

The British Mutiny Act, Articles of War, and the American Uniform Code of Military Justice.

A number of references are made in *Billy Budd* to the Mutiny Act and Billy is sentenced to death under the Articles of War.

A. The Mutiny Act

The Mutiny Act (the first of many) was enacted in 1689 and has a curious background. Edward I (1239-1307) created the Court of Chivalry, which was given authority over cases involving military law, chivalry, heraldry, and murder/high treason overseas. The king, working through the Court of Chivalry, created a special law governing the military called the Articles of War. This type of law was operative only during war and fell into abeyance once peace prevailed. With the start of each new war, a fresh set of Articles of War, specifically tailored to the circumstances of the new conflict, were promulgated. As the Court of Chivalry developed and grew, so did the parallel Courts of Chancery and Common Law, which had authority over the civilian population, but not the military.

Eventually, British kings, especially the Tudors and Stuarts, began to invoke the Articles of War against civilians even in times of peace, trying people by courts-martial rather than in the common law courts. This abusive expansion of military law led to Parliament's passing the Petition of Right (1627), which barred courts-martial from having jurisdiction over: a) civilians; or b) soldiers and officers, residing in Britain during times of peace.

Flash forward sixty years to the "Glorious Revolution" (1688) when William III ousted King James II from the British throne. Scottish troops loyal to James refused to obey King William, marching home to Scotland instead, and since the mutinous troops were located in Great Britain and it was technically a time of peace, Courts-martial had no jurisdiction over them. Only the Courts of Chancery and Common Law had jurisdiction, but they were not empowered to enforce any sanction against mutiny. What to do?

The Mutiny Act of 1689 made peacetime desertion, mutiny, and sedition by military personnel in Britain crimes triable by court martial and punishable by death.

The first Mutiny Act and all subsequent Mutiny Acts had a duration of one year and so a new act was passed annually until 1879. The Mutiny Acts (a creation of Parliament) were modified to provide for courts-martial of military personnel for acts prohibited by the Articles of War (a creation of the crown) as long as the Articles conformed to the then current Mutiny Act.

(The Mutiny Act of 1774 allowed the quartering of British troops in the homes of American colonists, a provision that helped ignite the American Revolution.)

B. Royal Navy Articles of War

The Articles of War were read publicly at the commissioning of new ships, at least once a month, usually when church was rigged on Sunday, when an offender's punishment warrant was read to the ship's company and at timely intervals by the Captain to the Ship's Company.

In the British Navy during the age of sail, flogging was the most common of all punishments. When a disciplinary offence was committed by a member of the Ship's Company and was serious enough to warrant more severe punishment than the captain was authorized to award, notice of the offence would be forwarded to the Admiralty where a 'Warrant Punishment' would be initiated and then sent back to the ship or naval installation for reading and sentencing.

Warrant punishments were 'read' publicly while the offender stood to attention in front of the formally mustered ship's company, or if received on board at an unusual hour in front of the fallen in Duty Watch.

The Articles of War on board a Royal Navy ship matched the gravity of holy writ. It served as the law practiced upon His Majesty's Ships.

The Articles were originally established in the 1650s, amended in 1749 (by an act of Parliament) and again in 1757.

Comment:

The Naval Articles of War (1757), promulgated by the British Admiralty, contain seven articles that require the death penalty upon conviction. Others allow death as a penalty, but permit lesser penalties, and still others don't mention death at all. Billy Budd was convicted of violating the first clause of Article 21, striking a superior officer, which had an automatic death penalty. I have included only those Articles I think would be of interest, including all that require a death sentence for their violation

1. All commanders, captains, and officers, in or belonging to any of His Majesty's ships or vessels of war, shall cause the public worship of Almighty God, according to the liturgy of the Church of England established by law, to be solemnly, orderly and reverently performed in their respective ships; and shall take care that prayers and preaching, by the chaplains in holy orders of the respective ships, be performed diligently; and the Lord's day be observed according to law.

Comment:

Not every ship had a chaplain to conduct services. For those that lacked a chaplain, the captain usually conducted the service instead, often reading the Articles of War instead of a sermon.

2. All flag officers, and all persons in or belonging to His Majesty's ships or vessels of war, being guilty of profane oaths, cursings, execrations, drunkenness, uncleanness, or other scandalous actions, in derogation of God's honour, and corruption of good manners, shall incur such punishment as a court martial shall think fit to impose, and as the nature and degree of their offence shall deserve.

Comment:

When the ship's crew mustered on deck for inspection in their various groups (foretopmen, afterguardmen, etc.), the leader responsible for the group being inspected would accompany the captain and, if all was well, would report "all sober and clean, sir."

3. If any officer, mariner, soldier, or other person of the fleet, shall give, hold, or entertain intelligence to or with any enemy or rebel, without leave from the king's majesty, or the lord high admiral, or the commissioners for executing the office of lord high admiral, commander in chief, or his commanding

officer, every such person so offending, and being thereof convicted by the sentence of a court martial, shall be punished with death.

10. Every flag officer, captain and commander in the fleet, who, upon signal or order of fight, or sight of any ship or ships which it may be his duty to engage, or who, upon likelihood of engagement, shall not make the necessary preparations for fight, and shall not in his own person, and according to his place, encourage the inferior officers and men to fight courageously, shall suffer death, or such other punishment, as from the nature and degree of the offence a court martial shall deem him to deserve; and if any person in the fleet shall treacherously or cowardly yield or cry for quarter, every person so offending, and being convicted thereof by the sentence of a court martial, shall suffer death.

12. Every person in the fleet, who through cowardice, negligence, or disaffection, shall in time of action withdraw or keep back, or not come into the fight or engagement, or shall not do his utmost to take or destroy every ship which it shall be his duty to engage, and to assist and relieve all and every of His Majesty's ships, or those of his allies, which it shall be his duty to assist and relieve, every such person so offending, and being convicted thereof by the sentence of a court martial, shall suffer death.

13. Every person in the fleet, who though cowardice, negligence, or disaffection, shall forbear to pursue the chase of any enemy, pirate or rebel, beaten or flying; or shall not relieve or assist a known friend in view to the utmost of his power; being convicted of any such offense by the sentence of a court martial, shall suffer death.

Comment:

In 1756, Admiral Byng, who commanded a fleet that had been sent to relieve the besieged British garrison on Minorca, engaged the French fleet near the Minorcan city of Port Mahon. After an indecisive battle, Byng convened a council of his captains and on his initiative the council concluded that the garrison could not be relieved and they sailed away to Gibraltar. There Byng was removed from command and sent in custody to England where he was tried, found guilty of violating Article 12, and sentenced to death. Despite pleas for mercy, including a plea from the House of Commons, in March 1757

on the deck of the HMS Monarch Byng was shot to death by a firing squad of Royal Marines.

The Articles of War, under which Byng was tried had been revised by an act of Parliament in 1749 to mandate capital punishment for officers who did not do their utmost against the enemy, either in battle or pursuit. The revision followed an event in 1745 during the War of the Austrian Succession, when a young lieutenant named Baker Phillips was court-martialed and shot after his ship was captured by the French. His captain had done nothing to prepare the vessel for action and was killed almost immediately by a broadside. Taking command, the inexperienced junior officer was forced to surrender the ship when she could no longer be defended. The negligent behavior of Phillips's captain was noted by the subsequent court martial and a recommendation for mercy was entered, but Phillips' sentence was approved by the Lords Justices of Appeal and he was executed. This angered Parliament, which felt that an officer of higher rank would likely have been spared or else given a light punishment and that Phillips had been executed because he was a powerless junior officer and thus a useful scapegoat. Consequently, the Articles of War were amended so that one law applied to all, including the death penalty for any officer of any rank who did not do his utmost against the enemy in battle.

Although not involving criminal charges, recent events in the U.S. Navy seem to show that high-ranking officers will be held accountable for their action or inaction. For example, On August 22, 2017, the head of the U.S. Pacific Fleet removed Vice Admiral Joseph Aucoin, the commander of U.S. 7th Fleet, from his position just days after the second deadly crash involving a U.S. warship this year.

So, on first blush, it looks like the higher-ups are being held accountable. But the penalty imposed on Aucoin was not a judicial punishment, merely the requirement that the Vice Admiral move up his retirement date by less than a month. And Aucoin's leaving the service on a sour note after an exemplary career seems to have been the only negative consequence for the Navy top brass, despite the fact that Navy commanders who outranked Aucoin knew for some time about the conditions that were identified as contributing to the ship collisions.

In 2015, a Government Accountability Office report showed that the forward-based ships of the 7th Fleet, moved to the region in a broad Navy strategy to increase Pacific presence, spent significantly more time deployed and were regularly short-changed on training.

The report showed that U.S.-based cruisers and destroyers spent roughly 40 percent of their time deployed and 60 percent in training and maintenance periods, while their Japan-based counterparts (*i.e. the 7th Fleet*) spent 67 percent of their time deployed, 33 percent in maintenance, and did not have a dedicated training period.

The report's authors wrote that this led to a "train on the margins" approach in which crews squeezed in training while underway or whenever possible between underway periods. In addition, a GAO survey at the time found up to 17 percent of warfare certifications for crews home-ported in Japan were expired, and some had been for months.

In light of the GAO report, the Aucoin affair, rather than demonstrating accountability, could be seen as the scapegoating of a three-star admiral (who was leaving the service in any event) to cover up the lack of command responsibility of the Commander of the Pacific Fleet, a four-star admiral.

21. If any officer, mariner, soldier or other person in the fleet, shall strike any of his superior officers, or draw, or offer to draw, or lift up any weapon against him, being in the execution of his office, on any pretense whatsoever, every such person being convicted of any such offense, by the sentence of a court martial, shall suffer death; and if any officer, mariner, soldier or other person in the fleet, shall presume to quarrel with any of his superior officers, being in the execution of his office, or shall disobey any lawful command of any of his superior officers; every such person being convicted of any such offence, by the sentence of a court martial, shall suffer death, or such other punishment, as shall, according to the nature and degree of his offence, be inflicted upon him by the sentence of a court martial.

24. Every person in the fleet, who shall unlawfully burn or set fire to any magazine or store of powder, or ship, boat, ketch, hoy or vessel, or tackle or furniture thereunto belonging, not then appertaining to an enemy, pirate, or rebel, being convicted of any such offence, by the sentence of a court martial, shall suffer death.

27. All murders committed by any person in the fleet, shall be punished with death by the sentence of a court martial.

28. If any person in the fleet shall commit the unnatural and detestable sin of buggery and sodomy with man or beast, he shall be punished with death by the sentence of a court martial.

Uniform Code of Military Justice

The law that governs all the branches of the US military is called the Uniform Code of Military Justice (“UCMJ”). As might be anticipated, it is an “encyclopedia” compared to the “short story” the Articles of War represent. Therefore, I’ve included only the provisions that may provide some comparison with the relevant Articles of War. While some of the provisions of the UCMJ permit a sentence of death, unlike the Articles of War, none require such a penalty.

809. ART. 90. ASSAULTING OR WILLFULLY DISOBEYING SUPERIOR COMMISSIONED OFFICER.

Any person subject to this chapter who--

(1) strikes his superior commissioned officer or draws or lifts up any weapon or offers any violence against him while he is in the execution of his officer; or

(2) willfully disobeys a lawful command of his superior commissioned officer;

shall be punished, if the offense is committed in time of war, by death or such other punishment as a court-martial may direct, and if the offense is committed at any other time, by such punishment, other than death, as a court-martial may direct.

Comment:

Where the Articles require death for this offense, the UCMJ authorizes that penalty, but does not mandate it.

891. ART. 91. INSUBORDINATE CONDUCT TOWARD WARRANT OFFICER, NONCOMMISSIONED OFFICER, OR PETTY OFFICER

Any warrant officer or enlisted member who--

(1) strikes or assaults a warrant officer, noncommissioned officer, or petty officer, while that officer is in the execution of his office;

(2) willfully disobeys the lawful order of a warrant officer, noncommissioned officer, or petty officer; or

(3) treats with contempt or is disrespectful in language or deportment toward a warrant officer, noncommissioned officer, or petty officer while that officer is in the execution of his office;

shall be punished as a court-martial may direct.

Comment:

The UCMJ makes a distinction between commissioned officers and every other type of officer, with the penalty of death absent for assaulting lesser officers.

With respect to the Articles of War, it is unclear whether Claggart, a Master at Arms, and not a commissioned officer is a “superior officer” under Article 21. Captain Vere, in justifying his position that Billy should hang, does not quote the exact language of the Article 21, saying instead that it’s a capital crime to strike one’s “superior in grade”, which would include Claggart, while “superior officer” arguably would not.

894. ART. 94. MUTINY OR SEDITION

(a) Any person subject to this chapter who--

(1) with intent to usurp or override lawful military authority, refuses, in concert with any other person, to obey orders or otherwise do his duty or creates any violence or disturbance is guilty of mutiny;

(2) with intent to cause the overthrow or destruction of lawful civil authority, creates, in concert with any other person, revolt, violence, or disturbance against that authority is guilty of sedition;

(3) fails to do his utmost to prevent and suppress a mutiny or sedition being committed in his presence, or fails to take all reasonable means to inform his superior commissioned officer or commanding officer of a mutiny or sedition which he knows or has reason to believe is taking place, is guilty of a failure to suppress or report a mutiny or sedition.

(b) A person who is found guilty of attempted mutiny, mutiny, sedition, or failure to suppress or report a mutiny or sedition shall be punished by death or such other punishment as a court-martial may direct.

Note:

Like Article 28 of the Articles of War, Article 125 – Sodomy” of the UCMJ bars “unnatural sex”:

“(a) Any person subject to this chapter who engages in unnatural carnal copulation with another person of the same or opposite sex or with an animal is guilty of sodomy. Penetration, however slight, is sufficient to complete the offense.

(b) Any person found guilty of sodomy shall be punished as a court-martial may direct.