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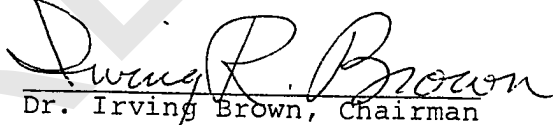
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PREVIEW

DEVIANTIZATION IN THE U.S. ARMY
1947 - 1971

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DEVIANTIZATION IN THE U.S. ARMY
1947-1971

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THESIS

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PREFACE OF ACKNOWLEDGEMENTS

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ABSTRACT

"Deviantization in the U.S. Army, 1947 - 1971" tests proposals by Emile Durkheim, Kai Erikson, and Karl Marx on the nature of solidarity in the U.S. Army. Using court and non-judicial punishment proceedings in the Army during the period, a constant rate of deviantization is hypothesized as a measure of such solidarity. An economic basis for this constancy is also explored. The findings provide support for all three theorists and their proposals, with additional strength indicated for the Durkheim-Erikson structural-functional explanation.

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PREFACE

PREFACE

The U.S. Army Justice system was established as "an Article I court under the U.S. Constitution" (Nufer, 1981: ix) at the inception of this country. Along with similar, although not identical, systems for each of the other Armed Forces, it has overseen the legal prosecution and processing of the soldier. In fact, the Army legal system prosecutes, protects, reinstates, defends, and overall, defines the soldier's existence within the Army.

Previous to 1950 the military operated under the Articles of War, a legal system mostly unchanged since 1775 and perceived to be suited to a force under warlike threat and action. The Articles of War were comprised of few if any legal processes and were extremely weak in handling peacetime offenses (Generous, 1973). Branding, bread and water rations, tar and feathering, every sort of punishment was allowed under the discretion of a commander with no real appeal, no absolute necessity for a hearing. During war these actions might be deemed necessary to maintain discipline during stressful situations, but they were eventually seen as unsuited for peacetime necessity; they cowed persons into action but were not conducive to peacetime solidarity.

During World War II complaints were heard in Congress about the status of military law from both the commanders,

who dispensed the punishment, and the soldiers, who received it. Sentences were thought to be too harsh and many were commuted. A whole revamping of the military justice system was requested to arrive at a restructuring that would be effective both in war and peace (Congressional Record, 1949: 5719-5743).

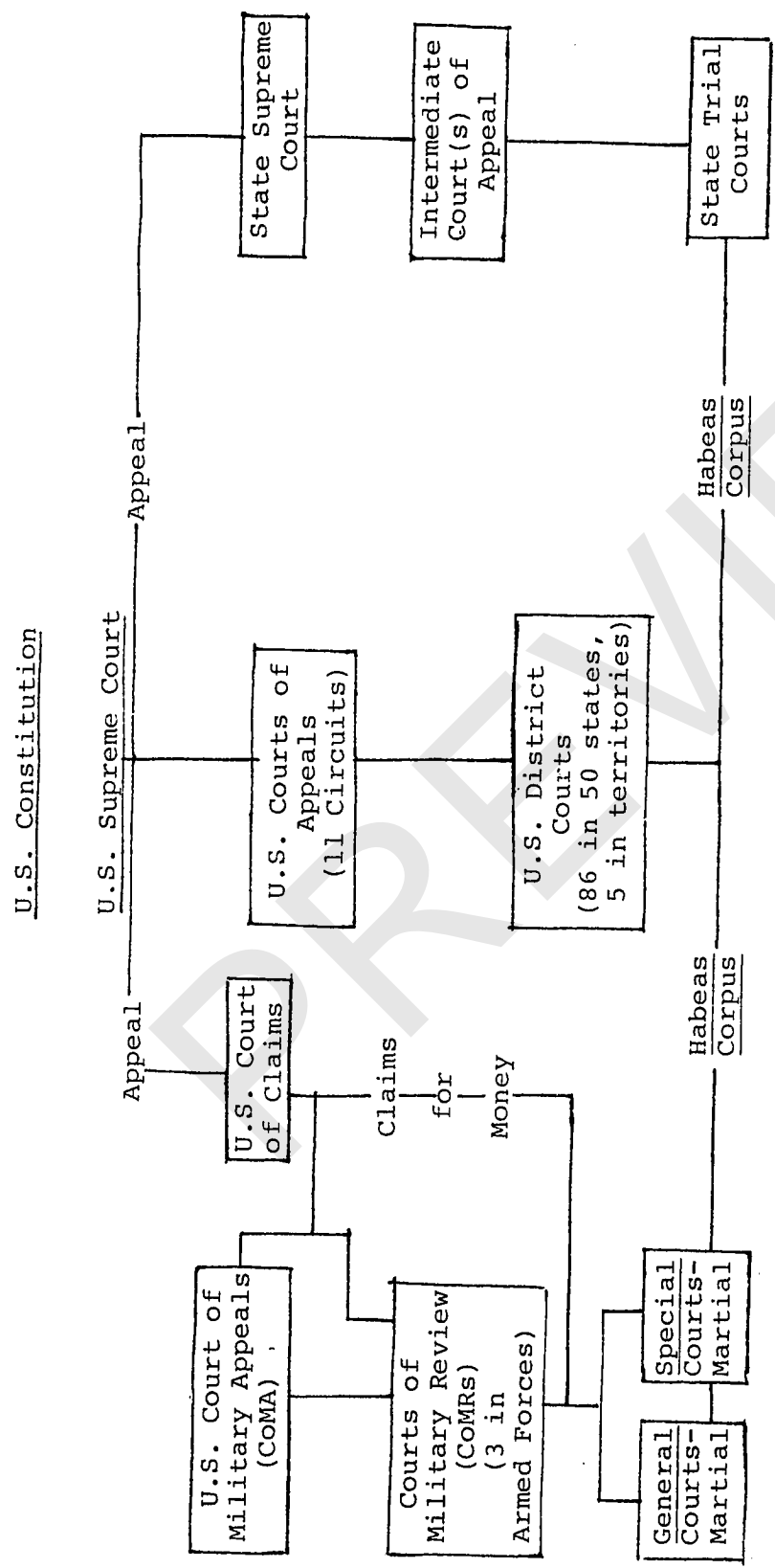
After 1950, the U.S. Army's legal system was placed in the Federal Court System with the relationship depicted in Figure 1, page 4, (from Nufer, 1981: 55). It is not separate from civilian law, but specialized for military offenses and the maintenance of military discipline.

We can now look at the military justice system not as separate, but as a specialized structure of law. It must encompass both peacetime and wartime offenses which often do not overlap, as well as the necessity to extend to the offender some protection from rampant disciplinary action, as was not the case under the Articles of War (Generous, 1973).

The military system created by the passage of Public Law 506 in 1950 not only consolidated the four distinct military systems under one comprehensive Code, known as the Uniform Code of Military Justice (UCMJ), but also added a fairly comprehensive requirement for legal counsel and for a military judge to preside over general courts-martial (Congressional Record, 1949: 5719-5743).

These changes, open appeal, required-counsel, and a military judge, were not extended to all Army courts in 1950,

Figure 1
RELATIONSHIP OF COMA TO FEDERAL AND STATE COURTS



although for general courts-martial they did apply. Between its inception and 1970, the UCMJ has gone through two major revisions. One, the Article 15, involves the inclusion in 1963 of non-judicial punishment for offenders in military offense cases (Ulmer, 1970); and in 1968, the extension to special courts the requirements placed on general courts. Summary courts, which try only minor military transgressions, have not been changed (Congressional Record, 1968: 30565).

As shown in Figure 2 (page 6), the Army court system is structured according to the seriousness of the offense as well as the sentences the individual court can apply.

Criminal cases, although not restricted to general and special courts, normally are tried there (Nufer, 1981). Minor military offenses are tried by a company commander in his responsibilities for command. Article 15's, or non-judicial punishment, are restricted primarily to other than honorable discharges and are not court actions. They are administrative and carry no criminal penalty (Jacobs, 1978).

The history of the Army court system might be summarized as such -- from 1775 to 1950, under the Articles of War, legal structure and function were relatively weak in relation to command control. From 1950 to 1970, the legal structure of the Army was strengthened in the cases of general and special courts, while command control was strengthened in the establishment of non-judicial punishment, or Article 15's.

Figure 2

THE U.S. ARMY COURT SYSTEM 1950-1970

Type of Court-Martial	Offenses	Jury	Military Judge	Pros. Atty.	Def. Atty.	Sentences
GENERAL	Capital and Non-Capital	REQ 1950 Min. of 5	REQ 1950	REQ 1950	REQ 1950	Death 6 mos. to life impr. Forfeiture of pay Grade reduction All discharges
SPECIAL	Non-Capital	REQ 1968 Min. of 3	REQ 1968	REQ 1968	REQ 1968	Up to 6 mos. impr. Forfeiture of pay Grade reduction Bad Conduct Discharge only
SUMMARY	Minor Military Offenses	NOT REQ	NOT REQ	NOT REQ*	NOT REQ*	Confinement up 30 days Forfeiture of pay Hard labor, no conf.
ARTICLE 15 NON-JUDICIAL PUNISHMENT/ADMINISTRATIVE						

*Attorneys may be requested to attend. This action was implemented in 1974.