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Fear, Weak Legs, and Running Away *A Soldier's Story*

William Ian Miller

Statutes make for appallingly tedious reading unless primitively short and to the point as, for example, this provision in the early Kentish laws of Æthelberht (c. 600): “He who smashes a chin bone [of another] shall pay 20 shillings” or this one from King Alfred (c. 890): “If anyone utters a public slander, and it is proved against him, he shall make no lighter amends than the carving out of his tongue.”¹ Yet on very rare occasion a modern statute can rivet our attention and when it does, it seems to do so by mimicking some of the look and feel of legislation enacted in less lawyer-ridden times. Consider the statute presently codified in the United States Code as part of the Uniform Code of Military Justice:

Misbehavior before the enemy

Any member of the armed forces who before or in the presence of the enemy—

- (1) runs away;
- (2) shamefully abandons, surrenders, or delivers up any command, unit, place, or military property which it is his duty to defend;
- (3) through disobedience, neglect, or intentional misconduct endangers the safety of any such command, unit, place, or military property;
- (4) casts away his arms or ammunition;
- (5) is guilty of cowardly conduct;
- (6) quits his place of duty to plunder or pillage;
- (7) causes false alarms in any command, unit, or place under control of the armed forces;
- (8) willfully fails to do his utmost to encounter, engage, capture, or destroy any enemy troops, combatants, vessels, aircraft, or any other thing, which it is his duty so to encounter, engage, capture, or destroy;

(9) does not afford all practicable relief and assistance to any troops, combatants, vessels or aircraft of the armed forces . . . when engaged in battle; shall be punished by death or such other punishment as a court-martial may direct.²

Making cowardice a capital offense strikes us as a kind of barbaric survival from a rougher age, a time, that is, when few doubted that courage ranked higher than pity or prudence in the scale of virtues. And if many of us today believe that capital punishment cannot be justified even for the sadistic torturer, what a shock to discover that, as an official matter at least, Congress reserves it for the person who cannot kill at all. Not to worry: although the state has the power and right to execute those who misbehave before the enemy, we are too unsure of ourselves, or maybe even too charitable, to enforce the statute maximally. We have done so but once since 1865 when Private Eddie Slovik was executed by firing squad “pour encourager les autres” in the bleak Hürtigen Forest of 1945.³ Still, even if only by inertia, we have preserved the option.

Quite independent of the grimness of its sanctions, the statute prompts our attention because of its strangely absurdist quality. Most of its provisions seem merely to restate one another. What, for instance, is running away (1) that isn’t also cowardly conduct (5)? And aren’t paragraphs 2 and 8, the one covering the shamefulness of cowardice on defense, the other governing slacking off on offense, really special cases of cowardly conduct punished in 5? Paragraph 7 goes so far as to make jitteriness a capital offense to the extent one’s nerves lead one to overinterpret causes for alarm, while paragraph 3, in contrast, authorizes putting the sleeping sentry before the firing squad apparently because he is not jittery enough even to stay awake.

There is also the statute’s strange relation with fear. All law must pay homage to fear, for if the law does not succeed in nurturing the passions that will make it self-enforcing, such as a sense of duty or a special reverence for the law as law, it must have recourse to fear, the passion that underwrites all coercive law—fear of punishment or the fear of the shame of being execrated as a lawbreaker. But this statute places fear at its substantive core, for it is fear-impelled action that it mostly seeks to regulate.

Only paragraph 6—the stricture against looting—cares nothing about fear, not even the fear that you and your raping and pillaging comrades inspire in the enemies’ civilian population as you quit your proper place to plunder. Like the other provisions, the antilooting provision is devoted to maintaining the delicate balance of forces that keep armies behaving as

armies rather than as crowds. At times that balance is as susceptible to being undone by routing the enemy as by being routed by him. Success can be as disordering as failure.⁴ The initial success of the German offensive on the western front in 1918 was stopped as much by the German soldiers stumbling upon stores of wine and cognac as by Allied resistance. But the weight of these strictures shows that loss of discipline and order bred by greed, cruelty, lust, and other manifestations of exultant riot is of significantly less concern than the loss of discipline bred by fear, slackness, and failure of nerve. Narrow self-interest in the exuberantly acquisitive style of the looter is just not as worrisome to an army as narrow self-interest in the life-preserving style of the coward. Fearfulness, not lust or gluttony, count as a soldier's first sin.

There lurk in this strange statute various attempts at a theory of the moral and legal economy of courage, cowardice, duty, and fear in the context of the demands a polity, in this case the American polity, makes upon its combat soldiers. The exposition that follows, structured mostly as a gloss on the various provisions of the statute, seeks to reveal the features of that economy.

Running Away

Isn't running away, punished in paragraph 1, running like hell for the rear, precisely how we quintessentialize cowardice (punished in paragraph 5), just as casting away arms (punished in paragraph 4) so you could run away faster was how Plato and Aristotle quintessentialized it?⁵ In fact, the very vividness of the image of running away has led some defendants to prefer being charged with the vaguer and more abstract cowardice under paragraph 5, considering it less prejudicial than an accusation of running away.⁶ But statutory provisions that to the normal eye look duplicative will inspire interpreters to invent differentiating glosses, just as language itself, though needing all kinds of structural and particular redundancies, never quite allows a perfect synonym. So paragraph 5—cowardice—was read to require a showing of fear as a necessary element of the offense.⁷ Cowardice had to be motivated by fear or it was not cowardice, but running away, it was decided, did not need to be so motivated. This strikes normal people, non-lawyers, that is, as somewhat perverse. Why else would anyone flee battle, run away, if not in panic, terror, or out of simpler fears of death and mayhem?

The military judges are often at a loss to give running away a meaning that can distinguish it from cowardice. One military court, which then became the final word on the subject, made this desperate attempt:

This term [runs away] must connote some form of fleeing from an ensuing or impending battle. . . . [I]t appears that to limit the phrase to flight from fear or cowardice is too restricted. It would appear to be more in keeping with the offense, if an intent to avoid combat, with its attending hazards and dangers is considered as an essential part of running away.⁸

Running away is made a catchall for whatever motives other than fear might impel turning tail in battle. And what might these motives be? One could, I suppose, run away out of treachery, or out of love, or out of the most calculating thin-lipped prudence.⁹ But the narrative suggested by each one of these motives seems incomplete without complementing them with fear. The most psychologically plausible motive for running away that dispenses with fear is fleeing in disgust, sick at being stuck in a situation where so much is asked of you and so little given you in return; not fear, but the feeling of being ripped off, revolted by unfairness and injustice. But one does not “run away” in this setting; the image is wrong, even the notion of “fleeing” misrepresents the insolence, even the fearlessness, with which one walks, sullenly saunters, or shuffles but manifestly does not run away, while muttering “f-k this.”

But the court doesn’t offer us a picture of sullen withdrawal. Still desperate, it turns to Winthrop’s Military Law and Precedents, where Winthrop too evinces bafflement, and in good legal form provides authority for his bafflement by citing an older writer who was discussing something not precisely on point:

RUNNING AWAY. This is merely a form of misbehavior before the enemy, and the words “runs away” might well be omitted from the Article as surplusage. Barker, an old writer cited by Samuel, says of this offense:—“But here it is to be noted that of fleeing there be two sorts; the one proceeding of a sudden and unlooked for terror, which is least blameable; the other is voluntary, and, as it were, a determinate intention to give place unto the enemy—a fault exceeding foule and not excusable.”¹⁰

The court citing Winthrop citing Samuel citing Barker¹¹ hopes for some clarification in Barker’s distinguishing between two types of fleeing, one in panic, which is excused as being so suddenly induced as to be largely involuntary,¹² whereas running away is calculated treachery, self-serving, and, by one view, a manifestation of narrowly construed interested prudence.

Panic, one suspects, is treated more generously because it is impractical to do otherwise. It usually involves large numbers in headlong flight and however harmful its consequences, it hardly makes sense to hand over the entire army to a firing squad. Barker's distinction between exceeding foute voluntary flight and less voluntary panicked flight follows immediately upon his discussion of Roman decimation. His association of ideas suggests that decimation might be suitable for generalized panic-propelled fleeing, but that fully individualized punishment, rated at 1.0 probability rather than at the 0.1 discounted group rate, be meted out to the voluntary calculator of his own immediate best interests.

No wonder prudence is such a suspect virtue in the extreme setting of combat, for in battle the prudence that qualifies as a virtue is not the prudence of each individual figuring out the wisest course for himself to pursue but the prudence of strategy and tactic at the level of the group. And what is prudence for the group often demands that the individuals that compose the group forgo more personalized prudence and opt instead for duty, heroism, honor, and glory, which provide them some kind of moral compensation for having the misfortune of being sacrificed for the greater good. Individualized prudence, we suspect, is too easily used to provide a serviceable gloss for cowardice. Cowardice, however, is not only about panic and no cases suggest that it is, the use to which Barker was put to notwithstanding.

A prosecution brought under paragraph 5, cowardly conduct, must show, as noted, that the conduct was motivated by fear. This is one of the few areas in the law where the decision maker is asked actually to find that the person was motivated by a particular passion, not just to find that the person was in the sway of some generalized powerful passion. How do we recognize that another was moved by fear? Do certain bodily clues give him away? Was he pale, did he tremble, sweat, shed tears, urinate or defecate in his pants? Few somatic indicators—facial expressions, blanchings, flushings, shakings—are unique to fear. We sweat from heat, shed tears in joy, grief, and merely from the cold. The most lethal saga hero of ancient Iceland grew pale in anger, not in fear. Montaigne observes that both “extreme cowardice and extreme bravery disturb the stomach and are laxative. The nickname ‘The Trembler’ given to King Sancho XII [he means actually his son Garcia V] of Navarre serves as a reminder that boldness can make your limbs shake just as much as fear.”¹³ Dysentery can cause us to befoul ourselves. And the fear of getting caught with one's pants down often leads the soldier, at least in the trenches of World War I, to become desperately con-

stipated.¹⁴ Fear does have a distinctive facial expression, but we can be in fear's desperate grip without looking like we are. Not only can the expression be suppressed when one is scared, but it can be faked when one is not scared.

This is not earth-shattering news. State of mind always ends up being inferred either by legal convention or by supplying the social knowledge necessary to make sense of whatever act or omission whose motivation we are searching for. If he trembles and runs away, or cries while curled up in a fetal position and hence cannot advance, then we judge that behavior to be a consequence of fear. And what about the specific feeling that we usually recognize to be fear? Do all fears have the same feeling? It is not clear that they do. Can we properly describe someone as motivated by fear if he runs away from obvious danger as if he were afraid, but who claims to have felt no inner surge, no grip in the gut, no sensation, that is, that most of us recognize as an accompanier of fear if not fear itself?

Gentle Offense versus Craven Defense

Fear has been read in as an element only in the specific charge of cowardice in paragraph 5. But it is also the psychological and social Eminence grise in other provisions. Paragraph 2 deals with the shameful abandonment or surrender of men, a position, or material; paragraph 8 deals with the willful failure to do one's utmost to encounter the enemy. Paragraph 8 can be seen as the failure to give cause to the enemy to violate their version of paragraph 2; that is, the most desired outcome of your aggressive moves is to cause the enemy to abandon shamefully what is its duty to defend. The "shamefully" explicitly makes this a moral issue, as well as a legal one. And that is quite fitting, for the goal of battle, as John Keegan has noted, is to bring about the moral collapse of your opponent, for battle is in the end always something of a moral contest, a matter of matching how character confronts demands of duty to perform dangerous action in the face of overwhelming desires to flee or quit, in the face of the instinct of self-preservation itself.¹⁵

Keegan's moral contest is bounded so as to make no distinction between the different moral and psychological claims made on the defender and the attacker. For him, this contest of character is, with due allowances for heroic failure, a matter of who, to borrow an image from Anglo-Saxon verse, controls the slaughter-place at the end of the day. Our statute, however, makes

such a distinction. Paragraph 2 involves the kind of mettle needed to defend properly, paragraph 8 the kind needed to offend or attack. And although we understand failures under each provision to involve cowardice, it is not clear that these cowardices carry the same moral weight or are understood in quite the same way.

Courage on defense seems to demand a different mix of virtues and talents than courage on offense, and it may be that cowardice also varies with the different styles of courage demanded. We can, I think, imagine someone who is perfectly courageous when attacked, who will not flee, who will even die before abandoning the fight, who at the same time does not have the ability to initiate violence, who, if not quite a mass of quivering jelly, may tend to find too many reasons, with all the trappings of an admirable prudence, as to why it would not be in anyone's best interests to go over the top: a slacker. A person constituted like this would not strike us as a psychological impossibility. In fact U. S. Grant complained that such was exactly the problem with one of his generals—G. K. Warren: Warren was able to see “every danger at a glance,” too many dangers apparently, and he delayed moving until he had made exacting preparations for each of them with the result that he never got to his appointed place in time to coordinate with others. But still “there was no officer more capable, nor one more prompt in acting, than Warren when the enemy forced him to it” (emphasis supplied).¹⁶ Nor is the obverse unimaginable: someone brave in the attack but cowardly in defense. Some have suggested that this describes Mike Tyson's moral failure in his fights with Evander Holyfield, who, when his offensive ominous aggressiveness failed to cow the opponent, either folded sullenly or folded violently, but in such a way that announced he was quitting the field. Aristotle may have had such a type in mind in his rather implausible portrait of the rash man, who turns cowardly the moment he experiences any real resistance.¹⁷

Let me turn now to another matter. Consider this remarkable account from Abner Small, a Union officer, recalling the battle at Fredericksburg:

I wondered then, and I wonder now equally, at the mystery of bravery. It seemed to me, as I saw men facing death at Fredericksburg, that they were heroes or cowards in spite of themselves. In the charge I saw one soldier falter repeatedly, bowing as if before a hurricane. He would gather himself together, gain his place in the ranks, and again drop behind. Once or twice he fell to his knees, and at last he sank to the ground, still gripping his musket and bowing his head. I lifted him to his feet and said, “Coward!” It was cruel, it was wicked; but I failed to notice his almost agonized effort to command

himself. I repeated the bitter word, "Coward!" His pale, distorted face flamed. He flung at me, "You lie!" Yet he didn't move; he couldn't; his legs would not obey him. I left him there in the mud. Soon after the battle he came to me with tears in his eyes and said, "Adjutant, pardon me, I couldn't go on; but I'm not a coward." Pardon him! I asked his forgiveness.¹⁸

Grand stuff this: the penitent self-understanding and the moral courage of the author, an officer, to beg forgiveness of one of his men. In another register this is an account of weak legs and the moral ambiguity of such cases. The spirit was willing, but the flesh was weak. The soldier's body just would not respond to the total dedication of his will to do the right thing, to go forward. If we decide the legs are blameworthy, but not the will, we, like Mr. Small, will be inclined to beg pardon of the soldier for calling him "Coward"; if we blame the will for not being able to overcome the fear that has turned his legs to jelly, then we too might call him "Coward."

By one account the soldier's body was completely overborne by fear, but his own perception was of having all the right feelings, the right motives, with his fear subdued or overcome if felt at all, only to be betrayed by a body that was an enemy to his good name, a rebel to his will. If we are likely to see him as fearful without the consciousness of his own fearfulness, he, instead, sees himself as fearless with a body mocking him by producing unmotivated fear symptoms. So he disowns his legs. How, though, are we to understand his weak legs?¹⁹ Without a convincing account of mind and body, emotion and body, we do not know how to apportion blame as between body and soul. And we are not confident of how to make the call. Is this a peculiarly male form of hysteria? Do weak legs support a theory of unconscious emotions, or at least of unconscious fear?²⁰ Or are we talking about a much more primitive central nervous system ur-emotion? Do we see instead a conscious refusal of the soldier to recognize his true emotional state, whether we understand the refusal's mechanism to work by means of classic forms of self-deception or wishful thinking or by a process more akin to repression? And how do such tricks of consciousness fit in with William James's scheme in which the consciousness of one's emotional state is the awareness of changes in one's somatic state, that is, we are afraid because we tremble and our legs give way, rather than that we tremble and suffer weak legs because we are afraid? What if the refusal to admit fear is simply a refusal to take note of our body at all? Are we then fearing? Or fearing fear? Or simply falling apart at the seams? But then might not the soldier know he fears but what he means to indicate is that he does not ratify his fear; he means to move on in spite of it and is desperately ashamed that an undesired desire for safety is causing

his body to defeat his desired desire to move forward? He does not, after all, will the various appraisals and beliefs that constitute fear; he need only look and listen and know where he is and what he is up to to have a more than reasonable serious apprehension for his safety.

Mr. Small's own psychological theory varies with the exigencies of the setting and no doubt ours would too. In the heat of battle Small was not as willing to be generously disposed toward the shaken soldier as he was upon reflection afterward and upon the soldier's poignant showing of his lack of shamelessness. Not only does the soldier shed tears of frustration, contrition, and shame, but he also responds to his officer's accusation as a man of honor would: he gives Small the lie, exactly the traditional manly challenge to a duel upon an accusation of cowardice. The poor man means well in the aftermath and our own and Small's lack of certainty as to the psychological and physiological components of weak legs make us incline toward lenity and thus believe he meant well on the field of battle too. And the statute follows Small and us in a small way.

If cowardice on offense runs into the moral and legal uncertainty of how to treat a case of weak legs, it at least gives us a hint that it was precisely this kind of case the statute had in its allegorical mind. Hence the demand of willful failure, not shameful failure, as in paragraph 2. The weak-legged attacker is given some small concession. He must will his legs' weakness to be culpable and so it seems our soldier may well be spared the firing squad. Nonetheless, cases of unwilling weak legs might still be shameful, as indeed our soldier desperately feared. Shame, unlike guilt, is felt not only for our voluntary failures but for what we happen to be, as the infirm, ugly, old, black, Jew, or weak-legged soldier can often attest. If he just can't help his weak legs, he may still be in the martial world a coward, but in the more nuanced judgment of one Civil War soldier, "a good coward," one at least who showed up for every battle and looked for no excuses to absent himself from it ahead of time.²¹

Cowardice on defense seems more craven than cowardice on offense. Our image is of begging not to be killed, turning tail and running, or simply despairing and not just not fighting, as on offense, but not fighting back. Failure under each provision, paragraph 2 or 8, is cowardly, and hence shameful, but only one offender, the miscreant defender, is branded shameful. Why the difference? There are several possible reasons. One involves the different stakes between losing as a defender and not measuring up as an aggressor. In the paradigm case we understand that the failure to defend means losing all; whereas the weakness on offense means you go home with your tail be-

tween your legs. But there is a home to return to. We are all expected to defend what is ours, our property and our loved ones. Consider too the almost ridiculous obviousness of this statement: the moral demand to defend to the utmost is greater than the moral demand to attack or aggress to the utmost. Even in aggressive honor-based cultures that is true. However fearful you are, you must defend, but no one expects everyone to volunteer to be the forlorn hope, the first through the breach in the wall. And as a psychological matter, we tend to find losses of what is already ours much more grievous than failures to acquire an equivalent amount of what is not ours.

The defender doesn't have the same kinds of choices the aggressor has or as many, for the latter is the moving party. It is aggressors who get to choose the timing, and even to determine that the battle will be on your turf rather than mine. The defender has no choice but to resist, even though he has some choices about how to carry this out: sometimes he must fight pitched battles, but other options are available, as long as they are understood to be forms of resistance. The Russians, for instance, have let the vastness of their land defeat its invaders until it was safe to assume an offensive posture; others have worn their attackers down with pesky gnatlike resistance, as Fabius did to Hannibal. But we should also note that Fabius had to muster great reserves of moral courage to persevere in the face of being thought cowardly by his countrymen for not engaging more aggressively.²² Gnatlike resistance, though effective in the end, may in certain warrior cultures not look "manly" enough to preempt accusations of poltroonery. The prudent warrior must always endure suspect glances and innuendoes about his fearfulness and lack of nerve. The statute may capture some little bit of that mistrust of the good faith of justifications for retreat and surrender, holding the defender of hearth and home to a higher moral standard than the weak-legged attacker. The paradigm we see embedded in the statute—of invading aggressor versus the defenders of the homeland—grants the attacker other options; it even allows him to plead weak legs from time to time, but the defenders' legs must stand firm. And maybe too we seem to feel that we have more right to ask legs to stand still than to move forward, by which ruse we simply restate the differing moral stakes in not defending as opposed to not offending.

Throwing Away One's Weapons

The prescription against casting aside one's arms has a rich and long tradition. It is a triumph of a certain dunderheaded literalism that often charac-

terizes law and the legal imagination that this provision, paragraph 4, wouldn't be understood to be implicit in paragraphs 1 (running away), 2 (shameful abandonment of a position), or 5 (cowardice), but especially 1. Running away, except as perversely understood by the military courts, and casting away one's weapons, as I noted earlier, are both meant to capture the quintessence of martial cowardice: headlong panicked, *sauve-qui-peut* flight:

Well, what if some barbaric Thracian glories
in the perfect shield I left under a bush?
I was sorry to leave it—but I saved my skin.
Does it matter? O hell, I'll buy a better one.²³

The comic energy of Archilochus's little song is parasitical on the power of the norms he so gleefully confesses to violating. The wit of such self-mockery, at such brazen shamelessness, is possible only because the norm against running away and debarrassing oneself of one's burdensome weapons demands some kind of psychic homage even when not adhered to.²⁴ But there is another kind of heroic inversion that takes place here. To be this cheerfully a coward in a warrior culture may itself mimic courage: such unapologetic shamelessness requires a certain kind of fearlessness, as Aristotle recognized.²⁵ This is the fearlessness that informs what we might vulgarly call the "I-don't-give-a-shit-what-they-think" attitude in matters touching upon reputation, an attitude as unfathomable to most of us as is the berserk courage of the kind that we associate with Alexander the Great. In keeping with his perversely inverted courage Archilochus refuses even to allege fear as the reason for casting away his weapons. It is all a matter of rational choice. His weapons, as he observes, are completely replaceable, something that he is quite pleased to believe is not the case with himself. And although Archilochus knows he will have to fight again (that is one of the risks that running away does not completely resolve unless he is capitally punished for it), there is not the least hint he will do better next time.

Archilochus's wit also reveals that virtue funds a powerful comedic impulse dedicated to deflating virtue's own pretentiousness and goody-two-shoes piety. Archilochus's comedy celebrates a life-affirming world of very unrigorous virtue, what somber professors of virtue might even call vice. Life-affirming affability, as unrigorous a virtue as we might find, is not a trait we think of as likely to describe the hero as it does the amiable hedonist, who means well and even does well as long as life or limb are not at stake, who prefers to keep fear safely relegated to worries about whether the

sauce is sufficiently piquant to satisfy his guest's palate. Yet unlike the other cardinal and theological virtues, courage thrives in certain restricted comedic veins. It is not just the butt of the comedic; in some cultural settings the heroic style means to be funny with the nasty in-your-face mordancy of gallows humor. Here the mockery is not directed against the virtue of courage at all but against all arguments that would undermine it, such as life itself.

With Archilochus compare the keen comedic eye of this Confederate soldier running away to beat hell at Sharpsburg:

Oh, how I ran! Or tried to run through the high corn, for my heavy belt and cartridge box and musket kept me back to half my speed. I was afraid of being struck in the back, and I frequently turned half around in running, so as to avoid if possible so disgraceful a wound. It never entered my head to throw away gun or cartridge box; but, encumbered as I was, I endeavored to keep pace with my captain, who with his long legs and unencumbered would in a little while have far outstripped me but that he frequently turned towards the enemy, and, running backwards, managed not to come out ahead in this our anything but creditable race.²⁶

John Dooley, our soldier, runs his anything but creditable race desperately aware of the comedy of trying to maintain the appearance of honor in headlong retreat: don't get shot in the back if you can help it and don't throw away your arms, although you realize that they have less than zero value to you now, pure dead weight. Dooley is a wit after a fashion. He is not unaware of a kind of double competition with his captain, one to see who can get away the fastest and the other to see who can get away the slowest. He envies his captain's benefits of rank: no pack, they are in a wagon somewhere, and no rifle. By this time the weapons of officers are becoming symbolic indicia of rank, like the pistols, whistles, and walking stick of the British officers who led their men into no-man's-land in the Great War. The ambivalence in the account and in the action itself gives the comedy multiple layers.

The heroic ideal of standing your ground at all costs turns out to give way before fear and not an altogether irrational fear, though as in Archilochus the fear is not mentioned directly but supplied by the comic action. Both John Dooley and his captain are still giving respect to the norms they are not quite living up to by adhering to some of their forms: John will not throw away his gun or ammunition, though he is sorely tempted, and both he and his captain engage in the comedy of trying to prevent the ignominy of being shot in the back by running backwards every

now and then. Comedy, we see, can be called to the rescue of heroic, even if it must mock it rather roundly while saving appearances.

It is the comic voice with its almost self-delighting self-mockery that indicates this is not culpable cowardice. The comedy is probably the surest sign that Dooley and Archilochus are not alone in flight. The whole army is in what might be generously called a retreat, a rather indecorous one at that. This is a pure case of running away to live to fight another day as long, that is, as they do not throw their weapons away. Dooley's attempts to maintain the forms of honor indicate quite well that he means to be back. Even Archilochus means to return with his new shield, but by throwing his old one away he committed an offense that Dooley may have wanted to commit, but his implicit contest with his captain to see who could minimize their mutual dishonor kept him honest. Archilochus, however, does more than just disarm himself, he arms the opposition.

From the military's point of view casting aside arms is a very serious matter. It renders the soldier useless; it arms the opposition, and in societies in which the work and material that was congealed into the weapon represented the most valuable objects in the culture, throwing away weapons was culpable waste, even sacrilege. But nonmilitary moralists take a kindlier view: Aquinas was willing to find the soldier who cast away his shield less sinful than the licentious man, because "grave fear and sorrow especially in dangers of death, stun the human mind, but not so pleasure which is the motive of intemperance."²⁷ But Thomas might also be underestimating the deliberative capacity of the weapon dropper. Dooley deliberately refrained from casting his aside; others might deliberately do so, for they might reason that an unarmed man might look like a noncombatant and thus fade by degrees into a general population.²⁸

False Alarms

Paragraph 7 punishes capitally the person who causes false alarms and it must be seen as the companion of paragraph 3, which punishes the person who "through disobedience [or] neglect endangers the safety of command, unit, [or] place." One provision sets limits on jitteriness, the hyperalertness and excessive imagination that if not quite inventing danger overrates its imminence; the other seeks to limit the lack of jitteriness, the lack of imagination or insensibility that lets the sentry fall asleep on his watch. Falling asleep on the watch is a strict liability offense. It does not matter that you

didn't mean to. And the same is the case for causing false alarms. There are no requirements in the provision that one causes them knowingly or intentionally, and no cases have read them in.²⁹ It is not only the prankster who set off the fire alarms in junior high (though he too) that the law can put before the firing squad but the nervous wreck, the poor, high-strung, anxious soul who suffers from being too alert to the prospect of danger and has not managed to develop the cool or the expertise that distinguishes between the general danger of being in the presence of the enemy from the particular imminent danger that requires immediate and total mobilization. This poor soul does not feel the difference between the state of daily alertness to the possibility of alarm on the one hand and being alarmed on the other, between normal vigilance and the sense that something indeed is up. For we suspect that this is an imaginative soul and much too sensitive. Risk to him is not a probabilistic assessment but certain danger. His lot is constant insomnia and nausea.

My false alarmist, however, may also be the very man who is asleep at his post. Given that for him there is no distinguishing between the various levels of danger or its imminence, sleep, never easy to achieve under the best of circumstances, might just as well come at one anxiety-ridden time as another.³⁰ But we usually think of the sleeping sentry as utterly opposed to the false alarmist, as a study in insensibility, an anxietyless person for whom sleep has always been easy. And it is for this reason alone that he is simultaneously an object of the nervous insomniac's envy and his contempt.

The sleeping sentry and false alarmist contrast in other ways. As a purely Darwinian matter, the species needs an alarm system that engenders some false positives or it wouldn't be sensitive enough. A system that gave no false positives would have left us all in the viscera of our predators or slaves of our more sensitive enemies. But an alarm system too responsive would, as Goffman noted, have us spending all our time in dither and not in grazing, digesting, sleeping, playing, or whatever we need to do to survive.³¹ This is why we divide the labor; the sentry is to be vigilant so that the rest can sleep. We want our sentry to be experienced and cool but not insensitive or dull. We need him alert or, if not alert, alertable by all those signs that, if we lived in a movie, would be accompanied by ominous music.

The false alarmist and sleeping sentry impose costs in different ways. The false alarmist runs up the bill each time he occasions a false alarm. To the obvious costs of wasted energy spent mobilizing, the physiological costs of misused adrenaline, mis-summoned fear, and loss of sleep should be added the disclosure of one's positions to the enemy by the mobilization or merely

by the panicked firing into the threatening night. But the greatest cost is that false alarms lead to mistrusting the next true alarm. And although we may recoup some of these costs by the disbelief of future false alarms, that would be a penny-wise and pound-foolish accounting, for the alarm would not be disbelieved because false but disbelieved because of the belief that all alarms are more likely to be false than true. Such a belief leaves one effectively without a functioning alarm system. The jittery false alarmist, after all, does not mean to be false and in other settings his sensitivity may be a most valuable asset. True, its value suffers serious diminution if he is not right most of the time. And if he were right most of the time, we would consider him a man of experience and discernment, not a jittery pathetic wreck whom we can imagine putting up before the firing squad.

If the false alarmist imposes serious costs each time he blows it, that is not the case with the sleeping sentry. His sleep imposes harm if the attack occurs on his watch, otherwise his sleep, though negligent or even reckless, yields no great harm. But not quite. If others suspect he is asleep, or know he is asleep then they must increase their vigilance to compensate. Their anxiety levels rise and they begin to expend energy in dither that could have better been spent relaxing. The sentry functions in the way catastrophe insurance functions. Most days go by without our having gained much for carrying such insurance except the ease of mind having it confers. The sentry provides such insurance. He is meant to allow others to rest secure in the belief that his eyes and ears are just as serviceable at the moment as theirs would be.

To the extent that insensibility produces fearlessness, it may be very useful in the midst of combat either on attack or in defense. But in the myriad of soldiers' memoirs I have been plowing through fear is not the only psychically and morally destructive emotion that threatens soldierliness. Fear dominates in battle or in immediate anticipation of it, but soldiers do more than fight. They also stand and wait. Boredom defeats almost as many soldiers as fear. If fear defeats our false alarmist, boredom defeats our sleeping sentry, so bored he cannot generate the imagination to fear the consequences of his boredom.

Omnipotent Fear

The man of reasonable firmness who gives way to his fear has the basis for a successful claim of duress in the criminal law, but in the military the

man of reasonable firmness can never give into his fear unless a substantial number of others give in at the same time. If he is the only one or one of few who give way, we judge him to be of insufficient firmness. In cases of common duress the defendant is measured against a norm whose constraint on actual behavior can be hypothesized only by figuring what that hardly heroic “reasonable man” would do under like circumstances. But in war the norm is situated concretely: we know whether most hold firm or most don’t. If most don’t hold firm, they are all pretty much off the hook, for we do not, in the Roman style, cast lots and decimate the battalion.³²

No one, however, doubts that soldiers are afraid.³³ There have been through time different views as to whether it was acceptable for them to admit openly that they were, but fear was clearly always a gloomy and tormenting omnipresence. Those few who qualify as genuine berserks aside, the dominant passion in battle, the one each party expects its comrades and its opponents to be intimately involved with, is fear. We might see all heroic literature as a desperate attempt to keep it at bay. One pays homage to it by working hard to deny it in oneself and to insult one’s opponent with it. Agamemnon has images of Terror and Panic painted on the sides of his shield.³⁴ Before the battle of Gaugamala, Alexander sacrificed to Fear. Beowulf drinks and boasts the night before seeking out Grendel to raise the moral stakes of failure. Even Achilles, if not quite fearful, doesn’t dare fight without armor as some of the Norse berserks would do. And Alexander again, who was surely a berserk in combat and feared no one in the host arrayed opposite him, nor the whole host for that matter, was still rather paranoid at times about suspected plots against his life from within his own ranks. (There is an interesting idea to pursue here: the different issues raised for the demands on our courage by our fear of enemies as opposed to our fear of friends. And this would hardly be solved by the fiat of declaring that our friends are those whom we do not fear.)

Commanders have always assumed the fearfulness of their soldiers. The subtlest observer of all, Thucydides, noticed the tendency of battle lines to extend by degrees to the right so that each army slowly flanked its opponent’s left as it too moved to its right:

This is because fear makes every man want to do his best to find protection for his unarmed side in the shield of the man next to him on the right, thinking that the more closely shields are locked together, the safer he will be.³⁵

Exhortation speeches try to counter fear and reluctance with other passions: revenge, perhaps, anger, confidence, bloodlust, and often, in extremis, desperation. But no commander trusted to mere words. The Persians whipped their men to battle; many a general used his cavalry to deter his fleeing troops more than to engage the enemy. One military theoretician, Raimondo Montecuccoli, a general on the Imperial side in the Thirty Years War, spent the bulk of his treatise on how to prevent the natural cowardice of one's own troops from taking hold to give enough time for the natural cowardice of the troops on the other side to assert itself. He lists some of the devices one may use to keep one's men on the field: let the enemy cut off lines of retreat, forbid the inhabitants of nearby friendly cities from admitting any of the troops, dig trenches behind your troops, burn bridges and ships, delegate certain men to shoot retreating soldiers.³⁶ When arraying the troops and forming their lines, Raimondo advises embedding the cowards in the middle of the ranks behind the valorous ones whom they can follow at less risk to themselves and hemmed in by the ranks behind them so that their escape routes are clogged.³⁷

One can also combat fear by instilling confidence, he notes. Nor does it matter that that confidence is ultimately indistinguishable from those crude self-deceptions that actually on occasion do succeed in bootstrapping us into performing better than we have any right to expect. "One may conceal or change the name of the enemy general if he happens to have a great reputation." Confidence can also be acquired by the indirection of stimulating contempt for the enemy by presenting naked prisoners to the soldier. Once they have viewed the captives' fragile, flabby, filthy, diseased, and infirm legs, as well as their hardly valiant arms, then men will have no reason to be afraid, for they will have had the chance to see the kind of people with whom they must fight—namely, pusillanimous, humble, and tearful individuals.³⁸

While cowards like me and a good portion of my readers may find in this display additional reason to desert or flee rather than fight to the death, Raimondo thinks otherwise:

Indeed, the troops may come to fear the state of bondage themselves once they have perceived the wretched fate of such afflicted, shackled, castigated, and emaciated persons, and they may conclude that it will be better to fall in battle rather than, dragging on their lives unhappily, necessarily experience such contumely and calamity.³⁹

Our statute joins Raimondo in adding to these in *terrorem* motivational exercises. As we have seen, the statute authorizes the killing of cowards,

slackers, craven defenders, jittery false alarmists, and supposes to dissuade behaviors such as theirs by taking from them exactly what they sought to save: their lives. The statute testifies to the power of fear as a motivator: make them fear the court-martial as much as they fear the enemy. This is probably not the wisest strategy since it gives the soldier no reason, once the crunch is on, to prefer one outcome to the other; and it loses all its force should he fear the enemy more. Moreover, it is not uncommon that the coward in battle faces the firing squad with dignity and courage. Such was the case with Eddie Slovik, who spent his last moments trying to alleviate the anxiety of those who had to execute him. The fear that motivates cowardice may not just be the fear of death but the inability to suffer Death's malicious teasing. Certain death, whether by suicide or firing squad, may be a kind of relief, a good-bye to all that.

The statute also hints of another motivating fear; it is the fear of being disgraced as a coward, the fear of shame. This is hardly a startling revelation. It is a commonplace, the theme of honor itself, which demands that fear of losing on esteem and esteemability is worse than death. In this light the law can be seen not only as the scourge of those too shameless to be properly motivated by their sense of shame but also as a bit player in backing the norms that support the sense of shame. The law, then, though mostly negative in its means of motivating, also has a positive role to play in securing the behavior it desires.

To conclude, reconsider the statute. One may wonder at the impossible standard it sets. The soldier is to do his duty, but the duty demanded seems almost to be beyond the call of duty. It is as if the law asks not only that soldiers not be cowards but that they be courageous as a matter of routine. But then consider briefly paragraph 9, the one provision we have left unnoticed until now. It governs, among other things, the obligation to rescue. In contrast to the heroic demands of the other provisions not to run, not to fail willfully to advance, not to abandon shamefully a position, we move to the world of purest prudence: not to "afford all practicable relief." When it comes to rescuing your fellows, practicality and rationality are the standard, not courage, unless it be as Aquinas and others have argued, that courage is just the virtue reason and practicality need to keep functioning in fearful circumstances. Of course, it doesn't make sense to throw good bodies after bad unless it is rational to do so, that is, unless the likelihood of saving the endangered one is greater than the danger incurred by the rescuer to save him.

Yet it is precisely in the domain of rescue that twentieth-century battle has made its particular addition to the styles of the heroic. It is in the Great War that stretcher bearers get Victoria Crosses, and in Vietnam that medics get their Medals of Honor. In the Civil War the same medal was more likely to be awarded for rescuing the regiment's colors.⁴⁰ Is it that the antiglory, antihonor discourse has finally become sufficiently suspect that we prefer the heroism manifested in the greater love that lays down or risks its life for another as against those acts in which we suspect that the motive may be glory itself? Heroic culture would consider glory and honor as fine a motive as there could be; we mistrust it precisely because it seems, in spite of its frequent rashness and irrationality, self-regarding and even self-interested, even though it must risk self-sacrifice. By setting our heroic stories in narratives of rescue are we arguing for a kinder-styled heroic: selfless, fearless, and life-saving rather than life-destroying?⁴¹ How do we fit this in with the suspicion that we may be as self-regarding now as ever it was possible to be? Or is it that we see the medic, the stretcher bearer as needing no special physical attributes, that they indeed are everyman or indeed everywoman, that they hold for all of us the possibility of grand action, even if we do not have the body of Ajax or the spirit of Alexander or the ability to kill other human beings even when it is in our best interests to do so?⁴²

But for most of us I would guess that what is most salient in this statute is not its substantive commitments so much as its formal attributes. For surely the statute's most remarkable feature is its redundancy, which in a statute that seeks to punish capitally becomes a redundancy of both literal and figurative overkill. Yes, the statute excuses cases of weak legs as long as the mind did not willfully collude with the body to produce them and puts no extraordinary demands on the rescuer, but it otherwise is quite clear about reserving the firing squad for cowardice motivated by fear, and if that lets too many off the hook of culpability, it specifically includes the jittery alarmist, the person who turns tail for whatever motivation other than fear, the slack attacker, the person who casts away his weapons, the quivering craven defender, and the exuberant looter.

The statute received its present form in 1950 when it was cobbled together from the Articles of War and the Articles for the Governance of the Navy into a Uniform Code of Military Justice. Most of the clauses were already extant in the British Articles of War of 1769, which in turn were enacted virtually verbatim as the American Articles of War of 1776. In them are found the strictures against looting, shameful abandonment of a position, casting

away arms, and causing false alarms, but not the clauses against cowardice and failure to engage, that is, the weak-legs provision. Those have their origin in the navy articles.⁴³ It is not, then, until 1950 when all these clauses were tossed together that military judges felt called upon to distinguish between cowardice and running away and we get, as a result, our explicit jurisprudence of fear; cowardice is motivated by fear and nothing else.

But this does raise one final matter for weak legs. Weak legs turn out to be a certain kind of sea legs. Not that the army couldn't always get the weak-legged advancer under various general orders,⁴⁴ but the navy was concerned less with the legs of its sailors, at least until they might have to board the enemy ship, than with the will of a captain to make his ship advance. The sailors could be standing on the deck with legs quivering and still be advancing because they were being borne by a higher will, willy-nilly. The provision that I have been dealing with as a weak-leg provision is historically not about legs at all but about a naval captain's weakness of will.

And one final observation about cobbling, statutory revision, and uniformity in this world of uniforms: it was the modern reform, the modern consolidation of the articles providing a uniform law for all the armed services that produced the archaic, casuistic, ad-hoc absurdist look of the present statute, not the remnants of pre-eighteenth-century diction still lingering about in shameful abandonments and the casting away of arms. It was the 1950 consolidators, that is the modernizers, who made this statute look more like a law of Æthelberht or Alfred than a law of the most advanced industrial power of the 1950 world.

NOTES

1. Æthelberht cap. 50; Alfred cap. 32. The provisions are most conveniently accessible in F. L. Attenborough, ed., *The Laws of the Earliest English Kings* (Cambridge: Cambridge University Press, 1922), 11, 77. I have altered the diction of Attenborough's translation.

2. 10 USCS at 899 (1997) Art. 99.

3. See William Bradford Huie, *The Execution of Private Slovik* (New York: Duell, Sloan and Pearce, 1954).

4. On crowds and armies, see John Keegan's discussion in *The Face of Battle* (New York: Penguin, 1976), 174–76.

5. See Aristotle's *Ethics* 5.2, 5.9; *Rhetoric* 2.6; Plato, *Laws*, xii.944e. See also Polybius on capital offenses in Roman army, 333–34.

6. See *United States v. Gross* 17 (1968) USCMA 610; 38 CMR 408.
7. *United States v. Smith* (1953) 3 USCMA 25, 11 CMR 25; *United States v. Brown* (1953) 3 USCMA 98, 11 CMR 98; *United States v. McCormick* (1953) 3 USCMA 361, 12 CMR 117.
8. *United States v. Sperland* (1952) 5 CMR 89. The problem is not just to distinguish running away from cowardice within the confines of this statute but also to make sure running away is not expanded to eliminate the mercy implicit in the differently defined and lesser offenses of being absent without leave or some forms of desertion that did not take place in the presence of the enemy and were thus assumed to be motivated by something other than an intent to avoid combat. See 10 USCS §885 (desertion); 10 USCS §886 (AWOL).
9. Running away is not always prudent. You are a much easier target to the enemy when you show your back because he need not worry about your firing back. And when whole armies turn and run, that is when they are butchered by the pursuing victors. Military strategists have often tried to impress their troops with the superior rationality of facing the enemy and fighting rather than fleeing in panic; see Keegan's discussion of Ardant du Picq, *The Face of Battle*, 70.
10. William Winthrop, *Military Law and Precedents*, 2nd ed. (Washington : G.P.O., 1920), at 624, cited in *Sperland*, at 92. Winthrop is discussing the provisions as they appear in the army's Articles of War, which provisions were later codified in the statute being glossed in the *Sperland* case and in this essay.
11. See E. Samuel, *An Historical Account of the British Army and of the Law Military* (London: William Clowes, 1816), 599–601; Robert Barker, *Honor Military and Civill* (London, 1602), 1.16.
12. Suddenness hardly precludes volition, but what Barker is after, it seems, is the difference between cold calculation and quick unreflective volition.
13. *Essays* I.54, trans. M. A. Screech, *Michel de Montaigne: The Complete Essays* (Harmondsworth: Penguin, 1991), 349.
14. See Richard Holmes, *Acts of War: The Behavior of Men in Battle* at 109 (New York: Free Press, 1985), on the problem of soldiers' relieving themselves. At stake is the misery of constipation versus the plague of diarrhea. Modesty produces former, fear latter, but that is not always the case either since bearing down under fire and artillery shelling can produce former. See Humphrey Cobb, *Paths of Glory* (1935; rpt. Athens: University of Georgia Press, 1987), 4: it is not diarrhea but constipation, contrary to popular opinion, that is the disease of the front. The Germans have the latrines zeroed in and so you hold it.
15. Keegan, *The Face of Battle*, 302.
16. *Personal Memoirs of U.S. Grant* (1885–86; New York: Library of America, 1990), 543, 580, 701–02. A refined ability to discern risk and difficulty may be in some respects necessary to a field general, but such a capacity also tends to prompt despair or indecisiveness in all but specially endowed sensibilities.
17. *Nicomachean Ethics* 3.7.

18. *The Road to Richmond: The Civil War Memoirs of Major Abner R. Small*, ed. Harold Adams Small (Berkeley: University of California Press, 1939), 70–71. Small, as the quoted passage readily reveals, possesses a literary gift.

19. For an ironic inversion of the weak-legs theme, see Tim O'Brien, *Going After Cacciato* (New York: Dell, 1979), 150, in which the legs of a soldier who resolves to fall down and opt out of the march toward battle refuse to give way: "the decision did not reach his legs."

20. To the extent that Freud's massive corpus allows for quotes that can back any number of propositions of varying consistency, note that in at least one place Freud, himself, spoke of the notion of unconscious emotions as incoherent: "It is surely of the essence of an emotion that we should be aware of it, i.e., that it should become known to consciousness. Thus the possibility of the attribute of unconsciousness would be completely excluded as far as emotions, feelings, and affects are concerned" ("The Unconscious," in the Standard Edition, ed. James Strachey [London: Hogarth Press, 1953–1974], 14: 177). Of course how we understand his statement depends not only on how we understand the notion of the unconscious but what we mean by emotion too.

21. See the memoir of Robert J. Burdette, *The Drums of the 47th* (Indianapolis: Bobbs-Merrill, 1914), 101–8, quoted by Gerald F. Linderman, *Embattled Courage* (New York: Free Press, 1987), 166–67. Burdette's good coward in fact ran from every battle but he was distinguishable from bad cowards by not availing himself of the traditional means of avoiding taking any part in the initial attack: he did not feign illness or exhaustion, stop to tie shoes during the charge, or arrange hospital details, "he was beaten in every fight but he went in" every time.

22. See Polybius, *Histories* 3.89 in Polybius: *The Rise of the Roman Empire*, trans. Ian Scott-Kilvert (Harmondsworth: Penguin, 1979), 255.

23. <http://cac.psu.edu/~ltv100/Classics/Poetry/archilochus.html>

24. Tossing away the shield, *rhipsaspia*, was especially grievous in the phalanx style of fighting Archilochus was engaging in. Those accused of *rhipsaspia* "were assumed to have been among the first to have abandoned their friends in an effort to save their own lives during a general collapse of the phalanx; that is, they had endangered the men who kept their arms and were notable, or had no desire, to make good such an ignoble escape"; quoted from Victor Davis Hanson, *The Western Way of War: Infantry Battle in Classical Greece* (1989; New York: Oxford University Press, 1990), 63. Plutarch notes that, unlike helmet and breastplate, a man carried his shield "for the sake of whole line" because an unbroken shield wall was "virtually impregnable"; John Lazenby, "The Killing Zone," in *Hoplites*, ed. V. D. Hanson (London: Routledge, 1991), 95.

25. *Nicomachean Ethics* 3.6.

26. John Dooley, *Confederate Soldier: His War Journal*, ed. Joseph T. Durkin (Washington, D.C.: Georgetown University Press, 1945), 46–47.

27. *Summa Theologiæ* 2a2æ. Q. 142. Art. 3. Is Aquinas right? Is it harder to stand

and fight than to resist pleasurable indulgence? Don't we speak of the "courage" it requires to refrain from proffered pleasure? In any event, commanders and their men knew that the pleasures of alcoholic indulgence often served to stun the human mind in a way that worked to cabin fear.

28. This was a strategy that seemed more plausible up until the late seventeenth century, before the general appearance of distinctive military uniforms.

29. The Manual for Courts-Martial, 1984 IV.23. Art. 99, makes it an element of the offense only that "the alarm was caused without any reasonable or sufficient justification or excuse." Winthrop, *Military Law and Precedents*, 619, is explicit that knowledge of its falsity or the specific intention to occasion a false alarm need not be shown.

30. It is not rare to find reports of troops falling asleep under intense bombardment, not in nonchalance or even in exhaustion but as a kind of ostrich-like escape from intense horror. See the examples cited in Holmes, *Acts of War* 267.

31. Erving Goffman, *Relations in Public* (New York: Basic Books, 1971), 239.

32. Commanders in the French army, however, as late as the Great War, would still select a man by lot from each company when a regiment failed badly for execution; see Alistair Horne, *The Price of Glory: Verdun 1916* (Harmondworth: Penguin, 1964), 64. Such an occasion forms the substance of Cobb's novel, *Paths of Glory*.

33. It is a deeply contested issue whether heroism is more properly pure berserk incapacity for fright, or whether it is fearlessness achieved by overcoming fear either through training or extraordinary assertions of will, or whether it is acting grandly in the continued presence of fear but in spite of it. We may also want to differentiate among heroism, bravery, and courage as to their relations to fear. These questions are obviously too large to take up here.

34. *Iliad* 11.35

35. Thucydides, *The Peloponnesian War* 5.71.

36. Raimondo Montecuccoli, *Sulle battaglie*, ed. and trans., Thomas M. Barker in *The Military Intellectual and Battle: Raimondo Montecuccoli and the Thirty Years War* (Albany: SUNY Press, 1975), 82.

37. *Ibid.*, 92.

38. *Ibid.*, 133–34.

39. *Ibid.*, 134.

40. The most decorated British soldier in the Great War was a stretcher bearer; Holmes, *Acts of War*, 197.

41. On the intersection between the heroic and rationality, note that rescue narratives begin to become common only when medical care rises to a level at which the wounded and disabled are likely to survive if saved.

42. Horne writes (*The Price of Glory*, 181–83) that the most deserving of the title of hero at Verdun were those who occupied the humble categories of runners, ration parties, and stretcher bearers. Their jobs required them to be more exposed to

fire than even that endured by the front-line infantry, and the stretcher bearers were prevented by the demands of their task from hitting the deck when a shell whistled down upon them. Moreover, the last two categories were filled by the bad shots, the old, the musicians, that is, those who were known as miserably unmartial.

43. An Act for the better government of the navy, 1800. Sec. 1, Arts. 4–6.

44. See Winthrop, *Military Law and Precedents*, 623 n. 26.