

# Military Justice

By [Steven R. Welch](#)

**This essay offers a comparative survey of the practice of military justice among several of the key belligerent powers. Accused soldiers enjoyed little in the way of legal protection, and punishment was generally swift and often harsh. Decisions about the severity of punishment could vary considerably from case to case depending on the current war situation and the state of morale and discipline in selected units. Thousands of soldiers were executed by firing squad for the crimes of desertion, mutiny and cowardice. The primary purpose of military justice was to maintain soldierly discipline; achieving justice in individual cases was a secondary concern.**

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## Introduction

On 5 November 1998, as part of commemoration of the 80<sup>th</sup> anniversary of the end of World War One, then French Prime Minister Lionel Jospin gave a speech at Craonne, a site which witnessed heavy French casualties in spring 1917 during the ill-fated Chemin des Dames offensive. The failure of the French offensive set the stage for a serious mutiny by tens of thousands of discontented French troops. In the aftermath of the mutiny some 3,427 soldiers were court-martialed. Death sentences were imposed on 554 soldiers; forty-nine of these were executed by firing squad.<sup>[1]</sup> While Jospin praised the efforts of French soldiers who participated in the offensive, he also made explicit reference to the executed mutineers:

Some of these soldiers, exhausted by attacks condemned in advance, frozen in mud mixed with blood, plunged into bottomless despair, refused to be sacrificed. May these soldiers, "executed for example," in the name of a kind of military discipline whose harshness was equaled only by that of the battle itself, be reintegrated, today, completely, in our national memory.<sup>[2]</sup>

Jospin's reference to a system of military discipline as harsh as battle itself expresses what could be termed the conventional view of military justice in World War One, one well-represented in many scholarly and popular accounts of the war. According to this view, military justice was not only extraordinarily severe, but was often brutally inhumane and unjust, an essential element in a broader set of coercive disciplinary practices designed to intimidate the common soldier and force him to continue fighting in a [war of attrition](#) and mass slaughter to the bitter end. From this perspective, soldiers of the various belligerent countries appear

as helpless victims of military justice systems that had little regard for the individual or for the principle of justice, but were instead instruments used primarily to maintain discipline and achieve deterrence through harsh and often arbitrary punishment.

The roots of this conventional view have their origins in criticisms raised during the war itself. Both the [British](#) and [German](#) parliaments voiced concerns about the application of military justice; in [Germany](#) this led to revisions of the military penal code in 1917 and 1918 that reduced the punishments for some offences. In the years after the war, a number of official investigations were conducted. These provided forums in which the shortcomings of wartime military justice were highlighted. In two of the defeated nations, Germany and [Austria](#), the military justice systems were completely abolished. Although an early British inquiry into wartime executions (the Darling Committee) concluded that the military justice system had operated fairly, throughout the 1920s a number of influential publications painted a harshly critical portrait of a flawed and merciless British military justice system, sustaining pressure for reform of military law.<sup>[3]</sup> These efforts culminated in the abolition of the death penalty for desertion and cowardice in 1930 (only mutiny and treason remained subject to capital punishment).<sup>[4]</sup> In [France](#), veterans doggedly pursued a campaign to rehabilitate victims of military justice, in particular those who had been summarily executed. They also pressed successfully for reform (achieved in 1928) of the military code of justice in order to eliminate judicial practices that they condemned as ruthless, unjust and prejudicial to ordinary soldiers.<sup>[5]</sup>

After 1945, the extraordinary horrors of the Second World War relegated concerns over military justice in World War One to the margins in many countries. In Britain, however, a number of widely read works such as Leon Wolff's *In Flanders Fields: The 1917 Campaign* and Alan Clark's *The Donkeys*, both of which supplied material for the popular musical *Oh What a Lovely War* (1963, film version 1969), served to perpetuate the conventional view by portraying British soldiers as victims of incompetent and pitiless generals.<sup>[6]</sup> Beginning in the 1970s, the practices of the British courts-martial of World War One, especially the frequent use of the death penalty, attracted increased attention in books by William Moore, Anthony Babington, and Julian Putkowski and Julian Sykes.<sup>[7]</sup> These works, all of which presented the British military justice system as flawed and unjust, helped to trigger campaigns in [Great Britain](#), [Canada](#), and [New Zealand](#) that aimed to win pardons for executed soldiers.<sup>[8]</sup> In France there was a parallel campaign; Jospin's 1998 Craonne speech, quoted above, was part of the official response to calls for pardons for French soldiers executed in the war.

The pardon campaigns proved to be successful. The New Zealand government enacted a pardon in 2000, the Canadian government offered an "expression of regret" in December 2001 and a conditional pardon to British soldiers was granted by the British government in August 2006. In France, the forty-nine soldiers executed in connection with the 1917 mutinies received an informal pardon in 1998. The debate about extending an official pardon to most or all of the French soldiers executed in World War One has continued to the present. There are signs that some form of pardon may well be granted by French President François Hollande in conjunction with planned war centenary commemorations.<sup>[9]</sup>

Over the past two decades, in part in response to the pardon campaigns, but also as a result of broader historiographical debates about World War One, a new revisionist view has emerged to challenge the dominant conventional assessment of military justice. In [British historiography](#), the topic of military justice has become linked to the larger debate between revisionists and anti-revisionists about the nature and utility of the war and the role of the generals – in particular Sir [Douglas Haig \(1861-1928\)](#), who was responsible for confirming death sentences from 1916-1918. In France, it has figured in the controversy about the relative importance of "consent" versus "coercion" in explaining soldier morale and motivation.<sup>[10]</sup> In general, proponents of the revisionist and "consent" positions argue that military justice was, for the most part, fair and just, and insist that there are therefore no grounds for granting posthumous pardons to convicted soldiers.

According to the revisionist view, it is a mistake to regard soldiers as unfortunate victims of an inhumane system. As Gordon Corrigan has asserted in reference to the British military justice system, "it may have been hard justice, but it was justice."<sup>[11]</sup> Revisionists regard the conventional criticisms of military justice as superficial, one-sided, and anachronistic.<sup>[12]</sup> They defend the courts-martial as fair and downplay the role of coercion in maintaining morale and cohesion.<sup>[13]</sup> In the most recent detailed study of Canadian courts-martial, Teresa Iacobelli explicitly positioned her work as a "challenge [to] previously accepted notions that military law was harsh and inflexible during the Great War." She argued that "military discipline during the First World War, rather than being meted out by unyielding and callous generals who feature so prominently in movies and popular media, was surprisingly flexible and capable of showing great concern and even sympathy for the individual soldier."<sup>[14]</sup>

There is no single scholarly work that provides a comparative international survey of military justice in World War One. Virtually all studies focus on a single nation. There is a great deal of justification in this approach since the military justice systems of individual armies were undoubtedly shaped to a considerable extent by their own national military histories and traditions, as well as by the attitudes and values of their respective civil societies. Nevertheless, as one shall see, there were many broadly similar features common to the military justice systems of most of the armies engaged in World War One. The British, German, Italian and French cases have been the subjects of the most extensive research, while the American, Russian, Habsburg, Serbian and Ottoman armies have attracted much less scholarly attention.<sup>[15]</sup> Christoph Jahr's excellent study of desertion and its prosecution by the German and British armies is the only substantial work that carried out a truly comparative, detailed analysis of two military justice systems; his work, however, focused solely on desertion and did not extend to a consideration of how the two systems dealt with other military offences.<sup>[16]</sup>

This essay will survey some essential features of military justice in World War One and present some of the key evidence that has emerged from current research about judicial practices. The essay restricts itself to the impact of military justice on soldiers; it excludes any consideration of military justice applied to civilians or to [prisoners of war](#) (POWs). After a brief overview of the military codes and procedures in effect during the war, the essay describes the range of punishments available to military authorities, with special attention given to the most controversial aspect of military justice, the use of the death penalty and executions. This is followed by a section on desertion – one of the most frequently prosecuted serious military offences – which offers a convenient way of comparing and contrasting the military justice systems of several of the belligerent countries. Finally, the legacy of military justice in World War One, in particular with regard to the German case, is examined.

## Codes and Court-Martial Procedures

The late 19<sup>th</sup> century had seen reform and modernization of the military law codes in numerous countries. During World War One, the following military law codes were in effect: Great Britain: The Army Act of 1881, the 1912 edition of the King's Regulations and the 1914 Manual of Military Law; [Italy](#): The Italian Penal Code of 1859; Austria-Hungary: The Military Penal Code of 1855; [Russia](#): The Military Code of Punishments of 1867; Germany: The Military Penal Code of 1872; France: The Military Code of Justice from 1857; [USA](#): Articles of War as revised in 1916.

Most codes were premised on a belief that future wars would be of relatively short duration and would be wars of movement resolved through decisive large-scale battles. The prolonged, static [warfare](#) that emerged after 1914 meant that the reality of modern [total war](#) differed sharply from the pre-war expectations. As in so many other aspects of military affairs, military justice too would be forced to adjust to the new reality. The number of offenders would vastly increase, placing strains on the various military justice systems, and courts-martial would be confronted with soldiers afflicted by the psychological damage caused by industrialized warfare. In addition, as the war dragged on, the option of imposing prison sentences on offending soldiers became problematic, since the prospect of imprisonment might encourage soldiers to violate military law in order to escape the horrors of the frontlines. Military codes would need to be amended and revised in order to cope with new demands and pressures.

One key tension ran through the military law codes and practices of all the belligerent nations: the relationship between discipline and justice. Although Heinrich Dietz, one of the leading German military law experts, insisted that "discipline and justice are not opposites, but rather complement each other," in practice military leaders consistently favoured the concern to maintain military discipline over the pursuit of justice.<sup>[17]</sup> As the British *Manual of Military Laws* succinctly stated, "the object of military law is to maintain discipline among the troops and other persons forming part of or following an army."<sup>[18]</sup> Attaining justice was a second-order priority.

All military law codes listed and defined a wide range of military offences, stipulated penalty standards and laid down the rules of court-martial procedure. All made distinctions between the penalties to be applied and procedures to be followed in peacetime and at war. Under wartime conditions, court-martial proceedings were streamlined and accelerated, very often to the detriment of accused soldiers; penalties were substantially increased. There were also clear distinctions drawn between officers and enlisted men and their respective treatment under military law. Under all codes, the role of the military leadership in the administration of military justice was paramount.

Although the codes were in many ways broadly similar, some were more progressive than others. The French, American and German codes are generally considered to have been less harsh than the codes of the British, Russian, Austro-Hungarian and

Italian forces. The Italian code, for example, afforded very little protection for individual soldiers, opening the door to arbitrary and despotic punishment. The British Army Act of 1881 listed many more capital offences (twenty-seven in total) than either the French or German military codes.<sup>[19]</sup> The Austro-Hungarian code authorized extensive use of drumhead courts-martial (*Standgerichte*) that severely limited the rights of defendants and resulted in a very high number of death sentences and executions. By contrast, under the French and American systems, soldiers sentenced to death had in effect a right of appeal to their respective presidents, thus providing a measure of civilian oversight and a check on the absolute authority of the military.

In all of the armies involved in the war, soldiers brought before courts-martial faced judgment by panels consisting exclusively of officers. For both contemporary and current critics, the lack of legal training and expertise on the part of the military officers who sat in judgment over their subordinates constituted a major shortcoming of military justice that could and sometimes did compromise the integrity of trials and expose accused soldiers to arbitrary and unjust punishment. The dominance of officers over the court-martial process further underlines the fact that the primary purpose of military justice was to aid officers in maintaining discipline over their troops. British courts-martial consisted of a minimum of three officers. Beginning in 1917, so-called Court Martial Officers (CMOs) were often assigned to trials; CMOs were officers with some legal training who could provide advice and monitor proceedings. Their introduction was at least in part a response to concerns about the lack of legal expertise evidenced by most officers. Whether the presence of CMOs had any substantial effect in improving the fairness of court-martial procedures, however, remains unclear.

In Germany, a court-martial consisted of a legally trained judge advocate and four officers; no non-commissioned officers or enlisted personnel were allowed to serve as judges. The divisional commander served as the convening and confirming authority (*Gerichtsherr*). The courts-martial, however, were located with the rear area logistics groups rather than close to the front lines with the divisional staff. In the post-defeat discussions about German shortcomings, the location of the military courts away from the front lines and the limited mobility of the courts (they had to rely on slow horse-drawn buggies) were both cited as serious deficiencies. Critics complained that judge advocates lacked both sufficient insight into the demands of frontline discipline and were too slow to administer justice.

Court-martial proceedings in wartime were designed to move quickly. Military leaders considered speedy resolution of cases and rapid implementation of punishment essential to achieve both the desired deterrent and disciplinary effects. The emphasis on speed meant that legal protections for accused soldiers were often curtailed or ignored. Provisions for assistance for the defendant differed in the various systems. In the British courts-martial the defendant was entitled to ask for a defending officer, quaintly termed "the prisoner's friend." However, courts-martial files of executed British soldiers indicate that in nearly 10 percent of these cases, soldiers had no such defending officer; even when defending officers were present, their lack of both legal knowledge and time for preparation meant that a proper defence strategy could seldom be developed.<sup>[20]</sup> In general, it appears that soldiers facing court-martial did not enjoy the quality of defence assistance that today would be considered necessary for a fair proceeding.

There is relatively little data on just how long criminal proceedings took from arrest through trial sentencing to the commencement of punishment or execution. German courts-martial appear to have taken significantly more time than in many other armies. In his study of military discipline in the Bavarian Army, Benjamin Ziemann noted the "chronic slowness of the courts-martial proceedings"; he cited figures from 1918 that indicate only 17 percent of court-martial cases (363 of 2,138) underway in that year were brought to conclusion.<sup>[21]</sup> In contrast, the British army seems to have moved more expeditiously. Trials often took only an hour, making it possible for a court to hear several cases on a single day. If a guilty verdict was announced in a capital case, the court-martial papers would then be circulated upward through the military hierarchy starting with the guilty man's commanding officer, proceeding through the brigade, divisional and corps levels, and ending up with the commander in chief - until the end of 1915, Sir John French (1852-1925), thereafter Sir Douglas Haig - who, taking into account the recommendations submitted by the various command levels, had to confirm the death sentence or commute it. The time between the trial and the public announcement of the sentence to the convicted man in the presence of his unit was normally two to three weeks (although there were cases in which execution of a convicted soldier took place within as little as two days after the trial).<sup>[22]</sup> Austro-Hungarian drumhead courts-martial provided an even swifter, summary form of military justice. They were required to arrive at a verdict within seventy-two hours, otherwise the case was to be handed over to a regular Field General Court-Martial. In this form of court-martial, only a verdict of death or acquittal was possible. In the case of a guilty verdict, the convicted soldier had no avenue of appeal, and execution was required to take place within two hours after the trial.<sup>[23]</sup>

## Punishments

Under the various military law codes, officers had at their disposal a hierarchy of sanctions that could be employed in order to enforce discipline. The content of the sanctions hierarchy did, of course, vary from army to army, but the practices of the British army can serve as a general guide to the range of disciplinary and judicial penalties used against soldiers. At the lower end of the scale soldiers could be fined, reduced in rank, confined to quarters, subjected to extra punishment drills or guard duty, imprisoned in unit guardrooms or given a form of field punishment (Field Punishment No. 1 involved hard labour as well as stipulated periods of being tied to an object; Field Punishment No. 2 involved only hard labour). These punishments could be imposed by commanding officers without recourse to a regular court-martial.

More serious disciplinary breaches required that accused soldiers appear before a court-martial. British courts-martial could impose penalties ranging from the two forms of field punishment described above (FP), to imprisonment with hard labour (IHL) for a term of two years or less, or penal servitude (PS) for a term of three years to life, to death by firing squad. The table below gives some examples of court-martial sentencing recommendations used in the New Zealand forces (who were subject to the British military code).

Section of Military Code	Offence	Punishment
4	Cowardice	Death
6	Leaving sentry post	Two years IHL
6	Sleeping on post	Three years PS
8	Insubordinate language to a superior officer	Three months No. 1 FP to two years IHL
8	Striking a superior officer in the execution of his office	Six months IHL to five years PS
9	Disobedience, showing wilful defiance of authority	Three years PS
12	Desertion	Death
15	Absence when warned for duty in trenches, etc.	Two years IHL
40	Accidental self-wounding	Three months No. 1 FP

Table 1: Recommended Average Punishments New Zealand Division<sup>[24]</sup>

Binding an offender to an object was a practice used in the British, German and Austro-Hungarian armies. British regulations stipulated that a soldier sentenced to Field Punishment No. 1 could be attached to an object for up to two hours per day for a maximum of twenty-one days over a twenty-eight-day period.<sup>[25]</sup>

A New Zealand [conscientious objector](#), Archibald Baxter (1881-1970), graphically described his experience of Field Punishment No. 1 (often referred to as “crucifixion” by the soldiers) in a Field Punishment Camp near Ypres in early 1918:

My hands were taken round behind the pole, tied together and pulled well up it, straining and cramping the muscles and forcing them into an unnatural position... . The slope of the post brought me into a hanging position, causing a large part of my weight to come on my arms, and I could get no proper grip with my feet on the ground, as it was worn away round the pole and my toes were consequently much lower than my heels. I was strained so tightly up against the post that I was unable to move body or limbs a fraction of an inch.<sup>[26]</sup>

The pain and humiliation of binding as a form of disciplinary punishment made it universally despised. British and German military commanders surveyed during the war held differing opinions on the effectiveness of binding. In the end, the British forces retained Field Punishment No. 1 to the end of the war, while the practice of binding offenders to a wheel or tree was abolished in the German army in May 1917.<sup>[27]</sup>

The use of flogging as a punishment for indiscipline had been abolished in most armies in the later 19<sup>th</sup> century. However, the

practice was reintroduced in the Russian army in 1915.<sup>[28]</sup> The use of corporal punishment seems to have been frequent and widespread in the Russian forces and became a focus of soldier grievances. As the Russian army disintegrated in 1917, rebellious soldiers demanded the abolition of flogging and all forms of corporal punishment. Their aims found expression in the Declaration of Soldiers' Rights issued on 11 May 1917 that prohibited corporal punishment.<sup>[29]</sup>

In all of the belligerent armies, there were many offences that carried penalties of imprisonment. As the war dragged on, military authorities found themselves caught between competing pressures in regard to imposing prison sentences. On the one hand, maintaining military discipline and achieving a deterrent effect seemed to demand that serious offenses be punished with stiff terms of imprisonment. On the other hand, in a war of attrition with no end in sight, imprisonment – no matter how miserable the conditions – might be seen by some soldiers as a desirable alternative to the lethal dangers of the front. From the standpoint of military authorities, imprisoning soldiers also had the drawback of removing valuable labour and fighting power from the war effort. Already at the beginning of 1915, over 5,000 British soldiers were confined in military jails.<sup>[30]</sup>

In 1915, both the German and British armies began the practice of suspending prison sentences, effectively placing convicted soldiers on a form of probation and returning them to their front line units. In the German army, some convicted soldiers served a portion of their sentences, had the remainder suspended, and were then returned to service in their units. In the Bavarian Army, only 6 to 16 percent of convicted soldiers served the full term of their sentences.<sup>[31]</sup> Figures for New Zealand troops show that of the 383 soldiers given prison sentences (PS or IHL) between May 1916 and December 1918, 39 percent had their sentences suspended; a further 16 percent had their sentences commuted to Field Punishment.<sup>[32]</sup> The need to exploit the potential fighting and labour power of convicted soldiers took priority over exacting the full measure of judicial punishment; the principle of deterrence had to yield to more practical military necessities.

## Death Sentences and Executions

The death penalty was the most extreme punishment that could be imposed by courts-martial. The execution of soldiers has been by far the most thoroughly researched – and also the most controversial – aspect of work on military justice in World War One. To many modern observers, the fact that thousands of soldiers, some of whom at least were suffering from [shell shock](#) or the psychological effects of combat fatigue, were “shot at dawn” stands as clear proof of the inhumanity of military justice. The use or abuse of capital punishment stands at the heart of debates between revisionists and those who hold a more critical conventional view of the practice of military justice in the war.

There was a strong belief in all armies in the deterrent effect of imposing death sentences; the British military leadership were among the most fervent believers, but in other armies as well, superior officers generally subscribed to the view that the death penalty was an indispensable instrument of military justice. Nearly all the armies engaged in World War One carried out executions of soldiers but, as Table 2 indicates, some – the British, French, Italian and Austro-Hungarian, for example – displayed greater willingness to apply this extreme disciplinary measure.

<b><i>Nation</i></b>	<b><i>No. of Death Sentences</i></b>	<b><i>No. Executed</i></b>	<b><i>% of death sentences executed</i></b>
Italy	4,028	750	19%
Great Britain	3,118	361	12%
France	2,500	650	26%
Austria-Hungary	1,175	1,148	98%
Canada	222	25	11%
Belgium	200	12	6%
Germany	150	48	32%
U.S.A.	145	35	24%
Australia	121	0	0%
New Zealand	28	5	18%
South Africa	11	1	9%
Russia	unknown		
Japan		0	

Table 2: Death Sentences and Executions in World War One<sup>[33]</sup>

The Austro-Hungarian figures reflect only the death sentences and executions carried out by the drumhead courts-martial; this also accounts for the extraordinarily high execution rate.<sup>[34]</sup> It should be noted that none of these national totals include victims of summary executions carried out without recourse to a courts-martial. In the Italian army there is evidence that summary executions totalled at least 300, if not more.<sup>[35]</sup> The British figures do not include any death sentences or executions for Indian soldiers, although it seems very likely that significant numbers were condemned to death and executed.<sup>[36]</sup>

As the figures demonstrate, the Italian army made the most extensive use of the death penalty and resorted to execution more often than its Western wartime allies. The figures are also somewhat deceptive in terms of the actual execution rate of Italian soldiers given a death penalty. The majority of the soldiers was condemned to death in absentia; of the 1,006 soldiers in Italian hands, 750, or 75 percent, were executed. This “regime of unremitting harshness” can in part be attributed to the Italian commander in chief, General Luigi Cadorna (1850-1928).<sup>[37]</sup> Cadorna despised his peasant soldiers and was convinced that only the use of brute force would keep them in line. Italian military tribunals were encouraged to apply the death penalty. But Cadorna also insisted on the practices of decimation and summary execution. In a letter to the Italian government in June 1917, he noted: “It has been necessary to resort to immediate executions, on a vast scale, and to renounce forms of judicial proceedings, because it is vital to cut off evil at its roots, and it is to be hoped that we have done so in time.”<sup>[38]</sup> Decimation was first introduced in 1916. Soldiers of units that had failed to do their duty on the front were chosen at random and summarily executed. Italian soldiers, understandably, viewed the practice of decimation as arbitrary and grossly unjust. Rather than reinforcing discipline, decimation more likely served to undermine morale. As [Vanda Wilcox](#) observed:

It never seemed to occur to Cadorna that such executions had a profoundly demoralising effect on the junior officers and men ordered to arrange and perform them, and that the apparent absence of justice or reason in such affairs shook men's faith in their superiors.<sup>[39]</sup>

The Italian case illustrates perhaps most graphically the arbitrary nature of military justice through the use of decimation and victims chosen by lot.

At the other end of the scale stands the Australian case. Australian soldiers, like other Dominion troops (Canadians, New Zealanders and South Africans), were subject to the British Army Act of 1881. However, the Australian Defence Act prohibited the execution of any Australian soldier without the approval of the Governor-General. Despite entreaties from British Commander in Chief Haig and Australian General John Monash (1865-1931), such approval was never given; no Australian soldier was executed during the war.<sup>[40]</sup>

Charles Bean (1879-1968), official historian of the Australian war effort, noted that:

Both in the ranks of the Australian forces and in the people of Australia there was an invincible abhorrence to the seeming injustice of shooting a man who had volunteered to fight in a distant land in a quarrel not particularly Australian. The frequent reading out on parade of death sentences passed on British soldiers much intensified this feeling.<sup>[41]</sup>

As Table 2 shows, in most armies only a minority of soldiers condemned to death were actually executed. In the British army, for instance, only about one in every ten death sentences was carried out. Oram has used the term “bureaucratic decimation” in relation to British practice, noting that “clearly the execution of one in ten was regarded as a ‘safe’ level politically speaking, satisfying both military and judicial considerations.”<sup>[42]</sup> It has also been suggested that the British court-martial sentencing followed a “theory of systematic pardoning”: maximum penalties were imposed and then the confirmation process was used in order to reduce them, thus allowing the military authorities to demonstrate fairness and leniency.<sup>[43]</sup> However, a portion of death sentences had to be carried out in order to achieve the desired deterrent effect. Whether or not a soldier was one of the unfortunate few whose death sentence was not commuted seems to have hinged on factors quite independent of his own individual case. The current state of the war as well as the condition of discipline and morale in the accused soldier's unit seemed to be key factors in determining whether a death sentence would be confirmed or commuted. There seems to have been a clear correlation between the enforcement of death sentences<sup>[44]</sup> and the lead-up to major British offensives.<sup>[44]</sup>

In both the French and British armies, the use of executions was not constant over the course of the war. In the French army the highest number of executions, 296, took place in 1915; in 1917 the number fell to eighty-nine and in 1918 to fourteen.<sup>[45]</sup> In

autumn 1914, 70 percent of French death sentences were carried out; by 1917 this had dropped to 15 percent.<sup>[46]</sup> A downward trend in the number of executed British soldiers began in 1917 and continued through 1918. These shifts were due to pressures within the armies themselves (the French mutiny of 1917; the gradually changing nature of the British army after conscription was introduced in 1916) as well as in response to public and parliamentary criticism. In Italy, by contrast, Cadorna continued to push for harsher sanctions and continued executions right up to the [Battle of Caporetto](#) in late October 1917. Only in the wake of Italian defeat there and Cadorna's sacking was there a recognition that disciplinary policy required reform.

In his study of military executions Oram has suggested that "social and cultural structures were every bit as important in defining the respective armies' approach to the death penalty."<sup>[47]</sup> In other words, the prevailing attitudes toward the use of capital punishment and penal practices of civilian society may help in part to explain why some armies were more willing than others to execute their soldiers. "Of all the western countries," Oram noted, "Britain clung most steadfastly to corporal and capital punishments, reflecting the importance attached to deterrence, which remained an essential element of penal policy throughout the nineteenth and early twentieth centuries."<sup>[48]</sup> In the case of Canada, Iacobelli has drawn a similar link, noting that the death penalty was also applied in civilian society during World War One; between 1914 and 1918 forty-eight executions took place in Canada.<sup>[49]</sup>

There are limits, however, to the explanatory power of an approach that looks at the values of an army's parent society. In Italy, for instance, the death penalty in the civil penal code had been abolished in 1889; yet the practice was maintained in the military, and as has been seen, was applied extensively during the war. In Germany, capital punishment was reintroduced by [Otto von Bismarck \(1815-1898\)](#) in 1878; in the immediate pre-war years, an average of twenty-eight death sentences were imposed by criminal courts and on average nineteen people were executed per year.<sup>[50]</sup> One might therefore have expected – especially given the German army's reputation for ruthlessness put on display in the atrocities perpetrated in Belgium and France at the outset of the war – that capital punishment would have been used much more frequently. The presence of a legally trained judge advocate on German court-martial panels may have enhanced the influence of the principles of the *Rechtsstaat* on the administration of military justice and was probably a factor that contributed to the comparatively low number of death sentences and executions.

The application of the death penalty in the Russian army and the number of executions remains unknown, but may have been considerable. Following the [February 1917 Revolution](#) the death penalty was initially abolished.<sup>[51]</sup> At the insistence of the military, it was reinstated on 12 July 1917 for soldiers at the front.<sup>[52]</sup>

## Prosecuting Desertion

Alongside cowardice and mutiny, desertion was regarded as the most serious military offence; it was punishable in all armies by death. A very high proportion of death sentences and executions were imposed on deserters. About two-thirds of British death penalties were imposed on deserters and three-quarters of those executed were deserters; in Canada the comparable figures were 91 percent and 88 percent. Table 3 provides an overview of available statistics from various nations.

<b>Nation</b>	<b>Convictions</b>	<b>Death Sentences</b>	<b>Executed</b>	<b>% of Death Sentences executed</b>
Italy	101,665		391	
Great Britain	38,630	2,004	272	13%
Germany	7,936	49	18	37%
U.S.A.	2,657	24	0	0%
Austria-Hungary			430	
Canada		203	22	11%
France			4	
New Zealand	310	25	4	16%
Australia		104	0	0%

Table 3: Court-Martialing Desertion in World War One<sup>[53]</sup>

Although desertion was designated as a capital offense in all military codes, definitions of desertion and the proof standard required for conviction differed from code to code. This helps to account for some of the variations in Table 3. One reason why



such a comparatively low number of German deserters received the death penalty and so few were executed was due to the fact that the death penalty only applied to cases of repeat desertion or to cases of soldiers who crossed over to the enemy. A first-time deserter therefore faced only a prison term, not a possible death penalty. The German military code also required clear proof of intent to desert; this made it more difficult to arrive at guilty verdicts. In the Italian and British codes, desertion was defined much more broadly, and there was a willingness to accept that certain circumstantial evidence could provide proof of intent. Under the Italian military code, the prosecutor did not need to prove intent to desert but only had to demonstrate the defendant's absence from his unit.<sup>[54]</sup> The French distinguished between two different types of desertion: desertion to the interior and desertion to the enemy. Only the latter form was punishable by death. Only four French soldiers were executed for desertion to the enemy, while slightly over 500 were executed for the crimes of abandoning their post in the face of the enemy or refusing to obey in the face of the enemy.<sup>[55]</sup>

In the Ottoman army, when deserters were caught, they generally were punished only lightly and were quickly returned to their units. By May 1916, it would appear that the army had replaced prison sentences with corporal punishment in order to preserve manpower numbers – a practice reminiscent of the suspended sentences technique used by the British and German armies.

Reports recording the execution of deserters are rare.<sup>[56]</sup>

## Legacy

After 1918, former belligerents drew diverse lessons about military justice from the experience of World War One. As pointed out in the introduction, by 1930 criticism of the British practices in the war had led to the abolition of the death penalty for desertion and cowardice. And despite efforts by British commanders in World War Two to have the death penalty reinstated for desertions, this did not occur. In the Weimar Republic, the military justice system itself was abolished in 1920.

After the war, some German commentators praised what they regarded as the harsh and punitive approach to military discipline practiced by the British and French armies. In the same fashion that many Germans argued that the Allies had done a much better job in the realm of wartime propaganda than the Germans, it also became part of conventional right-wing wisdom that the Allies had been better at maintaining discipline because of their willingness to impose death sentences and carry out executions.

The relative moderation of German military justice in World War One came under sharp attack from critics who argued that it was one of the factors that had contributed to Germany's defeat. Numerous right-wing nationalists, including the prominent General Erich Ludendorff (1865-1937) and the later-to-be-prominent Adolf Hitler (1889-1945), joined in the chorus of those who charged that lax discipline and the virtual elimination of capital punishment had undermined morale and sapped the fighting spirit of the army. As Ludendorff commented in one of his later works:

In total war it becomes necessary to safeguard discipline not only in the fighting units of the Army but also in those units which are at some distance from the enemy and to protect them from the disintegrating influences of malcontents. Discipline in war is even more important than in peace. In the struggle for the life of the nation, sure, swift and inexorable discipline by virtue of special laws is necessary. When, in 1918, owing to the duration of the World War, discipline slackened and cases of desertion became numerous, the German military tribunals failed entirely. Instead of death sentences they inflicted terms of imprisonment which kept the culprit away from the enemy fire he feared, whereas a year before the French military tribunals were doing their moral duty by passing death sentences.<sup>[57]</sup>

Stern discipline, it was asserted, would have prevented the internal breakdown that had made it possible for left-wing conspirators to stab the army and the nation in the back. According to this interpretation, deserters, in particular, had constituted a major part of the ranks of the psychopaths, shirkers, and criminal elements who had undermined the war effort and brought about Germany's defeat. In *Mein Kampf* Hitler insisted that:

The fact that in the War the death penalty was excluded, that in reality the Articles of War were thus suspended, had terrible consequences. An army of deserters, especially in 1918, poured into the reserve posts and the home towns, and helped to form that great criminal organisation which, after November 7, 1918, we suddenly beheld as the maker of the revolution.<sup>[58]</sup>

During World War Two, the after-effects of the "November trauma" undoubtedly played a prominent role in encouraging German military judges to impose harsh sentences. While in World War One German military courts imposed 150 death sentences, in World War Two there were 35,000; an estimated 22,000 to 25,000 soldiers were executed. While only eighteen German

soldiers were executed for desertion in World War One, around 18,000 suffered this fate in World War Two.

## Conclusion

As this essay has demonstrated, the severity of military justice varied from nation to nation, and within individual armies severity was not constant but fluctuated over the course of the war. In France, Britain and Germany there were clear tendencies toward greater leniency and lessening of penalties as the war dragged on. This complicates any attempt to make a blanket judgement about the overall character of military justice in World War One. "Harshness" is a relative concept, relative in terms of the accepted values of the armies of the day and the societies that supported them, and also relative to conduct in other wars. Compared, for instance, with the performance of the German military justice system in World War Two, the practices of the belligerent armies in World War One were clearly much less harsh and unjust and exacted a much lower toll in terms of executions.

Confining the focus to the armies that confronted each other in World War One, it is possible to make some tentative differentiations. Christoph Jahr has argued convincingly on the basis of surviving courts-martial records of the Bavarian Army that the German military justice system functioned on the whole in a fair and reasonably just manner. German military judges adhered to the standards and procedures of the *Rechtsstaat* and for the most part resisted undue interference from military commanders. His comparative study of the prosecution of deserters in the German and British armies comes to the conclusion that the "application of military justice in the British Army was by contrast very much more severe than in the German Army and was characterized by a greater degree of arbitrariness."<sup>[59]</sup> If Jahr is correct, then it would appear that among the major belligerents, the German army came closest to achieving a balance between the demands of maintaining discipline and achieving justice for the individual. Both the Italian and the Austro-Hungarian armies fell far short of attaining such a balance; their systems must be rated as among the harshest military justice systems in the war, with even higher numbers of executions than in the British and French armies. On a spectrum of harshness, the French army occupies a middle position, with the Australian (at least in terms of executions) and American military justice systems positioned closer to that of the Germans. More detailed knowledge of the Russian and Ottoman systems is needed before their place on the spectrum can be determined; a tentative evaluation would group them with Italy and Austria-Hungary.

There is no question that many of the procedures and practices of World War One courts-martial fell short of what would be considered today as necessary standards for guaranteeing fairness and justice. The lack of legal expertise on the part of the officers entrusted with administering the courts-martial was a serious deficiency, as was the paucity of protection for the rights of the accused. As seen, there was also a degree of arbitrariness in the application of punishment in various armies (decimation in the Italian army; the selection of French soldiers for punishment in the aftermath of the 1917 mutinies; the practice of commuting death sentences in the British army). Inconsistencies in sentencing practices also appear to have been common, a result of the ever-changing composition of court-martial panels and the lack of legal expertise of their members.

Overall, the current state of research tends to validate the conventional view of generally harsh military justice in World War One. Revisionist studies have offered some useful qualifications (such as a more favourable evaluation of British and Canadian commanders as a result of examinations of their commutation practices) but have not succeeded in fundamentally undermining the conventional view. Previous research has been heavily concentrated on the highly charged issues of death sentences and executions. While these are very significant issues and do reveal much about the character of military justice, they represent only one aspect of military justice. Future research needs to focus more broadly on the ways in which the various military justice systems affected the overwhelming majority of soldiers who were not among the relatively small group condemned to death. Such studies would provide a much more solid basis for evaluating the role of military justice in maintaining or undermining obedience and morale. More in-depth and comparative studies of the exercise of military justice and the operations of courts-martial could make a significant contribution to the long-running debates about what kept men in line during World War One.

Steven R. Welch, University of Melbourne

Section Editors: [Michael Neiberg](#); [Sophie De Schaepdrijver](#)

## Notes

1. ↑ Pedroncini, Guy: *Les Mutineries de 1917*, Paris 1967, pp. 194, 215.
2. ↑ Jospin quoted in: Smith, Leonard V. / Audoin-Rouzeau, Stéphane / Becker, Annette: *France and the Great War 1914-1918*, Cambridge 2003, p. 186.
3. ↑ Among the most critical works were A.P. Herbert's *The Secret Battle* (1919), Ernest Thurtle's *Shootings at Dawn* (1924) and C. E. Montague's *Rough Justice* (1926). Ben Shephard described the Darling Committee report as an exercise in 'whitewashing'; Shephard, Ben: *A War of Nerves. Soldiers and Psychiatrists in the Twentieth Century*, Cambridge 2001, p. 141.
4. ↑ See French, David: *Discipline and the Death Penalty in the British Army in the War Against Germany during the Second World War*, in: *Journal of Contemporary History* 33 (1998), p. 535.
5. ↑ See Prost, Antoine: *In the Wake of War. 'Les Anciens Combattants' and French Society*, Providence et al. 1992, pp. 56ff.
6. ↑ See Jahr, Christoph: 'The Edwardian world was an ordered place'. Revisionismus als rückgewandte Utopie in der britischen Geschichtsschreibung über den Ersten Weltkrieg und in der populären Erinnerung, in: Bauerkämper, Arnd / Julien, Elise (eds.): *Durchhalten! Krieg und Gesellschaft im Vergleich 1914-1918*, Göttingen 2010, pp. 112f.
7. ↑ Moore, William: *The Thin Yellow Line*, New York 1975; Babington, Anthony: *For the Sake of Example. Capital Courts-Martial, 1914-1920*, New York 1983; Putkowski, Julian / Sykes, Julian: *Shot at Dawn. Executions in World War One by Authority of the British Army Act*, London 1989.
8. ↑ On the British Shot at Dawn campaign see Peifer, Douglas C: *The Past in the Present. Passion, Politics, and the Historical Profession in the German and British Pardon Campaigns*, in: *Journal of Military History* 71 (2007), pp. 1107-32; and Iacobelli, Teresa: *Death or Deliverance. Canadian Courts Martial in the Great War*, Vancouver 2013, pp. 111-27.
9. ↑ See Prost, Antoine: *Quelle Mémoire pour les Fusillés de 1914-1918?* report presented 1 October 2013, online: <http://centenaire.org/fr/presse-communication> (retrieved: 15 December 2013).
10. ↑ See Winter, J. M. / Prost, Antoine: *The Great War in History. Debates and Controversies, 1914 to the Present*, New York 2005, pp. 97-106; and Offenstadt, Nicolas: *Der Erste Weltkrieg im Spiegel der Gegenwart. Fragestellungen, Debatten, Forschungsansätze*, in: Bauerkämper / Julien, *Durchhalten!* 2010, pp. 54-77.
11. ↑ Corrigan, Gordon: *Mud, Blood, and Poppycock. Britain and the First World War*, New York 2003, p. 248.
12. ↑ For revisionist accounts see Hughes-Wilson, John / Corns, Cathryn: *Blindfold and Alone. British Military Executions in the Great War*, London 2001; and Peaty, John: *Capital Courts-Martial during the Great War*, in: Bond, Brian et al. (eds.): *Look to Your Front. Studies in the First World War by the British Commission for Military History*, Staplehurst 1999, pp. 89-104.
13. ↑ Jahr, *Edwardian World* 2010, p. 120.
14. ↑ Iacobelli, *Death or Deliverance* 2013, pp. 6, 9.
15. ↑ In the case of the British army there are also several important studies that explore the application of military justice in the individual Dominion forces: Australia, Canada and New Zealand.
16. ↑ Jahr, Christoph: *Gewöhnliche Soldaten. Desertion und Deserteure im deutschen und britischen Heer 1914-1918*, Göttingen 1998.
17. ↑ Dietz, Heinrich: *Das Militärstrafrechtswesen im Kriege*, in: Schwarte, Max (ed.): *Der Weltkampf um Ehre und Recht, die Erforschung des Krieges in seiner wahren Begebenheit, auf amtlichen Urkunden und Akten beruhend*, Leipzig 1923, p. 112.
18. ↑ War Office: *Manual of Military Law*, 6th edition, London 1914, p. 6.
19. ↑ Oram, Gerard: *Military Executions during World War One*, Houndsmills 2003, p. 31.
20. ↑ Jahr, *Gewöhnliche Soldaten* 1998, pp. 205, 208f.
21. ↑ Ziemann, Benjamin: *Front und Heimat. Ländliche Kriegserfahrungen im südlichen Bayern 1914-1923*, Essen 1997, p. 118.
22. ↑ Estimates based on the data provided in Oram, Gerard: *Death Sentences Passed by Military Courts of the British Army 1914-1924*, London 1998.
23. ↑ Platzer, Karl: *Standrechtliche Todesurteile im Ersten Weltkrieg*, Graz 2004, pp. 66f.
24. ↑ Adapted from Pugsley, Christopher: *On the Fringe of Hell. New Zealanders and Military Discipline in the First World War*, Auckland 1991, p. 347.
25. ↑ On Field Punishment No. 1 see Pugsley, *Fringe of Hell* 1991, pp. 91-103.
26. ↑ Baxter, Archibald: *We Will Not Cease. The Autobiography of a Conscientious Objector*, Christchurch 1939, p. 106. Baxter was one of fourteen New Zealand conscientious objectors who were shipped to the Western Front in July 1917.
27. ↑ Ziemann, *Front* 1997, p. 112.
28. ↑ Beyrau, Dietrich / Shcherbinin, Pavel P.: *Alles für die Front: Russland im Krieg 1914-1922*, in: Bauerkämper / Julien, *Durchhalten!* 2010, p. 158.
29. ↑ Browder, Robert Paul / Kerensky, Alexander F.: *The Russian Provisional Government 1917. Documents*, volume 2, Stanford 1961, p. 882.
30. ↑ Until April 1915, British soldiers sentenced to IHL served time in a field prison near the front; those sentenced to PS were returned to Great Britain.

31. ↑ Jahr, *Gewöhnliche Soldaten* 1998, p. 198.
32. ↑ Pugsley, *Fringe of Hell* 1991, p. 348.
33. ↑ The figures cited here should not be regarded as definitive but rather as indicative. Note: The figures for Canada, New Zealand, Australia and South Africa are included in the totals for Great Britain. Sources: Italy: Monticone, Alberto: *Gli italiani in uniforme, 1915-1918. Intellettuali, borghesi e disertori*, Bari 1972, pp. 217f, 228; Great Britain: Column 2 – Oram, *Death Sentences* 1998, p. 14 / Column 3 – Oram, *Military Executions* 2003, p. 3; France: Prost, *Quelle Mémoire* 2013, pp. 3f; Austria-Hungary: calculated from Platzter, *Todesurteile* 2004, pp. 71ff, and Lelewer, Georg: *Die Militärpersonen*, in: Exner, Franz (ed.): *Krieg und Kriminalität in Österreich*, New Haven 1927, pp. 124f; Canada: Column 2 – Oram, *Military Executions* 2003, p. 11 / Column 3 – Morton, Desmond: *The Supreme Penalty. Canadian Deaths by Firing Squad in the First World War*, in: *Queen's Quarterly* 79 (1972), p. 348; Belgium: Englander, David: *Mutinies and Military Morale*, in: Strachan, Hew (ed.): *The Oxford Illustrated History of the First World War*, Oxford 1998, p. 192; Germany: Englander, Mutinies 1998, p. 192; United States: U.S. Army Military History Institute; Australia: Pugsley, *Fringe of Hell* 1991, p. 133; New Zealand: Pugsley, *Fringe of Hell* 1991, p. 7; South Africa: Oram, Gerard: *Worthless Men. Race, Eugenics and the Death Penalty in the British Army during the First World War*, London 1998, p. 124; Russia and Japan: Baumann, Ulrich / Koch, Magnus (eds.): *Was damals Recht war ... Soldaten und Zivilisten vor Gerichten der Wehrmacht*, Berlin 2008, p. 184. In Bulgaria's case we have statistics for the period September 1915 through November 1916: around 2,500 soldiers received death sentences from Bulgarian courts-martial and approximately 800 were executed. See Dimitrova, Snezhana: *Exécutions pour l'exemple dans l'armée bulgare (1915-1918)* in: Cazals, Rémy (ed.): *La grande Guerre. Pratiques et expériences*, Toulouse 2005, p. 227.
34. ↑ Soldiers under age twenty had their death sentences commuted. See Platzter, *Todesurteile* 2004, p. 220.
35. ↑ Thompson, Mark: *The White War. Life and Death on the Italian front 1915-1919*, London 2008, pp. 273f.
36. ↑ Oram argued that Indian troops were treated much more harshly than other contingents of the British army. The fact that no statistics appear to have been kept on the court-martialing of Indian soldiers makes it impossible to determine how many may have been executed. Oram, *Worthless Men* 1998, pp. 104f.
37. ↑ Gooch, John: *Morale and Discipline in the Italian Army, 1915-1918* in: Cecil, Hugh / Liddle, Peter H. (eds): *Facing Armageddon. The First World War Experienced*, London 1996, p. 438.
38. ↑ Quoted in Wilcox, Vanda: *Discipline in the Italian Army 1915-1918*, in: Purseigle, Pierre (ed.): *Warfare and Belligerence. Perspectives in First World War Studies*, Leiden et al. 2005, p. 81.
39. ↑ Wilcox, *Discipline* 2005, p. 82.
40. ↑ British Commander-in-Chief Douglas Haig attributed high crime rates and lack of discipline among Australian troops to the failure to allow executions: "Nearly one Australian in every hundred men is in prison. This is greatly due to the fact that the Australian refuses to allow capital punishment to be awarded to any Australian." Haig, Douglas: *The Private Papers of Douglas Haig 1914-1919*, London 1952, p. 291 (Diary entry 3 March 1918). Australian General John Monash agreed with Haig that capital punishment should be used; he confirmed six death sentences. All were commuted to ten years penal servitude. See Carlyon, Les: *The Great War*, Sydney 2006, p. 477.
41. ↑ Bean, C.E.W.: *The Official History of Australia in the War*, volume 3, Sydney 1929, pp. 870f.
42. ↑ Oram, *Military Executions* 2003, pp. 168, 130.
43. ↑ Jahr, *Gewöhnliche Soldaten* 1998, p. 214.
44. ↑ Oram, *Death Sentences* 1998, p. 14.
45. ↑ Prost, *Quelle Mémoire* 2013, p. 12.
46. ↑ Jahr, *Gewöhnliche Soldaten* 1998, p. 248.
47. ↑ Jahr, *Gewöhnliche Soldaten* 1998, p. 2.
48. ↑ Jahr, *Gewöhnliche Soldaten* 1998, pp. 164f.
49. ↑ Iacobelli, *Death or Deliverance* 2013, p. 33.
50. ↑ Evans, Richard: *Rituals of Retribution. Capital Punishment in Germany 1600-1987*, Oxford 1996, p. 482.
51. ↑ Browder / Kerensky, *Russian Provisional Government* 1961, volume 1, pp. 199f.
52. ↑ Browder / Kerensky, *Russian Provisional Government* 1961, volume 2, p. 982.
53. ↑ The figures cited here should not be regarded as definitive but rather as indicative. Sources: Italy: Column 1 – Gooch, *Morale* 1996, p. 439 / Column 3 – Monticone, *Gli italiani in uniforme* 1972, pp. 217f, 228; Great Britain: Column 2 – War Office (ed.): *Statistics of the Military Effort of the British Empire in the Great War 1914-1920*, London 1922, p. 669 / Columns 3 and 4 – Oram, *Death Sentences* 1998, p. 15; Germany: Column 1 – *Statistisches Jahrbuch für das Deutsche Reich*, volume 41 (1920) *Kriminalstatistik für das deutsche Heer*, p. 164 / Columns 2 and 3 – Creveld, Martin van: *Fighting Power. German and U.S. Army Performance, 1939-1945*, London 1983, p. 139; United States: Mead, Gary: *The Doughboys. America and the First World War*, London 2000, p. 207; Austria-Hungary: Calculated from Platzter, *Todesurteile* 2004, pp. 71-75; Canada: Iacobelli, *Death or Deliverance* 2013, p. 5; France: Prost, *Quelle Mémoire* 2013, p. 12; New Zealand: Pugsley, *Fringe of Hell*, pp. 7, 347; Australia: Pugsley, *Fringe of Hell*, p. 133.
54. ↑ Thompson, *White War* 2008, p. 269.
55. ↑ Prost, *Quelle Mémoire* 2013, p. 12.
56. ↑ Zürcher, Erik Jan: *Between Death and Desertion. The Experience of the Ottoman Soldier in World War I*, in: Turcica 28 (1996), p. 246.
57. ↑ Ludendorff, Erich: *The Nation at War*, translator A.S. Rappoport, London 1935, pp. 103f.
58. ↑ Hitler, Adolf: *Mein Kampf*, translator Ralph Manheim, Boston 1943, pp. 525f.

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