

## A Century of Lawmaking for a New Nation: U.S. Congressional Documents and Debates, 1774-1875

### Journals of the Continental Congress --FRIDAY, SEPTEMBER 20, 1776

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#### **Journals of the Continental Congress, 1774-1789** **FRIDAY, SEPTEMBER 20, 1776**

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A letter of the 18th, from General Washington,<sup>3</sup> also,

[Note 3: 3 The letter of Washington is in the Papers of the Continental Congress, No. 152, II, folio 559. It is printed in Writings of Washington (Ford), IV, 416.]

A letter of the 13th, from the general Assembly of Massachusetts bay, with sundry papers enclosed, were laid before Congress, and read.

Resolved, That the letter from the general Assembly of Massachusetts bay be referred to the Marine Committee.

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In order to prevent the officers and soldiers, who shall be entitled to the lands hereafter to be granted by the resolution of Congress of the 16, from disposing of the same, during the war,

Resolved, That this Congress will not grant lands to any person or persons, claiming under the assignment of an officer or soldier.<sup>1</sup>

[Note 1: 1 Printed in the Pennsylvania Gazette, 25 September, 1776.]

Resolved, That the Medical Committee be directed to forward 300 lb. of Peruvian bark to the southern department, for the use of the troops in the said department.

Congress resumed the consideration of the articles of war, which, being debated by paragraphs, were agreed to, as follows:<sup>2</sup>

[Note 2: 2 In the Papers of the Continental Congress, No. 41, I, folio 1, is a paper by William Tudor, "Remarks on the Rules and Articles for the government of the Continental Troops," giving suggestions for a revision of the rules established June 30, 1775. See Vol. II, 111.]

#### ARTICLES OF WAR

Resolved, That from and after the publication of the following articles, in the respective armies of the United States, the rules and articles by which the said armies have heretofore been governed, shall be, and they are, hereby repealed.<sup>3</sup>

[Note 3: 3 See note under August 19, p. 670, ante.]

## Section I

- Article 1. That every officer who shall be retained in the army of the United States, shall, at the time of his acceptance of his commission, subscribe these rules and regulations.
  - Art. 2. It is earnestly recommended to all officers and soldiers diligently to attend divine service: and all officers and soldiers who shall behave indecently, or irreverently, at any place of divine worship, shall, if commissioned officers, be brought before a general courtmartial, there to be publicly and severely reprimanded by the president; if non-commissioned officers or soldiers, every person so offending
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shall, for his first offence, forfeit  $\frac{1}{4}$ th of a dollar, to be deducted out of his next pay; for the second offence, he shall not only forfeit a like sum, but be confined for twenty-four hours; and, for every like offence, shall suffer and pay in like manner; which money, so forfeited, shall be applied to the use of the sick soldiers of the troop or company to which the offender belongs.

- Art. 3. Whatsoever non-commissioned officer or soldier shall use any prophane oath or execration, shall incur the penalties expressed in the foregoing article; and if a commissioned officer be thus guilty of prophane cursing or swearing, he shall forfeit and pay, for each and every such offence, two-thirds of a dollar.
- Art. 4. Every chaplain who is commissioned to a regiment, company, troop, or garrison, and shall absent himself from the said regiment, company, troop, or garrison, (excepting in case of sickness or leave of absence) upon Pain of being brought to a Court Martial and punished as their judgment and the circumstances of his offence may require. shall be brought to a court-martial, and be fined not exceeding one month's pay, besides the loss of his pay during his absence, or be discharged, as the said court-martial shall judge most proper.

## Section II

- Art. 1. Whatsoever officer or soldier shall presume to use traitorous or disrespectful words against the authority of the United States in Congress assembled, or the legislature of any of the United States in which he may be quartered, if a commissioned officer, he shall be cashiered; if a non-commissioned officer or soldier, he shall suffer such punishment as shall be inflicted upon him by the sentence of a courtmartial.
  - Art. 2. Any officer or soldier who shall behave himself with contempt or disrespect towards the general, or other commander in chief of the forces of the United States, or shall speak words tending to his hurt or dishonor, shall be punished according to the nature of his offence, by the judgment of a court-martial.
  - Art. 3. Any officer or soldier who shall begin, excite, cause or join, in any mutiny or sedition, in the troop, company or regiment to which he belongs, or in any other troop or company in the service of the United States, or in any party, post, detachment or guard, on any pretence whatsoever, shall suffer death, or such other punishment as by a court-martial shall be inflicted.
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- Art. 4. Any officer, non-commissioned officer, or soldier, who, being present at any mutiny or sedition, does not use his utmost endeavor to suppress the same, or coming to the knowledge of any intended mutiny, does not, without delay, give information thereof to his commanding officer, shall be punished by a court-martial with death, or otherwise, according to the nature of the offence.
- Art. 5. Any officer or soldier who shall strike his superior officer, or draw, or shall lift up any weapon, or offer any violence against him, being in the execution of his office, on any pretence whatsoever, or shall disobey any lawful command of his superior officer, shall suffer death, or such other punishment as shall, according to the nature of his offence, be inflicted upon him by the sentence of a court-martial.

## Section III

- Art. 1. Every non-commissioned officer and soldier, who shall enlist himself in the service of the United States, shall at the time of his so enlisting, or within six days afterwards, have the articles for the government of the forces of the United States read to him, and shall, by the officer who enlisted him, or by the commanding officer of the troop or company into which he was enlisted, be taken before the next justice of the peace, or chief magistrate of any city or town-corporate, not being an officer of the army, or, where recourse cannot be had to the civil magistrate, before the judge-advocate, and, in his presence, shall take the following oath, or affirmation, if conscientiously scrupulous about taking an oath:

I swear, or affirm, (as the case may be,) to be true to the United States of America, and to serve them honestly and faithfully against all their enemies or opposers whatsoever; and to observe and obey the orders of the Continental Congress, and the orders of the generals and officers set over me by them.

Which justice or magistrate is to give the officer a certificate, signifying that the man enlisted, did take the said oath or affirmation.

- Art. 2. After a non-commissioned officer or soldier shall have been duly enlisted and sworn, he shall not be dismissed the service without a discharge in writing; and no discharge, granted to him, shall be allowed of as sufficient, which is not signed by a field-officer of the regiment into which he was enlisted, or commanding officer, where no field-officer of the regiment is in the same state.

#### **Section IV**

- Art. 1. Every officer commanding a regiment, troop, or company, shall, upon the notice given to him by the commissary of musters, or from one of his deputies, assemble the regiment, troop or company, under his command, in the next convenient place for their being mustered.
- Art. 2. Every colonel or other field-officer commanding the regiment, troop, or company, and actually residing with it, may give furloughs to non-commissioned officers and soldiers, in such numbers, and for so long a time, as he shall judge to be most consistent with the good of the service; but, no non-commissioned officer or soldier shall, by leave of his captain, or inferior officer, commanding the troop or company (his field-officer not being present) be absent above twenty days in six months, nor shall more than two private men be absent at the same time from their troop or company, excepting some extraordinary occasion shall require it, of which occasion the field-officer, present with, and commanding the regiment, is to be the judge.
- Art. 3. At every muster, the commanding officer of each regiment, troop, or company, there present, shall give to the commissary, certificates signed by himself, signifying how long such officers, who shall not appear at the said muster, have been absent, and the reason of their absence; in like manner, the commanding officer of every troop or company shall give certificates, signifying the reasons of the absence of the non-commissioned officers and private soldiers; which reasons, and time of absence, shall be inserted in the muster-rolls opposite to the names of the respective absent officers and soldiers: The said certificates shall, together with the muster-rolls, be remitted by the commissary to the Congress, as speedily as the distance of place will admit.
- Art. 4. Every officer who shall be convicted before a general court-martial of having signed a false certificate, relating to the absence of either officer or private soldier, shall be cashiered.
- Art. 5. Every officer who shall knowingly make a false muster of man or horse, and every officer or commissary who shall willingly sign, direct, or allow the signing of the muster-rolls, wherein such false muster is contained, shall, upon proof made thereof by two witnesses before a general court-martial, be cashiered, and shall be thereby utterly disabled to have or hold any office or employment in the service of the United States.

- Art. 6. Any commissary who shall be convicted of having taken money, or any other thing, by way of gratification, on the mustering any regiment, troop, or company, or on the signing the muster rolls, shall be displaced from his office, and, moreover, forfeit all such Pay as may be due to him at the time of conviction of such offences. and shall be thereby utterly disabled to have or hold any office or employment under the United States.
- Art. 7. Any officer who shall presume to muster any person as a soldier, who is, at other times, accustomed to wear a livery, or who does not actually do his duty as a soldier, shall be deemed guilty of having made a false muster, and shall suffer accordingly.

## Section V

- Art. 1. Every officer who shall knowingly make a false return to the Congress, or any committee thereof, to the commander in chief of the forces of the United States, or to any his superior officer authorized to call for such returns, of the state of the regiment, troop, or company, or garrison, under his command, or of arms, ammunition, clothing, or other stores thereunto belonging, shall, by a court-martial, be cashiered.
- Art. 2. The commanding officer of every regiment, troop, or independent company, or garrison of the United States, shall, in the beginning of every month, remit to the commander in chief of the American forces, and to the Congress, an exact return of the state of the regiment, troop, independent company, or garrison under his command, specifying the names of the officers not then residing at their posts, and the reason for, and time of, their absence: Whoever shall be convicted of having, through neglect or design, omitted the sending such returns, shall be punished according to the nature of his crime, by the judgment of a general court-martial.

## Section VI

- Art. 1. All officers and soldiers, who having received pay, or having been duly inlisted in the service of the United States, shall be convicted of having deserted the same, shall suffer death, or such other punishment as by a court-martial shall be inflicted.
- Art. 2. Any non-commissioned officer or soldier, who shall, without leave from his commanding officer, absent himself from his troop or company, or from any detachment with which he shall be commanded,

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shall, upon being convicted thereof, be punished, according to the nature of his offence, at the discretion of a court-martial.

- Art. 3. No non-commissioned officer or soldier shall inlist himself in any other regiment, troop or company, without a regular discharge from the regiment, troop or company, in which he last served, on the penalty of being reputed a deserter, and suffering accordingly: And in case any officer shall, knowingly, receive and entertain such non-commissioned officer or soldier, or shall not, after his being discovered to be a deserter, immediately confine him, and give notice thereof to the corps in which he last served, he, the said officer so offending, shall, by a court-martial, be cashiered.
- Art. 4. Whatsoever officer or soldier shall be convicted of having advised or persuaded any other officer or soldier to desert the service of the United States, shall suffer such punishment as shall be inflicted upon him by the sentence of a court-martial.

## Section VII

- Art. 1. No officer or soldier shall use any reproachful or provoking speeches or gestures to another, upon pain, if an officer, of being put in arrest; if a soldier, imprisoned, and of asking pardon of the party offended, in the presence of his commanding officer.
- Art. 2. No officer or soldier shall presume to send a challenge to any other officer or soldier, to fight a duel, upon pain, if a commissioned officer, of being cashiered, if a non-commissioned officer or soldier, of suffering corporal punishment, at the discretion of a court-martial.
- Art. 3. If any commissioned or non-commissioned officer commanding a guard, shall, knowingly and willingly, suffer any person whatsoever to go forth to fight a duel, he shall be punished as a challenger:

And likewise all seconds, promoters, and carriers of challenges, in order to duels, shall be deemed as principals, and be punished accordingly.

- Art. 4. All officers, of what condition soever, have power to part and quell all quarrels, frays, and disorders, though the persons concerned should belong to another regiment, troop or company; and either to order officers into arrest, or non-commissioned officers or soldiers to prison, till their proper superior officers shall be acquainted therewith; and whosoever shall refuse to obey such officer (though of an inferior rank) or shall draw his sword upon him, shall be punished at the discretion of a general court-martial.
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- Art. 5. Whatsoever officer or soldier shall upbraid another for refusing a challenge, shall himself be punished as a challenger; and all officers and soldiers are hereby discharged of any disgrace, or opinion of disadvantage, which might arise from their having refused to accept of challenges, as they will only have acted in obedience to the orders of Congress, and done their duty as good soldiers, who subject themselves to discipline.

### **Section VIII**

- Art. 1. No suttler shall be permitted to sell any kind of liquors or victuals, or to keep their houses or shops open, for the entertainment of soldiers, after nine at night, or before the beating of the reveilles, or upon Sundays, during divine service, or sermon, on the penalty of being dismissed from all future suttling.
- Art. 2. All officers, soldiers and suttlers, shall have full liberty to bring into any of the forts or garrisons of the United American States, any quantity or species of provisions, eatable or drinkable, except where any contract or contracts are, or shall be entered into by Congress, or by their order, for furnishing such provisions, and with respect only to the species of provisions so contracted for.
- Art. 3. All officers, commanding in the forts, barracks, or garrisons of the United States, are hereby required to see, that the persons permitted to suttle, shall supply the soldiers with good and wholesome provisions at the market price, as they shall be answerable for their neglect.
- Art. 4. No officers, commanding in any of the garrisons, forts, or barracks of the United States, shall either themselves exact exorbitant prices for houses or stalls let out to suttlers, or shall connive at the like exactions in others; nor, by their own authority and for their private advantage, shall they lay any duty or imposition upon, or be interested in the sale of such victuals liquors, or other necessities of life, which are brought into the garrison, fort, or barracks, for the use of the soldiers, on the penalty of being discharged from the service.

### **Section IX**

- Art. 1. Every officer commanding in quarters, garrisons, or on a march, shall keep good order, and, to the utmost of his power, redress all such abuses or disorders which may be committed by any officer or soldier under his command; if, upon complaint made to him of officers or soldiers beating, or otherwise ill-treating any person; of disturbing
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fairs or markets, or of committing any kind of riots to the disquieting of the good people of the United States; he the said commander, who shall refuse or omit to see justice done on the offender or offenders, and reparation made to the party or parties injured, as far as part of the offenders pay shall enable him or them, shall, upon proof thereof, be punished, by a general court-martial, as if he himself had committed the crimes or disorders complained of.

### **Section X**

- Art. 1. Whenever any officer or soldier shall be accused of a capital crime, or of having used violence, or committed any offence against the persons or property of the good people of any of the United American States, such as is punishable by the known laws of the land, the commanding officer and officers of every

regiment, troop, or party, to which the person or persons so accused shall belong, are hereby required, upon application duly made by or in behalf of the party or parties injured, to use his utmost endeavors to deliver over such accused person or persons to the civil magistrate; and likewise to be aiding and assisting to the officers of justice in apprehending and securing the person or persons so accused, in order to bring them to a trial. If any commanding officer or officers shall wilfully neglect or shall refuse, upon the application aforesaid, to deliver over such accused person or persons to the civil magistrates, or to be aiding and assisting to the officers of justice in apprehending such person or persons, the officer or officers so offending shall be cashiered.

- Art. 2. No officer shall protect any person from his creditors, on the pretence of his being a soldier, nor any non-commissioned officer or soldier who does not actually do all duties as such, and no farther than is allowed by a resolution of Congress, bearing date the 26th day of December, 1775. Any officer offending herein, being convicted thereof before a court-martial, shall be cashiered.

## **Section XI**

- Art. 1. If any officer shall think himself to be wronged by his colonel, or the commanding officer of the regiment, and shall, upon due application made to him, be refused to be redressed, he may complain to the general, commanding in chief the forces of the United States, in order to obtain justice, who is hereby required to examine into the said complaint, and, either by himself, or the board of war, to make report to Congress thereupon, in order to receive further directions.
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- Art. 2. If any inferior officer or soldier shall think himself wronged by his captain, or other officer commanding the troop or company to which he belongs, he is to complain thereof to the commanding officer of the regiment, who is hereby required to summon a regimental court-martial, for the doing justice to the complainant; from which regimental court-martial either party may, if he thinks himself still aggrieved, appeal to a general court-martial; but if, upon a second hearing, the appeal shall appear to be vexatious and groundless, the person so appealing shall be punished at the discretion of the said general court-martial.

## **Section XII**

- Art. 1. Whatsoever commissioned officer, store-keeper, or commissary, shall be convicted at a general court-martial of having sold (without a proper order for that purpose) embezzled, misapplied, or wilfully, or through neglect, suffered any of the provisions, forage, arms, clothing, ammunition, or other military stores belonging to the United States, to be spoiled or damaged, the said officer, store-keeper, or commissary so offending, shall, at his own charge, make good the loss or damage, shall moreover forfeit all his pay, and be dismissed from the service.
  - Art. 2. Whatsoever non-commissioned officer or soldier shall be convicted, at a regimental court-martial, of having sold, or designedly, or through neglect, wasted the ammunition delivered out to him to be employed in the service of the United States, shall, if a non-commissioned officer, be reduced to a private sentinel, and shall besides suffer corporal punishment in the same manner as a private sentinel so offending, at the discretion of a regimental court-martial.
  - Art. 3. Every non-commissioned officer or soldier who shall be convicted at a court-martial of having sold, lost or spoiled, through neglect, his horse, arms, clothes or accoutrements shall undergo such weekly stoppages (not exceeding the half of his pay) as a court-martial shall judge sufficient for repairing the loss or damage; and shall suffer imprisonment, or such other corporal punishment, as his crime shall deserve.
  - Art. 4. Every officer who shall be convicted at a court-martial of having embezzled or misapplied any money with which he may have been entrusted for the payment of the men under his command, or for inlisting men into the service, if a commissioned officer, shall be cashiered and compelled to refund the money, if a non-commissioned
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officer, shall be reduced to serve in the ranks as a private soldier, be put under stoppages until the money be made good, and suffer such corporal punishment (not extending to life or limb) as the court-martial shall think fit.

- Art. 5. Every captain of a troop or company is charged with the arms, accoutrements, ammunition, clothing, or other warlike stores belonging to the troop or company under his command, which he is to be accountable for to his colonel, in case of their being lost, spoiled, or damaged, not by unavoidable accidents, or on actual service.

### Section XIII

- Art. 1. All non-commissioned officers and soldiers, who shall be found one mile from the camp, without leave, in writing, from their commanding officer, shall suffer such punishment as shall be inflicted upon them by the sentence of a court-martial.
  - Art. 2. No officer or soldier shall lie out of his quarters, garrison, or camp, without leave from his superior officer, upon penalty of being punished according to the nature of his offence, by the sentence of a court-martial.
  - Art. 3. Every non-commissioned officer and soldier shall retire to his quarters or tent at the beating of the retreat; in default of which he shall be punished, according to the nature of his offence, by the commanding officer.
  - Art. 4. No officer, non-commissioned officer, or soldier, shall fail of repairing, at the time fixed, to the place of parade of exercise, or other rendezvous appointed by his commanding officer, if not prevented by sickness, or some other evident necessity; or shall go from the said place of rendezvous, or from his guard, without leave from his commanding officer, before he shall be regularly dismissed or relieved, on the penalty of being punished according to the nature of his offence, by the sentence of a court-martial.
  - Art. 5. Whatever commissioned officer shall be found drunk on his guard, party, or other duty under arms, shall be cashiered for it; any non-commissioned officer or soldier so offending, shall suffer such corporal punishment as shall be inflicted by the sentence of a court-martial.
  - Art. 6. Whatever sentinel shall be found sleeping upon his post, or shall leave it before he shall be regularly relieved, shall suffer death, or such other punishment as shall be inflicted by the sentence of a court-martial.
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- Art. 7. No soldier belonging to any regiment, troop, or company, shall hire another to do his duty for him, or be excused from duty, but in case of sickness, disability, or leave of absence; and every such soldier found guilty of hiring his duty, as also the party so hired to do another's duty, shall be punished at the next regimental court-martial.
- Art. 8. And every non-commissioned officer conniving at such hiring of duty as aforesaid, shall be reduced for it; and every commissioned officer, knowing and allowing of such ill-practices in the service, shall be punished by the judgment of a general court-martial.
- Art. 9. Any person, belonging to the forces employed in the service of the United States, who, by discharging of fire-arms, drawing of swords, beating of drums, or by any other means whatsoever, shall occasion false alarms in camp, garrison, or quarters, shall suffer death, or such other punishment as shall be ordered by the sentence of a general court-martial.
- Art. 10. Any officer or soldier who shall, without urgent necessity, or without the leave of his superior officer, quit his platoon or division, shall be punished, according to the nature of his offence, by the sentence of a court-martial.
- Art. 11. No officer or soldier shall do violence to any person who brings provisions or other necessities to the camp, garrison or quarters of the forces of the United States employed in parts out of said states, on pain of death, or such other punishment as a court-martial shall direct.

- Art. 12. Whatsoever officer or soldier shall misbehave himself before the enemy, or shamefully abandon any post committed to his charge, or shall speak words inducing others to do the like, shall suffer death.
  - Art. 13. Whatsoever officer or soldier shall misbehave himself before the enemy, and run away, or shamefully abandon any fort, post or guard, which he or they shall be commanded to defend, or speak words inducing others to do the like; or who, after victory, shall quit his commanding officer, or post, to plunder and pillage: Every such offenders being duly convicted thereof, shall be reputed a disobeyer of military orders; and shall suffer death, or such other punishment, as, by a general court-martial, shall be inflicted on him.
  - Art. 14. Any person, belonging to the forces of the United States, who shall cast away his arms and ammunition, shall suffer death, or
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such other punishment as shall be ordered by the sentence of a general court-martial.

- Art. 15. Any person, belonging to the forces of the United States, who shall make known the watch-word to any person who is not entitled to receive it according to the rules and discipline of war, or shall presume to give a parole or watch-word different from what he received, shall suffer death, or such other punishment as shall be ordered by the sentence of a general court-martial.
  - Art. 16. All officers and soldiers are to behave themselves orderly in quarters, and on their march; and whosoever shall commit any waste or spoil, either in walks of trees, parks, warrens, fish-ponds, houses or gardens, cornfields, enclosures or meadows, or shall maliciously destroy any property whatsoever belonging to the good people of the United States, unless by order of the then commander in chief of the forces of the said states, to annoy rebels or other enemies in arms against said states, he or they shall be found guilty of offending herein, shall (besides such penalties as they are liable to by law) be punished according to the nature and degree of the offence, by the judgment of a regimental or general court-martial.
  - Art. 17. Whosoever, belonging to the forces of the United States, employed in foreign parts, shall force a safe-guard, shall suffer death.
  - Art. 18. Whosoever shall relieve the enemy with money, victuals, or ammunition, or shall knowingly harbour or protect an enemy, shall suffer death, or such other punishment as by a court-martial shall be inflicted.
  - Art. 19. Whosoever shall be convicted of holding correspondence with, or giving intelligence to the enemy, either directly or indirectly, shall suffer death, or such other punishment as by a court-martial shall be inflicted.
  - Art. 20. All public stores taken in the enemy's camp, towns, forts, or magazines, whether of artillery, ammunition, clothing, forage, or provisions, shall be secured for the service of the United States; for the neglect of which the commanders in chief are to be answerable.
  - Art. 21. If any officer or soldier shall leave his post or colors to go in search of plunder, he shall upon being convicted thereof before a general court-martial, suffer death, or such other punishment as by a court-martial shall be inflicted.
  - Art. 22. If any commander of any garrison, fortress, or post, shall be compelled by the officers or soldiers under his command, to give up to
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the enemy, or to abandon it, the commissioned officers, non-commissioned officers, or soldiers, who shall be convicted of having so offended, shall suffer death, or such other punishment as shall be inflicted upon them by the sentence of a court-martial.

- Art. 23. All sutlers and retainers to a camp, and all persons whatsoever serving with the armies of the United States in the field, though no enlisted soldier, are to be subject to orders, according to the rules and discipline of war.



- Art. 24. Officers having brevets, or commissions of a prior date to those of the regiment in which they now serve, may take place in courts-martial and on detachments, when composed of different corps, according to the ranks given them in their brevets or dates of their former commissions; but in the regiment, troop, or company to which such brevet officers and those who have commissions of a prior date do belong, they shall do duty and take rank both on court-martial and on detachments which shall be composed only of their own corps, according to the commissions by which they are mustered in the said corps.
- Art. 25. If upon marches, guards, or in quarters, different corps shall happen to join or do duty together, the eldest officer by commission there, on duty, or in quarters, shall command the whole, and give out orders for what is needful to the service; regard being always had to the several ranks of those corps, and the posts they usually occupy.
- Art. 26. And in like manner also, if any regiments, troops, or detachments of horse or foot shall happen to march with, or be encamped or quartered with any bodies or detachments of other troops in the service of the United States, the eldest officer, without respect to corps, shall take upon him the command of the whole, and give the necessary orders to the service.

#### **Section XIV.**

- Art. 1. A general court-martial in the United States shall not consist of less than thirteen commissioned officers, and the president of such court-martial shall not be the commander in chief or commandant of the garrison where the offender shall be tried, nor be under the degree of a field officer.
- Art. 2. The members both of general and regimental courts-martial shall, when belonging to different corps, take the same rank which they hold in the army; but when courts-martial shall be composed of

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officers of one corps, they shall take their ranks according to the dates of the commissions, by which they are mustered in the said corps.

- Art. 3. The judge advocate general, or some person deputed by him, shall prosecute in the name of the United States of America; and in trials of offenders by general courts-martial, administer to each member the following oaths:

"You shall well and truly try and determine, according to your evidence, the matter now before you, between the United States of America, and the prisoners to be tried. So help you God.

"You A. B. do swear, that you will duly administer justice according to the rules and articles for the better government of the forces of the United States of America, without partiality, favor, or affection; and if any doubt shall arise, which is not explained by the said articles, according to your conscience, the best of your understanding, and the custom of war in the like cases. And you do further swear, that you will not divulge the sentence of the court, until it shall be approved of by the general, or commander in chief; neither will you, upon any account, at any time whatsoever, disclose or discover the vote or opinion of any particular member of the court-martial, unless required to give evidence thereof as a witness by a court of justice, in a due course of law. So help you God."

And as soon as the said oath shall have been administered to the respective members, the president of the court shall administer to the judge-advocate, or person officiating as such, an oath in the following words:

"You A. B. do swear, that you will not, upon any account, at any time whatsoever, disclose or discover the vote or opinion of any particular member of the court-martial, unless required to give evidence thereof, as a witness, by a court of justice, in a due course of law. So help you God."

- Art. 4. All the members of a court-martial are to behave with calmness and decency; and in the giving of their votes, are to begin with the youngest in commission.

- Art 5. All persons who give evidence before a general court-martial, are to be examined upon oath; and no sentence of death shall be given against any offender by any general court-martial, unless two-thirds of the officers present shall concur therein.
  - Art. 6. All persons called to give evidence, in any cause, before a court-martial, who shall refuse to give evidence, shall be punished for
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such refusal, at the discretion of such court-martial: The oath to be administered in the following form, viz.

"You swear the evidence you shall give in the cause now in hearing, shall be the truth, the whole truth, and nothing but the truth. So help you God."

- Art. 7. No field-officer shall be tried by any person under the degree of a captain; nor shall any proceedings or trials be carried on excepting between the hours of eight in the morning and of three in the afternoon, except in cases which require an immediate example.
  - Art. 8. No sentence of a general court-martial shall be put in execution, till after a report shall be made of the whole proceedings to Congress, or to the general or commander in chief of the forces of the United States, and their or his directions be signified thereupon.
  - Art. 9. For the more equitable decision of disputes which may arise between officers and soldiers belonging to different corps, it is hereby directed, that the courts-martial shall be equally composed of officers belonging to the corps in which the parties in question do then serve; and that the presidents shall be taken by turns, beginning with that corps which shall be eldest in rank.
  - Art. 10. The commissioned officers of every regiment may, by the appointment of their colonel or commanding officer, hold regimental courts-martial for the enquiring into such disputes, or criminal matters, as may come before them, and for the inflicting corporal punishments for small offences, and shall give judgment by the majority of voices; but no sentence shall be executed till the commanding officer (not being a member of the court-martial) or the commandant of the garrison, shall have confirmed the same.
  - Art. 11. No regimental court-martial shall consist of less than five officers, excepting in cases where that number cannot conveniently be assembled, when three may be sufficient; who are likewise to determine upon the sentence by the majority of voices; which sentence is to be confirmed by the commanding officer of the regiment, not being a member of the court-martial.
  - Art. 12. Every officer commanding in any of the forts, barracks, or elsewhere, where the corps under his command consists of detachments from different regiments, or of independent companies, may assemble courts-martial for the trial of offenders in the same manner as if they were regimental, whose sentence is not to be executed till it shall be confirmed by the said commanding officer.
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- Art. 13. No commissioned officer shall be cashiered or dismissed from the service, excepting by an order from Congress, or by the sentence of a general court-martial; but non-commissioned officers may be discharged as private soldiers, and, by the order of the colonel of the regiment, or by the sentence of a regimental court-martial, be reduced to private sentinels.
- Art. 14. No person whatever shall use menacing words, signs, or gestures, in the presence of a court-martial then sitting, or shall cause any disorder or riot, so as to disturb their proceedings, on the penalty of being punished at the discretion of the said court-martial.
- Art. 15. To the end that offenders may be brought to justice, it is hereby directed, that whenever any officer or soldier shall commit a crime deserving punishment, he shall, by his commanding officer, if an officer, be put in arrest; if a non-commissioned officer or soldier, be imprisoned till he shall be either tried by a court-martial, or shall be lawfully discharged by a proper authority.

- Art. 16. No officer or soldier who shall be put in arrest or imprisonment, shall continue in his confinement more than eight days, or till such time as a court-martial can be conveniently assembled.
  - Art. 17. No officer commanding a guard, or provost-martial, shall refuse to receive or keep any prisoner committed to his charge, by any officer belonging to the forces of the United States; which officer shall, at the same time, deliver an account in writing, signed by himself, of the crime with which the said prisoner is charged.
  - Art. 18. No officer commanding a guard, or provost-martial, shall presume to release any prisoner committed to his charge without proper authority for so doing; nor shall he suffer any prisoner to escape, on the penalty of being punished for it by the sentence of a court-martial.
  - Art. 19. Every officer or provost-martial to whose charge prisoners shall be committed, is hereby required, within twenty-four hours after such commitment, or as soon as he shall be relieved from his guard, to give in writing to the colonel of the regiment to whom the prisoner belongs (where the prisoner is confined upon the guard belonging to the said regiment, and that his offence only relates to the neglect of duty in his own corps) or to the commander in chief, their names, their crimes, and the names of the officers who committed them, on the penalty of his being punished for his disobedience or neglect, at the discretion of a court-martial.
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- Art. 20. And if any officer under arrest, shall leave his confinement before he is set at liberty by the officer who confined him, or by a superior power, he shall be cashiered for it.
- Art. 21. Whatsoever commissioned officer shall be convicted, before a general court-martial, of behaving in a scandalous, infamous manner, such as is unbecoming the character of an officer and a gentleman, shall be discharged from the service.
- Art. 22. In all cases where a commissioned officer is cashiered for cowardice, or fraud, it shall be added in the punishment, that the crime, name, place of abode, and punishment of the delinquent, be published in the newspapers, in and about the camp, and of that particular state from which the offender came, or usually resides: After which, it shall be deemed scandalous in any officer to associate with him.

## Section XV<sup>1</sup>

[Note 1: 1 The original Section XV read: "All commissions granted by Congress, or by any of the Generals, having authority from Congress, shall be entered in the books of the Board of War, otherwise they will not be allowed of at the Musters." It was struck out.]

- Art. 1. When any commissioned officer shall happen to die or be killed in the service of the United States, the major of the regiment, or the officer doing the major's duty in his absence, shall immediately secure all his effects, or equipage, then in camp or quarters; and shall, before the next regimental court-martial, make an inventory thereof, and forthwith transmit the same to the office of the board of war, to the end, that his executors may, after payment of his debts in quarters and interment, receive the overplus, if any be, to his or their use.
  - Art. 2. When any non-commissioned officer or soldier shall happen to die, or to be killed in the service of the United States, the then commanding officer of the troop or company, shall, in the presence of two other commissioned officers, take an account of whatever effects he dies possessed of, above his regimental clothing, arms, and accoutrements, and transmit the same to the office of the board at war; which said effects are to be accounted for, and paid to the representative of such deceased non-commissioned officer or soldier. And in case any of the officers, so authorized to take care of the effects of dead officers and soldiers, should, before they shall have accounted to their representatives for the same, have occasion to leave the regiment, by preferment or otherwise, they shall, before they be permitted
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to quit the same, deposit in the hands of the commanding officer or of the agent of the regiment, all the

effects of such deceased noncommissioned officers and soldiers, in order that the same may be secured for, and paid to, their respective representatives.

### Section XVI

- Art. 1. All officers, conductors, gunners, matrosses, drivers, or any other persons whatsoever, receiving pay or hire in the service of the artillery of the United States, shall be governed by the aforesaid rules and articles, and shall be subject to be tried by courts-martial, in like manner with the officers and soldiers of the other troops in the service of the United States.
- Art. 2. For differences arising amongst themselves, or in matters relating solely to their own corps, the courts-martial may be composed of their own officers; but where a number sufficient of such officers cannot be assembled, or in matters wherein other corps are interested, the officers of artillery shall sit in courts-martial with the officers of the other corps, taking their rank according to the dates of their respective commissions, and no otherwise.

### Section XVII

- Art. 1. The officers and soldiers of any troops, whether minutemen, militia, or others, being mustered and in continental pay, shall, at all times, and in all places, when joined, or acting in conjunction with the regular forces of the United States, be governed by these rules or articles of war, and shall be subject to be tried by courts-martial in like manner with the officers and soldiers in the regular forces, [save only that such courts-martial shall be composed entirely of militia officers of the same provincial corps with the offender.

That such militia and minute-men as are now in service, and have, by particular contract with their respective states, engaged to be governed by particular regulations while in continental service, shall not be subject to the above articles of war.]<sup>1</sup>

[Note 1: 1 The words in brackets were added as an amendment of the original report, being inserted in the writing of John Hancock.]

- Art. 2. For the future, all general officers and colonels, serving by commission from the authority of any particular state, shall, on all detachments, courts-martial, or other duty wherein they may be employed in conjunction with the regular forces of the United States,

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take rank next after all generals and colonels serving by commissions from Congress, though the commissions of such particular generals and colonels should be of elder date; and in like manner lieutenant-colonels, majors, captains, and other inferior officers, serving by commission from any particular state, shall, on all detachments, courts-martial, or other duty, wherein they may be employed in conjunction with the regular forces of the United States, have rank next after all officers of the like rank serving by commissions from Congress, though the commissions of such lieutenant-colonels, majors, captains, and other inferior officers, should be of elder date to those of the like rank from Congress.

### Section XVIII

- Art. 1. The foregoing articles are to be read and published once in every two months, at the head of every regiment, troop or company, mustered, or to be mustered in the service of the United States; and are to be duly observed and exactly obeyed by all officers and soldiers who are or shall be in the said service.
- Art. 2. The general, or commander in chief for the time being, shall have full power of pardoning or mitigating any of the punishments ordered to be inflicted, for any of the offences mentioned in the foregoing articles; and every offender convicted as aforesaid, by any regimental court-martial, may be pardoned, or have his punishment mitigated by the colonel, or officer commanding the regiment.
- Art. 3. No person shall be sentenced to suffer death, except in the cases expressly mentioned in the foregoing articles; nor shall more than one hundred lashes be inflicted on any offender, at the discretion of a court-martial.

That every judge-advocate, or person officiating as such, at any general court-martial, do, and he is hereby required to transmit, with as much expedition as the opportunity of time and distance of place can admit, the original proceedings and sentence of such court-martial to the secretary at war, which said original proceedings and sentence shall be carefully kept and preserved in the office of said secretary, to the end that persons entitled thereto may be enabled, upon application to the said office, to obtain copies thereof.<sup>1</sup>

[Note 1: 1 These paragraphs were added to the original report, and are in the writing of John Hancock.]

That the party tried by any general court-martial, shall be entitled to a copy of the sentence and proceedings of such court-martial, upon

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demand thereof made by himself, or by any other person or persons, on his behalf, whether such sentence be approved or not.<sup>1</sup>

[Note 1: 1 These paragraphs were added to the original report, and are in the writing of John Hancock.]

- Art. 4. The field officers of each and every regiment are to appoint some suitable person belonging to such regiment, to receive all such fines as may arise within the same, for any breach of any of the foregoing articles, and shall direct the same to be carefully and properly applied to the relief of such sick, wounded, or necessitous soldiers as belong to such regiment; and such person shall account with such officer for all fines received, and the application thereof.
- Art. 5. All crimes not capital, and all disorders and neglects which officers and soldiers may be guilty of, to the prejudice of good order and military discipline, though not mentioned in the above articles of war, are to be taken cognizance of by a general or regimental court-martial, according to the nature and degree of the offence, and be punished at their discretion.<sup>2</sup>

[Note 2: 2 The original report, in the writing of Timothy Pickering, is in the Papers of the Continental Congress, No. 27, folios 5--45. At the end is added, in the writing of John Hancock, the resolution on spies, printed under August 21, p. 693, ante.]

Ordered, That the same be immediately published.

Ordered, That the resolutions for raising the new army be forthwith published, and copies thereof sent to the commanding officers in the several departments, and to the assemblies and conventions of the respective states.

A petition from Charles Roberts, commander of the schooner *Thistle*, was presented to Congress, and read:

Ordered, To lie on the table.

Resolved, That the sum of 6,700 dollars be advanced to the delegates of New York, for the use of that state; the said state to be accountable.

Ordered, That Mr. [Robert Treat] Paine be directed to write to Governor Trumbull respecting the practicability of enlarging the furnace at Salisbury, for casting heavy cannon there, and request his opinion concerning the same.

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The delegates for New York having communicated to Congress a letter of the 9th, from the committee of safety of that state, with sundry papers enclosed:<sup>1</sup>

[Note 1: 1 This letter is in the Papers of the Continental Congress, No. 67, I, folio 268.]

Resolved, That a committee of three be appointed to take the same into consideration, and report thereon with all convenient despatch:

The members chosen, Mr. [Samuel] Chase, Mr. [Robert Treat] Paine and Mr. [Richard] Stockton.

Resolved, That a committee of three be appointed to repair to head quarters, near New York, to enquire into the state of the army, and the best means of supplying their wants:

The members chosen, Mr. [Roger] Sherman, Mr. [Elbridge] Gerry and Mr. [Francis] Lewis.

Resolved, That an assistant physician to Dr. Shippen be appointed for the flying camp and troops in New Jersey, and that his pay be two dollars and two thirds of a dollar per day:

The ballots being taken,

Dr. William Brown was elected.

The several matters to this day referred, being postponed,

Adjourned to 10 o'Clock on Monday.

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