

CHAPTER XXXV.

FLOGGING NOT LAWFUL.

It is next to idle, at the present day, merely to denounce an iniquity.
Be ours, then, a different task.

If there are any three things opposed to the genius of the American Constitution, they are these: irresponsibility in a judge, unlimited discretionary authority in an executive, and the union of an irresponsible judge and an unlimited executive in one person.

Yet by virtue of an enactment of Congress, all the Commodores in the American navy are obnoxious to these three charges, so far as concerns the punishment of the sailor for alleged misdemeanors not particularly set forth in the Articles of War.

Here is the enactment in question.

XXXII. Of the Articles of War.--"All crimes committed by persons belonging to the Navy, which are not specified in the foregoing articles, shall be punished according to the laws and customs in such cases at sea."

This is the article that, above all others, puts the scourge into the

hands of the Captain, calls him to no account for its exercise, and furnishes him with an ample warrant for inflictions of cruelty upon the common sailor, hardly credible to landsmen.

By this article the Captain is made a legislator, as well as a judge and an executive. So far as it goes, it absolutely leaves to his discretion to decide what things shall be considered crimes, and what shall be the penalty; whether an accused person has been guilty of actions by him declared to be crimes; and how, when, and where the penalty shall be inflicted.

In the American Navy there is an everlasting suspension of the Habeas Corpus. Upon the bare allegation of misconduct there is no law to restrain the Captain from imprisoning a seaman, and keeping him confined at his pleasure. While I was in the *Neversink*, the Captain of an American sloop of war, from undoubted motives of personal pique, kept a seaman confined in the brig for upward of a month.

Certainly the necessities of navies warrant a code for their government more stringent than the law that governs the land; but that code should conform to the spirit of the political institutions of the country that ordains it. It should not convert into slaves some of the citizens of a nation of free-men. Such objections cannot be urged against the laws of the Russian navy (not essentially different from our own), because the laws of that navy, creating the absolute one-man power in the Captain, and vesting in him the authority to scourge, conform in spirit to the

territorial laws of Russia, which is ruled by an autocrat, and whose courts inflict the knout upon the subjects of the land. But with us it is different. Our institutions claim to be based upon broad principles of political liberty and equality. Whereas, it would hardly affect one iota the condition on shipboard of an American man-of-war's-man, were he transferred to the Russian navy and made a subject of the Czar.

As a sailor, he shares none of our civil immunities; the law of our soil in no respect accompanies the national floating timbers grown thereon, and to which he clings as his home. For him our Revolution was in vain; to him our Declaration of Independence is a lie.

It is not sufficiently borne in mind, perhaps, that though the naval code comes under the head of the martial law, yet, in time of peace, and in the thousand questions arising between man and man on board ship, this code, to a certain extent, may not improperly be deemed municipal. With its crew of 800 or 1,000 men, a three-decker is a city on the sea. But in most of these matters between man and man, the Captain instead of being a magistrate, dispensing what the law promulgates, is an absolute ruler, making and unmaking law as he pleases.

It will be seen that the XXth of the Articles of War provides, that if any person in the Navy negligently perform the duties assigned him, he shall suffer such punishment as a court-martial shall adjudge; but if

the offender be a private (common sailor) he may, at the discretion of the Captain, be put in irons or flogged. It is needless to say, that in cases where an officer commits a trivial violation of this law, a court-martial is seldom or never called to sit upon his trial; but in the sailor's case, he is at once condemned to the lash. Thus, one set of sea-citizens is exempted from a law that is hung in terror over others. What would landsmen think, were the State of New York to pass a law against some offence, affixing a fine as a penalty, and then add to that law a section restricting its penal operation to mechanics and day laborers, exempting all gentlemen with an income of one thousand dollars? Yet thus, in the spirit of its practical operation, even thus, stands a good part of the naval laws wherein naval flogging is involved.

But a law should be "universal," and include in its possible penal operations the very judge himself who gives decisions upon it; nay, the very judge who expounds it. Had Sir William Blackstone violated the laws of England, he would have been brought before the bar over which he had presided, and would there have been tried, with the counsel for the crown reading to him, perhaps, from a copy of his own Commentaries. And should he have been found guilty, he would have suffered like the meanest subject, "according to law."

How is it in an American frigate? Let one example suffice. By the Articles of War, and especially by Article I., an American Captain may, and frequently does, inflict a severe and degrading punishment upon a sailor, while he himself is for ever removed from the possibility of

undergoing the like disgrace; and, in all probability, from undergoing any punishment whatever, even if guilty of the same thing--contention with his equals, for instance--for which he punishes another. Yet both sailor and captain are American citizens.

Now, in the language of Blackstone, again, there is a law, "coeval with mankind, dictated by God himself, superior in obligation to any other, and no human laws are of any validity if contrary to this." That law is the Law of Nature; among the three great principles of which Justinian includes "that to every man should be rendered his due." But we have seen that the laws involving flogging in the Navy do not render to every man his due, since in some cases they indirectly exclude the officers from any punishment whatever, and in all cases protect them from the scourge, which is inflicted upon the sailor. Therefore, according to Blackstone and Justinian, those laws have no binding force; and every American man-of-war's-man would be morally justified in resisting the scourge to the uttermost; and, in so resisting, would be religiously justified in what would be judicially styled "the act of mutiny" itself.

If, then, these scourging laws be for any reason necessary, make them binding upon all who of right come under their sway; and let us see an honest Commodore, duly authorised by Congress, condemning to the lash a transgressing Captain by the side of a transgressing sailor. And if the Commodore himself prove a transgressor, let us see one of his brother Commodores take up the lash against him, even as the boatswain's

mates, the navy executioners, are often called upon to scourge each other.

Or will you say that a navy officer is a man, but that an American-born citizen, whose grandsire may have ennobled him by pouring out his blood at Bunker Hill--will you say that, by entering the service of his country as a common seaman, and standing ready to fight her foes, he thereby loses his manhood at the very time he most asserts it? Will you say that, by so doing, he degrades himself to the liability of the scourge, but if he tarries ashore in time of danger, he is safe from that indignity? All our linked states, all four continents of mankind, unite in denouncing such a thought.

We plant the question, then, on the topmost argument of all. Irrespective of incidental considerations, we assert that flogging in the navy is opposed to the essential dignity, of man, which no legislator has a right to violate; that it is oppressive, and glaringly unequal in its operations; that it is utterly repugnant to the spirit of our democratic institutions; indeed, that it involves a lingering trait of the worst times of a barbarous feudal aristocracy; in a word, we denounce it as religiously, morally, and immutably wrong.

No matter, then, what may be the consequences of its abolition; no matter if we have to dismantle our fleets, and our unprotected commerce should fall a prey to the spoiler, the awful admonitions of justice and humanity demand that abolition without procrastination; in a voice that

is not to be mistaken, demand that abolition today. It is not a dollar-and-cent question of expediency; it is a matter of right and wrong. And if any man can lay his hand on his heart, and solemnly say that this scourging is right, let that man but once feel the lash on his own back, and in his agony you will hear the apostate call the seventh heavens to witness that it is wrong. And, in the name of immortal manhood, would to God that every man who upholds this thing were scourged at the gangway till he recanted.