LEGAL HISTORIANS agree that chapter 32 of the Old Norwegian Gulapingslag (GulL) is the only section in medieval Scandinavian law that contains provisions against homosexual behavior:¹

Magnús gerðe nymæle þetta.... En ef karlar tveir blandasc likams losta saman oc verða kunnir oc sanner at því. Þa ero þeir baðer ubotamenn. En ef þeir synia oc er þo heraðs fleytt. Þa syni með larnburði. En ef þeir verða sannr at soc. Þa a konongr fe þeirra halft. en biscoð halft.

(Magnús made this new provision.... And if two men enjoy the pleasures of the flesh and are accused and convicted of it, they shall both suffer permanent outlawry. But if they deny the charge while common rumor affirms it, let them deny it with the hot iron. And if they are convicted of the charge, the king shall have one-half of their possessions and the bishop one-half.)

The chapter was part of the new provisions introduced by King Magnús Erlingsson and Archbishop Eysteinn in 1164.²

Two recent studies on homosexuality and medieval society discuss that section and interpret it in two different ways.³ Because the regulation occurs in the oldest Norwegian law, Gisela Bleibtreu-Ehrenberg sees it as a reflection of an ancient Germanic tradition of severe punishment for homosexual behavior. She finds the earliest expression of that tradition in chapter 12 of Tacitus's Germania which states that "ignaunos et imbelles et corpore infames caeno ac palude iniecta insuper et crate mergunt," corpore infames allegedly referring to persons guilty of homosexual acts.⁴ John Boswell identifies chapter 32 of the GulL as part of Church law and considers it a late thirteenth-century interpolation in keeping with the century's Continental legal practice. He bases his argumentation on the fact that this chapter is not found in the Icelandic code Grægás and thinks it more likely that "the Norwegians would have added such a provision in compiling their thirteenth-century version than that the Icelanders would have deleted it."⁵ Boswell overlooks the fact that the regulation was incorporated into King Sverrir's christenret.

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a compilation of the Church laws of the *Gull* and the *Frostapningslög (FrL)*. The *christenret* is not older than 1244, but the version of the *Gull* that was used for the compilation is not the same as the main codex (manuscript 137 quarto, from around 1250); it is similar to the version of the *Gull* found in a fragment by a hand from the late twelfth century. That fragment contains provisions against bestiality (ch. 30) but breaks off before chapter 32. If Boswell is correct, the section in chapter 32 concerning homosexual practices must have been incorporated (not later than 1250) into two different versions of the *Gull* and then taken over by the compiler of Sverrir's *christenret*. The provision did not affect the legislation of the Frosta-, Eidsiva-, and Borgar assemblies, nor was it mentioned in thirteenth-century *réttarbaeti* (legal amendments) and ecclesiastical documents. It is unlikely that such an unprecedented regulation would have been introduced without justification or royal authority, and the simplest solution is to accept it as part of the *nymel* (new law) of Magnús Erlingsson and to assume that an early tradition underlay both versions of the *Gull*, that which appeared in manuscript 137 quarto and in the fragment from the late twelfth century.

The Old Icelandic compilation *Grágás* exists in two manuscripts from the latter part of the thirteenth century and in some fragments. One of the main manuscripts of the *Grágás*, the Staðarhólsbók, has been dated to approximately 1271; at that time, Magnús Hákonarson, the Norwegian king, enforced in Iceland the new law *Járnsida*, modeled on the *FrL*. The relationship between the *Grágás* and the extant West Norwegian laws appears to have been tenuous, and the recording of the *Grágás* at the time of the enforcement of the unpopular *Járnsida* could have been the result of an attempt by the Icelanders to maintain a national legal tradition in protest against Norwegian sovereignty. There are no reasons that the compilation should have included the new provisions introduced by King Magnús Erlingsson; indeed, it is unlikely that those provisions were ever part of the Icelandic legal code. Thus, Boswell's explanation for the presence of the regulation against homosexual behavior in the *Gull* is unacceptable: the provision was not a late thirteenth-century interpolation from mainstream Continental laws passed against homosexual acts; rather, it appears to have been introduced in 1164 by Magnús Erlingsson and Archbishop Eystein.

In the following, Old Norse attitudes toward homosexual behavior, as they emerge from legal and literary sources, shall be discussed. It is proposed that the regulation in the *Gull* may be explained in light of twelfth-century Norwegian political events and that its introduction was
owing neither to an earlier Germanic legal tradition nor to a sudden outburst of religious intolerance against homosexual practices in twelfth-century Norway.

I

The provision in chapter 32 of the GulL is an isolated occurrence in both Scandinavian and twelfth-century Continental law. Not until the latter half of the thirteenth century did homosexual acts start to incur severe penalties in most legal compilations. None of the Leges Barbarorum contains provisions against homosexual behavior, and the Carolingian legislation, following the forged capitulary of Benedictus Levita (848–50), contains general admonitions to stay away from this sin but enacts no severe punishments for it. The first general Church council to pass sanctions on homosexual behavior was Lateran III (1179); the punishment for a layman guilty of crimes contra naturam was excommunication. That provision was incorporated into the canon law of the thirteenth century, but neither the canon law nor the sections prescribing severe penalties for homosexual behavior in subsequent Continental secular laws appear to have had any immediate effect on contemporary Scandinavian legislation. In Norway, the provision in chapter 32 of the GulL (and Sverrir’s Church law) is the only reference to homosexual behavior. In Sweden, the wording of the counciliary statute from Lateran III occurs in 1280 in Bishop Brynjulf’s statute: “Hvær sum syndær amat naturrinni. bate biscipi .IX. markær” (“Whoever sins against nature shall pay nine marks to the bishop”). But that provision was not incorporated into subsequent Church or secular Swedish law.

In 1227 Pope Honorius III wrote a letter to the Archbishop of Lund appealing to him to deal severely with people guilty of bestiality and “those sins that should not be named nor committed, for which the Lord condemned Sodom and Gomorrah to destruction.” The punishment was pilgrimage to Rome to do penance. The papal admonition did not, however, result in any provision against homosexual behavior in medieval Swedish or Danish law. Continental and Scandinavian penitentials show that homosexual acts fell under Church jurisdiction, but the penances prescribed for those acts were almost uniformly equal to those imposed for other sins of a sexual nature. In 1178 Bishop Þorlákr in Iceland prescribed from nine to ten years of penance for homosexual acts, the same punishment as for bestiality or incest. This penitential also prescribes eight years of penance for a married man’s committing
adultery, seven for an unmarried man’s committing fornication, and from five to nine years for people committing incest within various degrees of kinship.

Unlike homosexuality, bestiality is explicitly mentioned as a crime against nature in both the GulL and the FrL:

Udaða verc ero oss oc oll firiðøn at vær r kna engi blandazt við bufe…. En ef bispoc æða hans ærendreke kenner þat manne. at hann blandazt við bufe. en hann kveðr við þvi nei. bispocs armaðr scal fora til hus hanom. oc stefna hanom til þings firi þat udaða verc. hann festir firi þat settar eið…. Sva scal eiða þa alla vinna er festir ero firi kristins doms brot vårt [GulL, ch. 30].

(All evil deeds are forbidden us, and we may therefore not have intercourse with animals…. And if the bishop or his deputy accuses a man of having had intercourse with animals, and he denies the charge, the bishop’s bailiff shall go to the man’s home and summon him to the assembly for that evil deed. Let him clear himself with a sixfold oath…. In this way all oaths shall be sworn in cases of crimes against Christianity.)


(If a man has intercourse with animals and in this way destroys his Christianity, then that man shall be castrated….)

Ef manni er þat kænt at hann blandazt uðr einhuærn fenad þan sem firiðøen er huærum kristnum manni. þa søke armaðr með heimilis kúðiðar vitri… [FrL, Vol. III, § 18].

(If a man is accused of having had intercourse with any animal, something which is forbidden every Christian, the bailiff shall bring action against him with witness to [the fact of] common rumor….)

The sinner’s punishment was castration and subsequent outlawry, with the animal being driven out to sea and drowned. The provision for destruction of the animal occurred in all medieval Scandinavian laws dealing with bestiality, and it was modeled on the biblical passage Leviticus 20. 15–16: “If a man has carnal dealings with an animal, the man shall be put to death and the animal slain.”

In Sweden, bestiality is first mentioned in 1171–72 in a papal letter from Alexander III to the Archbishop of Uppsala: a pilgrimage to Rome
is prescribed for this “abominable pollution.” The provision was subsequently incorporated into the chapter on adultery in the younger Västgötalag in the early fourteenth century, and the punishment was a pilgrimage to Rome, in accordance with the papal document. The late thirteenth and fourteenth centuries’ Swedish provincial laws contain regulations against bestiality that correspond to Continental provisions against “ sodomy,” in which sodomy had come to be synonymous with “ crimes against nature,” subsuming both homosexual practices and bestiality as well as “ unnatural” heterosexual habits. The transgressor’s punishment was being buried alive or burned, but in most cases the crime could be absolved through fines. Magnus Eriksson’s landslag from around 1350 makes no reference to bestiality, but the provision is reintroduced in Christoffer’s landslag in 1442, and the offender’s punishment for such dæwlskapr (devilish things) was being burned or buried alive, or being chained until receiving absolution by the bishop.

In Norway, provisions against both homosexual behavior and bestiality occur in the GulL. The FrL has regulations against bestiality, and although the law makes direct reference to the new provisions by Magnús Erlingsson and Eystein in GulL, chapter 32, the text breaks off before repeating the section dealing with homosexual acts and introduces new provisions concerning the constitution of the Frostaping. Sverrir’s Church law (§§ 75 and 80) retains the wording of GulL, chapters 30 and 32, but adds confiscation of property to the punishment incurred for bestiality. The late thirteenth-century Church law of the Gulaping, paragraph 33, by King Magnús Hákonarson, states the following:

Sa madr oc er drygir likams losta vidr nokot kykuende firir vttan konno oc verdr hann kvnr eda sanr at þui. þa er han vtlegr oc fe hans allt vidr konong.24

(And if a man enjoys the pleasures of the flesh with any other living being but a woman and is accused and convicted of this, he will be outlawed and all his possessions belong to the king.)

This section occurs in the chapter of the new Church law that otherwise corresponds entirely to chapter 32 in the older GulL, and the wording could have been a conscious attempt to collapse the sections on homosexual behavior and bestiality in accordance with Continental practice. The same provision is found in the chapter dealing with bestiality in the new Church law of the Borgarping (§ 24), also issued by Magnús Hákonarson, and the crime incurs the penalties of outlawry and confiscation of property (“the king takes all, the bishop gets three marks”).
Both Church laws remained in effect for a long period, and marginal remarks in the manuscripts of the *Borgarþing* law show that later readers understood the sections to refer to bestiality alone. On the bottom of a page of one manuscript from 1450, a hand added in Latin “de pena fedus rumpencium sicut super adulterio et cum brutis coenecium,” and in 1566, Jacobus Mathias Agricola added to manuscript C “och det quiek der han drygde ligoms lāste meder skall faris a sund och druckniss” (“and that living being [i.e., animal] with which he enjoyed the pleasures of the flesh shall be led out to sea and drowned”), a provision in keeping with those against bestiality in the older *FrL* and *Gull*. The Church law of Archbishop Jón, which was in effect for a short period after the death of Magnús Hákonarson, reverts to the wording of the old *FrL* and prescribes outlawry and loss of property when a man *blænda* við bufe (“has intercourse with animals”) but omits castration.

Bestiality was considered a crime against Christianity, and it was punishable under both Swedish and Norwegian law. In Sweden the provisions can be traced back to papal influence; in Norway, where they occurred much earlier, their content and wording suggest a similar influence, although the provision for punishment by castration does not occur in other Scandinavian sources. In *Leges Visigothorum*, from the seventh century, homosexual practices were punished with castration, and in the Frisian *Sendrecht*, from the eleventh century, a person guilty of “breaking the law of Octavianus and Moses and the whole world” had the choice of three punishments: being burned, being buried alive, or suffering self-inflicted castration. It is doubtful whether any of these provisions could have influenced the choices of punishment in the Old Norwegian laws. When in the late thirteenth century “unnatural” sexual habits began to incur severe penalties under Continental laws, the concepts of “sodomy” and “crimes against nature” were identified with bestiality in Scandinavia. That was most clearly reflected in Swedish law, where the prescribed penalties were comparable to what one finds in Continental or English law (being burned, being buried alive).

The section in chapter 32 of the *Gull* that prescribes outlawry and loss of property for homosexual behavior was unparalleled in twelfth-century legal tradition. The wording shows that it cannot be ascribed directly to the influence of the Church or canon law. Although bestiality was labeled an *úddåaverk* (an evil deed, like rape or incest), which defiles a person and corrupts his Christianity, homosexual behavior was not mentioned as a crime against Christianity, but men who indulged in
homosexual acts were *úbbótmenn* (criminals whose crimes, such as theft, treason and murder, could not be absolved with fines; see *Gull*, ch. 32). Homosexual practices did not incur severe corporal punishment (cf. castration for bestiality), and the procedure for proving the innocence of the accused was different from that prescribed for crimes against the Church, in which the defendant had to swear an oath on the Gospel laid on the threshold of the church door (*Gull*, ch. 30). Sverrir's *christeneret*, § 75, adds the clause, "En þær skulu fara or landæign konongs vars. oc bêta firer sol sinni oc koma aldri i land aftir" ("And they shall depart from the dominion of our king, and do penance for their soul, and never return to the country again"); thus, this code establishes a tie between the provision and Church regulations, but no such connection is evident in the *Gull*. Since the origin of this paragraph can be traced neither to previous (or contemporary) legal tradition nor to Church legislation, the motivation behind its introduction by Magnús Erlingsson must be sought elsewhere.

The archbishopric of Niðaróss was established in 1154 by papal authorization, and in 1161 the ambitious Eyusteinn Erlingsson was elected archbishop. He was a powerful man with important connections, and after his consecration as archbishop he at once set out to strengthen the power of the archbishopric and increase its treasury. In spring, 1164, a meeting took place in Bergen (under the jurisdiction of the *Gulaping*) between the archbishop and Erlingr skakki, father and guardian of Magnús Erlingsson. The outcome of that meeting was an alliance between Church and monarchy, and the archbishop and Erlingr agreed to assist each other in all matters profitable to crown and archbishopric. According to Snorri, Erlingr commented on certain legal enactments that the archbishop had carried through:

"Hvárt eru þat lög, herra, ins helga Óláfs konungs eða hafið ér tekit nókkuru frekara þetta mál en svá sem ritit er í lögðókinni?" Erkibyskup segir: "Svá mun inn heilagi Óláfr konungr löggin hafa sett sem hann fekk þá jáorð ok samþykki alþýðu til, en ekki finnsk þat í hans lögum, at bannat sê at auka guðs rétt." Erlingr svarar: "Vilið þér auka þárn rétt, þá manuð þér styrtja vilja oss til þess, at vör aukim jafnimiklu konungs réttinn."29

("Are these the laws, my lord, of Holy King Óláfr, or have you proceeded somewhat more harshly in this matter than is written in the law?" The archbishop says, "Holy King Óláfr may have
given his laws with the agreement and consent of all the people, but there is nothing in his laws that forbids increasing the rights of God." Erlingr replies: "If you wish to increase your rights, you will wish to help us increase the king's rights as much."

They agreed on that, and the archbishop promised to strengthen the power of Magnús in return for Erlingr skakki's support in "all matters profitable" to the archbishop. The result of that coalition was a series of nýmæli in the older Gul, among them the provisions against tibóiamdl in chapter 32, a section ascribed to both Magnús Erlingsson and Archbishop Eysteinn. The provision concerning homosexual behavior must have been introduced to gain control of the property of the accused and as a convenient tool to rid Church and state of their enemies. It was a product of the extraordinary coalition between the royal authority of Magnús (and Erlingr) and the hierarchical efforts of the Archbishop of Niðaróss, Eysteinn Erlingsson. The fact that the regulation is not to be found in earlier Icelandic law testifies to the lack of a previous tradition for it. If such a Germanic tradition existed, it is beyond reconstruction, for it left no trace in medieval Scandinavian legislation. The section on homosexual practices disappeared from Norwegian law after King Sverrir's Church law. There is no way of ascertaining to what extent the provision was enforced, but its subsequent deletion; the omission of a similar section in the FrL, Vol. V, § 46; and the fact that provisions against homosexual behavior were not introduced later—when such practices began to incur severe penalties in Continental legal compilations—all indicate that the regulation could not have been very successful.

The model for the section in the Gul, chapter 32, could have been a similar provision in the Justinian code, which prescribed "for those who dare to practice an abominable crime with persons of the male sex" confiscation of half their property; for those of inferior station, corporal punishment in addition to banishment. That code was circulated at Continental law schools visited by Scandinavian clerics. There is evidence that Norwegian students attended the law school of Bologna between 1280 and 1300, and the Swede Andreas Suneson was in Bologna at the end of the twelfth century; since that law school was founded in the late eleventh century, there are no reasons why Norwegian clerics—in conjunction with the drawing up of Church and secular laws and regulations—could not have visited the school prior to 1164.
Medieval Scandinavian literature is silent on the subject of homosexual relationships, but in connection with defamation, many episodes in prose and poetry stress the degradation of passive homosexual behavior (the active role does not appear to have carried such connotations). The earliest Norwegian and Icelandic laws contain detailed provisions about injurious remarks, and the penalties that followed were severe. A man who was said to have been used as a woman was allowed to kill his slanderer, and a poem containing certain words to that effect was also considered sufficient provocation for killing the insulter. Consider the following section from the Gríggás (Staðarhólsbók, vísíða, ch. 376):

Þav ero orð þríu ef sva mioc versna máls endar manna. er scog Gang varða avill. Ef maðr kallar mann ragan eða stroðinn. eða sorðinn. Oc scal skæia sem avnnor full rettis orð. enda a maðr vígt ígegn þeim orðum þrinn.

(There are three words that corrupt men's speech to such an extent that they all incur outlawry. If a man calls another man ragr or stroðinn or sorðinn, he shall prosecute as for other fullréttisorð [gross verbal insults]. A man also has the right to kill for these three words.)

If a deceased person was the object of such a defamation, the penalty for his slanderer was outlawry.

Accusations of passive homosexual behavior were not included among injurious remarks in later Norwegian and Icelandic laws; in Sweden such accusations occur only in the oldest provincial law, the older Västgötalag (relosa bokær, ch. 5). In the FrL, Vol. V, § 22, the following provision is to be found: “Engi maðr skal þat við annan mæla at hann hæf þegi skömm á sér…” (“No man must say about another that he [the latter] has submitted to disgrace…”). The same regulation occurs in later medieval Norwegian and Icelandic laws. Konrad Maurer takes it as a reference to sodomy, in accordance with the Járnsiða edition of 1847 (“alium sodomiae criminis insulit”). Johan Fritzner gives the same translation: “pigga skömm á sik : lade sig misbruge til Sodomiteri” (“submit to sodomy”). There can be no doubt that the expression pigga skömm á sér refers to the disgrace of having suffered a criminal injury without prosecuting the case at court, and not to homosexual practices. This is illustrated by the wording of the comparable section on fullréttisorð in the older Bjarkö-ret (§ 31):
Ef maðr bregður manni því at hann væri lostinn ok má eigi þat satt gera, ok svá ef hann bregður honum því at hann væri lostinn síðan hann tók rétt sinn fullan. bæti honum fullrétti.

(If a man chides another man for being beaten and cannot prove it, or if he chides him for being beaten after receiving his full compensation, then he [the first man] shall pay him as in cases of gross insult.)

Accusations of passive homosexual behavior—like other accusations of frivolous sexual behavior—are common in flying scenes in the Edda, and they are most frequently leveled against Loki (who indeed did bear children and play a woman’s part) and Óðinn (who had connections with the shamanistic seiðr). The sagas frequently allude to passive homosexual acts and furnish descriptions of nið (libel), containing defamatory remarks, the setting up of niðstengr (nið-poles), composition of insulting poetry, and the ensuing revenge or court case. In the extant corpus of skaldic poetry there are enough injurious poems to establish the fact that there did exist a tradition that warranted the detailed provisions against skildskapr (libel in verse) in Norwegian and Icelandic laws. Although there are poems accusing men of bestiality, homosexual behavior (passive and active), of childbearing, etc., there are no skaldic poems containing the three infamous words ragr, strodinn, sorðinn, for which a man had the right to kill.

This legal and literary tradition has led scholars to speculate on whether or not forced homosexual intercourse could have been used as a means of degradation in early Scandinavian society. Contrary to Roman law, in which rape of free male citizens was severely punished, there were no provisions in Scandinavian or Germanic law that specifically mentioned the corruption of free men. In the literature, however, one finds episodes alluding to such behavior. In Guðmundur saga dýra, chapter 20, the priest Björn and his mistress, Þórunn, are subjected to the following treatment for disloyalty:

... ok var þat við orð, at leggja Þórunni í rekkju hjá einhverjum gárungi, en göra þat nökkut við Björn prest, at þat þætti eigi minni [sic] sviðing.49

(...and it was decided to put Þórunn into bed with every buffoon, and to do that to Björn the priest which was considered no less dishonorable.)
The juxtaposition of the dishonorable treatment of the man and the rape of the woman suggests that Bjørn, too, was going to be exposed to sexual abuse.\textsuperscript{50}

*Bjarnar saga Híðarlaupapp* describes a violent confrontation that takes place on an island between its two main characters, Bjørn and Þóðr.\textsuperscript{51} Bjørn discovers Þóðr hiding from him under a cliff, drags him out, takes all his belongings, strips him of his clothes, and treats everything “most shamefully.” Afterwards he lets Þóðr and his men have their clothes back and allows them to row ashore. Some years later, the following scene takes place (ch. 17):

 Ness er nú við getit, at hlutr sát fannsk í hafnarmarki Þóðr, er þvígir vinveitiligr þótti; þat våru karlar tveir, ok hafði annarr hött blán á hofði; þeir stóðu lútur, of hofði annarr eptir þórum. Þat þóttir illr fundr, ok mæltu menn, at hvárskis hlutr væri góðr, þeira er þar stóðu, ok enn verri þess, er fyrir stóð.

(It is now said, that such a thing [two niðstengr] was found on Þóðr’s land which seemed not at all pleasant: there were two men, and one had a blue hat on his head. They stood bent over, one behind the other. That was deemed a bad discovery, and men said that this did not augur well for those that stood there, but it was worse for the one who stood in front.)

The saga implies that the setting up of the *niðstengr* was to be attributed to Bjørn, who, upon hearing of the discovery, composed a poem of such extremely slanderous content that Þóðr’s friends advised him against bringing such an ugly case before the alþing. The *niðstengr* illustrated two men in sexual intercourse, the implications being emphasized by the fact that one of them was wearing a hat, the attribute of Óðinn, a god charged with homosexual behavior. There is no doubt that the *niðstengr* were meant to disgrace Þóðr and imply that he had been used as a woman, and the content of the níð suggested a connection with the previous encounter on the island. When Bjørn, on a later occasion, composed another niðvisa about Þóðr, he described him as “jafnsnjallr sem geit” (“brave as a goat”).\textsuperscript{52} According to Fritzner, the goat in Old Norse literature was used to refer both to promiscuous women and to effeminate or cowardly men: *blaúdr*, *argr*, *ragr* (cf. the set phrase *ragr sem geit*).\textsuperscript{53} Clearly, Bjørn must have been aware of the double entendre of the word *ragr* (cowardly, passive homosexual), and he quite deliberately used the image of the goat to allude to Þóðr’s unmanliness and perversity.
The *visa* that accompanies the episode with the *niðstengr* is incomplete, for the pertinent five and a half lines have been deleted from the manuscripts. That *visa* also occurs in the grammatical treatise of Óláfr hvítaskáld but lacks the same lines. There is no reason to believe that a medieval sense of modesty prevented the recording of those lines; the poem must have contained those words which would incur severe legal penalties. Since the descendants of the saga characters might still be alive in Iceland at the time the saga was composed, the poem was censored. Whether or not the episode that took place on the island had any roots in reality is immaterial; what matters is that the fourteenth-century audience admitted the possibility.

As in Greek and Roman societies, the passive sexual submission of a free male citizen carried extremely derogatory connotations, and those connotations must have precluded any references in the sagas to homosexual relationships. Writers’ fear of repercussions, their attempts to glorify earlier ages and establish respectable genealogies and family traditions—all contributed to that silence. Only in connection with episodes of defamation (real or fictional) and in the literature that shows Continental influence—for instance, in the burlesque encounters between the king and Sneglu-Halli in the *Flateyjarbók* and in the exaggerations of sexual promiscuity in the *Grettisfærsla*—are unabashed references to homosexual practices to be found.

Although homosexual relationships existed in Old Norse society, such behavior was not punishable by Church or secular law, except as a sin mentioned in the penitentials. It is not known to what extent the provision in chapter 32 of the *Gull* was enforced; the fact that the section was not retained in Norwegian law when homosexual behavior began to incur severe penalties on the Continent shows that the regulation must have been alien to medieval Scandinavian legislation. Although there were no enactments in medieval Scandinavian laws to prevent the corruption of free men, literary evidence suggests that such an act was not considered unthinkable. The following section from the *Gull*, chapter 198, however, speaks for itself:

...Slican rett a hvern a þrælom sinum sem a ambattar legorðe. At armannn rette scal bota ef maðr ofundar mán konongs þat er firi bui hans vinnr. þrael a baugs helge a ser. ef hann fyglir drotn sinum til þings. æða til kirkiusoknar æða til oldhús oc er hann boðs þingat. þvi at þar eyest hverium manne rettr at holfo i þeim þrim þræðum....
(...Every man has the same right to compensation for carnal intercourse on behalf of his thralls as on behalf of his bondwomen. A man who abuses a king's thrall employed in his household shall pay compensation according to the bailiff's right. A thrall has the protection of a baugr [ring, payment of wergild] if he accompanies his master to the assembly or to church service or to the ale house and he goes on command. For in those three places the compensation of every man increases to the double....)

The provision is part of the section concerning the right to atonement in cases of carnal intercourse, and it is directly followed by the section concerning the rape of a free woman (ch. 199). The word legorð (carnal intercourse) refers here to the corruption of both male and female slaves. Provisions against rape in medieval Norwegian and Icelandic laws normally dealt with the rape of free women. Slaves (male and female) were the property and responsibility of the master, and a man could even kill his thrall and remain unpunished, provided that the killing was published the same day (FrL, Vol. V, § 20). Sexual intercourse between two free men, in which one played the passive role, was considered derogatory, whereas there seems to have been nothing derogatory in a slave playing that part. Only when the property of a master was violated (just as in the cases of violation of a man's wife or female kindred), did it become a punishable act and part of the Old Norwegian penal code.


Homosexuality and Rape of Males


4 Bleibtreu-Ehrenberg, pp. 17–29. Cf. The Germania of Tacitus, Philological Monographs, 5, ed. Rodney P. Robinson (Lancaster, PA: Lancaster Press Inc., 1935), p. 288. This chapter has been exhaustively discussed in scholarship (see literature cited by Bleibtreu-Ehrenberg, ibid.), and several interpretations have been suggested. There is no conclusive evidence that corpore infames indeed did refer to people guilty of homosexual behavior, although this interpretation is the prevailing one.

5 Boswell, pp. 291–92.

6 Kong Sverres christenret, § 75, in NGL, I, 429.

7 Konrad Maurer, "Das sogenannte Christenrecht König Sverrirs," Germanistische Studien, 1 (1872), 63–64. For information about the main codices of the GulL, see NGL, I, 1, i–x, and 3; the fragment of the version used for the compilation of Sverrir’s christenret is printed in NGL, II, 495–500.


9 Íjónlafr Hákonaršt, ed. Th. Sveinbjörnsson (Havniæ [Copenhagen]: Schultz, 1847).

10 Ólafur Lárusson, "Grágás," Tidskrift for rettsvitenskap, 66 (1953), 465–79; and Finsen, Stáðarhóðsbók, pp. i–xxxv.


14 Bailey, p. 95, n. 7; Boswell, p. 278.

Ibid., No. 242, pp. 248–49: "... verum etiam brutis animalibus, se nefarie commiscendo ac illud ne nominandum committendo peccatum, propter quod Dominus Sodomam, et Gomorram eversione damnavit, et quidam eorum propter viarum longitudinem et pericula, quidam ob verecundiam mori potuisit elegant in peccatis huiusmodi, quum propeter hoc nostro se conspicui presentare, super hoc providere miscorditer dignaremur" (emphasis added).

Bleibtreu-Ehrenberg, pp. 209–18; Boswell, pp. 180–83 and 205–06; Bailey, pp. 100–10; G. Rattray Taylor, Sex in History (London: Thames & Hudson, 1953), pp. 53–54. Pierre J. Payer, Sex and the Penitentials: The Development of a Sexual Code 300–1130 (Toronto: University of Toronto Press, 1984), pp. 40–44 and 135–39, criticizes Boswell for his superficial treatment of primary sources and claims that all the penitentials discussed by Payer "have at least one canon censuring homosexuality and many have a relatively extensive treatment of the subject" (p. 135). Payer's criticism is valid, but his tables of the subject matter in penitential texts show that homosexual behavior (including lesbian practices) occupies about 15% of the space devoted to the sexual offenses discussed in the penitentials. This percentage does not indicate a special preoccupation with homosexual behavior on the part of the Church, nor does it show that homosexual acts were treated differently from such sexual sins as fornication, adultery, incest, and masturbation.

Diplomatarium Islandicum, Vol. I, No. 43, ed. Jón Sigurðsson (Copenhagen: Möller, 1857–76), pp. 240–41: "Pessar skrifir baut Þorlakr biskup firir eran stærst hvafusyndir, ix. vetra x. firir hordom þann er karlmen eigost uith. eda þann er menn eigo við ferfætt kvikendni. ..." ("Bishop Þorlákr prescribed these penances for the greatest of the major sins. Nine or ten years for that carnal sin which two men commit together, and for that which men commit with four-footed beasts.")


Den yngre code xey Westgötia-lagen, in Vol. I of Sveriges gamla lagar (henceforth, SGL), 13 vols., ed. D. C. J. Schlyter (Stockholm and Lund, 1827–77), orboom mal, ch. 3, p. 120: "miller spiller, ma'jer sær við hors eller nöt. ... þem skal allum af landum skripa ok til room. ok skal bítæ þenni. i.x. marker af allum fyrnaerum" ("or if a man corrupts himself with horse or cattle... for all these crimes [including incest] he shall leave this country on a pilgrimage to Rome, and pay three times three marks for all shameful crimes").

Uplands-lagen, SGL, Vol. III, "Church law," ch. 15, § 8 (the punishment is being buried alive or having to pay a fine of six marks if the owner of the animal wishes to grant the offender his life); Södermanns-lagen, SGL, Vol. IV, "Church law," ch. 15, § 1 (man and animal are to be buried alive or burned); Westmanns-lagen, SGL, Vol. V, "Church law," ch. 10 (be buried alive or be subject to a fine of nine marks). Gerhard Hafström, De svenska rättstellungarnas historia, 7th ed. (Lund: Studentlitteratur, 1973), discusses the relationships between medieval Swedish provincial laws. For an overview of the development of the term "sodomy," "crimes against nature," and Continental legislation after mid-thirteenth century, see Bleibtreu-Ehrenberg, pp. 205 and 244, n. 65; Boswell, pp. 288–94 and 303–32; Rudolf Hitz, Die einzelnen Verbrechen, Vol. II of his Das Strafrecht des deutschen Mittelalters (1935; rpt. Aalen: Scientia, 1966), § 9, pp. 166–68.

Konung Magnus Erikssons landslag, SGL, X; Konung Chrisstoffers landslag, SGL, Vol. XII, högmaells balker, ch. 14.
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... (the new law did not apply to all laws with the advice of King Magnús and Archbishop Eystein and the other bishops and all the wisest men...)."

14 Gulathing-christenret, NGL, II, 324, and Borgarthings-christenret, ibid., p. 304.

15 Borgarthings nye christenret, NGL, IV, 176.


23 Erik Noreen, Studier i fornvästnordisk dikting. Andra samlingen, in Uppsala universitets dräktskrift, Filosofi, språkvetenskap och historiska vetenskaper, 4 (Uppsala: Akademiska bokhandeln, 1922), pp. 37–63; Folke Ström, Níð, ergi and Old Norse Moral Attitudes, The Dorothea Coke Memorial Lecture in Northern Studies delivered at University College London, 10 May 1973 (London: Viking Society for Northern Research, 1973); Bo Almqvist, Órðaður níðaðing, I. Ód Órd of Sveitar, Nordiska texter og undersøkilser, 21 (Stockholm: Almqvist & Wiksell, 1965), and his Órðaður níðaðing, 2, 1–2. Ód Órd of Missonnærar. Senneulelta niðtraditioner, Nordiska texter og undersøkilser, 23 (Stockholm: Almqvist & Wiksell, 1974), and Preben Meulengracht Sörensen, Òrðaður níð (Odense: Odense Universitetsforlag, 1980).

24 In Grágás, Konungsbók, ch. 237–38; Stóðarhólsbók, vígslokía, ch. 375–77; Skálholtssbók m.m., Cod. AM 125A 4º, vígslokía, chs. 12 and 30; GulL, chs. 138 and 197; FrL, Vol. X, § 35; Ældre Bjarki-rot, NGL, Vol. I, §§ 31 and 33; Den ældre codex af Westgotlægen, SGL, Vol. I, retlose blokar, ch. 5. For a discussion of these sections and the penalties incurred, see Almqvist, Níðadikting, 1, 48–66.

25 Grágás, Konungsbók, ch. 238; Stóðarhólsbók, vígslokía, ch. 376; Skálholtssbók m.m., Cod. AM 125A 4º, vígslokía, ch. 12; GulL, chs. 138 and 197.

26 The words rægr, stóðinn and sorðinn (Stóðarhólsbók, vígslokía, ch. 376, and Skálholtssbók, Cod. AM 125A 4º, vígslokía, ch. 12) in this context all refer to the passive
partner in homosexual intercourse. See Meulengracht Sørensen, pp. 21–29, and Noreen, pp. 40 and 63.

38 Gráðs, Konungsbók, ch. 238, and Staðarhólsbók, vígslodl, ch. 377.


44 For a convenient summary of saga episodes containing allusions to homosexual behavior, see Meulengracht Sørensen, esp. pp. 118–31.

45 Almqvist, Nidlikming, I and II, discusses the extant skaldic níðvísur.


47 Margaret Clunies Ross, “Hildr’s Ring: A Problem in the Ragnarsdrápa, Strophes 8–12,” Mediaeval Scandinavia, 6 (1973), 75–92, esp. 87; Meulengracht Sørensen, pp. 32–33; see also Thorkil Vangaard, Phallós (London: Cape, 1972), p. 77, and his chapters “Phallic Aggression” (pp. 101–12), and “The Relationship between Peers” (pp. 117–23).

48 Boswell, pp. 63; 75, n. 61; 122; 124; 176, n. 25; 179.


50 Meulengracht Sørensen, p. 102.


52 Grágæftim, ibid., ch. 20, pp. 68–69.

53 Fritzner, I, 573–74, discusses the various meanings and interpretations of the word geit.


55 This is Meulengracht Sørensen’s opinion, p. 70. A similar episode in which lines have been deleted from an obscene poem occurs in the Islendinga Saga, ch. 38, in Sturlunga Saga, I, 230.


57 Snegluhalla þáttr, in Flateyjarbók, eds. Guðbrand Vigfusson and C. R. Unger (Christiania [Oslo]: Malling, 1868), III, 416 and 427. Grettisfærsla, ed. Ólafur Halldórsson,

38 Gull. ch. 199; FrL, Vol. IV, § 39; Grágás. Skálholtsbók m.m., "Ordregister," s.v. legorð, pp. 637–38; Járnsíða, 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 uncleanniness” on March 17 and on April 21 again “punished James Jones (seaman) with 24 lashes” for the same offence. Since “uncleanniness” 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: