

Crime and punishment on the
Western Front: the Australian Imperial Force
and British Army discipline

by

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DECLARATION

I declare that this thesis is my own account of my research and contains as its main content work which has not previously been submitted for a degree at any tertiary institution.

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ABSTRACT

The Australian Imperial Force in the First World War had a deserved reputation as an effective fighting force, and at the same time had the worst disciplinary record away from the frontline when compared with other Dominion forces and the rest of the British Army. Australian indiscipline is a subject that has been largely ignored, or when dealt with as in the *Official History* by C. E. W. Bean, has had to pass through the filter of the Australian Legend. This study examines the link between Australian indiscipline and the privileged position they held of being the only force immune from the death penalty, except for mutiny, desertion to the enemy and traitorous activity. This simple fact would have a major influence on the relatively high numbers of absentees and desertions within Australian ranks. General Headquarters in France (GHQ) saw these high levels of indiscipline as a direct result of Australian authorities not allowing their soldiers to be placed under the Army Act in full. Further differences surfaced between the British and Australians when it came to punishment, with Australian courts criticised by British Army authorities for not using the powers they possessed to impose penalties that would act as a deterrent, as well as their reluctance to impose Field Punishment No. 1. This study examines these general differences as well as dealing with a specific case of an Australian soldier charged with the murder of a French civilian, a case that attracted the attention of senior political and military figures when it transpired Australians were immune from the death penalty for murder. Maintaining discipline was a constant struggle for the authorities when faced with those determined to avoid frontline duty either by committing military crime or through self-maiming. In this context the high venereal disease rate is discussed and

evidence presented that this could be considered as a self-inflicted wound. The mutiny in the 1st Battalion of September 1918 is examined as well as a mutiny in a military prison in France in 1919. It is not the purpose of this study to tarnish the reputation of the many thousands of brave men who fought in the AIF, rather it is an attempt to understand the high levels of indiscipline within the context of the war on the Western Front and the disciplinary code under which they operated.

TABLE OF CONTENTS

	<i>Pages</i>
Abstract:	<i>i-ii</i>
Acknowledgement:	<i>iv</i>
Introduction:	<i>v-xv</i>
List of Abbreviations	<i>xvi</i>
Chapter One: Unfavourable Comparisons	1-30
Chapter Two: This Privileged Position	31-67
Chapter Three: Field Punishment	68-91
Chapter Four: The War Within the War	92-113
Chapter Five: The September Mutinies	114-176
Chapter Six: The Men and the Mutiny at No. 7 Military Prison, Vendroux Les Attaques, Calais, 1919	177-222
Conclusion:	223-229
Appendices:	230-255
Bibliography:	256-265

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INTRODUCTION

In the historiography of the First World War there has been surprisingly little written about discipline in general and Australian discipline in particular. What has aroused great interest in recent years is the application of the death penalty by the British Army, with debate surrounding the justification of what was the ultimate deterrent in maintaining discipline. The absence of the death penalty for Australian troops is a major theme of this study, focusing on how it affected levels of Australian indiscipline. The Australian Imperial Force (AIF) earned the reputation as a formidable fighting force and was recognized as such by General Headquarters in France (GHQ). At the same time, senior British and Australian officers despaired at the high levels of Australian indiscipline away from the frontline when compared with both other Dominion and British forces. Explanations for this Australian paradox have often been incorporated into the Anzac Legend, which the Australian official historian C. E. W. Bean helped to create. The legend has it that colonial society produced stronger, fitter, more self-reliant men who were democratic and civilian in outlook and who viewed military service as a job, having little time or respect for unnecessary British discipline and the class and privilege that this seemed to represent.¹

In Australia, public opinion perceives the Australian troops' capacity to become very effective fighters to be the result of their capacity for independent action. At the same time this independence gave the troops a healthy disrespect for unnecessary British Army discipline and, when they encountered it, the English class system. The Australian officer selection system (they were drawn from the ranks and promoted on

¹ C. E. W. Bean, *The Official History of Australia in the War of 1914-1918*: vol. vi, *The Australian Imperial Force in France during the Allied Offensive 1918*, Sydney: Angus and Robertson, 1942, pp. 1078-1093.

merit) is often compared favourably with the British system of drawing its officers from a specific class in society, even though by the close of the war British officers were increasingly drawn from a wider social range.² Moreover, the main body of British troops are portrayed by Bean as being unable to think for themselves, lacking flexibility and relying too much on officers to make every decision. Bean claimed that a deferential and subservient relationship existed between officers and men in the British Army, something he believed was generally absent in the AIF. At the same time it is necessary to recognize that there were differences in both societies, with Britain more deferential and Australia more egalitarian and democratic. However, when the Australians volunteered in their thousands they left one culture and joined another in the shape of the British Army.

Although the focus of this study is on the Western Front, McKernan's study of the Australians in Britain is one of the few that deal with problems of Australian discipline and his comments are relevant. In *The Australian People and the Great War* McKernan thought these cultural differences were significant and he describes how the Australians became 'transformed in the eyes of Britons from heroes to criminals during their stay in Britain from 1915 to 1919'.³ They were hailed as heroes when they first arrived in England because of the reputation they had gained at Gallipoli. Large crowds came out to greet them at the first Anzac march in London, with the King and Queen attending the Anzac service at Westminster Abbey. English newspapers urged people to come out in force 'to give the Anzacs a hero's welcome'. A grateful empire was giving thanks while Australia 'was basking in the glory back home'. The Australian soldiers were viewed by some as 'stronger, fitter than his British comrades', with the Bishop of Willesden, Dr. Perry, offering his own assessment of the

² G. Sheffield, *Leadership in the Trenches* (Basingstoke: Macmillan Press), 2000, pp. 30, 62-63.

³ Michael McKernan, *The Australian People and the Great War*. Melbourne: Thomas Nelson, 1980, p. 147. Chapter 6 is of particular interest 'From hero to criminal: the AIF in Britain, 1915-1919', pp. 116-149.

Australians as ‘independent, democratic, easygoing’; even the way they walk ‘betrays their character’. McKernan noted that there were dissenting voices in the press on the praise heaped upon the Australians. Some felt that the part played by British troops was being neglected and that the Australians were indulging in ‘colonial swagger’. One letter writer complained of the tendency ‘to elevate their achievements far beyond those of other troops’.⁴

According to McKernan, after initially being excited at the thought of visiting the ‘mother country’, tensions grew between the Australians and their hosts as the novelty began to wear off. Their behaviour on leave deteriorated from 1917, as men became more homesick and started making unfavourable comparisons between life and standards in Australia and those in Britain. Differing social attitudes surfaced in regard to women in the workforce, with the Australians critical of female labour, which McKernan believes caused deterioration in relations with English women.⁵ On leave, tensions grew as men on six times the pay of the average British soldier took advantage of the services on offer by the numerous prostitutes that were now plying their trade, especially in London and the garrison towns of Weymouth and Salisbury, places where large numbers of colonial soldiers were concentrated. By 1917, Australians were being seen as ‘amorous, dangerous, even lustful’, and were gaining a reputation for causing trouble.⁶

Australian relations with civil authorities began to deteriorate in 1917, according to McKernan. Magistrates in garrison towns had been lenient in 1916 on offending Australian soldiers, but now they started taking a tougher line as the crimes became more serious. Apart from petty thefts and drunken brawls, which were the most common Australian crimes, there was the occasional riot, usually caused by attempts to rescue a mate from the civilian police. As the Australians’ reputation for making

⁴ Ibid., pp. 120-25.

⁵ Ibid., pp. 129-30.

⁶ Ibid., p. 139.

trouble grew by 1919, magistrates were responding by handing out severer sentences to offenders. “When Canadians rioted at Epsom and killed a policeman’, according to McKernan, ‘early newspaper reports labelled the affair another Australian riot – so synonymous had the two words become’.⁷

There was deep concern regarding Australian behaviour after the signing of the Armistice, with Prime Minister Lloyd George and Colonial Secretary Walter Long recommending that ‘it was necessary to remove the Australians from London as soon as possible’. Overall, McKernan thought the Australians’ unpopularity was ‘derived more from differences in temperament between host and guest than from really wicked behaviour’.⁸ This conclusion is somewhat surprising considering the evidence he presented, but in one way demonstrates the power of the Anzac Legend in that bad, drunken and riotous behaviour can somehow be explained or excused by reference to alleged colonial attributes of egalitarianism and a more democratic outlook.

The Australians were not the only troops causing trouble in the country in 1919, as many British soldiers expressed their frustration at delays in demobilization. British Army discipline began to fall apart under the strain. Soldier strikes in both England and France in 1919 were not treated as mutinies, as both the British Army and the government, faced with the scale of this internal opposition, could not put down the protests by the use of excessive force. Although the main motive of most of the soldiers was to return to civilian life, a few would have been aware that the British Cabinet was considering retaining troops for intervention in Russia against the Bolsheviks.²² British discipline held up before the signing of the Armistice, but at war’s end it seems the social divide between leaders and led began to widen and the bonds that bound them during the war began to slacken.

⁷ Ibid., pp. 145-47.

⁸ Ibid., pp. 148-49.

The British Army is very often depicted as callous and unfeeling in its imposition of a harsh disciplinary code, and in particular the death penalty. However, Christopher Pugsley in *On the Fringe of Hell: New Zealanders and Military Discipline in the First World War* states that the British High Command often tempered the zeal New Zealand officers displayed for imposing the death penalty. He suggests the same enthusiasm was also evident in other Dominion forces in their attempt to be the best or to maintain the reputation of their forces. He argues the same approach was true of Canada and Australia, emphasizing that it was the Dominion courts martial that imposed the sentences.⁹ Contrary to current Australian belief, Field Punishment was administered to Australian soldiers in France. The Anzac forces in Egypt and on Gallipoli were exempt from Field Punishment at Birdwood's request as 'being unsuited to the colonial temperament'. However, in France Field Punishment was centralised to a Corps Field Punishment Compound, out of sight, which conflicted with the intended purpose of Field Punishment. According to Pugsley, this led to the false belief that Field Punishments were not carried out on Australians nor indeed imposed by Australian officers. Further, many of these punishment centres set up to deal with Field Punishments reflected a failure in command. Officers unfit for frontline duty were often in charge, with the day to day running left to NCOs whose actions at times were in breach of the regulations for punishment and went largely unchecked. This was often the case when the punishment was carried out by the military police.⁸ Field punishment is discussed in chapter three and it will be seen that there were major consequences that flowed from Australian reluctance to impose this type of punishment.

⁹ Christopher Pugsley, *On the Fringe of Hell: New Zealanders and Military Discipline in the First World War* (Auckland: Hodder & Stoughton, 1991), p. 298; see chapter six 'Field punishment', pp. 91-102.

⁸ *Ibid.*, p. 92.

One of the questions posed in Eric Andrews' *Anzac Illusion: Anglo-Australian relations during World War I* was whether Australian soldiers were more effective than others and he challenged the myth of the Digger. He was critical of Bean's approach in writing the *Official History*, as Bean revealed that his primary question in writing the history was 'How did the Australian people – and the Australian character, if there is one – come through the universally recognized test of this, their first war?'. Andrews believed this approach weakened Bean as an historian from the outset and influenced his selection of evidence. He saw far more diversity in Australian troops than Bean was prepared to accept. His view was that 'they were more than larrikins: they ranged from thugs, heavy drinkers and gamblers to sensitive men and teetotalers, who were often deeply religious and patriotic'.¹⁰ He thought the Anzac myth did not take into account that Australian battle performance improved as the war went on and that the quality of Australian officers was much better by 1918, having been purged of many incompetent officers who were in part responsible for indiscipline in Egypt, mistakes at Gallipoli, and 'fiascoes' in France. Andrews could reach no conclusion as to whether the Australians were better fighting men, preferring to see Australian performance peak in 1918 as a consequence of improved training and battle techniques. For Andrews, the Anzac Legend was a myth 'in every sense of the word'.¹¹ He thought elements of it were untrue, and yet it became a powerful instrument in the formation of Australian national identity.

The Digger stereotype came under scrutiny in Dale Blair's *Dinkum Diggers: An Australian Battalion at War*, a study of the 1st Battalion. In his conclusion Blair notes that the alleged attributes of egalitarianism, initiative and resourcefulness were not 'sufficiently evident' in the 1st Battalion to warrant them being advanced as national characteristics. Many soldiers, on the surface at least, displayed attitudes that fitted the

¹⁰ Andrews, E. M., *The Anzac Illusion: Anglo-Australian relations during World War I*, Cambridge: Cambridge University Press, 1994, p. 214.

¹¹ *Ibid.*, p. 215.

Digger stereotype of a civilian and democratic outlook, but they soon realized that the Australian Army was not a democracy and that ‘autocratic and adversarial’ methods were employed (as in most armies) to maintain discipline. This caused resentment in some and found expression in frequent acts of indiscipline, such as refusing to obey orders, insubordinate language, and at times striking a superior officer.¹² For Blair, the key to good officer-man relations was the establishment of a ‘rough equality’, by which officers sought to gain the respect of their men by taking the same risks as them. This ‘rough equality’ did not mean the officers treated the men as equals, Blair observed, as the biases employed in the selection of officers in the 1st Battalion mitigated against that. The need for officers to earn respect of their men was not just a characteristic of the AIF, Blair observed, as research by Sheffield and Liddle into the British Expeditionary Force indicates. Blair’s study revealed a lack of harmony in officer-man relations, describing the conflicts that existed in that relationship as forming ‘a significant and unpleasant undertone to battalion life, one which persisted throughout the war’.¹³ These relationships would reach their lowest point in the mutiny of September 21, which is discussed in chapter five.

In Glen Wahlert’s *The Other Enemy? Australian Soldiers and the Military Police* an insight is gained into the acrimonious relationship between Australian soldiers and the military police who were charged with keeping them under control. Wahlert describes raw Australian recruits as having a ‘civilian attitude’, which in part he believes explains their indiscipline while in Australia and which also suggests that they were not completely under the control of their officers and NCOs.¹⁴ In the manner of Bean, Wahlert says that ‘unlike Great Britain, Australian society did not provide a class of young men who had been bred to lead and another, more compliant group bred

¹² Dale Blair, *Dinkum Diggers: An Australian Battalion at War*, Melbourne: Melbourne University Press, 2001, pp. 188-89.

¹³ *Ibid.*, pp. 189-90.

¹⁴ Glenn Wahlert, *The Other Enemy? Australian Soldiers and the Military Police* (Oxford: Oxford University Press, 1999), pp. 22-23; chapter two, ‘Policing the 1st AIF’, pp. 18-47.

to follow'.¹⁵ However, Wahlert does take issue with Bean's uncritical account of the notorious Wazza riots in Cairo on Good Friday, 1915 involving Anzac troops. He describes Bean's version, which compared these riots to 'university ragging' or high spirits, as being consistent with his desire to create the Anzac Legend, and criticised Bean for relegating the riot to a note in the *Official History*.¹⁶ Military discipline was hard to inculcate into men by officers who were inexperienced and learning on the job, according to Wahlert, and there occurred a 'shortfall in command' that was compensated for by the creation of a military police to enforce military discipline on a youthful and vigorous group of men. The tension that this caused between the two groups would last the duration of the war and was aggravated by the poor selection process for the military police. Wahlert, quoting statistics from Australian provost marshals, showed that arrests and convictions of Australian troops in all three theatres of war were approximately twelve times greater than those of other troops. However, even with these figures Wahlert thought that the question as to whether indiscipline was inherent in the AIF was difficult to assess. His major cause of Australian indiscipline centred around notions of 'Australian' characteristics, their 'incorrigibly civilian' attitude and individualism, attributes which he sees as absent in British society. He contrasts the democratic attitudes of his Australian with the supposedly representative British stereotype of the rural worker's humility and deference.¹⁷ Wahlert produced a useful study of a topic that is rarely written about, but his conclusions are well within the parameters of the Anzac Legend that sees Australian characteristics as accounting for Australian indiscipline.

In *The Australian Army* Jeffrey Grey discusses the paradox of Australian combat achievements and the AIF's reputation for indiscipline. He states that much of the evidence used to support notions of widespread indiscipline among Australians is often

¹⁵ Ibid., p. 22.

¹⁶ Ibid., pp. 27-28.

¹⁷ Ibid., pp. 29-30.

anecdotal and unreliable, and pointed to the lack of detailed studies done on the question of discipline. The popular view of Australian soldiers as ‘warriors’ rather than ‘soldiers’, according to Grey, is interpreted to mean that they maintained battle discipline and thought that while away from the front military discipline was an infringement of their citizen’s rights. He thought this to be only true of a ‘proportion of the force’ and that overall Australian behaviour, when the context was taken into account, was ‘probably neither especially better nor markedly worse’ than troop behaviour in other armies.¹⁸

Grey had touched on the major problem I found when beginning this study: the lack of a detailed examination of discipline in general in the AIF. One of the major questions asked in this study is whether GHQ was over-reacting to Australian indiscipline and whether their persistent call for the Australians to be placed under the Army Act in full was justified by the need to maintain discipline. In short, did GHQ have a case against the Australians? The War Office records held at the Public Record Office in Kew provided GHQ’s view of the problems they encountered with Australian troops regarding discipline. From these records it was apparent they were not complaining about larrikin-type behaviour, but more serious offences of absence and desertion. The belief existed throughout the war that the execution of a few Australian deserters would radically improve discipline. Throughout these records there are recommendations and numerous Army Circulars providing guidance to the framing of charges, dealing with cases of self-inflicted wounds, accidental wounding, and sentencing. Overall, these records reveal the determination of GHQ to bring the Australians into line with the rest of the Army as far as the death penalty was

¹⁸ Jeffrey Grey, *The Australian Centenary History of Defence, Volume 1, The Australian Army*, Melbourne: Oxford University Press, 2001, p. 62; chapter 2 ‘The Army and World War I, 1914-1919’, pp. 37-69.

concerned, for they feared Australian battle effectiveness would suffer if discipline did not improve. There was a danger that they could infect the rest of the Army.

With the authorities being unable to execute Australians for capital military crimes, the records reveal that they could not even try for his life an Australian charged with murdering a French civilian, as it transpired that Australians were immune from the death penalty, even for murder. The British government put pressure on the Australian Government to amend their laws to allow soldiers charged with civilian murders to be handed over to French or British civilian courts to be tried for their life. The case of Private Banks who was charged with murdering a French civilian is discussed in chapter two and provides the first case study.

I have used both London and Canberra archives in this study, with the latter yielding sources that have hardly been used before, or opened up at my request. This has enabled me to assess problems from a better perspective and knowledge base as a result. The courts martial and service records of Australian soldiers held in the National Archives in Canberra (Series B2455) made it possible to analyse the disciplinary record of soldiers discussed in this study allowing me to make observations on charging and sentencing procedures adopted by Australian courts. These archives provided details of the mutiny of 1st Battalion men in September 1918, which is the subject of chapter five. I found details of a further mutiny in these archives that occurred in a military prison at Calais in March 1919, which resulted in Australians being convicted of mutiny and which is examined in detail in chapter six. The Australian War Memorial in Canberra was widely used and provided the bulk of the official records regarding the AIF.

Throughout the war there was a constant struggle between those who were determined to avoid frontline duty, either by committing military crime or through self-maiming, and the military authorities who were trying to make sure that crime did not pay. The high venereal disease rate is discussed in chapter four and the evidence

presented points to the distinct possibility that some men deliberately contracted the disease. Thus it could be considered a self-inflicted wound. The work of the Australian physician and medical historian, Colonel A. G. Butler, in *The Official History of The Australian Army Medical Services in the War of 1914-1918*, volume iii, *Special Problems and Services* proved a most useful source. This neglected work proved invaluable in discussing venereal disease rates, self-inflicted wounds, the education campaign waged against venereal disease, as well as containing detailed appendices and tables dealing with statistics of the war.¹⁹

In the absence of detailed studies, the causes and extent of Australian indiscipline have previously been difficult to assess. This study endeavours to find reasons for Australian indiscipline that are not tied to alleged Australian national characteristics but instead looks for explanations in the context of the war on the Western Front and the need for the British Army to maintain discipline. Its conclusions, nevertheless, raise considerable doubts about the validity of the Anzac Legend.

¹⁹ Colonel A. G., Butler, *The Official History of The Australian Army Medical Services in the War of 1914-1918, Volume III, Special Problems and Services*, Canberra, Australian War Memorial, 1943.

LIST OF ABBREVIATIONS

AAG	Assistant Adjutant General
AAMC	Australian Army Medical Corps
AIF	Australian Imperial Force
APM	Assistant Provost Marshal
ANZAC, Anzac	Australian and New Zealand Army Corps
Aust.	Australian
AWM	Australian War Memorial
BEF	British Expeditionary Force
CIGS	Chief of the Imperial General Staff
Cpl	Corporal
CO	Commanding Officer
CSM	Company Sergeant Major
DAC	Division Ammunition Column
DADO	Deputy Assistant Director Ordnances
DCM	District Court-Martial
DPS	Department of Personal Services
Div.	Division
FGCM	Field General Court Martial
Gen.	General
GHQ	General Headquarters (France)
GOC	General Officer Commanding
GSW	Gun Shot Wound
JAG	Judge Advocate General
L/Cpl	Lance Corporal
Lt.	Lieutenant
Lt-Col.	Lieutenant Colonel
Lt-Gen.	Lieutenant-General
Maj.	Major
Maj. General	Major General
MP	Member of Parliament
NAA	National Archives of Australia
NCO	Non-Commissioned Officer
NZEF	New Zealand Expeditionary Force
OC	Officer Commanding
OTC	Officer Training Corps
Pte.	Private
RE	Royal Engineers
RSM	Regimental Sergeant-Major
Sgt.	Sergeant
TPE	Termination of Period of Employment
TNA	The National Archives of the UK
VD	Venereal Disease

Chapter 1

UNFAVOURABLE COMPARISONS

The reputation of the all-volunteer army that formed the first Australian Imperial Force (AIF) as an effective fighting force has come down to us through the writing of C. E. W. Bean, the Australian official historian. He argued in *The Official History of Australia in the War of 1914-19* (hereafter *Official History*) that the AIF, along with other Dominion troops, were among the best military forces on the Western Front.¹ Australian military success is often attributed by Bean to the national character, a product of colonial life with its less stratified society and a vigorous democracy, which imbued the Australians with the ‘bush values’ of ‘mateship’, toughness, and self-reliance, even though the vast majority of the AIF were urban-dwellers, and a sizable group were born in Britain.² Bean’s belief in the benefits colonial life bestowed on an individual leads him to compare Australian troops with the home forces, who, in almost every instance, suffer by comparison in fighting qualities, physique, officer selection, officer-man relations, and self-reliance. However, the Australian discipline record suffers by any comparison with the home forces, or other Dominion troops, especially away from the front line. A major cause of this indiscipline lay in the fact that the AIF remained the only force immune from the death penalty, except for

¹ C. E. W. Bean, *The Official History of Australia in the War of 1914-1918*: vol. vi, *The Australian Imperial Force in France during the Allied Offensive 1918*, Sydney: Angus and Robertson, 1942, p. 1078 (hereafter, *Official History*).

² Jeffrey Grey, *The Australian Centenary History of Defence*, vol. i: *The Australian Army*, (Melbourne: Oxford University Press, 2001), p. 40.

mutiny, desertion to the enemy and traitorous activity.³ At the heart of these comparisons is Bean's belief that the British Army was 'almost feudal' in its outlook to discipline,⁴ with its officer-man relations based on class and characterised by deference to the point of subservience. By contrast, the Australian Army is portrayed as democratic, employing a meritocracy in officer selection with more informal officer-man relations, and a reliance on self-discipline.⁵ The Australian soldier was therefore 'less amenable' to the British type of discipline, and the merging of Australian troops within this British disciplinary system was bound to cause friction and a healthy disrespect for a military authority that was based on class and privilege.

Bean's views did not go unchallenged in the writing of the *Official History* as Brigadier General Sir James Edmonds, the British Official Historian of the Great War, commenting upon Bean's draft chapters, thought that Bean 'misunderstood' the British Army,⁶ and that he had not taken account of the great changes that had taken place during the war. However, Bean was not swayed, and his views have been very influential, setting the tone of the historiography of Australia's involvement in the Great War, and helped create the Anzac Legend. Although the 'Legend' has been undermined by recent studies, a residue of it remains, and acts like a filter by which all histories must pass. In many ways it has been a hindrance in our attempts to understand Australian involvement in the Great War and to treat the war itself as history. To understand the relatively poor disciplinary record of the Australians this

³ The relevant part of the Defence Act (Section 98) states: 'No member of the Defence Force shall be sentenced to death by any court-martial except for mutiny, desertion to the enemy, or traitorously delivering up to the enemy any garrison, fortress, post, guard, or ship, vessel, or boat, or traitorous correspondence with the enemy'.

⁴ C. E. W. Bean, *Official History*, vol. vi, p. 1084.

⁵ *Ibid.*, pp. 1085-87.

⁶ Australian War Memorial (hereafter AWM) AWM 38, 3DRL 7953/34, part 2, Edmonds to Bean, December 8, 1938.

‘Legend’ must be stripped back, so that Australian indiscipline can be understood in the context of the war on the Western Front, and life beyond the front-line.

The benefits a colonial life bestowed upon the Australian soldier appeared self-evident to Bean as he contrasted the character and attitudes to discipline of the Australian troops against the products of what he saw as a class-ridden English society. In explaining Australian success in their operations holding back the German Spring Offensive in 1918, Bean acknowledged that having been rested they were less exhausted and ‘suffered less strain, and loss’ than the ‘English, Scottish, and Irish divisions’. With this caveat in place, Bean goes on to argue that the key to understanding Australian success ‘lies in the character of the men who carried them out’.⁷ Australian infantry contained more veterans than the rest of the British Expeditionary Force (BEF), and although it ‘appeared’ to British observers that by 1918 their discipline had improved Bean thought it was more a case of learning that it was fruitless to rail against unnecessary restrictions and impositions behind the lines. Paradoxically, this perception of improvement in discipline was not reflected in the number of crimes committed, which actually increased in 1918. Despite having to accept the disciplinary regime of the army, Bean explained, the Australian soldier remained ‘incorrigibly civilian’, possessing an individualism ‘so strongly planted’ that it withstood years of subordination and with it came an unwillingness to be reconciled to ‘continuous obedience to order, existence by rule, and lack of privacy’.⁸ For Bean, the Australian infantryman ‘contrasted sharply’ in outlook to most English soldiers, whom he depicted as deferring to an officer-class drawn from the upper and middle classes, unable to act independently, needing officer approval for actions out of the ordinary; and with a lack of interest in the affairs of the world, these being best left to

⁷ C. E. W. Bean, *Official History*, vol. vi, p. 4.

⁸ *Ibid.*, p. 5.

their social betters. As class distinction was resented in Australia, the recruitment of officers' batmen and grooms from Australian-born men was difficult. However, English born migrants to Australia who had no such qualms filled a large proportion of these posts.⁹

It was in early childhood, Bean argued, that the Australian became imbued with the sense that he was master of his own life, something Bean thought brought a closer affinity with the Scots and the Americans than with most of the English. Unlike the English soldier, the Australian was a decision maker, whether it be saving a mate, 'securing a souvenir', or going on 'unlicensed' trips. The threat of punishment did not appear to concern him as much as it affected the other troops. Bean states that: 'He was bound to his fellows, and to the Old Country and the Allies, by a tense bond of democratic loyalty – a man must "stand by his mates" at all costs; and as he knew only one social horizon, that of race, most of his officers came within that category.'¹⁰

Australian 'effectiveness' is down to country life, but Bean is forced to admit that only one quarter of the soldiers 'had acquired their powers of determination, endurance, and improvisation from country occupations'. Troops from the overcrowded European cities are described by Bean as being 'visibly poor in physique, mentally more helpless, and morally less virile and capable of endurance, than those from country parts'.¹¹

Bean's Social Darwinist approach to the writing of the *Official History* led him to over-emphasise Australian performance and make unfavourable comparisons with the home forces, views that were challenged on several occasions by Edmonds. The correspondence of Edmonds and Bean on their draft chapters of their respective

⁹ Ibid., pp. 5-6.

¹⁰ Ibid. p. 6.

¹¹ Ibid. p. 1079.

histories reveals a contested Australian history. Edmonds believed most Dominion forces exaggerated their performance, and he in turn was criticised for his ‘grudging’ praise of them.¹² He was critical, too, of Dominion historians, whom he thought lacked the necessary knowledge of staff work, and who were too concerned with protecting the reputation of their respective countries to write an informed history. Edmonds, commenting in 1926 upon a Canadian account of Second Ypres, wrote: ‘if the Canadian Historical Section wants a vainglorious account it better write its own as the Australians have done. I am afraid nothing I can write will satisfy them.’ Bean did not escape criticism in Edmonds’ 1928 report where he says that Bean ‘conceives that everything happening to the Australians is unique and unparalleled’, a recurring criticism of Bean’s lack of understanding of the wider picture and his emphasis on Australian performance.¹³ Edmonds’ approach as an official historian was to write a description of events, largely devoid of praise or criticism of British leadership, leaving it to the readers to form their own conclusions on individual faults. Edmonds has been criticised for this approach as being a way of protecting the reputation of senior British commanders and the General Staff, although at times the informed reader could pick up the implied criticism of individuals.¹⁴

This difference in approach and emphasis came to a head in 1932 over comments made on Bean’s draft chapters for volume iv that brought out the underlying tension between the two over bias concerning Australian success and the nature of the British Army. Edmonds’ letter to Bean in September raised the ire of the Australian Official Historian by labelling his work a ‘corps history’. Furthermore, Edmonds stated that: ‘the draft chapters do not seem to me to be up to the standard of your published

¹² T. H. E. Travers, ‘From Surafend to Gough: Charles Bean, James Edmonds, and the making of the Australian Official History’, in *Journal of the Australian War Memorial* 27 (October 1995), p. 15.

¹³ Ibid.

¹⁴ Ibid. pp. 15-16.

volumes, and, as regards matters touching the higher command and really outside the scope of an ordinary corps history, they seem to me sometimes to be misleading'.¹⁵

Edmonds, perhaps reacting to Bean's own lack of generosity when alluding to British units, felt justified in casting a few aspersions of his own on the Australians when he wrote:

We all feel that the historian of the A.I.F. could afford to be a little more generous in his allusions to British units and formations. You are now aware perhaps that the home troops regarded the Australians and Canadians as the spoiled children of G.H.Q., who were given most rest, the pick of the fighting pitches and most of the praise – not that it was grudged. What they envied most was the corps formations of the Dominion divisions which gave them many advantages.¹⁶

Edmonds hoped, somewhat mischievously, that his words would not be misinterpreted and that he was only trying to be helpful so the 'history of the AIF may be in every way worthy of the fighting achievements of the Australian troops, in admiration of whom I yield to no one'.¹⁷

Bean was incensed by Edmonds' comments, which reduced his history of Australian involvement in the Great War to 'a corps history'. Furthermore, Edmonds had indicated that Bean was not qualified to comment upon the workings of the higher command, and that he exercised bias when dealing with British units. Worse, Australian success was owing to factors other than Bean's cherished view 'that colonial life and conditions produce, on the whole, a stronger fighting people'. Bean replied within a day of receiving Edmonds' comments, a measure of his indignation. He toned down his original drafts, but still replied in quite emotional terms. He told Edmonds that he was aware of the home troops' view of the Australians and Canadians as 'spoilt children'. As for the Australians getting 'the pick of the fighting pitches', he questioned whether any impartial observer would consider 'Pozières,

¹⁵ AWM 38, 3DRL 7953/34, part 2, Edmonds' letter to Bean, September 2, 1932.

¹⁶ Ibid.

¹⁷ Ibid.

Mouquet Farm, Bullecourt, and Fleurs [*sic*] in November 1916' to qualify as such.¹⁸ Bean further took issue with Edmonds' view that matters concerning the higher command were outside the scope of the Australian history when he wrote: 'If you do not recognise that the Australian official history of the war is more than an "ordinary corps history", then you will forgive my saying that it shows me that, far from having written too strongly, I must make my points even more clear in future chapters, and this I will endeavour to do'.¹⁹ Furthermore, according to Bean, this view was symptomatic of the attitude that prevailed during the war that was responsible for most of the difficulties that arose between British and Australian organizations. He reminded Edmonds that Australia 'voluntarily entrusted her forces to British commanders and staffs' and that the wisdom or otherwise of decisions made by them affecting Australian troops 'is a matter of proper concern for the Australian *Official History* and could well influence whether this particular form of cooperation might in the future, be deemed "unsuitable"'.²⁰

Bean is at his most revealing in his claim to impartiality. He stated that for his part he would not withhold facts 'whether they tell against Australians or for them'.²¹ He claimed that English commentators (not necessarily Edmonds himself) wished the Australians to admit that their successes were in part due to their getting the pick of the fighting pitches [fronts], most of the praise, as well as being in 'homogeneous formations which gave us all sorts of advantages'. This last point was surely worthy of more consideration by Bean who dismissed it as a cause of Australian success. He claimed the British really want the Australians to 'admit that our reputed success was due to these advantages arising from chance and from supposed favours, and not, in

¹⁸ AWM 38, 3DRL 7953/34, part 2, Bean's letter to Edmonds, October 11, 1932.

¹⁹ *Ibid.*

²⁰ *Ibid.*

²¹ *Ibid.*

the main, to the fact colonial life and conditions produce, on the whole, a stronger fighting people'.²²

Bean made sure that in the *Official History* Australian success was credited to a frontier ethos, rather than counter-explanations put forward by British leaders of the benefits of operating in homogenous formations. 'The blessed word "homogenous"', Bean wrote, as applied to the Australian and Canadian Corps, 'was then assumed to explain everything'. Although Bean admitted that Dominion troops were better under their own leaders, he would not accept the British view that Australian effectiveness was due to 'the fact that their divisions seldom left their Corps, and therefore operated constantly under leaders and staff who knew them'.²³

He was understandably prickly over charges that the Australians and Canadians 'were the spoiled children of G.H.Q.', pointing out that when colonial troops received more than their share of publicity it did not occur to some Englishmen that their efforts merited it and that at times 'it worked quite the other way'. At the heart of Bean's complaints is non-acceptance by some of the benefits a colonial life bestows on the individual and the focus on other causes: 'You Englishmen, however, are constantly impressing upon us that these chance advantages were the root of the matter; and this I believe to be radically wrong and untrue'.²⁴ Bean's cherished view of the benefits of colonial life in producing a stronger fighting people leads him to minimise instrumental causes of Australian success and undermines his claim to impartiality. This exchange with Edmonds was a turning point, for Bean hardened his subsequent views regarding his bush ethos, and became less willing to accept Edmonds'

²² Ibid.

²³ C. E. W. Bean, *Official History*, vol. vi, p. 1080.

²⁴ AWM 38, 3DRL 7953/34, part 2, Bean's letter to Edmonds, October 11, 1932.

comments, particularly over matters which challenged Bean's view of the English officer class.

Edmonds replied dryly that Bean's letter 'is of more than usual interest, and it puts me in possession of the Australian point of view, of which I shall avail myself'. He assured Bean that in dealing with the 8th of August, 1918 he would 'appropriate' Bean's phrase that 'colonial life and conditions produce, on the whole, a stronger fighting people'. Edmonds, in a conciliatory mood, said he believed it to be true, and in his experience of the engineers, men who had worked overseas in Australia, South Africa or the Argentine, benefited from the experience and turned out to be better engineers and fighting men 'than the product of the great engineering firms at home'.²⁵ However, Edmonds cautioned Bean that comparisons made when the Australians arrived in France between the Australians and the home divisions there should take into account that these divisions 'had lost so heavily and had been so much diluted by very young officers and untrained other ranks that they did not fairly represent the old country's fighting force'. He also admitted that the Army and Navy did not attract the 'best brains' due to the poor financial prospects. He quoted Dr Wheldon of Harrow, who forty years earlier had told Edmonds, 'No clever boy goes into the Army', and Edmonds thought it 'fairly true'.²⁶ He lamented the fact that the Army made little effort to 'attract talent' and added that the few 'clever' boys generally go into the Royal Engineers 'and are soon lost to soldiering, indeed, acquire a contempt for it!'. Edmonds, commenting upon British Staff Officers, stated that at the start of the war there would have been 'no more than a couple of dozen really competent ones, and that the situation was worse now'. He admitted to Bean that those in a position to know at GHQ were of the view that the staff work of the Australian Corps and

²⁵ Ibid., Edmonds to Bean, November 14, 1932.

²⁶ Ibid.

Divisions (except the 2nd) was by 1918 of a higher order than the rest. In an attempt to repair some of the damage of his previous letter, Edmonds suggested that in future they would have 'to look to Australia for a future C-in-C [Commander-in-Chief] or at least the C.G.S [Chief of the General Staff]'.²⁷

It seems clear from Edmonds' reply that he accepted he had been provocative, and was now prepared to concede ground to Bean on the benefits colonial life bestowed upon the individual. He went further than he needed to in appeasing Bean with his observation of the Army's inability to attract 'talent', and his criticism over the quality of British staff work at the start of the war. He prudently did not respond to Bean's reply concerning his comments on the perceived advantages the homogenous formations gave Dominion troops, preferring instead to re-establish good working relations for the future.

Bean was not alone in believing that the British Army disciplinary regime was 'feudal'; in fact German leaders envied the severity of the British military code. Crown Prince Rupprecht of Bavaria noted in his diary in December 1917: 'The administration of discipline by the English is very rigid. Whilst on our side there is known to me only a single case in which a soldier on account of aggravated refusal of duty in the face of the enemy was shot.'²⁸ The rigidity of the British disciplinary code was also envied by General Erich von Ludendorff, First Quartermaster-General 1916-18, who lamented in his memoirs the fact that the absence of a British-style military discipline was a significant factor in Germany's defeat.²⁹ The British Army executed 351 British soldiers, which represents just over eleven per cent of those who were condemned to death. By contrast, the much larger German Army executed forty-eight of the 150 men

²⁷ Ibid.

²⁸ *Mien Kriegstagebuch*, vol. vii, pp. 303-4, quoted in C. E. W. Bean, *Official History*, vol. v, p. 25.

²⁹ Gerard Oram, *Military Executions during World War I* (Basingstoke: Palgrave Macmillan, 2003), p. 19.

it condemned to death.³⁰ Far fewer Germans were executed, but of those condemned the execution rate was much higher than the British at over one third. Liberal politicians in Germany resisted the protests of their High Command by modifying the military code by a gradual ‘tightening’ of the rules regarding evidence and trials which constrained German commanders in their attempts to secure death sentences. Further alterations were made to the military code in 1917 that effectively banned field punishments, allowed more lenient sentences for the crimes of absence and desertion, and abolished restraints on prisoners. These reforms came at a time, paradoxically, when Germany was effectively under military control. Ludendorff, who presumably did not have the power to prevent these reforms, commented in his memoirs: ‘Those in the homeland constantly pushed to liberalise military law while the enemy stiffened his. They simply couldn’t accept the necessity to inflict heavy sentences let alone the death penalty.’³¹

The number of French soldiers executed numbered approximately 600, the numbers remaining comparable with the British figures due to their much larger army.³² A further comparison shows that 340 civilians were executed in Britain for criminal offences during the period from 1901 to 1924.³³ Therefore, the AIF and other Dominion Forces that made up the British Army on the Western Front during the Great War faced a tougher disciplinary regime than either of the two major combatants, France and Germany. It was on the Western Front that British soldiers were especially vulnerable as the death penalty was applied there, proportionately, more than anywhere else. With the Australians immune from the death penalty, two

³⁰ A. Babington, *For the Sake of Example* (London: Leo Cooper, 1983), pp. 3, 189; G. Sheffield, *Leadership in the Trenches* (Basingstoke: Macmillan Press), 2000, pp. 62-63.

³¹ Gerard Oram, *Military Executions during World War I*, p. 36.

³² *Ibid.*, p. 18.

³³ G. Sheffield, *Leadership in the Trenches*, p. 63.

levels of discipline were imposed on British troops that caused great consternation to the British High Command. Because of the rigidity of the British military code the British Army remained the only army on the Western Front not to experience serious disciplinary problems at the frontline. The French, whose losses had been far more severe than the British, had to resort to a defensive role owing to large sections of their army refusing to attack after the failed Nivelle offensive in 1917. The German Army, too, in the latter part of 1918 began to crumble. It can therefore be argued that the strict British disciplinary code held up in the face of major setbacks and appalling losses. The Australians held up too, in battle, but experienced problems with discipline at the front in late 1918 when the 1st Battalion refused to return to the line. But away from the frontline their discipline remained a problem. Their disciplinary record was worse, too, in all other areas where the death penalty was not an option of punishment.

Although Bean overstates the benefits colonial life bestowed on the individual in the *Official History* and in his exchanges with Edmonds, cultural differences played a part in Australian success on the battlefield. While it is difficult to see how an army drawn largely from Australian urban centres produced a better fighting people, it can be argued that civilians joining an army that encouraged initiative would produce a more effective fighting force, especially if they remained in homogenous units as the Australians largely did. The Australian formations were in many ways a reflection of the values of the civilian population back home in that there were less formal inter-rank relations, a product of a less hierarchical society, and with it came a civilian attitude to the task of soldiering. In contrast, the British Army, at the start of the war, was less likely to mirror 'civilian values directly' than the continental armies of France and Germany, according to Watson, owing to the fact that it was a smaller, volunteer professional army, given the task of garrisoning the empire and not linked to

mainstream British society through conscription.³⁴ During 1915-16 the BEF experienced a massive expansion under Lord Kitchener, which gave the Army a more 'civilian character' than before. On September 10, 1914, British Prime Minister Asquith reported to Parliament that 'practically 439,000' men had volunteered in a ten-day period. A further 2,500,000 volunteers, who came from across the social range in Britain, would follow this first wave.³⁵ By contrast, in the pre-war period the army was unable to attract citizens of ability and made do with the least educated and the less intelligent, which in many ways justified the retention of strict command and disciplinary structures, and as a consequence stifled initiative. The Army was therefore out of step with the British perception of themselves as 'open-minded and freedom-loving people' and with its experience on arduous colonial campaigns behind it had seen the need to maintain a strict disciplinary code to keep the lowest in society in check.³⁶ However, as Edmonds told Bean (above) the Army changed during the course of the war, so by the second half there was increased delegation of command and a more enlightened approach to the better quality civilian soldiers that were now in their ranks. This helped cultivate initiative that was so lacking in the pre-war army. The Australians therefore left their culture to join another one, the British Army's culture, and brought with them the positive attribute of initiative. This cultural factor was not lacking in British society. It was more a case that the Australians, without a pre-war army infrastructure to contend with, were able and willing to foster initiative within their ranks.

³⁴ Alexander Watson, 'Culture and Combat in the Western World, 1900-1945', in *The Historical Journal*, 52, 2 (2008), pp. 536-7.

³⁵ Malcolm Brown, *The Imperial War Museum Book of The First World War*, London: Sidgwick & Jackson, 1993, pp. 42-43.

³⁶ Alexander Watson, 'Culture and Combat in the Western World, 1900-1945', p. 537.

The authority to discipline soldiers in the Great War came from Parliament, which annually reviewed and approved the Army Act that provided the disciplinary conditions under which troops lived and worked. Minor offences could be dealt with summarily by the commanding officer with more serious offences being dealt with by a court-martial. The most common form of court-martial convened in France was the field general court-martial, which handed down the vast majority of the death sentences passed on British soldiers. The fate of these men lay entirely with the commander-in-chief, who was charged under the *Manual of Military Law* ‘to maintain discipline among the troops and other persons forming part of or following an army’. Although the last word lay with the commander-in-chief, opinion was sought from various officers in the chain of command, including the convicted man’s immediate commanding officer, his brigade and divisional commanders, and their reports had the potential to influence his eventual decision. There was no avenue of appeal for the condemned men, as existed in the civilian courts,³⁷ and justice was left to be dispensed by the commander-in-chief who had also to weigh up the current state of discipline in the man’s unit. The Proceedings of Courts Martial from 1914 to 1920 (see Table 1.1 below) indicate the type of sentences that courts martial imposed on offenders.

Field punishment, as a means of punishing troops for less serious crimes, became more prevalent after flogging was finally abolished in 1881.³⁸ Field Punishment Number 1, in addition to a sentence of hard labour, involved public humiliation for the soldier by having hands and feet fettered to a fixed object for a period of two hours per day, but not exceeding three out of four days, in view of his comrades. Field Punishment Number 2 was similar; however, the prisoner could not be tied to a fixed object but could be kept in restraints to prevent escape. It was seen as a better option to

³⁷ Gerard Oram, *Military Executions during World War I*, p. 34.

³⁸ *Ibid.*, p. 21.

Table 1.1

Summary of Analysis of Proceedings of Courts Martial
at Home and Abroad: August 4, 1914 to March 31, 1920.³⁹

Officers:		Other Ranks:	
Death	3	Death	343
Life Penal Servitude	0	Life Penal Servitude	143
15 Years' Penal Servitude	0	15 Years' Penal Servitude	461
Penal Servitude: (3-12 years)	8	Penal Servitude: (3-12 years)	6,812
Imprisonment/Hard Labour (6-24 months)	46	Imprisonment/Hard Labour (6-24 months)	38,041
Imprisonment (6-24 months)	24	Imprisonment (6-24 months)	1,873
Detention (3 months, 6 months, 6 months+)	0	Detention (3 months, 6 months, 6 months+)	105,231
Field Punishment No. 1	0	Field Punishment No. 1	60,210
Field Punishment No. 2	0	Field Punishment No. 2	20,759
Discharged with Ignominy	0	Discharged with Ignominy	970
Cashiered	377	Cashiered	0
Dismissed	1,085	Dismissed	0
Forfeiture/Seniority/Rank	954	Forfeiture/Seniority/Rank	27,639
Reprimand	2,638	Reprimand	0
Fines/Stoppages	34	Fines/Stoppages	33,469
Quashed/Not Confirmed/Remitted	86	Quashed/Not Confirmed/Remitted	4,900
Suspended	0	Suspended	9,468

detention, which would keep the convicted soldier out of operations. The regimental police who were nominally under the control of the battalion RSM usually administered Field Punishment when the battalion came out of the line. It was carried out in view of the soldier's comrades to humiliate the accused and at the same time to act as a deterrent. By 1916, Field Punishments could be summarily imposed by a commanding officer for up to a period of twenty-eight days without a court-martial,

³⁹ Source: Reproduced from Julian Putkowski, "The Pardon Campaign", website <http://www.association14-18>.

with a maximum period of up to three months that a court-martial could impose.⁴⁰ Therefore, Bean's view of the 'feudal' nature of discipline in the Army has merit when Field Punishment and executions are considered. The severity of the disciplinary regime is evident in the figures that indicate that 92 per cent of all men tried by court-martial were found guilty.⁴¹ These issues will be discussed in future chapters, but the table of convictions does indicate that British soldiers, like the Australians, were by no means passive when facing the military hierarchy.

Of all the unfavourable comparisons Bean makes with the home forces none is so demonstrably wrong as his view of the English officer class and the gap that he believed existed between leader and led. As good officer and other rank relations play a vital role in the maintenance of discipline and morale in a unit it is worth examining these perceived differences. In 1938, Edmonds, commenting upon Bean's draft chapter for volume vi of the *Official History*, was clearly at odds with his understanding of how the British Army had changed during the course of the war with regard to the social distinction between officers and men, and the methods of commissioning officers from the ranks. Bean had contrasted the system that operated in the AIF where a man commissioned would invariably stay with his old unit, to the British principle of placing the commissioned man with a different unit. Behind this was Bean's view that the social gulf that existed between the classes afforded the newly commissioned officer an in-built deference necessary for military discipline, and therefore that previous familiarity with men from his unit would jeopardise that. For Bean, social distinctions within the AIF were 'unrecognised',⁴² therefore officers had to earn the respect of their men, as deference was not a means of control. Edmonds did not agree,

⁴⁰ Christopher Pugsley, *On the Fringe of Hell*, p. 91.

⁴¹ G. Sheffield, *Leadership in the Trenches*, p. 62.

⁴² C. E. W. Bean, *Official History*, vol. vi, p. 20.

and quoted General H. R. Davies (Oxford & Bucks, L.I.): ‘in the war N.C.O.’s were often promoted in their own battalions. A company sergeant major of my Regiment in 1914 became temporary commanding officer in 1918.’⁴³

Edmonds added that this was the case in the cavalry, ‘even in peace time’, with the commissioned ‘ranker’ being given financial assistance from other officers to pay his way in the cavalry mess. He added: ‘Many mechanics, labourers, &c., became officers in British regiments, and no social distinctions were made between them and other officers . . . It did not matter whether a man was Jew or Gentile, Duke’s son or cook’s son, we took him for what he was as a man.’⁴⁴

Bean appropriated Edmonds’ sentiments to apply to the selection of Australian officers in the *Official History*, stating that by 1918 few Australian commanders paid any regard to the social status of the men whom they selected to be officers. Education often figured in the selection, as did manners occasionally, but Bean, paraphrasing Edmonds, wrote: ‘it mattered not whether a man was a labourer or barrister, tradesman or clerk, mechanic or farmer, engine-driver or policeman, baker or stockbroker, the - average battalion commander now had his eye only on those qualities that fitted him for leadership, intelligence, courage, reliability, and strength of will; and knowing that he was selecting his own officers he was all the more careful about the choice’.⁴⁵

Earlier, Edmonds commented upon what appears to be a piece of appalling snobbery by Bean who wrote ‘that it was distasteful for Australian officers to have to associate with the officers of the New Army’. Edmonds asked Bean whether this comment was really necessary, adding that ‘if you must say it point out that the old type of British regimental officer had died in 1914. I myself did not relish associating

⁴³ AWM 38, 3DRL 7953/34, part 2, Edmonds to Bean, December 8, 1938.

⁴⁴ Ibid.

⁴⁵ C. E. W. Bean, *Official History*, vol. vi, p. 20.

in hospital and elsewhere with the officers of the New Army.’⁴⁶ Bean was to omit this from his history but made the point that: ‘to many of the finest Australian officers it was a new and distasteful experience to be plunged (as occasionally happened during their war service) into English circles where, though they themselves were often received with great kindness, people of the circles from which they had enlisted were obviously held to be outside the social pale’.⁴⁷

Edmonds added that the old type of British soldier ‘preferred to be led by what he called “a bit of blood” and loathed the “ranker” officer if he retained as he generally did N.C.O. manners’. Edmonds was referring to an army that no longer existed and accused Bean of misunderstanding ‘the Army which promoted from the ranks and loved old Wally Robertson’. However, Edmonds made little impact on Bean’s ideological conception of the British, their army, and his perceived notions of the social mores of the day.

Edmonds commented further upon the draft chapter responding to Bean’s claim that English officers’ messes reflected the social class from which the officers were drawn with conditions there quite superior to what the common soldier had to endure. By contrast, Bean had referred to the Australian tradition that ‘forbade’ officers from eating food and drink different from the other ranks. Edmonds, who was in a position to know, being stationed for long periods at GHQ, wrote: ‘Not even Staff messes, not even at G.H.Q. We drew the same rations as the men, went without tablecloths and our servants did the cooking. When dear old Professor David joined our mess we took a little more trouble. We did get port.’⁴⁸ However, this would not interfere with Bean’s view of the English officer class and in the *Official History* he wrote: ‘Whereas, for

⁴⁶ AWM 38, 3DRL 7953/34, part 2, Edmonds to Bean, December 8, 1938.

⁴⁷ C. E. W. Bean, *Official History*, vol. vi, p. 20.

⁴⁸ AWM 38, 3DRL 7953/34, part 2, Edmonds to Bean, December 8, 1938.

example, in the British Army it was accepted as healthy – indeed almost essential – condition that, even at the front, officers’ messes should be maintained with at least some faint reflection of the style to which the officer class in England was accustomed’.⁴⁹ Conditions at GHQ were described as ‘sparse’ by Bean in a footnote, the only recognition of Edmonds’ comments.

Bean contrasts the Australian system of selection of officers from the ranks to what he sees as selection by the British from a specific stratum of society. He ignored Edmonds’ protests on the matter as well as the fact that over 100,000 officers were commissioned from the ranks of the home forces during the war. In almost every comparison he makes between the home forces and the Australians, it is the home forces that suffer. He claimed that the beneficial result of the Australian selection process of officers was that the Australian officer was much closer to his men than his British counterpart, adding that he had to rely on his strength of personality as a natural deference did not exist. The notion that the social gap between officers and other ranks could not be bridged is one that Peter Liddle sees as one of the great misconceptions of the Great War. As the former curator of a significant collection of World War One letters and diaries, he states that:

Of all the misconceptions purveyed about the First World War, few so flagrantly deny the truth as the implication that across the socio-military gap between officer and man in the ranks there would be little kinship, no common identity in their wants, needs, fears, no understanding and sympathy based upon mutual respect. The letters and diaries of men on both sides of the divide between regimental leaders and led, conclusively refute such an interpretation.⁵⁰

Furthermore, German officers noted the respect other ranks had for their officers when they examined British prisoners. They also commented on their ability to maintain

⁴⁹ C. E. W. Bean, *Official History*, vol. vi, p. 21.

⁵⁰ Peter H. Liddle, *The Soldier's War: 1914-1918* (London: Blandford Press, 1988), p. 80.

morale, and their ‘iron discipline’, which they saw, perhaps in an exaggerated fashion, as being maintained by a ‘severe code of punishments’.⁵¹

Bean’s claim that British officers were drawn from a specific social class is largely true for the pre-war army, but the pressure of war was to change that radically. As far back as 1910 the Adjutant-General, commenting upon the Regular Army, stated: ‘We are coming to the end of our tether as regards candidates from the limited class which has hitherto supplied the commissioned ranks’.⁵² On August 1, 1914, 733,514 men served in the British Army and this figure had grown to an estimated 3,563,466 by November 1918, with a total of 5,704,000 having served during the war.⁵³ Exceptionally high casualty rates sustained by junior officers, many drawn from an elite class, which suffered disproportionately to other groups, meant that change was forced upon the Army. Although the Army did try to maintain the existing social structure of the officer-corps by insisting that officer candidates possess an Officer Training Certificate (OTC), graded A from a public school; or B, gained from a University; the sheer number of casualties forced the ‘abandonment’ of this policy. However, by adopting a policy of awarding temporary commissions (regular commissions were much harder to come by), the radical change in the social composition of the officer-class was limited to the war period, as these officers were demobilised in 1918-1919. As Sheffield observes, ‘the post-war officer-class more closely resembled that of 1913 than that of 1918’.⁵⁴

An analysis of the occupations of demobilised officers up to 1920, conducted by the War Office, shows that the social composition of the wartime officer class had

⁵¹ G. Sheffield, *Leadership in the Trenches*, p. 63.

⁵² *Ibid.*, p. 30.

⁵³ *Statistics of Military Effort of the British Empire During the Great War 1914-20* (hereafter *S.M.E.*), (London: HMSO, 1922), pp. 29-30, quoted in G. Sheffield, *Leadership in the Trenches*, pp. 30-31.

⁵⁴ G. Sheffield, *Leadership in the Trenches*, pp. 30-31.

undergone a radical change. On November 11, 1918, 164,255 officers were serving in the army. An analysis by the War Office of the dispersal certificates of 144,075 officers, who had been demobilised since May 12, 1920, placed these men in broad categories of occupation. Sheffield examined the three largest groups: 'commercial and clerical', 'students and teachers', and 'professional', to gain an insight into the social composition of the 1918 Army officer corps. Sheffield showed that although the 'commercial and clerical' group included men from a lower social status they still managed a significant 36.5 per cent, or 58,706 serving officers. Within each occupational group of those enlisted it was found that 44 per cent of 'professional men', 38 per cent of all 'students and teachers', 8 per cent of clerical workers, and 0.2 per cent of labourers served as officers.⁵⁵ These figures illustrate that social change was forced upon the army as they had already drawn heavily on the 'gentleman' class, which was just too small to cope with the demands on it. This left men from social and educational backgrounds not normally considered suitable for a commission serving as officers during the war. Furthermore, many of them were craftsmen, as the figures for 'engineering' indicate. It is no surprise that the middle classes represent the largest group from which officers were drawn. However, Sheffield makes the point that considering the number of working class soldiers serving they 'were grossly under-represented in officers' messes', which leads him to conclude that 'a limited meritocracy emerged in the British Army during the Great War'.⁵⁶ A similar pattern of selecting officers disproportionately from non-manual backgrounds, such as commerce, the professions and clerical work, emerges in the AIF.⁵⁷ There are clear

⁵⁵ Ibid., pp. 31-32.

⁵⁶ Ibid., p. 33

⁵⁷ Eric M. Andrews, *The Anzac Illusion: Anglo-Australian relations during World War I* (Cambridge: Cambridge University Press, 1993), p. 151.

indications that many men were promoted on merit in the British Army, and the picture that Bean paints of a class-ridden wartime army needs amending.

In his idealizing the Australian infantryman and officer Bean is left with the thorny problem of explaining the high levels of Australian indiscipline, particularly absence without leave and desertion, against his central thesis of a bush ethos. After all, the Canadians and New Zealanders could well claim similar frontier values and yet their disciplinary record was much better by comparison. By 1916 the levels of desertion and absence without leave were causing great concern to the High Command and senior Australian officers. It seems clear from the prevalence of these military crimes that Australian troops were fully aware of where they stood in respect of the Defence Act (Section 98), which states: ‘No member of the Defence Force shall be sentenced to death by any court-martial except for mutiny, desertion to the enemy, or traitorously delivering up to the enemy any garrison, fortress, post, guard, or ship, vessel, or boat, or traitorous correspondence with the enemy; and no sentence of death passed by any court-martial shall be carried into effect until confirmed by the Governor-General’.⁵⁸

Lieutenant General Sir William Birdwood, commander of I Anzac Corps, thought that if this were legal, then it should be removed, so soldiers serving side by side were subject to the same law. The War Office, however, recognised its legality and cabled the Commonwealth Government in July 1916 seeking their agreement to place its troops under the Army Act without restriction. The request came at a time when the first campaign over conscription was about to begin and so the Australian Government was to delay its answer by several months. There was no reply by December 1916. Birdwood shared his fear with Lieutenant General Sir Henry Rawlinson, commander

⁵⁸ C. E. W. Bean, *Official History*, vol. v, p. 25.

of Fourth Army, to which I Anzac Corps was now attached, that Australian discipline would suffer ‘when the men realise that they are not on precisely the same footing in all respects as all the other soldiers serving in France’.⁵⁹ In the same month three files of Australians convicted of desertion in I Anzac were sent to GHQ with the recommendation from the brigadier and divisional commander that in each of these cases the death sentence be applied. It seems clear that an example was needed in Rawlinson’s army as of 182 men who were convicted of absence without leave, 130 were members of I Anzac. Not surprisingly, Rawlinson wrote to the Commander-in-Chief, Field-Marshal Sir Douglas Haig, saying that ‘I cannot be responsible for the maintenance of discipline among the Australian forces under my command unless the required alteration in the law is made forthwith’.⁶⁰

Haig had written to the War Office in May and December 1916 calling for an amendment of the Australian Defence Act as a matter of ‘grave urgency’. He considered the lack of the death penalty to be the cause of an ‘alarming’ increase in desertion rates among Australian troops. Young reinforcements and more experienced men returning from convalescence were deserting on their return from England to the front. Furthermore, in February 1917 the I Anzac sector came under the jurisdiction of the Fifth Army Police who reported that in recent weeks, of forty-three prisoners who had escaped their custody, thirty were Australians.⁶¹ In the same month, Haig again pressed the War Office on the matter and the Army Council cabled Australia: ‘The matter is of utmost gravity for the discipline of whole army’.⁶² The Australian Government replied, and on the recommendation of Senator Pearce, would not agree to the full application of the Army Act. Having failed to carry the conscription

⁵⁹ Ibid., p. 26.

⁶⁰ Ibid.

⁶¹ Ibid., pp. 26-27.

⁶² Ibid., p. 26.

referendum in October 1916 the Australian Government would have had little chance of success in a future referendum if they had agreed to the execution of Australian troops convicted of military crimes.

It was a decision that was unacceptable to the British High Command and the call for its amendment came again as early as May 1917, this time by two senior Australian officers. The Australian 4th Division was experiencing high numbers of absences and an example was needed. Brigadier William Glasgow, commander of 13th Brigade and Major General William Holmes, Division commander, pressed Birdwood to ask for the Act to be amended so the death penalty could be inflicted ‘in a few cases’. Birdwood agreed, and told Pearce the high levels of desertion could be stopped with the infliction of the death penalty ‘in one or two extreme cases’.⁶³

Haig, in his letter to the War Office in July 1917, refuted the argument that the freedom that colonial life offered made men ‘less amenable to discipline’. He believed the situation had deteriorated with regard to the high rates of desertion and absence without leave among Australian troops since he wrote in January, a state of affairs he attributed ‘solely’ to the lack of the death penalty. He feared that unless the Australian Government agreed to remove the restriction regarding the death penalty ‘the fighting efficiency of these Divisions will deteriorate to an extent which may gravely affect the success of our Arms’. The comparative figures he provided with the rest of the BEF (see below) Haig described as ‘striking’, and needed no further comment from him.⁶⁴

Convictions for desertion in the BEF, January to June 1917.

	<i>Total</i>	<i>Average number per Division</i>
5 Australian Divisions	171	34.2
57 Remaining Divisions in BEF	506	8.87

⁶³ Ibid., p. 28.

⁶⁴ The National Archives of the U.K. (hereafter TNA): War Office (WO) WO 32/5484, item 86, letter from Field-Marshal Sir Douglas Haig to Secretary of State for War, July 27, 1917.

When comparisons are made with the New Zealand Division, to which the death penalty could be applied, only eight cases of desertion are recorded in the same period. This led Haig to conclude that ‘the argument that is occasionally put forward that the men from the Overseas Dominions are less amenable to discipline, as the result of the freedom of their ordinary life, is not borne out by the facts’. He said that similar results are found when other offences are examined, although Haig did not provide figures for the New Zealand Division. The offence of absence without leave, Haig defined as being ‘akin’ to desertion, because those cases, which result in a court-martial, are usually of men whose absence has kept them out of the ‘firing line’. He wrote: ‘One Army reports that this offence is very prevalent in the three Australian Divisions’, as the figures provided by Haig indicate.⁶⁵

Convictions for Absence in One Army, June 10 to June 30, 1917.

	<i>Total</i>	<i>Average number per Division</i>
3 Australian Divisions	63	21
22 Remaining Divisions in the Army	42	1.9

Haig thought that once the Australian Government became aware of these facts they would consider amending the Defence Act. He set out to assure them by stating that: ‘the power of inflicting the death penalty is very sparingly used. It is only in cases where the offence is of a very deliberate character and an example is urgently required, that such sentences are confirmed.’ However, he warned them, too, that unless this restriction was lifted he would not be responsible for the ‘serious consequences’ that may ensue.⁶⁶ His concern was not just with deteriorating Australian indiscipline but how their example would affect the rest of the army. Birdwood had suggested, independently of GHQ’s position, that only desertion would carry the death penalty

⁶⁵ Ibid.

⁶⁶ Ibid., item 87.

and the Australian Government could sanction this, if and when conscription was in place and enlistments were assured.⁶⁷ However, the Australian Government refused to amend the Act as enlistments were waning. They had behind them a failed conscription referendum and the prospect of a further referendum in 1917.

Bean, although he quoted extensively from Haig's July 1917 letter in the *Official History*, made no mention of Haig's dismissal of the argument that Dominion forces were 'less amenable to discipline', nor did he comment upon the low desertion rate among the New Zealanders, except to present the figures. Bean's approach was to isolate the men who committed these offences, whom he sees as slighting the reputation of the AIF, as well as to provide mitigating circumstances. According to Bean, the problems with absences in the 4th Division, discussed above, came after an 'exceptionally severe trial at Bullecourt' and became worse when the Division was reinforced and sent north to Messines.⁶⁸ This Division, Bean explained, whilst training in Egypt had been forced to accept many men rejected by the 1st and 2nd Divisions. Therefore, the Division had more than its fair share of 'hard cases' and 'ne'er-do-wells'. Persistent deserters, Bean stated, 'were always men of this type – in some cases actual criminals who had enlisted without the intention of serving at the front, and ready to go to any length to avoid it'.⁶⁹ Bean thought it was a small, hard-core group who, by refusing frontline duty, were 'recognised by their comrades as well as by their officers to be worthless to any community'.⁷⁰ However, Bean believed that this group was having a bad influence by leading astray younger members as well as some of the more war-weary veterans of the AIF. But as every Australian knew, any death penalty

⁶⁷ C. E. W. Bean, *Official History*, vol. v, p. 29.

⁶⁸ *Ibid.*, p. 27.

⁶⁹ *Ibid.*

⁷⁰ *Ibid.*, p. 28

that was passed would have to be commuted. The only deterrent was prison, and as harsh as this could be, it was preferable to duty at the front.

Bean left out of the *Official History* his private frustrations, which he confined to his notebook, regarding the proper enforcement of courts martial.⁷¹ In these notes he does not see prison as a deterrent, rather as a place where offenders meet others of bad character, and the process of repeat offending starts. He posed the problem of an offender [only] doing three months of his sentence, and then returning to his battalion. In turn he influences three more who end up in prison with him doing six months of their sentences. On returning to their battalion, he and ‘his drunken companions’ escape custody and get to Paris, where they are recaptured, only to escape from the guardroom again. Bean thought that prison sentences were not being enforced, and that offenders were released from prison if they behaved, even where no suspension of sentence had been requested. A sentenced man could also be held at a Divisional or Corps compound at the request of the battalion, until the papers for commitment were sent to a governor of a prison. Bean appeared to be saying that the delay is intentional, however, he does say that ‘this is due to a policy of weakness’⁷² which does indicate a degree of slackness about the enforcement of sentences.

The level of Australian indiscipline can be seen in the comparative figures for courts martial convictions during the war for soldiers on active service from New Zealand, Australia and Canada. Out of 100,444 New Zealanders on overseas service 2,009 courts martial were imposed, compared with approximately 23,000 courts martial for 331,814 Australians in the AIF, and approximately 18,000 courts martial for 458,218 Canadians.⁷³ One in fourteen Australians, one in fifty New Zealanders,

⁷¹ AWM 38, 3DRL606/198/1 (Bean’s notebook).

⁷² Ibid.

⁷³ Christopher Pugsley, *On the Fringe of Hell*, p. 298. Pugsley obtained the Australian figures from Ashley Ekins, Australian War Memorial, and the Canadian figures from (TNA) WO 93/4.

and one in twenty-five Canadians faced a court-martial. The ratios of courts martial per country are approximate, as some men would have been court-martialed more than once. The Australian figure, however, is a clear indication of the disciplinary problems the AIF faced.⁷⁴ Australian indiscipline may partly have been the consequence of incurring heavy losses, lack of adequate leave and reinforcements. But this did not prevent Australian courts martial handing down severe sentences, with Australian courts sentencing 121 Australians to death, of which 117 were in France. Furthermore, it was the belief among senior British and Australian commanders that their 'inability to carry out these sentences' was a contributing factor to Australian desertions.

Desertion remained a serious problem in the AIF in 1917 and 1918 and the true figures may never be known owing to the interpretation of the charge of desertion that was often downgraded to the lesser charge of absence without leave. Nevertheless, the convictions for desertion increased markedly from 288 in 1916, to 1,283 in 1917, with 1,807 desertions in 1918. The figures for 1917 are four times higher than any other division in the British Army.⁷⁵ It must also be borne in mind that Australian courts and Australian officers handed down these sentences.

In writing the *Official History* Bean was able to develop arguments about the Australian character and nationhood, views he held before the war as a journalist with the *Sydney Morning Herald*.⁷⁶ The comparisons Bean makes with other troops and nations reveals a deeper need to demonstrate that colonial society, free from social barriers, produce an improved version of the Anglo Saxon race: stronger, more independent and resourceful. This view was not confined to Bean as 'The Coming

⁷⁴ Comparative figures for British Divisions in France (excluding Dominion forces) are not available.

⁷⁵ R. Glenister, 'Desertion Without Execution: Decisions that Saved Australian Imperial Forces Deserters from the Firing Squad in World War I', B. A. thesis, La Trobe University 1984, synopsis, quoted in Alistair Thomson, 'Steadfast Until Death?' p. 472.

⁷⁶ Jeffrey Grey, *The Australian Centenary History of Defence*, vol. i: *The Australian Army*, p. 40.

Man' had many advocates in England, with many prominent commentators praising the physical attributes and confidence of the average Australian soldier compared with the products of Britain's industrial areas.⁷⁷ The Great War put Australia on the world stage, and for Bean it was as much a test of the Australian character as it was for the coming nation. In 1932 Bean stated his objectives in writing the *Official History*: 'The first question for my fellow historians and myself clearly was. How did the Australian people - and the Australian character, if there is one - come through the universally recognised test of this, their first great war?'⁷⁸

The unfavourable comparisons Bean made with the home forces, and his depiction of a class-ridden British Army, although this was not his main purpose, nevertheless created the context in which Australian indiscipline could be understood. The British Army of 1918 bore little resemblance to the 1914 Army, and Bean failed to take that into account, partly because of his beliefs regarding the Australian character. The Australians had changed, too, during the course of the war, and Bean was cautioned by Edmonds against trying 'to persuade the Australian public that in 1916 the Australian Corps was the fine instrument it was in 1918'.⁷⁹

Bean, in the *Official History*, laid the foundations of the Anzac Legend by exaggerating the differences between Australian and British performance in the war. Australian prowess on the battlefield provided a heroic base for a nation that was only federated some thirteen years before the outbreak of war. Recent research has cast doubt on whether those distinctive and allegedly Australian attributes of mateship and

⁷⁷ Michael McKernan, *The Australian People and the Great War*, pp. 123-25.

⁷⁸ C. E. W. Bean, 'Writing the Australian Official History of the Great War: Sources, Methods and some Conclusions', in *Journal and Proceedings of the Royal Australian Historical Society*, vol. 24, 1938, part 2, quoted in Anthony Hastings, 'Writing Military History in Australia', *Melbourne Historical Journal* 13 (1981), p. 53.

⁷⁹ T. H. E. Travers, 'From Surafend to Gough' p. 18. This correspondence in June/July 1928 is over a discussion with Bean and Edmonds surrounding General Gough and Pozieres, 1916.

egalitarianism made a significant difference in Australian battlefield performance.⁸⁰ Edmonds, earlier, had pointed to other factors: the corps formations of the Dominion Divisions; and by 1918 the high quality of the staff work of the Australian Corps and Divisions (except the 2nd), which suggest that military success owed more to factors such as training and organization than any alleged 'Australian' traits.⁸¹

⁸⁰ See Alistair Thomson, *Anzac Memories: Living with the Legend* (Melbourne, Oxford, Auckland and New York, 1994) and Eric. M. Andrews, *The Anzac Illusion: Anglo-Australian relations during World War I*, (Cambridge: Cambridge University Press), 1994.

⁸¹ AWM 38, 3DRL 7953/34, part 2, Edmonds to Bean, November 14, 1932.

Chapter 2

THIS PRIVILEGED POSITION

The British High Command, by 1918, had great difficulty in accepting the fact that the death penalty could not be applied to Australian soldiers for military crimes. Senior commanders were still calling for an end to the ‘privileged position’ the Australians enjoyed under the Army Act that had restricted the range of punishments that Australian courts martial could impose. Complaints continued from GHQ that Australian courts were not using the powers they did possess, citing, as an example, Australian ‘unwillingness’ to impose Field Punishment Number 1. Further, they emphasised the comparatively large numbers of acquittals, some ‘quite against the evidence presented’.¹ The anomaly of having soldiers under the Army Act with the restriction of being immune from the death penalty was galling and viewed as divisive by GHQ, but now it seemed the Australians were in a further privileged position when being tried for non-capital offences by courts martial composed of Australian officers. Moreover, in June 1918 the Australian authorities were calling for all trials involving Australian soldiers to be tried by courts consisting of exclusively Australian officers. However, in the weeks before the Armistice this differentiation in the treatment of offences came into sharp focus with the alleged murder, on October 31, of a French civilian by an Australian soldier, Private (6944) W. H. J. Banks, a case that caught the eye of GHQ. Further, according to Brigadier General B. E. W. Childs of the Department of Personal Services (DPS), an Australian soldier Private (1828) J. Richmond, who had been under arrest since June 1918, was charged and

¹ (TNA) WO 32/5484, item 83, letter from Sir Douglas Haig, Commander-in-Chief, British Armies in France to The Secretary, War Office, London, dated June 23, 1918.

found guilty of murdering an Australian sergeant, the proceedings not being confirmed due to the inadequacy of the sentence that could be imposed.²

Under the existing Australian Military Regulation 490 (Regulation 2), as it stood, no sentence of penal servitude could be imposed on an Australian convicted of murder, and it seemed two years would be the maximum that would apply.³ In contrast, all other troops within the British Army facing similar charges either would be tried for their lives by field general court-martial or be liable for trial in British or French courts. The Banks' case would occupy GHQ and government officials at the highest level in their attempts to get the death penalty applied in this case, for they feared ramifications with the French if it came to light that their inhabitants could be murdered without the sanction of the death penalty. However, there was more at stake than upsetting the French, for if Banks was found guilty of murder and executed, it was a way of forcing accountability on the Australians which GHQ had been unable to do for serious military crimes because of their immunity from the death penalty. With Germany in retreat by October 1918 the High Command had one eye on a future armistice, and a capital conviction in this case could provide the example they needed to curtail the behaviour of Australian troops waiting embarkation from France It

² (TNA) WO 32/5484, item 6, Brigadier General B. E. W. Childs, Deputy Assistant Adjutant General, DPS, December 6, 1918.

³ *Ibid.*, comments made by Brigadier General B. E. W. Childs, Deputy Assistant Adjutant General, DPS in a Minute dated December 6, 1918. Richmond was retried by a general court-martial held at Victoria Barracks, Melbourne, on 17th, 19th and 20th November, 1919. He faced two charges: '(1) Committing a civil offence, that is to say, unlawfully and maliciously wounding with intent to do grievous bodily harm, in that he near Frechencourt in France, on the night of the 25th and 26th June 1918 unlawfully and maliciously wounded Sergt. Arthur Edward Beresford, 26th Battn. A.I.F. with intent to do him grievous bodily harm, by causing an explosion in a dugout in which the said Sergt. Arthur Edward Beresford then was'. The alternative charge '(2) Committing a civil offence, that is to say, unlawfully and maliciously wounding, in that he at the place and time mentioned in the first charge unlawfully and maliciously wounded the said Sergt. Arthur Edward Beresford by causing an explosion in a dugout in which the said Sergt. Edward Beresford then was.' Richmond pleaded not guilty, but was found guilty on the first charge and not guilty on the second. He was sentenced to four years' penal servitude (see NAA: B2455, Richmond, J.) Sergeant Beresford had died from this wound within three days of the explosion on June 29. His next of kin were told that he died from 'accidental gunshot wound back'. This they accepted until his father, J. A. H. Beresford, Commander RAN (retired), read in the *Hobart Mercury* on November 19, 1919 that Richmond was being tried for maliciously wounding his son. An irate father wrote to the Officer-in-Charge, Base Records, Melbourne the same day demanding an explanation as to why next of kin had not been informed of the circumstances of his son's death. See NAA: B2455, Beresford Arthur Edward, service record.

appeared to Childs that not only did Australians escape the extreme sanction of the Army's disciplinary code but that it extended to 'the right to free murder' if the perpetrator could not be tried for his life, as would be the case for civilians and soldiers of either Britain or France.⁴ Furthermore, individuals convicted of capital offences in Australia during this period would face possible execution, as they would for another generation.

The visit of the Australian Prime Minister, William M. Hughes, to London in October 1918 provided the opportunity for the Secretary of State for War, Lord Milner, to try and meet with Hughes to express concerns over Australian indiscipline. In an attempt to impress upon Hughes the gravity of the situation a report, detailing Australian misconduct and criticism of Australian courts martial was compiled for Milner by the Adjutant General's Office, General Headquarters, France in August 1918.⁵ Attached to this report was a Secret Minute addressed to the Secretary of State for War in which the Adjutant-General's office, commenting upon Australian misconduct, wrote: 'The information was hurriedly collected in view of your possible interview with Mr. Hughes, but it throws a very lurid light upon the conduct of the Australian troops, and from what I have heard for the past two years, does not exaggerate the gravity of the situation'.⁶ Further comments in the Secret Minute stated that 'no one wishes to enforce the death sentence, but there is no question that it is the only remedy to restrain even disciplined troops in war time'. It is clear from this Secret Minute that the War Office and the Adjutant General feared the worst if the Australian Government did not bring their Army Act into line with the Acts of New Zealand and

⁴ (TNA) WO 32/5484, item 9, Brigadier General B. E. W. Childs, Deputy Assistant Adjutant General, DPS, DPS, December 6, 1918.

⁵ Ibid., items 71-74, Lieutenant-General G. H. Fowke, Adjutant-General, signed this letter dated August 2, 1918 and also commented on matters concerning comparative rates of imprisonment, absentees and desertions.

⁶ Ibid., item 70, comments in a Secret Minute to the Secretary of State for War, August 14, 1918 (signature unclear). Why the Adjutant General's report was gathered at short notice is not clear from this record as Milner was not meeting with Hughes until October, but one can surmise that Milner had asked for an urgent report.

Canada. Without this restraint they believed Australian conduct would lead to a serious situation developing between Britain and the French authorities.⁷

The report gives examples of the apparent inability of Australian courts martial properly to examine cases, as well as producing a damning indictment of Australian behaviour away from the front. Nowhere in this report is there a sense of British effrontery to ‘larrikin’ type behaviour, failure to salute, etc, nor is there any mention of Australian battle discipline breaking down. The concern here is with serious military offences and criminal behaviour. The examples given by the Adjutant General’s office of acquittals are for crimes of rape, murder and unlawful shooting, crimes that should not elicit the sympathy of any court, whether British or Australian.

Although in some of these cases the rulings appear perverse, they should not be taken completely at face value. They had been selected to make a point concerning Australian courts in their dealings with crimes against civilians and therefore the claims made by GHQ need to be tested against the trial transcripts. For example, in the case of Private J. H. Maslin, the Adjutant General’s Office mistakenly assumed he was acquitted. They stated that:

23rd June 1918. No. 1953, Pte J. H. MASLIN, 27th Btn. A.I.F., was tried on 13-6-18 for shooting with intent to do grievous bodily harm. On 9-5-18, when in AMIENS without a pass, the accused fired a revolver at a French Gendarme, who then fired back. Five shots were fired before Private MASLIN was arrested. Pte. MASLIN was acquitted.⁸

This case was updated 2nd August, 1918.

This was a very perverse acquittal by an Australian Court. MASLIN was roaming AMIENS with a revolver, and made a determined attempt to shoot a French Gendarme who fired back in self-defence.⁹

The claim that an Australian court acquitted Private Maslin is in fact incorrect. His military service record states that he was tried on May 13, 1918 (not June) charged on two counts: ‘shooting with intent to do grievous bodily harm; and secondly, being

⁷ Ibid., item 70, comments in a Secret Minute to the Secretary of State for War, August 14, 1918

⁸ Ibid., item 82, Enclosure C, attached to Haig’s letter to the War Office, June 23, 1918.

⁹ Ibid., item 72, Enclosure C, from the Adjutant General Office, GHQ to the War Office, August 2, 1918.

found beyond fixed limit without a pass'. He was found guilty on both counts and was given a sentence of two years' imprisonment with hard labour. Maslin's Suspension of Sentence document verifies that he was convicted and that his sentence was suspended on May 23, 1918.¹⁰

However, Maslin was armed with a revolver and did fire at a French gendarme, who presumably was about to arrest him. The leniency of the sentence, two years, is highly questionable, not only from the viewpoint of the Adjutant General but also of the French police officer who could have been shot dead by an ally while performing his duty. Maslin, for his crime, was only inconvenienced for a few days before his sentence was suspended and he was back with his unit. It is worth noting here that imprisonment in hard labour (IHL) could not be awarded for a term longer than two years. A sentence of penal servitude (PS) could not be awarded for less than three years, with the maximum being life.¹¹ The Maslin case was used twice to demonstrate the willingness of Australian courts to acquit, first by the Adjutant General and later by Haig to make a point about Australian indiscipline and Australian courts not making full use of their powers.

The Adjutant-General's office, in pressing their case against the reluctance of Australian courts to convict and thoroughly to examine the cases brought before them, gave the following example of what they considered a miscarriage of justice:

No. AM/6036, M. T. Driver G. H. LANAGAN, 1st Austrn. M.T. Coy. A.I.F., was tried on 5-5-18, on a charge of Murder. On 23-4-18 an altercation was heard between 2nd-Lt. BURKITT, 2nd/Yorks Regt., and a soldier alleged to be the accused. After some heated words and a scuffle the man fired a revolver at the officer and ran down the road, the officer followed him. Two or three more shots were fired and then 2nd-Lieut. BURKITT fell to the ground. The accused was acquitted on the strength of an alibi, which was of a feeble nature. He was identified by several witnesses for the prosecution.¹²

This case was updated 2nd August, 1918.

¹⁰ National Archives of Australia (NAA) NAA: B2455, Maslin James, service record.

¹¹ Christopher Pugsley, *On the Fringe of Hell: New Zealanders and Military Discipline in the First World War*, Auckland: Hodder & Stoughton, 1991, p. 343.

¹² (TNA) WO 32/5484, item 82, Enclosure C attached to Haig's letter to the War Office, June 23, 1918.

This man ought to have been convicted. The identification was sufficient, but he produced a number of pals who put up an alibi. The Court made no attempt whatever to get at the truth by asking questions, which might test the truth of the alibi.¹³

In the example below the Adjutant General's office accused Major C. Speckman, and other Australian officers, of perverting the course of justice:

Major C. SPECKMAN, M.C., 1st Austrn. Pnr. Bn. Was tried on 24-5-18 on a charge of attempting to rape Mlle I. DEGROOTE, of Staple, a civilian inhabitant, in particularly brutal circumstances. At the Court-Martial Mlle. DEGROOTE refused to incriminate Major SPECKMAN in any way although in a previous statement she declared that she had been most seriously assaulted by this officer. Major SPECKMAN was in consequence acquitted. Subsequent enquiries established the fact that the accused with other Australian officers had paid several visits to Mlle. DEGROOTE and induced her not to give evidence against him.¹⁴

This case was updated 2nd August 1918

This was a very notorious case, and caused a great deal of stir at the time. I am perfectly certain that the French girl was intimidated. The attempted rape was aided and abetted by another Australian officer who held SPECKMAN'S horse during the operation, and tried to prevent Mlle. DEGROOTE's father from going to the assistance of his daughter.¹⁵

In the case below of the alleged murder of a French youth the Adjutant-General was drawing attention to the activities of a lawless gang of Australian 'desperadoes' and not serving soldiers.

1083/318 The body of a French youth was found in the Somme at Ailly on the 10th June. It is established that he was deliberately thrown into the river by a party of Australians, who prevented him from leaving the water, and kept him there until he was drowned. Enquiries are now proceeding.¹⁶

This case was updated 2nd August, 1918.

This was a most determined murder committed by a gang of Australian desperadoes. The French youth had remonstrated with an Australian who was apparently insulting a small French girl. A fracas ensued, during which the Australian was struck. He then collected a party of his friends. They searched for the Frenchman and found him after some hours. They took him down to the river and threw him into the water. Some of them jumped in and repeatedly struck the Frenchman in the water, while others crossed the river to prevent the victim from getting out the other side. The body of the youth was found some days later. The incident was witnessed by several civilians who were apparently too terrified to interfere. The Police are investigating, but little hope is entertained of finding the men.¹⁷

¹³ Ibid., item 72, from the Adjutant General Office, GHQ to the War Office, August 2, 1918.

¹⁴ Ibid., item 82, Enclosure C, attached to Haig's letter to the War Office, June 23, 1918.

¹⁵ Ibid., item 72, from the Adjutant General Office, GHQ to the War Office, August 2, 1918.

¹⁶ Ibid., item 82, Enclosure C, attached to Haig's letter to the War Office, June 23, 1918.

¹⁷ Ibid., item 72, from the Adjutant General Office, GHQ to the War Office, August 2, 1918.

This catalogue of offences could well be seen as senior British commanders overstating the case of Australian indiscipline and being highly selective in the evidence they wanted to present to Prime Minister Hughes. However, there is little doubt that they were expressing their frustration at their inability to curtail the behaviour of a section of their troops. They believed that restraining men in time of war was difficult enough, even with the full force of the Army Act. The tenacity with which they pursued this matter could well indicate real concerns over serious Australian indiscipline once hostilities ended. They feared that if large numbers of Australians were, by necessity, still in France, they would have no effective deterrent against offenders who committed serious civil crimes. Moreover, this would be a constant source of divisiveness among British troops and adversely affect relations with the French government and their citizens.¹⁸

One of the recurring complaints made against the Australians by the Adjutant General's office was the willingness of Australian courts 'to accept any story told by the accused, however improbable, and to acquit whenever they can, especially in cases of offences against inhabitants'.¹⁹ The Adjutant-General produced figures of crimes against inhabitants for the five-month period from March to July 1918 showing that Australian acquittals 'more than equal convictions', by contrast with other troops where acquittals are approximately half of convictions.²⁰ This is supported by the statistics (see Table 2.1, below), which indicate that in crimes against inhabitants involving Australians, 50.89 per cent of those charged were acquitted, with 57

¹⁸ Ibid., item 70, these views were expressed in a Secret Minute from the Adjutant General's office to the Secretary of State for War, August 14, 1918.

¹⁹ Ibid., item 71, letter signed by Lieutenant-General Sir G. H. Fowke, dated August 12, 1918 from the Adjutant-General's Office, General Headquarters, France, forming part of the information gathered for a possible interview with Australian Prime Minister Hughes.

²⁰ Ibid., item 81, which shows number of convictions since March 1, 1918, for offences against inhabitants, attached to correspondence dated August 1918.

Table 2.1
Offences against inhabitants tried since 1 March 1918 until end of July 1918.²¹

<i>Offences Tried</i>			<i>Offences Tried</i>		
Australian	112		Other troops	443	
<i>Number committed to Prison:</i>		<i>Percentage</i>	<i>Number committed to Prison:</i>		<i>Percentage</i>
Penal Servitude	9	16.36	Penal Servitude	14	4.74
Imprisonment (I.H.L.)	11	20	Imprisonment (I.H.L.)	80	27.11
Total imprisoned	20	36.36	Total imprisoned	94	31.86
<i>Number sentence to:</i>			<i>Number sentence to:</i>		
Field Punishment Number 1	5	9.09	Field Punishment Number 1	156	52.88
Field Punishment Number 2	25	45.45	Field Punishment Number 2	22	7.45
Loss of pay, etcetera	5	9.09	Loss of pay, etcetera	23	7.79
Total number of convictions	55	49.10	Total number of convictions	295	66.59
Total number of acquittals	57	50.89	Total number of acquittals	148	33.40

acquittals and 55 convictions. For all other troops during this period the acquittal rate was 33.40 per cent with 295 convictions and 148 acquittals. Significantly, of the convictions handed down by Australian courts, only 5 per cent were awarded Field Punishment No. 1, compared with 52.88 per cent for all other troops. Field Punishment No. 2, however, was imposed by Australian courts on twenty-five offenders, by comparison with twenty-two for all other troops, vindicating Haig's claim of Australian reluctance to impose the harsher type of punishment.²² Up to September 1918, the AIF maintained, on average, a force of 118,883 men on the Western Front compared with an average in the rest of the BEF up to November 11 (excluding followers or labour) of 1,758,435 men. In this period, of the offences tried for crimes against inhabitants, the Australians were committing 25.28 per cent of them and they only represented 6.76 per cent of the BEF on the Western Front.²³

²¹ Table compiled from (TNA) WO 32/5484, item 81. The record of these statistics starts from 1 March, but there is no indication as to when they finish. As these statistics were included with correspondence dated in August I have assumed that the figures are up to July 31, 1918.

²² Ibid.

²³ Colonel A. G., Butler, *The Official History of The Australian Army Medical Services in the War of 1914-1918, Volume III, Special Problems and Services*, p. 907. These figures were extracted from Table 35: Approximate average ration strength of the British Expeditionary Force on the Western Front in France and Flanders; and Table 36: Maintenance of A.I.F. on the Western Front (in France and Flanders). From these tables it can be seen that the AIF maintained a force on the Western Front of 87,643 by the last quarter of 1916, an average of 119,512 in 1917, and an average of 113,091 in 1918.

It is difficult to find a motive for the unwillingness of Australian courts to convict in cases against civilians, even allowing for the antipathy that existed between most sections of the British Army and French civilians. GHQ seemed to be suggesting that either the Australian officers conducting these courts martial were incompetent, or that a culture of ‘mateship’ existed that was expressed in a preference to give the benefit of the doubt, no matter how slight, to their own men. They stopped short of saying that the misconduct of Australian troops was owing to the quality of leadership provided by Australian officers and NCOs. But the implication was there, and they had in the past complained about the laxity in imposing discipline behind the lines and had viewed the comparatively high rates of absenteeism, looting and other crimes as a consequence of this.

During the period under discussion, but not confined to crimes against civilians, the Australians commuted 127 sentences of penal servitude to two years with hard labour compared with a total of only 133 commuted sentences for all other troops.²⁴ Whether this was an attempt to get their prison numbers down is not clear, but the figures for the number of troops in prison for July 1918 show that Australia had 782 soldiers in prison (7.86 per 1,000). By comparison, other colonial troops imprisoned totalled 339 (1.88 per 1,000) and the British 1,373 (0.97 per 1,000). The number of Australian absentees for July 1918 was 414, or 4.16 per 1,000, compared with the combined total for other colonials of 84, or 0.49 per 1,000, and British absentees at 697 or 0.49 per 1,000.²⁵ Absenteeism was seen as a major problem among the Australians as the figures for Fourth Army in Table 2.2 (below) signify. Caution must be exercised in interpreting these statistics as they do not give an indication of how long a soldier

The rest of the BEF (excluding followers or labour) had an average strength of 1,246,731 in 1916, 1,786,462 in 1917, and 1,758,435 in 1918 up to November 11.

²⁴ Ibid., item 81.

²⁵ (TNA) WO 32/5484, item 80, report on absentees and rejoins from June 1 to August 3, 1918.

has been absent. Nevertheless, the British figures for Fourth Army show a total of 4,447 absentees in this period and the Australians, 3,850.²⁶

Table 2.2
Absenteeism in Fourth Army
(These figures are a snapshot of the total of absentees at that date with no indication of the length of time the soldier had been absent.)²⁷

	<i>British</i>	<i>Australian</i>
June 1, 1918	438	364
June 8, 1918	420	343
June 15, 1918	417	343
June 22, 1918	415	339
June 29, 1918	381	277
July 6, 1918	459	404
July 13, 1918	483	441
July 20, 1918	477	441
July 27, 1918	487	459
August 3, 1918	480	439

A more detailed picture of absentees emerges in Table 2.3 where there is a summary of absentees and rejoins and where an absentee is defined as someone absent for more than seven days. The British figures actually show a net gain of rejoins over absentees with 1062 absent and 1168 rejoining their units. The Australian absentees remain proportionately very high with 934 absentees and 898 rejoins.²⁸

Table 2.3
Summary of Absentees and Rejoins reported during the period from June 1 to August 3, 1918. (Absentees: absent for more than seven days).²⁹

	British		Australian	
	<i>Absent</i>	<i>Rejoined</i>	<i>Absent</i>	<i>Rejoined</i>
June 8, 1918	134	127	118	94
June 15, 1918	135	161	104	136
June 22, 1918	94	107	104	118
June 29, 1918	104	151	97	98
July 6, 1918	108	112	60	86
July 13, 1918	116	175	82	79
July 20, 1918	80	91	114	58
July 27, 1918	173	138	134	128
August 3, 1918	118	106	121	101
Totals	1,062	1,168	934	898

²⁶ Ibid.

²⁷ Ibid., item 75, table compiled from extract of weekly returns for week ending June 1, 1918.

²⁸ Table compiled from (TNA) WO 32/5484, item 80.

²⁹ Ibid.

The statistical evidence available for the period from March 1, 1918 to the end of July 1918 goes some way towards dispelling the notion that GHQ were exaggerating their case to pressure Hughes into a change of policy on the death penalty. The absentee figures show that many soldiers were prepared to take absence without leave, but most of them voluntarily returned. It was the permanent absentees that troubled the High Command because they had no effective deterrent to deal with them.

To add insult to injury, the Australian authorities proposed that in all cases where Australian soldiers were to be tried by courts martial the court should be composed only of Australian officers. Haig, in responding to the proposals to the Secretary of State for War, outlined the contemporary practice in Australian formations where the courts were formed exclusively of Australian officers. In the Lines of Communications the order was that courts should be composed of Australian officers wherever possible. However, Haig regretted the fact that at the front the courts convened to try Australians were composed 'exclusively' of Australian officers and put forward his preference for an interchange system whereby Australians could sit on British courts martial and British officers on courts martial of Australians.³⁰

While the Australian authorities were pressing for Australian courts to be 'exclusively' Australian, Haig was displaying a distinct lack of confidence in the existing system because Australian courts were not making full use of the powers they possessed. The interchange system that he advocated was a means of imposing a more rigorous implementation of the military code on the Australians and at the same time bringing the punishments imposed in line with the rest of the British Army. Haig identified the reluctance of Australian courts to award Field Punishment Number 1 to their belief that it was 'degrading'. The Australians were not alone in this view, as there was disquiet in Britain over the degrading nature of this punishment (a campaign was

³⁰ Ibid., item 83, letter from Field-Marshal Sir Douglas Haig, Commander-in-Chief, British Armies in France to The Secretary, War Office, London, June 23, 1918.

launched to abolish it, see chapter 3, pp. 70, 85-88). Haig conceded it was a view that the Australians had held before the campaign, which does suggest recognition on his part of a cultural difference between Australian and British attitudes towards discipline. For Haig, it was the immunity from the death penalty that was the root cause of serious indiscipline among Australian troops and he reminded the Secretary of State for War that he had, in previous letters, deplored the privileged position which the Australians enjoyed. He quite fairly acknowledged the fact ‘that this immunity so far has not hitherto resulted in a deterioration of the fighting qualities of Australian troops’, but added that it had resulted in ‘serious evils’ in three main areas.³¹ Firstly, he referred to the large numbers of men who were permanently absent from their units. These men, he stated, knew that imprisonment was the worst that could happen to them, and as a result, this ‘produces a completely lawless and defiant attitude’. His second concern was that Australian soldiers, with their laxity in discipline at ‘training or at rest’ behind the line, might infect the British troops with whom they came into contact. He added that it was ‘bound’ to affect their battle discipline.³² Interestingly, while Haig had conceded earlier that so far Australian battle discipline had not been affected by Australia’s special immunity, he saw British troops as more vulnerable when exposed to a more lax disciplinary regime. He perhaps feared their battle performance could be adversely affected as a consequence of the disparity between the Australian and British disciplinary codes, which could have affected morale and resulted in British troops not trying as hard. Thirdly, Haig was concerned with the poor relations with the French civilian population, owing to the high levels of looting, ‘of which Australian soldiers set an example’. Admitting that cases of looting were not confined to Australian troops, he argued that the evidence shows ‘they are the worst offenders in this respect’. He

³¹ Ibid., Haig had warned in a previous letter to the Secretary of War in 1917 that he feared Australian battle discipline would break down because of the lack of the death penalty. His concession here that it did not is significant.

³² Ibid.

cites the example of a patrol of French gendarmes in Amiens who were fired upon by Australian soldiers when trying to defend the property of evacuees from looters.³³

Believing that Australian courts were unwilling to convict their soldiers, especially in crimes against civilians, the last thing Haig wanted was to be compelled to order exclusively Australian courts in the Lines of Communications. He feared that if this were implemented it would result in a pronounced difference in punishment for Australian troops compared with other troops for similar crimes. Although he thought the Australians had a tendency towards indiscipline he diplomatically suggested that ‘everything possible should be done to foster community in methods and ideals between British and Dominion troops rather than to accentuate the differences’. Furthermore, Haig foresaw an administrative problem if offences were committed jointly by British and Australian troops. He thought it undesirable that British troops should be tried by an exclusively convened Australian court and perhaps disingenuously suggested that two courts martial would have to be held in these cases.³⁴

A further proposal from the Australian authorities to gain Australian control over their officers and soldiers suggested that in trials where the confirming officer was not Australian the proceedings should not be confirmed until the General Officer Commanding the Australian troops had considered the case and attached his remarks. Haig did not think the Australians had much to gain from this proposal, for of the 1,467 courts martial of Australians from the beginning of January to the end of May, only 125 were held in the Lines of Communications area. Moreover, he thought the discipline of any Base should be the responsibility of its Commandant and that referring to the General Officer Commanding Australian Imperial Force, who was already overburdened with work and who could not know local conditions, would not

³³ Ibid.

³⁴ Ibid., item 84.

give the proceedings the careful consideration they deserved. Additionally, addressing the issue of Australian control, Haig said he already referred to the General Officer Commanding Australian Imperial Force in all cases of officer dismissals or severer sentences, and also referred to him questions concerning the confirming of sentences of penal servitude. He therefore recommended that the following reply should be sent to the Governor General of Australia:

Courts entirely composed of Australian officers try 92 per cent Australian cases. In remaining 8 per cent, there is at least one Australian officer on the Court. It would cause great delay and administrative inconvenience to arrange for all members in the latter cases to be Australian.

As regards second proposal, the 92 per cent cases mentioned above are confirmed or reviewed by an Australian Commander. There would be serious difficulty in referring all remaining cases to General Officer Commanding Australian Imperial Force. But all sentences of dismissal of officers are referred to him and no sentence of penal servitude is carried into effect without reference to him.³⁵

The High Command's attempts to impose a stricter adherence to the military code on Australian courts and to bring the sentences awarded in line with the rest of the Army were being frustrated by Australian insistence on control over their men. However, the issue of Australian immunity from the death penalty would be brought into sharp focus, twelve days before the Armistice, with the alleged murder of a French civilian by Private Banks. Building on the anomaly of the Richmond case GHQ were determined to force accountability on the Australians for crimes of murder.

The intense interest shown by the British authorities in the case of Private Banks needs to be seen in the context of their failure to bring the Australian Army Act in line with the rest of the Army; their growing anxiety over Australian indiscipline; and their fear of how that indiscipline might manifest itself once peace was declared. Perhaps, above all, a conviction in this case, followed by the implementation of the death penalty, would provide the much-needed deterrent GHQ felt was required to curb Australian indiscipline.

³⁵ Ibid.

The case of Private Richmond, who was tried by court-martial in France and convicted of murdering an Australian sergeant, exposed the legal anomaly that existed under the Australian Defence Act. Although Richmond was found guilty, the legal problems in not being able to pass an appropriate sentence meant that the proceedings could not be confirmed. Lord Milner had written to Hughes on the 9th and 23rd November directing him to the anomaly in the Defence Act, whereby a charge of murder could not be punishable by penal servitude unless the law was changed. In contrast to the diplomatic approach by Milner, the Adjutant General's Office was seething, believing both Richmond and Banks should be brought to England for trial, and the Adjutant General had obtained advice that this was legally possible. Childs displayed a disdain for the Australians when he stated that: 'in view of the revelation of the lowliness of many of the Australian soldiers in France . . . and the danger of creating ill feeling between the people of France and this Country . . . I strongly press that these two men should be tried for their lives in this Country'.³⁶ He was scathing of the existing law by which two years was the maximum sentence that could be imposed for murder, less than that for manslaughter. He stated that: 'In my opinion such a suggestion is really ridiculous and amounts to nothing less than giving the right of free murder to Australian soldiers'.³⁷ He hoped that Hughes's option of 'imprisonment' included 'penal servitude for life' as he believed that to be the minimum sentence that should be applied on a soldier convicted of murder, and written in hand over the transcript added, 'I do not even agree with that'.³⁸

However, the alleged murder of a French civilian by Private Banks caused Milner to write again to Hughes expressing his anxiety over the situation in which a French national could be murdered and the alleged murderer could not stand trial for his life.

³⁶ Ibid., item 6

³⁷ Ibid., item 9, Brigadier General B. E. W. Childs, Deputy Assistant Adjutant General, DPS, DPS, December 6, 1918.

³⁸ Ibid.

For Milner, whatever agitation had arisen from the leniency of a sentence in the Richmond case was a matter for the Australian Government, but he expressed ‘grave concern’ at what might transpire when the ‘French authorities realize that a French citizen can be murdered by an Australian and that he cannot suffer the extreme penalty for that offence’. Milner explained to Hughes that under the Convention, which was arrived at between Britain and France early in the war, British and French soldiers ‘were to be amenable to the respective military codes’. It seems extraordinary that the British authorities did not anticipate such an occurrence, but Milner told Hughes: ‘It never occurred to the contracting parties that the advent of Australian troops in France would create a situation whereby in the event of a French inhabitant being murdered the death penalty could not be passed’.³⁹ Milner, in outlining the dilemma to Hughes, feared that once the French became aware that one of their inhabitants could be murdered and the accused be not ‘amenable’ to the death penalty, they would make strong representations that the accused be tried before a French court. He suggested the alternative of trying Private Banks in an English civil court, where the death penalty applied. However, in requesting French witnesses to travel to England for the trial he thought the French would require an explanation, and once they grasped the fact that a military court acting under the Convention did not have the ability to pass an appropriate sentence to deal with such a serious offence, they might still demand that Banks be tried in a French civil court.⁴⁰

Hughes studiously ignored the two alternatives of trials in English or French courts, favouring imprisonment as the best option. Replying to Milner at the War Office, Hughes stated the necessary amendment to the Defence Regulations was now in place and it would provide that the offence of murder should be punishable by penal

³⁹ Ibid., item 64, copy of letter to Prime Minister Hughes from Lord Milner responding to Hughes’s letter of November 26, 1918.

⁴⁰ Ibid., item 64.

servitude for life. His comment that ‘This will meet the technical difficulty to which you have called my attention’ reflected his unwillingness to deal with the vexing questions put to him by Milner.⁴¹ These questions, and more, would surface, as the British authorities were not about to let the matter rest.

The High Command and the Adjutant General’s Office, despite the impending change in the law to allow for penal servitude for life for murder, had already begun arrangements for Banks to be tried in an English civil court. French witnesses in the case had been approached and their consent to travel to England with appropriate expenses had been arranged. However, by February 1919 the case had not been disposed of and G. H. Fowke of the Adjutant General’s Office, writing for the Commander-in-Chief, mounted the case to the War Office for bringing Banks for trial in a French court. He advised the War Office that the French were noting an increase in crimes against their inhabitants by Allied troops. A communication had been received by the French Mission attached to GHQ from Prime Minister Clemenceau, whose attention had been drawn to the increase in crimes against civilians by Allied troops by his minister of justice. Fowke stated that ‘a case such as the above would be likely to impress itself on the mind of Monsieur le Ministre de la Justice’.⁴² Although the Banks case had not been raised by the French authorities, Fowke believed the delay in disposing of the case would create an ‘unfavourable impression’ with the French and therefore proposed that Banks be handed over to the French judiciary for trial. The justification for this course of action was the Convention that Fowke referred to as the ‘formal document’ in existence that allowed offenders belonging to the British Army to be ‘handed over’ to the French judiciary. He thought that in this case ‘any inconvenient precedent would not be established by adopting this course of action’.⁴³

⁴¹ Ibid., item 60, Hughes to Lord Milner, War Office, Whitehall, December 23, 1918.

⁴² Ibid., item 52, letter from G. H. Fowke, Adjutant General, for Field-Marshal, Commander-in-Chief, British Armies in France, dated February 19, 1919, to the Secretary, War Office, London.

⁴³ Ibid., item 52.

Earlier, Milner, in his letter to Hughes, had described the Convention quite differently: ‘The Convention, of course, was merely a working agreement and I feel that if the French with a knowledge of the fact that the soldier concerned is not amenable to the death penalty, press us to hand the man over for trial before the French Civil Courts, it is a request which it would be impossible to refuse’.⁴⁴

Fowke recognised that this proposal to try Banks in a French civil court would be unlikely ‘to commend itself to the Australian Authorities’. Nevertheless, Fowke argued that the Australians should realize that maintaining good international relations: ‘demand that a case in which so serious an accusation is made should be brought to trial, and it may serve to further their efforts to remove the flagrant anomaly, which has resulted in the present unfortunate state of affairs’.⁴⁵

In January 1919 it was Winston Churchill, now Secretary of State for War, who would take up the cudgel of getting Banks tried for his life. Writing to Hughes on the 23rd he appeared resigned to the fact that there was no alternative to bringing Banks to England for trial, believing the French would be ‘aggrieved’ if he were tried by court-martial. In a blatant pre-judgement of the impending trial of Banks, and in an attempt to apply pressure, Churchill added: ‘having regard to the fact that a perfectly inoffensive French civilian was brutally murdered under conditions which do not disclose any extenuating circumstances whatever’.⁴⁶ By early March the DPS was debating whether to hand over Banks to the French judiciary without the consent of the Australian Prime Minister. It was the intervention of Childs who insisted that Hughes’s consent was necessary ‘in view of the fact that GHQ propose to hand over to the French authorities for trial and possibly for execution an Australian soldier’.⁴⁷

⁴⁴ Ibid., item 64, copy of letter to Prime Minister Hughes from Lord Milner responding to Hughes’s letter of November 26, 1918.

⁴⁵ Ibid., item 52, letter from G. H. Fowke, Adjutant General, for Field-Marshal, Commander-in-Chief, British Armies in France, dated February 19, 1919 to the Secretary, War Office, London.

⁴⁶ Ibid., item 56, Churchill to Hughes, January 23, 1919.

⁴⁷ Ibid., item 15, DPS, March 9, 1919.

Frustrated by the lack of response from Hughes to his previous letter on the Banks case, Churchill wrote again to Hughes on March 17. He brought up the case of Private Richmond, presumably as a means of applying the sentence of penal servitude for life if re-convicted. In the Banks case, however, Churchill stated that he was in agreement with the Commander-in-Chief that Banks should be handed over to the French because of the objection the French might raise to a court that could only award penal servitude for the crime of murder. Churchill sought agreement from Hughes saying that in this case: ‘trial by court martial is out of the question, and it is therefore, for decision whether or not Private Banks should be handed over to the French for disposal or brought to this country for trial’.⁴⁸

The Australian Military Regulation 2 of Regulation 490 had been repealed early in December but the official notification of this fact had not reached Churchill. The regulation had been amended as follows: ‘Being the Military Force while on War Service or deemed to be on War Service shall be subject to Section 41 of the Army Act with the following adaptation, that is to say, if a member is convicted of murder he shall be liable to suffer penal servitude or such less punishment as is in the Army Act mentioned’.⁴⁹

Hughes’s reply to Churchill was short and to the point. Writing from the Hotel Majestic in Paris he told Churchill that the Banks case did not require action from him as the French authorities had not yet objected to the application ‘of the Australian Court Martial Law, the extreme penalty of which is penal servitude’.⁵⁰

By April 1919, six months after the alleged murder, the legal position regarding Banks (and Richmond) became clear. Legal opinion from the Judge Advocate General’s Office (JAG) interpreted the amended regulation as follows:

⁴⁸ Ibid., item 38, Churchill letter to Hughes, March 17, 1919.

⁴⁹ Ibid., item 37, Australian Defence Cable WQ678 of December 5, 1918.

⁵⁰ Ibid., item 36, Hughes to Churchill, March 21, 1919, writing from Hotel Majestic, Paris.

(1) Opinion that regulation applies to any conviction for murder after the date when it came into force even though the murder was committed before such date'

(2) Banks could be tried under Section 41 of the Army Act as varied by Australian law and if convicted sentenced to penal servitude for life or any less punishment. He could be tried under Section 6(1) for an offence against the person of an inhabitant of the country in which he was serving on active service for which offence he could also be sentenced to penal servitude for life or any less punishment.⁵¹

The way was now clear for Banks to be tried by field general court-martial. Private Richmond, already convicted of murder and not yet sentenced, would be retried; his second trial would be delayed until November 1919. The High Command had pressured the Australian authorities but was unable to move them. The French had not intervened to demand a trial by a French civil court. The Banks trial was held on the May 31, 1919, seven months after the murder and without the full glare of a hostile High Command. The need for an example was receding as troops were being repatriated from French soil and the serious disturbances expected from Australian troops in France had not eventuated. However, the case provided a revealing insight into the seedier side of life away from the front line on the Western Front, and the case would not be as clear cut as Churchill supposed.

Banks was more fortunate than most defendants facing a serious charge in that his Prisoner's Friend was a barrister at law in London, Major F. S. Laskey, MC, Tank Corps. The President of the Court was Major G. H. Roberts, 5th AHA Brigade, with Captains N. H. Hobbs, MC, 18th Battalion, C. Morgan-Jones, 20th Battalion, and Lieutenant C. O. Manning, DCMO, B. Aust Group. The prosecutor in the case was Lieutenant J. Payne of the 26th Battalion, quite a low ranking officer for such an important case.⁵²

⁵¹ Ibid., item 31, F. Cassel, JAG, GHQ.

⁵² NAA: A471, item 22163, the Field General Court-Martial of No. 6944 Private W. J. H. Banks of the 22nd Battalion, Australian Imperial Force. This file was opened in May 2005 at my request. The trial transcript consists of 23 pages plus one Schedule sheet and one Proceedings sheet. The record of this trial is written in pencil, which occasionally is unreadable, but the majority of the transcript is legible. The transcript, where quoted, is as written by the court scribe.

Private (6944) W. J. H. Banks, of the 22nd Battalion Australian Imperial Force, was charged as follows:

Offence charged: when on active service committing the offence of murder in that he at Longpré-les-Corps Saints on the night of 31st October, 1918 when on active service did feloniously wilfully and of malice aforethought kill and murder one M. Vertighen, proprietor of Café de Commerce, Longpré-les-Corps Saints.

Alternative: AA Sec 41: when on active service committing the offence of manslaughter in that he at Longpré-les-Corps Saints on the night of 31st October, 1918 when on active service did unlawfully kill M. Vertighen, proprietor of Café de Commerce, Longpré-les-Corps Saints.

Alternative: AA Sec 6: when on active service committing an offence against the person of an inhabitant of the country in which he was serving in that he at Longpré-les-Corps Saints on the night of 31st October, 1918 when on active service did unlawfully kill M. Vertighen, proprietor of Café de Commerce, Longpré-les-Corps Saints.⁵³

Banks pleaded not guilty to all three charges.

The prosecution case against Banks was that he was in the Café de Commerce in Longpré-les-Corps Saints on the evening of October 31, 1918 between 7pm and 7.30pm and was seen by several witnesses carrying a revolver. They would testify that Banks was worse for drink, although he could 'walk and talk'. He was seen talking to the café proprietor, Monsieur Vertighen, who, according to one witness, took the revolver from Banks and placed it in the accused's pocket. No clear motive for the killing was established but one witness testified that Banks and Vertighen had a conversation in which Banks threatened to close down the café because of an infringement of opening hours. As a result, an aggrieved Vertighen determined to see the town commandant to sort out the matter. This, the prosecution claimed, was why both men left the café around 7.30pm. Approximately two minutes later, a shot was heard, and Vertighen lay dead, about thirty metres from his café, from a bullet wound to his chest. Banks was arrested approximately one hour later in the Deputy Assistant Director Ordnance's (DADO) store. The witnesses involved in his arrest would describe Banks as being drunk and incapable when he came into the store at 8pm and at his arrest at 8.30pm. His revolver, which was unloaded, was found on his person

⁵³ Ibid., Proceedings Sheet.

with five live and one spent cartridge found beside him on the ground. No one was called who witnessed Banks shoot Vertighen.

The first witness was the deceased's sister-in-law, Mademoiselle Germain, who stated that she knew Banks and that he was in the café from 7pm to 7.30pm. She served him with a glass of wine, after which he went into the dancing room. Banks, she claimed, was carrying a revolver. When questioned by the Prisoner's Friend, Major Laskey, she stated: 'Accused came into the café and went out and came in again. The second time accused came into the dancing room. He had a revolver the second time he came in. Accused had a revolver and the live ammunition he loaded in the café. I have never heard accused speak French. I don't know whether he can speak French.'⁵⁴

To the court she stated that the 'accused was very drunk . . . could walk and talk but was unsteady in his gait'. Further, she saw Veritghen and Banks talking, but added that they had not known each other before that night. She said she saw Banks carrying his revolver in his hand but did not see him hand it to Vertighen.⁵⁵

The second witness, M. Cordier August, the grandson of the deceased, testified that around seven o'clock in the café he saw the accused and Vertighen talking in the kitchen and that Banks was not speaking in French. He stated that Vertighen took the revolver from Banks, who was carrying it in his hand, and put it into the accused's pocket. Then Banks went to the bar, returning to the kitchen ten minutes later, and said to Vertighen, 'that he would get the café put out of bounds because soldiers had come in before opening time'. The witness, Cordier August, did not speak English, but said he was told this by Vertighen, who could not understand why Banks wanted to close his café. Vertighen had told him that he and Banks were going to see the 'Town

⁵⁴ Ibid., pages 1-2.

⁵⁵ Ibid., page 2.

Major’ to sort it out. The accused, the witness stated, ‘was drunk but could walk and talk’.⁵⁶

Answering questions put to him by Major Laskey, Cordier August admitted that he had a problem identifying Banks as the man in the café. He stated: ‘On 3rd November [at the Summary] I called accused Brigand, Assassin and threatened him with a knife, but I am not sure that accused was the man. It is probable too.’ He insisted that the accused did not offer the revolver to Vertighen, but added that he did not think ‘accused wanted to shoot M. Vertighen when he showed the revolver in the kitchen’. When questioned by the court the witness said Banks spoke in ‘pure English, but not in Pidgin English’. Crucially, he stated that he saw the accused and Vertighen leave the café together.⁵⁷

The shooting of Vertighen occurred outside of the house of the third witness, M. Lamont Gorton, who was in his front room when he heard Vertighen talking in ‘broken English’ to a man who spoke ‘good French’. After hearing the shot fired he ran outside and saw a man running away very fast, but could not say whether the man was a civilian or a soldier as it was dark. Questioned by Major Laskey, he stated:

The voices were in an ordinary tone. Both men spoke quite clearly. I cannot say what kind of clothing the man who ran away was wearing. I don’t remember saying on 31st October 1918 that I thought it was a civilian who ran away. Anyone going from the Café de Commerce to the Town Major would have to pass my house. The Australian soldier was about 30 metres away from M. Vertighen when I first saw him. He was approaching my house from the direction of the Café de Commerce. The man who ran away was running in the opposite direction to the Café.⁵⁸

Unfortunately, there is no record of what actually was said between both men outside Lamont’s house, and no indication that Major Laskey asked the witness what was said. What counts in Banks’s favour here is that whoever Vertighen was talking to spoke ‘good French’, according to this witness, something the other witnesses for the

⁵⁶ Ibid., page 3.

⁵⁷ Ibid., pages 3-4.

⁵⁸ Ibid., pages 4-5.

prosecution had never heard Banks do. Furthermore, the voices were not raised in anger, and this witness, under examination, appeared to have said, at a hearing held shortly after the event, that he thought it was a civilian who ran away.⁵⁹

The next four witnesses were all Australian soldiers whose testimony would shed light as to why Banks, a private, was carrying a revolver, and his physical and mental state when he was arrested. Conductor R. Johnson, AAOC 1st Australian Division, was working in DADO's store and saw an Australian soldier in the street about 8pm, whom he later identified when the Summary was taken. Johnson stated that the man 'was drunk' and that they had had an argument. Then the man fell down and 'appeared as if he was in a fit'. He called for assistance and removed the revolver from the accused. The revolver was empty, Johnston stated, and he did not examine the barrel. When questioned by Major Laskey, Johnston added:

The man who came into the store was in a dazed condition and did not know what he was talking about. He thought the store was a YMCA and said that he was no. 1 and a Lewis Gunner in the Engineers. I told Private Smith 1st D.H.Q. to take the revolver away. The revolver produced in court is the service issue revolver. I cannot identify the accused as the man who came into the store.⁶⁰

Private W. R. Smith, of the 1st Aust DHQ attached AAOC, confirmed that he was in the store around 8.30pm and described Banks, who was wearing an Australian overcoat, as drunk. He stated that Banks 'was rolling about at the Summary'. He admitted that he 'could not identify any soldier as being the one I saw in the store'. To Major Laskey he confirmed that he never examined the barrel of the gun.⁶¹ Like previous witnesses, Private Smith had a problem with identifying Banks and the confusion could have been caused because the man who was charged was clean-shaven and Banks was wearing a moustache at his trial.

⁵⁹ Ibid., pages 5-6.

⁶⁰ Ibid., pages 6-7.

⁶¹ Ibid., pages 7-8.

The sixth witness called by the prosecution was S. M. R. Godfrey of the 1st Australian DAC [Division Ammunition Column] who was billeted in the Café de Commerce. He testified that he was in the dancing room around 7.30pm when he saw Banks enter: 'He was under the influence of drink and was a bit flaky. The man took a MP's [Military Police] brassard out of his pocket put it on his left arm, and was playing about with some handcuffs.'⁶² Godfrey could not swear that the 'accused is the man I saw'. He was in DADO's store around 8.30pm and described seeing a man lying in the yard: 'I had a look at him and saw that he was drunk and was incapable of speech. The man in the yard was the same man in the bars and in the café.'⁶³

Under questioning from Major Laskey, Godfrey provided details of Banks's activities working with the military police to round up a gang of Australian soldiers who were involved in criminal activities behind the lines. Sergeant Selmes, a key witness for Banks, who was not in France to provide evidence, had told Godfrey of Banks's work. Selmes, like Godfrey, was billeted at the Café de Commerce. According to Godfrey, Selmes told him that 'Banks was I believe the man who tracked a man who was badly wanted by the police'. Further, Selmes had told him:

That he had supplied Banks with an overcoat with artillery colours and a revolver, acting under instructions from Major Sheppard, 1st D.A.C. Sergeant Selmes told me that about the 15th [October] I took Banks to Lieutenant Dunne D.A.C. Dunne told me that he had seen Lloyd in civilian clothes in Longpré. Banks was working in conjunction with M.P.'s to roundup the gang. Lieutenant Dunne told Banks that he was to be very careful in approaching Lloyd, as Lloyd was a man who would not hesitate to shoot. I know Lloyd. Lloyd received 20 years Penal Servitude about six weeks ago for shooting with intent.⁶⁴

Further questioned by Major Laskey, Godfrey stated that he did not know whether Lloyd was in the café on the 31st, and further, that he would not have recognised him if he had been dressed as a civilian. Godfrey, in response to Major Laskey, replied that he was unaware that Lloyd had tried twice to kill Banks. He added that Banks, 'was

⁶² Ibid., page 7.

⁶³ Ibid., page 8.

⁶⁴ Ibid., pages 8-9.

shaky, it may have been nervousness. I don't now think it was nervousness Banks was suffering from.'⁶⁵

The seventh witness, B. W. Ashmore of the 1st Australian DAC, stated he was in the café around 7.30pm and thought the accused had been drinking, although he could walk. He saw Vertighen and the accused leave the café together, but did not notice the accused carrying anything. At 9.30pm he was placed on guard over the accused who was lying on the ground and could not walk and had to be carried to the car. Major Laskey asked whether a blow to the head could have caused Banks's condition. Ashmore thought it possible, although it is unclear how he was qualified to make that medical assessment. The accused and the deceased 'appeared to be friendly or on ordinary terms' he told Major Laskey. To the court the witness stated that the accused 'had no more than three drinks in the café' and that his conduct in the café did not attract any 'particular attention'. He added that he would have noticed if the accused was carrying a revolver in his hand. He stated to the court that from 9.30pm to 10.20pm, whilst guarding the prisoner, no words were exchanged between them.⁶⁶

Corporal F. M. Carrican of the Australian Provost Corps proved to be a most important witness as he knew Banks and was able to shed light on the detective work in which Banks was involved. He had seen Banks around 5.30pm on October 31, 'when he appeared to be slightly under the influence of liquor'. The accused told him 'I'm alright, I am after something'. The next time he saw the accused was in DADO's store at 9pm where the accused 'smelt strongly of liquor and could not walk without assistance. He appeared as if he were in a trance.' He confirmed that when Conductor Young handed him the revolver it was not loaded.⁶⁷ When questioned by Major Laskey he related the events of October 30 when he and Banks were attempting to apprehend a

⁶⁵ Ibid., page 9.

⁶⁶ Ibid., pages 10-11.

⁶⁷ Ibid., pages 11-12.

man named Crundill. In the process of making an arrest Corporal Carrican had requested Banks's revolver to 'cover' Crundill while Banks tried to handcuff the prisoner. However, Crundill broke his escort and Carrican, using Banks's revolver, fired, and hit Crundill in the thigh. On completing the arrest Banks went away with the prisoner as escort. Carrican had handed the revolver back to Banks without cleaning the gun, or knowing how many cartridges were left in the chamber. He did not notice whether Banks had any more ammunition.⁶⁸ He confirmed that Banks's revolver was of a similar pattern to the one produced in court and that powder marks were still present. Commenting upon Lloyd, Carrican said he knew that Lloyd was a dangerous man and that he was seen on the morning of October 31 at 1st DCO dressed as a soldier, and the day before was seen dressed as a civilian. Lloyd, he explained, was a member of the Kelly gang, but he could not confirm whether this gang had a grudge against Banks. He added that he thought Banks was feigning intoxication in the afternoon as he 'pulled himself together' when they spoke. However, by 9.30pm he 'could not wake him up'. Carrican explained to the court that when on duty in the service of the Provost Corps he had pretended to be drunk.⁶⁹

The final witness, Captain W. I. Hayes, AAMC [Australian Army Medical Corps] stated that he and Major Shepperd went to DADO's store on October 31 at 9pm. There he saw a man named Banks in custody and stated that Banks was drunk. He then went to the Military Post Office and saw the dead body of Vertighen, who had been shot in the chest. He performed the *post mortem* on the November 1 which confirmed that death was due to a bullet wound, with the bullet lodging in front of the neck of the first right rib. He produced the bullet he recovered from the body stating the revolver must have been 'within three feet of the dead man when the shot was fired'. Commenting upon Banks's physical and mental state, his medical opinion was that 'It is possible,

⁶⁸ Ibid., page 12.

⁶⁹ Ibid., pages 11-13

but not probable, that accused's condition was caused by a hit to the head. Accused was in comatose state.' Answering questions from Major Laskey, Captain Hayes stated that 'I ran my hand over his head but noticed nothing'. Captain Hayes also testified that he had seen Banks on the 31st around 5.30pm in the café, 'lurching about unsteady in his gait and talking thickly'.⁷⁰ His evidence concluded the prosecution's case against Private Banks. At this stage the Prisoner's Friend, Major Laskey, addressed the court, but whatever he said was not recorded in the trial transcript.

Although the prosecution's case against Banks was very strong they had not established a motive for the murder nor did they have any witnesses to it. What they did have was Private Banks under arrest an hour after the murder carrying a revolver, with one spent cartridge and five live ones. They had established that when Banks was in the café between 7pm and 7.30pm he was seen by two witnesses carrying a revolver and speaking with Vertighen. Cordier August, the second witness, testified that Vertighen had taken the revolver from Banks and put it into Banks's pocket. He also provided the reason, the alleged closing of the café for an infringement of opening hours, that prompted both men to leave together to see the Town Commandant at 7.30pm. Two witnesses heard the shot that killed Vertighen within two minutes of both men leaving the café. All the witnesses had testified to the degree of Banks's intoxication from the time he was in the Café de Commerce to the point when he was arrested in a drunken state. The medical examination of Banks by Captain Hayes, although cursory, seemed to rule out a blow to the head as the cause of his condition when arrested in the military store. What complicates this case is the fact that Banks was working with the Military Police in the round up of a notorious gang that was operating behind the lines. The Australian witness Godfrey provided the background of some of Banks's activities and Corporal Carrigan testified that he had borrowed

⁷⁰ Ibid., pages 13-14.

Banks's revolver, a day before the murder, when shooting Crundill escaping arrest. His testimony could account for the spent cartridge but the thorny problem of whether Banks reloaded remained. Most of the witnesses said they could not positively identify Banks as the man in the café and later in DADO's store. Banks would put this issue to rest when he began his defence, as he would not deny that it was he. Facing an almost overwhelming case against him Banks would present an extraordinary defence, and at the same time provide an insight into the dangers of dealing with a criminal element operating behind the front lines.

The thirty-five-year-old Banks, an engineer in civilian life from Parkville, Victoria, began his defence by outlining his encounters with the gang associated with Lloyd. According to Banks, on October 13, while in Comfaures with Sergeant Bryant, some men tried to steal Bryant's horse. A man named Cody, who had mounted the horse, shot Sergeant Bryant in the arm and then fired at him, before getting away. This, he said he reported to the Assistant Provost Marshal. A few days later he was sent to Belloy-sur-Somme to identify gang-members Cody, Lloyd, Bevan and O'Shea.⁷¹ On the 16th, at Ailly-sur-Somme, Banks claimed Lloyd fired at him and that he reported the matter to the commandant. Banks was not injured and Lloyd and the others all escaped. He claimed the Assistant Provost Marshal had warned him about Lloyd. On returning to his Battalion he was assigned to help the police in identifying Cody and his gang and was told to remain in his billet by the sergeant major. Talking about his undercover activities Banks stated that: 'On one occasion I was given an English cap and tunic and on another occasion a coat with 1st Aust Div colours and it was my duty to go about with the police'.⁷²

Sergeant Selmes gave him the revolver, Banks explained, because of an impending raid on the Caves [probable hideout for long-term absentees]. It was fully

⁷¹ Ibid., pages 14-15.

⁷² Ibid., page 15.

loaded in all six chambers when he received it and added that he had no further ammunition, or belt or pouch, as a means of carrying more. Trooper Marshall had given him the military police brassard and handcuffs. The incident on October 30 with the man named Crundill, on which Trooper Carrican gave evidence, was supported by Banks's version. Trooper Carrican had challenged Crundill, who was wearing a [Royal] Welsh Fusilier's badge. Banks explained: 'Carrican asked me to handcuff Crundill. I handed Carrican my revolver and he covered Crundill. Crundill bolted and was fired at and hit by Trooper Carrican.'⁷³

The encounter with Crundill happened at 11pm on October 30, and Banks had to escort Crundill to the 41st South African Stationary Hospital at Abbeville by car. There, Banks was warned by a sergeant that there would probably be an enquiry. He returned to Longpré at 7am on October 31. He stated: 'I did not open or clean the revolver when Carrican handed it back to me . . . I gave the hospital all particulars of Crundill. I still had my revolver. I never cleaned it. I had no ammunition.' According to Banks, Sergeant Selmes had given him the revolver in the presence of Vertighen on October 23 and on October 29 had asked Banks to return his revolver as he was attending a course at Corps School. On the night of the 31st, Banks admitted that he was in the Café de Commerce between 7pm and 7.30pm and that he was looking for Sergeant Selmes to return the revolver. Banks had asked Vertighen if Selmes was in:

Vertighen shook his head. I took it that Sergeant Selmes was out. I offered the revolver to M. Vertighen saying "Tres bon" meaning that it was unloaded. I had unloaded it earlier that evening. I did not say Bon pour soldats. I cannot talk French. I never said anything further. Vertighen was present when Sergeant Selmes gave me the revolver. Vertighen took the revolver and put it in my pocket.⁷⁴

Banks said he could remember everything up to leaving the café. He was out all night of the 30th with the Crundill shooting and claimed he was out the previous night as well. On the afternoon of the 31st Banks said he was in the Café Caron speaking to

⁷³ Ibid., page 16.

⁷⁴ Ibid., pages 16-17.

Carrican: ‘Carrican said to me you look as though you have been drinking. I said I am all right. I’m after somebody, meaning Lloyd.’⁷⁵

He claimed that he had only five drinks, two of them at the Café de Commerce between 7pm and 7.30pm. On entering the dance room Banks claimed: ‘I noticed in a corner the man named Lloyd. Lloyd was the only one of the gang who I think could not recognise me. I saw Lloyd the day before He was dressed as a civilian. This day he was dressed as an English soldier wearing RE [Royal Engineers] badges.’⁷⁶

The sighting of Lloyd in the café prompted Banks to speak to Vertighen of the danger this man Lloyd posed, but he had difficulty making him understand. Banks continued: ‘I saw S. M. Godfrey before I spoke to Vertighen in the kitchen. I went outside into the dance room. Lloyd was still there. I spoke to Vertighen but could not make him understand. He wanted me to arrest Lloyd. I told him I had no authority, as I was not a member of the Police force. Vertighen did not speak English. I left the café with M. Vertighen to find Carrican and Trooper Marshall.’⁷⁷

Vertighen, as far as Banks understood from him, was going to see the commandant. Both men walked together, ‘three or four yards’, before stopping by a shop next to an estaminet. At this point, Banks claimed, he parted company with Vertighen because he had spotted Lloyd. ‘I saw Lloyd come out; turn to the right towards the bridge. Lloyd entered the Café de Allies and I followed him. Vertighen did not come with me. Vertighen when I saw him last was walking up the hill to the Commandant’s office. I looked in the café and saw Lloyd.’⁷⁸

On seeing Lloyd in the café Banks claimed he ran down a side lane that led to the Café Caron, where he hoped he would find Corporal Carrican or Trooper Marshall. Unable to find them, he went to the café on the square, but did not find them there

⁷⁵ Ibid., pages 17-18.

⁷⁶ Ibid., page 17.

⁷⁷ Ibid., page 18.

⁷⁸ Ibid.

either. He stated that he did not hear a shot fired on his way to the Café Caron. He went to relieve himself near a munitions lorry where he claimed he was smacked on the head near his left ear, close to an injury he had received in 1914 in an accident on a banana boat. When falling forward under the impact of the blow a kick was aimed at him. Although he caught sight of a puttee he could not see who the man was as it was dark.⁷⁹

Banks claimed he could not remember anything more until he was brought before Major Denton at Lang who told him he was going to be charged with murdering a civilian. Banks thought the major was joking, but Denton assured him he was not. Banks concluded his statement by saying that his health was good and that he never suffered from fits. He added that he had ‘no cause whatever for any ill feeling against the deceased man’ and that he had no idea who caused his death. On completing his statement Banks disclosed that since his arrest on October 31, 1918 he had been put on ‘his honour’ and allowed special privileges.⁸⁰ It is interesting to note that on such a serious charge, and one that had attracted so much high profile interest, Banks was trusted not to abscond.

The prosecution questioned Banks about his revolver and whether he had more ammunition, and asked for clarification of his movements on October 31. Banks told the prosecutor that the revolver was fully loaded when Sergeant Selmes handed it to him. When he offered the revolver to Vertighen he said he was not aware that Lloyd was in the café. When he saw Lloyd in the dance room he went outside the café to load his revolver. He maintained that he did not say anything to Vertighen regarding placing the café out of bounds and that it was Vertighen who proposed seeing the Town Commandant. On the afternoon of the 31st he asserted he was sober and ‘was pretending to be drunk’. This he did again later when he saw Lloyd in the Café de

⁷⁹ Ibid., page 19.

⁸⁰ Ibid.

Commerce around 7.30pm.⁸¹ Banks assured the prosecutor that he was not a heavy drinker, maintaining that his alleged drunkenness was pretence, and that the real cause of his later apparent drunkenness was a blow to the head. He stated: 'I have still a lump on my head from where I was struck. I had my head washed the next morning. There was only a little blood on my head from where I was struck.'⁸² Banks said he could not account for the fact that five full cartridges and one empty cartridge were found beside him, as attested to by Sergeant Selmes at the Summary.

On re-examination by the prosecutor, Banks was asked to clarify why he carried an empty cartridge: 'When I loaded my revolver outside the café I put the five full cartridges and the blank one in the revolver. I put the blank one in because I was told by the Sergeant at the hospital that there would probably be an enquiry into the shooting of Crundill.'⁸³

Banks stated that he unloaded the revolver when he left the Café de Francis as he was returning to the Café de Commerce to hand over the revolver to Sergeant Selmes. Further, the Prosecutor wanted to know why Banks was now wearing a moustache when he was clean shaven at the time of the alleged offence, a factor in the inability of some of the witnesses to identify him. Banks explained that he had shaven his moustache off before the 31st 'so as not to be recognised by members of the Cody gang'. Banks, answering further questions, said there were no strict orders concerning the opening and closing of estaminets and that Vertighen had said nothing to him when he left him to go after Lloyd. He claimed he was struck on the head about forty-five minutes after he and Vertighen parted. Asked about his ability to speak French Banks replied: 'I have been in France about 18 months and understand a few words of

⁸¹ Ibid., pages 19-20.

⁸² Ibid., page 20.

⁸³ Ibid., page 21.

French – the French soldiers use in the line. I don't know the meaning of the expression "Ca re fait rien".⁸⁴

This concluded the examination by the prosecution of Banks and it was now left to the Prisoner's Friend to address the court. Major Laskey, as recorded in the trial transcript, was brief and his address consisted of only three sentences. He pointed to the fact that a long time had passed since the murder was committed and that Sergeant Selmes, 'a most important witness for the defence', had been demobilised. He claimed the civilian witnesses were unreliable, without mentioning why. Furthermore, the case for prosecution 'rests on inferences; no proof of shooting; no proof that revolver had been fired on 31st October'.⁸⁵ The case for the defence of Banks rested on those points.

Banks's defence seems extraordinary if it had not been for the fact, corroborated by Godfrey, Carrican and Marshall, that Banks was indeed involved in operations, involving undercover work, to round up a notorious gang. A ballistic examination, which was not available at the time, would have determined whether the bullet came from Banks's revolver and would have settled the matter. But Banks had an explanation for the spent cartridge with the shooting incident when he and Carrican had attempted the arrest of Crundill only the day before the murder. Whether Banks had more ammunition and reloaded is the question. What is clear is that Banks's alleged level of intoxication rose dramatically half an hour after Vertighen's death when he entered DADO's store, and whether his condition was caused by a blow to the head would be a matter for the court to decide.

This was always going to be a difficult charge to defend and it is not surprising the court would decide on what was probable. Although not recorded in the court transcript, they must have come to the conclusion that Banks, while in a drunken state,

⁸⁴ Ibid., page 22.

⁸⁵ Ibid.

shot Monsieur Vertighen. He was found guilty by the court on the alternative charge AA Sec 41 of committing the offence of manslaughter:

when on active service committing the offence of manslaughter in that he at Longpré-les-Corps Saints on the night of 31st October, 1918 when on active service did unlawfully kill M. Vertighen, proprietor of Café de Commerce, Longpré-les-Corps Saints.⁸⁶

Banks was awarded five years' penal servitude, which was later confirmed.

There is no record of the court's deliberations but we can surmise that they believed Banks was drunk when he and Vertighen left the café. They must have accepted the testimony of August Cordier, the grandson of the deceased, whose evidence concerning the threatened closure of Vertighen's premises provided the reason why both men left the café together. Captain Hayes, the medical officer who examined Banks on his arrest, had seen him worse for drink in the afternoon. Furthermore, he had testified that he thought it 'improbable' that Banks's condition in the evening was caused by a blow to the head, and that he had in fact examined him and found no head injury. An Australian witness, S. M. R. Godfrey, had testified that he had seen Banks put on a military policeman's brassard and 'was playing about with some handcuffs'. This may have suggested to the court that an over-tired Banks, who was worse for drink, abused what authority he had vested in him by threatening to close Vertighen's café. But most telling of all is the fact that two witnesses testified that they heard the shot that killed Vertighen around 7.30pm, about two minutes after Banks said he parted company with Vertighen. Significantly, Banks in his defence, never claimed that Lloyd, Cody or other members of the gang might have killed Vertighen. Probably, under advice from his barrister, Major Laskey, this was left to the court to conclude. But the insinuation was there and the possibility that Vertighen was killed to 'set Banks up' provided a motive for Vertighen's death and was something

⁸⁶ Ibid., Proceedings Sheet.

the court had to consider. If that was the case then it was a most opportunist killing as the gang members had less than two minutes to execute the plan.

After confirmation of his sentence Banks was imprisoned in No. 2 Military Prison, Rouen for a few days before being transferred to Portland Prison, England. On August 29 the Australian Imperial Force headquarters in London decided to return Banks to Australia to serve what was left of his sentence. Their intention was to have his case reviewed by the Defence Department and any remission of sentence to be made in Australia.⁸⁷ In September, the Governor of Portland Prison, S. H. J. Creedy, stated that a petition had been received from Private W. J. H. Banks and that his trial had been reviewed and it was found there were 'no grounds for interference'. In his Petition Banks claimed 'he was "drunk" at the time he committed the offence'.⁸⁸ Whether this amounted to an acknowledgement that he was guilty of manslaughter or just a plea in mitigation of his sentence is unclear. There is nothing in Banks's service record that indicates he was involved in 'undercover activity'. His disciplinary record shows that he had absences that resulted in detention, with one case of violently resisting a military policeman. He faced a court-martial on July 11, 1918 and was convicted of being absent from May 20 to June 3, drunkenness, and 'committing an offence against the property of an inhabitant of the country he was serving, in that he damaged a camera, the property of Mme. Bratazan', for which he was awarded twenty-eight days' Field Punishment No. 2. Banks embarked for Australia on January 5, 1920, disembarking at Melbourne on February 26. By March 27, 1920 Banks was a free man having been discharged from the Australian Imperial Force, 'services no longer required', an indication of his status as a disciplinary case.⁸⁹

⁸⁷ (TNA) WO 32/5484, item 20, AIF, London, August 19, 1919.

⁸⁸ Ibid., item 20, October 1919.

⁸⁹ NAA: B2455, Banks William John, service record. On January 18, 1921 Banks applied to the Commandant, 3rd Military District, Melbourne for a Returned Soldier's Badge. His request was refused.

The intransigence displayed by the Australian government to their soldiers being subject to the death penalty for murder most likely saved the lives of Private Richmond and Private Banks. Although Banks was found guilty of manslaughter, that verdict could well have been murder if he had been tried earlier under the glare of a hostile High Command in an English or French court. It would be interesting to know whether Banks was aware, while he was 'on his honour' awaiting his trial, that his Commander-in-Chief, and successive Secretaries of State for War, Lord Milner and Churchill, had tried to get him tried for his life. All their efforts came to nought in the end. The Australian government stalled over the issue of the death penalty for murder, delayed replying to correspondence, and settled for penal servitude for life as the maximum sentence that could be imposed for murder. The High Command did not get the example they so badly wanted, and by the time Banks was tried the need for an example was receding as soldiers were being repatriated. It could have been so different if the French had insisted that Banks should be tried in a French civil court where the death penalty applied. If that had happened it would have been very difficult for the Australian government to resist the combined pressure of GHQ and the French, and the necessity of maintaining good international relations could well have ended the privileged position the Australians enjoyed.

Chapter 3

FIELD PUNISHMENT

On the face of it the British Army's disciplinary code had enough force to keep men to their duty. A closer examination, however, reveals that the sanctions they could impose were quite limited when taking into account the overriding need to keep men available for combat. At the extreme end of this disciplinary code was the death penalty that frightened the vast majority of British and Dominion forces and proved to be an effective deterrent against high incidences of absenteeism and desertion. Exemption from this sanction resulted in exceptionally high rates of absenteeism and desertion among Australian troops. Imprisonment, as discussed earlier, was seen as 'rewarding' the offender by keeping him out of harm's way, as the regimen of prison life, as miserable as it was, did not compare to frontline combat. The awarding of Field Punishment Numbers 1 or 2 provided an alternative to imprisoning offenders whose crimes would normally attract a prison sentence. It remained one of the few options available to the British Army as a means of control, as branding – marking a prisoner with a letter 'D' for deserter, or 'BC' for bad character – was abolished in 1871¹, and flogging (corporal punishment) was eventually banned in 1881.² It offered the flexibility of being administered behind the lines when a man's unit had been stood down. However, Field Punishment No. 1 attracted much controversy and had been dramatically portrayed as 'crucifixion', a reference to the practice of physically tying the offender's legs and arms outstretched when fettered to a wagon wheel, or more generally after 1917, to a

¹ Gerard Oram, *Military Executions during World War I*, Basingstoke: Palgrave Macmillan, 2003, p. 26.

² *Ibid.*, p. 21

post with arms tied at the back.³ It has been argued, with some justification, that this degrading punishment reflected ‘an old idea that a soldier is a low and violent fellow who can only be ruled by brute force and savage torture’.⁴ During the war the severity of the disciplinary code was often mitigated by officers acting out of a sense of *noblesse oblige*, which entailed taking care of their men and protecting them, when appropriate, from the full rigour of the disciplinary code.⁵ Australian officers too adopted these principles, but crucially their men did not have the death penalty hanging over them. Furthermore, there was a reluctance of Australian-convened courts martial and commanding officers to award Field Punishment No. 1. Explanations for this would normally centre on the sensitivities of the colonial temperament that saw this degrading punishment as an affront to a man’s dignity. However, when the fettering of offenders was again raised in 1919 and opinions were sought on retaining this punishment the views expressed by the majority of British corps commanders were remarkably similar to the Australian position throughout the war.⁶ The British High Command detected this unwillingness to award this punishment during the war and urged senior Australian officers to award Field Punishment No. 1 and not to ‘reward’ offenders with detention or imprisonment.⁷ Their reluctance to do so contributed to the high imprisonment rates for Australian soldiers, tainting many of them with unnecessary prison convictions and reducing the disciplinary options at their disposal.

Field Punishment No. 1 was not just abhorrent to Australian troops. It also aroused a great deal of adverse feeling in Britain after a soldier died undergoing

³ Christopher Pugsley, *On the Fringe of Hell: New Zealanders and Military Discipline in the First World War*, Auckland: Hodder & Stoughton, 1991, p. 91; *Manual of Military Law*, p.721.

⁴ (TNA) WO 32/5460, Part 1, Robert Blatchford, a former soldier, quoted in the *Illustrated Sunday Herald*, October 29, 1916.

⁵ G. Sheffield, *Leadership in the Trenches*: Basingstoke: Macmillan Press, 2000, pp. 87-88, 168-69.

⁶ (TNA) WO 32 5461, the 1919 debate is discussed later in the chapter.

⁷ (TNA) WO 32/5484, item 83, letter from Field-Marshal Sir Douglas Haig to The Secretary of State for War, June 23, 1918.

punishment and the details of its administration became widely known. In 1916 the popular *Illustrated Sunday Herald* printed an article under the headline: ‘Why Crucify Tommy?’ In this story Robert Blatchford, a former soldier, voiced the rank and file’s hatred of this degrading punishment. Blatchford asked: ‘Why should any penalty be tolerated in the Army which would not be tolerated in civil life?’. For Blatchford, this type of punishment only reinforced GHQ’s view of the ordinary soldier as less human than themselves and who needed threats and acts of terror to keep him in line.⁸ The disquiet this brand of punishment aroused in Britain caused David Lloyd George, then Secretary of State for War, to write to his counterparts in the French and Italian governments to ask whether they had a similar form of punishment in their armies. His letter to them in November 1916 laid out the manner in which Field Punishment No. 1 was administered in the British Army. He stated the offender may be punished as follows:

- (a) He may be kept in irons, i.e. in fetters or handcuffs, or both fetters and handcuffs; and may be secured so as to prevent his escape.
- (b) When in irons he may be attached for a period or periods not exceeding two hours in any one day to a fixed object, but he must not be so attached during more than three out of any four consecutive days, or during more than twenty-one days in all.
- (c) Straps or ropes may be used for the purpose of these rules in lieu of irons.
- (d) He may be subjected to the like labour, employment and restraint, and dealt with in like manner as if he were under sentence of imprisonment with hard labour.

There is, however, the following important provision:

‘Every portion of a field punishment shall be inflicted in such a manner as is calculated not to cause injury or to leave any permanent mark on the offender; and a portion of field punishment must be discontinued upon a report by a responsible medical officer that the continuance of that portion would be prejudicial to the offender’s health.’ [This comment added to the letter.] Further, the sentence cannot extend for more than 3 months if inflicted by a court-martial, or 28 days if inflicted by a commanding officer.⁹

Lloyd George was careful not to admit to his ministerial counterparts that soldiers in the British Army would consider committing crime in order to be sent to

⁸ (TNA) WO 32/5460 Part 1, *Illustrated Sunday Herald*, October 29, 1916.

⁹ (TNA) WO 32/5460, David Lloyd George’s letter to the French Minister, November 21, 1916.

prison to avoid frontline duty, or that Field Punishment was a way to counter this by not rewarding this type of crime with imprisonment. The justification for this type of punishment, Lloyd George went on to say, was twofold:

- (1) In order to avoid keeping a soldier away from his duties as a combatant for so long a period as would be involved by an equally severe sentence of imprisonment.
- (2) In order that it may be necessary to employ as few men as possible to guard the offenders.¹⁰

The French Minister for War, Roques, replied that their military regulations ‘do not provide either at home or in the field for punishments analogous to those which Field Punishment No. 1 authorises’. He stated that ‘the punishment of irons does not even exist with regard to soldiers detained in military prisons’ and restraints of any sort are only used as a precaution when a prisoner is a danger to himself or others.¹¹ The Italian War Minister, Morrone, reported that use of irons was permitted under their military regulations ‘to increase the severity of rigorous imprisonment’, to constrain difficult prisoners, and to use against prisoners charged with a serious crime. He explained that ‘this measure, however, must be considered as entirely exceptional and should never be enforced merely as a punishment but only as a measure of temporary coercion’. He believed that it was justifiable in time of war to increase the rigorous punishment for serious crimes by the use of field irons.¹² However, there was little comfort for Lloyd George in these replies as the French had no equivalent of Field Punishment No. 1, and the Italians, although prepared to restrain men in irons, confined their use to serious offences – unlike the less serious offences which led to British soldiers being awarded this punishment.¹³ The practice

¹⁰ Ibid.

¹¹ (TNA) WO 32/5460, Part 1, letter from Ministère de la Guerre, Roques, December 13, 1916 replying to Lloyd George’s letter of November 21, 1916.

¹² (TNA) WO 32/5460, Part 1, Letter from the Ministro della Guerra, Morrone, Roma, Dicembre 11, 1916, replying to Lloyd George’s letter of November 21, 1916.

¹³ Many corps commanders were of the opinion that Field Punishment No. 1 was awarded too often for less serious crimes when they were canvassed for their opinion concerning retaining fettering of soldiers in 1919. See (TNA) WO 32/5461.

was thus anachronistic in Western Europe and peculiar to the British Army. It reflected an old view, prevalent in the High Command, that men drawn from the lower echelons of society required harsh measures to keep them in line.

In the same month Lloyd George cabled the General Officers Commanding forces in France, Egypt, Salonica, East Africa and Mesopotamia to canvass their views. The cable indicated that opinion in both Houses of Parliament and the press was that Field Punishment No. 1 should be abolished, and that ‘popular feeling against this punishment was growing daily’, with a motion down for discussion in the House of Commons. It was the controversial Rule 2(b), the tying of offenders to a fixed object, which aroused the most anger. The cable went on to add that the implementation of Rule 2(b): ‘has been carried out under conditions which lead to extreme physical inconvenience and various methods devised whereby soldiers suffer extreme pain and that some cases of death have resulted’.¹⁴

What had aroused anger in the community and adverse comments in the Press was the death of a Liverpool soldier who died undergoing ‘crucifixion’. The *post mortem* concluded the soldier died of ‘an acute attack of the dilation of the heart’. He had been tied up for half an hour; and then had been given a ten-minute break in which period he died. The official report used the fact that the soldier did not die undergoing punishment under Rule 2(b), but during a rest period. General Childs defended the report and the methods used to discipline men in this way. It is little wonder that the press labelled this report ‘a whitewash’.¹⁵ Public antagonism was also fuelled by eyewitness accounts of abuses of soldiers undergoing punishment under Rule 2(b). One soldier claimed that in Franvillers he saw a soldier handcuffed behind his back and tied around the chest and ankles with straps and ropes to a timber wheel in full view of the public in the village square. British soldiers reported

¹⁴ (TNA) WO 32/5460, Part 1.

¹⁵ (TNA) WO 32/5460.

that the comment ‘even the Germans do not do that’ was frequently heard in northern France. Protests poured in from the trade unions, mothers with sons in France, as well as from people across the social and political spectrum in Britain.¹⁶ None of these protests made any difference to the outcome. The general consensus amongst officers commanding British forces in all theatres was in favour of its retention. This matter would re-surface in 1919 in the reading of the Army Bill in the House of Commons with a motion set down for the fettering of offenders to be abolished.¹⁷

Haig, writing to the Secretary of War in June 1918, acknowledged that the Australians held the view that Field Punishment Number 1 was degrading before the campaign in England to have it abolished began. He persistently drew attention to the fact that the range of punishments available to Australian courts martial was restricted due to the fact they are unable to award the death penalty. In particular, he commented upon Australian ‘unwillingness to award sentences of Field Punishment No. 1’¹⁸ as part of a general criticism of Australian courts martial not using effectively the powers they possessed, thus contributing to the high levels of Australian indiscipline. In previous correspondence to the Secretary of State for War Haig had pointed to the exceptionally high rate of imprisonment of Australians compared with British and other colonial troops. In July 1918 the Australians were imprisoned at a rate of 7.86 per 1,000 compared with 0.97 for British and 1.88 for other colonial troops.¹⁹ Haig was urging the awarding of Field Punishment No. 1 in place of a custodial sentence which in turn would not reward the offender with imprisonment, and would naturally reduce the high rates of Australian imprisonment. There is evidence to support Haig’s claim when the punishments for crimes against

¹⁶ Ibid.

¹⁷ (TNA) WO 32/5461, the 1919 debate is discussed later in the chapter.

¹⁸ (TNA) WO 32/5484, item 83, letter from Field-Marshal Sir Douglas Haig to The Secretary of State for War, June 23, 1918.

¹⁹ (TNA) WO 32/5484, item 81.

inhabitants are examined for the period from March to July 1918. Of the fifty-five Australian convictions, only five were awarded Field Punishment No. 1, compared with 156 out of 295 convictions for other troops²⁰ (see table 2.1, chapter 2). In this snapshot of crimes against inhabitants, 9 per cent of Australian convictions resulted in the award of Field Punishment No. 1 compared with 53 per cent for other troops.

In July 1917 Australian brigade commanders were urged to use Field Punishment No.1 as a means to curb Australian indiscipline and reduce the excessive number of courts-martial. The brigade major of the 12th Australian Infantry Brigade, in a confidential memo to his Brigade commanders, drew attention to the ‘excessive’ number of courts martial of NCOs and men in his unit. To reduce the number of courts martial the Brigade Major used an example of one of his battalion commanders who, while deployed on the Somme, found Field Punishment No. 1 to be very effective in keeping discipline. This commander, the major explained, used Field Punishment No. 1 ‘fearlessly and successfully, with the result that crimes for drunkenness and absence without leave, refusing duty, etc., became an almost unknown quantity’.²¹ For this reason the Brigade Commander directed his commanders in future to award Field Punishment No. 1 and ‘that it be rigorously carried out’ when the Unit is out of the line so ‘the remainder of the Unit can see and realize for themselves what it means’.²² This was not always possible as punishment was sometimes administered in the transport lines or in special compounds. Although the order to award this punishment in future was clear enough from this brigade major, there was some confusion over which crimes could be awarded Field Punishment No. 1.

²⁰ Ibid.

²¹ AWM 25, 807/6, 12th Australian Infantry Brigade, Administrative Memo No. 17, July 14, 1917 (signature unclear).

²² Ibid.

The framing of charges was a critical factor in deciding whether a commanding officer had the power to deal with a soldier summarily or whether the crime was such that a court-martial was mandatory. It will be recalled that by 1916 a commanding officer had the authority to award Field Punishment No. 1 and 2 up to a maximum of twenty-eight days. The administrative instruction from the Third Australian Division sought to clarify the position for commanding officers, but it came late in the war in September 1918. This stated that care had to be taken when charges were framed so it was clear the commanding officer had the authority to deal with the case summarily. The example given illustrates just how much discretionary power could be exercised. A minor case of insubordination would be sent for trial by court-martial if the accused were charged with ‘disobeying a lawful command’, or ‘using insubordinate language to a superior officer’. To avoid this commanding officers were instructed to frame the charge to read ‘hesitating to obey an order’, or ‘making an improper reply to an NCO’,²³ so that the case could be dealt with summarily and avoid the costly loss of time and effort in convening a court-martial. For cases not considered serious enough to make the convening of a court-martial essential, permission could be sought to deal with such cases summarily if it was felt that the awarding of Field Punishment up to twenty-eight days would be appropriate. However, as the instruction indicated, ‘the power to deal with other offences under the direction of a superior authority is practically never exercised’.²⁴ The thrust of this administrative instruction was to remind commanding officers that by not fully exercising the powers they possessed they were contributing to the ‘marked increase’ in the number of cases ‘forwarded for trial by court-martial’.²⁵ The framing of charges to avoid the convening of a court not only saved administration, but also

²³ AWM 25, 233/1, Administrative Instruction No. 56, September 9, 1918, R. Jackson, Lt.-Col., AA & QMG, Third Australian Division.

²⁴ Ibid.

²⁵ Ibid.

prevented the offender from suffering the stigma of a prison sentence and kept him available for duty. Cases handled by the Australian Provost Marshal, such as absence without leave and less serious offences, could also be dealt with summarily by obtaining the sanction of brigade headquarters.

There existed a lack of uniformity in sentencing men convicted of absence without leave, which caused confusion for commanding officers. The guidelines laid down to show the recommended scale of punishment for absence appear harsh and one wonders how rigorously they were enforced. Cases of absence, when a Unit was engaged in active operations, would automatically be sent for court-martial. If the offence were committed after a man had been warned for duty then the charge would be upgraded to desertion. For absence over two hours but not exceeding forty-eight hours a minimum of seven days' Field Punishment No. 2 was recommended, with the offender forfeiting seven days' pay. Up to seven days' absence could attract twenty-eight days' Field Punishment No. 1 and forfeiture of fourteen days' pay. Absence over seven days, the guidelines state, 'should be sent for Field General Court Martial'. Non-commissioned officers were dealt with more severely as all cases of absence required a court-martial.²⁶ As absence without leave was the most prevalent crime amongst Australian troops, it is not surprising that the Army authorities were getting bogged down with too many trials and were urging commanding officers to use every means at their disposal to prevent them.

The above guidelines, if carried out to the letter, would have caused a further increase in Australians being court-martialled for absence. An administrative memo from the First Australian Division in September 1917 commented upon the 'disparity of awards in recent cases of trial by F.G.C.M'. The memo urged brigadier-generals to exercise their discretion as to whether cases should be sent for trial by field general

²⁶ AWM 25, 233/1, A233/5/47, Scale of Punishment for Absence Without Leave, guidelines. (No date, and one can speculate that these rules were laid down early in the war).

court-martial or whether the regiment could deal with these cases summarily. The suggestions made to deal with absence made by the signatory of the memo, Major F. Millner, DAAG, differ significantly from the guidelines above. Under these guidelines, brigadier-generals could exercise a greater degree of discretion, as can be seen below:

- (1) All cases of A.W.L. for 3 days or under, in which the accused rejoins his unit of his own accord or surrenders, to be dealt with summarily.
- (2) All other cases of over 3 days and under 21 days absence, where the man rejoins his unit or surrenders, to be submitted by the C.O. to the Brigadier General for his decision as to whether the case should be tried by F.G.C.M. or dealt with regimentally.
- (3) All cases where a man is arrested or where the A.W.L. is of a period over 21 days to be dealt with F.G.C.M.²⁷

Whereas in the previous guidelines seven days' absence was automatically a court-martial offence, under Millner's suggestion an absentee could be away up to twenty days (if he rejoins or surrenders to his unit) and not be tried by court-martial, if a brigadier-general so directed. With this much leeway brigadier-generals had the discretionary power dramatically to reduce the number of offenders being sent for trial.

Determining whether a soldier should be charged with absence without leave or desertion was problematic, even if a soldier gave himself up to his unit. A memo marked 'Secret' from the 5th Australian Division in November 1917 alerted all officers to the increase in cases of absence, which bordered on desertion, that had occurred since the Division had been engaged in active operations. The 'commonest cases', the memo pointed out, were where men absented themselves just before the Unit proceeded to the frontline, and then later surrendered, or reported to the 'Nucleus Camp or Transport Lines'. Some men, the memo stated, 'have boasted that they will not go into the line'. Furthermore, it was proving difficult to secure a court-martial

²⁷ AWM 25, 233/1, Administrative Memorandum No. 36, First Australian Division, September 5, 1917.

conviction for desertion in many of these cases as ‘it is found difficult to prove the essential fact the accused was warned the unit was about to proceed to the line’.²⁸ To counter this, the memo instructed officers personally to warn men liable to abscond of the Unit’s movement to the line and to caution them that a charge of desertion will be preferred for cases of absence. Furthermore, at the time of an absentee’s arrest arrangements should be made, should his Unit still be at the front, for him to rejoin them.²⁹ There is a sense of alarm in this memo at the number of men absenting themselves, and more importantly, avoiding frontline duty. General Birdwood expressed his dismay over the number of desertions in the 2nd Division in his telegram to the Australian Defence Minister, Pearce in the same month. He told Pearce that in the last month fifty-three men, whose battalions had been ordered to the front to join the rest of 2nd Division, ‘quietly slipped away at night back to the rear, where they were either apprehended or gave themselves up some days later’. Birdwood admitted to Pearce that the deterrents in place were not working and that he would resort to shaming the convicted men by having their convictions for desertion ‘published in all the Australian papers’, hoping that this would ‘act as a deterrent in a way which other things do not.’³¹

Although there existed a degree of flexibility in dealing with absentees, as discussed above, men found a way to exploit the requirement for a court-martial conviction for desertion. The Australian Provost Corps alone dealt with nearly 26,000 cases of absence from 1917-18 (see Table 3.1 below), an indication of the severity of the problem. Detention proved of little use as a deterrent, and commanding officers were continually urged to use the powers they possessed to award Field Punishment in its place. There is little evidence to show that they did so.

²⁸ AWM 25, 233/1, memo marked ‘Secret’, 5th Australian Division, Headquarters November 6, 1917, DAG, Major-General Commanding 5th Australian Division.

²⁹ Ibid.

³¹ AWM 92, 3DRL 3376, Birdwood papers, letter to Pearce, November 5, 1917.

The Australian military authorities were in a real tangle in framing charges that would keep men out of prison, sorting out what was appropriate punishment and providing a deterrent.

Table 3.1
Australian Provost Corps:
Summary of cases dealt with from January 1, 1917 to December 31, 1918.³²

Offences	Six Months Ending 30.6.1917	Six Months Ending 31.12.1917	Six Months Ending 30.6.1918	Six Months Ending 30.12.1918	TOTAL
Absence	7,232	6,367	6,086	6,205	25,890
Drunkenness	656	400	161	180	1,397
Insubordination	118	32	23	10	183
Conduct to the Prejudice	949	746	401	539	2,635
Resisting Arrest	104	51	45	61	261
Escaping from Custody	82	33	17	44	176
Disobedience	303	90	109	17	519
Neglect to Obey	1,906	3,474	2,463	1,980	9,823
Larceny	48	30	11	15	104
Forged Pass	240	263	78	26	607
Assault	48	20	12	59	139
Bounds	321	17	33	17	388
Failing to Salute	580	407	290	168	1,445
Breach of Traffic	20	51	15	3	89
Dissension	17	20	99	92	228
Allowing to Escape	41	1	-	-	42
Improperly Dressed	31	249	70	160	510
Striking Superior	17	18	4	6	42
Altered Paybook	16	-	13	7	45
Trespassing	41	71	94	128	334
Trafficking in Govt. Stores	1	5	8	3	17
No means of Identification	-	-	22	35	57
TOTALS	12,771	12,345	10,054	9,755	44,925

The awarding of Field Punishment No. 1 by the British Army was a discriminatory form of punishment. Officers, of course, were exempt, and although senior NCOs were often awarded Field Punishment, commanding officers were urged to commute their sentences to something less degrading. There was good reason for this as Army authorities feared the effect that the humiliating of NCOs in

³² Source: AWM 25, 233/6, Part 53. (This table does not indicate whether these crimes were committed either in France or England, or both.)

front of their own men might have on discipline. Non-commissioned officers provided the crucial link between officers and other ranks. These were the very people who did the shouting, swearing and bullying on behalf of their officers. They were generally treated more harshly when they transgressed, incurring more severe sentences for their crimes.³³ A confidential memo from Third Army in July 1917 expressed the hope that reviewing authorities would use the powers they possessed to commute the sentences of NCOs. They gave the following examples of commutation:

- (1) Sergeant X. Sentenced to reduction to the ranks and 90 days Field Punishment No. 1 or No. 2.
- (2) Sergeant X. Sentenced to 90 days Field Punishment No. 1 or No. 2 without anything being said as to his rank.

Either of these sentences may be commuted in the following terms:-

- (a) “90 days Field punishment No. 1 or No. 2 commuted to 90 days (or less) forfeiture of pay, reduction to the ranks to stand”.
- (b) “I remit the Field Punishment awarded, reduction to the ranks to stand”, i.e. the accused is merely reduced to the ranks.
- (c) “Committed to reduction to the rank of Corporal” i.e. the Field Punishment is remitted and also part of the sentence of reduction.
- (d) “Committed to reduction to Corporal and 90 (or less) days forfeiture of pay”.
- (e) “Committed to 90 days (or less) forfeiture of pay”. In this case the accused would remain a sergeant but would lose 90 (or less) days pay.³⁴

Despite Australian distaste for Field Punishment, the decision was made by Birdwood, GOC I Anzac Corps, to establish a Corps Field Punishment Compound for all men awarded Field Punishment Numbers 1 and 2 over seven days. Under the command of Major R. Reilly of the AIF, and staffed by members of the Anzac Provost Police Corps, the Compound at Poperinghe was opened on September 29,

³³ This is demonstrated in the sentences NCOs received for their part in the ‘mutiny’ in the 1st Battalion in September 1918 (see chapter 5).

³⁴ AWM 25, 807/1, Confidential Memorandum from Third Army Headquarters, DAAG, July 24, 1917.

1916. Its task was to administer Field Punishment and not act as a place to keep men in ‘safe custody’ while under arrest, waiting trial, or promulgation of court-martial sentences. It was not always the case that men sentenced to periods of Field Punishment served their full term, as commanding officers could request release before the sentence was completed.³⁵ By setting up a compound, out of sight of the troops from the offender’s Unit, the Australians were losing the deterrent effect of public humiliation, one of the main reasons given for the efficacy of Field Punishment.

This policy of Birdwood’s differed from that of Lieutenant General Alexander John Godley, commander of New Zealand Forces II Anzac Corps, who continued the implementation of Field Punishment within his divisions. This policy, Pugsley believes, helped to create the impression amongst Australians ‘that field punishment, and particular Field Punishment No. 1 was not awarded or carried out on Australians by Australians’.³⁶ He asserts that Field Punishment was awarded by Australian commanders to the same degree as in the New Zealand Division. Further, that ‘by 30th April 1918 the Australian Corps Field Punishment Compound reported total admissions of 2504 men on field punishment’.³⁷ Comparisons with British and Australian awards of Field Punishment No. 1 are difficult to make due to the lack of consolidated records on the subject. However, it will be recalled that Field Punishment No. 1 was awarded 60,210 times by courts martial in all theatres from August 4, 1914 to March 31, 1920 (see Table 1.1, chapter one),³⁸ and this figure does not include those men sentenced summarily by their commanding officers, who had the power to do so from 1916.

³⁵ AWM 25, 8071, Memo from Headquarters, Australian Division, September 26, 1916, 1st Australian and New Zealand Army Corps.

³⁶ Christopher Pugsley, *On the Fringe of Hell*, p. 101.

³⁷ Pugsley, *On the Fringe of Hell*, p. 101.

³⁸ See chapter one, page 15. Source: Julian Putkowski, ‘The Pardon Campaign’, website <http://www.association14-18>.

The general routine of the Central Field Punishment Compound was designed to make the offender's life as miserable as possible and therefore act as a deterrent. Reveille was at 6am, with roll call/sick parade and fatigues until 7.15am. At 8.30am the offenders were paraded and inspected by the officer commanding the compound. Parading and drilling would follow from 9.30am to noon and again from 1pm to 3.30pm. Pack drill was also required from 6pm to 6.15pm, which was followed by roll call at 7pm and silence from 7.30pm. In addition offenders were to be given all possible fatigues, and those undergoing Field Punishment no. 1 were to be tied to a fixed object for two hours (not more than three out of four consecutive days) and preferably between the hours of 2pm and 4.00pm. Breakfast was taken at 7.30am, dinner at noon, and tea at 5pm, with the diet restricted to bully beef, biscuits and tea. Not surprisingly they were denied life's small pleasures of tobacco and rum, with reading material restricted to drill books and sacred texts. Blankets were provided as offenders had to sleep on the floor, with the possible concession of straw for a stone floor. Communicating with sentries or other soldiers was forbidden and any requests had to be made to the sergeant or corporal of the guard. All orders had to be obeyed at the double, and all complaints, should an offender be foolhardy enough to make one, had to be made to the Officer Commanding the Compound, and any considered frivolous would result in further punishment for the complainant. Undergoing Field Punishment in a compound of this nature was considered to be more severe than being administered at brigade level. Although an offender undergoing Field Punishment within his Unit was exposed to the humiliation of being tied up in front of his comrades, he at least knew that men were observing his plight and any abuses by those carrying out the punishment would be remembered and retribution might possibly follow.

A report from the officer commanding the Australian Corps Field Punishment

Compound in May 1918 indicates that Field Punishment No. 1 was not as freely imposed on Australian offenders compared with British. The commander of the Compound stated that: ‘prisoners sentenced to F.P. No. 1 usually have anything from five to twenty entries on their conduct sheets, and it is generally a last chance given to them by their Commanding Officers before they are sent to a F.G.C.M.’.³⁹ Considering the high number of Australian courts martial there should be evidence of more men being given a last chance, that is undergoing Field Punishment rather than being sent for court-martial.

The report also highlights the degree of flexibility this commander could exercise as he reported ‘that in the past five months Field Punishment No. 1 had not been carried out in the Compound owing to the offenders being fully employed during the periods of daylight and the various moves of the Compound that have taken place’. In an attempt to allay fears of ill treatment this commander claimed that when Field Punishment No. 1 is carried out it is under the supervision of two ‘responsible’ NCOs, and that he personally inspects men undergoing this punishment every 15 minutes.⁴⁰

By March 1918, according to a graph showing the number of men in military prisons in the field, nine Australians per 1000 were in prison compared with one per 1000 British and less than two Canadians. The graph also shows the British imprisonment rate reached over five per 1000 in 1915⁴¹ and its reduction to the level of 1918 could in part be explained by the introduction of suspended sentences. Bean believed the comparatively high imprisonment rate of Australians to be a consequence of the British and other colonial troops suspending sentences,

³⁹ AWM 25, 783/1, Central Field Punishment Compound Orders, signed Major (name unclear), Commanding Central Field Punishment Compound.

⁴⁰ Christopher Pugsley, *On the Fringe of Hell*, p. 102.

⁴¹ AWM 27, 363/9.

something that he states ‘could not be so general in the AIF’.⁴² The reason why suspended sentences could not be readily adopted by the AIF is not expanded upon by Bean. However, in his notebook Bean had expressed his frustrations at the sentences of courts-martial not being properly carried out. He complained that men were let out of prison if they gave no trouble despite the offender’s battalion not recommending a suspension of sentence. Furthermore, he thought this was a policy of weakness that had placed undue burdens on commanders of battalions.⁴³ Instructions were given to commanders to the effect that men under suspension of sentence could be returned to prison to serve the full term should their conduct be unsatisfactory. Provision was also made to allow suspended sentences to be fully remitted in cases of acts of gallantry or ‘constant devotion to duty’, but not in cases of just ‘a negative abstention from crime’.⁴⁴

At the end of the war the High Command held firm to their belief that Field Punishment No. 1 was essential to the maintenance of discipline. In 1919, when the Army (Annual) Bill was being considered in Committee stage in the House of Commons, the disquiet this punishment had caused in 1916 found expression in an amendment moved to abolish the fettering of soldiers. The amendment included a proviso that ‘Field Punishment should not be of the character of personal restraint by being kept in irons or other fetters but that Field Punishment should be of the character of hard labour’.⁴⁵

The Secretary of State for War undertook the task of canvassing the opinion of senior commanders in all theatres in an attempt to find an alternative to Field

⁴² C. E. W. Bean, *The Official History of Australia in the War of 1914-1918*: vol. vi, *The Australian Imperial Force in France during the Allied Offensive 1918*, Sydney: Angus and Robertson, 1942, pp. 30-31

⁴³ AWM 38, 3DRL 606/198/1, Bean’s Notebook (date unclear).

⁴⁴ AWM 25, 233/1, Army Administrative Instruction No. 56, ‘Discipline’, September 9, 1918, Lt.-Col. R. Jackson, AA & GQMG Third Australian Division.

⁴⁵ (TNA) WO 32/5461.

Punishment No. 1 which would still have the effect of maintaining discipline and which, in a future war, would avoid ‘a more free infliction of the death penalty than has been the case in this war’.⁴⁶ Haig, now Commander-in-Chief of Home Forces, writing in June 1919, was ‘quite certain’ that without Field Punishment No. 1 the high standard of discipline in the British Army could not have been maintained. Furthermore, Haig stated, ‘it is not beside the point to recall the effect on discipline in the Australian Corps of the absence of capital punishment for desertion’.⁴⁷ Haig, echoed the opinion of most of his senior commanders when he wrote: ‘A few officers from a sentimental point of view wish that it could be dispensed with but are unable to find a substitute other than flogging and are generally in agreement that its abolition would result in an increase of death sentences’.⁴⁸

A wider range of opinion was canvassed by the commander-in-chief in Ireland, Lieutenant-General Sir F. Shaw, who consulted with formation commanders, officers commanding units and representatives of warrant officers and non-commissioned officers. They came to the unanimous conclusion that the tying up of men in ‘a fixed position in public, should be abolished’. Shaw acknowledged the degrading nature of the punishment and made the interesting point that Field Punishment No. 1 was ‘in the majority of cases, awarded for offences such as insubordination, which do not call for punishment of a degrading nature’. As an alternative he advocated the formation of penal companies or battalions where men awarded more than fourteen days Field Punishment or more could be sent. Furthermore, Shaw wanted the offender to face the same dangers as the rest of his comrades but recognised this was difficult in France as:

the only method of doing so was to send men behind the lines and therefore out of immediate danger. Consequently many men preferred to do several Field Punishments well behind the lines, than to run the risks attendant on the so-called period of ‘Rest’ in close support of the Trench Line, where long and arduous night working parties under

⁴⁶ Ibid.

⁴⁷ (TNA) WO 32/5461, Haig to Secretary of State for War, June 2, 1919.

⁴⁸ Ibid.

fire, caused the soldier to prefer his tour of duties in the trenches to that of his short tour of 'Rest'.⁴⁹

There was a measure of agreement from a corps commander of the British Army of the Rhine to Shaw's position. Lieutenant-General Sir T. L. N. Morland, commanding X Corps, thought fettering should be maintained on active service but was in agreement with Shaw in believing that Field Punishment No. 1 'should be restricted to cases of a serious nature, e.g., striking or threatening a superior officer, insubordination, etc., and should not be awarded for cases of drunkenness or overstaying leave, as has been the tendency during the present campaign'.⁵⁰ Further support for its abolition came from Major-General C. Hull, commanding IX Corps, who advocated the alternative of pack drill, physical training, and 'military training of arduous nature'.⁵¹ Lieutenant General C. Haldane, commanding VI Corps, said the consensus was against fettering offenders. He took issue with the Secretary of State's view that abolition would result in an increase in the death penalty, believing this was based on a 'misconception', and that 'such cases can be dealt with by the award of Penal Servitude and this sentence may or may not be suspended'.⁵² Major General P. Hambro, commanding II Corps, was in favour of abolishing irons, except to use as a restraint in cases of violent offenders, and would substitute hard labour.⁵³ In favour of its retention were Lieutenant General Sir A. J. Godley, commanding IV Corps,⁵⁴ and Brigadier-General H. S. Rogers, British Army of the Rhine, who stated 'the way in

⁴⁹ (TNA) WO 32/ 5461, reply by Lt-Gen. F. Shaw, Commander-in Chief, Ireland, May 20, 1919.

⁵⁰ (TNA) WO 32/ 5461 General Headquarters, British Army of the Rhine, Lt-Col. T. L. N. Morland, commanding X Corps.

⁵¹ (TNA) WO 32/ 5461, General Headquarters, British Army of the Rhine, Maj.-Gen. C. Hull, commanding IX Corps.

⁵² (TNA) WO 32/ 5461, General Headquarters, British Army of the Rhine, Lt-Gen. C. Haldane, commanding VI Corps.

⁵³ (TNA) WO 32/ 5461, General Headquarters, British Army of the Rhine, Maj.-Gen. P. Hambro, commanding II Corps.

⁵⁴ (TNA) WO 32/ 5461, General Headquarters, British Army of the Rhine, Lt-Gen. Sir A. J. Godley, commanding IV Corps.

which Field Punishment has been carried out during this war could not have been bettered'.⁵⁵

The commander of British troops in France and Flanders, Lieutenant-General Sir J. J. Asser, reported that, on balance, opinion favoured its retention, but admitted that NCOs and men were 'equally divided', with older men in favour of its retention and younger ones against. Asser believed that Field Punishment No. 2 was in practice 'little more than confinement to barracks with the added penalty of forfeiture of pay'. Non-commissioned officers pointed to the defects of administering the punishment in cases where offenders were left tied up when under enemy fire, and therefore in greater danger than their comrades. Sergeant Erley, DCM, stated that he had seen men killed in these circumstances and was in favour of its abolition. The regimental sergeant-major thought it should be retained, 'but considered it detrimental to a man's health'.⁵⁶ General E. H. H. Allenby of the Egyptian Expeditionary Force was in favour of abolition, but of retaining Field Punishment No. 2.⁵⁷

The High Command's position that Field Punishment No. 1 was essential to the maintenance of discipline during the war may well have been overstated considering the evidence of the officers consulted above. Many reported that it was awarded for minor offences that could have been dealt with by other, less degrading means. It is questionable whether tying men up in front of their comrades instilled a sense of fear of similar punishment. It was reported by one commander that this punishment more often than not enlisted sympathy rather than fear of a similar fate.⁵⁸ Sir William Robertson, who had been appointed Commander-in-Chief of the British Army of the Rhine in March 1919, summarised GHQ's view that it should be retained. Ignoring the

⁵⁵ (TNA) WO 32/ 5461, General Headquarters, British Army of the Rhine, Brig.-Gen. Rogers.

⁵⁶ (TNA) WO 32/ 5461, Lt-Gen. J. J. Asser, General Officer Commanding British Troops in France and Flanders.

⁵⁷ (TNA) WO 32/ 5461, General E. H. H. Allenby, Egyptian Expeditionary Force, 20 June 1919.

⁵⁸ (TNA) WO 32/ 5461, Officer Commanding Motor Transport (name not provided).

degrading nature of the punishment and the counter views of his corps commanders, his reply was based purely on practicalities. He did not want offenders rewarded with safety and ‘relative comfort’ because of their crimes. The administration of Field Punishment required the employment of few personnel and ‘elaborate accommodation’, had the advantage of being speedily carried out, ‘and at the same time be sufficiently distasteful to those undergoing it to act as deterrent’. Robertson also believed that Field Punishment saved many soldiers from ‘the taint of imprisonment for a military offence’.⁵⁹

British commanding officers and British-convened courts martial more readily awarded Field Punishment No. 1 than their Australian counterparts. The evidence of the Australian Field Compound Commanding Officer indicates that when they did award Field Punishment No. 1 it was reserved for habitual offenders. Furthermore, the British were far more flexible in framing charges so they could avoid court-martial offences and therefore not reward offenders with detention or imprisonment. In the snapshot of crimes against inhabitants, the reluctance of Australian courts martial to award Field Punishment No. 1 makes a striking comparison with the British awards. The considerably higher imprisonment rate for Australian troops suggests first of all that they were actually committing more crimes than other troops, especially absence, and therefore we should expect more of them to have been imprisoned. Secondly, if Bean is correct in his belief that suspension of sentences was not carried out to the same degree as with other troops, then crime did pay for some Australian offenders as it kept them out of the firing line. Overall, Haig’s criticism of Australian disciplinary procedures in this case is not so much a call for more severe sentences, but rather for them to exercise the powers they possessed in imposing Field Punishment No. 1 so as not to ‘reward’ crime.

⁵⁹ (TNA) WO 32/ 5461, Sir William Robertson, Commander-in-Chief of the British Army of the Rhine, had canvassed the views of his corps commanders.

The difference in opinion between GHQ and corps commanders in 1919 over Field Punishment No. 1 is significant, as it appears to reflect a similar division among Australian commanding officers during the war. The evidence also overwhelmingly underscores that Australian soldiers detested the practice and were willing to take action in some cases to free men undergoing Field Punishment No. 1.⁶⁰ In this case the much heralded attribute of the Australian colonial temperament played its part in that Australian commanding officers were not as willing to inflict degrading punishment on their men as were officers drawn from the upper echelons of British society. Even at war's end, after all the troops had endured and achieved, GHQ held on to their belief in the efficacy of Field Punishment No. 1 for rank and file troops on active service. They had seen how their strict disciplinary code had been successful in turning working men and those from the bottom rung of society into effective soldiers by instilling in them the qualities of 'soldierly discipline'.⁶¹ Through drill and training the soldier learned to obey promptly, achieved skill at arms, learned to have faith and trust in his comrades, and attained a pride in the unit to which he belonged. Essentially, military discipline was designed to prepare men for the trauma of battle. Its aim was to produce men immune from natural instinctive reactions of fear so they could keep their cohesion in battle and act as a corporate body. To achieve this there was a negative side to military discipline, as Wilson observes, in that 'it helped to safeguard the positions of bungling or vicious officers and to reconcile rank-and-file troops to low pay, poor conditions, and unwarranted ill-treatment'.⁶² However, all this was seen as necessary by GHQ if they were to mould men into an effective fighting force; and they were not prepared to get 'sentimental' over the tying up of military offenders. They remained unimpressed by the fact that no comparable punishment

⁶⁰ Christopher Pugsley, *On the Fringe of Hell*, pp. 91-101.

⁶¹ Trevor Wilson, *The Myriad Faces of War: Britain and the Great War, 1914-1918*, Cambridge: Polity Press, 1986, p. 248.

⁶² *Ibid.*, pp. 248-9.

existed in the armies of Britain's allies, or even the German army, as these armies suffered far more serious disciplinary problems than the British. Nevertheless, by insisting on retaining the right to tie-up offenders they can be accused of clinging to pre-war notions of the type of men who had traditionally made up the rank and file of the army, as well as being out of step with changing social conditions. This view did not take into account that the men who volunteered, and those conscripted into the British Army in the Great War, were from a much broader social spectrum than previously. In fact, as the war progressed, many officers were recruited from their ranks and altered the dominant pre-war social divide between leaders and led. Although this was not to last as the social background of officers in the post-war army came more to resemble the army of 1914,⁶³ nevertheless, the efficient army that emerged by 1918 could not have been achieved without the skill and intelligence demonstrated by rank and file troops. Despite this, and the fact that Field Punishment No. 2 was efficacious as a punishment and was considered 'severe' when administered in a compound, they still persisted with their belief that an example had to be made. The fettering of offenders, as an example to their comrades, was largely lost as very often the punishment was carried out in an enclosed compound; and further, was more often a cause of anger towards the staff who administered it, rather than instilling a fear of incurring the punishment. By believing that the dignity of offenders could be sacrificed in the cause of maintaining military discipline, the High Command had left themselves open to the charge, made by Blatchford earlier, that fettering offenders reflected an 'old idea' of the type of man who had previously made up other ranks in the British Army. Although they had canvassed the views of all their corps commanders they could not find anything suitable to replace it. In reaching this decision they were hampered by pre-war thinking, exemplified by Haig's labelling

⁶³ G. Sheffield, *Leadership in the Trenches*, pp. 30-31.

the views of those corps commanders in favour of abolition as being ‘sentimental’.⁶⁴ The High Command’s view that the army needed the death penalty and degrading means of control to keep men in line proved difficult to shake off. The unspoken contract of *noblesse oblige*, deference in return for paternalism, was, in the case of Field Punishment No. 1, surely broken.

The degradation of soldiers sat less easily with Australians, and although Field Punishment was effective in keeping offenders out of prison, the unwillingness of Australian courts to award Field Punishment No. 1 was a contributing factor in high levels of Australian indiscipline. Because of this attitude they were left with few options, apart from imprisonment, to control their men. This led to a flourishing of indiscipline, for they were operating within a different military disciplinary code to other troops, which paradoxically was at times harsher because of their willingness to imprison, but had the effect of rewarding offenders by keeping them out of harm’s way.

⁶⁴ (TNA) WO 32/5461, Haig to Secretary of State for War, June 2, 1919.

Chapter 4

THE WAR WITHIN THE WAR

The maintenance of discipline in the British Army was an unceasing struggle between Army authority and the regulars, volunteers and conscripts who were subjected to its military code. Ever-watchful senior commanders used the full array of disciplinary powers at their disposal to keep their men in check. As the figures for offences indicate (see Table 1.1, chapter 1), they were not dealing with subservient, docile men. On the contrary, many soldiers became educated in how far they could manipulate the disciplinary code to their favour. Among British and most Dominion troops the death penalty acted as a deterrent in curtailing absence and desertion. However, the Australians, free of this restraint, had far more scope to manipulate the system, as their figures for absence and desertion indicate. Military crime as a means to avoid dangerous duty at the front remained an option to many. Therefore, the Army dealt severely with suspected cases of self-inflicted injury, with ‘accidental injury’ that was proven to be due to the soldier’s negligence attracting the same penalty as wilful self-maiming.¹ The dilemma the Army faced was that in punishing crime, they did not want to ‘reward’ the offender with a period of detention or imprisonment that would keep him out of frontline duty. Locking up men was a waste of resources, and in the Australian case seemed counter-productive, according to Adjutant-General Fowke, who stated in August 1918 that ‘they give more trouble in the prisons than all the other troops put together’.² Field punishments were an option widely used to avoid sending

¹ AWM 27, 363/25, Fifth Army, Courts-Martial Circular Memorandum No. A/668/38, dated August 22, 1916. Army circulars relating to courts martial, training and discipline, absence without leave and accidental or self-inflicted injury (June 1916 – May 1917).

² (TNA) WO 32/5484, Enclosure C, item 71-73, August 2, 1918, attached to Secret Minute to the Secretary of State for War, 14 August 1918, from the Adjutant-General, Lt-General G. H. Fowke.

men to prison, in particular Field Punishment Number 1 which was designed to humiliate the offender and offered the flexibility of being administered during periods when the unit was away from the front trenches. But the Army had little control over the wastage of manpower caused by the contraction of venereal disease by Dominion troops, which was never less than 100 in every 1000 soldiers and probably 'considerably' higher.³ The authorities would have had great difficulty in proving intent to contract the disease as a way of avoiding duty, as indeed do historians. However, the Australians, owing to the medical campaign waged by General Howse of the Department of Medical Services, were the best-informed soldiers regarding this disease, and yet the figures for the Australians remained consistently higher than other Dominion troops. This is a situation that deserves investigation. The disciplinary powers the Army employed seem severe from this distance, but they were determined by the need to keep men available for duty. At the same time they were up against a formidable enemy in the 'savvy' shown by the men under their command, particularly the Australians, who 'worked the system' better than most. It is also crucial to consider the intense strain the men were under at times in 1917 and 1918 when they suffered high casualty rates, which may well have caused men, who would not normally consider other options to avoid frontline duty, to put their survival first. High incidences of venereal disease, and exceptionally high numbers of 'accidental injuries', especially in 1918, point to a general lowering of morale, which could well have led to the mutinies in the 1st Battalion in September 1918, and may have been instrumental in standing the Australians down in October 1918, a month before hostilities ceased.

³ Colonel A. G. Butler, *The Official History of the Australian Army Medical Services, 1914-1918, Vol. III, Special Problems and Services*, Canberra: Australian War Memorial, 1943 (hereafter A. G. Butler, *Special Problems and Services*), p. 152. Butler believes that it is 'probable the number was considerably greater'. He added that some men were infected many times, which would lower the proportion of men infected.

The procedures the Army had in place to deal with suspected self-inflicted wounding or ‘accidental’ wounding started with the premise of a presumption of guilt. A ‘Blighty wound’, that is a wound that is not too debilitating but enough to get a man out of the trenches and back to England (Blighty), was for some an ideal way of avoiding further danger at the front, and at the same time keeping their honour intact in the knowledge that they had done their duty. The temptation to ‘manufacture’ such a wound was an option the more desperate considered. The Army authorities appeared to have all the angles covered in dealing with suspect cases, as the procedures laid down in the Third and Fifth Army memorandum circulars of 1916 indicate. According to the Third Army circular, ‘whenever a soldier is found to be suffering from a wound or injury which appears to have been self-inflicted, and which involves his absence from duty, he is to be placed under arrest at once’.⁴ A soldier ‘accidentally’ wounding himself may not find himself under arrest immediately but he would be at the mercy of his General Officer Commanding (GOC) the Brigade, as it would be left to his determination as to how the injury was caused, whether wilfully, negligently, or through no negligence of the injured man.⁵ If the GOC found that the injury was caused wilfully or negligently, the injured soldier would be kept at the Field Ambulance and not evacuated to a casualty clearance station. The severely wounded had to be evacuated but with notification that they had been charged with self-maiming and therefore they were not to be treated as ordinary patients returning to base or to England. Furthermore, the names of men considered to have maimed themselves wilfully or negligently were published in regimental orders indicating that they were under arrest. The accused, if not too badly wounded, would face court-martial at the Field Ambulance as soon as possible to ensure that witnesses to the incident were

⁴ AWM 27, 363/25, Third Army, Circular Memorandum, ‘Accidental or Self-inflicted Injuries’, reprinted May 28, 1917 and Fifth Army, Courts-Martial Circular Memorandum No. A/668/38, dated August 22, 1916.

⁵ AWM 27, 363/25, Third Army, Circular Memorandum, ‘Accidental or Self-inflicted Injuries’.

available.⁶ Therefore, soldiers who were suspected of wilfully injuring themselves, or who did so by their negligence in handling equipment, similarly faced arrest and trial by court-martial.

The army authorities were fully aware of the difficulty in proving that a wound was self-inflicted, particularly if nobody came forward who witnessed the incident. To counter this, and to prevent acquittals, the circular memorandum from Fifth Army states that in cases where men are tried by field general court-martial for self-wounding, 'the charges should, in almost all cases, be brought under section 40 for 'neglect to the prejudice' and not under section 18(2) for 'wilful maiming'.⁷ As the memorandum indicates, both charges attract the same maximum penalty and that while proving 'intent' under section 18 (2) is difficult, 'it is always easy to prove neglect, e.g., by showing that the accused, when cleaning his rifle, did not remove the bolt and magazine, kept his hand over the muzzle of his rifle or pointed his rifle towards his foot'.⁸ If these procedures were followed the accused would have little chance of being acquitted. Once sentenced the authorities were faced with the old dilemma of appropriate punishment as imprisonment meant avoiding trench duty, the motive for the crime in the first place. Therefore, the memorandum recommended Field Punishment for the first offence, and, should a prison sentence be awarded, suggested that the GOC Brigade exercise his power to have the sentence commuted to Field Punishment.⁹

For Butler the only significant incidence of self-inflicted wounding occurred at Gallipoli, where he reported 'repeated short epidemics'. These, as well as the large evacuation of troops suffering from 'psycho-physical and psycho-somatic breakdown',

⁶ Ibid.

⁷ AWM 27 363/25 Fifth Army, Courts-Martial Circular Memorandum No. A/668/38, dated August 22, 1916.

⁸ Ibid.

⁹ Ibid.

he put down to the ‘intolerable strain’, with little or no relief in the form of leave or recreation (as would be available on the Western Front).¹⁰ Butler was of the opinion that the outbreaks of self-inflicted wounding were not deliberate attempts to avoid duty. He states:

These outbreaks were not so much sophisticated and deliberate attempts to shirk, as a crude and instinctive reaction against a psychic impasse which in less determined and morally-poised men would manifest itself as hysteria—the “flight into disease”. So far as records show, the outbreaks took the form entirely of personal maiming by rifle, or by exposure to enemy fire.

Though not unique this episode is the only important one in the history of the A.I.F.¹¹

The figures overall for the Western Front are not surprising inasmuch as many of the self-maimers would fit into the category that Butler described. The statistics in Table 4.2, below, for accidental injury appear remarkably low for 1916, and even for 1917 when the peak months of April and May are isolated. In April 1918 the number of self-inflicted wounds peaked at ninety-six with accidental injury increasing dramatically from May to October. These months are usually the main fighting season in each year, but the contrast with 1917 is stark. In the comparable months in 1917 there were 369 cases of accidental injury. The 1918 figures for the same months show a more than 630 per cent increase, with 2,341 cases recorded. After the German Spring offensive of March 1918 the war of movement replaced the more static nature of trench warfare, and allowance must be made for the increased risk of ‘accidental injury’ that movement would incur. Butler could not provide figures of just how many men were actually charged with negligently wounding themselves, owing to the main records of the Provost Marshal’s Department in Australia being destroyed after the war and the official conviction forms not being consolidated.¹² In light of the procedures

¹⁰ A. G. Butler, *Special Problems and Services*, p. 79.

¹¹ *Ibid.*, p. 80.

¹² *Ibid.*, p. 90.

Table 4.2

AIF Casualties Caused by Self-Inflicted Wounds and Accidental Injuries sustained on the Western Front from March 1916 to December 1918.¹³

	1916		1917		1918	
	<i>Self-inflicted Wounds</i>	<i>Accidental Injured</i>	<i>Self-inflicted Wounds</i>	<i>Accidental Injured</i>	<i>Self-inflicted Wounds</i>	<i>Accidental Injured</i>
January	-	-	14	71	11	22
February	-	-	13	80	13	27
March	-	2	13	76	49	34
April	4	4	17	107	96	88
May	5	14	17	113	63	305
June	14	20	18	70	42	385
July	19	21	20	80	66	464
August	20	56	6	38	29	517
September	16	51	15	32	20	436
October	16	41	23	36	4	234
November	21	39	15	17	4	49
December	11	41	15	33	-	27
Totals	126	289	186	753	388	2,588

that were laid down to secure a conviction for self-inflicted wounding by the apparent downgrading the charge to accidental wounding through negligence, the official statistics regarding self-maiming must be treated with suspicion.

Although 1918 was the year of victory it was also a year of appalling losses on the Western Front, with men's nerve and courage stretched to the limit. During the war there were 3,894 convictions for self-inflicted wounds in the BEF.¹⁴ Morale is a big factor, identified by Butler, and one can only speculate as to the number of 'manufactured' injuries. Butler states: 'It may be noted that the recorded details of such "epidemics" at once suggest a relation between the occurrence of such injuries and the morale of the units in which they happened'.¹⁵ The actual figures for men charged with 'accidental wounding' are not available. 'Accidentally' injuring oneself,

¹³ Statistics extracted from Appendix (iv) 'AIF. Battle and Non-Battle Casualties Sustained on the Western Front' in A. G. Butler, *The Official History of the Australian Medical Services in the War of 1914-1918*, vol. ii, *The Western Front*, Canberra; Australian War Memorial, 1940, pp. 864-65.

¹⁴ A. G. Butler, *Special Problems and Services*, p. 90.

¹⁵ *Ibid.*, p. 90.

however, must have seemed a better option than death or severe wounding in the push for victory. Corresponding figures relating to the AIF alone cannot be obtained. How many men took the option of injuring themselves to avoid further frontline duty we may never know. For men on leave, however, there was a further option; the contraction of a venereal disease offered a temporary respite to the dangers of the front.

Venereal disease

There seemed to be plenty of opportunity for men to indulge in ‘illicit’ sex out of the line if the descriptions from two British soldiers are anything to go by. Sergeant Alfred West of the Monmouthshire Regiment described how the ‘boys were always on the lookout for women’. He states: ‘And the women knowing this, used to put up a sign in the window saying “Washing done here for soldiers”. I’ve seen up to twenty men waiting in one room, and there were probably others upstairs. Afterwards these women used to sit on the end of the bed, open their legs and flick this brownish stuff around their privates, ready for the next man.’¹⁶

Sergeant George Ashurst of the 2nd Battalion Lancashire Fusiliers described the scene in a crowded estaminet in Armentières where five women were plying their wares:

. . . it was five francs a time if you went with them, up the stairs in the bedrooms. And fellows were going in, coming out, going in, coming out . . . There was a man on every step waiting his turn to go in with a woman . . . I didn’t fancy the women at all. They were so common. . . The first thing she does is grab your five franc note. Then she unfastens your flies and has a feel and squeezes it, see if there’s anything wrong with it. Then she just throws this cloak off and she’s on the bed, you know, ready for you . . . Then when you have finished, she has the kettle boiling there with some herbs in it to give a bit of a swill with it, for safety sake, for disease you know. . . But no, I didn’t go up there, not with that lot. Most of the troops did, because I tell you the stairs were lined with them.¹⁷

¹⁶ Max Arthur, *Forgotten Voices of the Great War*, London: Ebury Press, 2003, p. 94.

¹⁷ *Ibid.*, pp. 94-5.

These accounts surely give weight to the notion that increased alcohol consumption leads to a loss of self-control.

The Australians had little leave in France, except occasionally in Paris, and in numbers in Amiens when they were stationed in the Somme valley in the winter of 1916-1917. Venereal disease amongst the Australians had not been a problem in France up to late 1916 until large numbers of Australians took leave in Amiens.¹⁸ The seriousness of the situation prompted a letter from Major E. R. Corder, No. 51 General Hospital, to Colonel Victor Hurley of Howse's staff in January 1917. Corder asked that his letter be treated as 'entirely private and confidential'. He wrote:

We have noticed here a remarkable number of cases coming in from Amiens especially among Australian troops and nearly all of them are gonorrhoeal in origin. Really the incidence from there has been appalling . . . It seems from the men's stories that they get leave and go into Amiens and then come back and pass on to their pals the addresses of the houses where they have had connection. Their pals follow and each gets V.D. of some description.¹⁹

Corder explained that over a five-week period ending December 1916 his hospital had seen an increase from 1,000 patients to 1,600. Of the additional 600 cases for that period half had come from Amiens, and nearly all were Australians. He stated that he had orders to increase the hospital size to 2,000 but considered that would not be enough as 'the cases keep rolling in'. Corder was well qualified to give an opinion of the demeanour of the men coming into his hospital. 'The men seem to think it is their duty to get V.D. They really consider it a joke altogether and laugh and rag one another about it.' Corder goes on to complain that there is 'no attempt to get at the cause' and fears that his hospital will soon be overwhelmed with patients. Interestingly, Corder makes the point that he was not receiving cases until eight to ten days after the disease has been diagnosed, reminding Hurley that 'every day beyond three after the disease comes out puts about half a week on to the treatment.' Corder's

¹⁸ A. G. Butler, *Special Problems and Services*, p 167.

¹⁹ *Ibid.*

final point, and one that troubled him most, was the unfavourable comparison with the number of British venereal cases. He wrote: ‘. . . and it makes one sick to see 1,200 Australian venereals to 400 British venereals when one knows that this base is perhaps the biggest British base in France’.²⁰

The difference between the British and Dominion venereal disease rates is usually accounted for by the fact that Dominion troops had no home leave and what leave they had was usually taken in London, or occasionally in France. Also, with their higher pay they became a target for prostitutes, and may have been actively looking for them, and were therefore more likely to be exposed to infection. Investigations into the risk of infection from ‘illicit’ sexual intercourse, without precautions, was conducted in the American and British armies and found the overall risk of infection to be 3 per cent.²¹ In short, the social factors that existed during the war operated strongly in raising the venereal disease rate, with Dominion soldiers being more likely to be having casual sexual intercourse, either with prostitutes, or with women they had met on a casual basis, and who would not strictly be considered as prostitutes. Over 60 per cent of infections in the British army came from the second category; in the Australian army approximately 60 per cent of infections were attributable to professional prostitutes. It was on the rise of the ‘amateur’ prostitute, particularly in London, that Butler laid the blame for many of the infections. In France members of the BEF could use *maisons de tolérance* until they were placed out of bounds to all troops of the BEF in April 1918 in response to public pressure from the United Kingdom.²² The *maisons de tolérance* could offer some protection as they were subjected to periodic medical examination.

²⁰ Ibid., p 168

²¹ Major-General, Sir, W. G. McPherson, Major-General Sir W. P. Herringham, Colonel T. R. Elliott, Lieutenant-Colonel A. Balfour (eds.), *History of the Great War, Medical Services: Diseases of the War*, vol. ii, London: HMSO, 1923 (hereafter W. G. Macpherson *et al*, *Medical Services: Diseases of the War*), p. 120. Investigations into venereal disease rates were conducted in the American army by Colonel Ashburn, and by Colonel Harrison in the British.

²² Ibid., p 125.

Infected soldiers were normally questioned to find out from whom they contracted the disease. There was also reluctance amongst Australian troops to give the woman away, which compounded the problem. Once a woman was identified as the source she would be subjected to a medical examination, but in many cases, unless the infection was well advanced, it was difficult to detect and many were declared free of the disease.²³

The contraction of a sexually transmitted infection was not strictly a 'crime', but the concealment of venereal disease was, under King's Regulations 462 and Section II of the Army Act.²⁴ The Australian approach to dealing with infected soldiers differed from that of the British Army, in that the Australians introduced a system of fines for the period infected soldiers were hospitalised. As early as February 1915 the Australian Command and Commonwealth Government introduced 'a special military order' into the Australian Finance and Allowance Regulations which stated that 'No pay will be issued while abroad for any period of absence from duty on account of venereal disease'. What this meant in practice was that any pay allotted by the soldier to his family was also stopped and had to be made good when he recovered before he could again draw on his own pay. The soldier was punished further, as the reason for the forfeiture of pay was entered into the soldier's pay book. Because of the stigma attached to venereal disease, many soldiers feared that the contraction of the disease could be made known to their kin back in Australia. The anxiety this caused for some was worse than the imposition of the fine. Many of those affected reacted in the only possible way, by 'losing' their pay books. As a tactic it worked very well, as the authorities later adopted a form of entry that disguised the true nature of the forfeiture.²⁵ The soldier's pay was only deducted for the time he spent in hospital

²³ Ibid., p 124.

²⁴ Ibid., p. 123; A. G. Butler, *Special Problems and Services*, p. 153.

²⁵ A. G. Butler, *Special Problems and Services*, p. 153.

undergoing treatment. This proved to be unfair, as hospitalisation varied depending on the type of venereal disease contracted. Soldiers suffering from gonorrhoea could lose as much as six to eight weeks pay while the syphilitic soldier would only lose a few days' pay. The unfairness of these measures was brought to the attention of Birdwood from an unlikely source, the British Adjutant-General, who was made aware of the bitterness many felt by another British officer commanding a venereal disease hospital in France. Changes were made so that by January 1, 1918 the stoppage of pay would be 2s 6d a day for venereal disease with officers losing their field allowance.²⁶ Adopting this measure brought the AIF in line with British procedures only as far as charging hospital stoppages. By 1918 Australian soldiers hospitalised for venereal disease were still left with 3s 6d a day while in hospital, still two-and-half-times the normal pay of his counterpart in the British Army.

The British Army has had a long history in dealing with venereal disease and this experience had shown that adopting severe punishment only led to the concealment of the disease.²⁷ Throughout the war the British Army had the authority under the allowance regulations to charge hospital stoppages of 7d per day for men and 2s 6d for officers for all cases of sickness that required hospitalisation that were not the direct result of service in the field. However, during the war the army authorities treated all admissions to hospitals as if they were attributable to service in the field, with the exception of alcoholism and venereal disease. In this sense the British Army was not imposing fines on the alcoholics or venereal disease sufferers but rather withdrawing a privilege that applied to other diseases contracted during the war. Field allowances for officers and warrant officers were forfeited while hospitalised as they were while on leave. Whether a soldier lost his proficiency pay while undergoing treatment was left

²⁶ Ibid., pp. 153-54.

²⁷ W. G. McPherson *et al*, *Medical Services: Diseases of the War*, p. 123.

to the discretion of his commanding officer.²⁸ The British soldier was left with 5*d* per day while he was hospitalised with venereal disease but would face much tougher measures by 1917.

The army authorities were looking for a real deterrent to counter the spread of venereal disease and the wastage of manpower it caused. On January 27, 1917 an order was signed cancelling all leave for men suffering from venereal disease for twelve months from the time they left hospital.²⁹ These severe measures were designed as a deterrent and at the same time as a means of preventing the disease being carried back to England to the soldier's family and into the wider community. As the official British medical historian points out, these measures were 'possibly inoperative', as it was probable that a soldier would be evacuated to England due to sickness or wounding within twelve months on the Western Front.³⁰ Apart from taking the British soldier's 5*d* a day off him it is hard to imagine what more punitive measures could be taken. Although the Australians were brought into line with British procedure of hospital stoppages, there was little doubt who was better off. The British venereal disease sufferer was left with 5*d* per day while hospitalised and all leave cancelled for twelve months, while the Australian sufferer was financially better off, retaining 3*s* 6*d* per day of his pay. In February 1918, on account of the high venereal disease rates among the AIF, a measure was introduced to cut the leave of units which showed more than half of a per cent increase in venereal disease in any week. Leave was also stopped for six months for the infected soldier.³¹ How much of a deterrent this was is difficult to assess, as the taking of 'unlicensed' trips was not exactly a rare occurrence in the AIF. However, the downside for the Australians was that leave did not mean 'home leave'.

²⁸ Ibid.

²⁹ Ibid.

³⁰ Ibid.

³¹ A. G. Butler, *Special Problems and Services*, p. 168

The incidence of venereal disease among the AIF troops in France, according to Butler, 'did not greatly exceed that among the British; whereas in Great Britain it was approximately four times as great'.³² The disease, by its very nature, was primarily a disease of 'leave time', and as most AIF leave was spent in England the figures are not surprising. A summary of the medical measures the AIF took was outlined to the Inter-allied Sanitary Conference in 1918. It was recognised quite early on in the war that with few restraints on the men there would be more illicit sex and with it an increase in the venereal disease rate. At the same time they feared that by educating the men in sexual matters they might initiate the men into 'the knowledge of methods which later might be used to prevent conception—undoubtedly a serious matter in a country like Australia, whose vital need is population'.³³ This seems a little naive from this distance, but represents the prevalent attitude towards sex education at the time. It was decided to take the risk, and by using every means of persuasion at their disposal, it was hoped that a 'moral, social, and an education campaign', would limit the 'harm' caused by the knowledge gained.

By lifting the taboo on sex education the Australian Medical Authorities were able to wage a thorough sex education and preventative treatment programme. The British medical historians considered the 'prophylactic measures [of Dominion forces] were much more thorough than those of the British', and that the reason for the difference in disease rates between British and Dominion forces cannot be found in the 'medical methods of prophylaxis adopted'.³⁴ Each new detachment of troops on arrival at a new posting was given lectures on the nature and dangers associated with the diseases and their prevention. These lectures also addressed the myth that continence was unhealthy or that 'incontinence is an essential attribute of manliness', and also

³² Ibid., p. 156.

³³ Ibid., p. 157.

³⁴ W. G. Macpherson *et al*, *Medical Services: Diseases of the War*, p. 120.

warned of the link between heavy drinking and the increased risk of becoming involved in 'illicit' sex. The lectures were repeated to all ranks at monthly intervals. Men going on leave were similarly lectured and were given prophylactic outfits, and condoms were made available for purchase if they wished. The prophylactic outfit was a small box containing 'three collapsible tubes of calomel with camphor and carbolic cream and a packet of potassium permanganate tablets' with instructions for use enclosed. The advice given was that calomel cream was to be used before and after intercourse, and further recommended the use of a condom, something that the soldier had to buy. The men could obtain further outfits by applying to 'Blue Light' Depot.³⁵ If a soldier put himself at risk of infection he could refer to his 'card of instruction' which advised him of the necessity of attending an Early Treatment Centre as soon as possible for prophylaxis treatment. It was spelled out to him in lectures and leave instructions that getting abortive treatment within twelve hours of the first sign of infection a cure could be effected in 86 per cent of cases, and within six hours the cure rate was 90 per cent. The soldier reporting to these early treatment centres was normally detained for eight days within the lines; his name was not taken, and he lost no pay.³⁶ A soldier going on leave therefore was armed with a prophylactic outfit, condoms if he wished, a card advising of early treatment centres, as well as being subjected to repeated lectures on the benefits of early treatment. It is hard to imagine what more the Australian medical authorities could do, apart from issuing free condoms. And yet, the Australian venereal disease rate remained consistently higher than among all other troops. In short, a man showing signs of the disease knew how long the treatment would take. By holding back at the first signs, and delaying treatment, a soldier knew he would most likely be hospitalised and away from his unit

³⁵ Ibid., pp. 126-127.

³⁶ A. G. Butler, *Special Problems and Services*, p 158.

for several weeks. Although technically he was committing a crime by concealment, there is no indication that men were actually charged and convicted of this crime.

The British medical historian in reviewing the measures taken during the war in the prevention of wastage caused by admission to hospital for venereal disease, considered that the two most effective measures were disinfection by skilled attendants and abortive treatment of gonorrhoea. The Australian and New Zealand forces had set up stations, or early treatment centres, where soldiers 'could be disinfected by skilled attendants'.³⁷ In addition to the medical disinfection these centres undertook the abortive treatment of early gonorrhoea. By catching the disease in its early stages these centres saved large numbers of troops from being admitted to hospital. During the period from August 1916 to February 1919, 222,882 treatments for the two above procedures were carried out at the Australian centre in London alone. In the other eighteen Australian centres throughout England the weekly average attendances during the final six months of the war was 4,623. Furthermore, in 1918 out of 7,366 Australian soldiers who were treated using the abortive method, 5,350 were cured.³⁸ They did not require hospitalisation, nor did they appear on any official figures regarding the venereal disease rate amongst Australians.

The Australian medical historian, Butler, included in his history an account given by Colonel Raffan of the AIF campaign against venereal disease to the members of the British Demobilisation (Infectious Diseases) Committee in February, 1919. Raffan broadly agreed with the British summary of the efficacy of the prophylaxis treatment. Of the methods described above he could not single out one particular measure as being the most beneficial. He did believe that without these measures being taken the

³⁷ W. G. Macpherson *et al*, *Medical Services: Diseases of the War*, p. 127. The disinfecting process was as follows: '(1) Washed with soap and water. (2) Washed with 1:2,000 mercury perchloride. (3) Meatus and first half-inch of urethra swabbed with argyrol or protosil. (4) Urethra injected with 10 per cent argyrol or protosil. (5) Parts well rubbed with 30 per cent calomel lotion.'

³⁸ *Ibid.*, pp. 127-28; A. G. Butler, *Special Problems and Services*, p 165.

venereal disease rate ‘would be enormously greater’. He conceded that the number of cases admitted to hospital had not shown a marked decrease but thought the methods employed had merit because of the large increase in the numbers attending the Blue Light Depots. Overall, he thought the number of men ‘exposed to risk was probably much larger’ and considered that the ‘men were now more reckless’.³⁹ He made the point that the venereal disease rate rose in areas where the Blue Light Depots had not been set up, or where the prophylactic methods were not as well organised. He states:

Where, by accident, in France a unit arrived in a town before the Blue Light Depot had been set up, there was an immediate increase in V.D., and the rate was markedly higher where prophylactic methods were not well organised. “Amateur” infections had been greater than professional, but the Australians’ view of what was a “professional” was rather uncertain, and of late more came from this class.⁴⁰

Raffan was referring here to the ‘amateur’ prostitute, a woman not belonging to an organized brothel and who was not subject to routine medical checks as would the ‘professional’. However, the evidence from the statistics in Table 4.3, below, does support the view that the venereal disease rate would have been considerably larger without these Early Treatment Centres. The cure rate of 74.7 per cent of those who showed signs of the disease saved a great deal of time and trouble in hospitalising these men.

Table 4.3

Details of prophylactic and early treatment given at AIF Depots, UK, and at Early Treatment Section at AIF Administrative Headquarters, Horseferry Road, London, from June 1917 to June 1918.⁴¹

	Nargol and Blue Light outfits issued	Condoms issued	Number reported for Early Treatment	Number received Prophylct. Treatment	Number received Abortive Treatment	Number cured after signs	Percentage of cures
London Depots	47,472	64,564	213,064	223,424	654	439	
	225,508	132,261	209,823	143,107	16,671	12,504	
Total	272,980	196,825	422,887	366,531	17,325	12,943	74.7

³⁹ A. G. Butler, *Special Problems and Services*, p 166.

⁴⁰ *Ibid.*, p 166.

⁴¹ Table reproduced from A. G. Butler, *Special Problems and Services*, p 189.

The prophylactic treatment mentioned above was universal in Australian units by March 1917. According to Colonel McWhae, who was chiefly concerned with the campaign in the United Kingdom, ‘the number of patients in hospital was lessened by practically one-third . . . from 2,047 in January-March 1917 (3.66 per cent. of strength), to 1,168 (or 2.88 per cent.) in January-June 1918.’ McWhae, however, was at a loss to explain the figures for the last six months of 1918 (see Table 4.4, below) when the numbers in hospital inexplicably climbed to reach their original levels before the preventative measures were in place.⁴²

Although the Australian medical officers remained convinced that their work in these centres had prevented large numbers of men being hospitalized, there is a sense

Table 4.4
The rate per thousand per annum of recorded admissions to hospital for
Great Britain and Australia.⁴³

	1915	1916	1917	1918
British troops:				
In Britain	23.51	29.73	31.93	33.36
In BEF	29.65	18.23	25.60	32.36
Australian troops:				
In Britain	134.05	148.1	129.2	137.12
In BEF	58.7	72.6	59.6	63.65

of them fighting a losing battle against the disease. The comparison in the above table between British and Australian rates of disease is quite marked and must have given the Australian authorities cause for concern. McWhae expressed this sense of disappointment, when he wrote ‘Despite these measures, which were carried out by medical officers and orderlies with wholehearted enthusiasm, V.D. maintained a comparatively large hold on A.I.F. troops’.⁴⁴

⁴² A. G. Butler, *Special Problems and Services*, p 164.

⁴³ *Ibid.*, p. 180.

⁴⁴ *Ibid.*, p. 165.

Table 4.5
The ratios of admissions per 1,000 per annum of Canadian and Australian Forces supplied to the Interdepartmental Committee on Prophylaxis Against Venereal Disease.

	Canadian	Australian	
	U.K. only	U.K.	France
1915	222.0	—	—
1916	200.4	—	—
1917	114.0	2nd half 168.8*	85.0
1918	81.6	148.0*	64.2

In Table 4.5, above, some comparison can be made between Australian and Canadian force rates of venereal disease. In a footnote the British Medical History states that to these rates marked with an asterisk must be added 78.4 for 1917 and 101.1 for 1918 on account of cases of gonorrhoea treated successfully by the abortive method and not admitted to hospital'.⁴⁵ The venereal disease rates for Canada show high incidences of the disease when Canadian troops were stationed at Salisbury Plain from 1914 to 1915. Their figures do show a sharp decline in hospital admissions caused by venereal disease, and by 1918 they were down to 81.6 per thousand, nearly twice the British figure but closer to half of the Australian and New Zealand figures.⁴⁶ The Canadians were more successful in curtailing this disease and yet the methods used were similar to Australian procedure, with the emphasis on education, lectures, Early Treatment Centres and a special department created within the Canadian force to deal with venereal disease. Although Butler claimed that the figures for Canada and the other Dominion troops did not differ 'materially' from the others,⁴⁷ it is clear the Canadians were winning their battle with venereal disease, while the Australians, despite their best efforts, were facing rising rates in the latter part of 1918.

Butler makes the valid point that the high incidence of venereal disease, as with the incidence of self-maiming, amongst Australian troops is linked with the morale of

⁴⁵ W. G. Macpherson *et al*, *Medical Services: Diseases of the War*, p. 118.

⁴⁶ A. G. Butler, *Special Problems and Services*, p. 179.

⁴⁷ *Ibid.*, p. 152.

a particular unit. Indeed, Butler makes the point of its primary influence when he wrote:

The influence of “moral” factors in limiting the amount of venereal disease is very difficult to assess though there is no question of the paramount and urgent need for its limitation; but what may be said with certainty is that, despite striking exceptions, the higher the *morale* of a unit the less V.D. there was in it. It would indeed be difficult to refute the contention that this was the most potent of all the influences availed or available. V.D. in the Army was pre-eminently a disease of leave-time, and to dominion troops “leave” did not mean, “home leave”.⁴⁸

Unfortunately, Butler does not expand on this theme as his emphasis shifts to the ‘vital need of recreation’, as there was no home to return to, nor any comfort that could be provided for by home life.

The contraction of a sexually transmitted disease as a deliberate attempt to avoid duty was difficult to prove. It must be borne in mind that cases of gonorrhoea, according to Butler, required a minimum of six weeks in hospital for treatment, and although cases of syphilis required only a few days hospitalisation, the infected men went on to military convalescent camps to recover. Bulford (No. 1A.D.H.) hospital for the treatment of sexually transmitted diseases in England detained their patients longer than Butler indicated. Syphilis cases were detained for twenty-seven days in April to June 1917; reducing to eleven days from January to March 1918; and only decreasing to six days in October to December 1918. At the same hospital for gonorrhoeal cases the average for the period April 1917 to December 1918 was 46.9 days, nearer eight weeks than Butler’s six.⁴⁹

The wastage of men owing to venereal disease was compounded by the need to segregate infected soldiers. In the AIF, Butler states: ‘venereal disease contracted otherwise than in the sexual act was very rare. The immense trouble caused by gonorrhoea ophthalmia⁵⁰ in Napoleon’s campaign in Egypt, had no reflection in this

⁴⁸ Ibid., p. 154.

⁴⁹ Ibid., p. 188.

⁵⁰ Gonorrhoea ophthalmia, inflammation of the eyes, can be contracted from a person suffering from gonorrhoea through contact with the discharge contained on sponges, towels or clothing used by the

war'.⁵¹ There were cases of cross-contagion which Butler confines to a footnote: 'the infected towel of the gonorrhoeal case and mug of the syphilitic were both held responsible for occasional cases in the AIF'.⁵² The risk of cross-contagion was ever present among soldiers on active duty and isolation was necessary. Further, infected soldiers could not be let back into the community with a communicable sexual disease. Both British and Australian medical histories make the point that self-infection was comparatively rare with gonorrhoeal ophthalmia accounting for less than 1 per 1,000 cases. However, the Adjutant-General Fowke held a different view, and his comments are concerned with problems caused by the military offender with venereal disease within the prison system. He states:

Whereas we find that a period of imprisonment makes better men of the Imperial troops, for our prison regime is arranged to effect this, the Australians are not benefited in any way. They give more trouble in the prisons than all the other troops put together. They have been known to maim themselves by putting pieces of wire into their knees, and injecting petrol, which makes the joint stiff, while cases of gonorrhoeal ophthalmia, which are considered self-inflicted, are of frequent occurrence, and special precautions have to be taken accordingly in the prison hospitals.⁵³

Butler also commented upon the fact that military offenders with venereal disease 'caused vast trouble at Bulford' until they could be transferred to Lewes Detention Barracks. British practice was to keep diseased men in France, a policy that caused problems with the hospitals, which were full to the point of overflowing. All Australian requests to transfer their infected men to Bulford were therefore denied. With no designated hospital for Australians, discipline suffered in these hospitals, especially as there were large groups of men who were confined and did not feel ill. Butler excuses Australian indiscipline in these hospitals by stating:

infected person. (Harvey Marcotovich (ed.) *Black's Medical Dictionary 41st Edition*, A & C Black Publishers, London, 2005.)

⁵¹ A. G. Butler, *Special Problems and Services*, p. 149.

⁵² *Ibid.*, p. 150.

⁵³ (TNA) WO 32/5484, Enclosure C item 71-73, August 2, 1918, attached to Secret Minute to the Secretary of State for War, August 14, 1918, from the Adjutant-General Lt-General G. H. Fowke.

Treatment at a V.D. Hospital necessarily involved problems of discipline, and, for good discipline Australians required Australian officers. The Australian idea of discipline, admirably suited for fighting, did not lend itself readily either to the prevention or the treatment of V.D.⁵⁴

On reading the accounts of the Australian medical staff one gets the sense of their disillusionment that despite their best efforts a great number of Australians were still presenting with a venereal infection. Furthermore, the hospital admission rate that they had previously lowered considerably was by 1918 reaching its original high level. The Canadian troops were in a similar position to the Australians in that leave did not mean home leave and yet their rates had reached manageable proportions by 1918 after their exceptionally high rates of 1914-15. The Australians were well-informed as to the nature, progress and effective treatment of venereal disease and the high rates for 1918 need to be accounted for. There is strong evidence to show the Australians were 'becoming reckless' when it came to exposing themselves to the risk of contracting venereal disease. There is no suggestion by Butler that men would deliberately set out to contract venereal disease as a way of avoiding frontline duty. However, considering the increasing numbers contracting the disease in 1918, despite the thorough education programme and safeguards in place regarding the disease, the high rates do suggest that some men were contracting the disease to avoid frontline duty. It was a 'self-inflicted wound' that gave them a break of several weeks from the fighting at the front, without incurring a military charge.

The Army authorities, as discussed earlier, were highly suspicious of any 'accidental wounding' and adopted a presumption of guilt in these cases. If a charge of self-maiming could not be proved, then the charge of 'neglect to the prejudice', easier to prove, would be laid. Although there is no evidence here to point to how many men were charged 'with neglect to the prejudice' regarding accidental wounding, the suspicion that many were deliberate has to be considered. The last year of the war

⁵⁴ A. G. Butler, *Special Problems and Services*, p. 172.

brought stunning victories for the BEF and the Australians, as well as experiencing some of the highest casualties of the war. At the same time it can be argued that there was a general lowering of morale in the AIF during the last period of the war which found expression in September when over one hundred men of the 1st Battalion refused to return to the front. Butler made the link between high incidences of self-inflicted wounds and increasing levels of venereal disease, with the morale of the units in which they occurred. To this could be added the six-fold increase in ‘accidental wounding’ that occurred from May to September 1918 among the AIF. The medical problems in the AIF during the last months of the war were linked to a lowering of morale and with it a deterioration of discipline.

The harsh British disciplinary code became circumvented by men well versed in ‘working the system’ to their advantage. It is against the context of the fighting on the Western Front, with all its attendant dangers of death and injury, that the actions of soldiers must be measured. None of the above comments should detract from the bravery and sense of duty showed by most men. Butler’s comments upon the high Australian venereal rates are worth noting. He wrote: ‘The figures will discourage those who (doing a great disservice) attach unwanted haloes to the very human heroes who fought and died in the Great War’.⁵⁵

⁵⁵ Ibid., pp. 185-186.

Chapter 5

THE SEPTEMBER MUTINIES 1918

In September 1918, just over a month after playing a crucial role in the 8th August Battle, the AIF was beset by unrest in the ranks which resulted in men declining to return to the front line and battalions refusing to disband. The first recorded mutiny in the AIF took place at Péronne on September 14, when three platoons of the 59th Battalion refused to return to the line to follow the enemy's 'retirement'. According to the Official Historian, C. E. W. Bean, their officers supported the men in this action, and 'the refusal was eventually overcome'. Although this was the first recorded mutiny, Bean indicated, in a footnote, that during this period there had been 'slighter incidents, of which only hints are given in the records'.¹ The second mutiny, and by far the most serious, occurred on September 21, when 119 men of the 1st Battalion refused to return to the front line after their relief was cancelled. These men were not supported by their officers and would face a court-martial for this action. Further mutinies occurred later in the same month, often dubbed the 'disbandment mutinies', in which men refused an order to disband and join their new battalions. These were different in character from the other two mutinies because they did not involve a refusal to fight and no one was charged for their part in these. September had proved to be a difficult month for the AIF with sections of the force willing to take action to redress their grievances. A climate existed in the AIF where men thought they could take action, especially industrial style action where men combine together, without fear of suffering severe penalties under military law. After the Australian success of August 8, of which he had made a great deal, Bean was now left with the thorny

¹ C. E. W. Bean, *The Official History of Australia in the War of 1914-1918*: vol. vi, *The Australian Imperial Force in France during the Allied Offensive 1918*, Sydney: Angus and Robertson, 1942, p. 875.

problem of explaining Australian mutinies. It is only on closer examination of the mutiny in the 1st Battalion that we see that Bean's version of events is slanted in favour of the Australians at the expense of British troops. Bean, in his desire to keep his image of the 'ideal Digger' intact, was prepared to disparage the efforts of British troops in an attempt to provide mitigation for Australians refusing to fight. Before examining the mutiny in the 1st Battalion, however, we need to examine the *Official History* version of September 1918.

In his account of September 1918 Bean said that a belief was growing among the AIF that because of their success the British High Command was using them more than their own troops 'and for tasks that the British were unable to perform'.² Bean did not challenge this belief. The high value Australians placed on their own fighting abilities was in many ways fostered by Monash. According to Bean, Monash had ceased to appeal to his men's sense of patriotism and was now seeking further efforts from them on grounds of prestige. To foster this in his troops he circulated extracts from British and French newspapers on their achievements. When the British Press failed to give Australians their due in reports of the battle of August 8, Monash complained 'strongly' to GHQ of the 'undoubted covering-up' in Press reports of the role of Australians in this battle. Bean shared this view and went on to write that readers of *The Times* would have no notion of the part played by Australians in this battle, nor would people in England for many years afterwards.³ What Bean seems to be implying is that GHQ was aware of British failings and loath to praise the effort of Dominion troops; it was quite willing to credit its own troops with the successful battle on August 8. Bean relegated the more obvious reasons why this happened to two footnotes. In the first he admitted that Haig, in a brief communiqué, had mentioned 'French, Canadian, Australian and English divisions' in the August 8 battle. In the

² Ibid., p. 875.

³ Ibid., p. 876.

second footnote, Bean stated that GHQ replied ‘unofficially’ that the term ‘British troops’ was inclusive to mean the troops of the Dominions as well;⁴ and that that was their intent. Bean gave the example of Brigadier-General Brand, who reported to Monash that after his 4th Brigade ‘had snatched a costly victory from the difficult situation left by the failure of English troops on its left’, it had caused discontent among his troops and he feared they would not get the recognition they deserved. Bean was not averse to imagining what this discontented section said when he wrote: ‘whatever we do they’ll say they won the battle; next time we’ll let them win it’.⁵ Monash pursued his policy of using press coverage to inspire his troops. He also spoke to British political leaders, employing a sporting analogy to demonstrate the point, characterising the Australian as a ‘sportsman’ who required that his score be ‘displayed on the board’ or he would refuse to play. This argument, Bean stated, ‘would have been detested by the best of his men’, but it brought the desired results.⁶

The Australian Prime Minister, Hughes, like Monash, wanted more publicity for Australians, but for quite a different motive. Having toured the battlefield at Amiens with an Australian war reporter he came away ‘astonished’ by the crucial role played by Australian and Canadian forces. Hughes thought they were ‘a decisive factor’ and believed that if this became widely known it would increase Australia’s influence in a future peace settlement. For this reason he invited prominent newspaper owners and journalists to the Australian sector on September 12 in an effort to boost publicity of the Australian contribution.⁷ This, of course, helped Monash’s agenda of motivating his troops. This added publicity for the Australians could well have built on an existing prejudice against British soldiers and served to reinforce the belief that they were doing too much.

⁴ Ibid.

⁵ Ibid., Bean does not attribute this; it is a representation of what he thinks this group was saying.

⁶ Ibid., p. 877.

⁷ Ibid.

Owing to the strain to which Australian troops had been exposed, Bean explained, regimental officers were aware that ‘any chain of mischances increasing the burden might precipitate a local mutiny’. Bean said that Monash had been warned by General Hobbs on August 31 that the strain on the 5th Division was reaching critical levels and that after three more days’ fighting the strain on the 2nd and 3rd Division would become even greater.⁸ But it was Monash who was exerting Australian troops to greater effort. An unnamed diarist, quoted by Bean, reported Monash as saying that ‘six days’ rest and a bath restores the elasticity of a division’. Monash expanded upon this in *Australian Victories*, writing that it was essential that Australian troops ‘should be called upon to yield up the last particle of effort of which they are capable . . . I was compelled to disregard the evident signs of overstrain which were brought to my notice by the divisional generals and their brigadiers’.⁹ Bean does concede that the Fourth British Army, too, was suffering considerable strain and that Haig did not want to draw on his reserves. It was Monash and Godley that ‘had really forced his hand’. At the same time Bean said that a view was developing among Australian troops that because of their success the British High Command was increasingly using them for tasks to which British soldiers ‘were unable fully to perform’.¹⁰ This is not expanded upon by Bean and he allows this slur on British troops to go undefended, and in fact uses this as one of his causes of Australian mutinies in September.

After setting the scene, Bean briefly discusses the first mutiny at Péronne. The 59th Battalion had been subjected to ‘a week of repeated efforts and continuous strain’, he said, and had been relieved and had no sooner settled to sleep when they were recalled to ‘to follow the enemy’s retirement’. The reason given for the men’s refusal to go back in the line was that ‘they believed their actions to be the only way

⁸ Ibid., p. 875.

⁹ Quoted in *ibid.*, p. 875.

¹⁰ Ibid., p. 875.

they can impress the authorities with their needs'.¹¹ The authority in this case was Monash. How this mutiny was overcome is not expanded upon but Bean put the incident down to one of the symptoms of 'overstrain' to which Monash had referred earlier.¹²

In the period between March 1916 until the end of 1918, 306,243 men of the AIF were deployed in France and Belgium. During that period the 'expeditionary wastage' was 199,812 from all causes. The AIF maintained an average strength of approximately 100,000 on the Western Front. Each soldier, according to Butler's calculations, would spend an average of eleven-and-a-half months in the BEF, or 343 days.¹³ The statistics in Table 5.1, below, show the relative strengths of the AIF in France and Flanders compared with the surprisingly large numbers of Australian troops in the United Kingdom. Butler deduced from these figures 'that during the period of active operations in France and Flanders, for every three "effectives" at the front at any time approximately two men were in hospital or depots in the United Kingdom'.¹⁴ What inflated the numbers in the UK was the Australian policy of maintaining the fighting force at full fitness. In practice this meant that only 40.3 per cent of wounded men evacuated for treatment actually rejoined their units. This compares with the British figure in all theatres of 80.7 per cent of their wounded returning to duty. The AIF differed from the Imperial army in that they were limited as to where they could put men who had recovered from wounds but who were not considered fighting fit. These men were difficult to place as the AIF carried only relatively small numbers of 'B' and 'C' class men, and no frontline labour battalions or base supply units.¹⁵

¹¹ Ibid.

¹² Ibid., p. 876.

¹³ A. G. Butler, *Special Problems and Services*, pp. 909-10. Butler's calculation was based on the number of 105,289,248 personnel days over a period of thirty-three months.

¹⁴ C. E. W. Bean, *Official History*, vol. vi, p. 892.

¹⁵ Ibid., pp. 921-22.

Table 5.1

The average strength of the AIF in France and Flanders (BEF) and in the United Kingdom (UK) for the months of January, April, July and October in each year from 1916-1918.¹⁶

	1916		1917		1918	
	<i>AIF (BEF)</i>	<i>AIF in UK</i>	<i>AIF (BEF)</i>	<i>AIF in UK</i>	<i>AIF (BEF)</i>	<i>AIF in UK</i>
January	644	10,570	117,219	67,013	116,969	59,390
April	40,801	6,863	119,690	80,778	121,875	50,347
July	91,649	90,227	121,259	66,875	114,945	54,717
October	88,2344	90,504	116,249	56,422	91,998	60,152

The ‘disbandment mutinies’ were given extensive treatment by Bean who saw in the men’s actions a reflection of his own view of the ideal Australian: fiercely loyal to his mates, and demonstrating ‘a public loyalty once conceived was sustained with a flaming zeal, disconcerting to those who had encouraged it’.¹⁷ Disbanding battalions was inevitable as the fifty-seven Australian battalions were 8,500 men short, operating in many cases under strength. With future reinforcements estimated at 3,000 per month existing battalion strengths could not be maintained. The matter became urgent as there was a current proposal to give the estimated 6,000 ‘1914 men’ furlough to Australia. The problem of under strength battalions had been overcome in the British Army by each infantry brigade disbanding its fourth battalion. This made economic sense, according to Bean, as ‘battalions which entered battle with 300-400 men were in some important respects uneconomic, requiring the same staff as a battalion that took in 750’.¹⁸ However, the men of Australian battalions earmarked for disbandment were unwilling to accept this and organised industrial action to prevent it happening.

The men of the 37th Battalion were well organised and had a firm plan of action in place for the battalion’s final parade on September 22. They dutifully obeyed every order except the final one to join their new battalions. Officers and other ranks stood

¹⁶ Statistic extracted from Table No. 24 ‘Average Strength of the AIF in Each Theatre of War and in England’, in A. G. Butler, *Special Problems and Services*, pp. 892-93.

¹⁷ C. E. W. Bean, *Official History*, vol. vi, p. 940.

¹⁸ *Ibid.*, p. 935.

firm until addressed by Brigadier-General McNicoll, GOC 10th Australian Brigade. The battalion's officers were the first to obey the order to fall out, followed by the sergeants, a corporal and one private. Those left on parade were threatened with being posted as being absent without leave if they failed to join their new battalions that afternoon. The men still refused to fall out, returning to their huts to organise themselves as a battalion. They appointed their own 'commanders', maintained military discipline, keeping men under guard who were serving detention, even organising church parade for the following day which the padre attended.¹⁹ According to Bean, the men were supported by other units who helped them out by 'losing' the odd box of food from their wagons as they passed their huts. Bean said there was 'keen sympathy for these troops throughout the force', and that by the 24th and 25th the other battalions selected took the same action as the 37th by refusing to disband.²⁰ Members of the recalcitrant battalions told the senior officers who were trying to negotiate a settlement that they were willing to go into the next battle 'but demanded to be allowed to go in with their identity unchanged'. The disbandment order was deferred for a fortnight and these battalions went into battle on September 27 intact. The men's refusal to disband was treated with great sympathy by Bean who thought that although these refusals technically constituted mutiny it 'was not treated as mutiny by any authority, Australian or British'. Bean's assessment was that 'it had its origin in some of the best men and finest qualities of the AIF',²¹ in contrast with the mutiny in the 1st Battalion on September 21. No man was punished for his part in refusing to disband. However, the men of these battalions had defied military authority, won a temporary reprieve for their battalions, demonstrated that solidarity in the face of military discipline could yield results, and walked away without any sanction against them.

¹⁹ Ibid., p. 938.

²⁰ Ibid.

²¹ Ibid., p. 939.

In Bean's account of the September 21 mutiny he presents many mitigating circumstances for the men's refusal to fight. On reading this account one is left with a sense of a growing discontentment among Australian troops at being over-used, a lack of due recognition for their achievements, and most of all a disparaging view of the performance of British, or more accurately, English troops in the field. It is in this climate, as portrayed by Bean, that the most serious mutiny in the AIF occurred. Bean explained that the proposed attack on September 21 involved the 3rd and 1st Battalions who were already in the front line. General R. H. K. Butler, commanding III Corps, had organized the attack with his four divisions and Monash had agreed to cover the 500 yards of the southern sector of the attack. On September 20 at 10.30am the 1st Division was warned they would be in action.²² The 'order came at a difficult time', according to Bean, as General Glasgow had arranged relief for 'tired' troops of the 1st Brigade. But because the proposed operation required knowledge of the terrain it made sense to use the troops already in the line to make the attack. However, it was decided that half the men could be relieved, with the 6th Battalion relieving the men of the 1st who then proceeded to a sunken road south of Hargincourt for food and rest. The 1st Battalion's reserve, 'D' Company with Captain Steen in charge, was already bivouacked there having been relieved on the 19th. These men became aware of the order cancelling the relief in the afternoon and they made known their resentment at being asked to fight again to Colonel Stacy. By evening the men's position had hardened. According to Bean, the men made their feelings plain when they told Steen that 'they were not getting a fair deal' and felt they were being asked to do 'other people's work'. Bean summarized this feeling: "There was widespread feeling that British troops had repeatedly failed to keep up, and that the Australians, as well as

²² Ibid., p. 932.

fighting on their own front, were sometimes called on to make good their neighbours' failure'.²³

He did not challenge this view and let this slur on British fighting abilities stand. Bean tried to catch the mood of the men by imagining what was said: 'That's pretty rough', and one of the 'bad soldiers; (Bean tells us each battalion had some) would chime in 'well they can bloody well go over without me'.²⁴ Bean did mention that Colonel Stacy, according to a friend's diary, was of the opinion that the protest by the men was largely attributable to 'over mention' of the troops in the newspapers, so that they over-valued themselves in comparison with others'.²⁵ However, his account of the mutiny on September 21, or more accurately the account leading up to it, places the cause of the mutiny on overuse of Australian troops and British inadequacy to keep up, creating the conditions in which mutinies could occur.²⁶

Mutiny remained one of only two offences that was punishable by death in the AIF, the other being desertion to the enemy. During the war the Australian authorities had steadfastly refused to confirm the death penalty on Australians convicted of capital offences, but now they were faced with the dilemma that if these men were found guilty of mutiny some of the convicted could face a firing squad. It will be recalled that around ten per cent of those sentenced to execution in the rest of the British Army were shot.

What is clear from examining the court martial of the 119 men of the 1st Battalion who walked away from a planned attack on the September 21, 1918 was the crucial role played by their non-commissioned officers. Less clear is whether those who walked to the rear on the night of the 20th/21st September did so thinking they had been 'relieved', or did so in wilful defiance of the warning given them by their

²³ Ibid., p. 933.

²⁴ Ibid

²⁵ Ibid.

²⁶ Ibid., p. 875.

officers and NCOs of the proposed attack on the morning of the 21st. The trials concern Companies of the 1st Battalion who, after taking part in an attack on the 18th and holding their position in the front line, were relieved and made their way to an area known as the sunken road approximately 600 yards from the front line. The examination of the court martial begins with those charged from 'D' Company, who had been relieved from the front line on the 19th and gone into 'reserve' in the sunken road. It was amongst this Company that the first sign of unrest surfaced.

The trial by court-martial of five NCOs of 'D' Company

On October 15, 1918 five non-commissioned officers of 'D' Company faced a court-martial charged with: '(1) When on active service joining in a mutiny. Alternative: When on active service desertion on or about 0300 on the 21/9/18 until around 0900 on the 21/9/18'. The accused were Corporal (3002) A. E. Alyward, Temporary Corporal (4963) H. E. Slater, Corporal (3563) R. Cooney, Corporal (3490) R. C. Taplin, and Lance Corporal (2562) E. A. Besley.²⁷

For the prosecution the court first heard from Lieutenant Steen, Officer-in-Charge of 'D' Company, who stated that the 1st Battalion took part in an attack on September 18th and on the 19th around 8pm were relieved and moved back to 'reserve' some 600 yards from the front line in an area known as the sunken road. Shortly after 2pm on the 20th Steen gave 'certain instructions' to Sergeant Wilemet,²⁸ Acting Company Sergeant Major. Steen told the court that the NCOs paraded before him at 3pm (although he was uncertain whether Corporal Besley was present) where they told him that the men of the Company 'would not take part in the attack the following day'. He

²⁷ AWM 51,122, part 4, 1st Battalion, AIF Field General Court-Martial. Joint trial of five NCOs of 'D' Company. The President: of the Court was Major H. A. Youden, 2nd Btn; Members of the Court were Capt. O. F. J. Wolff, 4th Btn; Major G. E. McDonald, 3rd Btn; Captain C. W. H. R. Somerset, 1st Btn; and Capt. E. M. Johnson, H.Q. Aust. Corps.

²⁸ Throughout the transcript of this trial Sergeant (1642) E. N. Wilemet has been the spelling used for this man's name. In other trials he is referred to as Sergeant (1642) Ernest Wentworth Wilesmith, which is most likely the correct spelling after checking his name against his service number at NAA.

then told the accused 'that the orders were that there was to be an attack and that the orders must be carried out', telling the NCOs to 'inform their men to that effect'.²⁹ At around midnight Steen sent for Corporal Taplin and informed him that his platoon would be in support for the attack. Taplin made no comment to Steen and none of the other NCOs reported to him. When Steen checked his Company at 1.30am on the 21st all the accused were present. Steen stated that he did not give any orders to the accused that the Company would be relieved. He said the vicinity around the sunken road was under constant shelling and that he and Lieutenant Blake both received wounds that caused them to be evacuated around 2.30am.

Steen, when cross-examined by the Prisoners' Friend, stated that 'no particular platoons were mentioned by the NCOs' [when they paraded before him], but he gained the impression that the whole Company was refusing to go over.³⁰ Sergeant Halsthathate, Steen said, was also present at the parade and did most of the talking and told him that the men refused to go over. When examined by the court, Steen said that when Sergeant Halsthathate informed him of the Company's refusal to 'go over', none of the accused contradicted him. The reason given by Halsthathate for the men's refusal 'was that the men thought they were being called on to do too much and that their nerves were gone owing to the fighting they had gone through'.³¹ The parade that Steen referred to was not a conventional one through the Company Sergeant-Major (CSM), but a gathering around his dugout. Steen, in his evidence in this trial, made no mention of what happened from the period of his meeting with the NCOs through until 11pm, other than to say that around 11pm Lieutenant Blake took charge of two platoons, later relieving Corporal Cooney of responsibility for a platoon.³²

²⁹ Ibid.

³⁰ Ibid., p. 1. Lieutenant A. N. Buckley, 3rd Battalion, AIF, appeared as the Prisoners' Friend, and Lieutenant W. J. Waller, 2nd Battalion, AIF appeared as the Prosecutor, as they did in all the trials of 1st Battalion men charged.

³¹ Ibid.

³² Ibid.

Sergeant E. N. Wilemett, the second prosecution witness, was Acting Company Sergeant Major on the 20th. He told the court he informed Corporals Alyward and Taplin around 2.30pm that the Battalion would be involved in a 'hop over' the following morning and gave them orders to draw ammunition and issue it to their platoons. Around 3pm, according to Wilemett, Taplin made a remark to him 'to the effect that the men would not take the ammunition'.³³ He stated that all the accused were present that afternoon and were still present at 2am on the 21st. Wilemett said that around 3am he saw members of 'D' Company moving out of the sunken road away from the front but could not positively identify any of the accused as being amongst them. Examined by the Prisoners' Friend, Wilemett said on the morning of the 20th he passed the word that the Company would be relieved. On re-examination by the prosecutor, he said he had received his orders from Captain Steen that the Company would be relieved. Later, he understood that the relief had been cancelled when told they would be involved in an attack the following morning. Examined by the court, Wilemett clarified the situation by stating that he warned all the platoon commanders 'that there would be a hop over'.³⁴

Lieutenant Mortlock, the third prosecution witness, told the court that he took command of 'D' Company around 2.30am. Being aware of the unrest he sent for Captain Moffat,³⁵ who spoke with about eight NCOs of 'D' Company (there were ten NCOs in total in 'D' Company). Mortlock said that Corporal Cooney was present but could not say whether the other accused were. The NCOs told Moffat 'the men refused to move forward'. Moffat told the NCOs 'to get their men out' and reminded them of their duty to the Battalion. Mortlock said that around five minutes later he saw some men of 'D' Company starting to file down the sunken road towards the rear. On

³³ Ibid., p. 2

³⁴ Ibid.

³⁵ Captain Moffat, M.C., died of wounds on 21 September 1918. See footnote in C. E. W. Bean, *The Official History of Australia in the War of 1914-1918*: vol. vi, p. 933

checking his Company a short while later Mortlock found only one man of the Company had stayed, Private Berman. He told the Prisoners' Friend that he was certain Corporal Cooney was present when Captain Moffat addressed the men.³⁶

The fourth witness for the prosecution, Sergeant (5236) G. F. Wood stated that when passing the sunken road around 2.30am on the 21st he saw Corporal Cooney and three other men in a dugout. He asked Cooney if the men 'were coming up'. Cooney is alleged to have replied: 'I don't think they are . . . the others would willingly come up only their own principles would not allow them to leave the men'. He told the Prisoners' Friend that he knew Corporal Cooney 'pretty well'.³⁷

The fifth prosecution witness, Captain J. G. Bootle, Officer in Charge of 1st Battalion Nucleus, told the court that the accused had marched the ten miles to the Nucleus arriving between 8am and 9am on the 21st. When they paraded before him he asked the NCOs to appoint a spokesman to explain 'what the trouble was'. Lance Corporal Besley spoke for the NCOs and told him, in the presence of the other accused, 'that the men had come out because they considered they would not have done themselves justice in the attack as they were too tired and that they considered they would have been doing someone else's job if they had gone over.' After this parade the accused all went back into Reserve with the Company and around noon on the 23rd were placed under arrest. When examined by the court, Bootle said he asked the NCOs if what Besley said was 'correct', and none of the accused contradicted it. Captain Bootle, when asked by the Prisoners' Friend, could not say for certain the exact words used by Besley. When examined by the court, Bootle re-stated that he asked the accused if what Lance Corporal Besley had said was correct, and that no one had contradicted it.³⁸

³⁶ AWM 51, 122, part 4, pp. 2-3.

³⁷ Ibid.

³⁸ Ibid., p. 3.

Corporal Alyward was the first defence witness and his evidence was the longest and the most detailed. He told the court that on September 20 the Company was told by the Sergeant Major that they would be relieved that night. The men were ordered to hand in containers and petrol tins, something that is always done before a relief. At around 4pm on the 20th, Sergeant Wilemett told him that the relief was cancelled 'as there might be a stunt in the morning'. He told the court 'he was dumbfounded at the thought of telling this to the men. In all my experience I had never seen men in such a state as my men were'.³⁹ On returning to his platoon Alyward instructed Corporal Cooney to draw ammunition and told his men 'there might be a hop over in the morning'. The men asked Alyward whether the 'hop over was a fact', and he replied 'that he would find out later'. Alyward said the men were complaining that they were in no fit state to attack and that he was of the opinion that if they were involved in the attack 'it would not be a success'. He and Cooney discussed the situation and decided to speak to Lieutenant Steen. They took Lance Corporal Muir with them and on arrival at Steen's dugout saw other NCOs already there, including Sergeant Halsthath (who was tried separately), who explained to Steen the feeling of his platoon as to the proposed attack. Alyward explained to Steen that having no officer in his platoon he thought it his responsibility to ask about the morning attack. Steen told Alyward that 'there may be an attack in the morning'. [It will be recalled that in Steen's evidence he stated that the 'orders were that there was to be an attack.'] Alyward then explained to Steen the men's condition. Steen is said to have remarked, 'I can't tell the Colonel this', and then left. Alyward returned to his platoon and told the men that he had received 'neither details about the attack nor any satisfaction'.⁴⁰

It was around 9.30pm on the 20th, according to Alyward, that members of the 6th Battalion started to arrive and told him and the others that they were relieving them.

³⁹ Ibid.

⁴⁰ Ibid., p. 4.

Around 1am on the 21st, according to Alyward, he saw men moving out who told him that they were members of the 1st Battalion and had been relieved. Some time later he said word was passed down the line, 'Get your gear on 'D' Company and move out'. Alyward said he thought it was 'an ordinary relief' and 'seeing everybody moving off went out with the Company'. Therefore, he was not present when Moffat addressed the men around 2.30am. On arrival at the Nucleus Alyward became aware that part of the 1st Battalion was still in the line and realized that 'there must be some mistake'. Alyward went on to say that when the NCOs paraded before Captain Bootle at the Nucleus he could not hear what Corporal Besley said.⁴¹

When examined by the prosecutor, Alyward said 'he was satisfied the relief was cancelled on the afternoon of the 20th September'. He told the prosecutor that he 'did not think it a fair thing for the men to do the attack. There was great dissatisfaction amongst the men at the idea of an attack.' Alyward said he told the men 'they would have to do the attack if there were orders to that effect'. He claimed that Lieutenant Steen told him 'there might be an attack' and that he received no further orders regarding it. Further, he stated that he did not tell Steen that the men would refuse to attack. Alyward admitted that he received no 'definite orders about a relief', which normally came from the company commander who passed on the order to platoon commanders. He left for the Nucleus with Lance Corporal Steel and Corporal Wilkins but did not take any of his men with him.⁴² When examined by the court, Alyward refuted Captain Bootle's claim that when the accused paraded before him he asked for a spokesman, or asked if what Corporal Besley had said (regarding the reasons why the men had walked out of the line) was correct. Alyward said he did not hand over to anybody when taking the relief. He told the court he had been a corporal for nearly four months and had never taken charge of a platoon.⁴³

⁴¹ Ibid.

⁴² Ibid.

⁴³ Ibid.

The second defence witness, Corporal (3563) R. Cooney, spoke of the meeting the NCOs had with Steen on the afternoon of the 20th stating that Lieutenant Steen had said, 'In case of an attack in the morning D Company will be engaged'. Cooney told the court he was not present when Captain Moffat addressed the men nor did he see Captain Mortlock that night. [Corporal Cooney had been identified as being present when Captain Moffat made his appeal to the men around 2.30am of the 21st in the previous evidence of Lieutenant Mortlock.] Cooney's evidence, like Alyward's, contradicted Steen's assertion that he gave definite orders that the attack would take place. He said that Sergeant Wood's testimony earlier regarding the conversation they had around 2.30am was 'substantially correct'. He explained that at the time he was not sure whether they were attacking or being relieved when he answered Wood's question as to whether the men 'were coming up'. However, he made no comment about Wood's recollection of a further conversation in which Cooney was alleged to have said that the men would 'willingly come up only their own principles would not allow them to leave the men'. Cooney said he heard Corporal Besley speak at the parade before Captain Bootle but did not contradict what was said because he 'was too tired to worry . . . [and] didn't bother much what he said'. Cooney told the prosecutor that he 'never definitely knew there was to be an attack'. He had handed out ammunition to his men and told them that he thought 'the relief had come a Gutzer and in the event of an attack in the morning D Company are in it'.⁴⁴ He told the prosecutor that he 'did not think the men were fit to attack' and from what his men said he got the impression that 'some of them would not hop over'. Cooney said he did not take any of his men with him when he left the sunken road area around 3am and conceded he had no 'special orders' concerning the relief.⁴⁵ Cooney was vulnerable as Mortlock had placed him at the meeting with Moffat, and Wood had a damning conversation

⁴⁴ Ibid., pp. 4-5.

⁴⁵ Ibid., p. 5

with him when it seemed clear the men were moving out knowing full well they had not been relieved.

Corporal (3490) R. C. Taplin, the third defence witness, stated that he did not parade before Lieutenant Steen on the afternoon of the 20th. He told the court that Steen had sent for him between 5pm and 7pm and told him to take over the platoon and make arrangements for the issuing of ammunition, which he did. Steen had said to him that ‘in case of an attack’ his platoon would be in support. Taplin passed on the orders to his NCOs Slater, Besley and Preston, and warned his platoon ‘that in case of an attack we would act as support to the Company’. He organized a fatigue to the frontline around 9pm to collect containers and petrol tins and then returned to his dugout. He said between midnight and 2am he saw several groups of men, who identified themselves as 1st Battalion, moving out, who told him they had been relieved. It was around 3am that Taplin moved out on hearing somebody say ‘Get your gear on ‘D’ Company’. Taplin claimed he saw men moving out who told him they were ‘D’ Company, and he followed them out.⁴⁶ When examined by the prosecutor, Taplin said he had no trouble with his men when he told them they could be involved in an attack the following morning. Taplin admitted he received no definite orders to say they had been relieved and that he had responded to an order that was ‘passed along the line’ that ‘D’ Company had been relieved. He said that his platoon members had left the sunken road before he did and therefore he had given no orders about a relief. Taplin, referring to the meeting at the Nucleus with Captain Bootle, said that he could not remember what Besley had said, but stated that Besley did ‘not use the words Capt. Bootle alleges he used’. Surprisingly, the prosecutor did not ask Taplin whether he was present when Moffat spoke with the NCOs at 2.30am.⁴⁷

⁴⁶ Ibid., pp. 5-6.

⁴⁷ Ibid., p. 6.

The fourth defence witness, Lance Corporal (2562) E. A. Besley, said he was asleep in the dugout in the early hours of the 21st and when he awoke his Company had moved out, so he followed after them. On the way to Nucleus he learned from the other men that they had not been relieved, but he continued on to the Nucleus and fell in with the others. Besley did not go into details about the statement he made to Captain Bootle apart from saying he told him about the previous action they had been engaged in [on the 18th] and ‘then in the end I told him another stunt was rumoured and did he think that a fair thing[?]’⁴⁸ When questioned by the prosecutor, Besley said he ‘did not definitely hear there was to be an attack’, even though he had issued his men with ammunition in readiness. Further, Besley said he had walked out of the line alone and thought the 6th Battalion men who had joined them in the dugout around 9.00pm had relieved the 1st Battalion. When he realised he had come out in error, Besley said that he did not feel fit enough to walk back to the front.⁴⁹ As Corporal Slater declined to give evidence, Besley was the last witness for the defence.

Captain Bootle was recalled by the court and re-examined on the details of the parade of NCOs at the Nucleus. Bootle told the court that around twelve ‘D’ Company NCOs were gathered in a semi-circle around him, with no man further than seven yards from Besley when he was speaking and that he was certain that all could hear what Besley said. Bootle restated that when Besley had finished speaking he asked them if what Besley had said was right and ‘nobody dissented’. Examined by the Prisoners’ Friend, he said he had made it plain to the NCOs that ‘there was trouble’. He claimed Besley asked him whether ‘it was fair to send the men into another stunt’. Bootle said he might have replied ‘that it was not for me to say’.⁵⁰

The case for the defence rested on the alleged ambiguity surrounding the warning the men were given for the proposed attack. However, it was a difficult task to

⁴⁸ Ibid.

⁴⁹ Ibid.

⁵⁰ Ibid.

convince the court of that in view of the testimony of Lieutenant Steen and Sergeant Wilemet, who both testified that the men were duly warned. The meeting of NCOs with Steen in his dug out on the 20th where they told him of the men's likely refusal to take part in the attack was also crucial. Sergeant Wood's conversation with Private Cooney provided further evidence that the men were aware of the attack and had decided not to take part. Captain H. H. Moffat, who in Gammage's view epitomised the ideal Australian officer, describing him as a 'type of leader that men would follow cheerfully to hell',⁵¹ had reminded the men of their duty to the Battalion, but even he was unable to dissuade them. Most damaging of all to the defence case was the remarks allegedly made by Private Besley to Captain Bootle at the Nucleus Camp as to why the men had walked out of the line.

It is clear enough that there was unrest in 'D' Company on the 20th and although this was brought to Steen's attention there is no evidence that he did anything about it, other than to remind the men that orders must be obeyed. In fact it was left to Lieutenant Mortlock, who took charge when Steen was wounded at 2.30am. He assessed the situation quickly and called in Captain Moffat to make a final appeal to the men. As the officers had failed to persuade their men to attack, the question remains whether the men's attitude could have been changed if their NCOs had taken a firm line and supported their officers. According to Bean, the men were not 'unfriendly' to their officers but that in Steen's 'D' Company he and Lieutenant Blake had been 'just wounded'. In fact, both Steen and Blake had been wounded around 2.15am on the morning of the 21st, about forty-five minutes before the men were due to assemble for the proposed attack.⁵² The wounding of Steen and Blake was so late in

⁵¹ Bill Gammage, *The Broken Years: Australian Soldiers in the Great War*. Canberra: Australian National University Press, 1974, pp. 245-5, quoted in Dale Blair, *Dinkum Diggers: An Australian Battalion at War*, Melbourne University Press, 2001, p. 159.

⁵² C. E. W. Bean, *The Official History of Australia in the War of 1914-1918*: vol vi, p. 933.

the proceedings as to be irrelevant, and not a cause of the men's refusal to go forward as Bean suggested in the *Official History*.

After the finding, Captain Bootle, still under oath, told the court he knew the five accused. He said the four corporals were 'very good NCOs both in and out of the line'. He said he had not known Besley for long but that he had been a good NCO. Bootle made special mention of Cooney, who had won the Military Medal in June. Lieutenant H. H. Elslan spoke up for Corporal Alyward, whom he had known for four months, describing him as 'the best man both in and out of the line'. Lieutenant J. P. Deppe praised Corporals Alyward and Slater, describing them as 'very good NCOs'. He singled out Taplin, who he had known for six months, telling the court that his conduct had been excellent 'both in and out of the line'. Corporal Alyward was the only one of the accused to speak and he told the court that he had three years' active service.⁵³ Despite the support the accused received from their officers, the NCOs in this trial were convicted of desertion and received sentences ranging from seven to ten years' penal servitude. The court had taken the view that the NCOs played a critical role in the men's refusal to attack on the 21st and therefore they were prepared to make an example of them. In short, the NCOs should have known better than to walk out of the line with their men. At one level it can be seen as a show of solidarity with men they had fought alongside. However, in examining the service records of the convicted NCOs what emerges is a lack of experience in being in charge of men and unfamiliarity with the men under their charge.

From the sentences that were handed down it was clear that the court was prepared to make an example of the NCOs despite their previous clean disciplinary records. Corporal Alyward was twenty-one-years-old when he enlisted in June 1915, and despite his clean record, was reduced to the ranks and received ten years' penal

⁵³ AWM 51, 122, part 4, p. 1.

servitude.⁵⁴ Temporary corporal Slater was twenty-three-years-old when he enlisted in June 1916. Like Alyward, his disciplinary record was good and he received seven years' penal servitude.⁵⁵ Corporal Rollo Charles Taplin was eighteen-years-old when he enlisted in July 1916. He was the youngest of the NCOs convicted, and although no disciplinary charges appear on his record, he still received ten years' penal servitude.⁵⁶ Lance Corporal Besley was twenty-one-years-old when he enlisted in June 1915. Apart from receiving seven days' detention Besley's record is free of any military crimes. Although only a lance corporal, Besley received ten years, a sentence usually reserved for corporals. He probably attracted the full sentence because of his role as spokesman for the men at the Nucleus Camp.⁵⁷ Corporal Roger Cooney had enlisted in June 1915 when he was twenty-one-years-old. He was wounded in action twice, suffering a gunshot wound to the abdomen in 1916, and in 1917 a gunshot wound to his left ankle caused him to be evacuated to England where he stayed for most of 1917. While in England he faced a District Court-Martial and was found guilty of using insubordinate language to a superior officer for which he received 78 days' detention. There is some irony in the fact that Cooney's bravery in 1918 was acknowledged with the awarding of the Military Medal, the gazetting of this occurring while he was in prison. Cooney's bravery and his three weeks as a corporal were barely taken into account as he received a sentence of eight years' penal servitude.⁵⁸

What is clear from these records is that the convicted men had little time to gain experience as NCOs and they had spent quite some time away from their Battalion in 1918. Alyward was appointed lance corporal on April 13, 1918 and by June 8 had progressed to temporary corporal, being promoted to corporal later that month. On August 17 he went to Corps School and only returned to his Battalion on September 7.

⁵⁴ NAA: A471, 1704. Alyward, A. E., Service No. 3002, 1st Battalion, AIF.

⁵⁵ NAA: A471, 2041. Slater, H. E., Service No. 4963, 1st Battalion, AIF.

⁵⁶ NAA: A471, 2349. Taplin, R. C., Service No. 3490, 1st Battalion, AIF.

⁵⁷ NAA: B2455, Besley E A, Service No. 2562, service record.

⁵⁸ NAA: B2455, Cooney R, Service No. 3490, service record.

Within two weeks of his return from training he was facing a refusal from his Platoon to attack.⁵⁹ Slater was appointed lance corporal in September 1917 and was promoted to temporary corporal on August 31, 1918, just three weeks before he was involved in the refusal to attack.⁶⁰ Taplin was appointed lance corporal in March 1917 and promoted to corporal by June that year. He did have time to gain experience as an NCO, however he was away from his Battalion for three months in 1918 only returning on August 3.⁶¹ Besley was appointed lance corporal early in 1917 and in December was transferred to 1st Training Battalion in England, only rejoining his battalion in France on June 27, 1918.⁶² Corporal Cooney was promoted to lance corporal in April 1918, in June to temporary corporal, and to full corporal on August 29.⁶³ The majority of these promotions came only a few weeks before the September 21st mutiny.

A separate trial was held for Corporal (3661) George F. Wethered, a member of 'D' Company on October 16. The evidence presented by Lieutenant Steen was essentially the same as in the other trials except that he did add that Wethered, who had been at the meeting of NCOs around Steen's dugout in the afternoon, had spoken to Steen about 11pm. According to Steen, Wethered had told him that the men 'would not leave me in the lurch and that they would stick to me and support the other Companies but that they would not make a hop-over themselves'.⁶⁴ Sergeant Wilesmith⁶⁵ added that he spoke to the accused about 4.30pm and warned him of the hop-over. He was with the accused most of the afternoon and reported him as saying 'that he thought it pretty rough on the men, and that they didn't like the idea of going

⁵⁹ NAA: A471, 1704. Alyward, A. E., Service No. 3002, 1st Battalion, AIF.

⁶⁰ NAA: A471, 2041. Slater, H. E., Service No. 4963, 1st Battalion, AIF.

⁶¹ NAA: A471, 2349. Taplin, R. C., Service No. 3490, 1st Battalion, AIF.

⁶² NAA: B2455, Besley E A, Service No. 2562, service record.

⁶³ NAA: B2455, Cooney R, Service No. 3490, service record.

⁶⁴ AWM 51, 122, part 7, 1st Battalion AIF Field General Court-Martial of Corporal (3661) George F. Wethered, held on 16/10/18 in the Field, p. 1.

⁶⁵ Throughout the other trials Sergeant (1642) Ernest Wentworth Wilesmith had been referred to as Sergeant (1642) E. N. Wilemett.

over'. Lieutenant Mortlock placed the accused at the 2.30am meeting with Captain Moffat and added that after that meeting he spoke with about five NCOs, including the accused, and said to them, 'What about the NCOs, surely you are coming up with me?' The accused is alleged to have replied, 'What's the use of us going up without the men?' To which Moffat replied, 'If you come up we will find some work for you'.⁶⁶

Wethered, in his defence, denied he was at the meeting addressed by Moffat and that he had moved out of the sunken road when word was passed along the line that the Company had been relieved. Lance/Sergeant Hasthorpe gave evidence that he and the accused arrived too late to hear the address by Captain Moffat and told the prosecutor that they did not enquire as to what the address was about. Wethered told the court he was twenty-one-years-old and that he 'always tried to do the best I could with the men'. Captain Bootle told the court that he had known Wethered for thirteen months and that 'he is one of the best men I have ever had both in and out of the line'.⁶⁷ Wethered received a sentence of eight years, with Bootle's statement probably saving him from receiving the full ten years.

The most senior NCO of 'D' Company to parade before Steen on the afternoon of the 20th, Lance Sergeant (3351) Milton Hasthorpe, was also tried separately. Steen told the court that he asked Hasthorpe what he thought of the views expressed to him that the men 'considered they were being called upon to do too much, and they were unable to do it because they were too tired and worn out and their nerves were gone owing to the fighting they had gone through'.⁶⁸ Hasthorpe is alleged to have replied, 'I think so too'. Steen, when examined by the court, said his Company was about sixty strong and that he was the only officer until 10pm on the 20th. Referring to the

⁶⁶ AWM 51, 122, part 7, pp. 1-2

⁶⁷ Ibid., pp.2-3

⁶⁸ AWM 51, 122, part 6, Field General Court-Martial of Corporal (3341) (L/Sgt.) Milton Hasthorpe, held on October 15, 1918 in the Field, p. 1.

previous attack on the 18th, he said they had suffered only 'slight casualties' and that while in the sunken road the shelling was 'fairly constant'.⁶⁹

Sergeant G. F. Wood of Battalion Headquarters said he saw the accused in a dug out with another NCO and two privates around 2.30am. He told the court that the accused and the others said, 'they were quite willing to hop over but as a matter of principle they did not like leaving the Coy'. The fourth prosecution witness, Lieutenant Mortlock, placed the accused at the meeting with Captain Moffat at 2.30am on the 21st.⁷⁰

In his defence, Hasthorpe explained to the court that in the attack on the 18th they had reached their objective by 10am and remained in the front line until relieved about 9pm on the 19th. Referring to the meeting at Steen's dug out, Hasthorpe said it 'was an accident' that he had arrived at the same time as the other NCOs as he had not discussed the situation with them. He told the prosecutor that Steen had told them that 'probably there would be an attack the next morning'. He went on to say that his men 'never said they would not go', adding that 'they would go if the rest of the Coy. went'. Hasthorpe made it clear he was in sympathy with his platoon, saying 'I was going to stick to my Platoon'. He said he believed that when he walked out of the line he was being relieved, and when at the Nucleus Camp he had heard what Corporal Besley had said but had not bothered to tell Bootle that the lance corporal's statement was incorrect and that they were really being relieved. Hasthorpe claimed to have missed the meeting with Moffat and was supported in this claim by Corporal Wethered. Examined by the court, Hasthorpe said he did not try to stop his platoon moving out, adding that he had no influence on them. Further, 'I was not the ringleader either in my Coy. or in the Platoon. I was really passive'.⁷¹ After the finding Captain Bootle said he had known the accused for about a year and that he was very good man

⁶⁹ Ibid.

⁷⁰ Ibid., p. 2.

⁷¹ Ibid., p. 3.

under shellfire and a good NCO. Hasthorpe was reduced to the ranks and received ten years for his part in the mutiny.⁷²

Hasthorpe was thirty-years-old when he enlisted in 1915 and his record is free of any military crimes. He was promoted to lance corporal on March 26, 1917, corporal June 8, 1918, and lance-sergeant on August 31. Like the other convicted NCOs his experience in his final promotion was confined to just a few weeks before he had to deal with the mutiny.⁷³

Trial of thirty-four members of ‘D’ Company

Each trial adds a different dimension, and in this trial a clearer picture emerges of the men’s grievances as well as sense of the friction within the Company that resulted in heated exchanges between Lieutenant Mortlock and some of the men who were filing out of the sunken road on the 21st. In this second trial of ‘D’ Company men thirty-four faced the same optional charges. Among them were Lance Corporals (3077a) E. C. Preston, (4651) J. R. Dawson, (3407) C. W. Muir, (3064) D. W. Humphreys and (3633) D. N. Steele.⁷⁴ Little in the way of evidence was presented against the Privates in this trial with the focus being on the accused NCOs. However, the alleged comments made by Privates that do appear in the trial transcript are discussed, as well as the testimony of the only defence witness, Private H. H. Tickner. As in the first trial, Lieutenant Steen (Officer Commanding ‘D’ Company) was the prosecution’s first witness, and we pick up his evidence at the parade of NCOs around his dugout around 2.30pm on the 20th of September.

Lieutenant Steen told the court that he could not say for certain that the accused NCOs were present at the parade at his dugout but ‘was under the impression they

⁷² Ibid., p. 4.

⁷³ NAA: B2455, Hasthorpe M, Service No. 3341, service record.

⁷⁴ AWM 51, 122, part 3, 1st Battalion AIF Field General Court-Martial. Joint trial of four non-commissioned officers and thirty Privates of ‘D’ Company.

were'. Steen said that after that meeting, around 4pm, he went out along the Company lines and spoke with the men he saw of 'D' Company and asked them whether they were coming over with him in the morning. Some men said 'yes', while others said 'I am going with the mob'. Steen estimated that he spoke with half of his Company, around thirty men, but could not positively identify any of the accused as being spoken to by him. However, he said he had checked his Company around 1.30am, one hour before he was evacuated wounded, and the 'accused were all present'.⁷⁵

Sergeant Wilemett, the second prosecution witness, added more detail to his previous evidence. He told the court that after he had warned his NCOs of the attack on the afternoon of the 20th he heard several of the men comment 'that they were not fit to go over', but could not identify who made those remarks. Wilemett told the court that when he and Lieutenant Mortlock watched the men file out of the sunken road, between 2am and 3am on the 21st, Lieutenant Mortlock shouted to some of the men 'you are a cowardly lot of bloody swine', or 'words to that effect'. Wilemett said he heard no reply, and he then proceeded to the place he was ordered to. He added that three men, who were present on the 20th and who had moved out with the accused, were still missing. Examined by the Prisoners' Friend, Wilemett said he had seen men from other companies filing out of the sunken road before the men from 'D' Company. Examined by the court he said the majority of the accused were 'strangers to him' as he had recently been in England for three months. He told the court that the impression he gathered from the men was that 'they considered they had been badly treated'.⁷⁶

Lieutenant Mortlock, the third prosecution witness, told the court that after he took charge of the Company, shortly after 2.30am on the 21st, he instructed Wilemett to move the men to a forward position, some 300 yards away, prior to them joining the assembly point for the attack. Wilemett then reported back to him and five minutes

⁷⁵ Ibid., pp. 1-2.

⁷⁶ Ibid., p. 2.

later he 'saw some of the accused moving down the road towards the rear, some putting on equipment and some standing about'. He could only identify one of the accused, Private Couley. Mortlock said he shouted to the men, 'Where are you fellows going?' Somebody replied 'We are going out', and with that they moved out in groups of five or six with Mortlock still making remarks to them. Examined by the Prisoners' Friend, Mortlock said he had shouted to the men of 'D' Company 'that they were deserting their comrades', and that he was certain that around a dozen men heard him. Examined by the court Mortlock said that one of the remarks he shouted was 'You are deserting like a lot of cowards'. Private Couley, whom Mortlock knew well, was alleged to have replied, 'No man can call me a coward', or words similar. Mortlock admitted that he could not identify any of the other accused NCOs as being present when this exchange took place.⁷⁷

Captain Bootle, the fourth prosecution witness, repeated his claim in his previous evidence that the men 'fully understood' that the NCOs were acting as their spokesmen when they paraded before him at the Nucleus. He told the Prisoners' Friend that they had marched in 'with equipment, Lewis Guns etc., complete', and 'went forward again the same day as they marched in'. Bootle, when examined by the court, said that he recalled Lance Corporals Dawson, Muir, Humphreys and Steele as coming forward with Besley, and that they all heard what Besley said. He alleged that Besley had told him that the men 'were all knocked up and not in a fit state to do an extra attack'. The final prosecution witness, Corporal (6237) C. A. H. Cox, Orderly Room Clerk at the Nucleus Camp, was on parade with Captain Bootle and confirmed that Bootle had called the NCOs to come forward to explain.⁷⁸

What remains unclear in the prosecution's case is why Lieutenant Steen did not take further action after he had walked down the line and received quite open refusals

⁷⁷ Ibid., p. 3.

⁷⁸ Ibid.

from the men under his command to attack. Whether he did discuss the situation with senior officers is not revealed here, but it does appear the situation was left to drift to the early hours of the 21st. Lieutenant Mortlock's shouted remarks at the men leaving should have left those who heard it in no doubt that they were not leaving in error. Most interesting of all is the remark by Sergeant Wilemett that most of the accused were 'strangers to him', as he had been in England for three months previously. Sergeants have a major influence on the attitude of the men in their units and it is significant that in this case Wilemett had very little. When his men were leaving the line, disobeying a direct order, Wilemett had the opportunity to say something to them, but did not, because he felt he could not change their decision. There is no indication here that Wilemett was in sympathy with them but it might explain his reluctance to speak out. Company sergeant majors are not known for their reticence. As discussed earlier, some of the accused non commissioned officers had little experience in their roles. Wilemett, however, was experienced, but claimed that due to his absence in England he was unfamiliar with the men under his command.

The defence called only one witness, Private (6327) H. H. Tickner, who gave an account of the conditions the men of 'D' Company had to endure during the attack on the 18th September and afterwards. Tickner explained that at 3am on the 18th, as they waited for the attack to commence, they were in an open field exposed to shellfire and persistent rain. The attack was successful as they reached their objective, a forward trench, which Tickner described as being 'up to the knees in water and mud'. They held this position until 9pm on the 19th and during this period they were obliged to do ration and other fatigues. They were relieved by 'B' Company and moved back to the sunken road where they were told they had to 'dig in deeply' due to the 'very heavy shellfire', a task that was not completed until around dawn.⁷⁹ On the 20th the majority of 'D' Company were on burial duties and the rest on gas guard. Tickner said that

⁷⁹ Ibid., p. 4.

around 4pm on the 20th he heard rumours of an attack but about the same time advanced parties of 6th Battalion men arrived and told him they were relieving them that night. Later in the evening the other three companies of the 1st Battalion joined 'D' company in the sunken road saying they had been relieved from the front line by the 6th Battalion. Tickner described the sunken road as being three-feet deep by twelve-feet wide, with the 1st Battalion's portion extending 200 to 300 yards, and due to the constant shelling the men were 'scattered all over the place'. Tickner recalled that an order had been given to stay in the sunken road until further orders. After getting some sleep in their dugouts he and some others of 'D' Company were aroused by the noise of men moving out who told them they were '1st Battalion being relieved and going out'. Shortly after, 'word was passed along for "D" Company to get their gear on and file out'. According to Tickner, at this juncture 'D' Company started to file out down the sunken road but because of the heavy shelling they got split up, only rejoining on the road back to the Nucleus.⁸⁰

Tickner told the prosecutor that he had not made any remarks about the difficulty of attacking again, although he thought it hard to do so, and that he did not discuss the attack with anyone nor make any complaint to an NCO. Furthermore, he said he did not hear the men complain about being involved in another attack. Their complaints were more to do with being tired and having sore feet. He said Sergeant Halstath (who did the talking at the parade before Steen) told him that an attack was 'rumoured'. Tickner could not say who passed the order down the line to move out. He conceded that he had not received any definite orders concerning the relief, adding that he had no orders where to go and that 'we very seldom get orders where to go'.⁸¹

Examined by the court, Tickner said he did not hear any remarks made to the men as they were leaving and that he had not seen any of his platoon NCOs until they had

⁸⁰ Ibid., pp. 4-5.

⁸¹ Ibid., p. 5.

gone about five miles. He stated that he received no orders from Sergeant Halsthat regarding the attack and, as far as he knew, ‘men of Sergeant Halsthat’s platoon were quite ready to go into the line if necessary’.⁸² The other accused declined to give evidence or call witnesses.

The defence had called only one man to give evidence, and he, according to the Prisoners’ Friend, was chosen haphazardly from the accused.⁸³ The defence was perhaps reticent about calling more witnesses, fearing a repeat of the type of statement that was attributed to Corporal Besley that had done so much damage to the men’s case. Tickner’s sworn statement was careful, as it gave no indication that the men had been discussing among themselves refusing to attack and thus avoid the charge of combining among themselves, which could have led to a mutiny conviction. The Prisoners’ Friend in his final summation to the court countered that all the accused had moved out in good faith and that they had good reason to believe they had been relieved and had received an order to do so. To support this he pointed to the presence of the 6th Battalion in the sunken road.⁸⁴

The prosecutor, when he addressed the court, said that the presence of the 6th Battalion in the sunken road was only natural as they were part of the ongoing operation. He drew the court’s attention to the evidence of Lieutenant Steen, Sergeant Wilemet, Lieutenant Mortlock, Captain Bootle and Corporal Cox.⁸⁵

After the findings, Captain Bootle spoke up for nineteen of the accused telling the court that he had known the men for about a year and that they all had been ‘good soldiers both in and out of the line’. He described Private Couley as being a ‘very good man in the line’ and made special mention of him winning the Military Medal at Bullecourt. Lieutenant McDonnell spoke up for several of the accused, especially

⁸² Ibid.

⁸³ Ibid.

⁸⁴ Ibid.

⁸⁵ Ibid.

Privates Mackey, Couley, and Lance Corporals Humphreys and Muir. McDonnell spoke of Couley's courage in the line and mentioned that Lance Corporal Muir, although he was gassed early in the Pozières attack, stayed in the line and saw the action through. Lieutenants H. H. Elsley and J. P. Deppe mentioned between them eighteen of the accused describing them as 'good men both in and out of the line'. Only one of the accused made a statement, Private (2700) W. Robson, who told the court that the present officers of the Battalion did not know him as he had been absent from the Battalion due to special duties and being ill, and had only returned in July 1918.⁸⁶

All the accused were found guilty of desertion with the convicted lance corporals receiving a sentence of five years' penal servitude. What may have prevented them receiving seven years was the fact that all of the senior NCOs of 'D' Company (apart from CSM Wilemet) had decided to follow their men out of the line. What the convicted NCOs had in common was that they all had been wounded in action while in France. Muir, who was just eighteen-years-old when he enlisted in July 1915, was wounded in action in April 1917 receiving gunshot wounds to his right calf and left thigh that kept him away from his unit until November 1917.⁸⁷ Preston was almost twenty-five-years-old when he enlisted in January 1916. He joined the battalion in France in November 1916 and was wounded in action in April 1917, suffering gunshot wounds to both thighs. This serious wound kept him away from his unit until late October 1917.⁸⁸ Humphrey's was aged twenty-six when he enlisted in July 1915 and in July 1916 he was wounded in action receiving a gunshot wound to his arm, which kept him away from his unit until January 1917.⁸⁹ Dawson was twenty-one-years-old when he enlisted in September 1915 and was wounded in action in August 1916. He

⁸⁶ Ibid., pp. 5-6.

⁸⁷ NAA: B2455, Muir C W, Service No. 3407, service record.

⁸⁸ NAA: B2455, Preston E C, Service No. 3077a, service record.

⁸⁹ NAA: B2455, Humphreys D W, Service No. 3064, service record.

spent most of 1917 in England with spells in hospital suffering from trench foot. In 1918, bouts of sickness and recurring trench foot kept him away from his unit until late June, severely limiting his experience as an NCO.⁹⁰ Steele was twenty-eight-years-old when he enlisted in February 1916. He was wounded in action in October 1917, suffering gunshot wounds to his left knee and arm, which caused him to be away from his unit until February 1918.⁹¹ Fear of being wounded again could have been a consideration for these men when deciding to walk out of the line. Muir was appointed lance corporal in November 1917; Preston, May 1918; Humphrey's, November 1917; Dawson, September 1916; and Steele June 1918. Steele and Preston had the least experience as NCOs, but what needs to be taken into account with the others is the length of time they were away from their units.

The trial of thirteen Privates of 'B' Company

The trial of men of 'B' Company of the 1st Battalion is significant because for the first time no non-commissioned officers were among the thirteen accused. The first prosecution witness, Lieutenant R. W. Sampson, commander of 'B' Company, told the court his Company took part in the attack on the 18th and remained in the line until being relieved on the evening of the 20th, arriving at the sunken road around 8.30pm. Sampson claimed to have warned all forty-four members of his Company, including the accused, that they would be involved in the attack on the 21st. Furthermore, this warning was given in the front line and in the sunken road. Referring to the proposed attack he told his men that 'we had not far to go and did not expect much opposition'. He stated that he gave no indication to his men 'which might lead them to believe we were going right out'.⁹² Examined by the Prisoners' Friend, Sampson said he had

⁹⁰ NAA: B2455, Dawson J R, Service No. 4652, service record.

⁹¹ NAA: B2455, Steele D N, Service No. 3633, service record.

⁹² AWM 51, 122, part 2, 1st Battalion AIF Field General Court-Martial, p. 1. Joint trial of thirteen Privates of 'B' Company.

warned his men of the attack while in the front line, on the way out of the line and in the sunken road. He added that none of his men were on fatigue duty.⁹³

There was conflicting evidence from the second prosecution witness, Corporal (6211) W. Adam, who told the Prisoners' Friend that when the Company was relieved in the front line he was unaware of an attack on the 21st and therefore did not warn his Section. When re-examined by the prosecutor he said that while in the front line he had heard rumours of an attack from one of the platoon sergeants but had not 'repeated it to anybody' or discussed it with anyone. On re-examination by the court he confirmed that Sampson had warned the Company of the attack in the sunken road.⁹⁴

The third witness for the prosecution, Sergeant (3348) W. E. Hegton (Acting Company Sergeant Major) also said he had heard no word of an attack while in the front line, and did not hear of any warning while in the sunken road as he was on duty. He did report that he heard Private A. Lawrence say, 'Well, I can't go over the top I am too done up'. He said Lawrence was speaking with a group of four or five, including Private Baker, one of the accused. Around 3am on the 21st when Hegton ordered the men to 'fall in' all the accused were missing. He told the Prisoners' Friend that he was not present when Sampson walked along the line on the 20th and that nothing happened to indicate that the men were being relieved. He confirmed to the court that he heard no orders for the men to 'file out' and that he gave no orders to do so.⁹⁵

Private (3716) J. Johnson, the fourth prosecution witness, told the court that Privates Lawrence, Baker, Jeffries and Lindsay (accused) were with him in the front line when Samson warned them of the proposed attack. He said the men discussed the attack while in the sunken road but that he took no part in the discussion.⁹⁶ The fifth

⁹³ Ibid.

⁹⁴ Ibid., pp. 1- 2.

⁹⁵ Ibid., 2.

⁹⁶ Ibid.

prosecution witness, Private (3881) E. L. Myers, said that the accused Privates Earle and Barnett were with him when Sampson gave the warning of the attack as they made their way to sunken road. He told the Prisoners' Friend that Sampson 'was speaking to everyone in general'. According to the sixth prosecution witness, Corporal (6237) C. A. H. Wilcox, nine of the accused marched into the Nucleus around 11.30am on the 21st and made no statement. The final prosecution witness, Lieutenant A. N. Backhouse, said that five of the accused had joined a party under his command some five miles from the front line on either the 21st or 22nd September.⁹⁷

Although the prosecution's case against the accused was stronger than in previous trials, the accused offered little in the way of defence. Out of the thirteen accused only one man, Private (2177) A. Mullins, a stretcher-bearer, gave evidence, and his sworn statement was contained in only four lines. He told the court that he was not warned of the attack on the 21st and the reason he was not present on the morning of the attack was because he saw men leaving and decided to leave with them. Examined by the prosecutor he said he had heard rumours of an attack on the 21st but did not discuss it with anyone. He left the line with the accused Privates Handcock and Lawrence.⁹⁸

Before the finding in this case the court dealt with the first charge against Private (7723) J. Earle that 'When on active service, endeavouring to persuade persons in H.M. Military Forces to join in a mutiny'. For the prosecution, Captain J. C. Bootle told the court that on the 23rd, a day after the men had marched into the Nucleus, he held a parade of 1st Battalion Details and that the accused was standing with his pack resting on his rifle. Bootle claimed he told him several times 'to stand at ease properly'. The accused was alleged to have replied, 'if I have to stand at ease I am going to take my pack off'. Bootle told him again to keep his pack on. Earle is then alleged to have half-turned to the rest of 'B' Company and said, 'Come on, let us get

⁹⁷ Ibid., p. 3.

⁹⁸ Ibid.

off parade'. All the accused stayed on parade but Earle did not obey the order. Bootle, when cross-examined by the accused, told him he had turned half right and not had mentioned that his shoulder was sore and that he would like to take off his pack. Examined by the court Bootle said the men around could hear what the accused said and Sergeant Hasthate was standing within two yards of him. Earle, in his defence, denied 'using the words alleged by Captain Bootle'. He told the prosecutor that the pack was hurting his shoulders and denied saying anything to the men, but admitted taking his pack off without permission. The defence called two witnesses, Hancock and Noad, who swore that Earle did not use the words, 'Come on, let us get off parade', although Hancock did say that when Bootle ordered Earle to 'fall out' Earle had replied 'I'll stop here now'.⁹⁹ Earle was found not guilty on this charge, but was found guilty of desertion and received three years' penal servitude for desertion. His conduct was assessed as being 'indifferent in and out the line'.¹⁰⁰

After the finding Lieutenant Sampson spoke up for Private Hancock saying he was a good soldier and had volunteered for patrols at Meteren and Merris. Sergeant W. E. Higden said he had known most of the accused for a considerable time and that they have been 'good front line soldiers and are not men of bad character'.¹⁰¹

Of the convicted, three were 1915 men whose conduct was classified as good in the line, with one bad and one indifferent out of the line. Of the four 1917 men, only one man's conduct was graded as good, with two indifferent and one fair in and out of the line. Three of the five 1918 men were graded good, the other two indifferent and fair. Overall, the conduct of eight men was considered good in the line and only six men had their conduct classified as good out of the line. Five of the convicted had only been in France a few months; four were men who had seen action in 1917; one in

⁹⁹ Ibid., pp. 3-4.

¹⁰⁰ A character assessment was made of the men accused for the use of the Court and follows the transcript of the trial.

¹⁰¹ Ibid., 4.

1916; and there were three 1915 men.¹⁰² What is significant in 'B' Company is that none of the NCOs were prepared to walk out of the line with these men. Whether that was a consequence of the perceived character of the convicted is not clear, but as noted above, the mutineers of 'B' Company were a mixed bag when it came to character and length of service.

The trial of forty-five members of 'C' Company

The trial of forty-five members of 'C' Company proves quite revealing as a picture emerges of the mood of the men and a sense of an industrial dispute developing with the men willing to go out in support of another Company. Included in the accused were Temporary Corporal (6949) T. J. Blackwood, Lance-Corporals (2928) E. Walker, (3801) E. M. Porter, (3953) R. Bardney, (1382) R. Beggs, and (3812) L. Pettit, and Corporals (6084) F. R. Smith and (3966) R. H. C. McKay.¹⁰³ Lieutenant L. J. Whipp, commander of No. 12 Platoon 'C' Company, was the first prosecution witness. He told the court that on September 18 'C' Company had taken part in an attack and after reaching their objective had stayed in the front line until the night of the 20th. They were relieved that evening and made their way to the sunken road some 350 yards from the front line. Whipp told his platoon, which consisted of eleven men, to 'extend along the sunken road'. Around 6pm he told Corporal Blackwood, in the presence of five or six of the accused, 'that we were drawing ammunition for an attack'. Blackwood and seven of the accused obeyed the order to draw ammunition. Around 3am on the 21st, only one member of his platoon was present when the

¹⁰² Corporal (550) Joseph Brissett, 1st Battalion, 'B' Company was tried separately and was found not guilty on each charge but guilty of absence without leave and was reduced to the ranks. Brissett had taken a wounded man out of the sunken road, without permission, in the early hours of the 21st and on his return claimed that two machine gunner had told him the Battalion had moved out. He had tried to check with Battalion headquarters, but they had moved. Lieutenant Sampson said he could not positively say the accused was present in the front line or in the sunken road when he warned his platoon of the attack. He added that NCOs are not allowed to take wounded men out.

¹⁰³ AWM 51, 122, part 1, 1st Battalion AIF Field General Court-Martial. Joint trial of eleven non-commissioned officers and thirty-three Privates of 'C' Company.

Company assembled for the attack. The rest were absent and remained so throughout the attack on the 21st.

When examined by the Prisoners' Friend, Whipp conceded that when he told Blackwood of the proposed attack it was possible that some of the men standing around did not hear him. Further, up to 6pm on the night of the 20th, he had 'surmised' that the Company was going to be relieved that night. He told the court that he did not see Corporal Blackwood until September 22 and that he had offered no explanation as to why he had left the sunken road.¹⁰⁴

The second prosecution witness, Lieutenant S. G. Ward, commander of No. 10 Platoon, had three members of his fifteen-strong Platoon on trial. He explained to the court that he had told his Platoon around 4.30pm on the 20th that they would be relieved from the front line but warned them they would be involved in the attack the following morning. Ward's Platoon arrived in the sunken road around 9.30pm and he instructed them to stay there while he went to Battalion Headquarters. On his return, at 12.30am on the 21st, he saw a number of men marching out of the sunken road towards the rear. On checking his platoon he found it was still intact. He said to his men they would be involved in the attack and told them to stay in the sunken road. Ward said the men discussed amongst themselves whether they would 'go or stay'. When the Company moved to a forward position for the attack around 3am three members of his platoon were absent: Privates (7344) W. James, (7038) A. Robinson, and (372a) E. Boland. Ward did not see them again until several days later when they were in custody. Under examination by the Prisoners' Friend, Ward said that he was certain all three accused were present when he warned the platoon of the attack. When he gave the warning he alleged that Private James remarked to him 'that he didn't think it fair to go into action again'.¹⁰⁵

¹⁰⁴ Ibid., p. 1.

¹⁰⁵ Ibid., p. 2.

Corporal (3996) E. A. Davis, the third prosecution witness, who was in charge of a Section of No. 10 Platoon, said he was present when Ward warned James of the attack. He told the court that on the march back to the sunken road there was a lot of ‘discussion’ in the Company. Soon after they arrived at the sunken road they heard that ‘D’ Company was ‘not going over’. He said that some of his Company ‘seemed inclined to go out in sympathy with D Company’. Davis said that he did not see any of the accused leave, but that Privates Bowman and Darling were the first to go and have remained absent since. He told the Prisoners’ Friend that James was warned in the second dugout [sunken road] but could not say for certain whether Robinson was warned.¹⁰⁶

The fourth prosecution witness, Lieutenant S. R. Trail, was in charge of No. 11 Platoon in the front line up until 11am on the 20th. He then took charge of ‘A’ Company. This platoon had thirteen men accused including Corporal (6084) F. R. Smith and Lance-Corporal (3801) E. M. Porter. Trail’s evidence was limited to telling the court that the accused were with him in the front line up to the time of his departure.¹⁰⁷

Private W. C. Morgan, a ‘C’ Company runner, was the fifth prosecution witness, and he identified four of the accused Privates as being present on the 20th and absent at 3.00am on the 21st. The sixth prosecution witness, Lieutenant Kelleway, Officer Commanding ‘C’ Company, told the court that the whole of No. 9 Platoon, which included Corporal McKay, Temporary Corporal Bardney, Lance-Corporal Pettit and six Privates were all absent at 3am on the 21st. All the accused had been present the previous evening, including two Privates from Company headquarters who were also among the accused. Kelleway explained to the Prisoners’ Friend that Lieutenant Hudson was the platoon’s commander but had since been wounded.¹⁰⁸

¹⁰⁶ Ibid.

¹⁰⁷ Ibid., pp. 2-3.

¹⁰⁸ Ibid., p. 3.

The tenth prosecution witness, Lieutenant R. U. Sampson, told the court that around 2am on the 21st he heard Corporal McKay remark, 'Oh I'm going out, my Platoon is going, so I'm going with them'. McKay then left the sunken road and walked towards the rear. Sampson told the Prisoners' Friend that the remark was made in a loud voice as McKay was making his way towards the rear and not the assembly point. The final prosecution witness, Sergeant H. D. Andrews, stated that all the accused had 'straggled' into the Nucleus on the morning of the 21st.¹⁰⁹

The prosecution had presented evidence that the men were involved in discussions among themselves as to whether they would refuse to attack. Lieutenant Ward's Platoon No. 10 suffered the least with only three absentees. In the other platoons there was almost a total walkout with ten out eleven men of No. 12 Platoon, and No. 9 and No. 11 Platoons reporting all their men absent.

The defence's first witness, Corporal Blackwood, told the court that when they were relieved from the front line and in the sunken road they had a hot meal and were told to spread out. He and the accused Private Anderson were in a dug out together and stayed there until they heard somebody say, 'Put your gear on and move out'. Blackwood said that they did not see anyone else from the platoon, so they moved out thinking the whole Battalion was moving out. In his defence Blackwood stated that he was not warned of the attack and he did not hear Lieutenant Whipp tell him about the attack. Examined by the prosecutor, he said he drew ammunition on Whipp's orders, but he did not hear Whipp say there was going to be an attack. He told the prosecutor they had arrived at the sunken road around 10pm and he and Anderson stayed until around midnight. He said he had heard rumours of an attack and had not discussed this with anyone. Blackwood claimed that before moving out he had looked for Lieutenant Whipp but could not find him or any men from his Section.¹¹⁰

¹⁰⁹ Ibid. There is no indication in this document of the evidence of the seventh, eighth and ninth witnesses for the Prosecution.

¹¹⁰ Ibid.

Private (7344) W. James, the second defence witness, stated that around midnight on the 20th/21st he heard somebody say, 'Put your equipment on and file out', which he did not hesitate to do. Examined by the prosecutor, he stated that he was not told about the attack, nor had he heard rumours of an attack. He admitted he had not received orders from an N.C.O. to move out of the sunken road, and only became aware that a mistake had been made when he paraded at the Nucleus before Major McKenzie.¹¹¹

The third defence witness, Corporal Smith, told the court he was in a dug out with Private Ham on the night of the 20th when word was passed along the line to put on their gear and move out. At the same time there was a group of men moving out and when he asked who they were they replied they were '1st Battalion moving out'. On hearing this both he and Private Ham followed them out of the sunken road towards the rear. Smith explained that his platoon was scattered along the sunken road due to the shellfire, and that no other members of his platoon accompanied them as they moved towards the rear. Examined by the prosecutor, Smith said he had heard rumours of an attack but he had not mentioned this to anyone. He admitted to not receiving an order from his platoon sergeant to move out nor did he look for him before doing so, although he did look for two men in his Section. He told the prosecutor that he heard no discussion about the attack or the relief. It was only on reaching the Nucleus that he realised that they had come out in error. Smith told the prosecutor he had been an NCO for a year and with the Battalion for two years.¹¹²

Corporal McKay, the fourth defence witness, told the court that on the night of the 20th he was asleep in a shell hole in the sunken road and when he awoke and checked his platoon they had all gone. He then met a machine gunner who informed him that the Battalion 'had moved out and was about 7 minutes ahead'. On moving out

¹¹¹ Ibid.

¹¹² Ibid., pp. 3-4.

he met up with about five members of his platoon, including Temporary Corporal Bardney, who told him that they had received orders to move out. He told the prosecutor that although he had heard rumours of an attack he had not received a warning concerning the attack and had not discussed this with anyone. Further, he had no definite orders to leave the sunken road nor did he issue any orders to members of his platoon to leave. Examined by the court, McKay said he had not learned of his mistake until he reached the Nucleus. He denied making the remarks or anything like them attributed to him by Lieutenant Sampson, who in his evidence claimed that McKay had said his platoon was moving out ‘so I’m going with them’.¹¹³

The fifth defence witness, Temporary Corporal Bardney, said he agreed with McKay’s evidence. He told the prosecutor he left the sunken road on hearing they were to file out and that no other members of his Section were with him. He did not look for his platoon sergeant and moved out with a crowd of about fifty men. He claimed he had heard no rumours ‘whatever’ of an attack and that his platoon had not discussed it, as he would have heard them. Bardney told the court that on moving out the men did not know where they were going, but after talking it over decided to go to the Nucleus.¹¹⁴

The final defence witness, Private (1715) E. F. Stokes, who along with Private (3700) L. G. Beckman, was a stretcher bearer attached to ‘C’ Company H.Q. Stokes told the prosecutor that he had heard rumours of an attack and had left the sunken road without orders to do so. He had moved out following a crowd of around fifty to sixty men who said they were ‘C’ Company.¹¹⁵ The other accused declined to give evidence, but before the finding in this case there was a further charge to be heard against Private (1234) W. Case who faced a charge of ‘When on active service, causing a mutiny in forces belong to H.M. Military Forces’.

¹¹³ Ibid., p. 4.

¹¹⁴ Ibid.

¹¹⁵ Ibid.

Lieutenant H. Trail, the only prosecution witness, claimed that around midnight on the 20th/21st in the sunken road he heard Case say, 'Come on let us get away while the going is good'. Trail said he was about fifteen yards from Case when he heard him speak, and although it was fairly dark he was certain it was the accused. Case is then alleged to have marched out with four or five men. Trail told the Prisoners' Friend that he knew the accused very well and although he could not swear he saw the accused speak he had previously been in the place from which the voice came. In his defence, Case denied using the words attributed to him, claiming he was in his dugout around midnight. He told the prosecutor that he knew of 'no attack and had not discussed the attack with anybody'. He called Private (6077) A. J. Rook in his defence (one of the accused) who stated that Case was in the sunken road until about 1.30am on the 21st when about four or five of them had moved out together.¹¹⁶ Case was found not guilty on this charge, but like the others, found guilty of desertion.

After the finding Captain R. Somerset, 1st Battalion, testified to the excellent character of twenty-three of the convicted Privates as well as Lance Corporals Beggs, Walker, Porter, Pettit, Temporary Corporal Bardney, Corporals Smith, Blackwood and McKay. He described the NCOs as having demonstrated keenness, and that they 'have proved reliable men'. Private Case (accused on the second charge) was praised as a willing worker and good soldier 'under fire'.¹¹⁷

What emerges from examining the service records of the convicted NCOs is a pattern similar to 'D' Company's, with most having been previously wounded in action and receiving their final promotion only weeks before the mutiny. Temporary Corporal Thomas John Blackwood was twenty-one-years-old when he enlisted in October 1916. He was wounded in action in late 1917, promoted to lance corporal in April 1918 and to temporary corporal on August 31, just three weeks before the

¹¹⁶ Ibid., p. 5.

¹¹⁷ Ibid., pp. 5-6.

‘walkout’ of 1st Battalion men. Blackwood had an unblemished disciplinary record and his three weeks as a temporary corporal resulted in him receiving eight years’ penal servitude.¹¹⁸

Lance Corporal Ernest Walker was twenty-five-years-old when he enlisted in June 1915. He was wounded in action in November 1916, suffering a gunshot wound to the neck, which kept him away from his unit for four months. He was appointed lance corporal on August 3, 1918, and the gallantry and leadership he displayed on August 23 earned him the Military Medal. In August 1917 he had faced a District Court-Martial in England charged with striking his superior officer and was found guilty and awarded sixty-four days’ detention. Like the other convicted lance corporals, he was awarded five years’ penal servitude.¹¹⁹

Lance Corporal Richard Beggs was twenty-five-years-old when he enlisted in November 1914, making him one of the longest serving of the convicted men. He was appointed lance corporal in September 1917 and rejoined his unit in France in February 1918. Beggs was wounded in action in April, suffering a gunshot wound to the back of his right foot which kept him away from his unit until the end of July. He was awarded five years’ penal servitude for his part in the mutiny.

Lance Corporal Edward Maitland Porter, was twenty-one-years-old when he enlisted in August. He was promoted to lance corporal in on July 7, 1916, and just ten days later was wounded in action, receiving gunshot wounds to both arms. He spent several months recovering from this severe wound and afterwards was assigned to postings in England. He was only able to rejoin his battalion in the field in March 1918. On August 2 he was promoted to temporary corporal, only to revert back to lance corporal later that month. He received five years’ penal servitude for his part in the mutiny.¹²⁰

¹¹⁸ NAA: B2455, Blackwood T E, Service No. 6949, service record.

¹¹⁹ NAA: B2455, Walker E, Service No. 2928, service record.

¹²⁰ NAA: B2455, Porter E M, Service No. 3801, service record.

Corporal Reginald. H. C. McKay was twenty-two-years-old when he enlisted in September 1915. He was appointed lance corporal in January 1917 and was wounded in action in July of that year, receiving a serious gunshot wound to his face. Recovering from this wound and being re-classified as A3 meant that he was away from his battalion in France until May 1918. In August he was promoted to corporal and was seven weeks in his new position before his involvement in the mutiny. His disciplinary record was free of charges, and despite his short experience as a corporal he received ten years' penal servitude.¹²¹

Corporal Fred Rowe Smith was twenty-one-years-old when he enlisted in March 1916. He was appointed corporal on August 3, 1918 and rejoined his battalion on August 16. No charges appear on his record except for the eight years' penal servitude he received for taking part in the mutiny.¹²²

Lance Corporal Leonard William Pettit was nineteen-years-old when he enlisted in August 1915. His appointment to lance corporal came in March 1917, and he was wounded in action in April 1918, receiving a gunshot wound to his right arm. This wound kept him away from his battalion until August 17, just five weeks before the mutiny. He was awarded five years' penal servitude by the court and there are no other charges against his name.¹²³

Temporary Corporal Richard Bardney was almost twenty-one-years old when he enlisted in October 1916. He was promoted to lance corporal in February 1918 and was wounded in action on April 18 and would not return to his unit until July 27. His appointment to temporary corporal came three weeks before the mutiny, and despite his short period at that rank, he was awarded eight years' penal servitude.¹²⁴

¹²¹ NAA: B2455, McKay R H C, Service No. 3966, service record.

¹²² NAA: B2455, Smith F R, Service No. 6084, service record.

¹²³ NAA: B2455, Pettit L W, Service No. 3812, service record.

¹²⁴ NAA: B2455, Bardney R, Service No. 3953, service record.

Of the twenty-nine Privates convicted twelve, or 41.37 per cent of the convicted Privates, were men who had only been involved in operations in France in 1918. Thirteen had been in operations since 1917, and five since 1916. Adding the 1917 and 1918 men we have 86.2 per cent of men with just over a year's operational experience. The conduct of the convicted Privates in and out of the line as given the court was classified in every case as good. This must be treated with some suspicion and may reflect the fact that a man's previous conduct, whether good, fair, indifferent or bad, made no difference in the uniformity in sentencing Privates to three years' penal servitude. It is significant that a sizeable proportion of the men convicted were recent arrivals (41.37 per cent) with only a few months of actual combat experience.

The trial of nineteen members of 'A' Company

The trial of nineteen members of 'A' Company provides more detail of the unrest in the sunken road on the night of the 20th. Among the accused were Corporal (4466) W. H. Pittock and Lance Corporals (6975) E. B. Davis and (3712) S. F. Carr.¹²⁵ The prosecution's first witness, Lieutenant H. A. Heatley, had ten members of his No. 4 Platoon accused. He told the court that on the 18th his Company acted in support of an attack and was in the front line until around 10pm on the 20th. They were then relieved by the 6th Battalion and moved back to the sunken road. He told his men to 'dig in' to the bank of the sunken road and 'make themselves comfortable', detailing some men to ammunition and ration fatigue. Heatley heard confirmation of 'A' Company's involvement in the morning attack at 11pm and then walked along the sunken road warning the men of his platoon. Heatley could not recall whom he warned but remembered speaking with the accused Corporal Pittock. He told Pittock they were participating in the attack the following morning and asked him 'whether there was

¹²⁵ AWM 51, 122, part 5, 1st Battalion AIF Field General Court-Martial. Joint trial of three non-commissioned officers and sixteen Privates of 'A' Company.

any talk in the Company of the men leaving or striking'. He explained to the court that at that time he had heard 'something about "D" Company'. Pittock replied 'that the men were worn out and tired', with Heatley gaining the impression that the men would take part in the attack. Heatley said he warned the men about the attack and recommended that they get as much sleep as possible. He added that some members of his platoon were in groups 'discussing the situation'. Between 1am and 2am on the 21st, when Heatley gathered his platoon, only three men were present.¹²⁶ On further examination by the Prisoners' Friend and the court, Heatley said he first knew of the Company's involvement in the morning attack around 7pm on the 20th, and up to that time he thought they were being relieved. When they were in the sunken road he had said nothing to his platoon about being relieved, adding that normally when there is a relief he leads his men out.¹²⁷

Sergeant (1915) W. J. Pritchard, the second prosecution witness, told the court he was in charge of a platoon of about twenty, with five members of his platoon among the accused, including Lance-Corporal Carr. He said his platoon had arrived in the sunken road around midnight for a hot meal and that he told his platoon, including the five accused, that they would be 'doing a stunt in the morning'. He said no remarks were made and the Platoon dispersed to get some rest. Examined by the Prisoners' Friend, Pritchard said his platoon was told on the 20th they were being relieved and would be moving back to the sunken road. He restated the accused were present when he warned them of the attack, adding that when a platoon is relieved it is normal for the platoon commander to lead his men out.¹²⁸

The third prosecution witness, Company Sergeant-Major (2480) T. B. McBarron, was in charge of a platoon and had two of his men accused. McBarron explained to the court his platoon had left the frontline arriving at the sunken road at 11pm where they

¹²⁶ Ibid., p. 1.

¹²⁷ Ibid., p. 2.

¹²⁸ Ibid.

were told to have some ‘tea and a rest’ and await instructions concerning an attack the following morning. He told the Prisoners’ Friend that he was certain the two accused were present when he told the platoon about the attack.¹²⁹

Captain Bootle, the fourth prosecution witness, told the court the accused had marched into the Nucleus and paraded before him. When he asked for representatives to explain what the trouble was four men came forward. One of them, Bootle could not recall who, said ‘that they had come out of the line as they were too tired to do another attack, and that they would be doing somebody else’s job’.¹³⁰

Corporal Pittock was the first of ten witnesses for the defence. He told the court that on the 19th the Company was under the impression they were being relieved but on the 20th Lieutenant Heatley told him the relief was cancelled. He recalled Heatley’s enquiry as to the condition of the men late on the 20th and had replied that ‘they are pretty tired, but a couple of nights sleep will fix them up’. Pittock explained that whilst in the sunken road he found a place to sleep and was wakened by troops moving out and that he heard somebody say, ‘Put your gear on ‘A’ Company and file out’, which he did. Moving towards the rear he met up with Private Coupe, who told him he had seen Lieutenant Heatley ‘putting his gear on and no doubt he was in front’. Pittock said there were troops from all Companies filing out. He told the prosecutor that he had been a corporal for four months and that Lieutenant Heatley had not given him any orders regarding the attack, although he had heard rumours of one. He said he moved off between 1.30 and 3am alone, not taking any of his Section with him, nor did he issue orders for his men to move out. He told the court he made no effort to see his platoon commander or sergeant before moving out.¹³¹

The next five witnesses for the defence, all Privates, gave approximately the same evidence stating they had heard rumours of an attack, had not discussed the situation

¹²⁹ Ibid., pp. 2-3.

¹³⁰ Ibid., p. 12.

¹³¹ Ibid., pp. 3-4.

with anyone, and had moved out when word was passed down the line for the Company to put their gear on and move out. When Lance Corporal Davis was called he said his evidence was the same as Corporal Pittock's. He told the prosecutor that neither Lieutenant Heatley nor Sergeant Nichols had warned him about the attack. Further, he could not remember much about what happened at the Nucleus when he paraded before Captain Bootle saying, 'the whole thing is a blank to me'.¹³² The ninth witness, Lance Corporal Carr, said that Sergeant Pritchard, who was in charge of his platoon, did not warn him of the attack. He did concede under examination from the court that Pritchard said 'he thought we were doing a bit of a stunt but it was unofficial', but had not discussed the 'rumour' with anyone. He could not remember much about the parade before Captain Bootle at the Nucleus or whether he was one of the representatives who stepped forward, claiming he had 'lost his memory' by the time he paraded 9am. Two more Privates gave evidence stating they had not received official notification of an attack, and both could remember little of the parade before Captain Bootle as to who stepped forward as representatives or what was said.¹³³

After the finding Lieutenant F. H. Gorham spoke of the trustworthiness of Corporal Pittock and mentioned Lance Corporal Carr as having been involved in daylight patrols with his Platoon. All the other accused, he said, 'had done their job' in the 18th September attack.¹³⁴

The pattern continues in 'A' Company of NCOs who had been promoted only weeks before the mutiny and who had spent little time back with their units before the mutiny. Also, there is a remarkable similarity when the operational experience of the convicted Privates is compared with those convicted in other companies. Corporal William Holland Pittock was twenty-three-years-old when he enlisted in September 1915. He was wounded in action in France in July 1916 (gassed), but was able to

¹³² Ibid., pp. 4-5.

¹³³ Ibid., pp. 5-6.

¹³⁴ Ibid., pp. 6-7.

rejoin his Battalion two months later. He was promoted lance corporal in May 1917 and was made a full corporal in July 1918. On August 24 he was posted to 1st Division Guard Duties and rejoined his Battalion on September 7. Like many of the accused NCOs he had a short spell back with his platoon before being involved in a refusal to attack. He was a very inexperienced corporal with no previous convictions against him, but this did not prevent him receiving a sentence of eight years' penal servitude for desertion.¹³⁵

Lance Corporal Davis was born in England and was thirty-two-years-old when he enlisted in October 1916. He was appointed lance corporal in July 1918. His lack of experience as an NCO was perhaps taken into account but still resulted in a sentence of five years' penal servitude.¹³⁶

Lance Corporal Sydney Francis Carr was nineteen-years-old when he enlisted in September 1915. He was appointed lance corporal in April 1918, and attendance at Corps School and leave in the UK saw Carr away from his Unit until September 7, just two weeks before taking part in the mutiny. His disciplinary record is free of charges except for the five years he received for his part in the mutiny.¹³⁷

Of the sixteen privates convicted, seven had been with the Battalion a short time and only involved in operations in 1918. Six had operational experience since 1917, and three since late 1916. A sizable proportion, 43.7 per cent, had only a few months with the Battalion, and taking the 1918 and 1917 men together, 81.25 per cent of the convicted had about a year's operational experience.

What were the causes of mutiny in the 1st Battalion?

When the 1st Battalion assembled for the attack around 3am on the morning of the 21st of September, 1918 they could only muster three Companies, which amounted to

¹³⁵ NAA: B2455, Pittock W H, Service No. 4466, service record.

¹³⁶ NAA: B2455, Davis E B, Service No. 6975, service record.

¹³⁷ NAA: B2455, Carr S F, Service No. 3712, service record.

ten officers and eighty-four men. The attack had to be bolstered by Lieutenant-Colonel B. V. Stacy, senior Brigade and Battalion commander, and his staff from headquarters.¹³⁸ Part of the blame for the mutiny can be laid at the door of the army hierarchy for causing confusion over the proposed relief. The officers commanding individual companies seemed to be aware at different times whether they were to be involved in the attack on the 21st. Lieutenant Sampson, commander of 'B' Company was the only commander reported to have told his men that the planned operation was to be a minor affair. As Sampson was aware of this fact, one may assume the other company commanders knew it as well. And if these commanders had conveyed this knowledge to their men, this could have had a major bearing on the number of men who walked to the rear. Most of the Company commanders, from the evidence presented, were under the impression they were actually being relieved before they made their way to the sunken road on the 20th, and it is little wonder their men thought so too. No doubt the men, occupying the front line trenches, knee deep in water in some cases, would have been looking forward to being relieved. Their spirits must have sunk when told they were 'hopping over' again the following morning.

The September mutiny brings into question the reasons why men keep fighting in the first place. After the Second World War the belief that men were motivated to fight for patriotic or ideological reasons was replaced by a simpler and more general theory: that men fought because they were part of a group that fights. In that sense, they were fighting for each other – their mates – and failure to fight not only put their own lives at risk but those of their comrades with whom they had built up bonds of 'mateship'. 'I hold it to be one of the simplest truths of war that the thing which enables an infantry soldier to keep going with his weapons is the near presence or presumed presence of a comrade', wrote S. L. A. Marshall in his study of Americans fighting in the Pacific,¹³⁹

¹³⁸ C. E. W. Bean, *The Official History of Australia in the War of 1914-1918*: vol vi, p. 934.

¹³⁹ Quoted in Simon Wessely, 'Twentieth-century Theories on Combat Motivation and Breakdown', *Journal of Contemporary History*, 2006, 41, p. 268.

borrowing the psychoanalytical concept of the primary group or small group identity as a way of explaining motivation or unwillingness to fight. There remains a fine line between the group that has been together a while and built up social ties and is combat effective with the group that has been pushed too far, causing physical and mental exhaustion and refusal to fight.¹⁴⁰ The men who mutinied in the 1st Battalion had argued that they had been asked to do too much and the question remains whether they fit into the mould of the primary group theory in terms of bonding with their comrades, to the extent that they were prepared to combine together because they felt they had been pushed too far.

Fatigue is often put forward as the major cause of the mutiny, with British war historian John Terraine describing the walkout of 1st Battalion men as a ‘fatigue mutiny’¹⁴¹. There is little doubt that the men thought they were doing too much and that if they attacked they would be doing other people’s work. It remains problematic how they could make a meaningful comparison with their efforts and those of their allies in the confusion of battle. The Australians as a larger group had displayed characteristics of primary group thinking by identifying themselves as different from the rest of the British Army with whom they made unfavourable comparisons regarding fighting ability. What is questionable in the refusal to fight of the 1st Battalion men was whether they were actually being asked to do too much. In Steen’s evidence he states that in the operation on September 18 the Company suffered only slight casualties.¹⁴² Nowhere in the evidence presented was sympathy expressed by any officer for the men’s cause. The NCOs convicted did not have the time or the combat experience with their men to build the bonds of mateship. Indeed, that was also the case with many of the Privates who were returning from hospital and leave, as well

¹⁴⁰ Ibid., 279-80.

¹⁴¹ Dale Blair, *Dinkum Diggers*, p. 160.

¹⁴² AWM 51, 122, part 6, Field General Court-Martial of Corporal (3341) (L/Sgt.) Milton Hasthorpe, held on October 15, 1918 in the Field, p. 1.

as the large contingent of 1918 recruits, which does suggest that the social ties, borne out of combat, did not have time to flourish. A study of the mutiny by J. J. MacKenzie revealed that 50 per cent of all the men who mutinied had returned to the Battalion six months before the proposed attack after being in hospital (it is not clear whether from wounds or sickness). Furthermore, 50 per cent of those who mutinied had joined the Battalion after Bullecourt, around the middle of 1917.¹⁴³ A major feature of the records examined here is the surprisingly rapid turnover of men in the Battalion, either through injury, leave, sickness or training, and maintaining and building *esprit de corps* in the Battalion must have been difficult. Further, as Strachan has pointed out, the problem of the small group theory is that it takes no account of high casualties in the short term.¹⁴⁴ To that we can add frequent comings and goings that resulted in some NCOs being unfamiliar with men under their command. The paradox here, especially in 'D' Company, is that apart from one man, they came together displaying characteristics of the primary group by standing by their mates – not in battle – but in refusing to fight.

The service records of the privates who were convicted indicate they had been stationed on the Somme since August 8, and the intensity of the fighting during this period cannot be understated. There is some support for the role of fatigue, as two days before the attack Stacy had confided to his personal diary that he thought the men were 'not up to concert pitch'.¹⁴⁵ Other battalions of British and Dominion troops, however, were involved in the same battles and they did not mutiny. Further, the records of the convicted NCOs show that many were actually away from their units for long spells throughout their service, with several having limited time with their units in 1918 (see Table 5.2, below). The convicted NCOs were therefore not continually involved in

¹⁴³ J. J. MacKenzie, 'A Disabling Minority', Tables 3-5, pp. 61, 65, quoted in Dale Blair, *Dinkum Diggers*, p. 160. It is not clear whether the 50 per cent who had returned from hospital had been wounded in action or were recovering from sickness.

¹⁴⁴ Hew Strachan, 'Training, Morale and Modern War', *Journal of Contemporary History*, 2006; 41; 211, pp. 211-13.

¹⁴⁵ 1st Australian Infantry Brigade Diary, appendix, report by Lt-Col. B. V. Stacy, p.48, quoted in Dale Blair, *Dinkum Diggers*, p. 156.

battle since August and would have been unfamiliar with the men they had to command. Significantly, almost two-thirds of the convicted NCOs had been promoted from June to August 1918, with close to a third of the men receiving their final promotions in August. Of the others who had been promoted earlier, many had been away from their battalions for long periods. Their lack of experience was a major contributing factor in the mutiny, as the majority of them had only weeks in their role before having to deal with large numbers of their men threatening to refuse to fight.

Table 5.2

Shows the date of enlistment of the convicted NCOs, whether they were wounded in action and the date of their known last return to their Battalion before the ‘mutiny’.

	Enlisted	Wounded in Action	Last Promotion	Last date of return to Unit in 1918
Cpl. A. E. Alyward	June 1915		June 1918	September
T/ Cpl. H. E. Slater	May 1916		August 1918	July
Cpl. R. Cooney, M.M.	June 1916	July 1916	August 1918	January
L/Cpl. E. A. Besley	June 1915	July 1916	August 1918	January
Cpl. R. C. Taplin	July 1916	August 1917	June 1916	August
L/Cpl. E. C. Preston	Jan. 1916	April 1917	May 1918	March
L/Cpl. J. R. Dawson	Sept. 1915	August 1916	Sept. 1916	June
L/Cpl. C. W. Muir	July 1915	April 1917	Nov.1917	March
L/Cpl. D. W. Humphreys	July 1915	July 1916	Nov. 1917	August
L/Cpl. D. N. Steele	Feb. 1916	October 1917	June 1918	February
T/ Cpl. T. J. Blackwood	October 1916	1917	August 1918	January
L/Cpl E. Walker, M.M.	June 1915	Nov. 1916	August 1918	June
L/Cpl. E. M. Porter	August 1915	July 1916	July 1916	August
T/Cpl. R. Bardney	October 1916	April 1918	August 1918	July
L/Cpl. R. Beggs	Nov. 1914	April 1918	Sept 1917	July
L/Cpl. L. Pettit	August 1915	April 1918	March 1917	August
L/Cpl. F. R. Smith	March 1916		August 1918	August
Cpl. R. H. C. McKay	Sept. 1916	July 1917	August 1918	May
Cpl. W. H. Pittock	Sept. 1915	July 1916	July 1918	September
L/Cpl. S. B. Davis	October 1916		July 1918	March
L/Cpl. S. F. Carr	Sept.1915		April 1918	September
L/Sgt. M. Hasthorpe	July 1915	Nov. 1916	August 1918	August
Cpl. G. F. Wethered	March 1916	April 1917	July 1918	September

Of the twenty-three convicted NCOs, eighteen had been wounded in action, and fear of being wounded again could have been a factor in making the men candidates for mutiny. Twelve of the convicted had enlisted in mid 1915 and were in France in the spring of 1916. Nine who enlisted in 1916 would not see France until early 1917;

and the one man (Beggs) who had enlisted in November 1914 had seen action at Gallipoli before France. On average, the convicted had been in France for two years and simple war weariness and homesickness must have affected them. Most men, whether wounded before or not, would have been mindful they could be killed or wounded in the next battle.

What does emerge from the trials of the Companies of the 1st Battalion is that senior NCOs exerted a greater degree of control over their men than did the officers in charge of individual platoons. The exception to this was Sergeant Wilemett, who appeared to have made little effort to dissuade the men from walking out and declared that the men in his platoon 'were strangers to him' owing to his three-month absence from the Battalion prior to the attack. His 'D' Company experienced a near total walkout with thirty-nine men convicted, only one man remaining. Amongst them were three corporals, one temporary corporal, and six lance corporals.¹⁴⁶ Their two officers, Steen and Blake, as stated earlier, were both wounded around 2.15am on the morning of the attack but were there in the afternoon when they became aware of the trouble brewing. The fact that Steen did not act by calling in senior officers to speak with his men when he had the chance was a critical factor. A placated 'D' Company could well have defused the whole dispute, with other Companies less likely to initiate action.

The commanding officer of 'B' Company, Lieutenant Sampson, was the only officer to tell his men that in the proposed attack they 'had not far to go and did not expect much opposition'.¹⁴⁷ In this Company the NCOs held firm and refused to walk out with their men. These two factors contributed to the relatively low number of 'B' Company men, thirteen out of forty-four, walking out.

¹⁴⁶ AWM 51,122, part 4, 1st Battalion AIF Field General Court-Martial. Joint trial of five non-commissioned officers of 'D' Company, p. 2.

¹⁴⁷ AWM 51, 122, part 2, 1st Battalion AIF Field General Court-Martial. Joint trial of thirteen Privates of 'B' Company, p. 1.

Bean's inference in the *Official History* that the loss of officers in 'D' Company was a contributing factor in the men's refusal to fight is open to challenge when considering 'C' Company. Of the four platoons referred to in this trial, each had an officer in charge, yet this Company experienced the biggest walkout in the Battalion. Forty-five men were convicted, including one corporal, one temporary corporal and five lance corporals. Lieutenant Whipp's platoon had ten out of eleven walking to the rear, and Lieutenant Ward lost three out of his fifteen-strong platoon. Lieutenant Trail had thirteen convicted in his platoon, and Lieutenant Kelleway reported that Lieutenant Hudson (who was later wounded) suffered a complete walkout of his platoon. The loss of so many men must bring officer-man relations in this Company into question.

In 'A' Company, Sergeant Pritchard lost five out of twenty in his platoon, with Company Sergeant Major McBarron suffering the loss of only two men from his. In contrast, Lieutenant Heatley's platoon had ten out of thirteen refusing to fight. Of the nineteen who refused to fight (two were stretcher bearers not included in the platoons) there was one corporal and three lance corporals.¹⁴⁸ Senior NCOs in this Company, as in 'B' Company, were able to draw on their experience and were more successful than most officers in keeping their platoons viable.

The occupational background of all the convicted mutineers came under scrutiny in MacKenzie's study in an attempt to show whether men from certain occupations were more likely mutiny than others. A comparison was made with the occupations of all the mutineers and non-mutineers (see Table 5.3, below). The table indicates that professional and clerical workers were less disposed to 'take industrial action', which has historically been the case, and this group represented around 4 per cent of the mutineers as opposed to their nearly 17 per cent representation in the non-mutineers'

¹⁴⁸ AWM 51, 122, part 5, 1st Battalion AIF Field General Court-Martial. Joint trial of three non-commissioned officers and sixteen Privates of 'A' Company, pp. 1-7. Two 1st Battalion stretcher-bearers were included in the nineteen accused.

group. As industrial action is normally associated with the groups listed under industrial and manufacturing’, ‘labourer’ and ‘tradesmen’, it is not surprising to find that nearly 63 per cent of the mutineers belong to these groups, while in the non-mutineers they made up nearly 44 per cent. The civilian occupations of the convicted NCOs were predominantly labour-intensive and included five labourers, two farmers, a grocer, a tailor, a bank clerk and the rest tradesmen. The social background of the mutineers is a factor to be taken into account, but the fact remains that this occupational composition would have been similar in other battalions that did not mutiny.

Table 5.3
Comparison of occupations of mutineers and non-mutineers in
the 1st Battalion, September 1918¹⁴⁹

Occupation	Non-Mutineers	Mutineers
	(%)	(%)
Professional	5.33	0
Clerical	11.33	4.03
Tradesman	14	15.32
Labourer	18.66	33.87
Industrial and manufacturing	11.33	13.70
Transport	8	7.25
Commercial	3.33	2.41
Rural	18	12.90
Seafaring	2	2.41
Mining	0.66	4.03
Domestic	4	2.41
Other/Unstated	3.33	3.21
Total	99.97	99.54

It is also difficult to find any common factor in the backgrounds of the convicted NCOs that would predispose them to mutiny. The men’s age at enlistment ranged from

¹⁴⁹ Dale Blair, *Dinkum Diggers*, p. 161. These figures are based on the examination of the attestation and embarkation records of 150 non-mutineers and 124 mutineers.

nineteen to late twenties. Similarly, with their religion as stated on enlistment, the vast majority were Church of England, followed by Methodist, Presbyterians, etc., with only two Roman Catholics, which does seem to indicate that the men's religious affiliation did not influence their decision to walk-out.

The dilemma the AIF faced before the trials was that if the men were found guilty of mutiny the court would have had the option of imposing the death penalty. This was overcome with 118 men being convicted of the non-capital offence of desertion (one was cleared). Throughout these trials the prosecution and the court did not press the mutiny case, and this policy could have been pre-determined before the trials. They could have asked more questions when evidence was presented that some of the men did discuss the situation amongst themselves as to whether to attack or not, something one would have expected the prosecutor and court to seize upon if pursuing a mutiny conviction. The court seemed more interested in the desertion charge, which was easier to prove. Mutiny required evidence beyond reasonable doubt that the men had combined among themselves. In some cases this could have been proved, and in others it was not so clear-cut. Also, a mutiny conviction would have presented problems of imposing the death penalty. By the time of the trials in October the men were fully aware of the seriousness of their situation and their testimonies were careful to claim that little discussion took place amongst them regarding whether they would attack. The court settled for uniformity in sentencing with Privates given three years' penal servitude, whether their character was classified as 'good', 'bad' or 'indifferent', a rating that was provided to the court before they handed down their sentences. Ninety-two of the 102 men charged were classified as being of 'good' character,¹⁵⁰ as were the all NCOs on trial. This made no difference in sentencing, nor did being previously decorated for bravery make a difference. Lance Corporals received sentences from five

¹⁵⁰ S. R. Trail, diary, 18 October 1918, p. 138, AWM 51/122, parts 1-9, '1st Battalion AIF Field General Court Martial', quoted in Dale Blair, *Dinkum Diggers*, p. 161, footnote 11.

to seven years, indicating the court took some account of the length of time a man had been an NCO. Corporals were given the severest sentences with most receiving ten years' penal servitude. The army hierarchy, through the court, was sending a clear message to anyone contemplating similar action of the consequences that would flow from refusing frontline duty. On the other hand, there appears to have been some unofficial collusion to ensure that the more serious offence of mutiny could be avoided.

In the *Official History*, Bean makes no mention of the sentences the men received. One gets the impression of detention at school, as he described the convicted men as following the 1st Battalion round for 'several weeks' until their sentences were finally remitted. After the sentences were handed down the recommendation of the Commanding Officer of the 1st Battalion and both the GOC 1st Infantry Brigade and the GOC 1st Division felt that 'in view of the nature of the offence and the circumstances under which it was committed and for the purposes of discipline the recommendation that the sentence be put into execution is a strong one'. The men's sentences were finally suspended on April 25, 1919. Lieutenant-General Sir H. C. Sclater, GOC-in-Chief Southern Command, signed the orders for the suspension of the sentences. After the trials the prisoners were held in a Corps Compound until 19 December 1918, before their transfer to No. 11 Military Prison in France (Audricq).¹⁵¹ They embarked for England on March 30, 1919, under escort, to serve the remainder of their sentences at HM Prison Portland. By June many of the convicted 1st Battalion men were on their way home to Australia to be discharged on arrival at their base command. According to Bean, 'General Glasgow would not recommend remittance of the sentences, though General Monash tried to induce him to do so'.¹⁵² Eventually, General Hobbs recommended remittance, which finally came through on April 25,

¹⁵¹ AWM 51, 122, 1st Battalion AIF Field General Court-Martial. See first page of each trial.

¹⁵² C. E. W. Bean, *The Official History of Australia in the War of 1914-1918*: vol. vi, p. 940.

1919. The *Official History* is silent on the sentences the convicted men received, their imprisonment in France, and their transfer, under armed escort, to an English prison. It is hard to escape the conclusion that Bean put the best possible 'spin' on the mutiny of 1st Battalion men.

Throughout these trials the language reportedly used by both officers and men leading up to the mutiny bears a striking resemblance to an industrial dispute and not a mutiny. None of the officers involved warned the men that their actions would result in a court-martial, and if found guilty of mutiny would face a firing squad. The closest any officer got to saying something of the sort was Lieutenant Mortlock, who was reported as shouting to men of 'D' Company as they were leaving that 'they were deserting like a lot of cowards'. When Lieutenant Steen told his NCOs 'that orders must be carried out', there was no mention of the consequences that would flow if they were not. This was also the case when Steen walked along the Company lines and asked the men if they were taking part in the attack and was told openly by some of them that 'they would go out with the mob'. In 'C' Company Lieutenant Ward's platoon was still intact at 12.30am on the 21st when he told his men to get ready to move forward. He told the court the men discussed the situation amongst themselves as to whether they would 'go or stay'. Three of Ward's platoon went out but there is no record of Ward intervening in the discussion to remind them of the consequences of their actions if they left. Corporal Davis, who was in charge of a section in Ward's platoon, said that on arrival at the sunken road his men were aware that 'D' Company was 'not going over' and that some men of his Company 'seemed inclined to go out in sympathy with 'D' Company'. Lieutenant Sampson reported he heard Corporal McKay remark ' . . . my platoon is going out, so I'm going with them', but no record of Sampson saying anything to him about the seriousness of such an action. In 'A' Company Lieutenant Heatley, who had heard of the trouble in 'D' Company, asked Corporal Pittock after warning him of the attack 'whether there was any talk in the

Company of the men leaving or striking’; not whether the men would mutiny. Throughout these trials the men convicted of desertion appeared ignorant of what would naturally follow when they broke this most serious of military laws. Their officers, too, failed to understand the gravity of what was happening and should have spelled out to the men who were considering leaving that they would face a mutiny charge with all the ensuing consequences.

Blair, in his study of the 1st Battalion, thought the absence of the death penalty did not influence the mutineers in their decision. Rather, he thought they were acting on their perception that they were being asked to do too much and they did not dwell on the consequences that would follow.¹⁵³ This view is questionable as the Australians were fully aware they were not subject to the Army Act in full and therefore must have felt less constrained in flexing their ‘industrial’ muscle. Moreover, it is doubtful that the exchanges between men and their officers reported in these trials concerning refusal of frontline duty would have occurred if the Australians had been subject to the death penalty like the rest of the British Army. However, from the trial evidence it seems clear both officers and men appeared ignorant of the fact that mutiny was a capital offence in the Australian Army. NCOs are an important conduit between other ranks and their officers concerning morale. At the same time they are subject to Army regulations and are therefore not shop stewards. The taking of industrial action, in the form of refusing duty, appeared to have become an option in the 1st Battalion, an action the men thought could be taken without the risk of serious consequences.

September 1918 had proved to be a difficult month for the AIF. The mutiny at Péronne, the September 21st mutiny, and the disbandment mutinies can be seen as symptoms of this. There are striking similarities with the Péronne and September 21st mutinies, as a planned relief was the trigger for both. At Péronne, after a hot meal the men were called back to the line and refused to go. In this case their officers supported

¹⁵³ Dale Blair, *Dinkum Diggers*, p. 161.

them in their action. Bean, who had a habit of relegating unpleasant facts about the Australians to footnotes, said there had been similar incidents, but on a small scale.¹⁵⁴ Word of these ‘incidents’ would have got round the AIF, through stretcher bearers and runners, and the men would be aware of these actions, just as the men of Companies relieved in the line on the 20th were fully aware of the trouble in ‘D’ Company. Within two days of the September 21st mutiny the mutinies over disbandment took place. Bean had made much of the loyalty the men felt towards their Battalions and their refusal to disband seemed to Bean to be a display of a natural born virtue. However, as we have seen in the 1st Battalion, men were away from their units for long periods and when they were returned the composition of their Battalion had changed. One can assume that similar comings and goings occurred in the Battalions that refused to disband. It has been generally accepted that the men who refused to disband were acting out of loyalty to their Battalion, and for no other reason. In the climate that existed in the AIF in September the refusal to disband can be seen as an industrial dispute, a symptom of the unrest that existed in the AIF. It is not unusual for strike action to be taken where the focus of the dispute is not the real issue. Underlying discontent is usually at the heart and surfaces to rally round a cause. Ostensibly, this was about disbanding. But it was more than that; it was about making a protest, a ‘safe’ protest, in the sense that the stated cause was one that elicited sympathy. At the same time, the men had disobeyed lawful commands, taking over the running of battalions, and showed solidarity typical of well-run industrial disputes. Blair, in his study of the 1st Battalion, concluded from the diaries and letters of the men that Battalion loyalty did not figure prominently as a motivating force. Although they keenly felt their Australian identity within the British Army throughout the war ‘the soldiers exhibited less consistency in their allegiance to the Battalion’. The Gallipoli veterans were more inclined to define their ‘soldier identity’ with the 1st Division, but

¹⁵⁴ C. E. W. Bean, *The Official History of Australia in the War of 1914-1918*: vol. vi, p. 875.

even this, according to Blair, ‘diminished with the expansion of the AIF and influx of later reinforcements.’¹⁵⁵

The unrest in the AIF had caused concern to the British High Command with Haig telling the Adjutant-General on October 25 ‘to keep in closer touch with the Australians’. Referring to the Australians, Haig confided to his diary the same day that ‘it is said the 2 divisions are likely to decline to go into the line if ordered’. At the time Haig wrote this the convicted men would have only recently been informed of their sentences and the deterrent effect of these would not have had time to be felt within the AIF. Haig also wrote that the Australian Prime Minister (Hughes) ‘had told the Australian troops they would not be used in the line again for some months’. Haig did not consider the Australians were being over-used and produced comparative figures (below) of the infantry casualties since March 21, 1918.¹⁵⁶

	<i>Average</i>	
English, Scottish, Welsh, Irish per battalion	45 officers	1088 other ranks
Australian	36	704 „ „
Canadian	42	956 „ „

These figures do not compare battalion numbers, and, as discussed above, the Australian battalions had struggled to find replacements. Nevertheless, Haig thought ‘the Australians have the least claim of any therefore for consideration on account of losses . . .’. Haig had planned for the Australians to move into a sector ‘quite soon’,¹⁵⁷ but two weeks after his diary entry the Armistice came into force and the Australians were not deployed.

In the *Official History*, Bean had downplayed the mutiny in the 1st Battalion. By inference he had laid some of the blame for it on British inability to keep up with the Australians, and in so doing diverted us from dwelling on the unrest within the AIF.

¹⁵⁵ Dale Blair, *Dinkum Diggers*, pp. 192-193.

¹⁵⁶ Gary Sheffield and John Bourne (eds.) *Douglas Haig: War Diaries and Letters 1914-1918*, London 2005, pp. 479-80.

¹⁵⁷ *Ibid.*

His over-emphasis on battalion loyalty in the disbandment mutinies was a further distraction. The AIF in September and October, when Haig's comments are taken into account, was experiencing internal strife. This dissatisfaction found expression in the Péronne mutiny, the 1st Battalion mutiny, as well as the disbandment mutinies. Bean's much-vaunted Australian officer-man relations did not hold up in the 1st Battalion. This together with a combination of poor communication at senior officer level and a very inexperienced group of NCOs who could not exert influence over a disgruntled group of other ranks, made the 1st Battalion vulnerable to a walkout. The convicted men saw their actions as industrial rather than mutinous. The fact that they could consider refusing frontline duty as an option was owing to them not being under the Army Act in full. With no death penalty to act as a deterrent, no precedent of an Australian suffering more than imprisonment or Field Punishment for a military crime, and with the example of the Péronne mutiny in which no one was punished, the men of the 1st Battalion must have felt that they could take this action without bringing down on themselves the full weight of military law. When the sentences were handed down in October 1918 they found out how wrong they were.

Chapter 6

THE MEN AND THE MUTINY AT NO. 7 MILITARY PRISON, VENDROUX LES ATTAQUES, CALAIS 1919

If those court-martialled from the 1st Battalion managed to avoid a conviction for mutiny in September 1918, other Australian prisoners were less fortunate as several were convicted a few months later. In March 1919, four months after the signing of the Armistice, ninety-seven men were charged and convicted of joining in a mutiny in forces belonging to His Majesty's Military Forces. The mutiny occurred at No. 7 Military Prison, Vendroux Les Attaques, Calais on March 11, 1919. Most of the men charged were members of the AIF with a few Canadian and Imperial prisoners. They were charged with 'combining among themselves not to fall in after having been warned by proper authority to do so'.¹ In essence a riot occurred in the prison on the evening of the March 9, with further disturbances the following evening. This prompted the Governor of the prison, Major J. J. Hardinge, to call in troop reinforcements on the evening of the riot to restore order. During the two days of unrest the majority of the men refused to parade as ordered. On March 11, backed by armed troop reinforcements, the Governor entered the huts of the Compound and read the Riot Act to the men, leaving those who refused to parade facing the charge of mutiny.² As a consequence of refusing to parade as ordered, the men were charged with mutiny and tried by field general court-martial. All were convicted and received sentences ranging from seven to fifteen years' penal servitude. The sentences imposed came as a severe blow to these men, who prior to the mutiny were expecting an

¹ AWM 10, 4304/7/60 (letters of appeal of the convicted mutineers, reports from the Governor and military staff on the riot, and the Governor's report on prison conditions), item 7.

² Ibid., item 8, statement made by Major J. J. Hardinge to the Court of Enquiry.

amnesty on the prison sentences that had led them into No. 7 Prison in the first place. They were looking forward to their repatriation to Australia. Instead, they were to leave France, handcuffed, under military escort to detention centres in England.

The men did not accept the court-martial sentences and appeals were made for a hearing to Prime Minister Hughes³ and the General Officer Commanding the AIF.⁴ These appeals, which were accompanied by a list of complaints regarding prison conditions, were treated seriously by the AIF in London who took statements from the men as they passed through their headquarters on their way to Portland Prison. Their statements, and letters of appeal, were passed on to the Prime Minister's Department at Australia House in the Strand and the War Office.⁵ In these statements the men emphasized the severity of the prison regime at No. 7 Military Prison, revealing deep tensions between the Australian prisoners and the prison administration staff, which included Australian military police. They complained that the court that tried them consisted of only one Australian officer, believing that a court consisting of all Australian officers would not have convicted them of mutiny. Moreover, they held that an all-Australian court, having heard the evidence of alleged conditions and ill treatment meted out to prisoners, would have held an enquiry and demanded an explanation from its chief administrator, Governor Hardinge. The AIF headquarters in London asked the War Office to conduct an investigation and report back. The statements obtained from the prisoners, along with the letters of appeal, were

³ Ibid., item 3. The letter to the Australian Prime Minister, Mr. W. M. Hughes, dated April 18, 1919 and addressed to Warwick House, London, was signed by 'one of the prisoners', Private (1190) J. Wallace. The letter was typewritten and its composition indicates that the convicted men were being given legal advice. (The accused were jointly tried by Field General Court-Martial.)

⁴ Ibid., item 6. This was also the case in the letter written to the Officer Commanding Australian Troops in London a day later which was signed by the following prisoners: Privates (2769) H. R. Hall 45th Btn; (2942) D. C. Gregg, 10th Btn; (3940) E. Rogers, 18th Btn; (5654) C. L. Brissenden, 18th Btn; (1802) W. H. Webb, 56th Btn; (3203) P. A. Woodbury, 1st Pnrs Btn; (2398) H. R. Powardy, 50th Btn; (5343) A. S. Broadhead, 58th Btn; (4459) A. W. Nicholls, 23rd Btn; (4219) C. Bunting 23rd Btn; and Sapper (6603) O. Jansen, 3rd AL, RFC.

⁵ Ibid., item 2. Letter sent from Administrative Headquarters, AIF, was addressed to H. W. Perryman Esq., Prime Minister's Department, Australia House, Strand, London.

forwarded to the Australian Prime Minister's Department at Australia House.⁶ The War Office responded by forwarding to the AIF a report they had received from France on the mutiny.⁷ This report forms the basis of the discussion that follows. This is the version from the Governor and staff at No. 7 Prison, and covers the mutiny and the Governor's reply to the prisoner's complaints.

An examination of this mutiny sheds light on prison conditions, often seen as a soft option compared to the rigours of trench life. It also reveals tensions that existed between the Australians and the British officers and staff who administered the prison. Private (1190) J. Wallace, who signed the letter of appeal to the Australian Prime Minister, stated in his letter that:

We have all done our bit in this War and was [sic] also at Amiens last year and saved the situation when England received the biggest blow in this War. We are now on our way to Portland Prison, and we were all looking forward for Peace to be signed. But since yesterday things look very black for us all and as we are all Military Offenders [sic].⁸

In their letter to the GOC Australian Troops the men claimed that 'in practically all cases' they were soldiers who had experienced trench life and were imprisoned for military offences committed after the signing of the Armistice.⁹ The Governor would take issue with this assertion later when asked to report on the prisoners' complaints.¹⁰ The military records of some of the signatories to the appeal allow us to follow their own journey to No. 7 Military Prison, or more accurately, the crimes that led them to be incarcerated. It can be said at the outset that their claim that they were imprisoned for committing military crimes after the signing of the Armistice is demonstrably untrue.¹¹ On examining the service records of these men it is clear they were not

⁶ Ibid., letter from AIF Headquarters to The Secretary, War office, dated April 29, 1919 included the appeal made to GOC, AIF. A further letter was sent from AIF headquarters to the Prime Minister's Department on May 8, 1919 that included statements taken from the prisoners en route to prison.

⁷ Ibid., letter from War Office to AIF, dated July 18, 1919.

⁸ Ibid., item 3

⁹ Ibid., item 4, this forms part of the statement made at AIF Headquarter, April 20, 1919.

¹⁰ Ibid., Major Hardinge had originally attached the service records of the convicted men with his report on the mutiny, but these are not with the file.

¹¹ This view is based on reading the service records of the signatories to the appeals and is expanded upon later in the chapter.

hardened criminals but men who consistently broke military laws and thus avoided frontline action. Nevertheless, the convictions for desertion, which many of them had, and more than once, could have got them executed if it were not for the fact that they were Australian soldiers and were not subject to the Army Act in full. However, it will be recalled that under the Defence Act (Section 98) mutiny remained one of the very few offences that attracted the death penalty.¹² On paper, at least, the convicted mutineers could have been sentenced to death as conditions of active service still existed four months after the signing of the Armistice. We can also see the lack of conformity in sentencing and the administration of a disciplinary code that appeared impotent in the face of the habitual offender.

The men charged with mutiny, especially as they were, on paper at least, facing a custodial sentence of anything from eleven to fifteen years, were faced with the prospect of being treated like common criminals and imprisoned in a country far from home. As there was a strong belief amongst the offenders that at war's end a general amnesty would apply and their sentences remitted, the severity of the sentences must have caused a great deal of anxiety. The twelve signatories to the letter to Hughes had been charged with offences during the course of the war, with the majority of the charges being for absence and desertion. It seems clear that these men were no 'desperadoes',¹³ but in most cases they were 'absentees' who tested the military disciplinary code to its limit. They can be seen either as failed absentees, for they were caught, tried and convicted; or their actions could also be viewed as a very successful technique to avoid the danger of frontline duty. In all this they were aided and abetted by an Army authority, although unable to inflict capital punishment, which seemed

¹² The relevant part of the Defence Act (Section 98) states: 'No member of the Defence Force shall be sentenced to death by any court-martial except for mutiny, desertion to the enemy, or traitorously delivering up to the enemy any garrison, fortress, post, guard, or ship, vessel, or boat, or traitorous correspondence with the enemy'.

¹³ AWM 10, 4304/7/60, item 6. The prisoners claimed that the sergeant of their escort had told them that the Governor of the Prison, Major Hardinge, had described the prisoners as 'desperados and criminals of the vilest type'.

bent on dishing out custodial sentences rather than Field Punishment. Many of the offenders were men who had enlisted in 1915 and 'fatigue' as a motive for their behaviour is a factor for consideration. They left France under military escort, handcuffed, to be escorted to Parkhurst and Lewes Detention Barracks. When their sentences were eventually remitted under the terms of the amnesty¹⁴ they would lose their entitlement to their medals and have their army service terminated with the initials SNLR (Services No Longer Required) on their record to indicate that they had been treated as disciplinary cases.

Anatomy of a mutiny

The initial perspective on the mutiny comes from the Governor, his administrative staff and the officers of the armed troop reinforcements. The prisoners' version is pieced together from the contents of their appeals to the Australian Prime Minister and Australian Army authorities and amounts to a justification for their actions, as their refusal to 'fall in' was not disputed. It is clear that the Governor and his staff were not dealing with a minor disturbance in March 1919, as approximately 300 armed soldiers were deployed to keep a prison population of over 400 in check.

The trouble started on Sunday, March 9, 1919 in No. 7 Military Prison Compound around 7.30pm. Sergeant-Major Morhen of the Military Police reported that between twenty and thirty men had congregated near the centre of the compound making a great deal of noise and demanding that the gate be opened. He told them this was not possible, but 'he would hear what any of them had to say' if they would fall in and keep quiet. They again shouted 'open the gate' and started throwing 'large

¹⁴ The amnesty came into force on April 25, 1919 and generally applied to military crimes. Many of the men returning to Australia as disciplinary cases had their sentences remitted just before embarkation and remained in prison after April 25. In many cases it was left to the army authorities in Australia to decide if remittance was appropriate. See A471, 2041 Slater, H. E., Service No. 4963, 1st Battalion, AIF.

stones'.¹⁵ He informed the Governor and by the time both men got to the Compound the crowd had increased. The Governor stated that 'bricks and stones were flying in all directions' with one striking him on his left knee. Assessing that the situation was beyond the control of the small prison guard, he called Lieutenant-Colonel J. O. Nelson of the Worcestershire Regiment requesting armed troop reinforcements. On returning to the Compound the Governor found the attitude of the men to be 'hostile and aggressive', with prisoners shouting 'Down with tyranny and the rotten British Government'.¹⁶

In a vulnerable position until armed reinforcements arrived, the Governor offered to hear their grievances on condition they moved back from the gate. They complied with his request and they aired grievances over food, with demands for a more varied diet. Jam and tea were mentioned. They also requested that the men in cells be released. Private Pritchard was reported as saying that it was time they were all released as the war was over. The Governor quoted Pritchard as saying 'that he would never again shoulder a rifle for the rotten British Government and he hoped for the day when he could shoulder one against it'. With the arrival of armed reinforcements the Governor ended his parley with the prisoners and told them bluntly that 'their demands could not be gratified', and that if they wished to make a complaint they could remain from work the next day to make it at the office.¹⁷ Morhen reported that some of the men appeared to be placated, but others at the back of the crowd became abusive and shouted 'Take the leg-irons and chains off and put them on yourselves'. The Governor responded by warning them as to their conduct. Further shouts of 'rush the gates' led Morhen to believe that a breakout was imminent; only the timely arrival of reinforcements preventing this.¹⁸

¹⁵ AWM 10, 4304/7/60, statement by (W/1619) Sergeant-Major J. Morhen, MPSC.

¹⁶ Ibid., statement by Major J. J. Hardinge, Governor of No. 7 Military Prison, Les Attaques, Calais.

¹⁷ Ibid.

¹⁸ Ibid., statement by (W/1619) Sergeant-Major J. Morhen, MPSC.

The crisis had reached a critical point. The Governor's admission that he ended his parleying when he was in a position of strength could well have been a missed opportunity to defuse the situation. He could have met there and then with a delegation of the prisoners to hear their grievances. The fact that he chose not to was surely a contributing factor in what happened next. Nelson, who had arrived with 250 armed troops, had doubled the prison guard and surrounded the prison with his troops. They must have felt confident they could put down any further disturbances with force. By 11pm they did just that as the prisoners began breaking up the camp, knocking down the dividing fences and building a fire. Nelson gave an order to Hardinge, who repeated Nelson's order to the prisoners, 'that if all the men did not get back to their huts within 10 minutes, I would fire a volley'.¹⁹ The prisoners replied using foul and abusive language, according to the Governor, who was told by one prisoner 'to fire the volley up your fucking arse'.²⁰ The men did not move and ten minutes later Captain A. C. W. Cranko, commanding the 19th Garrison Company, carried out the order, sending a volley into the fire. The men ran off and no one was injured. The situation calmed down as the men returned to their huts. But there were further disturbances that night as some prisoners risked all to feed the fire. Cranko spotted one and alerted a sentry who fired, wounding a prisoner in the leg.²¹ A stretcher was passed through to the Compound and the man taken to hospital. The Governor made no further mention of his condition but the men believed that this prisoner later died of his wound.²² This shooting ended the disturbances for the night.

The following morning, March 10, the Governor ordered reveille at 7am and 'fall in' at 7.30am. Between twenty and thirty men obeyed the order to parade. During the

¹⁹ Ibid., statement by Lieutenant-Colonel J. O. Nelson, Worcestershire Regiment, OC Troops, Vendroux.

²⁰ Ibid., statement by Major J. J. Hardinge.

²¹ Ibid., statement by Captain A. C. W. Cranko, OC 19th Garrison Company.

²² The man shot was not named making it difficult to confirm the prisoners' belief that he died of his wound.

disturbances in the night the prisoners had raided and wrecked the cookhouse, leaving the Governor little choice but to issue bread rations for the day. He described the prisoners as being in a quiet and 'sullen' mood for most of the day. By evening, shouting and stone throwing recommenced, and provocatively, a red flag was hoisted.²³ Although the disturbances were less severe than the previous night, the prisoners were still in a defiant mood.

This defiance continued into the following day, with the majority of men refusing to 'fall in' at 7.30am. At 10am the Governor took action. He entered each hut accompanied by members of his staff, his sergeant major, and a company of armed troops commanded by Lieutenant T. P. Harris, 11th Somerset Light Infantry, whom Nelson had called in as reinforcements. The Governor called each man by name and gave the order to parade at the medical hut, taking the names of those who openly refused. He only managed to take the names of four men who categorically refused to obey the order.²⁴ Morhen says on reaching the third hut men started to run away and congregate in the centre of the Compound. When the Governor addressed them he was greeted with abuse and boos. While the Governor was in the third hut a noisy crowd had gathered in No. 2 Compound. Shouts of 'Come on, lads out with him' greeted the Governor as he approached the crowd. Demanding a hearing the Governor warned them of the consequences of their conduct and told them he would give them until 3pm to 'think it over'. After that time he would read the Riot Act (Section 7 of the Army Act and paragraph 4 of the notes to the section on page 385 of the *Manual of Military Law*). Those who failed to comply with the order would have committed mutiny.²⁵

No prisoners responded when the 'fall in' was sounded at 3pm. At 3.30pm, the Governor, accompanied by Captain Harris and Sergeant-Major Morhen visited each

²³ AWM 10, 4304/7/60, statement by Major J. J. Hardinge.

²⁴ Ibid.

²⁵ Ibid.

hut and explained to the men that he had come to read the Riot Act to them. On leaving the last hut the Governor noted that many of the men had ‘capitulated’, parading behind the armed troops that had been strategically placed for their protection. The men who refused to parade were removed to four huts, in a separate Compound, and surrounded by armed troops. A roll call was taken revealing that ninety-seven men refused to parade and would be charged with mutiny.²⁶ These prisoners were kept separate from each other until March 14. On March 19 they were tried by field general court-martial.

With 250 armed troops at his disposal the Governor was in a position to put down a full-scale riot and prevent a wholesale breakout. The prisoners knew this well enough. They exercised the only power they had by stubbornly refusing to parade. How unanimous this was is difficult to gauge as pressure could have been exerted upon those who wished to do so. After the reading of the Riot Act those who paraded sought protection behind a company of armed troops. There is little in the Governor’s statement that suggests he was prepared to give an inch. The parleying abruptly stopped with the arrival of armed troops. He certainly did not create the environment in which men would have felt safe confronting him with their complaints the day following a night of rioting.

The field general court-martial was held on March 19, 1919 and it was only when the convicted men were about to embark for England on April 19 that they learned of their sentences. On this day eleven of the convicted wrote to the GOC Australian Troops, London, giving notice that they were going to appeal their sentences, believing they had not received justice and that their case demanded an investigation. They argued the outcome of their trial would have been different if a court consisting of

²⁶ Ibid.

Australian officers had tried them.²⁷ It is difficult to see how an Australian court could have found them not guilty of mutiny, as their refusal to obey the direct order of Major Hardinge had not been contested. They did expect an all-Australian court to be more sympathetic to their plight, taking more notice of their grievances and complaints regarding conditions and treatment of prisoners. No doubt they hoped that an Australian court would recommend a full enquiry. Instead, a court consisting of Imperial officers and one Australian colonel had tried them, finding all guilty of mutiny as charged.²⁸ On the advice of the solicitor defending them they included the other charged mutineers in their appeal. Interestingly, they used the argument that the court should have realised that only a few men had led the crowd, and that if they were re-tried a future court-martial would agree. A new trial was demanded, and they believed that a Court of Inquiry would ‘expose the irregularities and injustices of No. 7 M.P. Camp’. They were incensed when a sergeant, acting as escort to England, told them the Governor described the prisoners as ‘all desperados and criminals of the vilest type’. This was a ‘grave accusation’ they thought, to make against men ‘who have defended their homes and country so dear to them’. Finally, they claimed they were not medically examined when leaving France, which should be normal procedure, allowing the possibility of carrying with them diseases to England.²⁹

In his letter to Prime Minister Hughes, Private Wallace claimed that prison conditions were ‘scandalous’ and that the refusal by the prisoners to parade was a consequence of the Governor not meeting their requests for improvements. According to Wallace, prisoners were treated like ‘idiots’, and if a prisoner made a complaint he ended up in the cells. Therefore, the men combined and put together seven requests to the Governor. They were as follows:

²⁷ Ibid., item 6, letter of notice of appeal from eleven of the convicted mutineers addressed to the Officer Commanding Australian Troops, April 19, 1919.

²⁸ Ibid.

²⁹ Ibid.

1. That the Food be improved and dished up clean.
2. That we be allowed to write one letter a week instead of one a month.
3. That we be allowed our parcels.
4. That leg irons and figure 8 be abolished in the cells.
5. That we be allowed one drink of tea, coffee or cocoa a day.
6. That proper Medical Attention be provided.
7. That we Australians get a definite answer regarding draughts [*sic*] leaving the prison on remission.³⁰

Wallace made no mention of the rioting, just the refusal to parade as a consequence of the Governor giving them no satisfaction to their requests. He does, however, shed some light on what happened when the Riot Act was read. He claimed the ringleaders paraded, leaving ninety-seven in their huts to be charged with mutiny. In his letter to the Prime Minister he wrote that it was only yesterday that twenty-four of them learned of their sentences, which ranged from seven to twelve years. Wallace claimed that ‘we have all done our bit in the War’, emphasising that their original offences were military in nature. He asked Hughes for his assistance in securing their release.³¹

A more detailed account of their complaints was addressed to the GOC, AIF, London on 20 April by twelve of the convicted mutineers. They referred to the riot at the prison, which they claimed was caused by the treatment they received as prisoners. The convicted men, they stated, ‘in practically all cases, were men, who had seen trench life, and were undergoing sentences, through breaking Military rules, since the signing of the Armistice’.³² Furthermore, they claimed that the evidence given against them at their trial came from Imperial prisoners, who in ‘many instances’ did not tell the truth, an indication of the tension that existed between Australian and British

³⁰ Ibid., letter signed by Private (1190) J. Wallace addressed to the Australian Prime Minister, W. M. Hughes, dated April 18, 1919.

³¹ Ibid.

³² Ibid., this statement signed by twelve of the prisoners on behalf of all ninety-six men convicted was written while the men were passing through AIF headquarters in London. It was addressed to the General Officer Commanding AIF, London and dated April 20, 1919.

prisoners. Referring to the volley shot down the Compound they re-affirmed their belief that the soldier who was wounded in the thigh, later died of his wound.³³ How they would know this is not clear, and the Governor made no comment on whether the man recovered. The thrust of their appeal centres on their account of prison conditions and is presented as a justification for their refusal to parade. The list of complaints, below, and the Governor's response provides an insight into conditions in a military prison in 1919. It will be remembered that although the Armistice had been signed some four months earlier the prison regulations were those that were in force under the conditions of active service and therefore would have been similar during the hostilities.

The list of their grievances made to the GOC was passed on to the Governor who was asked to make a report on the appeal. The men claimed that the food was:

1. Unclean, unwholesome and diet never varying and always improperly cooked. Potatoes, unwashed and often rotten, were always cooked with the stew-meat. Porridge was like water at breakfast. At dinner time we were give a quarter of a tin of corned beef and a drink of hot water. Tea time we were given a stew, being, as mentioned above, dirty and unwholesome, and watery. This was the same day after day, no variety in any way at all, and we knew very well, that we never received our allotted rations.³⁴

The Governor thought the whole paragraph on food to be false, apart from the monotony of the diet. He said the rations issued conformed to the rules laid down for Military Prisons in the Field (para. 97), and 'particular attention was always given to the food, also the cooking' with all troops drawing from the same local Detail Issue Store. He went on to say that complaints about food were rare, and that he investigated any that were made. He noted that nobody mentioned the concession he made of 'the half-ounce of lime juice and quarter-ounce of sugar per man daily which was mixed with the hot water'.³⁵

³³ Ibid.

³⁴ Ibid. (The grammar and punctuation of this appeal is reproduced in its original form throughout.)

³⁵ On June 3, 1919 the Governor, Major J. G. Hardinge was asked to report on the appeal of the men sentenced for mutiny. At the time of making this report Major Hardinge held the position of Governor, Military Prison, Army of the Rhine, Siegburg.

2 MEDICAL TREATMENT: No general medical inspection of men ever took place. Cases of venereal and scabies after complaints, have been found very much in evidence, amongst the prisoners. Some of these cases after discovery, have not been isolated. The medical treatment, was, in most cases, managed by a N.C.O., without consultation with a doctor. A prisoner requiring medical treatment, – say tomorrow – had to report such, to a N.C.O. this evening – otherwise there was no chance of receiving attention.³⁶

The whole of this paragraph ‘is absolutely false’ stated the Governor. Venereal cases were sent to hospital and men suffering scabies or other skin diseases were always isolated in a separate part of the Compound and locked in after working so as not to come in contact with the others. Sick parades were held morning and night and any man reporting sick saw the medical officer that morning. He went on to explain how ‘every precaution was taken to ensure that every man was kept as fit as possible and ready to join his Unit in the Line’.³⁷

3 AUSTRALIAN DRAFT: The usual procedure was to call out, an Australian Draft and these men were sent out of the prison, about two or three weeks later. The trouble, about this draft, in question, was, after being read out, they were nearly, two months, before marching away. They continually paraded to the Officials, but received no satisfaction.³⁸

The Governor addressed this issue by stating that the Australian Authorities were responsible for any delay in the Australian draft leaving prison, and he had explained this to the prisoners in detail.³⁹

4. CONDITION OF CELLS: The condition of the cells, during the cold weather was unbearable, and freezing. Icicles hung from the iron ceiling. The cell was built of iron, the floor being of cement. Three blankets was supplied. The sanitary tins were always in the cells, day and night in the hot weather also.⁴⁰

In response, the Governor said the cells were of the same design in all military prisons in the field and he and the medical officer visited all prisoners in cells daily. Prisoners had visits from chaplains three times a week as well as periodic visits from visiting officers from the Base Commandant in Calais. Further, the Director or Deputy Director of Military Prisons ‘made frequent visits, and made a very minute inspection, speaking with every man in the cells, making the closest enquiries of each man as to

³⁶ Ibid., statement signed by twelve of the convicted addressed to the GOC AIF, London.

³⁷ Ibid., Governor, Major J. G. Hardinge’s report.

³⁸ Ibid., statement signed by twelve of the convicted addressed to the GOC AIF, London.

³⁹ Ibid., Governor, Major J. G. Hardinge’s report.

⁴⁰ Ibid., statement signed by twelve of the convicted addressed to the GOC AIF, London.

how he was getting on and for what reason he was in cells'. Four blankets were issued in cold weather, with men being allowed to keep their greatcoats. The sanitary arrangements, he stated, 'were the best possible and everything was kept scrupulously clean', being periodically inspected by the medical officer, the ADMS and the Senior Sanitary Officer.⁴¹

5. UNJUST TREATMENT OF PRISONERS: Figure eights were placed on men and were only removed for meals. There was no provocation on the part of the prisoners to necessitate such treatment. During the days these cuffs were placed behind the prisoners back, and at night were made to sleep with arms locked across the body, in such a way, that the blankets could not even be pulled up. Such treatment was meted out for petty, and trivial affairs such as a button being missing from an overcoat etc., men have been ill treated with whips in their cells, causing them to yel [*sic*] with pain, and teeth have been knocked out with no just cause whatsoever.⁴²

These represent the most serious complaints made by the prisoners and one would have expected a more detailed reply from the Governor. He conceded that figure-of-eights were used but only for 'violent and dangerous prisoners'. As for the inconvenience this caused the prisoner he pointed out that the President of the Court that tried the men had been placed in 'figure-of-eights and was convinced that a man so restrained did not suffer the inconvenience alleged'. He stated 'that no man was ever awarded a punishment of any description by me for a missing button'. The Governor claimed he was only aware of one complaint of violence against a prisoner. This was made to the Director of Military Prisons in the Field on a routine visit, who was unable to take action owing to the lapse of time.⁴³

6. REFUSING TO GRANT INTERVIEW WITH AUSTRALIAN STAFF OFFICER: Just after riot occurred the Governor of the Prison was approached and was asked, that an Aust Staff officer be sent for, for explanatory purposes. The request was refused, – the Governor's words being to the effect that he would always refuse us permission to interview an Australian Officer, even if an Aust. General was waiting outside the Prison Gates for admittance.⁴⁴

⁴¹ Ibid., Governor, Major J. G. Hardinge's report.

⁴² Ibid., statement signed by twelve of the convicted addressed to the GOC AIF, London.

⁴³ Ibid., Governor, Major J. G. Hardinge's report.

⁴⁴ Ibid., statement signed by twelve of the convicted addressed to the GOC AIF, London.

In his response Hardinge did not dispute his alleged reference to the Australian General at the prison gates. He did say that reasonable applications, ‘made in the proper manner’ were never refused. He claimed that when the men made demands they became abusive and used foul language. He did, however, enquire whether the men required legal assistance, and after consulting with each other, one man shouted ‘will he be Australian?’ He would be a solicitor or a barrister, the Governor told them, and his appointment would be a matter for a higher authority, ‘and on his arrival they could make their explanations to him’.⁴⁵

7. MAIL MATTER: We were only allowed to write one censored letter a month. No envelops [*sic*] was supplied, with the paper, therefore we cannot say whether those letters ever left the prison. These letters were only supposed to be censored by the Governor, were in many cases read by a N.C.O. to whom they were handed. This was not permissible, but was done very often. On receipt of a parcel from Australia and elsewhere, they were all opened and we were only allowed soap and toothpaste, but no food, not even the tinned foods from Australia, no reading material was ever allowed.⁴⁶

The Governor referred to paragraph 101 of Rules for Military Prisons, which gave him the discretion to ‘allow any Prisoner to write a letter and receive a reply’. He allowed a prisoner to write one letter within seven days of admission, and then one a month thereafter. As a concession, he granted over 500 requests for ‘special letters’ between December and March, demonstrating that the welfare of the men under his command ‘was placed before personal consideration’. He stated that he adhered to Paragraph 14 which required the Governor to ‘read every letter addressed to and written by a Prisoner’, and it was the duty of Section Commanders to check that the letter was folded as directed and addressed in the proper manner. In cases where censorship regulations were not complied with the letter was returned to the prisoner. Food was confiscated from prisoners’ parcels, the Governor explained, and anything perishable was given to men being released. Items of sentimental value were stored

⁴⁵ Ibid., Governor, Major J. G. Hardinge’s report.

⁴⁶ Ibid., statement signed by twelve of the convicted addressed to the GOC AIF, London.

and would be given to men on release, or in the case of men still under sentence being transferred would accompany them to their new prison.⁴⁷

8. SANITARY: The General Sanitation of the camp was very much neglected. No Medical Officer ever inspected the condition of the latrines which were fully exposed to all prisoners and staff, in fact, no privacy in any way regarding arrangements. From 12 to 20 men were made to wash in one dish of water, – there being no necessity for such as there was no shortage of water. Little or no soap was allowed. In instances the same water had to be used over and over again, that is, the water we used in the morning had to be used again in the evening. Regarding washing of clothes, all clothes were washed in one lot, including those of the men suffering from scabies, and other diseases. No disinfection took place after this occurred.⁴⁸

The Governor refuted all these complaints. He explained how he inspected the Prison daily, and the Medical Officer did so weekly. In the first three months of 1919 the only remarks in the Sanitary Diary recorded by the Senior Medical Officer was ‘Shaving brush in Staff Kitchen’ and ‘Window ledges of huts dusty’. The latrines were constructed, enclosed on three sides, afforded privacy and allowed observation for prison staff. A plentiful supply of water was on hand and all bowls, twenty-five in each Compound, were removed and cleaned daily. Each man received a hot bath and a change of clothes once a week, with the box fumigator being employed on a daily basis, with clothes from men suffering from scabies or suspected skin diseases being treated separately.⁴⁹

9: PERSONAL BELONGINGS: Men on entering prison wore Aust clothes. These are taken from the prisoners. The Prison staff wear Aust boots puttees and riding breeches, and we were re-issued with Imperial clothes, tunic, slacks and caps in place of Aust clothes, handed in. Separate complaints are being sent to you, regarding rings, money and watches, not being returned on leaving prison.⁵⁰

On entering prison, the Governor explained, each man was given a bath and change of clothes. Australian uniforms were taken from them and preserved until release, and Imperial clothing was issued, making all prisoners dressed alike with no distinguishing Divisional or Corps insignia. Prison staff was required to be ‘properly

⁴⁷ Ibid., Governor, Major J. G. Hardinge’s report.

⁴⁸ Ibid., statement signed by twelve of the convicted addressed to the GOC AIF, London.

⁴⁹ Ibid., Governor, Major J. G. Hardinge’s report.

⁵⁰ Ibid., statement signed by twelve of the convicted addressed to the GOC AIF, London.

dressed according to the arm of the Service to which they belonged'. Men transferred to the United Kingdom under sentence had their valuables sent to the prison to which they were transferred with money being sent to the Base Paymaster who credited the man with the amount.⁵¹

In Major Hardinge's general remarks he states that each man was made aware of what was expected and what course of action he should take in making a complaint or an application. He strongly challenged the statement made by the signatories that they were undergoing sentence for breaking military rules since the signing of the Armistice. To back this up he enclosed a nominal roll of the offences and dates of sentences of the men who signed the appeal.⁵² He denied that he ever made the comment attributed to him by the escort sergeant that the prisoners were 'all desperadoes and criminals of the vilest type'. Further, claims that no medical inspection was carried out before embarking for England were false, as each man needed to have a certificate to say he was clear of scabies, and without it could not embark. Hardinge claimed he took a personal interest in every man in his charge. His prison was seen as an 'ideal example as to how a Camp should be run', as on many occasions the Officer Commanding local troops sent officers from local units to be shown over No. 7 Military Prison. Finally, the complaint that except for one officer the composition of the court was Imperial, he pointed out that there were also Imperial and Canadian soldiers among the accused.⁵³

In many ways Major Hardinge fits the stereotypical image of the British officer so often portrayed in Australian mythology of the war. It seems clear that he held a poor opinion of the prisoners under his charge, knowing that their crimes had got them out of trench warfare. Also, as a British officer he probably would not have been

⁵¹ Ibid., Governor, Major J. G. Hardinge's report.

⁵² Ibid., this nominal roll of offences was not included in this file.

⁵³ Ibid., Governor, Major J. G. Hardinge's report.

accustomed to being on the receiving end of the sort of abusive language that was directed to him by Australian prisoners, although they usually abused him from the safety of the crowd. His handling of the mutiny can be questioned on the basis of his refusal to continue the parley with the prisoners when in a position of strength, which may have ended the disturbances and avoided a mutiny. In his reply to the mutineers' complaints he presented his prison as the ideal establishment of its type, thus conceding nothing to them. It seems clear that conditions at the prison were austere. To act as a deterrent they had to be, and Hardinge was not prepared to make life any easier for the prisoners, apart from the half-ounce of lime juice and sugar and the odd extra letter. The prisoners had a hard task proving that abuses took place against a prison staff that had closed ranks, together with a higher army authority that was less than sympathetic to complaints from men who had transgressed several times and so avoided the hardships and dangers of the front. What counts in Hardinge's favour in handling the disturbances was that he waited until the third day before reading the Riot Act. He also provided an armed guard to protect those who wished to parade from intimidation. It is hard to see how he could have waited any longer to regain control of his prison.

Hardinge's prison regime does suggest that it was not an environment in which to make a complaint, as the fear of retribution was real. To get to the Governor the complainant would have to go through the administrative staff first, and in many military prisons the NCOs were a law unto themselves.⁵⁴ Apart from the serious complaints about the use of figure-of-eights and violent abuse, the prisoner's grievances centred on food and drink, which takes on a crucial importance in prison, as well as complaints over sanitary conditions and mail. However, what was really behind the disturbances was the fact that the Armistice had been signed in November

⁵⁴ See Christopher Pugsley, *On the Fringe of Hell*, pp. 97-103.

and now, four months on, they were fully expecting an amnesty on military crimes committed during the war (and after in some cases) and a swift return to Australia.⁵⁵ They were not the only ones frustrated at not returning home, as many Australian soldiers found themselves in the same position and would not see Australia until late in 1919. The claim that at their trial Imperial prisoners lied when giving evidence was never substantiated. Intimidation probably played a part in the men's refusal to parade; however, they claimed the ringleaders paraded, leaving them to face a charge of mutiny. In that case the intimidation would have ceased and once the ringleaders capitulated they would have been free to choose to parade or not. In their appeals to Hughes and the Australian High Command the signatories presented themselves as men who had previously done their duty, had seen trench life, and who happened to fall foul of military regulations and wound up in prison. It is the records of some of the signatories to the appeals that will be examined to see what sort of crimes led them to be incarcerated.

The journey to No. 7 Military Prison, Vendroux Les Attaques, Calais

Private (3238) Alan Storm Broadhead, of the 58th Battalion, was a most reluctant soldier. His road to No. 7 Prison provides an interesting case study on how a habitual absentee was dealt with under the military code. From the time he enlisted in July 1915 to his discharge on 4 January 1920 there was hardly any significant period in which he avoided trouble with the military authorities. During this period he was convicted of wilfully maiming himself so as to render himself unfit for service, wilful defiance of an order from a superior officer, with both offences attracting prison sentences of two years and one year IHL respectively. His transgressions continued after his conviction for mutiny when he attempted to escape from the transport ship H.M.T. *Port Sydney*,

⁵⁵ An amnesty came into force on 25 April, 1919. Many prisoners had their sentences remitted at this time, but some cases had to be reviewed on being returned to Australia. See AWM 27, 363/2 .

receiving a serious bayonet wound in the stomach, inflicted by a sentry in an attempt to prevent his escape.⁵⁶

Broadhead was thirty-one-years-old when he embarked for Egypt in October 1915. A glassblower by trade, he was married, and lived in Victoria. After only one month in Egypt he was admitted to hospital in December where he absented himself for five days and was awarded fourteen day's detention on 25 January 1916. Just over three weeks after his release he was tried by FGCM in Egypt on three counts: '(1) disobeying a lawful command given by his superior officer; (2) failing to appear at the place appointed by his CO, and (3) AWL from 15/2 till 25/2' and was awarded forty-two days' Field Punishment No. 2. A month after his release his battalion was posted to France where immediately he was in trouble by failing to entrain at Marseilles after previously being warned to do so. This time he was awarded fourteen days' Field Punishment No. 1. On August 8 he marched out to active service but by the 15th was charged with disobeying the order of an NCO in that he refused to proceed to the support trenches when ordered to do so and was awarded twenty-eight days' Field Punishment No. 1. He committed further offences over the latter part of 1916 and early 1917 included short, unauthorised absences that resulted in forfeiture of fourteen days' pay and fifteen days' pay. He also was admitted to hospital with scabies in February 1917, being discharged five weeks later. Up to his FGCM in January 1918 for self maiming he had been awarded Field Punishment No. 1 four times, which was exceptional, and Field Punishment No. 2 twice, as well confinements and forfeitures of pay.⁵⁷ What is striking about the early period of Broadhead's disciplinary record is the fact that, despite the seriousness of most of them, he was not awarded a custodial sentence. The officers who comprised the courts martial dealing with Broadhead were

⁵⁶ NAA: B2455, Broadhead A S, service record (the findings of the Court of Enquiry held at sea are contained within this file); A471/7693, Broadhead, Allen [*sic*] Storm (Private): date of court-martial January 7, 1918.

⁵⁷ NAA: B2455Broadhead, A S, service record.

indeed following the guidelines laid down by the British High Command by not giving custodial sentences and thus rewarding offenders. Broadhead had shown a remarkable resilience to Field Punishment, which had not acted as a deterrent to further crimes as his record until his discharge indicates.

Précis of service of Private A. S. Broadhead (3238), 58th Battalion from January 7, 1918 until his discharge on January 4, 1920.⁵⁸

7/1/18	FGCM held at Havre. Wilfully maiming himself with intent thereby to render himself unfit for Service.	2 years In Hard Labour (I.H.L.), total forfeiture of 805 days' pay, £201 and 5/-.
27/1/18	Sentence of 2 years I.H.L. awarded by FGCM on 7/1/18 has been suspended.	
2/5/18	FGCM held in the Field. Disobeying in such a manner as to show wilful defiance of authority, a lawful command given by a superior officer.	12 months I.H.L.
26/6/18	Admitted to No. 7 Military Prison. First sentence 2 yrs I.H.L. awarded 2/5/18, 2nd sentence 12 months I.H.L. awarded 2/5/18. First sentence suspended 27/1/18. Sentence now put into execution and to run concurrently with latter sentence.	
24/3/19	FGCM. Held at No. 7 Military Prison, Calais. Joining in a mutiny in forces belonging to H.M. Military Forces. At Calais on 11/3/19 joined in mutiny by combining amongst themselves not to fall in after having been warned by proper authority to do so.	13 years Penal Servitude (P.S.) Forfeiture concurrent 24/5/19.
19/4/19	Transferred to U.K. to serve sentence in H.M. Prison, Parkhurst	
22/9/10.	Left England for return to Australian per H.T. "Port Sydney". – Disciplinary reasons. Undergoing sentence.	
5/11/19	Whilst a prisoner undergoing sentence on H.T. "Port Sydney" attempting to escape. Was bayoneted by sentry. Evacuated to hospital, Fremantle. Abdominal wound.	
4/1/20	Discharged from the AIF in Melbourne. Services No Longer Required (S.N.L.R.)	
	Medals refused.	

Broadhead's trial for a self-inflicted wound is an interesting case as it reveals the ingenuity of some men to make themselves unfit for active service. Also, this case

⁵⁸ NAA: B2455, Broadhead, A S, service record, item 85, Précis of Service for the information of the Medal Board.

demonstrates the quite extraordinary lengths that were taken by the military authorities to secure a conviction of self-maiming. At his field general court-martial held at Havre, on January 7, 1918, Broadhead pleaded not guilty to the charge of self-maiming:

1st Charge. Sect. 18 (2A) A.A. When on active service wilfully maiming himself with intent thereby to render himself unfit for service (at Havre on or about the 24th October, 1917. Injecting petrol into his left knee.)

2nd Charge (Alternative) Sect. 40 A.A.). When on active service as an act to the prejudice of good order and military discipline in that he at Havre on or about the 24th October, 1917 caused an injury to his left knee thereby rendering himself unfit for service.⁵⁹

The reason for the alternative charge under Section 40 is because wilful self-maiming had proved difficult to establish beyond reasonable doubt, whereas conduct to the prejudice was easier to prove and attracted a similar sentence to self-maiming.⁶⁰

The Court heard that the services of a lieutenant in the Special Police were called upon, and ‘acting on instructions’, posed as a patient in the same hospital and ward as Broadhead. This witness claimed that the accused had confided that ‘he had purchased a hypodermic syringe from a French chemist for the sum of 7 Fr’ and that he had used it to inject petrol into his left knee. Further, Broadhead told the witness that ‘he had no intention of going up the line’.⁶¹ This conversation allegedly took place on November 3 whilst the two were playing cards. However, there was no one to corroborate the witness’s account, and the following day the Special Policeman left hospital. Two doctors, Lieutenant-Colonel Rawling, RAMC and Capt. R. L. Scott, examined Broadhead, who had been admitted to hospital on October 25. Rawling stated that Broadhead had a swelling at the back of his left knee. He noticed a ‘puncture mark’ in the inflammation area that was ‘emitting a few drops of matter’. As there was no ‘browning or abrasion of the skin’ Rawlings concluded that the injury was not

⁵⁹ NAA: A471, 7693, Broadhead, Allen [*sic*] Storm (Private): Service Number 3238, unit 58th Battalion, AIF, date of court-martial January 7, 1918.

⁶⁰ This point is discussed in chapter 4.

⁶¹ NAA: A471, 7693, Broadhead, A. S. (3238), testimony of (P1375) Lieutenant. E. T. Malows (name unclear), items 8-10.

consistent with Broadhead's claim that he got the injury falling down some steps.⁶² Scott was more direct in his evidence and told the Court that on first examination he believed the accused had injected petrol into the back of his knee. When examined by the court, Scott claimed there 'had been four cases of this type in the last two months'.⁶³ This goes some way towards explaining the undercover operation and the necessity of securing the self-maiming conviction. The message needed to get out to those considering the same deception that the medical officers were alive to it and that their actions would result in a court-martial conviction.

In his defence, Broadhead claimed the injury had been caused by a fall. He told the court:

I was coming out of the Dry Canteen, 5th Division at 7.15p.m. Tuesday evening 23.10.17, when I slipped down the steps my [sic] feet slipped from under me, and I fell on my "behind". I had one litre of beer and I was quite sober. I did not feel anything at all at the time, but got up and walked to bed. At about 10.30 p.m. I woke up with a pain in my leg. Nothing stuck into my leg to the best of my knowledge, and I did not think there was anything the matter with my leg until I woke up in the night.⁶⁴

Broadhead refuted the evidence of the first witness, denying saying any of the statements attributed to him. He told the court he had not had the opportunity to leave camp and therefore could not have been in a position to buy a syringe. He stated that he had chronic bronchitis that had kept him out of front line duty, intimating there was no need to maim himself to avoid this.⁶⁵ However, the court found him guilty on the first charge of self-maiming, sentencing him to two years' IHL. His self-inflicted injury put him in hospital for two months and his court-martial had tied up the services of crucial medical and military personnel. Just twenty days after his conviction his sentence was suspended. The policy of not rewarding self-maimers with custodial sentences was applied in this case. He rejoined his unit on April 10, and on the 11th he

⁶² Ibid., testimony of Lieutenant-Colonel S. Rawling, RAMC, items 10-11.

⁶³ Ibid., testimony Captain R. L. Scott, RAMC, items 11-12.

⁶⁴ Broadhead's signed testimony appears in NAA: B2455, Broadhead, A S, item 92 (it should have been filed in (NAA) A471, 7693, Broadhead, A. S. (3238).

⁶⁵ (NAA) A471, 7693, Broadhead, A. S. (3238), testimony of Private A. S. Broadhead, items 12-13.

was charged with refusing to obey an order of his superior officer. This caused another court-martial to be convened on May 2, 1918. He was officially charged with 'disobeying in such a manner as to show a wilful defiance of authority a lawful command given personally by his superior officer in the execution of his office'.⁶⁶

The evidence of the first witness, Lieutenant E. J. Ryan reveals to some degree Broadhead's state of mind. Ryan had ordered Broadhead to 'get on his equipment' and join a working party. He refused the order telling Ryan 'I am not going to I [*sic*] have had no pay for 6 months and I'm not going to do anything now'. In short, Broadhead had 'downed tools'. After he was found guilty he told the court in mitigation, 'If I am given a chance I will play the game'. No more chances were given him and he was sentenced to twelve months' IHL, an award that automatically brought into execution his previously suspended sentence. It seemed there was little more the military authorities could do with Broadhead except award him a custodial sentence. On June 6, 1918 he was transferred to No. 7 Military Prison where he joined in the mutiny in March 1919 and was sentenced to thirteen years' penal servitude. But Broadhead's war was not over yet and further dramas were to follow the attempt to get him home to Victoria on board H.M.T. *Port Sydney*. It would prove a difficult voyage for the Officer Commanding Troops on board, as we shall see later in the chapter.

Other signatories to the appeal

The examination of the service records of nine other signatories to the appeal reveals that there was only one man who could claim that the crime that got him imprisoned occurred after the signing of the Armistice. Questions that do emerge in examining these records are whether these prison sentences could have been avoided? Did imposing a prison sentence then suspending it store up trouble when dealing with a

⁶⁶ (NAA) B2455, Broadhead, A S, item 63.

Table 6.1

Disciplinary records of nine of the signatories of the appeal and the crimes that got them incarcerated in No. 7 Military Prison, Calais.

Name and sentence for mutiny	FP No. 1	FP No. 2	AWL	Crime	Sentence
Powardy, H. R. (12 years' PS)			Aug 4 to Sept 9, 1918	Desertion	7 yrs' PS not susp.
Jansen, O. (9 years' PS)		7 days 28 days		Altering paybook Jan 1919	6 months' IHL
Nicholls, A.W. (11 years' PS)			Nov 1916 to March 1917 Mar 16,'18 for 5 days	Desertion Desertion (Unit in line)	10 yrs' PS Susp. Dec. 1917 15 yrs PS
Wallace, J. (11 years' PS)	56 days reduced to 20 days FP No. 2	3 days 7 days	May 31 to July 17, 1918	AWL	2 yrs' IHL
Gregg, C. D. (10 years' PS)		28 days 28 days 7 days 20 days 60 days	July 24 to Sept 11, 1918	AWL	6 months' IHL
Brissenden, C. L. (10 years' PS)		22 days	Aug 25 to Sept 17,'18	AWL (escaping)	2 yrs' IHL
Bunting, C. (13 years' PS)			Dec 28, 1916 to Jan 2, 1917 July 20 to Nov 11,'18	AWL Desertion	3 yrs' PS com. 2 yrs' susp. April 1918 4 yrs' PS
Gay, E. H. (10 years' PS)		30 days	July 17 to 23 July 1918	Unlawfully wounding a comrade AWL	12 months' IHL susp. 2 weeks later 1 yr IHL (brought in previous sentence)
Woodbury, P. A. (9 years' PS)			Aug 12 to Sept 14, 1918	AWL	12 months' IHL

future offence? And was there inconsistency in the sentencing of offenders? Of the nine signatories to the appeal examined here six were 1915 men, two 1916 (which

includes one enlisted in 1914 but who was returned to Australia as a venereal disease case in 1915) and one enlisted in 1917. Table 6.1 (above) shows the crime and sentence the man received that got him imprisoned at No. 7 Military Prison, and is not a complete disciplinary record of these men. In the cases examined there are many instances of men being sentenced to detention for absence, and these are not reflected in this table. What is recorded is the number of times a man was sentenced to Field Punishment, and it is immediately noticeable that Field Punishment No. 1 was rarely given, a reflection of the reluctance of Australian courts to impose this kind of punishment. In these records, too, we find that soldiers were reluctant to report that they had been imprisoned, which caused a great deal of anxiety to their next-of-kin back home in Australia, who starved of news of their loved one, feared the worst.

Australian courts faced a real dilemma in dealing with absentees as the convening of a field general court-martial for men charged with absence usually resulted in a prison sentence being imposed. Private (2309) H. R. Powardy, for example, had kept a relatively clean disciplinary record up to him being declared an illegal absentee on August 4, 1918 (see Appendix v for more detailed records of the signatories of the appeal). He was absent until 9th September and at his court-martial on November 5 he was convicted of desertion and received seven years' penal servitude.⁶⁷ This, of course, kept him out of action, and rewarded him for his absence by keeping him out of harm's way. The Armistice came into force soon after his trial so there was no need to suspend his sentence to make him available for duty. If his period of absence had been dealt with summarily by his CO and Field Punishment awarded, Powardy, who would have got off lightly, would still have been available for duty and would not have been swelling the prison numbers.

⁶⁷ NAA: B2455, Powardy, H R, owing to a typist's error he was originally discharged TPE (Termination of Period of Enlistment), which was amended in February 1921 to SNLR on account of his receiving twelve years' PS for his part in the mutiny.

Private (6603) Oscar Jansen could justifiably claim that his more serious military offences occurred after the hostilities had ended. His two periods of Field Punishment were awarded for insubordination and not absence. Jansen's first court-martial was held in January 1919 when he was charged with 'altering his paybook with intent to defraud'. He was found guilty and sentenced to six months' IHL.⁶⁸ If the war had still been in progress this sentence could well have been suspended and Jansen would have avoided his incarceration in No. 7. Military Prison. One can speculate that the sentence of six months' IHL suggests that the crime was not a serious one and a more appropriate sentence other than imprisonment could have been awarded.

It is hard to see how the courts could have acted differently with Private (4459) A. W. Nicholls, who had picked up two desertion convictions before his conviction for mutiny. His first desertion conviction was for being absent from November 1916, after being warned his platoon was going to the front line, until his arrest in March 1917. At his court-martial the court heard evidence from platoon Sergeant James Alliston who stated, 'I warned my platoon that we were going to the front line & accused was present at the time'. Two hours later, when the platoon was lined up a roll call was made and Nicholls was absent.⁶⁹ Nicholls was captured on March 27 by a patrol of military police, who found him living rough in disused huts belonging to the Field Ambulance AIF. The arresting military police officer thought the huts looked like someone had lived in them for some considerable time. When the court questioned Nicholls he claimed that he had only spent three nights in the huts and that he was in Buire for a month. Nicholls told the court that:

On the 14th November at Carlton Camp having been suffering from nervousness, I had the inclination to get away from all the noise. I went to the canteen and had some drink. The next day I did not feel any better, and was then afraid to return to my unit.

⁶⁸ NAA: B2455, Jansen, Oscar, service record.

⁶⁹ NAA: B2455, Nicholls, Arthur William, service record, see item 55 for FGCM.

Nicholls' demonstrated his naivety when he told the court that he 'never thought when I was back at Buire that I would be posted as missing, or a "deserter" with my Battn'.⁷⁰ He was awarded ten years' penal servitude, which was suspended nine months later and he rejoined his battalion on December 23, 1917. Nicholls went missing again on March 16 when a roll call was taken at 11.30pm, prior to his unit going into the line. At his court-martial in April 1918 Nicholls was charged with desertion. The court heard from Sergeant H. H. Burnell, who stated that his unit was in the line for five days and Nicholls was absent for that period. Sergeant D. McPhee, giving evidence, stated that he was in Romain when 'the accused came to me and said he wished to give himself up'. In his defence Nicholls stated that he 'left on account of my nerves. I could not stand the strain any longer. I was not giving [*sic*] a fair deal because I was 20 months in France without leave.'⁷¹ He was convicted of desertion and given fifteen years' penal servitude, which could not be suspended because of the suspension of his previous sentence.

Private (1190) John Wallace, who signed the letter to Prime Minister Hughes, and who had claimed 'we have all done our bit in this War and was [*sic*] at Amiens last year and saved the situation when England received the biggest blow of this War'.⁷² Wallace had embarked for overseas in October 1915 and had a relatively clean disciplinary record up to 1918. He had previously picked up three days' Field Punishment No. 2 for disobeying an order and seven days' Field Punishment No. 2 for an absence of three days. In February 1918 he was charged with 'disobeying the lawful order of a superior officer' for which he was awarded fifty-six days' Field Punishment No. 1, which was subsequently reduced to Field Punishment No. 2, with thirty-six days

⁷⁰ Ibid., items 56-57, contain Nicholls' testimony.

⁷¹ Ibid., item 65, FGCM April 22, 1918.

⁷² AWM 10, 4304/7/60, item 3, letter to the Australian Prime Minister, Mr. W. M. Hughes, dated April 18, 1919 signed by Private (1190) J. Wallace.

of his sentence remitted.⁷³ But on May 31 Wallace absented himself until he was apprehended on July 17. At his court-martial he was found not guilty of desertion but guilty of absence without leave for which he was awarded two years' IHL. The court in this case determined that this period of absence was not desertion, unlike the finding for Private Powardy, discussed above, who was absent for a similar period of time and was convicted of desertion and received seven years' penal servitude. Wallace's sentence was not suspended and he went straight to No. 7 Military Prison where he joined in the mutiny and received eleven years' penal servitude.

Private (2942) Charles Darwin Gregg's disciplinary record is littered with charges for absence and disobedience (see Table 6.1 for Field Punishment awards). He was awarded Field Punishment No. 2 six times, but never Field Punishment No. 1. This could have been on health grounds as Gregg was a bronchitis sufferer, and being tied up and exposed to the elements could well have aggravated his bronchial condition. In 1918, after spending a period in England sick, he rejoined his unit at the end of June. But on July 24 he was declared an illegal absentee, only rejoining his unit two months later on September 11. While awaiting trial for this period of absence he absconded for two days from October 10. At his court-martial on November 30 he was found not guilty of desertion but guilty of being absent without leave and sentenced to six months' IHL.⁷⁴ The leniency of this sentence is surprising as he was absent for nearly two months at a critical period in the prosecution of the war. This case highlights the inconsistency in defining the offence of desertion and absence without leave and the disparity in sentencing when Gregg's sentence is compared to those Powardy and Wallace received.

Private (5654) Clarence Leslie Brissenden was barely eighteen-years-old when he enlisted in March 1916. In September 1917 he was wounded in action, receiving a

⁷³ NAA: B2455, Wallace, J, service record.

⁷⁴ NAA: B2455, Gregg, C D, service record.

gunshot wound to his left arm that caused his evacuation to hospital in England. He was discharged on October 25, 1917, and while still in England he was convicted of his first military offence in March 1918 for being absent from February 21 to March 3. He was awarded twenty-two days' Field Punishment No. 2 for this absence, and shortly after serving this sentence he was absent again and was declared an illegal absentee. At his District Court-Martial (England) he was convicted of being absent from May 27 until July 5 and received the sentence of the forfeiture of thirty days' pay. He rejoined his battalion in France on August 10, 1918 only to be declared an illegal absentee again by the 23rd. He was arrested on September 24 and faced two charges at his court-martial of being absent from August 25 until September 17, and escaping from confinement. Brissenden was found guilty of absence without leave and given a sentence of two years' IHL that was not suspended.⁷⁵ Overall, Brissenden was treated quite leniently for his absences when compared to some of the other signatories of the appeal.

Private (4219) Clarence Bunting faced his first court-martial on January 5, 1917. He pleaded guilty to being absent from December 28 until January 2, 1917. The court heard that his battalion was moving to the front from Cow Lane on December 27 and that Bunting was present at the time. The following morning at roll call he was reported missing. Despite Bunting's guilty plea he was given three years' penal servitude, later commuted to two years' IHL. The severity of this sentence was a consequence of his unit moving to the front trenches. He did not serve his full sentence and was discharged from prison in April 1918 with the remainder of his sentence suspended. Bunting was with his unit less than three months when he was reported an illegal absentee in July. He did not return to his unit until November 11. He was tried

⁷⁵ NAA: B2455, Brissenden C J, service record.

on November 18 for deserting from July 20 until November 11 and awarded four years' penal servitude.⁷⁶

The sentence Bunting received for his first court-martial offence highlights the difficulty the Australian military faced in dealing with absence from the front line. Bunting was only twenty-years-old at the time and the court could have taken some account of his age. Convicting him of a lesser offence to allow Field Punishment to be awarded may have been more appropriate. It would have given him a second chance, and thus avoided the possibility of him becoming tainted by mixing with the hardened cases in prison. From early January 1917 until his discharge on November 12, 1919, apart from his voyage home, Bunting would spend less than three months out of prison.⁷⁷

Private (5343) Ernest Henry Gay joined the 27th Battalion in France in January 1917 and in March was promoted to lance corporal and to corporal by September. Gay did not pick up his first court-martial conviction until May 1918 when he was found guilty of 'unlawfully wounding a comrade'. For this offence he was awarded twelve months' IHL and reverted to Private. This sentence was suspended two weeks later. In August he faced a court again, this time charged with desertion, for being absent from July 17th to the 23rd. He was found not guilty of desertion but guilty of absence without leave and given thirty days' Field Punishment No. 2. In this case the awarding of Field Punishment, instead of a custodial sentence, prevented his previously suspended sentence being executed, thus keeping Gay available for duty as his Field Punishment could be completed when his unit was out of the line.

This sentence also indicates that Field Punishment was an option open to the courts when dealing with cases of absence. However, Gay was not available for duty long as a month later he was again charged with desertion for a sixteen-day absence.

⁷⁶ NAA: B2455, Bunting, C, service record.

⁷⁷ Ibid., item 34.

As before, he was cleared of desertion, but found guilty of absence, and this time awarded twelve months' IHL that could not be suspended because of his previous conviction. Gay had faced three courts martial on serious charges from May to August 1918 that blemished his otherwise good record.⁷⁸

Private (3202) Percy Arnold Woodbury was twenty-years-old when he was wounded in action on October 30, 1917, receiving a gunshot wound to his ankle that was diagnosed as 'severe'. He was hospitalised in England and not declared fit for duty until April 1918, rejoining his battalion in France the next month. By August, he was declared 'an illegal absentee' and was arrested later on September 8. He escaped confinement the very next day and was not back with his unit until September 14. At his court-martial, which was delayed until December, he was found not guilty of desertion but guilty of absence without leave and escaping from confinement for which he received twelve months' IHL.⁷⁹ Perhaps the ending of hostilities influenced the court in not giving this young man a desertion conviction.

The claim made by these signatories to the appeal that their military crimes were committed after the signing of the Armistice is clearly wrong, except in the case of Private Jansen. It seems clear, too, that the definition of desertion as opposed to absence without leave was open to interpretation by the court. It does suggest that the courts could exercise flexibility, in that many of the cases examined here appear, on paper at least, clear cases of desertion but which resulted in a conviction for absence without leave. In only one of these convictions for absence was Field Punishment awarded which avoided bringing in a previously suspended sentence and sending a man to prison. Field Punishment was an option open to the courts but one that they rarely used to punish serious cases of absence. By not using the options and powers

⁷⁸ NAA: B2455, Gay, E H, service record.

⁷⁹ NAA: B2455, Woodbury, Percy Arnold, service record

they possessed Australian courts were contributing to the comparatively high rates of imprisonment of Australian soldiers.

Soldiers sentenced to imprisonment faced the dilemma of what they should tell their loved ones back home. Families faced a period when there was little news coming their way during the process of waiting for trial, conviction and finally incarceration in a military prison. No doubt this uncertainty was contributed to by the convicted themselves who would have had a natural reluctance to inform their relatives of their crime and imprisonment. As discussed earlier, prisoners were allowed one letter on arrival at a military prison, and if they could not bring themselves to pass on their news to their next-of-kin then another month would pass before they would have the opportunity to do so. Contributing to these problems was the fact that paperwork concerning convicted soldiers took some considerable time to be processed at Base Records, which meant that they were sometimes unable to give a definitive reply to anxious relatives. Next-of-kin would not normally be informed of the imprisonment of their relative, unless they specifically asked for his whereabouts and those records were at hand. This was the case with Private Bunting's wife and father in Australia. They were unaware he was undergoing prison sentence and their letters were returned marked "Unable to Trace". Anxious letters were written to Base Records in Melbourne requesting an explanation and they were given the address of the 23rd Battalion (Abroad). Bunting had written to his wife telling her that he had only permission to write one letter a month, but from her letters to Base Records it seems clear she was unaware of his imprisonment.⁸⁰

Private Nicholls' relatives in Australia, having not heard from him for some time and having their letters returned marked 'sick in hospital' or 'left hospital', were becoming increasingly anxious, too. His brother wrote to the officer in charge of Base

⁸⁰ NAA: B2455, Bunting, C, service record, item 21.

Records in July 1917 to enquire if he had been wounded, or worse. He stated that the portion of his brother's pay that was paid to his mother had stopped, with no reason given. He went on to write, quite poignantly, 'that such an occurrence causes us great anxiety, and I would be pleased to know the best or worst of him, so as I can relieve my parents' minds somewhat'.⁸¹ He received a reply in August from Base Records that his brother's name had not come up on any injured list and that the subject of his pay had been referred to the military paymaster in Melbourne.⁸² No mention was made of his court-martial. This could be due to Base Records being behind in paperwork, or the officer in charge unwilling to disclose the desertion conviction. His brother's letter was a powerful one in that it conveyed the anxieties felt by all relatives who fear the worst when deprived of news. This is a recurrent theme in the archival records of convicted soldiers. One can imagine the shock and bewilderment they felt when they received news of a family member who had volunteered to serve in the AIF and was now convicted of a serious military crime and was in prison.

The convicted mutineers had their sentences remitted under the terms of the amnesty and embarked for Australia in the latter part of 1919. They were officially discharged 'Services No Longer Required' instead of the normal 'Termination of Period of Enlistment', a reflection of the fact they were disciplinary cases. However, returning disciplinary cases back to Australia by ship was not always a smooth passage, especially with convicted men on board with a proven track record of causing trouble. This proved to be the case with H.M.T. *Port Sydney* where there was trouble throughout the voyage. A riot broke out on board when the ship docked at Fremantle. Two men escaped, and Private Broadhead, who had tested the disciplinary system to its limit, was bayoneted as he tried to escape.

⁸¹ NAA: B2455, Nicholls, Arthur William, service record, item 31, letter from Mr. A. P. Nicholls to the Officer in Charge, Base Records Office, Melbourne, July 31, 1917.

⁸² *Ibid.*, item 21, reply from Officer in Charge, Base Records, Caulfield, August 9, 1917.

Troubled voyage home

Broadhead began his journey back to Victoria on September 23, 1919 on the troopship H.M.T. *Port Sydney*, along with other disciplinary cases, many of whom had previously been incarcerated in Loos Gaol, France and Lewes detention barracks, England. It was while the ship was docked in Fremantle that a ‘serious disturbance’ took place in which two prisoners escaped and Broadhead received a serious abdominal wound whilst trying to overpower a sentry.⁸³ Meanwhile, Broadhead’s wife had written to the Defence Department asking when she could see her husband again. She was told that he was returning to Australia ‘for disciplinary reasons’ and that he would be detained on arrival in Victoria until it was ascertained ‘whether his case comes within the provisions of the amnesty granted in certain cases’.⁸⁴ After Broadhead was wounded she was informed that he was ‘seriously ill’,⁸⁵ but not told of the bayonet wound.

Maintaining discipline throughout the voyage had proved difficult, according to Major F. C. Hardie, who was appointed by the Defence Department to investigate the wounding of Broadhead. He reported that the Officer Commanding Troops, Lieutenant-Colonel G. Currie, stated ‘that there are about 100 men aboard who are of bad character’, and that Currie had dealt with cases of ‘assault and robbery with violence’ during the voyage.⁸⁶ Because of this, Currie sought permission to disembark prisoners at Fremantle, who he described as ‘desperate characters’. Permission was refused,⁸⁷ and the *Port Sydney* sailed on to South Australia and Victoria. While at sea,

⁸³ NAA: B2455, Broadhead, A S, service record (contains findings of Court of Enquiry held at sea), item 66, cable, headed ‘Defence, Melbourne’.

⁸⁴ *Ibid.*, item 49, letter from the Officer I/C Base Records to Mrs. E. Broadhead, September 30, 1919.

⁸⁵ *Ibid.*, item 66, Defence Department cable.

⁸⁶ *Ibid.*, item 67, letter to The Secretary, Department of Defence, Melbourne, November 10, 1919 and signed by Major F. C. Hardie for Lieutenant-Colonel Administering Command, 4th Military District.

⁸⁷ *Ibid.*, item 66 Defence Department Cable (no date).

the Adjutant General directed Currie, by radio, to hold a court of inquiry into the circumstances leading up to the serious wounding of Broadhead.⁸⁸ This investigation reveals the difficulty in maintaining discipline at sea, especially with prisoners who had a proven track record of causing trouble and who had freedom of movement on board, apart from a few who were in the cells.

At the Court of Enquiry it emerged that eight prisoners, who had joined the ship from Lewes detention barracks, were held in cells. Four were held because they were to complete their sentences in Australia, and the others, although under suspended sentences, were being held because they received additional sentences from courts martial on board ship. A further sixty soldiers from Lewes were returning under suspended sentences, and according to Captain G. L. Allen, had ‘throughout the trip had been giving continual trouble, and who always worked together as a gang.’⁸⁹

Lieutenant S. R. Downe, the Orderly Officer, in his evidence to the Court of Enquiry, stated that the ship was berthed within easy reach of the wharf at Fremantle and that around 8.30pm on November 4 a number of men were gathered around the two portholes in the guardroom vicinity. According to Downe, the men were ‘hauling in something’ which later proved to be bottles of beer, which were passed through the bars to the prisoners in the cells. He reacted to this situation by placing guards on the wharf to prevent alcohol being passed up the side of the ship. At midnight, Downe stated ‘that many of these soldiers seemed to be drunk’.⁹⁰ By this time he was dealing with a serious situation, as the men in cells became abusive and started cutting down the woodwork panels and attempting to kick-in the door. Downe was ordered to use force if necessary by his commanding officer and he told the prisoners ‘that armed force would be used against them’ if they broke out. Downe reported that around the

⁸⁸ Ibid., item 65, cable addressed to Officer Commanding Troops, *Port Sydney*, from Adjutant General, November 7, 1919.

⁸⁹ Ibid., item 81, testimony of Captain L. G. Allen, M.C., 28th Battalion, AIF, at the Court of Inquiry.

⁹⁰ Ibid., items 79-80, testimony of Lieutenant S. R. Downe, ASBAC, AIF, at the Court of Inquiry.

guardroom a 'considerable crowd all more less drunk' had gathered, most of them 'hostile to the guard'. In an attempt to return a prisoner to the cells the door was forced open and five prisoners got out. The guard closed in on them and in the ensuing struggle Broadhead was bayoneted 'wrestling with a sentry'. He was carried away to the ship's hospital by one of the prisoners. The 'hostile onlookers' became more infuriated and rushed the guard who could not prevent four of the prisoners escaping. All this took place in darkness, Downe explained, as some of the light bulbs had been smashed and the 'onlookers' had easy access to the light switch. The prison guard spent the next hour 'defending themselves' and preventing further escapes until reinforcements arrived.⁹¹ Two of the escapees were captured on board while the other two were pursued on the wharf and remained at large when the ship sailed for South Australia.

Lieutenant F. A. D. Watts had entered the guardroom area around 12.15am on the 5th and saw the prisoners attempting to 'kick the outer wall down' the court heard. As there was no other officer present at the time he instructed the guard 'to use the bayonet on the first man who came out through the door or the hole'; also warning the prisoners that this order had been given the guard. He described the majority of the 'onlookers to be in favour of the prisoners and who were in a state of great excitement'.⁹² Watts left before the wounding incident, leaving Downe, who had returned, to take charge.

The sentry who had bayoneted Broadhead, Lance Corporal W. Barrett, had made a statement soon after the incident to Captain Allen. Barrett described how four prisoners had rushed the cell door after the guard had tried to return a prisoner who had been allowed to the latrines. When Broadhead tried to wrest a rifle from a sentry, Barrett picked up a rifle and bayonet and warned Broadhead 'that if he didn't let go I

⁹¹ Ibid.

⁹² Ibid., item 81, testimony of Lieutenant F. A. D. Watts, 26th Battalion, AIF, at the Court of Inquiry.

would stick him – he continued and I did stick him’.⁹³ Allen considered Barrett’s life was now in danger and that he was in need of protection from the ‘threatening attitude of the ex Lewes men’. Therefore arrangements were made for Barrett to disembark at Fremantle and to catch later transport to his own military district. Allen opted against searching the ship for the escaped prisoners favouring placing ‘a strong patrol of sergeants’ on the wharf. He feared that further bloodshed would have resulted trying to return the prisoners to their cells in the darkened conditions onboard.⁹⁴ By morning the disturbances had ended and two of the escapees were found onboard.

Captain G. W. Holmes, the Orderly Medical Officer, carried out the medical examination of Broadhead. He told the Court that in his opinion the bayonet had entered the ‘back of the right side’ and exited ‘in the front of the mid-line’ causing a wound about half an inch in length. Holmes judged that the wound was serious and he observed that Broadhead’s ‘breath smelt slightly of alcohol’.⁹⁵

The Court of Enquiry found:

That ‘under the exceptional circumstances described in the evidence, every reasonable precaution was taken by the O.C. Troops on board H.M.T. “Port Sydney” to prevent prisoners from escaping; that the Orderly Officer and the Guard did all that could reasonably be expected of them and that therefore no blame can be attached to anyone on board in connection with the escape of the prisoners in question.

That Private Broadhead came by his wound in attempting to escape with violence from the Guard-room, having been emphatically warned beforehand of what he might expect; and that Corporal Barrett inflicted the wound upon the prisoner in the execution of his duty, using no more force than was necessary.⁹⁶

These findings are not surprising. Two warnings were given by officers of the intention to use force, and then one by Barrett before he bayoneted Broadhead. Broadhead, who was hospitalised in Fremantle, could not give his version at the Court of Enquiry and there is no record of any statement being taken from him. As he was unable to face a court there was no charge brought against him for trying to escape. His

⁹³ Ibid., item 84, written statement by (1519) Lance Corporal W. Barrett, AIF, at the Court of Inquiry.

⁹⁴ Ibid., item 82, testimony of Captain L. G. Allen, MC, 28th Battalion, AIF, at the Court of Inquiry.

⁹⁵ Ibid., item 82, testimony of Captain G. W. Holmes, AAMC, AIF, at the Court of Inquiry.

⁹⁶ Ibid., item 83, the Finding of the Court of Inquiry.

discharge on January 4, 1920 stated that his services were no longer required. Broadhead had tested the disciplinary code to its limit during his service. The military authorities had done their best not to reward his military crimes with custodial sentences. In the end the army's disciplinary code became impotent against his determined efforts. There was nothing to frighten him with. He had weathered Field Punishment No. 1 and imprisonment and was prepared to spend further periods in custody if necessary. Broadhead's poor disciplinary record caused the forfeiture of all his rights to medals and his claim for War Gratuity was rejected.

The two escapees, Private (1114) Hugh Leslie Smith and Private (3535a) Thomas L. Winstanley, who remained at large when the *Port Sydney* sailed, had histories of escaping from confinement (see Appendix vi for more detailed records of the men involved in the rioting on board). Smith's record is a sad one in that, at nearly nineteen-years-old when he enlisted, this young man was in trouble from the outset, with his crimes getting progressively worse. In June 1916 he was convicted by court-martial of being absent for one day, drunkenness, and escaping from confinement, for which he was awarded forty-two days' Field Punishment No. 2, which was later commuted to twenty-eight days. One week after his release he was charged with drunkenness and was severely dealt with, being sentenced to twelve months' IHL⁹⁷. This draconian sentence was not commuted or suspended and sent this youngster down the spiral path. He was released from prison on July 13, 1917 but was declared an illegal absentee on July 21. He was returned to custody on September 9 and escaped nine days later. At his court-martial he was found guilty of absence and sentenced to two years' IHL, which was subsequently suspended. He returned to his unit and within a month he 'accidentally injured himself' by falling into a shell hole and breaking his leg, which caused him to be evacuated to England. After recovering, Smith picked up

⁹⁷ NAA: B2455, Smith, H L, service record.

one sentence after another and had to face two separate trials in civil courts charge with theft and assault. His final court-martial appearance on charges of escaping from confinement, attempting to escape from custody, making a false statement, and absence from April 16 to May 20, 1918 had to wait until his release in November from a civilian prison. Smith was found guilty on all these charges and was awarded seven months' detention, which brought into operation his previously suspended sentence from 9 October 1917. Smith added to his troubles while aboard the *Port Sydney*. He faced a DCM at sea and was convicted on two counts of 'violently assaulting another soldier' and stealing money. For these offences he was sentenced to two years' IHL.⁹⁸ Smith had good reason to believe that he would be spending the near future in jail and had not much to lose by escaping. His service record shows that his initial discharge was July 21, 1920 (desertion), but this was amended in October to read SNLR.⁹⁹ It is not clear when Smith made it back home, but there is no record of any further action taken against him. At nineteen-years-old Smith had been given a one-year custodial sentence with hard labour for drunkenness. This sentence illustrates the inconsistency in sentencing offenders, as he served the full year in custody. It is interesting to note that Field Punishment No. 1 was not awarded to Smith for any of his crimes.

Private Winstanley, who remained at large with Smith, embarked for active service in October 1915. In July 1916 he fell foul of the civil authorities and was tried at Dorchester Assizes for felony. He was found guilty and sentenced to three months' IHL. In November, on his return to France, he was awarded twenty-eight days' Field Punishment No. 1 for '(1) Being in town with a pass (2) Being improperly dressed.' He spent a few weeks with his battalion before a further absence led to his desertion

⁹⁸ Ibid., Précis of Service for the information of the Medal Board, but see references throughout his service record.

⁹⁹ Ibid., item 27, letter from Base Records Victoria to Headquarters 3rd Military District asking for clarification on Smith's discharge. On Routine Order No. 84/20 he was discharged on July 21, 1920 (desertion) and on Routine Order 87/20 he was described as being discharged SNLR on July 18, 1920. His discharge on the 'Précis of Service', a much later document, shows he was discharged July 21, 1920 'as a consequence of being illegally absent from 4.11.19'.

conviction for being absent from February 23, 1918 until apprehended on April 9. He was sentenced to penal servitude for life, which was later commuted to two years' IHL. He escaped from No. 10 Military Prison in September 1918 and was at large for seven weeks until apprehended. On the voyage home on *Port Sydney* he escaped from confinement in Cape Town for a day and was awarded nine months' IHL by a DCM held at sea. It is not clear whether he was apprehended in Fremantle or gave himself up, but he embarked on the *Pakeha* a week after the *Port Sydney* sailed.¹⁰⁰

Private (1799) Henry Nash, who had escaped, but was recaptured on board, was also absent at Cape Town, failing to re-embark on the first vessel that had tried to get him home. Nash had enlisted in 1915 and picked up his first court-martial offence when transferred to France in April 1916, being sentenced to sixty days' Field Punishment No. 2 for '(1) drunkenness (2) Insubordinate language (3) and conduct to the prejudice etc.' Nash was involved in the fighting, however, being wounded in action in July 1916, and returning to duty a week later. In September he distinguished himself in battle and was Mentioned in Despatches 'for participation in a very successful raid on the enemy trenches on 30.9.16'.¹⁰¹ Nash had no further charges until March 1917 when he faced a court-martial for being absent for one week and escaping from confinement. The sentence of three years' IHL, although commuted to two years, seems particularly harsh, although this sentence was suspended a month later. Six weeks after rejoining his unit in the field he was charged with wilfully self-inflicting a gunshot wound to his left forearm for which he was sentenced to fifteen months' IHL. This caused his previously suspended sentence to come into execution, and in this way Nash was 'rewarded' for his self-inflicted wound.¹⁰² The guidelines for punishing self-

¹⁰⁰ I NAA: B2455, Winstanley, Thomas, service record. In October 1946 Winstanley sought help from The Sailors' & Soldiers' Distress Fund who wrote to the Base Records office for particulars of his service.

¹⁰¹ NAA: B2455, Nash, Henry, service record.

¹⁰² Ibid.

maimers could not be followed in this case, being hampered by the severity of the previous sentence, a crime that could have been dealt with by the awarding of Field Punishment. For his part in the disturbance on *Port Sydney* he was awarded twenty-eight days' detention.

Another soldier named in the disturbance onboard was Private (6273) William John Gleeson who had been awarded fifteen years' penal servitude in December 1918 for desertion, a sentence that was later commuted to two years' IHL. Gleeson had picked up his first custodial sentence in May 1918 whilst a patient in a venereal disease hospital. At his trial the court was told that Gleeson, along with Sapper (4091) Hugh Ball and Private (6037) Edward James Betts were patients in 29th General Hospital undergoing venereal disease treatment. The three were part of a fatigue party that was handed over to the NCO in charge of the laundry, Sergeant E. Tucker. All three were ordered to take off their coats and start working in the laundry. Each man in turn refused. As each had had their money stopped, they objected to doing laundry alongside men who were being paid. Sergeant Tucker stated that he waited about twenty minutes for his order to be obeyed before handing the men over to the provost sergeant. Sapper Ball, on behalf of the accused, told the court that they 'were under the impression that fatigues by Australian soldiers in the Hospital were quite voluntary'.¹⁰³ All three were found guilty, and in mitigation each of them claimed to have had clean disciplinary records up to that point. Nevertheless, all were sentenced to eighteen months' IHL. Ball and Betts had no previous convictions and their sentences were suspended a month later.¹⁰⁴ Gleeson had previously served periods of detention for drunkenness and absence and had been awarded twenty-eight days' Field Punishment No. 1 by his commanding officer for using abusive language to a superior officer.¹⁰⁵

¹⁰³ NAA: B2455, Gleeson, W J, items 47-49 deal with the court-martial

¹⁰⁴ NAA: B2455, Ball, H, service record

¹⁰⁵ NAA: B2455, Gleeson, W J, service record.

Betts and Ball, who had good disciplinary records before the trial, now had quite unnecessary court-martial convictions against their names.¹⁰⁶ The charge of disobeying a direct order could have been avoided if the guidelines on laying charges had been followed. As sufficient time had not been given for the order to be obeyed, in this case it was only twenty minutes, the lesser charge of hesitating to obey a lawful command could have been laid. The court-martial could have been avoided if the commanding officer had followed the guidelines of preferring lesser charges so he could deal with the matter summarily, instead of the costly business of convening a court-martial.¹⁰⁷

Private (5045) Frances James Barker, 13th Battalion, was also involved in the disturbances on *Port Sydney*. His first conviction for desertion occurred in 1916 when he was absent from August 29 until September 2, and was sentenced to twelve years' penal servitude, which was subsequently commuted to two years' IHL.¹⁰⁸ He remained in prison until May 19, 1918, rejoining his unit in June. In July he was wounded in action for the second time receiving multiple shrapnel wounds which kept him away from his unit for two months. Further unlicensed leave offences resulted in detention and forfeiture of pay. In early January 1919 he was sentenced by a court-martial to ninety days' Field Punishment No. 2 for 'conduct to the prejudice'. By April 1919 he had added another court-martial conviction that of 'Escaping from escort 2/3/19 . . . and A.W.L. from 24/3/19 to 17/4/19', receiving a sentence of six months' IHL. For his part in the disturbance onboard a DCM was convened charging him with: 'Striking his superior officer in the execution of his duty, in that he at Fremantle on H.M.T. 'Port Sydney' on 5/11/19 struck with his fist in the face Lieut. L. D. R. Snellgrove, 3rd Div. Engrs, who was endeavouring to quell a disturbance on board'. He received a sentence

¹⁰⁶ NAA: B2455, Betts, E J, service record.

¹⁰⁷ AWM 233/1 Administrative Instruction No. 56, September 9, 1916, R. Jackson, Lieutenant-Colonel, AA & QMG, Third Australian Division..

¹⁰⁸ NAA: B2455, Barker, F J, items 15-17, contains the main particulars of Barker's service. He had submitted a request for the re-issue of his RS Badge, which the Adjutant General approved. See items 30, 32 and 35.

of two years' IHL but only served nine months' of this sentence. Barker's war was finally over when he was released in August 1920.¹⁰⁹

The most striking feature of the service records examined above is the large number of courts martial, which in most cases resulted in custodial sentences being awarded. The framing of the charge was the critical factor in whether a court-martial had to be convened. Charging a man 'with using insubordinate language to a superior officer' or 'disobeying a lawful command' are charges that normally have to be dealt with by court-martial. However, in these two examples lesser charges could have been laid such as 'making an improper reply to an NCO' or 'hesitating to obey an order', charges that could have been dealt summarily by a commanding officer. Many of the soldiers examined here were sent to trial on the charges outlined above, were convicted and imprisoned. Although many of these sentences were suspended after a few weeks in less serious cases, the fact that a man had been awarded a sentence meant that any future court-martial conviction would automatically bring into execution his previously suspended sentence. If the commanding officer had dealt with the offender's initial crime summarily this would have been avoided, and kept offenders out of prison.

The failure of so many Australian commanders to follow the guidelines to enable them to deal with these types of charges summarily, although they were continually urged to do by senior British commanders, contributed in great measure to the extraordinarily high numbers of Australian soldiers in prison. The awarding of Field Punishment Number 1, and of course the ultimate sanction of the death sentence, helped reduce British and other Dominion imprisonment rates. Another feature of these service records is that once a man had been imprisoned within a short period

¹⁰⁹ Ibid., item 17, on his particulars of service it shows that Barker was discharged from the AIF on December 30, 1919. However, on the same document, in handwriting, it states he was not released until August 10, 1920.

after his release he was re-offending. These records also show that in many cases prison did not act as a reforming or deterrent measure; in fact it had the opposite effect. Field Punishment, distasteful as it was, kept offenders mixing with, and becoming influenced by, the more hardened types that were imprisoned because of the severity of their crimes. The reluctance of many Australian commanders to award Field Punishment No. 1 is a factor in the unnecessary convening of costly trials, and the needless tainting of soldiers' service records with courts martial convictions.

It seems clear from the records of the men examined that they were no 'desperados', but in the majority of cases men who habitually offended, and too many times were 'rewarded' with custodial sentences that kept them away from the front line. Significantly, almost all the men enlisted in 1915 or early 1916, and their offences for absence increased in the mid part of 1918, when the war was at its height. There is also a sense of an 'industrial dispute' going on between men who no longer wanted to serve and an army authority determined to thwart their efforts to avoid duty. However, nowhere in these records did 'battle fatigue' emerge as mitigation in any of the cases resulting in convictions. What the records do reveal is an inadequacy on the part of Australian disciplinary procedures to deal with men who were serial offenders.

Without the ultimate sanction of the death penalty maintaining discipline among Australian troops inevitably relied on the consent of the soldiers themselves. But the army authorities were in the end powerless to deal with soldiers who were prepared to treat Field Punishment and imprisonment as occupational hazards in their attempt to avoid frontline duty. These problems associated with dealing with habitual offenders only reinforced the British High Command's view that the death penalty was really the only deterrent to keep men in line and that Field Punishment No. 1 was an effective way of dealing with lesser offences to keep men available for front line duty.

The brother of one of the convicted mutineers, Nicholls, wrote to the authorities and asked for news 'of the best and the worst of him'.¹¹⁰ The worst in this study ranges from the inadequate to the downright calculating. It is as well we assess this behaviour for what it was and not attach to it useless labels such as larrikinism, or the display of a fiercely civilian attitude, or worse, a frontier ethos that has an alleged healthy disrespect for authority. In contrast, the 'best' of them, the majority, gained the respect of allies and enemy alike.

¹¹⁰ (NAA) B2455, Nicholls, Arthur William, item 31, letter from Mr. A. P. Nicholls to the Officer in Charge, Base Records Office, Melbourne, 31st July 1917.

CONCLUSION

Australian troops on the Western Front believed that the death penalty would never be applied to them. They also believed that at war's end a general amnesty would apply to all military crimes. They were to be proved correct in both beliefs. At the same time GHQ and senior Australian officers held the view throughout the war that their inability to impose the death penalty on Australians was the major cause of Australian indiscipline away from the front, in particular the most prevalent crimes of absence and desertion. On the evidence presented here it can be argued that they were also right in their belief. It will be recalled, as an approximate guide, that one in fourteen Australians, one in fifty New Zealanders, and one in twenty-five Canadians faced a court-martial, figures that were reflected in the comparatively high imprisonment rates for Australians. Although the evidence points to a clear case that Australians were offending more than any other group within the Army, their high rates of court martial and imprisonment need qualifying.

The High Command, although they were alarmed at the high numbers of absentees in the AIF and fought long and hard to get the Australians under the Army Act in full, were not pressing for stiffer prison sentences that would reward absentees with custodial sentences. They were urging Australian courts to use the powers they possessed, in particular, to award Field Punishment No. 1, which could be imposed summarily by a Commanding Officer without the need to convene a court-martial and thus avoid giving the offender a prison conviction. Sir William Robertson made this point when he was canvassed for his views on the efficacy of Field Punishment No. 1

in 1919, and thought the nature of the punishment needed to be 'distasteful' for it to act as a deterrent. As a punishment it had the benefit of preventing men from receiving the taint of a prison sentence for a military crime, kept them available for duty, and had the effect of not rewarding crime. Although it can be argued that Field Punishment, properly administered, was a deterrent in itself and the tying up of men was an unnecessary degradation, the fact that Australian courts preferred not to sentence men to this form of punishment meant in practice that they were needlessly sending men to prison. From the examination of the service records in this study of men convicted for absence without leave and desertion, there appeared at times to be no clear distinction between the two. Some courts did exercise a degree of flexibility in downgrading what appeared to be clear-cut cases of desertion to the lesser charge of absence without leave to avoid imposing a hefty prison sentence. Nevertheless, the lesser charge usually attracted a prison sentence and not Field Punishment.

Once a man was given a prison sentence, even if that sentence was subsequently suspended, it would count against him in any future court-martial he faced that resulted in a conviction. If the court did not exercise the option of awarding Field Punishment for his subsequent conviction and imposed a prison term instead, then his previously suspended sentence would have to be put into execution. By doing this Australian courts were adding to the Australian prison population. British imprisonment rates had been high in 1915, reaching five per 1,000, before the introduction of suspension of sentences, which helped to reduce this number dramatically. This rate of imprisonment of British soldiers does suggest that they were not as servile and subservient as Bean thought. The British imprisonment rate was kept down further, in part, by commanding officers exercising their prerogative to deal with offences summarily, as by 1916 they had the power to impose up to 28 days' Field Punishment No. 1 without the need of a court-martial. Their willingness to impose Field Punishment No. 1 and deal with

offences summarily gave them more flexibility than Australian courts were prepared to exercise and kept many British soldiers out of prison. But the main deterrent for British and other Dominion soldiers was the threat of facing the death penalty for absence – which could be construed as desertion – and so discouraged men from repeat offending. By comparison, an Australian knew no matter how many convictions he chalked up for his absences he would not face the death penalty. It is a feature of the records examined here that many of the Australians convicted of crimes were repeat offenders.

Bean did not give a reason why Australian authorities could not as readily suspend sentences. In this study there is evidence that most men awarded their first prison sentence had it suspended, but that suspension usually came after a man had spent a considerable time in prison. The problem was that Australian courts were too willing to imprison in the first instance. At the same time they seemed reluctant to convict in cases of crimes against inhabitants, as the figures for courts martial offences provided by the Adjutant General indicate. It is not clear why Australian courts would do this, and more research is needed to illuminate this point, but by 1918 GHQ were afraid that when hostilities ended, and large numbers of Australian were still in France, there would be serious incidents with the French civilian population.

The intense interest shown by the Commander-in-Chief, and successive British Secretaries of State for War, Lord Milner and Churchill, in the alleged murder of a French citizen by Private Banks was not just an expression of the fear of troubled relations with the French once the fighting had stopped; it was more to do with them getting the example they felt they needed to rein in Australian indiscipline. The fact that they spent so much time and energy on this case when the war was at its height is an indication of the importance they attached to getting an Australian tried for his life. The Australian government would not budge on the death penalty, and with their

concession that penal servitude for life would be the maximum sentence for murder, they were able to maintain the privileged position the Australians enjoyed. Private Banks probably spent the rest of his life blissfully unaware of all the attention his case had attracted from GHQ and senior British political figures. He also probably never knew just how close he came to being tried for his life in a British or French court, and if found guilty Australian authorities would have had no power to commute the sentence.

Prison was meant to be a deterrent, and the examination of the regime that existed in No. 7 Military Prison shows that life for the inmates was made as miserable as possible. No doubt it did work as a deterrent for many, but the Adjutant General thought that although it dissuaded many British soldiers from transgressing again it had little in the way of a reforming effect on Australians. His remark that the Australians tended to cause more trouble in prisons and while in hospital than all the other troops put together in many ways indicates that the Australians did identify themselves as separate and different from other troops. This group identity could keep each other going in times of battle, and at the same time be the cause of endless trouble while they were imprisoned, hospitalised, or on troop ships.

Were the Australians significantly different from British troops and less amenable to being disciplined? Haig, although he accepted they came from a freer society, thought this was not an excuse for indiscipline and wanted them treated the same as everyone else. The incorrigible civilian attitude attributed to Australian troops has been advanced to explain away indiscipline as a natural reaction of independent, free men to a harsh and intrusive British Army disciplinary code. If the Australian national character was the product of a frontier ethos with mateship, individualism, and a civilian attitude as its central tenets, then surely other colonial troops from Canada, South Africa and New Zealand could claim the same, and yet their disciplinary record

away from the front was much better than that of the Australians. Comradeship in battle, or mateship, was not exclusive to Australians. The Australians did display a more civilian attitude towards soldiering than the rest of the Army, mainly because they were allowed to, owing to the fact that two levels of discipline operated on the Western Front.

The Australians, however, did see themselves as being different and superior to other armies, especially English troops, with whom they made unfavourable comparisons concerning battle performance. Although there was no firm basis for believing that English troops were under-performing, and no meaningful way of assessing that, it was a belief that was held and amounted to 'group think' among Australians. This belief may well have had a positive effect in bolstering group or national identity, by seeing themselves as different and superior to other troops. The negative side of this thinking can be seen in the September 21st mutiny when the general complaint of those convicted was that they thought by returning to the line they would be doing 'other peoples' work'. Bean thought they would be too, alluding to the British inability to keep up in the *Official History* version of the mutiny. Further, there is an undertone of this attitude in some of Bean's accounts of British performances in the field, which Edmonds had challenged him over when checking the draft chapters. This type of thinking, which appeared to be widespread among Australians, could well have been instrumental in 1st Battalion men, who previously had good military and disciplinary records, talking themselves into what they considered industrial action, but which was in essence mutiny.

Haig had conceded that Australian battle discipline held up during the war despite the problems with discipline away from the front. Fighting a modern industrialized war required the acquisition of a military professionalism, which could only be achieved through training, discipline, leadership and a general improvement in tactics. This was

true of the Army in general, and was something Edmonds had alluded to in his exchanges with Bean. Edmonds had told Bean that the Australians were a far better outfit in 1918 than when they first arrived on the Western Front in 1916, mentioning their excellent staff work, and their having the advantage of remaining in their own Divisions. In many ways Edmonds' views fit neatly into theories of modern warfare, which argue that units that train together and stay together become a more effective fighting force. Therefore, other, more important factors were the real cause of Australian battle success than any alleged Australian traits.

The Army authorities tried to cover every avenue to prevent men avoiding duty. They were alive to attempts at self-maiming, with every accidental wounding arousing suspicion, and if found to be owing to negligence attracting the same punishment as self-inflicting a wound. They tried to keep the venereal disease rate down by education, but in that personal area of men's lives they were powerless. The high venereal disease rate among Australians suggests that the men at times were being reckless. Contracting venereal disease was one of the few loopholes in the system that would take men out of action for as long as two or three months without fear of serious disciplinary consequences. It is difficult to establish for certain whether men did take advantage of this loophole, but the high venereal disease rate, despite the thorough education campaign that was mounted, needs to be explained. It would be surprising if they did not take advantage, considering what some men were prepared to do to avoid duty at the front.

There was little uniformity in punishing crime on the Western Front. The death penalty was a powerful deterrent for the rest of the Army, but its absence for Australian troops meant that there was little with which to frighten them. Even when their actions, such as the mutiny in the 1st Battalion, could have resulted in the death penalty being imposed, it never occurred to Australian senior officers to remind the

men who were walking to the rear of that fact. It seemed they were of the view that this immunity applied to all crimes, even mutiny for Australians.

In the end an army can only function with the consent of the men under their command. The vast majority of Australian troops who volunteered freely gave that consent. When writing the *Official History* Bean had burdened the Diggers with his conceived notion of what he believed the national character should be. He helped create the Anzac Legend which has had a profound and far lasting influence upon the historiography of Australian involvement in the First World War. A concern throughout this study has been that by focusing on the negative side of behaviour – indiscipline – that this could somehow tarnish the reputation of the many thousands of men who volunteered and who did themselves and their country proud. However, the Australian medical historian, Butler, quoted also in chapter four, had made a very perceptive comment when discussing the high venereal disease rates among Australian soldiers. His words are relevant to the main focus of this study and the concern expressed. He wrote: ‘The figures will discourage those who (doing a great disservice) attach unwanted haloes to the very human heroes who fought and died in the Great War’.

A p p e n d i x i

SERVICE RECORDS OF THE CONVICTED NCOS
OF 'D' COMPANY

Corporal A. E. Alyward, a grocer, was twenty-one-years-old when he enlisted in June 1915. He embarked for Alexandria in November that year and bouts of sickness would keep him out of action for several months during 1916 and 1917. In February 1917 he joined the 1st Battalion in France, but by May he was hospitalised with malaria. Recurring bouts of malaria and pleurisy kept him unfit for duty until November 1917, he only rejoining his Battalion in February 1918. Alyward's record of service in 1918 demonstrates just how inexperienced he was, not just as a combatant, but as well as a non commissioned officer. Alyward spent his first month back in France being re-trained, returning to his Battalion on March 2. He was appointed lance corporal on April 13 and by 8 June had progressed to temporary corporal, being promoted to corporal later that month. On August 17 he went to Corps School and only returned to his Battalion on September 7. Within two weeks of his return from Corps School he was facing a refusal from his Platoon to attack. He clearly had little time to gain experience as a corporal and what sort of frontline experience he gained is not clear from the record.

Alyward, despite his clean record, received ten years' penal servitude and was admitted to Military Prison Audricq. In March 1919 he left France under escort to England to serve the remainder of his sentence at HM Prison Portland. Alyward, like the other military offenders, had his sentence remitted under the amnesty that came into effect on April 25, 1919 by order of the General Officer Commanding (GOC)

Southern Command. He embarked for Australia in July 1919, and was finally discharged on August 17, 1919.¹¹³

Corporal H. E. Slater's experience as a non commissioned officer was as limited as Alyward's. He was born in Kent, England, and was twenty-three-years-old when he enlisted at sea on board HMAT *Oraova*, eventually arriving in England on June 7, 1916. He joined the 1st Battalion in France in November that year and was appointed lance corporal in September 1917. In January 1918 he accidentally wounded himself, without negligence, causing lacerations to his hand. This wound and an outbreak of boils would keep Slater away from his Battalion until May 11, 1918. Within three weeks he was admitted to hospital again suffering from boils and was not fit to rejoin his Battalion until July 6. On August 31 he was promoted to temporary corporal, just three weeks before he was involved in the refusal to attack. Apart from one unlicensed leave from hospital, for which he incurred the loss of seven days' pay, Slater had no previous convictions against his name. Slater's three weeks as a temporary corporal got him awarded seven years' penal servitude and not the ten years which was the norm for corporals.¹¹⁴

Corporal Rollo Charles Taplin was eighteen-years-old when he enlisted in July 1916. Although he had no trade or calling listed on his attestation paper, Taplin must have impressed his senior officers for he was appointed lance corporal in March 1917 and promoted to corporal by June that year. He was wounded in action in France in August 1917 but recovered in a few days to rejoin his unit. In 1918 he suffered from influenza and was sick from June to July, and other duties kept him absent from his unit for a period of three months up to 3 August. His service record is clean, up to September 21, with no charges of any kind being laid against him. He was the youngest of the NCOs convicted but still received ten years' penal servitude. His war

¹¹³ NAA: A471, 1704, Alyward, A. E., Service No. 3002, 1st Battalion, AIF.

¹¹⁴ NAA: A471, 2041, Slater, H. E., Service No. 4963, 1st Battalion, AIF

medals (1914/15 Star, British War Medal and Victory Medal) were initially denied him, but were later restored.¹¹⁵

Lance Corporal E. A. Besley, a coachbuilder by trade, was twenty-one-years-old when he enlisted in the AIF in June 1915. He was in Gallipoli for a month in November 1915 then embarked for Alexandria and joined the BEF in France in March 1916. In July 1916 he was wounded in action (gas poisoning) but was discharged to duty a month later. He would spend two months in hospital in 1917, and married in London in August that year. In December 1917 he was transferred to 1st Training Battalion in England only rejoining his battalion in France on June 27, 1918. Apart from receiving seven days' detention Besley's record is free of any military crimes. Like many of the accused, Besley had returned from a spell away and had spent little time back with his Battalion before the mutiny. Although only a lance corporal, Besley received ten years, a sentence usually reserved for corporals. He probably attracted the full sentence because of his role as spokesmen for the men at the Nucleus Camp. As a disciplinary case he forfeited his right to medals, but restoration was recommended in a note on his service record.¹¹⁶

Corporal Roger Cooney, a labourer, was twenty-one-years-old when he enlisted in June 1915. While in France he was wounded in action in July 1916, suffering a gunshot wound to the abdomen, but returned to his unit a month later. In September he was wounded in action again receiving a gunshot wound to his left ankle that caused him to be evacuated to England where he stayed for most of 1917. In August of that year he faced a DCM and was found guilty of using insubordinate language to a superior officer for which he received 78 days' detention. In late January 1918 he was back with his battalion and in April was promoted to lance corporal, in June to temporary corporal and to full corporal on August 29. There is some irony in the fact

¹¹⁵ NAA: A471, 2349, Taplin, R. C., Service No. 3490, 1st Battalion, AIF.

¹¹⁶ NAA: B2455, Besley E A, Service No. 2562, service record.

that Cooney's bravery in 1918 was acknowledged with the awarding of the Military Medal, the gazetting of this occurring while he was in prison. Cooney's bravery and his three weeks as a corporal were barely taken into account as he received a sentence of eight years' penal servitude.¹¹⁷

Milton Hasthorpe, a labourer from New South Wales, was thirty-years-old when he enlisted in July 1915. He was with the 1st Battalion in France by the end of March 1916 and appointed lance corporal in July of that year. Later that year in October he was wounded in action, receiving a gunshot wound to his back. This wound kept him away from his unit until mid February 1917. He became an instructor and was transferred to England for part of 1917. In February 1918 he rejoined his Battalion and was promoted temporary corporal on March 30. Training would keep him away from his unit for several weeks until he rejoined his unit on August 1 with his final promotion to lance sergeant on August 29. Hasthorpe had no disciplinary charges against his name and he received ten years' penal servitude for his part in the mutiny.¹¹⁸

George F. Wethered, a machinist, was twenty-one-years-old when he enlisted in March 1916 and joined his Battalion in France in November that year. He was wounded in action in April 1917 suffering a gunshot wound to his ankle that kept him away from his unit until October 21, 1917. He was appointed lance corporal on March 30, 1918, temporary corporal on June 8 and corporal on July 20. Corps school and an ear infection kept Wethered away from his Unit until September 7. He therefore had two weeks as a practising corporal before having to deal with a walkout of his men. He had a clean disciplinary record and received eight years' penal servitude for his part in the mutiny.¹¹⁹

¹¹⁷ NAA: B2455, Cooney R, Service No. 3563, service record.

¹¹⁸ NAA: B2455, Hasthorpe M, Service No. 3351, service record.

¹¹⁹ NAA: B2455, Wethered G, Service No. 3661, service record.

Lance Corporal C. W. Muir, a labourer, was just over eighteen-years-old when he enlisted in July 1915. In February 1916 he was with the 1st Battalion at Tel-el-Kebir and undertook training as a Lewis machine gunner. His duty in France began in March 1916 and little is recorded of his progress that year. In April 1917 he was wounded in action receiving gun shot wounds to his right calf and left thigh that kept him away from his unit until November 1917. The same month he was promoted to lance corporal. In 1918 he was with his battalion from March 30 onwards having spent some weeks at corporal school. Muir, whose disciplinary record was clean, received five years' penal servitude for taking part in the mutiny.¹²⁰

Lance Corporal Edward Clifford Preston, an orchardist, was almost twenty-five-years-old when he enlisted in January 1916. He joined the battalion in France in November 1916 and was wounded in action in April 1917, suffering gunshot wounds to both thighs. This serious wound kept him away from his unit until late October 1917. Bouts of sickness plus training leave meant he could not rejoin his battalion until March 1918. His promotion to Lance Corporal occurred in May 1918, and like so many of the accused NCOs he had limited experience. He received five years' penal servitude for his part in the mutiny, and apart from a forfeiture of five day's pay there were no other disciplinary charges against him.¹²¹

Lance Corporal David Watkins Humphreys, a miner, was aged twenty-six when he enlisted in July 1915. His first posting was to Tel-el-Kebir, then on to France in March 1916. In July of that year he was wounded in action receiving a gunshot wound to his arm, which kept him away from his unit until January 1917. He was appointed Lance Corporal in November 1917, and married in England in February 1918. He had long spells away from his battalion in 1918 only returning in August. He received the

¹²⁰ NAA: B2455, Muir C W, Service No. 3407, service record.

¹²¹ NAA: B2455, Preston E C, Service No. 3077a, service record.

standard five years' penal servitude for lance corporals for his part in the mutiny and his disciplinary record was clean up to that point.

Lance Corporal James Robert Dawson, a labourer, was twenty-one-years-old when he enlisted in September 1915. He was stationed in Te-el-Kebir in March 1916 before proceeding to France where he was wounded in action (not serious) in August the same year. His promotion to lance corporal was in September 1916, but he spent most of 1917 in England with spells in hospital suffering from trench foot. In 1918, bouts of sickness and recurring trench foot kept him away from his unit for most of the year until late June, severely limiting his experience as an NCO. His disciplinary record shows no previous charges against him, and he was awarded five years for his part in the mutiny.¹²²

Lance Corporal Dudley Neale Steele, a farmer, was twenty-eight-years-old when he enlisted in February 1916. He was in France in late 1916 and was wounded in action in October 1917, suffering gunshot wounds to his left knee and arm, which caused him to be away from his unit until February 1918. His appointment to lance corporal was in June 1918 and like the other lance corporals he received five years' penal servitude for his part in the mutiny.¹²³

¹²² NAA: B2455, Dawson J R, Service No. 4651, service record.

¹²³ NAA: B2455, Steele D N, Service No. 3633, service record.

A p p e n d i x i i

SERVICE RECORDS OF THE CONVICTED NCOS
OF 'C' COMPANY

Temporary Corporal Thomas John Blackwood, a farmer, was almost twenty-one-years-old when he enlisted in October 1916. He joined the Battalion in France in May 1917 and was wounded in action later that year. His wound and bouts of sickness kept him from his unit until January 1918. He was appointed lance corporal in April 1918 and promoted to Temporary Corporal on August 31 just three weeks before the 'walkout' of 1st Battalion men. Blackwood had a clean disciplinary record without a single charge against him. He received eight years' penal servitude, and not the full ten years which was the going rate for convicted corporals.¹²⁴

Lance Corporal Ernest Walker, a tile layer, was twenty-five-years-old when he enlisted in June 1915. He was in France in the spring of 1916 and was wounded in action in November that year suffering a gunshot wound to the neck, which kept him away from his unit for four months. In August 1917 he faced a DCM charged with striking his superior officer and was found guilty and awarded sixty-four days' detention. He was back with his unit in France from November 1917 until March 1918, but hospitalisation at various times resulted in him rejoining his battalion at the end of June. He was appointed lance corporal on August 3, seven weeks before the mutiny. Walker was awarded the Military Medal for gallantry and leadership he displayed on August 23, 1918. Nevertheless, he received the same sentence of five years' penal servitude as many of the other convicted lance corporals.¹²⁵

¹²⁴ NAA: B2455, Blackwood T E, Service No. 6949, service record.

¹²⁵ NAA: B2455, Walker E, Service No. 2928, service record.

Lance Corporal Richard Beggs, a labourer, was twenty-five-years-old when he enlisted in November 1914. He was in Gallipoli in May 1915 before his posting to France, making him one of the longest serving of the convicted men. In May 1915 he was convicted of drunkenness and was awarded twenty-one days' Field Punishment No. 2. He was appointed lance corporal in September 1917 and rejoined his unit in France in February 1918. Beggs was wounded in action in April, suffering a gunshot wound to the back of his right foot which kept him away from his unit until the end of July. He was awarded five years' penal servitude for his part in the mutiny.

Lance Corporal Edward Maitland Porter, a printer, was twenty-one-years-old when he enlisted in August 1915 and spent time in Tel-el-Kebir before proceeding to France. He was promoted to lance corporal on July 7, 1916, and just ten days later was wounded in action receiving gunshot wounds to both arms. He spent several months recovering from this severe injury and afterwards was assigned to postings in England. Eventually, he was able to rejoin his battalion in the field in March 1918. In July he became a victim of the influenza outbreak and was sick for nearly three weeks. On August 2 he was promoted to temporary corporal, only to revert back to lance corporal later that month. Although he had held the rank of lance corporal since mid-1916 he had little time in which to gain experience in that role. He received five years' penal servitude for his part in the mutiny.¹²⁶

Corporal Reginald. H. C. McKay, a tailor, was twenty-two-years-old when he enlisted in September 1915. In February 1916, while in Tel-el-Kebir, he suffered a gunshot wound to his hand from which he quickly recovered. He was appointed lance corporal in France in January 1917, and was wounded in action in July of that year receiving a serious gunshot wound to his face. Recovering from this wound and being re-classified as A3 meant that he was away from his battalion in France until May

¹²⁶ NAA: B2455, Porter E M, Service No. 3801, service record.

1918. In August he was promoted to corporal and was seven weeks in his new position before getting involved in the mutiny. His disciplinary record is free of charges, and despite his short experience as a corporal he received ten years' penal servitude.¹²⁷

Corporal Fred Rowe Smith, a bank clerk, was twenty-one-years-old when he enlisted in March 1916. He had short spells in the field with his battalion in 1917 and was assigned for many months to administrative duties. His movements in 1918 are not clear from his service record but he was appointed corporal August 3, 1918 and rejoined his battalion on August 16. No charges appear on his record except for the eight years' penal servitude he received for taking part in the mutiny. Like so many of the convicted NCOs his experience was limited.¹²⁸

Lance Corporal Leonard William Pettit, a labourer, was nineteen-years-old when he enlisted in August 1915. His appointment to lance corporal came in March 1917, and he was wounded in action in April 1918, receiving a gunshot wound to his right arm. This wound kept him away from his battalion until August 17, just five weeks before the mutiny. He was awarded five years' penal servitude by the Court and there are no other charges against his name.¹²⁹

Temporary Corporal Richard Bardney, a labourer, was almost twenty-one-years-old when he enlisted in October 1916. He was taken on strength with the 1st Battalion in France in May 1917 and was promoted to lance corporal in February 1918. He was away from his Unit from November to April 1918, owing to hospitalisation and leave. He was wounded in action on April 18 and would not return to his unit until July 27. His appointment to temporary corporal came three weeks before the mutiny, and despite his short period at that rank, he was awarded eight years' penal servitude.¹³⁰

¹²⁷ NAA: B2455, McKay R H C, Service No. 3966, service record.

¹²⁸ NAA: B2455, Smith F R, Service No. 6084, service record.

¹²⁹ NAA: B2455, Pettit L W, Service No. 3812, service record.

¹³⁰ NAA: B2455, Bardney R, Service No. 3953, service record.

Appendix iii

SERVICE RECORDS OF THE CONVICTED NCOS
OF 'A' COMPANY

Corporal William Holland Pittock, a carter by trade, was twenty-three-years-old when he enlisted in September 1915. After spending the early part of 1916 in Alexandria he was transferred to France where he was wounded in action in July 1916 (gassed), but was able to rejoin his Battalion two months later. He was promoted lance corporal in May 1917 and was made a full corporal in July 1918. During this year he had only returned to his Battalion in May after spells of training and illness. On August 24 he was posted to 1st Division Guard Duties and rejoined his Battalion on September 7. Like many of the accused NCOs he had a short spell back with his platoon before being involved in a refusal to attack. He was a very inexperienced corporal with no previous convictions against him, but this did not prevent him receiving a sentence of eight years' penal servitude for desertion.¹³¹

Lance Corporal Davis, a labourer, was born in England and was thirty-two-years-old when he enlisted in October 1916. He joined his battalion in France in May 1917 and throughout his service there are no disciplinary charges against him. In March 1918 he rejoined his unit after training and was appointed lance corporal in July. His lack of experience as an NCO was taken into account but still resulted in a sentence of five years' penal servitude.¹³²

Lance Corporal Sydney Francis Carr, a miner, was nineteen-years-old when he enlisted in September 1915. He spent long periods in England during 1916 and in 1917 suffered a fractured hand that restricted his time with his battalion. He was back with

¹³¹ NAA: B2455, Pittock W H, Service No. 4466, service record.

¹³² NAA: B2455 Davis E B, Service No. 6975, service record.

his unit in February 1918 and appointed lance corporal in April. Attendance at Corps School and leave in the UK saw Carr away from his unit until September 7, just two weeks before taking part in the mutiny. His disciplinary record is free of charges except for the five years he received for his part in the mutiny.¹³³

¹³³ NAA: B2455Carr S F, Service No. 3712, service record.

A p p e n d i x i v

SERVICE RECORDS OF NINE OF THE SIGNATORIES TO THE APPEAL

Private (2309) Herbert Rogers Powardy, a twenty-five-year-old horse-driver from Brompton, South Australia, was keen enough to enlist in September 1914. He embarked for overseas a month later but was returned to Australia as a venereal disease case in September 1915. Over a year later, in December 1916, he re-embarked for active service, eventually proceeding to France and joining the 30th Battalion in July 1917. Powardy kept a relatively clean disciplinary record up to him being declared an illegal absentee on August 4, 1918. He was absent until September 9 and at his court-martial on November 5 he was convicted of desertion and received seven years' penal servitude. This sentence was not reduced or suspended, and Powardy was admitted to No. 7 Military Prison on January 30, 1919. For his part in the mutiny in March 1919 he was awarded twelve years' penal servitude. This sentence ran concurrently with his previous award of seven years but was commuted to two years' IHL in August 1919. When he embarked for Australia in October 1919 the unexpired portion of his sentence was remitted under the amnesty. He received treatment for venereal disease while at sea and was eventually discharged services no longer required on December 1, 1919.¹³⁴

Private (6603) Oscar Jansen could justifiably claim that his more serious military offences occurred after the hostilities had ended. He was born in Sweden and was twenty-two-years-old when he enlisted in October 1915, embarking overseas to Alexandria in March 1916. There he picked up a minor charge of leaving his work

¹³⁴ NAA: B2455, Powardy, Herbert Rodger. Due to a typist's error he was originally discharged TPE (Termination of Period of Enlistment), which was amended in February 1921 to SNLR owing to his receiving twelve years PS for his part in the mutiny.

without permission and was fined five days' pay. He proceeded to France in October 1916 and was wounded in action (gassed) in July 1917. His only offence in 1917 occurred in December when he was awarded seven days' Field Punishment No. 2 for 'refusing to give his name when asked to do so'. In May 1918 Jansen was promoted to lance corporal, but reverted to his substantive rank of sapper by order of his commanding officer in July 1918. In September 1918 he was charged with using insubordinate language to a superior officer and sentenced to twenty-eight days' Field Punishment No. 2. Jansen's first court-martial was held in January 1919 and he was charged with 'altering his paybook with intent to defraud'. He was found guilty and sentenced to six months' IHL.¹³⁵ For his part in the mutiny he received nine years' penal servitude, which was subsequently suspended on December 16, 1919. On his release he contracted venereal disease that required seventy-eight days' recovery, thus delaying his departure to Australia until April 1920. Jansen was unlucky in that before his mutiny charge he had no noteworthy offences against him. He was discharged as a disciplinary case (SNLR) and his Returned Service Badge was returned. He automatically forfeited his medals. The army authorities, however, perhaps taking into account his war record, recommended to the Medals Board that they be restored.¹³⁶

Private (4459) Arthur William Nicholls, a motor driver, was twenty-years-old when he enlisted in July 1915. He did not embark for active service until March 1916 joining the 23rd Battalion in Belgium in October 1916. A month later Nicholls was reported as being absent and remained so until his arrest on 27 March, 1917. At his court-martial held in April he was convicted of desertion and awarded ten years' penal servitude, which a month later was commuted to two years' IHL.¹³⁷ Nicholls' sentence was suspended nine months later and he rejoined his battalion on December 23, 1917.

¹³⁵ NAA: B2455, Jansen, Oscar, service record.

¹³⁶ *Ibid.*, see item 10, Précis of Service for the information of the Medal Board.

¹³⁷ NAA: B2455, Nicholls, Arthur William, service record, see item 55 for FGCM.

But on March 16 Nicholls was missing when a roll call was taken at 11.30pm, prior to his unit going into the line. At his court-martial in April 1918 Nicholls was convicted of desertion and given fifteen years' penal servitude. He was awarded eleven years' penal servitude for joining in the mutiny in March 1919 that was commuted to two years' IHL in August 1919. On embarking for Australia in October 1919 the unexpired portion of his sentence was remitted. Nicholls' war came to an end when he was discharged on November 27, 1919. His services were no longer required, and he forfeited any claims to medals and entitlement to war gratuity.¹³⁸

Private (1190) John Wallace, who signed the letter to Prime Minister Hughes, embarked for overseas in October 1915 to join the 9th Light Horse Regiment in Hellowpolis. He was thirty-one-years-old when he enlisted, unmarried, and gave his occupation as a labourer. Wallace had a relatively clean disciplinary record up to 1918, having previously picked up three days' Field Punishment No. 2 for disobeying an order and seven days' Field Punishment No. 2 for an absence of three days. In February 1918 he was charged with 'disobeying the lawful order of a superior office' for which he was awarded fifty-six days' Field Punishment No. 1, which was subsequently reduced to Field Punishment No. 2, with thirty-six days of his sentence remitted.¹³⁹ But on May 31, 1918 Wallace absented himself until he was apprehended on July 17. At his court-martial he was found guilty of absence without leave for which he was awarded two years' IHL. This sentence was not suspended and he went straight to No. 7 Military Prison where he joined in the mutiny and received eleven years' penal servitude. This sentence, like those of his fellow mutineers, was commuted to two years' IHL. The remainder of his sentence was remitted in November 1919 as he embarked for Australia. Wallace's own record, by comparison with the other mutineers, was relatively good up to mid-1918. He was discharged

¹³⁸ Ibid., item 38, particulars of service issued to the Public Service Commissioner.

¹³⁹ NAA: B2455, Wallace, John, service record.

SNLR. on December 13, 1919,¹⁴⁰ and like the other mutineers his sentence was remitted.

Private (2942) Charles Darwin Gregg was twenty-five-years-old when he enlisted in June 1915. He was a labourer, and married with one child. Gregg's disciplinary record is littered with charges for absence and disobedience. He embarked for active service in September 1915 and picked up his first conviction while he was in Cairo, being awarded twenty-one days' detention for being drunk, absent without leave and breaking camp. A further fourteen days' detention was imposed on him in February 1916 'for creating a disturbance, interfering with natives, and being out of bounds'. After embarking for France he joined the 10th Battalion on July 31, 1916. By September 2 he was awarded twenty-eight days' Field Punishment No. 2 for being absent. Immediately after serving this sentence he picked up another twenty-eight days' Field Punishment No. 2 for being drunk and absent again. After serving this sentence he was hospitalised suffering from bronchitis that caused his transfer to England. He was discharged from hospital on January 12, 1917 and given a period of furlough before proceeding to Perham Downs. By March 23 he was awarded seven days' Field Punishment No. 2 for displaying threatening behaviour to an NCO. Just three weeks after completing this sentence he was awarded six days' Field Punishment No. 2 for absence and neglecting to obey an order. Shortly after completing this sentence he was absent again from May 16 until May 28, picking up another twenty days' Field Punishment No. 2. June was spent serving this sentence, but on August 21 he faced a District Court-Martial at Perham Downs, charged with:

That he on 6.5.17 in a document signed by him, made a false statement, by stating that his pay book was lost, while knowing that such was false. (2) An act to the prejudice etc. in that he deposited his pay book with the Station Master at Bournemouth as security for the payment of 9/3 [9s 3d] advanced for Railway fare, which amount has not yet been paid. (3) Using insubordinate language to a superior officer.

¹⁴⁰ Ibid.

Gregg was found guilty on all three charges and was fortunate to receive only eleven days' detention considering his track record. As these crimes were committed in England they attracted less severe sentences than breaches of discipline in France. In October Gregg embarked for France, rejoining his unit on October 21. A month later, on November 27, he was reported as an illegal absentee and was apprehended on December 9. At his court-martial on January 11, 1918 he was charged with this absence and faced a further charge of conduct to the prejudice as he was wearing a sergeant's chevron when he was arrested. He was sentenced to sixty days' Field Punishment No. 2, but how much of this sentence he served is not clear as he was reported absent on February 28, reporting back on March 3. By March 18 he was admitted to hospital sick and transferred to England, being discharged on April 10 to furlough and ordered to report to No. 4 Command Depot on April 24. He absented himself from this date until his apprehension on May 11. For this absence and for being in possession of another soldier's pass he was awarded twenty-eight days' detention. He proceeded to France on June 12, rejoining his unit later that month. But on July 24 he was declared an illegal absentee, only rejoining his unit two months later on September 11. While awaiting trial for this period of absence he absconded from October 10 for two days.¹⁴¹ At his court-martial on November 30 he was charged with desertion for these absences. He was found not guilty of desertion but guilty of being absent without leave and sentenced to six months' IHL. He was transferred to military prison on January 25, 1919. For his part in the mutiny he received ten years' penal servitude, disembarking for England on April 4 under escort. Gregg's war was over on November 6, 1919 when he was discharged SNLR.¹⁴² He had spent precious little time with his unit, sickness accounted for some of it, but his military service was punctuated with absences. Interestingly, he was awarded Field Punishment No. 2 six times, and

¹⁴¹ NAA: B2455, Gregg, C D, service record.

¹⁴² *Ibid.*, see items 53-55, Précis of Service for the information of the Medal Board.

never Field Punishment No. 1. This could have been on health grounds as Gregg was a bronchitis sufferer, and being tied up and exposed to the elements could well have aggravated his bronchial condition. Private (5654) Clarence Leslie Brissenden, a civil servant, was barely eighteen-years-old when he enlisted in March 1916. He embarked for active service in August, joining the 19th Battalion in France on December 18. A day later he was hospitalised with venereal disease and was not discharged to duty until February 25, 1917, his period of treatment lasting seventy days. In September 1917 he was wounded in action receiving a gunshot wound to his left arm that caused his evacuation to hospital in England. He was discharged on October 25, and it was while still in England he was convicted of his first military offence in March 1918 for being absent from February 21 to March 3. He contracted venereal disease during his unauthorised leave that detained him in hospital for thirty-nine days. He was awarded twenty-two days' Field Punishment No. 2 for this absence, and shortly after serving this sentence he was absent again and was declared an illegal absentee. At his District Court-Martial (England) he was convicted of being absent from May 27 until July 5 and received the lenient sentence of the forfeiture of thirty days' pay. He rejoined his battalion in France on August 10, 1918 only to be declared an illegal absentee again by the 23rd. He was arrested on September 24 and faced two charges at his court-martial of being absent from August 25 until September 17, and escaping from confinement. Brissenden was found guilty and given a sentence of two years' IHL that was not suspended. He was transferred to No. 7 Military Prison a month later. Brissenden would be amongst the youngest of the mutineers at twenty-one-years-old but this did not stop the court awarding him ten years' penal servitude. Like the others, his sentence was remitted and he was officially discharged late in December 1919 and forfeited his entitlement to medals.¹⁴³

¹⁴³ NAA: B2455, Brissenden, C L, service record.

Private (4219) Clarence Bunting was nineteen-years-old when he enlisted in the AIF in August 1915, embarking for overseas in March 1916 and joining the 23rd Battalion in France in August of that year. At his first court-martial held on January 5, 1917 Bunting pleaded guilty to being absent from December 28 until January 2, 1917 (114 hours). The court heard that his battalion was moving to the front from Cow Lane on December 27 and that Bunting was present at the time. The following morning at roll call he was reported as missing. Despite Bunting's guilty plea he was given three years' penal servitude, later commuted to two years' IHL. The severity of this sentence was a consequence of his unit moving to the front trenches. He did not serve his full sentence and was discharged from prison in April 1918 with the remainder of his sentence suspended. He was with his unit less than three months when he was reported an illegal absentee in July. He did not return to his unit until November 11, 1918. He was tried on November 18 for deserting from July 20 until November 11, 1918 and awarded four years' penal servitude. From early January 1917 until his discharged on November 12, 1919, apart from his voyage home, Bunting would spend less than three months out of prison.¹⁴⁴ For his part in the mutiny he was awarded a further thirteen years' penal servitude, which was commuted under the amnesty when he embarked for Australia.

Private (5343) Ernest Henry Gay, an engine cleaner, was twenty-three-years-old when he enlisted in April 1916. He joined the 27th Battalion in France in January 1917. By March, Gay was promoted to lance corporal and to corporal by September. Gay did not pick up his first court-martial conviction until May 1918 when he was found guilty of 'unlawfully wounding a comrade'. For this offence he was awarded twelve months' IHL and reverted to private. This sentence was suspended two weeks later. In August he faced a court again, this time charged with desertion, for being

¹⁴⁴ NAA: B2455, Bunting, C, service record.

absent from July 17th to the 23rd, 1918. He was found not guilty of desertion but guilty of absence without leave and given thirty days' Field Punishment No. 2. In this case the awarding of Field Punishment, instead of a custodial sentence, prevented the previously suspended sentence being re-imposed, thus keeping Gay available for duty after his Field Punishment was completed. However, Gay was not available for duty long as a month later he was again charged with desertion for a sixteen-day absence. As before, he was cleared of desertion, but found guilty of absence, and this time awarded twelve months' IHL that could not be suspended because of his previous conviction. Gay had faced three courts martial on serious charges from May to August 1918 that blemished his otherwise good record. In the early part of his service he had shown aptitude and leadership, qualities that were recognised with his promotion to corporal. He was transferred to No. 7 Military Prison and received ten years' penal servitude for taking part in the mutiny, a sentence that was not remitted until January 5, 1920.¹⁴⁵

Private (3202) Percy Arnold Woodbury was nineteen-years-old when he enlisted in June 1916. His trade is listed as farming, which may account for him being posted to the 1st Battalion Pioneers. Woodbury was wounded in action on October 30, 1917, receiving a gunshot wound to his ankle that was diagnosed as 'severe'. He was hospitalised in England and not declared fit for duty until April 1918, rejoining his battalion in France the next month. By August, he was declared 'an illegal absentee' and was arrested later on September 8. He escaped confinement the very next day and was not back with his unit until September 14. At his court-martial, which was delayed until December, he was found not guilty of desertion but guilty of absence without leave and escaping from confinement for which he received twelve months' IHL. He received nine years' penal servitude for taking part in the mutiny, which was later

¹⁴⁵ NAA: B2455, Gay, E H, service record.

remitted under the amnesty and he was discharged on September 19, 1919.¹⁴⁶ Although his previous trial was a month after the Armistice, Woodbury's illegal absence occurred while the war was in progress.

¹⁴⁶ NAA: B2455, Woodbury, Percy Arnold, service record.

A p p e n d i x v

SERVICE RECORDS OF MEN WHO CAUSED TROUBLE
ON BOARD HMT *PORT SYDNEY*

Private (1114) Hugh Leslie Smith, who remained at large when the *Port Sydney* sailed, had previously escaped from confinement. Smith's record is a sad one in that at nearly nineteen-years-old when he enlisted this young man was in trouble from the outset, with his crimes getting progressively worse. He contracted venereal disease while in Alexandria in March 1916 before embarking for France to join the BEF. In less than one month in France he was convicted by court-martial of being absent for one day from June 6, drunkenness, and escaping from confinement, for which he was awarded forty-two days' Field Punishment No. 2, which was later commuted to twenty-eight days. One week after his release he was charged with drunkenness and was severely dealt with, being sentenced to twelve months' IHL¹⁴⁷. This draconian sentence was not commuted or suspended and sent this youngster down the spiral path. After five months serving his sentence he was admitted to hospital suffering from venereal disease. He escaped from hospital on January 21, 1917 and declared an illegal absentee, being re-admitted to prison on February 13, 1917. He was released from prison on July 13 but was declared an illegal absentee on July 21. He was returned to custody on September 9 and was absent nine days later. At his court-martial he was found guilty of absence and sentenced to two years' IHL. This sentence was suspended, which is surprising considering his previous sentences. He returned to his unit and within a month he 'accidentally injured himself' by falling into a shell hole and breaking his leg, which caused him to be evacuated to England. On recovering, and a period of furlough, he lasted only four days with Command Depot at Sutton Veny before absenting himself on December 23 and was apprehended on the 28th. For

¹⁴⁷ NAA: B2455, Smith, H L, service record.

this offence he was awarded twenty-four days' Field Punishment No. 2 but escaped again undergoing this sentence and was given a further ninety days' IHL by a DCM held on February 4, 1918. As soon as he was released he was absent again from April 4 to May 25. He was further charged by a civil power on the May 29 for shop breaking and given a six-month sentence. His court-martial charges for escaping from confinement, attempting to escape from custody, making a false statement, and absence from April 16 to May 20, 1918 had to wait until his release in November from a civilian prison. Smith was found guilty on all these charges and was awarded seven months' detention. But this meant that the previously suspended sentence from October 9, 1917 would be put into execution. In March 1919 he was tried again by a civil power, this time at Westminster Police Court, and found guilty of assaulting a prison officer. He was awarded a further six weeks' IHL to run after his two-year sentence finished. Smith added to his troubles while aboard *Port Sydney*. He faced a DCM at sea and was convicted on two counts of 'violently assaulting another soldier' and stealing money. For these offences he was sentenced to two years' IHL.¹⁴⁸ Whether this last sentence would run concurrently is not clear, but he had good reason to believe that he would be spending the near future in jail and had not much to lose by escaping. His service record shows that his initial discharge was July 21, 1920 (desertion), but this was amended in October to read SNLR.¹⁴⁹ It is not clear when Smith made it back home, but there is no record of any further action taken against him.

Private (3535a) Thomas L. Winstanley embarked for active service in October 1915 and joined the BEF via Alexandria and Marseilles in March 1916. In May, he

¹⁴⁸ Ibid., Précis of Service for the information of the Medal Board, but see references throughout his service record.

¹⁴⁹ Ibid., item 27, letter from Base Records Victoria to Headquarters 3rd Military District asking for clarification on Smith's discharge. On Routine Order No. 84/20 he was discharged on July 21, 1920 (desertion) and on Routine Order 87/20 he was described as being discharged SNLR on July 18, 1920. His discharge on the 'Précis of Service', a much later document, shows he was discharged July 21, 1920 'as a consequence of being illegally absent from 4.11.19'.

suffered a gunshot wound to his shoulder and was evacuated to England to recover. He returned to duty in November 1916 to No. 2 Command Depot in Weymouth. His first offence occurred in March 1917, while still in England, where he faced a DCM charged with: '(1) A.W.L. from 21.12.16 to 2.1.17. (2) Escaping from confinement on 6.1.17 (3) Escaping from custody on 8.1.17 and remaining absent until 16.1.17'.¹⁵⁰ He was found guilty and sentenced to detention for one day and forfeited ninety-eight days' pay. The extraordinary leniency of this sentence is hard to fathom but it may be because the offence took place in England, away from the front, and that Winstanley had previously been wounded, although on his service record there is no indication that he was wounded in action. In April he was awarded fourteen days' Field Punishment No. 2 for breaking out of hospital and being absent for three days. In July he fell foul of the civil authorities and was tried at Dorchester Assizes for felony. He was found guilty and sentenced to three months' IHL. In November he embarked for France and within four days was awarded twenty-eight days' Field Punishment No. 1 for '(1) Being in town without a pass (2) Being improperly dressed.' He spent a few weeks with his battalion before a further absence led to his desertion conviction. Winstanley was convicted of deserting from February 23, 1918 until apprehended on April 9 and was sentenced to penal servitude for life, which was later commuted to two years' IHL. He escaped from No. 10 Military Prison in September 1918 and was at large for seven weeks until apprehended. In December he was admitted to hospital suffering from venereal disease. On the journey home on *Port Sydney* he escaped from confinement in Capetown for a day and was awarded nine months' IHL by a DCM held at sea. It is not clear whether he was apprehended in Fremantle or gave himself

¹⁵⁰ NAA: B2455, Winstanley, Thomas, item 55, Précis of Service for the information of the Medal Board.

up, but he embarked on the *Pakeha* a week after the *Port Sydney* sailed. His services were no longer required and he was discharged at the 4th Military District.¹⁵¹

Private (1799) Henry Nash, who had escaped, but was recaptured on board, was also absent at Capetown, failing to re-embark on the first vessel that had tried to get him home. When he originally embarked for Australia the unexpired portion of his sentence for self-wounding had been remitted. Nash had enlisted in 1915 and joined his battalion in May of that year at Gallipoli. From September through to November he had spent most of the time sick in hospital. He picked up his first court-martial offence when transferred to France in April 1916, being sentenced to sixty days' Field Punishment No. 2 for '(1) drunkenness (2) Insubordinate language (3) and conduct to the prejudice etc.' Nash was involved in the fighting, however, being wounded in action in July 1916, and returning to duty a week later. In September he distinguished himself in battle and was Mentioned in Despatches 'for participation in a very successful raid on the enemy trenches on 30.9.16'.¹⁵² Nash had no further charges until March 1917 when he faced a court-martial for being absent for one week and escaping from confinement. The sentence of three years' IHL, although commuted to two years, seems particularly harsh, although this sentence was suspended a month later. Six weeks after rejoining his unit in the field he was charged with wilfully self-inflicting a gunshot wound to his left forearm for which he was sentenced to fifteen months' IHL. This caused his previously suspended sentence to come into execution.¹⁵³ The guidelines for punishing self-maimers could not be followed in this case, being hampered by the severity of the previous sentence. For his part in the disturbance on board *Port Sydney* he was awarded twenty-eight days' detention.

¹⁵¹ Ibid. In October 1946 Winstanley sought help from The Sailors' & Soldiers' Distress Fund who wrote to the Base Records office for particulars of his service.

¹⁵² NAA: B2455, Nash, Henry, service record.

¹⁵³ Ibid.

Another soldier named in the disturbance onboard was Private (6273) William John Gleeson who had been awarded fifteen years' penal servitude in December 1918 for desertion, a sentence that was later commuted to two years' IHL. Gleeson had picked up his first custodial sentence in May 1918 whilst a patient in a venereal disease hospital. At his trial the court was told that Gleeson, along with Sapper (4091) Hugh Ball and Private (6037) Edward James Betts, were patients in 29th General Hospital undergoing venereal disease treatment. The three were part of a fatigue party that was handed over to the NCO in charge of the laundry, Sergeant E. Tucker. All three were ordered to take off their coats and start working in the laundry. Each man in turn refused. As each had had their money stopped they objected to doing laundry alongside men who were being paid. Sergeant Tucker stated that he waited about twenty minutes for his order to be obeyed before handing the men over to the provost sergeant. Sapper Ball, on behalf of the accused, told the Court that they 'were under the impression that fatigues by Australian soldiers in the Hospital were quite voluntary'.¹⁵⁴ All three were found guilty, and in mitigation each of them claimed to have had clean disciplinary records up to that point. Nevertheless, all were sentenced to eighteen months' IHL. Sapper Ball had no previous convictions and his sentence was suspended a month later.¹⁵⁵ Private Betts had only five days' confinement to his name and his sentence was also suspended. Gleeson's claim of not being in trouble before was not true and he would serve his sentence. He had previously served periods of detention for drunkenness and absence and was also awarded twenty-eight days' Field Punishment No. 1 by his commanding officer for using abusive language to a superior officer.¹⁵⁶ Betts and Ball, whose disciplinary record was clean before the trial, now had quite an unnecessary court-martial conviction against their names.¹⁵⁷

¹⁵⁴ NAA: B2455, Gleeson, W J, items 47-49 deal with the court-martial

¹⁵⁵ NAA: B2455, Ball, H, service record

¹⁵⁶ NAA: B2455, Gleeson, W J, service record.

¹⁵⁷ NAA: B2455, Betts, E J, service record.

Private (5045) Frances James Barker, 13th Battalion was also involved in the disturbances on *Port Sydney*. His chequered military career began when he enlisted in September 1915. He was wounded in action in August 1916 and had remained on duty. Soon afterwards he absented himself from his unit, which was in the front line at the time, from August 29 until September 2, 1916. He was found guilty of desertion and sentenced to twelve years' penal servitude, which was subsequently commuted to two years' IHL.¹⁵⁸ He remained in prison until May 19, 1918, with the remainder of his sentence being suspended, rejoining his unit in June. In July he was wounded in action for the second time receiving multiple shrapnel wounds which kept him away from his unit for two months. Further unlicensed leave offences resulted in detention and forfeiture of pay. In early January 1919 he was sentenced by a court-martial to ninety days' Field Punishment No. 2 for 'conduct to the prejudice' in that he 'bought drinks and cigars from Madame Scaillet and did not pay for same'. This brought into execution his previously suspended sentence. By April 1919 he had added another court-martial conviction that of 'Escaping from escort 2/3/19 . . . and A.W.L. from 24/3/19 to 17/4/19', receiving a sentence of six months' IHL. On October 22, 1919, the day he embarked on the *Port Sydney*, the unexpired portion of his sentence was remitted. For his part in the disturbance onboard a DCM was convened charging him with: 'Striking his superior officer in the execution of his duty, in that he at Fremantle on H.M.T. 'Port Sydney' on 5/11/19 struck with his fist in the face Lieut. L. D. R. Snellgrove, 3rd Div. Engrs, who was endeavouring to quell a disturbance on board'. He received a sentence of two years' IHL but only served nine months of this sentence. Barker's war was finally over when he was released in August 1920.¹⁵⁹

¹⁵⁸ NAA: B2455, Barker, F J, items 15-17, contains the main particulars of Barker's service. He had submitted a request for the re-issue of his RS Badge, which the Adjutant General approved. See items 30, 32 and 35.

¹⁵⁹ *Ibid.*, item 17, on his particulars of service it shows that Barker was discharged from the AIF on December 30, 1919. However, on the same document, in handwriting, it states he was not released until August 10, 1920.

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