

A HISTORICAL SKETCH OF MILITARY PUNISHMENTS, IN AS FAR
AS REGARDS NON-COMMISSIONED OFFICERS AND
PRIVATE SOLDIERS.

BY HENRY MARSHALL, DEPUTY-INSPECTOR-GENERAL OF ARMY HOSPITALS.

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Declare the past and present state of things.—DRYDEN.

Military laws have for their object to force an unhesitating and instant compliance with whatever the military chief chooses to issue, and to sustain a constant unnatural state of irksome existence in obedience to rules which interfere every instant with our wishes and time: all this inconvenience being endured for a small pay, for which the soldier gives up a home and domestic comfort. * * * Our military law changes daily, as circumstances demand; every order issued from the King, or from a Lance Corporal, is part of our law. OBEY! that is our law.—MAJOR-GENERAL SIR CHARLES NAPIER'S *Remarks on Military Law*, 1837.

THE object of the following sketch is:—

1. To enumerate and describe the various modes of inflicting punishments which have been in use in the military force of this country.
2. To trace the influence of civilization and public opinion, in gradually meliorating military punishments.

The laws of civil life are intended to establish a rational, religious, moral state of society, by a steady and long-continued action upon human nature; but the object of military law is simply to produce prompt and entire obedience to the will of a superior. "An army is a collection of armed men, obliged to obey one man."—*Locke*.

The Rev. Mr. Colton appears to have had a very unfavourable opinion of the influence of the military law of the Emperor Napoleon; and I believe it must be admitted, that the usages of war in all armies are frequently but little influenced by rational, moral, or religious motives.

The reverend poet thus addresses Napoleon in his poem on the "Conflagration of Moscow,"—

Forge then the links of martial law that bind,
Enslave, imbrute, and mechanise the mind;
Indite the conscript code with iron pen,
That cancels crime, demoralizes men.

The Honourable A. F. Tytler, in his *Essay on Military Law*, tells us that, "the martial law in former periods of our history, deserved all those characters of *tyranny* which have been assigned to it;" and he also designates it as "an antiquated and justly exploded tyranny," while he characterizes the law military, when he published (1800, and 2nd edition 1806,) as "a well regulated, moderate, and humane system."

Sir Charles Napier "is of opinion, that although martial law has been influenced by the spirit of the age, and softened both in its ordinance and its practice, we have maintained, if not surpassed, our former military glory and discipline." Can we have a more satisfactory evidence that military discipline may be established and sustained without the frequent infliction of excessively severe punishments?

Military punishments are regulated by the Mutiny Act, the Articles of War, and the general Regulations of the Army. The Mutiny Act

merely enumerates certain crimes which may be punished with death, or such other punishment as a court-martial shall award ; while the punishment of all other crimes is left absolutely at the discretion of courts-martial, with the restriction only, that the members are not entitled to adjudge the loss of life or limb as the punishment of any crimes, but those enumerated in the Act. But if, with this single exception, they spare life and limb, they are authorized to punish all other military crimes, viz., immorality, misbehaviour, or neglect of duty, either with corporal punishment, imprisonment, pecuniary mulct, or with a slight censure, as to them may seem best. The Sovereign is, however, allowed to regulate this discretion, in any way he may think proper, and to make what regulations he pleases for the direction of the courts-martial. These regulations are called the Articles of War, to which the general Regulations are subsidiary.

Tytler thus describes the military code of this country:—"A British soldier, enjoying in common with his fellow subjects, every benefit of the laws of his country, is bound by the military code, solely to the observance of the peculiar duties of his profession,—a code *which is simple in itself, reasonable in its enactments, easy in all its obligations, level to the meanest understanding, and more effectually promulgated and better known than any of the ordinary statute laws of the realm.*" (*An Essay on Military Law, &c.*, 2nd edition, 1806, page 25.)

A late writer on military law (Sir Charles Napier), and a much better authority on the usages of the Army than Mr. Tytler, gives a somewhat different account of the British military code:—"Dreadful," says he, "is the calling of a soldier, and dreadful must the means be by which that calling is fulfilled during war. A state of war is the natural state of an army, and military institutions must have war for their object, or they are without sense."

"As a soldier, OBEDIENCE is '*the Law and the Prophets.*' His religion, law, and morals, are in the '*orderly-book.*' If that says '*spare,*' he spares: if that says '*destroy,*' he destroys! The conscience of a good soldier is in the keeping of his General, who has the whole responsibility before God and man for what the soldiers do, in obedience to his orders. Perfect obedience is then a yoke which every soldier of the British Army voluntarily places upon his own neck when he enlists."

"Those alone," says Count Alfred de Vigny,—a retired officer of the French Army, "who have been soldiers, know what servitude is. To the soldier alone is obedience, passive and active, the law of his life—the law of every day and of every moment; obedience not stopping at sacrifice, nor even at crime. In him alone is the abnegation of his self-will, of his liberty of independent action, absolute and unreserved; the grand distinction of humanity, the responsibility of a moral agent, being made over once for all to superior authority."—(*London and Westminster Review*, vol. vii., 32.) In fact, nothing short of this severity has been found necessary, in order that one individual might be master of one hundred thousand armed men. Passive obedience from grade to grade, is a condition essential to the existence and efficiency of an army. "When the clock-maker has made a clock, it goes without asking why. Soldier, you must be like the clock; march, turn, halt, and above all, not a word."

It is essential to bear in mind, that the object of military law is not

to punish moral delinquencies, in other words, to make men virtuous and good, but to produce prompt and entire obedience; hence, a military offence may not be a crime in its moral sense. Military crimes are usually arranged under the following classes:—

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| <ul style="list-style-type: none"> 1. Mutiny. 2. Desertion. 3. Violence to a superior; Insubordination. 4. Disobedience and neglect of duty. 5. Quitting or sleeping on post. 6. Drunk on duty, under arms. | <ul style="list-style-type: none"> 7. Habitual drunkenness. 8. Disgraceful conduct. 9. Absent without leave. 10. Making away with necessaries. 11. Miscellaneous crimes, (see Article of War, 70.) |
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Crimes in civil or social life are commonly classed under two heads, namely, 1st, offences against the person; 2nd, offences against property. The difference of the character of the requirements of social and military law, is therefore obvious.

The Army includes within itself the germs of the military crimes committed, and at the same time the temptations and the necessary facilities for their development. It is the military state or condition of soldiers which in some measure prepares these crimes, and the criminal may be said to be the instrument to execute them. A certain number, and a certain order of crimes, are the necessary result of the organization, discipline, usages, and services of the Army. Soldiers who have been unable to resist the temptations to crime and disobedience in the Army, and who were discharged as incorrigible or excessively prone to commit irregularities, have become industrious, orderly, respectable members of civil society.

Military law (obedience) has in all ages been enforced by more rigorous penalties than the punishments of social law.

It is the object of the following pages to describe the different punishments which have been adopted to promote order and preserve discipline in the British Army, and to notice the meliorations which have from time to time been made in these punishments. The improved discipline which, according to competent authority, has taken place, notwithstanding these alterations, inspires a hope that the penalty of corporal infliction (flogging) may be gradually allowed to fall into disuse. "It is," says Sir Charles Napier, "the duty of Government at once to put rewards and minor punishments into full activity, and in a complete manner. Thus, the lash will soon become obsolete; and this is the safest method that can be adopted for the abolition of flogging." With this sentiment I most cordially concur.

We have the high authority of Sir Henry Hardinge for stating, that good discipline may be preserved without much punishment. His words are:—"The state of discipline in which the Army now is, and the great diminution of corporal punishment, prove that frequent and severe floggings do not produce good discipline. The regiments of highest reputation in the Service, have for years had the fewest punished men."—(*Evidence on Military Punishments, Question 5662.*)

There is, perhaps, no profession in which the improving spirit of the age has made such deep inroads as into the Military and Naval branches of the public service. The meliorations of the Navy may be said to have commenced after the mutinies at Spithead and the Nore, and to have been progressive and important ever since. The meliora

tions of the Army made an important step in 1806; but compared with the Navy, they have been less progressive, and of less consequence. Although considerable improvements has taken place in the Army, still much requires to be effected. Fortunately, the aid of public discussion, which familiarizes the mind to changes and improvements in our institutions and usages, is now permitted or recognised, by which means alterations are examined, and their benefits established before they are adopted. Without previous discussion, changes that may be good abstractedly considered, lose half their benefit by being precipitately carried into effect. In the language of the Commissioners on Military Punishments, "No practice can be long maintained, which is really contrary to the well-considered judgment and settled feelings of the country." The necessity or expediency of the punishment of flogging, must depend upon public opinion, namely, the feelings this mode of punishment excites, and the views taken of it by the bulk of the community possessing more or less influence.

The following sketch is calculated to show how progressively public opinion changes. The different kinds of military punishment, as well as the different degrees of severity with which they were inflicted, together with the relative frequency of their occurrence, mark the changes which have taken place in the "world's mind" in this respect, and show that the military laws, as well as the civil code of a country, yield to the influence of popular opinion—the will of the people.

The very great improvement which has been effected during the present century in the administration of military law and military usages, by the force of public opinion and the progress of civilization, may serve as a beacon for the guidance and encouragement of those who linger in the path of melioration, and anticipate evils from further change.

In the following pages my object has been principally to collect facts which may serve as materials for future inquirers, and who may combine, and compare, and draw deductions from them, and by that means render them practically useful.

The first regulation on record which refers to punishment in the Army is the *Charter*, as it is called, of Richard I., which was addressed to all his men going by sea and land to Jerusalem, and purports to have been made in the first year of that monarch's reign, for the emergency described. The ordinance being short, it is here inserted verbatim.

CHINON, 1st RICHARD, 1189.

Richard, by the grace of God, King of England, Duke of Normandy, &c., To all his men going by sea to Jerusalem, greeting: Know ye, by the common counsel of all good men, we have made the underwritten ordinances.

He who kills a man on shipboard shall be bound to the dead man and thrown into the sea; if the man is killed on shore the slayer shall be bound to the dead body and buried with it. Any one convicted by lawful witnesses of having drawn his knife to stick another, or who shall have drawn blood of him, to lose his hand; if he shall have only struck with the palm of his hand, without drawing blood, he shall be thrice ducked in the sea. Any one who shall reproach, abuse, or curse his companion shall, for every time he is convicted thereof, give him so many ounces of silver. Any one convicted of theft shall be shorn like a champion, boiling pitch shall be poured on his head, and down of feathers shaken over it, that he may be known, and he shall be set on shore at the first land at which the ship touches.

Champions hired to fight legal duels in cases of murder and homicide had their hair clipped or shorn close to their heads.

Richard has been represented in history as a military savage, only redeemed a little by the profession of religion, and by what is called chivalry.

King Richard's articles of war were obviously framed after the original idea of punishment, which was to inflict pain on a person as a satisfaction or atonement for some offence which he had committed. The law of retaliation, *lex talionis*, was recognized by the Mosaic law, the punishments awarded by which are,—1. *Death* by the sword, or by stoning, followed in some instances by gibbeting the corpse of a criminal for a few hours. (Deut. xxi. 23.) 2. *Exile* from the congregation. 3. *Corporal punishments*, the maximum number of stripes being fixed at forty, while the amount of the sentence, which could not legally exceed that number, was left to be determined by the circumstances of the case and the discretion of the judges. 4. *Fines*. 5. *Offerings* to make atonement for sin.

In the Hindu law the principle of retaliation is also sanctioned; for example, whoever breaks a dam or sluice, by which an inundation would be caused, shall be drowned, an adulterer shall be burned on an iron bed, a cut-purse is to lose two fingers, and with whatever limb a thief commits an offence, even that limb shall the King amputate.

By the *Regiam Majestatem*, or ancient laws of Scotland, which collection is supposed by several authors to be a mere compilation from the old laws of England, it appears that the criminal laws of Scotland were framed according to the same principle, that of retaliation. For example:—

OF THE PRICE OF BLOOD AND INJURIES.

Exod. xxi. 18.; Levit. xxiv.

1. Be the law of Scotland for the life of ane man nine times twentie kye.
2. For ane fute ane marke.
3. For ane tuth 12 pennies.
4. For ane wound of the lenth of ane inch 12 pennies.
5. For ane strake under the ear saxteen pennies.
6. For ane strake with ane batton aucht pennies, and gif he quha is stricken falles to the earth saxteen pennies.
7. *Item.* For ane wound i' the face ane piece of golde, that is, ane image of golde.
8. *Item.* For ane broken bane five *oræ*.
9. For ane wounde under the claithes twelve pennies.
10. For ane wound before the sleive 16 pennies.
11. For ane visible wound, except i' the face, 15 pennies.
12. For ane wound above the end (breath) 5 shillings.
13. Under the end (breath) 40 pennies.
14. For ane strake with the fute 40 pennies.
15. For ane strake with the steiked neif 12 pennies.
16. *Item.* Anent the straik with ane palm of the hand; for ilk finger 12 pennies.
17. For shedding or drawing of blude 25 shillings.

According to the articles of war for the Dutch army, the principle of retaliation was in some respects very rigorously observed. By the law, as it stood in 1717, it was ordered that "if a soldier give his fellow a box on the ear, he is to receive the like from him on the head of the regiment; or, if an affront of any kind be given, he who offers it is ordained in a public manner to repair the other's honour."

any person. The Captain did not bring the culprit to trial till his third offence—the court-martial commuted the capital penalty—the Admiral mitigated the severity of the sentence—a skilful and humane Surgeon superintended the punishment—every spectator shed tears of pity—and yet a comparatively innocent being was openly tortured to death, under the authority of an inhuman and antiquated custom.” Homicide was perpetrated; but having been accomplished according to law, none of the perpetrators were considered legally responsible. Can anything be advanced in favour of a usage which sanctions so murderous a punishment as flogging round the fleet? It has been said, that death is *of all dreadful things the most dreadful*; but certainly such a punishment as has been described, is much more dreadful than a sentence of death. Montesquieu observes, that “there are two sorts of corruption—one, when the people do not observe the laws, the other when they are corrupted by the laws—an incurable evil, because it is in the very remedy itself.” Strange as it may appear, the fact is not the less certain, that in the Army and the Navy, “*les loix auront à punir les crimes qu’elles auront fait naître.*” To enforce oppressive usages, or to multiply laws, is to multiply crime; and although the great majority of military crimes are not breaches of the moral laws, it is considered essentially necessary that they should be punished. To multiply laws is, therefore, to multiply human punishments—in other words, human miseries.

The young seaman in question was, in the first instance, pressed into the service, and then obviously flogged to death; but as the infliction was conducted “according to the laws and customs in such cases used at sea,” on board His Majesty’s ships and vessels of war, the homicide will not be attributed to the members of the court-martial, or the agents who carried the sentence into effect. But it is difficult to exculpate a court-martial the members of which have complete discretionary power in regard to the amount of punishment, for sentencing a man to receive such a fearful infliction. There is no other authority for the mode of torture called “flogging round the fleet,” with studied intervals, introduced to increase the agony, but ancient custom; and if this be admitted as a sufficient reason for its continuance, the same precedent might justify a revival of the punishments ordered by Richard I., whereby, if a man was convicted of theft, boiling pitch was to be poured upon his head, and down of feathers shaken over it;—both practices deriving their existence from the same source,—the ignorance, the barbarity, and the inhumanity of the people who lived in the age in which they originated and were practised.

Sir Richard Steel, who served long as a Marine officer, after stating the circumstance of seven men belonging to the *Edgar* having been sentenced *to go through the fleet*, thus describes the consequences of that terrible punishment:—

“I believe no man has ever been known to hold up his head after going through the fleet. The heavy launch is fitted with a triangle, to which the wretch is tied, as if to a cross. It takes some hours to row (sometimes against wind and tide) through the fleet. The torture is, therefore, protracted till, to use a sailor’s phrase, ‘their very soul is cut out.’ After this dreadful sentence they almost always die.”

Justice towards both officers and men demands, that while our civil

laws are undergoing revision, and gradually being adapted to the more humane spirit of improved civilization, the naval code and naval usages should not be left as monuments of a period of comparative barbarity.

The infliction of corporal punishment a second time, under one and the same sentence, having been declared to be illegal in the Army, the practice has long fallen into disuse, and for some time it has been interdicted; but, so far as I know, second punishments have not been prohibited in the Navy. In the Army, a soldier is now considered as having expiated his offence when he shall have undergone, *at one time*, as much of the corporal punishment to which he has been sentenced as, in the opinion of the medical officer in attendance, he has been able to bear. The following account of the infliction of a second punishment for the same offence is given by "An Old Officer" of the Navy, in Tait's Edinburgh Magazine for 1834, page 320:—

"Flogging round the fleet," says our author, "is a punishment which is still in existence, and is evidence that all we hear of the *boot* and other instruments of torture, the horrors of the Inquisition, &c., is not mere fiction. I shall endeavour to give the reader an idea of the horrible transaction, which, in my seventeenth year, made such a lasting impression on my youthful mind, that it can never be obliterated on this side of the grave.

"It was at a few minutes before eight o'clock in the morning, when the First Lieutenant of the ship ordered me to take charge of the launch, and see the punishment carried into effect. Had he given me orders to mount the sides of an enemy's frigate, at the head of a launch's crew, it would not have distressed me half so much, as I might have considered that my good luck might bring me a Lieutenant's commission; but here was a service devoid of honour and full of painful consequences, from which, however, there was no chance of escape. I must needs obey; and the heaviest, bitterest hour of my life was when I stepped into the boat to superintend the infliction of *five hundred lashes* on the back of poor Evan Evans, a half-idiot Welshman. The men on board were ordered up to the rigging, so that every person on board might see the whole operation. The Captain, taking off his hat, which was followed by all on board and in the boats, which were lying on their oars within earshot, then proceeded to read the sentence of the court-martial. This effected, the Boatswain of the ship himself stepped into the launch; the blanket was removed from the culprit's shoulders, and he, the Boatswain, inflicted the first twelve lashes. The poor fellow screamed, and groaned, and struggled; but all this, like the struggles of the dying sheep under the knife of the butcher, passed unheeded. The Boatswain returned on board, and two Boatswain's Mates came down and completed the number of fifty lashes. The blanket was immediately thrown over his shoulders; the people were piped down out of the rigging; I gave the word of command to shove off, and the boats which took the launch in tow began to row towards the Admiral's ship, the drummer striking up the *Rogue's March*. The origin of this idea of having music in the boat was, no doubt, to drown the groans of the sufferer, lest the ordinary feelings of humanity should revolt against the barbarous practice of so mutilating the body of a fellow-creature. A quarter of an hour elapsed, during which the poor Welshman's groans mixed with the vile sounds of the drum, and we were again alongside of a large two-decked ship, the men of which exhibited themselves in the rigging on our approach. The towing-boats lay on their oars; we hooked on to the ship, and three stout fellows jumped into the launch, each with a new cat-o'-nine-tails ready in his hand, prepared to expend his strength on the back of the sufferer. The First Lieutenant of the ship came to the gangway. I handed him a copy of the sentence, which he read aloud to the crew, and the Boatswain's Mates removed their jackets

ready for the infliction. The cats, as I have just observed, were new ; their lashes or tails were made of strong white cord, just the thickness of a common quill, and the glue, or size, which is worked into the cord, had not been removed by soaking in water. They curdled up, and were literally almost as stiff as wires. As officer of the boat I objected to their being used for the first time on the poor man, and others were procured which had told many a tale of suffering. He looked at me gratefully, and said, in a weak voice, 'Thank ye, Sir.' The blanket was removed, and I observed the poor fellow shudder as the cold air struck the bleeding sore on his flesh : the next moment a heavy lash fell upon it, and his screams were agonizing. He received a dozen lashes, and then began to cry out for water. The punishment was stopped till he had taken some. He afterwards told me that at this period the thirst he felt became intense, and that each lash caused a *violent burning pain at his heart*, and seemed to fall like the blows of a large stick on his body, but that the flesh was too *dead* to feel that stinging smart he felt at first and when the flogging was renewed. *The same scene was repeated alongside two other ships*, with the like interval of misery to the sufferer and of disgust and vexation to myself. My reflections, indeed, were painful enough ; for I utterly condemned myself for ever becoming one of the many unfeeling wretches who were so seriously occupied in torturing this poor wretch. Perhaps many others felt as disgusted as I did. *Two hundred lashes* had now been inflicted with a cat-o'-nine-tails, or EIGHTEEN HUNDRED STROKES with a cord of the thickness of a quill. The flesh, from the nape of the neck to below the shoulder-blades, was one deep purple mass, from which the blood oozed slowly at every stroke ; a low groan escaped, and the flesh quivered with a sort of convulsive twitch, the eyes were closed, and the poor man began to faint. Water was administered, and pungent salts applied to his nostrils, which presently revived him in a slight degree. At this period I gave the Doctor a hint, by asking the Master-at-Arms, in a loud tone, how many lashes the prisoner had received. 'Two hundred lashes, exactly, Sir,' was the reply. I knew this very well, but it answered the purpose ; for I saw the Doctor look at me, and then ordered him to be taken down. This was instantly done, and I ordered a fast boat, in the vicinity, to take him on board. The poor fellow was laid on some blankets in the stern-sheets, the sails hoisted, and in a quarter of an hour he was in his hammock in the sick berth, and the Doctors were engaged dressing his wounds. *Five weeks* after this I was again compelled to superintend a further mutilation of the back of poor Evans. This time he looked more miserable than ever ; his frame was shrunken and his cheeks fallen, and, when his shirt was removed, *I observed that the wounds were barely healed over*, and that all about the sides of them there were dark discolourations, which indicated a state of disease. I was surprised that the medical men allowed him to be taken out again for punishment. The first six lashes, given by the arm of a herculean Irishman, brought the blood spirting out from his old wounds, *and then almost every blow brought away morsels of skin and flesh*. It would disgust the reader to detail this second flogging. Suffice it to say the poor fellow fainted when he had received another *one hundred and fifty* lashes ; but, the Surgeon deeming him still capable of a little more punishment, another thirty-three were inflicted. A second faint and convulsive action of the eyes put an end to his torture. He was removed to the guard-ship, and, having taken *three hundred and eighteen* lashes, the remaining *one hundred and seventeen* were remitted by order of the Admiral. The ship sailed for a cruise in the North Sea ; and some months after we heard that poor Evan Evans had been sent to the prison of the Marshalsea, where he fell into a consumption and ended his days. This was just what I expected : for it was clear that the first flogging had given the death-blow to the unfortunate Welshman."

The Old Officer thus concludes,—

“ I think that any argument against the system of *torturing* our seamen would have little effect with those readers whose minds are not made up to condemn it after perusing the above account, which is not in the slightest degree exaggerated; and I have no observation to make to those who have, like myself, already determined that it is as offensive to humanity as it is contrary to good policy.”

Such is an account of the punishment of flogging through the fleet, by an old officer. To exhibit the true character of the punishment in question he has considered it necessary to describe the mode of its infliction in detail. We may form a very different estimate of a measure when we contemplate it in a general way, and when we examine it particularly. War, for example, in the abstract, is, in popular opinion, considered an honourable and glorious pursuit; but if we examine the subject more particularly, we shall find that practical hostilities consist of one man endeavouring to push his bayonet into the body of another man, of whom he knows nothing, or of shooting him through the head. Viewed in this light, war may make a somewhat different impression.

I may here observe that the punishment of flogging round the fleet has not yet been abolished, nor has it fallen into disuse. A court-martial was held on board Her Majesty's ship *Minden*, at Hong Kong, on the 5th January, 1844, to try two seamen for desertion, Rear-Admiral Sir Thomas Cochrane, C.B., being President. They were both found guilty, and each was sentenced to receive one hundred lashes.

On the morning of the 9th January the yellow flag, the signal of punishment, was displayed from the *Agincourt*, the gun was fired, and fourteen boats, manned and armed, assembled to attend the punishment, which was executed in the usual barbarous manner. Notwithstanding the cruel character of the Chinese punishments, the inhabitants witnessed the exhibition with astonishment.

I come now to describe the summary punishments inflicted at the discretion of a Captain or commanding officer, “ according to the laws and customs in such cases used at sea;” and, first in order, I have to give an account of flogging at the gangway.

1. *Flogging at the Gangway.*—“ This punishment,” says Mr. M'Arthur, “ is not so severe in the Army as in the Navy.” He thinks one dozen of lashes applied to the bare back, by a Boatswain's Mate, furnished with a naval cat-of-nine-tails, is equivalent to at least fifty lashes laid on by a drummer with a military cat. This arises not so much from the expertness of one executioner over another in the mode of laying on his lashes, as from the comparative thickness, hardness, and greater dimensions of the one instrument over the other, aided, no doubt, by the superior strength of the Boatswain's Mate, when compared with that of a Drummer.

Mr. M'Arthur thinks the inquiring mind may be apt to ask, whence does this difference of severity in the punishment with a naval cat-of-nine-tails arise? A very natural question certainly. He seems to find no difficulty in satisfying himself that the cause is obvious.

“ When we reflect,” says he, “ that no inferior courts-martial, analogous to regimental ones, are admitted in the Navy, and that a Captain or Commander of any of His Majesty's ships is restricted, by the printed instructions, from inflicting any more than *twelve* lashes upon the bare back of a seaman for any minor offence; and that, if the fault should deserve a greater

punishment, he is directed to apply for a court-martial. Hence it has been the ancient practice and usage in the *Navy* for Commanders to have the cat-of-nine-tails made of cord of a certain weight and texture, that the same force or power, applied to one lash, is equal to four of the common cat used in the *Army*."

According to this theory, a Captain ought not to sanction the use of the large cat when he inflicts a sentence above twelve lashes; and it ought not to be employed when a man is flogged round the fleet; but in practice, the large, or navy-cat, is employed under all circumstances. Unlimited and irresponsible power has a much greater tendency to increase than to meliorate the pains and penalties of naval usages,—“the laws and customs used at sea;”—and the enormously large cat of the Navy is only a part and parcel of the discretionary power with which officers are invested, and which has been used sometimes very indiscreetly.

Notwithstanding the prohibition of the printed instructions, Captains frequently inflicted several dozen lashes at a time, especially where an offence could be considered as falling under different articles. Upon this latter construction a seaman may be punished with three dozen for getting drunk, which offence falls under the 2nd article, and in that state may disobey his officer, and quarrel or fight with some person in the fleet, which brings him under the 22nd and 23rd articles. What will ancient practice and usage not justify!

The cat-of-nine-tails in the Navy, according to Dr. William Burney, editor of an edition of Falconer's *Marine Dictionary* (1816), is composed of nine pieces of line, or cord, about half-a-yard long, fixed upon a piece of thick rope for a handle, and having three knots on each, at small intervals, the first being near the end. The cat which I have seen used appeared to be considerably larger in dimensions than the cat described by Dr. Burney.

By the existing regulations or usage of the Navy, the Captain or Commander of every ship or vessel is authorized to inflict corporal punishment on any seaman, marine, or boy, by warrant under his hand; but until lately he might order a man to the gangway to be flogged, without the formula of a warrant, whenever he thought it necessary to do so; and it was the usage of the Service to direct corporal punishment to be inflicted immediately, sometimes even by torch-light, or within a very brief period after an offence had been committed.

As an example of what was done in the summary way in the Navy, and, by inference, of what might be done with comparative impunity, I may state the following fact:—The late Admiral Cornwallis, who was commonly known in the Navy by the sobriquet of “Blue Peter,” came upon deck one day after dinner, and having found fault with something which was going on, he ordered the Lieutenant, who was the officer of the watch, to be flogged at the gangway, which was accordingly executed forthwith. Having been informed next day of the circumstance, it was with difficulty that he would credit the statement; but the exhibition of the officer's back was proof irresistible. The Admiral then took a cane, or staff, and, presenting it to the officer, said, “I have disgraced you, and, as the only reparation I can make, I have to beg that you will lay it on my shoulders.” The officer declined doing so. Through the

interest of the Admiral, the Lieutenant was soon after appointed to a lucrative situation, namely, to be a Collector of Excise in Scotland.

Some very judicious measures have been adopted by the Admiralty, of late years, to abolish cruelty and restrain severity. Ever since 1811 each Captain has been directed to forward a quarterly report of punishments inflicted by his order, specifying the nature of the offence and the number of lashes; and lately a custom has been pursued of demanding special explanations, in all cases where the punishment has exceeded four dozen lashes. The warrant which the Captain issues, before a man is punished, details the nature of the offence, together with the evidence, and all the other circumstances that are necessary to form a judgment of the case.

Another very important rule or usage, for restraining severe or inconsiderate punishments, has been adopted, namely, never to punish a man the same day on which an offence has been committed.

Antecedent to June, 1811, when the quarterly returns of punishments to the Admiralty were instituted, there was little or no restraint upon the despotic authority of the Captain, in regard to the infliction of corporal punishments. And it will be in the recollection of every one who served in the Navy in those days, that Captains who were perhaps not really cruel by nature, nor more intemperate than the ordinary run of men, were occasionally, some, perhaps, would say frequently, led, by the mere indulgence of unlimited and unscrutinized authority, to inflict the most unjustifiable punishments, such as, in fact, were neither equitable nor useful, but, on the contrary, hurtful to the discipline of the ships, and degrading to the character of the Service. Notwithstanding the reluctant acquiescence which the above humane regulation met with from conscientious but prejudiced individuals (officers who were terrified at the imaginary danger of innovation), much good has already followed; and it is to be hoped that the melioration of the Service will be more or less progressive. It is highly gratifying to learn, from competent authority, that ever since the period when it became the duty of Captains to make periodical returns to the Admiralty of the number of corporal punishments, those punishments have gradually decreased; meanwhile the discipline has gone on improving. "Still the snake," according to Sir Richard Steel, "is only scotched, not killed," as the following *recent* occurrence will go far to prove.

Lieutenant V——, of the Royal Engineers, who had the command of a detachment of Sappers and Miners, which was employed in the north of Spain only a few years ago, applied to the officer commanding the Royal Marine Battalion, he being the senior military officer on the spot, for a detachment court-martial upon some of his men, which Colonel O—— expressed his readiness to grant; but, as a matter of courtesy, he desired the Lieutenant to mention the circumstance to the *Commodore*, who observed, that the proposed ceremony of a court-martial was superfluous and unnecessary. He then ordered the accused Sappers and Miners to be taken on board the Tweed sloop-of-war, Commodore ——, to whom he addressed a note, ordering, that on their being brought on board they were to have a good flogging each; and on their arrival on board the Tweed they were tied up and flogged accordingly.

"A Commander of a man-of-war," says Sir Richard Steel, (*The Marine*

Officer, or Sketches of Service, 1840,) “can flog any man under his pennon, without even the mockery of a trial. I never think of this without my blood running alternately hot and cold within me. Take an instance of the result of the practice. It was the custom of Captain ——, of the A —— frigate, to flog the last man who lay in from the yard after reefing or handling sails; and it happened in a fresh gale that the Captain of the foretop, the smartest and best seaman in the ship, after close-reefing the topsail, saw that the weather-earring was not properly hauled out. He was compelled, therefore, to lay out again to complete his work,—having accomplished which, and recollecting the ignominy that inevitably awaited him, he threw himself from the yard-arm into the sea, and perished. But Retribution in this case took the monster singly to herself,—the tyrant of the A —— was shot by one of his own people in the midst of battle, and the ill-fought badly-defended frigate fell into the hands of the enemy.”

“Some Captains of ships,” says Sir Richard Steel, “kept their cats steeped in brine, to make their horrid punishments still more cruel; but this was unusual, and always reprobated.”

The punishment of flogging at the gangway usually takes place at half-past eleven o'clock, A.M., (seven bells,) and the infliction is executed in the following manner:—The carpenters are ordered to “rig the gratings,” that is, to fasten two gratings at the gangway, in such a manner that the culprit stands upon one, to which his feet are fastened, and leans forward against the other, to which his hands are secured. The officers appear in their cocked-hats and side-arms, and the marines are “under arms;” the ship’s company stand on the opposite side of the deck. Near the gratings the delinquent stands, and close to him the Master-at-Arms, with his sword drawn. The Boatswain and Boatswain’s Mates complete the line round him. One of the Mates is commonly standing ready with a cat-of-nine-tails, half concealed under his jacket. These arrangements being made, the First Lieutenant reports the same to the Captain, who usually comes upon deck forthwith. The Captain sometimes addresses the crew, together with the culprit, and concludes by ordering him to “strip.” When he has stripped the Captain says, “Seize him up,” and he is instantly fastened to the gratings. An article of war, relative to the punishment, is then read by the Captain, who concludes by ordering the Boatswain’s Mate to “give him a dozen.” While the article of war is being read, the officers, including the Midshipmen, stand uncovered. The punisher, who is usually a powerful man, applies the cat slowly, and apparently with all his strength. It would appear that in some ships a Serjeant of Marines was employed to reckon the lashes, and regulate the time of infliction, by means of a sand-glass of a quarter of a minute. At the conclusion of a dozen another Boatswain’s Mate is called, for the purpose of inflicting an equal number, and so on until the Captain suspends the punishment. The author of “*A Man-of-War’s Man*” strongly objects to this mode of punishment. “It is,” says he, “in every shape, and in all its bearings, a cool, cowardly, contemptible waste of human blood.”

However severe flogging at the gangway obviously is, delinquents have been known to make a joke of it, apparently for the purpose of annoying the officer who ordered the infliction. The author of “*The Port Admiral*” asserts as a fact, that a seaman named Collins, who had received four dozen without a word, when the Captain nodded to the

Master-at-Arms, saying, "Cast him off," Collins quietly turned his head towards his superior, and with an indescribable air of drollery said, "Thank ye, your honour, thank ye; I was just a-dozing off to sleep." A suppressed laugh among the crew, and a look of rage from the Captain, was the effect of this sally; the latter ordering the Boatswain's Mate to give him two dozen more, which failing to move his stoicism, he was at length liberated.

2. *The Gantlet* is inflicted in the following manner:—The whole ship's crew is disposed in two rows, standing face to face, on both sides of the deck, so as to form a lane whereby to go forward on one side and aft on the other, each person being furnished with a small twisted cord or rope called a *knittle*, having two or three knots upon it. The delinquent is then stripped naked above the waist, and brought to the gangway, where he receives one dozen from a Boatswain's Mate. Next follows what may be called a procession, which takes place between the two rows of men in the following order:—1st. A Drummer, who beats the Rogue's March. 2nd. The Master-at-Arms, having a drawn cutlass under his arm, with the point directed behind him towards the delinquent. 3rd. The culprit. 4th. The Surgeon's Mate. The delinquent passes forward between the two rows of men on one side, and aft on the other, a certain number of times, rarely exceeding three, during which every person lays on him with their knittles. All the officers are present, and when the Captain sees fit, he directs the punishment to cease.

The ordinary effects of the gantlet are, excessive tumefaction of the shoulders and ribs; the parts do not usually ulcerate, but the sufferer is commonly some time on the sick list, being unfit for duty.

3. *Starting*.—This punishment is thus described by Dr. Burney:—"A vulgar or common term, denoting a summary mode of punishment, formerly used on board ships, which was inflicted on the seamen by the Boatswain's Mate with a rope's end, by order of the Commanding Officer, for laziness at their duty, and frequently resorted to for want of alacrity in hoisting the top-sails to the mast-head, and to quicken their efforts in getting boats in and out, also in hoisting in beer and water, and in performing such like duties."

Starting was, as I had occasion to witness, frequently inflicted upon men who were a few minutes late for muster when their watch was called, and such like alleged delinquencies. Starting was a most severe punishment. It is related of the Captain of the *Edgar*, that he flogged his men "till," as he told his First Lieutenant, "he was tired of flogging, and therefore handed them over to the Lieutenants to be started, being a more prompt punishment than flogging." It used to be said, that "a good starting, that is, beating a man with a rope till he cannot see, was worse than a bad flogging."—(*Sir R. Steel.*)

4. *Keel-hauling*.—This punishment was frequently resorted to in the Royal Navy, as well as in the merchant service, about the time of the Revolution (1688); and it appears to have been borrowed from the Dutch navy, where it is said to be still practised. To keel-haul, is to suspend a delinquent by a rope from one yard-arm, with a weight of lead or iron upon his legs, to sink him to a competent depth, and having another rope fastened to him, leading under the ship's bottom, and through a block at its opposite yard-arm; he is then

repeatedly and suddenly let fall into the sea, where, passing under the ship's bottom, he is hoisted on the opposite side of the vessel to the other yard-arm.

5. *Ducking*.—This punishment used to be inflicted in the Navy for uncleanness, blasphemy, or scandalous actions. The French inflict it on those who have been convicted of desertion, or persons who are alleged to be seditious. The punishment is inflicted in the following manner:—The delinquent is placed astride on a short thick batten, fastened to the end of a rope, which passes through a block hanging at one end of the yard-arm. This fixed, he is hoisted suddenly up to the yard, and the rope being slackened at once, he is allowed to fall into the sea. This chastisement is repeated several times, and by having double-headed shot fastened to his feet during the punishment, he sinks a considerable depth before he is hoisted up again.

6. *Gagging* is described by Dr. Burney as a mode of punishment used in the Navy to prevent insolent language during confinement for drunkenness or other misconduct.

The infliction of this punishment, or measure of restraint, is thus described by a Medical Officer of the Navy:—

“I have,” says Dr. Forbes, “seen gagging performed in the following manner:—A piece of wood or iron, various in diameter and length, is introduced into the mouth, exactly in the way a bit is introduced into the mouth of a horse, so that a portion of it shall project from each side. It is retained in this position by means of a cord passed over the projecting extremities and behind the head. As the operation is one which is seldom proposed but when gentler means have failed to procure a cessation of outrageous conduct, it will naturally be concluded that it is one which is never voluntarily submitted to. Against the drunk man's efforts, accordingly, to keep his mouth shut, considerable force must generally be employed before the business can be properly accomplished.”

In the year 1815, Captain J. T., of His Majesty's sloop M———, was tried by a court-martial on charges of cruelty and oppression. The first charge stated, that “Thomas Payne, belonging to His Majesty's sloop M———, had suffered a dislocation of the jaw, from the severe punishment of gagging, inflicted on him by direction of Capt. J. T.” The pieces of wood with which Payne was successively gagged were of fir, about six or seven inches long, and of the thickness of the finger or thumb. Payne bit through one or more pieces of wood successively; and when he had bitten through the third piece, he appeared to have hurt himself, and upon examination by the Surgeon, it was found that his jaw was completely dislocated. The dislocation was shortly after reduced; but next day, or the day after, the Surgeon discovered that the jaw was again in a state of dislocation, and his repeated attempts to reduce it were ineffectual. The distortion and disfigurement of countenance was disgusting and humiliating, conveying the impression of idiotism.

The decision of the court was as follows:—“The court is of opinion that the dislocation of Thomas Payne's jaw was occasioned by his own violence in biting the piece of wood through, and *by a facility which he had of putting the jaw out and in himself*, and not from the severe punishment of gagging.” The prisoner was accordingly most fully acquitted. It would have been well, however, if, while the court-

martial acquitted Capt. T., the members had abstained from criminating the unfortunate man Payne.

A witness on the trial stated, that he had usually seen "the pump-bolt," the iron bolt on which the handle of the ship's pumps works, "bayonet and drum-stick," used for the purpose of a gag.

In acquitting Capt. T., the court doubtlessly proceeded upon the following grounds:—1st. That, by the Articles of War, Payne merited punishment. 2nd. That, by the same Articles, a discretionary power is left with Captains to punish alleged criminals "according to the customs in such cases used at sea."—(Vide "History of a Case of Dislocation of the Lower Jaw, with Remarks on the Sentence of a Court-Martial held to investigate the nature of the causes that produced it; by John Forbes, Esq., Surgeon, Royal Navy." *Edinburgh Medical and Surgical Journal*, 1817, vol. xiii. p. 315.)

A practice prevailed at one time in some lunatic asylums, of "muffling" the more noisy patients, which consisted in binding a cloth tightly over the mouth and nostrils, for the alleged purpose of "dunning" the noise, and keeping the patients quiet. The punishment of gagging was obviously a dangerous means of restraint, although it was perhaps less hurtful, or less liable to abuse, than the half-burking system of repressing noise by "muffling" patients. Muffling, or burking, is a very ancient mode of promoting silence. (2 Kings viii. 15.) The mode adopted for coercing maniacs, until lately, in some parts of Ireland, by interring them, in an erect position, up to the neck, and covering the head with a basket, exceeds most other measures of restraint for barbarity.

7. *Spread Eagle*.—This punishment I have seen inflicted on a man while he was in a state of inebriety. The culprit is placed upon the standing rigging of the mizenmast, his feet and arms being stretched wide and secured. In this state he remains until the officer of the watch directs him to be taken down.

8. *The Wooden Collar*.—This instrument of punishment appears to be a modification of the Chinese *kea*, or *cangue*, a portable pillory, consisting of two thick pieces of wood, hollow in the middle, so as to fit the neck of an offender, and about two feet broad. On the upper surface of the collar shot are fixed, by which means the instrument is made heavy or light, according to the nature of the crime or the pleasure of the commanding officer; generally it is about sixty pounds' weight. The delinquent is to wear the instrument on deck, or in some public place of a ship.

9. *Barrel Pillory*.—Another species of pillory has lately been adopted in the Navy as a punishment, which, according to report, has effectually supplanted flogging. Two large barrels are placed on the quarter-deck, in which the culprits are placed several hours during the day, wearing a cap not unlike that used in some schools, and designated the fool's cap. In front of the cask is written the nature of the offence committed, and in this manner they are subjected to the gaze of the curious who visit the ship, as well as the ridicule of their comrades.

10. *Carrying a Capstan Bar*.—This punishment consists in a man being obliged to carry a heavy beam of wood, and to walk fore and aft upon the weather gangway, for the period of a watch, or about four hours.

98

11. *Black List*.—This list is composed of men who have been guilty of venial offences, commonly some trivial neglect of duty, and are placed on the black list of the First Lieutenant. The ingenuity of officers to punish in this manner, rather than resort to the cat, has been most amply exemplified of late years. The author of "The Life of a Sailor" informs us, that "he knew a Captain who made the black-list men, when the duty was over for the day, carry their hammocks on their shoulders up and down the quarter-deck, at every six feet placing a rope about three feet from the deck, and making these poor devils, who followed one another like sheep, step over each rope. The exertion required, and the consequent fatigue experienced, is beyond all calculation."

How far the administration of the Articles of War has been meliorated during the last twenty or twenty-five years, I leave to be described by those who are better acquainted with the practical working of the existing rules and usages of the Navy, than the writer professes to be.

A HISTORICAL SKETCH OF MILITARY PUNISHMENTS, IN AS FAR
AS REGARDS NON-COMMISSIONED OFFICERS AND
PRIVATE SOLDIERS.

BY HENRY MARSHALL, DEPUTY-INSPECTOR-GENERAL OF ARMY HOSPITALS.

From The United Service Magazine.

Declare the past and present state of things.—DRYDEN.

Military laws have for their object to force an unhesitating and instant compliance with whatever the military chief chooses to issue, and to sustain a constant unnatural state of irksome existence in obedience to rules which interfere every instant with our wishes and time: all this inconvenience being endured for a small pay, for which the soldier gives up a home and domestic comfort. * * * Our military law changes daily, as circumstances demand; every order issued from the King, or from a Lance Corporal, is part of our law. OBEY! that is our law.—MAJOR-GENERAL SIR CHARLES NAPIER'S *Remarks on Military Law*, 1837.

THE object of the following sketch is:—

1. To enumerate and describe the various modes of inflicting punishments which have been in use in the military force of this country.
2. To trace the influence of civilization and public opinion, in gradually meliorating military punishments.

The laws of civil life are intended to establish a rational, religious, moral state of society, by a steady and long-continued action upon human nature; but the object of military law is simply to produce prompt and entire obedience to the will of a superior. "An army is a collection of armed men, obliged to obey one man."—*Locke*.

The Rev. Mr. Colton appears to have had a very unfavourable opinion of the influence of the military law of the Emperor Napoleon; and I believe it must be admitted, that the usages of war in all armies are frequently but little influenced by rational, moral, or religious motives.

The reverend poet thus addresses Napoleon in his poem on the "Conflagration of Moscow,"—

Forge then the links of martial law that bind,
Enslave, imbrute, and mechanise the mind;
Indite the conscript code with iron pen,
That cancels crime, demoralizes men.

The Honourable A. F. Tytler, in his *Essay on Military Law*, tells us that, "the martial law in former periods of our history, deserved all those characters of *tyranny* which have been assigned to it;" and he also designates it as "an antiquated and justly exploded tyranny," while he characterizes the law military, when he published (1800, and 2nd edition 1806,) as "a well regulated, moderate, and humane system."

Sir Charles Napier "is of opinion, that although martial law has been influenced by the spirit of the age, and softened both in its ordinance and its practice, we have maintained, if not surpassed, our former military glory and discipline." Can we have a more satisfactory evidence that military discipline may be established and sustained without the frequent infliction of excessively severe punishments?

Military punishments are regulated by the Mutiny Act, the Articles of War, and the general Regulations of the Army. The Mutiny Act

merely enumerates certain crimes which may be punished with death, or such other punishment as a court-martial shall award ; while the punishment of all other crimes is left absolutely at the discretion of courts-martial, with the restriction only, that the members are not entitled to adjudge the loss of life or limb as the punishment of any crimes, but those enumerated in the Act. But if, with this single exception, they spare life and limb, they are authorized to punish all other military crimes, viz., immorality, misbehaviour, or neglect of duty, either with corporal punishment, imprisonment, pecuniary mulct, or with a slight censure, as to them may seem best. The Sovereign is, however, allowed to regulate this discretion, in any way he may think proper, and to make what regulations he pleases for the direction of the courts-martial. These regulations are called the Articles of War, to which the general Regulations are subsidiary.

Tytler thus describes the military code of this country:—"A British soldier, enjoying in common with his fellow subjects, every benefit of the laws of his country, is bound by the military code, solely to the observance of the peculiar duties of his profession,—a code *which is simple in itself, reasonable in its enactments, easy in all its obligations, level to the meanest understanding, and more effectually promulgated and better known than any of the ordinary statute laws of the realm.*" (*An Essay on Military Law, &c.*, 2nd edition, 1806, page 25.)

A late writer on military law (Sir Charles Napier), and a much better authority on the usages of the Army than Mr. Tytler, gives a somewhat different account of the British military code:—"Dreadful," says he, "is the calling of a soldier, and dreadful must the means be by which that calling is fulfilled during war. A state of war is the natural state of an army, and military institutions must have war for their object, or they are without sense."

"As a soldier, OBEDIENCE is '*the Law and the Prophets.*' His religion, law, and morals, are in the '*orderly-book.*' If that says '*spare,*' he spares: if that says '*destroy,*' he destroys! The conscience of a good soldier is in the keeping of his General, who has the whole responsibility before God and man for what the soldiers do, in obedience to his orders. Perfect obedience is then a yoke which every soldier of the British Army voluntarily places upon his own neck when he enlists."

"Those alone," says Count Alfred de Vigny,—a retired officer of the French Army, "who have been soldiers, know what servitude is. To the soldier alone is obedience, passive and active, the law of his life—the law of every day and of every moment; obedience not stopping at sacrifice, nor even at crime. In him alone is the abnegation of his self-will, of his liberty of independent action, absolute and unreserved; the grand distinction of humanity, the responsibility of a moral agent, being made over once for all to superior authority."—(*London and Westminster Review*, vol. vii., 32.) In fact, nothing short of this severity has been found necessary, in order that one individual might be master of one hundred thousand armed men. Passive obedience from grade to grade, is a condition essential to the existence and efficiency of an army. "When the clock-maker has made a clock, it goes without asking why. Soldier, you must be like the clock; march, turn, halt, and above all, not a word."

It is essential to bear in mind, that the object of military law is not

to punish moral delinquencies, in other words, to make men virtuous and good, but to produce prompt and entire obedience; hence, a military offence may not be a crime in its moral sense. Military crimes are usually arranged under the following classes:—

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| 1. Mutiny. | 7. Habitual drunkenness. |
| 2. Desertion. | 8. Disgraceful conduct. |
| 3. Violence to a superior; Insubordination. | 9. Absent without leave. |
| 4. Disobedience and neglect of duty. | 10. Making away with necessaries. |
| 5. Quitting or sleeping on post. | 11. Miscellaneous crimes, (see Article of War, 70.) |
| 6. Drunk on duty, under arms. | |

Crimes in civil or social life are commonly classed under two heads, namely, 1st, offences against the person; 2nd, offences against property. The difference of the character of the requirements of social and military law, is therefore obvious.

The Army includes within itself the germs of the military crimes committed, and at the same time the temptations and the necessary facilities for their development. It is the military state or condition of soldiers which in some measure prepares these crimes, and the criminal may be said to be the instrument to execute them. A certain number, and a certain order of crimes, are the necessary result of the organization, discipline, usages, and services of the Army. Soldiers who have been unable to resist the temptations to crime and disobedience in the Army, and who were discharged as incorrigible or excessively prone to commit irregularities, have become industrious, orderly, respectable members of civil society.

Military law (obedience) has in all ages been enforced by more rigorous penalties than the punishments of social law.

It is the object of the following pages to describe the different punishments which have been adopted to promote order and preserve discipline in the British Army, and to notice the meliorations which have from time to time been made in these punishments. The improved discipline which, according to competent authority, has taken place, notwithstanding these alterations, inspires a hope that the penalty of corporal infliction (flogging) may be gradually allowed to fall into disuse. "It is," says Sir Charles Napier, "the duty of Government at once to put rewards and minor punishments into full activity, and in a complete manner. Thus, the lash will soon become obsolete; and this is the safest method that can be adopted for the abolition of flogging." With this sentiment I most cordially concur.

We have the high authority of Sir Henry Hardinge for stating, that good discipline may be preserved without much punishment. His words are:—"The state of discipline in which the Army now is, and the great diminution of corporal punishment, prove that frequent and severe floggings do not produce good discipline. The regiments of highest reputation in the Service, have for years had the fewest punished men."—(*Evidence on Military Punishments, Question 5662.*)

There is, perhaps, no profession in which the improving spirit of the age has made such deep inroads as into the Military and Naval branches of the public service. The meliorations of the Navy may be said to have commenced after the mutinies at Spithead and the Nore, and to have been progressive and important ever since. The meliora

tions of the Army made an important step in 1806; but compared with the Navy, they have been less progressive, and of less consequence. Although considerable improvements has taken place in the Army, still much requires to be effected. Fortunately, the aid of public discussion, which familiarizes the mind to changes and improvements in our institutions and usages, is now permitted or recognised, by which means alterations are examined, and their benefits established before they are adopted. Without previous discussion, changes that may be good abstractedly considered, lose half their benefit by being precipitately carried into effect. In the language of the Commissioners on Military Punishments, "No practice can be long maintained, which is really contrary to the well-considered judgment and settled feelings of the country." The necessity or expediency of the punishment of flogging, must depend upon public opinion, namely, the feelings this mode of punishment excites, and the views taken of it by the bulk of the community possessing more or less influence.

The following sketch is calculated to show how progressively public opinion changes. The different kinds of military punishment, as well as the different degrees of severity with which they were inflicted, together with the relative frequency of their occurrence, mark the changes which have taken place in the "world's mind" in this respect, and show that the military laws, as well as the civil code of a country, yield to the influence of popular opinion—the will of the people.

The very great improvement which has been effected during the present century in the administration of military law and military usages, by the force of public opinion and the progress of civilization, may serve as a beacon for the guidance and encouragement of those who linger in the path of melioration, and anticipate evils from further change.

In the following pages my object has been principally to collect facts which may serve as materials for future inquirers, and who may combine, and compare, and draw deductions from them, and by that means render them practically useful.

The first regulation on record which refers to punishment in the Army is the *Charter*, as it is called, of Richard I., which was addressed to all his men going by sea and land to Jerusalem, and purports to have been made in the first year of that monarch's reign, for the emergency described. The ordinance being short, it is here inserted verbatim.

CHINON, 1st RICHARD, 1189.

Richard, by the grace of God, King of England, Duke of Normandy, &c., To all his men going by sea to Jerusalem, greeting: Know ye, by the common counsel of all good men, we have made the underwritten ordinances.

He who kills a man on shipboard shall be bound to the dead man and thrown into the sea; if the man is killed on shore the slayer shall be bound to the dead body and buried with it. Any one convicted by lawful witnesses of having drawn his knife to stick another, or who shall have drawn blood of him, to lose his hand; if he shall have only struck with the palm of his hand, without drawing blood, he shall be thrice ducked in the sea. Any one who shall reproach, abuse, or curse his companion shall, for every time he is convicted thereof, give him so many ounces of silver. Any one convicted of theft shall be shorn like a champion, boiling pitch shall be poured on his head, and down of feathers shaken over it, that he may be known, and he shall be set on shore at the first land at which the ship touches.

Champions hired to fight legal duels in cases of murder and homicide had their hair clipped or shorn close to their heads.

Richard has been represented in history as a military savage, only redeemed a little by the profession of religion, and by what is called chivalry.

King Richard's articles of war were obviously framed after the original idea of punishment, which was to inflict pain on a person as a satisfaction or atonement for some offence which he had committed. The law of retaliation, *lex talionis*, was recognized by the Mosaic law, the punishments awarded by which are,—1. *Death* by the sword, or by stoning, followed in some instances by gibbeting the corpse of a criminal for a few hours. (Deut. xxi. 23.) 2. *Exile* from the congregation. 3. *Corporal punishments*, the maximum number of stripes being fixed at forty, while the amount of the sentence, which could not legally exceed that number, was left to be determined by the circumstances of the case and the discretion of the judges. 4. *Fines*. 5. *Offerings* to make atonement for sin.

In the Hindu law the principle of retaliation is also sanctioned; for example, whoever breaks a dam or sluice, by which an inundation would be caused, shall be drowned, an adulterer shall be burned on an iron bed, a cut-purse is to lose two fingers, and with whatever limb a thief commits an offence, even that limb shall the King amputate.

By the *Regiam Majestatem*, or ancient laws of Scotland, which collection is supposed by several authors to be a mere compilation from the old laws of England, it appears that the criminal laws of Scotland were framed according to the same principle, that of retaliation. For example:—

OF THE PRICE OF BLOOD AND INJURIES.

Exod. xxi. 18.; Levit. xxiv.

1. Be the law of Scotland for the life of ane man nine times twentie kye.
2. For ane fute ane marke.
3. For ane tuth 12 pennies.
4. For ane wound of the lenth of ane inch 12 pennies.
5. For ane strake under the ear saxteen pennies.
6. For ane strake with ane batton aucht pennies, and gif he quha is stricken falles to the earth saxteen pennies.
7. *Item.* For ane wound i' the face ane piece of golde, that is, ane image of golde.
8. *Item.* For ane broken bane five *oræ*.
9. For ane wounde under the claithes twelve pennies.
10. For ane wound before the sleive 16 pennies.
11. For ane visible wound, except i' the face, 15 pennies.
12. For ane wound above the end (breath) 5 shillings.
13. Under the end (breath) 40 pennies.
14. For ane strake with the fute 40 pennies.
15. For ane strake with the steiked neif 12 pennies.
16. *Item.* Anent the straik with ane palm of the hand; for ilk finger 12 pennies.
17. For shedding or drawing of blude 25 shillings.

According to the articles of war for the Dutch army, the principle of retaliation was in some respects very rigorously observed. By the law, as it stood in 1717, it was ordered that "if a soldier give his fellow a box on the ear, he is to receive the like from him on the head of the regiment; or, if an affront of any kind be given, he who offers it is ordained in a public manner to repair the other's honour."

In ancient times it was customary for Kings, or officers in command of armies, to form regulations, or articles of war, for the soldiery, at the commencement of a campaign. These regulations chiefly respected the chastisement of military offenders or offences, which the officer in command considered necessary to punish to preserve order and promote the efficiency of the army. In these regulations the infliction of death is the first, and ever-present resource. "Drawing (dragging), hanging, quartering, and beheading are awarded, without any discrimination, against offences of the most dissimilar quality, and of the most contrasted character." Not only the capital but the secondary punishments were of a most ferocious and sanguinary description, such as dismemberment, maiming, or fracturing of the limbs, boring of the tongue with a red hot iron, and burning or branding the cheek, and cutting off the left ear.

Grose ("Military Antiquities") informs us that in many instances where a corps, or a considerable body of men, were guilty of a crime for which the established punishment was death, to prevent too great weakening of the army the delinquents were decimated, every tenth man being executed; sometimes corps were decimated by ranks and files. In cases where a few only were condemned to suffer for the sake of example, the whole were ordered to cast dice on the drum-head, sometimes under the gallows, and the requisite number of persons who drew the low numbers were doomed to death. It appears by authentic documents that this method of casting dice was practised in Ireland so late as the reign of William III. Indeed, casting dice seems to have been practised in the case of desertion until the accession of George I., and, perhaps, to a much later date. I have heard of a regiment which was on service in India, not fifty years ago, when, in consequence of marauding, the majority of the corps were prisoners to the minority. In this case a few delinquents were selected by ballot from the whole number, and punished at the halberts.

The *decimation* of corps appears to have been recognised as a legitimate punishment in the Austrian Army during the present century. After the battle of Wagram the Archduke Charles issued a general order, (7th July, 1809,) of which the following is an extract:—"In every regiment which shall hereafter conduct itself in a similar" (cowardly) "manner, the tenth man shall be condemned to die, and the rest distributed among other regiments. The commanding officers shall be cashiered, and all other officers dismissed. Cries of alarm among the troops shall be punished with death."

With respect to the administration of military law, it appears that until a comparatively recent period almost every important case was left to be decided by the discretion of the Commander-in-Chief of an army. "The High Marshal should make choice of a good Provost, to whom he may commit the handling of smaller matters, always retaining the greater causes, and such as concern *life*, to be heard by himself."—*Stratioticos, by Thomas Digges, Esq., 1579.*

The ordinances of war, during the 16th and part of the 17th century, contained a minute enumeration of military crimes, and a clear denunciation, so far as they admitted of precision, of their correspondent punishments. Death, fines, and forfeitures appear to have been very common punishments; the latter being imposed on many slight transgressions, whether committed by private soldiers or officers. The emo-

luments of the Earl Marshal depended in a great measure upon the fines which were thus imposed. Under such a system of temptation, where officers had a beneficial interest in the delinquencies of soldiers, neither honesty nor humanity could be expected to prevail.

The punishments mentioned in the "Lawes and Ordinances Militarie" of Robert Earl of Leicester, Captain-General of Her Majesty's Army and Forces in the Low Countries, &c. &c., 1579, are as follows:—"Death with torments. Death. Loss either of life or limb. Banished the army. Fines. Loss of place and wages. Imprisonment." Vagrant women were to be whipped; but it does not appear that the punishment of the gauntlet or flogging had been then introduced into the army.

Great care seems to have been taken to prevent discord; for according to an ordinance of the Earl of Leicester's, "No man shall quarrel, brawl, or make any fray within the camp, or tower, or garrison, upon *pain of loss of life or limb*, at the discretion of the General or Marshal." Blasphemy or profane swearing was punished by "loss of five shillings to the relief of the poor for the first offence; for the second, five days' imprisonment; and for the third, loss of his place and wages." The punishment for blasphemy in the Spanish army at this time, was, "for the first offence, thirty days' imprisonment; for the second sixty, and to be shamed openly with a gag on his tongue; and for the third to be made a galley-slave, either perpetually, or to some time certain."

"Any Captain finding any soldier of what band or company soever, which hath transgressed any of these lawes and ordinances, may take him and bring him unto the Marshal to be punished." It does not appear that the Captain had anything to say in regard to the nature or degree of the punishment a soldier received from a Provost-Marshal, who seems to have, in most cases, been both judge and executioner. According to Digges, the following is a copy of one of the military ordinances practised among the Spaniards:—"For that drunkenness doth turn men into beasts, and makes them so many times utter words tending to mutinies *and new sects in religion*, if any man drink dronk, he shall be chastised as an infamous person with a *banne* that shall publish his fault." *Vide* "An Arithmetical Warlike Treatise, named *Stratoticos*, &c., by Thomas Digges, Esq., 1579."

The profession of religion was in early times enforced by means of heavy penalties; for example, according to the "Lawes of Armes," &c., published by Sutcliffe in 1593, "Notorious swearers and blasphemers shall be punished according to the qualitie of their offence, yea with *death*, if their faults be heynous."

The punishment of imprisonment, and a diet of bread and water, is a very ancient mode of chastising soldiers, and one which is still in use at the present day. The following law is extracted from Sutcliffe:—"For that God is greatly offended with drunkenness, and the abuses that come of it; and forasmuch as all camps and garrisons are thereby much disordered, and many good men suffer for the abuse of such lewd drunkards; therefore, such are to be *imprisoned and fedde with bread and water*, so long as the qualitie of their offence shall deserve."—*Sutcliffe*, page 305.

By an article in the "Lawes and Ordinances of Warre," &c., promulgated by his Excellency the Earl of Northumberland, who commanded the Royal army in 1640, it appears that officers were in the habit of chastising soldiers in a summary way by manual correction. The article

in question is as follows, "No man shall resist, draw, lift, or offer to draw, his weapon against an officer correcting him *orderly* for his offence, upon pain of death." A similar article is comprehended in the "Lawes and Ordinances of Warre," established by the Earl of Essex in the Parliamentary army. Resistance to a commanding officer, or contumacy in a soldier, such as taking hold of an officer's rod, or cane, wherewith he was beaten, was by the Romans deemed a capital offence.

In 1642 the Earl of Essex, who commanded the Parliamentary army, published a code of "Lawes and Ordinances of Warre," &c., which seems to have been the foundation of the present Articles of War. This code enumerates certain crimes which are to be punished with death, while the punishment of all other offences is left to the discretion of a council of war. There are from forty to fifty delinquencies mentioned in this code for which death may be awarded. The secondary punishments, specially enumerated, are "boring the tongue with a red-hot iron; loss of pay; confinement in prison with only bread and water; riding the wooden horse; and degradation to serve as pioneers and scavengers."

In the same code of laws, namely that of the Earl of Essex, it was ordered as follows:—"First, let no man presume to blaspheme the holy and blessed Trinity, God the Father, God the Sonne, and God the Holy Ghost, nor the known articles of our Christian faith, upon pain to have his tongue bored with a red-hot iron." The offence of blasphemy, namely impugning the doctrine of the Trinity, it may be remarked, is punishable at common law by *fine* and *imprisonment*, but while it was forbidden by an article of war, and remained within the cognizance of a court-martial, it was treated with a much heavier penalty, the blasphemer being liable to have his tongue bored through with a red-hot iron, even at so late a period as the reign of King James II. *Vide* Fourth Article of War, James II.

We are informed that "a soldier of Okey's Regiment was, on the 26th July, 1650, sentenced by a court-martial *to be bored through the tongue with a red-hot iron*, and to run the *gantelop* through four companies, for uttering blasphemous words, he being at the time in a ranting humour with drinking too much."

The punishment of the "gantelop" will be better understood by the following sentence, which was passed on two soldiers for deer-stealing: the punishment took place in Sept. 1649:—"That they be stripped naked from the waist upward, and a lane to be made by half of the Lord General's regiment of foot, and half of Colonel Pride's regiment, with every soldier a cudgel in his hand, and they to run through them in this posture, every soldier having a stroke at their naked backs and breasts, arms, or where it shall light; and after they have run the gantelop in this manner, they are to be cashiered the regiment."

Tongue-boring seems to have been frequently employed as a punishment in the seventeenth century both in this country and in North America. In 1656, James Naylor, one of the first Quakers, was sentenced to be set on the pillory, at Westminster, during the space of two hours on Thursday, and on Saturday next he was to be whipped by the hangman through the streets from Westminster to the Old Exchange, London, and there to be set on the pillory for the space of two hours. Here his tongue was to be bored through with a hot iron, and branded in the forehead with the letter B: he was afterwards to be

whipped a second time, and to undergo a variety of other modes of punishment. "I went," says Burton, a Member of Parliament, and my authority in regard to this case, "to see Naylor's tongue bored through, and him marked in the forehead. He put out his tongue very willingly, but shrank a little when the iron came upon his forehead. He was pale when he came out of the pillory, but high coloured after tongue-boring."

It was Lewis IX., king of France, who for his virtues was numbered among the saints, that first sentenced blasphemers to have their tongue bored with a hot iron, being a species of retaliation—the sinning member suffering the punishment. An ordinance of Lewis XIV. declared that "those who shall be convicted of having sworn by or blasphemed the holy name of God, or His most holy mother, or of His saints, shall, for the first offence, pay a fine; for the second, third, and fourth, a double, triple, and quadruple fine; for the fifth, shall be put in the stocks; for the sixth, shall stand in the pillory and lose the upper lip; for the seventh, shall have his tongue cut out."

In 1813 a Bill was brought into Parliament by Mr. Smith, and passed, to grant further relief to individuals differing in opinion from the Church of England, with respect to certain penalties imposed by law on those who impugn the doctrine of the Trinity, and to extend to such persons the benefits conferred on all other Protestant dissenters. This Act may be said to have had a special reference to the Army, inasmuch as, by an article of war, a soldier was liable to a heavy penalty for impugning the doctrine of the Trinity. Since the passing of Mr. Smith's Bill, the article has been modified as follows:—"Any officer or soldier who shall presume to speak against any known article of the Christian faith, shall be delivered over to be proceeded against according to law."

It may be mentioned that commissioned officers were as liable to be sentenced by a court-martial to the corporal punishment of having the tongue bored with a red-hot iron for blasphemy as privates. This punishment remained on the military statute-book until the reign of Queen Anne.

A very summary mode of punishing cowardice was directed to be adopted about the middle of the seventeenth century; for, on the descent of a British force in Jamaica about the year 1655, General Venables issued orders that if any man should be found to run away, the next man to him should put him to death, which, if he failed to do, he should be liable to the severest punishment by a court-martial. (See M'Arthur on Courts-Martial.) The above order of General Venables is still more severe than a somewhat similar rule in the Roman army, which directed that *whosoever first fled in battle*, was not only liable to capital punishment, but it was permitted (not ordered, however) to any man to kill him without, as Bruce says, further sentence or solemnity.

Military punishments being greatly modified by the judicial punishments in civil life, it will be necessary for me to advert to them occasionally in the course of this sketch. The legal punishments inflicted for social offences, according to the Saxon laws, were *death*, by hanging and sometimes by stoning; *finer*; *imprisonment*; *outlawry*; *banishment*; *slavery*; *transportation*; *whipping*; *branding*; *the pillory*; *amputation of limb*; *mutilation of the nose*; *castration*; *mutilation of the ears and lips*; *plucking out the eyes*; and *tearing off the hair*.

A HISTORICAL SKETCH OF MILITARY PUNISHMENTS, IN AS FAR
AS REGARDS NON-COMMISSIONED OFFICERS AND
PRIVATE SOLDIERS.

BY HENRY MARSHALL, DEPUTY-INSPECTOR-GENERAL OF ARMY HOSPITALS.

II.

THE punishments of more modern times were as follow :—

I. CAPITAL PUNISHMENTS.

1. *Death by hanging.*—In high treason the punishment is in general very solemn and terrible. The delinquent is to be drawn to the gallows, and not to be carried or walk, though usually a sledge or hurdle is allowed to preserve the offender from the extreme torment of being dragged on the ground. He is to be hanged by the neck, and then cut down alive. His entrails are to be taken out, and burned while he is yet alive. Then his head is to be cut off, and his body to be divided into four parts, the head and quarters being at the King's disposal.

2. *Death by beheading.*—This punishment was introduced by the Normans, as being a less ignominious mode of putting criminals of high rank to death.

3. *Death by burning alive.*—The punishment of females for petit treason, or murder in the most odious degree, was, until near the end of the last century, to be burned alive. On the 24th October, 1773, Mrs. Herring was tried for the murder of her husband, and burned alive in St. Stephen's Green, Dublin. Burning alive was the punishment awarded for *heresy, sorcery, witchcraft, and conjuration*. In this respect the civil law imitated the express law of God, "Thou shalt not suffer a witch to live." (Exod. xxii. 18.) In Scotland thousands of persons were burned in the period of about one hundred years. The last execution of a Scottish witch took place at Dornoch, Sutherlandshire, in 1722. Having been brought out for execution, and the weather being cold, the victim, a poor old woman, sat composedly before the pile, warming herself by the fire prepared to consume her, while the other instruments of death were making ready.

Capital punishments were rare under the Saxon Kings and the early Norman Sovereigns. Richard I. repealed the penalties of castration, loss of eyes, and cutting off the hands and feet, in consequence, as is supposed, of the severity of these punishments preventing prosecutions.

II. SECONDARY PUNISHMENTS.

1. *Banishment—Transportation.*—By a statute passed in the reign of Elizabeth it was enacted that "such rogues as were dangerous to the inferior people should be banished the realm." Transportation was not brought into common operation until after the sixth year of the reign of George I. Under the statutes of George I. transportation to America lasted from 1718 till the commencement of the War of Independence, in 1775. Transportation was resumed by a statute 24th Geo. III.; and in the month of May, 1787, the first band of convicts left England, which in the succeeding year founded the colony of New South Wales.

2. *Mutilation*, by cutting off the hands or ears, cutting out the tongue, &c.—A person who struck another in the place where the King

resided was liable to have his right hand cut off, by a statute of Henry VIII., and by another of Elizabeth the exportation of a sheep incurred a forfeiture of the left.

3. *Perpetual or temporary imprisonment*, with or without hard labour.

4. *Slitting the nostrils—Branding*.—In all felonies where the benefit of clergy was allowed the criminal was to be marked with a hot iron, with the letters T or M, for *thief* or *manslayer*, on the left hand, and rogues were to be burned on the shoulder with the letter R. Prynne, the eminent compiler of records, who published a pamphlet reflecting on the hierarchy, was sentenced to be branded on both cheeks with the letters S and L. (Seditious libeller.)

5. *Fine*.

6. *Whipping*.—The punishment of whipping appears to have been left much to the discretion of jailors, who could inflict the penalty how and when they pleased. Corporal punishment is becoming daily more unpopular in this country, and its practice is fast going into disuse. Whipping is now seldom used, except for juvenile offenders.

The public and private whipping of females was abolished in 1830.

7. *The Pillory*.—A scaffold for persons to stand on, to render them infamous. In some cases the head was put through a hole, the hands through two others, the nose slit, the face branded with one or more letters, and one or both ears there cut off. Many persons died in the pillory, by being struck with stones by the mob. The pillory was totally abolished by Act 1 Victoria, June, 1837. In 1832 it was abolished in France.

The Scottish pillory, *collistriguum*, or neck-stretcher, has long fallen into desuetude. By this instrument a very savage punishment was inflicted. The culprit being placed on a low scaffold, in a standing position, his neck was encased in a wooden collar, or board, not so closely as to provoke suffocation, but being elevated to such a height as just to allow the tip of the toes to barely touch the ground, the weight of the body on the chin and back of the head produced a painful sensation. Nearly allied to the *collistriguum* was the punishment of the *jougs*, from *jugum*, a yoke, formerly in use in Scotland. Evil doers were chained to the gateways of parish churches by means of the jougs, an iron collar fastened with a padlock. This infamous punishment was frequently administered at the instance of church courts. Sometimes the culprits were dressed in sackcloth, and passengers had a liberty of spitting on individuals so unfortunately condemned to this species of pillory. The last person exhibited in the *jougs* or *brangus* at Inverness, as an example to offenders, was a military officer, at the instance of the Rev. Mr. Macbean.

8. *The Stocks*.—A wooden machine to put the legs of offenders in, by way of punishment, in divers cases ordained by statute. In 1376 the Commons prayed the King for the establishment of stocks in every village. Formerly in great houses, as also in some colleges, there were moveable stocks for the correction of servants. A whipping-post usually adjoined the stocks.

9. *The Ducking Stool*.—Scolding women used to be placed in a ducking-stool, and then suspended over a deep pond, into which they were let down, and plunged under water thrice. The ducking-stool was not abolished in Liverpool before the year 1776.

From the foregoing enumeration of punishments employed in this country, it will appear, that they almost all involve the infliction of pain by different means, as death, mutilation of the body, flogging or beating, privation of bodily liberty, banishment, forced labour, limited diet, pecuniary fine, branding, &c. At certain periods particular modes of punishment have prevailed, which having been found inefficacious or unpopular, these have been superseded by other forms of punishment, which have also given way in their turn, and the same punishment has been much more frequently employed at one time than at another. It has been well observed, that "nothing that philanthropy or sagacity can suggest, will ever render human punishment other than it is, a coarse, indiscriminating, and imperfect preventive of crime, often demoralizing instead of reforming, and only inflicted because, on the whole, it represses, as we hope, more mischief than it occasions. Crime, and misery, and punishment, considered abstractedly, are evils in every shape—the last among the heaviest evils which society must necessarily endure." Hitherto the institutions which have been established for secondary punishment, have been found to be radically inefficient or vicious; every mode of punishment which has yet been tried, has disappointed the expectations in which it originated. One result is, I believe, quite certain, which is, that in as far as regards the repressing of crime, and the promotion of good conduct, degrading and severe punishments have failed to a much greater degree than penalties of a comparatively lenient character.

By Acts which have been passed during the present century, the penalties of the statute law have been greatly meliorated; formerly they were excessively severe, so much so, that we look back with horror and disgust at the offences which were punished, and the punishments which were inflicted upon individuals. For some time after the commencement of the eighteenth century, heretics and witches were committed to the flames. The cutting of a twig, and assassinating a parent,—breaking a fish-pond, and poisoning a whole family, or murdering them in their sleep, all incurred the same penalties; and two hundred different actions, many not deserving the name of offences, were punishable by death. The statute gave the text, and the tribunals wrote the commentary in letters of blood, and extended its penalties by the creation of constructive offences. In February, 1785, twenty persons were hanged at once at the Old Bailey.

The number of capital offences was greatly increased during the eighteenth century. Sir Fowell Buxton stated, in the House of Commons, that,—

4 offences were made capital by the Plantagenets.

27 by the Tudors.

36 by the Stewarts; and

156 by the House of Brunswick.

When Blackstone wrote his "Commentaries," there were 160 offences, to which the penalty of death was attached.

Capital offences having recently been greatly reduced, I may here give the actual state of the law in that respect—namely, a list of offences still *punishable with death*.

1. *High Treason*.—2. *Murder*.—3. *Attempting to murder by poison, &c.*—4. *Attempting to murder by stabbing, &c.*—5. *Rape*.

—6. *Unnatural Offences*.—7. *Piracy*, if accompanied with an attempt to murder.—8. *Robbery*, whenever accompanied with an attempt to murder.—9. *Burglary*.—10. *Arson*.—11. *Unlawfully setting fire to, or casting away a ship*.—12. *Exhibiting false lights at sea*.—13. *Being accessory to any of the above capital offences*.

Markham, who published his “*Epistles of Warne*” about the year 1622, gives us the following account of the duties of a Provost-Marshal, from which the nature of the military punishments then inflicted may be inferred. “The Provost-Marshal hath the charge of all manner of tortures, as *gyves, shackles, bolts, chains, bilbowes, manacles, whips*, and the like, and may, by his ministers, use them either in case of judgment or commandment from a marshall court or otherwise upon unruliness at his own discretion; he is, by his officers, to see all places of execution prepared and furnished with engines fitting to the judgment, whether it be *gallows, gybbets, scaffolds, pillories, stocks*, or *strappadoes*, or any other engine which is set up for terror and affright to such as behold it.” The Provost “hath allowance for many attendants of all sorts, and conditions to despatch any executive how suddenly soever commanded, and to that end it is not lawful for the Under-Provosts to go at any time without *halters, withs, or strangling cords of match* ever about them.”

Sir James Turner furnishes us with a pretty full account of the military punishments of the seventeenth century, in his *Pallas Armata*, a work which was published in 1683. In one chapter of his work he treats of military laws and articles, of courts of war, of the Judge Martial, and of the Provost-Master General; and in another chapter he describes “our modern military punishments and rewards.”

“The fairest and justest way of punishment,” says Sir James, “is by courts of war, if the case do not require a present animadversion. As to capital punishments, the most honourable death,” says Sir James, “for a delinquent soldier, is beheading, the next to that is shooting,—if he be a horseman, with pistols,—if a foot soldier, with muskets. But the punishments of several crimes are left by martial law to the arbitrament of a court of war, and some of them are made capital, though in themselves they are not such, of which demurring to give present obedience if an enemy be conceived to be near is one, and this falls frequently out.”

The secondary military punishments, according to the same authority, are “the *strappado*,” hanging up by the thumbs, so that the delinquent’s toes can only touch the ground, laying muskets on their shoulders, more or fewer, for a longer or shorter time, according to the quality of the fault;—to be kept in prison so many days or weeks, with irons on them, and sometimes to be fed only with bread and water in prison. “Observe here, that without a sentence of a court of war no superior Commander, be he who he will, can keep an inferior officer or common soldier longer in prison than the imprisoned party calls for a hearing. There is also riding the wooden horse, on which sometimes he hath his hands tied behind his back, and sometimes muskets, or other weights, tied to his feet. As likewise to be turned out of the Army by the *hangman*, to have their ears cut off by the *hangman*, and to be whipped by the *hangman*. I have known some who thought that soldiers who are whipped at *Gatloupe* should be turned out of the

Army, which is a gross mistake, for they are appointed to be whipped by their comrades, that they may be kept in the Army; *for after an officer or a soldier is put into a hangman's hands, he should serve no more in any army.* Gustavus Adolphus, King of Sweden, first began it (the Gantlope), in imitation of the customs of the Roman centurions to whip their soldiers."

The punishment of the strappado, *etrapade* (French), requires some explanation. It is as follows:—"The delinquent is hoisted up by means of a rope fastened to the arms behind his back, and then suddenly dropped down with a jerk, by which process his shoulder joints were generally dislocated. He was sometimes hoisted up, and again let fall two or three times. The shoulder joints were sometimes dislocated by this punishment."

When the punishment of the *gatloupe*, or *gantlope*, is inflicted, the Provost Marshal furnishes the rods, and gives the delinquent the first stroke; but if there is neither Provost nor Deputy present, then a drummer gives the rods.

Sir James next states "in what cases officers may *strike, wound, or kill.* There are several cases," says he, "which require present punishment to be inflicted by officers and commanders, without committing the



ETRAFADE (STRAPPADO), FROM CALLOT*.

* Les Misères et les Malheurs de la Guerre. Callot died 1635.

delinquents to prison, or calling them before a court of war; as in point of obstinacy, either in not doing the thing that is commanded, or not doing it in that manner that the officer would have it done, the giving undutiful language in presence of a superior; speaking after silence is commanded; standing still after being commanded to march or go. In any one of these and many other cases, a Serjeant may make use of his halbert, and a commissioned officer of his *battoon*, if the party offending be either an inferior officer or common soldier. Nay, there be some cases wherein officers may *cut, wound, yea kill*, as in a mutiny. In case soldiers be plundering, and will not forbear when commanded; in case two be brawling and fighting, and will not leave off. But killing should be used by no officer, but when the service of the Prince or the vindication of just authority, make it necessary. And therefore to kill soldiers when they straggle on a march, unless they refuse to obey and return to their companies, I think is a crime in any commander or officer, except in a Provost Marshall, or Rumour-Master.—(Scout-Master?)”

The author next discusses “some nice questions” in regard to the mode of beating soldiers; for example, as “a corporal” he says, “must only beat with a musket rest; and if he broke one of them in beating a soldier, who should pay for it?—the corporal or the soldier, is a hard question.” Sir James does not attempt to resolve this difficulty.

Our author concludes his observations on punishments, with the following exhortation to officers of the Army:—“And now,” says he, “I shall desire all of my profession, of what quality soever they may be, to *proportionate their punishments to the crime*, and to take good heed, as they will answer it one day to the Great Judge, they do not avenge their private quarrels and grudges under the cloak of public justice. It is true, military persons may say, that this warning of mine concerns them no more than it doth those who officiate both in Church and State, and neither indeed doth it.”

Under the phrase proportionating the punishment to the crime, or suiting the sentence to the delinquency, there used to be a fearful latitude of penal infliction exercised by courts-martial. Vindictive or revengeful punishments are calculated to do more harm than good. In the present state of the Army, military punishments may require to be more severe than the common penalties of civil law; but when they exceed the bounds which a due regard to justice and mercy, equity and utility prescribe, they only deprave the mind, and probably tend to promote perseverance in misconduct. “Pain,” as has been observed by Sir Robert Wilson, “will not reform; the discipline of the mind is far more efficacious than the discipline of the body, and how much more satisfactory.”

It does not appear that drummers were specially employed to execute the sentences of courts-martial, before the beginning of the eighteenth century. Sir James Turner says, “When regimental hangmen are wanting, capital crimes must be punished by harquebusiers, and scourging must be converted into the gatloupe.” The duty of carrying the sentence of a court-martial into effect belonged, during the reign of William III., to the Provost-Marshal, who made out a contingent bill to defray expenses for execution, including his fees. The contingent expenses of a Dutchman who was Provost-Master General in Ireland,

under William III., amounted, in one campaign, to 307*l.* 10*s.*: a manuscript copy of this contingent bill is preserved in the British Museum. From the Dutchman's account I have extracted two entries, which are subjoined. The spelling is that of a Dutchman not well acquainted with the English language:—

“1691, February 25th.—Brought in arrest William Waters, for a repery and do.; remained to the 5th March, after he had severely been whipped with rods, 28th day of February.

For nine days' diet, at 6 <i>d.</i> a day	..	..	..	£0	4	6
For reading of the sentence	..	..	..	0	2	6
For whipping	..	..	..	0	5	0
For locking and unlocking	..	..	..	0	2	6

The cat-of-nine-tails appears to be an invention of a later date than the reign of William III:—

“Kilkenny, 9th of June, 1691. Have been sent in arrest by order of his Excellency the Lord of Sgravemore, two persons, named Thomas Trassi and Philip Wodli, being both raperies; and remained in the arrest until the 11th of February, when the same, in pursuance of the sentence and approbation of the Lord of Sgravemore, in Kilkenny, have been punished with the rope to death.

For 33 days' diet, at 6 <i>d.</i> each a day	..	..	£1	13	0
For extraordinary treats after the sentence of death of the patients, as otherwise, each 6 <i>s.</i>	..	..	0	12	0
Paid unto the 3 servants that have sat up with, and served the patients after the sentence of death, according to custom, half-a-crown a day, for two days and a night	..	..	0	15	0
For the reading of the sentences	..	..	0	2	6
Unto the executioner, for hanging and taking downe, as otherwise, 10 shillings apiece is together	..	..	1	0	0
For the ladder, ropes, and bolts	..	..	0	3	0
For the locking and unlocking of each, 2 <i>s.</i> 6 <i>d.</i>	..	..	0	5	0
For assisting in the execution, according to custom, for me	..	..	0	10	0
For the Liftenant	..	..	0	4	0
Paid for burying, unto the servant, 2 <i>s.</i> 6 <i>d.</i> each	..	..	0	5	0

(GROSE, *Military Antiquities.*)

With reference to the circumstance of a person being hired to read the sentence, a duty now performed by the Adjutant, it may be observed, that prior to the year 1773, according to ancient usage in Scotland, sentence of death was first read by the clerk of the court from the engrossed record, and repeated by the macers, after which it was uttered in a discordant tone by the *doomster*, or hangman, who was brought from a retired part of the court for the purpose, on the ringing of a hand-bell, placed on the desk of the judge. The hangman of Edinburgh, though now banished from the court, is still in one sense a member of the College of Justice, being a stipendiary of the Exchequer.

A HISTORICAL SKETCH OF MILITARY PUNISHMENTS, IN AS FAR
AS REGARDS NON-COMMISSIONED OFFICERS AND
PRIVATE SOLDIERS.

III.

It seems probable that the modern military punishment of flogging is derived through the gauntlet from the Roman *Fustuarium*, the *bastinado*, *stick-beating*, which was much practised in the Roman army. Offences committed by soldiers were by the Romans much more severely punished than in civil life. A Roman freeman, even in the remote provinces, could not legally be scourged. (Acts xxii. 25.) No such tenderness was, however, shown to soldiers: for we find in their history frequent allusion to corporal punishment, particularly the infliction of scourging or flogging, which was executed with rods, or vine-saplings.

When a soldier was to suffer the *bastinado* the Tribune first struck him gently with a staff, on which signal the soldiers of the legion fell upon him with sticks and saplings, and death was sometimes the consequence. In addition to flogging by running the gantelope, the other punishments of the Romans were fines, imprisonment, degradation, banishment, depriving an offender of his accoutrements, hard labour, the stocks, and coarse bread. Their more severe punishments consisted in cutting out a criminal's tongue, amputating his hands, excising a knee-bone, slavery, stoning, and beheading. It is alleged, however, that young soldiers, *tyrones*, were exempted from the severity of military punishments, partly because of their presumed want of knowledge and experience, and partly on account of their youth and want of mature judgment. It may be remarked that, according to Sir James Turner, a Provost-Marshal, in his time, executed the functions of a Roman tribune when a soldier was to be scourged. "The Provost-Marshal," says Sir James, "is to be present at the execution of every sentence; and when a soldier is to run the gauntlet he is to give him the first lash."

Bruce, who published his work (*The Institutions of Military Law*) in 1717, has a long chapter on military crimes, with the punishments awarded thereto. The punishments he enumerates are *death*, which might be awarded to a great number of delinquencies, the secondary punishments being *stigmatizing* (branding) *in the forehead*, *cutting off the ears*, *forfeiture of three months' pay*, *degradation to the quality of a pioneer-scavenger*, and *riding the wooden horse*. Flogging is not mentioned. At this time the criminal law was cruel and inexorable. The law which punished with death the offence of privately stealing in a shop property to the value of five shillings was enacted in the year 1699. Two years after it had passed (in 1701,) an anonymous writer published a tract to propose that hanging was not a sufficiently severe punishment for murder, burglary, or highway robbery. "If death," says he, "be due to a man who surreptitiously steals the value of five shillings, surely he who puts me in fear of my life, and breaks the King's peace, and it may be murders me at last, and burns my

house, deserves another sort of censure, and, if the one must die, the other should be made to feel himself die." And the author accordingly proposes breaking upon the wheel and whipping to death as punishments proper to be adopted.

The injurious effects of corporal and disgraceful punishments are, however, recognized by 5 Anne, c. 6, repealing the 11 and 12 William III., which directs that persons convicted of theft "*shall be burned in the most visible part of the left cheek.*" "And whereas," says the Act, "it hath been found by experience that the said punishment hath not had the desired effect by deterring such offenders from the commission of such crimes and offences; *but, on the contrary, such offenders being thereby rendered unfit to be intrusted in any honest and lawful way, become the more desperate,* be it therefore enacted that the aforesaid clause shall be and is hereby repealed."

The principal object of punishment being the reformation of an offender, much care should be taken in regard to the kind and degree of the punishments inflicted. A man who is branded having completely lost his character, and all hope of ever regaining it, is apt to become more disposed to injure, to circumvent, and to betray than ever. Wherever his road lies he bears with him the mark or the remembrance of his infamy. His hand is against every man, and every man's hand against him.

We learn from Bruce that in his time (1717), "by the *sea-laws* of most of the maritime powers it was ordered that whoever draws a sword, dagger, knife, &c., upon his fellow, is either to have a knife *struck through his hand, and drawn out betwixt the fingers, or is to be keel-hailed,* although he have been prevented, and has given no wound; but beating or wounding with any other weapon is now commonly punished with the loss of the right hand."

As a specimen of the severity of the laws and usages of war about the middle of the last century, I have subjoined the following brief extracts from orders issued during the campaigns in Flanders:—

"All men who are found gathering pease or beans, or under the pretence of rooting, to be *hanged,* as marauders, without trial."—(Orders by the Duke of Cumberland, 1748.)

"Any sutlers that refuse to change the men's money, or demand a reward, or oblige them to drink in order to get their money changed, shall be *plundered* and turned out of camp."—(Orders by the Duke of Cumberland, 1747.)

"The first officer who sends his baggage before the march of the army, or out of its proper place, shall have it *plundered,* and the said officer shall be brought before a court-martial, and tried for disobedience of orders."

Among the punishments to which sutlers and camp-followers were liable I may mention the *Whirligig*. "This was a circular wooden cage, which," according to Grose, "turned on a pivot, and when set in motion wheeled round with such amazing velocity that the delinquent became extremely sick, and commonly emptied his or her body through every aperture."

A military essay was published in 1761, by Lieut.-Colonel Dalrymple, from which we learn that by that period whipping was employed as a military punishment. As a means of preventing crime in the Army,

Colonel Dalrymple recommended that the regiments should be raised and recruited in particular counties. "It is very difficult," says our author, "from the kind of men that we get, to avoid frequent and severe punishments, especially in time of war, when, from the scarcity of men, we are not to *whip* out of a regiment perhaps a good but vicious soldier; yet *we do more than perhaps is absolutely necessary*. There is a kind of spirit of honour in the most profligate of the soldiery, which being strengthened greatly by the regiments becoming provincial, will give leave to think that they might be worked upon in that way and by confinement; for frequency of *flogging*, and for *every crime*, renders it less exemplary, and lessens the shame attending it. Now to vary the punishment might, therefore, be a means to deter old offenders, and by making a man to run the gantlet, and to be severely punished by his companions, might have some effect upon him, at least it would affect the humanity of the men, who thereby disliking to punish, would afterwards avoid deserving the like penalties." Colonel Dalrymple is the first author that I have met with who mentions the word "flogging," and who, be it observed, bears testimony to the inefficacy of this mode of punishment.

Whipping or flogging was, according to Samuel (Account of the British Army, 1816) a refinement on the former modes of chastisement, increasing the rigour of punishment by prolonging the duration of it, if not the intensity of pain, probably in consequence of the change which had taken place in the condition of persons of whom our armies were subsequently composed. The military ranks in remoter periods were filled by men of some substance, and generally of landed property, who had ability to make atonement for slight offences by pecuniary mulcts, — a composition conformable to ancient usages. The interest of certain officers in the fines of soldiers must have favoured and co-operated with the policy which thus directed itself to the purse, rather than the person of an offender. When the pursuit of the camp was afterwards preferred as a profession, a pecuniary expiation of crimes could not be countenanced in the military code; and hence, from altered circumstances, flogging was substituted in its stead. "A species of punishment," says Samuel, "which, if not exceptionable in itself, is, from the frequency of its use, and the strange extent of its application, not less discreditable, as it is supposed by many well-directed minds, to the spirit of the military law than the general character of our armies."

On the 7th February, 1749–50, the following question was submitted to the House of Commons: "Whether a clause ought not to have been added to the Mutiny Bill for preventing any non-commissioned officer being broke or reduced into the ranks, or any officer or soldier being punished but by the sentence of a court-martial." The Earl of Egmont, who spoke in favour of the introduction of the clause, maintained that "We ought to be careful not to give the meanest soldier of our Army an occasion to think that he is in a state of slavery. On the contrary, we should, as far as is consistent with the nature of military service, furnish them with reasons for rejoicing in their being English soldiers, and, consequently, in a condition much superior to that of the slavish armies on the Continent. And as this of inflicting punishments by the sole and arbitrary will of a Commander, is a power that has been very seldom exercised in time of war, it cannot, I think, be necessary in time

of peace." Another member, who advocated the same side of the question, said, "Gentlemen may talk of the happy condition of the soldiers of our army, and of its being preferable to that of the soldiers of any other army. But no man that reflects can think himself happy whilst he is liable to be punished at the mere whim of any man whatsoever. And although I shall allow that a little *manual correction* may now and then be necessary, yet it is what a good officer will always be very sparing off." The object of the clause in question, "is to prevent any Military Commanders taking upon him to subject a soldier to such as have always been deemed military punishments by his own sole authority." The clause was withdrawn, and the bill passed. British soldiers had, I believe, for many ages been liable to the manual correction of officers; and the result of this motion may be considered tantamount to an approval by the House of Commons, of that mode of inflicting punishment. It was not until after the commencement of the present century that effectual measures were taken to prevent soldiers being beaten by officers; but I believe manual correction, or rather correction with the cane, did not fall into disuse in the East India Company's Army for a number of years after it had been practically abolished in the British Army.

It may be inferred, from a work which was published in 1761, intitled, "Cautions and Advices to Officers of the Army, by an Old Officer," that soldiers were at that time very liable to receive "manual correction" from officers, without any previous legal investigation. "Never *beat your soldiers,*" says the old officer; "it is unmanly. Are they guilty of a crime? make them prisoners, let them be punished legally by the sentence of a court-martial, and my life for it they will never repine. But to see, as I have often done, a brave honest old soldier battered and banged at the caprice and whim of an arrogant officer, is really shocking to humanity; and I never saw such scenes, but it brought to my recollection the saying of a General to a young officer, perhaps the day after his joining the regiment, thrashing an old soldier,—very probably from no other cause but to show his authority, or to look big in the sight of those who came to see him mount his first guard, who called out to him, *That is well done, Sir; beat the dog, thrash him, for you know he dare not strike again.* This very consideration ought to be a sufficient restraint from the practice.

"Every man," says the old officer, "is capable of knowing and resenting ill usage, the low as well as the high. Change sides for instances. Suppose it had been your fate to have been born in so low a situation, or that by some cause or reverse of fortune, you were reduced to the necessity of carrying arms for a maintenance, think how you would resent this treatment—how your soul would be torn with grief, rage, and shame, to be treated like a brute, who must be corrected into obedience. Though soldiers do in some measure part with their liberty when they enlist, yet the law is still as ready to screen them from violence, oppression, and tyranny, as it was before they entered the Service; and surely it is a manifest infringement of the laws arbitrarily to punish at your own discretion, without the opinion of a jury, or sentence passed upon the culprit. I have been fuller upon this head than I at first intended, yet I cannot dismiss it without another caution, which is, that if you have unguardedly been guilty of beating a soldier,

do not confine him afterwards: this is punishing him twice for the same crime, which no law upon earth, that I know, can justify. I remember once an officer came to his Major, who then commanded the regiment, and stated that a soldier had insulted him grievously, for which he had confined him, and desired a court-martial on him. The Major added to the orders he was then giving to the Adjutant, one for a court-martial to try the offender on the morrow; when the officer said he had beat him so long as he had strength, or that stick (showing the remains of an enormous one in his hand,) would hang together. To this the Major replied, 'Had you, Sir, only confined the man for insulting you, as you told me, you should have seen strict justice done on the delinquent; but as you have thought proper to take your own satisfaction, you must be content with that, for no other shall you have from me. I cannot in conscience punish twice for the same crime;' and immediately cancelled the order for a court-martial, and ordered the Adjutant to set the man at liberty."

The officer, it does not appear, incurred any penalty by beating the soldier, and hence, we may presume, that the manual correction of soldiers was completely sanctioned by custom, if not by law; in other words, officers executed their own sentences.

"Some punishments," says the old officer, "are inflicted by officers without the sentence of a court-martial, for which custom only can be pleaded, for I know of no other authority they have for it,"—namely, *tying neck and heels, riding the wooden horse, and picketing.*

Tying neck and heels, is thus performed:—"The criminal sits down on the ground, when a firelock is put under his hams, and another over his neck, which are forcibly brought almost together by means of a couple of cartouch-box straps. In this situation, with his chin between his knees, has many a man been kept till the blood gushed out of his nose, mouth, and ears, and ruptures have also too often been the fatal consequences, and a worthy subject lost to the Service or rendered incapable of maintaining himself when the exigencies of the State no longer require his duty. Can any one who has brought a man into such circumstances ever forgive himself? I think not."

This punishment must have had a similar effect to the *Scavenger's Daughter*, an instrument of torture formerly employed in the Tower. This instrument is thus described by Dr. Lingard, (*History of England*, vol. viii., p. 521). "The Scavenger's Daughter," says he, "was a broad hoop of iron, consisting of two parts fastened to each other by a hinge. The prisoner was made to kneel on the pavement, and to contract himself into as small a compass as he could. Then the executioner, kneeling on his shoulders, and having introduced the hoop under his legs, compressed the victim close together, till he was able to fasten the extremities over the small of his back. The time allotted for this kind of torture, was an hour and a half, during which it commonly happened that from excess of compression, the blood started from the nostrils, and sometimes it was believed from the extremities of the hands and feet." This compressing instrument is sometimes called *Skevington's Gyves*, (feters or irons,) but more commonly called, *Skevington's Daughter*, which was invented by Sir William Skevington, Lieutenant of the Tower, in the reign of Henry VIII. It acted by compressing the limbs and body, instead of distending them as the

rack. Shakspeare perhaps alludes to Skevington's Daughter, when he makes Prospero say, in the *Tempest*,

He is a traitor !
I'll *manacle* thy neck and feet together.

Torture was occasionally used in England so late as the Commonwealth; and in Scotland it was employed to extort confession, down to the reign of William III., and not definitively abolished until the 7th of Anne. In Ireland, the use of it was renewed by the Military Judges of 1798.

Riding the Wooden Horse, and Picketing, will be described in a subsequent page of this sketch.

“These punishments, barbarous as they are,” says the old officer, “are only inflicted for petty crimes, as they are called,—such as coming to the field of exercise five minutes later than his comrades, or overstaying as many minutes the leave given him by his officer when on guard, &c. Will anybody say these trifling crimes deserve such severe, such dangerous punishment? I am aware that it may be asked, Are petty crimes and little neglects of duty, to escape with impunity? I answer, No. How then are they to be punished? By making the culprit do a double duty, that is, mount two guards instead of one, making him stand sentinel four hours instead of two. These, and several other methods that might be adopted, are in my opinion punishments sufficiently adequate to such trifles. Crimes of a deeper dye have their punishment allotted to them in the Mutiny Act, and Articles of War, from which a court-martial cannot deviate, without very justifiable reasons. Punishments are necessary while men will be guilty of the committing of crimes; but all I contend for,” says the old officer, “is, that they ought not to be arbitrary, or inflicted at the whim or caprice of any man whatever, merely perhaps to show his authority, or to glut the cruelty of his disposition.”

We have too much adopted the Gothic system of correction—namely, by rigorous severity, which often hardens the heart, instead of pursuing a more rational plan of softening the mind in order to promote its amendment. The idea of the necessity of severe and revengeful punishments, has made such a deep impression on mankind, and perhaps in a special degree upon military officers, that it is very difficult of obliteration. We are unwilling to believe that punishments which we have seen frequently inflicted, and which have received the sanction of ages, however shocking they may be to our feelings, are not necessary and efficacious. Strange to say, the alleged opinions of even private soldiers in favour of the severe and degrading punishment of flogging are adduced in support of that mode of penal infliction. How strong must the conservative influence of habit be, when it can produce such effects!

Running the Gantlet was used as a punishment at this period, (1760,) which is fully described by the “old officer,” who informs us that there was a clause in the former Articles of War, where, in ordering it as a punishment, it was with this caution, “‘which is a punishment we think not fitting to be otherwise inflicted, than by the judgment of a general or regimental court-martial;’ would to God,” says he, “and I speak it with all imaginable deference and submission, the other punishments I have just been describing were as effectually guarded

against; and I am convinced it would be greatly to the advantage of the Service."

"In giving your opinion," says the old officer, "in a regimental court-martial, endeavour to make a distinction in your punishments; make them as near as you can adequate to the crime. I knew a set of officers sufficient for a court-martial, no more being with the regiment, who constantly allotted one number of lashes to all offenders."

When flogging was frequent in the Army, officers were very liable to follow a routine uniformity in their sentences, and to pay too little attention to the discrimination of particular cases, the character of individuals, or the best mode of preventing the commission of offences. The tendency of officers to follow in an old track, became, from custom, to be considered by all ranks as the ordinary result of a court-martial. "Give yourself no trouble," (said a soldier who had been convicted of intemperance, to the members of a court-martial, who were deliberating upon the amount of his punishment,) "in regard to the number of lashes; just put down the usual 200." This was one of those numerous cases which occur in the Army, where flogging does no good. Physical pain never cured a habit of intemperance; and when a good-natured, obliging offender is flogged, he is pitied and commiserated by his comrades, who think much of the punishment, and little of the delinquency. Punishment fails to deter from the commission of offences, when it is inflicted in opposition to popular opinion.

"Some soldiers," continues the old officer, "when they have once shown their backs, become hardened to shame, and all the whipping in the world afterwards is insufficient to reclaim them; sometimes, however, a lucky start out of the common road has had surprising effects. I have heard of a soldier who used about once a week to be brought to the whipping-post. To this he was so hardened, that he once made this address to the court-martial,—'Gentlemen, I am sorry to give you this frequent trouble on my account; but if you will please to order me one hundred and fifty lashes every Monday morning, I will regularly come and receive them. This will be better for us all: it will save you the trouble of meeting so often, and me the confinement between the whippings.' This man was again sentenced to be whipped, and the Commanding Officer was determined to try an experiment with him, which, if it failed, he resolved to discharge so troublesome, indeed so worthless a fellow, out of the regiment. Accordingly, when the culprit had with great resignation and calmness suffered his hands to be tied up, as is the custom, the Commanding Officer ordered his breeches to be let down, and the lashes to be applied to his bare posteriors. This he thought himself authorized to do, as the court-martial had indeed allotted a certain number of lashes, but had not specified where they were to be applied. The fellow hearing these orders, begged that he might be punished as a man, and not as a boy; that he might suffer any other way,—in short, that he might be shot, rather than undergo this ignominious punishment. His entreaties were, however, unavailing, and he received the lashes as directed. The effect answered beyond expectation, it brought a total reformation on him; he became one of the best men in the regiment, and in a short time he was made a Serjeant, as a reward for his good behaviour. I have heard, also, of another man, upon whom punishment

had no effect. The Commanding Officer observing that, notwithstanding all his vices, he had some very valuable qualifications, resolved to try another mode than whipping. It was not long before he had an opportunity of putting his scheme into execution; for the next fault, instead of being punished, to the fellow's great surprise he appointed him Serjeant! This opened his eyes, he applied himself diligently to his duty, and became as remarkably sober and good as he had been the contrary before. These instances, amongst many others I could give, show that severity is not always necessary to work reformation; lenity, or a happy thought, will oftener prove more effectual; at least, it is well worth the trial,—it is time enough to recur to the other if this fail.”

Horne Tooke says, “The worst use you can turn a man to is to hang him,” and I have no hesitation in alleging that the worst use you can turn a soldier to is to make a “flogging-block” of him for the example of others.

A soldier who thinks he has been aggrieved in the Army may, even after his being discharged, appeal to the civil jurisdiction of the country, and by that means obtain a legal investigation of the alleged grievance.

In July, 1763, at the assizes of Winchester, before a special jury, a cause was tried, wherein George Dawson, lately a soldier in the 85th Regt., was plaintiff, and three Lieutenants and three Drummers were defendants. The action was brought for trespass and assault, and false imprisonment of the soldier. In the course of the evidence it appeared that one of the defendants (Lieut. W.) had caned and imprisoned the plaintiff without just cause, and that the plaintiff received 300 lashes with a cat-of-nine-tails, at the halberts, under colour of the sentence of a court-martial, of the proceedings of which no evidence was given by the defendants; and, after a long hearing, the jury found a verdict for the plaintiff, with 300*l.* damages,—against one Lieutenant 200*l.*, and 50*l.* each against the other two.

A HISTORICAL SKETCH OF MILITARY PUNISHMENTS, IN AS FAR
AS REGARDS NON-COMMISSIONED OFFICERS AND
PRIVATE SOLDIERS.

IV.

THE following brief, but comprehensive account of the punishments in the British Army, is given in a work published about the year 1762, entitled, "Essay on the Art of War," &c. "To be hanged, shot, sent to the galleys, chained to a wheelbarrow, or run the gantelope, are the military punishments of crimes now in use. The wooden mare, the picket, imprisonment, chains, bread and water, are the punishment of faults."

However harsh the treatment of soldiers in the British Army may have been during the last century, and however barbarous the punishments, they were still more horrible in the Prussian army, as will appear from the following account of Prussian discipline, under Frederick II. :—

"The privates of the Prussian army, composed of the scum, not only of the native population but of all other countries, could not present a very grateful spectacle. Fear of punishments, some of them extremely cruel, was the only curb to the hardened miscreant. Hence the officer was led into the most revolting severities, the demoralized soldier into the most audacious excesses. The consequence was, that the men seized every opportunity to rid themselves of their tormentors by desertion; and, as that was rendered very difficult, some of them even had recourse to suicide. We learn from Preuss that the regiment of the Guard, one of the most distinguished and the most favoured in the army, and in which desertion in time of peace was rendered most difficult, lost from that cause, between the year 1740 and 1800, 3 officers, 93 subalterns, 32 musicians, and 1525 privates; and that, during the same period, there were 130 suicides, and 29 soldiers executed for different crimes, chiefly child-murder. They had a notion that if they put an end to their own lives, they should incur everlasting punishment, whereas the spirit of the innocent child whose life they took, would be sure to go to heaven, and they would have time to repent, and make their peace with God, before they suffered for the crime. Persons possessing any delicacy of feeling were deeply shocked at the daily exhibitions of running the gantlet, caning, and other punishments. Even in Potsdam, this brutal spirit, transmitted down from the school of the old Dessauer, ruled with such vigour as long as Frederick lived, that when the new Queen, consort of Frederick William II., was receiving condolences and congratulations, she turned to Major Kunitzki, who had just been appointed Commander of the 1st battalion Royal Life Guards, and said, 'The battalion could not have fallen into better hands. I hope that you may soon make it forget the torments which it has endured under Gen. Scheelen.' It is doubly remarkable that other states sought in the military punishments of the Prussians the source of the glory acquired by them in the Seven Years' War. France adopted them when on the threshold of a new era; but many of the subalterns chose rather to be reduced to the ranks, than to take upon them the office of executioner. At Lille, the grenadiers of a regiment of four battalions shed tears of rage at the new regulations, and their Commander, the Duke de Vauguyon, wept along with them: nay, another French officer, who was ordered to give a soldier twenty-five lashes, plunged his sword into his own body after the twenty-fourth. It is true that, before

the great King quitted the stage, more liberal sentiments in regard to the treatment of the common soldier had begun to gain ground. This is proved by a circular of General Mollendorf's, dated Berlin, June 10th, 1785. 'For two years past,' he says, 'that is, ever since I have been Governor of this capital, it has been one of my first cares, for the honour of humanity, to put an end to the tyrannical and barbarous conduct of the officers to the privates; and I confess with pleasure, that in six regiments of this garrison I have perceived evident fruits from my efforts. In one regiment only, which I will not now name, the old practice, founded on erroneous notions, of keeping the common soldier to his duty by barbarous flogging, caning, and abusive language, is still the fashion. But I warn the Commander who has hitherto pursued this practice, to desist from it, and to lead the private soldier more by ambition than by tyranny, to that discipline and military dexterity which His Majesty requires. The King has no scoundrels, blackguards, dogs, and clodpoles in his service, but honest soldiers, as we are too, only that chance has given us higher characters. For among the common soldiers many are as good, and some might perhaps be a great deal more clever than we. Every officer ought to rejoice in being the leader of soldiers eager after honour; but he is not so if he degrades those whom he commands into so low a race of men. It is obvious that, under such circumstances, the soldier could not be fond of his profession. To watch doubtful men was a heavy task for the officers, both in garrison and in the field; and the King opens the military instructions for his Generals, with fourteen rules for preventing desertion, as an essential part of their duties: without which all other qualifications for Commanders would be unavailing. Nevertheless, in adverse circumstances, or for the sake of a fresh bounty, the men ran off in whole bodies, and especially during the Bavarian succession war, before the face of the King himself. How odious the service was to natives of the country is attested by many ordinances; but neither that which decreed confiscation of the property of those who assisted deserters, nor that against cutting off the thumb to get free from the detested profession, could put a stop to those practices. Others sought to escape by giving themselves out for skimmers' and executioners' men; but even this self-imposed infamy did not protect them in the Bavarian succession war from compulsory enrolment in the partisan corps.'—(*The Court and Times of Frederick the Great*, vol. iv., p. 45.)

The ancient Romans enjoyed fights of gladiators, and combats of wild beasts, in which men and animals tore each other to pieces. Such scenes forcibly demonstrate to us, that with all their boasted refinement, they were essentially barbarians. What are we to think of the state of civilization in Prussia in the time of Frederick II., when such barbarities were tolerated as have been described? We cannot help concluding, that it had made but very little progress. Unless the animal propensities are subdued by moral and intellectual culture, the feelings are gross, and scenes of cruelty do not excite disgust. When the English Army took possession of the island of Ceylon, in 1796, the Dutch ladies in Colombo used to ask the officers to let them know when any of the men were to be flogged, that they might have the pleasure of being spectators of the infliction. Some of the concomitants of civilization, such as wealth and prosperity, may exist in a society without much individual improvement or intellectual refinement.

The punishments inflicted upon Non-commissioned Officers and soldiers, as practised when Capt. Grose published his work on *Military Antiquities*, 1786, or which had only recently fallen into complete or partial disuse may be divided into two classes, namely, *corporal* and

and Adjutant: the first to see the halberts are properly fixed, the cats in order, that each Drummer does his duty, and is properly relieved after having given twenty-five lashes. The Surgeon is to take care that the prisoner does not receive more lashes than he is able to bear without *endangering his life*, or injuring his constitution; and the Adjutant to cause the sentence of the court-martial to be properly inflicted, and to oblige the Drum-Major to make his Drummers do their duty."

"Whipping," says Grose, "is almost the only corporal punishment now in use. This was formerly inflicted with switches; but for these *thirty years* at least, except running the gantlope, with what is called a cat-of-nine-tails; being a whip with nine lashes, each lash knotted with nine knots. This punishment is inflicted either by the soldiers or Drummers of the regiment, according to the sentence of the court-martial."

Whipping appears to have been used until a comparatively late period in hospitals and in lunatic asylums, as a remedial means or a necessary measure for promoting a due degree of discipline among patients. "I observed," says Thunberg, "in this place (the Cape of Good Hope) what I never saw anywhere else, viz., that the attendants of the sick were provided with *ropes' ends*, with which they now and then corrected turbulent patients. *Mirum sane morborum remedium.*" (Travels, &c., vol. 1, Third Edition, p. 248.) It has been recorded, that in an establishment for the insane in France each patient received ten stripes daily; but even in our own country stripes, fetters, cold, darkness, and solitude, with the total absence of every bodily comfort, was, until lately, the established discipline of receptacles for lunatics. Physical pain and moral misery were, it appears, long considered as specially calculated not only to repress vice and promote good conduct, but also to restore the unsound mind.

Of the many revolutions which have taken place in modern times, there is none so remarkable as the change from the mere cells of durance with their apparatus of straw, whips, chains, and straight waistcoats, in which the lunatics were kept, to the palaces in which they now dwell, and the comfort they now enjoy. In the Army, also, a great improvement has taken place in this respect; the cat-o'-nine-tails is not now considered so indispensable and so efficacious a means of preserving discipline as it was formerly, other measures of a less revolting character having been found adequate to repress irregularities and enforce subordination.

The punishment of the gantlope, from which the more modern punishment of flogging in the Army originated, had not been completely abandoned when Dr. Hamilton published his work: *The Duties of a Regimental Surgeon Considered*, in 1787, (Second Edition, 1794). "Different regiments," says he, "use different methods of punishing; in some to run the gantlet is customary. Here, instead of cats, rods of willow are made use of. The whole regiment are drawn up in a line two deep, face to face—every man is furnished with a willow. The prisoner runs naked the whole length of the line, and every man strikes as he passes. No regard can be paid in this way to the part they strike, hence the ribs as well as the shoulders are wounded." While the delinquent runs the drums beat at each end of the ranks; sometimes he runs three, five, or seven times along the line, according to the nature of the offence. The Major of a regiment superintends the punishment, and takes care that every soldier does his duty. In 1805,

wooden horse was sometimes inflicted in a very summary way. "I have seen," says he, "an Officer led drunk between two men to his guard, who immediately called for his Serjeant to enquire into the state of it, who reported a man to him for being drunk. The Officer, though he could scarcely speak to be understood, ordered his brother-drunkard to be set on the wooden horse as soon as he (the soldier) was sober. I daresay the Serjeant thought that the officer should have been mounted with the soldier." The *cheval de bois* was employed also in the French army, not only for soldiers, but for ladies of easy virtue who were caught in the barracks.



RIDING THE WOODEN HORSE, FROM CALLOT.

This punishment is alluded to by Sir Walter Scott, in the 4th chapter of "Old Mortality," where Halliday says, "We'll have him to the Guard-house and teach him to ride the colt foaled of an acorn, with a brace of carbines at each foot to keep him steady."

The Picket. "This punishment," Captain Grose informs us, "was chiefly used by the Cavalry and Artillery; and in the former, often inflicted by the order of a Commanding Officer, without the sentence of a court-martial. The following was the mode of inflicting this punishment:—A long post being driven into the ground, the delinquent was ordered to mount a stool near it, when his right hand was fastened to a hook in the post, by a noose round his wrist, drawn up as high as it could be stretched; a stump, the height of the stool, with its end cut to a round and blunt point, was then driven into the ground near the post before mentioned, and the stool being taken away, the bare heel of the sufferer was made to rest upon the stump, which though it did not break the skin put him to great torture; the only means of mitigation was by resting his weight upon his wrist, the pain of which soon became intolerable. Soldiers were frequently sentenced to stand on the picket for a quarter of an hour. This punishment, like the riding of the wooden horse, has been for some time left off, it having lamed and ruptured many soldiers." Dr. Hamilton (who published his work about the same time as Captain Grose) speaks of the picket and riding the wooden horse as being in use when he wrote. It continued to be

HISTORICAL SKETCH OF MILITARY PUNISHMENTS, IN AS FAR
AS REGARDS NON-COMMISSIONED OFFICERS AND
PRIVATE SOLDIERS.

V.

To the foregoing punishments enumerated by Capt. Grose, the following may be added; the greater number of which were in use when he wrote, and some of them have been employed until a comparatively late period.

Clubbing.—This after-punishment was chiefly practised upon the bodies of criminals, particularly by the British Generals who were employed in the Netherlands, about the middle of the last century. After a prisoner has been executed in the usual manner, he is suspended with the feet upwards, which is said to answer to the custom authorized by the Civil Law of hanging certain malefactors in chains, as a terror to others, on the spot where they committed their depredations. The gibbet, with its attendant human scarecrow, was once not an unfrequent object of English scenery, more especially on the banks of the Thames; yet these exhibitions did not prevent or diminish crime. The injurious effects produced by hanging men in chains on the most interesting sympathies of our nature, may be inferred from the following example:—There was a criminal exposed near a turnpike on a road leading from a provincial town in Derbyshire. His widow, whenever she went to market, used to lock the door of her house, and taking her little children with her to the foot of the gallows, she would then leave them to play *under the care of their father*, as she callously expressed it, until it was convenient for her to call for them again on her way home.

Removal to the Navy.—A soldier, who behaved ill, and who, in consequence of frequent delinquencies, was deemed incorrigible, was occasionally turned over to a press-gang. This transfer did not, however, occur without some sort of concurrence on the part of the soldier, who was left to choose between the execution and continuance of a severe military punishment, or to enter on board one of His Majesty's ships.

Cold Burning—Bottling.—This punishment is thus inflicted. The offender is set against the wall with the arm which is to be *burned* tied as high above his head as possible. The executioner then ascends a stool, and having a bottle of cold water, pours it slowly down the sleeve of the delinquent, patting him, and leading the water gently down his body till it runs out at his feet; this is repeated to the other arm if he is sentenced to be burned in both. Bottling was, at one time, much in use in the Cavalry branch of the Service.

Cobbing is a punishment which used to be inflicted upon a soldier by his comrades for petty offences committed among themselves, sometimes with the sanction of the Commissioned Officers of a company, or of the Commanding Officer of a corps. It consisted in bastonading an offender on the posteriors with a cobbing-stick or a cross-belt. Cobbing was chiefly practised in the Infantry.

Booting is a punishment which was principally used in the Cavalry. It consisted in flogging a man with a belt on the soles of the feet. Previous to the infliction of Cobbing, or Booting, the delinquent is fairly tried by a Court consisting of a president, the oldest soldier;

members, next two oldest soldiers; youngest soldier, next youngest soldier.

These modes of punishment, namely, delivering over a man to the tender mercies, or rather to the vengeance or wild justice of his comrades, were liable to serious evils, although their abolition has been regretted by many experienced officers. In the early part of 1828 a squadron of Dragoons was stationed in Sheffield barracks. A man was suspected of stealing a watch from one of his comrades, and the men of his regiment dragged him to the river for the purpose of inflicting summary punishment upon him. The Major commanding and another officer were in the yard, who no doubt ascertained what they intended to do with the man. The inhabitants of Sheffield complained of the conduct of the officers for countenancing the ill-treatment of the soldiers; and finally the alleged culprit brought his action against the officers, which was tried at the York assizes, and he recovered 500*l.* damages. The officers afterwards applied to set the verdict aside on the ground of excessive damages, but the Court refused the application. This punishment of the officers did not end here, for after the trial one or more persons addressed the Duke of Wellington, then Commander-in-Chief, complaining of these officers, in this instance, not supporting proper discipline. A Court of Inquiry was ordered, and from the evidence given, it was clear the officers had not put a stop to the irregularity, which they could have done, and they were reprimanded by the Duke for such neglect.

Church Pillory.—A circumstance occurred on the east coast of England, in 1797, which led to a soldier being punished in the following ignominious manner:—During the alarm which prevailed regarding an invasion on the east coast, but especially along the coast of Essex, a Serjeant belonging to a Militia regiment unwittingly said, in the hearing of some soldiers, that the French would dine at Ipswich on Sunday following. This expression soon spread among the inhabitants of the place, and a formal complaint was made to the General of the district. The offender, having originally belonged to the Line, and bearing the best of characters, was so far considered as not to be tried by a general court-martial; but for the sake of example he was ordered to be escorted to the church nearest to the coast, (Colchester,) and on Sunday to appear in the front of the church, and there to *ask pardon* of the inhabitants for the alarm he had created.

The public exposure of an offender is liable to many objections: it is, in the first place, unequal in its operation, and the efficacy of merely disgracing delinquents is very doubtful. Infamous or disgraceful punishments prevail chiefly in a barbarous state of society, and by the influence of civilization they gradually fall into disuse. As an example of the progress of public opinion, in regard to ignominious punishments, I may, though much out of place, instance the disuse of the penance of Church Pillory in this part of the United Kingdom. The stool of repentance, *alias* the cutty stool, or black stool, to which delinquents were sentenced by church courts, was long the opprobrium of Scotland. This mode of chastisement fell into disuse towards the end of the last century.

About one hundred years ago, the Rev. Peter Nicholson, of Kiltarlity, sentenced Lord Lovat to occupy the cutty stool; an order which sadly militated against the pride and wishes of his Lordship. Being,

however, assured that the law of the kirk was imperative, and that nothing but compliance would save him from excommunication, he consented to the punishment upon a promise from the clerk that he should stand by him for three Sundays in the church of Kiltarlity. Mr. Nicholson being about to address the lordly occupant of the stool of repentance, Lovat exclaimed, "Ah! Nicholson, you ungrateful man! was it not I that placed you there?" (having presented him to the living.) Whereupon Mr. N. answered, "True, my Lord; you have placed me here, and I have placed you there to-day to be publicly rebuked for your sins."

Young men of fortune sometimes made light of the stool of repentance, being attended by others of their own age and circumstances of life, who, to keep them in countenance, stood with them in the pew, or pillory, fronting the pulpit, so that many of the spectators were unable to distinguish the culprit from his companions. The contempt of the punishment led to a sum of money being levied in place of it, which was called a composition; and, according to Capt. Burt, the kirk treasurers gave regular receipts and discharges for each specific delinquency.

The stool of repentance was a relic of the Romish Church, being one of the few modes of church discipline which was continued after the Reformation. The reply of an old woman to Mr. John Knox, respecting this stool, is worthy of record. After holding forth in praise of the Reformation, and railing against the wickedness of Popery, he zealously exclaimed, "*I hae plucked the raiment frae the harlot.*" "Ah! na, na," said the old lady, pointing to the chair of repentance, "*ye hae keepit the vera tassel o' the breeks o' Popery.*" It has been supposed, and perhaps with justice, that Mr. Knox retained the cutty stool as part of the Presbyterian discipline, for the purpose of enabling him to apply the severe rod of church censure against the looseness of the times, and the vices even of the nobility.

This stool, or chair, in question, was made somewhat like an arm chair, being a little higher than the other seats, and placed directly in front of the pulpit. When the kirk bell was rung, the delinquent ascended the chair, and the bellman arrayed him in the black sackcloth gown of unchastity. Here he stood for three Sundays successively, his face uncovered, and was reprimanded from the pulpit immediately before the blessing was pronounced. Females stood in the same accoutrements, and they were commonly denied the privilege of a veil. It appears, however, that the gown was frequently dispensed with, and that delinquents were also sometimes permitted to cover the face. Many queer stories are current respecting the cutty stool exhibitions.

The stool of repentance was not peculiar to Scotland, it was also employed in England. An Essayist, in the *Gent. Mag.* for May, 1732, observes that, "The stools of infamy are the *Ducking Stool* and the *Stool of Repentance*. The first was invented for the taming female shrews. The stool of repentance is an ecclesiastical engine of popish extraction, for the punishment of fornication and other immoralities, whereby the delinquent publicly takes shame to himself and receives a solemn reprimand from the minister of the parish." This instrument of penance, or punishment, fell into disuse in England long before it was abandoned in Scotland.

Venereal Fine.—Until about the end of the last century, a soldier who incurred the misfortune to have it alleged by a medical officer that

he had the venereal disease was, in many regiments, mulcted of five shillings, which sum went into the pocket of the surgeon. Hence, medical officers had a beneficial interest in the moral delinquencies of soldiers; a very unwise plan for preventing the prevalence of any disease. In the Navy the fine was fifteen shillings—an obvious prize to a surgeon.

Blistering.—We are informed by Sir Charles Napier that blistering was successfully tried as a substitute for flogging in two corps, and he is not aware that this mode of punishment was adopted in any other regiment. The Commanding Officer of one of the regiments in question, then stationed in Guernsey, where liquor is cheap, determined to try to put a stop to the crime of drunkenness on duty, by an appeal to the honourable feelings of soldiers, and at the same time to make drunkenness as unpleasant as possible, but without the lash. He gave out an order to say that he would not flog, but trust to the soldiers' self-respect for keeping sober on duty. Next day a man was drunk and confined. The Colonel, accompanied by the Surgeon, went to the guard-house and felt the drunkard's pulse: he was declared to be in a fever. Nothing could be more true. He was therefore put into a blanket, and four soldiers bore him through the barracks, his comrades all laughing at the care taken of him; on reaching the hospital the patient was put to bed and *blistered* between the shoulders, fed on bread and water for a week, and then discharged cured. "He was then brought on the parade, when the Commanding Officer congratulated him on his recovery from the fever, and sent him to join his company, when he was laughed at and jeered by his comrades during the space of a week. Many others underwent the same treatment; but the joke, though very amusing to the sober soldiers, soon began to be none to the drunkards. There was considerable pain and uneasiness—some bread, plenty of water; but no pitying comrades—no commiseration—no mercy. The experiment was completely successful. Not a man of that regiment was flogged in Guernsey from the time the men were treated with blisters; and after a fortnight there was no such thing as a man drunk for guard or parade." "Now *this regiment had been in an infamous state.*" "Observe," says Sir Charles, "the consequence of having inefficient means. This same regiment was embarked for the Bermudas. There was, at that period, much drinking and much illness in these islands, rum being cheap and the blister-plaster scarce. There was no means of confinement, and the Lieutenant-Colonel, for want of efficient means, was obliged to use the lash, which punished without preventing drunkenness. Now the blister did prevent it in Guernsey. So much for inefficient means."

Reprimand.—Non-commissioned officers or private soldiers are seldom sentenced by a court-martial to be *reprimanded*. There is a very remarkable instance, however, on record of a corporal being formally reprimanded by a General Officer, apparently as a commutation of a sentence of another kind. The matter will appear in the animadversion made by the General Officer, to whom the proceedings were reported, in his orders to the garrison.

"Orders by Lieutenant-General Cornwallis, Commanding at Gibraltar.
March 17th, 1764.

"Lieutenant B——, of the 54th Regiment, tried by a general court-martial, and found guilty of leaving his guard, contrary to orders, is adjudged

by the court to receive a public reprimand from the Governor. The Governor does, therefore, in this public manner, reprimand him, and orders him to be released from arrest."

"Corporal James, of the same regiment, commanding the signal-house guard, was tried by a regimental court-martial, the same day, for a like neglect of duty, and was ordered to be reduced, and to receive 200 lashes. The Governor pardons him, thinking a neglect of duty in a commissioned officer more heinous than in a non-commissioned officer, who is not supposed to have the same education, and is, of course, more liable to err. Justice is the same in high rank as in low. Lieutenant Bond gave him as good a character in his situation as Lieutenant-Colonel Welsh did the Lieutenant. Therefore, to do strict justice to both, the Governor reprimands in this public manner Corporal James."

The General is supposed to have fallen into an irregularity in commuting the judgment passed by the court-martial; unless he be considered to have remitted the sentence, and then to have given the reprimand, as he certainly had a right to do, in virtue of his own authority.

According to the remarks upon the following case, it appears that there are cogent objections to the sentencing of non-commissioned officers and soldiers to be reprimanded.

"*Bengal Presidency.*—General Orders. 22nd July, 1820.—Serjeant-Major R. Gibson, of the 4th Regiment Light Cavalry, was arraigned, &c.

"SENTENCE.—To be *reprimanded* in such a manner as his Excellency the Commander-in-Chief may direct.

"Disapproved.

(Signed) HASTINGS."

"The Commander-in-Chief disapproves of the above decision * * * *
In the first place a reprimand from the head of the Army to a non-commissioned officer is not suited to the situation of the latter. The efficacy of such a reproof to a commissioned officer depends on his feeling that as it is rarely resorted to, and thence implies serious misbehaviour in him to whom it is addressed, it will materially affect him in the estimation of the society in which he moves. The application, therefore, of a reprimand to a non-commissioned officer, is not only objectionable from rendering it common, but is idle with regard to an individual whom it will little disparage in his humble circle of acquaintance."

Notwithstanding the publication of these remarks in General Orders, an European general court-martial was holden at Moulmein, 22nd July, 1835, Captain Mair, 62nd Regt., President, for the trial of a Sepoy, who was accused of permitting the escape of a prisoner, which found the prisoner guilty of the charge, and sentenced him to be severely reprimanded, in such manner as the officer confirming these proceedings may be pleased to direct. The decision of the Commander-in-Chief in this case was as follows:—

"*Disapproved.* Reprimand not being a punishment suited to the degree of a private soldier.

"(Signed) R. W. O'CALLAGHAN,
"Lieut.-General and Commander-in-Chief."

Vituperation and Abuse.—This was another of the punishments to which soldiers were liable, and which was often very liberally exhibited. "In the course of my service," says an old officer, "I have been shocked to hear the expressions made use of by some officers in command of regiments. What can tolerate or excuse such words as these? 'I will flog your guts out, you rascal;' 'I will cut the flesh off your bloody back;' and other expressions more ungentlemanlike and inhu-

man." A commanding officer of a corps concluded an address to the men in the following emphatic words,—“*If you,*” said he, “*furnish backs, I will provide cats for them.*”

“The soldier,” says Major Macnamara, “was treated as an unruly child in a workhouse,—fed, clothed, and flogged, but never instructed, never reasoned with. ‘You have no business to *think*, Sir,’ was a sentence often addressed to him, ‘but to do as you are *bid*,’ and the sentence was generally concluded by a gentlemanlike, charitable, and encouraging ‘and be damned to you.’ Swearing and abuse were, indeed, the only accomplishments within the soldier’s reach. His officers swore, his non-commissioned officers swore, and his comrades never once addressed one another without swearing.” Swearing was at one time so common that it became to be considered an indispensable specific for preserving discipline and carrying on public duty. It was supposed by some that it added dignity and weight to the orders which were given,—that it was a manly qualification; and it has often been asserted that a British soldier never thought his officer in *earnest* with him unless he swore at him. When the habit of swearing prevailed in all ranks in the Army, an officer could with very little consistency check his men for it; but this absurdity sometimes happened. “I have heard an old officer,” says an author whom I have frequently quoted, “I mean in point of age, correcting a man of his company who had sworn in his hearing, and with the most horrid curses and imprecations on himself, assured him that he would put the Articles of War in execution against him the first time he swore again.” By the Articles of War a soldier “is to forfeit twelve-pence” upon being convicted of profane swearing.

No action on the part of a soldier can justify the abuse of a superior, or a threat urged in terms of abuse. “Abuse,” says an old soldier, “deadens the heart; kindness wins the affections. Threatenings infuse into the obdurate bosom a callous indifference; whilst calm admonition sucks the sting from the most hardened mind. Severity creates hatred,—mercy love. I have known private and parental admonitions by Commanding Officers wean the most desperate dispositions, on which severity had exercised its greatest power without reforming; each blow of retribution stole from the heart the few remaining sparks of manhood, and the debased individual at last fell like a brute into the grave. *Kindness will ever be found the best antidote to crime,—severity its most active source.*” Prince Henry, the brother of Frederick II., King of Prussia, severely reprobated the harsh treatment of soldiers. He used to say to his officers, “If a soldier performs an evolution ill you have not practised him sufficiently at it. Exercise him an additional hour or two in the evening, and he will be sufficiently punished. *If you strike him, you punish him on account of your own idleness.*”

The principal punishments inflicted upon soldiers subsequently to the year 1790, by military law, and military usage, were death, and flogging with the cat-of-nine-tails. The minor punishments inflicted by a Commanding Officer were imprisonment in a guard-house or black-hole,—in which case bread and water was the usual diet. Extra duties, &c.

Pecuniary fines had long ceased to be awarded as a punishment for military crimes; but when martial law was proclaimed in Ireland, in 1798, this mode of punishment appears to have been temporarily restored. In this year (1798) the following proclamation was issued:—

“TO THE INHABITANTS OF BELFAST.

“ This is to give notice, that if any person is taken up by the patrols after ten o'clock he will be fined five shillings for the benefit of the poor. If the delinquent is not able to pay five shillings, he will be brought to a drum-head court-martial, and will *receive one hundred lashes*.

“ JAMES DENHAM, Colonel Commandant.”

By this notice, Colonel Denham seems to have considered five shillings equivalent to one hundred lashes, and any man who could not raise five shillings might be flogged as a matter of course.

In practice, flogging was almost the only punishment employed, as at this time confinement had not been much thought of as a mode of chastisement. Hence crimes very different in character and enormity were punished by the same degrading mode of infliction. We learn from Dr. Hamilton that private Anthony Gregory, of the 10th Foot, was punished with a hundred lashes, for suffering the queue of his hair to drop off when on duty, which, perhaps, he had that morning rather carelessly tied on; and I have, as late as 1811, seen an African recruit, who did not know a word of our language, brought to a drum-head court-martial and flogged, in consequence of some of his appointments being less clean than they ought to have been. Unsteadiness in the ranks, caused, perhaps, by a man brushing a fly from his face, and the disgraceful offence of stealing from a comrade, met with a similar chastisement, differing, perhaps, a little in the amount of infliction, but the same in ignominy. By this means the moral judgments of officers were in some measure confounded; as offences which received the same kind of punishment come to be considered as of the same guilt. Use and wont was the rule in regard to this kind of punishment, while the amount or severity of the infliction was entirely optional with a court-martial, which might sentence a man to receive an unlimited number of lashes, or to be slightly censured, as to the members might seem meet. Hence it will appear that the ferocious severity of military punishments depended upon the practical administration of the military law, not upon any specific enactment of the law itself,—the judges, not the statutes. But it would appear that Government considered enormous inflictions expedient when it so obstinately resisted every attempt which was made to restrain the powers of courts-martial by fixing a moderate maximum of punishment, so as to meliorate their sanguinary sentences. Instances were daily occurring which showed that no body of men should be invested with the power of awarding unlimited punishments.

In the “Conversations of Paley,” by the Rev. Mr. Best, a case is recorded which may be here noticed. About the end of the last century several regiments of boys were raised, for the purpose of being sent to India. One of these regiments was quartered at Lincoln. “The cat-of-nine-tails, though administered,” says Mr. Best, “as was supposed, with due regard to the tender age of these young soldiers, was not idle. One boy died a day or two after a punishment. The officers, shocked at the event, wished to impute it to some other cause,—the previous state of the boy’s health,—some mismanagement. We met at dinner on the day of the poor lad’s burial, Of course the conversation fell on this topic. Paley said, ‘It is a pity that the officers should endeavour to excuse the matter. All the world must see that if the boy had not been flogged he would not have died. It is an unlucky accident.’ One officer of the regiment was present,—a very young man. He was

praised for the unaffected sensibility which he manifested on the occasion,—he was not ashamed to shed tears.”

The subject of corporal punishment was brought prominently forward by Sir Robert Wilson, in a letter which he addressed to the Right Hon. William Pitt, in 1804. The work is entitled, “*An Inquiry into the Present State of the Military Force of the British Empire, with a View to its Re-organization.*” In this inquiry the author asserts, that the principal checks to recruiting are comprised in the system of enlisting for life, and *the frequency of corporal punishments.* “There is no mode of punishment,” says Sir Robert, “so disgraceful as flogging, and none more inconsistent with the military character, which should be esteemed as the essence of honour, and the pride of manhood; but when what should be used but in very extreme cases as the *ultimum supplicum*, producing the moral death of the criminal, becomes the common penalty for offences in which there is no moral turpitude, or but a petty violation of martial law, the evil requires serious attention. How many soldiers whose prime of life has been passed in the Service, and who have behaved with unexceptionable conduct, have been whipped eventually for an accidental indiscretion; an absence from tattoo-beating, or even a dirty shirt. Intoxication is an odious vice; and since the Duke of York has been at the head of the Army, officers have ceased to pride themselves upon the insensate capability of drinking; but, nevertheless, flogging is too severe as a general punishment, for what has been the practice of officers, and also most decidedly fails in correcting the disposition to drink. Cleanliness is a virtue, and highly essential for the health of the soldier; but surely there are a thousand ways of enforcing attention to dress, and producing a love of decent appearance, without having recourse to such rigour as corporal punishment. Absence from quarters is a great fault, and must be checked; but is there no allowance to be made for young men, and the temptations which may occur to seduce such an occasional neglect of duty? Would not confinement for an evening or two afterwards, be a sufficient mortification?”

“Officers are too familiarized to consider soldiers as mere machines, who are insensible to kind treatment, and on whose minds no reasoning can operate; but if they would remember that man is an intellectual being, susceptible of reflection, and endowed with faculties, they should at least try the experiment fairly, and endeavour to ascertain whether those vicious habits, to which the lower classes are often addicted, may not be corrected by lenient measures, and a frequent appeal to their characters as soldiers. I am positive that the *amour propre* of man, except in very bad subjects indeed, is always to be excited, that the *esprit du corps* of regiments may always be formed, and that every soldier may be rendered proud of his profession, interested in the preservation of its honour, and be sensibly affected by its disgrace.”

What may be considered remarkable in connection with this subject is, that many individuals who display great aversion to the infliction of severe punishments in civil life, show no such forbearance in regard to the Army. This apparent inconsistency was very obvious in the case of Frederick II. of Prussia, who, although he evinced much reluctance to putting to death even the greatest criminals, showed no disposition to meliorate the laws which regulated the military. The Prussian discipline was one of the strictest and harshest kind. “The barbarity of

these military punishments," says Lord Dover, his biographer, "at which humanity shudders, would appear at first sight to be quite incompatible with the compassionate intentions usually shown by Frederick to criminals." Irresponsible power and vicious training, may, through long practice, render individuals naturally humane, unreasonably severe. Men make systems, and systems make men. Men may be trained to inhumanity, as well as to benevolence. Young officers who see harsh measures only adopted for the reformation of soldiers, are very apt to practise severe treatment when they attain rank and influence. The principle which seemed to pervade Frederick's policy was this, that the more severely the army is governed, the safer it is to treat the rest of the community with lenity.

The facts stated by Sir Robert, cannot be denied, nor the conclusions to which he arrives, refuted; indeed, they carry conviction along with them. It will also be recollected, that his suggestions are the result of experience and observation, and an anxious interest in the efficiency and honour of the Army. "Corporal punishments," says our author, "ought to be so rare in the British Service, that whenever inflicted, such an event should be considered as remarkable, and then the impression would be advantageous; but the eye is now so familiarized to such spectacles, that the sight is no longer sickening or disgusting; and consequently, as indifference gains ground, hope of improvement by example must recede.

The ingenuity of officers should be exercised to devise modes of mitigating the punishment, and yet maintaining discipline. If the heart be well disposed, a thousand different methods of treating offences will suggest themselves; but to prescribe positive penalties for breaches of duty is impossible, since no two cases are exactly similar. Unfortunately, many officers will not give themselves the trouble to consider how they can be merciful. Corporal punishments never yet reformed a corps, but they have totally ruined many a man, who would have proved, under milder treatment, a meritorious soldier. They break the spirit without amending the disposition. Whilst the lash strips the back, despair writhes round the heart; and the miserable culprit, viewing himself as fallen below the rank of his fellow species, can no longer attempt the recovery of his station in society. Can the brave man, and he endowed with any generosity of feeling, forget the mortifying, vile condition in which he was exposed? Does not therefore the cat-of-nine-tails defeat the object of punishment? It is to be remembered, that flogging is the common treatment—not an awful extraordinary example. And is not a mode of punishment too severe, which for ever degrades and renders abject? Instead of upholding the character as entitled to the respect of the community, this system renders him despicable in his own eyes, and the object of opprobrium in the state, or of mortifying commiseration.

If we could impress upon the mind of the delinquent an idea that the efforts that we are making, are really intended for his welfare, our object would be in a great measure accomplished. There is no human being so stupid or so wicked, as not to concur to the utmost of his power in measures evidently calculated to relieve him from suffering. We should never forget that corporal inflictions are not applied to inert matter; but on a sentient and intelligent being, capable not merely of bodily suffering, but endowed with feelings of remorse, sorrow, peni-

tence, and shame, which vary in every individual, and are implanted by nature in the human bosom. Even the unfortunate individuals who are confined in lunatic asylums, are found to be subordinate, and to act rationally, in proportion as they are treated like reasonable beings.

All the known punishments which involve the infliction of pain, when legally imposed, imply degradation and disgrace; and I firmly believe that that sentiment is experienced by soldiers to a greater degree than by the general population. Degradation is unfavourable to improvement: it is apt to excite a resentful feeling, a sentiment highly destructive of good discipline, or ultimate reformation. "Where there is most whipping," says Dr. Hamilton, (*Duties of a Regimental Surgeon*), "there will be found most disobedience, for few men can imitate the spaniel, and fawn the more the oftener they are beaten; human nature revolts at this, and reason cries out against it. Flogging only serves to harden." As an evidence of the truth of this conclusion, I may state the following fact:—A soldier belonging to — Regt., who had been frequently punished, was brought to the halberts; and when he was under the infliction of the cat, he turned round to the officer, and exclaimed, with a laugh,—“Well, I get my three thousand a year, which is more than many of you can say!” The heart and the back, says my authority, are gradually but simultaneously hardened, till after a time the infliction of flogging is considered of little importance.

“I have known,” says an old soldier, (*Sketches and Tales of a Soldier's Life*), “regiments entirely demoralized by a system of flogging. In a particular corps that came under my observation, and which for some time bore the nick-name of the *bloody regiment*, the consequence of this system was, that all sense of shame was lost, and every blackguard made it a boast of manhood that he had received thousands of lashes on his back, and on the calves of his legs, nay, on the *fleshy part of his thighs*; he who could name the greatest number considered himself the most honourable soldier.”

On the other hand, I have known regiments in which a drummer had scarcely ever been subjected to the hatred of an executioner; the good men were so happily encouraged, that vice was put out of countenance, and found no refuge in opinion, every man became a censor and a juror, answerable for the conduct of his comrades, and active in supporting the honour of his *corps*. A wise Commanding Officer can find other punishments than the lash, when rewards, and the hope of preferment, fail to preserve discipline. He knows, that a base punishment, if often resorted to, will be little dreaded; his principle of commanding is to keep the minds and bodies of his men in a constant state of activity, agitated by hope, firm in their reliance on his justice and mercy, and certain of reward for meritorious conduct, as well as of deserved punishment for dereliction of duty.

In civil life, shame, and the fear of blame, are restraining motives capable of preventing a multitude of crimes, consequently the civil laws have a softer way of correcting than military laws, whose principle has hitherto been chiefly that of terror, not that moral discipline which inspires a soldier with the sentiments of honour and virtue. “Where shame is not a consequence of punishment,” says Montesquieu, “this must be owing to tyranny, which has inflicted the same penalties on villains and honest men;” and he adds, “Where men are deterred only by cruel punishments, we may be sure that this must in a great

measure arise from the violence of the Government, which has used severe penalties for slight transgressions."

To what extent flogging in the Army was practised early in the present century, I have no means of ascertaining; for, so far as I know, there is no return published of the number of corporal punishments inflicted in the British Army, prior to 1825. Numerous isolated facts combine, however, to render it probable that flogging was carried to a very great extent in the Army generally. At the latter end of October, 1806, the 28th Regiment embarked at the Cove of Cork, to join the expedition then proceeding to Germany. The men were ten weeks on board transports, when they reached the city of Bremen, where the troops were quartered on the inhabitants from two to ten in each house. "During our stay in Bremen," says Serjeant Teesdale, (A Letter addressed to the People of England, 1835,) "which was about six weeks, we had a parade to attend morning and afternoon. The officers commanding companies received orders from Major B—— to inspect their men closely, and turn out such as they found dirty to the front; a square was then formed for punishment, and the men who had been found fault with, were marched in, tried by a drum-head court-martial, and flogged to a man without reference to character. There was no remission of sentence—no, not a lash. I have known from *ten to fifteen and twenty-five* fellows flogged at a parade under this frivolous pretext. This practice was continued at every parade until it was put a stop to," probably by Gen. Sir Edward Paget.

"At one of the above flogging parades, when we had been nearly two hours witnessing the horrible scene of bloodshed, and when the hands and feet of every soldier in the regiment were benumbed from cold, and from remaining for such a length of time in one position; I say, at one of these parades, a brave old soldier, whose character was unimpeachable, happened to cough in the rank. He turned his head a little on one side to discharge the phlegm, and was instantly ordered into the centre of the square, stripped of his accoutrements, and placed in front of the halberts. He went through the mock form of trial, by a drum-head court-martial. Major B—— swore he was unsteady in the ranks; and on the *ipse dixit* of that tyrant, he was sentenced to receive fifty lashes. After the brave veteran was tied up he implored hard for mercy, adding, that he had been twenty years in the service, and was never till then brought to the halberts. The pale, worn, and dejected appearance of this man, from age and length of service, was in itself sufficient to excite compassion and sympathy, even had he been guilty of a crime; his appeal was useless, he had every lash of his sentence, weeping and crying bitterly during the infliction; and although he only received fifty lashes, he never looked up afterwards. It had wounded his best feelings; he was constantly in hospital, and but a little time elapsed before he was discharged." Commissioned officers are comparatively ignorant of the thoughts and feelings of soldiers, with the hearts of those whom fortune alone, in many instances, makes their inferiors.

A HISTORICAL SKETCH OF MILITARY PUNISHMENTS, IN AS FAR
AS REGARDS NON-COMMISSIONED OFFICERS
AND PRIVATE SOLDIERS.

VI.

DURING the year 1805 an Act was passed, which gave permission to recruit from the Militia in the same manner as from towns and the agricultural population, and this measure was very successful in adding to the strength of the Army. A periodical writer alleges that "the volunteers from the Militia who filled the ranks of the Army during the last war, were a class of men far superior, both in education and character, to the recruits enlisted by the parties in the present day. Many men who could not have been induced to enlist voluntarily, when taken by the ballot from their homes and occupations, imbibed a taste for the Service. Admitting the statement respecting the superior quality of the recruits received from the Militia to be well-founded, the reason for their volunteering for the Line may be otherwise explained, in as far as regards the Scotch Militia. The Militia of Scotland consisted almost entirely of substitutes; in some regiments there were not above one per cent. who were principals. Substitutes received a bounty, or present, from the principals, varying from 40*l.* to 60*l.*, a sum which was calculated to induce a respectable class of men to volunteer for the Militia, the service in which being at first presumed not to last longer than five years. When a soldier in the Militia volunteered to serve in the Line, he received the current bounty, which was, at one time, as high as sixteen guineas. Even during peace substitutes for principals drawn to serve in the French Army receive a present of from 60*l.* to 80*l.* It will thus appear that high bounties, not merely the incident of the ballot, produced many good recruits."

Early in 1806 the Honourable Brigadier-General Stewart, 95th Regt., published a pamphlet entitled "*Outlines of a Plan for the General Reform of the British Land Forces,*" which contains the following passage upon corporal punishment. "No circumstance," says the General, "can mark a want of just discrimination more than the very general recurrence in any stage of society to that description of punishment, which, among the same class of men, and with the alteration of the profession alone, bears a *stamp of infamy* in the estimation of every man. The frequent infliction of corporal punishment in our armies tends strongly to debase the minds and destroy the high spirit of the soldiery; it renders the system of increasing rigour necessary; it deprives discipline of the influence of honour, and destroys the subordination of the heart, which can alone add voluntary zeal to the cold obligation of duty. Soldiers of naturally correct minds having been once punished *corporally*, generally become negligent and unworthy of any confidence. Discipline requires the intervention of strong acts to maintain it, and to impress it on vulgar minds. Punishment may be formidable, but must not be familiar; generosity, or solemn severity, must at times be equally resorted to; pardon or death have been resorted to with equal success, but the perpetual recurrence to the infliction of infamy on a soldier by the punishment of flogging is one of the most mistaken modes for enforcing discipline which can be conceived."

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These observations are obviously calculated to produce conviction in men who have not been corrupted by frequent examples of corporal infliction,—who have not, in fact, been *brought up* to flogging from their infancy, and think it a mere matter of course. The “stamp of infamy” which is indelibly inflicted by flogging, is a permanent disgrace; it tends to cut off an offender from restoration to character; he can scarcely hope that his conduct and exertions will be equally rewarded with the meritorious efforts of others. But does it ever excite a culprit to reform his conduct, to become sober, honest, obedient, and zealous? When it fails to operate beneficially upon a delinquent, and upon the minds of the men in general, I fear

“ It hardens a’ within,
And petrifies the feeling.”

The hardening effect of corporal punishment is strikingly illustrated by the result of a case which is recorded by the late Dr. Gordon Smith. “Private P., 12th Dragoons,” says Dr. G. Smith, “was sentenced to receive 1000 lashes, which amount of punishment he bore without a complaint, and as soon as he was taken down he turned round and addressed the officers as follows:—‘Gentlemen, you have seen me take my punishment like a soldier, I hope you will give me my discharge; and if you don’t I will vex you all.’ He was as good as his word, inasmuch as, for the space of about two years afterwards, he lived chiefly in the guard-house, being seldom, if ever, out of a drunken scrape.” He was at length discharged, and subsequently obtained employment as a *valet*.

The consequences of the “frequent infliction” of corporal punishment are graphically described by General Stewart. Flogging was for a long time the principal, indeed almost the only, moral specific employed in the Army, and as penal as well as medical specifics are liable to be much abused, it is, I believe, universally admitted that corporal infliction was practised to a most pernicious extent, thereby producing all the evils enumerated by the General. This terrible excess of corporal punishment is not to be attributed so much to the natural disposition of the officers as to the long and generally established usage of resorting to no other means of reformation, and no other mode of preventing delinquencies, but flogging, to the practice of vindicating the law by awarding a certain amount of punishment for a certain portion of crime, with but little, if any, regard to character. Young officers saw no other mode adopted, and custom reconciled them to the disgusting character of the chastisement, a belief being thereby inspired that there was no other equally effectual means of preserving discipline. “The judgment of a court-martial,” says Sir Robert Wilson, “does *not* interpose a sufficient check upon the severity of some commanding officers. Young men are allowed to be members who have never considered the moral effects of punishment,—they are familiarized to severity by the recorded instances of their predecessors. They are instructed to consider particular offences as forcing *de se* a precise award, without the consideration of a man’s previous character,—they are accustomed to trust to the mercy of the commanding officer * * * * They too frequently assemble without a thought upon the important trust committed to them, they hear with levity, and decide without reflection.”

Courts-martial frequently consider *crime* chiefly with relation to

punishment, and their principal difficulty is to apportion the latter to the former, or, "according to the nature and degree of the offence." Now the immediate effect of punishment is to inflict a degree of pain, an evil which is only allowable as a medium of amendment. Instead, therefore, of connecting the ideas of crime and punishment, we ought rather to place together the ideas of *crime* and *reformation*, considering punishment as only one of the modes for effecting such reformation. The first impulse of the mind upon the infliction of pain as a punishment is not contrition but resentment, a hardening of the heart, a disposition unfavourable to reformation. Hence it has been found, by the experience of all ages, that as punishments have increased in severity crimes have multiplied. (*Roscoe, on Penal Jurisprudence.*) Nowhere has vice prevailed to such a fearful degree as when men were suffering under the severe and degrading penalties of the law. The criminals at the penal establishment at Port Arthur are sure to return from the institution more hardened in guilt than when they were sent to it. "Let a man," said a convict under penal discipline, "be what he will when he comes here, he is soon as bad as the rest,—a man's heart is taken from him, and there is given to him the heart of a beast." Hopeless despair sometimes drives these degraded wretches to commit murder in the sight of their companions, with no other intention than to be tried, convicted, and executed.

A popular author (Mr. Southey, *Esprielli's Letters*, 1807,) thus describes the principal military punishments of this country:—"The martial laws of England are the most barbarous which at this day exist in Europe. The offender is sometimes sentenced to receive a thousand lashes;—a surgeon stands by to feel his pulse during the execution, and determine how long the flogging can be continued without killing him. When human nature can stand no more he is remanded to prison (hospital),—his wound, for from the shoulders to the loins it leaves him one wound, is dressed, and as soon as it is sufficiently healed to be laid open in the same manner he is brought out to undergo the remainder of his sentence. And this is repeatedly and openly practised in a country where they read in their churches and in their houses *that Bible*, in their own language, which saith, 'Forty stripes may the judge inflict upon the offender, and not exceed.'"

By this time popular opinion had in some measure become adverse to severe and degrading punishments, and in an especial manner to the punishment of flogging in the Army. A soldier who was punished in this manner, received the popular sympathy of a martyr, rather than the degradation of a culprit.

The progress of civilization had rendered the inhuman inflictions which were deemed necessary in barbarous times, more or less objectionable and disgusting. But it was not only the degrading character of corporal punishment which excited popular disapproval, but the fearful abuses to which it was liable. "The frequent—the arbitrary and indiscriminate way in which some commanding officers resorted to corporal infliction, was highly reprehensible, distressing, and frequently *perfectly useless*, and tended to harden and destroy, rather than amend the moral feelings of the man."—(*Evidence on Military Punishments*, Q. 573.)

Colonel Dickson, when he commanded the 42nd Regiment, was one day superintending the punishment of an old soldier, who had been sentenced

to receive corporal punishment in consequence of his being, as he himself said, a "*wee fou.*" The man complained much under the infliction, and begged frequently to be taken down; but the Colonel showed no disposition to remit any of the sentence. He made another appeal to the Colonel's humanity, and exclaimed, "Oh, Colonel, take me down! for *ye ken I'm just a puir auld drunken bodie like yoursel.*" The justice of the remark was universally admitted, and military discipline could hardly restrain the risible faculties of the officers and men. The soldier was forthwith taken down. His punishment evidently did much more harm than any benefit which could have been expected from it. Instruction, admonition, and good example, cannot fail to have a beneficial influence upon the conduct of soldiers; for notwithstanding the injunction of Solomon, I am much disposed to recommend that commanding officers should be sparing of the rod.

The above case reminds me of a measure, which in ancient times was adopted to recover the virtue of the relics of saints, when it had become inert, viz., to flog them with rods, which is said to have been effectual. Such a practice is, however, not advisable in the case of old soldiers, whose virtues are very seldom restored by corporal infliction. It seems to have been but rarely contemplated under the flogging system, that the mind of a soldier could be stung by insult or shame, dishonour or injustice.

For a period of two or three hundred years, little was done for the melioration of the criminal law of England. Scarcely any change was effected either in the form or the substance of this code, except when new taxes, or new kinds of crime caused fresh felonies to be added to the list of existing penal enactments. At last, Sir Samuel Romilly, in 1808, introduced his bills for abolishing capital punishment in certain sorts of larceny; and the same distinguished lawyer and humane man subsequently made several motions in the House of Commons, which were directly, or ultimately intended to diminish the frequency and severity of the punishments to which soldiers were liable. Ever since that period, both the criminal and military law have been progressively undergoing a remarkable degree of melioration.

Mr. Windham's Army Bill passed in 1806, which substituted service during a limited term of years, for that indefinite and hopeless bondage to which soldiers had hitherto been doomed. This bill had long been called for by humane and enlightened men in civil life, but it met with but little support from military officers. It was supposed, when this bill passed, that the crimp and the hardly less nefarious practices of the recruiting Serjeant might be dispensed with, and that a soldier's life, into which, under the old system, the criminal was forced, the innocent inveigled, and only the dissolute and desperate voluntarily entered, would become the deliberate and not imprudent choice of young mechanics and peasants. As this bill removed one reproach from the Army, it was regarded as a pledge that corporal punishment would be exchanged for some more humane means of amendment, and that a method would be devised of assimilating military law to the principles of freedom and justice. These cheering hopes and prospects were completely frustrated and subverted, by the introduction of a clause into the military bill which was proposed in 1808, by Lord Castlereagh, namely, to permit recruits to enlist for life. The sophistry and incon-

sistency of Lord Castlereagh's reasoning in defence of the introduction of the clause were too gross and glaring to need refutation. Upon this occasion, Lord Melville expressed himself in the following terms:—"It had been said that the system of limited service would introduce a better description of men into the Army—that it would induce respectable farmers to prepare one of their sons to be a soldier. In short, that it would make the military service a trade! There never was, and never would be such a trade in this sense of it. What was meant by a better sort of men? Was it that they would be taller or shorter—broader or thinner? This might be intelligible, but it was not the fact. The men that hitherto formed the British Armies, men of stout hearts and habits—men of spirit and courage, lovers of bold enterprise; these were the materials of which an army must be composed. Give him such men, though not of the better description. *The worst men were the best soldiers.* Keep the better sort at home." This singular language, which indicated such contempt of the moral dignity of man, and such ignorance of his nature, provoked an indignant reply from the Duke of Gloucester. "Where did the noble lord learn," said the Duke, "that the worst men made the best soldiers?"

"Mr. Windham's main object," says a contemporary author, "is to provide a permanent and efficient military force, to meet an enemy of equal or even superior number, not a force made up of fools entrapped, of men held in bondage, of half-starved paupers, of vagabonds and of thieves, whose punishment has been commuted for the honour of serving the King."

After the introduction of the clause in question into the Mutiny Act, and the consequent offer of a higher bounty to recruits who enlisted for life, the liberal provisions of Mr. Windham's measure was rendered abortive, and enlistment for life again became the rule of the Army.

When the Bill for establishing the local Militia was introduced, it met with great opposition from Sir Francis Burdett, partly because the men were to be placed under military law. The Marquis of Buckingham viewed it in the same light, and when the Bill was brought into the Upper House he proposed, but without success, as an amendment to the clause, which subjected the local Militia to the Mutiny Act, "that no sentence of a court-martial for inflicting corporal punishment should be carried into effect until submitted to His Majesty or to the Commander-in-Chief."

During the month of June, 1808, Sir Francis Burdett renewed the subject of martial law, by moving "That there be laid before the House early in the next session of Parliament, regimental returns of all corporal punishments sentenced and inflicted during the last ten years in every regiment of regulars, Militia, garrisons, and Artillery, specifying the causes, the sentences, and number of lashes given at one or more periods." This motion gave rise to a long and interesting discussion. Four members only, however, voted for it. Public opinion had, however, by this time become, in some measure, alive to the abuses of corporal punishment in the Army; and when the public mind becomes intelligent and benevolent, the reign of justice and humanity will certainly follow. "Public opinion," says Lord Lauderdale, "cannot be held too sacred by public men. The voice of enlightened public opinion is irresistible. Nothing but time is wanting to render it triumphant and

favourable. Circumstances not unfrequently give it an elastic kind of impulse which issues in unexpected success." These observations of his Lordship have been amply fulfilled in regard to the practice of flogging in the Army.

Flogging was, I believe, carried to a greater extent in the Army at this time than at any future period. "When at Jersey, in the year 1808, it was my painful duty," says Lieut. Shipp, "to witness the infliction of corporal punishment almost every week. One of the battalions of the 60th, which was chiefly composed of foreigners, including a number of Frenchmen, was then stationed at Jersey. Many of the men deserted, and most of them were taken in the attempt. Being tried for desertion, they were sentenced to receive a thousand lashes each." According to my authority, "this punishment was rigidly inflicted, with the additional torture which must have resulted from the number of *five* being slowly counted between each lash; consequently the space of three hours and twenty minutes was occupied in inflicting the total punishment, as though a thousand lashes were not of themselves a sufficiently awful sentence without so cruel and unnecessary a prolongation of misery. Many of these poor creatures fainted several times, but having been restored to their senses by medicinal application, the moment they could move their heads the castigation was recommenced in all its rigour. Numbers of them were taken down and carried from the square in a state of utter insensibility. The spectacle, altogether, instead of operating as an example to others, created disgust and abhorrence in the breast of every soldier present who was worthy of the name of man." When we reflect upon the administration of military law and military usages at the time in question, it may seem extraordinary that much reliance should be placed upon the efficacy of severe laws in the case of desertion; for if severity could have prevented desertion, no such delinquency would be known in the Army. Unless the welfare of a soldier be, in a great measure, identified with the interests of the Service, penalties will never prevent desertion.

In the month of June, 1809, an alleged mutiny broke out amongst the *local Militia* at Ely, which was suppressed by the arrival of four squadrons of the German Legion Cavalry, from Bury, under the command of General Auckland. Five of the ringleaders were tried by a court-martial, and sentenced to receive five hundred lashes each, part of which punishment they received, and a part was remitted. A stoppage for their knapsacks was the ground of complaint that excited this mutinous spirit, which occasioned the men to surround their officers, and demand what they deemed their arrears. Mr. Cobbett, in his Political Register of the 1st July, animadverted strongly on the impolicy and injustice of flogging the alleged mutineers at Ely, which animadversions eventually excited the attention of Government; for on the 15th June, 1810, he was tried for a seditious libel, nearly twelve months after his remarks had been published, and found guilty. A few days after, on the 9th July, he was sentenced to be imprisoned in Newgate for two years, to pay a fine of 1000*l.* to the King, and at the expiration of the two years to give bail, himself to the amount of 3000*l.*, with two sureties to the amount of 1000*l.* each, for his keeping the peace for seven years.

On his defence Mr. Cobbett stated, "that the disturbance at Ely

was not to be called a mutiny—that it was a mere squabble between the men and the officers for a trifle of money—that the men were persons who had just thrown off their smock-frocks to put on the garb of a soldier, and still continued so much labourers as to be ignorant of their duty as soldiers, and had become so much soldiers as to have lost the inclination to labour.”

On the 9th July, 1812, the day on which his imprisonment ceased, he was invited to a dinner at the Crown and Anchor; at which dinner six hundred persons were present, and Sir Francis Burdett was in the chair.

Messrs. Hunt, the proprietors of a weekly newspaper, called the *Examiner*, were tried at Westminster for a seditious libel, 22nd February, 1811, they having published some remarks in regard to the punishment of flogging, extracted from the *Stamford News*, a paper edited by Mr. Drakard. They were acquitted.

At the assizes at Lincoln, on the 13th March, 1811, Mr. Drakard, of the *Stamford News*, was tried for a seditious libel, which he had published in his papers, in regard to the flogging of soldiers. He was found guilty, and adjudged to pay a fine of 200*l.* to the King, and be imprisoned in his Majesty's jail at Lincoln for the space of eighteen months, and find security for his good behaviour for three years, himself in 400*l.* and two sureties in 200*l.* each. Lord Brougham was Counsel for the defendant in this case, as well as in the case of the Messrs. Hunt, and made ample use of the facts which were then known in regard to the corporal inflictions of soldiers.

When the Mutiny Act was brought before Parliament, in 1811, a new clause was introduced, which *empowered* courts-martial to imprison instead of inflicting the penalty of flogging. It may be mentioned here a court-martial had always the power of sentencing men to be imprisoned, or, indeed, to any other mode of punishment, but confinement was not the “*established usage*,” the “*old system*,” commonly employed for punishing military delinquents. We are informed by Major James, in the second edition of his *Dictionary* (1805), that solitary confinement had then been tried by some commanding officers. This punishment became gradually more frequently adopted in the Army.

“The first instances I find on our books,” says Sir John Woodford, Grenadier Guards, “of commutation of corporal punishment, are in 1807, when part of the regiment was in Sicily. A close kind of military confinement, when the soldier was off duty, was substituted, combined with punishment-drill. Subsequently solitary confinement was adopted as a commutation of sentence, instead of corporal punishment, and then as the common sentence of courts-martial in Cadiz, in 1811 and 1812. The first instance of such a sentence in the 1st Regt. of Guards at home occurred at Knightsbridge barracks, on the 28th December, 1814; consequently it would appear that corporal punishment first fell into partial disuse on foreign stations.” (*Evidence on Military Punishments, Question 3846.*) This inference of Sir John Woodford is strikingly confirmed by the following extract from a General Order, which was issued by Sir George Nugent, dated 11th August, 1813, while Commander-in-Chief of the troops in the Bengal Presidency. “The Commander-in-Chief cannot dismiss this subject without expressing his earnest expectations that commanding officers of regiments will feel the

expediency and efficacy of meeting offences, otherwise than those of a serious nature, by measures less hurtful to the soldier than *corporal* punishment, a frequent or inconsiderate recurrence to which has ever been found greatly to weaken its effect. *Solitary* confinement has had the happiest result when the infliction of *corporal punishment* has failed to produce amendment."

On the third reading of the Mutiny Act (March 13th, 1812), Sir Francis Burdett proposed a clause forbidding the cruel and degrading practice of flogging. A division took place, when six voted for the motion, and seventy-nine against it.

On the 15th April, 1812, a motion was made in the House of Commons by the Honourable H. G. Bennet, for a return of the number of corporal punishments inflicted in the regular Army, Militia, and Local Militia, for the last seven years, distinguishing the number of lashes in each case, and the crimes for which they were inflicted. Ayes 17; Noes 49. Majority against the motion 32.

During the discussion upon these motions it was generally admitted that the practice of flogging soldiers is disagreeable and disgusting to all who are connected with the Army, and that the continuance of such a punishment is an evil which nothing but extreme necessity can justify. The only question, therefore, at which the parties were at issue was simply this,—whether, from the known habits of soldiers, it would be possible to preserve discipline without a punishment of this character and severity, and whether any other punishment could be devised of equal efficacy and less repugnant to the feelings of humanity? It was stated in the course of the debate that *the punishment of flogging is stamped with peculiar infamy by the civil law of the land, which places those who have suffered it on a footing with persons who have been convicted of the most disgraceful crimes, and considers them as so infamous that they are unfit for the discharge of the most important functions of citizens.* That even if it were impossible to dispense altogether with the punishment, its infliction ought to be regulated, and the offences on which it may be visited ought to be pointed out with precision. That the best regiments in the Service are those in which flogging has been discontinued. That much might be done towards rendering it unnecessary by the care of officers to check offences on their first appearance, and, above all, that the British soldier ought to be encouraged by high rewards, rather than intimidated by cruel punishments. That it is singularly barbarous to punish a man more than once for the same offence, which is frequently done. The Members who spoke on the other side of the question alleged that the statements made in regard to punishments actually inflicted had been grossly exaggerated; but they absurdly enough resisted every proposal which was made to investigate the subject, so as to ascertain the exact extent of corporal punishment in the Army.

It has been well observed, that whosoever proposes an alteration of existing usages, will meet from some men with a sort of instinctive opposition, which is influenced by no process of reasoning—by no considerations of propriety or sound policy, which defends the existing system because it exists, and which would have equally defended its opposite, if that had been the oldest.

On this occasion it was observed that, "If the floggings were rare—

if they were seldom inflicted—if they were inflicted only in a wise and moderate way—if the soldiers do know the necessity of them—if they do approve of them; if all this was so, and is so, why not produce the return moved for?” The editor of the *Courier* warmly defended the measures of Government, and asserted that flogging in our Army is very rare,—that it is a punishment very seldom inflicted. “Punishments in our Army,” says he, “are now not half so frequent or severe as they were formerly.” After this allegation, I am disposed to exclaim, How frequent must corporal punishments have been at one time! Major Macnamara states, that “it is scarcely an exaggeration to say, that during the war, at least three-fourths of the soldiers of almost every regiment in the service had felt its sting.”

The mean number of lashes inflicted monthly in a regiment then serving in India, was for some time 17,000; and I have no reason to think the practice of flogging in this corps differed materially from other regiments on the same service, and liable to the same temptations;—to disobey orders for example, to sell or to purchase spirit rations.

“One would suppose,” said Mr. Bennet, in the House of Commons, “that Sir Francis Burdett had been proposing to do away with some great known blessing—something containing within itself the means of affording health, or plenty, or security. Who would ever imagine that the abolishing of the power to flog soldiers was big with danger to England, and that it ought to be regarded as an act of political suicide or madness?”

Strange to say, it is probable that the melioration of the punishment of soldiers was materially promoted by the West India slave owners. In defending the cruelties inflicted on the negroes, and the inhuman treatment they endured, the slave proprietors frequently referred to the punishments in the Army. One author, “A native of Jamaica,” who published a pamphlet on the subject, says,—“In Europe, among free men, and by a court of freemen, a seaman and a soldier are sometimes sentenced to receive 100 to 1000 lashes,—*men who have fought their battles, and protected their liberty.* A master in the West Indies cannot, without answering to the laws for it, nor can a magistrate, by the settled laws of the country, give or sentence a slave to receive more at one infliction than forty lashes. Would not an idiot perceive on which side the *humanity lies?*” But by the time this author had published, popular opinion had become alive to the subject; for as was stated, by the reviewer of the above work (in 1812), “who now,” says he, “defends military flogging? Does any one argue in its favour? Is there any one of feelings so hardened as not to be horror-struck at the bare description of this barbarous practice? Is there any one of such confined intellect as not to perceive its gross unfitness to answer the ends of punishment? The public mind is made up on the question—there is no difference of opinion—the abuse is condemned—it cannot survive its sentence many months.”

The beneficial effects of the discussions which took place in Parliament, in regard to the frequency and severity of the corporal chastisement of soldiers, and the public press, became obvious in the Navy earlier than in the Army. By an order from the Admiralty, dated April, 1811, a quarterly return was directed to be made to them of the

number of seamen and Marines flogged in each of His Majesty's ships, together with their crimes, age, time they were confined, and the quantity of punishment; still leaving it in the power of the Commander or Captain to inflict punishment whenever he shall deem it absolutely necessary for the good of the Service, probably from the belief that the fear of *immediate* punishment operates powerfully to the prompt performance of duty and good order among the crew of a man-of-war.

Sir Robert Steele, who served long as a Marine officer, and who is consequently well acquainted with the practical working of the "usages and customs of war" on board ship, strongly objects to the use of the cat-o'-nine-tails, without the sentence of a court-martial. Hitherto the Captain of a man-of-war unites in his own person the attributes of accuser, jury, judge, and executioner; and Navy officers almost uniformly allege that this despotic sway, or as they call it, the power of inflicting summary justice, is indispensable at sea. This is a power which even good men are apt to abuse, and which it is hoped will not long be considered essentially necessary.

But courts-martial, as well as individuals, are liable to make a cruel use of the discretionary power with which they are invested, as the following example will show:—"The Commanding Officer of the 9th Regiment, who commanded chiefly by fear, after the defeat of the enemy at Roleia, established a permanent court-martial in the regiment—a kind of sitting provost-commission. These individuals were exempt from the other duties of the corps; and as a specimen of the working of the system, and how completely brutalized, and what tools mankind may become, it is stated that a soldier of the regiment in question, while serving in the Peninsula, committed some irregularity, which subjected him to the sentence of the aforesaid court-martial to be flogged; that the regiment being on the march it was halted, the halberts stuck up, the proceeding of the court read, and the culprit ordered to strip, when a Serjeant of the regiment, who, it may be presumed, was a deserving soldier, recovered his musket, and stepping out of the ranks, respectfully saluted the Commanding Officer, and said,—'May it please your Honour, the culprit is guilty, but he is a brave soldier; and if your Honour will take me as a security for his future good conduct I'll answer for him with my body; and if he commits any future offence, I'll be ready to offer myself up to receive the sentence of the present court-martial.' 'You mutinous rascal,' exclaimed the Commanding Officer, in a fury, 'I'll teach you manners!' His arms were taken from him, and he was sent a prisoner before the permanent court-martial, who not only reduced him to the ranks, but sentenced him also to be flogged for interceding in favour of a fellow soldier; and while writhing in agony at the halberts, he ground his teeth, and muttered, 'I will have blood for this.' The man's heart was broken, and the Commanding Officer escaped with impunity."—(*The Marine Officer, or Sketches of Service.*)

Notwithstanding the cruel sentences which were awarded by courts-martial under the sanction of the Articles of War, and inflicted upon delinquents, the military law was characterized by Mr. Tytler, as "*a well-regulated, moderate, and humane system.*" With the exception of death for certain crimes, the law specified no punishment, but it permitted or sanctioned almost any punishment, or any degree of punish-

ment, which a court-martial in its discretion might award. "The penalties," says Mr. Tytler, "which it is competent for the Sovereign to decree by his own authority, must at the worst be of a very *slight* and *subordinate nature*, and calculated merely for the improvement of good discipline." One would presume that Mr. Tytler was but little acquainted with the practical administration of the Articles of War, and the penal usages of the Army.

The influence of popular opinion on the subject of flogging began about this time to have a beneficial effect; for early in 1812, the following circular letter was addressed to the Officers commanding regiments, by the Adjutant-General:—

"Horse Guards, 25th March, 1812.

"SIR,—The Commander-in-Chief judges it expedient to transmit to you, with the inclosed documents, a few observations on the salutary effects with which it is reasonable to hope that an occasional recurrence to the powers with which you are hereby vested will be attended, amongst which the most obvious advantage is that of limiting the operation of regimental courts-martial strictly to the purposes for which they are designed by the Legislature, viz., for inquiring into such disputes and criminal matters as may come before them, and for inflicting corporal or other punishments of *small offences*, and, in order to prevent the possibility of any misunderstanding on this important point, it is His Royal Highness's command that on no pretence whatever shall the award of a regimental court-martial hereafter exceed *three hundred lashes*.

"The Commander-in-Chief has commanded me to take the opportunity of stating that there is no point on which His Royal Highness is more decided in his opinion than that when officers are earnest and zealous in the discharge of their duty, and competent to their respective stations, a frequent recurrence to punishment will not be necessary.

"The Commander-in-Chief is confident the officers of the Army are universally actuated by a spirit of justice, and impressed with those sentiments of kindness and regard toward their men which they have on so many occasions proved themselves to deserve; but His Royal Highness has reason to apprehend that in many instances sufficient attention has not been paid to the *prevention of crime*. The timely interference of the officer, his personal intercourse and acquaintance with his men, which are sure to be repaid by the soldiers' confidence and attachment, and, above all, his personal example, are the only efficacious means of preventing military offences; and the Commander-in-Chief has no hesitation in declaring that the maintenance of strict discipline, without severity of punishment, and the support and encouragement of an ardent military spirit in a corps, without licentiousness, are the criterions by which His Royal Highness will be very much guided in forming his opinion of the talents, abilities, and merit of the officers to whom the command of the different regiments and corps of the Army are confided.—I have, &c.

"(Signed)

HARRY CALVERT, Adjutant-General."

A HISTORICAL SKETCH OF MILITARY PUNISHMENTS, IN AS FAR
AS REGARDS NON-COMMISSIONED OFFICERS AND
PRIVATE SOLDIERS.

VII.

THIS confidential circular may be considered the first important step which was taken for meliorating the punishment of soldiers. Considering the wanton and inconsiderate sentences which had been awarded, and which were frequently awarded by regimental courts-martial, any restriction to their powers in this respect must have been highly beneficial, more, perhaps, from the spirit of the Commander-in-Chief's communication, than from the specific rule which it promulgated. But it may be observed, they had still a frightful opportunity of abusing the power with which they were invested. They could sentence a man to receive 300 lashes for a *small offence*, such as being absent at *tattoo*, although, perhaps, he might be in an adjoining barrack-room, or the constructive crime of "unsoldier-like" conduct. Many old officers, however, individuals who had been educated in the school of vindictive routine, believed, and did not to hesitate to say, that to limit the number of lashes to 300 would destroy the discipline of the Army. We are all prone to consider those means which we have long been accustomed to adopt in furtherance of an object, as not only justifiable, but indispensably necessary. One officer with whom I was acquainted, and who belonged to the same regiment as I did myself, swore that he could not, and would not, comply with the order; "for," says he, "my conscience would not allow me to award a sentence of 300 lashes when I felt convinced that a man *deserved* 600." This expression reminds me of the conduct of a Governor of the United East India Company, who, writing to an officer who had been appointed Judge of Civil Affairs in India, thus expressed himself: "I expect my will and orders shall be your will, and not the laws of England, which are a heap of nonsense, compiled by a number of country gentlemen, who hardly know how to govern their own families, much less to regulate our affairs."

Crime must, no doubt, be prevented if possible, and the means of prevention are the only proper objects of penal legislation; but the infliction of pain is not the end of punishment, it is simply a means for the attainment of the end—reformation and prevention. It is wrong in principle to suppose that punishment should be inflicted on an offender, in vengeance for the offence he has committed, as if the administration of justice was inseparably associated with the infliction of a large amount of suffering. No one can apportion retributive punishment who cannot judge of the motives of action. We never can know how much a crime may be expiated by remorse, contrition, and good resolutions.

The general tenor of the circular of the Duke of York had obviously for its object to reduce the extent of the punishment of flogging in the Army. The supporters of the old established plan of discipline, or in other words, the unlimited flogging system, had always contended that no more flogging was inflicted than the necessity of the case demanded; but from the Duke's circular it appears that he thought otherwise, and that the amount of corporal punishment might be reduced with advan-

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tage, and he hints, in pretty plain terms, that the commanding officer of a regiment would not increase his claims for promotion, or gain the Duke's favour, by requiring a great amount of punishment to preserve discipline in a corps.

Had the Duke of York issued a positive restraint against corporal punishments without previous examination, and without public discussion, commanding officers who had been checked in their practice by such a regulation, would attribute every irregularity in the regiment to the Duke's order, and as has been observed by Sir Robert Wilson, "it must indeed be admitted that any partial direction of this nature is very difficult until the principle of the practice is combated by argument, and all its evil consequences exposed by reasoning." The justice of this observation is obviously established and confirmed by the success which followed the public discussions on corporal punishment in the House of Commons, and by the periodical press. A large proportion of the officers of the Army seemed to be so well satisfied with the efficacy of corporal punishment, however degrading and injurious it was popularly admitted to be, that they rarely considered the practicability of moderating its severity, diminishing its frequency, or of suggesting an adequate substitute. Corporal punishment was considered the *sine qua non*, without which the discipline of the Army could not be maintained. "I am not the least surprised at this opinion," says Lord William Bentinck; "I must not forget that for many years of my life, in conjunction with ninety-nine hundred parts of the officers of the British Army, I entertained the same sentiments. It is only from long reflection, from the effects of *discussion*, from the observation that since that time, though corporal punishments have diminished a hundred, perhaps a thousand-fold, discipline has been improved, and the soldier treated like a rational being, and not as a mere brute, that my own prejudice and that of others have given way. I now feel confident that the degradation will speedily disappear before a reasonable and enlightened legislation even in the British Army."

At one time the efficiency of an officer to command seemed to be estimated by his disposition to inflict corporal punishment. "I understand you have got a new commanding officer," said an officer of one regiment to that of another, "how do you like him?" "We like him pretty well," answered the other, "only he does not flog enough." How differently is the talent for command now appreciated, the *minimum* of infliction required to repress crime and preserve discipline being considered a satisfactory evidence of the *maximum* of qualification.

The salutary effects of the discussion of the question of flogging soldiers in the House of Commons and by the public press in this country became evident in America shortly after the promulgation of the Duke of York's circular. On the 10th April, 1812, an Act was passed by the American Congress, expressly putting an end to flogging in the American Army. I will here subjoin part of the Act in question.

Section 5. "And be it further enacted, That in lieu of whipping, as provided by several of the rules and articles of war as now used and practised, stoppage of pay, confinement, and deprivation of part of the ration, shall be substituted in such manner as hereinafter provided."

Section 6. "A convicted soldier shall, for the first offence, be put under stoppages of pay, as such court-martial shall adjudge, not exceeding the one-

half of one month's pay for any one offence; but such offender may, moreover, at the discretion of such court-martial, be confined under guard on allowance of half rations any length of time not exceeding ten days for any one offence, and may, at the discretion of such court-martial, be publicly drummed out of the Army."

Thus it will appear that the American Congress not only abolished flogging, but the maximum of the punishment which they substituted for it, namely, imprisonment, on half rations, at the moderate extent of ten days. Hitherto no maximum has been fixed by the legislature of this country, limiting the award of a general or district court-martial in regard to a sentence of imprisonment. It appears, by the official returns of punishments in the Army, that soldiers have been sentenced by these courts to confinement for periods extending from 7 to 1826 days.—(*Vide Appendix, Number III.*)

In a committee on the Mutiny Bill, (29th February, 1813,) Sir Samuel Romilly in vain attempted to obtain a declaration of the Judge-Advocate and the Secretary at War against the practice of bringing out soldiers to be flogged a second time after as many lashes have been inflicted in the first instance as the offender could endure. The Judge-Advocate General admitted, however, that he had no hesitation in declaring his opinion of the *impropriety, injustice, and even illegality*, of inflicting the second part of a sentence after the first had really produced all the suffering that was intended. This was an important declaration, although the reason assigned for considering a second infliction of a sentence illegal, is neither clear nor satisfactory. How are we able to estimate what degree of suffering the court-martial intended—the amount of pain endured by a delinquent? A court-martial, I believe, commonly thinks principally of the degree of an offence, and adjudges a corresponding number of lashes according to usage or a scale of their own framing, without taking much consideration in regard to the amount of pain thereby occasioned, or whether a man is able to endure the infliction of the sentence or not. The publicly expressed opinion of the Judge-Advocate General, in regard to the illegality of a second infliction of a sentence, was, no doubt, of considerable importance; but if an order was given to interdict second punishment, it does not appear that it was obeyed even at head-quarters, for we find that by the regulations and orders of the Army (1822) soldiers were permitted, upon application, to commute for service abroad without limitation the punishment awarded by a court-martial, but before the permission was granted a man was obliged to emit the following declaration:—

"I do hereby declare, that I am willing to serve, without limitation, in any regiment abroad, to which I may be attached, if the punishment, or *remainder of the punishment* (as the case may be), awarded me for _____, is remitted."

On the 8th March, 1815, when the report of the Military Bill was brought up, Sir Samuel Romilly moved that a clause should be added to it in these words:—"And be it farther enacted, that it shall not be lawful for any court-martial by its sentence to inflict on any offender a greater number of lashes than one hundred." Mr. Manners Sutton, the Judge-Advocate, said that he wished to have time to consider the proposition, and to consult military men upon it, and requested Sir

Samuel to withdraw his motion for the present, which he did; this bill being to continue only for four months.

When the Mutiny Bill was brought into the House, on the 21st June, Mr. Bennet gave notice of a motion for leave to bring in a bill, to limit the number of lashes which courts-martial may, by their sentences, inflict; and that motion he made on the same day, which was lost.

A great point was, however, gained by the motion; Mr. Manners Sutton, the Judge-Advocate, having declared, in the course of the debate, that in his opinion, *when a criminal had been brought out, and had suffered some portion of the lashes to which he was sentenced, it was ILLEGAL to inflict any more of them on him at any future time, or by the threat of inflicting them, to compel him to enter into any other regiment,* in military phrase, to “keep the lashes hanging over him.”

Not a word of commiseration seems however to have been expressed in regard to the hundreds or thousands, who have been illegally, and consequently, cruelly and unjustly, punished by the infliction of second, third, or fourth punishments. The inhumanity and injustice of the measure, appears to have been long obvious to medical officers. Dr. Hamilton observed (1787), “If a delinquent be taken down, cured of his wounds, and then tied up again, he suffers a punishment equal to the whole each time, should he be tied up ever so often; surely this is what the court-martial never intended.”

It may be remarked, that Mr. Manners Sutton had for a long period tacitly sanctioned the infliction of second punishments, and continued to do so until after Mr. Bennet introduced his motion. How much is it to be regretted that he did not sooner discover, or perhaps I should rather say sooner promulgate his opinion of the illegality of a measure so pregnant with mischief.

The question respecting corporal punishment had, by this time, been so fully discussed from time to time, in the House of Commons, and the opinion of the few officers who had in their publications disapproved of frequent flogging, so often quoted—namely, Sir Robert Wilson, Brigadier-General Stuart, and General Mooney,—that hopes began to be entertained that flogging would not long be practised in the British service, except for thieving, or some notoriously disgraceful act.

Among the many objections alleged against the punishment of flogging, one was, that it failed in its object; it neither reformed delinquents, nor prevented crime. This conclusion seemed to be warranted by the frequent recurrence of delinquencies; and it has been often observed, that in the regiments where flogging was much practised, crime became in a corresponding degree prevalent.

Perhaps the relative frequency of punishments in different regiments depends more upon the disposition of Commanding Officers, than on insubordination of the men. Let the returns of each regiment in the Service be called for for a series of years, and it will be found in some corps not a man has been flogged, and in others a considerable number. A similar result may be observed in the same regiment under different Commanding Officers. As the men are pretty much alike in all corps, the difference in regard to the number of punishments must be chiefly owing to the dispositions of the Commanders. “If,” says Lieutenant Shipp, “an officer be of a tyrannical disposition, or an ungovernable

temper, the cat will be found in frequent use in the regiment under his command. If the Commander be a man of humanity, and possess a heart of kindness, he will admonish, advise, encourage, and endeavour to infuse into the minds of youth a kind of parental love and affection. In the regiment where mercy reigns, discipline, order, harmony, and peace of mind will be found; but in the regiment where rigid flogging is practised, discontent, disorder, and a great deal of bad feeling towards the officers, are sure to prevail."

No one doubts, I believe, that many men who underwent corporal infliction were good soldiers, not a few of them having been made non-commissioned officers, and some having been promoted to the rank of commissioned officers. The promotion of soldiers who have been corporally punished during the war, need not surprise us, when we take into consideration the numbers who had undergone that infliction, amounting, as is alleged, in some regiments, to one-third, or one-half of the strength, and also the trivial nature of the offences for which men were at one time flogged. There is little doubt that many good men were flogged—men who distinguished themselves as brave and well-conducted soldiers, notwithstanding the degrading infliction they had endured. It was too much the practice at one time to punish the offence rather than the man; and this seems to be the vindictive principle of military law, as courts-martial are instructed to take cognizance of delinquencies "according to the nature and degree of the offence." The equity and utility of punishment is, I fear, often too little thought of.

In the discussions which took place in Parliament on the subject of military flogging, the question principally agitated was, whether the infliction of this kind of corporal punishment ought to be admitted on the military code, while comparatively little attention was directed to the expediency of limiting the severity, and restraining the frequency of flogging. Admitting that in extreme cases the infliction of corporal punishment may be considered necessary, or rather useful, for the prevention of delinquencies, that it would in fact be productive of more good than harm, just as we conclude in regard to capital punishments. It is impossible, however, to defend that mode of chastisement, when it is inflicted from a vindictive spirit for minor offences, when the scale of punishment measured by the average powers of human endurance, is excessive, and when its infliction approaches to what may be called frequent. No one who is acquainted with the usages of the Army, can deny that the punishments awarded to delinquents were sometimes enormous—far, very far beyond what an average of mankind is able to endure. This cruel absurdity eventually attracted the attention of His Majesty George III. A general order, of the 30th January, 1807, promulgating the sentence of a court-martial on a private of the 54th Regiment, who had been sentenced to *fifteen hundred* lashes for mutinous conduct, contained the following observations:—"It appearing to His Majesty, that a punishment to the extent of *one thousand* lashes, is a sufficient example for any breach of military discipline, short of capital offence; and as even that number cannot be safely inflicted at any one period, His Majesty has been graciously pleased to express his opinion, that no sentence for corporal punishment should exceed *one thousand lashes*."

In May, 1807, a man belonging to the 67th Regiment, was tried by

a court-martial in Bengal, and sentenced to receive *fifteen hundred lashes*, which sentence was approved and confirmed by competent authority.

This is the largest amount of flogging to which I have known a man sentenced, and that sentence approved and confirmed. To the honour of General Fox, it ought to be mentioned, that when he commanded in the Mediterranean, he sent back those courts-martial which awarded excessive sentences, observing, that punishment should never be cruel, and that no court should sentence a soldier to receive more lashes than what the members themselves thought right to be actually inflicted.

As God hath not given to many men a constitution calculated to enable them to endure extremely large punishments,—such sentences as were sometimes awarded, it had long been the custom of the Service to complete a sentence at a period subsequent to the first infliction. The award of the court sometimes expressly stated that the delinquent was to be punished at such *time* or *times* and *in such portions* as the commanding officer might think fit to appoint, but the express permission to carry the sentence of a court-martial into effect by instalments does not appear to have been considered indispensably necessary; second punishments was a usage of the Army, and, indeed, it may be observed that a court, in awarding such a punishment as 1000 lashes, must, one should think, have contemplated the probability of a second infliction, if not the certainty of it, unless a part of the sentence was remitted.

“We tolerate,” says Sir Samuel Romilly, “this species of punishment, this refinement of cruelty; we permit a fellow creature to be driven to the very verge of existence, a Surgeon standing by to feel the pulse of the sufferer, and to pronounce at that moment exhausted nature can bear no additional infliction. Then, when his soul is about to forsake his body and to leap into eternity, then, indeed, the poor wretch is taken down from the halberts, and removed into an hospital, where he is left, his body more at ease, but his mind still upon the rack, reflecting that the faster his wounds heal, the nearer he is to a renewal of his sufferings, and that his life is thus cherished by his tormentors only that it may be again subjected to their torments.”

“There is great cruelty,” says Sir Robert Wilson, “in bringing men out at different times to receive the remainder of a sentence as soon as the tender skin has covered former wounds. I could mention some terrible instances, if evident reasons did not check me, and if the corrections of such abuse can be secured in future, there is no necessity to distress the mind with circumstances which have had already their full operation; but only in very aggravated cases of criminality indeed should the remainder of a sentence be inflicted at different periods, particularly as the excess and not the prescribed mode of punishment, which is frequently the case in civil law, prevents the execution of the whole sentence in the first instance.”

Commanding officers sometimes appeared to rest satisfied if a certain degree of pain was inflicted on an offender, as if the infliction of pain were not an evil which can only be justified by its probable prevention of a much greater evil. The back and the heart both have feeling, and it would be well if every commanding officer reflected upon this circumstance when the cat is cutting the back of a soldier. The severest punishment will commonly fail in eliciting the slightest evidence of contrition and penitence, while the tear of repentance is often brought from

a delinquent's eyes by a word of kindness or a breath of tender feeling from a commanding officer.

The foregoing observations of His Majesty in regard to the extent of punishment did not, by any means put an effectual stop to courts-martial sentencing men to receive punishments far above one thousand lashes. The late Marquis of Hastings made the following remarks upon the proceedings of a court-martial, which was held in the Presidency of Bengal, in the year 1817:—

“The Commander-in-Chief has confirmed the foregoing sentences to avoid the loss of time which an instruction to the court to revise them would occasion; but his Excellency conceives it advisable to point out to the court the *inexpediency* of awarding a punishment which can never be inflicted, in the instances of J. D., J. B., and W. J., who are sentenced *fifteen hundred* lashes each.

“The Commander-in-Chief reduces the corporal punishment to *five hundred lashes* each, and orders the punishments allotted to J. C., D. D., and M. W. to be mitigated to the same number respectively.”

In the evidence given on military punishments before the Commission, it appears (*question* 822) that a court-martial held at Dinapore on the 12th September, 1825, sentenced a man to receive *nineteen hundred lashes*, which sentence was remitted by the Commander-in-Chief to *twelve hundred lashes*.

It is to be inferred that the officers concerned in awarding the above enormous sentences were ignorant of the general order of the 30th January, 1807, there being no other way of accounting for their disregard of His Majesty's direction.

Example, as has been observed, can only be legitimately obtained through the medium of justice, but as there is no rule to determine what degree of punishment is necessary to be inflicted in order to deter others from crimes, legislators and courts-martial have in former ages been induced to carry punishments to their greatest possible extent, so as to make example still more terrible and striking, and thus this idea of the prevention of crimes by the severity of punishments has been the principal cause of the infliction of the most unwarrantable punishments, while the ultimate object has been completely defeated. Outrageous and very ignominious punishments, from their bad effect on the mind of the criminal, and their tendency to excite the sympathy rather than the indignation of spectators, ought perhaps never to be resorted to, the infliction of death being perhaps a less evil. In the Army, where a willing and zealous obedience is so necessary, degrading punishments should be avoided, yet long after civil subjects were in a great measure protected against torture and infamy, ignominious punishments were inconsiderately inflicted on soldiers for very trivial offences. These severe, perhaps I may say cruel, sentences, which were awarded by a body of military officers (a court-martial), were tacitly sanctioned by lawyers of the first eminence and by judges of the highest courts in the country. “In 1792,” says Mr. Tytler, afterwards Lord Woodhouselee, “Serjeant G. S. Grant was sentenced to one thousand lashes, in addition to his loss of rank and pay as Serjeant, for the crime of having been instrumental in the enlisting for the service of the East India Company two drummers, knowing them at the time to belong to the

Guards ;” and while he records this horrible sentence, he calls the code under which it was awarded “*a well-regulated, moderate, and humane system.*” On a motion which was made in the Court of Common Pleas for a prohibition against the execution of the sentence upon Serjeant Grant, the validity of the award was confirmed by the court. Lord Loughborough, then Lord Chief Justice, in delivering the opinion of the court, expressed no disgust at the dreadful sentence of the court-martial. “Here,” says Sir Charles Napier, “are two enlightened civilians, and one a Lord Chancellor, who discuss this sentence without being shocked at its barbarity ! Far better would it be to shoot a man than inflict such a chastisement.”

“There are sentences of court-martial,” said Sir Charles Grey, in his place in the House of Commons, March 14, 1834, “which, if inflicted, would amount to loss of life ; and I think when the punishment is to the extent which we sometimes hear of, it is *degrading rather to them who inflict it* than to the sufferer, and especially degrading to the noblest art to which human talent can attain—I mean the art of healing—when the attendance of a medical man is rendered necessary, *not to assuage pain and relieve suffering, but to ascertain the extreme limit of human endurance.*”

Courts-martial, but especially general courts-martial, have more courage, and apparently they have much less humanity, than most individuals. They can bear odium better, responsibility being attached to no particular individual. They have a strong tendency to exercise their large discretionary powers with fearful severity. So many circumstances may arise which will tend to diminish or to aggravate a military offence, that it is impossible for human wisdom to provide for such contingencies by affixing specific punishments for certain crimes. But while much latitude should be left the judges, experience teaches us that bounds should be fixed which would limit the severity of their sentences. The penal codes of all civilized nations, so far as I know, have long fixed limits to the award of judges in secondary punishments. In this country, however, until very lately, general courts-martial were not restrained by any law in regard to the amount of lashes they might award, and even at present they are not limited in their sentences when they award the punishment of imprisonment.

With respect to the discipline of regiments, I may observe that when a soldier is brought to a regimental court-martial, it is after the Commanding Officer has previously examined the case, and, having done so, he must be supposed to presume that the prisoner is guilty : he then assumes, almost in spite of himself, the feelings of a prosecutor, and, as a consequence of this position, he may disapprove of an acquittal, or think the sentence too light. In this mood he orders the court “to revise the sentence,” and instances have occurred where courts-martial have been threatened with the accusation of contumely for refusing to augment an already awarded sentence when their reasons for lenity were but too well founded.

The members of a regimental court-martial, who had disappointed the Commanding Officer by acquitting a soldier, were ordered to wait upon a General Officer to account to him for their decision. To an observation made by the General, one of the members replied as follows : “When I became a member of the court-martial in question I swore that I would duly administer justice without partiality, favour, or affec-

tion, according to the best of my understanding; and, having done so, I did not expect to be called before any tribunal in regard to our decision, but my own conscience, with which I am at peace." "That will do," said the General, "you may all go."

It was lately stated, in a respectable periodical, that a soldier was tried for desertion, and sentenced to imprisonment and corporal punishment; but the General thought that the example of death was requisite. He revised the proceedings, or rather the sentence, the court complied with his wishes, and the man was shot.

Ten times out of twelve, however, when a Commanding Officer directs the proceedings of a court-martial to be revised, for the purpose of augmenting a sentence, it is returned to him unaltered. On this subject Sir Charles Napier asserts that he never knew a single instance in which a revision with a recommendation to be more *merciful* was not at once complied with.

As to the frequency of this kind of corporal punishment in the Army, when these discussions took place nothing specific was publicly known. In April, 1812, Sir Samuel Romilly moved in the House of Commons for a return of the number of corporal punishments which had been inflicted in the regular Army and the Militia during a certain period; but he was opposed by the Ministerial side of the House, and his motion was lost. It was observed on the occasion, that in as far as regarded the Militia no undue frequency of punishment was to be feared, because the officers are frequently magistrates, or have served in grand juries; but Sir Robert Wilson had previously stated, in 1804, that corporal punishment was more frequent in the Militia than in any other department of the Service, and supported his observations by making it appear that if as many men should continue annually to receive the lash for the next six years as have suffered within these last two or three years, the whole 70,000 will have undergone this inhuman and degrading punishment. [It is alleged that the Irish Militia were flogged for the purpose of inducing them to enlist in the regular Army.] And we learn from Macdiarmid, "*Principles of Military Subordination*," that the discipline of the Militia was more severe than in the regular Army. "In the old regiments of the line," says our author, "the abuses and errors of the young and ignorant are in some measure checked and corrected by the counsels and authority of the elder officers; men who have long and often, from a severe train of experience, learned the proper methods of dealing with human nature. But in the Militia regiments, where no experienced officers are found, the abuses I have mentioned have full swing. To ply the cat-of-nine-tails without mercy is there thought the only means of rendering men good soldiers, and the most disgraceful outrages daily pass on parade. How can it be otherwise where the teachers know no difference between instructing a man and training a horse; where they know nothing of the business of teaching, unless what they have learned from assisting a gamekeeper to break a pointer?"

In 1811 or 1812 I recollect seeing thirty-two punished men at one time in a regimental hospital on a foreign station. The ratio of men admitted into hospital, in consequence of punishment, in Jamaica, during the year 1817, the first year of which we have any correct record, was one in five of the strength; but if we deduct the non-commissioned

officers, who were not likely to incur the punishment of flogging, it would be nearly one in four privates. It may be observed that this may not be the full amount of corporal punishments, inasmuch as men were not admitted into hospital unless the infliction had been so severe as to unfit them for duty. The advocates for the efficacy and necessity of flogging frequently allege that soldiers are rarely possessed of any education, that they have no principles to guide them, and that they know nothing of self-control as a voluntary habit; and hence it is concluded that the punishments which are required to preserve discipline must be severe, in order to produce any useful effect. The purport of this argument apparently means that flogging is cheaper, and requires less labour, than instruction. If a soldier is uneducated, why not adopt means to teach him? Good principles and self-control may follow; and certainly much faster under humane kind treatment and good example than under the summary method of flogging, which, when unrestrained, used too often to be inflicted without discrimination, without mercy, and without any definite object. "That commonwealth," says Reginald Scott, "remaineth in woful state where *fetters* and *halters* bear more *sway* than mercy and due compassion."

It cannot be too strongly impressed upon the minds of officers that the crimes which are annually committed by soldiers are intimately connected with the constitution of the Army; and since the number of delinquencies are not likely to diminish unless the causes which induce them undergo previous modification, it becomes the duty of commanding officers to endeavour to ascertain these causes, and to obviate them as much as possible. Desertion, for example, is a military crime or delinquency nearly peculiar to the Army. Now, when the offence becomes frequent, it must depend upon some general or special causes, which should be carefully investigated.

The advocates for the punishment of flogging usually allege that this mode of punishment is necessary in consequence of the intemperance of soldiers of the British Army, compared with those of other nations. But, upon consideration, it must be admitted that flogging is by no means an effectual specific against intemperance; indeed, it is much more likely to render a tolerably good man, although an erring soldier, "a hardened rascal or a sneaking villain." To apply the same kind of punishment to all delinquents is a species of empiricism in legislation, which pretends by a certain nostrum to cure a certain crime without any reference to the state of the party on whom the specific is tried.

It is alleged by some military officers that flogging cannot possibly be abolished while the Army is composed of the present description of men; but so long as the ignominious punishment of flogging is continued, how can we rationally expect that a better description of men will enlist, and remain in the Service? If the vice of intemperance be curable, it must be by treating men as reasoning beings, not as brutes; by raising them in the scale of society, and inspiring them with a sense of honour and a dread of shame. The superior courage of the officer over the private may in all probability be materially attributed to a higher sentiment of honour, and a greater fear of disgrace. Von Raumer delivers it as his opinion that "so long as the soldier is liable to corporal punishment, nobody will voluntarily embrace the profession of the Army who is not destitute of moral feeling and discovers no degradation in punishment." (England in 1841, vol. i., 40.)

Recruits for the British Army are commonly so reckless and so improvident when they enlist, that I believe they think little or nothing about the terms of the contract they enter into. But a time usually does come when a soldier becomes sensible of the thralldom of the Army, the unlimited nature of his engagement, the strictness of discipline to which he is liable, the moderate pay which he receives for his services, the hardships of his duty, and the limited remuneration for past services after being discharged. Reflection is sometimes followed by dissatisfaction, and eventually by desertion, a military delinquency which is not confined to immoral men or soldiers of irregular habits.

A HISTORICAL SKETCH OF MILITARY PUNISHMENTS, IN AS FAR
AS REGARDS NON-COMMISSIONED OFFICERS
AND PRIVATE SOLDIERS.

VIII.

1824 (15th March).—Mr. Hume submitted a motion to the House of Commons, for the abolition of flogging in the Army, which was lost; forty-seven members voted in the minority, Lord Althorp being one of the tellers.

1827 (12th March).—Mr. Leycester submitted a similar motion, which was lost. On this occasion Sir John Hobhouse said, “He had attentively listened to what had fallen from the gallant officers in the Army on the subject; but the only reason they gave for defending flogging, that he could discover, was, that it ought to be continued because it had existed. He had heard an officer say, that in his regiment some of the men were brought out so frequently to be flogged, that they were known by the name of the ‘*flogging-blocks.*’ And this circumstance demonstrated that so far from flogging making them better soldiers or men, no good could be derived from it; and as no benefit resulted from the revolting custom, it ought to be abolished as being a national disgrace, and as placing our Army in its discipline and honour second to that of France.”

The practice of thus flogging alleged incorrigible soldiers, for the sake of example, when all hope of reformation had been abandoned, has been carried much too far.

To punish a man very severely, ostensibly for an offence which deserves only a slighter punishment, but in fact in the expectation of deterring others from the perpetration of similar crimes, is an iniquitous practice, and cannot be justified, yet persons have been put to death for the sake of example, who would not have been executed for the crime itself; and this motive has been openly avowed. “Take for example the story so often repeated, and so much relied on, that when a man convicted at Hertford assizes of horse-stealing, complained that it was cruel to hang him for only stealing a horse, the judge told him that he was not to be hanged for only stealing a horse, but that horses might not be stolen. Now, if the criminal was not hanged for stealing a horse, he was unjustly put to death.” When we reflect on the history of the punishments which have from time to time been inflicted for the sake of example, we cannot help expressing our wishes that this principle may cease to be adopted, as the motive and guide by which the powerful may rule their poor and erring brethren. The condition of convicted military offenders should no doubt be felt to be a serious abridgement of the enjoyments of well-behaved men; but under any circumstance, can it ever be advisable that one pang of suffering should be added to their lot, for the sake of deterring others, if that pang be not calculated to prove beneficial to themselves?

The infliction of severe and frequent punishments in a regiment, diffuses a sanguinary or unfeeling spirit throughout the corps, which infects both officers and men. The officers come, from habit, to con-

sider flogging as essentially necessary to preserve discipline, while the men become resigned to the evil, and as is alleged, eventually believe that it cannot be safely dispensed with. It is a notorious fact, that when flogging was at its height, it was counted no great disgrace, indeed it was sometimes made a boast of, and instances have occurred where to have suffered from the lash, was reckoned a qualification necessary for becoming a good comrade. A soldier who had been frequently punished, was ordered to strip to receive another flagellation. He refused at first to take off his clothes; but when coercive measures were resorted to, he submitted, and received his quantum of punishment, without complaining; and when taken down, he said to the Colonel, "Colonel, honey! if you will give me six drams of liquor, I will take six hundred lashes more." This man prided himself exceedingly on the number of lashes he had received, and used to expose the cicatrices of his back to his comrades. Many excellent officers and worthy men allege, that those regiments in which flogging has been least practised, have been the best behaved; and numerous cases have occurred where the number of corporal punishments inflicted varied with the change of Commanding Officers to an infinitely greater degree than the change of circumstances with respect to discipline, or the commission of crime. A low degree of discipline not unfrequently exists with a high degree of flogging,—a circumstance which shows that the discipline which depends upon the fear of the lash is precarious, little to be trusted, and will not stand the test of temptation—even the temptation to render the Commanding Officer ridiculous. Major ——, while he commanded the African corps—a corps which has been always notorious for corporal punishment, was one Sunday reading the morning service of the Church to the men, who were formed into a square. The Major, who was from north of the Tweed, spoke and read the English language with the broad accent of the natives of one of the counties in the north of Scotland; upon reading the Creed, and pronouncing the words, "Suffered under Pontius Pilate," in his own queer way, a wag in the ranks, well known for his uncontrollable propensity to joking and fun, exclaimed, "Wha's Ponshews Peelate, I wonder?" The Major paused, and laying aside the Prayer-book, said, "Ah, John, is that you at your jokes again? just come out here, my man." The soldier stepped forward—a drum-head court-martial was held—the triangles rigged out, and John received one hundred lashes without saying a word. The flogging having been completed, the Major resumed the Prayer-book, and finished the service of the day.

The Articles of War enact, that "all crimes not capital, and all disorders and neglects of which soldiers may be guilty, to the prejudice of good order and military discipline, shall be taken cognizance of by courts-martial, according to the nature and degree of the offence;" in other words, at the discretion of the members. They could not only define the crime, but until 1812, it was in their power to award unlimited corporal punishment. This Article was known among the soldiers by the denomination of the "Devil's Article;" and for a long time more than half the offences were tried under its provisions, the punishments inflicted being almost invariably flogging. Under this Article, a court-martial has extensive powers for punishing constructive delinquencies; and so long as flogging was the punishment awarded for

every crime, and courts-martial could award an unlimited number of lashes, the cat-o'-nine tails was employed to an extent which old officers are ashamed to own, and which young officers will scarcely credit. Flogging was often inflicted from usage, routine, or want of thought, and justified because committed. A modern advocate or apologist for the use of the cat, admits that, "*The extent to which flogging was carried until late years, was brutalising in its effects, and disgraceful in the extreme to a Christian nation; it was inflicted alike upon the young as upon the old soldier and offender, and for every denomination and degree of offence: its indiscriminating use broke the spirit of many a noble mind, whilst its frequency rendered almost nugatory its effects as an example to check and paralysed in a great degree the good which would have otherwise attended it.*"—(Naval and Military Gazette).

A practice crept into the Army, which consisted in giving a soldier who fell under the displeasure of his Commanding Officer, the choice either to receive a certain number of lashes,—say fifty, a hundred, or a hundred and fifty, as the case may be,—or to abide the decision of a court-martial. "I have, myself," says Lieutenant Shipp, "been ordered by the Commanding Officer of a regiment in which I served, to give soldiers who had offended the option of submitting to receive a stipulated number of lashes, or of standing the chance of the award of a court-martial." The object of some Commanding Officers in thus punishing men, probably was to screen a delinquent from a portion at least of the punishment attached to his offence; but perhaps others did it to save the trouble of assembling a court-martial, or to prevent publicity. These punishments were inflicted in comparative privacy, being witnessed only by the troop or company to which a delinquent belonged, instead of, as usual, by the whole regiment.

Flogging having been for a considerable time the only punishment in use in the Army, and having been frequently inflicted, it came at length to be considered an indispensable and efficacious specific—a moral *panacea* eminently calculated to prevent insubordination and other military offences—a measure without which all other means of preserving discipline was unavailing. Owing to a similar cause, a fallacy of the same kind long prevailed in regard to the use of mercury in the venereal disease, it being believed that this disease could not be effectually cured without the exhibition of a certain quantity of that drug. Later and more careful experience has proved that the exhibition of mercury is not only not essentially necessary for the recovery of the above disease, but that it is often productive of much injury to the constitution. A similar discovery has also been made in regard to the use of the cat-o'-nine tails; this instrument is not now considered an indispensable specific against military delinquencies, other measures having been found as efficacious, perhaps more so, measures which are less revolting and less demoralizing than corporal infliction.

The frequency and severity of corporal infliction in the Army eventually excited, as has been observed, the attention of the public—the periodical press—and a few members of Parliament. Measures of restriction were officially promulgated, and reports from General Officers called for, by which means it soon became known that any excess or heedlessness in the infliction of punishment would not pass

unnoticed at the Horse Guards. A new system in the course of time sprung up in the Army, and it became the general practice of Commanding Officers to check the offences of soldiers in a great degree, by the infliction of what were called *minor punishments*, viz., punishments inflicted on their own authority, such as extra drills, heavy marching drills, additional parades, extra guards, confinement to barracks, to guard-room, gagging, wearing the jacket inside out, drinking salt-water, bread and water diet, stopping a man's ration of grog, or diluting it with an unusual portion of water, trotting round in a circle, standing fully equipped in heavy marching order with the face to a wall, parading at the guard-room fully equipped every hour during the day, the stocks, the log, the dry-room, the black-hole. The last four modes of punishment require a little explanation.

The Stocks.—Military authorities are much divided in regard to the use of the stocks as a reforming and deterring punishment. Some officers recommend it, while others consider it too ignominious as a military punishment. Lord Hill thinks the punishment of the log, (and the stocks is liable to the same objection,) is too degrading. "I think," said his Lordship, "the log is a punishment more for a beast than a man, and I should think it was not desirable to restore it."—(Evidence on Military Punishments, Question 5744.) The public exposure of an offender as a punishment, is liable to many objections, even in civil life, but still more so in the Army, where self-respect and magnanimous feelings should be sedulously cultivated. In consequence of the recent direction of public opinion, degrading punishments have been lately withdrawn from most of the codes of penal law in Europe. It is worthy of remark, that some officers who think the log too degrading a punishment for a soldier, and disapprove of its use, continue to resist every attempt which is from time to time made in Parliament, to abolish the practice of flogging in the Army. I may here ask, Do they consider punishment with the cat-o'-nine tails less ignominious than the log or the stocks?

The Log.—This punishment consisted of a log, or a large round shot, or shell, which was connected to a delinquent's leg by means of a chain. The delinquent was obliged to drag or carry the log about with him on all occasions, except when he mounted guard. In one regiment, which was quartered in Richmond Barracks, Dublin, in 1821, from twenty to twenty-five men were frequently seen marching together round the barrack-square, each dragging a log behind him. I believe the punishment of the log was about that time interdicted in the garrison of Dublin, by the late Sir Colquhoun Grant.

The Dry-Room.—The dry-room, or penitentiary, was, originally, I believe, an East Indian punishment; and it obtained the designation from the circumstance of the men being kept in a state of confinement, and deprived of their spirit rations—hence, the term dry-room. The delinquents were much at drill, and sometimes their diet was reduced to bread and water. From forty to fifty men belonging to a regiment were sometimes in the dry-room at one time. The ignominy of a punishment diminishes in proportion to the numbers who undergo the penalty together. To confine thirty or forty offenders in one apartment, is a sure means of corrupting the moral atmosphere, and rendering the bad worse.

In the Prussian army non-commissioned officers and certain other classes are liable to punishment of arrest of three kinds, viz.,

- 1st. Arrest in barracks or quarters.
- 2nd. Solitary confinement, on bread and water and no bed.
- 3rd. Solitary confinement in a room without flooring, but only joists placed edgeways.

The punishment of a Corporal in the Austrian army is solitary confinement, on bread and water, with or without irons, in an upright or stooping position, as follows. Privates are liable to the same punishments; viz.,

- 1st. *Long Shackling* (*Lang Schliesen*) consists in chaining the wrists to the ankles, but so as to allow a man to stand nearly upright.
- 2nd. *Short Ironing* (*Kurtz Schliesen*) consists in shackling together the opposite wrist and ankle for a period not exceeding forty-eight hours, with an interval of relief of an hour at the end of every six hours.

In the Austrian army these modes of shackling delinquents may be inflicted by a Captain or by officers of higher rank.

The Black-Hole. (A cell with scarcely any light.) The name of this kind of punishment is sufficiently characteristic of the place in which soldiers were, in former times, frequently immured. Soldiers who are intoxicated ought not to be, as is sometimes the case, confined by themselves in a black-hole. A drunken man should, generally speaking, be considered a sick man, being often *apoplectic, paralytic, and insane*. He is consequently unable to take care of himself, and he should therefore be carefully attended to by others. Let us suppose that a drunken man rolled off the cot in the black-hole, and lay all night on a stone or mud floor during severe weather in winter in this country or in Canada, in what condition, it may be asked, might we expect to find him next morning? Certainly more dead than alive.

Until lately it was the practice in some regiments to confine a man to the black-hole for forty-eight hours, and after an interval of twenty-four hours to repeat the confinement for forty-eight hours, and so on. Nay, in some regiments men were confined in the black-hole at the discretion of the Commanding Officer for periods not only exceeding forty-eight hours but amounting to seven days. *Congee House* is in India, nearly synonymous with black-hole in this country. As a general usage in the Army, the diet of prisoners confined in a black-hole is restricted to bread and water. In India it is limited to bread and *congee*, namely, water in which rice has been boiled. The custom of restricting the diet of military prisoners is very ancient. One of the orders of the Earl of Essex (1642) is as follows: "He that absents himself when the signe is given to set the watch shall be punished at discretion, either with bread and water in prison or with the wooden horse."

"The black-hole," says an old soldier, "was no doubt invented by some gloomy and good-natured soul, who loved a sedentary life, for the punishment of the minor offences incident to a soldier's life, and which when frequent, are in their opinion and wise judgment, subversive of military discipline and highly disgraceful to the profession. I will instance," says he, "some of these offences which call for incarceration in solitude: sneezing in the ranks—scratching your head—letting the butt of your firelock fall on your Captain's toes—singeing his whiskers by filling your pan too full—wiping your nose on a chilly morning—treading upon the Captain's heels—

of courts-martial held upon private soldiers between the first day of January, 1831, and first day of January, 1832, stating the charges upon each individual and the number of lashes inflicted, which motion was lost by a majority of 61 to 28.

Lord Althorp opposed the motion, stating at the same time "that from all the communications which he had received from officers of the Army, it was his opinion that it was impossible, consistently with the discipline of the Army, to dispense entirely with the punishment of flogging." Sir John Hobhouse, Secretary at War, admitted that he entertained strong objections to the practice of flogging in the Army. He, however, opposed Mr. Hunt's motion; but the grounds of his opposition, he said, had no reference to the abstract question of flogging, but only alluded to the particular question he brought forward as to the returns. It may be observed that Lord Althorp and Sir John Hobhouse had, on former occasions, expressed opinions in the House of Commons adverse to corporal punishment. His Lordship appears to have been greatly influenced in his opposition to Mr. Hunt's motion by the opinion of officers of the Army. Military officers have very generally advocated the efficacy and necessity not only of corporal punishments but also of the power of awarding severe sentences.

April 2nd.—Mr. Hunt moved that corporal punishment should be abolished in the Army for one year, which was withdrawn. Sir John Byng observed that he had been thirty years in the Service, and "I will venture to say," said he, "that the punishment is not now inflicted to one-fiftieth part of the extent it used to be. Within the last ten years it has been reduced to one-tenth." To whom, it may be asked, is the reduction of corporal punishment in the Army to be attributed?

Mr. Hume thought the public had a right to know why the returns of the number of punishments which were called for were refused. "If," said he, "the flogging which is now inflicted is not one-tenth the amount of that which was inflicted a few years ago, God knows what the state of the Army must have been then, and if the punishment has ever been fifty times its present amount, the British Army must have been in a melancholy state indeed."

From the alleged fact that the number of lashes inflicted in the Army has been greatly reduced, the majority seemed to wish it to be inferred that the power of inflicting this mode of punishment should be continued, while the minority concluded, from the same circumstance, that it was neither necessary nor expedient to grant such an authority.

June 19th.—Mr. Hunt moved that an address should be presented to His Majesty praying that he will be graciously pleased to take such measures as may cause the punishment of flogging in the Army to be suspended till after the meeting of next session of Parliament, which was lost by a majority of 37 to 15. During the discussion upon this motion, Sir John Hobhouse stated that the number of lashes that can be inflicted by regimental courts-martial had been reduced in the Articles of War from 300 to 200, and that by district courts-martial from 500 to 300.

June 24th.—Mr. Hunt moved for returns of corporal punishments in the British Army for a period of seven years, which was agreed to by the Secretary at War. The returns of punishments in the Army have been published from 1831 to 1838.—(*See Appendix, Nos. I. II. III.*)

now received from military men relative to the necessity of preserving this punishment, some substitute might be devised.

“I cannot join the gallant General opposite in deprecating the agitation of this question. When I look back to the small divisions who formerly enrolled their names against military flogging—when I look to the defence of the system which is now put forth, viz., that the practice has materially diminished, to such an extent indeed, that by comparison it can hardly be said to exist at present, I feel that so desirable a result can be attributed to nothing but the fact of the subject being agitated and re-agitated by the perseverance of a spirited minority. I think it is a subject which ought to be unceasingly agitated, because I am sure that the effect must be to improve the situation of the Army, and to prevent this severity being exercised in future to the full extent to which it now exists.”

The subject of military flogging was again discussed on July 21st, 28th, and August 8th, on the presentation of petitions against corporal punishment. On the 21st July, the Secretary at War, Mr. Ellice, announced his intention to submit the subject to the investigation of a military commission. “The whole subject,” said he, “has arrived at a stage at which it cannot rest, and it has been my intention to recommend His Majesty to issue a commission composed of persons competent to take the consideration of all the circumstances connected with our military code—to inquire into the state of that code and into the state of the codes of other countries, and to collect together a body of information on which the whole system may be revised.”

The arguments adduced in favour of corporal punishments by military officers in Parliament were alleged to bear a close affinity to those with which a Spanish Inquisitor once endeavoured to justify the system pursued by that tribunal.

“Do not imagine,” said he, “that we take pleasure in witnessing *auto da fés*. Oh no, it is by far the most painful part of our duty. But where is our substitute for this mode of punishment? How can ecclesiastical discipline be carried on without it? Such exhibitions should unquestionably be reserved for grave and gross delinquencies, but this may surely be left to the humanity and discretion of a tribunal whose members would never think of shedding human blood. Gentlemen, who are not themselves versed in the department over which they preside, are not competent judges as to the expediency of leaving the power in our hands, without which it would be altogether impracticable to maintain due subordination, and anarchy and confusion would infallibly prevail.”

By a warrant which was issued 7th February, 1833, the pensions to which soldiers became entitled in consequence of disabilities and long servitude, were reduced much below the rates of pensions according to the warrant of 1829. By this means a powerful incentive to satisfaction with the Service and to good conduct was in a great measure removed. The policy of holding out a hope of distinction and reward as a stimulus to praiseworthy and meritorious conduct appears in this instance to have been greatly overlooked.

“If,” says Major Macnamara, “a system of encouragement and reward had been made to go on hand in hand with one of coercion, and the young soldier had been in the first place properly schooled, not only in his duties, but in the advantages he would derive from the strict and regular perform-

ance of them—if he had been mildly and gently treated, his views and his better qualities fostered and encouraged—in short, if he had been dealt with as a reasonable being, instead of as ‘a mere brute upon two legs,’ we in our conscience believe that the ‘cat of nine tails’ would be as little known to the generality of our readers as ‘iron hooks’ or thumb screws.’”

During the month of March, 1835, the Royal Commission, which had been promised by Mr. Ellice, the Secretary at War, was appointed, the members being Lord Wharncliff, Lieut.-General Sir James Kempt, Lord Sandon, Sir Edward Hyde East, Baronet, Robert Cutlar Ferguson, Lieut.-General Sir Edward Barnes, and Major-General Sir Thomas Reynell.

The specific object of the commission was to examine “Whether after a careful reference to all the circumstances and conditions under which the British Army is constituted and governed, and all the services which it is called upon to perform, it may be practicable to dispense with the power of inflicting corporal punishment, or to make any other changes or modifications in the punishments now applicable to offences committed by the soldier, without detriment or danger to the paramount consideration of maintaining strict discipline, and effectually repressing crime, in the ranks of the British Army throughout all the various contingencies of military service to which our troops are necessarily liable.”

It appears to be assumed by the foregoing query, not only that corporal infliction is efficacious, but that it is adequate to maintain discipline and to repress crime in the ranks of the British Army throughout all the various contingencies of military service. Now it is difficult either to prove or to disprove this assumption, but judging from the practice of the Army, we may conclude that commanding officers believed or found that a very large amount of corporal punishment was required to repress military offences, and consequently we may presume that it was by no means a very effectual specific. “After an experience of one-and-thirty years’ service,” says Major Macpherson, 99th Foot, “during the early part of which period I witnessed much military flogging, I have no hesitation in saying that I never knew a single instance of a bad character being reformed by it. I beg to express my firm belief that any mode of punishment is better than corporal punishment.” (Appendix to Report on Military Punishments, page 117.)

Many experienced officers have expressed their belief that in ninety-nine cases out of a hundred, a flogged soldier becomes a burden to himself, a pest to his comrades, and a disgrace to the corps to which he belongs. Other able old officers maintain that flogging is a practice not only unnecessary, but one that creates disgust and abhorrence in the breast of every soldier who is called upon to witness it: the spectacle altogether, instead of operating as a warning, has a hurtful effect, by inducing men to dislike and to be dissatisfied with the Service. “The first man I saw punished,” says Bombadier Alexander, “my heart was like to burst; it was with difficulty I could restrain my tears; indeed, my spirits sunk from that day.” But many a strong and crime-hardened man cannot witness a punishment without emotion: and when some of the boldest men in a regiment faint, actually drop senseless in the ranks, what effect must such a scene sometimes have upon young unbearded youths, fresh from the parental fireside, and raw from the village school?—obviously to render them dissatisfied with the Service.

According to the report from the Royal Commissioners, it appears that officers of all ranks, who gave evidence on the subject under investigation, speak of flogging as an evil rendered necessary by the description of recruits received into the Service, and the prevailing habits of soldiers, but more especially by the vice of drunkenness to which they are liable; in other words, to the ignorance and thoughtless intemperance of soldiers. But admitting that lack of knowledge and inebriety are the parents of most military crimes, it may be asked, will flogging instruct the ignorant and reform the intemperate more effectually than other means which may be devised and adopted? Flogging, in the opinion of not a few excellent officers, will neither inform nor reform. The lash is a most unsuitable remedy for drunkenness by which at times many a high-spirited and gallant soldier has been overtaken.

With respect to the effects of the punishment of flogging, I shall quote the opinion of an experienced officer, of thirty years' standing in the Army, on this important subject—an officer who rose from the ranks, and from his meritorious conduct was promoted to the rank of Lieutenant. "The man who is flogged," says he, "feels himself dishonoured and degraded; and reflecting on his debasement, obduracy takes the place of obedience, hatred that of love, apathy of unwillingness, and discontent deprives him for ever of that happiness which surely ought to be the lot of him who voluntarily leaves his home and the dearest ties of nature to cast his mite into the lap of his country's glory. The nobler feelings are usurped by those of hardihood and callous nature, and the mind feeds on its debasement, and lingers on its own dishonour. There will be found in such a man a sullen, restless, fretful, and irritable disposition, ever alive to malice and revenge; he becomes a discontented, grumbling, and disobedient soldier, who feels that he has nothing further to lose or to care for. Thus he lives, time is but a tell-tale of his woes, and at last in the cup of inebriety he seeks refuge from the storm, or, as he would term it, drowns his cares and his sorrows. Repetition of his crime ensues, and further punishment is the sure consequence."

"To this mode of punishment (flogging) I have," says Sir Neil Douglas, "been a great enemy, having found from long experience that it is hopeless to expect any good results from its infliction, either as a *warning to good men to avoid evil courses, or as a punishment to bad ones* for the actual commission of crime. I therefore gave much attention to the subject, and came to the conclusion, after mature reflection, that under the existing system of military law of England, my only chance of abating it was by stimulating men's minds by holding out other great advantages for good and regular behaviour, and thus making it their interest to conduct themselves with propriety." For this purpose Sir Neil established a regimental order of merit in the corps which he commanded, the 79th Regiment of Highlanders, "which," says Sir Neil, "tended, more than any measure I ever knew or heard of, to encourage good conduct, and to repress vice and immorality of every description." Sir Neil Douglas commanded the 79th Regiment for upwards of twenty-two years.

The Royal Commissioners concluded their Report in the following terms:—

"There now only remains for us to submit to your Majesty the conclusions which, in our judgment, are the result of the whole evidence.

“1st. That it is the opinion of almost every witness whom we have examined that the substitution of other punishments for corporal punishments in the British Army, upon active service and in the field, is impracticable, and, if practicable, would be insufficient for the maintenance of proper discipline in your Majesty’s Service.”

[The witnesses who gave evidence before the Royal Commission in regard to punishments in the British Army, were chiefly General Officers and Officers who were in command of regiments and depôts, or non-commissioned officers and soldiers still serving in the Army. With respect to the Commissioners, it may be observed that the military members, perhaps the most influential, had, during their long service, been employed in administering the laws and usages of the Army, which laws and usages, in as far as they regarded punishments, the Commission was directed to investigate. It is a very common principle in human nature for men to be blind to the defects of a system which they have long been employed to carry into effect, and to regard every change which may be suggested as fraught with highly-dangerous consequences. It is curious to observe how slowly and reluctantly men are induced to act practically, and to act upon conclusions of which their understanding has been convinced, when *habit* and prejudice are opposed to them.]

“2nd. That the abolition of the power of awarding corporal punishments, by sentence of court-martial, in the British Islands and the Colonies, and during peace, and the retention of the power of inflicting that punishment when the Army is on service, and in the field, appears to us, for the reasons we have stated, manifestly unjust.”

[In practice the principle in question has, I believe, been commonly more or less acted upon, a higher ratio of punishments being inflicted “on service and in the field” than in the British Islands and in the Colonies.]

“3rd. That it does not appear to us that the punishments which have been resorted to as substitutes have hitherto had such an effect as to render it safe to abolish altogether that power in Great Britain or the Colonies, nor have any other punishments been suggested to us that appear to promise a more favourable result.”

[The number of men sentenced to be flogged by courts-martial, since the peace in 1815, has been gradually reduced, the annual ratio of corporal inflictions having declined from 70 or 80 to 10 per 1000, without any falling off in the discipline or efficiency of the Army. Indeed, it appears, from good authority, that discipline has improved as flogging has been diminished, 200 lashes having been found to be more effectual as an example than 1000, because the lesser punishment is less revolting. Experience has proved that military laws may be invigorated, and rendered more efficacious in repressing delinquencies and sustaining discipline, by rendering them more lenient and more accordant with popular feeling.]

“4th. That it appears to us that, even supposing that some effectual substitute might be devised, or that those now in use might be made more effectual, so as to render corporal punishment ultimately unnecessary, it would be unsafe to proceed at once to abolish it entirely, and that even in that case its abolition should be gradual.”

[Let the various secondary or minor punishments, together with the requisite rewards for good conduct and long service, be effectually put in force, and allow the lash to fall into disuse, in the same manner as other barbarous punishments have become obsolete. By this means I have no doubt that in a very short time a court-martial would with equal reluctance sentence a man to endure the punishment of the *strap-pado* as award to him an infliction with the cat-of-nine-tails.]

“5th. That, in order to give full effect to the punishments now in use as substitutes for corporal punishment considerable alteration must be made on the means of rendering solitary confinement in the several barracks more effectual, and that a certain number of prisons, exclusively for military offenders, should be provided as soon as possible.

“6th. That although we have been *unwillingly convinced* of the necessity of still retaining the power of corporal punishment, and in proportion to our conviction of that necessity we earnestly recommend that no pains may be spared to endeavour to make the infliction less frequent.”

[It is commonly easy enough to convince us that the measures which we have long authorised and sanctioned are wise, and proper, and necessary; but it is usually very difficult to persuade us that our opinions are ill founded, and our conclusions and conduct wrong. Convictions against our former practices seldom take deep root. Mankind do not generally resist the influence of habit.

“Persuade the folk against their will,
They’re of the same opinion still.”

It is often long before the dictates of humanity and justice prompt military legislators, and every Commanding Officer is a military legislator, to relieve an inferior order from an evil, the pressure of which is not experienced by themselves.]

“7th. That with the view of diminishing the frequency of the punishment, the offences to which it is limited, and the occasion upon which it should be resorted to, should be more clearly defined.”

[The purport of the recommendation contained in this conclusion had to a certain degree been attempted to be carried into effect by the Circular Letter from the Horse Guards, dated 24th August, 1833.]

“8th. That with the same view more discretion should be vested in Commanding Officers, as to the power of making use of minor punishments, and in determining on the offences which shall, under their orders, be tried by a regimental court-martial.”

[This conclusion has, I believe, met with the universal approbation of Commanding Officers. Power and superiority are so flattering and delightful that even those who have most reverence for the laws of right are pleased with showing that not fear, but choice, regulates their behaviour. “Pride is unwilling,” says Dr. Johnson, “to believe the necessity of assigning any other reason than her own will, and would rather maintain the most equitable claim by violence and penalties than descend from the dignity of command to dispute and expostulation.”]

An anonymous correspondent in the *United Service Journal* suggests that the discretion recommended to be vested in Commanding Officers should authorize them—

“To confine a soldier for a week in the black-hole.

“To lay a man in irons for three days.

“ To stop pay for days of absence, including the other usual punishments.

“ To revert to the use of the log under certain circumstances.

“ To authorise the use of the stocks.

“ To sanction regimental courts-martial to try all cases of delinquency, except such offences as come to a question of transportation or death.”

Were Commanding Officers to cease to be swayed by their passions and prejudices, like other mortals, then might they be safely intrusted with considerable power without responsibility, but not till then. The author of a temperate communication upon the subject of military punishment, in the Naval and Military Gazette, observes that to “invest Commanding Officers and Captains with increased power would be a measure of very questionable expediency; for, unless Commanding Officers and Captains were more perfect in their natures than they really are, or are ever likely to be, increasing their power might make a soldier a more submissive instrument, but it would retard his advancement in the way it is desirable to elevate his character, and he would become a mere animal, devoid of feeling.”

“ 9th. That it appears to us that the extent of the sentences in the power of the several descriptions of courts-martial to award may, without danger, be more limited than at present.”

[Let it be recollected that the award of a district court-martial was at this time limited to three hundred lashes, and a regimental court-martial to two hundred. What an improvement since 1812!!]

“ 10th. That encouragement should be given, in the way of honorary reward and distinction, both to the gallant and well-conducted soldier.”

[An honorary reward, in addition to the means of comfortably sustaining life, is a valuable distinction, but without the requisite means of decent existence what is it but an empty bauble? I should never wish to see a mendicant, or an indigent old soldier, wearing a medal.

“ Dat Belisarius un oboli.”]

“ 11th. That no consideration of expense, within reasonable bounds, should be allowed to stand in the way of attending to the comforts of the soldier when in the Service, and of a sufficient pension for the good and deserving man after that service has been performed.”

[This conclusion embraces the whole economy of a soldier's life, much of which does not come within my plan to discuss. I may here observe, however, that the term “sufficient pension” bears very different meanings, according to the practical experience, liberality, and disposition, of individuals. For example, the Honourable A. F. Tytler, in his Essay on Military Law, admits that the “sacrifice of a greater portion of the personal liberty of individuals is more necessary in the profession of a soldier than in any other of the employments of civil life;” but “when it is considered,” says he, “that these *trivial restraints* are most amply compensated by the wise, humane, and *bountiful provisions* that are made for the soldier after he is released with honour from the fatigues of his profession, and by the immunities and privileges he enjoys in that title above all others of his fellow-subjects,” no man possessing a well-constituted mind will complain. Now, the bountiful provision, immunities, and privileges to which discharged soldiers had a claim when Mr. Tytler wrote was 5*d.* a day, when a man was worn out in the Service, and permission to earn a livelihood

wherever he could find employment. To apply the term bountiful provision to so small a pittance, after twenty-five or thirty years' service, appears to be mere mockery. Let the Army be made a desirable profession, so much so as to induce soldiers in general to be satisfied with it, and let officers conduct themselves towards their subordinates so as to deserve their love and respect, and I feel confident that in ordinary circumstances, I mean during peace, that very little punishment will be required. For this purpose let soldiers, in the first place, be enlisted for a specified period, or what would, perhaps, be better, let them have it in their power to claim their discharge after a certain period of servitude. Let them have a prospect of an adequate allowance for their sustenance should they serve twenty-one or more years. Study their comforts,—rule them with kindness,—have some confidence in their honesty,—and whatever punishment may be required by some individuals to preserve discipline will meet with the approval of a great majority of the corps, and consequently be in all probability beneficial. When a man has enlisted for life, or, as an Irishman would say, "*has sould his wind,*" and surrendered his independence for life, what encouragement can he have to cultivate his mind, and what hope is he warranted in entertaining to be able to better his prospects in life? He has no hope, and without hope there is little virtue.]

A HISTORICAL SKETCH OF MILITARY PUNISHMENTS, IN AS FAR
AS REGARDS NON-COMMISSIONED OFFICERS AND
PRIVATE SOLDIERS.

IX.

IN 1836, the award of a general court-martial was limited by the Articles of War to 200 lashes, a district court-martial to 150, and a regimental court-martial to 100. No farther restriction in regard to the amount of corporal punishment has since been ordered. It must seem strange to persons who do not observe the extreme difficulty with which old-established customs and prejudices, however ill-founded, are subverted, that the practice of awarding excessively large sentences of corporal punishment for trivial offences, and for every offence, second punishments, &c., should so long and so obstinately have withstood the most convincing arguments and the most conclusive statistical evidence. It is hard to say how far a man may be carried by the influence of bad example, and by the practice of a vile custom, when we see that men, otherwise humane, may become the champions of a system so revolting to a feeling mind, and so liable to abuse, as flogging.

1842.—On the order for the third reading of the Mutiny Bill in the House of Commons being read (15th April), Capt. Bernal proposed a clause to prohibit flogging in the Army during peace, except on a march, or for theft, which motion was lost by a majority of 187 to 59. Capt. Bernal took a review of the circumstances under which corporal punishment had been inflicted in former times, and the frightful extent to which it had been carried, compared with the circumscribed application of the same punishment at present, which, in his opinion, was a strong proof that public opinion was decidedly in favour of its ultimate abolition. He believed all parties were agreed as to the degrading and brutal nature of the punishment, and it was high time that the House should turn its attention to the substitution of a system of rewards, and to the moral improvement of the condition of the soldier. He trusted he should have the support of Capt. Boldero, now a member of the Government, who, before his accession to office, had been a steady foe to this description of punishment.

Capt. Boldero admitted that he had on former occasions advocated the appointment of committees to inquire into the subject, with a view to doing away with corporal punishment. He intended, however, to vote against the present motion; he had, he said, changed his opinion on the subject. Mr. Macaulay took occasion to remind him that in 1838 he had used the following words upon moving for a select committee: "*I call upon the House to put an end to this barbarous and brutal torture * * *. The British soldier may be governed by more ennobling influences than those of terror.*"

Sir Howard Douglas objected to the motion, although he admitted that corporal punishment had been carried to "*a frightful extent in former times; and he shuddered when he recollected the scenes which it had been his lot to witness.*"

Mr. Stanley was convinced that if the flogging took place in the sight of the public the practice would not be suffered to continue one day.

In his opinion much good had been done by discussion; for if the matter had been left in the hands of military men flogging would have continued to this hour in full force.

Military men, as was observed by Capt. Bernal, were for the most part averse to the abolition of the practice of flogging; but it may be observed that the members of all professions are commonly wedded to received forms of discipline. It was admitted by every member who took part in the discussion that the punishment was a brutal and disgusting one, but at the same time the general opinion was that it was necessary in extreme cases for the sake of discipline. This is, perhaps, true, as the Army is at present constituted.

During the discussion it was observed by Lord A. Lennox that at this moment there were four Colonels in the British Army, who, when they were privates, underwent corporal punishment. The severity of the British military code, or rather, perhaps, the interpretation given to it, and acted upon during the war, was excessively rigorous. "It was, moreover, so contrived, or so construed, that the most perfect character that ever existed (being a soldier) could be brought to the halberts whenever it suited the pleasure of his *superiors*." Good and efficient soldiers were often punished for some trifling breach of military rule, who, notwithstanding their having been ignominiously punished, conducted themselves so as to gain the approbation of their superiors, and by that means obtained commissions in the Army. They remained good soldiers in spite of the degrading infliction which they had suffered. Commissioned officers who have been flogged are generally silent on the circumstance, but sometimes the fact becomes known by accident.

The most talented, best informed, and most trustworthy men of a corps frequently take a dislike to the Service, and sometimes commit a breach of the contract they entered into at enlistment, and desert, by which means they are liable to punishment. A man belonging to — Regiment deserted twice while he held the rank of Serjeant, and such was the excellence of his moral character, talents, and conduct, that he obtained a commission in the same corps from which he had deserted. The late Paymaster of — Regiment, and a most influential man in the corps, deserted when a private, and was, I believe, punished; but, notwithstanding this delinquency, he was subsequently promoted to the rank of Quartermaster, and finally to that of Paymaster.

"The true way to reform the discipline of the Army," says a contemporary journalist, "is to begin by improving its character. Inadequate rewards engender, and, as a matter of temporary policy, justify harsh punishments; and when we look to the condition of the soldier, his hopelessness of promotion, and the unlimited term for which he is bound to serve, can we wonder if cases of recklessness and insubordination are frequent, and stern punishments essential to the maintenance of discipline? Young men are generally entrapped into the Army under the excitement of drinking, or in consequence of abandoned and dissolute habits. Patriotism, thirst for distinction, all the more generous impulses which should actuate the soldier, are mocking words in the mouth of a British recruiting Serjeant; and, accordingly, the latter is too often compelled only to seek for success among the ignorant, the degraded, and the reckless. In an army thus constituted the necessity inevitably arises for stringent regulations, and the establishment of a rule of terror. Strict discipline is the first requisite an

main source of strength in a military force, and if higher motives are shut out from the soldier, it must be attained through his fears, even at some cost to humanity. While, therefore, in deference to military authorities, who, with a few exceptions, concur in upholding the practice, we would not argue for the immediate abolition of flogging, we yet hold that the necessity which exists for it affords indubitable proof that our Army is placed upon a false basis, and that the soldier is cruelly wronged by being attached to the Service by force and terror, rather than interest and ambition. The State first deprives him of the ordinary motive to good conduct, and then declares, and probably with truth, that corporal punishment is necessary to insure obedience!"

When the delinquencies on a march are numerous, flogging is a very inconvenient punishment, and, in consequence of the unsuitableness of the infliction, offenders are apt to escape with impunity.

Sir Charles Napier, in his Treatise on Military Law, which was published in 1837, has fully examined the subject of flogging; and as his military experience has been not only long but greatly varied, his sentiments and conclusions deserve the highest consideration; more especially as he is not one of those alleged "clamorous civilians" "who under the cloak of philanthropy, but in reality to court popularity, have the folly and impertinence to discuss a subject of which they cannot possibly have the least knowledge." Sir Charles enumerates eight specific objections which he has to the punishment of flogging. They are as follow:—

"My objections to flogging," says he, "are,—
"First.—That it is torture."

The word *torture* is probably here used in the same sense as inhumanity, more pain being inflicted than is necessary.

"All torture," says Sir Charles, "is objectionable, and therefore should be avoided, when to avoid it is possible; it savours too strongly of vengeance, which is not the object of law. Torture is worse than death to many who suffer it; to some it is both agonizing and fatal; yet no crime can demand from mortal judges a greater punishment than death; so that he whose crime at most only merits a moderate share of pain, may suffer a greater punishment than is established for the monster whose fell deeds seem to merit death in this world, and to court damnation in the next."

"In fact, when a judge condemns a culprit to the torture, he may be said to put so many sentences into a bag, and draw out one by chance; for when he orders the application of torture, he knows not what he inflicts."

"Secondly.—That it is torture of a very unequal infliction."

Officers who have seen much flogging know well that drummers frequently appear to exercise some discretion, and in all probability do so, in regard to the severity of corporal infliction. They commonly flog a thief, or any man who has what is called disgraced the corps, with excessive severity.

"Drummers," says General Napier, "can so flog a man, that he could receive a thousand lashes, and it is probable they could kill a strong man with five hundred."

"Thirdly,—Because it is an unequal punishment; some men being able to bear a much larger infliction than others."

In practice, men who were sentenced to receive what was at the time considered a very moderate punishment, such as three hundred lashes,

frequently suffered a much heavier infliction than a man who was sentenced to receive eight hundred or one thousand lashes. The man who was awarded three hundred lashes might be able to receive the whole of his sentence; while the man who was sentenced to receive eight hundred might not be able to receive twenty-five lashes. This circumstance, I believe, accounts for the great difference of the amount of punishment inflicted for the same class of crimes, as appears by the Return of Corporal Punishments inflicted in the Colonies and Possessions of Great Britain, prepared in pursuance of an Order of the House of Commons, dated 22nd April, 1839. (*Vide* Appendix, No. II.) For example, under the class "disobedience," the greatest number of lashes inflicted upon one individual was five hundred, while the lowest number was fifteen; and under the head "violence to superiors and insubordination," the greatest number of lashes inflicted was eight hundred, while the lowest was twenty-five. The sentences awarded might be nearly equal in amount, being graduated according to a scale of punishments in relation to the crimes; but the capacity of individuals to endure the infliction is beyond the power of a court to foresee or to estimate.

"Fourthly,—Because the severity of the infliction is in some measure in the option, or according to the strength of the drummers employed, and also according to the temper of the Commanding Officer and Drum-Major."

"Fifthly,—Because the state of a man's health, and the ability of a man to endure severe corporal infliction, cannot be always correctly ascertained."

This is a most important objection, and one which has a particular reference to the duty of a Medical Officer. A Medical Officer of the greatest experience is unable to predict with certainty the effect of a severe, or even a moderate flogging, upon the future health of a man,—either upon his general constitution, or locally upon his back. He may be attacked with fever, which may terminate in death; and inflammation and sloughing of the back may supervene, and be followed with a similar result. It is not to be expected that young or inexperienced Medical Officers should be acquainted with their duties on a punishment parade,—more especially as no official instructions have been promulgated on that head. A Medical Officer ought to be informed in regard to what is required of him in the performance of this duty, and also how he should execute it. Sir Charles Napier informs us that he knew of two soldiers who were flogged at Corfu, by the sentence of a court-martial in 1819; both died, and neither had been punished with unusual severity. When an inquiry was made by Sir Thomas Maitland into the cause of the death of the two soldiers above mentioned, it was alleged that both of them had the "*malaria*" fever before they were punished, although neither they themselves nor the Medical Officer who attended the punishment were aware of the circumstance. This allegation, or conjecture,—for it was only a conjecture,—served the purpose of shielding the Commanding Officer and Surgeon from the consequences of any imputation of blame, in regard to the manner of carrying the sentence into effect. It is sufficiently well known that fever is frequently excited by injuries, such as the fracture of a bone, a surgical operation, and it may also be occasioned by the contusions occasioned by a cat-of-nine-tails. There is much truth in what Sir Charles Napier says on the subject. "As to pulse," says he, "it forms no cri-

terion by which a Medical Officer may ascertain the state of a man's health; for what man's pulse would be regular when going to suffer, or when actually suffering torture?" I believe every possible care is in general now taken by Medical Officers, to ascertain the state of a man's health previous to his being flogged; but medical men cannot do what is impossible,—and it is impossible to say what may be the effect of corporal infliction with more certainty than to predict the consequence of a surgical operation. The most experienced Surgeons can only guess; the result is, that when a man is tied up to be flogged, his life depends upon a guess, and that guess, perhaps, made by a young and inexperienced officer.

“Sixthly,—Because the danger to life from flogging is greater in a tropical than a temperate climate.”

The ratio of sickness in a tropical climate is nearly three times that of troops in a temperate climate; while the mean ratio of mortality in the former climate may be estimated at from four to six times that of the latter. Every cause of ill health, including the contusion excited by flogging, is of more importance in a warm than in a cold climate. Fever is more easily excited between the tropics than where the temperature is low.

“The fact is,” says Sir Charles Napier “that the Medical Officers are placed in a most unfair and perilous position. The danger to which the life of the culprit and the *life of the Surgeon* are exposed, appears to be a powerful objection to this punishment. As to making the Surgeon responsible, it is unjust to do so: the law places a man *by force* in a certain position, and orders him to act according to the best of his judgment; he does so, and there is an end of the matter, whatever may be the consequences, unless it can be shown that he was drunk or mad!”

“Seventhly,—Because ‘the punishment of flogging is not only an unequal infliction for the above reasons, namely, that for similar offences it is applied by unequal force, in unequal quantities, and by unequal wills, to unequal powers of endurance,—but also because the first punishment is the most cruel.’”

“Eighthly,—Because the lash brands the sufferer with indelible marks.”

An indelible mark of misconduct is a fearful punishment. In Ceylon female delinquents were at one time punished by cutting the hair close to the head; but this mutilation, or perennial mark of disgrace, was found to be so extremely severe a chastisement, that it was eventually abolished. Cutting the hair was not only a greater, but an infinitely more lasting infamy, than to whip a delinquent at the cart's tail, or even to burn her on the hand, the delinquent having to conceal herself nearly for life from the eye of the public. A similar opinion prevails in the East with respect to shaving the beard. (2 Sam. x. 4.) The spirit of a good man must be in a great measure broken when he receives the brand of disgrace. As a sample of the evil consequences of thus branding a soldier, Sir Charles Napier supposes a case. A young man enlists, and commits some crime of a military, but not of a moral nature. He is tried, sentenced, and flogged. He is transferred to another corps, or, perhaps, none but himself are left in the corps in which he served when he was flogged; some circumstance, such as sickness, bathing, or the like, makes him strip,—the traces of punishment are seen, and there are none to vouch for the fact, that no vile

deed, such as robbery, has been the cause of his punishment. He becomes a *suspected character*, and consequently is, in proportion to his high sense of honour, miserable. Unable to endure his feelings, if not a man of extraordinary firmness, he grows desperate and deserts,—is caught, and either again flogged or shot, and there is an end of him! But we may suppose another case. We may suppose that the man has been idle and drunken, though not really bad, but the reverse—a fine character—and that a flogging has made him a better man, which is sometimes, but not very often the case;—his crime has been punished—reform has followed, and all the superiority of his nature shines forth;—yet he of whose reformed conduct God and man approve, and who becomes the admiration of his companions, is *branded like a felon*.

“But,” says Sir Charles, “is flogging effectual? That it is effectual when inflicted in a degree suited to the crime, there is in my mind no doubt; but I am equally persuaded, that when inflicted in the outrageous degree that it has hitherto been inflicted, it does harm; and I think it good that I should endeavour to prove this to the public, because many able professional men have maintained, and do yet maintain, that the diminution of the number of lashes is an evil. Professional men frequently grow so accustomed to the evils of their profession, that they lose that impartiality of judgment, in such matters, which is necessary to see the extent of these evils, and, what is worse, these men grow to believe such evils necessary, and even that they are no evils at all.”

The most remarkable instance of the perversion of judgment in human suffering which I have met with, is the following:—When the Protestant Bishops had resolved to put Joan Boucher, (the Anabaptist of Kent, who suffered in the reign of Edward VI.) to death, a friend of Mr. John Rogers came to him, earnestly entreating him to use his interest with the Archbishop, that the poor woman’s life might be spared, and other means used to prevent the spreading of her opinions, urging too, that though while she lived she infected few with her opinions, yet she might bring many to think well of them by suffering for them; he therefore pleaded, that it was much better she should be kept in some prison, where she had no opportunity of propagating her notions among weak people, and thus she would be precluded from injuring others, while she might live to change her mind. Rogers, on the other hand, pleaded that she ought to be put to death. “Well, then,” said his friend, “if you are resolved to put an end to both her life and her opinions, choose some other kind of death (than burning) more consonant to the gentleness and mercy prescribed in the Gospel, there being no need that such tormenting deaths should be resorted to in imitation of the Papists.” Rogers answered, that “*burning alive was not a cruel death, but easy enough!*” On hearing these words, which expressed so little regard to the poor creature’s sufferings, his friend replied, with great vehemence, at the same time striking Rogers’ hand, which before he had held fast, “Well, perhaps it may so happen that you yourselves will one day have your hands full of *this mild burning.*” The above story derives a singular interest from the subsequent fate of Rogers: he was the first of the long array of the martyrs of the persecution which took place under Mary, and was led to the stake at Smithfield, on the 4th February, 1555.—(Pictorial History of England, vol. ii. 735.)

“Had not the diminution of flogging,” says Sir Charles, “been insisted upon by the public—had the question rested wholly with military men, I do not believe that the powers of Courts-martial would have been restricted as they now are.”

Human sufferings are never beheld for the first time except with aversion, terror, and disgust; but these feelings become soon blunted, by frequent repetition; and, for good and wise purposes, no doubt, certain feelings are implanted in our nature, which render many individuals insuperably averse to change; improvements are consequently resisted, and professional practices and abuses defended; innovation is dreaded and denounced; persons who venture to suggest amelioration of extremely severe, and consequently inefficacious punishments, must expect to be branded and stigmatized as “destructives” and “disorganizers,” or sneered at as “liberals” and “philanthropists.” The alleged motives of persons who have advocated a mitigation of corporal punishment in the Army, have been “traced to an active and persevering desire to innovate upon the customs of the country, and to establish a corrupt popularity with the unthinking part of the community, if not to sap the discipline of the Army, and thereby to remove the last bar to the introduction of democracy and its consequences—anarchy and devastation.” Sentiments of this kind defeat their object, for no thinking person will believe that “anarchy and devastation” are averted in this country by the infliction of severe and of frequent punishments in the Army. A punishment, to be effectual, must somewhat humble the delinquent, and give him some degree of pain; but if the law effect these objects with a moderate penalty, and without ignominy, reformation may be expected with much more confidence than when the punishment has been severe and degrading.

I am aware that many military officers do not consider the punishment of flogging a degrading infliction, if applied in the case of a military offence, leaving it to be inferred, that when a man is punished for an immoral delinquency, he is consequently disgraced. Whipping is an ignominious punishment in civil life; and I have no reason to believe that British soldiers are so destitute of every feeling of shame, so bereft of the feelings of men, as to regard the infamous part of corporal infliction with indifference.

A competent judge of the general feelings of soldiers—an officer who rose from the ranks—asserts, that notwithstanding all that has been advanced by persons of a different opinion, he thinks that the illiterate and ignorant are very sensitive of oppression and wrong:—

“I hesitate not to say,” adds he, “more susceptible than those who are better informed. The capacities of the former will not permit them to view the punishment under which they suffer, in connection with the cause by which it is produced. They are only sensible of the cruelty of the effect, and thus irritated by the infliction of a supposed wrong, reason is subdued by the impulse of the moment, and they consider themselves deeply injured when they receive the punishment of offence. I would ask,” says he, “those who argue that the minds of common soldiers are barren and uncultivated, and hence, more callous than those of the more enlightened, I would ask the advocates for corporal punishment, a few simple questions. Have they served in the ranks, and mixed and lived in social friendship with the private soldiers of our country? Have they ever sat at the bedside of a flogged man, and witnessed the agony of his heart, and the distraction of his

mind? Have they ever heard the unintimidated and unbiassed opinions of the soldiers in their barrack-rooms, respecting the ignominious lash? If not, they are but half competent judges on this great question. If this great promoter of discipline be so requisite to practice, and so efficient in checking the most turbulent soldiers, how is it that some men who have once been flogged, fall under the lash almost every week afterwards?"

The sense of shame is the feeling which should be worked upon, if we expect to prevent bad conduct; and should punishment not excite some degree of shame and humiliation, the infliction, in as far as the delinquent is concerned, had as well be omitted. But the care that is required to be taken, that the reproach of being flogged shall not be thrown in the face of one soldier by another, implies that the feelings may be painfully excited by this means, and that the sense of disgrace arising from the corporal infliction is easily excited, in however latent a state that sentiment may seem to be. Soldiers are, in fact, commonly very tenacious of character, and their honourable feelings in this respect should be carefully cherished. An old soldier is proud of being able to say, "I have served in the Army for so many years, without being tried by a Court-martial, or even confined in a guard-room." This expression proves that flogging would have been considered a great degradation, the traces of which a man has no power to obliterate. The Germans, it is said, have a horror of being tied up to receive punishment. "In a German regiment in our service," Sir Robert Wilson informs us, "where punishment was very rare, two men destroyed themselves to avoid this increased disgrace."

There is one circumstance which may be noticed on this subject—namely, that the ignominy which attends the punishment of flogging, is greatly modified by the numbers who undergo the infliction. Corporal punishment, if very frequently exercised, may come to be considered as one of the common evils to which military life is incident; and instead of being looked upon as a disgrace, it may come to be regarded as a simple misfortune limited to the inconvenience of enduring the pain inflicted.

It is, in my opinion, a libel upon the Army, to say that soldiers "are not of that thoughtful reflecting description of men, to think of punishment, beyond the inconvenience occasioned by it." Even when punishments of this kind were frequent, and when the disgrace of the infliction was less than it is now, when punishments are rare, men who had undergone the discipline of the lash carefully concealed the circumstance.

"Thank God," said an old soldier to me, one day, "I served in the — Regiment for about fourteen years, and went through the Peninsular War, and was discharged without having been *disgraced* by being confined in a black-hole, except once; and that punishment," said he, "was inflicted in consequence of my wife having slept rather later than usual, by which means the barrack-room was not 'in apple-pie order,' when it was inspected by the Quartermaster." How much more would the veteran have felt the indignity had he been flogged, instead of being confined, punished for an offence which the greatest Martinet in the Service would not designate as disgraceful. Commissioned Officers, in general, know little or nothing in regard to the feelings of soldiers. Without intimate social intercourse with the men, it is difficult to arrive at any specific conclusion in regard to their opinions respecting punish-

ments. We are certainly not warranted in presuming that soldiers are insensible to shame and moral degradation.

It was a principle with Gustavus Adolphus, that the common soldier should rarely, if ever, receive corporal punishment, being fully persuaded that such a disgrace cast a damp afterwards upon his vivacity, and did not well agree with the notions which a high spirit ought to entertain of honour. It was his idea, that a man of bravery would sooner forgive a sentence of death inflicted upon him by a Court-martial, than incur the scandal of corporal punishment. His general rule, therefore, was to degrade or banish.

Kirckhoff, a medical officer of rank in the army of the King of the Netherlands, entertains a similar opinion.—“ Il ne faut point,” says he, “ soumettre le soldat fautif à des punitions avilissantes. A quoi bon les coups de bâton qu’on donne trop légèrement au soldat, si ce n’est que pour l’abrutir et pour déshonorer le noble état du défenseur de la patrie ? Ce genre punition déshonorait ne devrait être réservé qu’aux lâches et aux traîtres ; et dès qu’une fois un militaire l’aurait subi, il faudrait l’exclure à jamais d’un ordre auquel les destins d’une nation sont confiés, d’un ordre qui a pour base le courage, l’honneur, et toutes les vertus généreuses.”

The soldiers of the French army submitted very unwillingly to corporal infliction, to which they were liable before the Revolution. On one occasion, “ Un officier ayant entrepris de haranguer les grenadiers révoltés parcequ’on vouloit frapper un de leurs camarades, et s’étant efforcé de leur persuader que ce châtiment n’avoit rien qui ne fût militaire, un d’eux s’étoit écrié :—‘ Mon capitaine, je ne connois de militaire dans le sabre que la pointe et le tranchant.’ Le maréchal, qu’on avoit excité à punir ce propos, avoit répondu, ‘ Gardez-vous bien de réprimer ce mouvement !—Perisse, s’il le faut, l’ordonnance des coups de plat de sabre, mais conservez l’honneur du soldat français.’ ”

Frequent reference is made by the officers who gave evidence before the Commissioners for inquiring into Military Punishments, in regard to the difficulty of getting rid of an alleged “ hardened and unmanageable description of men,” to which the corporal punishments in every regiment are said to be much confined, and the Royal Commissioners suggest, in their Report, that if a measure were adopted by which these “ men of confirmed bad habits” might be discharged, they think it would “ greatly tend to diminish the frequency of corporal punishment.” An opinion prevails very generally in the Army that the lashes inflicted by corporal punishment are distributed among a small number of men frequently characterised as being *incorrigible*. But this conclusion does not appear to be well established, if we infer that incorrigibility in soldiers implies that they have been flogged repeatedly without improvement—the ratio of men belonging to troops of the Line, who are usually punished more than once, being comparatively small. The subjoined Table, compiled from Parliamentary papers, will show the absolute and relative number of men who were punished more than once in different arms of the military force of this country for certain specific periods.

Arms of the Military Force.	Period (years inclusive).	No. Punished.	Punished more than once.	Punished more than once per cent. of the whole number punished.
Troops of the Line	1831—1835	1440	213	14
Artillery (Home Service).....	1831—1837	141	2	1·3
Marines.....	1831—1835	415	83	20
Artillery (Home and Abroad)	1836—1838	112	5	4·4
Marines.....	1836—1837	86	10	11
Regiments and Depôts at home ..	1836—1837	360	15	4·1

Individuals who may be called unimproveable are not limited to any grade of the Service. "In all ranks," says Sir Charles Napier, "we occasionally find men appointed to fill situations for which they are totally unfit—men whom nature never intended to be soldiers, much less to command soldiers." A Commanding Officer may be a well-meaning man, but he may also be "merely a zealous fool, hot after unimportant minutiae, on the exact execution of which he considers the fate of the nation to depend, and in the enforcement of which he most indiscreetly uses his *discretionary powers* with a vengeance." Commanding Officers of this class are ever and anon meeting with individuals of "confirmed bad habits," and by injudicious measures, frequently excite the very delinquencies, the incorrigibility, which they wish to prevent or to remedy. Officers who enforce obedience without teaching it, or who adopt measures of coercion without having endeavoured to inspire self-restraint or self-respect, often fail in establishing or maintaining correct discipline, notwithstanding the severe manner with which they may wield the terrors of the Articles of War and the usages of the Army. Soldiers, however rude they may be in manners, and however deficient in education, if treated as men possessing some degree of free-agency, will generally amply repay the confidence placed in them.

A HISTORICAL SKETCH OF MILITARY PUNISHMENTS, IN AS FAR
AS REGARDS NON-COMMISSIONED OFFICERS AND
PRIVATE SOLDIERS.

X.

THE punishment of flogging by the sentence of a civil court was abolished in India about the year 1831 or 1832, and after this punishment had been put an end to by the Civil Penal Code it was considered by the Governor-General that this degradation could no longer be inflicted upon the High Caste Sepoy of the Bengal army. Under this impression the Governor-General recommended that committees consisting of the Adjutant and Quartermaster-General, with three other members, should be directed to assemble at each Presidency to consider the expediency of altogether abolishing corporal punishment in the native armies of the three Presidencies. Two of the committees assembled in April, 1834, and one in June of the same year. The majority of each committee were unfavourable to the abolition of corporal punishment.

“With them all,” says Lord Bentinck, “corporal punishment is the *sine qua non*, without which the discipline of the Army cannot be maintained. An insuperable terror appears to reign over the imaginations of all, and, like the native superstition, that sees in some charm or amulet the only protection against all evils that can afflict the body or haunt the mind, so corporal punishment is venerated as the sole security against every military distemper, and as the sole guarantee for the efficiency and good regulation of the Army. I denounce this as prejudice. It is opposed to reason—it is injurious to those feelings of the most importance for us to cultivate among our native soldiery,—satisfaction with their condition and allegiance to the State.”

The infliction of corporal punishment was much more frequent in the Presidencies of Bombay and Madras than in Bengal, as will appear by the following abstract of the Returns of Punishments in the Company's Army.

Statement of the quantum of Corporal Punishment awarded and inflicted on the Sepoys of the Native Armies of Bengal, Madras, and Bombay, for the years 1829, 1830, 1831, 1832, and 1833 :—

1833.		BENGAL.	MADRAS.	BOMBAY.
Average lashes inflicted per regiment	Cavalry	209½	1852	7657
	Infantry	516	3588	5415

The contrast between the three Presidencies in this statement will appear quite astonishing. For every lash inflicted in a Cavalry regiment in Bengal 9 were inflicted in Madras and 36 in Bombay; and for every lash inflicted in an Infantry corps in Bengal 6½ were inflicted in Madras and 10 in Bombay.

“Upon an examination of the returns from Madras and Bombay, from the latter most especially,” says Lord William Bentinck, “it may be recollected that, as was the practice in the British Army in 1793, infliction by the cat-o'-nine-tails was the ordinary and general punishment for every offence, great and small, only varied as to the amount according to the different degrees of culpability, but always the lash; except in regard to the most trivial offences, corporal punishment was the echo in each and every one of the Articles of War. The principle of checking crime by

measures of extreme severity, both in the Army and out of it, had since been strongly condemned by public opinion as being no less impolitic than cruel, and has gradually given way to milder penalties. Experience has proved the soundness of this doctrine, and corporal punishment is now maintained rather for its terrors, and only applied in cases of the deepest guilt."

Upon a full conviction of the expediency, safety, and true policy of the measure Lord William Bentinck recommended the Council to immediately abolish the corporal punishment in the native armies of India; and as his Excellency's proposition met with the unanimous approval of the Council, the following order was issued:—

“Fort William, February 24, 1835.

“The Governor-General of India in Council is pleased to direct that the practice of punishing soldiers of the Native Army by the cat-o'-nine-tails, or rattan, be discontinued at all the Presidencies; and that it shall be competent to any regimental, detachment, or brigade court-martial to sentence a soldier of the Native Army to dismissal from the Service for any offence for which such soldier might now be punished by flogging, provided such sentence of dismissal shall not be carried into effect, unless confirmed by the General or other Officer commanding the division.”

I am not aware that any inconvenience has resulted to the Service from the introduction of this highly important measure; and as the abolition of corporal punishment from the Civil Penal Code gave universal satisfaction to the native population, the abolition of it in the Army must have been very gratifying to the native armies in all the three Presidencies.

In the Appendix to the Report of Commissioners on Military Punishments there is a return showing the establishment of the British Army in each year from 1825 to 1834 inclusive—the number of persons tried by courts-martial in each of the said years—the number sentenced to various punishments other than corporal punishments—and the number on whom corporal punishment was inflicted, dated Adjutant-General's Office, 18th February, 1836.

From the above return the following statement has been compiled:—

Years.	Establishment.	Number tried by Court-martial.	Proportion of men tried to the Establishment.	Number sentenced to punishments other than corporal punishments.	Number on whom corporal punishment was inflicted.	Ratio of corporal punishment per 1000.	Proportion of men who received corporal punishment to the Establishment.
1825	98948	4708	1 in 21	2280	1737	17	1 in 59
1826	111058	5524	1 in 20	2653	2242	20	1 in 50
1827	111107	5340	1 in 21	2541	2291	20	1 in 50
1828	110918	5314	1 in 21	2779	2143	19	1 in 52
1829	103749	4789	1 in 22	2705	1748	17	1 in 59
1830	103374	5946	1 in 17	3847	1754	17	1 in 59
1831	103413	7438	1 in 14	5549	1889	14	1 in 71
1832	103572	8780	1 in 12	7215	1283	12	1 in 83
1833	103527	9628	1 in 11	8320	1007	9	1 in 111
1834	103063	10212	1 in 10	8946	963	9	1 in 111
Total	1052729	67672	1 in 17	46835	16957	15.4	1 in 70.5

This statement shows that the mean number of soldiers who were annually accused and tried during the period comprehended in the return was 1 in 17; the lowest ratio being 1 in 22, and the highest 1 in 10. The ratio of corporal punishments, as will appear by the statement, has decreased about one-half. It is, however, obvious that while the infliction of flogging has been reduced, the number of alleged military delinquencies has been increased. How far the latter may be a consequence of the former I am unable to decide. Not only are the number of corporal inflictions reduced from 20 per 1000 per annum to 9 in ten years, but if the limited sentences be taken into account, perhaps the number of lashes inflicted in 1834 did not amount to one-fourth of the number inflicted in 1825. Sir Henry Hardinge stated in evidence before the Commissioners on Military Punishments, in 1836, "that, including men who have been serving for upwards of twenty years, the average of punished men throughout the Army does not exceed thirty-six men at one time in regiments, of seven hundred, or three men and a half a company," being about five per cent. Consequently, the unpunished men are twenty times more numerous than the flogged men. This is a highly gratifying account of the result of popular feeling being directed to meliorate an alleged grievance by means of public discussion. It indicates a great improvement in the condition of soldiers, without injury to the discipline and efficiency of the Army. How different is the present state of affairs in this respect from the time when, as is confidently alleged, the punished or degraded class of the Army exceeded in number the unpunished!

As has already been observed, the above table is a highly gratifying evidence of the progressive melioration of the administration of military law and military usages; while it is asserted, by competent authority, that the Army never was in a more efficient condition. The following statement is, perhaps, still more encouraging in the above respect. I may, however, premise that the number of men admitted into hospital, in consequence of corporal punishment, may not comprehend the entire number of men punished, on this account, that a man is not admitted into hospital unless the punishment he receives disables him for duty.

The following statement shows that the ratio of punishments in eleven foreign stations has been gradually decreasing during the whole period comprehended in the return. The ratio of punishments in the Bermudas, it will appear, is unusually high,—a circumstance which requires to be noticed. It may be thus easily accounted for. During the years 1822, 1823, and part of 1821 and 1824, the garrison was principally composed of a wing of the second battalion of the 60th Regt., then a penal corps, to which delinquents from other corps were transferred. Of 353 punishments, which were inflicted in the above mentioned period, all, except two, were men belonging to the 60th Regt., though the mean strength did not exceed 260. Vice is much more infectious than virtue; and to introduce an erring youth into a contaminated moral atmosphere, such as the 60th Regt., has a certain effect of converting him into a "man of confirmed bad habits." Under these circumstances, it may be asked what influence could punishment have in reforming a man—an important object in all secondary punishments—who was doomed to live and associate with the disgraced delinquents of a penal corps? Or would corporal infliction have any effect in deterring

others from desertion, insubordination, or similar military offences? I am disposed to say—none. To send an alleged incorrigible soldier to a penal corps for the purpose of being reformed, is not less absurd than to transfer an invalid to the coast of Africa for the benefit of his health.

Statement showing the Annual Number of Men admitted into Hospital in consequence of Corporal Punishment (flogging) per 1000 of the strength of the Troops employed in the following Military Stations:—

Years.	Windward and Leeward Island Command.	Jamaica.	Gibraltar.	Malta.	Ionian Islands.	Bermudas.	Canada.	Nova Scotia and New Brunswick.	Ceylon.	Cape of G. Hope.	Mauritius.
1817	135	193	..	65	56	64	80	65	52	..	..
1818	154	198	14	100	61	51	52	46	41	76	43
1819	91	105	15	126	107	46	44	81	47	42	33
1820	56	110	14	137	75	36	54	71	57	47	22
1821	63	103	18	59	96	160	54	51	52	73	33
1822	76	73	9	42	89	409	53	34	59	43	36
1823	78	105	10	31	36	358	32	18	47	33	21
1824	84	51	18	35	31	288	26	17	49	56	20
1825	37	27	20	33	29	41	20	19	75	49	21
1826	26	29	20	22	21	80	18	11	73	36	19
1827	24	40	25	14	17	55	20	16	48	19	20
1828	37	33	19	28	21	20	29	22	44	24	35
1829	29	39	25	17	22	10	23	24	32	28	25
1830	38	37	21	19	22	18	16	23	22	19	44
1831	31	18	16	29	17	29	14	8	25	9	51
1832	26	26	10	10	15	31	8	17	20	15	43
1833	14	25	7	18	12	35	8	17	20	13	46
1834	14	26	8	18	11	18	4	14	23	6	29
1835	16	27	7	25	11	5	5	13	19	22	14
1836	8	28	7	18	8	5	3	12	19	16	16
Average	50	64	16	40	37	59	32	31	41	35	31

From a discussion which took place in the House of Commons, March, 1842, it appears that out of 70,000 prisoners, who were imprisoned in the several gaols and houses of correction in England and Wales, in 1840, 1207 were flogged in prison, namely, juvenile offenders, 789; adults punished in pursuance of sentence of law courts, 348; punished for breach of prison discipline, 70. How far this statement may be below or above the usual ratio of punishments in gaols and houses of correction, I have no means of determining.

For the repression of crime we rely too much on coercion or forcible prevention; but it is not enough to punish delinquents, or to keep men from doing mischief,—means should be taken to encourage them to do good.

The opinion, that corporal punishment might be discontinued in the British Army, originated, it is alleged, in consequence of the partial or total disuse of such punishments, first in the army of France, and afterwards in the armies of the other powers. The abolition of corporal punishment in the French army followed the establishment of the conscription; and as the other countries of Europe have to a great degree followed the example of France in the mode of raising their armies by ballot or conscription, they have also discontinued, or greatly diminished,

the corporal infliction of soldiers. The well-educated and well-disposed among the conscripts became not only an example, but a check and controul over the conduct of their comrades not so well-inclined, and the whole machine is comparatively easily conducted.

Before the Revolution, the secondary punishments in the French army were of two kinds:—1st. *The Picket*, which was used in cavalry corps. 2nd. *The Gauntlope*, a punishment which was chiefly in use in the infantry. The rods or switches employed by the men in this infliction, were generally osier or willow twigs.

The modern punishments in the French army will appear from the following account of the administration of military law in France during the years 1838 and 1839, compiled from the *Moniteur*. These statements are adduced simply as interesting facts, not for the purpose of contrasting the punishments in the French army with the English, and advocating the superiority of either system.

1838.—Mean strength of the French army, 314,919. Prosecutions, 4638 (being 1 in 68); and of these 3169, or 1 to 99 of the strength were convicted and sentenced, viz.:—

69	to death
3	to transportation
972	to hard labour
109	to labour and imprisonment
2007	to imprisonment
9	to dismissal from the service.

3169

Of the 69 capitally convicted, 10 were executed; 1 in France for murder, and the 9 others in Africa: 3 of the latter were Arabs, serving in the French army.

Of the 4638 individuals brought to trial, 2468 could read and write, and 2170 were completely illiterate.

The numbers of the delinquents in the respective classes and branches of the French army, were as follows:—

	Strength.	Tried.	Convicted.
STAFF AND MILITARY SUPERINTENDANCE:—			
Invalids	7000	1	..
Gendarmerie, &c.	16,974	13	6
Infantry, 88 Regiments	210,961	2464	1849
Cavalry, 53 Regiments	37,769	392	263
Artillery, &c.	23,915	263	187
Engineers	5985	40	26
Waggon Train.....	4100	39	22
Veterans	51,442	50	3
Military Schools .....	..	2	..
OFFICERS, MILITARY ADMINISTRATION:—			
Recruiting Depôts .....	..	1107	579
Companies of Discipline.....	1600	103	72
Officers of the Army	17,165	19	7
Sub-Officers	20,312	70	36
Corporals.....	25,130	128	73
Soldiers	252,312	4386	3042

1839.—Mean strength of the army, 317,578 men, 4367 of whom were brought to trial, or 1 out of 73. 28 were tried by the civil tribunal, 1310 were acquitted, and 3029 condemned; the proportion of the latter being 1 to 105 of the effective force of the army.

These condemnations were as follows:—

To death	{ French army	..	..	98
	{ Natives of Algeria	..	..	14
				<hr/> 112
To imprisonment	..	..	..	2028
To hard labour or imprisonment in irons	..	..	..	243
To the <i>boulet</i> (log)	..	..	..	220
To public works	..	..	..	419
To be reduced to the ranks	..	..	..	3
To fine	..	..	..	4
				<hr/> 3029

Of the 112 capitally convicted, only 5 were executed, all belonged to the army in Algeria—namely, 1 Frenchman for murder, and 4 natives of the Regency for the same crime.

CRIMES.

	Tried.	Convicted.
Desertion	606	407
Recruits who failed to join their corps	881	471
Illegal absence during three months	4	3
Treason, espionage, and seduction	12	7
Insubordination	379	252
Robbery—breach of trust	4	4
Robbery of public funds	33	15
Robbing their hosts	10	5
Robbing public property, or from Commander	443	317
Robbing articles of clothing	244	209
Robbing similar articles of less value	905	791
Incendiarism	2	..
Extorting provisions by violence	14	8
Extorting provisions without threat or violence	58	44
Forgery	31	17
Desertion from military workhouses	41	35
Other military offences	41	17
Coining	6	5
Forcibly breaking prison	12	12
Damaging public monuments	29	22
Murder	17	11
Cutting and maiming	23	5
Inflicting wounds voluntarily	83	41
Violation of public morals	7	5
Rape	6	3
False evidence	6	1
Robbery—petty larceny—swindling	312	114
Abuse of confidence	52	42
Damaging private property	3	3
Other minor offences	98	62

Number of delinquents in certain classes of the Army:—

	Strength.	Accused.	Condemned.	Accused.	Condemned.
Volunteers.....	28,432	992	737	1 in 29	1 in 39
Conscripts.....	145,379	1615	1025	1 in 90	1 in 142
Substitutes.....	70,405	1638	1189	1 in 42	1 in 59
Re-engaged.....	13,635	32	24	1 in 426	1 in 568
Commissioned Officers	17,415	12	4		

By the foregoing return of the year 1839 it appears that about two-fifths of the French army are volunteers or substitutes, whose mode of enlistment in many respects resembles the form of engagement in the British Army. Delinquencies prevail to a much greater extent among the volunteers than among the three other classes of recruits, namely, "conscripts," "substitutes," and "re-engaged," one being annually accused for every twenty-nine, and one convicted for every thirty-nine. In the English Army the mean proportion of men tried annually by court-martial, during a period of ten years, ending 1834, is one in seventeen, being rather more than double the proportion of offences among volunteers in the French army. The English returns do not specify the difference between the accused and the convicted. To what cause may we attribute the superior degree of subordination,—the smaller number of delinquencies,—among volunteers in the French army, compared with the number of offences in the British Army? This is an important question. Are we to conclude that the French volunteers are a better, a more moral class of men than the recruits raised in the United Kingdom? I should think not. One circumstance peculiar to the French system may, and I believe has, much effect in contributing to keeping the ratio of delinquencies low, namely, the limited duration of the engagement of French volunteers,—seven years. It may be observed that desertion, which is the prevailing delinquency in the British Army, rarely occurs in the French army. When French soldiers dislike the army they may anticipate a period of liberation, which British soldiers cannot; they having engaged to serve for life. As has already been stated, corporal punishment is not permitted in the French army, "not even striking a soldier with a stick." (*Evidence on Military Punishments, Question 152.*)

It is gratifying to observe that the sentence of death is not frequently carried into effect in the French army, and in general only for the crime of murder. During the years 1838 and 1839 the mean annual number of convictions in the French army is about one per cent. (0·97); and it appears, from the mean of the last three years of the return of corporal punishments inflicted in the British Army, namely, 1832, 1833, and 1834, that the annual ratio of men flogged is about one per cent. (1·04); the punishments, other than corporal inflictions, for the same period, being about eight per cent. (7·8); consequently, about nine men per 100 are annually punished in the British Army, and one man per 100 in the French army.

A HISTORICAL SKETCH OF MILITARY PUNISHMENTS, IN AS FAR
AS REGARDS NON-COMMISSIONED OFFICERS AND
PRIVATE SOLDIERS.

XI.

THE punishments applicable to non-commissioned officers and soldiers, according to the powers vested in *general*, *district*, and *regimental* courts-martial, are as follow:—

Death, in cases specially prescribed in the Mutiny Act and Articles of War, being about eighteen in number.

Transportation, for life or a term of years, for all offences punishable by death (Mutiny Act, sect. 7). A district court-martial has not the power of passing sentence of death or transportation.

Corporal punishment (flogging). (Mutiny Act, sect. 7).—The Mutiny Act restricts the award of corporal punishment by a general court-martial to 200 lashes; by a district court-martial to 150; and by a regimental court-martial to 100.

Imprisonment.—This punishment may be awarded by a general or district court-martial, limited as to time only by the discretion of the court, with or without hard labour; and it may also sentence a soldier to be kept in *solitary confinement* for any portion or portions of such imprisonment, not exceeding *one month at a time* or *three months* at different times, with intervals of not less than one month between such times in one year; and, as an additional punishment,

Forfeiture of additional pay whilst serving, and *pension on discharge*, for any offence cognizable as an “immorality, misbehaviour, or neglect of duty” (Mutiny Act, sect. 7).

Further, the court may, in the case of desertion, award a second additional punishment, *marking with the letter D* (Mutiny Act, sect. 11). As an accumulated punishment, the court may recommend the offender, he having been convicted of disgraceful conduct, to be discharged with ignominy.

Suspension.—A non-commissioned officer may be suspended for a fixed period from the rank and pay of a non-commissioned officer, and be sentenced to serve as and upon the pay of a private soldier.

When a non-commissioned officer is found guilty of an offence, he must be reduced to the ranks by the sentence of the court previous to the adjudication of any additional punishment.

A regimental court-martial has the power to sentence an offender to—

Corporal punishment, not exceeding 100 lashes; or,

Imprisonment, with or without hard labour, for any period not exceeding 40 days; or,

Solitary confinement, not exceeding 20 days.

And, in addition, to be put under stoppages, not exceeding two-thirds of his daily pay, to make up articles which he may have made away with.

Under certain circumstances, a soldier may, at any time, and by any description of court-martial, be placed under forfeitures (whether of beer or liquor-money, or of pay, or both), not exceeding in the whole the amount of *three-pence per diem*.

The punishments which courts-martial are called on to apply are either *peremptory*, that is, specially enjoined by the Mutiny Act or Articles of War, or they are *discretionary*, that is, the court in its judgment is authorized to award such punishment as it may deem pro-

portionate to the offence. The chief peremptory punishments which apply to non-commissioned officers and soldiers, are forfeiture of beer-money, and forfeiture of all claim to pension on discharge, and of all additional pay whilst serving. Consequently, the punishments to which soldiers are liable are generally arbitrary or discretionary.

For the information of non-professional readers, it may be useful to notice the constitution and functions of general and regimental courts-martial. General courts-martial are assembled under the authority of the King, or of an officer having the chief command within any part of His Majesty's dominions, to whom such an authority may be delegated. A general court-martial generally consists of thirteen officers.

A regimental court-martial, which may consist of five or three officers, is held by the appointment of the Commanding Officer of the regiment. The officers for these courts are taken by rollster of the regiment. An officer is not expected to be named for court-martial duty until he is considered fit for regimental duty,—an accomplishment which is commonly attained in a few weeks or months. A court-martial may be composed of officers all under age. The accused has no right to a *peremptory* challenge of a member of the court; he must assign his cause of challenge, of the relevancy of which the members are the judges.

Trial by court-martial and trial by jury differ in several respects; in the former, a majority determines the verdict, while in the latter the verdict must, in England, be unanimous. According to the common law, much precaution is taken to prevent the influence of private partialities in judicial trial; which military law does not sanction. In tenderness to prisoners, the civil law allows a person who is tried for a felony to *peremptorily* challenge twenty jurors. Military officers have a direct interest in the preservation of discipline, which, considering the ordinary feelings of human nature, may produce a bias in their minds unfavourable to an alleged offender. The members of a court-martial administer a law to which they are, in many respects, not themselves obnoxious, and they award punishments to which they are not liable. Courts-martial are not only arbitrators of the guilt and crime of the accused, but they are also interpreters and framers of the law. "*The members of a court-martial,*" says Tytler, "*are in regard to many offences the sole judges, or rather the legislators, for it is in their breasts to define the crime as well as to award the punishment.*" Markham, who published his *Epistles on War* early in the seventeenth century, thus incidentally expresses his opinion of the administration of justice in the Army:—

"There is," says he, "no constant law in the Army but the judge's conscience for all manner of occasions, main trespasses only excepted, as *treasons, conspiracies, contempt of officers, cowardice, theft,* and the like; all which, by settled rules, are evermore most severely punished, so that to a well-mixed law to have a better-mixed temper, is the best election that can be found out by any noble and well-tryed judgment."

"Times in the wars," continues our author, "make the nature of offences differ, for I have seen a man, who for stealing of a hat or such a trifle, nay, for going but out of his quarter, or breaking out of his array, hath been killed or hanged up immediately; when at another time great felonies have been committed, but yet escaped, horrible offences pardoned, and gross injuries highly praised. This hath been the working of times and the *conscience* of the judge, neither will I stand in this place to argue one or the other's greater goodness."

When a soldier conceives himself to be wronged by his Captain, the complaint is to be submitted to a regimental court-martial, from which court-martial either party may appeal to a general court-martial; but if the appeal shall appear to be vexatious and groundless, the person so appealing is to be punished at the discretion of the court-martial. Appeals are very rarely resorted to in the Army. One example may, however, be stated. A soldier belonging to — Regt., being on guard, and while in the act of falling in in front of the guard-room, stumbled, fell, and broke the stock of his musket. The Captain of his company charged the soldier with the expense of repairing the musket (10s. 6d.), alleging that the stock was broken in consequence of his negligence. The soldier complained to his Commanding Officer, and a regimental court-martial was assembled, which decided the complaint in favour of the Captain. An appeal was made by the soldier to a general court-martial, and it was again decided against him. The men of the company to which the soldier belonged, being convinced that the musket was injured by accident, and not from negligence, refunded to the soldier the full amount charged against him by the Captain. It may be observed that in this case, the general court-martial did not find the appeal vexatious and groundless.

In cases of emergency, a field or drum-head court-martial may be assembled for the trial of delinquents. Sometimes the accusation and sentence are written on a drum-head, whence they are called drum-head courts-martial. The proceedings are not committed to writing, but a circle being formed, the prisoner is arraigned, evidence is heard, the prisoner defends himself, and the members communicate their opinions in a *whisper*, the President reports their sentence to the Commanding Officer, who, if he approves of it, orders it to be carried into *immediate* execution.

Drum-head courts-martial are, I believe, now rarely resorted to, except when troops are unemployed in the field, when summary punishments are considered necessary to preserve strict discipline. Colonel Campbell (*A British Army as it was, &c., page 10,*) gives the following account of the precipitate punishments which were inflicted during the early part of the present century, together with the observations on the subserviency of members of courts-martial in awarding corporal punishment.

“My surprise,” says Colonel C., “often was, how officers who composed courts-martial could, by their sentences, always so readily lend themselves to the views, or perhaps, badly regulated feelings of their commanders; indeed, the trials I have witnessed were sometimes little else than mere matter of form, and they could not well be otherwise, for I have seen a soldier receive *two or three hundred, or even more lashes*, inflicted with great severity, under a sentence awarded by a drum-head court-martial, after an investigation of a few minutes’ duration of the charges brought against him. Such arbitrary proceedings as these were generally abuses of power, with which many men are unfit to be intrusted, and from habit we really thought little of such matters, and the soldiers themselves were only thereby rendered the more callous. I declare, however, that I am at a loss to say which is preferable, the prompt manner of acting in our Navy, where a Captain, when he orders the punishment of a man, does so on his own serious responsibility, or that of a Commanding Officer of a regiment, who can generally act as he pleases, whilst all he does is sanctioned by a court-martial.”

For an account of the minor punishments in the Army, the reader is referred to a circular letter from the Horse Guards, bearing date 24th June, 1830.

I come now to describe the manner of carrying into effect the punishments above enumerated; and, first, of the punishment of death.

Execution of the sentence of Death.—In carrying the sentence of death into effect, which is generally executed by shooting, great ceremony is ordinarily observed. Formerly, it would appear that when two delinquents were to suffer at the same time, an execution party was told off or allotted to each criminal. This conclusion seems probable at any rate from the following account which Hume gives us of the execution of Sir George Lucas and Sir Charles Lisle. During the war between the royalist army and the army of the Parliament in the reign of Charles I., the town of Colchester, which had long held out for the King, was obliged to surrender at discretion. Fairfax, who commanded the besieging army, instantly seized Sir G. Lucas and Sir C. Lisle, two of the gallant defenders of Colchester, and resolved to make them instant sacrifices to military justice. Lucas was first shot, and he himself gave orders to fire with the same alacrity as if he had commanded a platoon of his own soldiers. Lisle instantly ran and kissed the dead body, then cheerfully presented himself to a like fate. Thinking that the soldiers "*destined for his execution*" stood at too great a distance, he called to them to come nearer. One of them replied, "*I'll warrant you, Sir, we'll hit you.*" He replied, smiling, "*Friends, I have been nearer you when you have missed me.*"

The following is the ordinary mode of carrying a military sentence of death into effect in modern times. An execution party, consisting of ten or twelve men, commanded by a Serjeant, is usually ordered from the regiment to which the prisoner belongs, and placed under the orders of the Provost-Marshal. The troops to witness the execution being formed on three sides of a square, the prisoner, escorted by a detachment, is brought on the ground. The Provost-Marshal heads the procession, followed by the band of the prisoner's regiment (drums muffled) playing "*The Dead March in Saul*;" the execution party comes next; then four men, bearing on their shoulders the prisoner's coffin, which he himself follows, being sometimes attended by a Chaplain: the escort bring up the rear. The procession passes down the front of the three faces of the square, facing inwards, brigades or regiments being in line or in column, as their numbers and the nature of the ground may allow. On the procession arriving on the flank of each regiment, the band of that regiment plays "*The Dead March in Saul*," and continues till the procession has cleared its front. On arriving at the open face, the music ceases; the prisoner is placed on the fatal spot marked by his coffin. The charge, sentence, and warrant for execution are read aloud; the Chaplain, having engaged in prayer with the condemned person, retires; the execution party forms at six or eight paces from the prisoner, and receives the word from the Provost-Marshal. If its fire should not prove instantaneously effectual (for a man may be pierced by a number of balls without any of them touching a vital spot), it is the duty of the Provost-Marshal to complete the sentence of the court-martial with his pistol. Sometimes the fire of a file or two is reserved to be prepared for this painful occurrence. Capt. Kincaid (*Adventures in the Rifle Brigade*) relates the circumstance of six men who were

paraded and shot for desertion; two remained standing after the first fire, and the Provost-Marshal was obliged to put an end to their sufferings by placing the muzzle of a piece at each of their heads. It is the duty of the senior medical officer on parade to report to the Commanding Officer that the sentence of the court has been completed. After the execution, the troops usually march past the body in slow time.

Capt. Kincaid, in his "*Random Shots of a Rifleman*," informs us, that on the retreat of the British Army to Corunna, Sir Edward Paget, who commanded the Reserve, caused two plunderers to be tried by a court-martial, and they were sentenced to suffer death. The troops were ordered to parade, and the men were executed under the fire of the enemy.

When a soldier who is condemned to suffer death is pardoned, it is nevertheless usual to go through the preparatory formalities by way of example. During the American War of Independence, a marine was shot at Plymouth, who had received His Majesty's pardon, when it was only intended to frighten him in this manner. The Major who commanded, intended to carry the ceremony to the fifth act, and only to exhibit the royal pardon just before the dropping of the curtain. However, by some oversight or mistake, the catastrophe happened before the *denouement* took place, and the life of the unfortunate victim was sacrificed to the observance of military forms, or rather to the neglect or inattention of those who were appointed to conduct them.

A capital punishment occurs very rarely in the Army, except on active service. I never saw it carried into effect but once. A military execution is truly a terrible sight. Great military show is purposely displayed for the purpose of rendering it as impressive as possible to the troops who are to witness it; but how far this terrible example tends to prevent crime, is a difficult problem to solve.

Does the public execution of a sentence of death upon a soldier, act beneficially by deterring others from the commission of crime? In many instances public exhibitions of this kind seem to have no effect in deterring from vice, if we may judge from the results. Some authors of high character as profound thinkers, have recommended that capital punishments, and indeed all corporal punishments, should invariably be carried into effect in private, because the imagination exaggerates the terrors of the penalty, while familiarity and public *éclat* lessens them.

A soldier belonging to one of the regiments at present serving in India, fired at a Serjeant on the parade ground of the corps, and killed him. The delinquent was tried and sentenced to suffer death. Unusual care was taken to render his execution as solemn and impressive as possible. At the execution, he was completely dressed in white, with a rosette of black ribbon on his breast, for the purpose of serving as a target for the men to fire at. Nothing was omitted which seemed to be calculated to intimidate others, and to deter them from following the example of the criminal. A few weeks after this man was executed, a private of the same corps shot the Adjutant through the head on parade, of which wound he died in a moment. The soldier was seized, tried, and sentenced to suffer death, without loss of time. Before his execution, it was suggested to the Commanding Officer, that as the pompous ceremonial which attended the former execution seemed rather to please with its *éclat* than to deter from insubordination and crime,

another mode of carrying the sentence into effect might be tried, perhaps with advantage. The Commanding Officer benefitted by the hint he had received, and the criminal was privately hanged at a little distance from the cantonments of the corps, and afterwards hung in chains. No similar delinquency followed the execution.

The execution of death has sometimes been carried into effect in India by blowing a criminal out of a mortar, or from the mouth of a cannon. Persons who have witnessed the latter mode of execution carried into effect, speak of the shower of fragments of the delinquent which falls, with surprise.

The mode of carrying the sentence of death into effect in the French army, is thus described by a French officer:—

“The troops form three sides of a square, the fourth is left vacant for the passage of the balls. The culprit arrives accompanied by a priest. The drums all at once beat a march, till the sufferer is in the centre of the troops. They then beat a *ban*, as that beat is called, which precedes and follows every kind of proclamation. The Captain-reporter reads the sentence—the drums close the *ban*—the culprit is made to kneel down: he is blindfolded, and twelve corporals, commanded by an Adjutant-Subaltern, fire at the wretched man, at the distance of ten paces.

“To diminish, if possible, the agony of the prisoner, the words of command are not uttered, the Adjutant makes signals instead of them with his cane. In case the man is not killed outright, as it sometimes happens, a reserve platoon, composed of four men, is ready to despatch him, by clapping the muzzles of their pieces to his head.

“After the execution of the sentence, all the troops defile before the corpse. They then return to their quarters; the circumstance is talked of for two or three days, and very soon forgotten. I have seen,” (says the author I am quoting,) “many of these unfortunate men die with admirable fortitude. I have seen some of them address the regiment, and give the command to fire, while not a syllable denoted the slightest emotion in them. But the man who in this predicament displayed the most astonishing courage, was General Malet, who conspired against Napoleon in 1812. On being conducted, with twelve of his accomplices, to the plain of Grenelle, he, as the chief of the conspirators, asked permission to give the command to fire. ‘Carry... arms!’ cried he, in a voice of thunder. ‘That won’t do; we must begin again. Your piece on the arm all of you! Carry... arms! Good—Platoon...Arms! Present! Fire!’ All fell excepting Malet: he was left standing alone. ‘And why not me? *Sacre nom de Dieu!* Reserve platoon, forward! Right! Carry...arms! Platoon...Arms! Present! Fire!’”

Charette, the Vendean chief, was shot by the Republican soldiers, after being made prisoner, himself giving the word of command, and to fire at his heart. The gallant Hofer also gave the word “Fire!” in a loud and articulate voice, when he was executed.

The sentence of death is thus carried into effect in the Austrian army:—

“A square is formed, of which one side is left open; and near the centre three men are selected, who stand in front of the criminal, who is blindfolded, and kneel before them, while they place the muzzles of their pieces within about nine inches of his head and heart. The signal for execution is given by the Commanding Officer striking his boot with his sword.”

Transportation.—To effect the transportation of a delinquent either in pursuance of the original sentence, or in commutation of capital punishment, it is necessary that the Officer Commanding-in-Chief should notify the sentence to any Judge of the King’s Bench, who is

thereon enjoined to make an order for the transportation of the offender.

All laws in force concerning persons sentenced to transportation, their escape and rescue, are extended to persons transported by sentence of a court-martial.

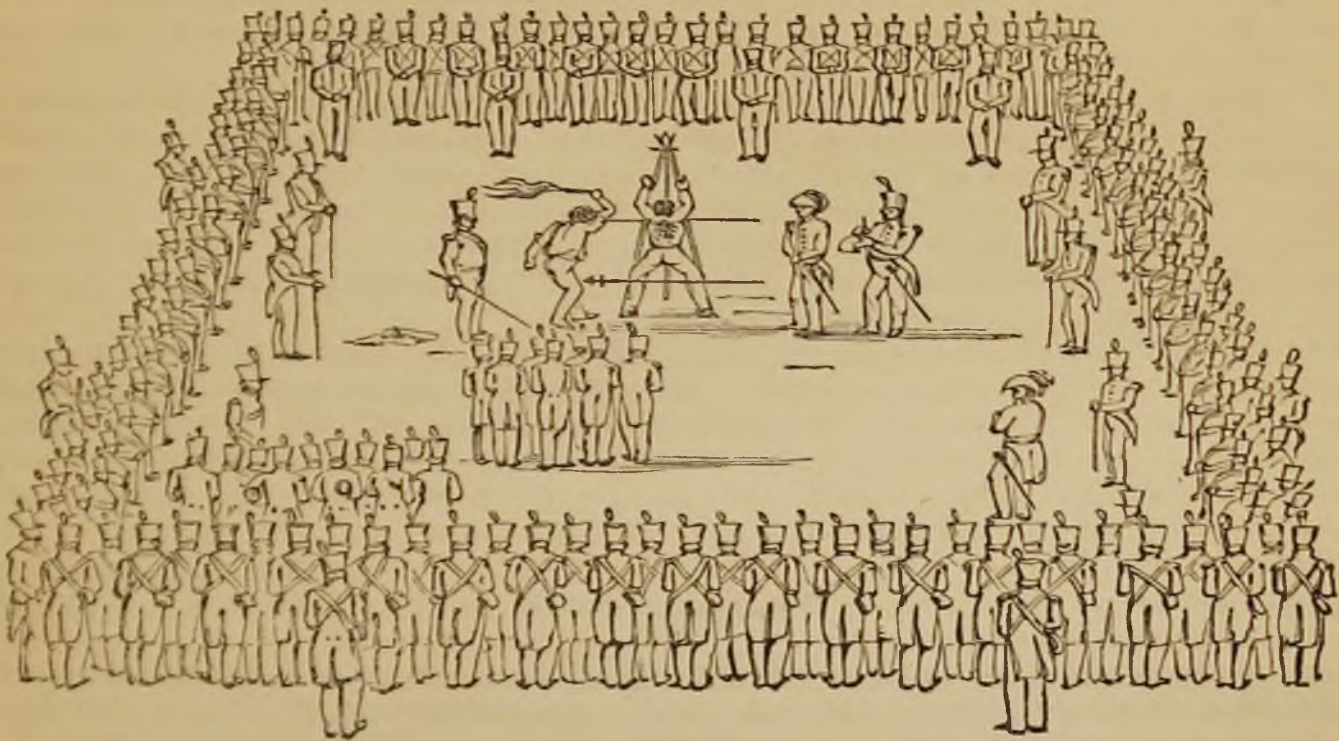
Transportation has no other recommendation as a punishment for soldiers, but that it gets rid of offenders. Even in civil life, it has hitherto had little or no effect as an example, partly because the culprit himself scarcely thinks it a punishment, and partly because the distance causes both him and his crime to be forgotten as completely as if he were removed by death. When the sentence is passed on men, they sometimes say, "*Thank you, my Lord;*" but, in the Army, relegation is frequently an object of desire;—hence, the punishment of transportation may become an incitement to the commission of military offences. This result takes place not only in the United Kingdom, India, and other stations, where the hardships of a convict in New South Wales are unknown, but it also occurs among the troops serving in that colony, who must be well acquainted with the pains and penalties to which convicts are liable. Dozens of men, it is said, commit crimes, or mutilate themselves, for the express purpose of becoming convicts, more especially about the time when a corps is about to be transferred from New South Wales to India. The men appear to balance the advantages and disadvantages of being a convict, with the advantages and disadvantages of being a soldier, and give the preference to the condition of a convict.

According to good authority, the disposition to leave the Army, and become convicts, is now less strong among soldiers than formerly.

Corporal Punishment (Flogging).—In awarding the sentence of corporal punishment, a court-martial commonly states, that the infliction shall be "*on the bare back, with a cat of nine tails, in the usual manner;*" but the last four words were formerly sometimes omitted, as is alleged, for the purpose of conveying to the officer ordering the execution of the sentence, a power to inflict the punishment on the back or breech, at his discretion. The mode of inflicting corporal punishment, is usually as follows:—The brigade, garrison, regiment, or detachment, being under arms, is formed into a square in some retired spot, often in the ditch of an outwork of fortified places or posts, to receive the prisoner, who is brought by an escort to the centre of the brigade. The Commanding Officer, the Adjutant, the Medical Officer, the band, and the Drum-Major, with the Drummers, next take their respective stations within the square.

The Town-Major, or Adjutant, as the case may be, proceeds to read aloud the charges, sometimes the proceedings;—but invariably the sentence of the court, and the approval of the competent officer, the prisoner being uncovered, and advanced a pace or two in front of the escort. The delinquent is then directed by the Commanding Officer to *strip*, which he does to the waist: he is forthwith tied to a machine termed a triangle, which consists of three legs or poles, connected by a belt at top, and separate about four feet at bottom; to two of the legs a bar is fixed, at a convenient distance, that the prisoner's chest may rest against it. The hands being pulled up to the top of the triangle, they are there secured with cords by the Drummers, who also tie him to the triangle round the upper part of the thighs and the ancles.

Halberts are sometimes rigged out, to serve the purpose of triangles,—a circumstance that has originated the common saying, “bringing a man to the halberts,” which is synonymous with bringing him to corporal



punishment. At other times the prisoner is lashed to a gun-wheel, or to a tree. A cartouche belt, which is held by a Drummer, is usually thrown over a man's head, and rests on the back of his neck, by which means his head is kept steady.

About the year 1768, a Surgeon, belonging to one of the regiments then stationed at Gibraltar, invented a machine for confining a delinquent during the time of punishment, which consisted chiefly of a plank with holes cut in it, something like the common stocks, the culprit being placed on a stool before it, and his head bent down and put through one of the holes, and there fixed. His arms were stretched out, and in like manner each put through other holes, cut for this purpose in the plank. The feet and legs were fastened together as he sat on the stool. By this contrivance the back was exposed to the cats, and a delinquent was effectually prevented from swinging about in the common way. On trial, this machine was found to be attended with great inconvenience and injury to the men; and it was consequently laid aside, the old mode of the halberts being again adopted.

Untoward circumstances may be occasioned by tying a man too tight as well as by allowing him more freedom than is necessary. For want of due attention to this circumstance, the hands, above the ligatures, from the stoppage of circulation, have turned black, and remained numb for several days, which partly arises from a man's hanging, as it were, by the hands. When the ligatures are too loose he is liable to move from side to side, by which means the *cats* are apt to fall on unsuitable parts of the body; if too low the instrument is applied to the ribs, and if too high the tails of the cat may twist round the neck, injure the face and endanger the eyes. Serjeant Teesdale (*A Letter to the People of England*, 1835) informs us, that a

remarkably fine young soldier, belonging to the — Regiment, who was undergoing corporal punishment on board a transport, having been insufficiently secured, disentangled himself from the ropes, jumped overboard and was drowned. Two of his comrades, who were good swimmers, leaped over the ship's side with a view to save him, but without success.

A culprit having been secured, the requisite number of Drummers, who have been previously *told off* by the Drum-Major, to inflict the punishment, commence their operations, by each taking off his cap, coat, or jacket. The Commanding Officer then says, "Go on, and, Drum-Major, see that the Drummers do their duty." The Drum-Major gives the time to the Drummers, by audibly calling, "one," "two," "three," &c., in slow time.

When the first Drummer has inflicted twenty-five lashes, the Drum-Major calls out, in a loud voice, "*Stop, twenty-five,*" and then orders a second Drummer to supply the place of the first. When another twenty-five lashes have been inflicted, the Drum-Major again calls out, "*Stop, fifty;*" and so on till the punishment is completed. It is the duty of the Adjutant, who stands near to the triangles, to record the number of lashes inflicted. Water is always at hand for the purpose of a delinquent's drinking, or to restore him from fainting by sprinkling a little on his face.

The first stroke of the cat occasions an instantaneous discolouration of the skin from effused blood, the back appearing as if it was thickly sprinkled with strong coffee even before the second stroke is inflicted. Sometimes the blood flows copiously by the time the first fifty or one hundred lashes are inflicted; at other times little or no blood appears when two hundred lashes have been inflicted. During the infliction of the first hundred and fifty or two hundred lashes, a man commonly appears to suffer much, considerably more, indeed, than during the subsequent part of a punishment, however large it may be. The effused blood in the skin, or, perhaps, some disorganization of the nerves of sensation, seems to occasion a blunting of its sensibility, and thereby lessening the acuteness of the pain arising from the application of the cat. Left-handed Drummers, whose cats are applied to a portion of sound skin, and Drummers who have not been sufficiently drilled to flogging, spread the lashes unnecessarily, and excite an unusual degree of pain. Delinquents frequently call out to the Drummer to strike higher, then lower, and sometimes alternately. A story is told of a Drummer, who, while he was flogging a man, had been frequently found fault with by the floggee, and who, forgetting the usual etiquette of a military parade, said, in an audible voice, "Flog high or flog low, there is no pleasing you, Barney McKanna."

An ex-Drum-boy, who had attained the rank of a commissioned officer, gave the result of his own manual experience in the following terms ;—

"From the very first day I entered the service as Drum-boy, and for eight years after, I can venture to assert, that, at the lowest calculation, it was my disgusting duty to flog men *at least three times a week*. From this painful task there was no possibility of shrinking, without the certainty of a rattan over my own shoulders by the Drum-Major, or of my being sent to the black-hole. When the infliction is ordered to commence, each Drum-boy, in rotation, is ordered to strip, for the purpose of administering twenty-five lashes (slowly counted by the Drum-Major) with freedom and

vigour. After a poor fellow had received about one hundred lashes, the blood would pour down his back in streams, and fly about in all directions with every additional blow of the cat, so that by the time he had received three hundred, I have found my clothes all over blood from the knees to the crown of the head. Horrified at my disgusting appearance, I have, immediately after parade, ran into the barrack-room, to escape from the observations of the soldiers, and to rid my clothes and person of my comrade's blood."

General Sir Charles Napier thus describes the physical consequence of large punishments upon delinquents, and the moral effects upon the spectators:—

"I have seen," says the General, "many hundreds of men flogged, and have always observed, that when the skin is thoroughly cut up or flayed off, the great pain subsides. Men are frequently convulsed and screaming during the time they receive one lash to three hundred lashes, and then they bear the remainder, even to eight hundred or one thousand lashes, without a groan; they will often lie as if without life, and the Drummers appear to be flogging a lump of dead raw flesh. Now, I have frequently observed, that in these cases, the faces of the spectators assumed a look of disgust; there was always a low whispering sound, scarcely audible, issuing from the apparently stern and silent ranks,—a sound arising from lips that spoke not; but that sound was produced by hearts that felt deeply, and this too, when the soldiers believed in its justice, and approved of the punishment, when the willing Drummers had, up to that moment, laid on the lash with great asperity. This low and scarcely audible sound spoke aloud to my mind, that the punishment had become excessive, that the culprit had disappeared and the martyr taken his place."

The low sound mentioned by General Napier, which is heard issuing from the ranks during punishment, sometimes resembled what may be called *sniffing*, (drawing the air strongly up the nose,) and which may be occasioned by an increased flow of tears into the nostrils.

The Drum-Major is presumed to see, that the ends of the cords of the cats are not entangled during the infliction, so as to produce a more serious blow than intended, but that they are disengaged from time to time; should the cords become heavy with coagulated blood, they are sometimes washed with water. As nine of every ten of the Drummers are right-handed, and consequently stand on the left of a delinquent, the right shoulder suffers much more severely than the left. Left-handed Drummers appear, as has already been observed, to inflict more pain than right-handed punishers, in consequence of the cat being applied to a sound and sensible part of the skin of the back. The Drum-Major stands behind the inflicting Drummer with a cane in his hand, and his eyes fixed on the sufferer's back, ready to lay it hard and heavy on the shoulders or thighs of the punisher, should he think he is laying on lightly or *unfair*. I have seen a Drum-Major "lay on" a Drummer with merciless severity. It would appear, that a Drum-Major was formerly *admonished* to do his duty in a similar way to that by which he occasionally excites the Drummers, namely, by the infliction of the cane. "The Adjutant," says Dr. Hamilton, "charges the Drum-Major, and often enforces it *with a stroke of his rattan*, to make the Drummers *do their duty*; he, in return, strikes the punisher, who, if he is able, is compelled to add force to his next stroke on the delinquent." The practice of rattaning a Drum-Major upon punishment parades, did not fall into complete disuse for several years after

the commencement of the present century. I have been assured by an officer now living, and not an old man, that he has seen a Drum-Major chastised on parade, with a cane, by an Adjutant, for alleged leniency in the performance of his duty.

In some cavalry regiments it was customary to count ten between each stroke of the cat; and we are assured, that in many corps the cats were not washed, the blood being allowed to dry upon them, for the purpose of rendering the punishment more severe. (*Hamilton.*) A commanding officer is, however, not now justified in prolonging the infliction beyond the usual time; and charges have been grounded upon the non-observance of such caution. (*General Order, No. 450.*) The previous preparation of cats, by steeping them in brine, and washing them in salt and water, during the punishment, has also been prohibited. A case happened not long ago, when this circumstance was made the subject of a charge against a commanding officer, who received an admonition, according to the sentence of a court-martial. (*General Order, No. 511.*)

The instrument of punishment, namely, the cat of nine tails, seems to have undergone some variations in its construction. Dr. Hamilton describes the cats used, when he wrote, as consisting, generally, of six cords. When Governor Wall was tried for flogging Serjeant Armstrong to death, the Lord Chief Baron Macdonald thus described what he called the legitimate instrument of punishment; "The cat of nine tails," said he, "is an instrument of punishment composed of small cords—the cords are *nine* in number; and they are generally whipped at the end with threads that are turned up and twisted round with a bit of thread, in order to prevent their unfolding; the handle of this instrument is wood." No notice is here taken of knots being on the cords, but this is, probably, an omission.

I may here observe, that Armstrong was tied to a gun-carriage, and flogged by Africans, each man inflicting twenty-five lashes in turn. The instrument, employed in this case, was a rope one inch in diameter, and he received eight hundred lashes. (*Howell's State Trials, vol. xxviii., p. 57.*)

An officer, who had risen from the humble station of a Drum-boy, and who has already been quoted, gives the following account of the cat of nine tails;—

"I am ignorant," says he, "what sort of cats were used when flogging was first introduced into the Army, but they are now, I believe, very different in different regiments, and, indeed, there is sometimes, a variety kept in the same corps. Those which I have seen, and *used*, were made of a thick strong kind of whip-cord, and on each lash, nine in number, and generally about two feet long, were tied *three* large knots, so that a poor wretch, who was doomed to receive one thousand lashes, had twenty-seven thousand knots cutting into his back, and men have declared to me, that the sensation experienced at each lash, was as though the talons of a hawk were tearing the flesh off their bones."

According to Captain Simmons, "the cat of nine tails consists of a drum-stick, or handle of wood of equal length, having fixed to it nine ends of whip-cord about sixteen inches long, each knotted with three knots, one being near the end." (*Remarks on Courts-Martial, 1830, page 276.*) So far as I know, there is no pattern cat deposited in any of the public offices, nor any specific instructions issued by authority for the construction of this instrument.

The cat of nine tails which I have in my possession, and which is stated to be the usual size, consists of a handle of wood, about the same length as a drum-stick, having fixed to it *nine hard cords* about *twenty-one inches long*, each cord having *nine knots*, half an inch distant from each other, one being near the end. Delinquents commonly pay 1s., or in some regiments 6d., for the use of the cats; and this charge is regularly entered in a soldier's monthly account, thus, "Drum-Major's charge, 6d." Should a soldier complain of the charge, which he sometimes does, it is alleged, that the Drum-Major offers to present him with the cat or cats, which had been employed in punishing him; and this proposal generally puts an end to the business.

In the Indian army the cord required for cats used to be furnished by indent (requisition) from the public stores. It will be recollected that during the reign of William III. the punishment of whipping was inflicted by means of rods, not with cats, as also that the expenses incurred by the purchase of the instruments of punishment, and a remuneration to the floggers, were supplied by Government, by means of a contingent bill. At what time cats began to be used, and when it became customary to assess the flogged to pay for cord, I have not learned.

Rods are still employed for flogging or whipping in the Austrian, Prussian, and Russian armies. In the Austrian service a Colonel in command may, without a court-martial, order fifty blows to be given, a Major forty, and at all times the Captain of a company may inflict twenty-five blows. The rod or stick employed, which should be hazel, is not to be thicker than the bore of a musket, and it is to be without knots. The delinquent is laid over a drum or bench, and the blows are given on the breech by two Corporals, one on each side. Whipping is not to be inflicted upon a delinquent without his clothes on, and not with the point, but with the full length of the rod.

Very lately the following paragraph, respecting a military punishment inflicted in the Austrian army, appeared in the Times newspaper. How far the statement may be correct I have no means of ascertaining :

"VENGEANCE AND DISCIPLINE.

"A letter from Vienna of the 12th inst. states, that at Wels, near Lintz, during some recent military manœuvres, two soldiers of a regiment of Hussars having fallen in a charge, were obliged to remain behind. One of them, however, who was less injured than his companion, joined his corps shortly afterwards, but being unable from pain to perform his duty, the Chief of Squadron, the Chevalier de L——, condemned him to receive twenty-five lashes. When the hussar had undergone the penalty, he went up to that officer, as it were to thank him, according to military usage, and struck him in the face. The officer drew his sword and killed him on the spot; but at the same moment four soldiers left their ranks, and literally cut the Chief of Squadron to pieces."

In the Prussian military service any commanding officer may inflict corporal punishment on a soldier degraded to the second class, to the amount of thirty stripes of the cane, or, if they belong to sections already under punishment, forty stripes, in military form. The prisoner is not undressed, but keeps his shirt and working-jacket on during the infliction of the lashes. The punishment is inflicted with small canes, by a non-commissioned officer, and never in public, but in a separate place, such as the guard-room or barrack, and in presence of his com-

rades. It deserves to be observed that, with respect to minor punishments, it is strictly enjoined that every precaution be taken not to injure a delinquent's feelings of honour.

Whipping is not employed in the Russian army, except in the case of non-commissioned officers and soldiers who do not belong to the class of Nobles. For grave offences the commanding officer of a corps may order a man to be whipped to the extent of twenty *coups*, but only *par le moyen de verges* (switches).

These punishments are severe, but fortunately they are restricted in amount, the necessity of limiting the power of military judges to award and inflict penalties being highly necessary. The policy of the Mosaic law in this respect deserves the imitation of all legislators. By this law, when a man was found "worthy to be beaten" the judge might sentence him to receive a certain number of stripes, according to the character of the offence, but the number was never to exceed *forty*. (Deuteronomy xxv. 3.) The importance of such a restriction is obvious. Among the Romans delinquents were sometimes flogged to death, there being no limitation to the number of blows which might be inflicted. The maximum of the Athenian punishments was fifty stripes. The Jews fixed the practical maximum at thirty-nine stripes; and hence we read of "forty stripes save one" in the New Testament. (2 Cor. xi. 24.) The punishment was inflicted with a cat or scourge, with three tails or thongs of leather, thirteen strokes of which counted as thirty-nine, which "might not be exceeded."

The usual mode of inflicting punishment is on the back of a delinquent; but at one time, I mean during the last war, it was very common to flog also upon the breech. Sometimes the punishment was inflicted on the breech for the purpose of rendering it more painful, sometimes to render it more disgraceful than on the back, and occasionally with the view of saving the back, when the skin was inflamed, or otherwise unsound, from repeated punishments. Sometimes a man was flogged on the calves of the legs, perhaps in consequence of both the back and breech being unsound from former inflictions, and consequently very liable to tedious ulceration. In one regiment it was customary for a time to give twenty-five lashes alternately on the back and breech. The commanding officer of another corps used to order a man to receive twenty-five lashes on one shoulder, and then twenty-five on the other; a similar plan being adopted with the breech, twenty-five lashes being inflicted by a left-handed Drummer upon the left buttock, and twenty-five by a right-handed Drummer on the right side. This amount of punishment was frequently inflicted on a march, the delinquents being obliged to carry their knapsacks after the punishment.

The infliction of the cat on the breech is more painful than on the back, probably in consequence of the greater sensibility of the extreme parts of the body.

It is alleged that flogging on the breech occasionally caused an erection, sometimes to such a degree as to attract the attention of the men in the ranks, and to excite their suppressed laughter.

At what time it became customary for medical officers to be present at the corporal punishment of flogging I have not been able to ascertain. With reference to the duty of a medical officer when he attends a punishment,—“it is,” says Dr. Hamilton, “his business diligently to watch over the sufferer; for should the punishment adjudged prove

greater than it is his opinion the delinquent can bear, without hazard of his life, he has authority to stop the Drummers (the executioners) at any period of it, and order him to be taken down." The usage of the Service has long rendered it necessary for a medical officer to be present when a man is punished; but I am not aware of any authority by which he would be warranted in assuming any practical control in the business. A medical officer is ordered to be present, for the purpose of performing this anomalous duty; but hitherto no official instructions have been issued to regulate him in the exercise of his functions. According to the usage of the Service, his duty seems to be twofold:— 1st, to see that a delinquent does not escape any part of his punishment by simulating disabilities; 2nd, to see that a man is not permanently disabled, or his life endangered, by the punishment. To use the language of a late Judge-Advocate-General, Sir Charles Grey, the medical officer is not present for the purpose of assuaging pain and relieving suffering, but to ascertain *the extreme limit of human endurance*.

In the exercise of this duty, when a medical officer observes any symptoms arise during the punishment, which in his opinion indicate the expediency of suspending the infliction, it is, by the usage of the Service, his duty to approach the commanding officer, and to respectfully recommend that the punishment should be suspended. The commanding officer usually directs the punishment to cease forthwith, and the man to be taken down. But, as a commanding officer sometimes asks the Surgeon whether the delinquent is not able to bear a greater number of lashes, he should invariably be prepared to give a suitable answer. A man may be able, in all probability, to endure a somewhat greater amount of punishment, without materially endangering his prospective fitness for the Service; but it may be highly inexpedient, in the opinion of a medical officer, to sanction the infliction of a punishment which proceeded to the utmost verge of safe endurance. When a soldier has received the punishment awarded to him, or when the commanding officer remits part of the sentence, he is released from the triangles, and his shirt being loosely thrown over his shoulders, he is marched off to hospital. Here his back is dressed by being covered with cloths wetted with a dilute solution of the sugar of lead. The dressings are kept in their place by means of a cloth, technically known by the name of a "saddle," and sometimes by that of a "wrestling jacket." In Ceylon and the peninsula of India punished men are usually dressed with plantain leaves.

In cases where there are a considerable number of men to be punished, or when time is very limited, two triangles are sometimes put up in one square, by which means two men undergo punishment at the same time. I have seen two triangles actively employed in the square of a regiment, and I have heard of three being in use at the same time. Occasionally, also, punishment takes place at night, by means of torch-light, or rather by the light of a lantern. All the men who are to be punished are usually brought into the square at one time, and consequently some of the prisoners have to endure the anguish of seeing their comrades undergo a similar punishment to that which is awaiting themselves. The agony of the prisoners may be imagined. Two men belonging to — Regiment were brought out for punishment, one a young lad, the other comparatively an old soldier. The lad, who was tied up first, screamed dreadfully, by which means the old soldier was

completely unmanned; and while the Staff of the regiment were superintending the punishment, he insidiously extracted a razor from his pocket, with which he made an attempt to cut his throat. He was, however, secured before he effected his purpose, and he finally recovered.

A scene of another kind occurred on a punishment parade of the — Regiment. A soldier, who thought he was harassed by a Lieut. W——, committed some offence, and was tried by a court-martial in Corfu. When brought out to receive the punishment awarded, he had concealed a bayonet underneath his watch-coat, with which he threatened to take the Subaltern's life; and although he injured no one, beyond his menacing attitude and threats, yet he was tried by a general court-martial for the capital offence, viz., for "drawing, or offering to draw, or lifting up a weapon of violence against his superior officer." He was found guilty, and suffered death by being shot.

Instead of exciting a disposition to resentment, the ignominious prospect of being flogged has occasioned individuals to commit suicide. While the army was lying at Rangoon, in the year 1824, two privates belonging to — Regiment, while they were somewhat inebriated met General —— in their wanderings. They pretended to be ignorant of his rank, and would not salute him. They were both tried by a regimental court-martial, the General himself appearing to give evidence against them. Being found guilty, they were sentenced to receive corporal punishment. The delinquents were fine high-spirited young men, and though in this instance they had grievously offended against military law, they were generally well-behaved soldiers. On the morning after the court-martial, at an early hour, the regiment paraded for punishment. The triangles were placed, and the Drummers stood by them in their shirt-sleeves, but no prisoners appeared. Where are they? was asked on all sides. It was soon ascertained that one of the men had shot himself during the night, thus preferring death to the ignominy of a public flagellation. His case excited much sympathy, more especially as, at the solicitation of the General Officer who brought him forward, the sentence was to have been remitted; but the result of a court-martial is not promulgated till the regiment is assembled on parade the following day. Such is one of the mournful examples of the evils which result from the indiscriminate use of the lash. (*Reminiscences of the Burmese War, by Captain Doveton.*)

"When I was a Subaltern," says General Napier, "I then frequently saw 600, 700, 800, 900, and 1000 lashes, sentenced by regimental courts-martial, and generally every lash inflicted. I have heard of 1200 having been inflicted, but never witnessed such an execution. I then often saw the unhappy victim of such barbarous work brought out from the hospital *three* and *four* times to receive the remainder of his punishment, too severe to be borne without danger of death at one flogging; and sometimes I have witnessed this prolonged torture applied for the *avowed purpose* of adding to its severity. On these occasions it was terrible to see the new tender skin of the scarcely-healed back again laid bare to receive the lash. I declare that, accustomed as I was to such scenes, I could not on these occasions bear to look at the first blows; the feeling of horror which ran through the ranks was evident,—and all soldiers know the frequent faintings that take place among recruits when they first see a soldier flogged."

A HISTORICAL SKETCH OF MILITARY PUNISHMENTS, IN AS FAR
AS REGARDS NON-COMMISSIONED OFFICERS AND
PRIVATE SOLDIERS.

XII.

SOME men evince great fortitude during punishment, and will endure 700 or 800 lashes without complaining. I recollect attending at the punishment of seven men, each of whom received 600 lashes without one of them saying a word. Where there are a number of men punished at one time, the fortitude of individuals is strongly exercised by way of rivalry; and those who behave best, or evince the greatest powers of endurance, become the heroes of the day: they enjoy a kind of triumph. Flogging, to be useful, should not be inflicted on a number of persons at the same time, for the infamy of many resolves itself into the infamy of none.

Many implore for a remission of their punishment, and frequently exclaim, "Oh, Colonel, forgive me!—oh, Doctor, take me down, and I'll never come here again! five-and-twenty are as good as 500;" and I must say that I usually entertained a similar opinion with the delinquent. It has been well observed, that the cause of all human corruptions proceeds much more frequently from the impunity of delinquents, than from the moderation of punishments. We ought to make a prudent use of the means which nature has given us, to govern soldiers, and to be more anxious to inspire good morals than to inflict heavy penalties. "*Il ne faut pas,*" says Mareschal Saxe, "*que les chatimens soient rudes; plus ils seront doux, et plus promptement vous remediez aux abus.*" Upon witnessing the punishment of flogging, it is impossible, I think, to avoid coming to the conclusion, that military law and military usages should aim at economizing pain, by diffusing the largest amount of salutary terror, and thereby as much as possible deterring from crimes at the smallest expense of corporal infliction.

In general, offenders conduct themselves with as much submission and propriety while they are undergoing punishment, as could be expected. Sometimes their expressions are calculated to excite a smile. "Oh, Colonel, take me down!" said a man of the — Regiment; "take me down, I say, for God's sake!" After being silent for a short time, he again addressed the Colonel as follows:—"I see, Colonel, that you do not intend to order me down. *I always thought you were a gentleman until now.*" The Colonel was a kind man, and took no notice of the implied stain upon his character.

Occasionally a man will set the whole regiment laughing, in some instances apparently from intention, and in others from simplicity. One man, after imploring the intercession of a long catalogue of the saints in the Roman Catholic calendar, exclaimed, "Oh, son of David, take me down." A smile was excited in some of the spectators by the *equivoque*, the commanding officer's name being Davidson. The Colonel observed, that there is no resisting such an appeal, and ordered the punishment to cease.

During the time a private belonging to the Artillery was receiving corporal punishment, he begged earnestly to be forgiven, and frequently

called upon Major D., the commanding officer, to take him down. The Major replied, by saying that he would not remit one lash of the sentence which the court-martial had awarded him. "It is always with reluctance," said the Major, "that I bring a man to a court-martial; and even at this moment I feel as much pain as you do." "Oh, then," said the man, "just come and take my place," apparently implying that it was inexpedient for both to be suffering punishment.

Some men appear to amuse themselves by a kind of soliloquy while they are receiving punishment. "I think," said an old soldier, belonging to the — Regiment, who was in this situation, "that when I receive the present sentence, I shall have got about 12,000 lashes, which are quite enough, and I do not intend to come here any more." This man was soon after discharged.

It is hardly necessary to observe, that punishments which greatly excite the sympathy of the spectators, do no good,—they possess little or none of the deterring principle.

The commanding officer of a corps may remit all or any part of a sentence which has been awarded by a regimental court-martial; but it appears that he is not warranted in remitting any part of the sentence of a man who has been tried by a district or general court-martial. An instance happened not long ago, in which an officer took upon himself the responsibility to mitigate the punishment directed by the sentence of a district court-martial; and the consequence was, that he received a very severe reprimand from the Horse Guards.

Punishments should, it is presumed, be regulated by equity and utility. A man may be *justly* sentenced to receive corporal punishment, but a question may be asked, will the infliction of the sentence be useful? Any thing may be said to be *just* which is conformable to, or consistent with, established enactment or usage; but the exercise of indiscriminate *justice*, without mercy and without humanity, may be excessive cruelty. It is perhaps too much to expect that soldiers should conduct themselves with strict propriety while they are enduring the pains and penalties of military law; and commanding officers are, I believe, in general, much disposed to overlook some want of military decorum in their expressions of pain and suffering under such circumstances. But I am well aware that many good men, and excellent commanding officers, at one time deemed it highly expedient to appeal to the cat-of-nine-tails, upon the commission of every offence, however trivial, and under whatever circumstance the alleged delinquency was committed. Colonel C., who commanded the — Regiment in 1808, had the character of being unwilling to bring men to the halberts. He punished much by solitary confinement, and a bread and water diet, the ration of bread allowed being very limited. The men under confinement were regularly marched out for exercise every day, under the charge of a non-commissioned officer. On one occasion it was discovered that a delinquent had, against orders, purchased a small loaf, for which offence he was tried by a court-martial, and sentenced to receive 300 lashes, all of which were inflicted without his saying a word. But upon his being taken down, he addressed his commanding officer in the following words:—"Colonel, you have done for me;—and Doctor," said he, "you have also done for me." The utterance of the words having been deemed a serious offence, he was forthwith tried

on parade by a drum-head court-martial, and sentenced to receive 300 lashes, which were inflicted before the parade was dismissed.

Soldiers are liable to be severely punished for using reproachful words towards any person immediately under the protection of a court-martial. The following is an instance exemplifying the usage of courts-martial in such cases, extracted from Captain Hough's *Practice of Courts-Martial*, page 456.

“G. O. C. C., 8th January, 1821.

“At an European court-martial, Gunner Lowe, of the 2nd company, 1st battalion of Artillery, was arraigned upon the following charge, viz. :—

“*Charge.*—With having said, in the presence of the Court, that he did not consider Lieut. Cameron's conduct like that of a gentleman, on the evening of the 16th instant.

“18th September, 1820.

“*Finding, Guilty. Sentence, 600 lashes.*”

This sentence was approved and confirmed by the Marquis of Hastings.

Of all injustice, that is the greatest which is perpetrated under the name of law, and of all sorts of tyranny none is more grievous than the forcing of the letter of the law against equity.

Flogging is not often inflicted on a march, although sometimes it takes place. The commanding officer of the 3rd battalion — Regiment, in the Netherlands, in 1814, had, it is said, upwards of seventy men flogged on the line of march in one day.

Corporal punishment has been inflicted even during a conflict with the enemy. I quote from Serjeant Teesdale.

“The — Regiment took an active part in the battle of Quatre Bras. On the 17th June, the army retreated, and on the line of march two men of this corps fell out to get a drink of water. They were ordered by the late Sir Thomas Picton, to be marched prisoners with the rear-guard. General Picton, in riding through the lines on the 18th, about nine o'clock, saw a man of the same regiment discharge a musket. The General sent him instantly to the rear-guard, and gave orders to try him and the two men he had confined on the retrograde movement the day before, and flog them, notwithstanding the enemy's troops were advancing towards us at the time. It is a fact, that when the regiment was forming square for the court-martial, a private who was frying some meat in a Frenchman's steel jacket, which he had brought with him the day before from Quatre Bras, lost the whole of his mess by a cannon shot that alighted close to his newly-invented culinary utensil, filling it full of sand and dirt. The square, however, was formed, and the three men were tried by a drum-head court-martial, and flogged, each man receiving every lash of his sentence.”

One of the men was shot dead in the field within two hours after he was flogged, a second was wounded, the third escaped. The two men found out of the ranks, were punished for disobedience of orders; and the third for firing off his comrade's musket, the charge of which had been damaged by the rains, and whose alleged motive for doing so was to render it serviceable.

Corporal Punishment considered with reference to the duty of a Medical Officer.—I have now to consider the punishment of flogging in the Army with respect to the duties of a medical officer.

A regulation has lately been introduced into the Service (1838), which directs, that before a soldier is brought to trial by a court-

martial, he is to be examined by a medical officer, who, if he is of opinion that the prisoner is in a good state of health, and capable of undergoing corporal punishment, or imprisonment, solitary or otherwise, will grant a certificate according to the following form:—

“ I certify that No. Private of the Regiment, is in a good state of health, and fit to undergo corporal punishment or imprisonment, solitary or otherwise, and with or without hard labour.

Signature of a }
Medical Officer. } _____

Before this regulation was issued, a medical officer did not necessarily know that a man was to be flogged until he saw him tied up to the triangles; and it was then too late to make any inquiries respecting the health of the delinquent, or whether he was fit to receive corporal punishment or not. It was formerly by no means unusual for a medical officer to be directed to attend at the punishment of a number of men whom he had never seen, and of whom he knew nothing.

To certify that a soldier is fit for duty is sometimes attended with some difficulty; but to report a man to be able to undergo corporal punishment is a measure which requires still more careful consideration. In this country the duty in question is comparatively easy; but in tropical countries, where, in consequence of the prevalence of disease, every man is, on an average, two or three times in hospital in the course of twelve months, a regiment will always contain a considerable number of men who are not likely to endure the punishment of either flogging or imprisonment with impunity. The following example will illustrate the difficulty which sometimes occurs in the execution of this duty. A soldier belonging to — regiment, serving in India, was sentenced to receive one hundred lashes, a punishment which was commuted by the approving officer to imprisonment for a short period. The man had been carefully examined by a medical officer previously to trial, who emitted the required certificate of health and fitness to undergo corporal infliction. Within twenty-four hours after this man was confined he was attacked with remittent fever, followed by *delirium tremens*, and narrowly escaped with his life. Had he received his sentence, one hundred lashes, there is some reason for concluding that his career as a soldier would not have been long; and, perhaps, the medical officer might have been unjustly inculpated.

During the great prevalence of endemic or epidemic disease, or when symptoms of scurvy or ill-conditioned sores appear among the men, it may be highly expedient for a medical officer to recommend that corporal punishments should not in any case be inflicted.

In addition to the general health of a man, I would strongly recommend a medical officer to invariably pay much attention to the state of his mind. Military crimes, such as desertion and insubordination, are not unfrequently the result of idiocy, weakness of intellect, or partial insanity, a circumstance of much importance in the administration of military discipline, and one which a medical officer would require to carefully investigate. Fictitious madness has no doubt been treated as real; but, what is of much more importance to my subject, real madness has escaped unobserved, or it has been treated and punished as fictitious,—a fearful mistake when the penalty was such a punishment as flogging. With the view of illustrating the importance of this branch of the duty

of a medical officer, I have subjoined a brief account of a melancholy case, being one with which I was well acquainted. Similar cases might be quoted, but it is hoped they are not necessary.

“Private Charles Louis, — Regiment, complained, during the month of December, 1826, of pain in the loins, stated to be the result of a sprain received in the preceding July, but which he had not previously mentioned. He went on furlough soon after, and did not return until the 24th February, 1827, when he continued to state that he was unable for duty. He was then admitted into hospital; his appetite was good, the other functions of the body were apparently healthy, and no symptom of disease could be detected. He was in general remarkably taciturn. He was discharged from hospital, but would do no duty. He was tried by a regimental court-martial for disobedience of orders, which sentenced him to undergo corporal punishment; and on the 15th March he received one hundred and seventy-five lashes, without making the slightest complaint. He continued to refuse doing duty, and was a second time tried by a court-martial, and sentenced to be confined for one month in a solitary cell; but when released from confinement he still refused to do duty. He was transferred to the General Hospital, in Dublin, on the 30th of May, where he remained under the care of Dr. Cheyne until the 12th July, when he rejoined the regiment to which he belonged. During the time he was in Dublin the greatest care was taken to investigate his case by Dr. Cheyne and other medical officers; but no satisfactory evidence of disease, either physical or mental, was observed. Shortly after Louis joined the regiment symptoms of alienation of mind appeared, which were for some time supposed to be feigned; but, after close observation for a period of several months, the Surgeon was satisfied that his mind was unsound. In July, 1827, he was again admitted into the General Hospital, Dublin, in consequence of decided mental alienation, and during the year 1828 was transferred to the Military Asylum at Fort Clarence, where he expired on the 26th August, 1838.”

There are sometimes a few individuals in a regiment who constantly follow after that which is evil, and never that which is good, who injure others without an adequate motive, who seem to have an uncontrollable propensity to mischief, and who appear to labour under what may be called *moral insanity*. Cases of this kind require to be very carefully considered, inasmuch as punishing them rarely does any good, and may do much harm.

The General Regulations of the Army direct that “no punishment is to be inflicted but in the presence of a medical officer;” but hitherto, so far as I know, no instructions, either military or medical, have been issued in regard to his duties on a punishment parade. In the last edition of “Instructions to the Surgeons of Regiments,” issued from the War-Office, (31st August, 1838,) the duty of being present at the punishment of a soldier is not mentioned. What, then, is the duty of a medical officer when he officially attends the flogging of a soldier? In reply to this question, I will quote a passage from an address to the jury by the late Lord Chief Baron Macdonald, on the trial of Governor Wall. “It is usual,” says his Lordship, “even in the infliction of ordinary punishments, that the assistance of Surgeons should be called in, when the punishment is intended at the outset to be *only* such as experience shows us is *never*, without a very singularly unlucky accident, attended with *death*.” The medical officer is, it would appear, so to guard the life of a delinquent under punishment, as that the Army may not lose the services of a man by death, or by being

permanently disabled. In the execution of this highly important duty, he must be guided by a knowledge of the physiology and pathology of the human body, the habits and duties of soldiers, and an acquaintance with the regulations, usages, and discipline of the Army. A medical officer is presumed to divest himself of any opinion he may entertain in regard to the delinquency a man has committed, or the sentence which has been awarded him,—his duty being, in the first place, to prevent the man from escaping punishment by feigning indisposition, and also to see that he does not receive such a degree of injury as may endanger life, or which may disable him permanently for the duties of a soldier. While a Surgeon should invariably lean to the side of mercy, duty requires that he ought to be scrupulously careful not to unnecessarily obstruct the course of military law,—the rules and usages adopted to establish and sustain military discipline.

A medical officer generally takes his station a few paces behind the man who is undergoing punishment, but should symptoms of fainting come on, he sometimes moves towards the front of the sufferer, so as to see his face. It is scarcely possible I think to place a man in a more distressing situation, where he must frequently witness the imploring countenance, the speaking eye, of a gallant, good-natured, though erring, old soldier, anxiously pleading for a remission of the sentence; pleading, I may say, as if the medical officer had it in his power to suspend the punishment at his discretion.

In the performance of the duty of being present at a punishment parade, a medical officer may be said to undergo a professional trial. Should he give way to his feelings, and unduly interfere with the progress of the course of law, he may incur a serious responsibility—the disapproval of his superiors. On this subject I may quote the opinion of Dr. J. Gordon Smith, who served for a number of years in the 12th Dragoons. “*Taking a man down,*” says he, “who is able to endure the award of a court-martial, is a thing out of the medical province. I have been obliged to take men down before the infliction of one hundred lashes, and I have seen *a thousand* well laid on without injury to the prisoner. If, after touching his hat to the commanding officer, and stating that in his judgment the man could not receive any further punishment *at that time*, the punishment should be persevered in, the Surgeon would be warranted to turn away, and protest that he cannot be responsible for the sequel.” In my opinion, a medical officer would not, under such circumstances, be warranted in either *turning or going away*, or in obtruding any protest respecting his responsibility. He has so far performed his duty when he has in a respectful manner recommended that the punishment should be suspended; but he should neither leave the parade nor reiterate his recommendation, unless the commanding officer solicits his opinion.

Formerly, when a medical officer obtained the character of being easily affected by the sufferings of a delinquent, it sometimes happened, in the case of a man being sentenced to a considerable punishment, that another medical officer was ordered to attend the execution of the sentence, one who had obtained the character of not being easily moved by the feelings of humanity. Let it always be recollected that the execution of a sentence is usually intrusted to the commanding officer of a corps or regiment, and that, as he has a direct interest in

the preservation of its discipline, and is commonly the person who has brought forward the delinquent for trial, he may be expected to entertain a wish that an offender should receive the whole infliction to which he has been sentenced.

We learn by the evidence of Sir John Macdonald, (*Evidence on Military Punishments*, Question 40,) that it is at the *peril* of a commanding officer to order the infliction of a single lash after a medical officer interferes for the purpose of suspending punishment. But it does not appear that he incurs any danger by so doing unless death is the result; in which case the law will, I presume, throw the burden upon him, the law implying malice where the death of a fellow-creature is occasioned by any one, unless a justifiable cause can be shown for such death. Even when a medical officer does not interfere, a commanding officer is to a certain degree responsible for the result of the punishment he superintends. In the notorious case of Governor Wall, who was tried for the murder of Serjeant Armstrong, Mr. Ferrick, the Garrison Surgeon, who was present when Armstrong was punished, did not recommend that the punishment should be suspended. The outlines of this case may be briefly stated, in as far as regards the duty of a medical officer.

On the 10th July, 1782, Armstrong was flogged at Goree, in Africa, by the order and under the superintendence of Governor Wall. He was flogged by negro slaves, and the instrument used was a rope, about one inch in diameter. He received eight hundred lashes, and walked to hospital, which was about a quarter of a mile from the parade-ground. He died on the 15th July. The punishment had commenced before the Surgeon appeared on parade; but he was present during the greater part of the infliction. The punishment appeared to the Surgeon to be "rather severe than otherwise;" but he did not seem to think at the time that it was worse than the usual punishment. According to the Surgeon's evidence, Armstrong did not make more noise than the usual punishment excites. It occurred to the Surgeon, during the infliction, that he was called upon in the exercise of his duty to observe upon the state of Armstrong and the severity of the punishment; but he made no such statement to Governor Wall. The Judge was unwilling to permit the Counsel for the Crown to ask the Surgeon why he did not make a representation of his opinion of the punishment to the Governor. It may, I think, be inferred, from the evidence he gave, that he was intimidated. He was then about twenty-three or twenty-four years of age, and had been in the profession two or three years only.

The Lord Chief Baron Macdonald, in his charge to the Jury, upon this trial, expressed the following sentiments:—

"I think it necessary to tell you that if a punishment is inflicted, unusual in its circumstances either as to quantity or the instrument with which that punishment is inflicted, it will not take off from those who inflict that punishment a great degree of responsibility,"....."notwithstanding the Surgeon attends, and notwithstanding he does not interpose and make representations upon it, they who inflict the punishment, if it should be most inordinate in its quantity, or in the manner of inflicting it by the nature of the instrument, or otherwise, may, under certain circumstances, not exculpate themselves."

Governor Wall was tried on the 20th day of January, 1802, and found guilty; he suffered death on the 28th of the same month.

A HISTORICAL SKETCH OF MILITARY PUNISHMENTS, IN AS FAR
AS REGARDS NON-COMMISSIONED OFFICERS AND
PRIVATE SOLDIERS.

XIII.

THE officer who is entrusted with the execution of a sentence of corporal punishment, usually complies with the suggestion of a medical officer, when he recommends that a soldier should be taken down from the halberts. Martinets of the old school have, however, not only disregarded the suggestion of a medical officer, but even reprimanded him for his interference in favour of a man who was undergoing punishment. I once attended a corporal punishment, and suggested at what I considered due time to the commanding officer, that the punishment should be suspended; but no attention was paid to my recommendation. The following case is a remarkable example of disregard to the suggestions of a medical officer. Dr. G——, Surgeon to the — Regt., officially attended the punishment of a soldier in an island in the West Indies, who had been sentenced to receive five hundred lashes. When about two hundred and fifty lashes had been inflicted, Dr. G—— recommended that he should be taken down; but the commanding officer lost his temper, and censured the Surgeon for interfering; he at the same time declined to suspend the punishment. Nay more, while the punishment was going on, he continued to reprimand the medical officer for interfering, and finally ordered the Adjutant to put him under arrest, which was done, and he remained under arrest, until, in consequence of an appeal to the General Officer, through the principal medical officer, he was liberated, having been confined for about ten days.

A medical officer, who is officially present at a military punishment, is placed in a most unenviable situation, being in some measure held responsible for the consequences of the injury thereby inflicted, which responsibility is obviously unjust, inasmuch as the punishment is too uncertain in its operation for any medical officer to ascertain the boundaries of danger. Moral feeling, age, strength, nervous irritability, climate, previous disease, organic defects, and other circumstances, many of which it would be impossible for the most skilful and the most careful to detect, may render a punishment fatal, which had been intended to be but moderate or lenient. No medical officer can answer either for the immediate or ultimate consequences of this species of corporal punishment. Inflammation of the back, or general fever, may occur after a very moderate infliction, which may terminate fatally, notwithstanding the greatest diligence and attention on the part of a well-informed conscientious medical officer.

Every officer, upon becoming a member of a court-martial, swears that he will duly administer justice according to the rules and articles of war, without partiality, favour, or affection, and he further adds, "*If any doubt shall arise, which is not explained by the said Articles or Act, then according to my conscience, the best of my understanding, and the customs of war in like cases.*" A medical officer who is present at the infliction of corporal punishment, enters, I presume, virtually into a

similar engagement, namely, to do his duty impartially, and in the absence of specific instructions to be guided "*according to his conscience, the best of his judgment, and the custom of war in like cases.*" Under such circumstances, it may be asked why should medical officers bear a heavier responsibility, when untoward circumstances follow corporal punishment, than the members of a court-martial, by which the sentence was awarded?

With reference to the responsibility of medical officers, I may here advert to two remarkable examples, for the purpose of showing that they should be particularly careful in regard to the duty of attending the execution of a sentence of corporal punishment. Two men belonging to the — Regt., in 1823, then stationed in Demarara, made an attempt to escape in a boat to the Spanish main, and having been pursued, they fired upon the party sent in quest of them. They were, however, ultimately captured, and being tried by a general court-martial, they were each sentenced to receive one thousand lashes. Before the proceedings of the court-martial were confirmed by the General Officer at Barbadoes, the regiment was transferred to St. Vincent's. The commanding officer of the regiment in question, Lieut.-Colonel L——, who appears to have been the senior officer in St. Vincent's, determined upon carrying the sentence into effect regimentally, instead of upon a garrison parade, when a Staff-Surgeon would have been directed to attend. The regiment was then under the medical charge of Assistant-Surgeon F——, who attended the punishment. On the morning of the day when the men were to be punished, the Lieutenant-Colonel was reported sick, and the command of the parade devolved upon Capt. A——. The punishment was carried into effect on the 5th February, 1824, and each delinquent received the whole amount of his sentence, namely, one thousand lashes.

Three other men were punished at the same time. Both of the two men in question died, the first on the 7th February, and apparently in consequence of collapse; the second died on the 14th, after a fit of ague. Sloughing commenced on the 12th, and by the following day the whole of the back and loins had become involved. The backs of the men were not much cut. Both of the men had been previously delinquents, and they were sentenced to remain for life in the West Indies, in which station they had served nearly twenty years. The other three punished men did well.

The fatal issue of the above cases having been reported by the Staff-Surgeon at St. Vincent's to the Inspector-General of Hospitals at Barbadoes, he forthwith officially recommended that Mr. F—— should be removed from the Army. He stated in his communication, that although one thousand lashes may be awarded by a general court-martial, it is never expected that the whole should be inflicted in a warm climate; as also that to stand by and see one thousand lashes inflicted on men who had served long in a tropical climate, evinced great want of feeling and judgment; it betrayed, he added, neglect or ignorance, or both, to a considerable degree.

The Inspector-General admitted that Mr. F——'s former services and character were creditable, and that perhaps it would be unfair to dismiss him for what he may call an error in judgment; but still the Inspector thought it right to do so, for the purpose of depriving him of the power of committing a similar error.

It seems never to have struck the Inspector that by admonishing and instructing Mr. F——, he might have, in all likelihood, as effectually obviated a similar untoward result as by dismissing him from the Service.

Mr. F—— was ordered to proceed to England, there to await the decision of the Commander-in-Chief, and during the month of June, 1824, he was removed from the Service.

Mr. F—— having been dismissed without being heard in his own justification before a court-martial, I take leave to subjoin the following desultory observations.

No one doubts the right of the King to dismiss any of his officers from the Service, without offering any motive except his own will; but it must be admitted that this power may be used without sufficient examination, and consequently without that thorough understanding of a case which cannot be otherwise obtained, except by fully hearing all parties. Mr. F—— had entered the Service in 1815, and remained an Hospital Assistant until May, 1822, when he was promoted to the rank of Assistant-Surgeon, and attached to the regiment in question. An officer of the rank of Hospital Assistant is seldom required to be officially present at a punishment parade, and as Mr. F—— may not have joined the regiment more than a few months, when he was present at the punishment of the above-mentioned two men, he may perhaps have had little or no practical experience of the duties of a medical officer, when corporal punishment is inflicted. The duty, in fact, may have been quite new to him, and hitherto no instructions have been issued for the guidance of novices in that important branch of a medical officer's duty. He was no doubt present officially when the two men were punished, which punishment unfortunately proved fatal in both cases; but although

“It is generally supposed, that the Surgeon who is present at a military execution is responsible for its consequences; this is not legally true, and it is physiologically impossible: the punishment is too uncertain in its operation to allow of any medical officer ascertaining the boundaries of danger. * * * * No Surgeon can answer either for the ultimate or immediate consequences of this species of corporal punishment. He may indeed err on the safe side by interposing as early as possible, but there is no criterion by which he may be guided in forming an absolute opinion on the danger or safety of the punishment.” (*Paris and Fonblanque*, vol. iii. 149.)

“Let a medical officer bear in mind, whatever his sentiments may be concerning the nature of the punishment, that he has nothing to do with the merits of the case; and *if the prisoner is able to endure the award, he has no business to stop the course of law or justice.* If he gives way to his feelings once or twice, he will find himself unpleasantly situated, unless he can show satisfactory cause for his interference.” (*Forensic Medicine*, by Dr. J. Gordon Smith, page 403.)

Dr. Smith served long in the 12th Dragoons.

A Medical Staff Officer of my acquaintance, who, in the opinion of his commanding officer and the officers of the garrison, was too ready to recommend suspension of corporal infliction, came to be considered in some degree a nuisance in the station. He was ultimately removed to another garrison, in consequence of his being thought an impediment to the Service. I have elsewhere stated that medical officers, whose feelings were easily excited by being present at a corporal infliction,

that the symptoms of epilepsy were occasioned by fear, was proceeding to the Commanding Officer, for the purpose of stating that the man was unfit to receive punishment, when, by accident, he happened to look behind him, and saw the eye of the delinquent watching his motions. This circumstance convinced the medical officer that the symptoms were feigned, and the delinquent received his punishment without further delay.

Pain, but especially pain which is inflicted or imposed as a chastisement, frequently excites fainting, or *deliquium animi*; and when this takes place it becomes highly expedient to arrest the infliction of punishment. When syncope, or fainting, occurs during a surgical operation, I believe it is the ordinary usage of surgeons to cease operating until the patient is restored. But a man under punishment is liable to a partial *deliquium animi*, or fainting, during which it has been recommended, (and it is, I suppose, usual,) to permit the punishment to go on during some seconds of impaired sensibility. In the slighter cases, therefore, of *deliquium* the punishment need not be interrupted; indeed, the stimulus of flagellation frequently restores the sufferer to himself. If, on the other hand, the *deliquium* continues, and a man cannot be roused in a few seconds, if he perspires much, and if the pulse at the temporal artery becomes weak, or scarcely perceptible, he should be forthwith taken down.

I never considered it expedient to examine the irritability of the iris, as is sometimes recommended in doubtful cases, being always satisfied with the conclusions which might be drawn from the above symptoms. Should a man recover instantly, the medical officer is sometimes supposed to have been unnecessarily cautious,—imposed upon, in fact. This conclusion he may occasionally expect, but not often; for to witness the flogging of a man is, I believe, in general very painful both to officers and men,—the infliction of bodily pain, as a punishment, under whatever name the operation may be executed, having very much the appearance of torture,—consequently, officers in general are pleased to see the infliction brought to a conclusion. Some officers, who in the exercise of their duty are obliged to attend punishment parades, frequently turn their eyes from the sufferer, and obviously show, by their looks and gestures, that they are disgusted with the exhibition. In complete fainting the delinquent becomes unable to stand erect, the muscles of his limbs lose their power, and he hangs by the hands from the top of the triangles.

It need hardly be observed, that as long as a man exclaims and shrinks from the lash, a medical officer may be satisfied that there is not much tendency to fainting.

So long as it was customary to inflict second punishments medical officers were, from motives of humanity, much disposed to allow a man to receive the whole of the punishment which the court-martial had adjudged at once, or, at any rate, as much as he was able to bear, in the hope that the remainder would be remitted. Soldiers who received to the extent of two-thirds of the sentence awarded were seldom "brought out" to receive the remainder. The sentence was, however, not always remitted, it was allowed to *hang over* them, so as that the Commanding Officer might inflict the balance due when it pleased him to do so. Dr. Hamilton has very graphically described the cruel consequences of second punishments.

“Let us suppose,” says he, “that a man is taken down at the end of 250 or 300 lashes, and that his sentence was 1000, all of which he must receive, whether at two, three, or more times, before he is released from confinement. Let us suppose he is conveyed either to the guard-house or hospital, is daily dressed till the wounds are healed, and a new cuticle formed, which may be in a month or five weeks. He is now become able to wear his clothes, yet perhaps scarcely able to suffer the weight and friction of his cross-belts, or the pressure of his haversack,—the parts are as yet red and tender; notwithstanding, he is ordered a second time to the halberts, and at the end of 200 or 300 more is a second time taken down, cured as before, a third time brought there, and so on till the whole judgment be inflicted.”

An elaborate expounder of martial law and military usages expresses himself as follows in regard to second punishments under one and the same sentence:—

“Every Commanding Officer,” says Major James, author of a Military Dictionary, and several other military works, “has a discretionary power vested in him to remit the whole or part of the punishment which may have been awarded against a non-commissioned officer or private soldier by the sentence of a regimental court-martial. But no such power is vested in him when the King’s approbation (and I presume I may add that of his authorised representative) has sanctioned the execution of any sentence given by a general court-martial.”

“However the culprit may suffer on such an occasion, or have his punishment discontinued through the report of the Surgeon, he must again be brought out to receive the remainder of the lashes; and, should he expire before the *bona fide* complement of the sentence, it must be consummated upon his lifeless and mutilated carcase.”

“We cannot omit,” says our author, “mentioning in this place that the instant a military culprit receives a lash the Surgeon becomes responsible for his life.”—*Regimental Companion*, vol. ii., 466. Seventh Edition, London, 1811.

I remember attending the punishment of a man belonging to the — Regiment, in 1808, who had been tried by a court-martial, and convicted, in consequence of having a small piece of black muslin spread over the ball of the left eye and under the eye-lid. He had previously lost the sight of his right eye. He was sentenced to receive 1000 lashes in the usual manner, and at such *time* or *times* as the Commanding Officer might direct. He was taken down upon having received about 250 lashes. After being cured he was again brought out to receive the remainder of his sentence. The first few lashes tore open the newly-cicatrized skin, so much that his back became instantly covered with blood, which flowed downwards under his clothes. He was taken down before he received forty lashes. The second punishment was a most painful one to all who witnessed it; and I believe the disgusting exhibition was not in his case repeated.

The infliction of pain, without long disabling a man for duty, or endangering his life, being the immediate object of flogging, I am disposed to ask whether that intention would not be amply attained by employing a cat with one tail instead of one with nine tails. The pain inflicted by one cord would be severe enough, perhaps nearly as severe at the moment as with nine cords, while the ultimate injury and danger would be much less.

Dr. Hamilton gives the following account of a case of second punishment, similar to the one above mentioned, which came under my own notice:—

“Hall,” says he, “was sentenced to receive 500 lashes for housebreaking; he got 400 of them before he was taken down: and in the space of six weeks was judged able to sustain the remainder of his punishment, as his back was entirely skinned over. The first 25 lashes of the second punishment tore the young flesh more than the former 400, the blood pouring at the same time in streams. By the time he got 75 his back was ten times more cut by the *cats* than with his former 400,—so that it was thought prudent to remit the remaining 25, and take him down. Hall declared that his first punishment was trifling to what he suffered by the second. Other examples might be added,” says Dr. Hamilton, “but to multiply cases of this kind is disagreeable.”

Some men suffer much more than others from the same amount of punishment, more especially persons of a sanguine temperament, with red or fair hair, and a tall slender frame of body.

“Edwards, in the end of 1781, was sentenced to receive 50 lashes. He had got drunk, and otherwise misbehaved. In the Army this number is accounted next to nothing. So much, however, did this small punishment affect him, that, notwithstanding every degree of attention to his case, it was upwards of three months before he could bear his cross belts, or even move his arms to work. Perhaps 50 more would have placed his life in most imminent danger. He was of a thin, tall, genteel shape,—his hair black but soft, woolly, and thin on his head, with a skin remarkably white and smooth.—*Hamilton*, vol. ii., 40.

The effects of flogging are so different in individuals, that, although every attention is paid to the probable strength and constitution of soldiers by medical officers, untoward symptoms will sometimes follow.

“Henley, for desertion, received 200 lashes only; acute inflammation followed, and the back sloughed. When the wounds were cleaned, and the sloughed integuments removed, the back-bone and part of the shoulder-bone were laid bare. I never had seen so much of the muscular parts destroyed in any case from punishment before. * * * * * It was upwards of seven months before he was so far recovered as to be able to do his duty.”—*Hamilton*, vol. ii., 44.

In 1806, I recollect having two similar cases of sloughing from punishment to dress; they having occurred in the regiment to which I belonged. One man died, the whole of the muscles of the back having sloughed, and the other was never fit for duty, and required to be invalided.

Hamilton mentions the case of a man who died at the halberts. “Lately, in England, not far from the metropolis,” says the authority he quotes, “a soldier received 400 lashes; he scorned to flinch for some time, till by a repetition of stripes he groaned and died.” Fever and sloughing of the back are the consequences of flogging which are most to be dreaded. Junius, in a note to his celebrated Letter to the King, (15th Nov., 1769,) shows the partiality which is exercised in favour of the Guards, in strong terms, and then observes as follows:—“So much for the officers. The private men have four-pence a-day to subsist on, and five hundred lashes if they desert. *Under this punishment they frequently expired.*”

With the view of demonstrating to medical officers of the Army the great necessity of their being extremely discreet and cautious in the discharge of a most painful and unpleasant part of their duty—namely, their attendance at punishments, Staff-Surgeon Burmester published, in 1807, (*Edinburgh Medical and Surgical Journal*), the case of a man who died in consequence of what was considered a mild punishment.

The man in question was stout and healthy, twenty-eight years of age, subject to no constitutional disease, and who, for a considerable length of time previous to his punishment, had enjoyed perfect health. He was sentenced by a court-martial to receive 800 lashes, and received 250, which he bore with a manly resolution, and was taken down, the remainder of the sentence being remitted by the Commanding Officer,—not, however, from any appearance that he could not have borne a considerable number more without incurring the smallest danger.

Fever appeared on the second day after the punishment, which was followed by inflammation and sloughing of the back. On the twentieth day from his punishment, there was scarcely an inch from his neck to his loins free from disease. He continued to languish until twenty-four days from the time of his punishment, when he expired. This case happened in the Mediterranean; and other men who were punished at the same time, and to a more considerable extent, recovered in the ordinary time. The unhappy result of this man's case could not, in Mr. Burmester's opinion, be in any material degree attributed to an unhealthy climate.

In such a punishment as flogging, accident will be sure to assist the intrinsic rigour of the system, oversight will conspire with design, and congenial circumstances will develope strict discipline into cruelty. Startling results serve to arrest the attention, and prove the general character of corporal punishment as a means of enforcing discipline.

It may be observed, that in practice the attendance of a medical officer at a punishment parade is more calculated to prevent a man from escaping the amount of infliction to which he has been sentenced, than to meliorate and reduce the severity of punishment. His professional knowledge is employed to detect whatever latent principle of life a man possesses, which may enable him to undergo the sentence awarded. It has been stated to be "less necessary to dwell upon motives of humanity and discretion, than to caution military surgeons against attempts which are sometimes made to deceive them by soldiers feigning complaints to evade punishment, and feigning syncope or fits during its infliction;—to caution them also against any untimely or undue interference with the discipline of the Service, or any vain parade of authority in the only case in which their authority can be considered as at all paramount to that of the Commanding Officer." †

I may here observe, that the authority of a medical officer is on no occasion paramount to that of a Commanding Officer; he has, in fact, no military authority whatever. Medical officers are, in regard to choice of quarters, to be classed with other ranks; but this *indulgence* is not to give them any claim to exercise command.

Dr. Hamilton informs us, that he had seen several cases of partial or temporary loss of power of one or both arms, resulting from flogging. I have met with only one case of this kind,—the right arm having become paralytic, on which account the man was discharged.

When an unusual degree of tumefaction of the back takes place during punishment, a delinquent should be taken down, as this symptom is frequently followed by long protracted disease.

Bombadier Alexander incidentally mentions a case of this kind in his Memoirs.

*Outlines of a Course of Military Surgery
by Sir George Ballingall Edinburgh
1823 page 525*

“In 1803, at Chatham, a private of the 9th Regiment having been found asleep on his post, was tried by a court-martial, and sentenced to be flogged. The soldier was a fine-looking lad, and bore an excellent character in his regiment. The officers were much interested in his behalf, and it was said they endeavoured to prevail upon the General in command, to give his case a favourable consideration, but without success. All the troops were assembled to witness the punishment; and during the infliction I saw the Drum-Major strike a drummer to the ground for not using his strength sufficiently. The man’s back became black as the darkest mahogany, and greatly swelled. He was taken down at the recommendation of the medical officer, after he had received 229 lashes, and sent to the hospital, where he died in eight days, his back having mortified. I have witnessed 700 lashes inflicted, but I have never seen a man’s back so black and swelled.”

I have already stated, that extensive sloughing of the back occasionally occurs from flogging, notwithstanding the utmost care on the part of a medical officer.

“Burck,” says Dr. Hamilton, “had so great a discharge from his back, accompanied with a smell so great, that though a more than ordinary robust man, it made him extremely faint and uneasy; he complained more of this than of the pain he suffered, yet he was carefully dressed and washed twice a day, and for sometime shirted once every day.”

“Dale was punished for stealing, and smelled so offensively, though the greatest attention was paid to dressing and washing his back, as well as to changing his linen; and so great effect did it produce on his health, that he fell into a fever, and narrowly escaped with life. He was removed to a ward by himself, the smell being extremely offensive to the other patients. From the putrid smell of his sores, it was no easy task to dress him; and such was the precarious state of his health, that I durst trust it to no one but myself.”—*Hamilton*, vol. ii., 60.

In cases where great ulceration and sloughing occurs, the cicatrix is long, and, in some cases, permanently so sensible and tender, as not to permit a man to wear his cross-belts, or at any rate to carry his knapsack. I have seen a soldier permanently disabled for duty by this means, and rendered unfit for the service. It is alleged, by persons who have witnessed much flogging, that the back becomes callous by frequent corporal punishment, a circumstance which is probably occasioned by the repeated effusion of lymph.

“By frequently punishing offenders,” says Dr. Williamson, “the parts become insensible to that laceration which tears up the skin. When that barbarous consequence is arrived at, its infliction becomes a matter of indifference to the unfortunate negro; and new sources of torture must be found out by which the commission of crime may be checked. It can scarcely be necessary to add, that such a condition of torpor in the parts to which punishment has been applied, can never be justified on any pretext; and I blush to reflect that white men should be the directors of such disgraceful deeds.”—*Observations relative to the West India Islands*, by J. Williamson, M.D., 1817.

Dr. Williamson had peculiar opportunities of acquiring information on this subject, he having resided in a medical capacity during fourteen years upon different plantations in Jamaica.

“Although that few or none die, which,” says Dr. Hamilton, “I believe to be the fact, immediately from punishments moderately inflicted, I know, from experience in the Service, that constitutions have been considerably impaired by them. We sometimes find the body melt away into a spectre

of skin and bone, from the large suppurations that have followed; nor were they ever afterwards, as long as I knew them, able to bear the same hardships as before; and they must from thence also be more incident, not only to contagious diseases, if they be in the way of them, but to other complaints to which fatigue or hardships of duty may expose them.”—*Hamilton*, vol. ii., 56.

Dr. Kirckhoff makes a similar observation in regard to the use of the *cane* in the army of the King of the Netherlands:—

“The punishment of the cane,” says the Doctor, “is injurious to the health, for it may occasion spitting of blood and inflammatory affections of the chest, followed by consumption and death. I have seen men expire immediately after the punishment, and even during the infliction.”

Serjeant Armstrong, who was flogged to death by the orders of Governor Wall, passed blood constantly after his punishment, both by urine and stool; and the Surgeon stated also, that he had an asthma from the extraordinary absorption of the blood.

Sir Henry Hardinge bears strong testimony in regard to the injurious effects of the Portuguese mode of punishing military delinquents.

“Punishment,” says Sir Henry, “was inflicted by a Corporal seizing the culprit, and striking him with the flat of the sword upon the back. It was necessary to be done with the utmost caution, for it affected the chest so severely, that sometimes consumption and lingering complaints were the consequence. It bruised the body, and frequently led to spitting of blood, and very serious complaints.”—*Evidence on Military Punishments, Questions 5657 and 5658.*

Sir Henry commanded five Portuguese battalions in the Pyrenees, by which means his attention was peculiarly directed towards the hurtful consequences of this mode of punishment.

“The proper end of human punishment,” says Paley, “is not the satisfaction of justice, but the prevention of crimes. By the satisfaction of justice, I mean the retribution of so much pain for so much guilt.”

The chief design of punishment being therefore to prevent the commission of crimes, not to avenge wrongs, if this can be obtained, the end of the law is accomplished. And may not that be as effectually done by moderate as by excessive severity? To reform delinquents, and to deter others from committing crimes, being the true object of the military law, it is presumed the punishment of offenders should be such as to give temporary pain and anxiety, but which should carry no lasting infamy with it, other than the reflection of having been punished,—a punishment, in fine, which repentance might obliterate. The ignominy which is connected with corporal punishment, but especially the brand of infamy which results from an ulcerated back, is an indelible and fearful consequence of flogging.

Great melioration of the penal laws and usages of the Army has taken place since 1812; and I take leave to observe, that the general state and conduct of the troops has proved the safety and the policy of the alteration. I sincerely hope that “the improvement will be extended, and that the Army will not long be subjected to a degrading and barbarous torture, from which less moral men and much worse soldiers are exempted in every service in Europe.”

Previously to concluding this part of my subject, I may express my

cordial concurrence with the sentiments which Dr. Hamilton published fifty years ago, in his chapter on military punishments. "*I wish,*" said he, "*after all, the military laws knew no such thing as flogging, and that in place thereof some other mode of punishment could be devised less ignominious. On this head, however, I dare say nothing, it is out of my line of life, though I wish it with all my soul abolished as an inhuman thing, more suiting the nature of savages than civilized and polished nations.*" Indeed, I feel confident, that in a very short time flogging will be very little resorted to in the Army, that it will in fact fall into disuse, and that people will lift up their hands and wonder, as we do now in regard to some of the former barbarous punishments, that it has been tolerated and practised so long.

Were it demonstrated that flogging is sufficient to deter soldiers from the commission of certain crimes, and that other means of preventing crime after an adequate trial are insufficient, then perhaps flogging should be inflicted in a limited degree; but if it does not effect the above object, then it ought to be completely abolished, the only legitimate ends of punishment being to prevent the delinquent from repeating the crime, and to deter others from emulating it.

The usual defence of the punishment of flogging by military officers, rests wholly on the assumption that corporal punishment has the effect of preventing crime and sustaining discipline, and that it is superior to every other remedial means for that end. Degrading punishments very rarely produce contrition and reformation.

"There is not an instance in a thousand," says Dr. Jackson, "where severe punishment has made a soldier what he ought to be; there are thousands where it has rendered those who were forgetful and careless, rather than vicious, insensible to honour and abandoned to crime."

The reformation of a delinquent should be the motive, the object, and measure of all penal inflictions of a secondary character. Let reformation be recognised as a primary object in all punishments, and we shall have good security for the adoption of humane and judicious measures. Should the allegation of the Reverend Robert Hall, in regard to the trade of war be well founded, and, perhaps, it is much too true, great care should be taken to promote good conduct, and to repress vice in the Army. "*War,*" says he, "*reverses with respect to its objects all the rules of morality. It is nothing less than a temporary repeal of all the principles of virtue. It is a system out of which almost all the virtues are excluded, and in which nearly all the vices are incorporated.*" A State which contracts for the minds and bodies of men for an unlimited period, and which leads them into the temptations incident to a military life, becomes in a great measure responsible for their temporal and eternal welfare. Having surrendered their independence for life, and sworn unconditional obedience to their superiors, soldiers have a strong claim to become the adopted children of their country, and to be treated accordingly. The State has no doubt a right to command, but it has also important duties to perform; duties which comprehend the means of promoting the efficiency, the welfare, and the happiness of the Army.

A HISTORICAL SKETCH OF MILITARY PUNISHMENTS, IN AS FAR
AS REGARDS NON-COMMISSIONED OFFICERS AND
PRIVATE SOLDIERS.

XV.

Whipping or Flogging in Civil Jails.—Soldiers are liable to be whipped for delinquencies committed in civil jails. In Maidstone jail, for example, it has sometimes been deemed necessary to flog privates for breaches of prison discipline.

A person convicted of certain crimes may, if a male, be sentenced by the statute law of England, to be *once, twice, or thrice* publicly or privately whipped, in addition to such imprisonment as the court shall think fit to award.

Public whipping has, I believe, completely fallen into disuse both in England and in Scotland. Private whipping appears to be a very undefined punishment, the keepers of prisons having in practice nearly absolute power in the execution of this sentence, by which means the mode of infliction varies greatly in different jails. In some prisons it is alleged, that the whipping of prisoners is carried to a great extent of severity, from eight to ten dozen lashes being sometimes inflicted, in others not more than ten or twelve, and with a lightness that makes the sentence nominal. The cat of nine tails, or instrument of infliction, also varies greatly. In some prisons the cat or scourge in use, is similar to the instrument employed in the Army, in others to the cats employed in the Navy, while delinquents are punished in some establishments with an instrument like a common school-rod. The punishment is inflicted in some prisons the day previous to a prisoner's discharge,—a circumstance which obstructs moral improvement, and adds greatly to the numerous obstacles which lie in the way of a man in such a situation finding employment. While the infliction of flogging is hanging over a prisoner, he is little disposed to form good resolutions. He appears to feel that corporal punishment immediately before his discharge is unjust, and with a foreknowledge of the consequence of the whipping on coming out into the world, he steels his heart for the occasion, and goes forth from the prison a hardened sinner.—*Sixth Report on Prisons, Northern and Eastern District.*

The authors of the Seventh Report of the Commissioners on Criminal Law, seem much disposed to reject flogging altogether as a punishment. We say the Commissioners consider it "*a punishment which is uncertain in point of severity—which inflicts an ignominious and indelible disgrace on the offender, and tends, we believe, to render him callous, and greatly to obstruct his return to any honest course of life.*"

"By the discipline of *blows*," as has been observed by Dr. Caldwell, "no moral or intellectual faculty is cultivated." It may, however, excite resentment, hatred, and revenge; and if it should for a short period deter from crime, it awakens no disrelish for it.

Imprisonment.—By the Mutiny Act, Section 7, a court-martial may sentence a soldier to imprisonment, solitary or otherwise, and with or without hard labour, in any public prison, or other place which the

court may appoint, for "*immorality, misbehaviour, and neglect of duty.*" Every non-commissioned officer or soldier sentenced to imprisonment by a court-martial, forfeits all right to any pay from the day of his commitment during the time of his imprisonment. But a jail allowance may be drawn from Government by a proper certificate showing that the sum charged, not exceeding *sixpence a day*, has been actually and necessarily expended upon each prisoner.

Soldiers have been sentenced to be imprisoned for a period extending from 3 to 1460 days on foreign service, and from 3 to 1826 days on home service.—Vide Return prepared in accordance with the order of the House of Commons.

It may be stated, that by the Vagrant Act, the punishment for incorrigible rogues is imprisonment till the next quarter's sessions, hard labour for any time *not exceeding a year*, and in some cases the whipping of *male* offenders.

General and district courts-martial have the discretionary power of inflicting imprisonment without limitation, according as the court shall deem fit. Many reasons might be assigned for fixing a maximum term of imprisonment. Extreme severity, although allowed by the law, is perhaps rare in practice; but though the power be not abused, the law is still open to the objection that the court is unnecessarily invested with an excess of authority, which is only tolerated because it is seldom if ever used. An indefinite extent of punishment as may now be inflicted, operates perhaps less on the fears of the ill-disposed than the threat of a moderate but defined punishment would do, if attended with greater certainty as to its infliction. Indiscriminate sentences tend to confound the different gradations of guilt of which military delinquencies are susceptible, and which ought to be marked by the infliction of corresponding degrees of punishment.

The object of punishment by imprisonment, like other corrective punishment, is twofold—amendment and example; and as aversion to labour is the principal cause in civil life, from which the vices of the poorer classes deduce their origin and continuance, confinement with hard labour is adopted as a means of reforming a propensity to indolence and dishonesty, and training to habits of industry.

In the Army, however, disobedience is the principal cause of military offences, consequently the amendment expected by imprisonment is confined chiefly to an improved disposition in soldiers to obey their superiors. But imprisonment may do more harm than good: a place of confinement may become a school for insubordination and every kind of corruption, not only in civil jails, but also in provost prisons, such as the military prison in Dublin. "There is no vice," says Mr. Livingstone, (Penal Code of Louisiana,) "that affects the mind, which is not imparted by constant association; and it would be more reasonable to put a man in a pest house to cure him, than to confine a young offender in a penitentiary organised on the ordinary plan, in order to effect his reformation."

Solitary Imprisonment, Separate Confinement.—There seems to be no specific rule for the guidance of jailers and keepers of places of military confinement, in carrying this punishment into effect. The usual treatment of soldiers sentenced to solitary confinement in the Coldstream Guards, as described by Colonel M'Kinnon, is as follows:—

“The prisoner is placed in a cell or black-hole: some black-holes are very dark, others may have light enough to read by. He is allowed plenty of straw, and two blankets, and more when required, together with his great-coat. He is made to wash and shave every morning, and he is to walk for an hour under charge of a sentry, in the morning and afternoon. The allowance of sixpence a day is given in bread and milk, or bread alone, (with water I presume, *ad libitum*.) He is sometimes allowed a basin of soup out of his comrade’s mess in cold weather. His cell is carefully searched to ascertain that he has no tinder-box, pipes, spirits, tobacco, or any food concealed. Every man has a Bible and Prayer Book, being part of his kit. In Portman-street barracks, all the cells *are dark*, and in Knightsbridge only one has light, and that scarce sufficient to read by.”

Colonel M’Kinnon thinks, that to render solitary confinement effectual, the cell should be constantly dark, (a true black-hole), and the prisoner on no account allowed to walk out at any time, or to have any kind of recreation, neither should he be allowed a book, needle or thread, or any thing with which he may amuse himself. The admission of light, Colonel M’Kinnon thinks, would at once take off the severest and most beneficial part of the punishment.—*Evidence on Military Punishments, Question 3884.*

The discipline of Carlisle Jail may be detailed, it having been recommended as better than most, by Major Drought, 15th Foot.—*Appendix to Report on Military Punishments, page 58.*

“In that place of confinement the cell admits of but little light; the bedding is the same as in barracks, but no sheets are allowed. At 6 in the morning the prisoner is visited by the turnkey, and marched into the yard alone, where he is allowed ten minutes for washing, and at which time he receives his allowance of *bread and water*. He is then marched back to his cell, from which his bedding has been taken. At half-past 8 o’clock he is marched to chapel, where he sits by himself, and sees nobody but the clergyman. He returns to his cell, and is not visited till 7 in the evening, when his bed is put back. Once or twice a week he gets half a pound of cheese: he is not allowed to see any one except by order of his Commanding Officer.”

Rigorous disciplinarians of the severe school appear to think that pain and reformation are the same thing, or at least cause and consequence, and that if sufficient of the former is inflicted, the latter will certainly follow,—an opinion which is obviously not well founded. Real improvement consists in a formation of better and purer principles, and a realization of them in the life and conduct,—a result which cannot be attained without self-respect, and without a prospect of some portion of happiness coming along with it. It is difficult therefore to perceive the wisdom of confining men long in a “black-hole,” a position where soldiers are rarely if ever reformed,—where the health of persons of a nervous temperament may be destroyed, the spirits prostrated, the intellect clouded, and the heart broken. All punishments are attended with serious evils, but none are so bad as those which have a tendency to destroy the mind, on whose improvement we rest our hopes of instilling the principles of subordination.

Of all the punishments which are awarded by courts-martial, perhaps none strikes the mind of a soldier with so much terror as solitary confinement. Delinquents cannot contemplate without horror, the prospect of being shut up in company with their own thoughts, oppressed as the

mind must be sometimes with remorse. The state of inaction in which an energetic mind is placed by solitary confinement, is of itself a moral death.

Several officers have recommended that the allowance of sixpence a day for the subsistence of prisoners should be reduced even as low as threepence a day, exclusive of washing, or such a sum as would allow the prisoner one pound and a half of bread only, with water, each day. "All men imprisoned or confined," says one Commanding Officer, "should be dieted on bread and water only."—*Report on Military Punishments, App.*, page 621. Several other officers express a similar opinion.

On the 4th April, 1832, a General Order was published in Madras, containing regulations for the uniform execution of sentence of solitary confinement, consisting of fourteen paragraphs.

Paragraph 4.—"As a general rule, the diet of prisoners under solitary confinement is to be restricted to *bread and water*, subject to such addition as the medical officer may at any time deem to be necessary."

Previously to the issuing of this Order, European prisoners under solitary confinement in the Madras Presidency received their usual rations, with the exception of spirits. Medical officers may recommend a change of diet; but even if their suggestion be attended to, the sum expended in the purchase of articles of food for a prisoner, must in no case exceed sixpence a day.

The *congee* houses, or prisons, in a station in Bengal are thus described in *Life in the Ranks*, page 113, "The congee houses," says our author, "constituted a quadrangle of strong cells built in ranges one above the other, and were entered by means of balconies. Each cell was about eight feet high, and eight by six square; and confinement in this narrow space, joined to the overpowering heat of the climate, and scanty allowance of *bread and water* served to the inmates, rendered the punishment, in the case of a man labouring under the debilitating effects of arrack, equivalent to the sentence of death." A serjeant who was immured in one of the cells lost his reason the first night of his confinement, "he never recovered his senses, and death soon after put a termination to his sufferings." Two other non-commissioned officers were soon after confined in the congee house, "one died from fever brought on by excessive drinking, and a broken heart terminated the existence of the other."

If I am rightly informed, convicted prisoners in military prisons are chiefly subsisted on bread and water; in the West Indies they receive their daily ration in the shape of bread and coffee, and in the East Indies they receive bread and congee (rice water.) In one of the garrisons in this country, the allowance of 6*d.* a day is expended as follows:

3 pounds of Bread	-	-	-	-	3	³ / ₁₆	pence
Coffee and Vegetables	-	-	-	-	2	⁵ / ₁₆	
Washing	-	-	-	-	0	⁸ / ₁₆	
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No part of the allowance in this case remains for the purchase of articles of clothing, tobacco, &c., &c. Dr. Stark, who made the

experiment of confining himself to a farinaceous diet, chiefly bread and water, lost about four and a-half ounces by weight daily, and became affected with scurvy, together with cachexy, and a restless disquietude of mind. Eventually he fell a victim to his zeal in prosecuting his experiments on diet. Bowel complaints and general debility are frequent consequences of confinement, and a uniform diet on bread and water, by which means soldiers are sometimes reduced in health and strength to such a degree that, when they are discharged from prison, they require to be admitted into hospital to recruit their strength, being unable for duty. The consequences of confinement and inadequate diet take place among civil prisoners. "We continue," says the Surgeon to the hulks, "to receive from the majority of prisons in England, prisoners in such a state of debility from low diet, cold cells, and solitary confinement, that they are not, on arrival, capable of doing a day's work in the dock-yard, nor of undertaking the voyage to Australia."

According to the prison reports it appears, that the diet of prisoners in some of the civil prisons, where soldiers are confined, is far from being sufficient.

Winchester County House of Correction.—"It appears to me, that *soldiers*, or others, placed in solitary confinement for a month, should receive a better diet than simple *bread and water*, and also, that they should be allowed to take a little more exercise daily in the yard. At present they go into the yard only for a few minutes in the morning."

In *Gloucester County Jail and Penitentiary*, "Those who are in solitary confinement for a fortnight generally become emaciated and very frequently suffer diarrhœa, but then they have only a pound and a half of bread, and a pint and a half of mint water, during the day."

Preston County House of Correction.—"The Surgeon in evidence states, that he lays it down as a rule, *never to allow any extra food or alteration in the diet to any but patients in hospital*. This appears to me an injudicious departure from those sound precautions for the preservation of health observed in other establishments. I allude, particularly, to the cases of *soldiers* imprisoned here under sentences of Courts-Martial for lengthened periods, and who have, in several instances, *suffered most materially in health.*"

The modification of the ordinary diet of a body of healthy persons should not be left to the discretion of the Surgeon or any individual servant of an institution. The managers are the responsible persons on whom devolves the duty of framing a proper dietary. A surgeon who is disposed to defer to the opinion of his employers may consider the privations of a prison, comprehending insufficient diet, a part and parcel of the punishment inflicted on a prisoner, and deem it inexpedient to interfere. Besides, where all the prisoners are suffering, or liable to suffer, from insufficient diet, or from a diet not sufficiently varied, it might be a very invidious duty for a Surgeon, under such circumstances, to recommend a better diet to one prisoner and not to many others. Considerable differences exist in the dietary of prisons, both in quality and amount, and where it is low or innutritive, the health of prisoners suffers accordingly. The prevalent prison diseases are *petechia*, or scurvy, and cachexy, or an ill-condition of body, which, in some cases, are attended by prolonged weakness, and in others the symptoms becomeso virulent that the patient never recovers. In the treatment

of prisoners, it is highly expedient to avoid every thing harsh and arbitrary calculated to embitter and exasperate their moral dispositions, and due care should be taken that their bodily or mental vigour should not be injuriously diminished.

Dr. Malcolmsen, Madras Medical Service, thus describes the effect of solitary confinement and a bread and water diet on the health of soldiers in India :—

“Many men,” says Dr. M., “particularly those of indolent habits, endure a confinement of four or six weeks on bread and water, without injury to their health ; but in some instances a shorter period is sufficient to cause a total loss of appetite ; the bread is hardly touched, and no other food being allowed, the patient is unable to eat or to digest it. The stomach becomes weak ; there is uneasiness across the region of the stomach, spleen, and liver ; the latter is torpid ; the bowels are confined or they are relaxed with slimy discharges unaccompanied with pain ; yet the swollen red tongue indicates the existence of irritation of the mucous membrane of the digestive canal. The pulse is quick and feeble ; and the clammy skin, vertigo, debility, headache, and sleeplessness, shew how much the constitution suffers from diminished nervous power. The convalescence is slow, and the treatment requires to be adapted to the enfeebled state of the system.”
Letter to the Right Honourable Sir Henry Hardinge, London, 1837.

“It may not be improper to add,” says Dr. Malcolmsen, “that I have observed the minds also of prisoners confined for long periods, more especially when on a diet they believe to be destructive to their health, to become gloomy or even furious, and disposed to commit every crime.”

This is a very unfavourable state of mind for improvement, inasmuch as, whenever punishment has the effect of exciting exasperation and despair in the mind of a criminal, his moral faculties will be closed against every beneficial influence which confinement is intended to produce.

The convicted delinquent has his rights, and it is for the interest of the State that a soldier should not be deprived of them ; he is entitled to a wholesome atmosphere, decent clothing, and bedding, together with a diet sufficient in quantity and quality to support his health and strength, and adequate light during day to enable him to read. To render solitary confinement the more irksome, the cell windows are in some of the civil prisons so constructed as to admit a little light, but to exclude the sun-beams. It is in the military prisons alone, as described by Colonel Mc Kinnon, that total darkness reigns. Darkness is a prison punishment in America. The keeper of the Cherry Hill prison, in Philadelphia, is authorised to punish delinquent prisoners by confining them in a dark cell, and depriving them of the consolation of labour. The object of punishment being reformation, upon what principle should a soldier be starved and buried alive ? By confining a man in a *black hole*, it may be said, he is forbidden to reform, inasmuch as we deprive him of the means of intellectual and moral improvement which might promote contrition and repentance. Simply to punish, without endeavouring to produce some beneficial alteration in the disposition of the person punished, is little other than an act of retribution or revenge. It cannot be too deeply impressed on the minds of officers that punishment is only allowable as a medium of reformation, the mere vindictive satisfaction of the law being an accumulation of the evil of punishment upon the evil of crime without any rational ulterior object.

An unvaried diet, or a diet deficient in quantity, or, to be more particular, a diet of bread and water, operates unfavourably to moral improvement and as a means of deterring from misconduct. It is, perhaps, as hurtful upon the intellectual as upon the moral part of the human mind. A soldier who is enduring great privations in regard to food, as a punishment, must be but little disposed to form good resolutions, or to attend to the lessons of discipline. "There can be no doubt," says Dr. Malcolmson, "of the truth of the principle, that no punishment can be just, or in the eye of God lawful, which tends to impair the efficiency, injure the health, and shorten the life, of the soldier; or which produces any effects that cannot be estimated by the judges when they assign a punishment for an offence." Let us recollect, that the soldiers are men of like appetites and passions with ourselves, and let us act towards them according to the dictates of humanity and the lessons of experience. Military law and military usages, when wisely and justly administered, like the law of God, do not "*desire the death of a sinner, but rather that he should turn from his wickedness and live.*" (Ezek. xxxiii. 11.) An adequate quantity of food, sufficiently varied, and exercise, must be allowed to prisoners, if it be intended that they should afterwards be useful to their country or themselves. For the sake of example punishment should be somewhat severe but well regulated, and for the sake of the prisoner, and the interests of the State, the utmost care should be taken, that at the expiration of his confinement he may be liberated with his health and strength unimpaired, and, if possible, with an improved disposition to respect and obey his superiors.

The effects of an insufficient and an unvaried diet should be well considered, before healthy men are limited to bread and water, a restriction which has, in many cases, produced cachectic disease and scurvy in prisoners; and it ought to be recollected, that the constitution may be greatly injured by a too limited or an unvaried diet, long before decided symptoms of scurvy appear. The epidemic which broke out in the Milbank Penitentiary, London, nearly twenty years ago, is a memorable instance of the evils which result from insufficient nutriment.

With regard to the diet of soldiers undergoing punishment, I presume the object is, that they should have enough for nourishment and health, and very little more. How much and what quantity of food will suffice for that purpose has not, hitherto, been correctly ascertained by experiment. There is no universal rule in this respect, for the same quantity and quality of food which may be adequate to sustain the health and strength of one individual may be very inadequate to support another. Practically, however, the principal question seems to be, can animal food be safely excluded from the diet of military prisoners? I have no hesitation in answering this question in the negative. Soldiers have in general been accustomed to a daily allowance of 12 oz. of uncooked animal food, and it will also be recollected that a man who is undergoing punishment is liable to the influence of various debilitating causes, such as the depressing passions, want of exercise, &c. The ultimate intention of confinement being reformation, it is essentially necessary that a prisoner's health and strength should be carefully sustained, with a view to his prospective efficiency as a

soldier. I am disposed, therefore, to conclude that a soldier who is undergoing the sentence of a court-martial in confinement should invariably have a portion of animal food daily. The mean age of soldiers in the Infantry varies from about twenty six to twenty-nine years, consequently a large portion of the men of each regiment must be under twenty-three years of age. Now every person who has devoted any attention to human physiology must be aware that a growing young man, from seventeen or eighteen years of age to twenty-two, requires, and will consume, more food than a man ten or fifteen years older. The reason is obvious; in a growing youth the progressive development requires to be provided for. Starvation in the early period of life permanently ruins the constitution; consequently I am disposed to suggest that no young soldier,—perhaps I may go still further, and say no soldier,—should be punished by depriving him of much of his usual daily ration of food.

It would be out of place here to dilate further upon the evils of an insufficient and inadequately varied diet, added to confinement, want of exercise, and depressing passions. It is sufficient to state that they are calculated greatly to injure the constitution, and to excite the most formidable diseases, although, from their anomalous character, these often escape detection until too late to be remedied by art. When the health becomes impaired by scanty nourishment, the subsequent addition to the diet may fail to restore it.

Limiting the diet of prisoners to bread and water appears to have been a very ancient mode of punishment by the English. When the famous Joan of Arc was convicted of heresy, the Bishop who passed sentence announced to her that of “grace and moderation” her life should be spared, but that the remainder of it must be passed in prison, “with the bread of grief and the water of anguish for her food.” (*Au pain de douleurs et à l'eau d'angoisse.*)

Whatever may be advanced in favour of an extremely limited diet, as a means of reformation and for example in civil life, I am no advocate for its general adoption in the Army. The health and efficiency of the troops is of so much importance to the State, both in a financial and a political point of view, that too much care cannot be taken to prevent soldiers from being exposed to circumstances which may impair their constitutions and disgust them with the Service.

Imprisonment, conducted by either the separate or the solitary system, will, no doubt, tame in some degree the violent passions of some unruly individuals; but it may at the same time paralyze the energies of the mind, and impair the prospective efficiency of a soldier. The “black hole” system, conducted in the way recommended by Colonel M’Kinnon, would in all probability reduce many a mind to a weak, blank, negative condition. Books, together with good counsel, may dispose the mind of a prisoner to form good resolutions; but resolutions which have not been acted upon do not deserve implicit confidence,—reformation may not be the result. It is only by the exercise of subordination, and the practice of correct discipline, that the military virtues can be effectually cultivated. The morality of a prison, where there are no temptations, and where there is an absence of the power and opportunity of doing evil, is compulsory, and must not be depended upon.

There is one consequence of imprisonment which deserves considera-

tion, namely, that the mortality of prisoners is generally greater than that of free people. The loss of liberty, and the humiliation connected with the condemned state, may in part be the cause of the increased mortality. Hitherto, so far as I know, no census of the mortality of military prisoners has been made public. To appreciate the effects of confinement and the privations and sufferings connected with it, the annual proportion of deaths should be compared with the average annual number of soldiers confined in the whole Army. A statement of the mortality of prisoners should form an essential element in the statistics of the Army. In the American prisons it has been found that the mortality which occurs among prisoners confined in a state of complete solitude is more than double that of the mortality which takes place among prisoners who are in a state of solitude at night only.

MORTALITY OF THE AMERICAN PRISONS.

Time when.	Solitude at Night. Auburn Plan.										Solitude Day and Night. Pennsylvania Plan.	
	New Hampshire.		Vermont.		Wethersfield, Connecticut.		Charlestown, Massachusetts.		Asylum, New York.		Philadelphia New Penitentiary.	
	Prisoners.	Deaths.	Prisoners.	Deaths.	Prisoners.	Deaths.	Prisoners.	Deaths.	Prisoners.	Deaths.	Prisoners.	Deaths.
1828	..	..	..	2	..	1	290	4	571	9	..	..
1829	48	1	..	..	134	0	262	6	639	5	..	..
1830	54	..	..	1	167	4	290	5	620	18	31	1
1831	82	..	..	..	182	4	256	7	647	14	67	4
1832	89	1	..	1	192	2	227	11	683	12	91	4
1833	87	..	108	1	186	3	250	6	679	11	123	1
1834	86	..	..	1	189	1	277	4	679	11	183	5
1835	90	1	125	2	197	4	279	3	654	10	266	7
1836	82	1	120	2	204	8	278	4	648	18	360	12
1837	72	1	101	2	204	1	284	5	678	19	386	17
1838	73	..	95	1	187	9	302	6	660	15	402	26
1839	78	1	..	..	170	0	309	5	670	10	418	11
1840	81	..	..	..	187	2	320	2	682	14	405	22
1841	81	1	..	..	..	0	326	8	701	9	356	17
	993	7			2,199	38	3,950	76	9,211	175	3,088	127

N.B.—In no one of the prisons on the Auburn plan is the mortality 1 in 50, or 2 per cent.; in the New Penitentiary at Philadelphia it is more than 1 in 25, or more than 4 per cent.

Marking with the Letter D.—On conviction of desertion courts-martial are indirectly enjoined to award, as part of the punishment, that the offender should be marked with the letter D. It was a very general custom in the East to *brand* slaves on the forehead, as being the place most exposed, as well as on other parts of the body, the ultimate object being to distinguish the slaves if they should desert from their masters. For a similar reason it was common to brand soldiers, but with this difference, that while slaves were marked with the name, or some peculiar character, belonging to their master, soldiers

were branded in the hand with the name or character of their General. Roman recruits were branded upon final approval, and after a trial of three or four months.

Branding delinquents at one time entered largely into the English penal statutes. In the reign of Edward VI. a law was made for the punishment of idleness, by which, if a person brought to two Justices of Peace a runaway servant, or any other which lived idly and loiteringly for the space of three days, the said Justices shall cause the said servant or vagabond to be marked with a hot iron on the breast with the letter V (vagabond), and if he absconded for the space of fourteen days two Justices of Peace might order him to be marked on the forehead or the ball of the cheek with the hot iron with the sign of an S (slave), and adjudge him to be a slave to his said master for ever.

In former times branding was not limited by the Articles of War to the male sex. By the garrison regulations of Henry V., it was ordained "That if any common woman presume to come within the King's hoste, or nigh the same, by the space of three miles, if any so be taken to be brent (branded) on the right cheek at the first." If taken *afterwards*, "to be put in the ward of the Marshall, there to remain in prison as long as shall please the Marshall, and to have further punition as by him shall be thought convenient."

By the parliamentary ordinances in the time of Charles I. it is ordained, "If any whores shall be found following the army, if they be married women, and run away from their husbands, they shall be put to death without mercy, and if they be unmarried they shall be first *marked* by the hangman, and thereafter by him scourged out of the army."—*Samuel's Account of the British Army*, p. 93.

Branding in the hand or face was a punishment inflicted for theft and other offences until 1779, and it remained on the statute-book as a punishment for manslaughter till the reign of George IV., when it was entirely abolished. In recent times the iron was frequently not much heated, except in bad cases of manslaughter, when, as only one year's imprisonment could be added, the instrument was sometimes effectually heated. When branding was abolished as a punishment, whipping or imprisonment was substituted. Public whipping has already fallen into disuse, and private whipping is but very rarely practised, except for breaches of prison discipline, and chiefly on juvenile offenders.

During the reign of George I. desertion from the Army was punished by "*stigmatizing in the forehead*, unless the greatness of the number of desertions required some examples for terror of others, in which case they ordinarily threw the dice, and those alone upon whom the exterminating lot doth fall are hanged or shot to death. But in cases of reiterating the crime all deserters now-a-days are to die without mercy."—*Bruce's Institutions, &c.*, 1717.

Branding is now, I believe, rarely used as a punishment, except in China. In America it is much employed to mark slaves. We learn from Prince Oscar that, to the honour of Sweden, branding and several other barbarous punishments were never used in that country.

Branding deserters from the Army is, so far as I know, peculiar as a punishment to the United Kingdom. I do not know that it was ever adopted in France. During the old régime the crime of desertion was punished by slitting the nose, a punishment which was changed to that

of death without being more effectual,—a proof, says Montesquieu, that the fear of even capital punishment is not a more powerful preventive of crime than less severe inflictions. I do not think branding was ever employed as a punishment in the British Navy.

The mode of inflicting this punishment is by a species of *tattooing*, which is performed in the following manner:—A mark of the letter D having been traced on the left side, two inches below the armpit, such letter being not less than an inch long, the skin is then pierced so as to draw blood, commonly with a small bundle of common sewing-needles, along the tracing of the letter; after which operation gunpowder is well rubbed upon the wounds, for the purpose of rendering the mark visible and conspicuous, and not liable to be obliterated. The *rationale* of the process is this:—The charcoal of the gunpowder being forced into the small orifices made by the needles, remains in the skin without festering after the wounds have been healed, and in consequence of the black colour of the charcoal, the letter D is visible. As it is usually performed, the mark presents but an imperfect specimen of tattooing, the orifices made by the needles being too small to admit the requisite quantity of colouring matter. A shark's tooth is considered a good instrument for this operation, the cutting edge being angular and serrated. A saddler's needle, which is three-sided, is better adapted for tattooing than a round or common sewing needle. A piece of charcoal, rubbed upon a stone with a little water or lamp-black, so as to produce a thick liquid, is a much better colouring substance than gunpowder.

A circular has lately been issued from the Horse Guards, directing that the marking of deserters shall hereafter be performed in a uniform manner throughout the Army, by means of an instrument recently invented. This is made of brass, shaped at the end into the form of the letter D, from the outline of which is protruded, by means of a spring, a series of needle points, the length of which may be increased or diminished by turning a screw at the end of the handle of the instrument. By pulling back this nut, after the points are regulated, they recede into the box, when the instrument may be considered charged. A slight pressure on a small brass lever delivers the needle points, inflicting a puncture on the skin the exact shape of the instrument. These punctures, on being rubbed with a marking fluid, composed of a quarter of a pound of pulverised indigo, two sticks of Indian ink, and enough of water to render it liquid, leave an indelible mark of the letter D upon the arm or hand of the deserter. This punishment is only to be administered on parade, in the presence of the men; in the cavalry by the Trumpet-Major, in the infantry by the Drum-Major, and in rifle and light infantry corps by the Bugle-Major, who are to be instructed by the medical officer how to apply the instrument. It is, moreover, only to be inflicted in the presence of the Surgeon. The special duty assigned to a medical officer in the execution of the sentence of branding or marking a delinquent, is neither of a medical nor a surgical character, it being merely to instruct the Drum-Major how to apply the instrument. The machinery and mode of application of this instrument is, however, so simple, that few Drum-Majors will require any instruction. If marking deserters is considered indispensable, there is no possible means by which it can be accomplished with less pain and more certainty.

The mark inflicted by branding with a hot iron would not be so conspicuous as the mark by tattooing, and consequently it would be a less infamous punishment. Any indelible stigma or brand of infamy is a fearful punishment. For one thing, the infliction is completely irremissable; it cannot be removed by repentance, nor by any given period of good conduct. The great object of punishment being the reformation of an offender, it is very desirable that inflictions should be as much as possible exempt from that vindictive spirit which obstructs the exercise of mercy. A branded man may say, in the language of Cain, Henceforth "I shall be a fugitive and a vagabond in the earth." A soldier after being marked has no encouragement to mend, no inducement to do good, no incentive to subordination; his good actions are liable to pass unheeded, while his irregularities are readily noticed and rigidly punished. Branding will never urge men to reformation, it being much more likely to increase disobedience and discontent, and to drive them to acts of desperation. A soldier who is branded, has an insuperable bar set against him in the minds of his superiors; he can never hope to obtain their confidence, and hence one of the strongest encouragements to obedience is removed. Branding has been recommended to be extended to other crimes than desertion, on the principle that no punishment is more generally dreaded. (*Appendix to Report on Military Punishments*, pp. 82—91.) I am of a very different opinion, believing as I do that branding is the most vindictive and least reforming of all military punishments. Indeed, I think it is not a little degrading to the Army to retain a branded soldier in the ranks, the original use of branding being to distinguish runaway bondmen or slaves. Desertion will never be effectually prevented but by inducing men to like the Service, to prefer it indeed to other employments. If a man is dissatisfied with the Army, he may at any time desert in this country, and hope will tell him he may do so with many chances in his favour that he will escape being re-taken, and found again fit for service.

To brand a soldier, and then to discharge him from the Service, is to turn a man adrift in the world with greatly impaired means of earning an honest livelihood. Hunger urges its victims to follow dishonest courses, and what else can be expected from a branded and discharged soldier? It is the common misfortune of public punishments that they preclude the offender from all honest means of future support. Newgate thieves have been known to say, "We do not steal from disposition, but we steal because we cannot get employment. Our character is damned, and nobody would have us;" and so it is. Branding on the left cheek was employed as a punishment about the commencement of the last century, but it was found by experience that this infliction had not the desired effect of deterring such offenders from the committing of crimes and offences, but, on the contrary, *being rendered thereby unfit to be intrusted in any honest and lawful way, they became the more desperate*. The Act, according to which this punishment was inflicted, was repealed in the reign of Queen Anne.

I am aware that the usual apology or reason which is given for branding men who are discharged as being considered incorrigible, is to prevent their re-admission into the Army should they again enlist. This, however, will only apply to men who may be discharged under

the period of life when recruits are admitted into the Service. To brand men, therefore, who have reached twenty-six years of age, must in a great degree be a measure of vindictive retribution, not a medium of reformation or moral improvement. The man is stigmatised and degraded—and for what purpose? Certainly not for promoting his amendment, or for rendering him more subordinate. The question to be investigated in regard to this punishment is not merely how little a man is injured by it, but what benefit is likely to be derived from its infliction—to himself or to the country.

Courts-martial sometimes not only sentence men to be branded who are much more advanced in life than the age when recruits may be received into the Service, but they also sentence them to be branded a second time, and subsequently transported. Soldiers who have been transported are not likely to re-enter the Service surreptitiously, and consequently the reason alleged for branding men is fallacious. Branding is a relic of bad times, and carries something revolting to humanity along with it. To render a fellow creature the object of scorn has a tendency to harden him to vice, by rendering his return to self-esteem and the respect of his superiors almost an impossibility.

Discharged with ignominy.—The ceremony which takes place on discharging a soldier with ignominy, is conducted as follows. The regiment being assembled on parade, and the man about to be discharged brought forward, the several crimes and irregularities of which he has been guilty are recapitulated, and the order for his dismissal read, together with his discharge, in which is notified his ignominious and disgraceful conduct, the buttons, facings, lace, and any other distinctions, are then stripped from his clothing; he is marched down the ranks, and trumpeted or drummed, as the case may be, out of the barracks or quarters of the corps. It is directed by the Articles of War that “the names of all soldiers who have been dismissed with disgrace, or who have forfeited their pension owing to misconduct, shall be notified to the parishes to which they belong, such notification being affixed on the outside of the door of the church or chapel on the Sunday next succeeding the receipt of the notification.” By this means a large portion of the disgrace inflicted on a soldier falls on his family and connexions. The innocent may consequently suffer more than the guilty; a result which is certainly not intended. Formerly, when a soldier was dismissed with ignominy, he was escorted, with a halter round his neck, by the drummers of the regiment, with a written label, containing the particulars of his crime, through the streets of the camp or garrison, and dismissed with a kick from the youngest drummer. I have seen a man flogged, and immediately after dismissed in this manner.

The discharging of a soldier, either with or without ignominy, is equally well adapted for the purpose of getting rid of an offender, which is commonly the principal object of this mode of punishment. It may be doubted whether discharging with ignominy possesses much of the deterring principle, as military people know well, that a discharge of this kind, like a sentence of transportation, has been often courted. The moral pain, when there is any pain arising from the ignominious ceremony, is commonly of a very temporary character, a circumstance which is partly caused by the sympathy of the spectators.

When Dumouriez was retreating before the army of the Duke of

Brunswick, in 1792, he adopted an unusual, if not a novel plan of punishing fugitives; he stripped them of their uniform, caused their eyebrows and heads to be shaved, and dismissed them with ignominy as cowards, which example, it is alleged, produced a very beneficial effect.

In the foregoing sketch, my principal object has been to describe the various punishments which have been employed in the armed force of this country, together with an account of the meliorations that have taken place in the administration of the Articles of War, with cursory remarks on the evils which result from an abuse of the penalties of military law and military usages, leaving the means of preventing these evils to the consideration of those in authority, whose duty it is to superintend the recruiting, the discipline, the efficiency, and the general welfare of the defenders of the State.

Abuse is an element which enters into all laws and regulations, and in proportion as laws and usages are liable to be misused under an average administration, they are unsuitable or inadequate for their object, and fail in effecting the ultimate end of punishments—reformation and prevention; in the Army—OBEDIENCE.

SKETCH OF THE PUNISHMENTS TO WHICH COMMON SEAMEN
AND MARINES ARE LIABLE IN THE ROYAL NAVY.

BY A SURGEON'S-MATE OF 1803.

IN the 22nd year of the reign of George II, an Act was passed, intituled "*An Act for amending, explaining, and reducing into one Act of Parliament, the laws relating to the government of His Majesty's ships, vessels, and forces by sea;*" and in the 19th year of George III. another Act was passed, which modified and amended the Act passed in the former reign (1748). These two Acts of Parliament contain, with the requisite modifications, all the rules, articles, and orders, for the regulating and better government of His Majesty's ships, vessels, and forces by sea.

In the naval penal code above mentioned, there are nine articles, or branches of articles, which refer to common seamen, and which, on conviction, expressly inflict *death*, without alternative, or leaving any discretionary power to the members of a court-martial to award a milder punishment; and there are about twelve articles which inflict the punishment of *death*, or "*such other punishment as the nature and degree of an offence shall be found to deserve,*" and which a court in its discretion may award. In about ten other articles the word *death* is omitted, and the punishment to which a man may be sentenced is left, both in kind and degree, wholly to the discretion of a court-martial; and as these articles are for the punishment of offences not of so flagrant a nature as in the former two classes of articles, it may be presumed that the Legislature meant to exclude the power of a court-martial to inflict a capital punishment for any of the offences therein specified. In these cases it is left wholly to the discretion of a court-martial to discriminate the shades of guilt, and to inflict a punishment, in quality and amount, proportionate, in their opinion, to the offence, not affecting life or limb.

In early times, and even during the last century, it would appear that punishments were more severe and certain than during the last thirty years. It was not then uncommon for an offender, guilty of desertion, to be adjudged to suffer death, or to be punished with five hundred lashes. By the records of courts-martial, it appears that the sentences awarded at one time varied from one dozen to one thousand lashes. The punishments which it is in the power of naval courts-martial to inflict, are various in their nature and degree. They are from death, the greatest and highest, descending in various shades down to mild reprimand and gentle admonition.

By the 36th Article of War it is declared, "that all other crimes not capital, committed by any person or persons in the fleet, which are not mentioned in this Act, or for which no punishment is hereby directed to be inflicted, shall be punished according to the laws in such cases used at sea." For anomalous offences the old standing customs and usage of the Service are directed to be resorted to as a kind of unwritten or common law, which supplies the place of express statutes. A case which was tried in the Court of Common Pleas will illustrate the above article. The action was brought for an act of violence upon

the person of the plaintiff (a midshipman) in consequence of his disobedience of an order of the defendant, his commanding officer, who ordered him to the mast-head as a punishment, according to the usage of the Service. The Judge observed that the custom of the Service justified the order, and rendered the punishment legal; therefore, the disobeying such legal order, justified the measures taken to enforce it, or put it into execution. The jury, without hesitation, returned a verdict for the defendant.

Early in the month of March, 1797, a mutiny broke out in the fleet at Portsmouth, the principal subjects of discontent among the seamen being the smallness of their pay, and of the Greenwich pensions; the very unequal distribution of prize money, the excessive harshness and severity of the discipline, and the haughty and tyrannical behaviour of many of the officers. The seamen obtained all their demands, and forthwith returned to their duty. Among the officers charged with oppression, and discarded by the men, there were 1 Admiral, 4 Captains, 29 Lieutenants, 17 Master's-Mates, 25 Midshipmen, 5 Captains of Marines, 3 Lieutenants of Marines, 4 Surgeons, and about 13 petty officers. The men refused to receive on board those tyrannical officers, whom they had sent on shore; and Lord Howe, who had been commissioned to settle all matters of dispute, found himself obliged to comply with the decided resolution of the men. How much is it to be regretted, that previous care had not been taken to prevent discontent, by remedying the undeniable evils of which the seamen complained! From this mutiny, however, may be dated the most rapid amelioration in the management and condition of our sailors, with a proportionate improvement in the discipline and spirit of the men, and the gallantry of the officers.

About the middle of May, 1797, a mutiny broke out at the Nore, and the mutineers petitioned against the naval code, the 8th article of their list of grievances being an affirmation, "That the Articles of War, as now enforced, require various alterations, several of which to be expunged therefrom, &c., &c.," thereby expressing an opinion, that the system of discipline and the Articles of War are unnecessarily severe and require relaxation, in order to disabuse seamen in general of the prejudice against the Navy. In the letter which the mutineers at the Nore forwarded to the King, through Lord Northesk, they petitioned or urged, "that no punishment should be inflicted on board a King's ship, until the offender had been previously tried and convicted by a jury of seamen."

Courts-martial are in the Navy ordered either by the Admiralty or by the Commanding Officer of a station. The punishments to which seamen are liable by the sentence of a court-martial are as follow:—

1. *Death*; 2. *Flogging round the fleet*.

The punishments frequently inflicted at the discretion of a Captain or Commanding Officer, and which nothing but the usage of the Service appears to authorize, are—1. *Flogging at the Gangway*; 2. *Running the Gauntlet*; 3. *Starting*; 4. *Keel-hauling*; 5. *Ducking*; 6. *Gagging*; 7. *The Spread Eagle*; 8. *The Wooden Collar*; 9. *The Barrel Pillory*; 10. *Carrying a Capstan Bar*; 11. *The Black List*.

Execution of the sentence of Death.—When the King is pleased to

approve of the sentence of death, the warrant for execution is transmitted by the Admiralty to the officer commanding the ships and vessels at the place for the time being, who issues the necessary orders agreeably to the forms of the Service; and, in pursuance thereof, preparations are made. The fatal morning is arrived—the signal of death is already displayed—the assemblage of boats, manned and armed, surround the ship appointed for the execution. The crews of the respective ships are arranged on deck, and after hearing the Articles of War read, and being made acquainted with the crime for which the punishment is inflicted, await, with silent dread and expectation, the awful moment. At length a gun is fired (the signal to rouse attention), and at the same instant the unhappy victim, who has violated the laws of his country, is run up by the neck to the yard-arm; the whole spectacle being intended as a warning to deter others from the commission of similar crimes. (*Principles and Practice of Naval and Military Courts-Martial*, by John M'Arthur.)

Execution of the sentence of corporal punishment. Flogging round the Fleet.—In carrying the sentences of naval courts-martial for corporal punishment into execution, the Admiral or commanding officer of the station issues orders to the Captain of the flag, or other particular ship, to make the signal for the boats of the squadron to assemble, manned and armed, on the day appointed, to attend the punishment, and likewise orders the other Captains to send a Lieutenant, with a boat manned and armed, from their respective ships, to attend and assist thereat*.

An order is at the same time issued to the Captain or Commander of the ship to which the prisoner belongs (accompanied with a copy of the sentence), directing him to cause the punishment to be inflicted alongside of the different ships, in the manner, and in such proportions, as therein specified. Directions are at the same time given to the Captain to cause the Surgeon of his ship to attend in the boat, with the Lieutenant, as well as one of his mates, in the launch with the prisoner, for the purpose of judging of the prisoner's ability to bear all his punishment, the Surgeon being authorised to recommend that the punishment should be suspended when he conceives the prisoner is not able to bear more without endangering his life.

The Provost-Marshal or Master-at-Arms attends the punishment, and he reads publicly the sentence of the court-martial alongside of each ship respectively.

The delinquent having been put into a launch, attended by a Surgeon's-Mate (now denominated an Assistant-Surgeon), he is forthwith stripped naked to the waist, and tied up with his arms extended upon a

* Copy of orders for carrying corporal punishment into execution in the Navy :—

“ To the Captain of the Flag-ship. By &c.

“ A court-martial, held the instant, having sentenced to receive 300 lashes on his bare back with a cat-of-nine-tails, alongside of such of His Majesty's ships and vessels at this port, at such times, and in such proportions, as shall be directed by the Commanding Officer of the said ships and vessels for the time being, you are hereby required and directed to hoist a yellow flag at the fore-topmast-head of His Majesty's ship under your command, and fire a gun at nine o'clock to-morrow morning as a signal for the boats of the fleet to assemble alongside of His Majesty's ship to attend the said punishment.”

frame of wood, when he receives a specified number of lashes. The Master-at-Arms stands beside him with a drawn sword, and reckons the lashes as they are inflicted. A drummer and fifer stand in the bow; a Lieutenant and the Surgeon of the ship accompanying the launch in another boat. The whole flotilla of boats then fall into line, taking in tow the launch containing the culprit. The fifer strikes up the "Rogue's March," accompanied by the drum, *muffled*, and the procession moves on at a slow rate, following a light gig, called the dispatch-boat, which goes forward to announce the delinquent's approach to those ships where he is to receive his punishment. The prisoner having reached the ship, the crew cover the sides and channels upon that side where the procession has halted. The sentence of the court-martial is read aloud, after which two Boatswain's-Mates are sent from the ship, who inflict that portion of the punishment which has been directed to be given alongside each ship, the amount of lashes being divided among the number of ships belonging to the fleet. A blanket is then thrown over the man's shoulders, the flotilla of boats again take the launch in tow, the music strikes up, the dispatch-boat proceeds to the next ship as before, and thus the culprit is slowly dragged from one vessel to another, for a period extending sometimes to several hours, till the sentence has been carried into effect, or the punishment suspended by the recommendation of the Surgeon.

I was once officially present in the launch when a seaman was flogged round the fleet; but I think it better to avail myself of an account of this mode of punishment by two naval officers, than to describe my own sensations on the occasion.

"In the year 1811, when Admiral Sir C. Cotton commanded the Mediterranean fleet, a seaman belonging to a frigate was sentenced to be flogged round the fleet, and the punishment was accordingly inflicted at Port Mahon, in the Island of Minorca. This harbour has such deep water, that even the largest ships lie moored close to the rocks and quays. Attracted by the cavalcade of boats, the music, and above all by the cries of the criminal, thousands of the inhabitants crowded to the shore to witness the scene. When these spectators noticed that the punishment was *alternately suspended and renewed*, so as to produce more acute pain, they exclaimed loudly against British cruelty. 'You boast of humanity,' said an aged monk to the writer. 'What is there in all the tortures that your nation truly or falsely impute to the tribunal of the Inquisition more protracted or inhuman than this proceeding? Why do you suspend the lashes but to increase the agony? The culprit has already fainted twice, yet your Surgeon authorises a continuance of the whipping. Is not the poor wretch's back entirely flayed from his neck to the loins? Yet the scourging still goes on, and will frequently be suspended and renewed again before the sentence is fulfilled! What worse torture than this could disgrace the prisons of the Inquisition, or even the dungeons of Algiers?' Some attempt was made to deprecate this censure, by explaining that the difference consisted in the British seaman having had a fair and open trial, confronted with his accusers and with the witnesses; yet, whatever advantages might have attended his *trial*, it was impossible to deny that his *punishment* was altogether cruel and indefensible."—(*United Service Journal*, 1830.)

Good men, it is said, have nothing to fear from the severity of corporal punishment—an infliction which is only held *in terrorem* over the heads of bad subjects; but, in the eye of military law and military usage, the terms *good* and *bad* are frequently confounded. When

offences, which are very different in enormity, in popular opinion, are equally subject to severe punishments, the gradations of iniquity are destroyed. Moral virtue may be adjudged and punished as military vice. The following example appears to be a conversion of this kind:—

“In the year 1805, an *impressed seaman*, belonging to a ship in the West Indies, received a letter from his father, announcing his being in a rapid decline, and desiring his son to hasten home, if possible, that he might see him before he died. The young seaman determined to run all risks, in order to gratify his dying parent. He accordingly deserted from a watering party, but was retaken, conveyed on board, and slightly punished. He again fled from the ship, was brought back, and received a more severe flogging. Being detected in the third attempt to escape, he was brought before a court-martial, which, according to the Articles of War, might have adjudged the culprit to be hung at the yard-arm. Taking, however, into consideration the youth of the prisoner, and his having been recently impressed into the Service, together with the account he gave of his motive for deserting, the court sentenced him to be flogged round the fleet, and to receive four hundred lashes on board or alongside of such ships as the Commander-in-Chief might appoint. Sir Alexander Cochrane, however, was as merciful as he was brave, and there is not a braver man in the British Navy. Still it was necessary to make examples, to repress the spirit of desertion, if not disaffection, which characterised some of the hastily-raised ships’ companies at that period. The Admiral, therefore, remitted one-fourth of the punishment, and the remaining three hundred lashes were ordered forthwith to be inflicted. [*‘This tender mercy sounds very cruel.’* — (Proverbs, xiv., 10).]

“The fatal morning at length arrived. The young criminal’s back, which had scarcely healed since his former floggings, was quickly laid raw beneath the sharp strokes of the whip-cord. Possibly, the torture might have been endured but for the intervals in which it was suspended between one ship and another. By these cruel interruptions the benumbed flesh was repeatedly restored to sensation, and the miserable culprit frequently fainted under excess of suffering. The attending Surgeon, distressed at the scene, knew not how to determine for the best. It appeared less humane to suspend than to continue the punishment, because, as the sentence *must be executed*, there seemed real mercy in inflicting the whole number of lashes at once*. At length, however, the back became so badly lacerated, that the flesh quivered under every stroke of the whip—the head of the sufferer fell senseless upon his bosom—the punishment was suspended—the criminal removed to the hospital, where the heat of a tropical climate produced gangrene, and in two days after he expired.”—(*United Service Journal*, 1830.)

In this instance, the author thinks, “blame could hardly attach to

* The authority of the Admiralty is required to remit a portion of a sentence awarded by a court-martial in this country. The following is a copy of a letter from the Admiralty, authorising the remission of part of a sentence, half of which had been temporarily superseded:—

“Admiralty Office, May 17th, 1780.

“SIR,—I have communicated to my Lords Commissioners of the Admiralty your letter of yesterday’s date, informing them, that as the two seamen, named in the margin, had been sentenced by a court-martial to receive 500 lashes, for mutinous behaviour on board the *Invincible*, you had excused one half of the punishment to be inflicted upon them, and recommending, for the reasons therein mentioned, as objects deserving their Lordships’ pardon, in return I am commanded by their Lordships to signify their direction to you to remit the remainder of their punishment.

(Signed) “PHILIP STEPHENS.

“Admiral Sir Thomas Pye.”