

CHAPTER LXXI.

THE GENEALOGY OF THE ARTICLES OF WAR.

As the Articles of War form the ark and constitution of the penal laws of the American Navy, in all sobriety and earnestness it may be well to glance at their origin. Whence came they? And how is it that one arm of the national defences of a Republic comes to be ruled by a Turkish code, whose every section almost, like each of the tubes of a revolving pistol, fires nothing short of death into the heart of an offender? How comes it that, by virtue of a law solemnly ratified by a Congress of freemen, the representatives of freemen, thousands of Americans are subjected to the most despotic usages, and, from the dockyards of a republic, absolute monarchies are launched, with the "glorious stars and stripes" for an ensign? By what unparalleled anomaly, by what monstrous grafting of tyranny upon freedom did these Articles of War ever come to be so much as heard of in the American Navy?

Whence came they? They cannot be the indigenous growth of those political institutions, which are based upon that arch-democrat Thomas Jefferson's Declaration of Independence? No; they are an importation from abroad, even from Britain, whose laws we Americans hurled off as tyrannical, and yet retained the most tyrannical of all.

But we stop not here; for these Articles of War had their congenial

origin in a period of the history of Britain when the Puritan Republic had yielded to a monarchy restored; when a hangman Judge Jeffreys sentenced a world's champion like Algernon Sidney to the block; when one of a race by some deemed accursed of God--even a Stuart, was on the throne; and a Stuart, also, was at the head of the Navy, as Lord High Admiral. One, the son of a King beheaded for encroachments upon the rights of his people, and the other, his own brother, afterward a king, James II., who was hurled from the throne for his tyranny. This is the origin of the Articles of War; and it carries with it an unmistakable clew to their despotism.[4]

[FOOTNOTE-4] The first Naval Articles of War in the English language were passed in the thirteenth year of the reign of Charles the Second, under the title of "An act for establishing Articles and Orders for the regulating and better Government of his Majesty's Navies, Ships-of-War, and Forces by Sea." This act was repealed, and, so far as concerned the officers, a modification of it substituted, in the twenty-second year of the reign of George the Second, shortly after the Peace of Aix la Chapelle, just one century ago. This last act, it is believed, comprises, in substance, the Articles of War at this day in force in the British Navy. It is not a little curious, nor without meaning, that neither of these acts explicitly empowers an officer to inflict the lash. It would almost seem as if, in this case, the British lawgivers were willing to leave such a stigma out of an organic

statute, and bestow the power of the lash in some less solemn, and perhaps less public manner. Indeed, the only broad enactments directly sanctioning naval scourging at sea are to be found in the United States Statute Book and in the "Sea Laws" of the absolute monarch, Louis le Grand, of France.[4.1]

Taking for their basis the above-mentioned British Naval Code, and ingrafting upon it the positive scourging laws, which Britain was loth to recognise as organic statutes, our American lawgivers, in the year 1800, framed the Articles of War now governing the American Navy. They may be found in the second volume of the "United States Statutes at Large," under chapter xxxiii.--"An act for the better government of the Navy of the United States."

[4.1] For reference to the latter (L'Ord. de la Marine), vide Curtis's "Treatise on the Rights and Duties of Merchant-Seamen, according to the General Maritime Law," Part ii., c. i.

Nor is it a dumb thing that the men who, in democratic Cromwell's time, first proved to the nations the toughness of the British oak and the hardihood of the British sailor--that in Cromwell's time, whose fleets struck terror into the cruisers of France, Spain, Portugal, and Holland, and the corsairs of Algiers and the Levant; in Cromwell's

time, when Robert Blake swept the Narrow Seas of all the keels of a Dutch Admiral who insultingly carried a broom at his fore-mast; it is not a dumb thing that, at a period deemed so glorious to the British Navy, these Articles of War were unknown.

Nevertheless, it is granted that some laws or other must have governed Blake's sailors at that period; but they must have been far less severe than those laid down in the written code which superseded them, since, according to the father-in-law of James II., the Historian of the Rebellion, the English Navy, prior to the enforcement of the new code, was full of officers and sailors who, of all men, were the most republican. Moreover, the same author informs us that the first work undertaken by his respected son-in-law, then Duke of York, upon entering on the duties of Lord High Admiral, was to have a grand re-christening of the men-of-war, which still carried on their sterns names too democratic to suit his high-tory ears.

But if these Articles of War were unknown in Blake's time, and also during the most brilliant period of Admiral Benbow's career, what inference must follow? That such tyrannical ordinances are not indispensable--even during war--to the highest possible efficiency of a military marine.