

A Mutinous Disposition? Discipline and (Dis)order in the Fencible Regiments in Britain and Ireland, 1793–1802

War in History

1–19

© The Author(s) 2024



Article reuse guidelines:

sagepub.com/journals-permissions

DOI: 10.1177/09683445241306994

journals.sagepub.com/home/wih**Rory Butcher** 

School of History, University of Leeds, Leeds, UK

Abstract

The fencible regiments of the 1790s operated like the regulars but were limited to serve only in wartime, like the militia, and only in Scotland, later becoming the British Isles. These restrictions were the primary cause of the 1794 ‘mutinies’. These events, alongside other incidents of poor discipline across all ranks, have been previously used to portray the fencibles poorly. This article will argue that the ‘mutinies’ and the wider interactions within the military justice system both demonstrate the ‘soldier as worker’ approach and how the inherent temporary nature of the fencibles fundamentally shaped the employment of fencible officers and men.

Keywords

French revolutionary wars, fencibles, home defence, contractual soldiering, soldier as worker, courts martial

It is often the case that auxiliary branches of the military gain a reputation for poor discipline – both off and on the battlefield. Whilst this reputation is sometimes well-earned, inaccurate exaggerated narratives of incapable reserve soldiers are common throughout history. In the late eighteenth century, the home defence network that existed to protect the British Isles included several of these auxiliary branches. The Irish Militia’s behavioural notoriety has been well addressed within recent scholarship, as have the Volunteer Movement in Britain and the Irish Yeomanry Corps, with all receiving

Corresponding Author:

Rory Butcher, School of History, University of Leeds, Michael Sadler Building, Woodhouse, Leeds LS2 9JT, UK.
Email: rorydmbutcher@gmail.com

more balanced appraisals of their conduct.¹ This study is the first to investigate how far the fencible regiments, operating during the 1790s, deserved any reputation for 'mutiny and riot'.²

Following the Battle of Culloden, the new system of English militia, drawn by ballot and with officers from the landed gentry and property-owning elite, was not popular enough with Scots or within the British government to be introduced in Scotland.³ Instead, the fencible regiments were to be drawn from willingly enlisted men known to be loyal, for full-time service until the end of the current war. They were only intended for home defence and fulfilled this duty during the Seven Years' War and the American War of Independence. The need for home defence during the French Revolutionary Wars saw them reformed again. The fencibles were, in principle, very similar to the militia: their role was to protect the country during the conflict and, come peacetime, they would be disembodied. Fencible officers also did not have to buy their commissions, as the regulars did; they just needed the support of the regimental commander.⁴ Fencible regiments, therefore, attracted men at all ranks for whom temporary service was preferable to the general service of the regular army, such as those who did not wish to be sent abroad or who sought a quicker entry into military life.⁵ Yet during this period, despite their limited service, they operated largely like the rest of the regular forces. Their pay and equipment were provided by the government, and they were considered to have precedence above any militia forces.⁶ Their attestations were also modelled on the regulars, with only slight modifications to acknowledge their restricted service. The first cohort of seven regiments, raised in March 1793, was intended for service in Scotland only, unless there was an invasion of England.⁷ With the fencibles proving to be a useful alternative to the regulars and the militia, the scheme was expanded across the nation after 1794, and fencibles could be and were deployed within the British Isles in general. Those Scottish regiments which would not assent to service beyond

-
- 1 Suggestions include: Austin Gee, *The British Volunteer Movement 1794–1814* (Oxford: Clarendon Press, 2003); Ivan Nelson, *The Irish Militia, 1793–1802: Ireland's Forgotten Army* (Dublin: Four Courts Press, 2007); Allan Blackstock, *An Ascendancy Army: The Irish Yeomanry, 1796–1814* (Dublin: Four Courts Press, 1998).
 - 2 Charles J. Esdaile, 'The French Revolutionary and Napoleonic Wars, 1793–1815', in Jeremy A. Crang, et al., eds., *A Military History of Scotland* (Edinburgh: Edinburgh University Press, 2012), p. 417.
 - 3 J.R. Western, *The English Militia in the Eighteenth Century* (London: Routledge and Kegan Paul, 1965), pp. 162–165.
 - 4 Warrant for Raising a Fencible Regiment, 1794, 1994-04-75, National Army Museum (NAM).
 - 5 Wm Forester to Colonel Balfour, 11 January 1798, D2/10/12, Orkney Archives (OA); H.C. Ainslie to Major Sandilands, 9 December 1794, 1994-04-75, NAM.
 - 6 W.A. Gordon to Major Baillie, Dunean, 5 July 1794, D456/A/10/29, Highland Archives Inverness (HAI); Frederick, Duke of York to the Duke of Portland, 31 July 1798, HO 50/8, The National Archives, Kew (TNA).
 - 7 Attestations of recruits to the first or Strathspey fencible regiment, March–April 1793, GD248/464/4, National Records of Scotland (NRS). N.B. There were eight regiments raised in 1793, but the eighth was confined to the Isle of Man and is not relevant to this enquiry.

Scotland were disembodied.⁸ At their peak between 1796 and 1798, fencibles comprised approximately a fifth of the global British regular establishment, numbering over 32,000;⁹ in total an estimated 50,000 men served in at least one of the regiments.

By their nature, the fencibles therefore occupied a middle ground between contemporary regular and auxiliary forces. One contemporary inspection of the fencibles in Ireland acknowledged that: ‘the discipline and appearance...vary considerably, which is principally owing to the Military Knowledge...paid by their Respective Commanding Officers’.¹⁰ Such a variety in their experiences, from garrison duty in Guernsey to suppressing the 1798 Irish Rebellion,¹¹ but ultimately only a limited service history, has led to the occasions where fencible men behaved poorly remaining prominent in the historiography. The fencibles have thus suffered from characterisations of poor-quality soldiery, with the question of discipline comprising a key part of such assessments, and with specific incidents of disorder taken out of context.¹² This article will show that these judgements not only have lacked a deeper understanding of the fencibles themselves, of which many regiments were often complimented for their good conduct, but also of the contemporary cultures of contract negotiation and industrial resistance. This article will also investigate how the officers and men of the fencible regiments interacted with the structures which enforced discipline within the army. It will begin by examining the most notable incident in which order broke down when, in Spring 1794, the original cohort of fencibles raised in Scotland were asked to serve in England. In a period of ‘intense political stress’ amongst fears of treason,¹³ their reactions and the reasons behind them, which formed part of a larger culture of industrial action within Britain, will be considered alongside the legacy of the ‘mutinies’ which occurred. This article will also explore the wider reality of discipline within the fencible regiments through the General Courts Martial (GCM), which governed the upper levels of military justice during this period. With the fencibles being considered to be part of the regular army, and administered by the War Office and Commander-in-Chief’s office, these men were

8 For a further explanation of the fencibles, see Rory Butcher, ‘“By Beat of Drum or Otherwise”: Assessing Recruitment to the Fencible Regiments, 1793–1802’, in Andrew Bamford, ed., *One Hundred Years of Army Historical Research: Proceedings of the SAHR Centenary Conference* (Warwick: Helion & Company Ltd, 2023).

9 Monthly Returns to the Adjutant General, 1793–1802, WO 17/1159-1161, TNA; Return of the Effective Men in the British Army, 1793–1806, WO 1/903, f. 33, TNA; Kevin Linch, *The British Army, 1783–1815* (Barnsley: Pen & Sword Military, 2024), p. 84.

10 Josiah Champagné’s observations on the fencible regiments in Ireland, 9 August 1800, 1968-07-175, ff. 326–330, NAM.

11 Kilmainham Papers, Vols 2–6, 1791–1801, MS 1002–1006, National Library of Ireland (NLI).

12 Examples include: Wayne Stack, *Rebellion, Invasion and Occupation: The British Army in Ireland, 1793–1815* (Warwick: Helion & Company Limited, 2021), p. 68; J.E. Cookson, *The British Armed Nation, 1793–1815* (Oxford: Clarendon, 1997), p. 190.

13 Emma Vincent Macleod, ‘The 1790s: Establishing the Mind of Government in 1820’, in Gerard Carruthers, et al., eds. *1820: Scottish Rebellion. Essays on a Nineteenth-Century Insurrection* (Edinburgh: John Donald, 2022), pp. 21–23.

subject to the same Articles of War,¹⁴ the same punishments, and the same tiered trial system as the regulars. This means that research into fencible discipline encounters the same challenges which face those investigating the regulars: military justice largely took place at the regimental level, through Regiment Courts Martial (RCM).¹⁵ The RCM was used to resolve more minor offences, such as petty theft or absences without leave, and was conducted wholly by five regimental officers. In fact, the proceedings were often not recorded at all during the early years of its usage.¹⁶ The GCM, normally comprising thirteen officers from other regiments, was the senior court; it was the only one allowed to try officers and it was allowed to issue death sentences.¹⁷ Crucially, the sentences were required to be reviewed by the King, or the relevant regional commander of the forces, which has resulted in the storage and survival of many GCM proceedings in the WO 71 series in the National Archives (in total ninety-one fencible officers and men between 1795 and 1802). These proceedings included the personnel involved, an itemised list of the charges, detailed minutes of what was said and asked, and noted both the verdict and the reasons behind it. The WO 90 GCM Abroad Registers, beginning in 1796, refer to a further seventy-six cases, primarily of the rank and file, but in very limited detail.

What is most apparent is that the definition of the fencibles as a force raised for only the duration of the current conflict, and their temporary nature, fundamentally shaped how the fencibles behaved and interacted with authority in this period. This article has been guided by both established historiography and emerging approaches to reveal the implications of the fencibles' pseudo-auxiliary, pseudo-regular nature. The conception of the 'soldier as a worker' is especially potent, offering an opportunity to engage with work into wider contemporary cultures of industrial relations. Peter Way, in particular, has argued for the need for labour history to be 'militarised'.¹⁸ Workers unions were swiftly becoming an established way for employees to negotiate with their 'Masters'; these were particularly prevalent in the textiles industries, which were both popular in Scotland and vulnerable to reduced wartime markets and employment fluctuations.¹⁹ The subsequent development of contractual soldiering, both as a motivation and as an insight into the perception of military service, is crucial to this analysis, and Linch and

14 Attestations, such as those seen in the Attestation Forms, Correspondence and Accounts in Connection with the North Lowland Fencibles, 1793, D2/3/6, OA, note that the man had been read the Articles of War against mutiny and desertion.

15 Arthur N. Gilbert, 'The Regimental Courts Martial in the Eighteenth Century British Army', *Albion*, 8 (1976).

16 Gilbert, 'The Regimental Courts Martial', p. 62; Danielle Coombs, 'Crime and the Soldier: Identifying a Soldier-Specific Experience of Crime in the British Army, 1740–1830' (doctoral thesis, University of Leeds, 2015), pp. 34–35.

17 Zack White, 'Pragmatism & Discretion: Discipline in the British Army, 1808–1818' (doctoral thesis, University of Southampton, 2021), p. 39.

18 Peter Way, 'Class and the Common Soldier in the Seven Years' War', *Labor History*, 44.4 (2003).

19 Ad Knotter, *Transformations of Trade Unionism* (Amsterdam: Amsterdam University Press, 2018), pp. 41–42; W. Hamish Fraser, *Conflict and Class: Scottish Workers, 1700–1838* (Edinburgh: John Donald, 1988), ch. 3; Alastair Durie, *The Scottish Linen Industry in the Eighteenth Century* (Edinburgh: John Donald, 1979), pp. 99–106.

Conway have more recently engaged with martial labour as a driving force behind many elements of military service.²⁰ The military's need to create a working relationship between officers and men led to frequent altercations involving soldiers who did not consider their treatment was fair, just or in keeping with the treatment they expected from the army. These studies, however, have not extended to the fencibles, nor do they acknowledge the unique position the fencibles occupied, as temporary soldiers but not quintessential auxiliaries. Research by White, Tatum and Huf offers new and unique insights into the perception of discipline within the regular army and, by considering the fencibles as a branch of the regular army, their work also contextualises the fencible regiments within the wider scope of military justice.²¹ In these cases, the study of both officers and the rank and file has not often been combined. This article discusses both and considers how, by conceiving of the ordinary soldier as a worker who engages in military employment, insight can be offered into the consequences of why men in the eighteenth century chose the fencibles over the regular army. These reasons are also important when noting the origins of the fencible officer corps; the regiments acted as a space where those seeking longer-term military careers, and those who did not, served in the same capacity. Whilst this may superficially ally the fencibles with the militia, an auxiliary branch populated by men from a variety of backgrounds, again the nature of the fencibles as an element of the regular establishment sets them apart. This article is not a history of all military mutiny; instead, the fencibles present a unique opportunity to explore the application of soldierly norms of the era, both from the perspectives of soldiers and those in authority over them.

The 1794 'Mutinies'

One of the most well-known events associated with the initial cohort of fencibles took place in March 1794. They are often referred to as mutinies in historiography, particularly when linked with the several other incidents of Highland disorder which occurred throughout the eighteenth century;²² this is possibly best exemplified by their presence in John Prebble's detailed account of the affair in his *Mutiny*. This work, however, lacks a scholarly apparatus, and as such it is difficult to identify where he ventures beyond the source material. Most pressing in this context, is his depiction of the

20 Kevin Linch, *The British Army, 1783–1815* (Pen & Sword Military, 2024), ch. 6; Stephen Conway, *The British Army, 1714–1783: An Institutional History* (Barnsley: Pen & Sword Military, 2021), ch. 6.

21 White, 'Pragmatism & Discretion'; David Huf, 'The Junior British Army Officer: Experience and Identity, 1793–1815' (doctoral thesis, University of Tasmania, 2017); William P. Tatum III, 'The Soldiers Murmured Much on Account of This Usage', in Kevin Linch and Matthew McCormack (eds.), *Britain's Soldiers: Rethinking War and Society, 1715–1815*, paperback edition (Liverpool University Press, 2021).

22 Further reading includes: Stephen Brumwell, *Redcoats* (Cambridge: Cambridge University Press, 2002), pp. 119–136; Stuart Reid, *Wellington's Highland Warriors* (Barnsley: Pen & Sword, 2010), ch. 1; Matthew P. Dziennik, *The Fatal Land: War, Empire, and the Highland Soldier in British America* (New Haven and London: Yale University Press, 2015), ch. 2.

Highlands as the victim of ‘greed’ over ‘compassion’.²³ Prebble’s version of the fencibles considers them as helpless in the face of a government keen to impress its agenda. As a result, their behaviour in this incident is taken as reactive rather than proactive. They lack agency in a way that this article, by applying the wider context of industrial and military disputes in the period, argues that these men did have. The fencible, as a military worker, was willing to defend his contract and acted accordingly.

In January 1794, with Allied efforts in the Low Countries faring poorly,²⁴ Prime Minister William Pitt the Younger, and his government, became increasingly aware of the potential for an invasion. As the Duke of Richmond’s report had identified the year before, the most likely locations for an enemy landing were Hampshire, Kent and Sussex.²⁵ This area did have regular troops present, but was more heavily garrisoned by a number of newly formed, part-time, Volunteer Corps. These small units offered civilians the opportunity to demonstrate their loyalty to the King and Country so, as fears of an invasion scare grew in February 1794, they required reinforcement.²⁶ A senior member of the military administration (likely Henry Dundas, the Secretary of State for War) therefore decided to redeploy 2,000 Scottish fencible infantry, preferably to be sailed from Scotland, to Kent and Sussex. Notably, the initial cohort of fencible men had enlisted on limited service, and their attestations stated this: ‘I am not to be marched out of *Scotland*, except in Case of an actual Invasion of *England*’.²⁷ This would, of course, prohibit such a deployment. Dundas was clear in his instructions to Lord Adam Gordon, Commander-in-Chief of His Majesty’s Forces in Scotland, ‘that no measure in contradiction to the Stipulation in their letter of Service should be taken, without their full Consent’.²⁸ Lord Adam further included the offer of a bounty to induce more willingness, to be paid upon arrival in England.²⁹

However, Lord Adam’s entreaty for colonels to use ‘every persuasion’ when finding volunteers seems to have affected how they addressed their men, and subsequently the reception with which they were met.³⁰ The Gordon Fencibles were one of the regiments which received the offer positively and, despite some initial concerns about boarding naval transports,³¹ the entire regiment volunteered to go south on 13 March 1794. All 800 men were shipped to Chatham and remained in the Kent-Sussex area for much of the next two years.³² Lieutenant Colonel Donaldson addressed the West Lowland Fencibles on 12 March to ‘great cheerfulness and repeated Huzzas’, but reported that he was confronted that evening by a number of his men,

23 John Prebble, *Mutiny: Highland Regiments in Revolt, 1743–1804* (London: Secker & Warburg, 1975), pp. 264–265.

24 R.N.W. Thomas, *No Want of Courage: The British Army in Flanders, 1793–1795* (Warwick: Helion & Company Ltd, 2022), pp. 34–36.

25 John Ehrman, *The Younger Pitt: The Reluctant Transition* (London: Constable, 1969), pp. 327–8, 261; J. Holland Rose, *William Pitt and the Great War* (London: G. Bells and Sons, Ltd, 1911), p. 139.

26 J.E. Cookson, *The British Armed Nation, 1793–1815* (Oxford: Clarendon, 1997) pp. 38–46.

27 Attestation form of John Grant, 1 April 1793, GD248/464/4/1, NRS.

28 Lord Adam Gordon to Evan Nepean [Private], 3 March 1794, HO 102/10, f. 196, TNA.

29 Prebble, *Mutiny*, p. 277; Evan Nepean to Lord Adam Gordon, 5 March 1794, and Evan Nepean to Lord Adam Gordon [Private], March 1794, HO 102/10, ff. 245 and 247, TNA.

30 Lord Adam Gordon to Henry Dundas, 22 March 1794, HO 102/10, f. 327, TNA.

31 Lord Adam Gordon to Evan Nepean [Private], 1 April 1794, HO 102/10, f. 366, TNA.

32 Monthly Returns, 1793–1795, WO 17/1159, TNA.

armed and inebriated, refusing to embark. They took control of the powder store, distributed ammunition to their comrades and mounted a guard for several days.³³ It was not until 19 March that Colonel Montgomerie was able to report their pacification; they, too, were deployed to the southeast coast, and remained there for 18 months.³⁴ The only other regiment to send any men south were the Hopetoun Fencibles. Again, after some initial limited unrest, 300 agreed to march, not sail, to England, and the five companies which did consent to go south spent the following 18 months in the vicinity of Liverpool.³⁵

In contrast, the Argyll, Sutherland and both battalions of Breadalbane Fencibles all bluntly refused to go south; Colonel Wemyss even blamed the Sutherlands' disobedience on the 'evil inhabitants of Glasgow', who 'had created suspicions in their minds'.³⁶ Nevertheless, with almost no disorder to speak of, and with the men affirming that they were perfectly content to obey orders within Scotland, their officers did not push the matter.³⁷ The regiments which did fear more serious action disposed of their ammunition, but this was not universal. The Grant Fencibles responded with more hostility. Sir James Grant was absent when he received the news of this scheme and only addressed the regiment after several weeks of rumours circulating of them being sent abroad. Finally, on 17 March, Sir James spoke to the regiment, heaping praise upon his men, but only mentioning the need for volunteers in the last moments.³⁸ Lieutenant John Grant later defended Sir James, noting that despite the emphasis on the need for volunteers only, it was 'to no purpose',³⁹ and many of the rank and file seem to have perceived it as an order rather than a request: an order that they knew they were not prepared to follow. None stepped forward. He asked again in the following days and he was again met with silence.⁴⁰ On the morning of 21 March, he asked once more. This time:

Capt. Macdonell's whole Company, some of the Grenadiers, the Colonel's, Lt. Colonel's, & Major's, broke off from the Field without any Orders, run away & took possession of the Castle where the ammunition was lodged ... when the Adjutant & Cap. Macdonell went over to them, [the Mutineers] made them prisoners.⁴¹

33 Lieutenant Colonel Alexander Donaldson to Lord Adam Gordon, 12 March 1794, HO 102/10, ff. 285–286, TNA.

34 Lord Eglinton to Lord Adam Gordon, 19 March 1794, HO 102/10, f. 333, TNA; Monthly Returns, 1793–1795, WO 17/1159, TNA.

35 Lord Hopetoun to Lord Adam Gordon, 14 March 1794, Lord Adam Gordon to Henry Dundas, 8 April 1794, HO 102/10, ff. 295 and 368, TNA; Monthly Returns, 1793–1795, WO 17/1159, TNA.

36 Colonel Wemyss to Lord Adam Gordon, 27 March 1794, HO 102/10, f. 347, TNA.

37 Lieutenant Colonel Campbell to Lord Adam Gordon, 25 March 1794, Lieutenant Colonel Morison to Lord Adam Gordon, 27 March 1794, Lieutenant Colonel Macdonall to Lord Adam Gordon, 24 March 1794, HO 102/10, ff. 343, 349, 345, TNA.

38 Copy address, Sir James Grant to his regiment, 17 March 1794, GD248/464/9/14, NRS.

39 'Lieutenant John Grant, 10th April' in G.M. Fraser, ed., *The Strathspey Mutineers: A History of the First Highland Fencible Regiment 1793–1799* (East Kilbride: Librario Publishing, 2003), p. 105.

40 Fraser, *The Strathspey Mutineers*, pp. 88–110.

41 Sir James Grant to Lord Adam Gordon, 2 p.m., 21 March 1794, HO 102/10, ff. 329–330, TNA.

Captain Alexander Macdonell of Glengarry, as Sir James' ward, had been asked to raise a company to ensure that the Grant Fencibles could meet their establishment promptly. The men he had brought were from the Clan from which the young Chieftain inspired much loyalty. Half of those he brought bore his surname, many were his tenants, and they were predominantly Catholic like Macdonell himself.⁴² It was these men who had broken ranks first and would only negotiate in Gaelic, insisting on receiving a written assurance of never again being asked to be deployed south, save in the case of an actual invasion, which they were eventually given. A few days later, the regiment was returned to order, and they were left in Scotland.⁴³ By April, the affair was concluded. The men who had rebelled were assured that their attestations would be respected; Dundas had been able to secure the 2,000 fencible men.

Clearly, some fencibles did respond to the request to go south positively. Yet many did not, and their objections were wholly contractual in nature. As mentioned above, the fencibles, as part of the regular establishment, were subject to the Mutiny Act. The punishment of mutiny and desertion was a priority for the army in this period,⁴⁴ and disobedience of orders, such as was exhibited here, had severe consequences. In resisting what they perceived as an order, any fencible men who refused to submit were therefore ostensibly risking the death penalty. Those who took to 'mutinous' actions all but guaranteed that, even with the possibility of variable punishments for the same crimes, as Berkovich highlights were common,⁴⁵ they might face the worst. Their belief in their case was worth running this risk. The Grant 'mutineers', for example, stated that their major objection to the deployments in England was that such a deployment was simply 'not in their attestations'. Their enlistment documents had been explicit in the limitations and conditions under which their service could be extended. These circumstances did not qualify, this was justification enough, and this reflects the reasons why these men had enlisted in the fencible regiments in the first place. Recent scholarship has demonstrated a variety of motivations for service in the regular army; whilst personal testimonies might emphasise the thrill of adventure, fleeing from a troubled home life, or the desire to seek glory in battle, wider economic trends had the most impact on the success of contemporary military recruitment.⁴⁶ Recruiters were, of course, particularly successful during economic downturns, such as when the textiles industry faced 'slack seasons',⁴⁷ and many men sought enlistment into regular regiments as a reliable and

42 Fraser, *The Strathspey Mutineers*, pp. 22, 28; McDonnell et al. to our Most Honourable Renowned Colonel, 27 Oct 1794, GD51/1/844/3.

43 Lt. John Grant to James Grant, Factor of Strathspey, 10 April 1794, GD248/464/9/26-29, NRS.

44 White, 'Pragmatism and Discretion', p. 78.

45 Berkovich, *Motivation in War*, pp. 113–115.

46 Joseph Cozens, 'The Experience of Soldiering: Civil-Military Relations and Popular Protest in England, 1790–1805' (doctoral thesis, University of Essex, 2016), pp. 69–78; Kevin Linch, *Britain and Wellington's Army: Recruitment, Society and Tradition, 1807–1815* (Basingstoke: Palgrave MacMillan, 2011), pp. 90–99; Ilya Berkovich, *Motivation in War: The Experience of Common Soldiers in Old-Regime Europe* (Cambridge: Cambridge University Press, 2017), p. 129.

47 Peter Way, "'The Scum of Every County, the Refuse of Mankind": Recruiting the British Army in the Eighteenth Century', in Erik-Jan Zürcher, ed., *Fighting for a Living: A*

secure form of employment. The fencibles recruited from a similar demographic as the regulars,⁴⁸ offering a similar prospect of steady pay and consistent provisions but without the risk of combat abroad. Berkovich's concept of 'initial motivation', shows this first stage of military motivation as the one that afforded soldiers the most agency in their lives in uniform.⁴⁹ In the case of the fencibles, men chose to undertake service with restrictions, as opposed to the general service regulars.⁵⁰ This choice was expected to be respected.

A contractual understanding of soldiering was not unique to the fencibles, but its presence in 1794 demonstrates how widespread this conception was: that the military was another form of employment in which power was negotiated with the workforce. The fact that the regiments were happy to go in the event that the French had actually landed, and used the specific phrase 'actual invasion' in their negotiations to refer to this,⁵¹ is evidence that this was not a mutiny, but a campaign for their rights and entitlements. This was direct action, which many civilians perceived as the most effective and 'moral' way to ensure fairness.⁵² As Navickas has more recently argued, direct action was also widely supported by the public as, in the face of increasing resistance from employers, it could easily become 'desperate acts of self-preservation and survival'.⁵³ In the late eighteenth century, when facing such opposition, the choices were 'submission, a strike or a strike reinforced by violence'.⁵⁴ Action, whether direct or otherwise, was especially prevalent in Scotland.⁵⁵

Of course, it is important to note that the military hierarchy demanded utter obedience from its men, under threat of execution, in a way no commercial employer ever could. As a result, in a period seeing a greater understanding of the value of labour in an emerging capitalist state, soldiers were aware of the need for them to submit to military authority, but also of their agency in this process.⁵⁶ The rank and file needed to trust that their

Comparative Study of Military Labour 1500–2000 (*Amsterdam University Press, 2013*), pp. 301, 305.

- 48 Cookson, *The British Armed Nation*, pp. 134–148; Butcher, 'By Beat of Drum or Otherwise', pp. 110–115.
- 49 Berkovich, *Motivation in War*, p. 10.
- 50 Berkovich refers to John Lynn's *The Bayonets of the Republic* (Urbana: University of Illinois Press, 1984), pp. 21–40.
- 51 Lord Hopetoun to Lord Adam Gordon, 14 March 1794 and Sir James Grant to Lord Adam Gordon, 18 March 1794, HO 102/10, ff. 295 and 304, TNA.
- 52 E.P. Thompson, *The Making of the English Working Class*, reprint (London: Penguin Books, 1991), pp. 67–76.
- 53 Katrina Navickas, *Loyalism and Radicalism in Lancashire, 1798–1815* (Oxford: Oxford University Press, 2009), ch. 5; Navickas, 'What Happened to Class? New Histories of Labour and Collective Action in Britain', *Social History*, 36.2 (2011), pp. 192–204.
- 54 Ian Gilmour, *Riot, Risings and Revolution: Governance and Violence in Eighteenth-Century England* (London: Pimlico, 1993), p. 249.
- 55 Fraser's *Conflict and Class* discusses this in detail, particularly chs 1–4.
- 56 Way, 'Class and the Common Soldier'; Stephen Conway, 'Moral Economy, Contract, and Negotiated Authority in American, British, and German Militaries, ca. 1740–1783', *The Journal of Modern History*, 88.1 (2016).

officers would carry out their contractual obligations. A key expectation was to receive their pay on time, but also to receive fair treatment, full rations and, most pertinently for the fencible men, to be adequately compensated for duties beyond their contracts.⁵⁷ Action would be taken if these duties were not fulfilled, and confronting military authority was therefore almost a necessity of service; protests were frequently used to escalate when grievances were not addressed by senior officers.⁵⁸ Scottish regiments further engaged with changing understandings of the military labour market. Traditional conceptions of paternal clanship were being challenged by the necessity of the military labour market, and many Scottish soldiers found it necessary to seek support beyond their supposedly caring superiors.⁵⁹ Mutinies and desertions took place throughout the 1780s and 1790s amongst Scottish units deployed to North America where soldiers considered their officers to have broken their contracts, such as by giving false assurances or enacting unfair policies.⁶⁰ In 1778, the men of the 78th Regiment petitioned their commanding officer, demanding that 'bad' officers be sent to other regiments, enlistment debts be settled, and that they not be sent to India (this being 'inconsistent' with their service conditions).⁶¹ Even within the traditional clan concepts, moral authority was increasingly challenged by clan leaders' commercialism. Recruiting could be used as part of tacks-men's attempts to take over new holdings and,⁶² in the fencible context, Macdonell was known to have favoured those who served, implicitly threatening many of his tenantry with eviction if they did not.⁶³

The 'mutineers' also objected to any service in England on the grounds that they would be required to embark. Amongst those who were prepared to go to England, only the Gordon Fencibles agreed to actually board a ship, and this was not immediately forthcoming.⁶⁴ The Hopetoun and West Lowland Fencibles wholesale rejected the idea. In the month after the mutiny, when the Grant Fencibles finally consent to service in England, they too were only comfortable to march.⁶⁵ For the fencible men, the moment they boarded a naval transport they lost all control of their destination. A less cynical observer might emphasise the concern that the French navy might 'pick them

57 Conway, *The British Army*, pp. 97–105.

58 Tatum, 'The Soldiers', pp. 99–101.

59 Dziennik, *The Fatal Land*, ch. 2.

60 Matthew P. Dziennik, "'The Greatest Number Walked Out': Imperial Conflict and the Contractual Basis of Military Society in the Early Highland Regiments', in Catriona Kennedy and Matthew McCormack, eds., *Soldiering in Britain and Ireland, 1750–1850* (Basingstoke: Palgrave MacMillan, 2013), pp. 23–28.

61 Petition drawn up in September 1778 by men of the 78th Highlanders, AS026, Highlanders Museum, Inverness.

62 Andrew Mackillop, *'More Fruitful than the Soil': Army, Empire and the Scottish Highlands, 1715–1815* (East Linton, Scotland: Tuckwell Press, 2000), pp. 158–160.

63 Correspondence to Campbell Macintosh, Macdonell of Glengarry Papers, 1795–1796, D456/C/8, HAI. This correspondence features multiple references to soldiers' families receiving farms or tenantry arrangements, but areas with poor recruitment suffering from Clearance policies.

64 Lord Gordon to Evan Nepean [Private], 1 April 1794, HO 102/10, f. 366, TNA.

65 Prebble, *Mutiny*, p. 315.

up and carry them and their Families into France'.⁶⁶ However, this would overlook the rumours which had spread amongst several regiments that regular cavalry had been called in to ensure that they embarked, and the objection therefore adopts a more sinister undertone.⁶⁷ Throughout the eighteenth century, Scottish soldiers had been widely used to settle North America. They were considered to be hardy (especially the Highlanders), capable as a frontier defence force, and a population of loyal subjects able to hold back any indigenous incursions.⁶⁸ Regiments were offered the option for settlement rights in exchange for their military service, which was a popular choice for many in Scotland seeking a better life. However, this appeal was not universal, and many Scots enlisted into the army without consenting to be sent anywhere permanently: the Black Watch had mutinied in 1743, fearing service in the Caribbean. Dziennik also notes the problems faced by the 84th when, at the close of the American War of Independence, the men were not issued their discharges as expected, so they were unable to settle. The soldiers had upheld their part of the bargain, but had not received their reward nor expected to be returned to Scotland.⁶⁹ They deserted *en masse*. Service in Asia and the Caribbean was renowned for its high death rate, and it is likely that Scots were apprehensive of their chances of coming home from such far-flung places.⁷⁰ The soldiers recruited into the fencible regiments in 1793, therefore, entered a military culture where the rank and file could, and would, resist when forced into circumstances to which they did not consent, and where Scots were especially unafraid to do so. With the British government having already attempted to renege upon its contractual duties, many fencibles clearly feared being used and abandoned. The Macdonell men, having already mistaken the new Grant colours for the Duke of York's flag, believed that they were to be sent to Flanders, to serve on the front line.⁷¹ What had therefore started out, supposedly, as a cost-saving measure had quickly become a conspiracy. Many fencibles did later agree to march south, but their wholesale rejection of any embarkation is an indication of the extent to which the fear of service abroad and distrust of military leadership had spread.

Of course, with the fencibles being soldiers, the unequivocal use of the specific terms 'disorder' and 'mutiny' in contemporary correspondence is not unsurprising, but it is also indicative of wider establishment concern. Two officers of the Grant Fencibles even used 'sedition' and 'rebellion' to characterise the events.⁷² Such visceral descriptions are understandable, and the fear they evoke perhaps reasonable. With France in turmoil, the discipline of the French army had begun to break down in 1789–1790, with many soldiers angry over supposedly illegally withheld pay; one colonel was even killed

66 Copy of Lieutenant Colonel Alexander Donaldson to Lord Gordon, 16 March 1794, HO 102/10, TNA.

67 Lieutenant Colonel Alexander Donaldson to Lord Adam Gordon, 12 March 1794, HO 102/10, ff. 285–286, TNA.

68 Mackillop, *More Fruitful than the Soil*, p. 183.

69 Dziennik, 'The Greatest Number', p. 26.

70 Andrew Mackillop, *Human Capital and Empire* (Manchester: Manchester University Press, 2021), p. 126.

71 Prebble, *Mutiny*, pp. 303–304.

72 Adjutant James Watson to Anon., 4 April 1794 and Lt. John Grant to James Grant, Factor of Strathspey, 10 April 1794, GD248/464/9/22-23, 26–29, NRS.

by a 'lynch mob' as his men watched.⁷³ In Britain, the loyalty and integrity of the military were obviously integral to maintaining public order, preventing revolution, and avoiding a similar fate. Contemporary descriptions of fencible mutineers must therefore be considered alongside the contemporary concern over the possibility of a British insurrection. In the context of a Pitt government already accused of the reduction of civil liberties, in favour of a 'terror' of his own,⁷⁴ it is little surprise that many would be so concerned about the potential consequences of widespread disorder amongst Scottish soldiers. This also came after several high-profile trials in which Scots had been accused of treason and sentenced to transportation, and many political radicals and workers across Scotland had taken to more violent means, even if it was not particularly effective.⁷⁵ Of course, 1794 would also see the suspension of habeas corpus, the trials of the 'Scottish martyrs' Watt and Downie, and a more widespread increase in prosecutions for sedition, painted by radicals as evil and tyrannous.⁷⁶ Pitt's government was fortunate that the British military was largely loyalist, even amidst a Scottish people which were left with an 'early sense of savage repression' as a result of the mishandling of these civilian trials.⁷⁷ The later 1797 naval mutinies at Spithead and the Nore, not to mention more widespread (but limited) incidents amongst the regular army, demonstrate how neglectful the government had been of soldierly welfare. As Gilmour has argued, had there been a desire for regime change, it is possible that they could have gone further.⁷⁸ Yet all these incidents were only focused on improving working conditions. In 1794, as has been explained, in many ways the fencible resistance to their redeployment did not originate in poor behaviour of amateur troops, or from a desire to see a new political system, but from reasonable anger at the failure to uphold contractual expectations. There was precedent for both industrial action, which was peaceful or violent, and for limited military protest. The fencible men, as soldiers raised temporarily, existed within both contexts.

Yet what is also notable about this incident is that in other contemporary examples of military disorder, such as the 1795 Militia Mutinies over food prices,⁷⁹ the principal agitators faced punishment. At the very least those involved were jailed for a time, even if they were not eventually charged. Extraordinarily, there is no evidence that any fencible man faced any consequences for the breakdown of order that took place in March 1794. Set apart from the other branches, the fencibles were excused their flagrant disregard for

73 Rafe Blaufarb, *The French Army, 1750–1820: Careers, Talent, Merit*, paperback edition (Manchester: Manchester University Press, 2017), ch. 3 especially pp. 76–80.

74 Boyd Hilton, *A Mad, Bad, & Dangerous People? England 1783–1846*, paperback edition (Oxford: Clarendon Press, 2008), pp. 65–74.

75 David J. Brown, 'The Government Response to Scottish Radicalism' in Bob Harris, ed., *Scotland in the Age of the French Revolution* (Edinburgh: John Donald, 2005), pp. 108–110; Fraser, *Conflict and Class*, pp. 66–72.

76 Macleod, 'The 1790s'; Macleod, 'The English and Scottish State Trials of the 1790s Compared' in Michael Davis, et al., eds. *Political Trials in an Age of Revolutions* (Basingstoke: Palgrave Macmillan, 2018); Clive Emsley, 'An Aspect of Pitt's "Terror": Prosecutions for Sedition during the 1790s', *Social History*, 6.2 (1981).

77 Ehrman, *The Reluctant Transition*, pp. 389–390.

78 Gilmour, *Riot, Risings and Revolution*, pp. 442–445.

79 Roger Wells, 'The Militia Mutinies of 1795', in John Rule, ed., *Outside the Law: Studies in Crime and Order 1650–1850* (Exeter: University of Exeter, 1982), pp. 53–54.

the Mutiny Act: partially in an acknowledgement that the request to go south was beyond the fencible attestations, and partially out of Lord Adam Gordon's fear of civilian sedition, against which the fencibles were the main defence.⁸⁰ The War Office had acquired the men they needed, but in-so-doing had compromised the garrison in Scotland. Risking it further was unnecessary. This lack of punishment further contributes to the argument that the 1794 'Mutinies', far from evidence of incompetence or revolutionary fervour, are more accurately a demonstration of the contemporary perception of contractual labour, of soldierly norms and of the impact which civilian attitudes to labour could have on army cultures.

1794 saw the expansion of the fencibles across the United Kingdom; both infantry and cavalry units were raised in England, Ireland, and in Lowland and Highland Scotland. These new regiments were required to enlist for service across Britain and Ireland, to make them more suitable for garrison duty in Ireland, the Channel Islands or anywhere else the government could find a use for them. The original cohort had made it crystal clear that they would consider service beyond these terms to be a fundamental betrayal of their rights as soldiers: one with the potential to condemn them to end their lives in a far-flung corner of the world. In order to direct military funds to the most beneficial avenue, in 1799 the seven original Scottish regiments were finally dismissed.⁸¹ The third battalion of the Breadalbane Fencibles, raised in 1794 by the Earl of Breadalbane specifically for service in Ireland, and comprising of a number of men from the first two battalions, was allowed to maintain its regimental seniority.⁸² In turn many of the regiments which had volunteered for duty across the British Isles, fearing unemployment, began offering to extend their services to Europe – as did a large number of Irish militia. Even at this point, the legacy of the disorders resulted in men requesting extensions to their contracts; though to what extent they were 'willing' to travel is another question entirely.

Discipline in the Fencibles

Military justice played a key role in policing the lives of those entering the fencible regiments, this fast-growing and unique branch of the military. Even outside of the disorders, there was a need to maintain discipline within these new regiments, many of which, like the original cohort, were also new to the military, but now were also expected to serve further from home. Behaviour varied drastically within all these regiments, and poor discipline was not confined to the Highlanders (contrary to Prebble's narrative). RCM records are exceedingly rare and do not present a body of evidence substantial enough for an analysis of the fencibles as a whole. This article has therefore been guided by the GCMs available in the WO 71 series, a significant proportion of which, of course, comprises the trials of commissioned officers. What emerges most prominently is the result of the myriad of motivations for enlistment into this unique, temporary, branch of the military. Careers in the army could be profitable, in both financial and social

80 Prebble, *Mutiny*, pp. 317–318.

81 Fraser, *The Strathspey Mutineers*, pp. 239–240; Linch, *The British Army*, Appendix C.

82 Lord Breadalbane to Henry Dundas, 17 October 1794, GD51/6/77/3, NRS; Lt. Col. A. Nairn to Recruiting Officers, Strabane, 1 March 1801, MS 1386, NLI.

capital, and this shaped how fencible officers, as members of a branch which overlapped civilian and military spheres, found themselves negotiating with a military justice system not always willing to support their ambitions. Where John Harley stated that his commission in the Tarbert Fencibles was a 'favourable opportunity', the crimes with which fencible officers were charged indicate more mercenary motivations, set alongside the eventual expectation of returning to civilian life.⁸³

The most common charges fencible officers faced related to embezzlement, fraud, neglect of duty (normally in relation to embezzlement and fraud) and other administrative failings. Of the sixty-nine available officer GCM records, fifty-four involved officers prosecuted for variations on these four themes. Common accusations were making false musters, or embezzling subsistence allowances for personal gain. Where officers were found to have substantially and verifiably benefited from any financial misdealings they may have been ordered to pay the sum back. Fraud and embezzlement were crimes against one's fellow soldier, were considered theft from the Crown, and eroded the social contract with the men for whom these officers were responsible;⁸⁴ even high-ranking officers were punished. Colonel Mackenzie, of the Ross and Cromarty Rangers, was found guilty of withholding regimental funds for knapsacks in 1799 and half-mounting in 1801 and was ordered to refund the entire rank and file for their personal allowances. However, the Court, deciding that his embezzlement was not intentional, only summarily dismissed him.⁸⁵ Cornet and Paymaster Collison of the Ayrshire Fencible Cavalry was able to embezzle over £3,000 before he was caught and was sentenced to repay the entire sum.⁸⁶ He was also charged with desertion, notwithstanding a culture that White has observed saw many likely intentionally downgrading charges of desertion, to 'absence without leave', to spare the officer's reputation.⁸⁷ Collison was not given such a reprieve. He faced the far more humiliating punishment of being cashiered 'with every possible mark of disgrace'. He was obliged to suffer the indignity of being ritually dismissed from service and refused any further opportunities.⁸⁸ Had he been a regular, he would also have been barred from selling his commission. As a fencible, he was not allowed to sell his commission anyway, but his sentence nonetheless prevented a later transfer into a regular regiment.⁸⁹ Many fencible officers did just that, and had long and fruitful careers. John Harley accepted his initial

83 John Harley, *The Veteran, or 40 Years' Service in the British Army: The Scurrilous Recollections of Paymaster John Harley, 47th Foot – 1798–1838*, ed. G. Glover (Solihull: Helion & Company Limited, 2018), p. 30.

84 Conway, *The British Army*, pp. 99, 108–110.

85 Courts Martial Proceedings (CMP), Colonel Lewis Mackenzie, 1802, WO 71/193, TNA.

86 CMP, Colonel Lewis Mackenzie, 1802, WO 71/193, TNA; CMP, Cornet Thomas Collison, 1799, WO 71/193, TNA.

87 White, 'Pragmatism & Discretion', p. 118.

88 White, 'Pragmatism & Discretion', p. 121.

89 Adjutant General's Office to Col. Baillie, 30 November 1796, D456/B/3/14, HAI; Ross and Ogilvie to the Duke of Argyll, 15 July 1794, NRAS1209/692a, Inveraray Castle Archives; Ralph Abercromby to Thomas Pelham, 13 February 1798, MS 1014, NLI; Duke of Portland to the Lord Lieutenant of Ireland, 29 May 1801, MS 1005, NLI; Duke of Portland to the Lord Lieutenant of Ireland regarding Ensign Gordon, 16 October 1800, MS 1006, NLI.

lieutenancy in the Tarbet Fencibles and, after transferring to the regulars, served as Paymaster to the 47th Foot for much of the Peninsular War.⁹⁰ William Gordon began his career as a Cornet in the Hampshire Fencible Cavalry, but retired a Lieutenant-Colonel in the second Dragoon Guards.⁹¹ Cornet Collison had started his military career in December 1796 and, had he been able to continue, he may have been able to serve in the regular cavalry when the Ayrshires were disembodied.⁹² Instead, his cashiering rendered him unemployed and forced to return home as a dishonourably discharged man. That so many were accused of such crimes suggests that many officers saw the fencibles as a chance to profit from the ongoing war, but in a more widespread fashion than Guy has observed some mid-century regulars did.⁹³ Yet threats to their reputations at home were also of ‘consequence’, and therefore of great concern to the accused and their courts.⁹⁴

The question of honour impacted other aspects of officer discipline; the most common charge levelled at fencible officers was ‘behaviour [or conduct] unbecoming an officer and a gentleman’. This was not actually defined in the Articles of War as a specific crime but, as Gilbert has detailed, it related to the unofficial code to which British officers, as gentlemen, were implicitly subject and expected to adhere during their service.⁹⁵ Huf has also detailed the extent to which junior officers were bound together by a culture of politeness during their service. Not only did this reflect civilian society, but this charge could also be used as a method by which officers could hold their colleagues to an implicit standard.⁹⁶ John and William Yetts, lieutenant and ensign respectively in the Rothesay and Caithness Fencible Infantry, faced courts martial for various counts of ungentlemanlike conduct regarding their behaviour towards local merchants and their fellow officers, which was not an uncommon way to use the charge. They were also charged with lodging in a ‘house of bad repute’ in Berwick against the advice of their colleagues, and were found guilty of supplying and sharing alcohol with the men of the regiment, under the same label of ‘ungentlemanlike and unofficerlike

90 Harley, *The Veteran*, ed. Glover, chs 2–11.

91 Major Gordon to Marquess Townshend recommending Cornet Gordon, 14 October 1796, D/DU 23/134 i, Essex Archives; ‘William Gordon’, https://www.georgianarmyofficers.org/person/99-51-10-000134_WILLIAM_GORDON, 27 July 2024, Georgian Army Officers.

92 List of the Officers of the Several Regiments and Corps of Fencible Cavalry and Infantry, 1799, B.S.45/148, British Library.

93 Alan Guy, *Oeconomy and Discipline* (Manchester: Manchester University Press, 1985), pp. 108–110.

94 *Booklet of the Proceedings of a General Court Martial of Lieutenant Peter Squair of HM Fencible Regiment of Northumberland Infantry*, 1796, L/F/97/M2/44, pp. 50–51, Jersey Heritage Archives (JHA).

95 Arthur N. Gilbert, ‘Law and Honour among Eighteenth-Century British Army Officers’, *The Historical Journal*, 19 (1976).

96 Huf, ‘The Junior British Army Officer’, pp. 60–61; Cicely Robinson, ‘Conflicts of Conduct: British Masculinity and Military Painting in the Wake of the Siege of Gibraltar’, in Linch and McCormack, eds., *Britain’s Soldiers*, paperback (Liverpool: Liverpool University Press, 2021), pp. 138–143; Lawrence E. Klein, ‘Politeness and the Interpretation of the British Eighteenth Century’, *The Historical Journal*, 45 (2002), pp. 869–898.

conduct'.⁹⁷ Such incidents are similar to the many cases of the regulars being held to account for breaking the 'accepted code' of gentlemanly conduct. The brothers were punished with reprimands, which may reflect their loss of favour within the regimental mess. The charge was also used to describe verbal and physical assault of colleagues, absence without leave and breaking arrest; Cornet Stretch of the Sussex Fencible Cavalry was subject to charges concerning his 'abusing the Fencible Service in general and the Regiment to which he belongs'.⁹⁸

Yet the fencibles, as a liminal space between the regulars and auxiliaries, had a more complex relationship with this culture of gentlemanly conduct than the regular army. The regiments were explicitly raised for the duration of the war only. They were not front-line soldiers, not expected to serve abroad, and the officer corps was comprised largely of men without prior military experience. Their understanding of honour was therefore heavily influenced by both the established understandings of the civilian context many of them had recently left (with which officers in the militia continued to engage) and the regular culture. Fifty-seven per cent of the fencible GCMs involved some variation on the charge of 'conduct unbecoming', whereas White's study of the regular army in the period 1808–1818 found that only 24 per cent of regular officers' GCMs involved equivalent charges.⁹⁹ This would appear to indicate that fencible officers were more likely to face trial for dishonourable behaviour. However, fencible officers more commonly saw charges levelled under the wider definition of poor conduct, with later clarifications under the specific count at trial. These additional specific crimes, such as absence, disrespect, assault or financial misdealings, were prosecuted in a way that their regular colleagues later were not: under the banner of misconduct. As White highlights, this is likely due to the changing perception of the charge itself in this period. Charles Manners-Sutton, the Judge Advocate General 1809–1817, felt that 'conduct unbecoming' was too vague to prosecute by itself, and as a result the regulars were increasingly tried under specific crimes instead.¹⁰⁰ Whilst this does reflect the ongoing development of military justice within the French wars at large, the widespread use of such a general accusation also offers insight into how the fencibles, as a pseudo-auxiliary force, adhered to the regular standard of justice. McCormack has acknowledged the relationships which existed around, or indeed because of, the different conceptions of status and honour in the regular and auxiliary branches. The officer corps of the militia, being primarily drawn from civilian elites, were at a juncture between the military necessity of politeness and the societal 'culture of feeling'.¹⁰¹ The fencible officer corps was drawn from those with a similar social status, performing a similar military role, and in many ways considered themselves to be an equivalent to the militia's constitutional role in national

97 CMP, Lieutenant John Yetts and Ensign William Yetts, 1797, WO 71/176, TNA.

98 CMP, Cornet Stretch, 1797, WO 71/177, TNA.

99 CMP Series, 1793–1802, WO 71/166–193, TNA; White, 'Pragmatism & Discretion', p. 119–120.

100 White, 'Pragmatism & Discretion', p. 120.

101 Matthew McCormack, 'Stamford Standoff: Honour, Status, and Rivalry in the Georgian Military', in Linch and McCormack, eds., *Britain's Soldiers*, paperback (Liverpool: Liverpool University Press, 2021), p. 90–92.

defence.¹⁰² They conceived the military justice system as a route by which they could address interpersonal conflicts, as soldiers equivalent to the regulars, but also hold each other to as high a standard as possible – as they would outside the military.¹⁰³ In 1799, Colonel Burgoyne, Essex Fencible Cavalry, facing GCM in Ireland for financial mismanagement, was held to account by his senior field officers for attempting to send the necessary witnesses to recruit in England.¹⁰⁴

The way fencible rank and file were disciplined also bore much resemblance to the regular army, both in the crimes they committed and in desertion rates. As such, this is indicative of a culture of military justice more in line with the regulars than the auxiliary branches; the militia were nominally subject to the same process, but in practice standards were often found to be lesser.¹⁰⁵ Fencibles were distinct from other auxiliaries in that they were allowed to be tried by regular officers: militia officers were only to be tried by each other.¹⁰⁶ Like the regulars and militia, the fencibles faced the two-tier system of RCM and GCM. Surviving GCM records are limited, but do still offer some insight into the type of crimes which warranted the jurisdiction of the higher court. Privates Dearden and Wilkinson, of the Royal Lancashire Regiment of Fencible Infantry, were tried in 1797 for taking money from Prisoners-of-War at Porchester Castle to help them escape, only to pursue and re-arrest them. Their defence, that they were following orders to take bribes and alert the senior officers, raised severe questions in London about a regimental culture which allowed such disgraceful conduct to occur, implying that their superiors were to blame.¹⁰⁷ They were still sentenced to 200 lashes. Of the twenty-two rank-and-file GCM records, eight charges for unsoldierlike conduct were levelled at a group of Wallace Fencible Infantry for the same incident in and around Andover in 1799; the six men found guilty were sentenced to an average of 680 lashes, ranging from 500 to 1,000.¹⁰⁸ The most common GCM charge was desertion, of which all nine were found guilty. Six were sentenced to receive lashes and three were sentenced to service ‘in His Majesty’s Dominions beyond the seas’.¹⁰⁹ With other punishments also centring on the use of the lash, fencibles faced consequences for criminal activity comparably to their regular colleagues, with even desertion not facing more than 1,000 lashes (when they were given).¹¹⁰ The chief exception for fencibles, on home service, was that the death penalty was replaced with enforced service abroad. Fencibles who were already serving abroad faced capital punishment only in

102 Adjutant General’s Office, Circular, 8 November 1794, D456/B/1, HAI; Dublin Castle to Major General Nugent, 2 August 1798, MS 1133, NLI.

103 W.A. Gordon to Major Baillie, Dunee, 5 July 1794, D456/A/10/29, HAI.

104 Major Crosse, et al., to General Craig, CMP Colonel Burgoyne, 1799, WO 71/178, TNA.

105 Cozens, ‘The Experience of Soldiering’, p. 107.

106 William Fawcett to Col. Hewitt, 2 July 1795, WO 3/14, TNA; Western, *The English Militia*, p. 419.

107 CMP, Privates John Dearden and Robert Wilkinson, 1797, WO 71/177, TNA.

108 CMP, Sergeant William Cummins et al., 1799, WO 71/182, TNA.

109 CMP, Private Francis Jones, 1796, WO 71/174, TNA.

110 Judge Advocate General’s Office, General Courts Martial Registers, Abroad, 1796–1825, WO 90/1, TNA; Conway, *The British Army*, p. 106; Edward Coss, *All for the King’s Shilling: The British Soldier under Wellington, 1808–1814* (Norman: University of Oklahoma Press, 2010), p. 143.

the most severe circumstances, and it is currently unclear if that mimicked the regular tendency to issue it more readily when men had deserted to the enemy.¹¹¹ Nevertheless, the sentence was issued in a variety of different ways, particularly if a man had previous military experience, and could be offered as a downgrade from more severe punishment. For example, 10 years' service at sea instead of 20 years' service at an unspecified location. This continued well after many fencibles were expanded to serve across Britain, as they did after the 1794 disorders, and began transferring into the regulars, largely from 1795 onwards.¹¹² This indicates that fencible officers, and indeed the regular officers overseeing their GCMs, understood the importance of the limited service conditions to which these men agreed upon enlistment. Fencible authority was negotiated upon the principle of respecting these conditions, and threatening such a punishment, when considered in the context of the 1794 disorders, separated the fencibles from their regular cousins.

Concluding Remarks

This article has argued that the fencible' interactions with military authorities were fundamentally shaped by their nature as both a branch of the regular military, albeit one with some auxiliary duties, and as a temporary force. As men who had sought military employment, but chose to engage with limited service conditions, the contract under which these soldiers operated was key to the outbreak of 'mutiny' in spring 1794. Yet the legacy of the 1794 disorders was not so much the incidents themselves, as some have articulated, but the reasons behind them. Military life, by its nature, included the negotiation of authority with one's superiors, rather than blindly following orders; a concept with which both the militia and the regulars would have been familiar. The 1794 disorders demonstrate how the fencibles, too, engaged with this, as initial negotiations gave way to more violent action. Senior commanders understood that these men had undertaken temporary military service within an established culture of industrial relations and contractual soldiering, and in a period in which Scottish soldiers were especially cognizant of potential and previous abuses by the military administration. In the 1790s, the fencibles comprised a crucial element of the home defence apparatus, and the shift in usage for them in the years after spring 1794 demonstrates that the 'mutinies', whilst inconvenient at the time, had not dampened the War Office's enthusiasm for the scheme. The solution was simply to extend the limit on their service conditions. The fencibles had acted in a way consistent with the established culture of 'soldiers as workers' who were being treated in a way they deemed unfair; denying them their distinction as fencibles. To prevent such fallout in the future, the new regiments were required to enlist for service in Britain and Ireland, not just Scotland. The War Office had learned its lesson.

Courts martial records of this period also offer insight into the extent to which the fencibles emulated the regular forces, at all ranks. Officers and men were supposedly subject to the same standards of discipline as the regular army and, as a result, the officers developed a similar culture of honour and politeness. Financial crimes were common, and this

111 JAG's Office, GCM Registers, Abroad, 1796–1825, WO 90/1, TNA; Coombs, 'Crime and the Soldier', pp. 54–55; Cozens, 'The Experience of Soldiering', p. 134. N.B. Those men sentenced to execution were serving in Nova Scotia, Gibraltar, and Mahon.

112 Adjutant General to Duke of Richmond, 22 August 1795, WO 3/14, f. 142, TNA.

demonstrates how many officers thought they could personally benefit from military service, however, when these officers faced trial, it was most frequently for the charge of ‘conduct unbecoming’. As has been established, this charge fulfilled many roles within military contexts, and offered these men a way to challenge personal issues in a legal setting. As a force raised in the 1790s, and before the shift within the military justice system, the fencibles also benefited from a wider definition of the charge; it could be used to characterise a range of other crimes (including financial misdeeds) as being ungentlemanly. Investigation into this topic has therefore offered insight into an officer corps with different perceptions of their role – new military professionals, those seeking a future career or merely opportunists – all seeking to avoid being associated ‘with infamy’.¹¹³ It was this concept of meeting the standard expected of an officer which shaped how the fencible officers corps interacted with the regular army acting, as they did, as an intersection between civilian and military cultures of honour (much like the militia).¹¹⁴ The fencible rank and file were, however, disciplined like their regular colleagues, with the crucial difference being the more liberal application of the fencible alternative to the death penalty: enforced (sometimes permanent) service abroad. The events of 1794 had shaped how the military authorities interacted with the fencible men. Although they were subject to the same standards of discipline, and obeyed the Mutiny Act in the same way, the impact of enforced service abroad was to strip the fencibles of the privileges of their restricted service. The fencible men held this contract distinction dearly, and general service was a punishment that fundamentally robbed them of the agency which had governed their enlistment. Just as in 1794, and indeed throughout the French Revolutionary Wars, what threatened the fencible relationship with military authority at all ranks was the possibility that government might, at any point, impact their future life, whether that be in uniform or not. They were, after all, temporary soldiers only. Some sought military success or civilian acclaim, but many looked forward to the day they could leave the army and return home, or face ‘the contents of the bottle’, unimpeded by the restrictions of military life.¹¹⁵

Declaration of Conflicting Interests

The author declared no potential conflicts of interest with respect to the research, authorship and/or publication of this article.

Funding

The author received no financial support for the research, authorship and/or publication of this article.

ORCID iD

Rory Butcher  <https://orcid.org/0009-0008-1841-3977>

113 *Booklet of the Proceedings...*, 1796, L/F/97/M2/44, pp. 50–51, JHA.

114 Huf, ‘The junior British army Officer’, p. 60.

115 Robert Eadie, *Recollections of the Life of Robert Eadie*, second edn (Falkirk: Thomas Gibson, 1830), p. 41.