THE VIRTUES OF AN EXPLICIT DEFENSE: HOMOSEX IN THE VICTORIAN ROYAL NAVY

BY
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In April of 1868, William Widdicombe of the H.M.S. *Sphinx* faced a court martial for what was, at least by the letter of the law, one of the most severely penalized crimes in the Royal Navy: not murder, treason, or mutiny, but sodomy.[1] The British civil law against sodomy had been in place since the sixteenth century, and the Naval Articles of War had outlawed sodomy since their induction in 1653.[2] Victorian sodomy courts martial usually featured mortified defendants doing little more to defend themselves than making weak assertions of their good character. Widdicombe, on the other hand, did not tip-toe around the issue. He asked his accusers specific, hard-hitting questions that skipped the normal circumlocution around the sexual nature of the crime. His gamble worked: in spite of the evidence against him, he was acquitted of the sodomy charge.[3]

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[1] "Sodomy" as a term was used not just to indicate anal intercourse, but as a catch-all designation for sexual activity between men. See H. G. Cocks, "Secrets, Crimes and Diseases, 1800-1914," in *A Gay History of Britain: Love and Sex Between Men since the Middle Ages*, Matt Cook, ed. (Westport, Conn.: Greenwood World Publishing, 2007), 111.

[2] The first national ban on buggery was called The Buggery Act (25 Henry VIII c. 6), enacted in 1533. Before that the issue had been governed by local ecclesiastics. See B. R. Burg, *Boys at Sea: Sodomy, Incest, and Courts Martial in Nelson's Navy* (New York: Palmgrave Macmillan, 2007), 2, and Randolph Trumbach, "Renaissance Sodomy, 1500-1700," in *A Gay History of Britain*, 49.

[3] Although he was still "found guilty of having committed an indecent assault," his sentence of five years of penal servitude (jail with hard labor) was far preferable than the minimum ten-year sentence for sodomy.[3] He was lucky his case was not tried eight years earlier, when sodomy was still a capital crime. Nevertheless, because there is no such thing as an appeal to a naval court martial (either then or now),

Sodomy trials between 1830 and 1860 are characterized by a number of paradoxes. While the sentence for sodomy remained more severe than the that of almost any other crime, not only were there no death sentences in this period, but the most common punishment was one to two years in jail. [4] The Admiralty sought to avoid the intense and uncomfortable public scrutiny these trials brought, and so discouraged captains from bringing cases to trial. Thus, by contrast with the explosion of cases in the prior three decades and a quadrupling of cases between 1860 and 1880, the Admiralty pursued relatively few courts-martial for sodomy in the mid-Victorian period. For this short time, harsh legal codes coincided with lax punishments.

When officials were left with no choice but to address the crimes, they did so with maximal circumlocution. As the philosopher Michel Foucault argued, the Victorians did not so much avoid sexual language altogether as develop a "proliferation of discourses," a codified rhetoric of allusion and metaphor that allowed them to talk about sex, including a scheme for where, when, and with whom such topics could be discussed.[5] What could be said in relative privacy – in a doctor's office, or between boys on a ship – was entirely different from what could be articulated in public. For Foucault, talking about sex, especially in the form of a confession, provides a key site for normalization. Yet these courts martial demonstrate the profound difference that existed between the accepted discourses for the public sphere versus the private. Sex between men was a subject for shipboard gossip, but unspeakable in the forum of a court martial. As the historian Peter Gay has argued, the hypocrisy with which the Victorians were often charged is a product of an extreme public reticence combined with a range of private sexual practices.[6]

A defendant willing to flout these unspoken conventions and speak publically about sodomy could turn his society's reticence to his own advantage. By being specific, these men forced the navy to directly confront the issue at hand, an action the courts were patently unwilling to take. When forced to deal in explicit terms and specific claims instead of

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Widdicombe surely would have served out his harsh sentence if it had not been canceled by the Admiralty on May 25, 1868.

[4] For example, on May 22, 1861, a sailor charged with manslaughter was given a twelve month sentence. In 1859, a charge of mutiny earned an eighteen month sentence. See Admiralty (ADM) 194/180 and 194/181, Public Records Office (PRO), The National Archives of the United Kingdom (TNA), Kew Gardens, London.

[5] Michel Foucault, *The History of Sexuality. vol. 1. An Introduction*, Robert Hurley, trans. (New York: Random House, 1978), 18.

[6] Peter Gay, *The Bourgeois Experience: Victoria to Freud* vol. 1 *Education of the Senses* (New York: Oxford University Press, 1984).

vague incriminations, the cases often fell apart at the seams. By speaking the unspeakable, these men had the best chance of walking away unscathed.

To explore this issue, one must first look at how sodomy was discussed among crew members, and how it came to be reported. Once the crime was reported, the quality of the prisoner's character – and that of the witnesses for and against him – was crucial to establishing credibility. Proof of good character could ground a prisoner's defense, establish the validity of evidence, and verify a boy's role as a victim in a trial setting. Nevertheless, upstanding character was ultimately insufficient to secure acquittal. In addition, the reluctance of Victorian courts and litigators to address the sexual nature of these offenses altered the structure of the trials, focusing instead on innocuous logistics. This article will also consider the results of these trials: why sentencing was far milder than the law required, and why the Admiralty was so adamant about keeping its hands off this unspeakable crime.

I. Gossiping about a Capital Crime

An accusation of sodomy left an indelible stain upon a man's character. According to Jeremy Bentham, a nineteenth century jurist, social reformer, and philosopher, it did not matter if the accused could prove his innocence, for "whether a man be thought to have actually been guilty of this practice or only to be disposed to it, his reputation suffers equal ruin."[7] Faced with what was often referred to as the most horrible of crimes, some men fled rather than face trial; others ended their lives.[8] One ship's surgeon recorded how a sailor accused of sodomy allowed himself to waste away and die for fear of what he would face when they came to port.[9] Looking at the panic caused by even the prospect of a court martial for sodomy, the Victorians appear just as repressed as popular legend would have it.

And yet, private shipboard discussion of male sexual acts was – as trial transcripts indicate – an accepted, standard practice. By contrast with

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[7] Jeremy Bentham, 'Essay on "Paederasty"' (1785), cited in Netta Murray Goldsmith, *The Worst of Crimes: Homosexuality and the Law in Eighteenth-century London* (Aldershot Hants, England: Ashgate, 1998), 99.

[8] There are many examples throughout British society, including Major General Sir Hector Macdonald's famous suicide at the very end of the Victorian period; see Trevor Royle, *Death before Dishonor: the True Story of Fighting Mac* (New York: St. Martin's Press, 1982). For a more typical account, see "Suicide of Professor Matthiessen," *The Times*, October 8, 1870, 5.

[9] ADM 101/44/5, PRO, TNA.

the Georgian period, when mariners quickly raised the alarm, suspicions of sodomy in the Victorian navy often circulated as a rumor among the ship's crew long before any official report or accusation. When questioned, the Victorian sailor would trace an extensive narrative of the crime that spread among many people, long before the authorities got involved. Lieutenant Hawkins Ayscough, for example was only charged with making indecent proposals to his servant, Boy George Robinson, after Robinson told another boy of the incident, who in turn told the ship steward, who told Lieutenant Fredrick Hutty, who officially reported the offense to the captain.[10]These discussions of a case's details did not make the accusation any less believable; in fact, the accuser's confidant was routinely brought to court to corroborate the claims.

Not only were sailors apparently used to discussing sexual crimes among themselves, but the discovery of men in compromising positions apparently rarely shocked or disturbed their fellow sailors. The shipmates of Edward McGee and John Peach found the offenders in bed together, on top of one another, wearing only their shirts. This discovery was only made after the pair had been heard tossing back and forth in bed for some time, making noise "like a man being in bed with a woman." [11] After quietly conferring, the other sailors got fed up with the noise, and fetched the Master at Arms, who laughed upon being told. The men clearly recognized what was going on, yet did not jump to report it, or even react strongly. They even ignored it for a short time. More telling even than this is that McGee and Peach did not even bother finding a hidden place, an easy task on the cluttered, labyrinthine vessels. They were perfectly comfortable conducting their relations in the same room as their sleeping shipmates, behind the paltry screen of a blanket spread between their beds.[12]

Even sailor boys (officially defined as sailors between thirteen to eighteen years old, but sometimes as young as six) were surprisingly nonchalant when questioned in court about their own alleged molestation. Their testimony makes a marked contrast to that of civil cases, in which boys were often depicted as extremely distressed by any sexual encounter with another man. In an 1870 Middlesex deposition, the mother of an eleven-year-old boy recalled finding him pulling his hair, scratching himself, and threatening to commit suicide after a lodger had drugged the boy and attempted sodomy upon him.[13] Extant court minutes suggest that

[10] ADM 1/5484, PRO, TNA.
[11] ADM 1/5478, PRO, TNA.
[12] Ibid.
[13] Louise A. Jackson, *Child Sexual Abuse in Victorian England* (London: Routledge, 2000), 102.

this compelling, dramatic shame did not figure as prominently into naval courts martial. In the testimony of Boy Thomas Harris against Mr. Thomas Hammett, who was accused of "indecent assault," Harris could not even remember whether Hammett had returned a second time to touch him. "If such a thing had occurred would you be likely to remember it?" asked the prosecutor. "I can't mind everything," said Harris. While for a civilian boy the idea and act of sodomy was alien and abhorrent, it was, it appears, an unremarkable part of naval life for boys in the navy.

In sum, this explicit gossip helped to acclimatize the men into a culture of provisional tolerance, or at least indifference, to sex between men. The divergence between these informal practices and the criminal code that prevailed on board ship helps to explain why, in spite of the crime's mandated death sentence, the last execution for sodomy in the navy was carried out in 1829 on William Maxwell. The de facto and de jure punishments for sodomy were, in fact, quite different in this era.

II. Character in the Court-Martial

When a sodomy case was brought to court, sailors were forced to acknowledge the existence of a phenomenon that, as much as they gossiped about privately, they actively avoided addressing publicly.[14] Thanks to the many male brothels, or "Molly Houses," in Georgian London, the concept of the contemporary sodomite was well known in the 1700s.[15] The historian Richard Norton even claims that there were more gay clubs and pubs in the heart of London in the early 1720s then there were in the 1950s.[16] However, one cannot go so far as to label these men as "gay." The modern idea of a "homosexual," a person whose attraction to their own sex is an inherent and indelible part of their personality, was not even conceived until the end of the nineteenth century, and the term itself did not appear in English until 1892.[17] Historian Matt Houlbrook

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[14] Richard Norton, *Mother Clap's Molly House: The Gay Subculture in England, 1700-1830* (East Haven, Conn.: InBook, 1992), 9.

[15] Tellingly, the term "mollies" comes from the Latin "mollis" – meaning soft, tender, pliant, or woman-like. See Burg, *Boys at Sea*, 6.

[16] Norton, *Mother Clap's Molly House*, 9.

[17] The term originated in a German neologism, "Homosexuelle," coined in 1869. Richard von Krafft-Ebing's pioneering work of sexual investigation, *Psychopathia Sexualis* (1886), used the term, which then appeared in English for the first time upon the book's translation in 1892. See David M. Halperin, *How to Do the History of Homosexuality* (Chicago: University of Chicago Press, 2002), 155, n. 2. See also "homosexual, adj. and n." OED Online, <http://www.oed.com.turing.library.northwestern.edu/view/Entry/88110?redirectedFrom=homosexual>, (accessed March 4, 2011).

argues that the modern organization of male sexual practices and identities into two camps in binary opposition – "homosexual" and "heterosexual" – did not solidify until the two decades after the Second World War.[18] Thus the nineteenth century sodomite would not have thought of himself in terms of that label, or even consider himself abnormal. As Foucault succinctly explains, "The sodomite had been a temporary aberration; the homosexual was now a species."[19]

Faced with a moral crime, the accused sodomite almost invariably centered his defense on proving his strong moral character. Character was arguably the central concern of Victorian society; more than one's success and or even one's class, the ability to call oneself a gentleman (a term that required not just genteel birth but genteel conduct) was the highest objective. A man was expected to show self-restraint, perseverance, strenuous effort, courage in the face of adversary, as well as a sense of duty.[20] As one contemporary commentator put it, "Character is like an inward spiritual grace of which reputation is, or should be, an outward and visible sign."[21] A truly upstanding person would have been incapable of engaging in such depravity, for the source of a man's deeds was his character.[22] It would therefore seem to follow that proving one's morality was only a hair's breadth away from proving one's innocence.

An unimpeachable character, moreover, was often the only argument a prisoner was capable of making, as he had neither the right to legal counsel nor guaranteed time to prepare.[23] The accused was simply given notice of the accusation before trial, and expected to formulate his defense as the case unfolded. This lack of support for the defendant was justified on the grounds that the quality of the defendant's character would speak for itself. As a contemporary law manual explained: "we are not recommending or expecting that naval officers should be skillful lawyers," for the defendant's intelligence, demeanor, and "apparent freedom from prejudice . . . would go far in direction the court as to the faith which his

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[18] Matt Houlbrook, *Queer London, Perils and Pleasures in the Sexual Metropolis, 1918-1957* (Chicago: University of Chicago, 2005), 7-8; Eve Sedgwick, *Epistemology of the Closet* (Berkeley: University of California Press, 1990), 2.

[19] Michel Foucault, *The History of Sexuality*, 43.

[20] Stephan Collini, *Public Moralists: Political Thought and Intellectual Life in Britain, 1850-1930* (New York: Oxford University Press, 1991), 100.

[21] R.G. White, *Words and Their Uses* (London, 1870), 99, quoted in Stefan Collini, *Public Moralists: Political Thought and Intellectual Life in Britain, 1850-1930* (New York: Oxford University Press, 1993), 106.

[22] Ibid., 96.

[23] These rights were not conferred until 1883 and 1884, respectively. Reginald Acland, "The Development of Naval Courts Martial," *Journal of Comparative Legislation and International Law*, Third Series, Vol. 4, No. 1 (1922): 56.

testimony deserved."[24] It need hardly be said that this ideal was not realized. The prisoner was usually so overwhelmed by the indignity and shame of the circumstances that he could do little more than bluster about his unimpeachable honor (often in comparison to his dishonorable accusers).

These protestations came primarily in the form of the defense statement, a sometimes sprawling and usually haphazard document written and presented to the court the day after the prosecution had concluded their case.[25] Defendants largely skipped evidentiary arguments for expositions on their personal, moral, and professional excellence, in light of which the accusation was preposterous. One officer pointed to the fact that he was about to be married, a fact in light of which (he argued) he would hardly commit so heinous a crime.[26] In the course of these ramblings, the defendants often made unequivocal, acerbic denouncements of sodomy itself, which were often the most acrimonious statements in the entire trial. "It is a crime worse than death," one man proclaimed.[27] This, too, was likely done in part to show their solidity of character, as well as distance themselves from the crime through their extravagant disapproval.

The prisoner was also allowed to call his own witnesses. Flocks of his peers and superiors – sometimes as many as fifteen – vouched for his personal and professional character. In almost all cases, the defendants' witnesses were not even asked about the crime, as most of them had no direct connection to the case. They instead focused on the defendant himself, using the most excessive hyperboles available. Mr. Don Phillip Dumaresq, a mate on the steam vessel *Volcano* accused of indecent conduct, summoned his hometown pastor to court to testify that "I have known Mr. Dumaresq for upwards of twelve or thirteen years – from a boy – and his character has always been considered estimable. A most excellent young man."[28] Even William Renwick, faced with fifteen counts of indecent assault, had found a former captain who would testify

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[24]William Hickman, *A Treatise on the Law and Practice of Naval Courts- Martial* (London, 1851), 36, 62-63.

[25] Theodore Thring, *Thring's Criminal Law of the Navy : with an Introductory Chapter on the Early State and Discipline of the Navy, the Rules of Evidence, and an Appendix Comprising the Naval Discipline Act and practical forms*, 2nd ed. (London, 1877), 119. *The Making of Modern Law*. Gale, Cengage Learning, <http://galenet.galegroup.com.turing.library.northwestern.edu/servlet/MOML?af=RN&ae=F104382347&srchtp=a&ste=14>, (accessed March 12, 2012).

[26] ADM 1/6277, PRO, TNA.

[27] ADM 1/5484, PRO. TNA.

[28] ADM 1/5485, PRO, TNA.

that "I could not have had a higher opinion of any young officer in the service."[29]

This process of character vetting was used by the prosecution as well as the defense to establish the reliability of the witnesses, especially in relation to boys. The youths in question ranged drastically from near-men perfectly capable of elaborate perjury to hapless children like George Middleton, who was almost not allowed to testify against Dumaresq because he "did not understand the nature of an oath."[30] In order to verify the character, and the claims, of the young accusers, adult witnesses were brought in. When Boy Robinson claimed that he had written an account of Lieutenant Maxwell's abuses in chalk on the iron ring fixed around the main mast, no one challenged this fantastic statement directly. It was the first mate and officers, rather than Robinson, who confirmed that they had seen no chalk upon the mainmast.[31] Older witnesses, regardless of their connection (if any) to the case itself, were repeatedly asked to characterize the ship's opinion of the boy in question. The difference between even an "indifferent" and a "middling" regard among the crew was therefore crucial to winning the trust and goodwill of the court.

These universal examinations of character were used to compensate for the fact that, with very rare exceptions, there was neither physical evidence nor eyewitness testimony to confirm the allegation. Unless men were caught in the act (a rarely reported occurrence in this period), the trial usually amounted to one man's word against another's. As a naval legal manual readily admitted: "The disgusting crimes specified in the twenty-ninth article of war would generally be proved by circumstantial evidence; for the perpetrators would select such time and place for the committal of their atrocities as would render it almost impossible to prove the facts by direct evidence."[32] Therefore, in the

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[29] ADM 1/6277, PRO, TNA.

[30] ADM 1/5485, PRO, TNA. In the Royal Navy, the rank of "Boy" referred to any sailor under the age of eighteen. The minimum age to join the navy was thirteen, and after Continuous Service was enacted in 1853, the typical age to join was sixteen. Fourteen was both the age of sexual consent for boys; those younger could not be charged regardless of their complicity. See Randolph Trumbach, *Sex and the Gender Revolution, Volume 1: Heterosexuality and the Third Gender in Enlightenment London* (Chicago: Chicago University Press, 1998), 59; Eugene L. Rasor, *Reform in the Royal Navy: A Social History of the Lower Deck* (Lancaster, U.K.: Gazelle Book Services, 1976), 28; Mary A. Conley, *From Jack Tar to Union Jack: Representing Naval Manhood in the British Empire, 1870-1918* (Manchester, U.K.: Manchester University Press, 2009), 41; and Burg, *Boys at Sea*, 22.

[31] ADM 1/5473, PRO, TNA.

[32] William Hickman, *A Treatise on the Law and Practice of Naval Courts- Martial* (Charleston, S.C.: Nabu Press, 2010), 47-48; Colin Simpson, Lewis Chester,

hopes of actually reaching a conviction, the courts chose to accept evidence that would otherwise be considered irrelevant. As a naval legal manual explained, presumptive evidence, i.e. information regarding "facts not precisely of the matter in issue," should "be admitted and considered in proportion to the difficulty of substantiating the facts in issue by direct evidence."[33]

The prosecution also mobilized the rhetoric of character through their examinations of the defendant's conversations. What was said, when, and by whom, was brought forward and dissected in exhausting detail as evidence of bad character and guilt, regardless of whether it directly pertained to the crime. Here again, discussing one's allegations for weeks or months before officially bringing them forward was considered normal, even expected behavior. In the case of Lieutenant Dumaresq, the rumor of his illicit relations among the crew was referred back to as if to establish a consistent, verifiable precedent. In some cases, the prosecutor would have a witness relate a conversation with the accuser or defendant, and then simply ask, "Did you believe him?" The responses to this question were granted as much weight as the defendant's alibi, and were sometimes discussed more thoroughly than the details of the crime itself.

In the strictest sense of the law, these often unrelated conversations were inadmissible evidence. If the witnesses had no direct knowledge of the crime, and was instead reporting information they had learned second-hand, their evidence was hearsay, a well-established tenet of English law by the nineteenth century. But given the lax standards of naval law, this did not matter much. As a Navy-specific law manual asserted, "Evidence of what the prisoner said within the hearing of the witness is admissible, as direct and original evidence, and must not be confounded with hearsay evidence."[34] Thus, the oft-repeated question by the prosecution in Dumaresq's case, "are you in any way acquainted with the circumstance with which the prisoner stands charged more than by hearsay?" was not attempting to establish the validity of their testimony: their possession of direct knowledge was immaterial. By checking whether their statement was hearsay, they were merely establishing the type and scope of the evidence. Thus, when this question was answered with a negative (as it always was), the examination continued unabated.

From defendant to victim, boy to captain, the question of character defined sodomy-related courts martial in the navy. Unfortunately, the

and David Leitch, *The Cleveland Street Affair* (London: Weidenfeld and Nicolson, 1976).

[33] Hickman, *A Treatise on the Law and Practice of Naval Courts-Martial*, 47.

[34] Ibid., 57.

proof of even the most upstanding character was not enough to secure an acquittal on its own.

III. Shipboard Hierarchy

In many ways, life in the navy was a microcosm of Victorian society: a tightly organized culture held together by shared beliefs (including the importance of good character) as well as a rigid social hierarchy.[35] The captain ruled like a god upon his ship, with the Articles of War providing a malleable framework for his whims. Subordinate officers had only a fraction of the captain's authority, but they were still allowed an extreme degree of control over crew members. The crew, in turn, had neither authority nor standing, but were free to abuse the boys, the earthworms of the Naval food chain. The ranks that distinguished one sailor from another were not useless laurels; they provided structure to the high-stress, high-stakes life at sea. The clear line of command assured that there was no possibility of the orders of one rank conflicting even remotely with another, which helped the ship run smoothly.

Contemporary men therefore saw sodomy cases not only as a violation of moral and religious tenets, but a threat to the ship's balance of power. To abuse one's position by exploiting an inferior, or undermine one's authority by becoming too familiar, was to violate the basic fabric of authority holding the ship together. The prosecution spent considerable time in sodomy trials exploring the relationship of the accused to his inferiors. Any evidence of overt familiarity or rancor was seen as highly incriminating; fraternizing with boys, especially, could strike a fatal blow to a defendant's case. In the case of Henry Giddy, a boatswain's mate accused of sodomy on the HMS *Revenge*, much was made of the fact that the prisoner had regularly made clothes for various boys.[36]

Close scrutiny of inter-rank relationships was especially important given that a charge of sodomy often proved a potent weapon when relations between officers and those under their command had soured.[37] Boys especially were in such a powerless position that accusations of extreme abuse such as sodomy were one of the only ways they could effect change in their superiors' behavior. Of course, accusers' motives were not

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[35] Rasor, *Reform in the Royal Navy*, 76.

[36] ADM 1/5808, PRO, TNA.

[37] Blackmail involving sodomy was not unique to the Navy: practically from the time the civil law against sodomy was enacted the sixteenth century, a great many of the country's blackmail attempts involved one man threatening the other with an accusation of sodomy in order to secure their demands, leading to the law's nickname, the "Blackmailer's Charter." See Norton, *Mother Clap's Molly House*, 135.

uniformly high-minded: sometimes they just wanted payback for unjust punishments. One man only cried out his accusation of an unnatural crime while that officer was putting him in the stockade.[38] Inter-rank sodomy trials were therefore embroiled in the politics of hierarchy. William Meldrum, a Gunner on the HMS Rattlesnake put on trial for "behaving in a most indecent manner with four boys of the same ship," commented in his defense that "one should be able to punish boys without having to face accusations of this kind."[39]

In the 1832 court martial of Lieutenant Richard Morgan, one can see both how the lieutenant offended ideas of shipboard order, and how his inferiors may have mislead the authorities. Two boys, inseparable best friends, accused him of touching one of them on the leg in an offensive manner, and later asking him to "lie across his Belly."[40] The evidence against Morgan was practically nonexistent, consisting solely of the boys' word. But instead of denying the events altogether, Morgan conceded that he did touch the boy, but in a playful, inoffensive way, having mistook the boy for a friend of his.[41] This admission that his normal manner of greeting could be confused with sexual assault was hardly a convincing argument. Even more damning were his shipmates' testimonies, which were unanimous in that he was extremely familiar with his inferiors. He often went to the gun-room (the province of lower-ranked officers) to socialize, and gripped others by shoulder while they spoke. After twenty- nine years of service, Morgan apparently preferred the company of young men and boys, implicitly flouting Naval hierarchy. Thus, on little proof but ample disapproval, he was convicted of "taking indecent liberties" and dismissed from the Royal Navy.[42]

IV. An Explicit Defense: Talking Sex in Courts Martial

Over the course of the nineteenth century, naval courts martial grew increasingly sensitive about discussing sex, especially sex between men. In the free-spirited Georgian period, testimony describing sexual relations were quite graphic, mixing the anatomical with the lewd. By the 1830s, this candid language was all but extinct. During this era, which historian Jeffery Weeks termed "a reign of euphemism and ostensible delicacy," explicit terms such as "buggery" or "sodomy" were now

[38] ADM 1/5808, PRO, TNA.
[39] ADM 1/5473, PRO, TNA.
[40] ADM 1/5484, PRO, TNA.
[41] Ibid.
[42] Ibid.

unacceptable.[43] When McGee and Peach were discovered, and their shipmates went to get the master at arms, they did not tell him that the suspects were probably having sex, but instead said that the men were "doing something they ought not to."[44] In fact, Victorian sailors could be prosecuted for nothing more than calling another man an offensive sexual term, especially one implying sodomy. John Burlton Bennett was dismissed from the navy for calling a superior officer a "bugger" and a "sod."[45] The desire for veiled language was therefore not just a genteel preference: it was naval law.

In place of such salty language, the Victorians employed a variety of euphemistic terms with very specific connotations. Accusing someone of "taking indecent liberties" suggested that a superior had solicited sexual favors from an inferior, usually a boy. Men "found in an indecent position," like McGee and Peach, were caught in situations that suggested sodomy, but could not be definitively categorized as such. Both "Unnatural crime" and "indecent assault" could mean male rape, molestation, or consensual sex (in which case one man would be charged with indecent assault, and the other with "allowing himself to be assaulted").[46] These terms and many more like them utilized genteel, vague language while implying moral transgression as well as a lack of decency. Some of these terms were not new: the civil courts had used "indecent assault" for decades to refer to rape or attempted rape of a woman by a man.[47] Thus already carrying a negative sexual connotation, the term could be imported and used as a fitting substitute for a crime the navy considered equally if not more horrifying. Outright obfuscation behind technical language was also common. When Maxwell's case was discussed in a contemporary legal manual, his crime was only stated as being "under the twenty-ninth article."[48]

The circumlocution did not stop with terminology: the proceedings of a sodomy trial hinged on the universal unwillingness to discuss the crime's unseemly details. Far from the bawdy testimony of the Georgian-era courts martial, witnesses now circumvented direct

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[43] Jeffery Weeks, *Sex, Politics, and Society: the Regulation of Sexuality since 1800*, 2nd ed (New York: Longman, 1989), 19.
[44] ADM 1/5478, PRO, TNA.
[45] ADM 1/6250, PRO, TNA.
[46] These two terms were roughly synonymous, but unnatural crime was used primarily before 1860, and indecent assault was used mainly after 1860. See the case of Robert Elves and William Reed in TNA: PRO ADM 194/181.
[47] See, for example, "Births, Deaths, Marriages and Obituaries," *The Era*, October 1, 1843.
[48] Hickman, *A Treatise on the Law and Practice of Naval Courts-Martial*, 123.

explanations by providing logistical details about the surrounding circumstances. Less time was spent in the trial of William Renwick discussing the seminal discharge found on his bed than the process of reporting that discovery to the authorities.[49] This process often devolved into addressing a wealth of details that had little if anything to do with the actual crime. In Ayscough's case, the potential presence of a light source in his cabin, where he allegedly spent an inappropriate amount of time alone with a boy, was discussed at least eight times.[50]

More appealing to the prosecution than discovering the details of the crimes was the chance to avoid discussing them altogether. The Victorian Navy was likely to acquit an accused sodomite, regardless of other evidence, if there was one ironclad piece of evidence in his defense. In the 1877 case of Thomas Hammett, four boys accused Hammett of repeatedly sneaking into their sleeping area to approach them one by one, asking for sex and groping their privates.[51] The trial that followed was heavy on logistical details, including detailed charts of the positions of each boy's hammock in the berth, complete with tiny name labels on the hammocks, and in-depth discussions on whether the other boys would have woken up upon each of Hammett's hushed visits. While there were inconsistencies in the boys' testimony, the evidence that cleared his name was the proof that he was in fact on shore one of the nights he allegedly assaulted the boys.[52] Today, that would only acquit him of one of the multiple charges. Instead, the court dropped his case as fast as possible, declaring him "fully and honorably acquitted."[53]

If the crime itself was ambiguous but its surrounding circumstances were well established, the defendant was convicted on the assumption that the worst had happened. A vague, unflattering situation was often sufficiently damning for a naval court martial. Lieutenant Morgan, accused of taking indecent liberties, could not be proven to have committed any specific indiscretion, but his partial admission of the events was sufficient for a conviction. That same year, Lieutenant Hawkins Ayscough was accused of taking indecent liberties with his servant boy. While the details were murky, it was clear from the testimony of several persons that he had been alone with another boy, George McNamara, in Ayscough's cabin for over half an hour. The prosecution fussed over logistics, and Ayscough complained in frustration that the case "stamped

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[49] ADM 1/6277, PRO, TNA.
[50] ADM 1/5484, PRO, TNA.
[51] ADM 1/6385, PRO, TNA.
[52] Ibid.
[53] ADM 1/5808, PRO, TNA.

an innocent transaction with infamy."[54] In the end, the disquieting insinuation of immorality was enough to convict him.[55]

Victorian men were instinctively aware of how ruinous the loss of their moral reputation would be. Yet their assumption that the process worked in reverse – that proving good character could lead to acquittal – was disastrously wrong. In his influential *Public Moralists*, literary critic Stefan Collini notes that the peculiar quality of character is that it is neither stable nor permanent: it needs to be maintained.[56] In Victorian understandings of morality, there was no knowing when a virtuous person would break. The sententious Lieutenant Morgan observed, "When once the moral feeling is thrown off its balance, it is impossible to say to what fatal and degrading depths it may not be precipitated."[57] This defeatism meant that much of the defendant's focus on character was useless. A man was expected to defend his honor, and perhaps could establish some credibility thereby, but evidence of the accused's morality had no appreciable positive effect upon a verdict. After all, who could know if this alleged sexual encounter was the moment in which his character broke? Again and again, naval courts martial convicted men in spite of their apparently shining character.

The outcome of a trial eventually came down to how directly and aggressively the prisoner defended himself. If the accused relied on hard, factual, preferably uncomfortable evidence rather than evidence of character, he actually stood a chance. Don Phillip Dumaresq won his acquittal by steadfastly working through the details of his case. He took the three accusing boys through a series of unusually rigorous questions, forcing the court to confront the inconsistencies of their testimony. He capitalized on secondary witnesses to not only reveal further discrepancies, but to establish the low public opinion of the boys' character. By pointing out the issues the court would have been only too happy to pass over, he secured a full pardon, leaving "without any stain upon his character."[58]

In the fall of 1862, Henry Giddy, Boatswain's Mate on the HMS *Revenge*, was discovered behind a draped blanket with Boy Herbert Cox. The boy was standing on a barrel, and Giddy's face was pressed up against a boy's naked back. In the subsequent trial, the court examined the precise physical locations of the two persons in relation to one another in an attempt to determine whether sodomy had indeed occurred, forcing the jurists and judges alike to face the examine the uncomfortable details of

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[54] Ibid.
[55] ADM 1/5484, PRO, TNA.
[56] Collini, *Public Moralists*, 109.
[57] TNA: PRO ADM 1/5484.
[58] TNA: PRO ADM 1/5485.

the intimate encounter. What's more, Cox admitted that he and Giddy had been undressed, and claimed that Giddy had been checking his groin for lumps. Forced to confront what they did not wish to see, the court acquitted Giddy, freeing themselves from the responsibility of considering his upsetting crime.[59]

Few defendants had the wherewithal to effectively take advantage of this Achilles heel of the courts martial process. Seventy five percent of the cases tried between 1830 and 1860 were convicted; after 1860, this figure increased to eighty four percent.[60] Still, the punishments – usually less than two years in prison – were relatively minor in comparison to sentence specifically proscribed for sodomy by the 29th Article of War: death.[61]

V. Reticence in the Admiralty

What ordinary sailors were willing to discuss among themselves was for their sheltered, politicized superiors in the Admiralty literally an unnamable offence. One of the world's first and best-organized modern administrations, the Admiralty of the Royal Navy was staffed by the equivalent of modern office workers, far removed from the dangerous and volatile life at sea. Those at the highest levels of command were often little more than paper pushers and political glad-hands, more like a modern cabinet officer than a battle-hardened veteran. The Officers of the Admiralty themselves were such prominent public figures that the First Lord of the Admiralty, H. C. E. Childers, is portrayed in William Makepeace Thackeray's famous satire on Victorian society, *Vanity Fair*.[62]

While the Admiralty enjoyed its privileged status, it came at a high price. The Victorian public was highly invested in the actions of its beloved navy and extremely critical of its strategies and policies. *The Times'* 1846 leader on the problems of courts martial is a good example of the sorts of criticism the navy regularly faced. The article, titled "The Efficacy of a Naval Court-Martial as a Tribunal," attacked the amorphous practices of the trials from all angles, from their extemporaneous nature to their delight in "condemn[ing] on principle and punish[ing] for the sake of

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[59] ADM 1/5808, PRO, TNA.
[60] ADM 194/42, 194/180, 194/181, and ADM 194/182, PRO. TNA.
[61] According to the naval regulation, "If any Person in the Fleet shall commit the unnatural and detestable Sin of Buggery or Sodomy with Man or Beast, he shall be punished with Death by the Sentence of a Court Martial."
[62] Hamilton, *The Making of the Modern Admiralty*, 149.

protection."[63] Persons convicted by these broken courts, wrote the vexed author, "stand acquitted by a much more important tribunal – by an impartial public."[64]

The publicity the Admiralty earned for sodomy trials was damning, on par with news of battle losses and mutinies. The Victorian public was growing more aware of homosex, thanks in part to the passage of the Metropolitan Police Act in 1829, which established London's first organized, effective police force. The bobbies, as they were called after the act's affectionately dubbed "bobbies" after Robert Peel, who introduced the act. The bobbies, also had the unexpected effect of unearthing a network of casual male sexual encounters in public places. As a result, an alleged sodomite was brought before the Civil Criminal Courts (and the scandalized public) roughly once a week.[65] These cases would then be picked up by major newspapers, as well as radical printers and pamphleteers, who exploited the subject's prurient appeal.[66] Pamphlets detailing sodomy-related crimes were estimated to sell as many as 20,000 copies throughout Britain and its empire.[67] To make matters worse, the navy had a reputation for sharing in these proclivities, thanks in part to the continued resonances of the courts martial in public memory.

The navy was under fire from Parliament, as well. In 1846, the radical member of Parliament, Joseph Hume, finally succeeded in moving for the navy's recent punishment returns to be laid before the House of Commons. This was highly controversial, for although there were no actual changes to disciplinary law, this new public accountability was an unprecedented impingement upon a captain's normally unmitigated shipboard power.[68] As Hume explained when he proposed the bill, "if there were but a few officers who followed this system, let them at least be known to the public."[69] Once Hume's act was approved, returns became

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[63] "The Efficacy of a Naval Court-Martial as a Tribunal," *The Times*, Aug 28, 1846, 5, col. A.

[64] Another comment worthy of note was that "Courts-martial have been thought to resemble not a little those aristocratic conclaves which in Venice doomed the Foscarti to death and banishment." See Ibid.

[65] Matt Cook, *London and the Culture of Homosexuality, 1885-1914* (Cambridge: Cambridge University Press, 2003), 13. See also H. G. Cocks, *Nameless Offences: Homosexual Desire in the Nineteenth Century* (London: I. B. Tauris, 2003).

[66] Charles Upchurch, *Before Wilde*, 71, 139; Sean Brady, *Masculinity and Male Homosexuality in Britain, 1861-1913*, (Basingstoke: Palgrave Macmillan, 2005), 54-55, 63; Cocks, *A Gay History of Britain*, 113.

[67] Cocks, *A Gay History of Britain*, 115.

[68] Rasor, *Reform in the Royal Navy*, 54.

[69] Joseph Hume, Commons Sitting of Monday, July 20, 1846, House of Commons Hansard.

available every year, with the 1862-63 returns even published commercially in pamphlet form.[70] Now not only the activities of the ships' crews, but the disciplinary practices of the individual captains were laid open to public scrutiny.

To placate the public and Parliament, the Admiralty began an era of reform. They limited the number of lashes a man could be given without a court martial in 1830, and banned flogging without a court martial completely in 1860. Most significant were the Naval Discipline Acts, begun in 1860, that were meant not only to consolidate all recent policy changes into one document (a feat not attempted since 1749), but to institute sweeping reform across the Royal Navy. This included curbing venereal disease and slashing the number compulsory death sentences, including that of sodomy.[71] By the time Hume's act was remanded in 1870, shipboard crime had been reduced drastically.

The Admiralty also made a point of signaling within sodomy trials themselves how deeply they disapproved of such behavior. In the trial of William Meldrum, the court made a point of showing their overwhelming relief at his acquittal: "the Court unanimously acquitted the prisoner of all four charges declaring that he left the Court without the slightest stain or imputation upon his character."[72] Of course, The Board of Admiralty could do much more than simply comment on a trial; it could change just about anything about a trial's outcome, except for increasing the punishment.[73] Yet the Admiralty made little to no effort to intervene, only short notes inserted in the front of the minutes, commenting on its evidence or procedure, such as "I do think this poor fellow has been the victim of a foul conspiracy."[74] After reading through the case of William Renwick, an anonymous officer concluded that "I cannot say that there is any reason in law absolutely requiring this verdict to be set aside. But on the whole, I consider the verdict right not to stand."[75] Still, he was not willing to take any action: "Although I have given this opinion of the evidence . . . I would not recommend my interference with the sentence."[76] Thus, Renwick served ten years of penal servitude for his offense.

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[70] The returns were published by the Council of Military Education, a quasi- official body which sponsored lectures and classes for men in the armed services.
Rasor, *Reform in the Royal Navy*, 43.
[71] Ibid., 91.
[72] ADM 1/5484, PRO, TNA.
[73] Rasor, *Reform in the Royal Navy*, 43.
[74] Ibid.
[75] ADM 1/6277, PRO, TNA.
[76] Ibid.

The new visibility of sodomy cases encouraged captains to take care of the cases onboard. Instead of pushing a case out into the open through a court martial, captains had the option to hold a Court of Inquiry, an on-board mini-trial run by the captain. Most importantly, a Court of Inquiry was not open to members of the public. The Admiralty preferred this more private discussion; otherwise, "the publication of details [compulsory upon the instigation of a court martial] would have a bad effect on the fleet."[77] Comparatively discreet summary punishments could be awarded for such proceedings, instead of the ignominy of a conviction before the populous and an article in *The Times*.[78] However, thanks to Hume, even the punishments decided in Courts of Inquiry were made public through the punishment returns.

This unceasing liability led some captains, with the tacit support of the Admiralty, to suppress or ignore these cases entirely rather than deal with their damaging consequences. A ship sailing in Indian waters wrote to the Admiralty, asking if a man accused of sodomy should be sent to England for trail, accompanied by the pertinent witnesses. An officer wrote in a private governmental memo: "It is much to be wished that captains of ships at foreign parts would have the discretion not to send disgusting cases such as this home for trial Is it considered the duty of the gov't to persecute in such a case? If it is not, the matter might be allowed to drop."[79] A further officer agreed that "the gov't is not called upon to take any steps for prosecuting this man, when he arrives in this country," and the man was presumably allowed to walk free upon his arrival in England.[80]

Another example of this active navy-wide evasion of sodomy cases is the 1869 case of Joseph Smart, a Leading Seaman on HMS *Hercules*. Facing a charge of indecent assault miraculously supported by clear proof, the ship's police, with the knowledge of the captain, told Smart that "the best thing he could do was leave the ship and take care not to return."[81] The plan did not work – he was soon returned to the ship and summarily imprisoned by the captain. Smart was thereafter convicted by court martial of indecent assault, but acquitted of desertion. He served two years of hard labor in jail, and was dishonorably discharged. Here, too, the Admiralty made sure to insulate itself from the crime, admonishing the captain and the ship's police for their bad conduct.[82] What mattered to

[77] ADM 12/893, PRO, TNA.
[78] Rasnor, *Reform in the Royal Navy*, 98.
[79] Home Office (HO) 45/6834, PRO, TNA.
[80] Ibid.
[81] ADM 194/181, PRO, TNA.
[82] Ibid.

them was not the final judgment of the case but their judgment in the eyes of the public.

Conclusion

The Victorians, argues Foucault, spoke of sex as of a thing to be not simply condemned or tolerated but managed.[83] Between 1830 and1860, the virulent, near-universal condemnation of sex between men in the public sphere existed side by side with a private toleration of such practices. Evidence of good character was insufficient to prove innocence. A man's best shot at freedom lie in forcing the jury to face the sexual facts. Men who were willing to break the standards of public discourse by forcing a head-on confrontation with realities usually buried under layers of language so disturbed the sensibilities of their peers that they were allowed to go free.

It has become a favorite activity of naval historians to repudiate Churchill's famous bon mot that the traditions of the Royal Navy can be summarized as "Rum, Sodomy and the Lash."[84] Yet there is an uncanny accuracy to the comment. Probably the most commonly punished offense in the navy was drunkenness, and yet the famous grog ration remained until 1970.[85] Similarly, the navy overtly condemned sodomy, yet made no particular effort to prosecute this unspeakable crime between the last execution in 1828 and the vigorous reforms of the 1860s. The official commitment to reticence offered a chance for the man who dared confront the shameful facts to walk free.

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[83] Foucault, *The History of Sexuality*, 24.

[84] Winston Churchill, quoted in Peter Gretton, *Former Naval Person*: *Winston Churchill and the Royal Navy* (London: Cassell, 1968). It is also quoted as "Naval tradition? Monstrous. Nothing but rum, sodomy, prayers, and the lash" in Elizabeth Knowles, ed., *Oxford Dictionary of Quotations*, 6th ed. (Oxford: Oxford University Press, 2004), 222.

[85] "Frequently Asked Questions of the 20th Century Gallery," Royal Naval Museum, <http://www.royalnavalmuseum.org/visit_see_20faq.htm#1>, (accessed May 11, 2012).