was unambiguous and widely understood: a militia was respectable and well-ordered, and its cause had weight and merit.

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[13] William Pencak, "Play as Prelude to Revolution: Boston, 1765-1776," in William Pencak et al, eds., *Riot and Revelry in Early America* (University Park: Pennsylvania State University Press, 2002), pp. 133-34. Describing the same orderly protest march, Alfred F. Young writes, "The procession showed the discipline of the militia; in fact, most of the members of the town's militia would have been in the parade, taking orders from the shoemaker." Alfred F. Young, *Liberty Tree: Ordinary People and the American Revolution* (New York: New York University Press, 2006), pg. 342. Regarding Mackintosh, see also Dirk Hoerder, *Crowd Action in Revolutionary Massachusetts, 1765-1780* (New York: Academic Press, 1977), pp. 96-100 and pg. 141. Also useful is Charles Niemeyer, "'Town Born, Turn Out': Town Militias, Tories, and the Struggle for Control of the Massachusetts Backcountry," in John Resch and Walter Sargent, eds., *War and Society in the American Revolution: Mobilization and Home Fronts* (DeKalb: Northern Illinois University Press, 2007), pp. 23-41. Niemeyer examines "the growing militarization of the Massachusetts towns" on the eve of the Revolution, and the effort to "cleanse militia establishments of Tories and replace them with 'right-thinking' and politically reliable patriots" (28).

[14] Robert E. Shalhope, *Bennington and the Green Mountain Boys: The Emergence of Liberal Democracy in Vermont, 1760-1850* (Baltimore: Johns Hopkins Press, 1996), pg. 79, passim.

While the militia had served to challenge British authority, the removal of that authority did not change the utility of the militia as a political form; the institution could be made to carry a political message in other contexts. The Revolutionary militia was at least as malleable as the late-colonial militia, serving as "less a draft board and a reserve training unit than a police force and an instrument of political surveillance."[15] In Philadelphia, the laboring poor adopted the militia of association as a form for the expression of class grievances over wartime prices and unequal military burdens, attacking people they identified in the overlapping categories of Tories, Quakers, and speculators. Among the military organizations that put down the attack was the Philadelphia Light Horse, a mounted militia unit composed of the city's merchant and professional elite; in this instance, militia warfare was class warfare, and military structure provided for both the expression of civil discontent and its repression.[16]

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[15] John Shy, *A People Numerous & Armed: Reflections on the Military Struggle for American Independence*, Revised Edition (Ann Arbor: University of Michigan Press, 1990), pg. 176. The political malleability of the colonial militia was matched by its institutional malleability, and the militia of the colonial era was not simply a military organization with a plain and uncontested purpose. As Fred Anderson has written, seventeenth-century Massachusetts militia regiments "came to represent only the manpower pool from which the volunteers could be raised" for military campaigns, while a set of legal reforms at the end of that century left the colony's militia defined "not as an army per se, but as an all-purpose military infrastructure: a combination of home guard, draft board, and rear-echelon supply network." Anderson, *A People's Army*, pp. 26-27. See also Zelner, *A Rabble in Arms*, which examines the colonial Massachusetts militia as the foundation for military impressment. Richard Kohn has called the colonial militia "a patchwork hodgepodge of indifferently prepared and haphazardly armed units." See his essay, "The Murder of the Militia System in the Aftermath of the American Revolution," in Stanley J. Underdal, ed., *Military History of the American Revolution: The Proceedings of the 6th Military History Symposium USAF Academy* (Honolulu: University Press of the Pacific, 2002 [1976]), pg. 117.

[16] Rosswurm, *Arms, Country and Class*. Rosswurm finds a sharp break in the events he describes, arguing that "the Philadelphia lower sort transformed and politicized the militia and made it, among other things, the institutional embodiment of their growing power" (pg. 252). But his account was written more than twenty years ago, before more recent scholarship that has found a well-established political place for the militia. Rosswurm's narrative suggests that lower sort militiamen understood that they were acting in a developed tradition and using a familiar form: preparing to attack the objects of their scorn, they unsuccessfully sent for Charles Willson Peale, a militia officer and "an artisan of some note." Preparing to take action, Rosswurm writes, "they seem to have felt *the* need for a commissioned officer at their head; to this extent, the associators had internalized military discipline" (pp. 209-20). Adopting the form of a militia, Philadelphia's working poor may have been taking up a familiar political tool, rather than newly transforming and politicizing it. Regarding militia revolts and uprisings, see also John A. Nagy, *Rebellion in the Ranks: Mutinies of the American Revolution* (Yardley: Westholme Publishing, 2007).

Some of the most serious challenges to the post-Revolutionary political order were also undertaken by men who participated in the militia in significant ways. Leonard Richards has found that local militia officers and Revolutionary veterans were well represented among the leaders of the regulator army led in part by Daniel Shays. Massachusetts government officials recognized the important place of militia officers in the events of late 1786 and early 1787, passing a state Militia Act that threatened militia officers with death for taking up arms against the state. The rebellion failed, in part, because one of its leaders attempted to make use of the symbolic weight of an uprising that included the substantial participation of militiamen: leading one of the three regiments marching to attack the federal Springfield Arsenal, the Continental Army veteran and former militia officer Luke Day sent a note to the commander of the forces defending the arsenal, warning him in significant language that he stood opposed to "the body of the people assembled in arms." The decision to warn the arsenal instead of joining the attack left the other two regiments to fight alone, and gave the defending force advance warning of the approach of the regulator army. Day made a tactical error, but did so by making a familiar and important rhetorical gesture with deep social roots.[17] Similarly, the backcountry Pennsylvania uprising of 1799 known as Fries's Rebellion was in significant part a political protest undertaken directly by militiamen, an event in which the militia captain John Fries led a "combined force of armed light horse, riflemen, and infantry" into Bethlehem, marching in formation "to demand the release of seventeen

[17] Leonard L. Richards, *Shays's Rebellion*. Regarding leaders of Shays's Rebellion who were militia officers, see for example the discussion regarding Deacon (and Captain) John Thompson, pg. 9, the description of Job Shattuck, pg. 19, and the discussion regarding the participation of an unnamed colonel on pg. 53. The rebels attacked the Springfield Arsenal in "regiments," a movement adopting the form of an army; see pp. 27-30. For an example of the Massachusetts Regulators closing a courthouse while "assembled in military formation and with fifes and drums," see pg. 9. Regarding the state Militia Act, see pg. 18. Regarding Day's warning, see pp. 28-29.

prisoners jailed for resisting a federal tax." Nearing the town, Fries -- in military uniform, with a black cockade in his hat to show that he was a Federalist -- paid the bridge toll for the entire force before they crossed; an armed insurgent force attacking Federalist excesses marched in ordered ranks, wore their uniforms, paid their tolls, and obeyed their Federalist commander.[18] Militia organizations, constituting themselves as a political force for the protection of their communities and states, engaged in actions that government officials would regard as profoundly dangerous. But their apparent disorder was closely ordered and carefully directed by men who held officer rank. Militiamen possessed an informal authority that could bind and countervail formal authority, and they knew it.

Finally, though, formal authority had a voice in the exchange, and militiamen could discover the limits of their social power to police military institutions. Famously, six Tennessee militiamen discovered the hard reality of state power when they led other men out of camp while performing federal service in 1814, having all agreed and received assurances from their officers that militiamen could not be held beyond three months of active duty. Tried for desertion by court martial months later, they were executed by firing squad in February of 1815, the month the Treaty of Ghent was ratified.[19]

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[18] Paul Douglas Newman, *Fries's Rebellion: The Enduring Struggle for the American Revolution* (Philadelphia: University of Pennsylvania Press, 2004), pg. ix, pp. 133-39, passim. See also, for example, the description of a company of light horse, under its captain, appearing in uniform to disrupt a court session called to issue subpoenas in an investigation against tax resisters, pg. 109, and the discussion about the efforts of militia captains to organize their companies for anti-tax petitions and protest, pg. 86.

[19] Donald R. Hickey, *The War of 1812: A Forgotten Conflict, Bicentennial Edition* (Champaign: University of Illinois Press, 2012), pg. 223, and the broadside "Facts Concerning the Six Militia Men and General Jackson," 1828, at AA.

## "A Step You Cannot Retrace"

In this atmosphere of unstable foundations and unsettled principle, a forum designed to produce institutional order could instead magnify the disorder it was meant to fix. In 1804, five officers of Boston's Legionary Brigade filed a long set of picayune charges against their commander, Brig. Gen. John Winslow. A court of inquiry quickly concluded that the complaint brought by Winslow's subordinates was too petty to warrant serious consideration, but that finding did not end the legal conflict in the brigade.[20] Instead, Winslow filed his own complaint, alleging that the complainants had themselves injured the "harmony and discipline of the Brigade" with their "groundless and malicious" charges. Since one signatory was a captain, and could not be tried by general court martial with the others, four of the officers who complained against Winslow were brought to trial together: a lieutenant colonel and three majors. An officer had filed a complaint over a complaint, forcing a military court to assemble to evaluate a matter that had been heard and apparently resolved before a military court.

Rather than settling a breach of order, the resulting court martial echoed and magnified the chaos of the conflict that had caused it. The trial descended into several days of bickering in two locations, as the court lost its first venue to the arrival of the federal circuit court and moved into the vacant chamber of the House of Representatives. For the first two days, Lt. Col. Robert Gardner, speaking on behalf of his lower-ranking fellow defendants, repeatedly clashed with the judge advocate and the court. Over the court's repeated demands that he stop, Gardner raised procedural questions, objections to

[20] Court of Inquiry on Brig. Gen. John Winston [folder is mislabeled; BG's name is Winslow], Feb. 1804. MNGMA, Courts Martial, Volume 1. The specifics of the complaint are discussed in Chapter Two.

the objectivity of court members and the judge advocate, and sharply worded statements about the legal rights afforded to the accused in military trials, to the varying but increasingly irritated response of the court. Finally, the defendants asked for an opportunity to discuss the case between themselves, returning to the courtroom with a written statement announcing their decision to withdraw from the proceedings. Discovering themselves to be before a prejudiced court that operated with the guidance of a biased judge advocate, and forced to submit to procedural rules that struck them as unfair, the defendants proclaimed that they had been denied their right under the state constitution to be represented by an attorney. Under those circumstances, they explained, they had sent a note to the governor to demand his intervention. Receiving no reply, they pronounced themselves "constrained to protest against the proceedings of the court, and to decline taking any further part in the trial," refusing to be tried "upon the new and unheard of charge of having complained...to our Commander in Chief." Gardner and his co-defendants believed they were facing a disordered system, and refused to participate in a legal forum that operated without regard to honor or proper legal standards. They stood to leave.

In a conflict between different vocabularies of order, demands for ordered conduct were met with, first, puzzled demands for ordered conduct, and then with ad hoc efforts to muddle forward. Accused of showing contempt for the law, the members of the court saw disorder in the very charge of disorder, striking back with their own accusations of impropriety. The president, Maj. Gen. Ebenezer Mattoon, responded to Gardner with a long warning, rejecting the premise that court martial defendants could withdraw from trial. Such a claim, he cautioned, was "totally subversive of all order and discipline in the

militia," since an officer accepting a commission "voluntarily surrendered some of his personal rights and subjected himself to the rules and regulations by which the militia is governed." To walk away from a system of discipline after agreeing to subordinate themselves to it was a particularly dire choice: "Gentlemen, you will consider the consequences of the rash step you are about to take, it is a step, which you cannot retrace. I must admonish you against it, and do now declare to you, that if you withdraw from the court, you do it at your utmost peril." Mattoon ordered the judge advocate to read the militia law aloud for the benefit of the defendants. They left while it was being read. Dumbstruck, the court adjourned, returning the next day to call the defendants for trial -- ritually, knowing that they were not there. Gardner and his co-defendants, "tho' solemnly called," predictably did not appear, and the court adjourned again. Resuming the next morning, the court called for the judge advocate to give his opinion of the charges and the evidence, but he declined to speak in the absence of the men who were supposed to be on trial. Deliberating on no evidence, testimony, or legal guidance, the court found each of the four men guilty, and ordered them stripped of their ranks. Gardner was barred for life from holding militia office; the majors were barred for ten years.[21]

Trying to set the process right, participants sent it spinning into growing confusion. Through a long exchange of warnings and accusations, a group of militia officers had pronounced other officers to be engaged in subversion and disorder: Gardner and his fellow officers accused Winslow, who accused them, who accused the court, who accused the defendants. Each set of participants found disorder and dishonor in the Massachusetts militia, but each found that disorder elsewhere. Everyone knew that

[21] Court Martial of Lieut. Col. Robert Gardner, Majors Benjamin Harris, Asa Hatch, Amasa Stetson, and Captain John Brazier [mislabeled; Brazier is not a defendant], 1804. MNGMA, Courts Martial, Vol. 1.

someone else was corrupt and dishonorable. Every set of participants knew themselves to be acting on behalf of order and propriety. The result was that, after the expense to the state of two separate courts, a brigade lost four of its field-grade officers. Gardner and the other defendants were in effect punished with the validation of their own choice and desire: walking away from militia discipline, they were ejected from the system that they had quit. This set of events and outcomes describes a legal system that was meant to discipline and stabilize a hierarchal institution.

## "Neighbors Judging Neighbors"

To understand these courts, it is first necessary to understand their formal limits, and the failures of those limits. As courts of limited jurisdiction, with a modest range of available sentences, they were designed to take up distinctly military offenses that merited only punishments related to military status, such as the loss of rank. But they also judged socially and politically transgressive behavior that occurred in military settings or among militia officers, becoming in effect tribunals for the examination of personal honor and dishonor. In some instances, courts martial judged disputes that were entirely private, as militia officers struggled to draw the line between military affairs and personal matters. As tribunals with modest powers, courts martial were almost never asked to judge battlefield cowardice and disobedience, consequential failures that they could not adequately punish. In Rhode Island, the distinction between systems of discipline was particularly clear, making officers ordinarily subject to state military law but amenable to

the federal Articles of War while "called into actual service" by the state.[22] Massachusetts accomplished the same ends by different means, creating separate state laws for the militia under regular circumstances and while in actual state service.[23]

State courts martial were largely an instrument for the discipline of men at peace, even during wartime. In the very few instances in which commanders used regular state military courts to accuse subordinate officers of failures in the face of the enemy, the courts generally refused to consider the most consequential of the charges. In May of 1815, for example, a peacetime Massachusetts court martial turned aside a nearly year-old charge of wartime cowardice directed against an ensign by his regimental commander, finding that a failure to march against the enemy was "beyond the jurisdiction of this court which has no power by the law under which it is assembled to inflict the punishments which are attached to the aforesaid offences."[24] Operating under the laws for militia officers not in actual service, militia courts would not venture into charges drawn from the battlefield. They were a forum for disputes in military settings short of combat. This distinction rooted the system of militia courts in social and political conflict, keeping them from becoming a more plainly military forum.

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[22] Rhode Island effectively borrowed a statute, adopting the federal Articles of War as state law.

[23] *An Act for Governing the Militia of the Commonwealth of Massachusetts, Passed June 22, 1793* (Boston: Adams & Larkin, 1793). I have found no records at all of state militia courts martial that proceeded under the statute for actual service, though I expect that such courts martial did take place. Lacking evidence, I omit any further consideration of these courts martial here.

[24] See the trial of Ens. George Clark in Court Martial of Capts. Harding Knowles and Nathaniel Snow, Ensigns Edward Kendrick and George Clark, and Surgeon Zebina Horton, May, 1815. MNGMA, Courts Martial, Vol. 5. Clark's trial was the first the court took up, and appears at the front of the record of several unrelated trials. Clark had been ordered to march his company to the coast on June 13, 1814, "where there was reason to believe the enemy would attempt to land." He stopped the company short of its destination, then vanished. A witness in his trial, Thomas Riddle, told the court that Clark had "absented himself from New Bedford" since the date of his abandoned march, returning to town only after the war. Declining to take up the more consequential charges of cowardice and desertion, the court convicted Clark of a single charge of disobedience over the same event. Obviously influenced by the charges they had not considered, the court sentenced him to be stripped of his rank and barred from the militia for seven years.

Limited in scope, state courts martial were also limited in reach. Militia trials were local and narrowly regional affairs; from record to record, the same names reappear as witnesses, court members, accusers, and defendants, while courts sometimes heard charges against several defendants with the same last name, or were forced to remove officers who were related to the people on trial before them.[25] New England militia courts disciplined a small world.

Resisting formalized law, state courts martial sustained the "common-sense jurisprudence" that John Phillip Reid has described in New Hampshire's civil courts at the end of the eighteenth century. In the civil sphere, this "republicanist" form of local and socially derived justice resisted formal standards and professional authority, leaving to juries the power to apply their ordinary understanding of human nature to the settlement of conflict. As Reid explains the prevailing sentiment, "The law of neighbors judging neighbors was safer and sounder than lawyers' law." Similarly, in the New England of the early republic, the law of officers judging officers was understood to be safer and sounder than lawyers' law; the common premises of shared status gave men elected to officer rank a set of heuristic tools that they preferred to legal structure. The costs of republicanist

[25] On March 8 and March 9 in New Haven, for example, Lt. Col. Abel Rosseter was first the officer who ordered the arrest of the first day's defendant and then the president of the next day's court. See Trial of Lieut. Malachi Cooke, 1814. CSA, RG 13, Box 46, seventh folder, and Trial of Zalmon B. Banks, 1813. CSA, RG 13, Box 46, fifth folder. For a different sense of the smallness of the world of New England militia officers, see the Court Martial of Capt. Samuel Robinson, Oct. 1815. MNGMA, Courts Martial, Vol. 6. Robinson successfully objected to two members of the court, causing their replacement. Both Maj. Ebenezer Rawson and Lt. Samuel Rawson were the brothers-in-law of Robinson's accuser. Similarly, a member of an 1815 court martial told the president of the court he "wished to be excused from serving as a member on this trial," as the defendant was his brother. The Capt. Knowles detailed to the court was released from service in the trial of Capt. Harding Knowles. See the Knowles trial in Court Martial of Capts. Harding Knowles and Nathaniel Snow, Ensigns Edward Kendrick and George Clark, and Surgeon Zebina Horton, op. cit. For an example of a court that tried family members, see the Court Martial of Ensign Ebenezer Wales and 22 Others, 1822. MNGMA, Courts Martial, Vol. 12. Among the officers from a single regiment tried before this court were Lt. William A. Matthews, Capt. Ezekiel Matthews, Capt. Gershom Crowell, Lt. Joseph Crowell, and Ens. Ebenezer Crowell.

military justice were the same as those imposed on systems of civil justice: "It was unequal, crude, uncertain, changeable, and worst of all unpredictable," establishing no clear precedents that would punish comparable offenses with similar penalties. But the benefits to participants in militia courts were also the same, as militia officers were judged by standards they shared, valued, and understood. Courts martial managed by common-sense jurisprudence were both formally unpredictable and socially familiar, unreliable and disordered for the very reasons that they were comfortable to the people subject to their discipline.[26]

But the comparable presence of common sense jurisprudence does mean that civil courts and state military courts were more generally comparable. In outline, the major differences between the civilian and militia courts of this time and place are as follows. First, state courts martial did not act upon the bodies of their subjects, who were never taken into custody or punished by pain, physical shaming, or confinement. Second, state military courts had no formal role in developing the economic order that emerged after the Revolution, as they did not adjudicate conflicts over property or labor rights. Third, militia courts were composed from the general population of militia officers, so defendants, most accusers, and the court members who served a dual role as judges and juries usually shared a common identity and status. Officers detailed for a court martial served only on that court martial, which was then dissolved upon its delivery of a verdict and sentence. State military courts were temporary, while civil courts were not.[27] Fourth,

[26] Reid, *Controlling the Law.* Regarding "common-sense jurisprudence," see esp. pp. 24-32; regarding adherence to "republicanist" legal standards, see pp. 38-40, passim; regarding the authority of juries to reach verdicts based on informal premises, see pp. 126-27, passim.

[27] State courts martial were sometimes convened to hear charges against multiple defendants, often in unrelated cases. But these courts also sat only for the duration of the specific trials referred to their discretion. See, for example, Court Martial on Capt. Josiah Seabury and 29 Others, 1819. MNGMA, Courts

courts martial were creatures of the executive branch of government, not of the judicial branch. As such, they served the purpose of command, not of justice; their purpose was the narrow preservation of institutional order, not of any broader societal order. This formal reality of militia courts was ironic in practice, as these courts were plainly liable to casual use as social and political police. In effect, the official narrowness of purpose in state military courts led to a quotidian reality in which those courts performed little apparent gatekeeping. All manner of social and political conflict generated military charges before courts martial, precisely because they were not structured to address broad matters of social or political conflict.

Procedural rules had little practical effect. Run by officers temporarily assigned to them and untrained in the law, courts martial routinely tried inadequate charges, heard hearsay testimony and witness speculation without objection, did not reliably exclude witnesses during the testimony of other witnesses, and accepted agreement to other testimony -- that is, a statement by a witness that he remembered things the same way as another witness did -- as new and complete testimony. In one instance, members of a court martial privately swore themselves in as witnesses and testified to one another during closed door deliberations, then voted to return a conviction based on the testimony they had given themselves. In short, the state courts martial of the early republic were conversations with a verdict, usually gathering men in taverns, inns, and private homes to informally discuss military charges in trials with few effective rules and only limited order. This is not to say that courts martial lacked a procedural formula and basic

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Martial, Vol. 10, Folder 7; or Court Martial of Ensign Ebenezer Wales and 22 Others, 1822. MNGMA, Courts Martial, Vol. 12, unnumbered folder.

structure, and most state court martial records move more or less reliably through the same set of steps to reach a verdict. Examined more closely, though, the application of rules within that apparent framework varied; the differences of substance outweighed the similarities of form.

The informal nature of the state courts martial of a new republic connects the post-Revolutionary militia to its late-colonial predecessors, which imposed similarly limited punishments by uneven means. Colonial courts martial for militia and provincial troops also tried privates and sergeants, but the characteristics of military trials in both periods were otherwise similar in many ways. As James Biser Whisker has written, "Militia discipline was never as severe in the colonies as it was in the British army."[28] Peacetime colonial militias were lightly regulated and essentially local in practice, but the Seven Years' War required a regulatory scheme for provincial forces. In Massachusetts, the General Court passed a Mutiny Act in 1754 that punished disobedience and desertion with sentences that could include death. But in practice, provincial officers relied more often on "consistency, solidarity, entreaty, and instruction," as officers frequently admonished disobedient subordinates to reform: "Justice in the provincial armies did not kill, even though under the law it could." While regular troops were controlled through "savage discipline" and "drastic punishments," physical punishments for provincial soldiers included comparatively restrained flogging and short periods riding the wooden horse. "By eighteenth-century professional standards," Fred Anderson has written, "such punishments were ridiculously mild." In the colonial era as in the early republic, officers were exempted by their status from physical punishment. After the unification of

[28] James Biser Whisker, *The American Colonial Militia, Vol. 1: Introduction to the American Colonial Militia* (Lewiston: Edwin Mellen Press, 1997), pg. 65.

provincial and regular commands in 1757, provincial soldiers became subject to regular military discipline. Again, the practice was often less harsh than the formal boundaries suggested, as some provincial officers took care to moderate charges against subordinates to assure them lighter punishment than their offenses officially warranted. "It became a sort of game, one in which officers' sense of Christian ethic and morality set the rules. Thus, if an enlisted man fell asleep on duty, a capital crime under British law, he might be charged only with neglect of duty, which brought only physical punishment."[29] The tradition of military discipline in late-colonial New England was a tradition of restraint and admonition, not of disciplinary brutality.[30]

## "They Tend to Burthen the State with a Great Expense"

New England courts martial systems were indifferently managed and loosely overseen in the decades after the Militia Act, with predictable results. State military trials mostly looked the same over time: same structure, same procedures, same narrow range of charges and punishments, same loose practical organization. State officials tinkered around the edges, mostly seeking to reduce the administrative and financial burdens of courts martial on state governments. Seeing that their military courts were frequently expending resources on essentially social conflict that had limited military significance, governors and adjutants general attempted some feeble acts of gatekeeping. In

[29] Ibid, pg. 69. Also see generally Whisker's entire brief chapter on "Martial Law and Military Discipline," pp. 65-70.
[30] Anderson, *A People's Army*, pp. 120-135, passim. Regarding the comparatively harsh discipline of the 17th century, see Zelner, *A Rabble in Arms*, esp. pp. 41-43.

Massachusetts, legislators also shrank courts martial, reducing their cost and causing fewer officers to lose days and weeks to service for militia trials.[31]

State officials showed that they understood the limits of their power to issue and enforce demands. Mostly they chided, urging officers to be more careful about making formal accusations against one another. In Massachusetts, Adj. Gen. William Donnison responded to a petty complaint in 1810 with a letter to Governor Elbridge Gerry suggesting that they ignore it. "The evidence of willful wrong should pretty strongly appear before the State should be put to the great expence of a public Inquiry," Donnison argued, without success.[32] Four months later, Donnison issued a new general order informing officers that the governor alone had the authority to call courts to hear charges arising from contested militia elections. The adjutant general warned that "a Major General, or subordinate Officer of the Militia, has no constitutional or legal authority, to institute any court, or courts of inquiry, in regard to the validity of any election or elections of militia officers." The order was ignored.[33] Eight years later, Adj. Gen. William Sumner issued still another general order calling on militia officers to stop filing petty complaints against one another. The governor, Sumner wrote, "hopes that a proper degree of self respect and a just estimate of their public obligations, will prevent officers

[31] The Massachusetts Militia Act of 1793, op. cit., required that "No Court-Martial shall consist of a less number than thirteen commissioned Officers" see pg. 52. In 1816, the legislature reduced that number to seven, but only for division courts martial. See *Acts in Addition to an Act, Entitled "An Act for Regulating, Governing and Training the Militia"* (Boston: Russell and Cutler, 1816), pp. 8-9. In 1822, the legislature shrank courts martial again, requiring that general courts martial have seven members and that division courts martial have four members. See Commonwealth of Massachusetts, *In the Year of Our Lord One Thousand Eight Hundred and Twenty Two, An Act, in further addition to an Act, entitled, "An Act for Regulating, Governing and Training the Militia of this Commonwealth"* (Boston: s.n., 1822), Section 9.

[32] Court of Inquiry on LTC Patrick Bryant, 1810-1811. MNGMA, Courts Martial, Vol. 2. Donnison's Nov. 19, 1810 letter arguing against the inquiry is part of the record of the inquiry.

[33] Tellingly, Donnison's March 14, 1811 general order forbidding major generals to call courts to hear charges related to militia elections is contained in the record of an 1816 court martial convened by a major general to hear charges related to a militia election. See Court Martial on Lt. Asa Tapley, Jr. and Ens. Ira Preston, 1816. MNGMA, Courts Martial, Vol. 6.

of high rank from making formal complaints for slight reasons against their brethren in authority, thereby subjecting themselves and the parties interested to great trouble and expence." Far from creating discipline and order, Sumner concluded, excessive military trials were "destroying that unity of design and harmony of action which lightens the weight of public duty."[34] Across state lines in New Hampshire, Adj. Gen. Joseph Low sounded a similarly weak alarm in 1823, warning that the governor "has witnessed with still greater regret the increasing expense of Courts Martial, and he cannot forbear to express his hope, and confidence that a spirit of subordination and pride of duty will not hereafter render so frequent recurrence to their authority necessary, as they tend to burthen the State with a great expense, and often destroy that harmony among officers which it is desirable always to cultivate."[35] While justice systems were predicated on the idea of order, state courts martial created disorder, amplifying disputes rather than settling them. State officials could only "express their hope" for an end to the problem, begging their militia officers to appear before courts martial less often.

## "As Yet it Has Not Been Clearly Settled"

No historian has examined state courts martial in any significant way. Scholarship on the topic has never gone beyond the briefest discussions of a few individual cases, and to some more general references made only in passing.[36] But the realities of courts martial

[34] See Sumner's June 19, 1819 general order in the record of Court on Inquiry on Col. Bartlett Doe, 1819. MNGMA, Courts Martial, Vol. 10.
[35] General Order from Adjutant General Joseph Low, Nov. 29, 1823. A printed copy is pasted into Orderly Book, New Hampshire Militia, 18th Regiment, 1st Company [3rd Brigade, 1st Division], 1820-1824. New Hampshire Historical Society.
[36] See the introduction.

discussed in this chapter closely reflect the available scholarship regarding federal courts martial.[37] Historians of military law have established that the unsettled and slipshod nature of courts martial continued well into the twentieth century, with the current uniform system of military law being developed only after World War II. For most of American history, military trials were not a forum for law or lawyers.[38] The desire to exclude legal considerations was the normal condition of military discipline for a century and a half. Military trials were meant to be a forum for command discipline rather than for law. The absence of clarity in federal courts martial reflected the long absence of legislative care and attention. Following the ratification of the Constitution, Secretary of War Henry Knox warned that the federal Articles of War would have to be adapted to the new frame of government; Congress got around to amending those articles for the army in 1806, "almost seventeen years after Secretary Knox had first called attention to the need for a revision."[39] Even the most fundamental matters of jurisdiction persisted with minimal attention well into the twentieth century, leaving unclear the question of who could be brought before a military court.[40] Throughout most of the history of the United

[37] The first similarity between the existing scholarship on state courts martial and the existing scholarship on federal courts martial is the fact that there isn't much of either. As Jonathan Lurie writes, wars and military institutions are the topic of a great deal of historical research. "When it comes to legal history, however, the military suddenly falls into a deep, dark hole." Jonathan Lurie, "The Military in American Legal History," in Michael Grossberg and Christopher Tomlins, eds., *The Cambridge History of Law In America, Vol. II: The Long Nineteenth Century* (New York: Cambridge University Press, 2008), pg. 568.
[38] The experience of the historian Edmund Morgan, who served in the U.S. Army during World War I and led the later effort to develop the Uniform Code of Military Justice, suggests the pattern. Testifying before a Senate committee during the development of the UCMJ, Morgan recalled his own experience as a military officer, in which he learned that commanders had preferred to keep officers with law degrees from sitting on courts martial; they were worried, he explained, that lawyers would "bitch up the thing by telling them some law." Lurie, "The Military in American Legal History," pg. 593. Morgan also said that WWI court martial prosecutors were frequently "officers of low rank who wouldn't know a law book from a bale of hay," while the defense in courts martial was often managed by "a chaplain who is hardly able to distinguish between a rule of evidence and the Apostle's Creed." In ibid, see pg. 588.
[39] Frederick Bernays Wiener, "Courts-Martial and the Bill of Rights: The Original Practice I," *Harvard Law Review* , Vol. 72, No. 1 (Nov., 1958), pg. 8.
[40] Joseph W. Bishop, Jr., "Court-Martial Jurisdiction over Military-Civilian Hybrids: Retired Regulars, Reservists, and Discharged Prisoners," *University of Pennsylvania Law Review*, Vol. 112, No. 3 (Jan.,

States, the development of the system of military justice "has been haphazard and irregular," reflecting a "distinct internal legal culture" that "may best represent a synthesis of principle and expediency."[41] The current settled order of the Uniform Code of Military Justice cannot be mistaken for the norm; federal military justice was grossly undeveloped for far longer than it has been more carefully managed.

## "The objection...was well founded and ought to have prevailed"

This chapter now turns to a sequential description of procedure in New England state courts martial, discussing each step from the production of a complaint to the infliction of punishment. Examining courts martial as participants encountered them, this portion of the chapter shows how these courts worked in practice, examining the significance of procedural choices. It reveals place and persistence of common sense jurisprudence, and the costs of that persistent absence of legal formalization, placing the entropy of a disordered system in the context of its apparent rules.

Complaints almost always came first, revealing disputes, expressing the demand for formal charges, and shaping the events that followed. State courts martial required written complaints, although not all written complaints against militia officers resulted in courts martial. Such a complaint would sometimes result in a court of inquiry that could

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1964), pp. 317-377. "All of the American Articles of War, from those adopted by the Continental Congress in 1775 down to the Uniform Code, covered various types of civilians accompanying the armed forces in wartime or, after 1916, in peace-time outside the United States" (323). Nor were other basic questions about the system of military law settled with any urgency, as when the army debated well into the twentieth century over the question of who had the authority to review the verdicts of courts martial. As late as 1997, the United States Supreme Court was asked to decide whether the U.S. Court of Appeals for the Armed Forces, which had been founded only in 1951, was an Article III or Article II court; the place of the military justice system remained ambiguous and not entirely settled. In Lurie, "The Military in American Legal History," see pg. 586 and pp. 594-95, passim.

[41] Ibid, pgs. 569, 599, and 603.

recommend to a commander whether or not a court martial should be called. By custom rather than by statute, complaints were to take a standard form, precisely describing allegations with detailed descriptions of dates, places, events, and the category of offense being alleged.[42]

In practice, they did not, and some courts encountering deficient complaints simply proceeded to trial. In August of 1813, for example, Lt. Zalmon Banks appeared for trial in Bridgeport, Connecticut on a set of vaguely stated charges from his company commander. Capt. Benjamin Darling accused Banks of failing to perform his duties, but his letter of complaint provided no dates when the lieutenant had been ordered to appear and had failed to do so. Over the objections of the defendant, the court proceeded to take testimony, opening with a request to Darling to name the days when his subordinate had not appeared. The trial ended quickly; taking evidence regarding the defendant's "bilious complaint or nervous headache," the court found Banks not guilty of neglecting his duties. A week later, Gov. John Cotton Smith wrote that he approved the verdict, but was doing so for a trial that should never have taken place: "The captain general is constrained to observe that the complaint in this case is altogether indefinite, the charges not being sufficiently set forth by the proper specifications." A court had tried and judged a set of charges that plainly fell well short of the expected standard, giving no sign that they taken notice of the point. Seeing the failure of process, the governor expressed concern about the failure of law, but approved the outcome.[43]

This decision to proceed to trial on vague and insufficient charges was common, and shows how little concern state courts martial gave to legal standards. Less than a year

[42] Maltby, *Treatise on Courts Martial*, pp. 19-20; Macomb, *Treatise on Martial Law*, pg. 61.
[43] Trial of Zalmon B. Banks, 1813. CSA, RG 13, Box 46, fifth folder. The Aug. 10, 1813 general order from Smith approving the verdict is bound into the back of the record.

after Smith pointed out the deficiencies in a complaint that led to trial, another Connecticut militia officer unsuccessfully objected to the vagueness of the charges that led to his court martial. Brought to trial in New Haven in March of 1814 on charges of neglect of duty and "unofficerlike conduct generally," Lt. Malachi Cooke objected to the charges against him "because they contain no specific fact on which the charge is alleged." After Cooke's long examination of the vagueness of the charges, the court asked the opinion of Judge Advocate George Hoadley, who agreed "that the charges in arrest ought to have been more specific." But the court voted to proceed to trial anyway, "two thirds of the members concurring therein." The weakness of the charges, and the division among the members of the court, brought the trial slouching to a weak end: by a two-thirds vote, the court found Cooke guilty of neglect, but acquitted him on the charge of unofficerlike conduct, "no testimony having been adduced in relation thereto." A vague charge had been unsupported by factual allegations, then had gone on to be unsupported by testimony. Smith declined to reprimand Cooke, rejecting the verdict of a trial that should never have begun. "The charges on which the arrested officer was arraigned contain no specification whatever of neglect of duty or of unofficerlike conduct," Smith wrote. "The objection therefore made by him to proceeding in the trial of accusations so general and indefinite, was well founded and ought to have prevailed." Participants in the court martial system regularly perceived the gap between what ought to have happened and what did happen.[44]

The significance of Smith's response to the legally insufficient complaint in Cooke's trial is limited by his response in other cases. While he sometimes objected to vague charges as the basis for the discipline of militia officers, the governor was liable to the

[44] Trial of Lieut. Malachi Cooke, 1814. CSA, RG 13, Box 46, seventh folder.

same failure. The day after the court martial of Zalmon Banks, Ens. Thomas Bevins was tried, also in New Haven, on charges of "disrespect + unofficerlike conduct," as well as "Bad conduct + abuse to Capt Isaac Beach" at a regimental meeting in August of 1813. But the complaint described no allegations of behavior that supported the charges. Arguing at length that the vagueness of the accusations leveled against him were "wholly insufficient on which to bring me to trial," Bevins argued for dismissal. Standing before the court appointed to try him, Bevins still did not know precisely what he was alleged to have done; he only knew what categories of violation were charged against him. State law and the federal manual on courts martial both required detailed allegations, he argued. "By these principles which are the basis of every fair trial, the articles of charge must clearly + specifically state the facts on which the officer arrested is founded. General charges of unofficerlike conduct or of abusive conduct are insufficient." Arriving at trial without those details, the ensign had not had an opportunity to prepare a complete defense. But the court unanimously rejected the objection, and began to take testimony. Bevins returned to the same objections in his closing statement, but the court continued to brush them aside. They convicted Bevins on every count he faced. Voicing concerns over the specificity of charges in other courts martial, the governor approved the verdict and sentence in Bevins' trial on a vague complaint without comment. Examining militia trials conducted in the same place on back to back days, the same governor both demanded and abnegated procedural rigor and precise accusation.[45]

[45] Trial of Ensign Thomas L. Bevins, 1814. CSA, RG 13, Box 46, sixth folder. For additional examples of defendants objecting to complaints as vague and inadequately stated, see, e.g., the trial of Col. Ephraim Ward in Court Martial of Col. Joshua Hamblin and Col. Ephraim Ward, 1822. MNGMA, Courts Martial, Vol. 12; and the order for a court of inquiry, finding that "none of the charges are properly and sufficiently defined," in Court of Inquiry on William Goddard, 1808. MNGMA, Courts Martial, Vol. 2. In Connecticut, see Trial of Ens. Ansel Southworth, 1816. CSA, RG 13, Box 47, Folder 17, in which Southworth objected that the charges against him were "general + vague," as well as undated; Trial of Capt. Alpheus Shumway,

Defendants themselves could also insist, against the requirements of the law, that a court try them despite the inadequacy of a complaint. In a demand that reflects the realities of courts martial as a social forum and a site of common-sense jurisprudence, Lt. Rufus Coburn insisted upon a trial in 1814 despite the obvious problems with the complaint against him. Coburn had been accused by his former regimental commander, Lt. Col. Jonathan Lyon, of refusing to obey an order to march with the regiment to New London, "complete in arms in order to repel the enemies of the United States." In one of the few cases tried by a New England state military court that touched directly on a failure related to the anticipated presence of an enemy, the defendant noted that there was "much obscurity" in the complaint "of an individual who Bears no Commission + is out of service." But Coburn still insisted that he "be fully tried on the merits of the case," and the court obliged, despite the belief of its members that the trial "seems rather inconsistent with that spirit of honor which is the main pillar of our military fabric." Standing before a court martial, the lieutenant was too socially offended by the charges against him to take shelter in the law; he wanted his peers to subject the accusation he faced to a common sense examination. Again, as he would so often do, Governor John Cotton Smith approved the verdict while noting that the trial should not have taken place.[46]

Tried by social standards, accusations against militia officers had a social reception, and complaints galled the accused, however well or poorly they were framed. In particular, affronted officers argued before courts martial that enlisted subordinates

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1820. CSA, RG 13, Box 48, Folder 10, in which Shumway made several objections regarding vagueness and absence of factual support for charges; and Trial of Maj. Robert Knapp, 1826. CSA, RG 13, Box 49, Folder 2, in which Knapp objected that none of the charges against him "are set forth with sufficient certainty + particularity."

[46] Trial of Lieut. Rufus Coburn, 1814. CSA, RG 13, Box 46, Folder 8.

should not have had standing to accuse them. They made this complaint with mixed success. Tried on a complaint of nineteen privates under his command, Capt. John Bacon expressed deep distaste for the fact of his trial. "To be arraigned before your honorable tribunal on the complaint of privates, in the company I have the honor to command, is to me, I confess, in a high degree irksome and painful," Bacon wrote. His statement to the court went on the lament his own "wounded feelings" over charges "so foul, so degrading in their nature." The point served little purpose: the court tried Bacon and convicted him on charges that he had abused one of the privates.[47] Another captain accused by a private in his company raised the same objection, but warned about the injury to the militia itself. Capt. Reuel Baker told the court of inquiry examining the complaint of Private William Bacon that "this investigation strikes at the authority of the officer, and may be fatal to the subordination of his men."[48] In this telling, the examination by a military court of an officer's exercise of command was enough to cripple that officer's authority, if the court was beginning its effort on the word of a private. The law guaranteed privates the right to complain against their officers, but officers were chagrined to see that law put into practice. Their social presumptions of status diverged from the formal legal presumptions of the system they served, but were not out of place in a conversation between men who shared a perception of themselves as members of a distinct class.

Similarly, the social realities of the complaint process could lead to further complaints as accused officers lashed out at fellow officers; affronted honor could lead the accused

[47] Court Martial of Capt. John Bacon and Lt. Kimball Jr., 1819. MNGMA, Courts Martial, Vol. 9. This court tried two unrelated cases.
[48] Court of Inquiry on Capt. Reuel Baker, 1820. MNGMA, 1820. Courts Martial, Vol. 11. The court of inquiry was "unanimously of the opinion that it is expedient that a court martial should be called" in the matter, but I have found no record of a court martial in which Baker was a defendant. I have no evidence that shows whether William Bacon and John Bacon were related.

to accuse their accusers. Charged in 1808 with a failure to obey the commands of his brigade inspector during a regimental review in October of 1807, Capt. Elijah Elder objected to the charges against him on the basis of their insufficient form. The five charges brought against him expressed "but one charge with divers specifications," Elder argued. As usual in state courts martial, the court proceeded to trial on the poorly framed charges, but it quickly pronounced the captain "honorably acquitted of each and every charge."[49] Six months after Elder's acquittal, a court of inquiry met to examine the charges that Elder brought against his own accuser, Brigade Inspector William Goddard. As with Goddard's charges in Elder's trial, the charges Elder brought against Goddard were vague and poorly framed. Ordering the court of inquiry to convene, Adjutant General William Donnison noted the manifest failures of the written complaint. Among other problems, Donnison wrote, Elder's allegations "are such as ought to come under the cognizance of civil law courts...and are such as a court martial can have no cognizance of in any instance whatever." Beyond that, "none of the charges are properly and sufficiently defined." Discovering a set of improperly framed charges that belonged only before civil courts, Donnison ordered a military court to convene to consider them; the governor, he wrote, "does not incline to pass the whole by unnoticed." The court of inquiry found that the charges, which the adjutant general convening the court had already declared to be outside the jurisdiction of a court martial, did not merit a court martial. This foregone conclusion was not the point of the inquiry, which had been called to discuss charges that were acknowledged in advance to be outside the jurisdiction of military courts. The point

[49] Court Martial of Capt. Elijah Elder, 1808. MNGMA, Courts Martial, Vol. 2. The original record of this case is lost, and this folder contains only the reprinted trial record from a newspaper, the *Eastern Argus*, Nov. 17, 1808 (Vol. VI, No. 272), pg. 1. This court martial took place in Portland, Maine District.

had been the discussion; the point had been to allow militia officers to publicly air a dispute between militia officers.[50] The formal deficiencies of the complaint had no effect on the social purpose of the court's proceedings.

In a legal system in which each trial was conducted by a newly assembled panel constituted by officers detailed for service on just that court, no institutional memory or developing judicial doctrine practically formalized the written standards for complaints against militia officers. Complaints filed in the 1820s were as likely to be deficient as complaints filed two or three decades earlier, and courts were as likely to overlook those deficiencies and proceed to trial.[51]

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[50] Court of Inquiry on William Goddard, 1808. MNGMA, Courts Martial, Vol. 2/1-6, unnumbered folder.

[51] For other examples of inadequate complaints taken to trial in the later years of this study, see: Trial of Col. Elias Starr, 1819. CSA, RG 13, Box 48, Folder Seven. Starr was accused of improperly fining subordinates, but he argued in his written defense that the complaint was "wholly insufficient in the law" and "monstrously vague." The court tried the charges anyway, but found Starr not guilty on all counts. Also, Trial of Captain Alpheus Shumway, 1820. CSA, RG 13, Box 48, Folder Ten. The complaint against Shumway charged that he had allowed "sundry persons" to vote in a company election who were not eligible, and had "sundry conversations" aimed at influencing the outcome of the election. Shumway objected to four specifications detailing the basis for the charges he faced, complaining that, for example, the third specification was "so general + uncertain that he ought not to be required to defend against it." The court heard testimony on every specification and returned a mixed verdict, sentencing Shumway to be reprimanded. Also see Trial of Capt. Gordon Henderson, 1822. CSA, RG 13, Box 48, Folder Twelve. In a general order of General order of April 17, 1822, which appears as part of the trial record, Governor Oliver Wolcott approved the verdict and sentence of the court. But he noted that charges not considered by the court because they were "drawn up in too general a manner + were so indefinite, that the person accused, could not be expected to prepare a defence against them" would have been damning if proven. In Trial of Maj. Robert Knapp, 1826. CSA, RG 13, Box 49, Folder Two, see Knapp's defense statement, which unsuccessfully argued that none of the charges against him "are set forth with sufficient certainty + particularity." In Massachusetts, see for example Court Martial on Maj. John P. Meriam. MNGMA, Courts Martial, Vol. 13, especially the written objections attached at the back as No. 6, No. 17, and No, 18. In the same trial record, see the general order of May 15, 1822, signed by Adjutant Gen. William Sumner, who wrote that the court should have honored Meriam's objections to the sufficiency of the complaint, at which point "the prosecution would of course have there terminated." On a few occasions, later courts did insist that complaints be presented in proper form. See, for example, Court Martial of Colonel Joshua Hamblin [Hamblen] and Colonel Ephraim Ward [and Maj. Freeman Foster], 1822. MNGMA, Courts Martial, Vol. 12. Ward objected "to the form and manner in which the first and second charges were drawn up," and the court agreed to exclude those specifications from the trial, refusing a request from the complainants to amend and resubmit their complaint. Along with the trial transcript, see Ward's written objection, attached to the trial record as Document #4.

In the next procedural step, the polite "arrest" of accused officers demonstrated the distinct nature of courts martial, which reflected the elevated status of the people disciplined by those courts. Written complaints often led to the arrest of officers accused of wrongdoing, but officers could also arrest subordinates on the training field and describe the arrest in a later written complaint.[52] In either case, "arrest" was a change in status, not a moment in which officers would be taken into custody or otherwise physically restrained. Arrested officers were arrested from command, forbidden to exercise the office of a military leader. State laws established this distinction, as in the Massachusetts militia act of 1793: "And every Officer to be tried shall be put in arrest, so as to be suspended from the exercise of his office." An earlier act governing the militia while in wartime service made the distinction between officers and others explicit, requiring that accused officers be "put in arrest" while accused privates and sergeants were to be "imprisoned."[53] The Connecticut militia law passed near the end of 1792 implied the same standard, requiring arresting officers to leave a notice of arrest with the arrested officer "at his usual place of abode."[54] But the law only codified a prevailing standard; in Rhode Island and New Hampshire, where state laws did not define the arrest

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[52] For a rare example of the latter, see *Report of the Trial of Leonard Blodget, Colonel of the Second Regiment, on Charges Preferred Against Him by Joseph Hawes, Brigadier General of the Second Brigade of the Rhode-Island Militia, Before a General Court Martial, Holden by orders from the Major-General, Which Convened at the State House in East-Greenwich, October 23d, 1821* (Providence: Miller & Hutchens, December 1821). HL. From pg. 9: "The general then rode up to the colonel, and told him, he must consider himself under arrest." I discuss this case in detail in Chapter Two.

[53] "An Act for Regulating and Governing the Militia of the Commonwealth of Massachusetts," 1793, pg. 53 and pg. 76.

[54] *Acts and Laws, made and passed by the General Court or Assembly of the State of Connecticut, in America, holden at New-Haven, (in said state) on the second Thursday of October, Anno Dom. 1792.* (New London: Timothy Green & Son, 1792), pg. 429.

of a militia officer, the limited available evidence suggests that those arrests were conducted just as they were in Massachusetts and Connecticut.[55]

In this area as in others, military custom shaped the operation of the law, making the symbols of arrest significant because of their social meaning among men of officer status. An 1809 handbook on courts martial written by an army officer and used in federal trials (and sometimes referenced in state trials) describes the standards for arrest established by the federal Articles of War: an arrested officer "shall be confined" to his quarters, "and deprived of his sword by the commanding officer." But while military law described no difference between the arrest of a private and the arrest of an officer, Alexander Macomb added, "a difference is established by the custom of the army, according to the degree or measure of the crime." An officer accused of a capital offense or a crime meriting other severe punishment should be confined, Macomb concluded; but for those accused of lesser offenses, "the presumption is, that the officer whose character is thus impeached must be solicitous to obtain a judicial investigation of his conduct, and he is therefore generally allowed to be in arrest at large, that is, to walk about within certain limits, without his sword, on his word of honor."[56] Among officers, the utility of law was moderated by the weight of shared presumptions about honor and character. Reflecting those presumptions, an officer's "arrest" included the social mortification of being forcibly disarmed before the public eye, an act perceived by military officers as a kind of social punishment inflicted prior to a verdict. While Macomb described the federal custom, Maltby described the same practice among state militias: "Militia officers in time

[55] See "An Act to Organize the Militia of this State," 1793 (Rhode Island) and "Regulations for the Order and Discipline of the Troops of the United States...and the laws for...Militia of...New Hampshire," 1794.
[56] Macomb, *Treatise on Martial Law*, pp. 54-55.

of peace are not to be permitted to wear their swords after an arrest, nor can they exercise any command, till discharged from the arrest."[57] Horrified officers spoke to courts martial about the shame of being effectively branded by this condition of their arrests, as when the future congressman Robert Cranston complained that he had been "dispossessed of my sword" on a legally flimsy allegation.[58] The inappropriate charge angered Cranston. But the loss of the right to wear his sword, a symbol of public status, he found particularly galling.

The notices of arrest that appear in courts martial records make clear the gentleman's version of an "arrest" that militia officers faced. In 1811, the adjutant of Connecticut's 28th Regiment received a notice from Lt. Col. Ephraim Wilcoxon, informing him of a complaint alleging that he had behaved in an unofficerlike manner. As a result, the regimental commander wrote, "I am under the necessity of putting you under an arrest; and you are from this time to consider yourself as an arrested officer."[59] Arrest was a change in the way an officer was to regard his identity, following a polite message delivered by a gentleman to a gentleman.[60] Arresting officers gave written notice that they had completed their duties, arresting the accused. The civility in these notices is palpable: "Agreeably to orders from Brigadier General Cobb. I have this day served the within arrest on Ensign Richard Baker by reading the same to him + leaving an attested

[57] Maltby, *Treatise on Courts Martial*, pg. 130.
[58] *Proceedings of a General Court Martial Holden at Newport, August 1, 1817, for the Trial of Captain Robert B. Cranston of the Newport Artillery, as Officially Reported by the Judge Advocate* (Providence: Miller & Hutchens for Jones and Wheeler, 1817), pg. 20. AAS, Dated Pamphlets.
[59] Trial of Adjutant Robert Southworth, 1811. CSA, RG 13, Box 46, Folder 4.
[60] This language can be found in most court martial records, and did not change over time. For a few examples, see, in Connecticut, Trial of Lt. Col. Joshua King, 1801-1802. CSA, RG 13, Box 46, Folder 2 ("You are...Ordered and Directed to consider yourself under an arrest, and you are hereby arrested and suspended from any further Military Command..."; Trial of Lt. Malachi Cooke, 1814. CSA, RG 13, Box 46, Folder 7 ("Sir, you are to consider yourself under an Arrest and by these presents are arrested from holding any Military command..."); Trial of Capt. Alpheus Shumway, 1820. CSA, RG 13, Box 48, Folder 10 (testimony regarding Shumway's arrest by Adjutant Norris Wilcox).

copy of the arrest + complaint with him."[61] Few officers bothered to evade this kind of "arrest," and no evidence suggests that any such arrest led to a confrontation with the arresting officer.

The arrest of accused officers from command had an ironic effect, as a judicial system designed to create institutional order could cause an immediate and substantial diminution of order over internal conflicts. Of several available examples, a conflict in Connecticut bridging wartime and the subsequent peace is most remarkable: in the late summer of 1814, a prolonged battle of wills between a lieutenant colonel and his subordinates led him to complain against every company officer in his regiment, leading to a long round of courts martial the following year.[62] In the seven months between complaint and courts martial, an entire regiment had no company officers eligible to exercise the authority of their office. Several comparable sets of widespread allegations affected regiments in Massachusetts. In 1819, a 5th Division court martial tried thirty officers, including thirteen accused of neglect of duty and disobedience by Maj. John Freeman and twelve charged with similar offenses by Col. Joshua Hamblin.[63] In 1822,

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[61] See the handwritten note at the front of the printed general order in Court Martial on Capt. Josiah Seabury + 29 Others," 1819. MNGMA, Courts Martial, Vol. 10.

[62] See, esp., Trial of Captain William Beebe, 1815. CSA, RG 13, Box 46, Folder 11; Beebe was charged as the ringleader of a conspiracy to resist the authority of Lt. Col. Aaron Smith, commander of the 17th Regiment. I discuss this conflict in detail in Chapter Three. Other 1815 trials that followed Smith's complaint, from Box 46: Trial of Ensign Robert H. Austin, Folder 10; Trial of Ensign Luther Cook, Folder 14; Trial of Lt. Julius Griswold, Folder 15; Trial of Lt. Marvin Griswold, Folder 16; Trial of Capt. David Hall, Folder 17; Trial of Lt. William Hall, Folder 18; Trial of Capt. Jeremiah Holt, Folder 19. From Box 47: Trial of Lt. Benoni Johnson, Folder 2; Trial of Lt. Chester Loomis, Folder 3; Trial of Capt. Elisha Loomis, Folder 4; Trial of Ensign Reuben Loomis, Folder 5; Trial of Lt. Warren Loomis, Folder 6; Trial of Capt. Joseph Mansfield, Folder 7; Trial of Cornet David McKinney, Folder 8; Trial of Lt. Stephen Russell, Folder 9; Trial of Ensign Champion Scovill, Folder 10; Trial of Capt. Zimri Skinner, Folder 11; Trial of Capt. Uriel Tuttle, Folder 12; Trial of Ensign Henry Whittelesey, Folder 13; Trial of Ensign Samuel Wright, Folder 14.

[63] Court Martial of Capt. Josiah Seabury + 29 Others, 1819. MNGMA, Courts Martial, Vol. 10. The record of proceedings for this court have been lost, depriving researchers of detailed testimony, but the printed general order describing the charges, verdicts, and sentences is available. Those accused by Freeman were Capt. William Lewis, Capt. Thomas Swift, Capt. Micajah Handy, Capt. Ebenezer Lothrop, Lt. Job C. Davis, Lt. Nathan B. Gibbs, Lt. James Fish, Lt. Gershom Hall, Ens. Ebenezer Bodfish, Ens. Leonard Chase,

another 5th Division court heard twenty-three cases; among those tried were twelve company and staff officers accused by their regimental commander, Lt. Col. Isaiah Bray, of disobedience, neglect of duty, and "mutinous conduct." Complaints from another regimental commander, Col. Obed Nye, accounted for five of the other trials conducted by this single court.[64] These mass allegations rendered entire regiments largely or entirely leaderless, causing the arrest from office of most or all of the their officers.[65] A comparable event cost a company the arrest all of its officers after Brig. Gen. James Appleton accused two captains, a lieutenant, and an ensign of insulting him at an anniversary dinner for the Salem Light Infantry.[66]

Similarly, the gentlemanly arrest of militia officers from command could lead to further conflict and discipline when those officers refused to take notice of the arrest. This decision could turn a petty charge into multiple charges, causing the new arrest of an already arrested officer. In October of 1811, a Massachusetts militia captain was brought before a court martial following an accusation that he had failed to attend a court martial to which he had been detailed as a member. The court quickly found Capt. Robert Lathrop not guilty, but he was back before another court martial just two months later,

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Ens. Josiah Linnell, Ens. Benjamin Battles, and Ens. John Bursley. Those accused by Hamblin were Capt. Josiah Seabury, Capt. Nehemiah Doane, Capt. Nathan Nickerson, Lt. Thomas Howes, Lt. James Long, Lt. Jeremiah Crowell, Ens. Reuben Rider, Ens. Nathan Crosby, Lt. Ezekiel Thatcher, Ens. Lothrop Howes, Ens. Mash Clark, and Ens. Richard Baker.

[64] Court Martial of Ensign Ebenezer Wales and 22 Others, 1822. MNGMA, Court Martial, Vol. 12, unnumbered folder. The record of proceedings for this court have been lost, depriving researchers of detailed testimony, but the printed general order describing the charges, verdicts, and sentences is available. Officers accused by Bray were Capt. Joseph Seabury, Lt. William A. Matthews, Capt. Gershom Crowell, Capt. Ezekiel Matthews, Lt. Joseph Hamblin, Lt. James Hedge, Lt. Miller Whelden, Ens. Richard Baker, Lt. Joseph Crowell, Ens. Ebenezer Crowell, Ensign Henry Custus, and Lt. Rowland Lewis. Those tried on charges brought by Nye were Ens. Ebenezer Bodfish, Ens. John Bursley Jr., Capt. Anselm Fish, Capt. Micajah Handy, and Lt. Samuel Whitman. Note that Micajah Handy was also tried in 1819; see fn TK.

[65] I examine the circumstances that led to one set of these mass arrests in Chapter Three.

[66] Court Martial of Capt. William Sutton, Jr., Court Martial of Capt. Joseph Cloutman, Court Martial of Lt. John Porter, and Court Martial of Ens. Ralph Emerson, 1826. MNGMA, Courts Martial, Vol. 14.

arrested again and accused of "presuming to exercise military command" while under arrest due to the previous charge against him. This second court found him guilty, and the members of the court suggested the possibility of a reprimand; warned by the judge advocate that a reprimand "would be illegal and insufficient," the court sentenced Lathrop to be removed from office and barred from the militia for a year.[67] A court martial had caused a court martial, which then caused a court martial, forcing the removal of an officer who had twice been arrested from command. The system for producing order in the officer corps instead expanded and prolonged instances of disorder. In a comparable Rhode Island case, a captain in a state-chartered artillery company refused to take notice of his arrest, appearing in uniform at a company muster. He was ordered off the parade field by a major, arrested again for failing to take notice of his arrest.[68] The ineffectual nature of the polite "arrest" of officers is clear: the immediate consequence of a refusal to take notice of a polite and limited arrest was an identically polite and limited arrest.

Still, the decision to ignore a request could be honored as proper by military courts when it was well-founded in law and custom and expressed in appropriate social language. Accused for the second time of failing to obey his captain, whose election he did not recognize as lawful, Ens. John Brown notified this second court martial of his decision to refuse them his presence as a defendant. Brown addressed his letter to "the President and Gentlemen" of his court martial, explaining that he had "no official notice of arrest." But Brown's refusal was perfectly framed as a gesture of honor between men of status, expressing both a refusal and a promise of obedient respect: "Gentlemen --

[67] Court Martial of Capt. Robert Lathrop, Capt. Joseph Nichols, and Ens. Pelham Holmes, 1811, and Court Martial of Capt. Robert Lathrop and Ens. Jonathan Pierce, 1811. MNGMA, Courts Martial, Vol. 3.
[68] *Proceedings of a General Court Martial Holden at Newport, August 1, 1817, for the Trial of Captain Robert B. Cranston*.

should I receive an order of notice from you; thru the Judge Advocate; I shall heartily attend, with due respect, your commands, as an officer." The court proceeded to his trial, finding him not guilty.[69] Trying charges against fellow officers, the members of courts martial could recognize as appropriate a decision to refuse to take notice of an arrest. Militia officers called to enter the system of military justice could, in a limited set of circumstances, successfully refuse to stand before that system. One possible outcome of the claim *You are under arrest* was the response *No I am not*, a refusal of acknowledgement that could eat at the authority of militia courts.

But even officers who did not contest the validity of their arrest sometimes chose not to bother attending their own trials, a choice that demonstrates the degree to which state courts martial relied upon shared social premises. Some officers fought fiercely for their exoneration; in the absence of physical compulsion, others simply stayed home. Capt. Harding Knowles, a Massachusetts militia officer accused in 1815 of ignoring wartime regimental training the previous year, chose to ignore his own court martial, to which his brother was detailed as a member. Lt. Watson Berry, Knowles' second in command, testified that he had received a note from the captain on the morning of the regimental review, asking his subordinate to lead the company, "as he was engaged in getting a vessel out of a creek."[70] Like many officers in this period, Harding Knowles felt that he had better things to do than submit to the demands of military discipline. The formal weakness of those demands made his choice possible. Ens. Hercules Weston showed a similar disregard for his court martial three years later, making a decision that perfectly

[69] Court martial of Lt. Thomas Conn and Ens. John H Brown, 1810. MNGMA, Courts Martial, Vol. 3.
[70] Court Martial of Capts. Harding Knowles and Nathaniel Snow, Ens. Edward Kendrick and George Clark, and Surgeon Zebina Horton, May 1815. MNGMA, Courts Martial, Vol. 5. This court martial tried several unrelated cases.

reflected the accusations he faced. Accused of neglecting his duties, ignoring training days, and failing to arm himself or acquire a uniform, Weston did not appear for his trial.[71] The court convicted the ensign on only one of the many charges against him, though, as his accuser and all but one subpoenaed witness also neglected to attend. A formal legal process relied on informal expectations of personal honor, and could not overcome the problems that arose when militia officers did not share those expectations.[72] This failure of social consensus clearly accelerated over time, weakening an already weak institution; in an 1822 court martial of twenty-three officers, for example, eighteen did not appear.[73]

## "Giving Rise to Few Questions of Law"

With a complaint and an arrest complete, courts were detailed and assembled. Militia trials were palpably intimate and social: a gathering of people who knew each other, meeting in taverns and living rooms to have highly wrought and essentially free-flowing discussions about questions of honor and dishonor.

In the small world of militia officers, courts often included distinctly interested parties, in a process that was subject to manipulation. But a more troubling scenario brought militia officers into a position to judge social and political enemies, sometimes with their careful contrivance. This maneuvering was particularly remarkable in two

[71] Court Martial of Capts. Joshua Small, Samuel Wilbur, N. Nelson, Adjutant Thomas Wood, and Ens. H. Weston, 1818. MNGMA, Courts Martial, Vol. 8. This court tried several unrelated cases.
[72] For other examples of officers not appearing for their own courts martial, see, in Massachusetts, Court Martial of Capt. Joseph May of the 1st Brigade, 1st Division, February 1824. MNGMA, Courts Martial, Vol. 13. In Connecticut, see Trial of Ensign Alfred Seeley, 1818. CSA, RG 13, Box 48, Folder 4; Trial of Lieut Jacob Robinson, 1822. CSA, RG 13, Box 48, Folder 13.
[73] Court Martial of Ens. Ebenezer Wales and 22 Others.

courts martial that took place in New Hampshire, one in 1797 and one in 1812. In the first, Capt. Thomas Wadleigh was tried on charges on disobedience during a long conflict between militia officers in the towns of Sutton, where Wadleigh lived, and Hopkinton, where his accuser lived. Having received a list of the officers who were to sit on his court martial, Wadleigh was shocked to arrive for his trial and discover that the appointed officers were not present. In their place sat several officers from Hopkinton, including the officer at the center of the conflict. Ignoring his objections, they found Wadleigh guilty and ordered that he be cashiered. In the second court martial, Capt. Jonathan Rollins was accused by the field officers of his regiment of failing to obey the orders of his regimental commander, an act of disobedience that reflected a dispute between Rollins and officers of another company. As with Wadleigh, Rollins was judged by the officers who were in conflict with him: the regimental commander, Col. Samuel Cochran, and two officers from the other company. Rollins was also convicted and cashiered, the victim of an accusation by proxy that allowed his real accuser to appear as a disinterested party and take a seat as president of his court martial.[74] In Massachusetts, the court martial manual published by Maltby in 1813 acknowledged the possibility of court-packing schemes, warning against the "intentional, *false, and wicked detail*" of court members: "It cannot, at any rate, be consistent with a free government, that one man should be permitted to

[74] I have found no records directly recording either trial, as no court martial records from New Hampshire appear to have survived. Wadleigh's court martial is described in a series of petitions to the governor, which can be found among the petition files in the New Hampshire State Archives, in the folder titled, "Petitions, November 1797." They are: a Nov. 15, 1797 petition from Wadleigh; undated petition from officers of the 11th Company and selectman for New London; Nov. 16, 1797 petition from three selectman of [illegible]; Nov. 17, 1797 petition from three officers of 4th Company, 21st Regiment; and Nov. 18, 1797 petition from Sutton Selectmen Daniel Page and Micaiah Pilsbury. Rollins's trial is described in his petition of June 3, 1812 to the state legislature, which can be found at the state archives in the folder "Legislative Petitions, June 1812." A separate petition from cavalrymen who served under Rollins can be found in the folder, "Petitions -- June 1812 -- June 1-June 9."

*pack* a court martial according to his own pleasure; and to select such officers as he may know are inimical to the person accused."[75] Maltby warned against court-packing because it was a very real possibility in a small and closed system.

But courts martial in that small world could easily be composed of interested parties without manipulation, drawing officers for trial duty from the area of the court and the offense being tried. Sometimes the relationships of court members to the cases they heard was incidental, and passed over with little concern, as in the late-1816 court martial of Capt. Horatio Woodward. Discovering that a member of the court was related to the defendant's wife, Woodward's accuser demanded that he be replaced. The court rejected the challenge, and Capt. Samuel Crawford sat in judgment on his cousin's husband.[76] More remarkable, though, was the 1822 trial of Lt. Jacob Robinson in Wallingford, Connecticut. Court martial deliberations were not recorded, so little evidence shows how court martial members discussed their personal relationships with defendants during their efforts to reach a verdict. But this single trial opens a window onto the small world of New England militia officers, as the members of Robinson's court martial decided to swear each other in as witnesses and exchange their personal knowledge about the defendant. Three members -- Col. Thaddeus Street, Lt. John Foster, and Maj. Ethelbert Benham -- testified that they had long known Robinson to be intemperate and hostile to authority.[77] In local trials conducted among the small population of militia officers, members of courts martial often judged men they knew personally. There was little social or geographic distance between a conflict and the court that judged its substance.

[75] Maltby, *Treatise on Courts Martial*, pp. 58-59.
[76] Trial of Captain Horatio Woodward, 1816-1817. CSA, RG 13, Box 48, Folder 1.
[77] Trial of Lt. Jacob Robinson, 1822. CSA, RG 13, Box 48, Folder 13.

In trials that were conversations between officers, legal professionals had almost no place. The role of the officer appointed as judge advocate to a trial was the closest thing in the court martial system to a legal professional, but this role was not assured to lawyers, did not require substantial legal knowledge, and was often largely clerical. As Maltby wrote in his manual on courts martial, an officer appointed to be judge advocate to a court martial was "generally a person of law talents," but not inevitably a lawyer.[78] By law and custom, judge advocates served equally as counsel to prosecution and defense, playing a procedural role with clear limits. The significant adversarial roles belonged to two participants, who were sometimes individuals and sometimes groups of people: first, the accuser or accusers, who appeared in court as the "prosecutor," required to prove the complaint he or they had made; and second, the defendant, who was expected to speak entirely for himself (though both the prosecutor and defendant often questioned witnesses through the judge advocate, who read their written interrogatories aloud). Prosecutors and defendants could ask to be assisted or advised by lawyers, a request founded in custom that was usually granted despite its limited and ambiguous foundation in statutory law.[79] But the lawyers appearing alongside the contestants in

[78] Maltby, *Treatise on Courts Martial*, 76. The Connecticut militia laws of 1792 and 1810, cited above, required only that "another officer of the line or staff" be appointed as judge advocate; see pg. 429 of the former and pg. 27 of the latter. The Rhode Island militia law of 1793 made no mention at all of the judge advocate. See "An Act to Organize the Militia of this State," op. cit., pg. 10. The New Hampshire militia law of 1793 required that the commander summoning a court martial also appoint "some suitable person" as judge advocate, leaving the matter of suitability undefined. See "Regulations for the Discipline and Order..." op. cit., pg. xxvii. The Massachusetts militia law of 1793 describes the judge advocate as a kind of clerk, "whose duty it shall be impartially to state the evidence" for both sides, and to "take accurate minutes" of the proceedings; the only statutory requirement is that the officer designated as judge advocate be "a suitable person." See "An Act for Regulating the Militia...", op. cit., pg. 52.

[79] In the Massachusetts Militia Act of 1793, cited above, courts martial are described on pp. 51-56 and 58-59, without any reference to outside counsel. But the Connecticut Militia Act of 1792, also cited above, explicitly forbids the presence of any courtroom intermediary but the judge advocate, requiring that "no other person whatever, shall be admitted to solicit, prosecute, or defend the officer arrested." The statute is silent on the role of lawyers as advisers. See pg. 429. Later militia statutes in this period did not change these conditions.

military trials were expected to be seen and not heard, communicating only through the officers they advised. More importantly, lawyers were expected to leave the presumptions and premises of the civil law outside the military courtroom. Maltby makes very clear the distinction between what lawyers did and what military courts did, in a passage largely borrowed from an earlier writer (emphasis added):

> Attorneys are never admitted to speak in behalf of a prisoner before a court martial. They are admitted as *advisers*, and not as speakers. The remarks of Mr. Tytler, an approved writer on military law, are much in point... "Courts martial being in general composed of men of ability and discretion, but who, from the nature of their profession and general mode of life, are not to be supposed versant in legal subtilties, or abstract and sophistical distinctions, **and the cases that come before them giving rise to few questions of law**; it has hence been considered as founded in established usage, that counsel, or professional lawyers, are not allowed to interfere in their proceedings... This is a most wise and important regulation; nor can any thing tend more to secure the equity and wisdom of their decisions: **For lawyers in general being as ignorant of military *law* and *practice*, as the members of courts martial are of civil jurisprudence and the forms of ordinary courts; so nothing could result from the collision of such warring and contradictory judgments, but inextricable embarrassments, or rash, ill-founded, and illegal decisions**... [therefore] the prisoner's counsel, who properly understands his duty, will see that it is his part... **not to force the unsuitable rules of civil courts on a military tribunal**; but candidly to *instruct himself* in that law which regulates their procedure, and accommodate himself to *their* forms and practice."[80]

The expectation that law would not intrude upon courts martial was rarely disappointed. While lawyers did sometimes appear as advisers in militia trials, during only one New England state court martial during these years did lawyers speak for their clients, a deviation from practice that the court in that case did not explain.[81]

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[80] Maltby, *Treatise on Courts Martial*, 73-75. The "Mr. Tytler" in this passage is Alexander Fraser Tytler, a Scottish lawyer and former judge advocate to the British army.

[81] In 1815, a Connecticut militia captain was permitted advisory legal counsel, but the court refused his request to have his lawyer deliver a closing statement on his behalf. Trial of Capt. William Beebe, 1815. CSA, RG 13, Box 46, Folder 11. Five years later, another captain in the same state also asked to be

While the exclusion of lawyers from courts martial was nearly universal, it was also disputed by accused officers who believed they had an incontestable right to legal representation. Robert Gardner and his co-defendants appeared at their 1804 court martial with a lawyer, but the court forbade him to speak. The defendants could be quietly advised by the attorney, "or any other gentleman," but they "would not admit and recognize counsel to act openly." In this formulation of the procedural rules, accused officers were gentlemen who, being responsible for the management of their own cause, could be aided by the sober wisdom of other gentlemen, who could just as easily not be trained in the law: "any other gentleman" could provide sensible advice in a trial over matters of personal honor. Gardner immediately responded with a warning to the court, informing him he and his fellow officers were considering "whether they would not enter a protest against the proceedings of this court." The record preserves the court's dry response: "it was observed the defendants might do as they pleased." A short time later, as Gardner informed the court that the defendants would withdraw from the trial, he gave the court's view of their right to legal counsel as one of the reasons they would be forced to leave. They had, he wrote, been denied the opportunity to be directly defended by a

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represented by a lawyer. After unrecorded deliberation, the court concluded that they were "of opinion, that the Prisoner is entitled to counsel to sit by him + advise + assist him in his defense, but that counsel, other than the Judge Advocate, cannot be admitted to speak in his behalf before the court." Trial of Capt. Alpheus Shumway, 1820. CSA, RG 13, Box 47, Folder 10. In Massachusetts, requests for legal counsel were rare. In 1825, a colonel moved "that he may be permitted to have a friend to attend + assist him upon the trial of the complaint now brought against him." Court Martial on Col. Hiram Wheelock, 1825. MNGMA, Courts Martial, Vol. 13. In an 1821 court martial in Rhode Island, the court ruled that both the prosecutor and defendant were to be "allowed the assistance of counsel in the examination of witnesses; all questions being by them reduced to writing, handed to the judge advocate, and by him read to the witness." But the court also allowed counsel for each side to present closing arguments, the only instance of this choice that I have identified in the New England courts martial of this period. See *Report of the Trial of Leonard Blodget,* pp. 18-44.

trained lawyer, "as we humbly supposed was our constitutional right."[82] The court knew as a matter of fact that defendants appearing before courts martial could not be defended by a lawyer; the defendants knew as a matter of fact that they were guaranteed such a defense.

Acting in a dual role as judges and jurors in conflicts between men they often knew personally, the members of courts martial typically had little grounding in the law, as Maltby wrote; for the most part, they neither knew it nor cared about it. Statutory law rarely helped, defining courts martial only in the broadest terms, while common law derived from the customary operation of courts martial was a matter of guesswork and conflicting conceptions of custom. The absence of law from ad hoc militia courtrooms is clear in the handling of testimony before courts martial, which reflected lax and ad hoc rules of evidence.

Witnesses before state military trials were sometimes excluded from court and sometimes not, often sitting through the entire proceedings and sometimes testifying by simply saying that they agreed with the prior testimony of other witnesses. Maltby's manual on courts martial shrugs at the question, concluding that it is "frequently the practice in court martial trials, to exclude the witnesses, and admit only one at a time. But this is for the determination of the court."[83] This formulation reflects the premises of a casual system: they usually do something a particular way, but not always, and it's up to

[82] Court Martial of Lieut. Col. Robert Gardner, et al. In a written statement attached at the back of the record and signed by Gardner, Harris, Hatch, and Stetson, the defendants called the courts attention to the Twelfth Article of the Declaration of Rights in the Massachusetts Constitution, which assures the right of a defendant "to be fully heard in his defence by himself, or his counsel." They noted that this article is phrased "without confining such right to any particular species of courts." Therefore, they concluded, they "hereby severally make our election to be heard in our defence by our counsel, Barnabas Bidwell Esquire, who attends for that purpose."

[83] Maltby, *Treatise on Courts Martial*, 65-66; quote is from 65.

them. During the Massachusetts court martial of Capt. Bradbury Emerson in 1815, Capt. Eben Cleaver testified at length before Daniel Haley, apparently a private, was forward called to testify. Briefly questioned by members of the court, Haley engaged in this exchange: "Did you hear the testimony of Capt Cleaver -- Ans. I did, and think it correct as I could state it." With witnesses sitting together, many rotated before the court as if having a conversation in which everyone kept getting a turn. In the 1812 court martial of Capt. Zenas Smith, also in Massachusetts, witnesses had also been called and called again; Rufus Curtis was the sixteenth and twenty-seventh witness, while John King testified four times, Micah Pool and Melville Gurney testified twice, and so on. Given broad prompts to relate everything they knew about a matter, witnesses gave forth with long bursts of narrative testimony, unchecked by boundaries or direction. Asked if he saw "any particular conduct of Capt Emerson towards John Dunnell," Eben Cleaver told an apparently uninterrupted story that took three pages to record. Testimony was conversation, minimally shaped by contact with a legal setting.[84]

Discussion of witness exclusion was vanishingly rare in the records of court martial proceedings. The record of the 1817 court martial that tried Lt. James McNear appears to be the only record from these years in which a defendant asked a court to exclude witnesses, though it may also be the only record in which such a discussion was recorded. Dubiously informed by the judge advocate that the exclusion of witnesses was the usual

[84] In the record of proceedings from Court Martial of Zenas Smith, 1812, MNGMA, Courts Martial, Vol. 4, see the separate testimony of Rufus Curtis on pgs. 9 and 12; the separate testimony of John King on pgs. 4, 5-6, 15-16, 16-17; the separate testimony of Micah Pool on pgs. 4-5 and 18; and the separate testimony of Melville Gurney on pgs. 8 and 9. For Cleaver's long narrative answer, see the transcript of proceedings in Court Martial of Bradbury Emerson, MNGMA, Courts Martial, Vol. 5, pp. 19-21.

practice of courts martial, the court agreed to the request.[85] This sort of procedural happenstance reflected the fact that courts martial were not understood to be a forum for legal professionalism. In closing statements at his 1820 trial, Capt. Alpheus Shumway reminded the court that, as a court martial defendant, he had not had the benefit of legal counsel; with that in mind, he argued, the judge advocate should figure out which witnesses had given improper testimony, and warn the court not to consider it. Appearing before a legal system, a defendant asked it to police itself, since he did not know what testimony warranted his objection. It is not surprising that these courts took testimony by the slipshod application of already-loose rules.

With haphazard trials complete, accusers and accused turned to the most wrenching and socially charged moment of the court martial process: the closing statement. In this distinctly personal procedural step, courts closed testimony and adjourned to give participants a chance to prepare written statements that would be read aloud by the judge advocate; often leaving in the afternoon, defendants and prosecutors sometimes returned to court the next morning bearing statements that could run to dozens of handwritten pages, suggesting the likelihood of a full night's anguished labor.[86] The 1817 court martial of Lt. Joseph Peabody, which resulted in nothing more than a reprimand, produced massive written statements from both sides, with Peabody's accusers filing an 87-page closing statement.[87] Consideration of law and evidence was only one of several common elements in these statements. Defendants, in particular, often devoted as much

[85] Court Martial of Lt. James McNear [folder gives his name as "Sears"], 1817. MNGMA, Courts Martial, Vol. 7.
[86] See, for example, the 37-page defense statement in Court Martial of Col. Hiram Wheelock, 1825. MNGMA, Courts Martial, Vol. 13. In Connecticut, see, for example, the defense statement of Capt. William Beebe, which appears on pp. 70-113 of the record of proceedings for his court martial. Trial of Captain William Beebe, 1815. CSA, RG 13, Box 46, Folder 11.
[87] Court Martial on Lt. Joseph Peabody, Jr., 1817. MNGMA, Courts Martial, Vol. 7.

space to expressions of mortified honor as to examinations of testimony. They recognized that they were on trial before entire communities, which would take note of an accusation and the lost status of an officer cashiered or publicly rebuked. Furiously insisting that he had been accused "with willful falsehood -- a charge which has ever been considered a most gross insult with military men of honorable feelings," Capt. William Beebe identified the threat that the accusation presented: "Our characters are not to be thus sported with."[88] A court martial was a threat to a man's reputation, and not simply in the military sphere. Accused officers sometimes noted the harm done not just to themselves but to their entire families. Presenting his closing statement to a Connecticut court martial in 1816, Ens. Ansel Southworth argued that "his Honor + Interest are at stake, his Reputation + that of his Family."[89] Similarly, Capt. Alpheus Shumway noted that his wife and children were "dependent on my standing in society for their own rank among their fellow citizens," a relationship between social honor and legal peril that made his court martial "the most serious event of my life."[90] To be accused of improper military behavior was to be socially imperiled by allegations of dishonor.[91]

Given the chance to freely address that kind of peril, defendants wrote with palpable emotion: sometimes anger, sometimes anguish. They addressed courts as equals, fellow

[88] Trial of Captain William Beebe.
[89] Trial of Ensign Ansel Southworth, 1816. CSA, RG 13, Box 47, Folder 17. Record of proceedings, pg. 30.
[90] Trial of Capt. Alpheus Shumway.
[91] Court martial defendants therefore usually saw their appearance at trial as a duty and an urgent personal need. At his 1803 court martial in Cambridge, Lt. Col. Jeduthan Wellington (whose name is sometimes spelled as Willington in the record) expressed these sentiments is particularly clear language: "However painful it may be to the feelings of a man, to be charged with a crime or misdemeanor, which every gentleman, possessing sentiments of honor and integrity, must detest; yet such in human imperfection, that even innocence + rectitude, are not always beyond the reach of suspicion, or impeachment, with all the disagreeable consequences, that must inevitably ensue. When his character is implicated, no man, who feels himself supported by conscious propriety + justness of conduct, but will hasten to meet investigation. When it approaches, he bids it welcome; if it be delayed, he seeks it; if it be withheld, he demands it; for it is that only, which can wipe the stain from his name + reinstate him in the estimation of his fellow-men." Court Martial of Lt. Col. Jeduthan Wellington [Willington], 1803. MNGMA, Courts Martial, oversized box labeled "Early Militia: Courts Martial, 1803, 1810, 1816."

officers judging one of their own. Accused of subjecting company officers to an "unnecessarily rigid + severe" inspection in the difficult days of September 1814, Brigade Inspector Ralph Ingersoll pronounced himself confident of vindication; he had surely been brusque, Ingersoll agreed, "but thank God my case is before a board of officers, not a jury of fops."[92] Understanding themselves to be tried by men of their own kind, militia officers standing before courts martial made arguments based on shared assumptions about honor and standing. Their statements to their courts were social and personal as much as they were formal and legal.[93]

Much as militia trials worked as formalized discussions in an intimate space, their verdicts and sentences were primarily social in effect; a socially managed forum produced highly personal outcomes. New England courts martial had a narrow range of available sentences to apply: they could order a convicted officer to be reprimanded in published orders, to be suspended from his rank and office, to be removed from his rank and office, and to be barred from service as a militia officer in addition to removal.[94] In a very few instances, courts martial levied fines, but without the legal authority to do so.[95]

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[92] Ingersoll's written defense statement is so large it has its own folder in the archives. For the proceedings of his court martial, see Trial of Ralph G. Ingersoll, 1815. CSA, RG 13, Box 46, Folder 20. For his statement, see Statement of Ralph G. Ingersoll, RG 13, Box 47, first folder. I discuss this case in detail in Chapter Three.

[93] To be sure, court martial defendants did make arguments about the law, while struggling to find it. Chapter Two discusses jurisdictional conflict, and competitions between state and federal law, statutory law and custom, and statutory law and competing charter rights.

[94] Regarding Connecticut, see "An Act for Forming and Conducting the Military Force of this State," 1792, pg. 429. Regarding Massachusetts, see "An Act for Regulating and Governing the Militia of the Commonwealth of Massachusetts," 1793, pp. 55-56. Regarding Rhode Island, see the vague language of "An Act to Organize the Militia of this State," 1793, pg. 10. Regarding New Hampshire, where courts martial could only sentence a convicted officer to be cashiered, see "Regulations for the Order and Discipline...," pp. xxiv-xxv.

[95] Court Martial on Capts. William Cooley and Thomas Snell, Jr., 1826. MNGMA, Courts Martial, Vol. 13. convicted on charges that they had conspired to resist the authority of their regimental commander, Cooley was fined $115, and Snell was fined $200. In Connecticut, Lt. Jacob Robinson was fined $50 in his 1822 court martial; CSA, RG 13, Box 48, Folder 13.

These punishments aimed at a militia officer's social standing, and required the assumption that the punished officer would naturally feel the correct sense of mortification. The most striking fact about these punishments is their entirely unchanging nature over the course of three decades. At no point did the punishments available to state courts martial off the battlefield include discipline that acted upon the body. No militia officer convicted by a state court martial in this period was ever flogged, placed in stocks, or imprisoned, punishments that were not available under the law in a disciplinary system that did not provide for pain, physical shaming, or punitive confinement.

The arrival at a verdict, and the decision regarding the sentences of those convicted, are the most opaque elements of courts martial. Deliberations were not recorded, and it is not generally possible to discover the reasoning of courts on the questions of guilt and punishment. But some hints survive in the record to suggest that the members of courts martial took a defendant's reputation into account during their discussions. In some cases, these personal considerations do not seem to have changed verdicts or sentences, as courts weighed evidence and reluctantly concluded that they had a duty to convict men they admired. In one such case, the 1800 court martial of Lt. Col Andrew Hull in Connecticut, the court found Hull guilty of neglect of duty and disobedience, and sentenced him to be reprimanded. But they asked the governor to refuse the sentence they themselves had imposed: "Notwithstanding which, as many of the members of the Court have been personally acquainted with the long & faithful services of Colo Hull & the other members of the Court being convinced of the same by information, beg leave to recommend him to the Honbl general assembly for a mitigation or remission of the

sentence of this court..."[96] Clearly, the members of the court had engaged in personal discussion about their own acquaintance with the officer appearing before them. At the opposite end of the personal opinions implied by the nature of courts martial, the officers trying Lt. Jacob Robinson in 1822 recorded the portion of their deliberations in which members of the court swore one another in as witnesses -- during deliberations, with the court cleared of spectators and other participants -- and testified to one another about Robinson's bad character. The court convicted Robinson in significant part on the grounds that they personally knew him to be dishonorable and habitually disobedient.[97] In both cases, the courts gave themselves their own evidence, based on prior personal knowledge of those on trial. Deliberations took social knowledge into account.

The premise of shared assumptions underlying courts martial punishments sometimes meant that guilty verdicts and the harshest available sentences were taken as a relief by defendants who wished to escape the burden of service and did not care about the social damage that they would incur by being cashiered. Gentlemanly discipline required gentlemanly values; in their absence, the punishments available to state courts martial had no utility. Brought before a Massachusetts court martial in 1815, Capt. Nathaniel Snow hoped to be convicted. He had resigned his commission without success, waiting to be released from duty but hearing no word about his resignation. In his letter of accusation, Lt. Col. Jonathan Snow wrote that Capt. Snow had Snow had repeatedly refused to appear for training, arguing "that he was entitled by law to his resignation, that he had been refused after making repeated applications therefor, that he saw no other

[96] Trial of Andrew Hull Jr., 1800. CSA, RG 13, Box 46, first folder.
[97] Trial of Lt. Jacob Robinson, 1822.

mode to get clear but by being broke."[98] Similarly, Ens. Luther Bushnell was removed from office and barred from holding a militia rank for five years after being convicted on charges related to his failure to attend training and his long refusal to obtain arms, equipment, or an officer's uniform after his election. Bushnell was thrown out of the militia for refusing to appear with the militia.[99]

Courts could recognize the disutility of punishment, as a Massachusetts court of inquiry did in 1823. Examining an accusation that Capt. Joseph May did not attend a training event or provide company returns, the court recommended that he be brought before a court martial, with the proviso "that if Capt. May should be released from his arrest, it appears to the court that his inability to perform his duty from ill health and other causes would entitle Capt. May to a discharge at his own request." May's division commander took the formal recommendation and declined the informal suggestion, referring the captain for trial. May was convicted and removed from office, achieving the

[98] Court Martial on Capts. Harding Knowles and Nathaniel Snow, Ens. Edward Kendrick and George Clark, and Surgeon Zebina Horton, May 1815. MNGMA, Courts Martial, Vol. 5. This court martial heard charges in several unrelated cases. The court found Snow guilty, but his punishment did not release him: they sentenced him to a reprimand. I have not been able to determine if Snow was related to his accuser.
[99] Court Martial on Ens. Luther Bushnell and Surgeon Abraham K. Whiting, 1817. MNGMA, Courts Martial, Vol. 7. Unrelated cases heard by one court. For comparable cases of an indifference to duty that was rewarded with the nominal punishment of removal, see Court Martial on Lt. Nathaniel Backus, 1818. MNGMA, Courts Martial, Vol. 7; Court Martial on Lt. James Butterfield, 1819. MNGMA, Courts Martial, Vol. 9; and Court Martial on Col. Hiram Wheelock, March 1825. Court Martials, MNGMA, Vol. 13. According to the complaint filed by Brig. Gen. Nathan Heard Jr., Wheelock "publicly declared that he had sold his uniform and equipments and that he should not & would not do any more military duty whether a discharge was granted him or not, & pursuant to his evil intention thus publicly declared he utterly neglected & refused to attend as an officer the regimental reviews held within said Brigade pursuant to said Division orders although the companies under his command were mustered with the several Regiments within whose territory they are located, thereby setting to those under his command a pernicious example of insubordination & of gross & wilful neglect of duty." Convicted, Wheelock was sentenced to a reprimand; in an April 9, 1825 general order, Adjutant General William Sumner wrote that the governor approved the sentence, but considered it too mild. Of course, a harsher sentence would have give Wheelock exactly what he wanted, freeing him from duty as a militia officer.

same effect.[100] His punishment simply did what his resignation would have done, and by a longer route.

The final step in courts martial, the command review of verdicts and sentences, most plainly distinguishes courts martial from civil courts, but was influenced by the same social presumptions that colored the other steps of state military trials. In this procedure, the officer who had ordered the court martial either approved, rejected, or modified its findings, explaining his decision in writing. Verdicts against company officers, who were tried before lower courts martial, were usually approved by brigade or division commanders, depending on the state. For courts that tried officers of higher ranks, approval was usually a matter for governors, who often passed down their conclusions through the office of the adjutant general.[101] Militia commanders and governors alike were sometimes reluctant to punish officers who were well-regarded, especially in the event of a defendant's contrite and gentlemanly comportment. Public social character took a place alongside the formal proceedings of a legal system.

This act of social judgment is shown most clearly in the event of divergent behavior after a shared offense, especially when that divergence was taken to reflect the character of the accused officers. In 1800, a lieutenant colonel and his immediate subordinate, Maj.

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[100] Court of Inquiry on Capts. Cyrus Balkum and Joseph May, 1823, and Court Martial of Capt. Joseph May, 1824. MNGMA, Courts Martial, Vol. 13.

[101] In Massachusetts, company officers were to be tried by division courts martial, and higher-ranking officers were to be tried by general courts martial ordered by the governor; see Massachusetts Militia Act of 1793, Section XXXV, pg. 51. In Connecticut, company officers were to be tried by brigade courts martial, with their sentences approved or disapproved by the governor, while field officers were to be tried by division courts martial, the verdicts of which were also to be approved by the governor. General officers were to be tried by general courts martial called by the governor, with their verdicts being reviewed by the legislature. See Connecticut Militia Act of 1792, pg. 429, last paragraph. In Rhode Island, courts martial were either regimental or general, and the verdicts approved by the commanders at those levels, though the statute did not explicitly define the jurisdiction of either. See Rhode Island Militia Act of 1793, Sections 21 and 22, pg. 10. In new Hampshire, courts martial could be called by commanders of brigades (for company officers) and divisions (for field officers), who were responsible for reviewing the subsequent verdicts. The governor could also call general courts martial "when he shall think in necessary," approving the verdict himself. See New Hampshire Militia Act of 1793, pp. xxiv-xxvi.

Isaac Burnap, were both put on trial for marching their regiment off the parade field against the orders of a general officer. Appearing before the same court martial as Burnap, Lt. Col. Jason Chamberlain pled not guilty, but declined to call witnesses or produce a statement in his own defense. Invited to return another day with a written defense statement, Chamberlain replied that the state of his health made it "inconvenient" for him to come back. He was convicted, cashiered, and barred from militia office for life, the harshest sentence available to a state court martial. Governor Caleb Strong approved the sentence without comment. Burnap, on the other hand, appeared before the court and immediately entered a guilty plea, offering no comment but his apology. In a Jan. 28, 1801 general order signed by Adj. Gen. William Donnison, Strong approved the resulting guilty sentence against Burnap, but remitted his sentence due to "his Reputation as an officer for many years; his obedience to the orders of General Hull after reflecting for a moment on the impropriety of his proceeding conduct; and his decent Deportment afterwards + particularly before the Court."[102] Two field officers did the same thing, at the same time and place, in disobedience of the same order, and were tried by the same court. But one displayed an indifference suggesting his contempt for a discussion about honor, while the other strongly signaled his respect for order through apology, contrition, and -- in republican terms -- the display of manly firmness implied in a decision to plead guilty and accept the consequences. The dishonorable man was ejected from the officer class forever; equally guilty at the moment of disobedience, the gentleman received no punishment. "Decent comportment" had weight in punitive considerations. Officers

[102] Court Martial of Lt. Col. Jason Chamberlain and Maj. Isaac Burnap, 1800. MNGMA, Courts Martial, Vol. 1.

merited the punishment that their public character suggested, not simply the punishment implied by the formal offense at hand.

This act of social judgment could be contested, precisely because critics realized that courts and commanders had made decisions based on character rather than law. After the conviction of Col. Leonard Blodget on charges of disobedience and unofficerlike conduct in 1821, his Rhode Island court martial sentenced him to be "broke," or removed from office. In an awkward decision, Maj. Gen. Albert C. Greene, the only major general in the state, simultaneously approved and rejected the sentence. In a Nov. 6 general order, Greene wrote that he approved both "the proceedings and sentence of the general court martial." But then, noting "the general good character of the prisoner as an officer," and pointing to widespread confusion about the issues of authority that were considered in Blodget's trial, Greene reduced the sentence to a functionally meaningless thirty-day suspension that took place during the winter, when the militia did not meet or train.[103] The major general was widely ridiculed in Rhode Island newspapers for inventing his own legal standard, approving a sentence by reducing it.[104] By the 1820s, the social foundations of courts martial looked increasingly untenable to the public. Generals still thought to waive punishment for fellow officers of "general good character," but discussion in print focused on their failure to establish and enforce consistent legal standards.

Finally, the power of command approval distinguishes courts martial from civil courts in one especially clear way. While they sometimes moderated sentences on social premises, governors and generals could also return a verdict or sentence for

[103] *Report of the Trial of Leonard Blodget.*
[104] See the more detailed discussion of this case in Chapter Two.

reconsideration when they believed that courts martial had been improperly lenient or had failed to properly weigh evidence. In his manual on courts martial, Maltby compares this power of governors and generals to the power of kings, a comparison that he appears to have found unremarkable. Like a British monarch, a governor could direct a court martial to consider a revision of their decisions, asking the court to revise its verdict; but neither kings nor state officials could dissolve the court and send the case to for a new trial, and "there is no power to *compel* an alteration of the sentence."[105] In practice, this authority of kings to ask a court to change its not guilty verdict appears to have hardly been used by generals, and never used by governors. The surviving evidence reveals only one state court martial in this period in which a division commander directed a court to reconsider an acquittal: the 1816 trial of Lt. Asa Tapley, Jr. and Ens. Ira Preston in Massachusetts.[106] In this single instance, Maj. Gen. Amos Hovey offered the court a narrowly framed argument that they had misunderstood the evidence presented to them. In deliberations that were not recorded, the court declined to change their verdict, and Hovey had no authority to offer further objections. The theory of courts martial gave officials a power derived from monarchical roots, but they barely used it.[107]

## Conversations With Verdicts

As Jonathan Lurie has written about federal courts martial, early New England state courts martial operated on a "distinct internal legal culture" that "may best represent a

[105] Maltby, *Treatise on Courts Martial*, pp. 144-145.
[106] Court Martial of Lt. Asa Tapley, Jr. and Ensign Ira Preston, 1816. MNGMA, Courts Martial, Vol. 6.
[107] I have as yet found no recorded discussion among governors or generals regarding their view of this authority and their decision not to use it. I doubt that any would have recorded their thoughts on an obscure power with politically questionable origins.

synthesis of principle and expediency." State military courts were a forum for formalized discussions among a loosely formed status group, functioning on a set of rules that were sometimes ignored entirely and often loosely heeded. Accused of wrongdoing, a New England militia officer in the early republic usually faced trial whether or not the charges against him were properly framed and structured, as courts martial encountering vague complaints usually just proceeded to try them. Receiving a copy of the complaint, the officer would most likely be horrified to be accused of dishonorable behavior. He would take an accusation from subordinates or rival officers as an affront, threatening his standing in society by improper means. Though his legal jeopardy would be limited, his social jeopardy would be considerable, and he would, especially in the face of a serious accusation touching on his personal honor, express his responses in the highly charged language of an affronted gentleman. Arrested, the accused officer would only be barred from command pending resolution of the charges against him, rather than being physically confined. The presumption underlying the court martial system was that an officer would wish to appear before a tribunal examining a matter of honor; given that expectation, the men who designed New England's court martial systems saw no need to compel officers by force to appear at trial. This assumption built a failure into the structure of state military courts, as officers who did not share the assumed premises of gentlemanly honor could, and did, ignore their trials.

State courts martial were a small and intimate world. Appearing for trial, a New England militia officer faced a court composed of men drawn from his own social orbit. He probably knew several members of the court, and may have found himself appearing before officers with a personal interest in his social standing or in the very conflict that

had led to the trial at hand. None, or most, would have been lawyers, and the law would not have been their concern. In a distinctly personal manner, his accuser would appear in court alongside him as the prosecutor of the case, managing the trial of his own allegations. The accused would similarly manage his own defense, rarely assisted by a lawyer and almost invariably not directly represented by one. A judge advocate would play a limited role, recording the proceedings and reading the written questions and statements of the participants. At its center, a court martial would be a very direct contest between accuser and accused, in front of at least some men they knew personally. Testimony was casual and personal, frequently taken in front of every witness, full of hearsay and narrative, elicited under questioning by men who were not trained as lawyers and in front of a court of military officers who were similarly not trained in the law. Concluding the testimony, the court would adjourn to give the defendant and his accuser a night to prepare their closing statements. Each would appear the next morning with a statement that would often be highly personal, the defendants expressing anguish at the blight on their honor and the threat to their standing in society. Both sides would appeal to the members of the court as fellow soldiers, not as disinterested finders of fact.

Levi Lincoln, Jr. correctly identified the private judgments that structured court martial decisions: passions and feelings involving social perceptions of personal character. With closing statements and the judge advocate's record of testimony in hand, the members of the court would deliberate privately, usually not recording their discussions but leaving behind some suggestions that they had reached verdicts based on a mix of testimony and social knowledge. Officers with a strong public character would be treated differently than an officer with a bad reputation, evidence notwithstanding.

Found guilty, a defendant's sentence would target his sense of honor. For a militia officer before a state court martial, imprisonment or physical punishment was never possible. Instead, a convicted officer could be shamed with a published reprimand, set into print and distributed as a general order to be read to the ranks. More seriously, a convicted officer could lose his status as an officer and a soldier altogether, being stripped of his rank and permanently or temporarily barred from further military service. A cashiered officer lost the right to be socially addressed by his rank, to appear in a military uniform, to wear a military sword that would signal his gentlemanly status, and to stand in front of other men and exercise public command. He would be socially reduced. Again, this reality of courts martial rendered them nugatory in the case of a defendant who did not share the social premises of the officer corps: the worst punishment a state court martial could do to an officer who refused to perform his militia duties was to forbid him to perform militia duties. For a defendant who did share those premises, signaling could produce salvation: a firm but penitent comportment, specially combined with a good reputation of long standing, could win a reduction or waiver of punishment, either before the court martial or at the stage of command review.

The legal coherence and procedural order of state courts martial gradually drifted toward failure. No dramatic transitional moment marks any sudden shift, though military trials became more frequent after the War of 1812.[108] A loosely ordered system instead became somewhat more loosely ordered over time. Petty complaints became more

[108] See Appendix B, "Courts Martial Frequency by Year." This acceleration is not as plain as it first appears, since some years still saw very few militia trials and the high court martial rate of some years were caused by mass complaints filed by one complainant against many defendants, a fact already discussed in the introduction to this dissertation. Appendix A lists courts martial, and describes the occurrences of mass complaints.

common, and defendants appeared at trial less often.[109] But even the appearance of defendants could reduce trials to farce, suggesting that the men subject to state courts martial had not accepted their authority despite the passage of years and the long functioning of the military legal system.

As a final example, the court martial of Capt. Benjamin Dunn suggests the dismal state of courts martial in the years after the War of 1812. When Dunn appeared for trial in the Maine District town of Limerick in December of 1816, his contempt for the court looked a great deal like the disgust Lt. Col. Robert Gardner and his fellow officers had expressed to the members of their Boston court martial in 1804. It also had much the same effect. Dunn announced that he objected "to the whole court and to individual members." He was not wrong to do so, and the composition of the court further suggests the continuing failures of the legal system that disciplined militia officers. Despite the procedural rules laid down by state law and by Isaac Maltby's 1813 courts martial manual, Dunn faced trial by a court that included men of inferior rank, and that also included an officer who had already pronounced his decision on the case outside the courtroom. Bizarre procedural grappling marked the opening of the trial, as when the court allowed Dunn to take a supernumerary outside the courtroom for private interview.[110] Two members of the court, proven to have prejudged the case, were eventually ejected from the trial, while a third was retained over Dunn's objections. Lacking enough members to try to the case, the court adjourned until January, then resumed without filling the vacancy. Repeatedly adjourning and reconvening in March,

[109] See, for example, Court Martial of Ensign Ebenezer Wales and 22 Others, MNGMA, Courts Martial, Vol. 12. At this mass trial, 18 of 23 defendants did not appear.
[110] Serving a function akin to that of an alternate juror, supernumeraries appointed to courts martial took the place of court members who were disqualified or failed to appear. They are listed in the record of every court martial.

April, and May of 1817, the court finally managed to begin Dunn's trial on May 1, only to find that the defendant was unwilling to enter a plea.

The successful opening of Dunn's trial after so much disappointment only resulted in further failures of order. Barraging the court with complaints, Dunn eventually exhausted its patience, producing an exasperated declaration: "The respondent still persisted in making and filing challenges and objections to the members of the court. but the court declined receiving or considering them, as they said challenges and objections were considered frivolous and indecorous." Dunn's trial finally proceeded without his participation, as the court elected to ignore him entirely while taking testimony. In the later days of the trial, Dunn stopped attending altogether, and the court arrived at a mixed verdict without his presence. They sentenced him to a written reprimand, laboring mightily toward a practically inconsequential end. Finally, then, after a court martial of a company officer that stretched across six different months, the acting division commander simply rejected the court's verdict without comment.

Nearly half a year of persistent chaos and disruption had served no purpose. The members of the court had wasted their time, beginning in December and ending in May, on an infuriating exercise that produced no result. Twenty-five years after 1792, the supposedly uniform militia still operated a legal system that extended and intensified disorder rather than settling it.[111]

[111] For a comparable but less dramatic example in Connecticut, see Trial of Captain William Giddings, 1818. CSA, RG 13, Box 48, Folder Three. Giddings argued that the court assembled to try the charges against him was "not a Lawfully organized Court Martial for his trial and has no power or authority to hear and determine this case." The court proceeded to trial, convicted him on some of the charges Giddings faced, and sentenced him to be reprimanded. But in a general order that appears with the record of proceedings, Governor Oliver Wolcott concluded that the organization of the court was "defective," and that the court had convicted Giddings on evidence that should have exonerated him. The court had assembled unlawfully to reach an improper verdict.

## Chapter Two: "In His Ordinary Costume"

> "Question by the court. On what account did he call him a D–d rascal, was it in respect to his military or private capacity?"
>
> "Answer. I cannot say!"
>
> -- Court Martial of Ens. Thomas L. Bevins, 1814[1]

> "I have never consented, sir, to be under your command, or to be arranged to the first division; nor have I had any voice in your election; and I am satisfied no authority under this government or any other, can force a volunteer to do contrary to his agreement with that government."
>
> -- Court Martial of Maj. Joseph Loring Jr., 1812[2]

Captains David Bradish and Francis Osgood did not dispute the claim that they had spoken disrespectfully as Lt. Col. Samuel Stephenson took votes during an infantry company election in Portland on March 10, 1810. Attending as spectators, the pair had loudly pronounced the balloting to be "a damned rascally piece of business," among other things, but they informed their court martial that it had no jurisdiction to try them for saying so. The company in question had been unarmed and unequipped while it cast its votes, called upon only for the selection of officers on a day that included no military training. A large audience had mixed in with the company, no physical boundaries having been set between civil and military attendees. The colonel himself, they noted, "attended in his ordinary costume," and so could not have been disrespected in his military capacity. Citizens had insulted another citizen. Pronouncing their prosecution a "novelty in the history of the Militia of this state," Bradish and Osgood warned the court that it was on dangerous ground: "There is no other case recorded in our annals of an attempt to

[1] Trial of Ensign Thomas L. Bevins, 1814. CSA, RG 13, Box 46.
[2] *Minutes and Proceedings of a General Court Martial, Holden at Boston, by order of His Excellency Caleb Strong...[of] Major Joseph Loring, Jr.* (Boston: Watson & Bangs, 1813), pg. 32. AA. Loring's letter, copied into the record of his court martial, was dated Sept. 14, 1812.

render an officer of the Militia subject to Military Law for acts committed by him while divested of all Military command." After a long trial, the court reached a similar conclusion by a different and confused construction, voting that the defendants were not guilty of any military offense. They returned a verdict that proclaimed their absence of jurisdiction. In an order disapproving the verdict, Brig. Gen. Alford Richardson echoed the defendants' language about novelty, but rejected their argument. "The idea that an officer cannot be guilty of unmilitary conduct unless on duty is a novel one," he wrote. Asked to explain the outcome, Judge Advocate James D. Hopkins wrote that he had given the court no legal guidance on the question of jurisdiction. When the defendants had raised their objection and the court had taken it into consideration, he explained, he had retreated into silence. "I have thought much of it since and confess that I have my doubts as to the authority of the court to do this but as I was not clear upon the subject then (nor am I indeed now) I gave no opinion to the court upon that subject," he concluded.[3] Confused and divided, the officers of the 12th Division reflected an ordinary institutional fact of their time and place, not knowing where the militia began and ended.

This chapter investigates a practical discourse about jurisdiction and authority in the early national New England militia, using the records of twenty-eight courts martial conducted in Massachusetts, Connecticut, Rhode Island, and Vermont. In these legal cases, four related topics intertwined as militia officers, men in the ranks, and state

[3] Two military courts heard complaints over this election. At MNGMA, in Courts Martial, Vol. 3, see both Court of Inquiry on Lt. Col. Samuel Stevenson [Stephenson], May 1811 and Court Martial on Captains Francis Osgood and David Brandish [Bradish], Oct. 1811. The letters and orders from Richardson and Hopkins, as well as the long defense statement written by Bradish and signed by both defendants, appear as appendices at the back of the latter record. At the time Osgood and Bradish were tried, Richardson was the acting commander of the 12th Division, as his general order explains. The record of proceedings in the court martial of Osgood and Bradish describes their status as spectators: while the election was for company officers in Portland's Ward 2, Osgood was the commander of the company in Ward 4, and Bradish was the commander of the regiment's light infantry company. See pp. 2-7.

officials argued over the sources and limits of state military authority. First, the men involved in state militia systems did not agree over the proper limits of court martial jurisdiction. Second, and closely related, they did not agree when a militia officer could be regarded as such by military authority, and when or how fully he resumed his civil identity. With that boundary between identities remaining unclear and contested, the political speech of militia officers was potentially subject to military discipline.[4] Third, they did not agree over the prevailing sources of military regulation from moment to moment, arguing over the boundaries between, for example, statutory law and local custom. Fourth, and similar to the point about an individual officer's military and civil identities, they did not agree where the militia ended as an institution, as when they argued over the power of states to treat state-chartered independent military companies as militia units.[5]

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[4] It appears that a similar absence of clear boundaries existed in states outside New England. In 1808, for example, a Maryland militia officer was brought before an informal board of officers for an inquiry into a toast he offered at a Fourth of July dinner. Arguing that "the dinner was a *private* one," he was cleared of wrongdoing after also explaining that he had been drinking to the damnation of French democracy rather than the American kind. esp. *Proceedings of the Officers of the Thirty-Ninth Regiment of Maryland Militia, on an Inquiry into the Conduct of the Adjutant* (Baltimore: G. Dobbin & Murray, 1808), pgs. 14 and 16. AA.

[5] Apparent confusion over authority could also operate as a dodge, allowing officers to evade difficult or dangerous duties. In 1813, as the Portland Committee of Safety reported to the local militia officers that British warships had been seen "close in by the Light house," they asked for militia companies to be posted to protect the town from attack. In a subsequent conversation, Maj. Gen. James Merrill told Brig. Gen. James Irish that they had no authority to assign companies or pay them for that purpose. (As Merrill told the court about the local militia: "No, I should not have ordered it out. I did not think myself authorized.") Irish immediately ordered two companies to duty for the defense of the town, and so Merrill brought charges against him that quickly resulted in a not guilty verdict. One of Merrill's charges was that Irish had taken command of troops while "in Citizen's dress," an insistence on a boundary that made no sense as the town rushed to establish its defense against nearby warships. Court Martial of Brig. Gen. James Irish, Jr., April 1814. MNGMA, Courts Martial, Vol. 5. In other instances, militia officers refusing to obey what they regarded as improperly given orders were on contested but more clearly military ground, as when Capt. Elijah Elder refused in 1808 to obey an order from a major, delivered by a private, that countermanded an order given by a lieutenant colonel. Court Martial of Capt Elijah Elder, April 1808. MNGMA, Courts Martial, Vol. 2. Similarly, an 1812 court martial followed the refusal of a captain to obey orders from a major who had been detached from his regiment and had informally appeared at a regimental review without orders to attend. Court Martial of Captain Joseph Howland, June 1813. MNGMA, Courts Martial, Vol. 4. Elder was acquitted. Howland was convicted on four of six counts, but only reprimanded.

In all of these contested areas, the boundaries around state military authority were unclear to the people who had to find those boundaries and live within them. Militia officers did not reliably know where their liability to military command and martial justice ended. Nor did clear and consistent arguments emerge over time that pointed in a single direction. In one case discussed below, a militia officer argued that he had insulted a superior after candles were lit at the end of a day of training. If candles were needed, the duty day had ended, and evening had returned him to his civil identity. In this conception of authority, the citizen and the soldier were starkly delineated: one switched off as the other switched on, plainly freeing an officer from command or returning him to it. But in another case discussed in this chapter, militia officers argued that formal orders from superior officers could be constrained by contravening social custom. In this model, the citizen and the soldier were ineradicably blended, each identity operating always in relation to the other. Men at all levels of the militia system argued over the relationship between military authority and a militia officer, especially when he was "in his usual costume" as a citizen. The argument was never settled, a reality that gradually rendered the new nation's first formal militia model untenable and made a slowly emerging joke of its justice system.

The argument over authority was perceived as a kind of duty, laden with attendant social duties that moderated expressions of both defiance and rebuke. Disobedient militia officers usually presented their refusal to obey contested authority as a necessary act of honor, believing themselves to be engaged in a larger obedience to principle and order.[6]

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[6] Chapter Three focuses on honor disputes between militia officers, but the topic of honor is important here for the context it provides in discussions over political authority. The discussion that took place among middling militia officers in New England suggests the outlines of a vocabulary that was similar in form and

Deciding to resist orders, officers spoke as gentlemen who served the cause of propriety. They often did so with considerable politeness and restraint, in a finely calibrated performance that required a kind of genteel sternness. Ordered to obey new superiors after a reorganization of Boston regiments in 1811 and 1812, for example, Maj. Joseph Loring refused. Writing to the brigadier general who had addressed him as a subordinate, Loring returned a package of written orders with an unbroken seal, declining even to examine correspondence premised on a military relationship that he did not concede to exist. Turning aside military orders, Loring took care to set his institutional defiance in a social context. The brigade major, he reported, had delivered the disputed orders "with his usual urbanity towards me as a soldier." Loring's refusal to obey was gentlemanly, acknowledging the correct social comportment of a fellow officer while refusing to receive military orders that the other officer had delivered in an official capacity.

Self-control could fail in two different directions, and gentlemanly comportment required firmness as well as civility and restraint; a gentleman who spoke uncivilly did not merit his social and military rank, but neither did an officer who failed to respond to an insult with appropriate vigor. That two-part social expectation could lead to a change of tone over time, as it did it in the subsequent exchange Loring had with the officer he refused to obey. Brig. Gen. Arnold Welles responded to Loring's explicit disobedience with a notice of arrest, but had carefully placed that message in a precise personal context: "I have, however, the satisfaction to reflect, that the discussion of this subject, so interesting to our feelings, individually, is not imbittered with any personality. I am free to declare, that the sentiments of a personal nature, which I entertain, are those of

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effect to the honor code Joanne Freeman locates among national political elites in the same period. Joanne B. Freeman, *Affairs of Honor: National Politics in the New Republic* (New Haven: Yale University Press, 2001), esp. the last paragraph on pg. xv and the first paragraph on pg. xvi.

gratitude for your kind expressions towards me on past occasions." Refusing to acknowledge his arrest, Loring shot back a letter insisting that he could not be tried for the disobedience of an officer he was not obliged to obey. Defiant, refusing to acknowledge the authority of a military superior, and brushing aside a formal notice of arrest, Loring also expressed his social admiration for the man who had, he insisted, improperly arrested him. "I heartily reciprocate the pleasing reflection that the discussion of this subject is not imbittered with any personality," he wrote. Finally, though, as the exchange matured through several letters, Loring began to sense that he was being treated differently than other, similarly circumstanced officers. His final letter to Welles ended sharply, pointing to evidence of partiality: "For my own part, thank God, I never had a favor from any officer, nor do I want any. And you may rest assured, sir, I never will play the sycophant to please any officer whatever."[7]

Loring managed an evolving position with a socially precise performance. Respectfully disobedient, he expressed both his admiration for other officers and his determination to resist their orders, depicting himself as a man who stood on his own feet. He took care to ensure that he expressed clear social respect, but also ensured that his sentiment could not be mistaken for an expression of formal deference. A major engaged in discussion with a higher-ranking officer, he signaled above all that he was not servile, expressing that sentiment most starkly at the moment that he most clearly perceived the apparent disrespect of another officer. His obedience was, in Elizabeth Samet's phrasing, "entirely compatible with the intellectual enlargement that

[7] In *Minutes and Proceedings of a General Court Martial...[of] Major Joseph Loring, Jr.*, see the letters reprinted on pp. 32-44. The details of this court martial are discussed later in this chapter.

distinguishes the *liber*, or free man."[8] He always oriented his military posture with a social eye, establishing his orderly identity alongside his refusal of obedience. This balanced display would become familiar during the years examined here.

## "To What Will Martial Law Not Extend?"

This chapter now turns to a chronological examination of courts martial in which participants raised questions over jurisdiction and other kinds of disputed authority.[9] Describing cases in sequence, the narrative that follows necessarily blends together different themes, mixing cases in which (for example) militia officers argued over their rights to speak freely while off-duty with cases in which (for another example) officers claimed that they had been given orders by officers they had not agreed to obey. This thematic blurring in a chronologically ordered story reflects the way that militia officers and state officials encountered these conflicts: many challenges to authority arose, in varying forms, then were disposed of, often without clear resolution, after which new and different disputes again brought some form of authority into question. In the mess of lived experience, the resolution of disputed legal areas advanced and receded, in a cycle that brought clarity and confusion at varying moments. But every case discussed here is linked by the shared fact that the people who commanded militia units, and state militias as a whole, could not reliably identify the sources and limits of military authority. They

[8] Elizabeth D. Samet, *Willing Obedience: Citizens, Soldiers, and the Progress of Consent in America, 1776-1898* (Palo Alto: Stanford University Press, 2004), pg. 7.
[9] The chapter text is chronological, but the footnotes reference whatever cases from other years are comparable to those discussed in the body.

could not plainly and consistently agree upon the fundamental rules they had to enforce and obey.

While the cases in this chapter that were tried before the War of 1812 do not look substantially different than the cases discussed during and after it, the significance of the war is suggested in the shift of frequency: seven of the cases discussed here took place before the war, while twenty-one took place during and after 1812. That increasing occurrence of similar events suggests that the war exacerbated existing tensions and questions, as wartime demands forced men in the militia to look more closely at the institution. Militia officers argued more often over disputed forms of authority, but they did not argue over new kinds of disputes.

In the rush of lived experience, though, officers appearing for trial often and incorrectly thought that they were engaged in a unique discussion. Bradish and Osgood, for example, believed that their 1810 court martial was a novelty in the history of the militia, but similar questions of jurisdiction had been taken up by earlier state military courts. The trial by court martial of Vermont's Maj. Gen. David Whitney appears to have been the first in early national New England for activities wholly unrelated to the performance of military duty. In September of 1799, a court martial convened on orders from the governor to hear charges of "unmilitary conduct" against Whitney, who commanded the state's Third Division. A major and a captain under Whitney's command had accused him of four acts of wrongdoing as a militia officer: first, that he had "debauched the wife of a friend"; second, that he had "meanly, cowardly, and tamely" allowed a mob to ride him on a rail as an adulterer, "in open day, several miles through the public streets"; third, that he had struck an elderly man, refusing to pay him

restitution; and fourth, that he had "at divers times been guilty of unmilitary conduct, in publicly assaulting and beating his wife," while "associating with divers riotous and disorderly persons."[10] No charge named an offense committed in the course of military duty, but Whitney was convicted by the militia court and stripped of his rank. The state's Council of Censors warned that both the governor and the court martial had "assumed to themselves new and unheard of jurisdictional powers," an act they deemed "highly censurable."[11]

But the trial of Maj. Timothy Whiting in 1803 raised more difficult questions about the boundary between the military and civil spheres.[12] Whiting had encountered Brig. Gen. Eliakim Adams while neither man was on duty or in uniform, arguing with him on a public road and shaking a fist in his face. Their argument touched the edges of military duty: Adams was angry because Whiting had spoken poorly of him in off-duty conversations with other officers, possibly seeking allies for an effort to remove Adams from his office, while Whiting was angry because Adams had implausibly accused him of collecting excessive compensation from the state for official travel as brigade inspector. In his defense statement, though, Whiting carefully framed his altercation with Adams as a fight between citizens who had met in the road while conducting their private business.

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[10] Mob discipline was a familiar punishment for wife beaters and adulterers in late colonial America and the very early United States. See the first seven chapters in Pencak, *Riot and Revelry in Early America*, especially Steven J. Stewart, "Skimmington in the Middle and New England Colonies." Whitney's accusers, and the mob that rode him on a rail, acted on a conception that placed the family in a close relationship with the community in which it resided. This conception of the family faded in the following decades, as "the growing idealization of the family as a distinctively private domain...opened the way to stronger rationalizations of wife beating." Ruth Bloch, "The American Revolution, Wife Beating, and the Emergent Value of Privacy," *Early American Studies: An Interdisciplinary Journal*, Vol. 5, No. 2 (Fall 2007), pg. 229.

[11] *An Address of the Council of Censors to the People of Vermont* (Bennington: Anthony Haswell, 1800), pp. 21-25. AA.

[12] Whitney's court martial, for which no trial record has survived, is discussed in the introduction. It may only be the first court martial over purely civil matters for which evidence is available, since many early court martial records have clearly been lost.

"To what will martial law not extend," he asked, "if this be a proper subject for a court martial?" Further blurring the boundary between civil and military questions, Adams appeared in court with a parade of witnesses whose proposed purpose was to "testify to the general character of Major Whiting."

Conclusions suggested conflicting answers to boundary questions. Faced with a case that centered around off-duty behavior and private character, the court split the difference several ways. Refusing to take overly broad character testimony, the court concluded it would only hear from witnesses who could speak "in support of the charges exhibited in the complaint." Then, in a mostly favorable verdict, the court similarly declined to convict Whiting of a military offense for his personal argument with Adams. With these choices, the court appeared to draw a solid line between military and civil identities, even when an argument between officers related to militia matters. But Whiting was also convicted on a single charge that again reflected nothing but off-duty behavior, though all of it related to military affairs. Making the rounds of his brigade's officers to pointedly ask their opinion about Adams, and to suggest to some that Adams should be removed, Whiting had been guilty of an unmilitary effort to disaffect his fellow officers to their commander. Even this verdict suggests reluctance, since he was sentenced to nothing more than a reprimand.[13] The verdict in Whiting's trial settled nothing. He was convicted of a military offense for private speech with fellow officers, and acquitted of a military offense for private speech with fellow officers.

[13] Court Martial of Major Timothy Whiting, June 1803. MNGMA, Courts Martial, Vol. 1. Quote beginning, "To what will martial law not extend..." is from Whiting's long defense statement, attached at the back of the trial record. This case, an honor dispute between officers, is also discussed in Chapter Three.

## "You Will Have No Guide or Precedent"

The boundaries defining the militia were unclear in ways that encompassed entire military units as well as individual officers. Reflecting a larger discourse about voluntarism and consensual association as well as the problem of conflicting sources of regulation, a Rhode Island court martial assembled in 1808 confronted the sweeping claim that state-chartered independent military companies could not be governed as a part of a state's militia force. Col. David Pinninger, Lt. Col. William P. Maxwell, Maj. Nathan Whiting, and Capt. Allen Tillinghast were the officers of the Kentish Guards, a company founded by association in East Greenwich in 1774.[14] Ordered in 1807 to provide six members of the company for the federal draft of militiamen that followed the attack on the American frigate *Chesapeake* by a British warship, the Kentish Guards refused. As commander, Pinninger responded to the draft notice from Adj. Gen. Samuel W. Bridgham with a letter explaining his course of action: declining to make a decision on behalf of the company he commanded, Pinninger had instead referred the order to a committee from the ranks, then submitted the committee's report to the vote of the entire company. The company voted unanimously against compliance, promising to defend the state if war came but refusing to provide any of its members for compulsory militia service. Linking his personal views to his military obligations and pronouncing them to

[14] The early records of the Kentish Guards show clearly the degree to which the founders of the company regarded their effort as a private, associational choice, to be managed entirely by self-governance. An undated document (probably from 1774) declares that the fifty-four signatories "unanimously join to establish and constitute a military independent company." Other early documents show the company establishing its own regulations, with members wishing to withdraw from membership being required to submit a request to be brought to a vote of the whole company: "And said Company Duly considering the same may grant a Discharge if they see fit." At RIHS, see the folder labeled "Kent Co. - East Greenwich - Kentish Guards - 1774-1854" (MSS 673 SG7-36).

be aligned, Pinninger was driven to put the matter to a vote "both by inclination and duty." The commander of a state-chartered military company sought and then joined a decision from below, rather than imposing one from above, and then submitted the report of a company committee as his own response to higher authority.

The report of the committee that Pinninger assembled to answer the state's draft order blends the language of consent and voluntarism with the language of contract. Finding that the Kentish Guards had been organized by sustained mutual assent, the committee wrapped an associational model in its state charter: men had agreed to join together to defend Rhode Island, after which they had been granted a charter, after which they continued to join together in a voluntary association that had been formalized by the state. Both premises were active at once, as the company acted by the continuing agreement of its members within the limits of its agreement with Rhode Island: "voluntary members from time to time, have associated with them for the express purposes held forth By the Charter." But the state was breaking the contract. The charter of the Kentish Guards, the committee wrote, recognized an organization that had agreed to defend Rhode Island in time of actual war, not in the anticipation of war. Refusing to give up members for a militia draft, the committee was not refusing service to the state; rather, they explained, "they now are willing to do Military duty in a body agreeable to their charter." Voluntary members were willing to fight, but only together, and only in a manner they judged to be consistent with both their formal charter and their socially established mutual purpose (which were, in any case, complementary). They would choose. In conclusion, they wrote, "upon a due consideration thereof said draft will be countermanded." The members of the Kentish Guards believed themselves to possess the

authority to countermand orders from the governor, an action they regarded as an ordered policing of their charter rights. Refusing to obey, they believed that they had served the lawful management of military affairs and the proper administration of their own company. They were enforcing a contract.

But such military contracts were subject to competing interpretations. The position adopted by the Kentish Guards caused obvious consternation among state officials, who sought outside advice. In a letter to Bridgham dated less than two weeks before the start of the court martial that tried Pinniger and his fellow officers, Massachusetts Adj. Gen. William Donnison wrote to offer something that cannot quite be described as advice. "I think you will get deeper into the mire the more you stir in this thing," Donnison wrote. With different levels of courts martial for company officers and field officers, there was no lawful or appropriate way to try a colonel who commanded a company. The only solution Donnison could see was to eliminate independent companies altogether. In fact, he argued, states had "no power to make such a creature in the first place," since the federal Militia Act did not describe companies commanded by colonels. And yet such companies existed, and Donnison doubted that their officers could be disciplined without exposing the legal failures inherent in their design. "The undertaking you are about to engage in is a trap calculated probably on purpose to embarrass you the more," he argued. Helplessness ran through Donnison's letter. As his concluding paragraph begins, "I think if you go to try these colonel-captains you will have no guide or precedent and all your decisions will be nugatory." In the end, any action against the officers of the Kentish Guards threatened to help them "establish their monstrous claim."[15] The adjutant general

[15] William Donnison to Samuel W. Bridgham, April 9, 1808. RISA, Adjutant General Correspondence, 1808-1810. I have looked for Bridgham's letter soliciting Donnison's advice, but have not found it.

of a state militia felt trapped between his understanding of the law and his practical recognition of the way state military forces had grown into place.

Donnison and the committee of the Kentish Guards were both simplifying the legal background as they purported to describe it. As Pinniger and his fellow officers would note during their trial, the federal law of 1792 that was intended to establish a uniform militia had carved out an exemption for independent military companies. Noting that "sundry corps of artillery, cavalry and infantry now exist in several of the said states, which by the laws, customs, or usages thereof, have not been incorporated with, or subject to the general regulation of the militia," the statute offered ambiguous language that conferred exemptions and refused them at the same time: "*Be it enacted*, That such corps retain their accustomed privileges subject, nevertheless, to all other duties required by this Act, in like manner with the other militias."[16] Independent companies were not to be subject to the general regulation of the militia, and so were to be allowed to retain their internal rules and customs, but were held to the duties of an act that was intended to create uniformity. They were to be simultaneously unique and uniform, in a collision of possibilities that was expressed but not explained. For the Kentish Guards, the ambiguity of the federal law would be echoed by the ambiguity of their charter, which defined the accustomed privileges they would retain: "in time of alarm," the late-colonial charter concluded, "the said Company shall be under the immediate direction of the Commander in Chief of the Colony."[17] Then, in October of 1807, the Rhode Island General Assembly

[16] "An Act more effectually to provide for the National Defence, by establishing an Uniform Militia throughout the United States," May 8, 1792, §§ 10 and 11.
[17] *The Charter and By-Laws for the Regulation of the Kentish Guards, in the Towns of East-Greenwich, Warwick, and Coventry, State of Rhode Island* (Warren: Nathaniel Phillips, 1800), pg. 6. AA. Regarding the colonial history of independent military companies in Rhode Island, see Sydney V. James, *The Colonial Metamorphoses in Rhode Island: A Study of Institutions in Change* (Hanover: University Press of New England, 2000), pp. 214-16.

responded to the call for militiamen to be prepared for federal service. In a statute totaling one brief section, the legislature directed the governor to prepare to meet the state's draft quota "from the militia and chartered companies of this State."[18] A set of legal standards pointed in several directions at once, depending on how each was read and which would be held to prevail against the other. Federal law assured the retention of undefined privileges and customs, but not against undefined duties, while recent state law imposed the same obligations on regular militia units and independent companies alike, and the company's charter placed it under the direct command of the governor, but of the colony rather than the state, and in times of "alarm" rather than -- as the company contended -- in times of war. The law, discovered in many competing sources, did not clarify or simplify.

To the men on trial, this jumble of muddled premises was the foundation for liberty itself, and to lose the ordered rule of law was to lose freedom itself. In an unusual court martial that took no testimony, the four officers of the Kentish Guards presented a written statement arguing against charges that were founded on facts they did not contest. Acknowledging that they agreed with the vote of the committee to refuse the company's draft quota, the officers would not concede that the company had behaved improperly. "And after all," they wrote, "what is there in this vote of the Kentish Guards that is so extremely obnoxious? Certainly there is nothing in it, that manifests the least disrespect to the Commander in Chief, or the legislature of the State." This argument reflected the often-repeated premise in which an act of disobedience was not necessarily an act of disrespect. In this view, a refusal to obey authority could be honorable, orderly, and sensible. This ordered disobedience was appropriate, Pinniger and his co-defendants

[18] "An Act for furnishing the quota of this State of the detachment of one hundred thousand militia, ordered by the President of the United States, by Virtue of an act of Congress," General Assembly of the State of Rhode-Island and Providence Plantations, Oct., 1807.

wrote, because the state was acting against its own commitment to a legal document. "Our Charter is a solemn compact between the State and the members of the company; and the legislature have no constitutional right to violate that compact, or to pass any law impairing its obligations." Completing their argument for a contractual relationship between their military company and the state, the officers of the Kentish Guard told the court that obedience to the state's draft order would reduce them to a condition "worse than that of a slave." Liberty itself depended on the sanctity of a military company's contract with its state. To lose the terms of its agreement with government was to be reduced below the status of human chattel.

Again, the outcome points in several different directions. The court convicted and cashiered all four officers, but the Kentish Guards won the larger argument: the state did not impose a militia draft on the company, which elected new officers and went on functioning under the premises they had established by their refusal.[19] The company lost its officers, but kept the substance of its shared vote to refuse a state order. A trail of confusion led to that verdict, and still more confusion followed. Pronouncing its judgment without explanation, the court produced nothing resembling clarity to resolve a conflict over competing views of authority and law.

[19] *Trial of Colonel David Pinninger, Lt. Col. William P. Maxwell, Major Nathan Whiting, and Captain Allen Tillinghast, Officers of the Kentish Guards* (Warren: Nathaniel & John F. Phillips, 1808). AA. The composition of the court itself (pg. 10) reflected the blending of the regular state militia and the state's independent military companies: twelve members were from the ordinary militia, while a thirteenth member was detailed to the court from the independent Newport Guards. The charter of the Kentish Guards is reproduced on pp. 15-18. The report of the committee assigned to consider the draft order appears at the back of the trial record, on unnumbered pages, as "Appendix, No. 1." Pinninger's letter of transmittal is attached as "No. 2." Quotes from the defense statement are from pgs. 29, 33, and 37. Specifications of charge appear on pg. 9; Pinninger was convicted on both specifications, while the other three were only convicted on the first, but the sentences were the same for all four officers (pg. 39).

## "The Officers of a Mercenary Army May be Disposed of at Pleasure"

As officials tried to discover where the militia ended, insulting language between officers in ambiguous settings raised particularly persistent boundary problems. At a regimental parade in 1811, the adjutant of the Connecticut militia's 29th Regiment was alleged to have spoken sharply to the quartermaster of the 4th Brigade, of which the regiment was a part. QM Henry May alleged that Adj. Robert Southworth had countermanded his order to the regiment to fire during training, demanding that he move to the back of the parade ground. After the regiment had been dismissed, May wrote, Southworth told other officers that "he the Adjt had some very high words with me, but that I was compelled to obey him and retire in to the rear where all such supernumeraries ought to be. with many other Abusive and false insinuations." In the days that followed, May heard further reports from other men that Southworth had mocked him as "the Genls livery," ornamental and essentially useless. Confronted, Southworth supposedly admitted to May that he had said insulting things about him; Southworth claimed, as May reported the conversation, that the attacks were "for the purpose of a little funn."

Timing was critical to the question of identity. Witnesses would describe a confrontation on the parade ground, saying that May "went off ashamed as a dog" after Southworth confronted him, but the testimony before the court closely paralleled May's accusations: Southworth had most viciously insulted May after the regiment was dismissed. In court, Southworth denied the charges in a written statement, but he more vigorously argued that he could not be tried by court martial at all; the court, he wrote, had "no foundation for further inquiry." Under the state militia law, officers were subject

to courts martial for misconduct "while on duty + during the day appropriated to military exercise and review"; but the charges against him "pretend nothing but ill talk about it afterwards." A militia officer, spreading insults to other militia officers about another militia officer's official conduct during a formal training event on a military parade ground, was engaged in private conduct. "The charges, at most, alledge the offense of slander, of which a military tribunal can take no cognizance," he argued. But Southworth also went farther, in an argument that again finds an unclear boundary: since the state militia law gave a brigade quartermaster a position and title but not a military rank, "no expressions used even to him, on parade, could dishonor his rank." A regimental staff officer insisted that a brigade staff officer had no status in the law that could support charges against militiamen who treated him inappropriately. Under state law, brigade staff could be demeaned at will. The members of the court accepted at least some part of these arguments, concluding that they "have no cognizance of the case submitted to them." Southworth, they agreed, "was arrested for improper and unofficerlike conduct after the parade and subsequent to the time for which said Adjt was ordered on Military duty at Saugatuck." In the same year that a Massachusetts court martial declined to convict Francis Osgood and David Bradish for insulting a superior officer while not plainly on duty, Southworth's Connecticut court apparently established the right of militia officers to privately insult one another without facing military charges.[20]

[20] Trial of Adjt. Robert Southworth, 1811. CSA, RG 13, Fourth Folder. This record contains several parts: a record of proceedings, which starts with a letter of transmittal and a copy of the letters of complaint; two written objections from Southworth, marked "Number 1" and "Number 2," annexed at the back; the letter of arrest and orders for arrest; and a one-page general order at the back, dated Jan. 11, 1812, agreeing with the decision of the court and signed by Governor Roger Griswold. The statement of Southworth's discussed below is "Number 2," the more significant of his two objections; the first was an objection to the composition of the court, which was overruled.

But while the clarity of these cases involving off-duty speech suggests a movement toward clear boundaries, the persistence of a contractual understanding of militia service continued to cloud the nature of state military authority. The court martial of Maj. Joseph Loring (also discussed above) centered on the idea that the service of state military officers was an agreement between a state government and a set of volunteers. Loring held a commission in the Fourteenth Division of the Massachusetts militia, which was eliminated by a vote of the General Assembly in 1811. In a reorganization, Loring's regiment had been moved from its own defunct division to the First Division, where Loring had not voted for officers or accepted a commission.

That reorganization was widely protested, and the objections of militia officers reflected their sensitivity to questions of personal honor. In a Feb. 29, 1812 letter to Gov. Elbridge Gerry, Brig. Gen. Isaac Maltby -- who would soon publish a new court martial manual that he had written, reflecting his desire to produce order in the militia -- warned that the state had violated the rights of militia officers to serve under officers they had chosen and in units for which they had accepted military office. "The officer who believes, as I do, that these rights are now invaded, and will not stand for himself and his brethren, is a coward, and would fly the post of danger." In the ultimate construction of disobedience as order, Maltby linked the refusal to obey improper orders to the likelihood of success on the battlefield: an officer who obeyed his governor's wrongfully applied authority would also run from an enemy. Under some circumstances, defiance of authority established the success of military organizations. "The officers and soldiers of a *mercenary* army may be disposed of at pleasure," Maltby concluded, but "*the free*

*citizens of the Massachusetts militia* are not to be cut up into sections and disposed of for any *special* purpose, incompatible with their freedom."[21]

Loring similarly declined to be disposed of in a manner that violated his own contractual understanding of his military commission. Sent commands as an officer of the First Division, Loring responded by returning his orders unread. But that action was even more precisely undertaken, as he received orders from an officer of the First Division but returned them through a different officer altogether: "I send you by adj. Berry, who was appointed and commissioned to the first regiment, second brigade, fourteenth division, the papers delivered by your brigade major, *in the same state I received them*." Informed that he was an officer of a brigade and division in which he had not agreed to serve, Loring took care to communicate as an officer of the brigade and division in which he *had* agreed to serve. His very act of communicating his refusal was undertaken in what he regarded as its proper form, a deliberate stubbornness that once again made order out of insubordination. Even as he adopted a position that was widely supported by his fellow militia officers, though, Loring was convicted of disobedience, stripped of his rank, and barred from returning to military office for five years by a court that was also composed of his fellow militia officers.[22] As with the officers of the Kentish Guard, Loring believed that his choice to volunteer for military service was given form by his agreement with the state, blending a contractual understanding with a voluntarist, associational view of state military service. Like the officers of the Kentish Guard, that finely structured perception

[21] "Highly Interesting Letter," *Boston Gazette, Extra*, April 2, 1812. AA.
[22] *Minutes and Proceedings of a General Court Martial, Holden at Boston, by order of His Excellency Caleb Strong...[of] Major Joseph Loring, Jr.* Quote is from pg. 33; verdict and sentence appear on pp. 98-99.

of his military place would result in his conviction on charges of disobedience and his removal from office.[23]

## "About Candle Light"

Even when they did not contest the authority of military superiors, militia officers did not believe that their military relationships structured their private relationships with other men they were compelled to obey on the parade field. Though militia rank colored social relations, it did not create military relationships among citizens.[24] But it was often unclear to militiamen when they were soldiers and when they were citizens; therefore, private business and military affairs could blur together, resisting clear separation. Tried in New Haven in 1811 on charges that he had damned his company commander as a

[23] Making the same argument as Loring but reversing the order, a Massachusetts militia captain refused in 1819 to command men who had not chosen him as a commander. At its annual review, a regiment in the 8th Division was broken down into platoons, and officers were assigned to command platoons on the parade field. Assigned to command a random platoon, rather than the company that had chosen him as captain, Capt. James Mayhew announced, in the language of the complaint, that "the men should be under no obligation to obey officers so assigned them + stated to some of the men in a platoon which had been assigned to him that they might do as they pleased in regard to obeying him as he had no right to command them and they were under no obligation to obey him and they might remain in the platoon or leave it at their option." Court Martial on Capt. James Mayhew, 1819. MNGMA, Courts Martial, Vol. 10.

[24] Militia officers sometimes attempted to enforce a line between civil and military identities by insisting that superiors address them in plainly military forms when conducting militia business. Ordered in writing to call a company election in 1813, Capt. Jonathan Bemis ignored the order. Maj. Alden Blossom had addressed him vaguely, calling him only by name and signing only by name, in an directive that did not identify the source of its authority. "It is only where Major Blossom clothes himself with the authority of the Commonwealth, that the said Bemis considers himself bound to respect any of his orders," Bemis told the court. The court found him not guilty of disobedience. Court Martial of Captain Jonathan Bemis, June 1813. MNGMA, Vol. 4. Similarly, Capt. Alpheus Spring unsuccessfully claimed at his 1819 court martial that he could not have been guilty of insubordination for marching his company off the field without orders during a regimental review, because the orders he received for that review had merely been delivered to him by a civilian courier, and so did not properly constitute military orders: ""Mr. Libby says he never was commissioned, appointed, qualified or ordered to transmit to, or serve any order on, me or any other officer in the Regiment; that he merely offered me a paper and said it was from Col. Steele; that I declined receiving it " Court Martial of Capt. Alpheus Spring, 1819. MNGMA, Courts Martial, Vol. 11.

rascal after a regimental meeting of officers and sergeants, Ens. Thomas L. Bevins made the same argument that Southworth had made: "This is no offence for which I am liable to be tried before a Court Martial. The expression, if I used it which I deny, tho' vulgar + improper to speak on any one at any time, was not spoken of Capt Beach as an officer, nor of any of his official conduct." Also echoing Southworth, Bevins argued if his statements subjected him to any legal jeopardy, that exposure to the law could only properly come before a civil court. Since "this was a private dispute between Capt Beach + myself," Bevins concluded at the end of his trial, "this court has nothing to do with it."

Again, timing was critical to the question of identity, a point that military courts could be compelled to examine precisely and exhaustively. Taking extensive testimony over the defendant's objections, the court in Bevins' trial narrowly examined the precise timing of the insults that the ensign had directed at Capt. Isaac Beach. Ensign Lewis Reeves heard Bevins "call Capt Beach a D-d Rascal + said he was no more fit to command a company than his D-d arse, or D-d dog, which of the two expressions he cannot remember, but is certain it was one or the other." Then Bevins and the members of the court peppered Reeves with questions: was it after Reeves had paid his bill? (No.) Was it "after the business of the day was closed?" (Yes.) "Was it in the house?" ("Answer: Yes!") Similarly, Capt. David Baldwin heard Bevins call Beach a damned rascal; asked by Bevins "how long after sun down" he had heard the insult, he remembered that it was "about candle light!": near the time when it became necessary to light candles. A long parade of witnesses testified to the same events and answered the same questions, with the same answers; when Sgt. Raymond Baldwin heard Bevins damn Beach, it was "After candle light, + after I had paid my bill." If candles were burning, Bevins and Beach were

not militia officers. As Bevins told the court in his closing statement, "the day does not mean the night"; the evening comments of an officer ordered to duty during the day were the comments of a citizen, and "at this time Capt Isaac Beach had as little to do with me as any other man whatever." The day was over, the meeting was complete, and Bevins had reclaimed his private status.

But questionable behavior could cross over the boundaries that officers tried to construct. As the long line of witnesses continued, the facts supporting the allegations suggested a more complicated picture of timing. First, Isaac P. Allen recalled that Bevins spoke in a mutual exchange of insults in which "they both grew warm": Beach had first called Bevins "a D-d Irish buggar," prompting Bevins to tell him he was "no more fit to command a company than my little dog." In testimony, an unprompted insult had become an ugly quarrel. Allen also joined other witnesses in adding a new claim to the record: during the regimental meeting, discussing Beach's physical examination of a militiaman who claimed exemption from military duty due to a testicular injury, Bevins had addressed Beach as the regiment's "bollux master general." Plainly insulting his captain after the end of the duty day, Bevins had also made mocking comments earlier, during an official meeting. The court examined the point closely; Sgt. Isaac Smith agreed that Bevins had talked about Beach as the bollux master "about 2 o'clock P.M." The court had evidence that would allow them to convict the ensign for conduct while on duty, possibly allowing them to evade questions about his later actions.

Bevins continued his effort to build a line between his social and military identities. In a significant and a common expression of honorable intent, he had promised to obey his company commander even after trading furious insults with him. Testifying near the end

of the trial, Capt. Eldad Bradley described the exchange of angry language between the two men, adding that "at the time he saw them, hard words appeared previously to have passed between them." Both men had just insulted one another, and had done so before. But then, "He heard Capt Beach warn the prisoner to appear at the Regimental training: that the prisoner said he would obey him on all such days, + turn out if he could." Privately telling Beach that he was unfit to exercise command, Bevins walled off the premise, announcing that he would obey Beach as a commander. Private contempt over public duty did not amount to public contempt. Bevins would hate Isaac Beach and give his full obedience to Capt. Beach, depending on the time of day.

Resolutions to these conflicting premises came only with difficulty and sustained debate. In a verdict that must have been colored by social judgments, the thirteen members of the court voted to convict and cashier Bevins, stripping him of his rank and place in the militia but allowing the possibility that he could return to office. But they had not done so easily, voting twice to reach one decision. In the first vote, only six members of the court had supported the eventual verdict; two voted to cashier him and permanently bar him from service as a militia officer, while the balance of the members voted only to suspend him from office. In this case especially, the privacy of deliberations hides answers to important questions.[25]

[25] Trial of Ensign Thomas L. Bevins, 1814. CSA, RG 13, Box 46, Sixth Folder. Bevins raised a flurry of other objections to his trial, arguing that he had not been properly notified of the charges, that the charges were vaguely stated ("No fact is charged"), and that he had not been given sufficient and appropriate time to prepare his defense. By a unanimous vote, the court turned aside every objection. In a comparable trial held in Connecticut in 1820, a militia lieutenant was charged with insulting his captain during a meeting of officers, "calling him a damned liar damned rascal and damned Indian and [saying] further that he would never obey him nor come under his command." The lieutenant argued that he had spoken privately while he was "not on military duty authorized or required by law." While he was convicted and reprimanded for other acts of disrespect, the court concluded that, with regard to his behavior at the meeting of officers, the lieutenant was "not therein guilty of any military offense cognizable by said court." Trial of Lt. William Kelley, 1820. CSA, RG 13, Box 48, Folder Nine.

Demonstrating the degree to which these discussions did not close the questions they raised, another militia officer also claimed a right to insult a superior officer in a private exchange, two years later and in the same state. Maj. William Dunbar served as the aide-de-camp to Maj. Gen. Elijah Crane, the commander of the state's First Division. Outraged by comments Crane had made about a personal friend, Dunbar confronted him and demanded an apology, quickly following up with a written version of the same demand. Rebuffed, Dunbar wrote to Governor Caleb Strong to demand an immediate discharge from his office, pronouncing himself unable to go on serving a superior he "most perfectly despises." He also made the rounds of the division, informing other officers of the dispute. Charged with unmilitary conduct for openly insulting a superior, Dunbar told the court it was intruding on a matter that "grew out of an unfortunate private misunderstanding between the parties, with which their military characters were in nowise concerned." A major insulting a major general in a letter to their commander in chief, and in conversations with other officers in their division, Dunbar believed that he had been acting privately. He believed that a general officer and his aide-de-camp could quarrel as citizens, without implicating their military identities, even while the subordinate framed the dispute as a military matter with a threat to resign his militia office over it. "The question here arises," Dunbar wrote in a challenge to the court's jurisdiction, "how far a militia officer is amenable to the military + how far to the common law for actions in themselves censurable -- or in other words, whether a militia officer is to be considered in perpetual obligation to military rules, or to yield obedience to them only on such days and at such times as they are required to perform some act of

military duty."[26] When he had threatened to resign as Crane's aide-de-camp, then, Dunbar was not acting as a military officer; he was speaking as a citizen. Discussion of the status of his military commission was not military business.

Question of identity and status became questions about the legal system itself. Dunbar challenged the jurisdiction of the court over Crane's claim that he had misrepresented the general's actions while testifying to a different court martial, an act undertaken in a plainly military forum. False testimony was perjury, Dunbar argued, and perjury was a civil offense. This jurisdictional challenge was the only one that the court accepted, agreeing that a court martial could not hear a charge of perjury alleged to have occurred before another court martial. Testimony in military trials could only be policed by civil courts. Rejecting Dunbar's other jurisdictional challenges, the court found him guilty of unmilitary conduct for two actions: writing contemptuously about Crane to the governor, and speaking contemptuously about Crane to other officers. He was sentenced to be removed from office and barred from resuming a military rank for three years, obtaining as punishment the outcome he had sought as a privilege. Insulting the general officer he served as aide-de-camp, and trying to obtain a discharge from the militia, Dunbar's discipline was that he would be freed from continued military service.[27]

Newspapers incorrectly reported the trial as an original adjudication of previously unexamined questions. "The charges were of new character, and led to the investigation

[26] Dunbar continued: "If there can be a time when militia officers can be citizens...then it must be true, that they are soldiers only when connected with military duty...The question again recurs, can words however disrespectful, spoken by a citizen to a citizen, be cognizable by the military law; common reason pronounces it an absurdity."

[27] Court Martial of Maj. William Dunbar, ADC to Gen. Crane of 1st Division, March, 1816. MNGMA, Courts Martial, Vol. 6. In Chapter Three, this court martial is briefly discussed as a social dispute between officers.

of important military principles," one story claimed.[28] But they charges were not of new character. Several versions of the same investigation had been performed in the previous years, and others would be performed again in the years to come. Like Bradish, Osgood, and Bevins, Dunbar had drawn a line between military and civil speech even while speaking to fellow officers about matters that were at least related to militia business.[29]

### "Mr. Cranston gave the orders to fire in his civil capacity"

But a few cases brought militia officers before courts martial for political speech that was plainly beyond the boundaries of military affairs. In the period studied here, the clearest effort in New England to police peacetime political speech with military law was magnificently petty, and probably undertaken in response to a mistake. On May 6, 1817, the day before a state election, the Federalist governor of Rhode Island visited Newport. He was greeted at the docks by a committee of citizens, who had borrowed an army band and federal cannon for the occasion. The committee was able to borrow artillery because it was led by artillerymen: the reception was organized by Republican members of the state-chartered Newport Artillery, and the company member Henry Cranston had made the request of the local army commander. But Henry Cranston was ordered to uniformed duty on the day of the governor's arrival, so his brother Robert took his place as the leader of the citizens' committee. Stepping into the role, Robert B. Cranston had not

[28] See, for example, the untitled notice regarding the conclusion of the trial in the *Boston Gazette*, March 21, 1816 (Vol. 45, No. 27), pg. 2. AHN.
[29] Much as Dunbar had argued that perjury in a military trial was a matter for civil courts, Ens. Lloyd Morton would argue in the same year that cheating in a militia election was "not cognizable" by a court martial. He was convicted and removed from office. Court Martial of Capt. J. Nichols, Lt. W. Simmons, Ens. L. Morton, and I. Pierce, May 1816. MNGMA, Courts Martial, Vol. 7.

asked the federal band about their knowledge of local music. As the packet ship carrying Gov. William Jones approached the dock, Cranston called for the band to play Greene's March or Rhode-Island March, but the musicians did not know either song. In desperation, with the ship preparing to dock, Cranston told the musicians to hurry up and just play something military. The drummer promptly responded by beating a loud retreat. The day before an election, the Federalist governor was greeted by a military band, led by a prominent local Republican, signaling a rout.[30]

While the precipitating event was absurd, the responses to it were disproportionately grave. Cranston was a captain in the Newport Artillery. In a letter addressed to the General Assembly, Jones reported that he had been grossly insulted, as the governor and captain-general of the state militia, by a military officer who was his subordinate. Cranston's apparent mishap had become a calculated assault on the dignity of government. Both houses of the General Assembly took unanimous votes on a resolution that called for Jones to bring Cranston before a court martial. In a move unsupported by law, the legislature also suspended Cranston from the exercise of his military office pending the outcome of the trial.[31]

Honor gave men a vocabulary to discuss these boundary disputes, but also raised new questions over the dimensions of military authority. As members of the Newport Artillery learned that their captain had insulted the governor, the company perceived a threat to its

[30] A newspaper account differs from testimony in Cranston's court martial, and suggests that the mistake took a slightly different form. In this account, Cranston ordered the musicians to play the songs they did not know, then "requested them to play a retreat, the regular evening *lullaby* in garrison; but immediately recollecting that the irritable nerves of the listeners might be affected, he directed the musicians to strike up Yankee Doodle, which was done, and the gentlemen landed under this enlivening national tune." This account was a response to a pseudonymous correspondent's sarcastic inquiry if he could go on "thrumming on his violin" without worrying that he would be brought before a military tribunal for accidentally insulting a passing politician. See the "COMMUNICATION" and untitled response "In reply to our correspondent...", *Providence Patriot & Columbian Phenix*, June 28, 1817, pg. 2. AA.

[31] These legislative measures were reproduced in the printed trial record, cited below.

collective honor. At a company meeting, the members voted to convene a "court on inquiry," a tribunal they had no authority to appoint, to examine the events in question. Meeting on June 9, the informal court voted to "request" Cranston's attendance for an inquiry on the following evening, describing itself as a company committee. Insulting the members of his own company, Cranston ignored their request, as the company journal would note with clear distaste: "This communication was treated with neglect if not with contempt by Capt Cranston who has not thought proper either to appear before the committee or to give any answer in writing to their communication." Recognizing that they had no power to compel witnesses to appear before them, the committee pursued evidence by similarly informal means, reporting on the individual inquiries each member had pursued during the day. Convinced that Cranston had ordered the band to play the retreat, though with unclear intent and timing, the supposed court of inquiry concluded that the events on the dock called for a real military trial: "Voted that the commanding officer of the company be directed to prefer charges and request his Excellency the Governor to call a Court Martial on Capt Robert B Cranston Ensign of the company." Condemned by the legislature, Cranston was also condemned by his own colleagues in an extralegal trial conducted by a tribunal of a selective military company.[32] Cranston's own sense of honor carried him across a set of boundaries, the legitimacy of which varied. The captain had landed in legal trouble because of an accident, but he compounded that

[32] "Records, Newport Artillery, Vol. 2: 1794-1825" (handwritten company journal). NHS, Records of the Newport Artillery Company, Box NA1. See the (surely misdated) entry of June 19, 1817, reporting on the company vote, and the later entry of June 12, which reports on the proceedings and findings of the court of inquiry. Other company records show that Cranston was well-known to the company, having been a member since 1812, and had very recently been elected captain. Cranston was the "ensign" by position, the junior officer of the company, but held the rank of captain in a company commanded by a colonel. Regarding his election, see the entry of April 29, 1817 in the same volume. Another handwritten volume in the same collection, "Newport Artillery, Enlistment Roll, Feb. 1, 1741 to March 4, 1913," shows Cranston joining the company on April 28, 1812.

trouble with an important and deliberate decision to both disobey the state and disregard the shared sense of his colleagues. Correctly believing that the legislature did not have the lawful authority to suspend him from office by resolution, Cranston appeared on June 27 at the next official event of the Newport Artillery, armed and in uniform to escort President James Monroe during a local visit. Repeatedly ordered by his lieutenant colonel to "retire from the company," Cranston repeatedly refused, and the company's major -- who had been the president of the company's recent informal court of inquiry -- arrested him again. In this exchange, order and disorder fragment into a jumble of scattered pieces: Cranston disobeyed an unlawful order promulgated without legitimate authority by state officials to impose institutional order and discipline, while a major who had led a legal tribunal that had no lawful authority to exist was demanding that a captain rigorously honor and comply with the limits of the law.

Officers in legal jeopardy over their speech acts signaled a sense of shared peril to their entire status group. Brought finally to trial, Cranston warned the officers serving as members of his court martial that they would damage themselves by hearing the charges against him. First establishing the principle, Cranston argued that a member of the militia ordered to active service was subject to military discipline, but "a citizen enrolled in the militia is still a citizen, with all the rights and immunities of a citizen; he is not a solider, though liable to become one in the cases to which I have before alluded; but until then, martial law and Courts-Martial have nothing to do with him." Then came the warning: "If they have any thing to do with him, then every able-bodied male citizen, from the ages of 18 to 45, are subject to martial law; a thing they never dreamed of." The men trying Cranston's case were militia officers, able-bodied men between the ages of eighteen and

forty-five; if they proceeded to trial, they would establish a precedent that would place them under military jurisdiction for their private actions. They shared Cranston's status, so they shared his peril. In his closing statement, Cranston would extend the argument, raising the hypothetical case of a newspaper publisher subject to military duty: if the civil speech of militiamen could result in a military trial, could printers be punished by court martial over the content of the public press? A military conviction for private speech threatened to bring whole categories of civil society tumbling into the trap of martial discipline. In Cranston's formulation, his objection to the charges against him was a public duty. "I owe it to my country, myself, and my friends, to object formally, as I now do, to the *legal jurisdiction* of this Court, to try me by Court-Martial, upon the charges which are preferred against me." Refusing the premise that he could be tried as a soldier for his actions as a citizen, Cranston argued that he was serving his country; he was marking a boundary of unmistakable importance.

Testimony proved the point. Over Cranston's written objection -- regarding which they "gave no opinion as to its sufficiency or insufficiency" -- the court proceeded to a Saturday morning trial that quickly established the validity of his position. Several witnesses testified that the army band and artillery had been borrowed on behalf of a group of citizens rather than at the request of the Newport Artillery. A prosecution witness, John Yeoman Jr., testified that he had been on the docks and heard the military drummer beat a retreat, though he didn't hear Cranston give the order for it. Asked by Cranston if he had appeared as a military officer or a citizen, Yeoman answered unambiguously: "As a citizen, and none but citizens assisted in the management of the guns." Another witness from the docks, William N.G. Helme, testified that he was

himself a commissioned officer in the militia, and that he had recognized no sign of military authority in Cranston's appearance as master of ceremonies. "Mr. Cranston gave the orders to fire in his civil capacity," Helme told the court. "He had no side arms or uniform -- he had a rattan, I believe, in his hands." Most important, the commander of the Newport Artillery testified on Cranston's behalf: "Colonel LEVI TOWER, sworn and examined, states, that the Company was not ordered out, and that Captain Cranston was not on duty as a member of the Artillery Company that day." From the first moment at which anyone had discussed the reception for Jones to the moment at which the event concluded, every action had been plainly undertaken under civil premises, by men acting as citizens.

Though Cranston's warning had not taken immediate effect, the members of the court came to see his point about shared peril. With clear evidence that the captain had not acted as a militia officer, the court agreed that they could not return a verdict. Adjourning for two days, the members of the court returned on a Tuesday morning to deliberate on the charges relating to the ceremony at the docks, finally ruling that "the jurisdiction thereof be not sustained." The next morning, the court reached a similar conclusion regarding the charge that Cranston had exercised military command against a resolution of the General Assembly. That charge had been framed as an allegation of contempt for the legislature, a matter Cranston had argued could not be tried before a military court. Jones had lost the election; the new governor, a Republican, approved the court's findings without comment.[33]

[33] *Proceedings of a General Court Martial Holden at Newport, August 1, 1817, for the Trial of Captain Robert B. Cranston of the Newport Artillery, as Officially Reported by the Judge Advocate* (Providence: Miller & Hutchens for Jones and Wheeler, 1817). American Antiquarian Society, Dated Pamphlets.

In disputes over contested matters of discipline and authority, disobedience could be survived without the stain of dishonor. Widely condemned by other men but ultimately released from legal charges by a court, Cranston emerged from his ordeal to remain a prominent and respectable citizen, thriving under a social verdict that apparently accepted both his accidental insult and his deliberate disobedience. Cycling through a long set of local and state offices that included both houses of the General Assembly, Cranston would also be elected to federal office, serving four terms in the House of Representatives.[34] He deliberately refused to obey the decision of the Rhode Island legislature, then joined it as a colleague. Cranston had felt shamed by his arrest, but it caused him no lasting dishonor; his ordered disobedience had been socially adjudged proper and understandable even by the company that had called on the governor to bring charges against him. Cranston was elected as the Newport Artillery's lieutenant colonel the year after his court martial.[35]

The significance of Cranston's court martial is suggested by the record of a division court martial held later the same year in Massachusetts. Brought to trial on charges of disobedience, neglect of duty, unofficerlike conduct, and conspiracy to resist lawful orders, Lt. Joseph Peabody filed a printed pamphlet with the court: the published record of Cranston's court martial, completed just a month before. Like Cranston, Peabody had

[34] For a brief overview of Cranston's political career, see his listing at the Biographical Directory of the United States Congress, http://bioguide.congress.gov. Cranston's career can also be tracked through notices in local newspapers. See, for example, "Robert B. Cranston," *Newport Mercury*, June 16, 1827, pg. 2, which announced that Sheriff Cranston had been appointed postmaster.

[35] Whatever shame Cranston's trial left behind seems to have fallen on the members of the General Assembly, with a published reaction greeting the court's decision as the conclusion of "this most ridiculous and contemptible farce." Cranston had been brought before a court martial, declared a Republican newspaper in Providence, because "a few *little men*...thought it a most excellent opportunity to stab the Republican body, through the vitals of an innocent individual." See "COURT-MARTIAL," the *Rhode-Island Republican*, Aug. 13, 1817, pg. 3. Regarding Cranston's election as lieutenant colonel, see "Records, Newport Artillery, Vol. 2: 1794-1825," entry of April 18, 1818.

voluntarily attended a ceremonial reception for an elected official, leading the Salem Light Infantry during a July visit of President Monroe.[36] Also like Cranston, Peabody had been brought up on charges for the music a band played by a military band under his leadership: while Monroe, accompanied by the governor, had been passing a line of militia in review, Peabody had ordered or allowed musicians in his company to strike up a tune "in the centre of the said Company." That grossly indecorous decision, wrote Lt. Cols. John Russell and Benjamin A. Dix, was "highly injurious to the reputation of the troops then and there assembled." Worse, the musicians should not even have been present to begin with, as his superiors had previously ordered him to send the musicians "to the right of the line, as is agreeable to military forms and usages in the like cases." Refusing orders and calling for inappropriate music during a politically important military ceremony, a company commander appeared to have willfully insulted the President of the United States in a way that would make the insult seem to have come from the militia of commonwealth.

Peabody's defense followed closely along the lines that Cranston had taken. Brought before the court, the lieutenant protested "that he is not by law bound to answer in a military court for any offences supposed to have been committed by him on the day charged in the complaint, and that this court has no legal jurisdiction to try him for any supposed offences committed on that day." The brigade order for the parade in honor of the president had merely requested, not ordered, that militia officers ready their troops, muddying the categories of consent and command: "although the parade will be voluntary, a prompt and cheerful compliance with necessary arrangements is expected."

[36] Monroe was on the same presidential tour that had led to Cranston's second arrest, a short distance up the coast.

In Peabody's handwritten closing statement to the court, the argument against the court's jurisdiction is firmly underlined: "I am not guilty, because at the time that the supposed offence was committed, I was not on such duty as is required by the militia law, nor on any duty by virtue of the regular orders of my superiors." Despite being in uniform and at the head of his company, Peabody had merely been asked to participate in a militia event; standing at the head of a military formation, he did not regard himself as a soldier, subject to military discipline.

Arguing in support of charges similar to those brought against Cranston, Peabody's superiors tore down the wall between military and civil identities. In an 87-page statement to the court, Russell and Dix examined the established practices of the Massachusetts militia, insisting that custom made their case. "We consider all the different corps who join together voluntarily at a parade, + all who compose them as subject to the same rules + principles while actually on parade as if the meeting was under the militia law." No statute applied, but it was no matter; Peabody's actions were "offences against common law military, that law whose obligation arises from usage...So in military law the most important part is common law." The argument against Peabody was as muddy as his orders. Required to comply immediately with voluntary measures, the lieutenant was tried by military law even when it did not apply, because quasi-military events created circumstances "as if" it did. Peabody was held to have appeared privately in a military capacity. The regulatory order of the militia was built on whole systems of presumptions, guesses, and blurred premises.

Military courts came up with different answers to similar questions. In deliberations that were not recorded, the court in Peabody's case "decided that their jurisdiction in this

case be sustained." But the court did not convict Peabody on the charges related to his supposedly unmilitary behavior on the parade field. Rather, they found him guilty only on a single count of disobedience, for refusing the order to move his musicians to the right of the line, and sentenced him to be reprimanded. Maj. Gen. Amos Hovey approved the sentence. Finding that the military justice system could discipline a militia officer for behaving inappropriately in front of the president and governor during a voluntary event, the court declined to require that discipline. It claimed a form of authority that it did not use, and imposed only mild punishment for a more plainly military offense.[37]

Questions of military authority also had a popular reception, being subjected to the social authority of the people who were subject to formal systems of state control. Shortly after the court's verdict was announced, the Salem Light Infantry Company met and voted "that we heartily approve of the conduct of Lieut. Peabody in refusing the band to Col. Russell at the time the President of the United States reviewed the troops on the common in this town." Convicted by a court, Peabody found his military subordinates united in their approval of his decision to refuse an order from a superior officer. Disobedience was put to a vote and approved by all ranks, held by common acclamation

[37] Court Martial on Lt. Joseph Peabody, Jr., Sept. 1817. MNGMA, Courts Martial, Vol. 7. The printed record of proceedings from Cranston's trial is still bound into the back of the record of proceedings in Peabody's trial, annexed with the trial documents. A comparable case tried in the same state during the same year followed the decision of a group of militia captains called their companies together for informal practice. One of the captains cursed and struck a private who had insulted him, then argued before his court martial that he had not been a militia officer at the time, since the companies had merely struck a private agreement to assemble. A written statement filed by the captain's attorney is the last document annexed at the back of the trial record: "That if it should be proved that he was guilty of any impropriety on the fifth of June last, it was not while he was in the exercise of his office of Capt of a militia company, or in the command of troops legally assembled or in his character as an officer, but as a private citizen." Court Martial of Capt. Charles G. Clark, December, 1817. MNGMA, Courts Martial, Vol. 7. In another Massachusetts court martial held in 1819, another captain who had struck a private claimed that he had done so after his company was dismissed. The matter, therefore, was "subject to enquiry before a civil, not a military tribunal," the captain claimed. Court Martial of Capt. John Bacon and Lt. Edward Kimball, Jr., 1819. MNGMA, Courts Martial, Vol. 9.

to be proper. The next year, Peabody was elected captain of the Salem Light Infantry Company.[38] Like Cranston, he was at last socially acquitted of dishonor.

## "His officers and men were opposed to the order"

The decision of the Salem Light Infantry Company to vote their approval of an act condemned by a court martial reflected a model of authority that still, two decades into the nineteenth century, held the militia to be contractual and associational. Formal systems of authority were subject to social evaluation. Matters brought before courts martial could be informally re-adjudicated by a company meeting. But this conception of shared authority is nowhere as dramatic as in the 1821 court martial of Col. Leonard Blodget, a regimental commander in the Rhode Island militia. In Blodget's case, a parade field conflict between the colonel and his brigade commander had ended with a violent confrontation involving the entire regiment. The dispute between the regiment and its brigadier was at its heart a conflict between informal and formal authority, and centered on an important disagreement over the degree to which social custom and the premise of mutuality could limit the reach of the military hierarchy.

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[38] George Mantum Whipple, *History of the Salem Light Infantry from 1805-1890* (Salem: Essex Institute, 1890), pp. 18-20; quote is from 19. The vote of the company was recorded by the company clerk, Joseph A. Peabody. Printed reactions suggest more limited support for Peabody outside the ranks of his company. After the *Essex Register* printed the verdict, sentence, and statement of reprimand against Peabody, the Salem Gazette rebuked the other newspaper for divisiveness, demanding that it apologize for printing matter "calculated to provoke." The publication of Peabody's reprimand was a provocation because it split local opinion: "We have been aware that the decision of the late Court Martial in this town has not united public opinion, and that doubt remains of the justice of its sentence in the minds of many officers and citizens." See "Division Orders" in the *Essex Register*, Oct. 18, 1817, pg. 3; and "Court Martial" in the *Salem Gazette*, Oct. 21, 1817, pg. 3. AHN.

The record of the incident that led Brig. Gen. Joseph Hawes to bring charges against Blodget makes clear the fundamental nature of a dispute between hierarchy and association. On Sept. 21, 1821, the 2nd Regiment of the 2nd Brigade had completed its regimental parade and inspection on the field in Providence that it ordinarily used for that purpose, with Hawes looking on as an observer. Blodget prepared to march the men under his command off the field and to the bridge where they were, by long custom, always dismissed. But Capt. E.R. Billings, Hawes' aide-de-camp, approached Blodget with an order from the brigade commander to immediately dismiss the regiment in place.[39] After a brief exchange, Billings returned to the brigadier to relay Blodget's refusal. Billings would later tell a court martial what had happened next, in a statement that delineated two sharply different conceptions of authority: "The general rode up to the head of the column, and asked the colonel whether he would obey his order or not. The colonel replied, that his officers and men were opposed to the order. The general then replied, No matter, sir; it is your duty to obey the commands of your superiour officer." The collision between Hawes' question about obedience to men above and Blodget's answer about the consent of men below reveals, in a single exchange, an entire conflict in the early republic over the sources and limits of power. To Blodget, a superior officer's

[39] Several times during the years discussed here, militia officers similarly contested the authority of superiors to decide where their units should assemble for training, arguing that chosen sites were inappropriate, contrary to custom, and unfair to men who would have to travel long distances to meet their military obligations. Taken together, these cases and the Blodget court martial describe militiamen and middling officers who believed they had a customary right to decide where they would assemble and be dismissed. *Where* was a question to be determined by consent, and usually reflected the desire to place events at a central point for the men who were required to attend them. See, for example, *Trials by Court Martial of Capt. Samuel Watson 2d, David Livermore, Daniel Kent, and William Prouty* (Worcester: Henry Rogers, 1811), pg. 17 ("He observed that he was as willing to be mustered at Worcester as at Leicester, if he could think the colonel had any right to order him there."), passim. Also see Court Martial on Lt. Col. Abner Goodell, October 1822. MNGMA, Courts Martial, Vol. 13. Among many charges, Goodell was accused of telling two captains not to turn out for a regimental review ordered by a colonel. At trial, his defense was that the review had been improperly sited at "the extreme south western limits of the Regt." He was found guilty of the charge.

authority was bounded by affinity and agreement, and he could not give an order with which his subordinates would not agree. Command could shape consensual action among men who shared service in a common cause, but could not transgress its limits. Hawes thought that consent was "no matter," a fact that could not bind higher rank.[40]

The premise of consent was broadly apparent on the parade field. Having articulated an idea of authority premised on agreement and exchange, Blodget set out to enforce that premise in a way that showed the regiment's commitment to it. In the brief lull between his conversation with Billings and his confrontation with Hawes, Blodget spoke with at least one of his subordinates, Maj. Edward S. Williams, who commanded the regiment's second battalion. Williams would later tell Blodget's court martial that his commander had walked over to discuss the order he had received to dismiss the regiment in place: "he asked me what was best to do?" Williams told Blodget that he was prepared to separate the regiment, and Blodget walked away without responding. At the trial, Blodget asked Williams what information his statement on the parade field had been intended to convey. The major explained, "The idea I meant to convey was, that I was willing to march off the second battalion, let the consequence be what it would." More importantly, Williams added that his offer was consistent with an agreement he would make moments later with Lt. Col. Job Angell, the commander of the first battalion, "which was, that we should march off the battalions different ways, in order to take responsibility upon ourselves, as I was fearful the colonel would comply with the order to dismiss." Angell told the court much the same thing, agreeing that he and Williams had agreed to break apart the

[40] *Report of the Trial of Leonard Blodget, Colonel of the Second Regiment, on Charges Preferred Against Him by Joseph Hawes, Brigadier General of the Second Brigade of the Rhode-Island Militia, Before a General Court Martial, Holden by orders from the Major-General, Which Convened at the State House in East-Greenwich, October 23d, 1821* (Providence: Miller & Hutchens, 1821). Huntington Library.

regiment because "the major and myself did not know what the colonel's decision would be respecting the order he had received from the general (as I understood) to dismiss the regiment on the field." Discussion and agreement were breaking out all over the parade field. Refusing to obey an order from his immediate superior, Blodget was well within the boundaries that his regiment placed around rank-centered, top-down authority. His own battalion commanders were prepared to enforce the regiment's refusal to obey Hawes, and to do so against the wishes of their regimental commander, in the event that Blodget decided to honor the brigadier's command. A colonel consulted with a major to ask if he should obey a superior, while the major was "fearful" that the colonel would obey an order from a brigadier general. Proper authority was consultative, and an officer could not properly give obedience to higher authority that was not properly exercised.

The moments that followed these discussions on the parade field suggest the ferocity of this divergence of premises. Capt. Caleb Williams would testify that Blodget and Hawes had an exchange at the head of the regiment over the order to dismiss, and that Blodget ended the exchange by confirming his refusal to obey. "The general then said, colonel Blodget, I arrest you -- consider yourself under arrest." But the regiment was already moving off the field, starting forward on an order from a source that no witness could identify. Hawes rode to Angell, who was nearby, and informed him that he had placed Blodget under arrest. With Blodget removed from command, Angell was the acting commander of the regiment. Hawes gave Angell the same order he had given Blodget, but the lieutenant colonel responded to the order by shouting "forward" at a regiment that was already on the move. "The general immediately wheeled his horse towards the troops, and took the command in person. He ordered the troops to halt.

Witness heard, as he thinks, captain Rathbone order, 'forward.' The general then repeated the order, 'halt these troops,' when the word 'forward' was repeated by a great many." As the regiment moved forward against the repeated order to stop, Capt. Williams watched it also turn against Hawes in direct physical confrontation: he "saw three or four of the men strike his horse with their guns," apparently attempting to make it run or rear. No one had actually struck Hawes, but men in the ranks began to shout a threat of a more direct and dire attack: "The words, 'fix bayonets' were exclaimed by a great many."[41] Finally, the brigadier's aide-de-camp "advised the general to retire," and he did, riding off the field with his staff officers.

Blodget's conception of his regiment's willingness to agree to a command from above had been correct: his officers and men were opposed to the order. What Hawes saw was not what happened. The decision to disobey Hawes had become visible to the brigadier with Blodget's refusal, then had apparently spread to the actions of both of his battalion commanders, and then to all of the men in the ranks around the head of the regiment, who shouted "forward" and "fix bayonets" over a general officer ordering them to stop. But the sequence in which disobedience became apparent from above was not the order in which it had taken form from below. As the colonel had effectively warned Hawes in their first direct exchange, the regiment's refusal to obey an order that violated its custom would be undertaken by acclamation.[42] It was a consensual disobedience, and the men

[41] It is unclear from the surviving records whether or not anyone actually did fix bayonets, but New England militiamen sometimes did so during training day disputes. I discuss two such incidents in Chapter Three. The evidence of those moments suggest that the decision to make a show of readying bayonets for use on the training field was understood to be a moment of exceptional seriousness, not simply a piece of angry posturing.

[42] Though the disputes were not identical, the 2nd Regiment's refusal to obey its brigadier general's order on the grounds of mutuality and custom may be generally compared to the early-Revolutionary War refusal of the Philadelphia Committee of Privates to accept the Pennsylvania Assembly's appointment of brigadier

who agreed to it signaled their willingness to defend their agreement by violence. The regimental commander was following his regiment as he decided how to command it. That consensual performance continued until it was complete, and no further actions could be taken. Angell and Williams marched their battalions in different directions, splitting the regiment so it could not be commanded in its full form. But they were only temporarily separated, as Angell told the later court martial: "After the companies were dismissed, the captains volunteered to march to the bridge." Broken apart over its refusal to recognize a starkly hierarchical form of authority, the regiment informally gathered again according to its custom, doing so by accord. Released as members of a military organization, the men who constituted that organization declined to simply go home; instead, they honored their own custom with a voluntary act after the end of the training day, gathering the companies of the regiment in kinship rather than under the premise of command.

The record of Blodget's trial expands and makes explicit the competing premises that led to the conflict between Hawes and his second regiment, although it also complicates and weakens Blodget's original position. In a long closing statement, Hawes warned the court that their failure to convict Blodget would have dire consequences for a military institution. If an officer could disobey a superior and escape punishment, he wrote, "there is an end to all military subordination -- the inferior officer is placed upon an equality with his superior, and military orders are converted into mere requests." He warned them, too, against accepting any construction of military law derived from custom. But most

generals to the command their militia of association. See Rosswurm, *Arms, Country and Class*, pp. 80-81 and pp. 97-100.

significantly, and most surprisingly, Hawes spoke about the militia as a national institution built from federal law:

> The powers of a major general or a brigadier-general, or any other officer enumerated in the laws of congress are uniform throughout the United States. A colonel of a regiment in Rhode-Island has the same power and is subject to the same control as a colonel of a regiment in Maine or Georgia... This honorable court are now called upon to determine not a mere local question applicable only to the second brigade or to the second regiment of the militia of Rhode Island, but a question equally applicable to all the brigades and regiments of the militia in the United States. This strikes at the root of local usage, for such a usage must be illegal and void if it derogates in any degree from the authority vested in each officer by the law military of the United States.

Six years after the Hartford Convention, a New England militia officer made Congress the principal authority over the militia, an institution that he depicted as functioning the very same way in the coastal Northeast or the Deep South. The Georgia militia was just like the Rhode Island militia, uniformly structured and run under as a statutory system.

Arguing for the homogenizing authority of federal law, Hawes was contending against history and practical reality. The Rhode Island militia had a deeply rooted political culture -- "Quaker mob government," in the eyes of its detractors -- that pulled power away from the center. As Daniel Jones has written, colonial Rhode Island had "a highly localistic form of government, reflecting in political form the religious beliefs of a people who preferred congregational autonomy and local liberties to the power of a centrally established church." This multidimensional commitment to local authority continued into and through the Revolution, though Jones notes that its particular forms gradually diverged in the eastern and coastal areas of the new state. Military affairs tended to be as locally oriented as civil affairs, and "Rhode Island municipalities often exercised

responsibility for local military defense," as when Newport devised its own military plan for defense against British attack in 1775.[43] Hawes was arguing for a highly centralized, federally defined militia in a place where even state and previous colonial control of the militia had long been somewhere between tenuous and absent. He gave the Rhode Island militia a structure and a system that it did not have.

But the opposing premises shifted, and Blodget's defense in court was not his defense on the parade field. Assisted and spoken for by legal counsel, an unusual arrangement in the state courts martial of the period, Blodget advanced a long set of arguments beyond his original claim. A closing statement by his prominent lawyer, Col. Samuel Young Atwell, focused closely on the state militia law, which gave no explicit and direct authority over a single regiment to a brigadier. State law allowed a brigadier to order a regiment to train, Atwell argued, but the law "gives him no power or authority over the regiment after they have assembled." What's more, Atwell argued, federal law gave only the brigade inspector the explicit duty to attend regimental training; if the law had meant for a brigadier to watch over regimental training and directly supervise the regiment, it would have plainly given him that authority. Like Hawes, Atwell warned the court against the implications of the decision they would make, arguing that Hawes' reading of statutory law would have a long echo in the militia. If a superior officer could approach a subordinate unit and issue direct commands to it, "our laws would contain the military absurdity of two separate and independent commands over the same body of troops." No

[43] Daniel P. Jones, *The Economic & Social Transformation of Rural Rhode Island, 1780-1850* (Boston: Northeastern University Press, 1992), pg. 4. An earlier historian, examining the structure of colonial New England militias, shrugged at the impossibility of describing the Rhode Island militia in that era: "Few generalizations may be drawn from the Rhode Island system save that it was changing and being neglected all of the time." Morrison Sharp, "Leadership and Democracy in the Early New England System of Defense," *American Historical Review*, Vol. 50, No. 2 (Jan., 1945), pg. 257, n. 69.

available evidence explains this courtroom strategy, but it suggests that Blodget doubted the potential effectiveness of an argument about custom. An absence in the record more strongly suggests that Blodget doubted the helpfulness of a discussion about consent premised on an associational model of militia obedience. The defense statement delivered by Atwell makes no direct reference to the willingness of the men under his command to comply with Hawes' order. On the parade field, Hawes had made an argument about the formal authority created by statutory rank structure, and Blodget had responded with a statement about what the men under his command would agree to do; in court, Hawes extended his argument, and Blodget changed his. "From these considerations," Atwell concluded, "it would appear that general Hawes had not, by the statute military law, any right to issue the orders in question." In court, Blodget met an argument about federal statutory law with an argument about state statutory law.

But the premise of shared practice was not altogether abandied. The court trying Blodget's case had heard testimony about local custom, and Atwell would briefly return to the point. A former commander of the regiment, Colonel Henry G. Mumford, had appeared as a defense witness, testifying that the regiment had always been dismissed "at or near the bridge." Blodget's lawyer used this evidence about local practice, precisely the thing that appeared to be most at stake, in a notably weak formulation: "There is but one other source from whence the prosecutor in this case, could derive his authority to issue the order, the legality of which is in dispute, and that is *custom*. I need not detain the court, on this point, as the evidence is in their possession, and it is not pretended that such a custom ever existed, but directly to the contrary." Custom had become a tertiary

defense. It was something that Hawes could not use to support the charges in the case, not something that Blodget could use directly to defeat them.

Despite that tactical shift, the trial record adds an additional layer of social meaning to the dispute between Blodget and Hawes, suggesting the significance of custom at the same time it appears to move custom to the background. But the transgression against custom discovered in court was not the transgression discovered at the end of the regiment's training day. The confrontation on the parade field had taken on the appearance of a dispute without a class dimension, unifying the men in the entire range between the place of a colonel and the place of a private; below Hawes, officers and men in the ranks acted out a display of shared premises and social accord. But this moment was not plainly and entirely egalitarian. Mumford testified in detail about the customary relationship between the regiment and its brigadier, who had long attended and observed regimental training. Previous brigadiers had commanded the regiment on the field, "by consent of the colonel; and I have known the privilege refused to the brigadier... I have known general Carrington [to] have an understanding with colonel Gladding, and he has commanded in person. I have known him ask leave, and that it has been refused by the colonel." At the end of a training day, Mumford testified, the brigadier customarily separated from the regiment, with careful ritual, as an honored guest: "The two years that I commanded, the general was escorted from the ground; the regiment paraded on the bridge, where it was dismissed; and the brigadier-general rode to his home with the field officers." In substance and in tone, Mumford's testimony suggests gentlemanly mutuality, not democratic mutuality. Asked again in court if he had known the brigadier to command the regiment, Mumford phrased his response in terms that referred to

exchange, not to law and formal structure: "I have, by consent of the colonel; and I have known the privilege refused to the brigadier." Regimental officers and brigade officers had treated one another as fellow gentlemen: consulting, asking leave, granting and refusing privilege, agreeing, engaging superiors in ceremonies of social honor. Then Hawes had spoken to Blodget as merely a military subordinate, sending him an order through a captain and decreeing the end of the training day before he had been honorably escorted from the field. In effect, Hawes had assaulted his own status, abnegating gentlemanly exchange with Blodget and denying himself the moment at which the regiment would show him its social respect. He had been crass while occupying a substantial rank. Insisting on his military authority, he had dangerously undermined his social authority.

Social perceptions of character colored institutional disputes over legal boundaries. The significance of this discussion about gentlemanly status is made clear by a line of defense that Blodget had pursued throughout the trial, identifying and foregrounding his own commitment to correct deportment. Though it is not clear from the record if Blodget or Atwell asked these questions, every prosecution witness was asked a version of the same question: "Q. Was colonel Blodget's conduct insolent or turbulent; and did he not treat general Hawes with personal respect?" All agreed that Blodget had spoken to Hawes as a gentleman, respectfully refusing his obedience. After that testimony, Atwell's closing statement argued that Blodget could not be convicted on a charge of disorderly behavior, since his disobedience had been ordered and deferential. He had disobeyed, but had not dishonored; military disobedience could be respectful. The conflict of premises, and the exasperation it caused Hawes, leap from the pages of his written rebuttal:

> If a refusal to obey an order is not disorderly, if acting contrary to orders is not disorderly conduct in a military officer, then there is no meaning in words. I do not charge colonel Blodget with having treated me with personal disrespect as an individual, but I charge him with having treated me with disrespect as an officer, with having denied my authority, disobeyed my orders, and in the face of his regiment, setting himself the first example of military insubordination which was followed by the first battalion, in his presence, in so disgraceful a manner. And I am now to be told that all this was done with the most perfect respect towards me personally, and decently and in order. This might pass for irony, but I think too well of your understandings to suppose that it can pass with you for argument.

Though Blodget had changed the boundaries of his argument in the space between the parade field and his trial, he and Hawes were still having a different conversation: Blodget continued to be engaged in a discussion about social standards alongside his statutory argument, and Hawes was still stubbornly focused only on formal authority. He appears to have never noticed the boundaries of the discussion, responding with consistent incredulity to arguments about social status and conduct.

The conclusion of Blodget's court martial demonstrates the ways that their conflict of premises was widely shared. After deliberations that were not recorded, the court -- composed of two brigadier generals, three colonels, two lieutenant colonels, two majors, and four captains, a broad representation of officer ranks -- found Blodget guilty of every charge that he faced, and ordered him "broke," or stripped of his rank and command. But the verdict and sentence of a division court martial required the approval of the small state's single major general, and Maj. Gen. Albert C. Greene substantially changed the punishment that Blodget would face. Writing that he agreed with the sentence and approved the verdict, Greene then announced that he was still compelled to reduce Blodget's punishment: rather than being deprived of his rank, the colonel would only be

suspended from command for thirty days, "at the expiration of which time his sword will be restored to him." Explaining his decision, Greene revealed both his acceptance of Blodget's social premises about obedience and his recognition that Blodget and Hawes had fought over a question about authority that no one had been able to answer. He was reducing the sentence, he wrote, "in consideration of the general good character of the prisoner as an officer, and of the contrariety of opinion heretofore existing on the question decided by the court." Blodget was socially honorable, and so had to be judged on different terms, especially as his disobedience took place over a widely shared dispute about the nature of military authority. The unanimity of the court did not reflect unanimity in the militia.

Printed responses to the verdict and its mitigation suggest the difficulty of the questions that Blodget had raised, and show their importance. First, a Providence print shop soon published the trial record in pamphlet form, "at a considerable expense and trouble to the Publishers," and explained at the front of the pamphlet that they had done so because of "its utility to the officers of our militia" and the significance of the matters the record discussed: "It furnishes a manual of precedents, at once copious, and intelligible -- while the point of law which it elucidates and decides, will leave but one opinion on a question, which, though much discussed within the last five or six years, has now, for the first time, received a legal adjudication." This claim represents the triumph of hope over experience, since the legal resolution of the much-discussed question had been muddied by the disagreement of the general officer who reviewed and reduced the sentence. The manual of precedents clearly did not bring people to "one opinion." Acknowledging a long debate over the dimensions of authority, a publisher invented a

clean resolution to that debate. The evidentiary value of the statement, though, is that it points out the presence of the debate. The conflict between Hawes and Blodget was not the only one of its kind, but was instead the only one of its kind to go to trial and leave behind a printed record.[44]

Second, responses published in newspapers expressed disgust and confusion over Greene's decision to substantially reduce Blodget's sentence, and these responses suggest other dimensions to both the conflict and the uncertainty it reflected. Certainly, wrote "Q. In a Corner," "*mitigation* cannot be tortured into meaning that he may destroy the sentence of a Court-Martial, and make one of his own." Pondering Greene's order, this correspondent thought it was "calculated to excite disagreeable feelings in the mind of anyone who regards the reputation of the State and the respectability and honor of its militia."[45] In a case that reflected confusion over the boundaries of militia authority, correspondents argued that Greene had exercised power that he did not possess. A contest over the exercise of disputed militia authority had opened a second dispute over the limits of militia authority, creating more disharmony in the course of an effort to settle the initial disharmony. Similarly, a Newport newspaper published an anonymous letter under an introductory note saying that they had not planned to discuss Blodget's court martial. The letter was being published, the note concluded, because the course that Greene had taken "reflects so such discredit on our State, and on the military system at large, we cannot refrain from offering our manifestation against such an outrage." The subsequent letter accused the major general of usurping a form of power that did not belong to him,

[44] See also a untitled short article in the *Providence Gazette*, Oct. 6, 1821, pg. 2, noting that Blodget would be brought before a court martial: "We hope their determination upon the subject will settle a long agitated point of considerable military importance."
[45] "For the Patriot," *Providence Patriot*, Nov. 10, 1821, pg. 3. AHN.

wiping away "as with a sponge" the laws of the state and the findings of the court. In this telling, Greene's choice compared poorly to the performance of the officers who had served on the court martial. Faced with the hard duty of pronouncing the guilt of a "brother officer," the court had "marched right forward to the faithful and prompt performance of that duty." To convict and cashier Blodget was unmistakably necessary and correct; to mitigate his sentence was a cowardly assault on order, and a usurpation of lawful authority.[46] "Q. In a Corner" also reminded readers that Greene and Hawes had a personal history that made Greene's decision more questionable: Hawes, a Republican, and Greene, a Federalist, "were rival candidates for the office of Major General at the last May session," where the Republican legislative majority had chosen the Federalist brigadier for promotion.[47]

Convicted and lightly punished for disobedient behavior, Blodget also faced a social verdict as his actions and his trial were publicly discussed. This verdict suggests that Greene's view was widely shared: three years after his conviction, Blodget's name appeared on the list of the "gentlemen" elected as officers in the Providence Association of Mechanicks and Manufacturers, as he took a place on its select committee.[48] As with Cranston and Peabody, Blodget's high-profile disobedience, and his conviction by a court martial, had not cost him his respectability. Blodget had argued that his decision to disobey had not been not disrespectful, and his argument was stamped with social

[46] "Newport. Wednesday, November 21, 1821," *Rhode-Island Republican*, Nov. 21, 1821, pg. 2.
[47] Greene had been chosen as Major General of the State over Hawes by one vote. See the untitled notice on the choice of civil and military officers by the General Assembly in the *Newport Mercury*, May 5, 1821, pg. 2.
[48] "Providence Association of Mechanicks and Manufacturers," *Rhode-Island American*, April 16, 1824, pg. 2.

validity. A gentleman could properly refuse and disobey authority he regarded as improper, if his view was widely shared.[49]

The persistence of custom against formal authority reflects the duration of the unsettled question at the heart of this dispute: in 1821, Joseph Hawes claimed a 1792 federal law as the source for his authority. His claim produced furious opposition. Twenty-nine years of statutory structure had not produced settled order. The law never grew more sure or less sure; it lingered in a haze, persistently undeveloped in practice.

## "He Was There as a Private Citizen"

Militia officers and state officials repeatedly asked the same questions, which were often answered differently and never fully resolved. The boundary between military and civil identities, in particular, remained persistently unclear. This questioned boundary was examined again in an 1824 court martial of a captain in the Dorchester Artillery that was also comparable to the trials of Robert Cranston and Joseph Peabody. Capt. John Parks was accused of behaving wildly during the town's July 4 celebration, roaming the streets in a carriage with a small cannon mounted on the back and firing it again and again "to the great annoyance of the citizens generally." In his complaint against Parks, Maj. Robert Stutson wrote that he had confronted Parks "with a drawn sword" as the

[49] Looking beyond Blodget, there are striking lacunae in the record of the events that led to his trial. No evidence suggests any effort to court martial Lt. Col. Angell, Maj. Williams, or Capt. Rathbone, the three other officers on the parade field who aggressively resisted Hawes' order. Though a witness testified in court that militiamen in the ranks had struck a general officer's horse and shouted "fix bayonets" in response to his order, no evidence suggests that anyone ever tried to identify those men. Many men resisted the authority of their brigade commander, but only one was charged with an offense. This general inaction suggests again that Hawes' certitude regarding his authority was not connected to local reality. Most of the subordinates who challenged and attacked his authority apparently never faced any legal jeopardy at all.

captain ordered a battery of artillery to fire while much of the town was gathered inside its meetinghouse to hear patriotic speeches. Parks, the complaint alleged, had responded to Stutson's warning that he was disturbing prominent men with the statement that he "did not give a damn" for them.

As was often the case in courts martial, testimony in the trial focused on the defendant's identity, examining his actions to determine who he had been -- John Parks, or Capt. Parks -- at the time of the contested events. Several members of the Dorchester Artillery present for the firing of the cannon told the court that Parks had ordered them to fire at a pre-arranged time, not intending to disrupt the nearby speakers; confronted, Parks "shook his head" at a subordinate who asked him if he still wished to go on firing. But the company lieutenant also testified that they were engaged in a civil celebration, not a military event: "We had no roll call, nor formation, nor music." In his defense statement, Parks took up the theme in precisely the language that appears again and again in these cases. "Not one tittle of evidence has been offered showing that Capt Parks was on duty, in a military or any other sense of the word," he wrote. "The fact was not so. He was not on duty. He was there as a private citizen," unarmed and without a military uniform. Nor could he have spoken contemptuously to a military superior, as alleged, when he had no military superior. "He had no officer or soldier under him, subject to his orders, and he never once dreamed that he was under any military command himself." Concluding, Parks echoed Cranston's warning that the case threatened to bring men under military jurisdiction for all of their private behavior, erasing the boundary between martial and civil affairs. "If he was on duty at that time, in contemplation of law, he knows not the time when he is off duty, while he holds a commission. He knows not the

day, under this construction, when he is not under martial law, and liable to be arrested by some superior officer." In this formulation as in Cranston's, the problem with the case lay in the future: a conviction would have the effect of placing men under military command at every moment of their lives. The court did not respond to this objection for the record, but found Parks not guilty of every charge he faced.[50] As in other cases, this decision points in different directions: the militia officer appearing before a military tribunal was not guilty of any military offense, but the court had jurisdiction to try him.

## "The boundary between private and public realms"

In the cases examined in this chapter, militia officers disputed claims of military authority over their actions, asserting and sometimes establishing boundaries that limited the reach of government authority. Each case was a broadly significant political and social event, not simply a narrow military contest. Joseph Hawes asserted a power to command that he located in federal law; acting in concert with the regiment he commanded, Leonard Blodget refused the premise, insisting on a bounded view of consensually exercised command that acknowledged local custom and shared values. These claims were about government itself, speaking to the role of law and the role of consent in making authority. With varying success and with varying validity, Robert Cranston, Joseph Peabody, Robert Southworth, Thomas Bevins, William Dunbar, John Parks, Lloyd Morton, and John Bacon argued for a right to engage in civil speech and

[50] Court Martial of Capt. John Parks and Lieut. Stephen Wales, Jr., 1824. MNGMA, Courts Martial, Vol. 13. The court was hearing charges in two unrelated cases, although the charges against Wales had been brought by Parks; the captain accused his subordinate of failing to attend a pair of training events. Wales testified for Parks at the captain's trial, presenting evidence that would clearly support Parks' acquittal.

private action without being judged as military officers. Refusing to be policed as soldiers, they claimed status as citizens who were only sometimes subject to military duty. Several argued explicitly that their cases threatened to bring the entire population subject to militia duty under the routine application of martial law, threatening the liberty of civil society. Identifying his cause as a political matter of national importance, Cranston argued that he had a duty to other men to challenge the jurisdiction of the court. Referencing Cranston's case, Peabody turned to his entire company for a social verdict, seeking and winning their vote of support for his decision to refuse an order. Bevins told a superior he did not respect him, but added that he would faithfully obey him as a military officer on the parade field. And David Pinninger, William P. Maxwell, Nathan Whiting, and Allen Tillinghast rejected the premise that they were militiamen, subject to a military draft. They premised their claim on the mutuality of the Kentish Guards, depicting themselves and their subordinates in the ranks as freemen who volunteered to associate together for the defense of their communities.

In many instances, men who disobeyed and challenged formal authority looked to other men for social validation, often with success. They preserved their personal honor while refusing their compliance with orders and arguing against the authority of courts that sought to try them for private behavior. They insisted on an end to government authority at its meeting point with civil society. The efforts of militia officers brought before military courts attempted to develop space for private behavior that could not properly be reached by military discipline.

But the result of that effort remained unclear, and the failure of clarity made militia officers liable to some persistently absurd applications of military justice. A military

system that could not locate the premises which would bring it into order, the state militias of the early republic gradually became ridiculous, trying men for transgressions like making noise at the Fourth of July parade. Gradually, the mockery of that system would gradually become unabashed. Joking references to militia justice came easily.

Courts martial were becoming merely silly. In 1826, Brig. Gen. James Appleton brought charges against four officers that resulted in a six-week court martial. Among Appleton's complaints: the officers of the Salem Light Infantry had offered and allowed a series of insulting toasts at a company dinner, mocking their brigadier in front of an audience of officers. But the complaint itself became a kind of joke, since the insulting toasts had made fun of Appleton for his too-frequent recourse, against his own officers, to courts martial: "*Brig. Gen Appleton:* When he suspends men from the honorable discharge of their duties, may he recollect Haman of old, and how he was suspended." A newspaper report on the court martial gave the names of the captains on trial, and added only that there were "a sufficient number of other officers to make up a large batch" on trial with them. Similarly, a company history mentions the long court martial of 1826 as a bit of light entertainment: "The charge against Lieut. Porter was an amusing one." Jokes about courts martial led to a court martial that was the object of jokes. In a trial that opened on March 9 and ran until April 23, every officer accused of improper toasts was acquitted. A long and exhausting court martial, trying eight officers over the course of six weeks, examined no meaningful charges and produced no disciplinary outcome of any significance.[51]

[51] At MNGMA, in Courts Martial, Vol. 14, all from 1826: Court Martial of Capt. William Sutton, Jr. Court Martial of Capt. Joseph Cloutman. Court Martial of Lt. John Porter. Court Martial of Ensign Ralph Emerson. Several other officers were tried by the same court martial on unrelated charges that had also been filed by Appleton. In the same box at MNGMA, see Court Martial of Capt. Joshua Low, Lt. Moses

Operating with loosely observed procedural rules and persistently unclear constructions of military authority, jurisdiction, and the prevailing sources of regulation, militia courts martial worked poorly as a legal forum for the establishment of institutional order. Social criteria filled those absences. As Joanne Freeman has written, describing honor contests among early national political leaders, "The fragile new republic was a government of character striving to become a government of rules within a new constitutional framework."[52] This formulation may be adapted to the early national New England militia, a military organization founded practically on character but striving without success to become an organization of rules within a legal framework. Lacking clear formal order to guide their decisions, panels of middling militia officers, assembled as formal military tribunals, instead found themselves adjudicating disputes on largely social premises. Men in the militia fought over and honor and character precisely as if they could not distinguish clearly their military and civil identities. These social conflicts in the militia are the topic of Chapter Three.

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Andrews, Jr., and Ensign John F. Burnham, and Court Martial of Lt. Matthew Gaffney. The newspaper story quoted above is "Division Court Martial," *Salem Gazette*, Feb. 28, 1826. The company history quoted above is Whipple, *History of the Salem Light Infantry from 1805 to 1890*, pp. 24-25. One officer, Capt. Joshua Low, was found guilty of neglect of duty and disobedience for his failure to attend an officer's drill. He was reprimanded.

[52] Freeman, *Affairs of Honor*, pg. 69.

## Chapter Three: "Every Thing That Is Dear to Man"

> "Capt Woodward then ordered his Company to charge Bayonet + forward march. Ensign Preston then stepped forwards and said you are too fast. Capt Woodward replied I know what I am about, forward march. We then advanced untill we came in Contact with Capt Kimballs Company with Bayonets charged. one of Capt Kimballs Company presented his Bayonet to my heart."
>
> -- Court Martial of Capt. Horatio Woodward, 1816-1817[1]

> "Captain Woodward begs leave further to remark his sole object in doing as he did was to protect the men under his command and so to conduct as not to disgrace the rank given him by his fellow citizens or become the subject of ridicule or contempt among his fellow officers."
>
> -- Ibid

In October of 1814, while on duty at Fort Greene, a private in the state-chartered Newport Artillery violated the regulations that governed guard duty. The sergeant of the guard informed the private that he was under arrest. In response, Pvt. Richard Hazard Jr. "loaded a gun primed and cocked it; and declared he would shoot the sergeant; and when in the act of taking aim, the gun was wrested from him." Presented with evidence that a soldier on wartime duty had raised a loaded weapon against a superior, the commander of the Newport Artillery declined to take the obvious step of reporting the act to his own superior officers so a court martial could be convened and the private could be formally (and in all likelihood severely) punished. Instead, Col. Benjamin Fry assembled a company court of inquiry, a tribunal with no foundation in the law.[2] The six members of the court took testimony, "and from the examination of the witnesses they feel it their duty, however painful, to state that in their opinion the life of sergeant Hazard was alone

[1] Trial of Captain Horatio Woodward, 1816-1817. CSA, RG 13, Box 48, Folder One.
[2] The Newport Artillery convened a company court of inquiry on at least one other occasion. See the discussion of Capt. Robert Cranston in Chapter Two.

saved by the timely interference of a member of the guard." Finding that a dire offense against military order had taken place, and recognizing that under a formal court martial "the life of the accused might have atoned for the enormity of his offences," the informal court decided that Fry had been correct to withhold the matter from higher military authorities. Instead, they recommended, the Newport Artillery should impose its own punishment, striking Hazard from the company rolls. "And further," they added, "that it be recommended to the Members of the company, not to associate with the said Richard Hazard junr."[3] A member of an independent military organization composed of gentlemen, Richard Hazard Jr. would be harshly disciplined over a life-and-death incident by a paired reduction in status. His ejection from the company's military ranks would be paralleled in the social world of Newport. An especially appalling military crime merited the punishment of removal from a military company, but it also merited the punishment that the offender would no longer be known by men of honor. An unsanctioned military court had pronounced him to be ungentlemanly. Spared from formal discipline, Hazard had been informally sentenced to social execution.[4]

This chapter examines New England militia discipline as a contest over personal character, governed by the rules of a persistent culture of honor in changing political and

[3] "Records, Newport Artillery, Vol. 2: 1794-1825," entry of Oct. 20, 1814. As suggested by the sergeant's last name, the members of the court were disgusted by the private's failure to express contrition for his actions, "particularly as the person against whom he lifted the deadly weapon was his own Brother." Private Hazard's violations of guard regulations are not described. The first signature following the report is that of the president of the company's quasi-court, Lt. Col. Levi Tower, the company's second in command.

[4] I have been unable to track Hazard's path after this event with certainty. The Hazards are one of Newport's founding families, and the name is common in this period and place. A Richard Hazard, Jr. was advertising his services as a stone cutter at the wharf as late as 1822, and a person by that name died in 1823, at the age of 27 (which would have made him 18 at the time of his confrontation at Fort Greene.) I have found no references to Richard Hazard, Jr. in the Hazard family papers at RIHS. The consequences of Hazard's condemnation by the Newport Artillery remain a topic of serious interest to me, and I hope that future research will make it possible to describe Hazard's life in detail. See the advertisement for "Stone Cutting," *Rhode-Island Republican*, Jan. 2, 1822, pg. 1, and the brief death notice in the *Newport Mercury*, Aug. 2, 1823, pg. 3, which gives no cause of death.

economic settings. This contest took place within the context of an institutional culture defined by personal judgment, a reality that substantially moderated the military expectation of obedience within a hierarchy ordered by formal regulation. In particular, militiamen would not follow officers who they believed did not merit their rank. Failures of character damned leaders in the eyes of the men who were expected to follow them, producing serious conflict over routine matters of training and regulation. Similarly, officers would not tolerate the presence within their status group of men who did not appear to merit the rank and status of a military officer. Men in the ranks also evaluated their colleagues, condemning them for poor character or defending them against harsh discipline that good character did not warrant. Disrespect in the civil sphere could not be severed from disrespect in the military sphere.[5] A man could not be eccentric, conniving, reputedly weak of character, or persistently drunk as a citizen but also successful as a militia officer or a member of a select company. The identity of a citizen was indelibly written on his character as a sometime soldier.[6]

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[5] Nor could respect, and court martial sentences were sometimes mitigated by the court's pronouncement that an officer found guilty of formal charges did not merit significant punishment because his high personal character was known to the court. See, e.g., the sentence of a reprimand in Trial of Andrew Hull Jr., 1800. CSA, RG 13, Box 46, First Folder: "Notwithstanding which, as many of the members of the Court have been personally acquainted with the long & faithful services of Colo Hull & the other members of the Court being convinced of the same by information, beg leave to recommend him to the Honbl general assembly for a mitigation or remission of the sentence of this court being convinced that the neglect of Colo Hull & his disobedience of genl orders were not intentional or in contempt of his superior officers." The influence of arguments about personal character persists in contemporary American military justice, particularly influencing the courts martial of senior officers and NCOs. See, for example, Elizabeth Lutes Hillman, "The 'Good Soldier' Defense: Character Evidence and Military Rank at Courts-Martial," *Yale Law Journal*, Vol. 108, No. 4 (Jan., 1999), pp. 879-911.

[6] The loss of honor could also have a distinctly military character, as when Lt. Col. Rufus King found a lieutenant colonel with a more recent commission to that rank promoted over him to command their brigade. In his defense statement, King explained that he would bring dishonor upon himself if he tolerated the appointment of a military inferior to a superior position. In such a position, he explained, he could not be "disgracefully obedient to the command of his inferior officer," so "the moment that was done I considered myself exonerated from all Military duty." The court mercifully suspended King from office for one year, giving him time to secure approval of the resignation he had already submitted. Trial of Joshua King, 1801-1802. CSA, RG 13, Box 46. See also the 1819 court martial of Col. Abel Hall. When Hall arrived for duty on a court martial in Hartford, he found he had been detailed as a member of a court that

The apparent persistence of social values described in this chapter appeared in an era of rapid change and developing institutions. This grasping at social anchors during periods of uncertainty is a familiar behavior to historians. Describing honor contests among early national political leaders, Joanne Freeman has explicated a "highly personal political realm" that was closely governed by social rules precisely because its formal political structure was inchoate. Social judgments filled an absence. People navigated through unsettled institutional order by recourse to known standards. But this reaching back to stable values was riddled with irony and paradox, as the seemingly steady language of honor proved to be partially invented, frequently disputed, and enormously malleable in practice. A stabilizing premise unsettled hierarchal relationships and wore down the formal order of a state institution, as when men of honor in Newport withdrew from the formal system of military justice to impose social punishment on a private who tried to kill his sergeant. In effect, the unsettled official order of an institution and its justice system led men to reflexively adopt a socially based stabilizing tactic that further destabilized the official order.

The tools of this social negotiation in the militia are similar to those Freeman describes among national leaders, though less structured and formalized: New England militia officers did not duel, with the procedural formula of designated seconds and the ritual language of challenge and negotiation. But they argued before multiple audiences

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was to be presided over by Col. George Hoadley, who held a more recent commission. He refused to take a seat as Hoadley's inferior. The other members of the court voted that Hall had to take his seat. "After his claims were rejected by the court, Col. Hall said he thought a military man had his honor to preserve." Hall's court martial convicted him on charges of disobedience, unofficerlike conduct, and neglect of duty. But Gov. Oliver Wolcott, himself a Revolutionary War veteran and a former major general of the Connecticut militia, rejected Hall's sentence, finding that "as, in his opinion, no officer can be compelled to renounce the rank to which he is by law entitled, or to perform duty in a station subordinate to an officer of inferior rank, he perceives no principle which will justify the imposing of a fine or censure in the present case." Trial of Colonel Abel Hall, 1819. CSA, RG 13, Box 48, Folder 5.

over explosive questions of personal honor, and those arguments did sometimes lead to violence. More importantly, the outcome of an honor dispute among militia officers, or between officers and men in the ranks, was negotiated through many possible forms and exchanges. Freeman describes a "grammar of political combat" in national politics that created "a defined spectrum of weapons in response to a corresponding spectrum of attacks." The discovery of this spectrum of weapons reveals affairs of honor among national leaders that stopped short of gunfire.[7] Similarly, militia officers who believed that they had been insulted had a spectrum of available weapons. They could march their companies off a parade field, decline to appear for training, petition against the appointment of a social inferior to a superior rank, file a complaint asking to have an adversary tried by court martial, and so on. The recourse to violent gestures was a last response, not an only response. So, importantly, was the recourse to military justice.

Waging urgent social battles over personal honor in nineteenth century New England, the contestants in these militia disputes complicate two stories about the distinctiveness of another time, and also of another place. Freeman argues that the kinds of honor contests she describes between national politicians became less frequent and less important after 1800, when party identities solidified and moderated the need for an alternative source of order. A "politics without sharply defined permanent parties was...like a war without uniforms," but national politics then "came to feel like an organized war between two defined armies" as men looked back from the perspective of a later political establishment.[8] This study examines different people doing different

[7] Freeman: *Affairs of Honor*, pgs. xxii and 167, passim. "The culture of honor was a source of stability in this contested political landscape... Particularly in a nation lacking an established aristocracy, this culture of honor was a crucial proving ground for the elite" (xv).
[8] Ibid, pgs. 223 and 287.

things in a different setting, and cannot conclude from the present evidence that Freeman is incorrect about the dynamics of national political conflict. But clearly a larger vocabulary of personal honor survived the period Freeman describes as the most important years for affairs of honor among national figures. Well into the nineteenth century, middling men remained fiercely alive to the perception of wounded personal honor, and waged highly fraught battles over their perceptions that they had been insulted or demeaned. Second, historians have described significant differences between southern and northern conceptions of honor. Most famously, Bertram Wyatt-Brown argued that the North and South had shared an "ethical unity" through the early national period, managing social relations by similar means. But then, in the "quickly industrializing North, with its urban, polyglot populace," honor had by the 1830s become "akin to respectability." Southern honor became distinct, still highly personal and interwoven with the possibility of violence. In particular, Wyatt-Brown wrote, courts retained a social importance in the South that they did not in the North. "Criminal justice was a neighborhood, not metropolitan affair. The courthouse, more than the church, was the center for local ethical considerations." In the North, cities "had become too large, too secular for such parochial, personal, and sacral community values to be served" in courtroom discussion.[9] Again, this study does not overturn that narrative, particularly since the evidence examined here does not extend past the 1820s. In many of the disputes discussed below, the disputed matters of honor between contestants often look a great deal like disputes over respectability, and almost never centered on family honor or led to

[9] Bertram Wyatt-Brown, *Southern Honor: Ethics and Behavior in the Old South* (New York: Oxford University Press, 2007 [1982]), pp. 18-19 and 365-66, passim.

dueling.[10] But they remain highly personal contests, often conducted on the parade field and between men acting in defense of their status as military officers, and they did bring personal and community values into courts.

The disputes that brought officers to court could be absurdly picayune, but they were often socially consequential contests over deeply felt matters of personal honor. Occupying the identity of a militia officer in communities policed by social surveillance, a man of middling status placed himself before a crowd of judges. Complainants brought charges against officers over broadly construed allegations of poor comportment, lack of self control, and other manifestations of bad character, in contexts that blended the military and social realms.[11] But accusers, including militiamen in the ranks, also stood before social judges. Officers were sometimes brought before courts martial for their

[10] In one instance in 1820, a court martial defendant in Connecticut blended themes of family honor and professional respectability in a way that suggests a movement between competing conceptions of honor: "To be arraigned for trial before any Tribunal civil, ecclesiastical or military, at the period of life, to which I have arrived, on charges which may affect property or character, must to any individual in his own account be peculiarly interesting to his feelings; + if he have a family, the interest to be realized in such an event becomes doubly important, + can be better conceived by Gentlemen of honor + sensibility, than expressed in language however appropriate. I am forty-two years of age, have about half the period of my life been engaged in military duty, + have hitherto escaped censure in the execution of the various offices I have sustained in a regular progression in rank from a private to the office which I now hold, + the reputation acquired by punctuality + fidelity in the discharge of duty as a military officer being the principal claim to respectability I now hold (for I have no title to influence from wealth) when I contemplate the attack now made on my character by the charges exhibited before you, I feel no disposition to suppress what is indeed a most interesting fact, that the importance of a fair reputation to myself + a young family dependent on my standing in society for their own rank among their fellow citizens, makes the trial which I am now undergoing before you the most serious event of my life." This statement blends the themes of different conceptions of honor, mixing personal honor and the standing of a man's family in society with bourgeois themes of punctuality and regular progression through a hierarchy. See the defense statement in Trial of Captain Alpheus Shumway, 1820. CSA, RG 13, Box 48, Folder Ten.

[11] C. Dallett Hemphill, *Bowing to Necessities: A History of Manners in America, 1620-1860* (New York: Oxford University Press, 1999), pp. 65-86, passim, and Catherine Allgor, *Parlor Politics: In Which the Ladies of Washington Help Build a City and a Government* (Charlottesville: University Press of Virginia, 2000), pp. 211-12. Hemphill describes the middling men of the early republic as being particularly concerned with "physical self-control," a signal of deserved status. "Self-control would help the middling class both achieve and assert their worth...The key was to remain 'unruffled,' to give a convincingly smooth genteel performance" (pgs. 68 and 81). Regarding the social importance of self control in the early republic, also see e.g. Joyce Appleby, *Inheriting the Revolution: The First Generation of Americans* (Cambridge: Harvard University Press, 2000), 231-32. Regarding social exchange and emotional self-restraint in New England, see e.g. Jack Larkin, *The Reshaping of Everyday Life, 1790-1840* (New York: HarperPerennial, 1988), 149-50.

treatment of privates, and responded to those charges by arguing that their dissolute subordinates had warranted harsh management. Telling different stories, men looked for a referee to pronounce one or the other to be correct. Courts martial became one such forum.

Finally, as with disputes over jurisdiction and authority, the War of 1812 represents a moment of change in the frequency of military charges that reflected discussions of social honor.[12] Of the fifty-three courts martial and courts of inquiry discussed in this chapter (including those discussed in footnotes), only seven took place before 1812.[13] But again, this shift in frequency does not represent a substantial shift in the types of charges or trials that took place, particularly with regard to honor disputes between officers. Rather, the more frequent recourse to formal charges suggests both the increased demands of militia service caused by war, and the breakdown of social order in a military institution that had been brought under greater stress by those more serious duties. As many of the courts martial discussed below will show, the presence of an enemy forced militia officers and their subordinates to think about the militia in a way that peacetime training had allowed them to avoid. The peacetime institution was one in which men met a very few days a year for training that was not terribly strenuous, but war was an inescapably serious claim on the lives of militiamen, and the memory of that seriousness lingered. This change in perception is particularly clear in the one change that did clearly occur during the years discussed in this chapter: the wartime and postwar appearance of courts

[12] The War of 1812 was a moment of transition more generally, and far more state courts martial of all kinds took place during and after the war than before it. See Appendix B, "Courts Martial by Year."
[13] This count includes courts martial that took place before the formal declaration of war in June, but formal hostilities between the United States and Great Britain do not fully define the war. War with Tecumseh's tribal confederation in the Northwest Territory began in 1811, and the USS President had fought a haphazard battle with HMS Little Belt in that same year. See, e.g., Hickey, *The War of 1812: A Forgotten Conflict*, pp. 24-25.

martial that tried company officers for abusing or degrading the men in their company ranks.

## "With His Fist Doubled Up Towards My Face"

In the court martial records of the period, silences and lacunae speak to deeper conflicts than the matters being tried. Trials often wandered through a half-articulated muddle of personal resentments and vague arguments. Subtext peeks out from testimony. Evidence related to formal legal complaints was often thickly interwoven with social claims that were hinted at and dropped. Complainants who tried to make that subtext explicit sometimes found limits beyond which these tribunals would not pass. But those limits were never entirely clear, and courts were left to decide what claims to consider and what claims to set aside.

This sort of deeply rooted and multilayered honor contest was evident in the 1803 Massachusetts court martial of Maj. Timothy Whiting in Dedham. The formal charges against Whiting arose from a familiar point of origin in honor disputes: an exchange of insults in a public setting. Brig. Gen. Eliakim Adams complained that Whiting, standing "in the public highway" during a chance encounter in February, had insulted him "with indignant and abusive language and gestures highly unbecoming their respective stations." Three additional charges claimed that Whiting had applied for excessive travel reimbursement from the state, plotted against the authority of his brigade commander, and destroyed the cohesiveness of the brigade with his inappropriate talk among officers.

Each of the charges would prove to be connected, as Whiting and Adams fought a highly personal campaign before an audience of their fellow officers.

The most important thing about Whiting's court martial is what no participant ever clearly said: the record shows that he and Adams had been locked in a long and socially intimate campaign to destroy one another's military standing, but the causes and origins of that campaign were never described in anything more than hints. Several officers from the brigade that Adams commanded testified that Whiting, the brigade inspector, had spoken to them privately about his desire to see the brigadier removed from office. Capt. Amos Hawes told the court that Whiting had come to his house, after which they had gone into the street and "sealed ourselves in a cart." Speaking in this improvised private forum, Whiting had proposed to Hawes that their commander "was either a damned fool or a devilish fool." The captain agreed, and had not been talked into that agreement. Asked in court by Whiting if their conversation had disaffected him from Adams, Hawes said that it could not possibly have done so, since his disaffection with Adams was already widely known. No one asked the captain to explain his open dissatisfaction with a brigadier general. Hawes testified that he had agreed to Whiting's proposal to work together in the cause of removing Adams from his command. He would go along with any such effort, Hawes told the court, "if I could do it consistently with truth." But he hedged this admission, saying that the men had parted company only with a vague agreement of intent, not with a clear plan. Other witnesses were even more vague. Capt. Luther Metcalfe also remembered a visit from Whiting in the summer of 1802, but he had carefully forgotten everything that the other officer had actually proposed: "I do not now remember the particulars of what he said to me, but I recollect the impression it made on

my mind, which was, that he wished to secure my friendship at the expence of Genl Adams' reputation." For unexplained reasons, a field officer was making the rounds of company officers in an effort to build a partnership that would, by unexplained means and for an unexplained purpose, destroy the authority of a general officer. Officers conspired against officers, searching in discussion for ways to damage one another. Seeing Whiting at his door, Hawes led him away to speak in a setting that would guarantee them secrecy. Men plotted, maneuvered, and looked for allies in campaigns against the reputations of other men.

Social campaigns were met with social campaigns, and Whiting's whispering had an echo. The brigade that harbored open disaffection for its brigadier also nurtured a clear distaste for his principal antagonist. Capt. Nathan Jones, a cavalry officer, testified that Whiting had visited him to ask if he was angry to have been superseded by Whiting's appointment to the brigade staff. His answer hides more than it says: "I told him I felt no uneasiness on account of his superceding me, but I had objections to his character." As with the dissatisfaction Hawes expressed for Adams, no one asked in court what those objections were. Similarly, Lt. David Dana, the adjutant of the 1st Regiment, testified that he and Whiting had met for a discussion "about a year ago." Whiting had asked why many of the brigade's officers openly disliked him. Dana replied that it was not only because of his appointment as brigade inspector, but for other reasons as well. "He wished me to state them. I refused, as I did not wish to hurt his feelings." Again letting hints and gestures fall away undiscussed, no one in court asked Dana to finally speak the things he had previously refused to say. The court heard half-stated social claims without

supporting fact: officers in the brigade simply had objections to Whiting's character, and were dissatisfied with Adams.

Civil and military identity bled together. In a single instance, a witness made explicit the subtext that ran through much of the testimony against the defendant. Hawes, who had sealed himself in a cart to plot against Adams, acknowledged that officers in the brigade were whispering against Whiting, and that he had heard the whispers. Asked if he had harbored objections to Whiting's appointment as inspector, other than the fact that Whiting had superseded him, Capt. Hawes acknowledged the substance and origins of a campaign that he had decided not to credit: "I had, but the other objections arose from sundry reports I had heard of his manner of transacting his private business, that he was a speculator +c. but I know nothing of my own knowledge but what he is as honest as any man." A military conflict that led to a court martial was occasioned, in part, by an often repeated, vaguely supported claim about social behavior. Militia officers discussed another officer's "manner of transacting his private business" as a means by which they could understand his character as a military leader. There were no boundaries marking the separation of spheres. A major's fitness for his position could be determined by an analysis of his business conduct, which was closely watched and reported among officers. Whiting made the rounds to plot against Adams, and other men made the rounds to plot against Whiting. These social campaigns were active and consequential. Lt. Col. Amos Turner, the commander of the brigade's 3rd Regiment, told the court that his subordinate officers had been handing in their resignations because of their distaste for Whiting's presence. Plots against the reputation of fellow officers worked.

Character assaults drew blood. The military charges against Whiting reflect the substance of the social campaign that his fellow officers had waged, and his own actions suggest his fury at the effectiveness of this assault on his honor. Having been attacked as a speculator, Whiting found himself implausibly accused of a dishonest effort to turn his military office into a position of profit; a man suspected of private greed and dirty dealing was formally accused of the same kind of behavior in the militia. One of the charges Adams brought against him was that he had submitted "excessive and unreasonable charges" for duty travel, attempting to collect more money from the state than he deserved. The charge was nonsense, invented without substance in an exchange of personal attacks, and Whiting would be acquitted on that count after submitting his invoice for travel costs and that of his predecessor as brigade inspector.[14] But the accusation was a jab at a man who had been accused of dishonest dealings in private business, and Whiting's reactions show that he recognized the nature of the attack. In a closing statement that radiates contained anger -- he told the court he would "try my utmost to impose some restraint on my own feelings" -- Whiting argued that Adams had accused him of committing a "fraud on the public." Occupying a position of honor and responsibility, he had been held up as a thief. Whiting submitted this "affront" to the examination of "every man of honour," demanding that the members of the court consider "whether a more cruel, a more unmerited insult could be offered to a man." The accusation, he said, "goes deeply to wound my honor and integrity."

While military charges were socially derived, they were also wielded with an understanding of their social effects. Facing an officer who was plotting to destroy his

[14] Attached at the back of the record of proceedings, cited below, these account statements show that Whiting billed the state for $89.80 in travel costs over the course of thirteen months, while the last brigade inspector had billed the state $95.84 for twelve months of comparable official travel without controversy.

reputation, Adams made an easily refuted charge that nevertheless drew the fury of its targer. Whiting struggled at the limits of self control, and that struggle gave Adams another weapon: the charge accusing Whiting of insulting his superior officer "in the public highway...with indignant and abusive language and gestures." When the two men had met on the road, Adams had promptly raised the matter of Whiting's account, telling the other man that he was ready to certify it for payment as soon as it had been reduced to a proper figure. Whiting had long been making the rounds of the brigade's officers, looking for allies in an effort against Adams. Now, facing his antagonist in a public setting, Adams goaded him with a thinly veiled accusation of thievery and dishonor. Whiting responded, Adams told the court, "with his fist doubled up towards my face." Given the context of his time, place, and position, Whiting could hardly have responded otherwise to, as he put it, "a provocation so complicated and powerfull." As Whiting argued before the court, a calm response to an accusation of dishonor would have destroyed his public character; a man who could tolerate the kind of attack that Adams had made was unfit for public responsibility. "Could I have endured such treatment, without exhibiting something like the spirit of a soldier, every member of this honorable court would have thought me unworthy a commission, and unfit to lead my fellow citizens into honorable danger," he wrote. Attacked, men fought. To not fight an attacker was to not be a man; to tolerate the loss of honor was to be unfit to lead citizens to war. Whiting raised his fist to Adams because he knew the seriousness of the statement the other man had made, and he knew that his response would be reported for social evaluation. Militia officers knew that their disputes were always being watched and judged.

Men knew they were being watched and judged. The evaluation of action, audience, and reception is apparent throughout the record of Whiting's trial. Every participant had weighed his actions against the likelihood of social judgment, acting in anticipation of how each of his choices would be received. Several officers testified that they had counseled Whiting to resign his commission and end the tension between officers in his brigade. Turner described both his advice and Whiting's response, saying that he "told Major Whiting that were I in his place I should resign and remove the difficulties." Whiting had shot back that "the dissatisfaction arose from a spirit of mutiny...and that he should do his duty." In his closing statement, Whiting made explicit the calculation that led him to this answer, telling the court that he had been asked to "flinch from my post, and take to flight, merely because a mutinous and seditious spirit was stirred up by them against me." He was, again, confronted with a problem that reflected his standing as a man and an officer. To quit his office because of opposition was to "flinch" and to flee, running from other men; to resign his commission was to be unworthy of it, and to be seen in that damaging light. Taking up a position of honor, Whiting found himself enmeshed in a dizzying variety of threats to his reputation and status. He would be damaged if he allowed Adams to falsely accuse him without showing the correct anger, he would be damaged if he resigned, he would be damaged by the charges related to his expenses. Militia office was a thicket of social dangers.

Correctly perceiving that courts martial were submerged social contests over personal honor, participants could overreach by making that contest too explicit. While the legal conflict between Adams and Whiting was fought on distinctly social terms, the court drew a line when Adams made the thinly veiled subtext of his case too obvious.

Appearing on the second day of Whiting's trial, the brigadier informed the court that he had "a number of witnesses in court ready to testify to the general character of Major Whiting." After unrecorded deliberation, the court concluded that they would only accept evidence "in support of the charges exhibited in the complaint."[15] None of the new witnesses were permitted to testify. But even this rebuffed effort to introduce purely social evidence led to a kind of social argument, as Whiting used the maneuver to illustrate his accuser's lack of honor. Reminding the court that Adams had tried to call witnesses to attack his "private character," Whiting argued in his closing statement that the brigadier had revealed "a rancorous, vindictive spirit unworthy of an officer, unworthy of a man." This claim closed the second half of a critical argument: Whiting had not resigned his post or tolerated an accusation of dishonor, so he was worthy of manhood and an officer's rank; but Adams had attempted a maneuver that revealed him unworthy of both. Whiting was a man and a gentleman, and Adams was not. Even as a military court insisted it was narrowly trying a particular set of charges on directly relevant evidence, it was a forum for an argument about deeply personal matters of being and behavior. An understanding ran between the participants: at trial, men revealed who they were.

The verdicts in Whiting's court martial reflect a shared sense of values. Convicting Whiting on the clearly proven charge that he had conspired to disaffect other officers to their brigadier, "with a view to breed a division among the officers of said Brigade, and to disorganize the same," Whiting was acquitted of every other charge he faced. Among those charges was the one that followed his argument with Adams in the highway.

[15] Most unfortunately, the names of these witnesses were not recorded. No surviving evidence suggests the identity of these general character witnesses.

Though Whiting admitted he had spoken to a superior officer with anger and contempt, during a discussion about military business, he was not guilty of improper behavior. The court could not have found that the argument had not occurred, and that Whiting had not raised his voice -- and his fist -- to Adams. Though deliberations were not recorded, only one avenue to acquittal survives Whiting's admission: the court must have agreed that his behavior had been proper. Given their verdict that Whiting was not guilty of submitting fraudulent claims for his travel expenses, they clearly agreed that Adams had insulted Whiting with a false accusation. Militia officers conceded that it was appropriate to raise a fist against a superior officer who had insulted a gentleman's honor, or conceded a realm of civil speech in which that off-duty action could be appropriate. More broadly, the court was not obviously impressed with Adams: finding a major guilty of a conspiracy to undermine a general officer's authority, it sentenced him to nothing more than a written reprimand. This sort of outcome provided little support for an ordered military hierarchy.

The evidence of state courts martial suggests that Eliakim Adams commanded an ordinary brigade, with the usual resentments and ordinary sorts of social maneuvering. Military trials were a later-stage recourse of men who had long been feuding and scheming, one possible outcome in larger contests that were submerged in private, unwritten maneuvering. A formal complaint resulting in a court martial represents not an unusual conflict but an unusual failure of social resolution. Testifying at Whiting's trial in June of 1803, Maj. Reuben Newell told the court he had spoken to Whiting a year before, warning him that other officers were unsatisfied with his appointment and urging him to resign his post. Capt. Luther Metcalfe testified that had expressed similar sentiments in

the summer of 1802. A long campaign had been underway to fix a conflict in a brigade by removing its source. In this instance, the failure of that long discussion resulted in a court martial.[16] But the example suggests the possibility that other, similar conflicts ended without leaving a paper trail, as discussions and social maneuvering resolved disputes by personal means.[17]

These types of social conflict were routine because militia officers were frantically alert to the possibility that they had been insulted or demeaned by other officers. Petty acts produced angry reactions. Minor missteps echoed loudly. A long 1804 complaint by five officers in Boston, for example, brought fourteen allegations of wrongdoing against Brig. Gen. John Winslow. Every charge suggests the efforts of men who were easily aggrieved: the eleventh charge, for example, was that Winslow had publicly described a captain in his brigade as "the best officer" he had, "to the great injury of the feelings of the Gentmn present." A court of inquiry quickly concluded that the charges did not merit a court martial, and Winslow responded in kind to his accusers: he brought a complaint against them charging that they had behaved in an unofficerlike manner by bringing their complaint against him.[18] At least seven times in the years examined here, militia officers were brought before courts martial for marching their companies and regiments off the field during inspections, believing themselves to have been personally insulted in the

[16] Court Martial of Major Timothy Whiting, June 1803. MNGMA, Courts Martial, Vol. 1.
[17] This effort to manage disputes by informal means is referenced in other courts martial throughout the period examined here. Also see, for example, the 1822 court martial of a brigadier general who asked his field officers to take a vote on the question of whether or not Maj. Gen. Elijah Crane "injured and slighted the officers of the said Brigade, by declining to dine with them on that day, or words to that effect." Officers took votes on whether or not they had been insulted. Court Martial of Brig. Gen. Nathaniel Guild, April 1822. MNGMA, Courts Martial, Volume 13.
[18] Court of Inquiry on Brig. Gen. John Winston [folder is mislabeled; BG's name is Winslow], Feb. 1804. MNGMA, Courts Martial, Vol. 1, and Court Martial of Lieut. Col. Robert Gardner, Majors Benjamin Harris, Asa Hatch, Amasa Stetson, and Captain John Brazier [Brazier was named in the complaint, but was not a defendant], 1804. MNGMA, Courts Martial, Vol. 1. The court martial is discussed in Chapter Two.

course of the day's events. In one instance, a captain leading his company off the field in a dispute over control of his musicians ordered his men to fix bayonets and prepare to resist the efforts of superior officers to march them back.[19] Insulted before an audience, men necessarily lashed out. To fail to do so was damning.

## "A Tattling Mischief Making Fellow"

Socially founded charges demanded a socially oriented response. Accusations of dishonor were most powerfully rebutted with a defense that shifted the location of the dishonorable behavior in a conflict, as Whiting had attempted against Adams. In this often-used defense strategy, an officer claimed to have behaved in an apparently inappropriate way because he had been responding, appropriately or forgivably, to provocation. Charged with misbehavior, defendants shifted the frame, turning the attention of a court martial to failures of behavior that were neither before the court nor, in many cases, plainly military. The 1812 division court martial of an artillery captain in Massachusetts is a model of this form of legal deflection, as a complaint over

[19] Regarding the order to fix bayonets, see Court martial of Capt. Joseph Howland, 1813. MNGMA, Courts Martial, Vol. 4. Other instances of officers marching units off the field, in the Courts Martial files at MNGMA: Court Martial of Lt. Col. Jason Chamberlain and Maj. Isaac Burnap, 1800, Vol. 1; Court Martial of Lt. Col. Jeduthan Wellington, 1803, in the box of oversized court martial records; Court Martial of Capts. Edmund Smith and William Cobb, 1815, Vol. 5; Court Martial of Capt. Benjamin Dunn, 1816, Vol. 7; Court Martial of Capt. Alpheus Spring, 1819, Vol. 11. In the legislative records at NHSA, see the June 3, 1812 petition of Capt. Jonathan Rollins in the folder "Legislative Petitions -- June 1812." Rollins, the commander of a cavalry company, withdrew his long-established company from the parade field after being ordered to post to the left of a newly formed cavalry company in the same regiment. In the folder "Petitions, 1812 -- June 1 - June 9," see the June 3 petition to the legislature from the men of Rollins' company requesting his reinstatement to command. The signatories to that petition argued that "the orders alledged to have been disobeyed + for which the said Rollins was removed, were highly degrading + mortifying in the extreme, to the feelings of a soldier." At RISA, see Court Martial: Colonel Leonard Blodget, 1821, Adjutant General Records; or see the printed copy of Blodget's court martial, available on AA.

dishonorable behavior between officers produced a social inquisition regarding the character of a private. The trial, conducted in a Plymouth tavern, was called to decide several charges of dishonesty, disobedience, and unofficerlike conduct against Capt. Zenas Smith. Those charges followed two different but related controversies. The first complaint involved the forcible discharge of a private from the ranks of a select company, and the next two related to Smith's conduct during the election that had brought him to his place as a captain and company commander.

The person tried was not the person charged, as the defense opened a thorough social inquisition against someone who was not officially a party to the case. Though Smith was the only person actually on trial, testimony largely focused on the personality of the discharged soldier, Ephraim Whiting. The captain was charged with lying to a superior officer to obtain permission to discharge Whiting from his company as a habitually disobedient militiaman who "had been in his company some time without uniform." Witnesses quickly established that Smith had misled the superior, a brigadier general who briefly appeared as the first witness. Testifying second, Whiting himself explained even more briefly that he had appeared for training with Smith's company on only a single occasion, doing almost nothing in his minimal role as an attendant to the company's horses. Then the testimony changed course. The third witness to be called, John King, was the keeper of a public house. He was called upon to testify to matters well outside the realm of military affairs, in this questioning undertaken through the judge advocate:

> Ques by J.A. What do you know of the general character of Whiting. Ans. I know nothing of him but what is good. Ques by same. Are you much acquainted with him. Ans. Considerably, particularly of late. He does not live in my neighborhood. Ques by same have you considered him a disorderly man in society. Ans. No. Ques by same. Do you know anything

> of him as a soldier. Ans. No. Ques by same. Is he thought a temperate man. Ans. Yes. He bears on the whole a good character.

Smith claimed to have discharged Whiting for habitual insubordination and inadequacy as a soldier, but the first witness called after the accuser and the discharged soldier was not able to testify to that soldier's military performance, and was not expected to. Rather, King was called to describe Whiting's social character, denying the charge that he was a "disorderly man in society." The outline of the entire trial appears in this early questioning: the court was trying to determine whether or not Whiting was the kind of man an officer might reasonably wish to remove from his company. Evaluating formal charges against a militia officer, a military court turned almost entirely to the consideration of a social question about a private who had just one day of actual military experience under the defendant's command.

The testimony that followed was a flood of social judgment, almost all of it focused outside the boundaries of Whiting's military performance. A former neighbor, Rufus Curtis, pronounced Whiting sober, but still a nuisance: "I always thought him passionate and hasty." Melville Gurney offered an even harsher view from a more intimate perspective. "He bears the character of being quarrelsome + is generally considered a disorderly fellow," Gurney testified. "I worked in the same shop with him. I think he is a back biter + in the habit of slandering folks." Ebed Vining damned Whiting from a still-closer perspective: "He married my wife's sister." Vining had worked with Whiting in the same shop for several years, and was not impressed. "His general character is that of a disorderly quarrelsome fellow," he said. And another man named Zenas Smith offered testimony that helped the Zenas Smith who was on trial. This witness, the defendant's cousin and a member of his artillery company, had once worked with Whiting in "the

shop where I learnt my trade." But Whiting had not lasted there, since "he was turned out of it on account of his being a tattling mischief making fellow." An outpouring of social opprobrium was directed against a man who had a well-established reputation. As if to highlight the degree to which Whiting's reputation was a social burden unrelated to his performance as a militiaman, Nathan Beals testified that he lived near Whiting, saw him frequently in the neighborhood, and usually found him irritating. "I live near Whiting and see him often. He is thought a very quarrelsome man + this is generally his character...He provokes contests and begins quarrels." For all that, Beals added, "I am an officer in Cap. Dyer's company. Whiting has trained under me. He has generally behaved well." Whiting was intensely disliked as a man, but reliably performed his duties as a militiaman, and was tellingly forced out of a company that had the option of removing him. In a military organization, his social character mattered more than his military performance.

Much of the testimony taken by the court pushed back against this condemnatory view of Whiting's character, precisely as though he were the person on trial and his prosecution witnesses were being rebutted. David Pool said he had once seen Whiting "in anger" after being accused of cheating in a wrestling match. But Pool thought Whiting had been wronged, and deserved to be angry, since other men who witnessed the match "justified him + said he wrestled fairly." Others said plainly that they did not hold negative views of Whiting. Charles Whiting, formerly a close neighbor of Ephraim Whiting -- but not a relative -- testified that he had seen the other man often, but had never see him behave inappropriately. "I have no reason to believe that he sustains the character of a quarrelsome man + I never heard it of him until this difficulty began," he said.[20] Two

[20] Another militia officer, Captain Asa Dyer, commanded the training band that Whiting had left for Smith's artillery company. He linked Whiting's good character as a man to his good character as a soldier:

streams of testimony, both running through the same trial and directed at the character of the same man, established that Ephraim Whiting was simultaneously known to be socially disreputable, and not held in social disrepute; men avowing his good reputation claimed that they had simply never heard of Whiting as a person of questionable character before he was discharged from Smith's company.

Several elements of the testimony suggest two ways to reconcile these divergent views. First, the trial illustrates the extraordinary social memory of small-town Massachusetts. One of the social charges leveled against Whiting was that he was a drunk, a claim presented as the possible origin of his distasteful personality. Micah Pool made this argument explicit. "My opinion is that he is a quarrelsome fellow + apt to be more so when liquor is plenty," he testified. Asked a series of follow-up questions on that point, though, Pool muddled the claim. The judge advocate for the trial asked if Whiting was "habitually intemperate," and Pool hedged against the testimony he had just given. "I do not know that he is," he allowed. Then, muddling his answer still farther, Pool offered a weak answer a question about Whiting's drunkenness on days of public duty. "I have seen him quarrelsome at those times + supposed it was owing to that cause," Pool said. Whiting's habitual drunkenness had become a supposition, unsupported by direct evidence. But Pool, along with other local men, knew that they had seen Whiting drunk. Smith's cousin testified that he had seen Whiting obviously drunk "once about five years ago when he went with several others to get clams." Pool agreed; asked by an officer on

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"Whiting has served under me about three years. He was a well behaved + good soldier during that time...I live three miles or more from Whiting + have seen him only on public days. I never heard him called intemperate or quarrelsome until since his discharge." An enlisted militiaman, Perch Pool, offered the same connected picture of Whiting's private character and military behavior. "I am a member of Smith's company," he testified. "I was present at the training last May. Whiting was not to my knowledge guilty of any impropriety. I never knew him to disobey orders. I live four miles from him. I never heard of his being intemperate disorderly or troublesome."

the court if he could "recollect any particular time when he was noisy + riotous," Pool said that he remembered a single occasion when Whiting was seriously drunk. "This was four or five years ago." Rufus Curtis did not think that Whiting was frequently drunk, but he also remembered when he had seen him that way: "I have seen him when I thought he had drank too much four or five years ago." The men of a small community were having an extended debate over the habitual insobriety of a twenty-three year-old man who had once been seen drunk, five years ago. But the action against Whiting created its own social reality. As Charles Whiting and Asa Dyer testified, they had never heard that Ephraim Whiting was intemperate until he was thrown out of Zenas Smith's company for that reason. The public and private Ephraim Whiting, the man and the militiaman, created and reinforced one another. To some degree, Whiting became what Zenas Smith said he was.

But the argument over Whiting's drunkenness clearly covered other social charges, and that political subtext gradually boiled to the surface. Called to testify, Isaac Burrill said that he was a neighbor of Whiting and a member of Smith's company. Whiting, he said, was known locally for his questionable politics: "He is almost alone in his political sentiments in his neighborhood + defends his opinions with warmth." Melville Gurney explicitly connected Whiting's unpopular political views with his discharge, saying that he "heard it was a political business"; when Smith had allowed Whiting to enroll in the company, the captain had told him, "he did not know his politics." The political dispute at the heart of Whiting's discharge was not merely a general disagreement about the national questions of the moment; rather, it was centered on the internal politics of the artillery company. Called back before the court after his initial testimony, the tavernkeeper John

King was asked whether he had discussed Whiting's discharge with Smith. He had; the reason Smith had forced Whiting out of this company, he said, "was that ten or twelve respectable men of his company would not train with Whiting + Micah Pool for one. He further mentioned as a reason that Whiting in the presence of three of the company had called the company a rascally one." The men of the company had discovered their low regard for Whiting after he had announced his low regard for them.[21]

Answering military charges with broad social argument, defendants often produced a mess of divergent and not plainly helpful premises. With testimony complete, Smith presented a written statement of defense that raises more questions than it answers. Calling Whiting a "disorderly troublesome mischief making + quarrelsome man," the captain added that he was telling an old story. Whiting, he said, "from his infancy upwards could never be kept under proper control by his parents or others to whom obedience was due." But Smith's defense had broken down on precisely the claim that Whiting could never be kept under control by people to whom obedience was due: every witness who was asked about Whiting's behavior as a militiaman said that he had obeyed orders and behaved appropriately during military training days, both in the local training band and during his single day with Smith's artillery company. The captain's claims about Whiting bring his own judgment into question. Asking "whether the said Ephraim

[21] The same process took place between Smith and Whiting. Witnesses claimed that Whiting had said the company was made up of rascals because he was upset that it had chosen Smith as its captain; as with so many militia controversies, the root of an acute personal conflict between militiamen could be found in a local election for officers. John King, Jr., the son of the tavernkeeper called as the third witness, told the court he had heard reports from men in the company that Whiting had called them "damned rascals" for electing Smith over another officer. Rufus King was one of the witnesses who had actually been present when Whiting had made his socially damning statement; in his testimony, he described both Whiting's comment and his own reaction: "We were talking about the business of the day without much warmth when he made the attack upon the company + Smith. We separated immediately after. On account of his abuse of the company I intended to leave it if he did not. I told him either he or I must be discharged." Finally, called back before the court to testify again, Whiting himself admitted to a version of the claim, claiming he had been misuderstood: "I said it was a rascally thing to put Smith over Gloyd. I did not say Smith was a damned rascal." In Court Martial of Zenas Smith, cited below.

Whiting suffered himself to be overcome with ardent spirits or by violent passions," Smith concluded that the answer didn't matter, since "in either event he was an unsuitable person to be a soldier in an independent company." He left unexplained the fact that he had chosen Whiting for membership in just such a company. Defending himself by attacking a militiaman he had himself enlisted, Smith effectively argued that he had made poor choices as a military officer. Charged with unofficerlike behavior, he needed to show the court that he was calm, stable, and thoughtful. Instead, he allowed his defense to melt away into a rant, caught in a social conflict with a private.

But courts were not made up of indifferent finders of fact. They were made up of local militia officers, men who were likely to share the premises of the other officers appearing before them. Faced with Smith's immoderate and disordered defense, the court first voted to convict him on the charge of dishonesty related to Whiting's discharge from the company. The two other charges dissolved into acquittal, after a trial in which the court had heard remarkably little testimony regarding those allegations about the conduct of his election. Then the court turned to a sentence, concluding that Smith should only be reprimanded. Inventing false and harmful accusations of disobedience against a subordinate, and lying to a general officer, he had done nothing that would cost him his rank and office. The court had apparently decided to credit the social attack that dominated the testimony. Zenas Smith's court martial had tried Ephraim Whiting, and found him to be of low character. Illicit action against a "disorderly man in society" could only be a modest transgression. [22]

[22] Court Martial of Captain Zenas Smith, May 19, 1812. MNGMA, Courts Martial, Vol. 4.

## "A Parcel of Damned Low Lived Fellows"

While the vocabulary of personal honor was persistent and ubiquitous, it was practically fluid, contingent, and multifaceted. An officer could effectively try a private on social charges before a court martial, but the script could be inverted when the disorderly man in society was an officer who had been accused by men in the ranks of crimes against social order: gentlemen from below attacked licentiousness above. Bringing charges against the company officers they had chosen, militiamen moved cautiously, perhaps recognizing that their own social judgment was implicated by the claim that an elected officer did not merit his rank. The 1815 Massachusetts court martial of Capt. Bailey Bodwell, for example, reflects the reluctant willingness of accusers to bring military charges in the case of chronic failures of comportment and temperament that had not been resolved through social negotiation. Bodwell's long-running dispute with his company suggests the presence of a world of conflict we cannot see in the written record of the period, with his subordinates bringing formal charges only after their social efforts at resolution had failed. The final result is familiar: as in the courts martial of Whiting and Smith, Bodwell attempted to turn the court's focus toward the dishonor of other men, justifying disorderly behavior by framing it as a response. Formal status suggests the outline of these character exchanges, but did not determine it. Officers could be shamed by the apparent social superiority of their military inferiors.

Bodwell built and destroyed his reputation before the same audience. In the years before his court martial, he was well established as a middling figure in Norway, a town in the Maine District initially settled by former soldiers after the Revolution. Emigrating

from Methuen, Massachusetts, he was initially noted in town records in 1800, four years after the construction of the first real local road. He was in his early twenties, a member of the postrevolutionary generation, and recently married. Moving to proprietary land in Maine, Bodwell was making a common trek for young men of limited means in the early republic.[23] Arriving when Norway had "fifty-seven houses and forty-seven barns," Bodwell built the town's first two-story building and its first clothier's works, and the first sawmill in another community. Plainly substantial by the standards of a new and small town, he received one of the expected marks of a locally distinguished character: in 1809, when Norway's standing militia company split in two, Bodwell was the first man elected to the command of the new south company. A few years later, when the United States went to war against Great Britain, Bodwell raised a volunteer company and led it into service, first in Portland and then in Vermont.

But this is where the narrative of respectability begins to go wrong, showing how officers could destroy their standing with other men. Published histories of Norway describe the experience of Bodwell's company under British fire in Plattsburgh, New York, but note that their captain was not present: "Bodwell, on account of some improper conduct, left the army and returned home, some time in the summer of 1813." The account that mentions Bodwell's misconduct and departure immediately follows that sentence with the names of the Norway volunteers who died while serving in the company he had raised, and ends the paragraph with this: "Joseph Dale came home sick,

[23] Taylor, *Liberty Men and Great Proprietors*. Also see Robert A. Gross, *The Minutemen and Their World* (New York: Hill and Wang, 1999 [1976]), pg. 142, pp. 177-79, passim. Records of the Bodwell family in Methuen show that several members successfully made the journey from the descriptive category of "yeoman" to the status of "gentleman" in the documents that described their large and frequent land purchases. But Bailey Bodwell is not mentioned in these records, placing him among the familiar group of men in eastern Massachusetts who struggled to find land of their own. Henry Bodwell Papers, 1693-1826. MHS.

and never recovered; he died in a few months, leaving a family of children to the care of his widow, with little or nothing for their support." Having asked men to follow him to war, an officer had gone home in a cloud of dishonor. He abandoned his men, leaving some to die, their wives to be widowed, and their children to live without the support of a father. He asked other men to share a heavy burden that he did not then share.[24]

Active military service was a social test that men could fail. Bodwell simply disappears early on from the record of his own company, which suggests a milieu of growing disorder and conflict. But a few copied orders suggest the atmosphere between officers of the volunteer regiment. While Bodwell's company waited on the coast with other volunteers, officers fought over the control of their men and the extent of their authority. A short, sharp regimental order of March 5 directs Capt. Robert Snell to "deliver to the Management of Capt Bodwell the men yesterday put under guard and never think of interfering with the management of another company when the commanding officer is present." Snell was the commander of the company of volunteers from Poland, a town about ten miles from Norway. A captain from a nearby town had taken some of Norway's men into custody, under armed guard, in the presence of their commander. No other records describe this moment of conflict, but the available description of the event suggests several conclusions. First, another officer had felt the

[24] David Noyes, *The History of Norway* (Norway: David Noyes, 1852). Regarding Bodwell's arrival in 1800, see pg. 40; regarding his origins, building, and businesses, see pp. 20-21. See also the similar information in Charles Foster Whitman, *A History of Norway, Maine: from the earliest settlement to the close of the year 1922* (Lewiston: Lewiston Journal Printshop, 1924). A third history of the town suggests that Bodwell "had some trouble while in the Forty-Fifth Regiment at Burlington, and came home long before his company did." But this account is vague, given without a source, and factually wrong in its description of Bodwell's state court martial: "It is said that one of the charges against Captain Bodwell was the fighting of a duel with some other officer, while in the service in Northern New York." William Berry Lapham, *Centennial History of Norway, Oxford County, Maine: 1786-1886* (Portland: Brown Thurston & Co., 1886), pg. 241. Still, Lapham's account is useful for the list it provides of Norway militia officers from 1800 to 1884, which shows that Bodwell was never returned to an elected militia office after his court martial. See pp. 228-34.

need to discipline Bodwell's subordinates in the presence of their commander, suggesting his view that they were not properly led and required disciplinary intervention from outside their own chain of command. Second, another officer successfully took Bodwell's men under his control in his presence but without his interference, suggesting that Bodwell had been passive or ineffectual in a conflict over his own men. Snell had prevailed over Bodwell's authority, status, and personal strength of character. Finally, Snell held Bodwell's men for at least a full day before Bodwell could secure their release through an appeal to higher authority.[25] The commander of Norway's federal volunteers was a weak and ineffectual in a chaotic and loosely organized military environment.

Military displays of personal weakness had a social cost. However Bodwell had disappointed the volunteers who had agreed to follow him, his failures of character led other men to withdraw his social status, in a reversal of the process that had conferred it: the first militia company that made him its commander brought the charges that cost him his rank. But they did so eventually, not immediately. The charges were filed many months after the war had ended, and were not directly related to the captain's wartime departure from his volunteers. The formal complaint against Bodwell was signed by a group of men from Norway's south company in late September, 1815. The fifteen petitioners alleged three types of wrongdoing, including the mishandling of compensation in lieu of rations to men traveling home from war, several failures to warn men for training and company elections, and a failure to have the militia law read to the company during its March training. But timing revealed the heart of the complaint. While many of

[25] "Records for Capt. Bailey Bodwell's Company of U.S. Volunteers, 1813-1822." FLUM. The record extends through 1822 because someone (probably Bodwell) used its blank pages, after the war, as an account ledger. In the company's orderly book, the captain is shown accepting receipt of provisions until July 10, 1813. Then, without explanation, an ensign begins to acknowledge the delivery of rations.

the allegations addressed the captain's behavior in the spring of 1815, the third and final set of charges in the September 26 complaint related only to Bodwell's behavior on September 23. That third set of allegations took particular aim at the captain's character, alleging that he had recently engaged in "profane cursing and swearing" in the presence of his company and spectators, publicly using "indecent, vile and disgraceful language." The complainants also alleged that this performance of low character had taken place before an audience that had been subjected to Bodwell's misuse of power, as they claimed he had warned out men who were not subject to military duty. He did so, they charged, "with a view to abuse and insult said individuals and to gratify his private malice and revenge." Profane, indecent, abusive, malicious, Bodwell lacked character and an officer's temperament. These claims appear in an important context, representing a deeply rooted confrontation between long-aggrieved men and an officer who had persistently failed to behave with honor. Bodwell's subordinates had tolerated his multiple failures without formal complaint, but then abruptly reached a breaking point. This subtext of exhausted forbearance would move to the foreground during the resulting court martial.

Failed officers looked into the ranks and saw unmasked contempt. At trial, the nature of Bodwell's profane and indecent language became clear, and its context suggested deep hostility between the company and its commander. Facing an ill-equipped company at a September 23 inspection, Bodwell had cursed the inadequately prepared men as "a parcel of damned low lived fellows," ordering them from the ranks. Chaos ensued; one of the men may have called Bodwell a "damn'd rascal."[26] A distinguished witness, William

[26] The word "rascal" appears often in courts martial over personal disputes, and was commonly understood to be a serious insult. As Freeman writes, "Coward, liar, scoundrel, and puppy all demanded an immediate challenge, for they struck at the core elements of manliness and gentility." Freeman, *Affairs of Honor*, pg. 173.

Reed (a successful trader and the town postmaster, who merited an "Esq." alongside his name in the record of the court martial), described what Bodwell had said next: "Attention Fellow soldiers; enough of your God damn'd noises, or I don't wish to hear any more of your God damn'd noise." Throughout the decades in which state governments tried to maintain a nearly universal military service obligation for white men, militia officers routinely faced poorly equipped companies, and frequently accommodated the failures of their subordinates. Inspections that revealed inadequate equipment were ordinary events in which officers were reluctant to embarrass or punish the men who had elected them.[27] Bodwell himself had led Norway's south company since 1809, with sufficient comity that he had been able to raise a company of volunteers in 1812. But then, after the war, the company piled up a list of grievances, and broke apart in a storm of insults during an inspection. Something deeply personal had changed between Bodwell and the other men of his company and community. An officer was cursing militiamen for being unprepared for duty two years after he had abandoned his own duty during wartime. The "parcel of damned low lived fellows" had a reason to find Bodwell's complaint bitterly ironic.

Military rank and gentlemanly status gave militia officers an apparent redoubt against accusers, but also gave those accusers the very weapon that destroyed the same protective shelter. In their closing statements, both Bodwell and his accusers had framed their respective cases around a series of presumptions about decent society, gentlemanly status, and masculinity. Appealing to the members of the court as fellow officers and men, Bodwell reminded them that a private had spoken disrespectfully to an officer. What would they have done in his place? Judging a gentleman, other gentlemen were to

[27] See, for example, the events leading to the court martial of Maj. Ralph Ingersoll, below in this chapter.

understand his disgust; judging a man, other men were to understand his loss of control. They were to be affronted, as he had been, by insolent behavior from below.

Gentlemanly status was plastic and appropriable. Bodwell's accusers met a gentleman's argument on gentlemanly terms, responding with their own line of reasoning about status and character. Privates outdid an officer's ritual performance of gentlemanly premises. Insisting that Bodwell's behavior had long been distressing to them, they assured the court of their long forbearance: "In the hope of reformation in Capt Bodwell's conduct, they have passed over negligence of duty, abuse of authority and a total want of those principals of honor and decorum so essential to the military officer, until they find the company commanded by Capt Bodwell dispirited and broken down." Most damning, the complainants noted that their captain had been forced to stand alone as the only company officer for more than a year. They had held several company elections for a lieutenant and an ensign, they explained, "but the man has not yet been found sufficiently lost to a sense of the respect he owes himself to accept a post under said Capt Bodwell." The captain's behavior had even worn away the social value of military rank: other gentlemen would rather decline the status of an officer than accept that status in association with Bodwell.

Militiamen from the ranks performed their borrowed status precisely. Defending honor and order, and having failed in a patient and dignified effort to restrain their superior, the complainants invited the court to join their sensible cause. Averring themselves fortunate to address "a tribunal of high-minded, honorable men, ambitious of military fame, and determined to preserve from pollution the glory of the military character," the men of Bodwell's company felt certain that the court would deliver a

verdict that would tell the captain to "Curb and restrain your savage temper." Gentlemen, they knew, would not tolerate Bodwell's failures of duty, and "still less do they believe that this court will tolerate in office the profane swearer and the common blackguard." The privates of Norway's standing company had exercised forbearance in the face of provocation, trying to restore social order against crass and profane misbehavior. Inverting the script implied by their status, they had performed the order-keeping duties of honest gentlemen against the common licentiousness of a military commander. The argument against Bodwell was a social argument: he could not control himself, and so occupied a status that his character did not warrant. Officers could not allow him to be one of them. The court agreed, convicting Bodwell on each of the three charges that he faced, though they returned not guilty verdicts on three of the many specifications. They sentenced him to be stripped of his rank and barred from a return to military office for a year. Not surprisingly, Bodwell was never returned to militia office, which would have again required his election by the men of the south company. The court banned Bodwell from military duty for a year; the town could effectively ban him from military duty for life.[28]

[28] Court Martial on Capt. Bailey Bodwell, Oct. 1815. MNGMA, Courts Martial, Vol. 6. For examples of comparable social contests between officers and men in the ranks, see, first, the 1814 court martial of Captain Bradbury Emerson, also in the Maine District. A private had performed the manual of arms poorly, though witnesses would not agree how poorly. After a long argument, Emerson had ordered his sergeants to place John Dunnell under guard, eventually ordering them to drill him at bayonet point. Former officers attending the muster as spectators testified that Dunnell's behavior had been unremarkable, suggesting that Emerson had lost self-control over minor provocation. In response, Emerson produced witnesses who testified to Dunnell's low character and provocative behavior. Emerson was pronounced "guilty for unofficerlike conduct in part," and sentenced to a reprimand in general orders. Universal immoderation between contestants rendered a controversy impossible to settle. Court Martial of Captain Bradbury Emerson, July 1814. MNGMA, Courts Martial, Vol. 5. Second, see the 1819 court martial of Capt. John Bacon, who commanded the standing company in Boxford, Mass. Nineteen privates signed a complaint alleging abuse against a private, Thomas W. Durant, who was among the signatories. As described, the abuse had escalated over the preceding year, culminating in an Oct. 10 incident in which Bacon chased Durant and "struck him with his sword and wounded him on his arm." Witnesses told the court that the disorderly private had been struck while he ran at Bacon with his rifle raised, "somewhat in the manner of

## "An Evident Want of Civilization"

The militiamen who brought charges against Bailey Bodwell in Norway were performing a role of the New England militia in the first decades of the republic, functioning as a social police among ordinary white men in the face of substantial change. But courts martial reached ambiguous and apparently contradictory conclusions. Outcomes were local and specific. In the dispute between Bodwell and the privates enrolled in his company, the participants on both sides tried to influence the members of the court through the performance of correct behavior and gentlemanly comportment. In another court martial held the same year in Connecticut, the defendant successfully did the opposite, deliberately portraying himself as a coarse and uncultured man who had performed his duties roughly because he lacked the background to match gentlemen officers in comportment. This performance was a tactic: Maj. Ralph Ingersoll became temporarily unrefined to beat charges brought by a group of aggrieved gentlemen. Ingersoll's trial suggests that in some cases, social regulation by court martial could be defeated by military considerations. But the understanding of those military

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charging." Status mattered. A town history describes Bacon as "prominent in town affairs." He would go on to be the town clerk and a selectman. Durant was an itinerant blacksmith. Bacon's closing statement lamented a set of charges "from private soldiers": "Such men would do well to consider that the honor of their officers is intimately connected with their own, and that in attempting to disgrace their officers, they disgrace themselves." Convicting him on every charge, the court only sentenced the captain to be reprimanded. The mildness of the sentence, they explained, reflected their views of Durant. The captain's conduct had been "highly reprehensible, and, in itself considered, deserving of more severe animadversion, but they have refrained from a more pointed expression of their disapprobation," owing to "the improper and unmilitary conduct of said Thomas W. Durant, on some of the occasions mentioned in the complaint." Court Martial on Capt. John Bacon and Lt. Edward Kimball, Jr., March 1819. MNGMA, Courts Martial, Vol. 9. Regarding the status of the Bacon and Dunnell, see Sidney Perley, *The History of Boxford, Essex County, Massachusetts* (Boxford: Sidney Perley, 1880), pgs. 255, 275, 290, 371, and 384.

considerations were socially derived; even when courts martial evaluated an officer's wartime behavior, they did so through thickets of social knowledge.

Identities could be put on and taken off as a performance, and Ingersoll was none of the things that he would claim to be at trial. At the moment that he postured as a simple man from humble origins, he was twenty-six years old, a Yale graduate since 1808, and professionally established as one of New Haven's six lawyers. His father, who had also practiced law in New Haven, had gone on to serve as a judge, as would one of Ingersoll's brothers and a great-uncle. A year after Ingersoll's court martial, his father would be elected as the state's lieutenant governor, an office he held until his death in 1823. Decades later, one of Ingersoll's sons would serve as Connecticut's governor, while another son served in Congress. All around him, Ingersoll's family had been, and would be, prominent in politics and the law. Ingersoll fit comfortably into that family narrative. In 1819, he would be elected to the state legislature, becoming Speaker of the House in 1824. He would leave the state legislature for Congress the next year, serving on the Ways and Means Committee. He also went on to become the mayor of New Haven, the U.S. ambassador to Russia, and the lawyer for the Spanish government during the Amistad trial. While his political prominence lay in the future in 1815, at no point in his life would Ingersoll be defined by the modesty of his origins and ambition, despite the effectiveness of the social mask he adopted before his court martial. His record as a militia officer prior to his court martial suggests his trajectory: Ingersoll became "second lieutenant of the horse guards" in 1813, "and the next year, brigade-major and inspector,

second brigade." He held a field grade and a brigade post by his second year as a militia officer.[29]

Militia complaints could be derived from social judgments of military events. Like the charges against Bodwell, the allegations against Ingersoll suggested that he had revealed his bad character during an inspection. The complaint, signed in December of 1814 by a lieutenant colonel, a major, and a captain, claimed that Ingersoll had abused officers and men during a review of the 27th Regiment in late September. Storming through the ranks, the brigade inspector had broken many of the bladed weapons he examined. Worse, some of those weapons belonged to officers; he snapped swords in half just as he had snapped bayonets. Previous brigade inspectors had proceeded on the gentlemanly assumption that officers were properly armed, but Ingersoll "required the commissioned officers of said Regiment to deliver up their swords into his hands for inspection," implying that they could not simply be trusted. His disrespect for his fellow officers had also been made plain, the complainants charged, when Ingersoll had moved into the ranks and "demand[ed] of the soldiers their arms + accoutrements without first speaking to the captains of the several companies or greeting them with that affability + politeness which had been practiced by former inspectors + which as officers + gentlemen they had good right to expect." In short, Ingersoll had betrayed "an evident want of civilization, assuming a haughty + insolent deportment." He was vulgar, contemptuous of his own fellow officers, and so lacking in restraint that he had destroyed weapons he was supposed to simply be examining. He had no command over his own behavior, and so could not merit the military rank of a gentleman.

[29] Henry Bronson, *A Brief Sketch of the Life and Character of the Late Ralph I. Ingersoll* (New Haven: Hoggson & Robinson, 1873), pp. 3-8.

As in other cases, the people who were effectively put on trial were not the people who had been officially charged. Before the court, Ingersoll turned the substance of the charges back on his accusers, eliciting testimony about their own deep failures of self control. The inspector faced a long line of witnesses who described the destruction of their swords and bayonets, some of which were presented for the court to examine. He cross-examined them with three kinds of questions. First, he asked about his own comportment. In response, most witnesses agreed that Ingersoll had been severe in his method, but merely businesslike in attitude. Capt. John B. Chittenden, for example, "observed great destruction made by the severity of the inspection," but could not damn the inspector for his manner: "I can't tell whether the inspector was in a passion at the time." Second, Ingersoll mocked the supposed severity of his inspection by forcing the witnesses against him to describe it precisely, as when he questioned Chittenden: "Did I ever bend with but one hand? Ans. no -- Often with two fingers? An. yes."

Then Ingersoll brought the social substance of his defense clear, attacking several of the officers who testified against him by forcing them to address their own behavior. One, Capt. Samuel H. Stone, fell into a telling silence, as the record tersely relates: "Did you give the following toast at a meeting of the officers? Ralph I. Ingersoll persecution unto death. No answer given." Similar questioning focused on Ingersoll's threat to arrest a private who had criticized his inspection from the ranks. Again, Ingersoll challenged Stone in court: "Did you not say if Redfield was rode on a rail you would head a mob and dare any body to do it - and say you would spill the last drop of your blood in rescuing him? Ans. no." Other prosecution witnesses would insist that Stone had only offered a toast to the death of the inspector's military career, but the picture Ingersoll had created

was clear and damning. The best case the prosecution's witnesses could make was that their antagonist had comported himself sternly but properly, breaking their supposedly adequate swords with just two fingers, while they then publicly drank to his death as either a man or as an officer and threatened to lead a mob against him. All this while their complaint was that he had not controlled himself.

Events at the center of the charges moved to the background. Presenting his own witnesses, Ingersoll largely avoided producing testimony about the inspection in question. Instead, he offered the testimony of regular army officers, who told the court that his mode of inspection was considered ordinary and appropriate among federal troops. Then the proprietor of a weapons manufactory examined the damaged weapons brought into court by the prosecution, condemning them as being "of a middling quality" (the swords) and "unfit for service" (the bayonets). But the heart of Ingersoll's defense was a social argument about his character. Ingersoll presented a series of prominent witnesses whose testimony was so uniform that the judge advocate began to record it in lists: "Major Bradley - Maj Atwater Maj Sherman Maj Lynde Col Hull - Lieut. Bradley - Capt Beach - Lieut Beck witnesses for delinquent being duly sworn testify - say the inspector is a highly valuable and esteemed officer." Other men, most bearing ranks or "Esq" alongside their names, appeared in a long row to agree to the premise that Ingersoll had a "mild + amiable character." Finally, and most damningly, Ingersoll brought a series of witnesses into court who located militia officers among the members of the mob that had formed after the inspection. Abel Chittenden, who bore the same last name as several of the accusers and prosecution witnesses, called men by name as he described the mob: "Capt Stone in the afternoon of the day on inspection used threatening words. There

appeared to be a mob at Guilford in the streets...Reuben Stone (a witness) said to me go home, we are all united. the laws cannot be supported. Lieut Bradley (a witness) was ~~in the~~ among the men collected."

The last piece of a military trial before the verdicts, the presentation of closing statements, presented an opportunity for socially skillful men to mount a piece of undiluted social theater entirely on their own terms. Reframing the charges in a 65-page closing argument to the court, Ingersoll performed a difficult balancing act, though one that was made less challenging by the testimony he had elicited. He presented his actions as the appropriate behavior of a man confronting consequential dishonor, while claiming the habits of a lower social station than the one he occupied. With rhetorically complex language that was at once theatrical and accurate, Ingersoll established the context in which he had inspected the arms of the aggrieved regiment: "the war at that time, was raging in all its fury -- the walls of the Capitol were tottering in ruins, + the enemy had avowed the determination of laying waste every point, accessible to his arms." Facing an enemy that could quickly move a sizable force by water, the 2nd Brigade "was kept in constant alarm," strung along a coastline that could be attacked at any point and at any moment. And yet, Ingersoll recalled, the brigade had proved to be in poor condition at the moment it was needed. Companies that had been repeatedly certified by their officers as fully armed and equipped suddenly reported that they were not in a condition to fight. Militiamen "absolutely flung aside the very muskets" that had carried them through years of inspections, pronouncing themselves to be essentially unarmed in the face of the enemy. Needing a strong militia but suddenly watching it melt away in the face of a real threat, "Reflecting men, saw + felt the necessity of exchanging in some measure the sham

discipline of parade, (at least in the regiments on the sea coast) for the realities of service." Ingersoll made his trial a choice between men who would defend their communities and men who would allow their communities to be destroyed. In this telling of events, he had of course conducted a harsh and demanding inspection: he was a reflecting man, awake to a threatening reality, and anyone who would condemn him must be willfully blind.

Accusers stood accused. In the context Ingersoll brought to the foreground, the identity he had invented for himself worked as a rebuke to his accusers, dishonorable men who had lied about the state of their companies and the condition of their own personal weapons. The complainants lacked the character to meet danger; they did not have the personal substance to defend their own homes and families. He would not argue, Ingersoll told the court, with claims that his bearing had been rough and unpleasant:

> I shall not contend this point with the gentlemen, but readily give them the ground -- for I admit most fully, that the schools in which I have learnt my politeness are undoubtedly less correct, + the circles in which I have been bred undoubtedly less chaste, than the refined ideas my accusers had been accustomed to. I will also as fully admit, that I am not master of as much politeness as many of the former inspectors -- I make no pretensions, to extraordinary polish, or fashionable etiquette -- I undoubtedly, did not turn out my toes as regularly, or nod my plumes as gracefully, as my accusers would have done had they been in my situation.

This self-description is naked invention. He had not been taught in "less correct" schools, or raised in unchaste circles, and no one in a courtroom filled with local militia officers could have believed that he had been. But Ingersoll's momentarily adopted status made fools of his accusers: they were concerned with plumes and polish while a lurking enemy closed in to attack them. Militia officers at war were fastidious, delicate, over-refined. They were unmanly. Fortunately, a man of courage and strength had been present to point

it out to them. This framing is more remarkable for the degree to which it cuts against the impression formed by the trial. Having proved through his questioning of witnesses that the officers accusing him of a failure of comportment had themselves made threats, led a mob, and spoken of his death, Ingersoll turned around and condemned their "extraordinary polish."

Performance created its own momentary realities. The performance of personal plainness worked for Ingersoll precisely because of the falsehoods at its foundation. In comparison, Bailey Bodwell had been a middling settler in a fairly new and small town, with adequate means for his rank but an established local notoriety. His retreat to status was obviously brittle, weakened by social knowledge in the distinctly local world of militia officers. It could be answered in kind by other men who held lower military rank but, in a newly established and socially fluid town, not substantially or necessarily lower social standing. But Ingersoll was born and trained to status, comfortable in his social and professional place and well protected against the kind of character attack his accusers were attempting. In the story he suggested to the court, he was a man of authentic substance who had behaved roughly when rough behavior was called for; his high character provided dispensation for hard but necessary acts. He had been alert enough to know when it was appropriate for him to adopt a lower tone. Ingersoll's rhetorical framing would have been dangerous if it had been true. He could not have safely told the court that his upbringing was "undoubtedly less chaste" than that of his accusers if it really had been less chaste, since genuinely poor status would have colored his actions with the hint of vulgarity. A gentleman acting without "affability + politeness" was making a tough-minded choice, especially against antagonists of the officer class who

had lost their own self control; a common man behaving impolitely was merely revealing himself. Against accusers who had shamefully placed shoddy weapons between an enemy and the homes and families they were supposed to be defending, an officer of Ingersoll's status and reputation could not lose. Though the evidence left no question that he had done the things his accusers charged him with doing, breaking swords and bayonets in a brusquely conducted inspection, he was found not guilty.[30] A gentleman merited his status because he had been appropriately ungentlemanly to men who, despite holding being militia officers, were not themselves gentlemen. Proving his claim to social status, Ingersoll proved his claim to military authority.

## "Farewell Every Thing That is Dear to Man"

As the cases against Ingersoll and Bodwell suggest, officer rank implied the social status of a gentleman, but did not confer or secure it. When those identities clashed, social conflict produced military disobedience. The degradation implied by obedience to social inferiors could even make the selection of officers into a weapon, deliberately used in feuds within the status group. A lieutenant colonel in Connecticut took up this weapon in the course of a three-year conflict with his company officers, appointing regimental staff officers with the intention of insulting his subordinates. His targets responded with predictable outrage, withdrawing their obedience after an unsuccessful attempt to resolve their dispute with their commander through reasoned discussion. The conflict produced a

[30] Unusually, Ingersoll's very long defense statement is archived separately from the record of his trial. Trial of Ralph G. Ingersoll, CSA, RG 13, Box 46, last folder, is the record of proceedings, and includes the complaint. Statement of Ralph G. Ingersoll is the first folder in Box 47. The folders are understandably mislabeled given the appearance of the handwritten capital I, Ingersoll's actual middle initial, in the records.

months-long wave of trials, as Lt. Col. Aaron Smith brought charges against 20 of his subordinates.[31]

Disputes between officers could simmer for years as highly personal contests before they came to light in a military court as breaches of military discipline. The contest between Smith and his company officers began with an act of gentlemanly overreach: appointed to the command of the 17th Regiment in the spring of 1812, Smith tried to improve his younger brother's social standing by appointing him as a major in the regiment that he would command. Socially, this effort to secure military rank for a family member made sense. The Smith brothers were sons of a Revolutionary War officer and former major general, David Smith, who had been a member of the Society of the Cincinnati. Aaron Smith was an increasingly prominent lawyer and merchant in Litchfield, and his brother Lucius had briefly joined his mercantile firm. They were men of growing status and unmistakable substance, and Aaron was a member of the state House of Representatives at the time of his appointment to a regimental command. As such, they were acquiring the expected symbols of social rank. But Lucius Smith had never been a militia officer. His appointment vaulted him over the men who were already officers in the regiment, and they successfully petitioned the General Assembly to refuse

[31] CSA, RG 13, all from 1815. Box 46: Trial of Ensign Robert H. Austin, tenth folder; Trial of Captain William Beebe, eleventh folder; Trial of Ensign Luther Cook, fourteenth folder; Trial of Lieut. Julius Griswold, fifteenth folder; Trial of Lieut. Marvin Griswold, sixteenth folder; Trial of Capt. David Hall, seventeenth folder; Trial of Lieut. William Hall, eighteenth folder; Trial of Capt. Jeremiah Holt, nineteenth folder. Box 47: Trial of Lieut. Benoni Johnson, second folder; Trial of Lieut. Chester Loomis, third folder; Trial of Capt. Elisha Loomis, fourth folder; Trial of Ensign Reuben Loomis, fifth folder; : Trial of Lieut. Warren Loomis, sixth folder; Trial of Capt. Joseph Mansfield, seventh folder; Trial of Lieut. Stephen Russell, ninth folder; Trial of Ensign Champion Scovill, tenth folder; Trial of Captain Zimri Skinner, eleventh folder; Trial of Captain Uriel Tuttle, twelfth folder; Trial of Ensign Henry Whittelesey, thirteenth folder; Trial of Ensign Samuel Wright, fourteenth folder.

him the rank of a major.[32] They had prevented their commander from granting a military title to a family member, but their success would cause them considerable harm.

Personal anger shaped military affairs. Failing at his attempt to elevate his brother to a respectable military rank, Aaron Smith used his power of appointment to punish and degrade the subordinates who had blocked the effort. The premise of their opposition had been that Lucius Smith would supersede them despite being unqualified for his post. In response, the regimental commander took care to appoint staff officers who were even more plainly unqualified. First, Smith appointed a private to serve as his adjutant. Before their courts martial, the officers of the regiment would describe their response to this calculated insult: though they knew that Private Augustus Talmadge had no experience that qualified him for his post, they regarded him as a man of good character, and so "patiently submitted to the appointment." But then Smith replaced Talmadge with Isaac Sheldon, and the regiment shuddered to a stop.

The consequences of Sheldon's appointment tell a significant story about the way middling New Englanders evaluated personal character, and the legal proceedings that

[32] The petition does not appear to have survived, but is described in the later courts martial on 17th Regiment officers. The perfunctory legislative journals for the Connecticut House of Representatives show that the battle over Lucius Smith's appointment as a major was a subject of contention for six months. The House passed a pair of bills naming Aaron Smith a lieutenant colonel and Lucius Smith a major on the afternoon of Thursday, May 28, 1812. The Senate returned the bill with Lucius Smith's name crossed out and another name in its place; on June 2, the House again passed a bill appointing Lucius to the rank, changing back the Senate's change. The next morning, the House chose members to conference with the Senate over the disagreement, but then voted again, on the same morning, to appoint Lucius Smith as major in the 17th Regiment. On the afternoon of Thursday, August 27, finding the Senate still opposed, the House passed yet another bill appointing Lucius Smith as major in the 17th Regiment. The next morning, the House "Concurred with the upper house in referring a bill appointing a major of 17th Regt to the Genl Assembly in Oct next." On Oct. 15, returning for a new legislative session, the House again named Lucius Smith to the major's post in the 17th Regiment. They gave it up the next day, finally conceding that they "Concurred with the Honl upper house in passing a bill appointing Morris Woodruff a Majr in the 17th Regt of Militia." The House, with Aaron Smith as a member, had unsuccessfully tried five times to make Lucius Smith a major in his brother's regiment. At CSA, in RG 002, see *Journal of the House of Representatives, begun the 11th of Oct 1810* and *Journal of the House of Representatives, October Session A.D. 1812*.

followed illustrate the way courts martial became social trials for men who were not facing formal charges. Tried for disobedience, the officers of the 17th Regiment turned the tables: in effect, they put Sheldon on trial, and put Smith on trial for appointing him. Lt. Benoni Johnson, for example, called a series of witnesses in his own defense, asking each a version of the same question: "What is the character of Adjt Isaac Sheldon?" The answers from Johnson's witnesses were nearly uniform. Lt. Stephen Russell: "His general character, as far as I understand it, is that of a drunkard, + of a man that is swearing + swaggering about the streets a good deal." Ensign David Marsh: "His established character in the Town of Litchfield is that of a profane swearer, almost a blasphemer, + a drinking man." And so on, in a drumbeat of social condemnation. Lt. William Hall, who testified that Sheldon had married into his own family in 1808, said that he was known "throughout the town" as a "profane swearer and a drunkard." Roger L. Whittlesey, Esq. agreed that Sheldon had been known as a "vicious, profane + intemperate person." Capt. William Beebe told the court that Sheldon's character was "that of a profane drinking young man." Sheldon's appointment to a position of authority led to his social conviction before his community. Strange, profane, and constantly drunk, he had been elevated to a position that exposed him to especially close and persistent social evaluation. Compare this testimony to the discussion about Ephraim Whiting in the court martial of Zenas Smith. Again, the person whose character was on trial before a court martial was not formally a defendant.

But everyone faced character judgment before the audience of the officer corps. As with Ephraim Whiting, the social evaluation of Isaac Sheldon was disputed, opening a contentious social contest before a military court. Two competing narratives regarding

Sheldon's character -- each contradicting the other, but uniform within its own boundaries -- followed clear patterns of interest. Witnesses called for the prosecution described Sheldon in similar terms, but with much different shading. Capt. Ambrose Norton told the court that Sheldon was "generally spoken of as a man of talents," though "a good many people have said that he would go out of town + have a good many drunken scrapes -- I never heard so much said about it on Town hill." Sheldon had the good sense to leave town to get drunk, and there was never "so much said about it" where he lived until he took up a position of authority. Other prosecution witness were a bit more generous, pronouncing Sheldon an odd man of unmistakable worth. Col. Benjamin Talmadge agreed with a questioner's premise that he was "a man of genuine talents," and widely regarded as such. "I should consider him rather an eccentric young man in his conversation + deportment," he conceded, but he had never known Sheldon to be a drunkard. Frederick Wolcott, Esq., testified, "I have considered him as a man of good talents, rather superior, + good education -- as Col. Talmadge has observed he is considered rather as an eccentric young man -- has a brilliant imagination -- Is an active young man -- I have never heard of his being habitually intemperate." Dr. Abel Catlin described Sheldon "as a youth of rare + distinguished abilities, disposed to be gay + eccentric." His answer to a question about Sheldon's drinking again suggests the importance of shading and perception: "I have never known him to be disguised by liquor -- But I have heard, as I observed before, that when he has been out, sometimes, he has had his highs."[33] These answers about Sheldon's character are striking for both their

[33] And so on. James Gould said that Sheldon was "eccentric + considerably romantic, but I do not know that he is habitually addicted to any vice...I do not mean to say that he does not, like other young men, sometimes have a high scrape." And Erwin Galpin told the court that Sheldon "was always considered as a

uniformity within two different groups and their divergence between those two groups: company officers who answered to Sheldon as a staff officer in their regiment all found him to be a reckless and socially outrageous drunkard, while other men in the same town who were not company officers in the regiment all found him to be eccentric, but talented and finally decent. Rank was a lens interposed between subordinate observers and the observed: from below, among the men he had superseded, Sheldon appeared to be dangerously dissolute. His appointment to authority colored his actions among men with a direct stake in that authority.

Social relationships colored military relationships, and men sought social solutions to military disputes, in a process that again suggests the likelihood of a parallel world of similar conflicts that could have been quietly resolved by social action without leaving a record of formal discipline. Smith's company officers tried to restore their regiment's lost comity by personal means, approaching their commander directly. During an August training event, two captains and a lieutenant took Smith aside to tell him that his officers "were very much dissatisfied with him at the appointment of a Adjutant." It was a short conversation. Presenting an honor grievance, the company officers caused one in response. The men on both sides of the discussion quickly came to feel that they had been insulted. Taking the lead among the three grievants, Beebe had suggested that Smith could have appointed one of his company officers to serve as adjutant. As a participant in the discussion remembered it, "Col. Smith replied there is not a commissioned officer in the Regt who can take that post + do the duty -- Capt Beebe says I think you dont pay your commissioned officers a very handsome compliment." Within moments, Smith

gay young man, but a man of abilities, + a man of integrity." Trial of Lieut. Benoni Johnson, 30th unnumbered page of proceedings.

moved to end the discussion. "Col. Smith seemed to think that Capt. Beebe crowded upon him, + thought Capt. Beebe meant to charge him with lying." Beebe asked if Smith was drunk, and the conversation shuddered to a close. A month later, when the regiment met for review, its company officers did not appear. Insulted, Smith's officers had tried to discuss their grievance. Rebuffed, they went on strike. Each moment of bad feeling had led to further social harm; each loss of comity had fed off the last. Among men with a fierce sensitivity to questions of personal honor, lost mutuality could not be easily recovered. As Smith said in his own testimony, once he recognized Beebe's willful determination to misrepresent his intentions, "I declined any further conversation with him." There was nothing left for the officers of the 17th Regiment but to refuse their obedience.

Completing the inversion of their courts martial into an attack on their accuser, all the company officers adopted a pair of defense statements that recited a list of grievances rather than a set of denials. "It is a fact admitted that not a single commissioned officer of the 17th Regiment appeared on parade for Battalion Inspection + review on the 22d of Sept. last," began  Why has this thing happened?"[34] In a long argument that other defendants incorporated into their own defense, Beebe described the men on trial as the wounded parties. "We are reluctantly compelled to lay before the court a series of abuses + insults which we have experienced at the hands of Col. Smith," he wrote. He began with Smith's "unblushing effrontery publicly to advocate the appointment of his brother, a conduct unparalleled in the annals of Connecticut." They had disobeyed an order to

[34] Trial of Captain William Beebe, defense statement at back of trial record. Smith had ordered the entire regiment to assemble, but to do so by battalions, and to be inspected by battalion. So the entire regiment appeared, but the officers failed to appear for battalion inspection.

appear, but they had done so because they had been insulted. Military obedience was conditioned on social respect. Dishonored, men could not obey.

The second defense statement adopted by the officers of the regiment made these arguments in more plainly social language, though it also made an argument about military order. This statement, written by Ens. Henry Whittelesey, returned to the theme that Sheldon was known to drink frequently and excessively. At war, Whittelesey warned, the regiment could be called out to meet the enemy. What if, at that moment, the regimental adjutant was "laid aside by himself, in the crook of the fence," unable to perform his duties? But the heart of Whittelesey's argument is found in his claims about honor and identity. Men who would follow "a profane wretch into the field of battle" would soon "have reason to expect the judgments of heaven upon us." Officers were, as always, being watched and facing judgment, and not just from heaven. If their soldiers saw them submit to Sheldon's authority, then their own authority would be destroyed. Improper submission destroyed public character. "If we tamely submit to every thing of this kind we should at once forfeit the confidence + respect of our soldiers they would no longer consider us as worthy their trust + confidence." In that event, "then farewell peace, farewell liberty, farewell every thing that is dear to man." Whittelesey's reference to tame submission was repeated, constituting the thematic center of his defense. He was not failing his duty by refusing to obey; rather, he was upholding it. In a particularly telling use of language, the ensign compared Sheldon's status as a licentious white man to men occupying another degraded social place: "Indeed it has been said by some of the Col.'s friends (+ we must conclude, that Col. Smith's sentiments + theirs, would be correspondent on this subject) it has been said that we were bound to obey even if he had

appointed a black man for an Adjutant." To be drunk and abandoned was to be very nearly *black*. Isaac Sheldon had made himself so shameful that other men could not shame themselves by conceding authority to him. As Whittelesey phrased it, Sheldon was hardly even a man, any longer: "Were we under obligations to obey the Col. and tamely submit to be dragged about by any creature whom the Col. should please to appoint over us?"[35] Isaac Sheldon had become a "creature," a dark and lost thing.

The outcome of the twenty trials over the conflict in the 17th Regiment suggests the ambivalence men in positions of authority felt over questions of honor and obedience that grew from highly personal conflicts. All twenty officers were convicted on charges of disobedience, but most, including Whittelesey, were also acquitted on charges of unofficerlike conduct. In the court's judgment, their proven refusal to obey had been consistent with the character of officers. Most were not punished at all, and none were punished severely. The context for this light punishment is crucial. The 17th Regiment had broken apart in September of 1814, a month after British troops had sacked the District of Columbia and burned the White House. A British attack on Baltimore had failed just eight days before the officers of Smith's regiment had refused to appear on the training field. Militia units all along the eastern seaboard were in a high state of readiness for an attack that could fall at any time and without warning. In this wartime context, the disobedience of Beebe of his fellow officers had been extraordinary. They had withdrawn their obedience and their service at the very moment it was most urgently needed. But most were sentenced to nothing more than a reprimand, and the remaining few were sentenced to short suspensions from command. More remarkably, Governor John Cotton Smith refused to uphold even that minimal punishment for most, approving the verdicts

[35] Trial of Ensign Henry Whittelesey, defense statement.

but remitting the sentences for every officer but one. The court, and the governor, had clearly accepted the premise that the officers of the 17th Regiment had disobeyed their commander for understandable reasons.[36]

A comparison illuminates the fluidity and particularity of courts martial. At nearly the same moment that Aaron Smith's officers were refusing to appear with their regiment, Ralph Ingersoll was breaking swords and bayonets fifty miles away. Both events took place on Sept. 22, 1814. Ingersoll had successfully shamed his accusers: at war, with the enemy threatening the state, they had failed in their duty, appearing on the parade field with inadequate weapons. In contrast, Smith's officers had simply refused to appear with their companies at all. In a particularly dangerous moment, they had refused their military obligations altogether. But their decision did not cause them public shame. The officers of the 27th Regiment had entered into a conflict with a gentleman; the officers of the 17th Regiment had entered into a conflict over the authority of "a profane wretch." Social context determined military interpretations of duty.

## "A Very Improper Person for That Office."

Variations on this kind of social judgment were a recurring feature of courts martial in the case of officers who, like Isaac Sheldon, did not comport themselves as officers,

[36] The single officer who actually received punishment was the officer who had most directly confronted Lt. Col. Smith in person. Found guilty of willful disobedience, neglect of duty, and unofficerlike and mutinous conduct, Capt. William Beebe was suspended from his rank and command for one year. The governor approved the sentence. Responding carefully to an anguished letter from Beebe's father asking that he remit Capt. Beebe's punishment, the governor acknowledged that he was replying to a distinguished veteran of the Revolutionary War. But he declined to explain his approval of the sentence, and he brushed aside the request that he remit it. *John Cotton Smith Papers*, Vol. VII (Hartford: Connecticut Historical Society, 1967), pp. 250-52. Volume VII of Smith's papers is Volume XXXI of the *Collections of the Connecticut Historical Society*. The surviving records of the 17th Regiment make no mention of the feud between the regimental commander and his officers. In the militia records at CHS, see the box, "Militia Papers and Records, 12th-20th Regiments," and folder, "Militia: 17th and 18th Regiments."

destroying their social place in the officer class. While military trials sometimes undertook social inquisitions into the character of men who were not on trial, officers could also be brought up on charges with a social basis. The Connecticut court martial hearing charges against Ens. Ansel Southworth in 1816 discovered that the ensign's company had already delivered its verdict: among the officers and privates alike, no one would do duty again until Southworth was removed from his place among them.[37] Four of the seven charges against the ensign described events more than a year old, or described events so vaguely that it was not clear when they had happened, and the court quickly agreed not to hear them. The remaining pieces of the complaint effectively charged that Southworth had declared himself to fall outside the boundaries of an officer's identity, and then had gone on to prove the point. Asked to settle officers' business at the end of a company muster, Southworth had refused, announcing "with a loud voice" and in the hearing of other soldiers that he would no longer associate with his fellow officers "any more from that time." Refusing to associate with officers, Southworth went on to engage in "boisterous and tumultuous speech + ungentlemanlike behavior" at a regimental review a short time later. He faced the loss of his officer's rank because he had shoved away the components of his associated social status. Refusing to join officers, and refusing to comport himself as an officer, he no longer was an officer in social terms, and so would soon no longer be an officer in formal terms.

[37] Trial of Ens. Ansel Southworth, 1816. CSA, RG 13, Box 47, Folder 17. Regarding the refusal of others to do duty with Southworth, see, first, the letter of complaint from Capt. Eleazer Clark, which concludes with a warning that would do further duty until Southworth "shall be compelled to answer for his unmilitary ungentlemanlike + unofficerlike conduct as above described"; and, second, the testimony of Sgt. Daniel Walker: "Q: Did the other officers say, on the first Monday of last May, that they 'would not + could not do duty with him any more?' A: They did. Q: Have you heard the Soldiers say they would pay their fines before they would do duty with him in the compy? A: I think I have."

Officers could refuse the status of gentlemen, and testimony in Southworth's trial made clear the deliberateness of his choice: he had thrown off his status with great force. Lt. Samuel Colt told the court that the company had trained on the first Monday of September, 1815, and then had taken refreshments. Marching to dinner, Southworth refused to walk with other officers, and instead marched in the ranks. Called upon to settle the officers' bill, Southworth "did not pay. He said he had withdrawn himself from the officers from that time + forever after -- or to that effect." Two days later, after the annual regimental review, officers and spectators crowded into the small house that the regimental commander was using for headquarters. It was raining, driving more people inside than would usually have occupied such little space; as a major would tell the court, "we admitted a throng of all descriptions, from the rain." In those tight quarters, Southworth ran wild, or at least ran to something that other officers would perceive as wild. A major "saw the Ensign singing a funny song, + Drums going at the same time," and he approached the company commander. As Clark would testify, the major "requested me to still my Ensign." Clark's reply is telling: he "said it would do no good for him to try." Finally, the regiment's adjutant did what Clarke could not, stopping the noise "after threatening to run his sword through the drum." But then, after some silence, Southworth started up again. Finding that "there were not Ladies enough" for dancing, the Ensign "went into the street + asked one in." In the uniform of an officer, at regimental headquarters, an officer of the most junior rank was having a party.

Defendants could damn themselves on trial before courts martial by failing to recognize and honor the social standards of the event. Southworth's defense is nearly perfect in its failure to address the social realities of courts martial. Instead, in an

important misfire, he argued the law. He had refused to pay a share of the officers' bill for refreshments after a company muster, he conceded, but there was nothing in the militia statute "which requires that an officer shall pay, any Expences referred to in the charge." The several elements of the complaint against him, he argued, were all like that: they charged vague transgressions against rules that could not be found in writing. "That for the Deficiencies just enumerated," he argued, "they charge no crime, + he if found to have done what they alledge, cannot be pronounced guilty, for they contain no charge of guilt." Southworth was formally correct and practically obtuse. He was charged with social offenses before a type of tribunal that regularly heard and judged just those kinds of charges. Still, Southworth did at least gesture at social argument. But his version of that argument was itself a model of ungentlemanly comportment. He had sung and danced amidst the "the usual vivacity produced by military parade," he acknowledged, and his pleasure "was perhaps, indulged with Inadvertence, a little too far -- though not so far as to be censurable, but excusable, on such an occasion." He was, after all, just being himself: "it is impossible for a Sailor on Land, when his Heart is cheerful among his Friends, to forget the Song that has cheered him when absent." Finally, making the point certain, the ensign conceded his social distance from his fellow officers. He agreed that "a coolness had taken place" between him and them, and "no other Intercourse between them would probably occur, except what official duty required." But he would, he insisted, remain obedient to official orders. Southworth appears to have been entirely blind to the realities of his rank and place: the status of an officer was founded on collegiality and social belonging, not on formal compliance. The court would decline to return a guilty verdict over his boisterous behavior at the regimental review. But it

convicted him on two of the three remaining counts that he faced, ordering that he be cashiered from the militia and barred from holding an officer's rank for the rest of his life. Southworth had done little or nothing that was against the military laws, but his fellow officers shoved him permanently outside the circle of their shared status.[38]

## "If at the Price of Blood"

The potentially destabilizing effect of a persistent vocabulary of personal honor is particularly clear in a violent 1816 dispute between two Connecticut militia captains that also shows the escalation of an honor conflict through a spectrum of available responses. Capt. Horatio Woodward was the commander of a select company, the 2nd Flank Company of the 23rd Regiment. His antagonist, Capt. Asahel Kimball, commanded a standing company in the same regiment. Select companies recruited from standing

[38] The two charges for which Southworth was convicted were the charge that he had refused to settle the officers' bill, saying that he would no longer associate with officers, and a charge that he had posted himself in the ranks and declined to take his place as an officer. The Oct. 14, 1816 general order approving the verdict and sentence against Southworth makes a mistake, finding that he was acquitted on five counts. He was found not guilty on just one; the others, charges involving behavior more than a year in the past, the court declined to hear. *Collections of the Connecticut Historical Society*, Vol. 30, pp. 170-71. For comparable military trials over status and comportment, see, for example: Trial of Ensign Thomas L. Bevins, 1814. CSA, RG 13, Box 46. After his captain called Bevins an "Irish buggar," Bevins told the captain he was "a D-d Rascal, + said he was no more fit to command a company than his D-d arse, or D-d dog, which of the two expressions he cannot remember, but is certain it was one or the other." He was convicted and cashiered. See also, in RG 13 at CSA, Trial of Major Robert Knapp, April 1824 (Box 48) and Trial of Major Robert Knapp, April 1826 (Box 49). Knapp was persistently poor and sick, telling other officers he could not attend training because he had no horse. Then, in August of 1825, "At the officers Drill duly ordered by Col. Brimmade on the 31st Day of August last at Stratford aforesaid the said Major Knapp appeared on Parade on the morning of said Day in a State of intoxication highly degrading to the character of an officer whereby he was rendered incapable of rightly performing his duty as a major + made the subject of jest+ ridicule rather than commanding the respect + obedience of his inferiors in rank." Witnesses described Knapp giggling and stumbling around the parade field. After mild punishment at his first court martial, Knapp was cashiered at his second, and barred for life from holding military rank. Compare Knapp's courts martial to Trial of Lt. Zalmon B. Banks, Aug. 1813. CSA, RG 13, Box 46, fifth folder, which shows that courts martial accepted illness as a defense on the part of officers who often failed to attend training. Finally, see also Court Martial on Maj. William Dunbar, ADC to Gen. Crane of 1st Division. March, 1816. MNGMA, Courts Martial, Vol. 6.

companies, but Woodward made a particularly aggressive move to take men from Kimball's company: he recruited them during a regimental review in September, in the middle of the day, when Kimball released his men for a break from training. In the resulting conflict, men escalated and drew back, then escalated again, cycling through a set of actions that reflected both their growing anger and their sense that their anger was becoming dangerous. The worst of the confrontation would come when an officer made gestures of peace, but found those gestures rejected.

Throughout the afternoon of the growing conflict, though, provocative acts outnumbered the efforts to achieve restraint and restore comity, and men read the actions of their antagonists in the worst possible light. The first provocation was unmistakable, pulling men from an officer's ranks before an audience of the entire regiment. Woodward had probably planned in advance to take men from Kimball's company, using the training day to recruit those who were willing to switch. At Woodward's court martial, the men who switched companies testified that Woodward had promised to protect them from punishment if they left Kimball and joined the flank company. One, Danford Richmond, told the court that he and Woodward had discussed the matter "in the morning before the Company was formed." This plotting took place in a context of distrust: the record of the trial suggests that Woodward and Kimball arrived on the parade field as antagonists. One of the charges against Woodward was that he had deliberately marched his company so close to Kimball, with music playing, that the other man could not call his company roll in the morning. No testimony established the likelihood that Woodward had done so deliberately, but Kimball was clearly inclined to take his actions as provocations. In any case, Woodward was so determined to take some of Kimball's men that he was willing to

incur a personal cost. As Daniel Buffington testified, "At noon I enlisted in Capt Woodward's company -- Capt Woodward told me if I would take off my frontispiece and feather and join his Company, he would bear me harmless, against the fine, and accordingly I did." A company commander had no authority to prevent another captain from levying fines against men in his ranks, so this promise from Woodward was a personal commitment: he would pay the fines for Kimball's men. A member of Kimball's company, Elijah Whiting, told the court he had heard Woodward make that explicit promise: "Capt Woodward said to the men arrested not to go with the Guard, and if there were any fines to be paid he would pay them." Determined to take soldiers from another commander, and determined to do it in public on the parade field, Woodward invested his own money in a personal insult.

Sustained dishonor caused the escalation of conflict, as men moved to a more vigorous vocabulary of response. The pace of the provocations quickened, and both companies turned to an initial and limited use of force. Kimball returned from his noontime break to find that his company was missing five men who had been in the ranks throughout the morning, and his subsequent actions suggest that he took their absence as a deliberate personal insult. He sent an armed guard to recover the men. Lt. Amos Bugbee, Woodward's second in command, remembered the moment Kimball's guard entered the ranks of the flank company "and said to the men they must go with us and I answered they would not. they then seized some of the men by the coat, and I likewise seized him and ordered him to desist." The guard had not come to ask for Kimball's men; it had come to take them. As Buffington told the court, "I was taken and carried back." The men who switched companies became the ball in a game to score points. Buffington,

again: "After I was taken, Capt Woodwards Seargts Whitney + Smith came to me and one of them said if I would return to Capt Woodwards Company they would protect me. I told him I should submit to the Guard." Woodward took men from Kimball's company, then lost two to Kimball's armed force of guards, then went back to get them again. The subjects of this apparently petulant contest understood the growing seriousness of the event, discussing the promises of "protection" the received and describing their decision to "submit." Meanwhile, Kimball's guards had only recovered two of the men who switched companies. As they tried to lead away the remaining three, Woodward's company prevented them from leaving, and did so by a more serious use of force. Elijah Whiting, a member of Kimball's guard, told the court that Woodward shouted for his company to "form a hollow square," boxing in the men from the other company. "and there Capt Woodward said we were his prisoners and must march with his Company, and then ordered him men to charge Bayonet and march, they then marched a small distance and pricked me with their Bayonets." In just a few moments of confrontation, New England militiamen had gone so far as to make a show of using bayonets against other New England militiamen.

Men were alert to the implications of this vocabulary or honor, and at several points the antagonists recognized the growing seriousness of their conflict. First, seeing that the men of his company were pricking Kimball's guard with their bayonets, Bugbee ordered them to stop. He had grabbed one of the men himself, using force in response to force, but recognized a boundary that should not be crossed. More significantly, Woodward spoke to Kimball as their companies squared off, offering to meet for a quiet discussion between the two commanders. A witness, Peter Minor, told the court that Woodward had

pronounced the escalating confrontation to be "folly," and not worth continuing: "and if he Capt Kimball would go to their quarters, and if he had any of his men he would give them up, and if he had any men that had rather do duty in Capt Kimballs Company than his they might go." Kimball refused, and both companies soon stood face to face, both with fixed bayonets. Finally, a third officer tried to impose some restraint, as the ensign in Woodward's company called out that his commander was being "too fast." But this call for deliberation was too late.

Gestures demanded matching responses. The worst moment between Woodward's company and Kimball's company followed one antagonist's failed expression of willingness to settle the dispute. Still, personal restraint would be mixed in with continuing escalation. Hearing Woodward's offer to meet for discussion, Kimball refused, intensifying the conflict with the language of violence. As Minor told the court, "Capt Kimball then said he would have the men if at the price of Blood." Rebuffed and threatened, Woodward would make no further efforts to restore peace. Kimball ordered his men to fix bayonets and "stand their ground." His company moved from a single file to a formation by that filled the road, blocking Woodward's path. Woodward ordered his men to face Kimball's company, then led them directly into its ranks. Passing through the other company, Woodward struck at least one of its men, Ebenezer Chase, with his sword. Chase appeared in person to tell the court he had been struck. Other men in both companies gestured at violence, but stopped short of it. A private named Smith, a member of Woodward's company, called out to Kimball as he approached him that "it was a bad day, and he ought to make it no worse than it was." Kimball responded with a further show of his willingness to use force: "he replied + presented his sword towards

me, and I parried it with spontoon." Throughout both companies, men made a display of violence, but with enough sense to stop short of the real thing. A musician in Woodward's company, Walter Jones, told the court that a member of Kimball's company "presented his Bayonet to my heart," but added that he had "parried it with my drumstick." Men raised weapons, but allowed them to be knocked aside. Finally, Woodward may or may not have struck Kimball. The captains passed one another, with Woodward raising his sword, and Kimball's coat fell from his shoulders as they passed. Yet witnesses could not agree about what had happened. Some testified that Woodward had knocked Kimball's coat from his shoulders; Ezekiel Chapman told the court plainly, "I saw his sword strike the great coat + it fell." But another witness, Charles Loomis, disagreed: "It was brushed by a soldier, it hung loose over his shoulders and appeared to be done accidentally." In either case, Woodward turned to the other captain as his company passed through Kimball's, expressing triumphant contempt. As Abner Whiting testified, "they broke through Capt Kimballs Company, and broke off some of his files. and Capt Woodward then said to Capt Kimball, there God dam you go with your men. and gave a flourish with his sword." Woodward had insulted Kimball and used force against his company, then backed down and offered peace. Insulted in response, he abandoned comity altogether, and finished his effort to publicly humiliate his antagonist; he damned the other man, and "gave a flourish with his sword," in front of Kimball's company and on a regimental training day. He defeated Kimball before an audience, and made sure the audience noticed the victory.

Defending himself before a military court, Woodward understandably framed his actions in the terms of personal honor. He had acted, he explained, to prevent Kimball

from shaming him, and therefore from shaming the men under his command. Protecting his men, he had led them into a necessary conflict, the avoidance of which would have caused him to "become the subject of ridicule or contempt among his fellow officers." Though he had surely understood how Kimball would take the loss of men from his ranks in the middle of the day and before the entire regiment, Woodward had pushed forward into something close to inevitable conflict. But he had also tried to back down, offering to settle his dispute with Kimball by private discussion and compromise. He could not continue to pursue that course after being threatened before an audience. Kimball's public declaration that he would prevail even at the cost of bloodshed created a moment in which Woodward would reveal his character before witnesses: was he the kind of man who backed down in fear? In a culture that deeply valued personal honor, his choice was entirely clear. Similarly, Kimball could not tolerate the loss of his men, and the violent response to his detachment of guards, without a public loss of honor. He was compelled to display his firmness of will. The two captains had trapped themselves in a conflict they could not shut off without a loss of face. As late as 1816, and in New England, men had believed it necessary to defend their honor by gestures that edged up to the boundaries of real violence. The militia officers who judged Woodward's case did not agree with his conception of honor, probably recognizing that he had instigated an avoidable conflict. Convicting him on two of three charges, they ordered him "cashiered with disability of holding any military office in this state."[39] While a sense of the demands of honor could

[39] Trial of Captain Horatio Woodward, 1816-1817. CSA, RG 13, Box 48, Folder One. Though Woodward was removed, the conflict between the two companies persisted, and the officers of the flank company continued to goad their antagonist. In Feb. of 1818, Bugbee, now captain of the flank company, was also brought before a court martial. Like Woodward, Bugbee had enlisted men in his company who had been members of Kimball's company. Taking men from Kimball's command, he caused the standing company to fall below its required strength. Trying to prevent Kimball from recovering the men, Bugbee reported to Kimball the names of three other men who he claimed were subject to military duty in the district that

drive militia officers to passionate acts, their fellow officers judged those angry decisions harshly. Kimball and Woodward give us a sense of the intensity of honor conflicts in post-Revolutionary New England; the court that evaluated their conflict gives us a sense of the boundaries that men of the status group placed around those contests.

## "Not for Him, Nor for Any Other Man"

In some cases, courts found it easy to dispose of attacks on the personal character of an officer. The militia officers named to the court martial of Capt. Jabez Ripley in 1819 had no difficulty resolving allegations that the captain had abused the men under his command. Ripley was charged with an ungentlemanly loss of self control during a cold day of company training in Hartford. A complaint from his lieutenants alleged that the captain had cursed and harangued the company, telling them "that he did not care a damn for said company or how soon it was broken up + that he would injure it as much as he could." Watching the men drill, Ripley discovered his own sense of personal dishonor in the failures of his subordinates. "You have disgraced yourselves by your conduct; it is a disgrace to command you," he had told the company. "I will never disgrace myself so much as to command you again." But witnesses described a company that had genuinely shamed itself, staggering drunk in deep mud and bitter cold. A private, Anderson Shephard, told the court that other men had "sent and got some brandy" during a break in training. When Ripley called on them to fall in for the resumption of training, Private

encompassed Kimball's company. Kimball subsequently ordered the men to participate in militia duty, but discovered they were exempt from military duty under state law. The three exempts sued Kimball in civil court, costing him "much trouble and expence." Bugbee was acquitted. See Trial of Captain Amos Bugbee, 1817-1818. CSA, RG 13, Box 48, Folder Two.

Daniel Copeland testified, "They did not immediately come to order, but ten or twelve at the left of the company continued huddled up, the jug passing round among them." A third private, Harvey Ensign, remembered that another militiaman in the ranks had loudly cursed his commander as "a damned rascal," making sure Ripley could hear him say, "I will be damned if I will do duty under him again." Other witnesses told the court that members of the company had bragged about their deliberate demonstration of disrespect for their commander: "we pretty nigh mobd him." Then some had followed him after the day's training, and "blackguarded him all the way home." With this testimony before the court, Ripley declined to bother with a closing statement, telling the court it was not necessary that he defend himself. And it was not. The court acquitted him of every charge he faced. Militia officers could not be convicted on charges of abusing privates who got drunk on the parade field and chased their commander back to his house. Ripley had lost his self control, but had done so in an exchange with men who did not merit decent treatment.[40]

[40] Trial of Captain Jabez Ripley, 1819. CSA, RG 13, Box 48, Folder Six. For a comparable moment in which an officer was held to understandably react with disgust to behavior in the ranks, see the 1806 court martial of Lt. James M. Ingraham. No trial records have survived, but several published references describe a contest in which a private dressed in clownishly outlandish clothes to mock the acting commander of his company. Pvt. Noah Harding had announced around town that he would embarrass his officers at the next training event, so a crowd turned out to watch the performance, for which Harding turned out looking like " deserter from a mad house." Testimony in Ingraham's trial established that the private had carefully stored his boots where they would grow a layer of mold. Ingraham admitted to the resulting charge that he had severely punished Harding, stripping him of his military gear and marching him under guard through the public streets, in addition to making him ride the wooden horse. Ingraham was acquitted. See Ingraham's defense statement in the *Eastern Argus* (Portland), Oct. 30, 1806, pg. 1. Accounts of the court martial traveled. See the untitled piece beginning, "We observe, in the Eastern Argus...", *Weekly Wanderer* (Randolph, Vt.), Dec. 15, 1806, pg. 3.

## "A Highly Personal Political Realm"

Writing about honor disputes among national politicians in the early republic, Joanne Freeman described a "government of character striving to become a government of rules within its constitutional framework." This still-forming government was a "highly personal political realm," a setting in which men managed unclear political alliances and emerging institutional standards by the application of social understandings. Their contests, Freeman writes were not binary conflicts between "deference and democracy" or Federalists and Republicans. "Rather, they were engaged in a subtle, multifaceted tug or war between ideals and realities, past and present, deference and democracy, Old World and New."[41] Similarly maneuvering in a military institution that lacked clear formal order, well-identified boundaries of identity and structure, and established regulation, the men engaged in militia service in early national New England managed conflict by speaking in a vocabulary they knew. They applied social rules to the problems of military hierarchy, adding a fluid and contingent element to a relationship that was supposed to be rigidly structured from the top down. This fluidity was particularly likely in a period of democratization, as the status of a militia officer became more widely available, elevating militiamen to rank that similarly situated men could not have previously attained.[42] Continuing this examination of the collision between formal regulation and social understanding, Chapter Four examines the contested election of militia officers.

[41] Freeman, *Affairs of Honor*, pg. 69 and pg. 209.
[42] Gross, *The Minutemen and Their World*, pp. 171-91.

## Chapter Four: "As Peaceable as Elections Usually Are"

> "It is difficult for me to make up my mind what answer I ought to make to this charge as it is impossible for me to know what is the power + duty of a presiding officer in a military election."
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> -- Statement of Lt. Col. Ephraim Ward, 1822[1]

> "Third. That at said election many of the members of a certain military association called the soul of the Soldiery of which Amos B. Parker orderly Sergeant of said company + now reported to be elected to the Office of Captain in said Company was a member and other persons not members of said Company did appear at said election + through their interference in said election did influence the votes of many of the members by indecorous and highly improper representations in favor of said Parker and against your Remonstrants."
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> -- Inquiry on Election of Amos B. Parker, 1821.[2]

In January of 1801, twenty-three men in the seacoast town of Harwich signed a petition to Massachusetts Governor Caleb Strong. The petitioners asked Strong to remove the town's militia officers, claiming they had not been notified about the election of those officers until after the voting was completed. They also alleged that ineligible voters had been permitted to cast ballots. A great deal was at stake for the militiamen signing this petition, who had refused to train under "Illegally chosen officers." A justice of the peace had heard charges against them, and they claimed that he had turned aside their claims that the town's officers were not legitimately chosen: "the justice Intimated that the constitution and Law were not to be pled as an excuse." Having lost their case before a civil officer, they expected to have property seized to cover fines, a prospect that they expected "will be very distressing to our families." They closed by insisting on their

[1] Court Martial of Col. Joshua Hamblin and Col. Ephraim Ward, 1822. MNGMA, Courts Martial, Vol. 12. This court heard two sets of unrelated charges against separate defendants.
[2] Court of Inquiry on Election of Amos B. Parker as Captain, 1821. MNGMA, Courts Martial, Vol. 12.

willingness to obey their government and do the lawful duty expected of them. The three colonels and two majors who made up the resulting court of inquiry concluded that the petitioners had been largely correct. As the division commander put it in a letter to Gov. Strong, the court thought "the choice of officers + parades have not been managed strictly legal," although they also thought that "perhaps at the election of Captain Seabury their was less irregularity than common." Discovering unlawful behavior, the court also concluded that the officers should be confirmed in their authority. As Maj. Gen. Nathaniel Goodwin reported the court's findings, the petition to remove Harwich's militia leaders had "originated in a seditious Spirit of disorganization + had Capt Seabury conducted with the same inattention + neglect of duty as his predecessor their would have been no complaint." The adjutant general and governor agreed.[3] An election was valid because, among other things, it was less irregular than usual. Militiamen had seditiously disobeyed their unlawfully chosen officers, whose exemplary conduct in office was vigorous, faithful, and "not...strictly legal."

This chapter examines the local foundation of military authority, using the records of forty-seven military court proceedings to review contests over the election of company

[3] Court of Inquiry concerning the election of Thomas Seabury as Captain, Chillingworth Foster as Lieutenant, and Theophilus Berry, junior, as Ensign in 2d Reg. 3d Brig. 5 Div. May, 1801. MNGMA, Courts Martial, Vol. 1/1-21. The record of this court of inquiry consists of five separate documents, with unnumbered pages: a short record of proceedings, which contains all of the recorded testimony; a petition with 43 signatures, dated only March 1801; a petition with 23 signatures, dated at Harwich on January 15, 1801; a letter to Gov. Caleb Strong from Maj. Gen. Nathaniel Goodwin, dated at Plymouth on August 17, 1801; and a one-page letter from Adj. Gen. William Donnison to Strong, recommending that the Harwich officers be confirmed. A short note at the bottom of that letter, signed by Strong, indicates that he agrees. In response to the claims of the original petitioners, a larger group of Harwich militiamen wrote and signed a new petition arguing against the original complainants. The forty-three men who petitioned the state in March insisted that they were "well satisfied" with their officers, whose election had been challenged only by those who had "shown a disposition to discourage the organization of said company of militia and done all in their power to prevent the execution of the laws respecting the militia in Col. Snow's regiment."

and regimental militia officers in Massachusetts.[4] Historians have understood local militia elections as shabby scenes of needless chaos, and therefore as sites for the diminution of authority in a decaying institution -- a place where ordering effort met a disordering response. An early historian of the American militia, John Mahon, wrote more than fifty years ago that "endless disputes" arose over the choice of militia officers: "Candidates accused each other of stuffing the ballot boxes, of allowing ineligibles to vote, of intimidating voters, indeed of every sort of discrimination," while "other times the men in a company area, not wanting to trouble with military training, avoided it by failing to elect officers." William Riker made the latter point in more aggressive language, writing that militiamen often "elected the town fool their captain in order to display their contempt for the whole business. [5] More recently, Mark Pitcavage has compared militia elections to civil elections, with similarly cutthroat electioneering and vote-buying behavior. "Militia elections were frequently contested, and not infrequently physically contested," Pitcavage writes. "Even after controversies had been settled, the bad feelings caused by militia elections could seriously damage the workings of the

[4] I looked without success for comparable records in Rhode Island and New Hampshire, where very few court martial records have survived. In New Hampshire, though, the legislature voted to ask the governor to remove militia officers from their positions, and militiamen petitioned for them to do so. The state archive's collection of legislative journals for this period is limited, but see, for example, the petitions in the *Journal of the House of Representatives of the State of New-Hampshire*, for the session begun on the first Wednesday of June, 1817 (Concord, NH: Isaac Hill, 1817). Petitions for the removal of officers are discussed on pg. 83, pp. 96-97, pg. 121, pg. 124, pg. 131, pp. 166-68, pg. 176, and pg. 182; on pg. 168, see the request to the governor to remove a brigade officer "who has for a long time been insane, and still continues so to be." I also looked for records in Connecticut, where I found only one court martial related to an election during the period examined here. Connecticut was a smaller state, and had militia elections only for company officers, and so should have seen fewer courts martial over disputed elections than Massachusetts. Still, I expected to find more trials on this topic in the records of the many courts martial conducted in Connecticut. Their absence does not suggest stability in the officer corps. As William Riker noted using militia returns, "In the early 1820s Connecticut replaced about one-fourth of its officers annually." *Soldiers of the States*, pg. 33.

[5] Mahon, *The American Militia: Decade of Decision*, pg. 36. Riker, *Soldiers of the States*, pg. 30 and n. 23, pg. 121.

militia."[6] Men behaved badly, in outbursts of mere disorder: they recklessly threw around accusations of impropriety, invested unsound men with officer rank to express their disgust for military service, and fought for personal advantage in ways that devastated the effectiveness of a hierarchal, state-managed military institution.[7]

This view is substantially correct, as the evidence presented in this chapter will show, but also incomplete, as it misses a set of important contests between competing premises. Rather than simply being competitions between forces of order and forces of disorder, arguments over the selection of officers were often bitter struggles between competing conceptions of order.[8] Court records, which include detailed testimony from a far wider

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[6] Mark Pitcavage, *An Equitable Burden: The Decline of the State Militias, 1783-1858* (Unpublished dissertation, The Ohio State University, 1995) pp. 334-39; quote is from 338. The comparison to civil elections is apt, as elections for civil offices were also a source of constant disputes in this period. Regarding early national Massachusetts, see, for example, Luther S. Cushing, ed., *Reports of Contested Elections in the House of Representatives in the Commonwealth of Massachusetts* (Boston: Dutton and Wentworth, 1834).

[7] The election of militia officers was a source of local social competition, and broad social and political conflict, in many eras and areas that fall outside the scope of this chapter. Regarding the seventeenth-century Massachusetts militia, see Zelner, *A Rabble in Arms*, pp. 35-36, and Breen, *Puritans and Adventurers*, pp. 99-100. Regarding the Revolutionary militia, Rosswurm, *Arms, Country and Class*, pg. 51, pg. 137, pg. 231, passim. Also, from the mid-1820s the election of militia officers sometimes became a forum for the performance of protest that reflected the terminal decline of nearly universal white male militia service. See, for a rich example, the 1825 election of a hunchbacked ostler named John Pluck to the rank of colonel by militia officers in Philadelphia. For Pluck's first regimental parade, the officers of the 84th Regiment dressed their colonel in a woman's bonnet, with an absurdly large sword hanging from his burlap pants. Susan G. Davis, *Parades and Power: Street Theatre in Nineteenth-Century Philadelphia* (Philadelphia: Temple University Press, 1986), pp. 78-82; see also the useful section headed, "The Spread of Militia Burlesque," pp. 84-96.

[8] Even when they interfered with militia elections in dishonest ways that plainly disordered the affected militia units, officers sometimes acted on an intention to serve competing forms of order. Tried by a court martial on a battery of charges in the Maine District town of Castine in 1805, for example, Lt. Col. Jeremiah Wardwell was found to have conducted company elections with the intention of assuring "the Election of a certain class of the people into office, more conformable to his own political sentiments." Presiding over the election of a captain, Wardwell had greeted the results by hollering to the voters, "damn him he is a Fed, shoot him + the like," causing the winning candidate to decline the post. At other elections, Wardwell took votes verbally; then he refused to deliver commissions to properly elected officers, and held a new election for a company captain after the company had recently elected a commander he did not wish to commission. But Wardwell was one of the proprietors of a newly established town in the area, and his actions can be explained as an effort to control the settlement of political order in a setting in which he had a degree of personal ownership. Running roughshod over the process by which men chose militia officers, he shaped the status of men who would share prominent places in a local setting he had helped to establish. Court Martial on Lieut. Col. Jeremiah Wardwell, August 1805. MNGMA, Courts Martial, Vol. 1. Regarding Wardwell's place as a proprietor, see, for example, the untitled advertisement in which his name

range of participants and witnesses than a petition or orderly book documenting the same events, reveal a series of sharp clashes around the election of officers that centered on competing definitions of militia regulation and the emerging political order in which the institution was set. Fighting over the conduct and outcome of militia elections, militiamen were frequently doing three things, to varying degrees. First, they were carrying over the "persistent localism" that T.H. Breen has identified in the colonial militia, insisting on the right of communities to manage their own military affairs, while also manifesting the persistently local character of all voting for offices in early national New England.[9] Second, they were, in Edmund Morgan's phrase, "inventing the people": in the long collapse of an idea of a "better sort" based on wealth and land ownership, they were working out questions of status and authority in a republican setting.[10] Finally, they were negotiating the operation of an institution built on associational roots and statutory structure, finding ways to bridge those competing foundations. But these efforts were not unified or calculated. Rather, they were persistently ad hoc, never connecting to develop a systematic set of rules and procedures. Over time, a system that never began to cohere and systematize instead began to slowly degrade. The diminution of order grew from the absence of a prevailing effort to establish order. Unchecked, entropy gradually prevailed.

Examining overlapping arguments over the sources and limits of authority and the mediating effects of social honor, this chapter brings together the themes of the previous two chapters to examine the development and location of authority in an emerging

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appears several times, *Independent Chronicle* (Boston), July 21, 1806, pg. 3. Wardwell appears frequently as a selectman and member of civic committees in George Augustus Wheeler, *History of Castine, Penobscot, and Brooksville* (Bangor: Burr & Robinson, 1875).

[9] Alec E. Ewald, *The Way We Vote: The Local Dimension of American Suffrage* (Nashville: Vanderbilt University Press, 2009), pg. 31.

[10] Morgan, *Inventing the People*, pp. 292-93, passim.

institutional order. Militia elections took place in the "highly personal political realm" of a system that was still negotiating between competing sources of regulation and stability. Deeply rooted in colonial experience, reshaped by revolution, practically managed by local communities, and supposedly made uniform by federal and state legislation, the militia faced not an absence of foundational authority but rather a surfeit of it. Settling on the choice of the men who would lead them, militiamen had layers of competing guidance. They had to choose what apparent rules to follow, and they had to find a basis for their choices. As in other areas of militia experience, personal honor and local relationships provided practical guidance where authority and institutional rules were unclear or contested.

Nearly all of the disputed elections for which military court records have survived relate to conflicts in standing companies and the regiments that they composed. As Chapter Two suggests, select companies like artillery and cavalry units, and independent military companies like the Newport Artillery and the Salem Cadets, had different social tools available for the management of their own affairs. The available evidence suggests that state military units composed of selected members were less likely to turn to outside intervention to resolve controversies over the selection of officers.[11]

[11] However, the single election-related court martial for which the record has survived from Connecticut during this period took place in a cavalry company, and presents issues that are similar to many of the election-related courts martial that took place in standing companies in Massachusetts during the same period. The 1820 court martial convened in November in Wethersfield, near Hartford, to hear charges against a captain who had allegedly manipulated the outcome of an election in the cavalry company he commanded. The complaint against Capt. Alpheus Shumway was filed by two privates and a subaltern officer in Shumway's company. Most damaging among their allegations was one that centered on the very problem of the control of membership: a charge that Shumway had enlisted eight men in his company for the election, then had immediately released them from service after they cast votes to assure his election. The court found Shumway guilty on the charges of enlisting men for the sake of swaying the election, but sentenced him only to a reprimand. As usual, their deliberations regarding the sentence do not appear in the record. Trial of Captain Alpheus Shumway, Nov. 1820. CSA, RG 12, Box 48, Folder Ten. In Massachusetts, see also the court martial of an artillery officer in 1813, and an 1815 court of inquiry on an election in an artillery company: Court Martial of Capt. Jonathan Bemis, June 1813. MNGMA, Courts

The records of military courts called to examine militia elections give us a window into a larger set of probable conflicts that are not captured in the archives. While the officials described in this chapter responded to election complaints by convening militia courts, they also set aside militia elections, and ordered new elections for the same offices, often trying first to resolve election disputes through local negotiation. Though this conclusion reflects an evaluation of an absence in the available evidence, the election complaints that did result in courts martial and courts of inquiry must be only a portion of the complaints sent to state and division officials, and represent only some of the conflicts over the choice of officers. Court records show how such conflicts looked, but probably do not capture all of them.[12]

## "The urgent and repeated applications of sundry inhabitants of the town"

As with other forms of disorder in early national state militias, contests over the conduct and outcome of officer elections accelerated somewhat after the War of 1812, but did not start with that war. Rather, several kinds of questions and conflicts that began

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Martial, Vol. 4, and Court of Inquiry on Election of Asa Freeman as Captain, July 1815. MNGMA, Courts Martial, Vol. 5.

[12] The record of an 1812 court of inquiry on a disputed company election, for example, contains an Oct. 17 general order signed by Adj. Gen. William Donnison. In that order, Donnison notes that the governor had previously set aside the election of the same officer to command the same company due to complaints from men in the ranks. After the state received complaints about the next election in the same company, the governor ordered a court of inquiry. See the attached general order near the back of the record in Court of Inquiry on Election of Capt Moses Loamis, Dec. 1812. MNGMA, Courts Martial, Vol. 4. Several examples of locally discarded election results are discussed in the chapter below. At MNGMA, a collection of militia election complaints unrelated to military courts mostly includes documents from later years than those examined here. See the folder labeled, "Remonstrance[s] Against Election, 1799-1839," in the box labeled, "Officer Elections: Commissions, Complaints, Remonstrances; various dates between 1799-1924."

well before the war continued during and after it, as did the ways that militia participants addressed them. Eighteen of the cases discussed in this chapter took place before 1812, demonstrating the pre-war presence of contested militia elections. Even this number distorts the balance between pre-war and post-war election disputes that ended up in court, as several of the post-war cases resulted from a mass complaint in a single regiment over minor misbehavior. Militia elections after the war were not more disordered; rather, their disorder was somewhat more apparent, and in a few instances more dramatic.

Despite the presence of legislation that had been intended to create uniformity and order in the militia of the early national period, local discussion sought order where the law did not provide it. In September of 1794, for an early example, company officers gathering for the election of a regimental commander in Berkshire County found that most of their colleagues were not formally militia officers. At the western edges of Massachusetts, officers were chosen in local elections but not officially named to their ranks for long periods of time by a government that was run from the opposite end of the state. The state constitution gave company officers the right to elect their regimental commanders, and separately identified the means by which officers were to be commissioned.[13] But a gap opened between those two legal standards, as regiments filled with men who had been chosen from below for leadership positions that had not been validated from above. In a complaint dated January 29, 1794, more than four months after the election in question, Capt. John Foote and Ens. Levi Smedley complained to

[13] Constitution of the Commonwealth of Massachusetts, Oct. 25, 1780. Election of officers, Chapter II, Section 1, Article 10. Commissioning of officers, Chapter VI, Article 4: "All commissions shall be in the name of the Commonwealth of Massachusetts, signed by the governor and attested by the secretary or his deputy, and have the great seal of the commonwealth affixed thereto."

Maj. Gen. John Ashley that "a majority of the persons suffered to vote were not commissioned nor qualified agreeably to Law." Responding in early June to a January complaint about a September election, Ashley and several other officers wrote to the governor, arguing that "our distance from the Seat of Government renders our situation such that there will always be some officers Elected and not Commissioned." Facing that practical reality, they concluded, the men gathered for an election of a regimental commander during the previous September had solved their problem by conversation and community accord, as "every officer present gave his consent that the officers elect should be admitted to vote which they accordingly did." Assembling a few days later in Stockbridge, a court of inquiry composed of officers from western Massachusetts agreed that the election "was fairly and Legally conducted."[14]

The latter point was doubtful, as a formal matter, since militia officers without state commissions were creatures unknown to law, but it was nevertheless a legal conclusion that took effect. Operating in the world of the actual, men construed the law to make it work. Under the state constitution, a militia officer was a man who held a current commission signed by the governor. Among the population of militiamen and officers in Berkshire County, a militia officer was a man who had been chosen by other men to take office, and so could eventually expect to be commissioned. That definition of military office was made in an informal discussion at an election, then confirmed by a locally

[14] Court of Inquiry on Election of Lt. Col. William [John] Powell, Sept. 1793. MNGMA, Courts Martial, Vol. 1. No record of proceedings appears in this folder, which contains six documents: a report by the court, signed at Stockbridge on June 7, 1794 by Col. Silas Pepoon, its president; a complaint signed by Capt. John Foote and Ens. Levi Smedley, addressed to Maj. Gen. John Ashley and dated January 29, 1794; a Ninth Division order for the court of inquiry, dated May 20, 1794, signed by the division adjutant general; a letter signed at Boston, June 3, 1794, and by Ashley, Brig. Gen. Tompson J. Skinner, Col. Samuel Slean, and William Stark; another complaint, undated, signed by John Foote, Levi Smedley, and three other company officers; and a statement from three of the officers-elect who voted in the election. While the folder identifies the elected officer as William Powell, the documents inside identify him as John Powell.

convened military court. Establishing a definition of office that did not comport with formal law, those decisions created institutional order by extralegal means, establishing the legitimacy of organizational leadership in the absence of rapidly available formal sanction. Law and order led in different directions, a practical problem revealed by a complaint filed months after an election by men who had agreed to its mode of conduct on the day of the voting.

Local discussion could fail to produce order in many ways, and the management of election disputes by these kinds of local negotiation suggests the likelihood that military courts reveal a larger world of unrecorded social contention: disputes that could not be fully settled informally would then up in court, so the disputes recorded in court records are likely to be just a fraction of the total kinds of similar local conflicts. A court of inquiry that met in Westfield in 1795 examined just such a failed local discussion over the election of a captain, lieutenant, and ensign in the nearby town of Russell. The court was examining the conduct of three separate elections that had been conducted to fill the same set of offices in May and June of 1793, and in July of 1794. After the May, 1793 balloting, the court reported to its division commander, "Altercations soon arose about the election -- the company was divided into two parties nearly equal, one of which disputed the legality and validity of it, asserting that three persons carried in votes were not by Law entitled to do so." But the chosen officers had prevailed by seven votes, so the court thought the question not worth examining. This conclusion immediately raises other questions, though, because a higher-ranking officer had agreed to nullify the May election and call a new one, despite the clear fact that the number of disputed voters could not affect the outcome of the vote, and then to call still another election more than

a year later. The report of the court of inquiry makes plain the pressures that had led this officer to act: "The officers having been chosen...perceiving that not only the members of the militia company but most of the inhabitants of the town were warmly engaged in contention applied to Col. Taylor to nullify that election" and order a new one. Taylor had done just that, "but this election being disputed as violently as the former, on the urgent and repeated applications of sundry inhabitants of the town of Russell another order was issued by Col. Taylor...for a third choice of officers." Hounded for over a year, a militia colonel had given in to local anger two times, finding that his concessions did nothing to quiet the irate portion of a divided populace. The thin substance of the dispute had brought in "most of the inhabitants of the town." Like their colonel, the officers elected to leadership positions in the local infantry company apparently wanted to step clear of popular anger, and they asked Taylor "to release them from the acceptance of their several offices." But the court concluded that they were stuck with the results of their election, since the officers had not "by any act or application of theirs divested themselves of the offices to which they were chosen and of which they accepted." The lasting intensity of the conflict over militia elections, unresolved through multiple attempts to address local anger, could make the winners perceive their rank as a trap rather than an honor. Disputes ran for a period of years, finally being brought before a court after the failure of repeated local efforts to create peace and order.[15] But the first recourse of the disaffected was local contention, calling on officers to try again to conduct an election that would be widely accepted.[16]

[15] Court of Inquiry Concerning Election of Richard Andrews as Captain, and Cyrus Webster, Titus Doolittle, and James Hazard, Subalterns, April, 1795. MNGMA, Courts Martial, Vol. 1.
[16] The effort to settle conflict by re-voting was a recurring local tactic. See, for another example, Court of Inquiry in Election of Lt. [Nathan Meriam] Wright, June 1808. MNGMA, Courts Martial, Vol. 2.

Local negotiation over the election of militia officers addressed a broad range of questions involving personal status and identity, incorporating actions and consequences that went beyond the military realm. The year after the conflict in Russell, another court of inquiry met to consider a similar conflict after the residents of the District of Maine town of Bowdoinham split over the commissions of Capt. Thomas Dunham and a second captain who had been elected to command the same company. The petition that led to this inquiry is lost, but the response has survived: a second petition, dated July 27, 1796, signed by forty-four men and addressed to Gov. Samuel Adams. Disputing a claim that Dunham had never become a citizen, the petitioners noted that he had lived among them for years, and had previously been commissioned an ensign in the militia "without the least Objection By any person." What's more, Dunham had built a vessel and had "cleared it through the customhouse, being questioned about his citizenship and satisfying the customhouse officer that he was a naturalized citizen." To settle the question, Dunham had gone to court and obtained a certificate of naturalization. For another matter, the petitioners complained, "Some Disaffected People" had complained that Dunham's election had not been lawful "for the Trifling Reason that a few Elderly gentlemen were admitted to vote, which has always Been the custom of this county that all from twenty one years of age and upwards should vote in all such elections." In an important reference to the utility of a militia commission, the petitioners cautioned the governor against the withdrawal of Dunham's commission. Since he was "a gentleman in the Mercantile Line of Business," they warned, the loss of his rank might cause harm to his private career. An entire community was broadly discussing a neighbor's status and character, unsuccessfully trying to close a debate about his social place as well as his

military standing. A man who had served as a militia ensign for years was suddenly held to be unqualified for militia office, a fact that suggests underlying points of contention lost to the records.[17]

In these efforts to find local order, the political theory of the militia's rank structure and the quotidian reality of the institution's local forms diverged. Rather than reconciling militiamen to their officers and settling authority in reliable local leaders, militia elections could generate persistent conflict that divided towns and resisted resolution. Where order appeared, it grew not from statutes and general orders, but rather from agreement struck within communities. The failure of local agreement could lead to the intervention of military courts, but those courts were themselves made up of local militia officers. As communities and courts argued over the choice of militia officers, their debates took place between people who thought they were making order but offered different answers to the continuing questions about what that order would look like. Contestants in election disputes created chaos by their insistence that officers be properly chosen, offering clashing answers about what would constitute a proper choice.

[17] Court of Inquiry Concerning the Election of Thomas Dunham and James [Pupington], July 20, 1790 [1796]. MMMA, Courts Martial, Vol. 1. The folder containing this record names the second officer as Pupington, but the record itself appears to give his name as Purrenton or Parrenton. A few of the initial records also appear to give the date of the court of inquiry as 1790, and the labeling of the folder reflects that date, but dates throughout the rest of the record place these events in 1796. Of course, no one could have petitioned Governor Samuel Adams in 1790. No record of proceedings appears in the folder. Rather, there is a short report of the court's findings, followed by the July 27, 1796 petition, three written statements offering testimony on the relevant events, and a letter of transmittal to the adjutant general. The court decided that Dunham "never was naturalized as the Law directs." Leaving Bowdoinham's infantry company without a commander, the court also concluded that the second election for a captain had also been unlawful.

## "The Law Has Not Provided Any Mode...to Ascertain"

Inadequately defined and regulated by the law, the election of militia officers was a procedural mess in which men would not reliably behave with propriety, even when they sought to do so. No one clearly knew what the rules were, so no one knew when or how they had been broken. The record of a company election held in Pittsfield on June 8, 1802 preserves this testimony from a major who witnessed the election, describing the effort to keep militiamen under the age of twenty-one from casting ballots: "five minors was separated from the Corps when they voted for the Captain on the first time of voting for a Lieut, about the same number + same taken out at the second time voting for Lieut, nine were separated from the Company at the last time they went on to the parade to vote and Eighteen were separated from the Company when they voted for a Captain." The number of minors changed from ballot to ballot, and the results changed with the number of men excluded from voting: first the company elected Noah Whitney as its lieutenant, then Samuel Cott. Elected first, Whitney claimed the office, and insisted that the officer overseeing the election had no authority to ensure the exclusion of unqualified voters. "The law has not provided any mode for him to ascertain who are or who are not 21 years of age" he wrote. "He cannot even demand proof or examine the electors under oath as to their ages. Wherefore when the Presiding officer has a vote offered him + he receives, counts, + declares it, his office is finished." In Whitney's understanding of the law, minors could not vote for militia officers, but no one had the authority to prevent them from doing so. Presented with clear evidence that ineligible voters had cast ballots, the court shrugged at the evidence of impropriety and recommended that Whitney be

commissioned. Transmitting the court's findings to Gov. Caleb Strong, Adj. Gen. William Donnison agreed. In the absence of unclear procedures by which militia voting should be policed, the mere fact of proven illegality in the conduct of an election did not prevent the validation of its outcome. Again, law and order could not be clearly reconciled. Companies needed officers, whatever the usual shortcomings of the process by which they had been chosen.[18]

Given the lack of formally founded institutional clarity, the election of officers often became a deeply personal contest, managed by perceptions of honor and understood by processes of social evaluation. This absence of procedural depersonalization suggests the social damage that a militia election could cause, a reality that helps to make sense of the personal and communal efforts that officers applied in the search for resolution. The September 27, 1809 election of a major at a regimental officers' election in Falmouth, in the District of Maine, was a difficult contest even before the act that led to a complaint over its conduct: the company officers gathered for the choice of a superior cast twenty-

[18] Court of Inquiry on Election of Lt. Noah A. Whitney, Sept. 1802. MNGMA, Courts Martial, Vol. 1. See the testimony of Maj. Miller on the unnumbered third page of the proceedings. Whitney's seven-page statement to the court addressing the clarity of procedural rules is attached to the back of the proceedings, as is the March 4, 1803 letter from Adj. Gen. William Donnison to the governor. Compare this case to Court of Inquiry on Lt. Col. Samuel Stevenson [Stephenson], May 1811. MNGMA, Courts Martial, Vol. 3. Presiding over a company election in Portland, Stephenson refused to accept votes from men whose names were not on the roll of the company. Complained against by men who were refused a chance to cast ballots, Stephenson struck a baffled and aggrieved tone in his statement to the court: "How is the presiding officer at an election to determine who are or are not legal voters but by recurring to the role of the company?" The court agreed, concluding that "his conduct was regulated by a rational proper and legal construction of the militia law of this commonwealth." A regimental commander was called before a military court to defend behavior that he had regarded as thoroughly ordered and reasonable, because the men prevented from voting believed that he had created disorder, costing them the right to choose their officers. Again, the antagonists acted on competing conceptions of order, all of them believing their definitions of order were entirely reasonable. See also Report on Proceedings on Memorial of Matit [Nathaniel] Poor, June 1811. MNGMA, Courts Martial, Vol. 3. During repeated balloting at an election of company officers, as few as thirty-six voters cast as many as thirty-nine votes. After extensive discussion, the lieutenant colonel conducting the election refused to return results, but the court of inquiry concluded that Poor had been elected as an officer and should be commissioned, "although some small irregularity may have taken place." The court rebuked the colonel for refusing to declare a winner in an election in which extra votes had obviously been cast, writing that he had acted on a "mistaken apprehension of his official duty."

two ballots without producing a majority, before a captain from the regiment prevailed on the twenty-third. But the ballot that finally settled the matter was also the one that produced a formal complaint. Casting the deciding ballot in a narrowly concluded election, Lt. Joshua Robinson announced that he had been tricked into changing his vote. The lieutenant claimed that an unnamed person had handed him a ballot for Capt. Samuel Skillings, which he had examined by candlelight before going forward to cast a different ballot for his preferred candidate. But after voting, Robinson said, "on going towards the light I found had still got the vote for Captain Gordon in my pocket + that I had voted for Captain Skillings contrary to my intention." Robinson protested, but "the colonel did not order a new ballot," instead declaring a winner and dissolving the meeting. Ten officers in the regiment sent a written complaint to their brigadier general, offering a statement from Robinson in support of their claim that a militia office had been stolen.

The long round of negotiations that followed this claim were built on a rich mix of legal and social effort. In a letter dated Feb. 12, 1810 --- four and a half months after the disputed election -- the aide de camp to the commander of the 6th Division wrote a letter informing Maj. Gen. Ichabod Goodwin about the controversy. As was so often the case, militia officers facing a highly charged disagreement over an election turned to the possibility of starting over with new balloting. ADC Nathaniel C. Allen wrote that he had asked the regimental commander to approach Skillings and "suggest to him under all the circumstances of the Election wether it would not add to his dignity and the harmony of the officers to submit to an other choice and thereby relieve you or the Commander in Chief from all applications on the subject." But Lt. Col. James Merrill's report of that meeting said only that he had spoken with Skillings and "informed him of existing

difficulties," producing no agreement for a new election. Another long silence follows in the record, before a court of inquiry finally met to examine the complaint, fully a year after the election. Taking written evidence, the court received a set of statements that had been sworn out before a local justice of the peace. Three officers had sworn that Robinson was lying: he had voted for Skillings several times over the course of the day, had announced his intention to do so before casting the decisive ballot, and had finally admitted under long personal questioning that he had chosen to elect Skillings deliberately. The court concluded that Skillings should be commissioned, and an Oct. 20, 1810 general order signed by Adj. Gen. William Donnison finally brought the matter to a close, reporting that the governor agreed with the findings of the court.

Though we have only the legal record, the social subtext emerges in several ways. In a process that supposedly assured secret written balloting, other officers knew how Robinson had voted throughout the day, discussing individual rounds of balloting as well as his more general intent. When he lied, they knew, and questioned him until he admitted it. His actions took place before an audience of other men, who watched, remembered, and judged. The cause and origins of Robinson's decision to lie are unclear, but he misrepresented his vote after an election that was settled after many rounds of closely contested balloting, and his vote was sufficiently consequential to produce conflict. It mattered who he supported, in a highly personal way. Then, confronted with persistent conflict, other officers tried to resolve a dispute with the familiar suggestion that the source of the contention be negated and done over. But Skillings, given a choice between soothing a communal conflict and protecting his personal status, declined to surrender his new rank and implied elevation of social place. He chose personal honor

over social order. And finally, a year after the election, other men made public and explicit the accusation that Robinson has disgraced himself with a lie. Above all, these events played out slowly, each step occurring many months apart. The recorded conflict suggests the presence unrecorded negotiation: under the statements to the court, a long series of discussions around tables and fireplaces.[19] The legal record of Joshua Robinson's lie suggests that a long and tense meeting ended with lasting bad feelings among officers who waited a year for their chance to denounce the dishonor of a liar. The full dimensions of this conflict are lost to the record, but the intensity of the social contest are clear.[20]

### "I Have No Doubt of the Illegality...Although the Law is Silent"

The ferocity of social conflict and the murkiness of formal rules were closely connected. An 1810 court of inquiry that dragged into the next year shows how militiamen fought fiercely on uncertain footing, taking strong positions that were not well supported in law or consistently argued as matters of fact. The dispute that caused the trial began with a regimental election held to choose a major. That May 2 election led to a June 27 petition to Gov. Elbridge Gerry signed by nine company officers alleging that five voters had been "objected to by a majority of the officers duly commissioned." Despite the protests of his officers, the regimental commander proceeded with an election that selected a major between three candidates, the vote splitting twelve to eleven

[19] Remember that in the 1803 Massachusetts court martial of Maj. Timothy Whiting in Dedham, militia officers testified that Whiting had spent more than a year approaching them privately to discuss his desire to damage the military standing of Brig. Gen. Eliakim Adams. See Chapter Three.
[20] Court of Inquiry on Election of Maj. Samuel Skillings, 1810. MNGMA, Courts Martial, Vol. 2. The major's name is sometimes spelled "Skillins" in the court record.

between the top two and a single vote going to the third. The petitioners reported that the nineteen qualified voters at the election had cast ten ballots for William Ward, the winning candidate. Militia voting was supposed to be conducted by secret ballot, but here as in other cases it is clear that voters discussed their votes, tallying up the secret ballots by public inquiry.[21] Having acted against the supposed secrecy of their vote, the ten officers who had voted for Ward declared that, while he had won the illegitimate election, he had also prevailed among the legitimate voters, and so deserved to receive his commission. Nevertheless, they reported, Ward had not been commissioned, though "it was the duty of the Lt. Col. to have returned him." The petitioners concluded that Lt. Col. Patrick Bryant intended "to defeat the choice of said officers, and deprive them of their just privileges...whereby your complainants are as they conceive unjustly deprived of the officer of their choice, and are in danger of being deprived of their rights as Electors." Complaining that an election had been unlawfully conducted, a group of participants in that election then counted up the supposedly secret votes that they regarded as legitimate and declared the results of the alternative election they had invented, demanding the commission for an officer chosen at the legal component of an illegal event.

Systematic regulation did not emerge because responses to election contests were rarely systematic, and the mess of this election was compounded by the series of distinctly ad hoc responses that followed from more senior officers. Responding to the petitioners, Bryant wrote his own letter to Gerry in early October. "This part of the state being somewhat moved by party in Politics...I fear has had too much effect on what I am

[21] This practical absence of secrecy was the normal condition of voting by written ballot in the early republic. As Alec Ewald writes, "the written ballot was not at all necessarily a secret ballot, and it appears that for at least the first several decades of U.S. elections, relatively few voters cast written votes in private." Ewald, *The Way We Vote*, pg. 31.

about to write," he began. The regimental commander then laid out an entirely familiar and ordinary set of circumstances, saying that he had allowed five company officers to vote after they had been elected but had not yet received their commission. As militia officers did in many similar moments, Bryant explained that it had always "been the practice in this Regiment ever since it was formed and organized, to let officers vote after they were by the presiding officer declared chosen, at that time I did the same and those vote who were chosen although not commissioned." After taking this familiar and accustomed step, though, Bryant received a pair of urgent letters from his brigade and division commanders, urging him to hold a new election. Again, the response from above to complaints about an election of officers was to suggest that the voters try again. The major general's letter was particularly panicked, telling Bryant "that something must be done or I will be arrested; now Sir what I can do that I have not done is beyond my conception; although some intimations have been given, that I must do certain things; which as an honest man under oath I can not do." The conflicts in this case stack one on top of the other: ten officers of a regiment, angry that five other officers of the regiment had voted in an election before they conceived them to be properly invested with their rank, complained against their regimental commander, who was cajoled and then threatened in a panic by his two superiors. Every rank from ensign to major general was connected in a set of overlapping disputes and resentments.

In this muddle, no one occupied a position of clarity, and local disorder could not be resolved by management from the top. Adj. Gen. William Donnison insisted in his own letter to Gerry that Bryant could not be held culpable for withholding the results of an improper election, choosing not to report Ward as having been elected. "I have no doubt

of the illegality of a vote given by an officer elect, before he is commissioned and sworn, although the law is silent on this point, and that such votes will vitiate a choice," Donnison wrote. Arguing that Bryant had acted properly by not reporting the results of an unlawfully conducted election, Donnison then had to argue around the problem that Bryant himself had been conducted it. He did so by pointing at custom, acknowledging that "it has been a frequent practice in many Regiments in other parts of the state to admit such votes" as the unlawfully cast votes from officers lacking commissions. "I have known many instances and disputes have often been occasioned by such practices when the electors are nearly divided. I have used endeavours to put a stop to such practices by reason of such difficulties, but those efforts have not always availed. I believe there is hardly a Regiment in the State in which it has not been permitted at some time or other." All the principal themes of failed militia elections appear in Donnison's remarkable letter: he was certain that a practice is unlawful, despite the silence of the law, but his many and constant efforts to end the unlawful practice had never made significant ground against its frequency and persistence in every part of the state. In the end, Donnison concluded, "the Colonel appears to have like many others been betrayed by former usage; as thus to have acted under mistaken notions of what he conceived to be the law." The adjutant general recommended that the complaint against Bryant be dropped, because the regimental commander's behavior was unlawful in such an entirely common way. The law was clear, though not written anywhere, but could not be implemented against the frequency of contrary practice, and so should not be held against an officer who violated it. The commander of Bryant's brigade struck back against the state's adjutant general, insisting that the lieutenant colonel "ought not to be passed unnoticed after trampling on

the Law in the face of all his officers." Brig. Gen. Isaac Maltby also noted that the state militia law explicitly allowed "duly commissioned" officers to vote; the senior officers of the state's militia could not agree among themselves over what the law said. No source of order could be found and universally shared.

A conflict without a clear source of resolution ended without being resolved. A March 31, 1812 general order, signed by Donnison, noted Bryant had been arrested on March 27, 1811. A court was appointed to inquire into the charges against him, but by "various occurrences, unknown to the Commander in Chief, the officers who constituted that court, have been prevented from meeting, notwithstanding his repeated efforts to attain that object." Having proven unable to convene a court for over a year, the state abandoned the case, since "it is unreasonable and unjust that Lieut Colonel Bryant, who has manifested a desire to have an investigation of his conduct, should be longer held under arrest."[22] The authorities at the state capital who could not cause their militia regiments to follow the law were also unable to assemble a panel of officers to discuss the results. In the meantime, Bryant and Ward had developed a sharp personal dispute over Bryant's decision not to return the results of Ward's election. In one of many instances in which charges against an officer led to more of the same, Bryant brought charges against Ward while under arrest himself.[23] In a disastrous cycle, disorder and conflict fed disorder and conflict. But everyone involved in a dispute that disordered a regiment believed that they were acting in the cause of order, starting with a set of officers who had declared an election to be both unlawful and valid. The contest was not

[22] Court of Inquiry on Lt. Col. Patrick Bryant, 1810 and 1811. MNGMA, Courts Martial, Vol. 2.
[23] Court Martial on Adjutant William Ward, Feb. 1810 [1811]. MNGMA, Courts Martial, Vol. 2. The folder is labeled 1810, but the record shows the trial took place in 1811. The court found Bryant's charges against Ward "frivolous, vexatious, + wholly without foundation."

between the an effort to produce chaos and an effort to organize the militia; rather, it was a contest between a cacophony of answers that also sought the same purpose of ensuring that elections would be conducted reasonably and toward defensible results.

## "He Signified as Much as that He Should Not Know You as Captain"

Formal resolution did not reliably close contests over the election of militia officers. Men continued to evaluate the status and character of elected officers, in a form of personal judgment that sometimes disregarded such clear evidence of rank as a military commission. A series of accusations traded by Ens. John Brown and Capt. Lot Pool of Charlestown reflected this social evaluation of state forms, resulting in the assembly of at least three separate militia courts.[24] In June of 1810, Brown refused an order from Pool to assemble the company in which both were officers.[25] Brown argued that Pool was not lawfully commissioned, and could not properly be obeyed. But testimony quickly

[24] They are, first, Court Martial of Ensign John H. Brown, August, 1810. MNGMA, Courts Martial, Vol. 2. Second, Report on Election and Commission of Captain Job Pool, Oct. 1810. MNGMA, Courts Martial, Vol. 3. This report was the work of a board of officers, effectively a court of inquiry. Third, Court Martial of Lt. Thomas Conn and Ensign John H. Brown, Dec. 1810. MNGMA, Courts Martial, Vol. 3. Fourth, apparently a court martial labeled in the archive as a court of inquiry, Court of Inquiry on Election of John H. Brown, Dec. 1811. MNGMA, Courts Martial, Vol. 3. This fourth record may not constitute a separate trial, and is in considerable disarray that makes it difficult to parse. A record of proceedings begins on pg. 23, with earlier pages missing, and the final page is dated Sept. 7, 1810, suggesting that the folder contains records related to Brown's August court martial. Though the condition of the record makes the question difficult to settle, I do not believe it represents a separate event. Other state records indicate that Brown was tried twice, as I will discuss is the following pages. Note also that the third record mentioned here, that of the October 1810 "Report on Election and Commission of Captain Job Pool," is also a partial record with substantial narrative gaps. Similarly, the record of a December 1810 court martial of Captain John D. Edmond also appears to have taken place on an accusation that Edmond had refused to obey an order from Lot Pool, but the record is so badly disordered -- and littered with records from other cases -- that I have been unable to sort out the case. See Court Martial on Captain John D. Edmond, Dec. 1810. MNGMA, Courts Martial, Vol. 3.

[25] The lieutenant of the company, who occupied the rank between them, was not in town. The record of proceedings in Brown's August, 1810 trial is available online, and the footnotes that follow for this trial reference that printed record. *Minutes and Proceedings of the Division Court Martial, Begun and Holden at Charlestown, on the 14th of August...*, AA. Reference to the absence of Lt. Thomas Conn appears on pg. 7.

established that Pool's commission had been issued and was in force, answering the question before the court with simple and direct evidence: Col. Jonathan Page testified that he had told Brown that Pool was legitimately commissioned as a captain: "I told Ensign Brown that Captain Pool had his commission. Ensign Brown then asked me if Captain Pool was qualified, I answered that he was qualified, I qualified him." Answering a question from Pool, Page added that the conversation had not settled the matter, since "at that time Ensign Brown seemed to think it strange that you had gotten your commission, and signified as much as that he should not know you as Captain."[26] Hearing unambiguously from a more-senior officer who was well qualified to address his question, Brown had nevertheless declined to notice the answer. That decision persisted. At his first trial, the ensign announced to the court that the men under Pool's notional command would never agree to be commanded by him, "altho he may dangle a sword at his side": a symbol of status could not give him actual status. Pool's letter of complaint recognized his antagonist's tone and social posture. The ensign, Pool wrote, had greeted a written order with an "insulting and contemptuous answer." A captain realized that a military subordinate had spoken to him as a social inferior.[27]

At trial both men performed Brown's claims of their comparative status. Pool repeatedly aggressed against gentlemanly expectations, writing fevered protests that he handed to the judge advocate to read to the court. But the judge advocate apologized for having to read one of Pool's statements, prefacing it with the chagrined explanation "that this, as most other communications in support of the charges, came before the court without his being previously consulted." Reflecting Pool's extraordinary deafness to

[26] Ibid, pg. 20.
[27] In ibid, see quotes from Brown on pg. 10 and pg. 115; see quote from Pool on pg. 8.

social rules, the judge advocate explained that his unfortunate statement "contained some expressions which reflected on the court as well as himself," despite an officer's obligation to protect the members of the court "from any indignity in the communications made to them." A militia captain, bringing charges against a subordinate, could not be convinced to stop insulting his fellow officers. Brown had charged that Pool did not warrant his rank; Pool offered the proof.[28] Moments after the judge advocate read Pool's insulting statement, he informed the court that he had also received a written statement from Ensign Brown. He had examined the statement, he explained, and pointedly found "that it was free from all disrespect to the court, and improper reflections on any officer." The accuser had no sense of propriety; the accused was a gentleman, and comported himself as such. Though testimony proved that Pool was legitimately commissioned, Brown was found not guilty on every charge that he faced.[29] Brown disobeyed Pool without consequence, even as Pool officially continued in his office.

Even when military courts upheld clear legal standards for militia elections, the administration of those elections illustrated the ways that militia officers were operating in an uncertain procedural environment. A March, 1811 election of regimental officers in the Maine District town of Topsham was conducted with unmistakable informality, as

[28] In ibid, see the judge advocate's apology on pg. 32.

[29] For the verdict, see ibid, pg. 126. The contest between Brown and Pool was not concluded with Brown's acquittal, and neither was the involvement of the state. Acting in October, 1810 on a complaint from Brown, a board of officers examined Pool's election, and in February of the next year the state senate deadlocked in a tie vote on a motion to revoke his commission. Discussing the matter with the legislature, Governor Elbridge Gerry reported that Brown, "notwithstanding his honorable acquittal," had been rearrested for refusing to obey the orders of Captain Pool. Charged again, Brown was acquitted again. But the personal anger between Pool and Brown continued. Four months after his February message, Gerry told the legislature that "the irritation of the parties has continued and encreased." [29] See Letter of Elbridge Gerry to the Senate and House of Representatives, February 4, 1811, and Letter of Elbridge Gerry to the Senate and House of Representatives, June 18, 1811. Both may be found at AA. Brown and Pool fade into state records as ongoing contestants in a personal dispute with no apparent end. See the list of other cases, above. Ironically, though, Pool would go on to relative prominence, winning a seat in the Massachusetts House of Representatives. *Resolves of the General Court of the Commonwealth of Massachusetts*, *Jan.-March session, 1833* (Boston: Dutton and Wentworth, 1833), pg. 247.

officers gathered to vote on the apparently spontaneous word that the election would take place. Examining the conduct of the choice, a court of inquiry found that no regimental orders had been issued for it, and neither the regimental commander nor the adjutant had attended. Despite those failures, the court concluded, "no protest was offered or objection made against proceeding in the election." Finding themselves at an election convened on the authority of their casual discussion, without their commander, the officers of the regiment had seen no reason not to cast their votes.[30]

In the years leading up to the War of 1812, the ordinary chaos of militia elections grew from a series of unanswered regulatory questions, producing a loose collection of social and institutional responses that settled conflicts only narrow, local ways. Officer elections were often conducted in ways that were not entirely legal, a fact that was acknowledged explicitly by military courts. It was not entirely clear who could vote, or when an elected officer took his rank in the eyes of the state, or what kinds of authority the presiding officers at elections were properly able to exercise. Lacking a clear formal framework, officers and officials improvised in good faith, applying social knowledge to fill institutional gaps. But those gaps were no more than papered over. In a military system being closely guided from above, the balance between this formal confusion and the ad hoc responses it produced should be seen to shift over time; the available evidence should show the gradual imposition of discipline and stability by increasingly cohesive rules. But no such ordering took place, though the internal order of military institutions became a more urgent question during wartime. The conduct of militia elections, and the responses to controversies over those elections, remained essentially ad hoc.

[30] Report on Election of Field Officers, July 1811. MNGMA, Courts Martial, Vol. 3. The complaint in this case does not appear in the record, leaving unclear the path by which officers later decided to protest an election they had not complained about on the day of the voting.

## "He Might Break Up the Choice If He Could"

During two and a half years of war, the six disputed militia election cases that ended up before military courts had little substance, with one modest exception. The first wartime election conflict for which evidence is available took place in December of 1812. In that case, two petitions from several dozen members of a militia company in Boston charged that a lieutenant had been narrowly elected by fraud, with the votes of unqualified voters. But the single complainant who appeared to testify in the matter, Peter Thatcher, quickly admitted that he could not produce any evidence. "I cannot say any fraud was used," Thatcher admitted. "He, said Thatcher also admits that the charge of minors having voted is incorrect." The court concluded that the elected officer should be commissioned. Finally settling a pair of September, 1812 complaints, Adj. Gen. William Donnison wrote on Jan. 27, 1813 that Job Drew would be commissioned as a lieutenant, given the legitimacy of his election. In the meantime, an infantry company had operated without one of its chosen officers for four months, over a complaint that had no apparent military substance.[31] Another court of inquiry held the same month on other side of the state, near Great Barrington, briefly examined a dispute over the eligibility of one voter in an election for captain that was won by four votes.[32] A court martial held in June of 1813 in Paris, a small town in the Maine District, returned a not guilty verdict in the trial of a

[31] Court of Inquiry on Election of Lt. Job Drew, 1812. MNGMA, Courts Martial, Vol. 4. The complaints over Drew's election suggest an underlying social conflict, evidence of which I have been unable to find. But Drew appears to have occupied the lower end of middling status: a series of advertisements in Boston newspapers offer the services of a Job Drew as a maker of boots and shoes. See, for example, the advertisement headed "Removal," describing the relocation of Drew's workshop, in the *Independent Chronicle* (Boston), Oct. 26, 1812, pg. 4.

[32] Court of Inquiry on Election of Capt. Moses Loamis, Dec. 1812. MNGMA, Courts Martial, Vol. 4.

captain accused of failing to call a company election for lieutenant.[33] And another court of inquiry convened in the District of Maine evaluated a long series of charges that had originated in wartime, from multiple accusers, against a captain who had pocketed delinquency fines and excluded favored militiamen from a draft for wartime service. Among the least outrageous charges against Captain David Newbegin was the allegation that he had not bothered to warn his lieutenant and ensign about the election of a lieutenant colonel.[34]

In one instance, a wartime court of inquiry took up a significant question that Massachusetts military courts had addressed before with limited success. At a June 2, 1813 election of a regimental commander held in Barre, in Worcester County, many of the company officers attending the election had been elected by their companies, but not yet commissioned by the state. Arguing over the correct course of action, the men gathered to elect their commander took a series of socially predicated actions. After a captain objected to balloting that would exclude his subalterns, the acting regimental commander noted that he had been ordered to conduct an election. Obeying orders, he said, he would complete the balloting, but he added that "he might break up the choice if he could." He did just that: elected, he declined the command, as did the other major in the regiment, who was elected on the second ballot. Men would not take command of a

[33] Court Martial of Capt. Jonathan Bemis, June 1813. MNGMA, Courts Martial, Vol. 4. Bemis established that the order he received from Maj. Alden Blossom addressed him informally, and didn't identify a source of authority for ordering an election. In his statement to the court, Bemis insisted on his duty to disobey improperly formatted commands: "It is only where Major Blossom clothes himself with the authority of the Commonwealth, that the said Bemis considers himself bound to respect any of his orders."

[34] Court Martial on Capt. David Newbegin, 1815. MNGMA, Courts Martial, Vol. 5. Found guilty, Newbegin was stripped of his rank and barred from holding militia office for a year. A similar set of charges with wartime origins ended with the acquittal of a lieutenant colonel on every charge he faced. Among the allegations made against Lt. Col. Andrew Reed at his trial in Bath was the claim that he had appointed a civilian to oversee a company election. More seriously, Reed was charged with multiple counts of fraud against state accounts, and several failures to enforce wartime orders to defend against the enemy. Court Martial on Lieut. Col. Andrew Reed, July 1815. MNGMA, Courts Martial, Vol. 5.

regiment without having been elected by all of its officers, some of whose votes they could not yet accept. Again, law and social judgment pointed in different directions, as officers honored the importance of other men they believed themselves legally obligated to exclude from participation in an institutional event. The field officer overseeing an official event both managed the event to its formal conclusion and refused, as a personal matter, to join its conclusion. On the seventh ballot, the regiment's officers finally chose a captain who accepted the command. The court, finding the election "illegal + void," set aside the result, a decision approved by the governor. Five years after the state's adjutant general had declared that it was illegal for not-yet-commissioned officers-elect to vote in regimental elections, despite the silence of the law on that point, the answers discovered by officers faced with the question still varied. They would conduct elections but break them up, take votes but refuse command, in a process they regarded as lawful but improper and that the resulting court pronounced to be simply illegal.[35]

**"He thought it was best to throw the colonel out of the window"**

In the years after the war, Massachusetts military courts continued to take up election disputes in distinctly ad hoc ways, handling questions as though they had never been asked and casually construing local practice as law. When two dozen members of a standing company in the Maine District appeared in Berwick to vote at a May 25, 1815 election of company officers, they discovered that many of the other voters were not on

[35] Court of Inquiry and General Order Voiding Election of Captain Whipple to Lt. Col., Feb. and May 1814. MNGMA, Courts Martial, Vol. 5, Folder 1. Compare this case to Court of Inquiry on Election of Lt. Col. William [John] Powell, Sept. 1793, and Court of Inquiry on Lt. Col. Patrick Bryant, 1810 and 1811, discussed above.

the company rolls. After taking evidence, a court of inquiry agreed that many of the voters were too old to be eligible for militia service, but still concluded that "the election was regular and conducted with much fairness." The participation in company elections by former militiamen, they reported, "has been the uniform practice, not only in this company but in all companies in the regiment." Officers would not command many of the men who elected them, who were not in the militia. This reality, at odds with both the letter and spirit of state law, was fair and legally acceptable to a court because it was regular: it was what militia companies were used to doing.[36]

Militia elections remained distinctly local events to staff the leadership ranks of a state institution in its neighborhood forms, but the boundaries that defined the local world of the militia were unclear: a regiment could have local custom, resisting the outside authority of its brigade, but a company could also construe its regimental leadership as a usurping force.[37] This conflict between practical community form and centrally derived official structure played out across another unclear boundary, before an audience of participants and spectators who did not occupy clear roles. People gathered only to watch the conduct of elections could easily cross the thin line that brought them into the conduct of elections in which they could not vote. Both boundary conflicts were evident in an October 28, 1815 evening election of company officers in Danvers, "at the house of the

[36] Court of Inquiry on the Election of Officers in Berwick, July 1815. MNGMA, Courts Martial, Vol. 5. Another inquiry held fifteen miles away in York that same month concluded that ineligible voters had participated in an artillery company's election of a captain, but had not cast enough votes to change the outcome. Court of Inquiry on Election of Asa Freeman. July, 1815. MNGMA, Courts Martial, Vol. 5.
[37] For an example of a regiment construing brigade leadership as outside authority, see the court martial of Col. Leonard Blodget, which is discussed in Chapter Two.

widow Eunice Upton," and it led to the trial of three officers who participated in the event.[38]

Abstract conflicts took concrete form. As the Danvers militia company gathered after dinner to choose new officers, a contest for authority had first played out as a contest for a table. The company's current lieutenant, ensign, and clerk had seated themselves behind it at the front of the room. When the regimental commander entered, he walked to the front, took a chair next to the other three men, and reached over to pull the table toward him. Possession of the table signified possession of authority, and the men seated around it showed that they understood what was at stake: the lieutenant and clerk instantly grabbed the table and pulled it back. The events that followed are impossible to describe precisely, since different witnesses would remember them differently, but they can be outlined reliably enough to make clear the nature of the contest. Competing officers tried to control the discussion as they had tried to control the table. Seeing that a superior officer intended to run the election, Lt. Asa Tapley shouted that he was opening the meeting. The lieutenant colonel, George Gardner, responded with an announcement that *he* was opening the meeting. Gardner would later testify that Tapley "said I was meddling with what did not belong to me," and the rest of the room had joined in disputing the point. Witnesses would testify variously that "there was a good deal of confusion and dispute," "a good deal of noise," and "noise and confusion," all of which would have been taking place in the tight space of a room filled with militiamen and spectators. Trying to take firm charge of a company election, a regimental commander was met with immediate and furious resistance. But Gardner did not face a disordered attempt to resist

[38] Court Martial of Lt. Asa Tapley Jr. and Ensign Ira Preston, January, 1816, and Court Martial of Maj. Thorndike Procter, March, 1816. MNGMA, Courts Martial, Vol. 6.

the imposition of order. Instead, he faced the fury of an intensely local order, passionately resisting a premise of somewhat less local management. Shouting and shoving, everyone in the room was trying to establish the properly structured order in the militia.

As a group of militia officers fought at the front of the room over the boundary around local affairs, a new boundary conflict opened with the late arrival of a new spectator, Maj. Thorndike Procter. Entering a scene of obvious conflict without knowing its source, he walked to the front of the room. "As Major Procter passed up to the table," a witness would testify, "a crowd followed him." Another witness, an enlisted member of the company, thought that Procter carried himself at this moment "like a man, who had a parcel of children disputing, and came up to demand the reason of the quarrel." The noise intensified as the major walked forward to face the lieutenant colonel. Procter spoke to Gardner, who told him that the company lieutenant was disputing his right to preside over the election. The wording of Procter's reply varied slightly with each telling, but the point was always the same: the major told his superior officer that he had no authority to run the election, and should have known it without being told. At this, there was "a great shout." Rebuked by an inferior before an audience of inferiors, Gardner walked away for a few moments, then returned and ordered the election dissolved -- standing, according to his own testimony, on a bench. Ordinary speech no longer registered.

A set of boundary disputes had become a personalized conflict, implicating individual honor. Language and action sharpened. Procter waded back into the crowd, and several witnesses would testify that they heard him damn his lieutenant colonel as a rascal. Others would testify that Procter had only said Gardner had treated him as a damned rascal, hearing the same phrase but changing its context and meaning. One witness

testified precisely that Procter claimed Gardner "had treated him rascally. I did not hear him say the Col. had treated him like a damned rascal." Whatever Procter had said, the anger around him spread and built. Captain Jesse Putnam, one of many officers observing the election, testified before Procter's court martial that he "heard someone observe that he thought it was best to throw the Col. out of the window. this was said by one of the privates of the company." Ordered by his regimental commander to dissolve the election, Tapley instead held out a hat and stubbornly began to take votes. At some point, Gardner took the hat from him and turned it over to empty it, but Tapley got it back and continued the balloting. At another point in the dispute, Preston handed Gardner a copy of the state's most recent militia law, "and said I would thank him to show any passage authorizing him to preside." Gardner refused to answer. The company finally counted the votes it had been forbidden to take, "then repaired to the field," withdrawing themselves from Gardner's presence. Recounting this furious scene, the company clerk would later offer his assessment of these events to Procter's court martial: "The meeting was as peaceable, as elections usually are."

While the argument between officers fiercely and immediately personal, its origins were institutional and longstanding: still, in 1816, no one knew what the rules were supposed to be. Both courts that met to hear the resulting charges discovered that the standards governing militia elections were derived from unclear sources, to unclear effect. The record shows that higher officials already knew that problem. At their trial, Tapley and Preston entered into evidence a general order signed by Adj. Gen. Donnison on March 14, 1811. In that order, speaking for the governor, Donnison had acknowledged "the diverse constructions given by Officers of the Militia in different Divisions, and

even by those of the same Division, to the provisions by law for electing Militia Officers, and the great disorder resulting therefrom." Given the morass into which militia elections consistently descended, Donnison had concluded, the state's major generals and their subordinate officers could no longer issue rulings on the validity of elections, and could no longer order courts martial or courts of inquiry regarding their conduct. Divisions and brigades were barred from the review of officer elections. Instead, such decisions were to be made at the state level, where officials hoped to apply a single set of rules. Despite that statewide general order barring division commanders from ordering courts martial over elections, Tapley and Preston were on trial before a division court martial on charges related to their conduct of an election, improperly assembled on the orders of a major general. Challenging the authority of the division-level court to hear charges against them, the two company officers were also pointing out that they were being tried over an exceptionally common dispute governed by rules that were known to be unclear and variable. A statewide general order intended to reign in the chaos of militia elections had not had any of its intended effects. The case against Tapley and Preston was a legal and regulatory mess on many levels, but it went forward against the formal standards of the institution that hosted it.

At trial, defendants searched for the rules that governed their case. Preston argued that he could not have intended to contest a superior officer's right to run a company election merely by asking Gardner to show him where in the law he found his authority to preside. Since that was all he had done, he had committed no crime, "unless the requesting him to show me his authority by law in a dispassionate manner can be tortured into such a crime." Tapley took a different approach, agreeing that he had insisted on his right to

preside over the election and asserting that he had been correct to do so. The state militia law then in effect, which had been passed in 1810, required that regimental commanders "appoint some suitable officer to preside" at company elections; could the law have meant for regimental commanders to name themselves to the appointment? A colonel could not have a right to run a company election, Tapley concluded, because such a right was incompatible with a colonel's rank and the structure of a company: "What is it but a right to command the soldiers of a company, and what right has a Col. or a major to command the soldiers of a company." The rules were no clearer to the court than they were to the defendants. Hearing two different arguments, the court decided to accept both, acquitting Tapley and Preston of each of the three charges they faced.[39] Company officers had successfully refused the authority of their regimental commander, in a climate of uncertainty about the limits of his authority and place.

But the Massachusetts militia was stuck in a cycle, asking and rehashing the same questions without advancing the answers. Procter's trial, a general court martial held two months later, retraced the same ground, producing no greater clarity. A series of lieutenant colonels, including Gardner himself, testified that they had routinely overseen company elections. Lt. Col. Levi Dodge insisted to the court that "the right of a field officer to preside at such an election, was never disputed, to my knowledge." The division commander joined in advancing the theme, arguing that it had been "the invariable practice for field officers to preside at such elections." But Hovey did not

[39] Court Martial on Lt. Asa Tapley, Jr. and Ensign Ira Preston. The division commander who had ordered the court martial reacted by ordering the same court martial all over again: In a Feb.16, 1816 letter, Maj. Gen. Amos Hovey directed the court to reconvene and arrive at guilty verdicts on the basis of "the evidence that was exhibited of the general usage, relative to Presiding Officers at the meetings for Company elections, not only in many Regiments of the Second Division, but in several other Divisions in this Commonwealth." The court reconvened, but declined to change their verdicts. Hovey's eight-page letter to the court is attached near the back of the record.

extend the claim to the whole militia, or even to the entire division that he commanded; instead, he claimed that the practice had always prevailed in the second brigade of the division he commanded. The record of testimony ends with a statement for which no source is given: "It was here admitted by the parties in open court, that in the Salem Regiment, which is the 1R. 1B. 2D. it is the most usual practice, for subaltern officers to preside, at the election of Capts." Danvers and Salem are five miles apart. The evidence given in Procter's trial indicated that field officers always presided over company elections, by well established custom, and that company officers always presided over company elections, by well established custom. Against this conflict of local practices, Gardner filed a written argument that examined the written militia law in the same manner that Tapley had, building an argument about what the ambiguous text could not be taken to mean. The law, he wrote, requires that the officer presiding over an election notify the elected officers of the results within ten days. But Lt. Tapley had presided over an election at which he himself was elected captain. "Is he to notify himself?" Gardner asked. "Is Lt. Tapley the presiding officer, gravely to notify Lt. Tapley that he is elected Capt. and then does the law allow Capt. Tapley ten days to signify his acceptance thereof to Lt. Tapley, the officer who presided at the meeting?" A company officer presiding over an election of company officers, Gardner argued, is "managing his own cause." Convicted of unofficerlike conduct on two of three specifications, Procter was sentenced to be reprimanded, a punishment that appears to have been carried out so mildly as to not be actual discipline.[40] Something like a near-riot over an urgently disputed militia election resulted in complete acquittal for two of the officers involved, and a gentle

[40] Court Martial on Maj. Thorndike Procter, March 1816. MNGMA, Courts Martial, Vol. 6. The general order regarding the sentence appears at the back of the record. The usual place for a reprimand to be delivered, this order, signed by Adj. Gen. John Brooks, only notes that the sentence is approved.

rebuke for a third. The vagueness of the law, the contradictions of custom, and the familiarity of conflict over militia elections made significant punishment untenable. The election at Danvers was as peaceable as elections usually were.

As in the case of Donnison's impotent general order forbidding division commanders to call courts martial over disputed elections, state officials were sometimes goaded to offer solutions to the problems of militia elections. But those solutions did not appear to produce any effect. The intensity of the conflict between Gardner and his subordinates led Gov. John Brooks to issue a new general order requiring field officers to oversee all company elections "in every practicable instance." Nor were company officers to oversee elections for their own company.[41]

But the premise of the order was flawed: the authority of rank did not produce disciplined order, and postwar elections were no more reliably orderly when field officers exercised uncontested power to supervise the balloting.[42] In a setting governed by unclear

[41] This general order, dated July 8, 1816 and signed under the governor's authority by Adj. Gen. Ebenezer Mattoon, was widely reprinted in Massachusetts newspapers. See, for example, the *Salem Gazette*, July 19, 1816, pg. 3.

[42] Nor could field officers reliably compel their own subordinate members of the officer corps to vote. See, for example, the division court martial convened in Plymouth in August of 1819 that took up a variety of minor charges against thirty different officers in the 5th Division, disposing of each in rapid fire. Among the defendants were eight company officers accused by their regimental commander, Lt. Col. Joshua Hamblin, of failing to attend a an election for field officers. The complaints against two were dismissed "for want of service," as it was not proved that the accused officers had been notified of the trial. Three others were found guilty, and sentenced to a reprimand, while the remaining three were found guilty and removed from office. The same court tried a lieutenant on a separate complaint alleging that he had erased the names of eligible voters from the company rolls to assure the election of another officer, "that he might be superseded, and thereby obtain a discharge." The court found the lieutenant not guilty on every charge. Court Martial of Capt. Josiah Seabury and 29 Others, Aug. 1819. MNGMA, Courts Martial, Vol. 10. In the printed general order, see the nineteenth, twentieth, twenty-first, twenty-second, twenty-third, twenty-fifth, twenty-sixth, and twenty-eighth orders for the officers tried for missing a regimental election. For the lieutenant accused of striking voters from his company roll, see the fourth order. A court martial convened by the same division in 1822 quickly disposed of charges against twenty-three officers. Among the cases decided was that of Capt. Joseph Barker, who was accused of "unofficer-like conduct at an election of a Captain of a militia company." Barker objected to the complaint against him, and the court agreed that it was "too informal to be sustained," releasing him from arrest. Court Martial of Ens. Ebenezer Wales and 22 Others, Feb. 1822. MNGMA, Courts Martial, Vol. 12. In the printed general order, see the sixth order.

and various rules, rank did not appear to have given officers a reliable sense of how to manage controversies that arose in their presence. In difficult moments, social sensibilities could outweigh military rules even in the presence of uncontested hierarchal authority. At a Feb. 24, 1816 election for a major in the coastal town of Kingston, a regimental commander was rendered momentarily helpless when he watched a junior officer's folded ballot split in two as he tossed it in the lieutenant colonel's hat. Ens. Lloyd Morton had tried to sneak in an extra vote for another officer, Capt. Asa Thompson. Seeing the evidence of cheating sitting inside a hat in his own hand, Lt. Col. John Thomas continued to accept votes. He stopped only after two more officers had added their ballots to the hat. Awkwardly, Thomas directed the officers present for the election to gather around him, then asked for a show of hands from the men who had voted; four men raised their hands. Thomas turned over the hat: five ballots. "I informed them I well knew the officer who put in the two votes but I should not look him in the face," Thomas told the subsequent court martial. "The officers near me insisted I should name him but fearing the resentment of these officers would be displayed towards the person who committed the offence I thought it best not to mention the name of the person." Thomas had seen a dishonest act clearly and with certainty, but the awkwardness of a plain accusation of dishonor among military officers prevented him from speaking directly. The social implications of such an important accusation are apparent in the things Thomas could not bring himself to say. A kind of ritual began, building an accusation that was not plainly an accusation. Of the four officers who had voted, three asked Thomas if they were suspected of the act, and Thomas assured all three that they were not. One of the three, Ens. John Bradford, testified to the behavior of the fourth: "Ensign

Morton did not ask any question about it." Thomas refused to name the cheater in an election, for fear of the social result, and so instead frankly assured three of the four voters standing before him that they were not suspected. Better yet, as Capt. Ebenezer Woodward would testify, "Col. Thomas said he knew the person but did not mention his name. he said he wore a yellow epaulet." Only Morton was wearing a yellow epaulet. Thomas was as much as naming the person he could not bring himself to name.

Fighting charges that caused him "mortification" for their implication of dishonor, Morton turned to a defense that would not have been implausible to a court composed of militia officers in 1816: the routine disorder of militia elections. called upon a witness who offered an excuse for his behavior. George Drew, an ensign from Halifax, had attended the election, but he testified that he had arrived after the completion of the aborted voting. Knowing that he would be late, and wanting to get his vote in, he had earlier handed it to Ensign Morton, "written with red ink in Major Russell's store." Questioned by the judge advocate, Drew added that both votes were in the same handwriting because he had written them. With that thin support, Morton offered a defense statement that sought to muddy the charges with a reminder that militia elections were always a mess. "But is there not always some degree of bustle and confusion at an election of officers and consequently less opportunity to determine, with certainty, what was done and by whom?" There had been more ballots than voters, but who could judge such a thing, given the usual nature of militia elections? Morton's defense was that this election was as peaceable as militia elections usually were; he tried to prevent the court from passing judgment on a disordering act by embedding it in a pattern of disordered acts, making it impossible to see clearly. A court could not hope to judge the appearance

of disorder in the choice of officers, an invariably disordered event. While the court surely recognized that this argument was founded in reality, they nevertheless recognized the weakness of its particular application. Morton was convicted, stripped of his rank and office, and barred from becoming a militia officer again for two years. A dishonest act in a militia election had caused unmistakable and lingering awkwardness, dissolving into a muddle of disorder and embarrassment.[43] The selection of officers by the men they commanded could leave a trail of social harm, but not because of mere disorder. An instinct to order, a view of the world predicated upon personal honor and the assumption that other men of the officer class would behave with integrity, cost militia officers their ability to navigate clear acts of dishonor. A colonel was rendered speechless by an ensign, unable to speak a fact that appeared plainly in his presence. Disorder resonated because order was assumed and expected.[44]

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[43] Court Martial of Capt. J. Nichols, Lt. W. Simmons, Ens. L. Morton, and I. Pierce, May, 1816. MNGMA, Courts Martial, Vol. 7. (This court heard charges in four unrelated cases.) After noting the ordinary disorder of militia elections, Morton had waffled his way into a feeble confession: "But, Gentlemen, suppose 2 votes were put in + by the accused." Insisting that "my intentions were not dishonorable," the ensign made his second ballot into a mistake: "Such accidents often occur at military elections, and shall we so undervalue the integrity + honor of our profession as to attribute them to fraud, rather than to the bustle and confusion which so generally attend them." Each of Morton's shifting arguments returned to a common theme: disorder was ordinary during militia elections.

[44] Comparable expectations of order appeared on both sides of a dispute over an election of company officers in Parsonsfield, in the District of Maine, three years later. In April of 1819, Lt. Col. David Hobbs and Maj. Simon Whitten accused Col. Bartlett Doe of refusing to announce the results of an election for a captain. Instead, they alleged, Doe "then and there put the votes given as aforesaid into his hat and when they had fallen from his hat did with the assistance of some other persons put said votes into his glove." In an election that split 25 votes to 24, Doe had proceeded to take those votes despite being warned that two men from the company had not been warned to turn out for the choice. Finally, Doe had counted the votes himself, turning aside the help of the next-ranking officer present for the balloting. At later company elections in July, August, and September Hobbs and Whitten added, Doe had done much the same thing, supervising the choice of officers in a dishonest and improper manner. Hearing weak testimony, the court of inquiry rejected every charge as unfounded, concluding that there were no grounds for a court martial against Doe. A month and a half later, Doe charged Hobbs and Whitten with a number of acts of misconduct. Chief among those was his accusation against them about their accusations against him: they had "maliciously and without good cause" accuse him of wrongdoing. Both were convicted, but only reprimanded. Hobbs and Whitten had seen Doe's behavior as disordered, spilling and hoarding votes that he would not allow other men to confirm, but Doe had seen an assault on his authority and character as similarly a disordered act. Court of Inquiry on Colonel Bartlett Doe, 1819. MNGMA, Courts Martial, Vol.

**"For God's sake don't push so"**

For militia officers, this presumption that other men shared basic premises of order was particularly challenged by the task of policing the voting rights of a population that was subject to military service obligations, but also highly mobile and often inclined to resist their required duty. At company elections, men from the ranks who avoided training appeared to cast ballots for officers who could exempt them from that training, as did men who somehow lived outside the company limits on training days but inside those limits when it was time to vote. Officers responding to these shifting populations could believe that they were enforcing order with decisions that others perceived as transgressions. Lt. Col. Michael Roulstone was forced to make a whole series of these ambiguous decisions as he conducted a company election at Faneuil Hall on May 1, 1821, repeatedly turning aside voters. As the balloting finished, a complaint reported, Lemuel Bowker approached Roulstone and "said he had had not heard his name called and asked if he should vote, saying he had a certificate." A certificate marked Bowker as an invalid, exempt from service, but he denied the status at nearly the same moment that he claimed it: "The Presiding officer asked him if he was an able bodied man -- at first he said yes." A man subject to militia duty was physically unable to perform that duty, but became fully capable on election day. Recognizing the maneuver, the colonel announced that he would take away Bowker's certificate as an invalid, a warning that caused the other man to again suffer from an injury: "Bowker then said something was the matter

10, and Court Martial on Lt. Col. David L. Hobbs and Maj. Simon J. Whitten, 1819. MNGMA, Courts Martial, Vol. 11.

with his arm, that he had sprained it. and had had certificates before. Col. R. then said he was not able bodied." Similarly, Augustus Crosby had arrived and asked to vote. Finding that his name was not on the company rolls, he testified to a later court of inquiry, he asked Roulstone for a chance to vote. "Col. R asked me if I did duty," Crosby told the court. "I said I did not." Before the inquiry, Roulstone asked another question: "How long is it since you did military duty? An. I never did." Preventing men from voting for militia officers because they avoided militia service, or had even never performed any such service at all, Roulstone found himself called before a military court to answer complaints of misconduct for conducting an unfair election.[45]

But while Roulstone faced the old problem of who could vote in a militia election, he also faced a new one that reflects a series of competitions over the meaning and sources of order. Complaints over the election charged that the members of a military association, the Soul of the Soldiery, had appeared at the site of the balloting to ensure the election of one of their members, and so to prevent the election of non-members. An organization made up of noncommissioned officers of Boston's 3rd Brigade, 1st Division, the Soul of the Soldiery had been established by private agreement in 1805 to promote the principles of order, subordination, and military discipline. Instead, it became a voting faction in Boston militia units, and a source of conflict as its members were seen to scheme for the election of their colleagues in a private club. Though none of the complaints regarding this 1821 election mention it, the disordering effect of the Soul of the Soldiery on an election overseen by Roulstone had ironic roots: as a new sergeant in the 3rd Brigade, Roulstone himself had been among the founders of the association, later charged with

[45] For a comparable discussion of the status and rights of invalids at a militia election, see the printed record of Ens. John H. Brown's first court martial. "Minutes and Proceedings of the Division Court Martial, Begun and Holden at Charlestown, on the 14th of August," pp. 50-57.

losing control of an election to a club he had helped to create. Again, competing sources offered different models of order rather than models of disorder posed against models of proper organization. The Soul of the Soldiery had not been created for the declared purpose of spoiling the selection of officers and creating chaos in militia companies, but their intent did not support their effect. An organization created to serve the cause of order instead produced an additional cause of disorder, bringing a new set of competing premises into an already crowded set of arguments.[46]

The appearance of this new form of conflict, however, did little to alter the general character of militia elections. Over time, events and allegations revealed in militia courts over contested elections become a blur, as if the same cases were cut and pasted under new headings. An institution was continually confronting the same questions and conflicts, their intensity undiminished, the path to order resolution remaining unclear. The 1822 court martial of Col. Ephraim Ward covered nothing but familiar territory: a fight over the right of invalids to vote, allegations that men who lived within the boundaries of one company were permitted to vote in the election of another company's officers, the questionable handling of ballots, and "irregular and disorderly" conduct in a room crowded with aggrieved militiamen. Presiding in Middleborough during an August 3, 1821 election, Ward had spent hours trying to pull order from a crowd that did not wish to give it. Testimony would not support much of the "manifest impropriety" alleged

[46] Court of Inquiry on Election of Amos B. Parker as Captain, cited above. Regarding the original purpose of the Soul of the Soldiery, and Roulstone's founding membership, see "Soul of the Soldiery: Constitution," March 7, 1805 (Revised Feb. 24, 1807), AA. Roulstone's name appears on pg. 8, along with the date he became a sergeant, March 1804. I have been unable to find any other archived documents from the association. Nor are they described in any significant scholarship. But they are mentioned occasionally in Boston newspapers. See, for example, the short notice that describes Roulstone leading "a corps of the Sargents of the Legionary Infantry" on parade, *Independent Chronicle*, Oct. 30, 1806, pg. 2. In the year of this court of inquiry, see, for example, the short notice of the Soul of the Soldiery field day, *Independent Chronicle*, May 9, 1821, pg. 2.

by Lt. Southworth Ellis Jr. and Ens. Bennett Briggs, though the evidence presented in the trial offers a picture of a poorly managed and chaotic event. The company clerk, Sebra Briggs, told the court that Ward had declined to keep a written record of the votes, did not read the vote count to the entire company, and did not call the company roll after the company had voted. In fact, the votes did not match that roll, and Simon Staples, another member of the company, told the court he had heard Ward curse the company, "for some rascals, some damned rascals have put in two votes which he said was as scandalous a piece of business as he ever heard of." Another member of the company testified that Ward, who was supposedly presiding over the election, had allowed others to count the pile of ballots while he "put his head out of the window." The court asked Morton how long the "confusion + disorder" had continued around Ward, and the witness said he thought it had been "two hours at least. During all this time the soldiers and spectators were pressing around Col Ward in the manner I have before described... I remember at one time he said for God's sake don't push so." Ward had tried to question each of the questionable voters about their qualifications, but he did so in a climate of confrontation. "Col. Ward commanded order several times," testified David Wood, a member of the company. "I should think the examination would not have occupied so much time if there had been no noise and confusion."

The ordinary chaos of militia elections offered no path to a satisfying resolution. Hollered at and besieged for at least two hours by a crowd of both militiamen and spectators who had shoved against him so much that he called for them to stop pushing, Ward had tried to establish through personal inquiry who could and could not legitimately vote. The testimony suggests that he at least initially tried to run an honest

election, and finally declared a questionable victory in a state of exhaustion after being mobbed in a long and urgent confrontation. Against the likelihood of success, he tried to arrive at what he hoped would be a reasonable outcome in a manifestly unreasonable setting. Called to face charges many months after the fact, Ward was convicted on two of five specifications of unofficerlike conduct, as the court found that he had improperly declared a winner and failed to restrain the disorder that accompanied the election. But they sentenced him to a reprimand, the least punitive sentence available to them. Ward's fellow militia officers showed, with their verdict, that they understood the difficulty of his position. All would also have had a great deal of experience with militia elections.

Ward's written defense statement, an unusually brief effort by a defendant in a court martial, serves to summarize the view of militia officers on the topic of officer elections: "It is difficult for me to make up my mind what answer I ought to make to this charge as it is impossible for me to know what is the power + duty of a presiding officer in a military election." As in many trials that followed contested balloting for officers, the defendant told the court that he did not know the rules that were supposed to have guided his conduct. An argument over voting could go on for hours, and descend into shouting and shoving, leaving participants to say that they did not know what they were supposed to have done. There was no regular order to set in opposition to the usual disorder.[47]

## "He said he should not dare to give their names"

Finally, a court martial that took place in 1826 shows the persistent difficulty that militia elections could cause for division commanders and state officials as they tried to

[47] Court Martial of Col. Joshua Hamblin and Col. Ephraim Ward, cited above.

develop institutional order against the burgeoning collapse of nearly universal white male militia service. The charges against Ens. Thomas Mayhew, the ranking officer in the town of Charlemont, were unrelated to his exercise of authority over the standing militia company in that town. Instead, Mayhew was charged with disobedience of orders for his long failure to bring part of the infantry company of a nearby town, Heath, under his command. The ensign was unable to command Heath's militiamen for an unusual reason: like the state itself, he could not find them. The inability of the state to locate its own militiamen had been a problem for at least four years prior to the court martial that the failure occasioned. A Feb. 21, 1824 order signed by Gov. William Eustis noted that "the company of Militia in the town of Heath have for upwards of two years past been without either commissioned officers or a clerk." That absence of authority had been carefully cultivated by the town's militiamen, who had repeatedly elected men who promised not to accept military commissions. Electing officers who would not serve, militiamen freed themselves from the burden of having officers to command them. As a result, the order continued, "the said company has not been called out for Military duty, nor have any of the fines and penalties which are inflicted by law upon those who neglect it, been imposed or collected." Eustis ordered that the company, being "without the reach of Law," be dissolved, unless it could elect officers who would "bring them into service." The military age men of Heath did not comply, and a June 10, 1824 regimental order signed by Col. Noah Wells ordered the company disbanded. He placed the men of Heath under the authority of two different sets of militia officers: those on the north side of the town would be compelled to train with the militia company in the town of Rowe, while those to the south would be attached to the standing company in Charlemont. Finding that

a group of militiamen had used their legal rights to free themselves of their military obligation to the state, officials of the state placed those militiamen under the authority of neighboring officers, diluting their vote by incorporating them in the militia companies of other towns.

The men of Heath, however, proved more adept at sustaining disorder than the state would be at creating order. The record of Mayhew's court martial contains a written defense statement signed by both the defendant and his accuser, agreeing to the same set of facts. In that statement, Mayhew admitted that Wells had ordered him to hold an election, calling on men from both Heath and Charlemont to choose the officers who would lead their newly merged company. Wells admitted that Mayhew had done so, but that "no soldiers belonging to the company in Heath were present." Responding to that absence, Wells told Mayhew to send his clerk, Philemon Rice, to Heath to gather the names of the town's military age men. But the only known militia authority in Heath, a sergeant named Rugg, "exhibited no roll of said company and denied any existence of said roll." Rebuffed by the company's only sergeant, Rice stopped by the house of a former militia colonel named Leavitt and asked for the names of local men who would be subject to militia service. In his testimony before the court, the clerk recalled Leavitt's response: "He said he should not dare to give their names because he did not know who were soldiers." Ordered to take charge of a group of militiamen, a militia officer and his clerk could not discover who those militiamen were. The court found Mayhew guilty, but sentenced him to no more than a reprimand, "taking into consideration the very difficult and embarrassed situation in which the respondent Ensign Holmes Mayhew was

placed."[48] For at least four years, the military age men of Heath successfully declined to provide mandatory service to the state, withdrawing into a community that sought to close itself to outside authority. The town's standing militia company had no roll or officers, and the men regarded by state officials as militiamen declined to consider themselves as such. Elected as militia officers, the men of Heath refused to take office; called to a militia election in another town, they declined to appear. At least one man who was no longer subject to military service "should not dare" to offer the names of those who were. Carefully electing militia officers who would not serve, the men of Heath who were subject to militia duty were not seeking to challenge or attack the authority of the state; rather, they were seeking to avoid it, pulling in among themselves and trying above all to do nothing in relation to the militia. For several years, the election of company officers gave them the tool that enabled their withdrawal. While many conflicts over the choice of officers reflected competing visions of military order, some involved the desire to withdraw from that order altogether, particularly as it declined and in isolated places where its authority could not easily reach.

[48] Approving the verdict and sentence, Major General Asa Howland agreed that the company in Heath "has long been in a state of insubordination." Still, he noted, the militia officers in Rowe had succeeded in enrolling their share of men from Heath on their company rolls. I have not found documents that explain the difference between the two towns, though Rowe may have had a full contingent of company officers. Howland's division general order is the last document in the folder containing the records of Mayhew's court martial. Though the officers of the company in Rowe were more successful than Mayhew at organizing the militiamen in their neighboring town, Heath militiamen continued to resist the state's efforts to compel their service: in September of 1826, the Supreme Judicial Court denied certiorari to a private in Heath who had been fined by a justice of the peace for failing to appear for training with the standing company in Rowe. See *Joseph Adams, Petitioner for Certiorari*, 21 Mass. 25. Among other points, Adams's lawyer had argued that, under state law, "the territorial limits of a company should not go beyond those of a town." The court's short opinion details the last failed election before the company in Heath was disbanded, describing an event in which six men were elected captain and all six refused the post.

## "The Uniform Irregularity and Fluctuation in Every Company"

Militia elections caused, amplified, and sustained local conflicts, but did so as people fought for competing versions of order. Sitting in the same room for the same election, some men could believe that a well-ordered company election was properly overseen by a field officer, while others were certain at the same moment that a field officer's participation in a company election was a terrible usurpation of local authority. The choice of militia officers by the votes of the men they would command was a process riddled with consistent uncertainties regarding law and practice. Militia organizations faced the same conflicts over the same questions for a period of decades. Pushing and shouting in crowded rooms, casting dozens of ballots to settle the election of a single officer, endlessly squabbling over who could and could not vote, complaining and threatening one another in cycles of rage and recrimination, and fighting repeatedly over who had the power and status to preside over balloting, militiamen wore down the universal militia. A military institution that required order and subordination degenerated in a long failure to find a reliable way to peacefully settle authority in particular members. Officials at the center had an unmistakably limited ability to affect local behavior. Militiamen were who they were, not who planners and managers wished them to be; they chose their officers in ways that reflected the contours of their social world, confounding plans for political order with the particularity of neighborhood conflicts. In the realm of military democracy, the spirit of disorganization prevailed. Ironically, that spirit was often the product of powerful competing desires to produce order.

## Conclusion

Courts martial looked like the institution they policed. Apparently formal and highly structured, they pursued order in a long clash of competing arguments and uncertain practical rules. Boundaries were persistently unclear. Military courts were to be rigidly administered and governed by passions, rule-bound and focused on honor. Officials sent out orders that failed to take effect in the daily world of the actual. In that fluid and socially contingent system, the men who performed roles in the state military justice system muddled through on ad hoc applications of the rules they could find, premising their salvaged order on social values. But those social values, interpreted as the foundation of legal and political order, pointed in many directions at once. Robert Gardner and Benjamin Dunn both acted on the premise that they were battling for reason and propriety against corrupt men and a broken legal process. The men who watched their performances and judged their charges thought they were engaged in wild acts of disorder, aggressing against intertwined formal rules and social norms. In an environment of unsettled authority, recourse to a community-centered language of personal honor and community standards helped to resolve individual cases, but created no permanent answers or systematic ways forward. The gradual failure of militia courts martial, like the gradual failure of the model of universal militia service, opened a growing cultural and political space for a long-running contest between consent and authority.

## Appendix A: New England Courts Martial, 1792-1826

**Massachusetts**
**(Massachusetts National Guard Museum and Archive, Courts Martial Boxes.)**

Dates in the following indicate when each court opened. Cases are listed in the order of the folders in their boxes, and therefore are generally but not invariably in chronological order.

**Vol. 1:**

- **Court of Inquiry concerning the election of Thomas Dunham and James [Pupinton], July 20, 1796** [folder says 1790, because the clerk's 6 looks like a 0]. Folder identifies second officer in question as Pupinton, but his name appears to be Purrenten. Held at Bowdoinham. Conclusion that complaint is valid.

- **[Court of Inquiry on Lieut. Col. Jona. Kinsman and Ensign David Hobbs, August 24, 1791.]**

- **Court of Inquiry on Captain Abraham Whitney, Oct. 16, 1792.** Held in Sudury. Conclusion is that complaint was not valid.

- **Report of Board of Officers [Court of Inquiry], June 10, 1793.** Held at Pownalborough. Dissolved when parties did not appear.

- **Court of Inquiry on Election of Lt. Col. William Powell, 2nd Bgd., 9th Division. Sept. 1793.** Held at Stockbridge. Conclusion is that complaint was invalid.

- **Court of Inquiry concerning election of Richard Andrews as Captain, and Cyrus Webster, Titus Doolittle and James Hazard, subalterns, April 24, 1795.** Held at Westfield. Conclusion is that complaint was invalid.

- **Dispute of rank of regiments in Boston, Dorchester, and Brookline, 1798 [**Court of Inquiry**].** Place of meeting unclear. Report of board offered a proposed ranking for regiments.

- **Court Martial on Captain Nathaniel Johnson, apparently August, 1799** [No trial record in folder, which contains correspondence related to this court martial]. Held at Concert Hall [City?]. Convicted, removed and barred five years.

- **Court Martial on Lt. Col. Jason Chamberlain and Major Isaac Burnap, September, 1800.** Held at Watertown. Chamberlain guilty, removed and barred for life. Burnap guilty, removed and barred one year but sentence remitted by governor.

- **Court of Inquiry concerning the election of Thomas Seabury as Captain, Chillingworth Foster as Lieutenant, and Theophilus Berry, junior, as Ensign. May, 1801.** Held at Sandwich. Conclusion is that complaint was invalid.

- **Court of Inquiry on Election of Lt. Noah A. Whitney, Sept. 1802.** Held in Pittsfield. Conclusion is that complaint was invalid.

- **Court Martial of Major Timothy Whiting, June 1803.** Held in Dedham. Guilty on one count, not guilty on three. Reprimanded.

- **Court of Inquiry on Brig. Gen. John Winston [folder is mislabeled; BG's name is Winslow], February 1804.** Held at Boston. Conclusion is that complaint is invalid.

- **Court Martial of Lieut. Col. Robert Gardner, Majors Benjamin Harris, Asa Hatch, Amasa Stetson, and Captain John Brazier [mislabeled; Brazier is not a defendant], 1804.** Held in Boston. All guilty. Gardener removed and barred for life. Others removed and barred ten years.

- **Court Martial of Lieut. Col. Jeremiah Wardwell, August 12, 1805.** Held in Castine. Guilty on six counts, not guilty on two. Removed and barred seven years.

- **Court of Inquiry on Election of Capt. Joseph Edgerton, Sept. 1807.** Held at Shirley. Conclusion is that complaint is invalid.

**Vol. 2, 1-6:**
(Volume 2 is divided into two boxes. Volume 1 contains five cases, despite the label.)

- **Court Martial of Capt Elijah Elder, April, 1808.** No trial transcript. Folder contains a page from a newspaper that reprinted statements from the court martial. Held at Portland. Not guilty.

- **Court of Inquiry in Election of Lt. Wright, June 1808.** Held at Concord. Conclusion is that complaint is not valid.

- **Court of Inquiry on William Goddard, 1808.** Held in Portland. Conclusion is that complaint is not valid.

- **Court Martial of Adj. William Ward, Feb. 1810 (actually 1811, per the record; folder is mislabeled).** Held at Worthington. Not guilty.

- **Court Martial of Ensign Joshua Thayer, Dec. 1809.** Held at Northampton. Guilty. Removed and barred three years.

**Vol. 2, 7-11:**

- **Court Martial of Ensign John H Brown, August 14, 1810.** Held at Charlestown. Not guilty.

- **Court of Inquiry on Election of Maj. Samuel Skillings, Sept. 1810.** New Glocester [sic]. Conclusion is that complaint is not valid.

- **Court of Inquiry on LTC Patrick Bryant, Oct. 1810.** Court fails to convene.

- **Court Martial of Capts. Samuel Watson, William Prouty, David Lawrence [Livermore], and Daniel Kent, Nov 1810.** Held in Worcester. Prouty did not attend. Watson, Livermore, and Prouty guilty on one specification, not guilty on two. All three removed and barred one year. Division commander reconvened the court and asked that they reconsider their sentence, which he regarded as too harsh, recommending instead that the three defendants be reprimanded instead. Court refused to change its decision, and the MG disapproved the sentence. In the trial of Kent, the court split one specification of charge, finding him guilty of a portion and not guilty of a portion, and found him not guilty on two other specifications. Reprimanded in orders.

**Vol. 3, 1-8:**

- **Court of Inquiry on Election of John H Brown, Dec. 1811.** Held at Charlestown. Outcome unclear, record a mess.

- **Report on election and commission of Captain Job Pool, Oct. 1810 [court of inquiry].** Held in Charlestown. Conclusion is that complaint is valid.

- **Court Martial of Lt. Thomas Conn and Ensign John H Brown, Dec. 1810.** Held at Charlestown. Both are not guilty.

- **Court Martial of Captain John D Edmond, Dec. 1810.** Held at Charlestown. Not guilty.

- **Court of Inquiry on Lt. Col. Samuel Stevenson [Stephenson], May 1811.** Held at Portland. Conclusion is that complaint was not valid.

- **Report on Proceedings on Memorial of Matit Poor, June 1811 [court of inquiry].** Record identifies petitioner as Nathaniel Poor, not Matit. Held at Topsham. Conclusion is that complaint is not valid.

- **Report on Election of Field Officers, 3rd Regiment, 1st BG, 11 Div, July 1811 [court of inquiry].** Held at Topsham. Conclusion is that complaint is valid.

- **Court Martial of Captains Francis Osgood and David Brandish, Oct. 1811.** Held at Northyarmouth. Court declines to hear charges, agrees they don't have jurisdiction.

- **Court Martial of Captain Robert Lathrop, Captain Joseph Nichols, [Ensign Pelham Holmes, and Ensign Jonathan Peirce] (last two names not on folder), Oct. 1811.** Held at Plymouth. Court declines to hear charges against Nichols, Peirce, and Holmes on legal challenges regarding notification of arrest and age of charges. Lathrop's trial is postponed.

- **Courts Martial of Captain Robert Lathrop and Ensign Jonathan Pierce [Peirce, according to the record], Dec. 1811.** Held at Plymouth. Peirce not guilty. Lathrop guilty; court wants to reprimand, but JA recommends removal and one year bar, and they agree.

**Volume 4, 1-14:**

- **Court Martial of Captain Samuel Griffin, March 1812.** Held at Topsfield. Not guilty on six charges, guilty on two. Removed and barred one year.

- **Court Martial of Captain Zenas Smith, May 1812.** Held in Plymouth. Guilty on one count, not guilty on two. Reprimanded.

- **Court of Inquiry on Maj Gen Ebenezer Goodale, July 1812.** Held at Salem. Recommendation is for a court martial.

- **Court Martial of Maj Gen Ebenezer Goodale, October 1812.** Held at Salem. Not guilty on two counts, guilty on four. Removed and barred five years.

- **Court Martial of Major Joseph Loring, Oct. 1812.** Held at Boston. Guilty on multiple counts, removed and barred five years.

- **Court of Inquiry on Election of Lt. Job Drew, Dec. 1812.** Held at Boston. Conclusion is that compliant is not valid.

- **Court of Inquiry on Election of Capt Moses Loamis [Loomis], Dec. 1812.** Held at Egremont. Concludes one officer was properly elected, one was not properly elected to the same post.

- **Court Martial of Captain Ebenezer Bonditch, April 1813.** Held at Salem. One complaint, not guilty on two charges. "Discharged" from a second complaint.

- **Court Martial of Captain Jonathan Bemis, June 1813.** Held at Paris. Not guilty.

- **Court Martial of Captain Joseph Howland, June 1813.** Held at Lenox. Guilty on four counts, not guilty on one, one charge "abandoned by complainant." Reprimanded.

- **Court Martial of Captain Benjamin Hamblin, Feb. 1814.** Held at Sandwich. Guilty on one count, not guilty on one count. Reprimanded.

- **Court Martial of 1st Lt Joshua Laurence [and three others], Feb. 1814.** Though they are not listed on the folder, other officers brought before this court are Lt. Abner Bird, Cornet Adolphus Hodges, and Adjutant Aaron Brooks. Held at Brookfield. Laurence not guilty on four charges. Bird guilty on two counts, not guilty on two counts. Reprimanded. Hodges not guilty on three counts, guilty on one. Reprimanded. Brooks guilty, removed and barred five years.

- **Court martial of Ensign Lyman Howe, Feb. 1814.** Held at Shrewsbury. Guilty on three counts, not guilty on one. Removed and barred for five years.

**Courts Martial, Vol. 5, 1-10:**

- **Court of Inquiry and General Order Voiding Election of Captain Whipple to Lt. Col., Feb. 1814.** Held at Barre. Conclusion is that complaint was valid.

- **Court Martial of Brigadier General James Irish, Jr., April 1814.** Held at Portland. Not guilty.

- **Court Martial of Captain Francis Wright, July 1814.** Held at Groton. Not guilty on seven counts, guilty on one. Reprimanded.

- **Court Martial of Captain Bradbury Emerson, July 1814.** Held in Alfred. Guilty on two counts, not guilty on two counts. Reprimanded.

- **Court Martial of Captains Daniel Loring and Daniel Elmes [and two others], August 1814.** Though the folder does not list their names, this court tried two other officers: **Ensign Daniel Crooker** and **Ensign Zebeder Leach**. Held at Bridgewater. Elmes guilty on one count, not guilty on one count. Reprimanded. Crooker guilty. Removed and barred five years. Leach guilty. Removed and barred seven years. Loring guilty. Removed and barred for two years

- **Court Martial of Captain Dudley Sargent, August 1814.** Held in Gloucester. Guilty on one count, not guilty on two counts. Reprimanded.

- **Court Martial of Captain Caleb Downing, Nov. 1814.** Held at Salem. Not guilty.

- **Court Martial of Major Benjamin C. Perkins, Dec. 1814.** Held at [Becket?], Berkshire County. Not guilty.

- **Court Martial of Captains Edmund Smith and William Cobb, Feb. 1815.** Held at Quincy. Cobb not guilty on two counts, Smith guilty one count, not guilty on another, sentenced to reprimand.

- **Court Martial of Captain Thomas Eastman, March 1815.** Held at Augusta. Not guilty, six specifications of charge. Division commander disapproves verdict on three specifications, but can only release Eastman from arrest.

**Volume 5, 11-16:**

- **Court Martial of Capts. Harding Knowles and Nathaniel Snow, Ensigns Edward Kendrick and George Clark, and Surgeon Zebina Horton, May 1815.** Held at Sandwich. Clark convicted on one count, court concludes it has no jurisdiction with regard to a second charge. Removed and barred seven years. Knowles guilty, removed and barred one year. Snow guilty. Reprimanded. Kendrick guilty. Removed and barred five years. Horton guilty, removed and barred for life.

- **Court of Inquiry on BG John Blake, June 1815.** Held at Bangor. Conclusion is that no court martial is warranted.

- **Court Martial of Lieut. Col. Andrew Reed, July 1815.** Held at Bath. Not guilty on eleven counts.

- **Court of Inquiry on Election of Asa Freeman as Captain, July 1815.** Held at York. Conclusion is that complaint is not valid.

- **Court Martial of Capt. David Newbegin, July 1815.** Held at Limerick. Guilty. Removed and barred one year.

- **Court of Inquiry on the Election of Officers in Berwick [Capt. Hobbs, Lt. Pike, and Ensign Nowell], July 1815.** Held in Berwick. Conclusion is that complaint is not valid.

**Volume 6:**

- **Court Martial of Capt. Bailey Bodwell, Oct. 1815.** Held at Paris. Guilty on seven counts, not guilty on three. Removed and barred one year.

- **Court Martial of Capt. Samuel Robinson, Oct. 1815.** Held at Paris. Not guilty on four counts, guilty on two. Reprimanded.

- **Court Martial of Lieuts. William Thurlow and Joshua Bailey, 1816.** CM held at Newburyport. Both guilty. Thurlow removed and barred one year. Bailey removed and barred three years.

- **Court Martial of Lt. Asa Tapley, Jr. and Ensign Ira Preston, Jan. 1816.** Held at Salem. Not guilty.

- **Court Martial of Major John Jellison, Lt. Col. Andrew Grant, and Major Joshua Chamberlain, March 1816.** Held at Buckstown. Jellison guilty on one count, not guilty on four others. Reprimanded. Grant, mixed verdict. Removed and barred two years. Chamberlain not guilty.

- **Court Martial of Major Jonas Johnson, March 1816.** Held at Lancaster. Not guilty on one count, guilty on two others. Removed and barred three years.

- **Court Martial of Maj. Thorndike Proctor, March, 1816.** Held in Salem. Guilty on one count, not guilty on two others. Reprimanded.

- **Court Martial of Maj. William Dunbar, March, 1816.** Held at need Dedham. Guilty on two charges, not guilty on one; on one, court "disclaims all jurisdiction." Removed and barred three years.

**Volume 7:**

- **Court Martial of Capt. J. Nichols, Lt. W. Simmons, Ens. L. Morton, and I. Pierce, May 1816.** Held at Bridgewater. Morton guilty, removed and barred two years. Nichols guilty on two counts, not guilty on two. Removed and barred two years. Simmons guilty on one count, not guilty on another. Removed and barred two years. Peirce guilty on one count, not guilty on another. Removed and barred five years

- **Court Martial of Captain Benjamin Dunn, Dec. 1816.** Held in Limerick. Not guilty on two counts, guilty on one. Reprimanded.

- **Court Martial of Capt. Weston Jenkins and 21 [actually 23] Others of the 5th Division, March 1817.** Held at Plymouth. Four officers removed and barred. Nine reprimanded. Five acquitted. Court declines to hear charges against six officers due to defects in arrests.

- **Court Martial of Ensign Luther Bushnell and Surgeon Abraham K. Whiting, April 1817.** Held at Sheffield. Bushnell guilty, removed and barred five years. Whiting guilty, removed and barred for life.

- **Court Martial of Adjutant Jonathan Knight, April 1817.** Held at Worcester. Not guilty on four counts, guilty on one. Reprimanded.

- **Court Martial of Lieut. Jonathan Holman, June 1817.** Held at Livermore. Guilty. Reprimanded.

- **Court Martial of Lieut. Richard Clarkson, Sept. 1817.** Held at Bangor. Guilty on one count, not guilty on another. Reprimanded.

- **Court Martial of Lt. Joseph Peabody, Jr., Sept. 1817.** Held at Salem. Guilty on one count, not guilty on another. Reprimanded.

- **Court Martial of Lt. James McNear [folder lists his name as "Sears"], Oct. 1817.** Held at Nobleborough. Guilty. Removed and barred twenty years.

- **Court Martial of Captain Ezra Thayer and Lieut. Samuel Thayer, Dec. 1817.** Held at Dedham. Capt. Thayer guilty. Reprimanded. Lt. Thayer not guilty.

- **Court Martial of Captain Charles G. Clark, Dec. 1817.** Held at South Berwick. Guilty on many counts, not guilty on many others. Removed and barred two years.

- **Court of Inquiry of Col. John B. Barstons, Dec. 1817.** Held in Hanover. Conclusion is that complaint does not warrant a court martial.

- **Court Martial of Lt. Eli Young, Jan. 1818.** Held at Augusta. Not guilty.

- **Court Martial of Lt. Nathaniel Backus, Jan. 1818.** Held at Great Barrington. Not guilty on one count, guilty on another. Removed and barred five years.

**Volume 8:**

- **Court Martial of Lt. Oliver Richardson, Feb. 1818.** Held at Waterville. Not guilty.

- **Court Martial of Lt. Zenas Brigham, March 1818.** Held at Westborough. Guilty. Removed and barred five years.

- **Court Martial of Capt. Ezra Nelson, Jr., April 1818.** Held at Mendon. Not guilty.

- **Court Martial of Capts. Joshua Small, Samuel Wilbur, N. Nelson, Adjutant Thomas Wood, and Ensign Hercules Weston, May 1818.** Held at Plymouth. Small guilty. Reprimanded. Wilbur not guilty. Wood and Nelson not guilty, complainant did not appear. Weston guilty on one count, not guilty on several others. Removed and barred for one year.

- **Court of Inquiry on Maj. Gen. Caleb Burbank and Lt. Col. Gardner Burbank, 1818.** Held at [Worcester?] Recommend a court martial.

- **Court Martial of Maj. Gen. Caleb Burbank, Lt. Col. Gardner Burbank, and Major Samuel Graves, 1818.** Held at Worcester. Caleb and Gardner Burbank

both guilty on some charges, not guilty on others, removed and barred two years. Caleb Burbank "not holden to answer" on one specification of charge. Graves pled guilty to a single charge of neglect, reprimanded. Governor approves all verdicts and sentences.

**Volume 9:**

- **Court Martial of Capt. Samuel Silsbee, Dec. 1818.** Held at Alfred. Not guilty.
- **Court Martial of Capt. Edmund Smith, Nov. 1818.** Held at Quincy. Guilty on two counts, not guilty on a third. Removed and barred five years.
- **Court Martial of Lt. William P. Stacy, Dec. 1818.** Held at Alfred. Not guilty.
- **Court Martial of Capt. Benjamin Dunn, Dec. 1818.** Held at Alfred. Guilty on two counts, not guilty on a third. Removed and barred five years.
- **Court Martial of Capt. Stephen Berry, Jan. 1819.** Held at [Frybury?], Oxford County. Guilty. Reprimanded.
- **Court Martial of Lt. James Butterfield, Jan. 1819.** Held at Bangor. Guilty on some counts, not guilty on others. Removed and barred two years.
- **Court Martial of Capts. Royal Macklin and Joseph Whitaker, Jan. 1819.** Held at New Salem. Macklin not guilty. Whitaker guilty on one count, not guilty on others. Reprimanded.
- **Court Martial of Capt. John Bacon and Lt. Edward Kimball, Jr., March 1819.** Held at Haverhill. Kimball guilty on some charges, not guilty on others. Removed and barred three years. Bacon guilty. Reprimanded.

**Volume 10:**

- **Court Martial of Lt. Samuel Page, April 1819.** Held at Readfield. Not guilty.
- **Court on Inquiry of Colonel Bartlett Doe, May 1819.** Held at Parsonsfield. Conclusion is that complaint does not warrant a court martial.
- **Court Martial of Lt. (Adjutant) Sylvanus Pratt, May 1819.** Held at Leicester. Guilty on some counts, not guilty on others. Reprimanded.
- **Court Martial of Capt. James Mayhew, June 1819.** Held at Farmington. Mixed verdict, removed and barred three years.
- **Court Martial of Major Joseph Cammit, June 1819.** Held at Augusta. Guilty on multiple charges, removed and barred five years.

- **Court Martial of Captain John McLain, July 1819.** Held at Thomaston. Guilty, removed and barred two years.

- **Court Martial of Capt. Josiah Seabury and 29 Others, August 1819.** Held at Plymouth. Capt. Josiah Seabury guilty on one count, not guilty on another. Reprimanded. Lt. Ansel Howard not guilty on two counts, guilty on a third. Removed and barred three years. (Howard did not appear at his trial.) Capt. Elijah Hayward, charges dismissed on grounds that complaint was "defective and informal." Lt. John D. Gilmore not guilty on four counts. Capt. William Lewis guilty on one count, removed and barred one year. (Lewis did not appear at his trial.) Capt. Thomas Swift guilty on one count, removed and barred one year. (Swift did not appear at his trial.) Capt. Micjah Handy, charges dismissed on grounds that "no personal notice had been given him." (Handy did not appear at his trial.) Capt. Ebenezer Lothrop guilty on one count, removed and barred one year. (Lothrop did not appear at his trial.) Lt. Job C. Davis not guilty. (Davis did not appear at his trial.) Lt. Nathan B. Gibbs not guilty. (Gibbs did not appear at his trial.) Lt. James Fish guilty on one count, reprimanded. (Fish did not appear at his trial.) Lt. Gershom Hall not guilty. (Hall did not appear at his trial.) Ensign Ebenezer Bodfish, Ensign Leonard Chase, and Ensign Josiah Linnell, charges considered together and dismissed on grounds of defective service of arrests. Ensign Benjamin Battles, not guilty. (Battles did not appear at his trial.) Ensign John Bursley not guilty. (Bursley did not appear at his trial.) Capt Peter Paul guilty on one count, removed and barred three years. (Paul did not appear at his trial.) Capt. Henry Lyon guilty on two counts, removed and barred one year. (Lyon did not appear at his trial.) Capt. Nehemiah Doane, charges dimissed on absence of evidence that he "had been notified of the complaint, or the time and place of the trial. (Doane did not appear at his trial.) Capt. Nathan Nickerson guilty on one count, reprimanded. (Nickerson did not appear at his trial.) Lt. Thomas Howes, charges dismissed on grounds "that there has not been a sufficient service of the arrest." (Howes did not appear at his trial.) Lt. James Long guilty on two counts, removed and barred five years. (Long did not appear at his trial.) Lt. Jeremiah Crowell, charges dismissed "for want of service." (No reference to Crowell's presence in court.) Ensign Reuben Rider guilty on one count, reprimanded. (Rider did not appear at his trial.) Ensign Nathan Crosby guilty on one count, not guilty on another, reprimanded. (Crosby did not appear at his trial.) Lt. Ezekiel Thatcher guilty on three counts, removed and barred five years. (Thatcher did not appear at his trial.) Ensign Lothrop Howes guilty on one count, not guilty on another, removed and barred two years. (Howes did not appear at his trial.) Ensign Mash Clark not guilty. (Clark did not appear at his trial.) Ensign Richard Baker guilty on one count, reprimanded. (Baker did not appear at his trial.) Division commander approves all sentences, verdicts, and decisions to dismiss.

- **Court Martial of Captain Francis Cushman, Oct. 1819.** Held at Bath. Mixed verdict, removed and barred five years.

- **Court Martial of Ensign Henry Mange, Dec. 1818 [folder says 1819].** Held at Portland. Mixed verdict. Removed and barred fifteen years.

**Volume 11:**

- **Court Martial of Capt. Alpheus Spring, Dec. 1819.** Held at Waterford. Guilty, removed and barred one year.

- **Court Martial of LTC John W. Lincoln, Dec. 1819.** Held at Worcester. Mixed verdict of guilty and not guilty. Reprimanded.

- **Court Martial of LTC David L. Hobbs and Major Simon J. Whitten, Dec. 1819.** Held at Alfred. Mix of guilty and not guilty verdicts for both. Both reprimanded.

- **Court Martial of Ensign William Bradley, Dec. 1819.** Held at Boxford. Guilty. Removed and barred one year.

- **Court Martial of Quarter Master Christopher Wright, Jan. 1820.** Held at Portland. Not guilty.

- **Court of Inquiry on Col. Joseph Dudley, Feb. 1820.** Held at Roxbury. Conclusion is that a court martial is not warranted.

- **Court of Inquiry on Capt. Reuel Baker, March 1820.** Held at Boston. Court unanimously concludes that a court martial is warranted.

**Vol. 12:**

- **Court Martial of Lts. Henry Porter, John H. Pierce, Ens. Wheaton Bowen, and Capt. Thomas Welch, May 1820.** Held at Bridgewater. Porter and Pierce not guilty. Bowen guilty. Removed and barred four years. Welch guilty. Removed and barred five years.

- **Court Martial of Captains Jacob Upham and Ebenezer White, Jr., Sept. 1820.** Held at Charlton. Both enter guilty pleas, both are reprimanded.

- **Court Martial of Captain Bartlett Stoddard, June 1821.** Held at Gardner. Mixed verdicts. Removed and barred two years.

- **Court Martial of Colonel Joshua Hamblin [Hamblen] and Colonel Ephraim Ward [and Maj. Freeman Foster], Feb. 1822.** Held at Sandwich. Ward not guilty on two counts, guilty on two counts, court declines to hear two counts. Reprimanded. Hamblen guilty on multiple charges, removed and barred for life. Foster guilty on multiple counts, removed and barred one year.

- **Court Martial of Ensign Ebenezer Wales and 22 Others, Feb. 1822.** Held at New Bedford. Ensign Ebenezer Wales guilty on multiple counts, removed and barred three years. (Wales did not appear at his trial.) Lt. Josiah C. Thomas guilty on multiple counts, removed and barred one year. (Thomas did not appear at his trial.) Lt. Ezra Fobes not guilty on one count, guilty on three others, removed and barred five years. (Fobes did not appear at his trial.) Ensign Ebenezer Bodfish guilty on one count, removed and barred one year. (Bodfish did not appear at his trial.) Ensign John Bursley, Jr. guilty on one count, removed and barred one year. (Bursley did not appear at his trial.) Capt. Joseph Barker, charges dismissed on grounds that "the complaint is too informal to be sustained." Capt. Joseph Seabury, charges dismissed on grounds that "said complaint is too informal to be sustained." Lt. William Matthews guilty on one count, not guilty on another, reprimanded. (Matthews did not appear at his trial.) Capt. Anselm Fish guilty on one count, reprimanded. (Anselm Fish did not appear at his trial.) Ensign Theodore Fish guilty on one count, removed and barred one year. (Theodore Fish did not appear at his trial.) Capt. Gershom Crowell guilty on two counts, reprimanded. Capt. Ezekiel Matthews, Jr. guilty on two counts, reprimanded. Lt. Joseph Hamblin guilty on one count, reprimanded. Lt. James Hedge guilty on one count, not guilty on another, reprimanded. (Hedge did not appear at his trial.) Lt. Miller Whelden guilty on one count, not guilty on another, reprimanded. (Whelden did not appear at his trial.) Ensign Richard Baker guilty on one count, not guilty on another, reprimanded. (Baker did not appear at his trial.) Lt. Joseph Crowell, Jr. not guilty. (Joseph Crowell did not appear at his trial.) Ensign Ebenezer Crowell, Jr. not guilty. (Ebenezer Crowell did not appear at his trial.) Ensign Henry Custus not guilty. (Custus did not appear at his trial.) Lt. Rowland Lewis not guilty. (Lewis did not appear at his trial.) Lt. John D. Gilmore, charges dismissed when judge advocate "stated to the Court that he had not been furnished with any evidence that said Gilmore had been notified" of the court date. (Gilmore did not appear at his trial.) Capt. Micajah Handy, charges dismissed, "there being no evidence before the Court that Capt. Handy had been duly served with the order of arrest and copy of the complaint against him as the law prescribes." (Handy did not appear at his trial.) Lt. Samuel Whitman, charges dismissed, same grounds as for Handy. (Whitman did not appear at his trial.) Division commander approves all verdicts, sentences, and decisions to dismiss.

- **Court of Inquiry on Election of Amos B. Parker as Captain, June 1821.** Held at Boston. Conclusion is that complaint is not valid.

**Volume 13:**

- **Court Martial of Maj. John P. Meriam, April 1822.** Held at Concord. Not guilty.

- **Court Martial of Lt. Col. Abner Goodell, October 1822.** Held at Greenfield. Mixed verdict. Removed and barred ten years.

- **Court Martial of Capt. Thomas Ensign, Nov. 1822.** Held at Pittsfield. Mixed verdicts. Reprimanded.

- **Court Martial of Capt. Micajah Hardy and Ensign Josiah Sinnell [Linnell], March 1823.** Held at Plymouth. Hardy guilty. Removed and barred for life. Linnell guilty. Removed and barred ten years.

- **Court Martial of Brig. Gen. Nathaniel Guild, April 1822.** Held at Dedham. Guilty. Reprimanded.

- **Court of Inquiry on Captains Cyrus Balkum and Joseph May, Dec. 1823.** Held at Dorchester. Court concludes the matter involving Balkum does not warrant a court martial. Recommend a court martial for May. ("The court however beg leave to observe to the Major General that if Capt. May should be released from his arrest, it appears to the court that his inability to perform his duty from ill health and other causes would entitle Capt. May to a discharge at his own request.")

- **Court Martial of Capt. Joseph May, Feb. 1824.** Held at Dorchester. Guilty. Removed and barred for life.

- **Court Martial of Paymaster Samuel Woods and Quartermaster Austin Holbrook, Feb. 1824.** Held at Grafton. Both guilty on one count, not guilty on another. Both removed and barred two years.

- **Court Martial of Capt. John Parks and Lieut. Stephen Wales, Jr., March, 1824 [1825].** Held at Dorchester. Parks not guilty. Wales pleads guilty. Reprimanded.

- **Court Martial of Capt. Samuel Williams, March 1824.** Held at Manchester. Court agrees with Williams' objection to his arrest, conclude he is "not further holden to answer to the charge exhibited against him before this court."

- **Court Martial of Col. Hiram Wheelock, March 1825.** Held at Worcester. Not guilty on three counts, guilty on one. Reprimanded.

- **Court Martial of Ensign Thomas Mayhew, March 1826.** Held at Greenfield. Guilty. Reprimanded.

- **Court Martial of Capt. Aaron Willard and Lieut. John Ryan, March 1825.** Held at Dudley. Both guilty. Both removed and barred two years.

- **Court of Inquiry on Colonel Cromwell Washburn and Lt. Col. Nathan King, [Feb. or March] 1826.** Held at Taunton. Conclusion is that courts martial are unwarranted.

- **Court Martial of Captains William Cooley and Thomas Snell, Jr., Jan. 1826.** Held in [Monson?], Hampden County. Cooley guilty. Fined $115, removed and barred for life. Snell guilty. Fined $200.

**Volume 14:**

- **Court Martial of Capt. William Sutton, Jr., March 1826.** Held at Ipswich. Not guilty.

- **Court Martial of Capt. Joseph Cloutman, March 1826.** Held at Ipswich. Not guilty.

- **Court Martial of Capt. Joshua Low, Lt. Moses Andrews, Jr., and Ensign John F. Burnham, March 1826.** Held at Ipswich. Burnham and Andrews not guilty. Low guilty. Reprimanded.

- **Court Martial of Lt. John Porter, March 1826.** Held at Ipswich. Complainant abandons some charges; not guilty on all others.

- **Court Martial of Lt. Matthew Gaffney, March 1826.** Held at Ipswich. Not guilty.

- **Court Martial of Ensign Ralph Emerson, March 1826.** Held at Ipswich. Not guilty.

**Volume 15:**

- **Court Martial of Capt. Sewall Fiske, Capt Leonard Walker, Lt. Nathan Warren Jr., and Ensign Ephraim Pratt, March 1826.** Held at Cambridge. Fiske, Warren, and Pratt guilty on all charges, removed and barred five years. Walker not guilty.

- **Court Martial of Capt. Jonathan Wilbur, Capt. Ariel M. Sampson, and Adjutant George B. Atwood, March 1826.** Held in Middleborough. Sampson guilty on all counts. Removed and barred one year. Wilbur, mixed verdict. Removed and barred five years with a $100 fine. Complainant fails to appear for Atwood trial, charges dismissed.

**Oversize Box: "Early Militia: Courts Martial, 1803, 1810, 1816."**

- **Court Martial of Lt. Col. Jeduthan Wellington [Willington], April 1803.** Held at Cambridge. Guilty, removed and barred ten years. Sentence reversed by legislature.

- **Court of Inquiry on the Claims of Daniel Stetson + Isaac Thayer, Jr. to an Ensigncy, Sept. 1810 [and Court of Inquiry on Lt. Col. Calvin Hubbell, Feb, 1811].** Records for two courts of inquiry appear under the same cover, but only one is listed on the folder. First court held at Pittsfield, finds no cause to call a court martial. Second court held in Randolph, outcome unclear.

- **Charges and specifications against Col. Stephen Bickford, 1817.** No court records appear in this folder, which contains a letter of complaint. Possibly charges that led to a court martial for which the record has been lost. Not counting this among courts martial yet.

- **Court Martial of Lieut. Col. Calvin Hubbell, 1811.** This folder contains a large number of confusing records that are not clearly related, the subject of which are unclear. Unclear if Hubbell's court martial records are among them. Counting this among courts martial.

One Massachusetts case for which I have found a published reference does not have archived records:

**Court Martial of Lt. James M. Ingraham, 1806.** Acquitted on charge that he abused a private. "Court-Martial," *Eastern Argus* (Portland, Me.), Oct. 16, 1806, pg. 2.

**Connecticut**
**(Connecticut State Archives, Record Group 13)**

Note: Names of the cases reflect the labeling -- "Trial of" -- adopted by the state archives. Again, cases are listed in the order the folders appear in their boxes, and so are generally but not invariably in chronological order.

**Box 46:**

- **Trial of [Lt. Col.] Andrew Hull Jr., Feb. 1800. Tried at Guilford.** Guilty, sentenced to reprimand, but court recommends that governor remit sentence.

- **Trial of [Lt. Col.] Joshua King, Dec. 1801.** Held at Norwalk. Guilty, suspended from command.

- **Trial of [Capt.] Jonathan Pettibone, [Month?] 1810.** Guilty, reprimanded.

- **Trial of Adjt. Robert Southworth, Nov. 1811.** Court concludes they "have not cognizance of the case submitted to them."

- **Trial of [Lt.] Zalmon B. Banks, Aug. 1813.** Held at Fairfield. Not guilty. Governor approves verdict, but concludes that "the complaint in this case is

altogether indefinite, the charges not being sufficiently set forth by the proper specifications."

- **Trial of Ensign Thomas L. Bevins, March 1814.** Held at New Haven. Guilty, cashiered.

- **Trial of Lieut. Malachi Cooke, March 1814.** Held at New Haven. Guilty, sentenced to reprimand by 2/3 vote. Governor disapproves verdict and sentence, as the charges "contain no specification whatever of neglect of duty or of unofficerlike conduct."

- **Trial of Lieut. Rufus Coburn, March 1814.** Not guilty. Governor approves verdict, but concludes charges should not have been heard, as they were submitted by a former officer who had no standing to complain.

- **Trial of Captain Caleb Thompson, Jan. 1815.** Held at New Haven. Guilty, reprimanded. Court recommends that governor remit the sentence, but he declines.

- **Trial of Ensign Robert H. Austin, Feb. 1815.** Held at Goshen. Guilty, sentenced to reprimand. Governor remits the sentence.

- **Trial of Captain William Beebe, Feb. 1815.** Held at Goshen. Guilty, suspended from command for one year.

- **Trial of Captain Nehemiah Clark, 1814.** Not guilty.

- **Trial of Quartermaster Isaac Benton, 1815.** Guilty, sentenced to verbal reprimand.

- **Trial of Ensign Luther Cook, Feb. 1815.** Held at Goshen. Guilty, sentenced to reprimand. Governor remits the sentence.

- **Trial of Lieut. Julius Griswold, Feb. 1815.** Held at Goshen. Guilty, sentenced to reprimand. Governor remits the sentence.

- **Trial of Lieut. Marvin Griswold, Feb. 1815.** Held at Goshen. Guilty, sentenced to reprimand. Governor remits the sentence.

- **Trial of Capt. David Hall, Feb. 1815.** Held at Goshen. Guilty, suspended from command for six months. Governor remits the sentence.

- **Trial of Lieut. William Hall, Feb. 1815.** Held at Goshen. Guilty, suspended from command. Governor remits the sentence.

- **Trial of Capt. Jeremiah Holt, Feb. 1815.** Held at Goshen. Guilty, suspended from command. Governor remits the sentence.

- **Trial of Ralph G. Ingersoll, May 1815.** (Note: Ingersoll's written defense is the first folder in Box 47, "Statement of Ralph G. Ingersoll.") Held at New Haven. Not guilty.

**Box 47:**

- **Trial of Lieut. Benoni Johnson, Feb. 1815.** Held at Goshen. Guilty, reprimanded. Governor remits the sentence.

- **Trial of Lieut. Chester Loomis, Feb. 1815.** Held at Goshen. Guilty, reprimanded. Governor remits the sentence.

- **Trial of Capt. Elisha Loomis, Feb. 1815.** Held at Goshen. Guilty, suspended from command for six months. Governor remits the sentence.

- **Trial of Ensign Reuben Loomis, Feb. 1815.** Held at Goshen. Guilty, reprimanded. Governor remits the sentence.

- **Trial of Lieut. Warren Loomis, Feb. 1815.** Held at Goshen. Guilty, reprimanded. Governor remits the sentence.

- **Trial of Capt. Joseph Mansfield, Feb. 1815.** Held at Goshen. Guilty, suspended from command for six months. Governor remits the sentence.

- **Trial of Cornet David McKinney, May 1815.** Held at Hartford. Mixed verdict, sentenced to be privately reprimanded.

- **Trial of Lieut. Stephen Russell, Feb. 1815.** Held at Goshen. Guilty, suspended from command for nine months. Governor remits the sentence.

- **Trial of Ensign Champion Scovill, Feb. 1815.** Held at Goshen. Guilty, reprimanded. Governor remits the sentence.

- **Trial of Captain Zimri Skinner, Feb. 1815.** Held at Goshen. Guilty, suspended from command for six months. Governor remits the sentence.

- **Trial of Captain Uriel Tuttle, Feb. 1815.** Held at Goshen. Guilty, suspended from command for six months. Governor remits the sentence.

- **Trial of Ensign Henry Whittelesey, Feb. 1815.** Held at Goshen. Guilty, reprimanded. Governor remits the sentence.

- **Trial of Ensign Samuel Wright, Feb. 1815.** Held at Goshen. Guilty, reprimanded. Governor remits the sentence.

- **Trial of Capt. Samuel Crowell, May 1816.** Held at Glastonbury. Mixed verdict, reprimanded.

- **Trial of Capt. Eli Lacey, Sept. 1816.** Held at Bridgeport. Not guilty.

- **Trial of Ensign Ansel Southworth, Aug. 1816.** Held at Guilford. Mixed verdict, cashiered and barred for life.

**Box 48:**

- **Trial of Captain Horatio Woodward, Nov. 1816.** Held at Ashford. Guilty, cashiered and barred for life.

- **Trial of Captain Amos Bugbee, April 1818.** Held at Mansfield. Not guilty.

- **Trial of Captain William Giddings, Sept. 1818.** Held at Fairfield. Mixed verdict, sentenced to reprimand. Governor disapproves sentence on procedural grounds and because Giddings' negligence is explained by illness.

- **Trial of Ensign Alfred Seeley, Nov. 1818.** Held at Wilton. Guilty, cashiered and barred for life with a fifty dollar fine. Seeley did not attend his trial.

- **Trial of Colonel Abel Hall, Oct. 1819.** Held at Fairfield. Guilty, suspended from command for six months and fined twenty-five dollars. Governor disapproves verdict and sentence.

- **Trial of Captain Jabez Ripley, Feb. 1819.** Held at Hartford. Not guilty.

- **Trial of Col. Elias Starr, July 1819.** Held at Danbury. Not guilty.

- **Trial of Maj. Levi Hubbell, Oct. 1820.** Held at Danbury. Cashiered and barred for life.

- **Trial of Lt. William Kelley, Oct. 1820.** Held at Norwich. Mixed verdict, reprimanded.

- **Trial of Captain Alpheus Shumway, Nov. 1820.** Held at Weatherfield. Two complaints. Mixed verdict on one, not guilty on the second. Reprimanded.

- **Trial of Captain Daniel Tracey [Tracy], Feb. 1820.** Held at Plainfield. Guilty, reprimanded. Governor disapproves verdict and sentence because Tracy disobeyed an unlawful order.

- **Trial of Capt. Gordon Henderson, March 1822.** Held at New Hartford. Not guilty.

- **Trial of Lieut Jacob Robinson, Aug. 1822.** Held at Wallingford. Guilty, cashiered and barred for life with a fifty dollar fine. Robinson did not attend his trial.

- **Trial of Captain Samuel Corbin, Feb. 1823.** Held at Union. Not guilty.

- **Trial of Captain John Prentis, April 1823.** Held at New London. Court declines to hear some charges, finds Prentis not guilty on all others.

- **Trial of Captain Egbert G. Peck, March 1824.** Held at New Haven. Mixed verdict, reprimanded and fined fifty dollars and "taxed at sixty one dollars and four cents" for "the costs of prosecution."

- **Trial of Maj. Alpheus Shumway, Jan. 1824.** Held at Berlin. Court agrees that they are improperly constituted as a court martial, decline to hear charges.

- **Trial of Lieut Charles A. Stanley, March 1824.** Held at New Haven. Not guilty.

- **Trial of Major Robert Knapp, April 1824.** Held at Bridgeport. Not guilty.

**Box 49:**

- **Trial of Capt. John C. Howard, Feb. 1825.** Held at Ashford. Some charges dismissed as being too old. Not guilty on all others.

- **Trial of Maj. Robert Knapp, April 1826.** Held at Bridgeport. Guilty, cashiered and barred for life.

Militia records at the **Connecticut Historical Society** list two additional courts martial not referenced in the records at the state archives. In the box labeled, "Militia Papers & Records: 21st - 25th Regts.; 30th Regt. 1793-1812," see the folder labeled, "30th Regiment, 1793-1810." An order from Lt. General Jonathan Trumbull, approves verdicts in two courts martial: that of **Capt. Richard McCurdy**, apparently in 1798, and a court martial held at Norwich, Nov. 17, 1797, to try **Capt. Nehemiah Palmer.**

**Rhode Island**
**(Published Sources; Rhode Island State Archives; Newport Historical Society)**

- **Court Martial of Col. David Pinniger, Lt. Col. William P. Maxwell, Maj. Nathan Whiting, and Capt. Allen Tillinghast, April 1808.**

- **Court Martial Lt. Col. William Battey [Batty], Oct. 1811.**

- **"Court on Inquiry" [informal] on Capt. Robert B. Cranston, June 1817.**
- **Court Martial of Capt. Robert B. Cranston, Aug. 1817.**
- **Court Martial of Col. Leonard Blodget, Oct. 1821.**

**New Hampshire**
**(New Hampshire State Archives)**

- **Court Martial of Captain Ezekiel Cram, Oct. 1795.**
- **Court Martial of Captain Thomas Wadleigh, Dec. 1796.**
- **Court Martial of Captain Jonathan Rollins, Month Unknown, 1812.**
- **Court Martial of Joseph Hunter, Month Unknown, 1812.** Hunter's rank does not appear in the surviving records, but he was convicted on a charge of "unofficerlike conduct," among others.
- **Court Martial of Asa Head, Sept 1816.** The surviving records describe Head as a company officer, but do not list his rank.

**Vermont**
**(Archive of Americana/America's Historical Newspapers)**

- **Court Martial of Lt. Augustus Clark and Ens. Bela Tracy, July 1795.** Clark convicted and "removed from office two years." Tracy acquitted, "but not without suggesting they thought he had not been prudent, and free from blame."
- **Court Martial of Maj. Gen. David Whitney, Sept. 1799.** Guilty on multiple charges, cashiered.
- **Court Martial of Capt. Joseph Johnson, Jan. 1806.** Guilty on some charges from his sergeants and corporals, reprimanded.
- **Court Martial of Capts. Babcock and Ashley, Oct., 1806.** Verdicts unclear, but apparently acquitted, as the general order reprinted by newspapers says they are returned to duty.
- **Court Martial of Capt. Clement Smith, Feb., 1810.** Convicted on one count, acquitted on three, sentenced to reprimand. Brigade commander approves sentence but "dispenses with any further reprimand."

- **Court Martial of Capt. Nathaniel Newell, Jul 1811.** Court refuses to hear charges, finding that the complainant in a disobedience case had no authority to command the defendant.

- **Court Martial of Capt. Samuel Blackmer, April 1813.** Acquitted of charges that are not described in the published general order.

- **Court Martial of Ens. William Myrick, May 1820. Guilty of negligence and disobedience, reprimanded.**

- **Court Martial of Capt. John Orcutt, 1824.** Exact date and charges unknown. A published account describes his petition to the state legislature, asking to be released from the sentence of his recent court martial. Given that Orcutt's offenses occurred "in consequence of his own misconception of the law," the legislature does release him from the sentence.

## Appendix B: New England State Courts Martial by Year, 1792-1826

| |
|---|
| 1792: 0 |
| 1793: 0 |
| 1794: 0 |
| 1795: 3 |
| 1796: 1 |
| 1797: 1 |
| 1798: 1 |
| 1799: 2 |
| 1800: 3 |
| 1801: 1 |
| 1802: 0 |
| 1803: 2 |
| 1804: 4 |
| 1805: 1 |
| 1806: 4 |
| 1807: 0 |
| 1808: 5 |
| 1809: 1 |
| 1810: 11 |
| 1811: 12 |
| 1812: 6 |
| 1813: 5 |
| 1814: 20 |
| 1815: 36 |
| 1816: 20 |
| 1817: 37 |
| 1818: 19 |
| 1819: 50 |
| 1820: 12 |
| 1821: 2 |
| 1822: 32 |
| 1823: 4 |
| 1824: 9 |
| 1825: 6 |
| 1826: 19 |

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