Union Deserter Executions and the Limits of State Authority

Aaron Michael Bachmann

College of William & Mary - Arts & Sciences

Follow this and additional works at: https://scholarworks.wm.edu/etd

Part of the Criminology Commons, and the United States History Commons

Recommended Citation

https://dx.doi.org/doi:10.21220/s2-jh3v-r756

This Thesis is brought to you for free and open access by the Theses, Dissertations, & Master Projects at W&M ScholarWorks. It has been accepted for inclusion in Dissertations, Theses, and Masters Projects by an authorized administrator of W&M ScholarWorks. For more information, please contact scholarworks@wm.edu.
UNION DESERTER EXECUTIONS AND THE LIMITS OF STATE AUTHORITY

A Thesis
Presented to
The Faculty of the Department of History
The College of William and Mary in Virginia

In Partial Fulfillment
Of the Requirements for the Degree of

Master of Arts

by

Aaron Michael Bachmann

2006
APPROVAL SHEET

This thesis is submitted in partial fulfillment of
the requirements for the degree of

Master of Arts

Aaron Michael Bachmann

Approved by the Committee, May 2006

Carol Sheriff, Chair

Scott R. Nelson

Ronald B. Schechter
# TABLE OF CONTENTS

<table>
<thead>
<tr>
<th>Section</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>Acknowledgements</td>
<td>iv</td>
</tr>
<tr>
<td>List of Figures</td>
<td>v</td>
</tr>
<tr>
<td>Abstract</td>
<td>vi</td>
</tr>
<tr>
<td>Introduction. Private Parker Witnesses an Execution</td>
<td>2</td>
</tr>
<tr>
<td>Chapter I. State Power and the Expansion of Military Justice</td>
<td>7</td>
</tr>
<tr>
<td>Chapter II. The Spectacle of the Execution</td>
<td>24</td>
</tr>
<tr>
<td>Chapter III. The Rejection of Discipline</td>
<td>51</td>
</tr>
<tr>
<td>Epilogue. The State Responds</td>
<td>76</td>
</tr>
<tr>
<td>Bibliography</td>
<td>84</td>
</tr>
<tr>
<td>Vita</td>
<td>91</td>
</tr>
</tbody>
</table>
ACKNOWLEDGEMENTS

The writer wishes to express his deepest appreciation to Professor Sheriff under whose guidance this thesis was researched and composed. Professor Sheriff was a constant source of beneficial criticism and patient assistance. The writer is also indebted to Professors Nelson and Schechter for their careful reading of and suggestions for the manuscript.

The writer also wishes to express his gratitude to his wife, Erin Farney, for her editorial advice and unfailing support. The writer will always be indebted to his parents, Michael and Christine Bachmann, who inspired his interest in the Civil War and encouraged him to pursue his passion for history.
# LIST OF FIGURES

<table>
<thead>
<tr>
<th>Figure</th>
<th>Description</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>1.</td>
<td>Camp of a Regiment of Infantry</td>
<td>14</td>
</tr>
<tr>
<td>2.</td>
<td><em>The Army of the Potomac – Execution of Three Deserters</em></td>
<td>32</td>
</tr>
<tr>
<td>3.</td>
<td><em>The Execution of the Deserter William Johnson in General Franklin’s Division, Army of the Potomac</em></td>
<td>40</td>
</tr>
<tr>
<td>4.</td>
<td>Two pre-Civil War images of executions</td>
<td>41</td>
</tr>
<tr>
<td>5.</td>
<td><em>Private William Johnson, executed by a firing squad, December 1861</em></td>
<td>44</td>
</tr>
<tr>
<td>6.</td>
<td><em>The Execution of Five Deserters from the Army of the Potomac, Fifth Corps</em></td>
<td>46</td>
</tr>
<tr>
<td>7.</td>
<td>&quot;Death to Traitors,&quot; Civil War-era letterhead</td>
<td>49</td>
</tr>
</tbody>
</table>
ABSTRACT

Over the course of the American Civil War, thousands of soldiers deserted the ranks of the Union armies. Of these men, some 147 were tried and convicted of the crime and executed in front of their peers. Although the number of victims shot was small, the reactions of soldiers and civilians to executions of deserters suggests that Northerners often rejected the growing authority of the military and state during the Civil War.

From 1861 to 1865, the Federal government significantly grew in size and power in order to meet the needs of civil war. Part of this expansion was a radical transformation of the military's traditional police system, the Provost Marshal. In both the army and on the home front, the Provost Marshal was allowed to exert enormous influence that brought soldiers and civilians under close scrutiny and discipline. Such control was epitomized by the military execution of a deserter.

These military executions were organized entirely around their intended effect on the audience. The prisoner was shot so the army could demonstrate its complete power over all citizens. By being executed, the victim's body was transformed into a symbol of helplessness before the will of the state. Soldiers were lined up in a hollow square to witness their comrade's final moments; few left the site without a firm understanding of the army's complete control over their bodies.

However, contrary to the state's desire, many Northerners came to reject these executions of deserters. A large number of soldiers came to view the spectacles as cruel, unjust, and unfit for American society. Citizens on the home front echoed these sentiments, as more Northerners felt the military ought not to have such control over people. Moreover, as the execution of deserters was the ultimate symbol of the state's power over individuals, Northerners used their protest of the death penalty to express a wider rejection of the government's expanding power.

In certain cases, pressure from citizens even forced the army to change its treatment of deserters. While these incidents are few, they illustrate how Northerners could influence their government and check its power.
UNION DESERTER EXECUTIONS AND THE LIMITS OF STATE AUTHORITY
INTRODUCTION

PRIVATE PARKER WITNESSES AN EXECUTION

Private Moses A. Parker, a young volunteer in the Third Vermont Infantry, frequently wrote home, taking time to debate the merits of his generals, describe the “splendid country” of Virginia as his unit marched through it, and ask that friends and family “pray for [him]” while he fought the Confederates.\(^1\) His letters also recorded the horrors of warfare. During an early engagement in May 1862, when the intensity of the combat was still relatively new to the untested soldiers, Parker noted how a “well directed shell...burst directly behind me killing the one...behind me and my left hand man in rank wounding the other at my right.”\(^2\) Though each man surrounding him had been killed or mangled by the cannonball, he reported the devastation as easily as he wrote about receiving stamps and letterhead from home. The experience of Civil War combat had taught this recruit to quickly accept the violence inherent to the battlefield.\(^3\)

Three years later, in January 1865, Moses Parker reenlisted with the Second United States Sharpshooters after having suffered a grievous wound earlier in the war. He continued to write letters home with stories of everyday labor and drills. However, in

---

\(^1\) Moses A. Parker to Eliza Hale, 26 May 1862, *A War of the People: Vermont Civil War Letters*, Jeffrey Marshall, ed. (Hanover, NH: University Press of New England, 1999), 80-81. As a general rule, I have attempted to retain the particular idiosyncrasies of each writer, editing the material only when absolutely necessary for clarity.

\(^2\) Parker to Hale, 19 September 1861, Marshall, ed., 45.

one particular correspondence, Private Parker was clearly affected by the death of a single soldier in his camp. As he noted in the letter home, nothing prepared him for the incident, “even to the long tried soldier who has stood unmoved under the shower of leaden hail…such scenes are bad enough but are not compared to the one we witnessed to day; the shooting of a comrade for desertion.” Private Parker, an experienced soldier who typically wrote unemotional accounts of friends who were killed or wounded, was overwhelmed by the execution of a single, anonymous soldier.

Compared to the hundreds of thousands of soldiers who were brutally killed on the battlefield, the few hundred who were executed by the Union and Confederate armies seem insignificant; in fact, they are often relegated to little more than a footnote in most accounts of casualties. Specifically, while the Northern armies suffered 360,222 soldier deaths over four years of war, only 267 men were executed by authorities across that same period. Thus, while 14% of Federal troops died in service to their country, only a small fraction (0.011%) of those who entered the war suffered capital punishment. The majority of these executions took place in the later stages of the war, with over 84% in

---

5 Everett Long, *The Civil War Day by Day: An Almanac, 1861-1865* (Garden City, NY: Doubleday & Company, Inc., 1971), 710. Long drew upon the three major accounts of Civil War casualties available. These include Frederick Dyer’s *A Compendium of the War of the Rebellion* (1908), Thomas Livermore’s *Numbers and Losses in the Civil War* (1901), and William Fox’s *Regimental Losses in the American Civil War, 1861-1865* (1889).
6 Robert Alotta, *Civil War Justice: Union Army Executions under Lincoln* (Shippensburg, PA: White Mane Publishing Company, Inc., 1989), ix. His work remains the only full-length treatment of Civil War death penalty issues, and it provides information on every known and recorded sentence. Alotta’s work, though extremely useful for details, reflects the author’s intention to report the “delivery – or miscarriage – of justice.” See Alotta, *Civil War Justice*, xi. Thus, his analysis largely ends with hints of conspiracy between the military and the government, and examines very little of the cultural aspect of capital punishment in the army. Alotta has also produced a book-length case study of the circumstances surrounding the execution of Private William Howe. Like his other work, this monograph focuses on the actual court trials and documents rather than on the perceptions of the execution. See Robert Alotta, *Stop the Evil: A Civil War History of Desertion and Murder* (San Rafael, CA: Presidio Press, 1978). In contrast, this paper will center on the growth of the military’s system of control over soldiers (particularly through executions) and how Northerners’ responses to capital punishment indicate a widespread rejection of the practice.
the last two years of the bloody conflict. According to the dictates of military law, all soldiers—regular infantry, volunteers, or conscripts—could face the death penalty for a variety of offenses. The records show that men died on the gallows or in front of the firing squad for the crimes of murder, mutiny, rape, and other transgressions punishable in civil life. However, the most frequent act for which soldiers received the sentence of death was solely a military offense: desertion. While the accounts are fragmentary, at least 147 Northern men faced execution for desertion from 1861 to 1866. The importance of executed victims lies not in their numerical obscurity but in the impact they had on the American public.

The executions of Union soldiers sentenced for desertion and the records of these acts in letters and newspapers provide a unique window into American culture during the Civil War era. The American public grew increasingly literate in the mid-nineteenth century, and soldiers, civilians, and officials frequently penned letters or diary entries about their daily lives. Specifically, the stories of the few hundred men executed by the Civil War armies figured prominently in accounts written by soldiers, their families, and newspaper correspondents. This is especially true for the Union armies, for which many

---

7 Alotta, Civil War Justice, 202-209. According to Alotta, the total executions in each year where desertion was at least one cause for death sentence: 1861 - 2, 1862 - 2, 1863 - 60, 1864 - 65, 1865 - 39. These numbers do not add up to 147, since that is just the number of confirmed executions in the official records; other possible deaths have only circumstantial evidence. What is clear, however, is that executions increased as the desertion rate rose, though certain months witnessed large concentrations of deaths (for instance, 24 men in December 1864 alone). See Alotta, Civil War Justice, 44, 202-209. In fact, the process of “justice” quickened as well—on average it took 487 days between the incident and the sentence of death for 1861 desertions, but only 23 days in 1865. As the war progressed, the military necessity for execution appeared greater, hurrying many sentences along. See Alotta, Civil War Justice, 18.

8 Long, 714. Despite the cessation of armed conflict in 1865, army authorities continued to execute men-at-arms for crimes committed during the war for a year. These numbers were found in an unpublished military document entitled “U.S. Soldiers Executed by U.S. Military Authorities During the Late War 1861-1866” cited by Long. Although no similar reports exist for the Confederacy, historians suspect a similar number of Southern men were executed.
more official documents and personal letters have survived. A sampling of Union soldiers’ letters and diaries suggests that most soldiers witnessed at least one execution during their time in the service, and many described the event in significant and often gory detail. In particular, the punishment ceremony with its rigid displays of military authority awed the soldiers who stood at attention, causing them to reflect upon the circumstances attending the execution. Ultimately, the practice of and response to military executions provide insight into America’s complex understanding of the limits of state authority and the subtle but important ways people’s opinions modified the boundaries of government and military power.

During the Civil War, the power of the military and the state grew exponentially, spurred by the demands of the massive Federal armies and their efforts to quell the Confederate rebellion. In particular, the government began to exert unprecedented control over individual Americans, especially soldiers. Volunteer farmhands and clerks eagerly signed up to fight the Southerners only to be hastily thrown into the rigors of military discipline. The federal draft, initiated in March 1863, sent officers to scour the countryside and round up men and boys previously unwilling to fight in Virginia and Tennessee. The Northern government asserted extensive control over these individuals, a control some came to reject. Over the course of the war, tens of thousands of Union soldiers fled the army and returned to their communities. Within months, the early trickle of deserters grew to a massive tide, and though desertion rates fluctuated somewhat with the fortunes of war and political events, the government and military recognized the need

---

9 The United States government retained many more records than the Confederacy, due in part to the destruction of Richmond near the end of the war. More extant Union letters are on record as well, if only because the North had so many more soldiers than the South.
for harsher and more stringent domination of soldiers. Once recaptured, most of the deserters were returned to their units as their bodies were too useful for stopping Confederate bullets. Some, selected either for their recalcitrance or simply for being the last ones caught during a wave of desertions, faced a court martial and potential execution at the hands of United States authorities. Capital punishment of deserters demonstrated the totality of the Federal government’s control over the individual and the ultimate depths of state power.

Although some deserters were executed quite early in the war, the complex interplay between state power and military justice steadily evolved over the course of the conflict. Executions had taken place in armies for centuries, including American armies. The early punishments for deserters reflected more established military traditions and customs. However, over the course of the war, the numbers of deserters increased dramatically, and the military used executions not just punitively but also as extravagant displays of its complete power over soldiers. At the same time, the federal government faced increasingly vocal opposition to the war and implicit challenges to its authority, particularly through desertion. A radically new system of disciplining and observing soldiers and civilians became the solution for both of these issues. As the Civil War unfolded, the military and civilian government worked hand in hand to root out disloyalty and reassert total control over the individual. Nothing demonstrated this state power like the execution of Union soldiers.

---

10 In her classic study of Civil War desertion, Ella Lonn notes that over the years for which the Provost Marshal had complete data, the rate of desertion continuously increased overall. See Ella Lonn, Desertion During the Civil War (Gloucester, MA: Peter Smith, 1966), 151. First published 1928 by American Historical Association.

11 These older punishments included imprisonment, hard labor, and execution. However, the executions earlier in the war were much less ostentatious affairs than later. See Chapter II.
CHAPTER I
STATE POWER AND THE EXPANSION OF MILITARY JUSTICE

A vigorous debate over the proper limits of state authority had raged since well before the American Civil War. In fact, during the crises surrounding Shays’ Rebellion in 1786-1787, some of the very figures who had recently fought the British monarchy turned around and argued over their own government’s power.\textsuperscript{12} Nothing less than the very existence of republicanism was at stake in these discussions of the state’s authority over capital punishment. Sam Adams firmly believed that the fledgling American government could and should exercise the power of execution; his opinion concerning several Shaysites condemned to the gallows was simple: “‘The man who dares to rebel against the laws of a republic ought to suffer death.’”\textsuperscript{13} Benjamin Rush strongly disagreed with his Boston compatriot. In fact, according to historian Louis Masur, “the very act designed to preserve the Republic, Rush argued, violated republican principles and would in time contribute to its extinction.”\textsuperscript{14} In the end, the Shaysites were hanged before a large audience, but the deaths of these prisoners did nothing to answer the fundamental question: Did a republican government, even in wartime, have the right and just power to execute its own citizens?

\textsuperscript{12} Shays’ Rebellion, named after leader Daniel Shays, was an uprising in western Massachusetts amongst indebted farmers, many of whom were veterans of the American Revolutionary War. These regulators shut down debtors’ courts and engaged in fights with militia before largely dispersing by the summer of 1787.


\textsuperscript{14} Ibid.
Some seventy-five years after Daniel Shays laid aside his gun, the United States was in the midst of a crisis far more extreme and widespread than the farmers’ rebellion. The American Civil War of 1861-1865 required mobilization and innovation on a massive scale. The national governments of both the Union and the Confederacy established new requirements in their federal relationship with the states by levying volunteer soldiers. As the death toll mounted, first the Confederacy and soon thereafter the Union enacted a draft, requiring able-bodied men to enlist in the army and fight for their country. Many on both sides of the war were exempted from this act, often by hiring a substitute or by proving that they were required at home. Among the thousands who wished no part of the conflict but could not afford to refuse service, including some in uniform who set off for home, many were collected, imprisoned, and sometimes executed. These strong acts of state authority, both in the North and the South, were radical enlargements of the traditional role of government in America. Such changes inevitably aroused controversy amongst the populace; while the bloody conflict raged on the fields of Virginia and Tennessee, soldiers and citizens alike waged an intellectual battle to define the proper role of the government and the military in their lives.

The power of government ("the state") and the power of the military authorized by that government ("the military") are intimately connected, particularly in the case of a

---

15 Some draftees were exempted because they were the sole provider for their family. Rich draftees typically hired a substitute (in the North, often a poor immigrant) to fill their shoes. Interestingly, these substitutes numbered high among deserters. The so-called "Commutation Clause" that allowed for men to hire replacements with a $300 fee to the government was repealed by Congress in 1864. See "Deceiving the People," Valley Spirit, July 6, 1864, http://valley.vcdh.virginia.edu/ and "Foreign and Colonial Intelligence: America," The Illustrated London News, July 16, 1864, http://cti.library.emory.edu/

16 Although he focuses more frequently on questions removed from the battlefront, Harold Hyman covers much of the same constitutional ground in A More Perfect Union. Americans vigorously debated the proper limits of their government’s power; obviously, many Southerners and Northerners felt that the causes of the war lay in different interpretations of the federal government’s role. As the war dragged on, legislators and civilians alike contemplated and reshaped these issues. See Harold Hyman, A More Perfect Union: The Impact of the Civil War and Reconstruction on the Constitution (New York: Alfred A. Knopf, 1973).
civil war. The American Civil War was an internal war, fought between groups with common backgrounds, traditions, and histories. Therefore, while armies were not the exclusive distinction between the factions in this civil war, the military of each antagonist must in large part have represented the difference between the two sides. In essence, the army, one of the few tangible entities not previously shared by the opponents, helps to define the state it serves. This works in reverse as well; in a republican system, the government must exert some control over its military. During the Civil War, the Provost Marshal organization, ostensibly an arm of the military, was used by both the national and state governments for non-martial tasks. One periodical in 1863 records how “Provost Marshals were appointed in some of the States, upon the nomination of their Governors, to act under direction of the State Executive.” Thus, the state and the military, far from being distinct loci of power, are directly tied to one another, deriving their authority and legitimacy together.

Michel Foucault makes this connection between the state and the military explicit, particularly in the context of an execution. Although referring specifically to a seventeenth- or eighteenth-century European example, Foucault’s analysis is equally applicable to nineteenth-century America. The condemned were marched to the gallows, which were ringed with military escorts and guards. The procession was led by civil

---

17 For the Union during the war, the army did not only represent the loyal states, but increasingly became a politicized object linked with the Republican administration. Theoretically this was far less likely in the South, where the absence of distinctive political parties and the presence of a Northern army solidified the populace’s connection between the army and the Confederate government. In the North, on the other hand, a large portion of the Democratic Party began to identify itself by opposition to the war, which consequently tied the army to the Republicans. For instance, soldiers in the famous Iron Brigade endorsed a resolution supporting the Federal Militia Law, advocated for by Republicans and detested by many Democrats. Interestingly, many officers in the Federal army identified themselves as Democrats, as did many soldiers. See Coralou Peel Lassen, ed., Dear Sarah: Letters Home from a Soldier of the Iron Brigade (Bloomington: Indiana University Press, 1999), 82.

18 For this paper, “Provost Marshal” will refer to the organization as a whole or the military department, while “provost marshal” will refer to individual units.

administrators, court officials, and judges, as well as archers, cavalry, and foot soldiers.\(^\text{20}\)
The powers of military and state government were intentionally interwoven as two parts of a system of control over the prisoners. Foucault summarizes the situation succinctly:

Now, this meticulous ceremonial was not only legal, but quite explicitly military. The justice of the king was shown to be armed justice. The sword that punished the guilty was also the sword that destroyed enemies.\(^\text{21}\)

In the display of power necessitated by an execution of prisoners, the connection between the military and the state is made explicit. Government and the army forged an even closer association to justify the deaths of volunteer soldiers fighting to preserve the Union.

Despite this connection, nineteenth-century Americans, firmly committed to the virtues of republicanism, did not blindly accept the growing power of the state, particularly in wartime. Of all the developments in government power and coercion that arose during the Civil War, few sparked more controversy amongst the public than military justice. As the Union government and military leaders began to realize that the war would not be won overnight, they enforced more rigorous and exacting discipline within the ranks of the army. Military tribunals and policing actions expanded and penetrated the home front and traditional civilian institutions. Although many citizens accepted these measures as necessary in a time of war, others firmly disagreed with the expanded power of the state. The *Advocate of Peace*, a wartime journal, took note of the dangers implicit in military justice in a brief editorial about the Provost Marshal. Justice in a time of war is difficult to achieve, for war is “a temporary despotism, the one-man

---

\(^{20}\) A more thorough examination of Foucault’s theory, as well as analysis of the spectacle of execution and the power of the state over the body, will follow in Chapter II.

power wielding the sword with little or no direct responsibility to man or to God.” The editors claimed to trust their government “in their assumption of what are called war-powers,” but they also believe that “necessity is said to know no law; [as] the men who claim this wide and fearful license, need to be watched with sleepless vigilance.” This statement shows that reverberations of the Revolutionary-era fear of government, particularly regarding executions, were still felt in the nineteenth century.

In the first months after Fort Sumter, the New York Journal of Commerce printed an editorial vehemently opposing the war. Although this Democratic-leaning paper likely disagreed with the conflict for several reasons, the author of the piece chose to emphasize the possible fearful consequences of the fusion of military and government power. The author suggests that the war, even if successfully prosecuted, “must be over the ruins of the Republic.” The very nature of American society was being threatened because of the encroachment of military justice into civil affairs. The editorial warns of manifold dangers:

[T]he suspension of the writ of Habeas Corpus; the seizure and confiscation of private property by military force; citizens taken by soldiery, and put under martial arrest for trial, for speaking treason; the provost marshal superseding the sheriff; and the drum head taking the place of the jury box; these and many other acts of like character, done by the President or under his authority, are wholly without warrant in law.

The author of this editorial explicitly decried the ways in which formerly civilian tasks, especially in law enforcement, were now being undertaken by the military. Military

---

22 “Suspension of Civil Law in War,” www.proquest.com/
24 Ibid. Emphasis in original.
justice, previously confined to the ranks during campaigns, out of sight of the public at large, was now felt acutely by the citizenry.25

Of all the new or expanded organizations involved in dispensing military justice—including justice in the form of executions—the office of the Provost Marshal proved to be the most controversial. Small provost marshal units had been a fixture within the United States army for decades.26 In fact, policing within the ranks was deemed so essential that the Revised Regulations for the Army of the United States listed military discipline as its first topic.27 However, the massive size of the armies fielded during the Civil War coupled with the fact that the majority of soldiers were civilian volunteers or conscripts rather than professionals necessitated a significant expansion of the military police. More specifically, after the debacle at First Bull Run, when thousands of Union soldiers fled all the way to Washington, the new head of the Army of the Potomac formalized the organization. In February 1862, George McClellan ordered the creation of the Provost Marshal’s Department, an office meant to coordinate military discipline and justice.28 Just over a year later, in March 1863, the Provost Marshal’s Department assumed control over all military policing, a duty heretofore performed by provost marshal units designated by the particular armies and units.29 As the Provost

25 Of course, the massive increase in the size of the armies and the fact that the battlefields were within the states themselves and not in a foreign territory brought the military much closer to civilian life as well.
26 The early provost marshal units were responsible for affairs within their regiment, brigade, etc., but maintained a provincial outlook. It was only during the Civil War that these units were organized into a more centralized structure.
28 Kenneth Radley, Rebel Watchdog: The Confederate States Army Provost Guard (Baton Rouge: Louisiana State University Press, 1989), 2. No corresponding study currently exists on the Provost Marshal of the Union army, though Radley compares and contrasts the respective organizations frequently. Moreover, he admits that the “onerous roles and tasks” of the Confederate Provost Marshal were the same as those for the Union army because “many Confederate regulations and orders, including the Articles of War, were almost exact copies of Union regulations.” See Radley, 2.
29 Ibid.
Marshal organization became more centralized, its influence over the army—and citizenry—greatly expanded.

Within the army itself, the Provost Marshal’s presence was felt daily. In establishing the Provost Marshal’s Department, General McClellan judged that the traditional operations of a democratic army were insufficient for the scale of the Civil War. In other words, the units of the armies could no longer be trusted to punish offenses internally; instead, a supervisory organization was needed to ensure discipline. One of the major duties of the provost marshal units in the army was observation; in some cases, units were ordered to guard the enemy’s prisoners, but their main objective was to monitor their own comrades. As Foucault notes, “The exercise of discipline presupposes a mechanism that coerces by means of observation.”

Soldiers in the Federal armies were under surveillance at all times and were well aware of it, just as the Provost Marshal and top generals intended. Spying on the soldiers’ everyday actions was not sufficient to control such a large body of troops; rather, by forcing the men to acknowledge the constant presence of the Provost Marshal, the theory went, the soldiers would discipline themselves.

The very arrangement of the Federal regimental camps demonstrates Foucault’s theory in practice. As Figure 1 shows, the police guard units were placed directly in the middle of the location for observing all of the troops. This situation provided the provost marshal units with the most effective police units to set up camp with “the tents

---

30 Foucault, 170.
31 As mentioned earlier, the police guard units were initially designated by the corps or divisions, but these duties were later undertaken by soldiers under the command of the Provost Marshal – a further effort at centralizing the disciplinary arm of the military.
The provost marshal units are represented by the two ‘x’ marks in the center of camp. Image reproduced from Revised Regulations for the Army of the United States, 1861. (1861; repr., Harrisburg, PA: National Historical Society, 1980), 77.
facing to the front,” or in the direction of the rows of privates.32 Even when resting in their tents, the ordinary soldiers, many volunteers unaccustomed to military discipline, were meant to see the provost marshal units that were observing them. The Revised Regulations orders police soldiers, scattered around the perimeter of the campsite, to “warn [the Colonel], day or night, of any unusual movement in or about the camp,” and to “arrest, at any time, suspicious persons prowling about the camp.”33 For the officials concerned with military discipline it was important to witness and report possible dissension within the regiment. Tellingly, in the Revised Regulations, the Provost Marshal’s order to spy within the camp precedes any mention of how to guard enemy prisoners of war.

The sweep of the Provost Marshal’s surveillance was not only limited to the army in the field. In fact, one official proposal would have had members of the Provost Marshal observe every new recruit in order to catalogue the men visually:

> It has been suggested that on every man’s descriptive list at enlistment there be entered such marks as he may have about him, to facilitate his identification in case he should desert. Such marks as many men have tattooed on their forearms and hands, birthmarks, scars, &c., might be noted under “remarks” on every enlistment paper.34

In this idea, the Provost Marshal proposed a radical transformation. The distinctive characteristics of each body helped to individualize a person physically. However, the Provost Marshal hoped to use the very uniqueness of a person’s body to better police him within the anonymity and collectivity of the army. This concern about desertions is

---

32 Revised Regulations, 76.
33 Ibid., 85.
particularly interesting in the midst of a war where men died of wounds so gruesome that their corpses could be identified only by a tattoo.

As the war grew in scale, the Provost Marshal began to watch over many other aspects of the soldiering life, including hospitals for wounded and sick soldiers. This extension of military discipline, and thus state power, into realms previously overseen by physicians is mirrored by Foucault’s analysis of discipline. He notes how the hospital in early modern Europe became intertwined into a mechanism of discipline by the increased use of the medical examination. Doctors became more specifically involved in inspecting their patients over time. This helped to turn the hospital, which had previously been little more than a poorhouse, into an institution devoted to linking medical knowledge with power over the patient.\textsuperscript{35}

During the American Civil War, the Provost Marshal’s office made use of the army’s medical corps and further exerted its own authority over it by requiring physicians to report potential deserters in their hospitals. During Grant’s Overland Campaign, General Henry Halleck sent the commander over a hundred men who “[had] arrived [in Washington] with the wounded, under pretense of wounds, which on examination [was] found to be false.”\textsuperscript{36} The prescriptive for this handful of men proved to be but a prelude to an expanding system of observation. Later in 1864, C. H. Crane, the acting Surgeon General of the United States, informed all medical staff officers of new regulations affecting their posts. Crane ordered that “the Surgeon in charge, as soon as a desertion is ascertained, will report the fact direct … to the Provost Marshal of the District … and to

\textsuperscript{35} Foucault, 187.
such other Provost Marshals as might be of immediate aid in making the arrest." The apparatus of military observation and discipline was thus instituted, at least later in the war, within hospitals themselves. Doctors were employed as spies on their own soldiers as the Provost Marshal made use of their inspections to ferret out deserters. The Surgeon General then noted that "this is in addition to the regular reports of deserters sent to the Provost Marshal General’s Bureau." With the new order, the military police were merely tightening their control over the hospitals.

Not only were doctors ordered to watch out for potential deserters, but their very profession was subsumed as another layer of discipline over the Northern soldiers. After the close of major hostilities in 1865, the Provost Marshal sent a questionnaire to all Federal army surgeons still in uniform. In this letter, the military police first requested doctors to "state in minute detail [their] method of examining men." The Provost Marshal then ordered the doctors to share information with them that simultaneously incorporated the physicians as an arm of military discipline and lessened their independence and power. The surgeons were required to divulge "the frauds most to be guarded against, which are practiced by drafted and enrolled men to escape, and by substitutes and recruits to enter the service." By providing this information, the medical officers gave the military police access to some of their specialized knowledge of

38 The author is not aware of how many deserters were uncovered by medical professionals or how many surgeons actively participated with the Provost Marshal’s office. However, the very existence of standing orders to co-opt physical examinations into a system of discipline suggests a great deal about the increasing power of the Provost Marshal within the army.
41 Ibid.
ailments and body composition—their medical expertise that distinguished their role in
the army.

The Provost Marshal recognized that draftees were being released too easily and
decided to use its domination of the surgeons to advantage. Leaving the front for
medical reasons was one avenue towards desertion and the Provost Marshal wanted to
limit any such opportunities. Thus, in November 1863, Provost-Marshal-General James
B. Fry drafted a circular with a list of forty-one maladies and disabilities that would be
acceptable excuses from military service; surgeons and inspecting doctors were ordered
to report how many men fit into each category. Moreover, as the Herald of Health
reported in 1864, the Provost Marshal commanded the medical corps sufficiently to
renego on the very guidelines issued by Fry the previous year. A new circular
countermanded the previous notice to doctors by ruling that “incipient consumption
[would] not exempt a drafted man from service.” The state had successfully
maneuvered into a position where it had the ultimate vote on specialized health matters,
going against the wishes of much of the medical community. Without the exclusive
access to such information, the army surgeons became simply another set of eyes for the
Provost Marshal to continuously monitor the Federal soldiers.

Within the expanded apparatus of military and state discipline, the provost
marshal units did not merely serve as internal spies. As alluded to earlier by the editors

42 Such activities were particularly true after conscripts became aware of the various maladies that would
help them to avoid the draft. Scientific American reported in September 1863 how “fully three-fourths of
the applicants for exemption’ receive it on account of either ‘hemorrhoids [or] rupture.” See “Curiosities of
43 “Army and Navy News,” Medical and Surgical Reporter, November 21, 1863, www.proquest.com/
45 The Herald of Health, speaking for a large number of physicians, deplored the new regulations issued by
the Provost-Marshall-General’s Office. They considered the rule “a grave mistake on the part of the
constituted authorities.” See “Soldiers’ Department,” www.proquest.com/
of the *Journal of Commerce*, military discipline began to erode the lines between civilian and military authority. The Provost Marshal department steadily concentrated more operations under its mandate, simultaneously removing any civilian influence from such processes. In December 1861, provost marshals were ordered to round up citizens near the frontlines in Missouri and relocate them further away from the battlefields.\(^{46}\) Just nine months later, General Wadsworth sent a Provost Marshal Department unit to close down the Harrisburg, Pennsylvania, *Patriot and Union* and arrest its publishers on trumped up charges.\(^{47}\) The Provost Marshal even went so far as to take over responsibility for disputes “between employers and employed” within Union-controlled Louisiana.\(^{48}\) Military police were in charge of fixing wages for freedmen in order to ensure a functioning plantation system and called upon immediately to investigate “if complaint was made.”\(^{49}\) Within a year, the Provost Marshal in Louisiana had transformed from a military watchdog into a civilian bureaucracy, thereby transferring whole plantations under the army’s control. As all of these examples show, the military’s disciplinary machine, with the acquiescence of the federal government, had completely transformed civilian relations across the nation.

\(^{46}\) Such herding took place in St. Louis in response to threatened advances by Confederates. Whilst moving these civilians, provost marshals were still being ordered to carefully observe the citizens and quarter “Union refugees … upon avowed secessionists.” See “News Items,” *Saturday Evening Post*, December 14, 1861, www.proquest.com/

\(^{47}\) The *Patriot and Union* was accused of printing a false recruitment poster urging “the colored people of [Harrisburg] to assemble for the purpose of being mustered into the military service of the United States.” While such a publication would have interfered with military matters, the newspaper was charged with trying to start a racial riot and discredit the government entirely. See “Harrisburg Newspaper Men Arrested,” *Saturday Evening Post*, August 16, 1862, www.proquest.com/

\(^{48}\) “A Valuable Publication,” *The Liberator*, July 29, 1864, www.proquest.com/. “Employers” and “employed” are euphemisms for former slaveowners and African-American freedmen. On a side note, many of the Provost Marshal soldiers involved in Louisiana related more easily with the former white masters and helped these men to institute a form of strict serfdom in newly emancipated areas.

The most important and far-reaching assignment of the provost marshals during the war straddled the worlds of civilians and soldiers: the arrest and punishment of deserters. As Joan Cashin has noted, desertion was not only widespread amongst the Federal armies but also oftentimes supported by loved ones on the home front. Recounting the stories of thousands of Northern deserters, Cashin records how “repeatedly their comrades said that deserters had gone home, and there, surrounded by relatives, friends, acquaintances, and neighbors, many of them lived for months or even years without being arrested.” Some recruits and draftees never bothered to report for duty in the first place, and their numbers and power in the community often challenged the Provost Marshal. As early as 1862, an editorialist in *Vanity Fair* quipped that the military police would “have a fine time of it hunting up General Greeley’s 900,000 men, not one of whom has ever yet answered to his name at roll-call!” Clearly, desertion and resistance to military service were significant problems; in fact, dealing with desertion became the primary task of the provost marshals scattered around the country. It was in this duty that the absolute power of the state showed most forcefully.

After the war, Provost-Marshal-General James B. Fry recounted the beginnings of the “Deserters Branch” of the Provost Marshal’s bureau. Shortly after the start of the war, the relatively low number of desertions were handled according to established precedents: A “$30 reward was offered for the apprehension and delivery of a deserter to an officer of the Army at the most convenient post of [sic] recruiting station.”

---

horrors of war, homesickness, and necessity soon struck the ranks, however, and the previous strategies for dealing with deserters proved incapable of stemming the tide away from the battlefields. In August 1862, the army issued General Order 92, which authorized civilians such as "the mayor and chief of police of any town or city" or even any postmaster to act as special provost marshals to sweep up more deserters. While these persons still received the bounty paid out for a successful capture and served only as deputies, only one month later, in September 1862, the Provost Marshal and the powerful army behind it crossed another threshold. With General Order 140, a corps of provost marshals was created whose express duty "was to arrest, spies, [sic] etc."54

In addition to these explicit orders to spy on American citizens, the officers of the Provost Marshal were permitted to use "citizens, constables, sheriffs, or police officers" from the local citizenry to help them track down deserters.55 Civilian law enforcement was being melded into an able assistant of the military. And yet, as General Fry reported, these efforts were still unsatisfactory. The Provost Marshal’s department was thoroughly reorganized and expanded, and in early 1863 documents were forwarded to local provost marshals with a "descriptive list [including the deserters’] place of residence, and such available information as might lead to their arrest."56 The calculated planning, efficient organization, and wide sweep of this expanded Provost Marshal’s bureau finally succeeded in rounding up significant numbers of deserters.

In the face of such cold efficiency, local officials and civilians started to establish limits on how much power they would allow to the federal military and its police. For

54 Ibid.
55 Ibid.
56 Ibid.
example, in the words of General Fry, early in 1863 “considerable trouble was experienced” by the provost marshals when state courts began to issue writs of habeus corpus and take deserters away from the military police. In many cases these deserters, the general lamented, “often escaped punishment.”

Soldiers themselves acted to undermine the authority of the provost marshals as well, often by spreading stories about the punishments deserters would endure if returned to duty; in friendly local environs, these tales often helped soldiers gain the sympathy of neighbors who would protect them from the military police. General Fry simply could not understand the fear these punishments stirred in soldiers and civilians alike; as he put it, “Being tied up by the thumbs, though not a severe punishment, sounds to those who suppose it means ‘hung up by the tugs’ like a most barbarous proceeding.”

As more and more deserters returned home and recounted the dangers that awaited them, some civilians proved reluctant to side with the army and state, resenting such treatment as an abuse of power.

General Fry, who quickly dismissed such corporal punishments as mild, was wholly in favor of the most severe: the death penalty. Looking back over the course of the war, Fry firmly denounced the actions taken by the government as ineffective and negligent:

The large bounties given to volunteers have undoubtedly been an inducement to many to desert for the purpose of re-enlisting; but a still greater inducement has been the leniency with which the most culpable deserters, have been

---

58 Ibid., 755.
59 Lonn suggests that civilian reluctance to aid the Union army in capturing deserters grew as the desertion rate rose, as evidenced by the government’s response to the problem. At the start of the war, civilians who aided deserters or “enticed a soldier from his duty was subject to a fine of $300 or imprisonment for one year.” These threats apparently did not halt the practice, for in March 1863, Congress passed a new law increasing the potential fine to $500 and lengthening the possible prison sentence. The Congressional actions suggest that civilians were being influenced by deserters to defy the army and government. See Lonn, 166
treated. Had the extreme penalty attached to desertion been invariably carried into execution bounty-jumping and desertion would not have reached such gigantic proportions. The time elapsing, too, between arrest and trial give the reckless and often skillful deserter opportunity to escape. In the case of desperate and well-known offenders, a speedy trial and short shrift would have exerted a salutary influence.\textsuperscript{60}

Fry understood the power of capital punishment well; he recognized the coercive power of the government over its citizens and how the ceremony of state-sponsored death could force discipline. As Foucault theorized, an execution "deploys before all eyes an invincible force," a force soon in the hands of the Provost Marshal when this department came to oversee all punishments of deserters\textsuperscript{61} As noted, this power over life and death proved to be the military police's most effective and severe tool in enforcing discipline, yet it also became the most controversial. The spectacle of the execution sparked a reaction in many Americans that other encroachments on rights and liberties failed to elicit. In order to completely understand this rejection of state power, however, it is first necessary to survey the intent of the death penalty and comprehend the message such suffering was supposed to deliver to the Northern public and its armies of volunteers.

\textsuperscript{61} Foucault, 48.
CHAPTER II
THE SPECTACLE OF THE EXECUTION

Private Wilbur Fisk of the Second Vermont Volunteer Regiment experienced war like thousands of other Union soldiers. He joined the ranks in late 1861, following the Northern debacle at Bull Run. He was a young man from a small community who hurried to the call of duty to put down the rebellion. Perhaps more educated and idealistic than some, Fisk was extremely eloquent in his prose. This gift steered Fisk towards a joint career; while on campaign, he regularly wrote to his hometown paper as a soldier-correspondent. In folksy but informative accounts, Fisk provided his hometown with eye-witness journalism and candor. One of his most detailed letters described an execution of two deserters from his division in late December 1863. As Fisk prefaced the story, he "never was obliged to witness a sight like that before, and [he] sincerely hope[d] a long time may intervene before [he was] thus called upon again."

Fisk had no illusions about what he was made to witness. The fresh graves of the deserters lay a short distance outside of camp, and the units were marched into formation around them. Fisk understood that "these men were made examples, and executed in the presence of the Division, to deter others from the same crime." The soldiers of the unit

---

62 Emil and Ruth Rosenblatt, eds., Hard Marching Every Day: The Civil War Letters of Private Wilbur Fisk, 1861-1865 (Lawrence: University Press of Kansas, 1992), 179. Fisk took on the pen-name of "Anti-Rebel" for his letters. He himself was later branded a deserter while traveling home to be married. It seems that his case was erased from the books because of his status as a soldier-correspondent with the newspaper. See Rosenblatt, eds., vii-ix.
63 Ibid, 179.
64 Ibid.
were drawn up in a hollow square, with the empty end containing only the two graves. Into this theater, “two ambulances drove on to the ground with two live men, and two coffins to contain them, and these were to fill the newly made graves.” The rites of the execution ceremony did not end there, for “after the sentence [of death] was read, the chaplains stepped forward by [the prisoners’] side, … the prisoners kneeling as they prayed.” The deserters returned to this subservient kneeling position on top of their coffins as the execution squad was readied. Immediately after the fatal shot was delivered to each prisoner, the division “marched in columns around the spot where the bodies of the two men were lying just as they fell.” The bodies were placed in their caskets, lowered into the earth, and the remaining soldiers then resumed their duties.

Private Fisk’s detailed account of this Union military execution describes a sight witnessed by nearly every soldier in the Federal service. But this death was vastly different from the thousands who perished right next to friends on the battlefield or in the noxious tents of prison hospitals. This was the death of a Union soldier at the hand of the Union army, a carefully orchestrated and symbolic execution carried out in order to prove a point. Each step in the process, each image recounted by Fisk, was not an accident, but a conscious act in a drama of power. Capital punishment is, simply put, state-sanctioned murder, and a legal murder requires both a justification and a goal for legitimacy. The ceremony surrounding the death penalty fulfilled both of these necessities.

Fully understanding the importance of these military executions requires thinking about them as presentations of power, not just attempts at discouraging desertion. Few theorists have captured the essence of capital punishment like Michel Foucault,

---

65 Rosenblatt, eds., 180.
66 Ibid.
67 Ibid.
particularly in his work *Discipline and Punish*. Foucault's most significant contribution to historical study is his emphasis on reading the human body as the physical manifestation of power relations. In *Discipline and Punish*, Foucault chronicles the rise of the prison system in Europe as a replacement for archaic demonstrations of public torture and death. He argues that the story of this transformation must be situated in human bodies and the changing conception of how best to control human bodies. In Foucault’s theory, methods of punishment were adapted to fit the government’s desire for greater command over the bodies of its citizens. Thus, detailed knowledge of bodies was an instrument of power for the state and the military, a power that was wielded in order to extract usefulness from the bodies of citizens. In fact, as Foucault mentions, “The body becomes a useful force only if it is both a productive body and a subjected body.” Even the most efficient workers or soldiers were no use if their bodies were not rigidly disciplined and under the complete control of the state or military.

As a method of enforcing such control, the United States Army developed the military police system, intelligence units, and military prisons. However, it was the state-sanctioned death of deserters that best proved the power of the government over soldiers; after all, the deserter had personally inverted the system of subjection by leaving his post and his government’s army behind. His impending death was the final reminder to him of the awesome power of the state over his body. But, as previously mentioned, only 147 Union soldiers were killed by the Federal army for desertion; the personal deterrence was minimal. Far more important was the effect that capital punishment of deserters had on the

---

68 This conception meshes neatly with the creation of the Provost Marshal’s Office in the Federal army during the American Civil War, as the state believed that old methods of self-policing within the ranks were not sufficient to maintain the rigid control necessary to win the war.

69 Foucault, 26.

70 See Foucault, 27.
the thousands of soldiers standing at attention just yards away and the millions of citizens on the home front who read of the death squads in the newspapers and letters home.

The intended effect of military executions was written on the very body of the condemned soldier. According to Foucault, much like the monarch's body has a dual nature in that it is both the corporeal form of the king as well as the office of the king, so too does the body of the executed soldier have a dual nature. For the unfortunate prisoner, his body is both his physical self and a "code [for] the 'lack of power' with which those subjected to punishment are marked." The body of the deserter, slumped on his coffin and riddled with bullets, is a physical manifestation of the control the Federal army had over each body in Union blue. The dead deserter was punished not to eliminate one particularly unruly body but to create a symbolic second body representing the power of the state writ large.

The United States government and army officials recognized the impact executions had upon soldiers and created procedures to emphasize the ceremony of death penalties. According to Foucault, one of the primary features of a successful execution is publicity. As he notes, Europeans understood that "men will remember public exhibition" and that "from the point of view of the law that imposes it, public torture and execution must be spectacular, it must be seen by all almost as its triumph." Military guidebooks emphasized the same point: The very goal of an execution requires as large an audience as possible. The standard manual used by officers in the field during the

---

71 Foucault, 29. Foucault goes on to suggest that the power of the state exercised upon the powerless prisoner, the "inverted figure of the king," creates a similar duplication of the body as was experienced in the body of the king. In this case, however, the product is the soul. For Foucault the soul is not mythical but the result of power exercised for control on the punished body. The implications of these ideas, though potentially useful for understanding the development of military prisons, are beyond the scope of the present study. See Foucault, 29.

72 Ibid., 34.
Civil War was Captain Stephen Benét's *Treatise on Military Law and the Practice of Courts Martial*. Benét, drawing upon a long military tradition, made clear that "as one great end of punishment is the prevention of crime by example, it should be rendered, in this respect, as extensively useful as possible, by the publicity which attends its execution." The government's priority in executions was to impress its absolute authority upon the men in ranks. To achieve the greatest effect, military death sentences were "carried [out] in the presence of so much of the command of the accused...as [could] be 'conveniently assembled for that purpose.'" The army hoped that many soldiers would witness the sanctioned death of a comrade to strengthen their appreciation of the military's control.

Government officials acknowledged the importance of these acts and encouraged their practice as well. As Gideon Welles, Lincoln's perceptive Secretary of the Navy, recalled, the Cabinet assembled in February 1863 to discuss "the question of making an example by shooting a deserter" and "the necessity of an example to check a rapidly increasing evil was assented to." Moreover, the government was largely concerned with the execution as an example to the assembled troops rather than as a punishment to the individual deserter; in fact, Welles noted that the incident "did not strike [him] as so aggravated a case as some others." But Welles and other authorities would have appreciated a maxim expressed by Foucault: "The public execution is to be understood

---

74 George Davis, *A Treatise on Military Law of the United States* (New York: John Wiley & Sons, 1906), 166. Although compiled well after the Civil War, the procedures of the military had changed very little.
76 Ibid.
not only as a judicial but also as a political ritual." In other words, the President had an interest in supporting military executions because deserters were the physical representation of a rejection of his political authority to command the bodies of citizen soldiers.

The generals in the field also appreciated the effect executions had upon questionably loyal soldiers. The attending officers’ attention to detail reflected this appreciation of the impact of the event. An Indianapolis newspaperman was singularly impressed with how Col. A. A. Stevens had “arranged everything most admirably” for the public execution of three deserters by members of his command.”

Brigadier General William Lytle practically boasted to his sister about the arrangements he had made:

I send you an account of Calhouns [sic] execution which appeared in the Journal today. Everything went off smoothly to my great satisfaction – We only got the order the night before & it took me nearly all night to make the arrangements. Some of the regiments had to move six or 8 miles, but everything was sharp on time.

Both of these officers understood the necessity of displaying the military’s perfection and they made every effort to present an effective display of state power.

Other commanders were far more blunt in stating the role of executions. George B. McClellan, soon to head the famed Army of the Potomac, reported to his wife in August 1861 that certain soldiers “will be tried & probably shot tomorrow – an example is necessary to bring these people up to the mark, & if they will not fight & do their duty

---

77 Foucault, 47.
from honorable motives, I intend to coerce them.” McClellan’s use of “coerce” shows how central the authority of the government and the military were to the executions of Civil War soldiers. Far more than other aspects of regimented army life, the totality of the death penalty proved the power of the state over the individual.

Soldiers and civilians usually understood the message being broadcast by the state in ceremonies of capital punishment. Volunteers and conscripts filled their letters to loved ones at home with passages describing every detail of the macabre pageantry they witnessed. As with all other events in military life, the death of a deserter was a formalized routine. Soldiers generally began their descriptions by reflecting upon the mood of the moment, most echoing the sentiments of Surgeon Spencer Welch that the event “was a very solemn scene.” Newspaper correspondents were also struck by the “scene of unusual grandeur” which was filled with an “awful impressiveness.” As proscribed by the manuals, the sentences were carried out in the presence of as many men as possible. John Pardington wrote his wife that before any prisoners arrived, “our Bragade [sic] was drawn up in a solid square.” Pardington must have been mistaken about the arrangement of the men, as one end of the field was always left open in case of

---

80 George McClellan to Mary Ellen McClellan, 14 August 1861, The Civil War Papers of George B. McClellan: Selected Correspondence, 1860-1865, ed. Stephen Sears (New York: Da Capo Press, 1992), 85. Interestingly, the soldiers referred to by McClellan were not shot as he predicted.  
81 The interesting case of a private in the Nineteenth Indiana captures the importance generals placed on the ceremony of the execution. After the condemned was “led forward blindfolded” to the stake, the officer in command set the firing squad at the ready, but before yelling “Fire!” he paused when “a horsem an rode rapidly up the road, waving in the air a paper, which was understood by all to be a reprieve.” As the witness recorded, “His death had really never been intended; but it was deemed necessary for the good order and discipline of the army to make an impression upon not only himself, but the whole brigade.” See “A Remarkable Incident,” New York Times, January 13, 1862, www.proquest.com/ 
84 John Pardington to Sarah Pardington, 21 February 1863, Lassen, ed., 77.
stray shots from the firing squad. Still, the imposing geometry of row after row of soldiers must have only heightened the impact of the moment.

In fact, by indicating that an entire brigade was organized, Pardington may have actually underestimated the scale of the affair. Other witnesses, such as John Hartwell, recalled that the punishment was carried out “in the presence of our Divishen,” a group likely to number over ten thousand men.85 One soldier thought it unlikely that his wife would be able to comprehend the sight he had witnessed, so he felt compelled to draw a sketch of the layout that day, carefully noting the placement of the prisoners, commanding generals, and the particular regiments brought out to view the execution.86 While the number of soldiers brought to the event added to the visual power of the military, the actual identity of the spectators was also very important. As the Indianapolis Daily Journal reported late in 1864, though one particular execution was not a public affair, “among those allowed to witness the ‘terrible lesson’ were about a hundred bounty jumpers.”87 As these descriptions show, the military executions of the Civil War were structured to impress as many people as possible with the power of the state’s authority.88

87 Cimbala, 196.
88 For a complex study of how Americans understood death, see Gary Laderman, The Sacred Remains: American Attitudes toward Death, 1799-1883 (New Haven: Yale University Press, 1996). Laderman argues that nineteenth century Americans associated details rituals and ceremonies with all deaths, including executions. Thus, the symbolism inherent to military punishment would be readily recognizable by soldiers of the time. See also David Blight, Race and Reunion: The Civil War in American Memory (Cambridge, MA: The Belknap Press of Harvard University Press, 2001). Though focusing on race relations following the war, Blight’s study offers additional analysis of how nineteenth-century Americans remembered the violent deaths of the conflict. See also Figure 2.
An exemplary portrayal of the most extreme punishment enacted in the name of military discipline during the American Civil War. This representation clearly shows the pageantry and ceremony that were a part of every execution. Image reproduced from Harper’s Weekly, August 8, 1863, pg. 509. Accessed through HarpWeek, http://app.harpweek.com/
A large number of witnesses was not the only element of the execution that reinforced the government's authority. Foucault theorized about the fundamental necessity of making every aspect of capital punishment an extreme action:

Its aim is not so much to re-establish a balance as to bring into play, at its extreme point, the dissymmetry between the subject who has dared to violate the law and the all-powerful sovereign who displays his strength. Although redress of the private injury occasioned by the offence must be proportionate, although the sentence must be equitable, the punishment is carried out in such a way as to give a spectacle not of measure, but of imbalance and excess.89

The death of the deserter must include symbols and rituals that completely glorify the power of the state while simultaneously demeaning the prisoner as utterly powerless. To do anything less would reduce the impact of the death upon the witnesses present and squander an opportunity to display invincible authority. Thus, executioners designed their spectacles with sensory clues to reinforce their message. Oftentimes, these clues were embodied in the prisoner himself and the rituals he was forced to enact as part of his own demise. The military police's job, then, was to "[seize] upon the body of the condemned man and [display] it marked, beaten, broken."90 The deserter's living body before and during the ceremony and his corpse immediately following the gunshots literally displayed the awful force of the military over the individual.

The descriptions of executions in newspapers and soldiers' letters home often mention these visual clues and the impression they made on the witness, just as the army intended. Though few civilians saw firsthand men being put to death during the war years, many read about the ceremonies and would take note of the penalties for disobeying the army's control. Typical of the newspaper descriptions, the New York

89 Foucault, 48-49.
90 Ibid., 49.
Times’ story of the death of deserter Joseph Lane emphasized the drama and pageantry of the situation, intended to certify the state’s power:

A solemn assembly was seen approaching, headed by [the Provost Marshal]. Following him was the band, with muffled drums, playing the “Dead March in Saul,” and then the (firing) detachment to whom was assigned the still more unpleasant duty of launching a fellow-being into eternity.91

Soldiers and journalists joined in a somber moment of reflection when they told of the entrance of the prisoner into the setting. Sergeant John Hartwell felt that “it was a sorrowfull sight to see [the condemned] ride seated on his Coffin around the Square his eyes streaming with scalding tears.”92 Newspapermen brought similar sights home to readers, reflecting in morbid detail how “the criminals were sitting upon their respective coffins, with the yawning graves in the rear.”93 Those present at military executions often focused on the unfortunate victim, placing the readers of their letters or articles practically face-to-face with the prisoners so that those at home would be certain to understand the government’s control over each citizen.

The extent to which Civil War executions reflect a Foucault-style state is especially clear in one death during the first year of the conflict. In December 1861, the Union army executed the first soldier for desertion since the Mexican War.94 Private

92 Britton and Reed, eds., 136.
93 “Execution of the Five Substitute Deserters,” New York Times, August 31, 1863, www.proquest.com/. Those who organized the event were clearly aware of the impression of power it was meant to impart, as noted by the journalist witness: “More than ordinary interest was exhibited in this execution of military law, and it is estimated that not less than 25,000 persons were present. The ground was well selected, and every arrangement so complete that no accident occurred to mar the solemnity of the proceedings. ... Previous to the execution the scene presented a remarkable view to the spectator.” See “Execution of the Five Substitute Deserters,” www.proquest.com/
94 Several volunteer soldiers who had deserted General Winfield Scott’s army on its drive to Mexico City were captured after the American army stormed the Mexican redoubt of Molino del Rey near Churubusco. Many of these soldiers who, unlike most Union deserters in the Civil War, had actually taken up arms for
William Johnston, a member of the First New York Cavalry, was shot by a firing squad for leaving his picket post around Washington, D.C., and the arrangement of his execution soon became the norm. In stark contrast to the terse comments on most executions later in the war, the account of Private Johnston’s crime and subsequent punishment is extremely detailed. As Harper’s Weekly reported, Johnston confessed before his death that he “had not the slightest intention of deserting up to a few minutes before [he] started in the direction of the enemy’s lines.” According to his confession, Johnston, like many soldiers, simply hoped to see his family and then return to the army. Johnston was soon confronted by some members of the Third New Jersey who arrested him and returned him to camp to face a trial.

Harper’s Weekly continues with an elaborate description of the spectacle of Private Johnston’s death. Several elements of his punishment ritual reflect special efforts by the military to emphasize its authority over soldiers and complete command of the individual. The entire division was assembled precisely on the field to form three sides of a square, reserving the open end for Johnston and the executioners. Johnston was then

the opposing cause were hung high on a hill overlooking the city during the final battles. Most American soldiers agreed with Sergeant Tomas Barclay that “these Wretches richly merited death,” and Ralph Kirkham, who noted that “[he] presume[d] they [would] all be hung, for shooting is too good for them.” See Allan Peskin, ed., Volunteers: The Mexican War Journals of Private Richard Coulter and Sergeant Tomas Barclay, Company E, 2nd Pennsylvania Infantry (Kent, OH: Kent State University Press, 1991), 158; and Robert Miller, ed., The Mexican War Journal and Letters of Ralph W. Kirkham (College Station: Texas A&M University Press, 1991), 52.

95 Alotta, Civil War Justice, 48-49. Some accounts of this private’s death name him as Johnson; I chose to follow Alotta’s spelling, given his extensive research into the specific executions in the Union army.


According to Johnston, his mother lived in New Orleans and he hoped to find a way to her through the Confederacy. The accuracy of this statement could not be verified, though the press gave no indication that Johnston was anything less than a sincerely homesick soldier.

97 Ibid. Unlike many other deserters early in the war, Johnston was hurried through the court martial process. According to Alotta, Assistant Adjutant General J. Williams sent Brigadier General William Franklin a letter explaining the method of military executions and a formal list of charges against Johnston on December 7, 1861. As Johnston was dead within the week, it seems clear that his case was quick and efficient. As more deserters were caught, however, the process of court martial soon became more drawn out. See Alotta, Civil War Justice, 48-49.
brought to the site, accompanied by dozens of other soldiers. As the newspaper described it, “The Provost Marshal, mounted and wearing a crimson scarf across his breast, led the mournful cortége.”\(^9\) He was followed by four buglers, twelve soldiers forming the firing squad, the coffin on a wagon, Johnston, two priests, and the whole of Company C, Lincoln Cavalry, as an escort.\(^9\) The extensive processional was meant to signify the power of the sovereign, specifically represented in the person of the scarf-bearing provost marshal. Since President Lincoln and the top military brass could not be present at each execution, the provost marshal served as their delegated representative, symbolically bearing the color of blood upon his uniform.\(^10^\) In direct contrast to the decorated authority figure was the coffin for the deserter Johnston, “of pine wood stained, and without any inscription.”\(^10\) Johnston could not be placed in an ornate or even a named coffin, as he was soon to be a non-entity. The individual who had been Private William Johnston would be executed, leaving only a body that was no longer his own. His corpse

---


\(^9\) Harper’s Weekly notes that the firing squad was composed of twelve men, one from each company of the regiment, “selected by ballot.” Their weapons, Sharps breechloaders, “had been previously loaded under the direction of the Marshal. One was loaded with a blank cartridge, according to the usual custom, so that neither of the men could positively state that the shot from his rifle killed the unfortunate man.” See “The Execution of Johnson,” http://app.harpweek.com/. Modern scholars have noted these issues as well, recognizing that if a soldier knowingly fired the fatal shot, “the thought of it might always be painful to him.” See Wagner, Gallagher, and Finkelman, eds., 479. This custom brings up very important issues. According to Pieter Spierenburg, people around the world, especially Europeans, regarded executioners as practitioners of an infamous profession. In fact, “the hangman’s touch was considered as a penalty in itself;” in other words, these men were vilified by society simply because of their task. See Pieter Spierenburg, The Spectacle of Suffering: Executions and the Evolution of Repression (Cambridge: Cambridge University Press, 1984), 19. This commonly held view explains, in part, why the soldiers were randomly selected. The squad members’ own moral views were also taken into account by giving one man a blank charge. However, this only partially removed the stigma of being part of the execution. Moreover, were the executioners, though simply pulled from the ranks, now seen as part of the state punishment apparatus by their comrades? Civil War executions are difficult to pinpoint on this topic, since the shooters were both normal soldiers and appropriated bodies used by the state for an extra, highly onerous, task. The record is largely mute on soldiers’ feelings toward the firing squads, except for occasional gratefulness at not being amongst their number.

\(^10\) See Foucault, 53.

would instead become a physical manifestation of the military’s ability to control soldiers and keep them in the ranks.

Johnston was brought into the square and placed next to his anonymous coffin; the firing squad was arranged six paces in front of him. After being read the final sentence of the court martial, the condemned was given a few moments to speak to the assembled soldiers:

‘BOYS, - I ask forgiveness from Almighty God and from my fellow-men for what I have done. I did not know what I was doing. May God forgive me, and may the Almighty keep all of you from such sin!’

Johnston was then given a final few minutes with the Catholic priests to prepare him for the moment at hand. His confession and penitence are both classic elements of a public execution, according to Foucault. A statement of guilt such as Johnston’s lament “added to the conviction the signature of the convicted man.”

By proclaiming his guilt, the prisoner made the public aware of what had transpired in the private chambers of the court martial. By invoking God in his confession and in taking time to kneel with the priests, Johnston is hoping that He will be mindful of the suffering in the execution and subtract it from any penance still to be exacted in the hereafter. In explicitly allowing for religious elements, the military implicitly linked their ceremony with Christian sanctimony and the approval of God.

Now prepared for his death, Johnston was blindfolded and, at the sign of the provost marshal, shot by the firing squad. As the article relates, the unfortunate man was

102 "The Execution of Johnson,” http://app.harpweek.com/
103 Foucault, 44.
104 See Foucault, 46.
not killed in the initial volley, though he had been hit several times in the heart.\textsuperscript{105} Therefore, a reserve of shooters was immediately brought forward to dispatch Private Johnston; these four men fired at point blank range into the prisoner’s head.\textsuperscript{106} Whereas the provost marshal was able to simply assemble a firing squad from the ranks, the task of completing a botched execution like Johnston’s fell squarely upon the shoulders of the military police. The reserves were usually members of provost marshal units or, sometimes, just the presiding provost marshal with his pistol. The military was certain to ensure that discipline ultimately lay in the hands of its designated authorities, even if that required a pistol blast to the head. As a final act in the drama, every member of the division was marched around to see the “bloody corpse of his late comrade, who had proved a traitor to his country.”\textsuperscript{107} Whether consciously or not, this concluding sentence of the article in \textit{Harper’s Weekly} reflects how Johnston was no longer a specific individual, but simply a “corpse” that was symbolic of any “traitor.”\textsuperscript{108}

The visual description of Private Johnston’s death ceremony is full of the symbolism of state authority. This aura of control was also presented to Americans in the wartime images that filled the pages of popular periodicals and newspapers. Sketch artists like Alfred Waud and Edwin Forbes traveled with the Federal armies to capture

\textsuperscript{105} “The Execution of Johnson,” http://app.harpweek.com/. As an explanation for Johnston’s survival of the first volley, the article noted that “two of the firing party, Germans, had not discharged their pieces.” Although they served as the physical representatives of the state authority in this ceremony of death, these reluctant executioners were nevertheless subject to discipline - for their hesitation “they were immediately put in irons.”\textsuperscript{106}

\textsuperscript{106} Ibid.

\textsuperscript{107} Ibid. The entire execution took precisely forty-five minutes, from processional to death; the length of the ceremony was no doubt another conscious effort to drive home the message being relayed through the execution.

\textsuperscript{108} As the first Union soldier executed for desertion in the Civil War, Private Johnston’s death earned significant press coverage. For a foreign perspective on the event, see “[Among the Illustrations of the civil war in America],” \textit{The Illustrated London News}, January 11, 1862, http://cti.library.emory.edu/
scenes of battle, camp life, and even military discipline. \textsuperscript{109} A few prints survive of military executions, including that of Private Johnston. In conjunction with the written record, these pictures fully reveal the contrasting visual cues of power and powerlessness in capital punishment.

The images of Private Johnston’s execution reveal other conscious symbols of military power. In Figure 3, Johnston is depicted in civilian clothes at the ceremony, his cavalry uniform having been tossed to the side, as shown below. This small gesture is very important for the state apparatus—the state must not allow Johnston to die in uniform for that would associate the coward with other loyal soldiers. On the contrary, the prisoner was clothed plainly but uniquely from his peers, so that his “dress demonstrated the power of the state...to expose outwardly those judged inwardly evil.” \textsuperscript{110} Johnston’s clothes designated him as one who had broken the system of military discipline and thus had lost his right to the honor of the uniform. \textsuperscript{111} Johnston’s pose is also critical; rather than standing at attention to face his fate, he is shown in the pose of a supplicant. Johnston’s crouching pose suggests a religious act, the begging of forgiveness. As mentioned before, a confession and request for prayer was a typical part of the ceremony. More importantly, however, Johnston is crouched upon his plain coffin as if too weak to face the inevitable. Truly, this was likely the case, and the records show

\textsuperscript{109} Of course, the American Civil War is more famous as the first major conflict to be documented in photographs. However, the photographic technology of the time was incapable of capturing moving scenes—thus, all battle photographs were taken several days after the fact. Therefore, the images of military executions were documented almost exclusively in drawings. The one exception known to the author is a photograph of a black Union soldier coincidentally named Private William Johnson, included as an appendix to this paper.

\textsuperscript{110} Masur, 47.

\textsuperscript{111} Despite this visual dishonor, Johnston and other soldiers convicted solely of desertion were killed by a firing squad rather than by hanging. Hanging was seen as the punishment of criminals; desertion was only a rejection of the state’s authority to exert discipline over a body. All Americans assumed that deserters would at least be spared the complete loss of respect associated with hanging. Unfortunately, many soldiers whose only real crime was desertion were hung regardless for trumped up charges, particularly African-American soldiers.
The image on the left, *Lewis Miller's sketch of the hanging of John Lechler at Lancaster, Pennsylvania in 1822*, though the later of the two, shows the colonial-era imagery of the execution. Such images emphasized the witnesses in an attempt to show the community’s participation and acceptance of such punishments. The image on the right, *Illustration from the Narrative of the Pious Death of the Penitent Henry Mills (1817)*, is more typical of reform-era pictures of executions. The highlight is on the condemned as a pious and compliant victim and away from the masses, who were in fact kept away from the scene more and more frequently. The fact that the dates for these eras overlap indicates that these changes developed gradually and were not accepted by all Americans. Images reproduced from Louis Masur, *Rites of Execution*, 104 and 106 respectively.
most deserters approached their deaths with trepidation. However, the pose also shows a terrified man cowering before the undeniable power of the military. Regardless, the message being sent home to civilians in these visual clues was obvious: During this war, the government and its army held complete control over the bodies of each and every soldier.

The visual record for this moment of death is also intimately tied to cultural trends in nineteenth-century America. According to historian Louis Masur, as Americans moved away from public executions for violent offenders in the 1830s and 1840s, the ways that executions were depicted in art and in the media also changed. "Gallows iconography" began to shift away from earlier images that emphasized the community’s participation in the executions that highlighted the onlookers’ acceptance of the punishment and their adherence to societal norms. Instead, as middle-class values of privacy began to trump those of community, “depictions of the execution scene [began] to focus away from the assembled and towards the condemned.” While this shift in perspective arose largely from changing sensibilities, it also eliminated some of the references to state control, such as the crowds of approving citizens and the police units present in earlier, more community-oriented images, as seen in Figure 4. Additionally, in place of the moralizing accounts linked with the eighteenth-century death penalty, new penny press newspapers included lengthy descriptions of the ceremonies that were now largely held in private. The emphasis of these accounts and the new images was on the individual being punished and not the structure of the spectacle.

112 A more detailed look at American reform culture is included in Chapter III.
113 Masur, 105.
114 Ibid., 114. As Masur notes, many of the early penny presses were founded by journalists from working-class roots - the very people who largely refused to accept the shift towards private executions. By
These then-recent transformations in the reporting of capital punishment are visible in the prints of Private Johnston’s death. The emphasis in both Figures 3 and 5 is on the victim, just as reform-minded middle-class Americans encouraged. The guards and soldiers, the visible elements of state authority, are relegated to little more than a backdrop. Likewise, the lengthy and very personal accounts of the deserter’s death link with the lower-class reader’s desire to know every last detail of the event. However, unlike executions in the decades before the conflict, American Civil War capital punishment took place in public, like earlier ceremonies of death. As glorifying the power of the state over the individual again became the most important aspect of the death penalty, the army exhibited its discipline in public and on the very body of the deserter.\textsuperscript{115} This emphasis suggests that the allegorical meaning of the prisoner’s posture changed from pre-war to wartime depictions. Before the war, the condemned’s kneeling pose was meant to emphasize not only his crime before God but also his ultimate forgiveness, just the change reformers hoped the system would cause. The Civil War deserters like Johnston were sometimes also hunched over, but now as powerless entities under the complete discipline of the state. In Figure 5, an alternate representation of Private Johnston’s death, the prisoner is more than bent under the weight of authority; in fact, he is completely sprawled across the ground, broken by the army and its provost marshals. Johnston’s body, clad here in even more subservient garb than in the previous publishing detailed stories of the ceremony, the masses were appeased that justice—which they had once bore witness to—had been served.\textsuperscript{115} Moreover, the army never “shifted” back to public executions, as military policy had always dictated that capital punishment of soldiers would take place in front of others. However, unlike in peacetime where the army and citizenry were somewhat detached, the interplay of civilians and soldiers during a war, particularly a civil war, means that the portrayals of these deaths underwent a change. Thus, the connection with civilian punishments before the war is both valid and critical to understanding the public’s responses to and rejection of the death penalty for desertion.
Like Figure 3, in this early war image of an execution the artist followed the prevailing cultural imagery and emphasized the victim. Originally printed in *Frank Leslie's Illustrated Newspaper*, January 4, 1862. Image reproduced from Franny Nudelman, *John Brown's Body: Slavery, Violence, & the Culture of War*. (Chapel Hill: The University of North Carolina Press, 2004), 144.
image, is left riddled with bullet holes, rendering the man little more than a metaphor to powerlessness.

As the Civil War dragged on past a year and the desertion rate began to soar, the images of military executions changed dramatically. The pre-war relic of emphasizing the individual was abandoned completely; instead, the artists tended to sketch scenes that reflected a much more intense and organized display of military might. This is particularly true of the representation of the deaths of immigrant Privates Walter, Rionese, Folancy, Lai, and Kuhn, whose August 1863 execution is shown in Figure 6.116 General George Meade stated that these men were the first bounty jumpers to come before him, so “humanity, the safety of this army, and the most vital interests of the country required their prompt execution as an example, the publicity given to which might, and, I trust in God, will, deter others from imitating their bad conduct.”117

---

116 The fact that the deserters chosen for this mass execution were all immigrants was likely not a coincidence. The reasons are twofold. First, as Masur makes clear, nineteenth-century American authorities were far more comfortable with sentencing “outsiders” - foreigners and minorities - to death than persons they connected with more intimately. This was also done to appeal to the masses and support the government’s authority. As Masur notes, “Those executed were people for whom spectators might feel the least sympathy, and, as a result, authorities hoped, the assembled would unite against the condemned to defend social stability.” See Masur, 39. Secondly, immigrant deserters were targeted for the death penalty because the Provost Marshal believed that they were particularly prone to leave the ranks. An official report stated: “It appears beyond dispute that the crime of desertion is especially characteristic of troops from large cities.” The report explained the importance of this information: “It is probable that a more minute examination of the statistics … would reveal the fact that desertion is a crime of foreign rather than native birth. … In general, the manufacturing States [had a higher desertion rate], and this result is to be attributed not only to the fact that such States are dotted with towns and cities, but to the secondary fact that these towns and cities [sic] crowded with foreigners.” See OR, Ser. III, Vol. V, Pt. 1, pg. 668-669. This opinion seems to have been widely shared, both by the Provost Marshal and the soldiers throughout the army. It also helps to explain why the government would pass a law in 1865 whereby any deserters who did not return to the ranks within sixty days would be deemed to have “relinquished their right of citizenship.” See OR, Ser. III, Vol. V, Pt. 1, pg. 677. Immigrants were thus particularly targeted, though every deserter could ultimately be structurally removed from participation in the state. Differing opinions of executions depending on the origin of the deserter warrants further study.

117 OR, Ser. I, Vol. XXIX, Pt. 2, pg. 102-103. Bounty jumpers were deserters who left the ranks shortly after receiving their enlistment pay (a policy enacted later in the war, as a means of encouraging volunteers rather than draftees). Many such offenders repeated the process over and over. President Lincoln agreed with Meade, seeing them as “very flagrant cases.” See OR, Ser. I, Vol. XXIX, Pt. 2, pg. 102.
FIGURE 6

THE EXECUTION OF FIVE DESERTERS FROM THE ARMY OF THE POTOMAC, FIFTH CORPS

The identity of the condemned victims is completely lost in this engraving. Their bodies are in fact secondary symbols; the most important figures are the thousands of seemingly approving men lined up on the hill. Image reproduced from Harper's Weekly, September 27, 1863, pg. 616. Accessed through HarpWeek, http://app.harpweek.com/
Meade’s decision received the publicity he hoped for; a two-page spread depicted the death of the five immigrant deserters and was accompanied with an editorialized commentary by the artist, Alfred Waud. Waud commended the proceedings for the “precision” with which “the orders were given and the volley fired...there is no doubt that [the prisoners’] death[s] [have] had a very salutary influence on discipline.”118 The massive display that accompanied the execution clearly impressed the artist and, as noted by the tone of his comments, was intended to have a similar effect on the readers on the home front. Waud’s opinions and the expansive engraving, coupled with Meade’s official memo calling for publicity, suggest a very close relationship between the press and the officers of the army. The correspondents given the best access to the war were also being co-opted as unofficial spokespersons for the apparatus of military discipline. The media transmitted the message home to civilians that the army and the state wanted to disseminate, particularly in the visual clues they incorporated in the images of executions later in the war.

The image in Figure 6 conveys none of the individuality and familiarity of Johnston’s death, but rather five anonymous dead men. The victims’ outfits again emphasize that the condemned have been removed from the ranks of honorable soldiers. The dead are also portrayed as they fell, highlighting their weakness in the face of the Provost Marshal’s authority. However, unlike the images of Johnston, the engraving of the five immigrants includes the prisoners almost as an afterthought. Far more crucial to this drawing are the rows and rows of soldiers standing at attention throughout the ceremony. While thousands of soldiers had been lined up for Johnston’s execution as

well, the changing needs of the army and its Provost Marshal dictated a shift in emphasis in the way they were represented.

The images engraved in newspaper prints changed because the desertion rate was rising; not only were these deserters less unique, but their deaths were seen as far more necessary for preserving order. To further this aim, the image focuses on the regiments of men behind the condemned. In the most blunt interpretation, the simple sight of thousands of soldiers lined up at the army’s command highlighted the undeniable power of the army. But the sketch also sent a more refined and subtle message to the civilians at home. The anonymous masses of men in rank and file were those who followed army discipline. Their presence, coerced as it was, suggested their approval of the sentence.\textsuperscript{119}

The corpses of the five immigrants were meant to symbolize complete state power over the individual. The living bodies of the witnesses were likewise transformed into something more than themselves; they became justifications for the capital punishment of deserters.\textsuperscript{120}

The images of state-sanctioned murder in the newspapers reflect the profound changes that American society underwent during the Civil War. Engravers initially modeled their sketches to conform with the prevailing attitudes about executions before the conflict, but quickly adapted these pictures to include the symbols and clues about military discipline. The execution ceremonies themselves were consciously constructed

\textsuperscript{119} Foucault offers a similar idea, though rather than stoic soldiers he is speaking of a jeering mob of spectators. Still, the author believes the role of the spectators is fundamentally the same; as Foucault writes, “the people had to bring its assistance to the king when the king undertook ‘to be avenged on his enemies’, especially when those enemies were to be found among the people.” See Foucault, 59. The presence of the soldiers made the death of some of their own, the deserters, all the more legitimate.\textsuperscript{120} Interestingly, the last picture related to a desertion execution in Harper's Weekly portrayed not the awesome scene of the execution, but two detailed portraits of the victims. This execution took place several months after the fighting had ceased, perhaps reflecting the sentiment that the power of the state no longer needed to be reinforced with the public.
FIGURE 7

"DEATH TO TRAITORS," CIVIL WAR-ERA LETTERHEAD

This image adorned a piece of paper used by soldiers, helping to reinforce the state’s message to their family members. Attributed to an artist named E. Cogan. Reproduced from Nudelman, *John Brown’s Body*, 145.
to drive home a simple but profound message: The government and its army could wholly dominate their citizens. Most significantly, this concept implied the manipulation of bodies—civilians being molded into obedient soldiers, and persons on the home front accepting the increased regulation of their lives. Those who rejected this system and chose to desert were nevertheless affected. Once captured, their bodies could be employed by the army to reinforce its message.

The image depicted in Figure 7 was decoration for a piece of wartime stationery. In this cartoon, the bodies of the soldiers are contorted so as to literally become, in the words of Franny Nudelman, “instruments of violence and emblems of national power.”

Popular media across the war-torn country, ranging from newspapers to letterhead, manipulated images to reinforce federal supremacy. The bodies of deserters, bloodied and mangled by the firing squad, were even more poignant reminders of the great power being wielded by the federal government and the Union army over its citizens. A new form of state was arising amidst the turmoil of civil war. As the most vivid and brutal evidence of this change, it should not be surprising that the execution of deserters became a lightning rod for criticism. Just as the army intended, Americans understood the clues being broadcast through capital punishment. Ultimately, however, many chose to reject the death penalty for deserters and, by extension, the rapidly expanding authority of the state.

---

121 Nudelman, 145. Nudelman draws heavily from Foucault for a section of her fascinating book describing images of the war. Her extrapolation of themes from images of slaves and soldiers was a significant inspiration for the author of this paper.

CHAPTER III

THE REJECTION OF DISCIPLINE

One of the most eloquent and frank indictments of military justice to come out of the Civil War was actually a brief piece of literature. Ambrose Bierce, author and Civil War veteran, is perhaps best known for his short story, "An Occurrence At Owl Creek Bridge." This glimpse inside the mind of a spy before his hanging examined the complexity of loyalties amidst war and is often viewed by modern readers as a commentary on the folly of executions. However, Bierce’s own feelings are much more obvious in the allegorical vignette titled “Two Military Executions.” In the story, Private Bennett Greene is shot to death because he struck an officer, Lieutenant William Dudley, who happened to be a grade school acquaintance of the victim. Dudley begs the forgiveness of his friend, but the charges had been filed and the authorities carry out the sentence. Several weeks after the execution, the sergeant calls the company roll before a battle. Out of habit, the sergeant calls the dead Greene’s name and to everyone’s surprise a voice responds. Thinking it a prank, the sergeant repeats the name twice more and upon the third time the sound of a shot rings out. Slowly, Lieutenant Dudley, whose devotion to the rules was greater than personal friendship, walks to the front of the file and unbuttons his vest to reveal a growing crimson stain, then falls dead.  

Although Bierce leaves the identity of the mysterious new Private Greene unnamed, the message of the story is clear: The system of punishment within the Northern army was unjust; moreover, the power of discipline corrupted all who wielded it. Bierce was but one of many soldiers and civilians who questioned the legitimacy of Civil War executions. Implicit in such a conviction is a rejection of the power of the state to have full control over the body of the individual. In particular, many Americans began to believe that death was not a legitimate punishment for the crime of desertion. Foucault understood this to be a natural consequence of the public execution:

Above all ... the people never felt closer to those who paid the penalty than in those rituals intended to show the horror of the crime and the invincibility of power; never did the people feel more threatened, like them, by a legal violence exercised without moderation or restraint.¹²⁵

For those millions of Americans not drawn up in ranks around the firing squads, newspaper accounts and soldier letters brought the sensation of state-sponsored death home. As the Civil War raged on, more Northerners came to reject the capital punishment of deserters.

This sentiment is not altogether surprising, considering the statistics on desertion within the Union army. James Fry, Union Provost-Marshal-General at the end of the war, concluded that in the years spanning the fighting, some 201,397 soldiers left the

¹²⁴ The corruption of power obviously raises questions about distinctions between officers and enlisted men, the army’s class system. According to the records, not one of the 267 men executed in the Union army for any crime were members of the officer class. Nevertheless, a sizable percentage of the Northerners who deserted to their homes were commissioned officers. The case of Captains Benjamin Berry and Allen Seymour of the Second New York Cavalry is particularly illustrative of the different treatment received by officers. These two men had “deserted their regiment while on the march of [sic] meet the enemy,” clearly a more grievous offence than simply leaving camp. Moreover, the men had “continued absent up to the present time,” so General Hooker ordered them “dishonorably dismissed from the military service of the United States.” This passage indicates that no provost marshal units were even dispatched to try to hunt down the men, let alone threaten them with physical harm. Clearly, the army maintained different standards of proper discipline and punishment for the higher class of soldiers than the droves of enlisted men. See OR, Ser. I, Vol. XXV, Pt. 2, pg. 67.

¹²⁵ Foucault, 63.
army without leave.\textsuperscript{126} Many of these men were repeat offenders, some returning to their units before running again, meaning that the actual instances of desertions numbered much higher. For the last three years of the war, the desertion rate skyrocketed, peaking at approximately 7,333 men per month in 1864, the year with the most sustained combat.\textsuperscript{127} Despite the large number of men who left the ranks, only 77,181 soldiers were arrested and returned to duty or sent to await punishment in a two-and-a-half-year span.\textsuperscript{128} Of that number, a small percentage, either due to the extremity of their case or the immediate need for an example to the rest of the army, were tried by courts martial. The courts acquitted a number of these men, while others received clemency; however, the unfortunate few whom the courts convicted and sentenced to death sparked passionate debate within the army and the nation at large.

Older scholarship concerning desertion (and the war) focused almost exclusively on the soldiers. In her landmark study, \textit{Desertion During the Civil War}, Ella Lonn argues that soldiers deserted to escape the hardships of war, often because of sympathy with the Confederate cause, a lack of adequate supplies, and ineffective discipline.\textsuperscript{129} Although all of these issues factored into desertions in the larger sense, more recent scholarship contends that historians must look beyond the battlefield for a more complete

\begin{flushright}
\textsuperscript{126} Lonn, 154. Lonn's work, despite its age, remains the definitive work on desertion during the American Civil War. For a detailed case study of one state's experience with desertion, see Bessie Martin, \textit{Desertion of Alabama Troops from the Confederate Army: A Study in Sectionalism} (New York: AMS Press, Inc., 1966). Martin maintains a similar thesis as Lonn with regards to the reasons behind desertion.

\textsuperscript{127} Long, 714. The desertion rates for 1863 and 1865 were 4,647 and 4,368 men per month, respectively, according to T. A. Dodge. These are the only years that the Provost Marshal recorded complete details. Lonn suggests that the higher total for 1864 was linked with the Provost Marshal's history. That year was the "apogee" of the office's command over other officers, who were probably more thorough in their reports of missing soldiers as a result. See Lonn, 151-152.

\textsuperscript{128} Long, 714. These figures show the arrest tally from May 1, 1863 to December 31, 1865.

\textsuperscript{129} Lonn, 127-142. At least one Federal observer supported Lonn's theory about lax discipline. A citizen wrote to the Philadelphia \textit{Public Ledger} in 1862 complaining that many deserters were simply following the manner of their commanders: "'While the officers show such dereliction of duty, the men cannot be expected to be much better.'" See Alotta, \textit{Stop the Evil}, 33.
\end{flushright}
perspective. Specifically, new writings examine the significant connections between the soldiers at war and the civilians at home.\textsuperscript{130} In regards to desertion, the work of historian Joan Cashin is particularly revealing. Cashin expands Lonn’s thesis to stress that a significant proportion of deserters had first opposed the draft, “for many people distrusted government authority” and felt that the state was overreaching its boundaries. In fact, she sees the issue as a major philosophical battle “with individual men, their families, and their communities arrayed on one side and the national government on the other.”\textsuperscript{131} Thus, not only was desertion linked with the intensification of federal power, but soldiers and civilians were often speaking with one voice in opposition.

As Cashin makes clear, draft resistance and the work of the provost marshals were widespread and varied. Some soldiers, including officers, “urged relatives to avoid military service” while others shared their disagreement with the motives for the war with their family members.\textsuperscript{132} Back home, civilians often worked together to aid a soldier who chose to reject or had “a difficult time subordinating himself to military authority.”\textsuperscript{133} Many citizens offered refuge on the long path home or provided clothing to replace the obvious marks of military service. Others tacitly aided deserters by refusing to

\textsuperscript{130} This scholarly call-to-arms was publicized in James McPherson and William Cooper, eds., \textit{Writing the Civil War: The Quest to Understand} (Columbia: University of South Carolina Press, 1998). The most important study of the home front is certainly Phillip Paludan, \textit{A People’s Contest: The Union and Civil War, 1861-1865} (New York: Harper & Row, 1988). Other works that have attempted to tie the battlefield with the civilians at home include Cimbala and Miller, eds., \textit{Union Soldiers and the Northern Homefront: Wartime Experiences, Postwar Adjustments} and James Marten, \textit{Civil War America: Voices from the Home Front} (Santa Barbara, CA: ABC CLIO, 2003).

\textsuperscript{131} Cashin, 264. Randall Jimerson, like Cashin and others, delves into the minds of soldiers in his study of popular thought during the Civil War. He notes that the conflict spawned numerous ideological conflicts between soldiers and the government, particularly in regard to individual liberties. While he often focuses on how soldiers vilified Copperheads and other opponents of the war, Jimerson also notes how some came to question government figures and business leaders, suggesting that they were prolonging the conflict purely for profit. Civilians clearly rejected government authority during the war for many reasons. See Randall Jimerson, \textit{The Private Civil War: Popular Thought During the Sectional Conflict} (Baton Rouge: Louisiana State University Press, 1988).

\textsuperscript{132} Cashin, 267-8.

\textsuperscript{133} Ibid., 268.
acknowledge the existence of their camps. Some Northerners went so far as to violently resist the Provost Marshal’s office, which sent officers to find and arrest deserters. Cashin estimates that thirty-eight employees of the army’s police were killed in communities above the Mason-Dixon line. Other military authorities were simply humiliated, including one officer in Ohio who was captured by deserters and paraded around the town in chains. Ultimately, such incidents reveal the degree to which civilians and soldiers worked together to undermine the federal authority they came to reject.

Understanding the connections between the home front and soldiers is particularly important given nineteenth-century cultural understandings of war. As Reid Mitchell suggests in *The Vacant Chair*, American cultural attitudes tied domestic concerns with every other aspect of life, including soldiering. “The centrality of home and the family to northern culture,” writes Mitchell, “made them central to the northern soldier’s understanding of the Civil War.” Soldiers and the citizens at home shared common values and beliefs—beliefs that often included a rejection of the government’s attempts to coerce its citizens into war. As has been described in Chapter I, one of the army’s basic goals was to suppress such values and replace them with loyalty to the cause and discipline within the unit. But, as Mitchell notes, “the transformation from civilian to soldier was rarely completed.” Soldiers preserved their values and beliefs, even when they had been incorporated into the military apparatus.

---

134 Cashin, 274.
135 Ibid., 277.
136 Ibid., 268–279.
138 Ibid., 21. Mitchell goes on to suggest that Americans often saw military discipline in terms of family relations, like how parents controlled their children. Thus, many agreed with the necessity of some degree
Soldiers’ intimate connection with the home front also helps to explain why many came to specifically oppose the execution of deserters. In significant ways, Union soldiers were simply reflecting the changing views towards state-sanctioned brutality. Although the focus of this analysis is on executions during wartime, it is important to note that most victims of capital punishment across nineteenth-century America were killed for violent criminal acts like murder or rape. A cursory look at the laws of the country would give the mistaken view that the plight of such criminals was not a concern to the majority of Americans. At the start of the Civil War, only three states, Michigan, Rhode Island, and Wisconsin, had abolished capital punishment, and even within these states large percentages of the citizenry clamored to have it reinstated. Moreover, only two states moved to end the death penalty in the aftermath of the bloody Civil War. With the exception of some radical reformers, most Americans had little problem with the killing of guilty murderers, rapists, or traitors, before and after the war.

The context for capital punishment, however, had changed dramatically over the half century preceding the Civil War. In fact, despite the relatively small number of Americans who directly opposed capital punishment, changes in society and values led many Northerners to question aspects of military executions. Pieter Spierenburg’s study of the death penalty in modern Europe, The Spectacle of Suffering, offers an international comparison. Spierenburg contends that Foucault’s theoretical framework concerning

---

of discipline. However, they still believed that the army officers “must recognize that their authority, while necessary to military discipline, must operate in accordance to law.” See Mitchell, 54.

139 Masur, 158.


141 For more information on the death penalty for civil crimes in nineteenth-century America, see also Stuart Banner, The Death Penalty: An American History (Cambridge, MA: Harvard University Press, 2002).
prisons and executions is valid, but it ignores how discipline had “interdependencies with other societal developments.”\textsuperscript{142} Thus, Foucault falls short of connecting his theory with the changes that were taking place within the population of Europe and amongst the governmental structures wielding the power of life and death. Spierenburg suggests that the public execution did not give way to the prison system simply to change the mode of supervision and discipline of bodies (as Foucault maintains), but rather as a result of changing attitudes about punishment and its goals. He asserts that “an original positive attitude towards the sufferings of convicts slowly gave way to a rising sensitivity” among people that such dramatic pain was unnecessary and immoral.\textsuperscript{143} Public executions thereby faded away as an archaic and barbaric relic of punishment in Europe.

Louis Masur has chronicled the use of the death penalty in post-Revolutionary America using a similar model to Spierenburg’s. In the early years of the republic, public executions of violent offenders were the norm, and Masur suggests that they were structured to drive home the message of communal discipline. Masur writes, “The culture of execution day made it clear that everyone within the community was suspect” and therefore should be mindful to conform to society’s rules.\textsuperscript{144} However, in the early decades of the nineteenth century, the sensibilities of middle- and upper-class Americans began to shift against public executions, and they chose to remain at home and away from the gallows.\textsuperscript{145} Rather than serving as a community event to raise morality, hangings were increasingly seen as a brutalizing event.

\textsuperscript{142} Spierenburg, viii.
\textsuperscript{143} Ibid., x. Spierenburg attributes this change in attitudes towards suffering to the rise of nation states throughout Europe in the late eighteenth and early nineteenth centuries.
\textsuperscript{144} Masur, 39.
\textsuperscript{145} Masur draws heavily from Foucault in chronicling the shift in middle and upper class sensibilities. He suggests that Americans were increasingly drawn towards “reformative incarceration” rather than death for less severe crimes. Echoing \textit{Discipline and Punish}, Masur writes that the “penitentiary delved into the
According to Masur, authorities developed a compromise: private executions. Proponents of this shift contended that justice would still be served while the scenery of death would no longer revolt the public (or give them a chance to rally behind the victim). But this new situation created different problems. Middle-class Americans were now able to exclude the poor from witnessing the death of someone like them, but could not easily argue that the penalty was a deterrent when concealed or even that it was sufficiently public for a democracy. Death penalty opponents used these arguments to call for complete abolition, and they were successful in a few localities before the war. Most Americans, however, rejected these calls for reform and an end to capital punishment. The penalty remained on the books in most states and, if laws are any indication, acceptable to the vast number of men who answered the call to arms at the start of the Civil War.

While the abolitionist movement did not achieve sweeping changes on the surface, it did reflect the shift in attitudes towards public death that occurred in the decades preceding the Civil War. Increasingly, sentimentalist Americans saw public violence as a negative event, one that harmed those forced to witness it. Significantly, however, this rejection of public death did not seem to be widespread amongst those who witnessed the executions of soldiers convicted of such civilian crimes as murder or rape. The terse summary of the killer William Selkirk’s execution is typical. The New York Times report included few details of Selkirk’s demise, noting cynically that the victim

prisoner’s mind or soul, whereas public punishments operated primarily on the criminal’s body.” However, Masur also incorporates Spielenburg’s philosophy by noting that reformers also hoped that within the walls of the jail, “a prisoner would internalize values consistent with a bourgeois ideal: sobriety, industry, and especially self-restraint.” See Masur, 95.

146 Ibid., 96-100.
147 Ibid., 108-112.
asserted his innocence prior “to being swung off.” Soldiers themselves seemed to take less notice of those killed for murder or rape as well. Sergeant John Hartwell recorded a very succinct passage in his diary on July 15, 1864, stating bluntly that “at Poolsville at 1 P.M. Soldier was hung belonging to the 65th NY for...Murder &c.” Soldiers seemed to have accepted capital punishment for crimes that were also punishable by death in times of peace.

The comments about executions differ significantly when the victim was accused of desertion. In such cases, many soldiers hearkened back to their values at home and argued that the death penalty was a brutalizing experience for everyone involved. In fact, the experience was so awful that many came to identify more with the victims than the state, thereby completely negating the goal of the execution. Soldiers commonly expressed regret for the fate of the victims whose deaths they witnessed in which they sometimes took part. Numerous letters to family members or personal diary entries documented the emotions men felt as they watched a comrade die. Most expressed some level of lament for the poor man, even those whose fate seemed just. In marked contrast with his callousness towards a murderer’s death, John Hartwell confided to his diary that as the deserter, Joseph Conley, was ushered into the execution square, “the Soldiers pitied but could not help.” The sergeant, though noting this melancholy mood, confessed that the prisoner “had Diserted 3 times before,” enlisting long enough to receive the bounty before he would again desert, “but at last was caught at his tricks and executed.”

Other soldiers echoed Sergeant Hartwell’s thoughts. John Hardin Schutt, an Indianan with Sherman’s army, wrote home that when he saw a man “escorted through

149 Britton and Reed, eds., 256.
150 Ibid., 136.
the camps by a band of music with a large placard on his back, on which was the word
'Coward' in large letters" he truly felt for the victim, as the situation "looked hard."151
Sullivan Green of the 24th Michigan remembered a similar scene, recalling how the
condemned's comrades "gave him a last sad, pitying look" whilst still believing the
man's death deserved: "He had crave[ed] deserted them in an hour of danger and had now
paid the penalty."152 While these actions do not necessarily equate with an outright
rejection of the penalty, they did contribute to such a sentiment, particularly when
reinforced by other examples of excessive state control over the individual.

Private Wilbur Fisk, the soldier-correspondent who had carefully documented the
spectacle of an execution for his newspaper, was also affected by watching such a
punishment. Although he understood the reasoning behind the penalty was simply to
"deter others from the same crime," Fisk did not fully agree with the method. As he
declared, "Alas, that it should be necessary! Such terrible scenes can only blunt men's
finer sensibilities and burden them the more; and Heaven knows that the influences of a
soldier's life are hardening enough already."153 Fisk believed that the sight of the
execution abused the sensibilities of the assembled soldiers and added undue emotional
stress.

Other soldiers who agreed with the punishment in theory were disgusted when
finally forced to witness it. Samuel Fiske, another combatant-writer, began his
description of the punishment by admitting that the circumstances warranted the death,
"such a one as sad necessity has made only two [sic] common in the army of late." But

151 "Ups, downs of Civil War shared," South Bend Tribune, July 3, 1994, sec. E. The article was a selection of excerpts from letters preserved by the Northern Indiana Historical Society. On a side note, John Hardin Schutt was a distant relative of the author.
152 Alotta, Civil War Justice, 68.
153 Rosenblatt, ed., 179.
while the act may have had a “salutary effect” for discipline, “there were some unnecessarily revolting circumstances connected with the execution of this sentence, that made it a scene to be put out of one’s mind and forgotten.” Fiske continued his story by questioning the actions of the government in this “scene of butchery” as the event had been marred by poor planning and inadequate resources: “If such things are to be done in the future, the arrangements may be perfected beforehand so as to avoid a like bungling.”¹⁵⁴ The circumstances of the execution, intended by the government to justify military discipline, were so awful that soldiers hoped to push them from their minds.

Numerous other accounts suggest that Northern soldiers were frequently unnerved by the violent death of their comrades at the hand of the government. The reactions of these soldiers reflected the cultural trends described by Spierenburg and Masur, for Northerners often rejected the penalty because they believed it would be brutalizing rather than beneficial for witnesses. Given the acceptance of an equally violent death for soldiers convicted of murder, the opinions of these men suggest that Northern soldiers actually disguised a larger issue when they expressed disgust for deserter executions. In fact, many soldiers who admitted queasiness when watching the firing squads were truly speaking out against the punishment for people accused only of desertion.

As Foucault argues, the power of the state was literally written on the body of the dead victim. Therefore, when soldiers expressed disgust with the ceremony, they were ultimately opposing the very apparatus of discipline. If they were simply upset at public executions in general, more Union soldiers would be appalled when a murderer was hanged to death in camp. But the truly visceral reactions to death only surfaced in the

record when the victim was a deserter. Thus, soldiers (and many civilians) were rejecting the authority of the state to execute a man simply for desertion and implicitly arguing that government did not have the right to control citizens in such a manner.\footnote{Of course, not all soldiers rejected the principle of executions. After witnessing several deaths, John Westervelt concluded in April, 1864 that the punishments were deserved, as “Uncle Sam has been to \textit{sic} lenient with such traitors all through the war so far.” However, the vast majority of those who ostensibly supported such punishment did so, like Westervelt implies, for practical reasons. As the rest of this paper makes clear, many who supported the executions still denied that the government should wield that authority. See Anna Palladino, ed., \textit{Diary of a Yankee Engineer: The Civil War Story of John H. Westervelt, Engineer, 1\textsuperscript{st} New York Volunteer Engineer Corps} (New York: Fordham University Press, 1997), 126.}

As the war continued and more extreme measures were taken against deserters, men and women in the North struck back at the federal government and military and denied their right to discipline the unruly bodies of deserters. Some couched their criticism in terms of legality. The editors of the \textit{Advocate for Peace}, already opposed to warfare, found capital punishment of soldiers to be another example of the government using its power to support cruelty. The writers claimed that governments do not have “the right to use all the force necessary for the support of [their] authority.” In fact, they noted how some persons felt that when one was sentenced to “the gallows, [the government] in such acts make[s] war upon the offenders.”\footnote{“The Enforcement of Law Not War,” \textit{Advocate of Peace}, March/April 1863, \texttt{www.proquest.com/}} Though shying away from accusing Americans of drastic war crimes as the \textit{Advocate for Peace} had, the editors of the \textit{New York Times} also questioned capital punishment. Specifically, one article challenged the opinion of the editors of the \textit{Troy Daily Times} that a mass execution by General McNeil in Missouri was warranted. McNeil killed his victims with undo authority, for in this case, “neither [the condemned]’s character nor their infamous deeds had anything to do with their execution.” The death of these men was nothing more than “a killing, without trial, without even an accusation of crime” that could not be “justified
by any recognized rules of war.”\textsuperscript{157} These journalists believed in certain reprisals, but expressed outrage at the military for going beyond the legitimate limits of its authority.

The most common complaint concerning executions, and the one with the most profound effect, dealt with the role of the state in preventing desertion. Perhaps no one was more conflicted in his loyalties to home and government than Private John Pardington of the 24\textsuperscript{th} Michigan, a soldier in the famed Iron Brigade. As evidenced in many of his letters home, this soldier believed in his duty to the government and the cause for which he fought, including complete loyalty to the army. After witnessing the effect of a court martial and subsequent punishment, Pardington wrote his wife, expressing disgust at the actions of the deserters:

\begin{quote}
Sarah before I would under go the same as they did I would sooner be brought home in my coffin to you as bad as I want to see you dear I never could desert. Sarah I never could Bring such disgrace on you and my little darling.\textsuperscript{158}
\end{quote}

Pardington’s comments condemned those whom he felt had betrayed the cause. However, events soon took place that shook Pardington’s resolve. A week after witnessing the punishment of deserters in his own unit, Pardington was shocked to learn that his wife’s brother, William Knapp, had deserted his unit and returned home to stay with the family. Pardington wrote to his wife in disbelief, first trying to assert the priority of the war, but quickly settling into a debate with himself about the limits of one’s allegiance to the state:

\begin{quote}
I heard about your Brothers desertions. I think he ought to be ashamed of himself. Others are situated just as he is. But I supposed he must see his wife. What kind of a
\end{quote}

\textsuperscript{158} John H. Pardington to Sarah Pardington, 21 February 1863, Lassen, ed., 77.
reception would mine give me if i should do the same. (But never)\textsuperscript{159}

The young husband could condemn William’s action while at the same time wishing he could follow in his footsteps.

Soon afterwards Pardington wrote his father, clearly troubled by his brother-in-law’s desertion, and discussed nationalism and the debilitating effects of army life. He confessed that he had thought William’s “Patriotism would soon die out. It dont last long in the army.”\textsuperscript{160} Shortly before he was killed at the battle of Gettysburg, however, Pardington seems to have come to a decision regarding desertion. As he told his wife, “There [are] 3 or 4 men to be shot in our Corp for desertion on the 5\textsuperscript{th} of this month....Any man that will desert his countrys flag at this Hour of Peril Deserves to be shot.”\textsuperscript{161} Although he ultimately decided that the state’s execution of deserters was just, Pardington’s personal trials and doubts reflect the truly complicated ways that soldiers and civilians wrestled with conflicting loyalties during the Civil War. Pardington claimed to agree with the government’s actions in executing soldiers for desertion, but never thought of such a penalty for his own kin, not to mention his own flirtations with running for home.

It has already been shown that the state hoped to curb the vast problem of desertion and that soldiers like Pardington understood the necessity of stemming the tide. However, many persons, when faced with the dreadful sight of an execution, voiced their opinion that desertion simply did not justify such an extreme penalty. Susan Eppes lived in a town near an army camp and made a habit of conversing with the soldiers. One day,

\textsuperscript{159} John H. Pardington to Sarah Pardington, 6 March 1863, Lassen, ed., 84.  
\textsuperscript{160} John H. Pardington to Father, Lassen, ed., 89.  
\textsuperscript{161} John H. Pardington to Sarah Pardington, 3 June 1863, Lassen, ed., 124.
however, she “regretted her friendly glance...because while she was looking ‘the squad fired and the deserters fell dead.’” Eppes was outraged over the incident, saying that she “didn’t think it ought to be done. So many are killed in battle and lives are worth more than that.” She believed the government’s action was too harsh, for “maybe, she worried, they had ‘meant to come back.’”

Many others echoed Eppes’ assessment of deserters; as Confederate General Edward Porter Alexander noted, one prisoner “did not intend to desert for good and all, but only to go to see his folks for a bit – and may be a sweetheart.” Particularly early in the war, newspapers included confessions of condemned prisoners; one expressed the notion that his desertion was intended to be useful to the Northern army: “I thought that I could ride...go and see my mother in New Orleans, stay for a few weeks in the South, and then be able to get back to our regiment again, perhaps with some valuable information.” This man felt that his desertion did not warrant his death. Other Union soldiers agreed that deserters did not deserve the ultimate punishment. When Joseph Sharp ran from the ranks, the regiment’s historian recorded that many men blamed Corporal Julius Davis for “informing against his comrade” and “accused him of

---

162 Marten, ed., 169. Unfortunately, the source does not indicate where Ms. Eppes resided at the time of the incident. Presumably she was somewhere in the South, as the armies spent the majority of their time below the Mason-Dixon Line. The source also does not indicate what army she was watching, though it could have been either Union or Confederate.

163 Gary Gallagher, ed., Fighting for the Confederacy: The Personal Recollections of General Edward Porter Alexander (Chapel Hill: University of North Carolina Press, 1989), 196. Although Alexander was a Confederate officer and thus technically outside the scope of this work, his opinion reflected that of some less-eloquent and less-quotable Union officers.

betraying a friendly confidant solely for selfish gain.'\textsuperscript{165} These men expressed a widely held notion that desertion did not merit such an extreme punishment.\textsuperscript{166}

For some Americans in both army and civil life, imprisonment seemed the more sensible and effective punishment for deserters. In early 1864, Colonel R. F. Mawry of the 1\textsuperscript{st} Oregon Cavalry asked his commanding officer to commute the sentence of Private Francis Ely. Ely had been "an exemplary soldier" who had made a mistake and deserted his unit. Colonel Mawry believed that "the 'proceedings of the court & the approval of commutation on me of execution will have an effect equal to the execution of the sentence.'\textsuperscript{167} The Rev. G. F. Krotel made a similar argument concerning the convicted deserter William Howe, whom he had been sent to console before death. Private Howe, "who [had] volunteered as a soldier of the Union, and conducted himself bravely" was now a "humbled man ... who [had] learned the bitter lessons of long imprisonment," argued Rev. Krotel in a letter to President Lincoln. Like Colonel Mawry, Rev. Krotel understood that desertion necessarily led to the "stern demands of justice," but was convinced that the death penalty was simply not the proper punishment.\textsuperscript{168} Both Mawry and Krotel, obviously aware of what the spectacle of an execution would entail, felt that they had to speak out against a penalty they saw as unjust.

\textsuperscript{165} Alotta, \textit{Civil War Justice}, 157.
\textsuperscript{166} At the same time that many soldiers felt like the government was exerting too much authority in executing deserters, many of these same men castigated the state for not doing \textit{enough} to stem the reasons for the high desertion rates. Interestingly, these persons often suggested the very action they deplored using against their own comrades – death. George Cram wrote that he hoped "every copperhead rascal was hung," clearly blaming the Peace Democrats for desertion. Samuel Fiske expressed a similar thought when he blamed the Northern government, saying they "couldn't quite muster up courage and decision enough to hang a couple of Seymours and Fernando Wood as an appropriate preliminary measure." See Jennifer Cain Bohrnstedt, ed., \textit{Soldiering with Sherman: Civil War Letters of George F. Cram} (DeKalb: Northern Illinois University Press, 2000), 40, and Sears, ed., \textit{Mr. Dunn Browne's Experiences}, 132.
\textsuperscript{167} Alotta, \textit{Civil War Justice}, 103. Mawry's commanding officer disagreed with the colonel, and Private Ely was shot March 11, 1864.
\textsuperscript{168} Alotta, \textit{Stop the Evil}, 154.
Some of the most telling evidence of persons rejecting the death penalty comes from the victims themselves. Obviously the prospect of death was trying on the men, but many chose to use their final moments to defy the power of the government and military. Chaplain John Bowles recorded a poignant encounter with Private Wallace Baker, an African-American soldier sentenced to the “extreme penalty of the law.”

Baker saw his death as a crime of the government, one for whom he had sacrificed a great deal; as Chaplain Bowles recorded: “Said he, ‘I came out here to fight the rebels and I would not mind being killed in battle, but I don’t want to be murdered by my own side.’”

Baker’s choice of the term “murder” likely stemmed in part from the awful stress of the moment, but it also implicates the state in his death. In a similar case, Private William Dowdy was convicted of being absent without leave while his unit traveled towards battle. One of his comrades noted that Dowdy told his companions “that if anyone wanted to desert he did not care when they went as lief [sic] they would go one time as another...he would not blame the men for leaving for they were not treated as soldiers might be treated in several respects.”

Dowdy questioned the role of the military in

---

169 The execution of black soldiers presents numerous other questions that are beyond the scope of this study. The racial attitudes of persons both North and South often led to more severe penalties for African-Americans than for their white counterparts. As William Seraile notes, black soldiers were more quickly reprimanded and often judged unfairly by authorities. African-Americans were more liable to “drum-head court martials,” speedy trials on the spot with immediate punishment. Moreover, as Robert Alotta has recognized, blacks were disproportionately indicted for crimes such as rape and mutiny. Private William Johnson (not to be confused with the first soldier executed for desertion) was hung during a truce at Petersburg in between the trenches, so that Confederates and Union soldiers alike could witness the penalty. He had been charged with desertion, but also with attempting “outrages” upon a white woman. Thus, blacks were more likely to be hung (deemed a more ignominious death) than shot by firing squad. While some works have commented upon the deaths of black soldiers at the hands of the enemy, the role of race in Civil War executions has yet to be studied extensively. For general information, see William Seraile, *New York’s Black Regiments during the Civil War*, Studies in African American History and Culture (New York: Routledge, 2001).


171 Alotta, *Civil War Justice*, 129. Dowdy was convicted of desertion without ever once leaving the steamboat his unit was riding.
keeping men at arms, an extension of control over his freedom that he could not abide. Some men went well beyond words in their opposition to government authority. Hiram Oliver and John Hartup had deserted the Union army and then killed the official sent to arrest and return them to duty. These two men, while obviously saving their own hides, acted to defy the power of the state over their lives in the strongest manner possible.

While some men took extreme measures to resist their personal punishments, other individuals attempted to correct the very system responsible for what they saw as a flawed use of military discipline. By June 1864, Lt. Edmund Randall of the 116th Pennsylvania had become so frustrated by the treatment of some deserters that he took his feelings directly to President Lincoln. Lt. Randall, the appointed attorney for the deserter Private William Howe, sat down with the President and vociferously attacked the flaws in procedure in his client’s case, meanwhile hinting at more widespread abuses within the court martial system. Lt. Randall noted that the judges had refused to let Howe "examine the challenged member on his oath as to his qualifications to sit on the trial ... (as was his undoubted right)." Moreover, two other judges had sat on Howe’s previous trial for desertion, the verdict of which had been set aside because of informality during the court martial. Lt. Randall concluded from these facts that, given the "irregular and illegal" proceedings of the trial, that "the Prisoner was deprived of that full, fair

173 In what may be an anecdotal story, one condemned deserter supposedly used the force of his morality to cause others to question the legitimacy his execution. Witnesses contend that this Quaker soldier "was ordered to be shot, and when the file of soldiers who were to execute the sentence saw the victim and heard him calmly praying that they might be forgiven for their involuntary crime, they refused to fire." The author of this statement was presenting the case of conscientious objectors, but flatly denied their right to excuse themselves from duty, stating that they should "acknowledge the necessity of government or of authority." See "Quaker Exemption," *Harper’s Weekly*, February 27, 1864, http://app.harpweek.com/
impartial investigation of his case, that law & justice allows him.”

Although he challenged the method of Private Howe’s court martial, Lt. Randall still agreed that desertion was a serious enough crime to warrant punishment—but not death. He urged President Lincoln to exercise his “clemency in commuting the sentence from death to imprisonment.”

Tellingly, Private Howe’s lawyer was also supported in a concurring letter from nine current and former officers in the brigade. Lt. Randall’s objections were drawn specifically from one prisoner’s case, but his arguments pass judgment over the entire apparatus of military discipline.

While Lt. Randall questioned the legality of how some deserters were tried and convicted, newspaper correspondent J. R. Hamilton condemned the army’s recruiting system for creating conditions that would inevitably lead to desertion—and unnecessary executions. In December 1864, Hamilton penned a dispatch from City Point, Virginia, that opened with a concern he understood to be on the minds of many Americans: “Every few days, of late, the country has been shocked by the intelligence of three or four men at a time dying the death of dogs … for the crime of desertion.”

According to this observer, these shocking executions would be for the most part unnecessary but for a greater evil plaguing the army. In fact:

good and loyal people, everywhere, would be horrified beyond measure, if they only knew through what a hideous mass of peculation and corruption, among officials in

---

175 Alotta, *Stop the Evil*, 151.
176 Ibid.
177 Ibid. According to Alotta, two of these officers in particular, Col. St. Clair A. Mulholland and Adj. Lewis J. Sacriste, were rising stars within the army. To have such men oppose the army’s decisions regarding punishment showed the degree of their convictions concerning the death penalty. See Alotta, *Stop the Evil*, 171-172.
178 Unfortunately for Private Howe, Lt. Randall’s arguments did not sway the authorities. Private Howe was executed August 26, 1864.
positions of trust, the fate of each of these miserable wretches has culminated at the gallows.\textsuperscript{180}

Hamilton goes on to explain that substitute brokers, "aided, of course, by boards of enrollment, examining physicians, &c., (without whose guilty connivance they could not act)," were sending the army thousands of unfit recruits.\textsuperscript{181} Due to this corruption, young boys, blind and disabled men, criminals, mentally-unfit persons, and foreigners of many stripes swelled into the Union camps. Hamilton was incredulous: How could such individuals not be expected to desert when it was "impossible to drill and instruct [them] in the duties of a soldier?" he asked.\textsuperscript{182} In his assessment, such a deeply rooted issue could not be solved by simply executing deserters. "It is to be feared that a complete cure must be sought deeper yet," lectured Hamilton; nothing less than a complete overhaul of the system of substitutes and recruiting was necessary to eliminate desertion, not just more firing squads.\textsuperscript{183} This correspondent was aware of the power of the death penalty, but believed that it was increasingly being used to hide more fundamental and widespread flaws in the military's apparatus, failings he could not abide.\textsuperscript{184}

The widespread rejection of state authority is perhaps most clear in the case of two soldiers executed for refusing to join a new consolidated regiment. In early September 1863, a military commission was organized in Thibodeaux, Louisiana, to investigate the shooting of two privates from the Second Rhode Island Cavalry just a week earlier. Lieutenant Colonel Harai Robinson of the First Louisiana Cavalry had been

\textsuperscript{180} "Desertions From Our Army," www.proquest.com/
\textsuperscript{181} Ibid. Substitute brokers rounded up men for the army to take the place of more affluent Northerners in the Federal draft. Also, it should be noted, as mentioned in Chapter I, that the examining physicians were under the sway of the Union Provost Marshal by this point in the war.
\textsuperscript{182} Ibid.
\textsuperscript{183} Ibid.
\textsuperscript{184} Ibid. Hamilton did come away clearly affected by the spectacle of the execution, a sight he described as both "impressive" and "horrible."
ordered to incorporate the remnants of the Rhode Island unit into his own regiment, a practice increasingly common within the army as battle casualties decimated regiments. Col. Robinson encountered unexpected resistance to his orders, however, when the Rhode Island officers told him, as he recounted the event to the commission, that “in their opinion [Robinson] should never be able to do anything with their men” and “as they understood [the order], they themselves were already discharged the service.”¹⁸⁵ The enlisted men stood with their officers as Robinson recalled a murmur of dissent when he read the order of consolidation. These individuals considered their service to the United States complete. Specifically, Robinson noted that two privates arose and “used the following language, or words to this effect: ‘Colonel, we have made up our minds that, as we enlisted [in the] Second Rhode Island Cavalry, we will, by God, serve in no other.’”¹⁸⁶ These soldiers had volunteered to serve their country and state, but vocally rejected any effort to force them into a different unit.

Unfortunately for these privates, several Rhode Islanders had picked that very morning to make a more physical and permanent statement of their position—they deserted the camp. Nothing in the record indicates that the deserters were captured to face punishment, but Col. Robinson, determined that “some decisive action was necessary,” chose to make an example of other soldiers by proxy.¹⁸⁷ Col. Robinson summarily commissioned one of his officers as a “provost-marshal of the day” and charged him with “the execution of Private Richard Murphy, Boston alias Richard Smith, and of Private Frederick Freeman, alias William Davis, mutineers—a military

¹⁸⁶ Ibid., 263.
¹⁸⁷ Ibid.
The regiment was immediately assembled, and the two ringleaders were bound and led out before the men. According to the transcript of the commission, they were shot to death within half an hour of the very first rumblings from the soldiers.

Despite the general acceptance of the death penalty among the military officer corps, such a rapid execution raised questions of propriety and prompted an investigation. The military commission, after accepting Col. Robinson’s testimony, began a very telling line of questioning. In its first query, the court asked the colonel whether “that part of the First Louisiana Cavalry which was formerly the Second Rhode Island Cavalry, since the execution of two of its members, [had] shown any disposition to mutiny?” Robinson responded tersely: “None in the least.” The court seemed far more concerned with the practical consequences of the execution than with the ethical implications of hastily shooting two men to death. The commission’s examination of Robinson’s subordinate officers followed a similar line. Lieutenant Edward Hall was given leading questions to ensure that the death penalty would look like the only acceptable remedy for the situation. Rather than asking Hall to justify the punishment of these specific privates, the court was only concerned with the implications of their deaths:

Question: What quelled [the dissent]?
Answer: Shooting two of the ringleaders on the spot.

For the military authorities, the execution of Murphy and Freeman was exactly what Col. Robinson declared it to be in his order—a military necessity. The only important concerns to the court were whether the integrity of military discipline was preserved by the action, not which men were killed or even if they “deserved” their fate. Unruly
bodies like Murphy and Freeman (not to mention nearly all of the officers and enlisted men of the Second Rhode Island Cavalry) were a threat to the control of all soldiers and therefore their blindfolded and bound bodies were transformed into examples of state power.

After questioning a number of persons in the First Louisiana Cavalry, the commission returned its findings on the incident. The court concluded, rather succinctly, that “the suppression of the mutiny was in the prompt and efficient manner in which the ringleaders were executed.” However, not every person associated with this event accepted the executions without question. Clearly, the Rhode Island soldiers were angered at the actions taken against their comrades. But more prominent figures soon challenged whether the situation recounted in the court transcript truly constituted a “military necessity.” The first criticism came from within the army itself from General Nathaniel Banks, commander of the district. Gen. Banks was responsible for forwarding the details of the trial to authorities in Washington with his assessment of the actions. His subsequent “indorsement” of the proceedings can only be described as ambivalent at best:

It is probable that order could have been maintained in the regiment without the application of capital punishment to the two men executed; but the conduct of the Second Rhode Island Cavalry was such that it is impossible to say how soon the mutiny would have been repeated.

---

192 Ibid. Smith’s opinion of the consolidation of the unit with the First Louisiana Cavalry is equally caustic. He questions whether the army should have the ability to tear men “from their own organization and [place them] in one which is in every way distasteful to them. Yet these men are volunteers. I will ask your judgment; should they be treated so? Do not drafted men even receive better treatment?” Smith’s comments relate to many of the questions of federalism that the United States still struggled with in the nineteenth century, particularly amidst a civil war instigated by slave-owning rogue states. He also mentions the differences between volunteer soldiers and drafted men and how they were treated by the army. Both of these issues are important in understanding the nuances of military discipline, but are beyond the scope of the present study.
Ultimately, Banks bowed to the disciplinary needs of the army, but his analysis of the situation, even when drawn only from the biased court transcript, suggests that even some military figures did not always agree with the death penalty in particular instances.

The controversy over the execution of Privates Murphy and Freeman soon expanded beyond the ranks of the army. When he received word of the two victims, the governor of Rhode Island, James Smith, wrote to Secretary of War Edwin Stanton with his opinion of the matter. Governor Smith’s analysis truly questions the limits of the federal government’s authority. After critiquing the reorganization of the Second Rhode Island, Smith tells Stanton that he has heard that two men were shot “for simply remonstrating against the order of consolidation.”

Smith’s skeptical tone soon transforms into anger: “I fell [sic] it my duty to inform you, sir, that our people consider the order in question of much injury to the service, and an outrage to Rhode Island.” The governor invoked the presumed ire of his citizens, whom he believed saw the execution as an affront to honor. Moreover, Smith notes that his population believes that such shootings actually damage army discipline and morale. He concludes his letter with a question for Stanton that strikes at the heart of the matter: “What assurances can we given [sic] officers or recruits from this State that they will be protected in their rights if they are to be so summarily death [sic], without even a show of justice?”

Smith’s simple inquiry reveals a man with significant doubts about the integrity of the military disciplinary system. The Republican governor, no doubt a firm Unionist and friend of the administration’s aims, believed that the federal government and its army had overstepped

---

194 Ibid.
195 Ibid.
the limits of their legitimate control. More importantly, he acted as a spokesman for Rhode Island citizens who rejected the executions of men by the very government they served.

The Union army and Northern government were making a statement about their power over the citizens of America when they shot men for deserting the flag. The ceremony of death was meant to transform the body of a condemned victim into an emblem of state authority for all to see and fear. When soldiers on the march and civilians at home wrote to one another and spoke out against the state-sanctioned murder of deserters, they too were making a statement. By questioning the legitimacy of these executions, Northerners were actually imposing their own limits on the power of the government and military in their lives. At the same time that the necessities of the Civil War allowed the state to intrude more into the lives of Americans and exert more control over their bodies, many persons opposed the increased discipline. They signalled their disagreement by opposing the most visual sign of such discipline—the execution of deserters.
EPILOGUE

THE STATE RESPONDS

As Americans came to oppose the state-sanctioned murder of deserters, they sought out ways of making their opinions heard. Nevertheless, the case of one young New York private charged with desertion was particularly unusual for the day. Yankee Engineer John Westervelt related that this “deserter and bounty jumper...would have been shot but through the intercession of Capt Cruso and his mother he was released...and is with our Co at present.” Few soldiers sentenced to death had the luck of such arbitration; moreover, few Northerners at home could directly influence the military in regards to capital punishment like this young private’s mother. However, as the preceding chapter demonstrates, many Union soldiers and civilians believed that the government did not have the legitimate authority to execute deserters. As the desertion rate increased, this opinion spread even more rapidly and, in some instances, actually forced the state to mitigate its policies. Few intercessions with the military were as personal as the incident related above, but the strength of public opinion against deserter executions did compel the state to institute checks on its own policies.

Even as the records generally show a government and military firmly committed to punishing an unfortunate few for the larger goal of stemming desertion, several comments and actions betray the subtle ways that Americans, particularly civilians at home, could act to limit the state’s authority. One of the war’s most intelligent observers,

General William Tecumseh Sherman, noted with a hint of disgust that he could not carry out all the punishments he had hoped for, as "Times are changed since our present military code was enacted...now Public opinion General or Local is the ruling Power & must be denominated Law." This astute commander recognized that his attempts to execute larger numbers of deserters, though acceptable to military tribunals, would not be condoned in the court of public opinion.

General Darius Couch recognized that civilian fears about the military's treatment of deserters could actually lead to outright opposition to the government. While presiding over Pennsylvania late in the war, Gen. Couch warned officials about the residents of Columbia County. This heavily Democratic area was so restless that some observers called it the "Fishing Creek Confederacy," and Couch believed the civilians were sufficiently upset at the army's policies that they could actually rise up in armed rebellion. The general quickly understood at least one source of the citizens' frustrations: the severe treatment of deserters. In response, he offered a pardon to all deserters in the area and even delayed the execution of Private William Howe as a "'humane' gesture." As this scenario shows, the opinions of everyday Americans, increasingly against the capital punishment of deserters, had an impact on government and military officials.

Other generals were less cognizant of the people's demands and how they limited the government's authority. General William Rosecrans, bemoaning the rising rate of desertion, demanded that he be given "the power of confirming and promptly executing

---

198 Alotta, Stop the Evil, 173.
sentence of death for desertion.” General-in-Chief Halleck shared Rosecrans’ desire, but refused the officer’s request. He replied sternly: “The law is positive that no such sentence shall be executed till approved by the President. The President cannot change this law, and it is his duty, as well as yours and mine, to obey the law.” Halleck confided to Rosecrans that he had urged Congress to repeal this new law, but the people’s representatives had not budged. Moreover, Halleck cautioned Rosecrans that visible efforts to round up deserters would likely fail, and would in fact “weaken rather than strengthen the numbers of your army, besides the risks of conflict between the civil authorities and indiscreet officers sent on that service.” As the General-in-Chief’s comment makes clear, soldiers responded negatively to the efforts to round up deserters, as did citizens back home. These factors pressured the army to proceed cautiously, showing that the public could in fact resist the efforts of the army to discipline them.

The official records indicate a similar understanding by other military brass, even members of the Provost Marshal’s office, ostensibly the standard bearers for discipline. General James Oakes, Provost Marshal in Illinois, felt that the government had lost an opportunity early in the war by not acting decisively enough against deserters. He claimed that at the start of the conflict the public whole-heartedly approved of executions, asserting that “all the people would have said amen, and the crime of desertion, except in

---

200 Ibid. The law mentioned by Halleck drastically changed the procedure and climate of desertion punishment. Many commanders early in the war (when desertion rates were still very low) followed the lead of General David Hunter in declaring that though he “would deeply regret should a single man be killed while barely deserting the colors; [he reminded officers] that it is their imperative duty instantly to put to death any officer or enlisted men who shall be found deserting his brave comrades who are doing their duty in front.” See OR, Ser. I, Vol. XIV, Pt. 1, pg. 391. However, likely responding to pressure from the voters at home, Congress passed a law in July 1862 requiring that all such death sentences be approved by the President, not just the commanding general as had been necessary before. See OR, Ser. I, Vol. XXV, Pt. 2, pg. 67. Something clearly motivated legislators to enact this measure; certainly the reason was not practicality, as desertion rates were only climbing over this period. See Lonn, 143.
rare instances, would have ceased.” As the situation now stood, however, Oakes believed that “penalties [had] come to be disregarded and despised” by the public.\textsuperscript{201} Even if Oakes’ assessment about the early sentiment in the war is accurate, he admits to Union authorities that the American public would not then submit to such executions as he deemed necessary. Another Union official, reflecting upon the conflicting loyalties of home and army life, recommended that certain forms of desertion be categorized differently and correspondingly punished in a manner other than execution. Major Young suggested that “desertion to enemy or across Confederate lines” be treated according to regulations, “punishable with death by shooting.” On the other hand, recognizing the powerful ties many soldiers had to their homes and families, Young encouraged the army to give those merely guilty of “overstaying leave until arrest” or “desertion to home” a sentence of imprisonment, not death.\textsuperscript{202} The government and military understood that the public’s opinion mattered and subsequently acted to curtail their own authority in regards to executions.

Lawmakers were also listening to their constituents’ qualms with capital punishment for deserters and responding with legislation. As early as December 1862, members of Congress were calling for reform of the way deserters were punished. According to the \textit{New York Times}, one politician had “given notice of his intention to bring a bill, giving soldiers and officers convicted by Courts-martial the right to appeal … and giving the President the power of ordering a new trial.”\textsuperscript{203} The \textit{New York Times} actually belittled the proposition, claiming the necessity of stricter rules in the military. However, the very fact that a member of Congress believed that reform was necessary

\textsuperscript{201} OR, Ser. III, Vol. V, Pt. 1, pg. 833.  
\textsuperscript{202} OR, Ser. I, Vol. XLVI, Pt. 2, pg. 1300.  
within the army’s system of discipline suggests that many Americans had doubts about the severity of military law.

The Civil War’s most recognizable politician was also the figure most strongly affected by the American public’s aversion to death penalties for desertion. Although Abraham Lincoln signed off on dozens of individual cases, formally sending men in front of the firing squads, his writings also reflect the conflicting needs of war and regard for mercy. Lincoln asked all of his generals to send him the details of each prisoner awaiting execution, which allowed him to delay or even commute the sentence of many men. As he said in early 1864, he commuted the sentence of one particular deserter “‘because I am trying to avoid the butchering business lately.’” Lincoln’s personal antipathy towards some executions was intimately tied to the causes of desertion. He decried the actions of Copperheads and others antagonistic to the war effort who pushed men to leave the ranks. “Must I shoot a simple-minded soldier boy who deserts while I must not touch a hair of a wily agitator who induces him to desert?” Lincoln wrote. Was desertion not encouraged by persons at home, “a father or brother or friend…working upon his feelings until he is persuaded to write to the soldier boy” persuading him to run? The president felt that in these situations, to “save the boy is not only constitutional but with all a great mercy.”

Responding to Democratic senators who had come to ask Lincoln to pardon certain Indiana deserters, the president summarized why he and many other Americans felt that the state should limit its authority in the case of particular executions:

‘The death penalty is one of the most difficult questions with which I have to deal. When a soldier deserts to go over to the enemy and is captured, I let the law take its course, but when a man has been a long time in the service,

204 Long, 453.
and has not had a furlough, and who, when on picket, gets to thinking of his wife and children and breaks for tall timber, I never let them hurt a hair on his head.  

Lincoln understood that soldiers and their families faced hardship during the Civil War, and he worked to restrain the military’s executions except in the most aggravated cases. Towards the end of the conflict, the president went so far as to commute the sentences of all Union deserters scheduled for execution at that point “to imprisonment at the Dry Tortugas during the war.” Although some military commanders judged him weak for his actions, Lincoln accurately reflected the ways in which Northern men and women viewed capital punishment for desertion. Even though many believed it necessary as an example, Americans questioned the bounds of government and military authority in the case of desertions and, to a small extent, succeeded in curbing the state’s power to execute its own soldiers.

In a large number of cases, however, the many calls for an end to the executions of deserters fell on deaf ears. As Foucault demonstrates, the very nature of a public execution automatically triggered an identification with the victim rather than the state.

Undaunted, the government and military pressed on with their court martials and

---

206 “Lincoln and Indiana,” New York Times, December 28, 1882, www.proquest.com/. This quote is attributed to the president by former Senator J. E. McDonald. Lincoln was assassinated before he was able to pardon the two Indians who took part in a deserters gang known as the Sons of Liberty. However, his successor, Andrew Johnson, saw fit to fulfill Lincoln’s promise. See “Respite of the Indiana Conspirators,” New York Times, May 17, 1865, www.proquest.com/

207 “Army and Navy Items,” Harper’s Weekly, March 19, 1864, http://app.harpweek.com/. The Dry Tortugas is an island at the western edge of the Florida Keys. During the Civil War, the Union army maintained a base there, Fort Jefferson, that was used to house captured deserters. Lincoln’s proclamation actually went into effect on February 26, 1864; despite his announcement, many more men died at the hands of Union authorities for desertion, even after the war was over.

208 Although originating in the Confederacy, Secretary of War James Seddon’s letter to “Mrs. Sarah E. Howenton and Other Ladies” is more typical of both governments’ responses to cries against executions. Amidst a smattering of nineteenth century sexism, Seddon suggests that the women’s “petition in behalf of the deserters from the Army” was heartfelt, but that “the rigid enforcement of the death penalty, painful and distressing as it naturally is to the feelings, is in reality the course of humanity, and by preventing offenses in the end saves lives.” Despite such records, Union laws and policy changes reveal that the opinions of the public did make a difference, if only a small one. See OR, Ser. IV, Vol. III, Pt. 1, pg. 524.
spectacles of death. In fact, as many as six men were executed by the North for desertion even after General Lee surrendered the Army of Northern Virginia and Jefferson Davis’ capture signalled the end of the Confederate rebellion. Over American history to that point, desertion had been punishable by death only during times of war, but the machinery of discipline was already in place. The state, determined to preserve its newfound authority, refused to halt the process. As a result, several unfortunate men were shot for leaving the ranks even though there was no one left to fight.

To some extent, the executions of deserters served a parallel function with the establishment of rigid control over soldiers’ bodies. At a very simple level, the gruesome violence of war “made death familiar and gave rise to rituals intended to integrate it, to make it acceptable and to give a meaning to its permanent aggression.” In essence, the shooting of a deserter, deemed a criminal by the authorities, was meant to inure soldiers to the barbarity of war. At the same time, the executed prisoners were held up as proof of the necessity of continued conflict where only great discipline could win the day. This intent was particularly true for a civil war, where the enemy was not always seen as so

---

209 Alotta, *Civil War Justice*, 208-9. Two of these men, John Willis of the 52nd Infantry, USCT and Otto Pierce of the 5th Heavy Artillery, USCT were African-Americans. Although their only listed crime was desertion these men were made to suffer the indignity of a hanging rather than the firing squad.

210 While the actual desertion had taken place during a time of war, these prisoners were held and made to suffer their punishment. Some were kept even after the rest of their unit had been discharged and returned home.

211 Foucault, 55.

212 On a side note, the executions of soldiers were powerful enough to become ingrained in the psyche of many Americans, just as the state intended. For instance, when a newspaper reported shortly after the war concluded that fifteen men had died by scalding in a boat accident, the headline stated that the soldiers had suffered an “Execution by Steam.” See “Execution by Steam,” *New York Times*, June 24, 1865, www.proquest.com/. Other efforts to integrate death into the normal context of the Civil War included the largest execution ever in American history, 38 persons, in Mankato, Minnesota. These Native Americans were tagged as participants in the Sioux uprising of 1862 and hanged the day after Christmas, 1862. See Long, 301. For more information see John Bessler, *Legacy of Violence: Lynch Mobs and Executions in Minnesota* (Minneapolis: University of Minnesota Press, 2003). Military leaders took still more radical actions. Some went so far as to sweep the countryside, murdering those suspected of any disloyal sentiment. See Leslie Gordon, *General George E. Pickett in Life and Legend* (Chapel Hill: University of North Carolina Press, 1998) for a particularly notorious example. Obviously, such actions did not integrate death into everyday life, but merely stoked the fires of discontent amongst the American public.
different and loyalties were often unclear. Deserters straddled many such boundaries, so
the state murdered them in an attempt to reinforce its command of American citizens and
ensure their support for the war.

It is equally clear that many Northerners ultimately rejected these efforts. Rather
than rallying behind the government when the military shot deserters, Union men and
women increasingly saw these incidents as immoral and even illegal. As the war raged
on, Americans came to oppose such executions, sharing these sentiments in letters,
articles, and action. When Northerners challenged the validity of capital punishment,
they were not simply arguing against the death of individual deserters. In fact, these
persons were contesting the new levels of authority over their lives symbolized by the
execution of a deserter. When men were bound and blindfolded and shot by their
comrades, it was only a very tangible and poignant example of how the state was
attempting to exert its discipline over American citizens. During the Civil War,
Northerners rejected the state’s authority and, in the end, forced the government and
military to listen.
BIBLIOGRAPHY

SECONDARY SOURCES

*General Death Penalty Information*


*Theoretical Works on Execution*


*Civil War Capital Punishment*


**Soldiers' Responses to Death**


**Desertion, Prisoners, the Provost Marshal, and Legal Issues**


*Home Front and Civilians*


Reference Material and Civil War Summaries


Scholarly Articles


PRIMARY SOURCES

Civil War Soldiers’ and Civilians’ Letters


*Mexican War Accounts*


Generals and Government Officials and Military Manuals


Newspapers

*Charleston Mercury.* November 1860 – April 1865. www.accessible.com/


*Richmond Enquirer.* November 1860 – April 1865. www.accessible.com/

*Saturday Evening Post.* 1838-1885. www.proquest.com/

*South Bend Tribune.*

*The Illustrated London News.* http://cti.library.emory.edu/

*The Liberator.* www.proquest.com/

*Valley Spirit.* http://valley.vcdh.virginia.edu/


Contemporary Periodicals

*Advocate of Peace.* 1847-1906. www.proquest.com/

*Herald of Health.* www.proquest.com/

*Medical and Surgical Reporter.* www.proquest.com/

*Scientific American.* www.proquest.com/

*Vanity Fair.* www.proquest.com/
VITA

Aaron Michael Bachmann

Aaron Michael Bachmann was born in Cleveland, Ohio on March 4, 1980. He graduated from Chesterfield County Mathematics and Science High School at Clover Hill High School in June 1998. Aaron Bachmann graduated Phi Beta Kappa from the University of Virginia’s Echols Scholar Program in 2002 with B.A. degrees in Biology and History.

In September 2004, he entered the College of William and Mary as an M.A. student in the Department of History. Aaron Bachmann completed his M.A. thesis in May 2006. He is currently teaching American history and biology at The Field School in Washington, D.C.