
34 Gull, ch. 199; FrL, Vol. IV, § 39; Grágás. Skóðholtsbók m.m., “Ordregister,” s.v. legóð, pp. 637–38; Jónsbók, Jónsþóra, mannhelgisbolkr, chs. 4 and 10; Jónsbók, mannhelgisbolkr, ch. 2; landslag, mannhelgisbolkr, chs. 4 and 5.
BUGGERY AND THE BRITISH NAVY, 1700-1861

While Western military institutions have been tolerant of heterosexual escapades in modern times, they have been less broad-minded when faced with homosexual behavior. In part, the military has reflected the attitudes and practices of society at large. Buggery remained a capital offense in England, for example, until 1861, and conviction from that date until 1967 was punishable by life imprisonment. The harsh punishments meted out to convicted buggers in the army and navy paralleled the severe sentences awarded by the civil courts. Still, military attitudes reflected what the army and navy saw as their own unique problems of order and discipline. In particular, navy records reveal a ferocity toward morals offenders far beyond that of civil society. It is interesting to note that when the Wolfenden Commission report became the basis for the new Sexual Practices Act of 1967 and relations between consenting adults became legal, naval personnel and men serving aboard merchant vessels were specifically excluded from the new permissive regulations. Today, as in the eighteenth and nineteenth centuries, the thought of two sailors engaging in acts of sodomy, even in the privacy of their own quarters, is considered a threat to the ongoing life of the service.

It is impossible to judge the incidence of buggery in the military in the eighteenth and nineteenth centuries. No doubt some military officers simply looked the other way when evidence of sodomy was presented to them, and it is certain that the rank and file in some army units and on shipboard, knowing that conviction might mean death for the offenders, never reported known cases. We know that on occasion, the captain of a ship, faced with "suspicious behavior" on the part of a member of his crew, might simply put the man ashore at a convenient port of call. In other words, he got rid of the problem by the eighteenth century equivalent of an administrative discharge.

It is also clear that many morals "crimes" were arbitrarily punished by ship's captains without a formal trial. In the Logbook of the Surveillance in the spring of 1806, Commander John Bligh notes that he punished James Jones "with 18 lashes for uncleanness" on March 17 and on April 21 again "punished James Jones (seaman) with 24 lashes" for the same offence. Since "uncleanness" was never precisely defined, it is evident that captains, if they desired to avoid the more severe punishments meted out by general courts martial, had informal alternatives when dealing with homosexuality.

As in later times, homosexuality was not discussed openly in naval circles. It was and remains the "underground" crime par excellence. In one of the few written references in the navy, unfortunately from a later period, a British officer reported:
I have been stationed, as you know, in two or three ships and I think they have been thoroughly representative of the best sort of British Seamen. On the D—, homosexuality was rife, and one could see with his own eyes how it was going on between officers. I have been told that in some services (the Austrian and French, for instance), nobody ever remarks about it, taking such a thing as a natural proceeding: that may be so or not; but in any case, nobody was “shocked” on board either the A— or the B—. There were half a dozen tugs that we knew about.5

On buggery in particular he wrote, “To my knowledge, sodomy is a regular thing on ships that go on long cruises. In the warships, I would say that the sailor preferred it.”6

While we cannot be more precise than this on the incidence of buggery, the courts martial records do give us a clear and vivid picture of what happened to the unfortunate few who were accused of buggery and ultimately stood trial, and of the dilemmas and difficulties facing the officers who had to decide whether the evidence warranted conviction and death.7

In courts of law, sodomy presented problems very similar to those presented by rape: at what point was the act deemed “committed,” for example. Murder can easily be distinguished from attempted murder because the victim is either alive or dead, and robbery can be separated from attempted robbery by determining whether or not the attempt was successful. Rape and sodomy present more serious difficulties. In the latter case, conflict arose over whether sodomitic acts were deemed complete if an emission took place, or if penetration occurred, or both. In 1631, for example, the Earl of Castlemaven was convicted of buggery on proof of emission only.8 Generally, however, it was necessary to prove penetration, and according to a judicial decision of 1781, both penetration and emission had to be established for a sodomy conviction to be sustained.9 In 1828, Parliament passed a law in which proof of penetration became the sole criterion for separating attempted rape and sodomy from commission of the crime, in part because of the difficulty encountered in convicting men of these offenses.10 To complicate matters, buggery was never carefully defined in the statute books. Indeed, as late as 1817, a man was convicted and given a death sentence for buggery with a seven year old boy when it was proven “... that he forced the boy’s mouth open with his fingers, and put his private parts into the boy’s mouth, and emitted in his mouth.”11 Although the decision was reversed and the prisoner was pardoned, this case suggests the confusion about buggery that existed well into the nineteenth century.12

While there was little doubt in naval circles as to what did and did not constitute buggery, courts martial boards faced the same problems of proof and evidence, although generally speaking proof of penetration alone was sufficient to convict a man. As was the case in the civil courts, the military relied on the standard legal authorities of the day to guide them. Unfortunately, these were of marginal assistance. Edward Coke, for example, had written, “So as there must be penratio, that is res in re, either with mankind or beast, but the least penetration maketh it carnal knowledge.”13 Blackstone, whose major contribution to the literature on buggery was pejorative statements, did insist that it was “an offence of so dark a nature, so easily charged, and the negative so difficult to be proved, that the accusation should be clearly made out, for if false, it
deserves a punishment inferior only to that of the crime itself."14 In common with other eighteenth century commentators, Blackstone referred to the legal complications presented by rape as a guide to court procedures in sodomy cases. This meant that judges and juries were urged to take great care in evaluating the testimony of children and that there “should be some concurrent testimony of time, place, and circumstances . . . .” In addition, “the party ravished” — in sodomy cases, the passive partner — could give evidence in court, but juries were cautioned to be extremely careful in determining the veracity of the testimony.15

Given these guidelines, there were three ways in which a mariner might be convicted of buggery. First, men “caught in the act” by their shipmates might be found guilty on the testimony of these eyewitnesses. Since the navy required proof of penetration, the witnesses had to testify to this fact, and needless to say, it was not often that a sailor was close enough to the purported buggers to claim that penetration had occurred. Even then, some courts martial boards were reluctant to convict. In 1762, Martin Billin and James Bryan were tried for buggery and the main witness, Joshua James, testified:

They were behind a chest, Martin Billin with his face to the chest & James Bryan’s belly to Martin Billin’s back. I then threw myself down on the chest & run my hand, down between the forepart of Bryan & the hinder part of Billin; Billin’s breeches were about half down his thigh, & Bryan’s trousers were down on his knees. I laid hold of Bryan’s yard & pulled it out of Billin’s fundament . . . .16

Even with this unusually clear evidence, the court was not satisfied:

Q. When you had Bryan’s yard in your hand, did you observe whether there had been any emission from it?
A. I cannot tell whether there was any emission but my hand was moist after handling it . . . .

Q. By what means are you sure Bryan’s yard had penetrated the body of Billin?
A. Because as I laid hold of part of his yard, the other part came out with a spring, as if a cork had been drawn out of a bottle.17

Still, the court was reluctant to impose the death penalty and decided that the charge was “in part prov’d.” Bryan and Billin received one thousand lashes for this partial conviction.18

In 1757, Henry Brick was accused of sodomy on a twelve year old boy named John Booth. The boy testified, “On Saturday night he came into my hammock when I was asleep and unbottoned his breeches and put his private parts into my arse 4 times in my hammock that night and twice in this ship.”19 Another man, Edward Gauble, saw them together in the hammock and heard the boy cry out. Further, Brick had been caught once before after a drunken evening holding the “yard” of another boy. Once again, the Court was reluctant to impose the death penalty, found the charge proved “in part,” and sentenced Brick to five hundred lashes and ignominious discharge from the navy instead of hanging.20

Other courts martial boards faced with similar evidence of penetration were less charitable. During the trial of George Newton and Thomas Finney in 1761, Charles Ferret testified:

One night I was asleep and hearing somebody blowing and puffing alongside of me, close to my knee and shaking me which waked me; I never stirred him, but put my
left hand up and got hold of both his stones fast, the other part was in the body of
the boy, I asked him what he had got there, he said cunt, then I said you are worse
than any beast walking in the field; I made enough noise because everybody should
hear . . . .
Q. Did you, at the same time that you took hold of George Newton’s stones feel any
other part of him, and of the boy, Finney?
A. Yes, I felt the prick of George Newton in the boy Finney’s arse. 21

Both Newton and Finney were sentenced to death for sodomy.

Other courts martial boards were willing to accept even less positive evidence
of entry. In the Benson and Francis case in 1797, “two seamen of the St. George
were observed one night in a very indecent position. Francis was laying on his
belly with his trousers down around his legs, and Benson was laying upon
Francis with his belly upon the backside of Francis.” 22 No witnesses could
swear to penetration, but the court sentenced both men to death on this
presumptive evidence. 23 Again in 1802, two seamen, Greenard and Fuller, were
discovered in a compromising position on the deck of the ship Vengeance. Two
witnesses testified that Greenard moved against Fuller “in the same manner as a
man would do with a woman.” There was no other evidence of “criminal
connection,” and yet the court felt that penetration had been shown and
sentenced both men to be hanged. 24 While “proof” of penetration was required
for conviction, it was not at all clear what constituted acceptable proof.

A second method of proving buggery in a court martial trial was on the
evidence of the passive partner in the act, usually a boy, or boys, who had been
intimidated, cajoled, or threatened into submitting to the desires of the prisoner.
Unlike modern military law, which tends to distinguish in some way between
homosexual acts between consenting adults and what is often the equivalent of
rape of a shipmate, the navy during this period made no such distinction. 25 A
boy who had been seduced or forced to commit buggery, therefore, was under
great pressure to turn in his partner or attacker, for if they were caught and it
appeared he had consented, the “victim” might well be as severely punished as
the aggressor. Needless to say, there were serious problems in determining
whether or not the boys called to testify were telling the truth, or simply using
the buggery charge as a means of destroying a shipmate or officer they particu-
larly disliked.

In 1762, Robert Garbutt, a boatswain, was convicted of attempted sodomy,
largely on the testimony of a boy, John Pyle. Initially, the boy had not
complained to the ship’s officers because he was afraid the boatswain would
punish him. Since it was difficult to keep secrets of this sort on shipboard, word
of the activity got out and Pyle confessed. At Garbutt’s trial, Pyle claimed the
boatswain had attempted to bugger him on three occasions, offering one to three
drams of grog as a bribe. The court martial board accepted the boy’s testimony
and Garbutt was dismissed from the service and publicly drummed on shore with
the “usual marks of infamy.” 26

In 1706, James Ball was sentenced to death on the testimony of a thirteen
year old boy who told the court:

... James Ball obliged him to lie with him in his cabin and that the said James Ball
thrust his finger into his arse which he said hurt him very much but notwithstanding
he afterwards forst him & put his cock in his arse. Mr. Rooke then asked him what he did further, the boy answered he wriggled about and pissed in his arse...

Were these young boys lying? The courts were often acutely conscious of that possibility and there was even some objection to allowing young boys to testify in buggery trials. In 1772, the defense protested the testimony of John Ellis, a twelve year old boy who had accused one John Palmer of buggery. Despite the protest, however, it was decided that he could legally testify and Palmer was convicted of attempted buggery.28

The problem of boys testifying against men in buggery cases are clearly revealed in the Bartlett Ambler case. Ambler was accused by four boys of sodomitic practices. Each testified that Ambler threatened to have them flogged if they told what had occurred. One of the boys, John Davy, said, "... and I had scarce buttoned up my breeches when he said be sure don't tell no person of it. I'll be very good to you, but if you tell any person of it I'll get you flogged."29 Ambler based his defense on the alleged wickedness of his accusers. Joseph Dorman, the ship's corporal, was called upon to discuss the character of three of the witnesses:

Q. Do you know if the boys who have been examined in support of the charge against me are notorious liars?
A. Two of them Hopkins and Willecott have been several times punished for lying.
Court. What is the character of the boy Davy?
A. He bears a very bad character by the whole ship's company.30

Ambler also called upon Midshipman Robert Baker who told the court:

Davy is a very wicked boy indeed as ever lived everyone in the ship will say that if it was in his power he would hang his own father — I hear Hooper's mother say that her son had denied to her all that had been said against the prisoner.31

The court had to weigh the testimony of the four boys who accused Ambler of buggery against the evidence of Ambler's witnesses, who denigrated the character of the boys and testified to his good reputation. The judges sentenced Ambler to be hanged, but as a sign of their unease, sent the following letter to the Admiralty Secretary, along with the minutes of the trial:

By desire of the members of a Court Martial assembled by me this day to try Mr. Bartlett Ambler, I have to request you will call their lordship's consideration to the hardship the Court have labored under in being obliged to condemn a man to death, upon the evidence of four boys, the eldest not more than thirteen years of age, and therefore recommend him to mercy.32

The recommendation was endorsed by His Majesty on May 8, 1805, and Ambler was pardoned.

It is clear that boys could be intimidated into testifying against innocent men. In one disturbing case, a boy was caught under the blanket of Edward Martin. Evidently, the boy did not have a bed or blanket of his own, and Martin took him in as an act of kindness. The captain of the ship had the boy flogged and threatened him with another whipping if he refused to testify. Under the threat of further punishment, the boy confessed that Martin had bugged him. The trial record reads:
Prosecutor: Did you inform me that the Prisoner had committed that unnatural crime on you twice?

James: Yes, but I was afraid that the Captain would flog me.\textsuperscript{33}

In this case, the prisoner was acquitted, but the case does suggest the many possible abuses in buggery trials: that the testimony of boys was suspect, that fear of punishment or promise of reward might be used to intimidate them into giving false evidence against a shipmate, that the boy could be motivated by dislike or a desire for vengeance.\textsuperscript{34}

In another case, the ship's master, G. McCasky, was accused of attempted buggery on a thirteen year old boy, Robert Walker. The prisoner, a veteran of eleven years in the service, argued that “... in consequence of a quarrel taking place in Leith Roads between Mr. Davis the Purser and me, we have never been on good terms since, and this charge has arisen in consequence.”\textsuperscript{35} McCasky claimed that Walker was “well-schooled in making charges,” but he could not prove that the boy was “activated by malice” and was found guilty. He was cashiered and sentenced to two years in solitary confinement.\textsuperscript{36}

A third source of evidence in buggery trials was the report of the surgeon. In such cases, it was the responsibility of the ship's doctor to examine the anal passage of the passive partner to determine if penetration had taken place. This was particularly important when the testimony of young boys was the main source of evidence against the prisoner. Needless to say, this method of proving buggery was highly problematic also. In a 1759 case, the surgeon examined the fundament of George Val, a boy who accused a boatswain's mate of sodomy, and found it “a little inflamed,” but the court did not accept this as evidence that sodomy had been committed and the prisoner was released.\textsuperscript{37} On the other hand, in the John Ball case, the surgeon testified:

... the next day the boy complaining to me that his arse was very sore & took him into my cabin with my mate & searching him found his fundament very much inflamed and fumified...\textsuperscript{38}

and this information seems to have played a part in Ball's conviction and death sentence.\textsuperscript{39}

In 1806, a fourteen year old boy, George Parr, testified that John Sky had committed sodomy on him.\textsuperscript{40} The surgeon reported inflammation of Parr's anal passage, and the court asked, “Was it your opinion that the appearance was occasioned by the insertion of an instrument similar to a man's yard?” The surgeon replied, “I cannot ascertain that.”\textsuperscript{41} In this case, as in others, the surgeon was reluctant to send a man to the gallows when the inflammation might have resulted from more prosaic causes than sodomy.\textsuperscript{42}

Other surgeons were more positive in their judgments. In the John Coise case, a boatswain was acquitted of sodomy when, according to the trial record:

... it only appearing to the Court, by the evidence given in by the surgeon... that the detestable sin of sodomy was never committed on the said Davis, but that however the said boatswain cannot clear himself of some indecent actions with the said David tending that way.\textsuperscript{43}

Acquittal or conviction in buggery cases depended very much on whether or not the surgeon felt he could identify the crime by means of a rectal examination.

137
Since buggery was difficult to prove, men on trial for suspicion of the offense were often charged with lesser crimes, such as indecent behavior, indecent liberties, or uncleanness. In the eighteenth century, these were indictable offenses under a law passed during the reign of Charles II which forbade "all uncleanness, or other scandalous actions in the derogation of God's honor and corruption of good manners . . . ." Sometimes the scandalous action by the standards of the day was quite serious. In 1800, a boatswain, Robert Patton, was tried by a court martial for "attempted sodomy." The compiler of the Court Martial Digest summed up the offense in the following words:

The prisoner made a practice of getting these boys successively into corners, handling their private parts, and taking them into his mouth, thrusting his fingers up their fundament, blowing into them, and with a wonderfully capricious and brutal depravity, making them ease themselves into his hands, and asking them to do it in his mouth. Patton was "broke, rendered incapable of ever serving in the Navy in any capacity, mulcted of all pay due to him, to receive 200 lashes round the fleet; and thereafter to be drummed on shore with a halter around his neck, and in as disgraceful a manner as possible." Unfortunately, the law made no distinction between behavior of this sort and the one-time homosexual offender, who may have engaged in intimacies with another man under the influence of alcohol. In general, only drunkenness was not accepted in courts martial cases as a mitigating circumstance for criminal activity, and buggery cases were no exception to the rule. In 1832, Edward McGee and John Peach were tried for "indecent conduct" after they were found in bed together. One witness testified that they were drunk and got into the bed together by mistake. Nevertheless, they were found guilty and sentenced to three hundred lashes each and issued "branded" discharges. In 1813, James Hyndman, carpenter of the Wasp, was convicted of a morals charge for being found drunk and in bed with a boy, for which he was dismissed as ship's carpenter and condemned to serve before the mast.

Courts martial records show that ferocious punishments indeed were often given for minor sexual offenses. In 1775, A. Parrott was accused of attempted sodomy by a sixteen year old boy who said the prisoner had "come to his hammock" where he immediately began feeling his private parts. Parrott was given three hundred lashes for this offense. In 1798, a seaman named Bryan McMahon was accused of repeatedly putting his hands down the trousers of two seamen while they were sleeping. McMahon compounded his crime by knocking the light out of the hand of the sentinel and verbally abusing the lieutenant who arrested him. He received five hundred lashes as punishment. Lieutenant Richard Morgan was tried in 1838 for "indecency" at his own request to clear his name of suspicion that he "touched two seamen on their thighs" and said to one of them on another occasion, "Lay up here and lay across my belly and keep my cock warm" Morgan denied everything, but he was found guilty and dismissed from the service for this trivial offense.

Buggery, unlike other sexual offenses, was a capital crime. In civil law, this had been the case since the sixteenth century when Thomas Cromwell sponsored legislation to the effect as part of his campaign to weaken the power of the
eclesiastical courts. From the seventeenth century on, buggery was specifically mentioned in the Articles of War.

For example, Article 29 of the 1749 Articles stated:

If any person in the fleet shall commit the unnatural and detestable sin of buggery of sodomy with man or beast, he shall be punished with death by the sentence of a Court Martial.\(^5\)

In the early nineteenth century, the crime was dropped from the Articles of War, but covered by a general phrase, "...or any other crime which is capital by the laws of England."\(^6\)

In spite of the unwillingness to convict on the part of some courts martial boards, by and large the records show that buggery was treated as a serious offense — as serious as desertion, mutiny, and murder. Between May 1, 1705 and June 29, 1708, for example, twelve men were sentenced to death in the Royal Navy. Of the twelve, six were deserters, one was convicted of murder, and the remaining five were found guilty of buggery.\(^7\) Between 1703 and 1710, twelve sailors were tried for buggery or attempted buggery, and six of these men were sentenced to death.\(^8\)

The chart below compares death sentences meted out for buggery and other crimes during the years between 1703 and 1710 — the most active years of the War of the Spanish Succession. Exceeded only by convictions for desertion — a matter of extreme concern to the military in wartime — death sentences for buggery represent twenty-seven % of the total.\(^9\)

<table>
<thead>
<tr>
<th>Crime</th>
<th>Number of Death Sentences</th>
<th>Percentage of total</th>
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<tbody>
<tr>
<td>Desertion</td>
<td>14</td>
<td>63.3%</td>
</tr>
<tr>
<td>Buggery</td>
<td>6</td>
<td>27.0%</td>
</tr>
<tr>
<td>Murder</td>
<td>1</td>
<td>4.5%</td>
</tr>
<tr>
<td>Mutiny</td>
<td>1</td>
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A comparison of buggery convictions with those for murder and striking an officer throughout the eighteenth century is even more revealing. As David Hannay has pointed out, the conviction rate for murder in the eighteenth century was remarkably low.\(^5\) Between 1703 and 1709, the general courts martial records show that of six sailors tried for murder, four were acquitted.\(^5\) This represents twenty % of all naval court martial acquittals during the period. In 1760-61, out of seventeen murder trials, twelve, or seventy %, resulted in "not guilty" verdicts.\(^5\) Indeed, fifty % of all acquittals during this time span were in murder cases. From 1755 to 1777, only fourteen % of all murder trials resulted in convictions.\(^5\) If a sailor was found guilty of murder, of course, he was almost certain to hang, and this may account for some of the reluctance of naval boards to convict. Further, as Hannay commented, eighteenth century military courts seem "rarely to have understood that killing which falls short of murder may yet be manslaughter and deserving of punishment."\(^5\) The low conviction rate was also affected by the naval interpretation of malice and premeditation. The compiler of the Court Martial Digest for the period 1755-1806 made the following commentary which is certainly correct:
The general rule appears to be that however culpable a man may be, who is brought to trial for the death of another man, if the act which caused the death does not appear to the satisfaction of the Court to have proceeded from a direct purpose and intent to produce the man's death, the person causing such death, is entitled to a total acquittal.\textsuperscript{63}

For murder, then, we have a low conviction rate coupled with almost certain death for the guilty sailor.

In comparison to murder, striking an officer was a very serious offense in the navy. Between 1756 and 1800, fifty-three men were court martialed for striking an officer and twenty-seven received death sentences. In only one case did a court martial board acquit the prisoner — a conviction rate of almost ninety-nine \%.\textsuperscript{63} While the boards did everything in their power to find men on trial for murder innocent, striking an officer was interpreted broadly. In some cases, men were tried for simply lifting a weapon against an officer, even though no blow was delivered. Patrick Wilson was hanged in 1759 for drawing a knife and attempting to cut and stab a lieutenant.\textsuperscript{64} More significantly, the most common reason for dismissal in murder trials — lack of evidence of malice and premeditation — was simply not allowed as an appropriate defense in case of striking an officer. In effect, the navy was remarkably tolerant toward men who killed in a moment of passion or irresponsibility, \textit{provided the dead man was not an officer}.

In buggery cases, the conviction rate was much higher than in murder cases, but lower than for other naval crimes. Still, only thirty \% of those tried for buggery from 1756 to 1806 were acquitted \textit{entirely}. In part, this was because of certain peculiarities in naval law which allowed courts martial boards to find a man guilty of a “lesser offence” not even mentioned in the original charge. As Theodore Thring noted in 1861, under naval law, a man could “be found guilty of another offense of the same class involving a less degree of punishment.”\textsuperscript{65} Most striking, though, is the way military courts applied this rule in the eighteenth and early nineteenth centuries. In theory, in murder trials, the courts martial could have used the “in part prov’d” verdict or the “lesser offense” provision to punish men for manslaughter. This almost never occurred. Indeed, it was probably not until 1801 that an officer acquitted of murder was even dismissed from the service because he had been responsible for the death of a sailor.\textsuperscript{66} In buggery cases, the courts used the partial proof and lesser offense rules regularly. One example will suffice.

On September 6, 1809, Charles North was brought before a court martial charged with “a crime contrary to the 29 Article of War.” The verdict in the case read:

\begin{quote}
The Court ... is of the opinion that the suspicion of committing a crime contrary to the 29 Article of War was justifiable in as much that the Prisoner Charles North has been guilty of uncleanliness and scandalous action in taking indecent liberties with the Person of the boy Henry Noel.\textsuperscript{67}
\end{quote}

Although North was acquitted of the sodomy charge, he was found guilty under naval law of indecent actions and sentenced to three hundred lashes and two years solitary confinement. As a result of these procedures, accused buggers were far less likely to escape punishment than their counterparts on trial for murder.
It may be helpful to look at the table below which compares conviction and capital conviction rates for five of the most serious naval crimes during the latter part of the eighteenth and early nineteenth centuries. Table 1 clearly shows that buggery was as serious as murder and mutiny when we use capital convictions measured against total number of cases tried. While the conviction rate (Column 4) for buggery was less than for all other crimes except murder, those convicted of buggery (Column 6) were far more likely to receive death sentences than men charged with mutiny or murder. Further, only mariners charged with desertion to the enemy during wartime or striking an officer were as likely to be sentenced to death as men on trial for buggery.

To fully understand the consequences of a buggery charge, we must go one step further. In capital cases, the king could exercise his royal prerogative and pardon capitally convicted sailors and mariners. Courts martial records show, however, that the king would not pardon convicted buggers. Further, courts martial boards rarely recommended mercy for homosexuals. Table 2 shows capital convictions for the five major crimes analyzed in the preceding table, together with mercy recommendations and pardons granted for each kind of offense. (In almost all cases, the king accepted the recommendations of the courts martial board.)

Until 1806, the only documented pardon on record in buggery cases was that of Bartlett Ambler (discussed above). As a result, while the percentage of men capitally convicted of buggery was high, the rate of actual executions compared to the number of cases tried is higher still, with executions for sodomy second only to those for desertion to the enemy. In Table 3, I have listed all capital convictions and executions for the years 1810 to 1816 together with the same data for buggery.

The hard line taken by courts martial and the king toward buggery offenses, as opposed to all other crimes, resulted in a sodomy execution rate of thirty-one % of all probable executions in the navy during this period. In 1812, forty % of all executions were for this offense, and in 1816, at a time when the navy was in the process of cutting back to peacetime strength and because of one notorious set of buggery trials — the *Africaine* courts martial — eighty % of all executions were for buggery. Indeed, outside of the Ambler case, the first capitally convicted buggers pardoned by the king were two seamen, Spencer and Baker, who were transported rather than hanged in 1814.

There are several reasons for the reluctance of the king to grant mercy to capitally convicted homosexual offenders. The king probably shared with many other Englishmen the horror of sodomitic acts prevalent at the time. Religious and moral attitudes put this offense in a special category, and in particular, the king was no doubt sensitive to the fear of buggery rampant in naval circles. He might also have been afraid of the charge that he was somehow condoning homosexuality by granting mercy in these cases. Given the fact that being soft on buggers was somewhat analogous to being soft on Communists in our own day, or soft on witches in an earlier time, nonintervention was undoubtedly expedient. The king could extend his mercy to a man who in a fit of passion struck an officer without fear that this would be construed as condoning the act. This may not have been the case when buggery was involved.
When the death sentence was not imposed, either because buggery was not proven and the evidence pointed only to an attempt or because the charge was changed to "uncleanliness," the punishments meted out to morals offenders was extremely harsh, even by eighteenth and early nineteenth century standards. A comparison of buggery sentences with those for other crimes is illuminating. In 1760, for example, one man received a sentence of seven hundred lashes for desertion and theft, and another got six hundred for desertion. Five men were sentenced to five hundred lashes for crimes ranging from striking an officer to

<table>
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<tr>
<th>Crime</th>
<th>Convictions</th>
<th>Capital Sentences</th>
<th>Acquittals</th>
</tr>
</thead>
<tbody>
<tr>
<td>Murder</td>
<td>18</td>
<td>17</td>
<td>54</td>
</tr>
<tr>
<td>Buggery</td>
<td>23</td>
<td>19</td>
<td>10</td>
</tr>
<tr>
<td>Striking an Officer</td>
<td>103</td>
<td>72</td>
<td>1</td>
</tr>
<tr>
<td>Mutiny</td>
<td>384</td>
<td>212</td>
<td>127</td>
</tr>
<tr>
<td>Desertion to Enemy</td>
<td>54</td>
<td>51</td>
<td>3</td>
</tr>
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Table 2. Mercy Recommendations and King’s Pardons for Five Navy Crimes

<table>
<thead>
<tr>
<th>Crime</th>
<th>Total Cases</th>
<th>Capital Convictions</th>
<th>Mercy or Pardon</th>
</tr>
</thead>
<tbody>
<tr>
<td>Murder</td>
<td>72</td>
<td>17</td>
<td>4</td>
</tr>
<tr>
<td>Buggery</td>
<td>33</td>
<td>19</td>
<td>1</td>
</tr>
<tr>
<td>Striking an Officer</td>
<td>104</td>
<td>72</td>
<td>38</td>
</tr>
<tr>
<td>Mutiny</td>
<td>511</td>
<td>212</td>
<td>55</td>
</tr>
<tr>
<td>Desertion to Enemy</td>
<td>57</td>
<td>51</td>
<td>2</td>
</tr>
</tbody>
</table>

Table 3. Bestiality and Buggery Capital Convictions/All Other Death Sentences, 1810-1816

<table>
<thead>
<tr>
<th>Year</th>
<th>Death Sentences</th>
<th>Royal Pardon</th>
<th>Execution Rate</th>
<th>Death Sentences, Buggery</th>
</tr>
</thead>
<tbody>
<tr>
<td>1810</td>
<td>19</td>
<td>8</td>
<td>57.8%</td>
<td>2</td>
</tr>
<tr>
<td>1811</td>
<td>23</td>
<td>9</td>
<td>60.8%</td>
<td>5</td>
</tr>
<tr>
<td>1812</td>
<td>20</td>
<td>5</td>
<td>75.0%</td>
<td>6</td>
</tr>
<tr>
<td>1813</td>
<td>15</td>
<td>8</td>
<td>46.6%</td>
<td>2</td>
</tr>
<tr>
<td>1814</td>
<td>18</td>
<td>8</td>
<td>55.5%</td>
<td>3</td>
</tr>
<tr>
<td>1815</td>
<td>10</td>
<td>5</td>
<td>50.5%</td>
<td>3</td>
</tr>
<tr>
<td>1816</td>
<td>8</td>
<td>3</td>
<td>62.5%</td>
<td>5</td>
</tr>
<tr>
<td>Totals</td>
<td>113</td>
<td>46</td>
<td></td>
<td>26</td>
</tr>
</tbody>
</table>

Total number of executions, all crimes = 67
Total number of executions, buggery = 20 = 31%

142
mutiny. These were the highest numbers of lashes given in that year.\textsuperscript{74} In 1761, a sailor convicted of drunkenness, disrespect, and mutiny charges was given six hundred lashes, and another received the same sentence for desertion.\textsuperscript{75} In contrast, in 1762, two men accused of buggery which was "in part prov'd" were sentenced to a thousand lashes apiece, the highest number assigned for any crime in that year.\textsuperscript{76} It is instructive to look at the average number of lashes awarded for morals crimes compared to the "lash average rate" for that perennial military crime, desertion:

<table>
<thead>
<tr>
<th>Conviction Rate</th>
<th>Capital Conv., % of Conv.</th>
<th>Capital Conv., % of Total Cases</th>
</tr>
</thead>
<tbody>
<tr>
<td>25%</td>
<td>94%</td>
<td>23%</td>
</tr>
<tr>
<td>70%</td>
<td>82%</td>
<td>57%</td>
</tr>
<tr>
<td>99%</td>
<td>70%</td>
<td>69%</td>
</tr>
<tr>
<td>75%</td>
<td>54%</td>
<td>41%</td>
</tr>
<tr>
<td>95%</td>
<td>94%</td>
<td>80%</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>% Pardoned</th>
<th>Probably Executed—% of Conv.</th>
<th>Probably Executed—% of Total Cases</th>
</tr>
</thead>
<tbody>
<tr>
<td>29%</td>
<td>72%</td>
<td>18%</td>
</tr>
<tr>
<td>5%</td>
<td>78%</td>
<td>54%</td>
</tr>
<tr>
<td>53%</td>
<td>33%</td>
<td>33%</td>
</tr>
<tr>
<td>26%</td>
<td>41%</td>
<td>30%</td>
</tr>
<tr>
<td>4%</td>
<td>90%</td>
<td>80%</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>% of Total Death Sentences</th>
<th>Executions, Buggery</th>
<th>Royal Pardon, Buggery</th>
<th>% Executions, Buggery</th>
</tr>
</thead>
<tbody>
<tr>
<td>10.5%</td>
<td>2</td>
<td>0</td>
<td>18.1%</td>
</tr>
<tr>
<td>21.7%</td>
<td>4</td>
<td>0*</td>
<td>28.5%</td>
</tr>
<tr>
<td>30.0%</td>
<td>6</td>
<td>0</td>
<td>40.0%</td>
</tr>
<tr>
<td>13.3%</td>
<td>2</td>
<td>0</td>
<td>28.5%</td>
</tr>
<tr>
<td>16.6%</td>
<td>1</td>
<td>2</td>
<td>11.1%</td>
</tr>
<tr>
<td>30.0%</td>
<td>1</td>
<td>2</td>
<td>20.0%</td>
</tr>
<tr>
<td>62.5%</td>
<td>4</td>
<td>1</td>
<td>80.0%</td>
</tr>
</tbody>
</table>

(*One man convicted of bestiality was released after legal objections by the Crown law officers.)
Table 4. Desertion – Lash Average for Selected Years

<table>
<thead>
<tr>
<th>Year</th>
<th>Average Lash Number</th>
</tr>
</thead>
<tbody>
<tr>
<td>1760-61</td>
<td>300</td>
</tr>
<tr>
<td>1768-70</td>
<td>184</td>
</tr>
<tr>
<td>1782-84</td>
<td>204</td>
</tr>
<tr>
<td>1790-91</td>
<td>208</td>
</tr>
<tr>
<td>1808</td>
<td>184</td>
</tr>
<tr>
<td>1812</td>
<td>197</td>
</tr>
</tbody>
</table>

By way of contrast, the lash average for all morals crimes during the Seven Years War (1756-1763) was 585, and from 1793-1809 the lash average for homosexual offenses was 425. Even during the Seven Years War, when concern over desertion was reflected in the most severe lash punishments ever meted out for that offense, the punishments for uncleanness and attempted sodomy were almost double on the average. During the Napoleonic Wars, over twice as many lashes per sentence were given for morals offenses than for desertion. Indeed, if we use lash average as a measure of how seriously courts martial boards rated crimes, deviant sexual behavior would top the list until the last years of the Napoleonic Wars! Even the eighteenth century mutiny lash average figures are lower than the morals offense average. From 1755 to 1797, for example, the mutiny lash average was 283 — well below the homosexual offense average of 527.

Courts martial boards were only slightly more lenient toward officers than enlisted men accused of morals crimes. Once again a comparison with murder is enlightening. Between 1756 and 1806, twenty-one officers, including midshipmen, were tried for murder and eighteen were acquitted (over eighty-five%). Of the three convicted and sentenced to be hanged, two were pardoned by the king. Only one unfortunate midshipman — Kirke, in 1779 — was actually hanged by the navy, and he was convicted of murdering his mother on shipboard. One example will illustrate why the acquittal rate was so high.

In 1794, Captain Robert Faulkner of the sloop Zebra was in charge of a party of men in Martinique when the following incident occurred:

On the 12th instant when a party was at work digging under the Captain's inspection: Mr. Douglas, Captain of Engineers appeared at the battery, and gave some directions, which displeased Capt. Faulkner, who disliked his interfering. Capt. Douglas still kept saying something to John Damie, one of the seamen, on observing which, Captain Faulkner order Damie to his post. Damie answered, “I am at my post,” on this Captain Faulkner drew his sword, and struck Damie on the right shoulder, and immediately after gave him a stab under the right shoulder, Damie staggered two paces and then dropped crying “I am a dead man.” He expired in a few minutes.

Captain Faulkner was acquitted on the grounds that the murdered man had not complied with his order, he was close to the enemy, and he hadn’t intended to kill Damie. It was clear that his quarrel with Captain Douglas had caused him to overreact. Most significantly, Faulkner was not even charged with murder, but of having “given a wound to John Damie, a seaman . . . of which he died in a few minutes.” The Court Martial Digest correctly noted that the charge “was fully proved.”

Very few officers were charged with morals crimes, particularly buggery. Nonetheless, the navy treated sodomy in the officer corps as a more serious
crime than murder. On at least two occasions during the Napoleonic Wars, officers were hanged for buggery. In 1807, Lieutenant William Berry was sentenced to death, largely on the evidence of a boy, Thomas Gibbs, who testified that the lieutenant had committed buggery on him and fellatio as well. In another case, Captain Henry Allen of the sloop Rattler was convicted and executed for sodomy in 1797. As far as I can determine, Captain Allen was the only ship’s captain ever hanged for any offense in the British navy in the period covered by this study. All told, between 1756 and 1816, four ship’s captains were tried for sodomy and related morals offenses: one was hanged, one cashiered, and two were acquitted.

After the Napoleonic Wars, accusations and convictions for buggery decline sharply. Indeed, between 1816 and 1829, there were no sodomy trials at all. In 1829, William Maxwell, a boatswain, was convicted of buggery on a boy named William Pick and sentenced to death. Maxwell was hanged on January 7, 1829, and as it turned out, he has the dubious distinction of being the last British sailor ever executed for sodomy. He was also the only capitaly convicted man in that year.

The reasons for the decline of buggery trials are not difficult to ascertain. After the Napoleonic Wars, the navy was sharply cut back and the number of courts martial for all offenses declined precipitously. Like other institutions in British society, the navy was affected by the more humane attitude toward crime that characterized the mid-nineteenth century. In the case of buggery in particular, the post-Napoleonic period was influenced by the growing belief that sodomy might be a form of mental illness. The idea of moral insanity, developed by James Prichard in the 1830s, broadened the concept of madness beyond delusion and hallucination. With respect to criminal law, Prichard noted,

Various cases are on record in which homicide and other atrocious acts have been committed by persons of morose and wayward habits, given up to sullen abstraction or otherwise differing in their propensities and dispositions from the ordinary character of mankind.

On sodomy in particular, Sir Alexander Morrison argued in 1838 that it was “a consolation to know that it was sometimes the consequence of insanity.” Therefore, Morrison stressed, juries in sodomy cases “ought to be fully assured whether or not the offender was in possession of his reason, and power of self-control.” The possibility that a sodomitic act might be mad rather than evil may have softened punishments for the offense in both civil and military society.

While buggery, no doubt, continued to be practiced on naval vessels, there may have been a growing reluctance among naval officers and seamen to report known cases. Further, while lesser offenses, such as uncleanness, were occasionally tried on the general courts martial level, the harsh punishments for these crimes also gradually faded away.

Along with changing punishments codes and practices, the long period of peace between the Napoleonic Wars and the Crimean War played a significant role. In the eighteenth and nineteenth centuries, the number of buggery trials was directly related to whether or not England was at war. After the War of the
Spanish Succession (1702-1713) and the Seven Years War (1756-1763), there were few trials and no executions for sodomy. Between 1756 and 1806, as Table 5 shows, fear and assiduous prosecution of sexual deviance was a wartime phenomenon.

Table 5. Percentage of Morals Crimes Trials in Times of War and Peace: Royal Navy General Courts Martial, 1756-1806

<table>
<thead>
<tr>
<th>Offense</th>
<th>Wartime</th>
<th>Peacetime</th>
</tr>
</thead>
<tbody>
<tr>
<td>Buggery</td>
<td>100 %</td>
<td>0</td>
</tr>
<tr>
<td>Other Morals Crimes</td>
<td>83.3%</td>
<td>16.7%</td>
</tr>
<tr>
<td>Percentage of total GCM trials</td>
<td></td>
<td></td>
</tr>
<tr>
<td>morals cases</td>
<td>92.6%</td>
<td>7.3%</td>
</tr>
</tbody>
</table>

Of course, there are simple explanations for this. During wartime, the navy expanded rapidly and large numbers of men from different backgrounds and different countries were thrown together in cramped surroundings. Sheer numbers and the strains of sudden growth explain in good measure the war versus peace figures. Still, one would expect some sodomy trials in peacetime. It is interesting to speculate on the possibility that sodomy increased in wartime because sexuality has always been one mode of affirming life in the face of death. George Bataille has defined eroticism as "assenting to life up to the point of death." For men on board the ships of the Royal Navy, homosexuality was the only erotic outlet available. Of greater interest are the punishment — and particularly execution — statistics. Here, the sociology of deviance may be of help. Kai Erikson has noted that "...any community which feels jeopardized by a particular form of behavior will impose more severe sanctions against it..."

In spite of the supposed legal difficulty of proving buggery in the courts, a high percentage of purported sodomites were convicted and executed. While proof of penetration rules protected some men on trial for this offense, the navy still managed to hang more than half of the men brought to trial for buggery between 1749 and 1806. It is possible that homosexuals were singled out for punishment in wartime as part of the usual upsurge of patriotism and lack of tolerance for "dissenters" of all kinds that is often a concomitant of war, but this does not explain the extreme punishments for this particular offense. Clearly, the military community did indeed feel jeopardized by this "particular form of behavior." Why?

Again, Erikson is helpful:

The deviant and the conformist, then, are creations of the same culture, inventions of the same imagination. And thus it can happen that the most feared and most respected styles of behavior known to a particular age often seem to mirror one another — so accurately, in fact, that observers looking in from another point in time cannot always tell them apart.

What did sodomy, this "most feared" form of behavior, mean in the navy — particularly during wartime? Some of the more general hypotheses of deviance theory may be useful. For example, in his excellent study of "respectability" in nudist colonies, Martin S. Weinberg has pointed out that the marginality of
nudists vis-a-vis the morality of "clothed" society makes them exceptionally puritanical. "The low threshold of nudists to all that is apparently sexual..." Weinberg writes, leads to situations where nudists are, in effect, drummed out of the camp for acting or simply sitting in ways deemed sexually provocative. In this sense, marginality certainly characterized the navy, where matters of homosexuality were the issue. The navy was an all-male environment with very limited access to women. As such, it was under suspicion and, as a result, adopted an extremely rigorous code of conduct to govern human relationships.

Together with marginality, the ambiguity of homosexual relations probably challenged naval order in a special way. The navy prided itself on the fact that its values were clear, direct and simple. Every man knew his place in the hierarchical order of things and, in the same way, the lines between proper and improper conduct were sharply drawn. The ideal of both officers and crew was to live simply, to obey orders without question, and to know right from wrong. As John Losland has noted, "categories of persons who defy existing conceptions of possible and proper being serve to create ambiguity about that order." Homosexuality made the ideals of "manliness" — an all important part of naval virtue — ambiguous.

At the same time, the Royal Navy was close to what Irving Goffman has described as a "total institution." Among the central features of total institutions are control by one authority, the regulation and regimentation of all phases of daily activity, and a rigid body of rules imposed from above and enforced by officials and administrators. In such environments — and the navy was clearly one — the line between public and private behavior evaporates. While in civil society the individual can maintain a private life — even one that involves acts unacceptable to the mores of the society — safely and successfully, he cannot do so in total institutions.

Yet marginality, ambiguity, and totality only partially explain the specific concern with homosexuality in the British navy. We must return to the interactionist perspective: that deviance in some way mirrors the larger society. What did the fear of sodomy in the navy reflect? For one thing, it was somehow symptomatic of lack of discipline and control in all areas of life. The British navy took pride in the training and discipline of its crews. Indeed, it was this factor that often gave the British navy its edge over the French and Spanish in battle. After the Battle of the Nile, Admiral Nelson remarked in his general orders, "...it must strike forcibly every British seaman how superior their conduct is, when, in discipline and good order, to the riotous behavior of lawless Frenchmen." In the minds of many naval commanders, sodomy and the breakdown of order in general were closely related. After the great mutinies at Nore and Spithead in 1797, execution of sodomites began in earnest. In the process of stamping out mutiny in the Mediterranean Fleet in 1797, Lord St. Vincent not only executed would-be rebels, but also hanged two sodomite seamen from the St. George. After the most notorious series of sodomy trials in British naval history, the Africaine Courts Martial in 1816, the captain of the ship, Edward Rodney, was investigated for his purported failure to discipline the men under his command. Psychologically, the navy equated the rebellion of lower class seamen against the command structure with the revolt of the lower,
baser elements of the body against higher faculties and authorized values. Sodomy was releasing the beast, the animal in man, and much like allowing seamen to run amok on shipboard, threatened to destroy the principles on which naval performance and survival depended — discipline, self-control, order, and devotion to duty, manliness, and honor.

Still, the understandable fear of mutiny and disorder does not explain why the navy prosecuted sodomites more viciously than deserters and murderers. The navy's abhorrence of the "abominable and detestable crime" may have reflected a more basic fear and aversion of the society: sodomy brought into sharp focus the relationship between anality and death. In Bataille's words, "The horror we feel at the thought of a corpse is akin to the feeling we have about human excreta . . ." and he further notes that there exist "unmistakable links between excreta, decay, and sexuality." Along similar lines, Ernest Becker has observed,

The anus and its incomprehensible, repulsive product represents not only physical determinism and boundness, but the fate as well of all that is physical: decay and death.

The link between excrement and death is deeply rooted in the western intellectual tradition. Indeed, it accounts in large measure for the horror of the specific sexual act of sodomy. St. Paul proclaimed that the human body was a temple, a holy vessel, but the "temple" regularly evidenced its animality by depositing its waste products in a variety of places. Excrement was evil, and it was evil because it symbolized man's mortality. When Dante searched for earthly symbols to describe the horrors of hell, he could find no better images than those of the privy. As one writer has noted, "Dante’s Hell is one vast excremental dungeon." In Canto 18, Dante describes the punishment meted out to flatterers in words that leave no doubt of this: "There we went, and thence I saw, down in the ravine people stuck in ordure taken from human privies." The bowels of the earth, where men's rotting corpses were laid to rest, and the bowels of living bodies were inextricably intertwined. Neither was a place where humans ought to dwell, temporarily or permanently. Any one who found bowels attractive was, by any Christian standard, deviant. During the Middle Ages, as Jeffrey B. Russell has pointed out, witchcraft and sodomy were intimately linked: anal intercourse, whether with demon or human lovers, was an essential and climactic ritual of devil worship.

While it is difficult to determine whether or not the fear of sodomy was more acute in this period than in earlier times, there is certainly evidence to suggest that the phobic reaction to it reached a highwater mark during the eighteenth century. The Enlightenment has often been described as a period of declining faith, a time when the power of Christianity was waning and, with it, the comfortable belief in salvation and the immortal soul. Perhaps this gave rise to a more painful sense of man's mortality and a concomitant fear of the sodomitic act. Further, it was a period of rapid growth of urban centers — sprawling and over-crowded warrens where the stench of excrement and death was omnipresent and overpowering. As a reminder of death, sodomy may have taken on a uniquely abhorrent meaning during this time in human history.

Certainly in the Royal Navy death was a constant companion. Michael Lewis
has noted that "Life in a sailing warship was not, form an actuarial point of view, a good risk ...". Men fell from yardarms regularly, and disease, fire, and storms at sea took an appalling toll, particularly during wartime, when the ships were called upon to sail in inclement weather and men to face the perils of sword and cannon. All available evidence indicates that the mortality rate for sailors was, in Lewis' words, "grossly in excess of the national rate." Moreover, naval deaths were highly visible, particularly poignant, and never impersonal. To a greater or lesser extent, everyone had known and worked with the dead man, and in the close quarters of ships, seamen literally watched their comrades die, stitched them into their hammocks, and consigned their bodies to the voracious sea. The terrible poignancy of sea ballads reflects the ever-present consciousness of death in the minds of these men who spent their lives sailing the oceans of the world.

In wartime, the situation was exacerbated by battle deaths. It is true that only a small percentage of wartime casualties were caused by enemy fire. Still, all deaths are not equal in the eyes of the beholder, and the more dramatic deaths in battle had much greater impact on naval men than death from more prosaic causes. Surviving accounts of naval battles during the Napoleonic Wars suggest that death by enemy fire had a profound effect on the survivors.

In order to understand the special nature of the death/anality link at sea it is important to remember that the whole world of the sailor — the ship on which his existence depended — was threatened by enemy guns and the elements. On land a man died alone in the sense that there was no possibility in the pre-atomic age of destroying the firmament on which the army stood. In the Navy, the sailor not only had to confront the possibility of his own end but that of his immediate surroundings: his ship ablaze and slowly sinking into the ocean. There is an apocalyptic dimension to death at sea that brought the age old and always powerful imagery of the destruction of Sodom and Gomorrah into sharp focus. The fire and brimstone that the Lord presumably visited on these two errant cities had no closer parallel in the real world than the complete and total destruction of a man o' war.

The apocalyptic nature of death at sea was accent by the sense of complete and utter annihilation that being swallowed up by the ocean symbolized. Perhaps these themes were best expressed by Lord Byron when in *Childe Harold* he summed up man's special relationship to the ocean.

Roll on, thou deep and dark blue Ocean-roll!
Ten thousand fleets sweep over thee in vain,
Man marks the earth with ruin — his control
Stops with the shore; — upon the watery plain
The wrecks are all thy deed, nor doth remain
A shadow of man's ravage, save his own,
When, for a moment, like a drop of rain,
He sinks into thy depths with bubbling groan —
Without a grave —unkneled, uncoffined, and unknown.  

The sea is eternal and it leaves no trace of man or man made things.

Sodomy was an unbearably vivid reminder, a courting and embodiment, of the death that accompanied the warships of the navy wherever they went. As
such, sodomy had to be exorcised as ruthlessly as devils: the sodomite had to be killed for reminding men of their mortality.

University of Denver

Arthur N. Gilbert

FOOTNOTES

1. Buggery has not always been punished in military organizations. In ancient Greece, according to Thorkil Vangard, "A Dorian nobleman through his phallos transferred to a boy the essence of his best qualities as a man." These qualities included those that went into the making of a good soldier. Vangard continues, "Fighting corps composed of pairs of lovers as proposed by Phaedrus and mentioned by Xenophon in the Symposium, did in fact exist. The Sacred Band of Thebes, as it was called, was the backbone of the Theban army that conquered the Spartans of Leuctra in 371 B.C. under the leadership of Pelopidas and Empamenondas, and again at Mantinea in 362 B.C. under Epaminondas. The Sacred Band consisted of pairs of lovers fighting side by side." See Thorkil Vangard, Phallo: A Symbol and Its History in the Male World (New York, 1972), pp. 12, 40. See also Arno Katlen, Sexuality and Homosexuality: A New View (New York, 1971), pp. 26-27. According to Sir Richard Burton, Socrates once said, "a most valiant company might be composed of boys and their lovers, for... of all men, they would be ashamed to desert one another." Sir Richard Burton, The Sotadic Zone (Boston, 1973), p. 20. Marital virtues and homosexuality," which describes many practices between males which are not sodomitical. It is true Lotus: A Historical Survey of the Sexual Culture of the East (New York, 1959), writes, "The Samurai, a martial caste of sado-masochist invertists, were the most famous homosexuals in Japan, where as in ancient Greece, it became a matter of chivalry to love a strong and handsome comrade in place of an unclean woman." On India in the nineteenth century, Edwards continues, "The Sikhs, Rajputs, Maharattas, and Pathans (Pudhans) adopted a rigid homosexual camaraderie in order to maintain martial strength and unity.

In this essay, I have used the common eighteenth century term buggery because it is more precise than twentieth century euphemisms like "unnatural acts" or even "homosexuality," which describes many practices between males which are not sodomitical. It is true that buggery was defined in various ways during this period, but it is certainly more precise than the terms used, for example, in American statutes covering the practice. One popular word for the anal passage during this period was funder, which (unfortunately, in my view) faded away in the late eighteenth and early nineteenth centuries. Before then, it is the most common term used in courts martial testimony to describe this particular part of the body.

2. Recent studies of the incidence of administrative discharges for homosexuality measured against the number of honorable discharges given to homosexuals who served in the army or navy without discovery may serve as a rough guide to previous centuries. It must be remembered, of course, that conditions and attitudes have changed dramatically in recent years. According to one recent work on the U.S. military,

It appears obvious, therefore, that most homosexuals remain undiscovered by military authorities and complete their service with honor. Some evidence for this point comes from Fry and Rostow. Of 183 men known to be homosexuals prior to military service, they found that 51 were rejected at induction. Of the remainder, only 14 were discharged from the service — that is, 118 served from 1 to 5 years, of whom 58% became officers. This group was able to handle their homosexuality throughout the period and made excellent records for themselves. More recent research conducted by the Institute of Sex Research in 1967 showed that of some 458 male homosexuals, 214 had served in the military, of whom 77% received honorable discharges. Earlier data reported by Simon and Gagnon indicated that only 20% of 550 white homosexual males who had served in the military had any difficulties.
Finally, in the present study, of 136 homosexuals had served in the military, 76% received honorable discharges.


6. *Ibid.* Prostitution was sometimes defended by English sea captains as a way of preventing homosexuality. Others felt it contributed to homosexuality by teaching sailors promiscuity and vice. See Karlen, p. 163.

7. Most of the material in this article is based on an examination of the courts martial records in the Admiralty I series in the Public Records Office. I also searched the Army courts martial records (Series 71), but as one might suspect, there were far fewer buggery cases in the army. It is unlikely that the army personnel were less inclined to practice buggery, but the chances of getting caught were much greater in the navy because of the cramped and crowded conditions on ships in the eighteenth century, where detection was easier. The army cases of buggery (and the companion crime, bestiality) show that lashing was more ferocious in the army than in the navy, but there were no capital sentences. (See footnote 74)


   Every person who shall carnally know or shall have sexual intercourse in any manner with any animal or bird or shall carnally know any male or female by the anus (rectum) or with the mouth or tongue or shall attempt intercourse with a dead body shall be guilty of sodomy.

   Robert Veit Sherwin, "Sodomy" in R. Slovenko, *op. cit.*, p. 427. Edward Coke, one of the first writers in England on buggery and the law, included bestiality in his definition of
sodomy, but took the position that the law did not cover anal intercourse between a man and a woman. It is not clear to what extent homosexual acts other than sodomy were punished in the English courts, but attempted sodomy was a crime in English law and this act may have been so broadly interpreted as to include virtually all forms of homosexual contact.

12. Hyde, op. cit., p. 5. Oscar Wilde, among others, was tried under the Sexual Offenses Act of 1885 — not under the sodomy statute. For a full discussion of vague and ambiguous buggery and “gross indecency” statutes, see Alex K. Gigeroff, Sexual Deviation in the Criminal Law: Homosexual, Exhibitionistic, and Pedophilic Offences in Canada (Toronto, 1968).


14. Sir William Blackstone, Commentaries on the Laws of England (Philadelphia, 1897), Vol. IV, p. 215. Blackstone called buggery “the infamous crime against nature” and added, “I will not act so disagreeable a part, to my readers as well as to myself, as to dwell longer upon a subject the very mention of which is a disgrace to human nature. It will be more eligible to imitate . . . the delicacy of our English law, which treats it in its very indictments as a crime not fit to be named.”

15. Ibid., pp. 213-214.


17. Ibid.

18. Other witnesses, understandably, would not swear that they had seen (or felt) penetration. Joseph Britton, for example, was asked, “Did you see Bryan’s p—k in the body of Billin?” He answered, “No.” This fact, and the impossibility of proving emission, may have influenced the court, but since it was never possible to get more specific evidence than the eyewitness testimony of Jones, it is clear that the court simply did not want to see Billin and Bryan hanged for buggery.

19. Adm. 1/5296.

20. Ibid. The surgeon testified that there was “no external sign of hurt.” See below for the surgeon’s role in buggery cases.

21. Adm. 1/5300. Newton/Finney Court Martial, 2 July 1761. Finney, a boy, confessed to the ship’s captain and this certainly played some role in the conviction. Still, since what constituted proof of penetration was left to the judgment of the court, there were great variations in conviction and sentencing, depending on the attitude of the court martial board.


23. Ibid.

24. Ibid., Greenard/Fuller Court Martial, 1802.

25. In American military law, for example, there are three classes of homosexual offenders. Class I is reserved for a man accused of forcing himself on another male against his will, see “Homosexuals in the Military,” Fordham Law Review (1969), p. 468.

27. Adm. 1/5266, 9 October 1706. The boy’s testimony was supported by a rectal examination by the ship’s surgeon.

28. Adm. 12/26, Palmer Court Martial, 19 August 1772.

29. Adm. 1/5369, Ambler Court Martial, 22 April 1805; Adm. 12/26, Court Martial Digest.

30. Adm. 1/5369.

31. Ibid.

32. Adm. 12/26, Ambler Court Martial, 22 April 1805.

33. Adm. 1/5399.

34. Ibid.

35. Adm. 1/5390.

36. Ibid.

37. Adm. 1/5266, James Ball Court Martial, 8 October 1706.

38. Ibid.

39. Surgeons’ testimonies were especially important in bestiality cases. Since the passive partner, whether a sheep, a cow, or a dog, could not testify for obvious reasons, the surgeon was often called in to give his opinion on whether penetration and emission had taken place. In one interesting case (W.O. 71/77, John Watmore Court Martial), the prisoner was accused of copulating with a dog. Three surgeons were asked if it were possible to do such a thing. They were “of the opinion that is is possible for a man to have carnal knowledge of a large bitch she being proud... as to its being possible to have carnal knowledge of a dog,” they thought not, “without the dog be either first tied, or held by an assistant and not even then without the parts are lubricated.”

In 1809, Samuel Branter was tried for bestiality with a goat, and the assistant surgeon, Edward Caldwell, gave the following testimony which helped to convict the prisoner: “... the parts appeared of a florid colour and more dilated than usual; there was moisture appeared on the external parts; for fear of any mistakes, I examined another goat. She appeared quite natural.” The surgeon also had to testify that there was no male goat on board that could have been responsible for the female goat’s inflamed condition.

40. Adm. 1/5376, John Sky Court Martial, 9 December 1806.

41. Ibid.

42. It had long been believed that frequent sodomitic practice caused changes in the rectum. Richard Wiseman, the Serjeant-Chirurgeon to King Charles II, wrote in Eight Chirurgical Treatises (London, 1719), “The Christae and other species of excrecences are reputed to arise from the Lues Venere and from the filthy sin of sodomy and have the Rhagades for their companions.” (p. 348)

According to Karlen,

In Latin satires there were many jokes about it. Martial made puns about the *ficus*, which means both fig and hemorrhoid, to imply someone practiced sodomy. Juvenal similarly referred to “knobs” — papillary growths of the anus. Paulus Zacchius, in a medico-legal treatise of 1726, referred to the obliteration of the radial folds around the anus as a sign of sodomy. In the nineteenth century, Capser, Tardieu, and many
others devoted essays to whether lack of radial folds, a "funnel-shaped" rectum and syphilitic chances of the anus invariably resulted from sodomy and could be taken as legal proof of it. (p. 186)

Even today, however, it is not possible to prove buggery by examination of the anal passage. A homosexual who practices anal intercourse will have a dilated rectum; it will be "fish-mouthed." This condition, however, might be caused by the insertion of objects other than the penis into the rectum. The inflammation that eighteenth century surgeons noted in courts martial testimony might have been proctitis autophytica, described by one writer as a "localized area of... ulceration in the lower rectum" which may be due to "self-inflicted trauma... produced by a fingernail during repeated digital examination by the patient... or by the frequent introduction of an implement as a pencil or a poker for erotic or other purposes." J.G. Goligher, Surgery of the Anus, Rectum, and Colon (Springfield, Illinois, 1967), p. 1021.

In cases of abuse of young boys, there is likely to be inflammation and large tears in the anal opening, but, again, these might be attributable to other causes than sodomy. Indeed, dietary deficiencies - quite common in the navy - and various nervous disorders could cause inflammation. I would like to thank Dr. Richard Cohen, rectal surgeon, Denver, Colorado, for this information.

43. Adm. 1/5267.

44. Adm. 1/5273. Needless to say, this was a very vague law, and while it was usually limited to sexual deviance, there was one case of its use to punish a man for urinating in his bed. See Adm. 12/24.


46. Ibid.

47. Adm. 1/5478.

48. Adm. 12/27F.


50. Ibid.

51. Adm. 1/5484.


54. Adm. 1/5266.

55. Adm. 1/5265.

56. Adm. 1/5264-5268.

57. David Hannay, Naval Courts Martial (Cambridge, England, 1914), p. 146-155. Hannay makes only one veiled reference to buggery: "And there is one class of case of which I shall not be expected to speak at all. To ignore the fact that it is there would be dishonest. To dwell on it would be an outrage." (p. ix)

58. Adm. 1/5264-1/5267.
59. Adm. 1/5299-1/5300.
60. Adm. 12/24.
61. Hannay, op. cit., p. 146.
64. Ibid.
67. Adm. 1/5399, 6 September 1809.
69. Ibid.
70. See above, p. 10.
71. Adm. 12/27F. While the great majority of those refused pardon by the King were executed, it is not possible to determine if they were all hanged. Some may have escaped and others may have been released “informally” by the Admiral of the Fleet. The ship’s logs are helpful, since they usually contain entries of executions, but some are missing and it is difficult to find out where a man was executed. For example, Captain Henry Allen was commander of the Rattler, was tried on the Canada, and executed on the Adventure.

There was an unusual concern with sodomy during the Napoleonic Wars. For more information on this, see A.N. Gilbert, “Buggery and the British Navy during the Napoleonic Wars” (typescript) and “The Sodomy Scare of 1810 in London and Middlesex County” (typescript).
72. Adm. 12/27F.
73. Ibid.
74. Adm. 1/5299, Parts 1-4, Adm. 1/5300-1/5301, Bryan/Billin Court Martial. Army punishments were more severe. While I have not discovered any case of execution for sodomy or bestiality, the lash was applied liberally and men were drummed out of the service with the usual marks of infamy. In two 1762 cases of bestiality, the guilty parties were sentenced to 1500 lashes apiece (W.O. 71/72). In the Watmore case mentioned above, the prisoner received 1000 lashes. Some sodomy cases I uncovered showed 500 lashes for the attempt and 1000 lashes for proven sodomy. Army punishments, except for the death penalty, were harsher than their naval counterparts and sentences of one thousand lashes were not at all unusual. Fifteen hundred lashes, however, is close to the maximum number given for any offense in courts martial. On a very few occasions, a court martial board sentenced a man to two thousand lashes, but this was rare in the eighteenth century. Further, conviction of buggery and/or bestiality was accompanied by all the “shame” ingredients we associate with eighteenth century military law. For example, when Edward Minton received 1500 lashes for bestiality with a cow in 1762, fifty of the lashes were delivered by the common hangman and he was drummed out of the service with a halter around his neck (W.O. 71/72). In the same year, Simon Hoyle, convicted on the same charge, received 1000 lashes on the back and 500 “on the breech . . . inflicted by the hands of the common hangman.”
and was ordered “to be drummed from Southport to Westport, Gibraltar, with a halter about his neck and led by the hangman, and then to be dismissed from the service and turned out of town.” (W.O. 71/72) This was harsh punishment, even by eighteenth century standards.

75. Adm. 1/5300.

76. Adm. 1/5302.

77. Adm. 1/5299-3301, 1/5304, 1/5322-23, 1/5328, 1/5328-5390, and 12/27F.

78. Adm. 12/22-28 and Adm. 1/5372-5400.


82. Ibid.

83. Adm. 1/5383. The testimony in this case is a good example of how naval officers used their position to take advantage of young boys, and also of the innocence of these boys who did not understand what was happening to them. As a case in point, we find this passage:

   Prosecutor. When the prisoner’s privates were in your fundament, as you have related, did you feel anything coming from him?

   Witness. I don’t know what it was, it was the same as if he was making water.

   Prosecutor. You have stated to the Court that at two different times the prisoner held down your head and put his privates in your mouth — did anything at either of these times come from him?

   Witness. Once — I don’t know what it was, it was something white.

   Prosecutor. How do you know it was white?

   Witness. It runned out of my mouth.

84. Adm. 12/26. Allen was executed on board the Adventure on May 15, 1797. The ship’s log reads: [Adm. 51/1298] HMS Queen made the signal for the boats of the squadron to attend the execution. Read the articles of war to the ship’s company, at 7 hung Henry Allen Esqr, late commander of the sloop Rattler at the starboard foreyard arm for the detestable sin of sodomy, committed his body to the deep with the usual ceremonies.

   Admiral Byng, the only other officer at the general command level to be executed was shot.

85. Adm. 1/5473, 2 January 1829. The Maxwell case is interesting because he had been tried for the same crime earlier and sentenced to death. He had been reprieved because of irregularities in the proceedings and he appealed to the Admiralty Office on the ground that his second trial constituted double jeopardy. The objection was overruled. Once again, the evidence was based on the testimony of a boy, and Maxwell claimed he was lying. He argued that the boy was vindictive because “…it so happened that whilst I was boatswain of the Tweed… I had frequently chastised by principal accuser.”

86. Adm. 51/3501, 7 January 1829. Logbook of the Tweed. In civil courts, capital buggery convictions continued. As the number of capital offenses decreased, sodomy became one of the major crimes for which one could be hanged. From 1842 to 1849, for example, sodomy was second only to murder in terms of numbers of capital convictions. In 1846, more death
BUGGERY AND THE BRITISH NAVY


88. *Ibid*.


90. George Bataille, *Death and Sensuality: A Study of Eroticism and Taboo* (New York, 1962), p. 11. Williams, and Weinberg, *op. cit.*, argue that there is no evidence that homosexuality increases in wartime, but their argument is inconclusive.


92. While I have not treated the civil courts in this essay, it seems reasonably clear that buggery was regarded with greater severity in the navy. One measure of this is the percentage of men executed for buggery in civil society against all other executions. In 1810, for example, out of sixty-seven executions in Great Britain, only four were for buggery — a 5.9% rate. In 1812, only 1.2% of all civil executions were for buggery while the naval rate was 40%. Shipboard conditions, of course, made it easier to prove buggery at sea. See Report from the Select Committee on Criminal Laws, ordered by the House of Commons to be printed 8 July 1819 (Shannon, Ireland, 1968), Appendix I. Available evidence seems to indicate that the King was more likely to pardon buggers convicted in civil courts than those sentenced by courts martial. From 1761 to 1765, for example, four men sentenced to death for sodomy were pardoned. Radzinowicz, *op. cit.*, Vol. 1, *The Movement for Reform*, p. 119.


98. Adm. 12/26 and 1/5339. James Dugan, *The Great Mutiny* (New York, 1965), argues that the real reason that these two seamen were hanged was because they were accused of sedition as well as sodomy. This is incorrect. St. Vincent’s letters on the case make it quite clear that he viewed consensual sodomy a crime quite as dreadful as mutiny. Ad Mss. 31, 176, *Jervis Order Book*, 29 July 1797, and Ad Mss. 31, 186, *Journal of St. Vincent*, 3 July 1797. Dugan’s claim that sodomy was often overlooked is not supported by the available evidence.

99. Arthur N. Gilbert, "The *Africans* Courts Martial: A Study of Buggery and the Royal Navy," *Journal of Homosexuality*, Vol. 1, No. 1 (Fall, 1974). Whether sodomy was consensual or forced seems to have made little difference. Between 1795 and 1805, for example, in 71% of all sodomy cases, the act was consensual and in no way a threat to the ongoing life of the ship.
100. Bataille, *op. cit.*, pp. 57-58. This is also the theme of Bertolucci’s film, *Last Tango in Paris*.


109. The link between sodomy and catastrophe is a major theme in tracts and newspaper accounts dealing with the offense. One mid-eighteenth century poem contains the lines,

Where Sodom now lies buried in the deep;  
A Stygian lake where stinking waters meet;  
To form a filthy puddle, and compleat,  
A *Mare Mortuum*, where the filthy stain,  
Of Sodom’s vices, do as yet remain:  
To warn succeeding Ages to prevent  
‘Th’ efficient cause and faithful punishment.

*Sodom’s Catastrophe* (London, 1748).