

“Arbitrary and Cruel Punishments:”
Trends in Royal Navy Courts Martial, 1860-1869

by

Andrew Johnston
Bachelor of Arts (Hons.), University of Western Ontario, 2018

A Thesis Submitted in Partial Fulfillment
of the Requirements for the Degree of

MASTER OF ARTS

in the Department of History

© Andrew Johnston, 2020
University of Victoria

All rights reserved. This Thesis may not be reproduced in whole or in part, by photocopy or other means, without the permission of the author.

Supervisory Committee

“Arbitrary and Cruel Punishments:”
Trends in Royal Navy Courts Martial, 1860-1869

by

Andrew Johnston
Bachelor of Arts (Hons.), University of Western Ontario, 2018

Supervisory Committee

Dr. David Zimmerman, History, University of Victoria
Supervisor

Dr. Simon Devereaux, History, University of Victoria
Departmental Member

Abstract

Britain's Royal Navy of the nineteenth century was the unquestioned master of the world's oceans, having won such standing after over a century of near-uninterrupted warfare. However, while the strategies, tactics and technology of the navy evolved dramatically during this period, the laws that governed its many thousands of sailors and officers remained virtually unchanged from the original 1661 Articles of War. Despite minor amendments throughout the eighteenth century and a major reworking in 1749, both capital and corporal punishments were frequently employed as punishment for minor offences in a system that made England's "Bloody Code" look positively humane. The 1860 Naval Discipline Act provided the first substantive overhaul of the original Articles of War, but historians have generally lamented this act as providing little comprehensive change to the governance of the navy. Using statistical data collected from thousands of courts martial records, this thesis takes a broad look at trends in naval courts martial, studying how these courts interacted with the legislative changes of the 1860s. Viewing how charges and sentences changed on the global scale, it becomes clear that the "arbitrary and cruel punishments" of the previous century had at last given way to a centralized, formal expression of discipline.

Table of Contents

Supervisory Committee	ii
Abstract	iii
Table of Contents	iv
List of Figures	v
Acknowledgments	vi
Dedication	vii
Introduction	1
Chapter 1 – Historiographic Tides	4
Chapter 2 – The Traditions of the Navy: Methodology and Context	21
Chapter 3 – The Maintenance of Discipline: Crime, Punishment and Legal Reform	39
Naval Legislation	40
Trends in Courts Martial	47
Chapter 4 – “Our Far-Flung Battle Line:” The Royal Navy Around the World	62
Portsmouth – The Heart of Oak	65
Plymouth – The Western Power	72
The Mediterranean – The Centre of Empire	77
North America and West Indies – A Deserter’s Paradise	83
China – The Imperial Navy	89
Conclusion	97
Works Cited	100

List of Figures

Figure 1: Men Voted for Naval Service, 1790-1859	36
Figure 2: Royal Navy Death Sentences in Selected Years	53
Figure 3: Results of Courts Martial, 1860-69	59
Figure 4: Courts Martial by Station, 1860-69	63
Figure 5: Results of Portsmouth Courts Martial, 1860-69	69
Figure 6: Results of Plymouth/Devonport Courts Martial, 1860-69	75
Figure 7: Results of Mediterranean Courts Martial, 1860-69	82
Figure 8: Results of North America/West Indies Courts Martial, 1860-69	87
Figure 9: Monthly Courts Martial at Portsmouth and China, January 1860-December 1862	93

Acknowledgments

I would like to thank those on my committee, particularly Dr. David Zimmerman, for the valuable assistance they have provided through the entirety of my time at the University of Victoria, whether in coursework, research opportunities, or in the editing of my thesis. Their guidance ensured that this thesis remained within the scope of a master's program without expanding uncontrollably.

I would also like to thank my parents and grandparents, without whose support this degree would not have been possible. Although moving to the far side of the country was hard for all of us, their unwavering interest and assistance in all aspects of my work ensured that the task was neither tedious nor lonely.

Finally, I would like to thank all those who provided assistance in the research and writing of this thesis, whether friends or professors providing advice over coffee, or family friends whose generosity allowed my research to take place.

Without all of you, this thesis would not be anywhere near what it is today, and for that I thank you all.

Dedication

For my grandparents

Introduction

On 11 December 1861, Commander B.G.W. Nicolas, captain of Her Majesty's Sloop *Trident*, was brought before court martial at Malta to answer for charges of "cruelty in causing unwarrantable and excessive punishment to be inflicted on two boys of the Second Class, and in ordering them to be kept on deck without food from noon until midnight, after having been corporally punished."¹ Within a day, he was sentenced to be discharged with disgrace from Her Majesty's service, the senior-most officer of the Royal Navy to receive that sentence during the whole of the 1860s. The following month, a memorandum was penned by Lord Clarence Paget, Secretary of the Admiralty, in which he stated that their Lords Commissioners of the Admiralty could "find no extenuating circumstances to lessen their abhorrence of the cruelty of which it was proved Commander Nicolas had been guilty." Despite the "former services of Commander Nicolas and his father," the Admiralty saw no reason to modify the sentence, despite their power to do so under the Naval Discipline Acts of the 1860s. In the memorandum, the Lords of the Admiralty clearly stated their view on naval justice – "while it is their [Lordships'] duty to enforce the maintenance of discipline, and to sanction the punishments which may be awarded by Courts Martial on those men who are brought before them for acts of insubordination, it is equally their duty to protect the men from being subjected to arbitrary and cruel punishments."²

This statement – and the sacking of Commander Nicolas – seem to contradict the popular view of crime and punishment in the Royal Navy during the eighteenth and nineteenth centuries. Famous incidents such as the *Bounty* mutiny present accounts of brutal corporal punishments, such as the flogging of a sailor round the fleet and the ultimate punishment in the Royal Navy,

¹ ADM 194/180, Trial of Commander B.G.W. Nicolas, 11 December 1861.

² ADM 194/180, Memorandum, 14 January 1862.

being hanged from the yardarm. In 1939, Winston Churchill described the traditions of the navy, quite succinctly, as “rum, buggery, and the lash,” and numerous scholars have emphasized the military as the last bastion of corporal and capital punishment in many societies.³ If this is true, then where does it leave the Admiralty’s memorandum regarding Commander Nicolas’ sentence? This was an internal memorandum, issued to state the Admiralty’s stance and reasoning relating to Commander Nicolas’ fate. It was not intended to be a sweeping, public statement regarding justice in the navy, nor was it meant to assuage public concerns over the draconian nature and reputation of naval punishment. Of course, it remains nigh impossible to determine how strictly the Admiralty intended to adhere to this declaration. Further trials over the decade suggest that in cases of socially elite defendants, naval courts were more than willing to look the other way, with no recorded objection from the Admiralty.⁴ However, what is abundantly clear from the Courts Martial Returns of the Royal Navy is that the desire for legal reform shown in the numerous Naval Discipline Acts of the 1860s did indeed translate into at least some degree of actual change in the indictment⁵ and sentencing procedure of naval courts martial, including several examples of direct Admiralty oversight. Rates of many of the more brutal punishments of the 1700s were dramatically reduced by the mid-nineteenth century, especially regarding the death penalty.⁶

To what degree did sentences actually soften from the mid-eighteenth century, when the immutable and inflexible sentencing procedure of the Articles of War condemned Admiral John Byng to death for “failing to do his utmost” to relieve Minorca during the Seven Years’ War? As

³ See Christopher Lloyd, *The British Seaman 1200-1860* (London: Collins, 1968), 283, A.N. Gilbert, “The Changing Face of British Military Justice,” *Military Affairs* (1985): 80-84.

⁴ ADM 194/181, Trial of Lieutenant the Honourable Henry Hamilton, 6 January 1866.

⁵ The formal document by which the state sets out the claim that a person has committed a crime. It is on the basis of an indictment that an accused person must stand trial. (Duhaime’s Law Dictionary).

⁶ Clive Emsley, *Crime and Society in England 1750-1900* (London: Routledge, 2010), 264.

the Royal Navy spread throughout the world during the Revolutionary and Napoleonic Wars and the *Pax Britannica* that followed, in what manner did desire for legal reform accompany the fleet? Do the global records display significant differences in charges and sentencing based on geographic location? And finally, when the numerous Naval Discipline Acts of the 1860s finally repealed the Articles of War of the previous century, how was this legislation disseminated to the global navy? And did it have any appreciable effect on the outcome of naval courts martial?

As shown in the Courts Martial Returns of the Royal Navy, it is clear that the desire for change mandated by the Naval Discipline Acts existed long before these acts were first brought before Parliament. The number of lashes handed down by naval courts declined significantly almost immediately following peace with France in 1815, and imprisonment arose as an increasingly common alternative punishment. Although use of the lash would not be legally regulated in the navy until 1860, court-mandated floggings rarely rose above fifty lashes during much of the nineteenth century, and even instances of execution – the ultimate punishment in the sailing navy – were reduced significantly in peacetime. Of course, peace brought its own problems, forcing the much-reduced Royal Navy onto the global stage to defend the interests of the Empire. Such a widespread fleet tells a fascinating story of how understandings of naval law were disseminated worldwide, and how difficulties in global communication had a very real effect on the sentences of naval courts martial in a period of such rapid reform. Combined with other contextual information, the legal records of the navy on its distant stations show how differing circumstances altered the procedures of naval discipline, and displaying that the Admiralty's stance on the "arbitrary and cruel punishments" of the eighteenth-century navy was at long last changing.

Chapter 1 – Historiographic Tides

As a fundamental aspect of Britain's national identity, the Royal Navy has long captivated the interests of both academic and public audiences. Famous biographic accounts and all-encompassing surveys of Britain's maritime heritage still form an important lens through which Britons view their collective history and current place on the world stage.¹ Studies of crime, punishment and discipline form an important portion of this expansive historiography. The "Great Mutinies" of 1797 inspired much scholarship over the next century, by lawyers, historians and naval memoirists.² General histories of the Royal Navy, such as the works of Julian Corbett and Christopher Lloyd, or the more recent publications of Andrew Lambert and N.A.M. Rodger, inevitably include some mention of the nature of discipline in their discussion of the lower decks. However, it was not until quite recently that writings on naval law became so fundamentally intertwined with the work of another major historical field – criminal law.

In order to fully appreciate writings on crime and punishment in the Royal Navy, we must examine the historiographic trends in legal history of the past half century that now influence it. This contemporary fascination with the history of crime, criminals, and the law in early modern and modern England³ initially began with the works of the renowned criminologist Sir Leon Radzinowicz in 1949, but exploded into the wider historical literature through Douglas Hay's seminal 1975 article "Property, Authority and the Criminal Law," one of the first major historical works that successfully used court records to approach the history of the criminal law

¹ Cynthia Behrman, *Victorian Myths of the Sea* (Ohio UP, 1977), 156.

² See W.J. Neale, *History of the Mutiny at Spithead and the Nore* (1842), Sir Charles Cunningham, *A Narrative of Occurrences that Took Place During the Mutiny at the Nore* (1829).

³ Due to the period studied by many historians of this field, it is important to note that the focus is on *England*, rather than the whole of Great Britain – the criminal justice systems of Scotland and Ireland are too different to factor into this relatively narrow discussion.

from a social perspective.⁴ Taking inspiration from Thompson’s approach to social history, particularly as shown in *The Making of the English Working Class* (1963), Hay’s study of “history from below” became and remains a powerful tool of historical analysis.⁵ Hay’s article made ground-breaking use of court records, and was also heavily influenced by the Marxist tradition. Focus on the courts as an instrument whereby the ruling classes invoked “justice, terror, and mercy” to control the people at large presented a compelling image of criminal justice – usually seen as a non-ideological phenomenon – as an area for reinforcing the class divide which characterized eighteenth-century English society.⁶ The rulers’ obsession with the death sentence, Hay argued, must have had some further importance beyond the desire for justice, as the Bloody Code clearly defied the legal logic of the time.⁷ Hay’s work drew upon the Marxist school of historical materialism, arguing that many death sentences were passed with the specific goal of “enforcing ... the radical re-definitions of property which gentlemen were making in their own interests during the eighteenth century.”⁸ Its main role in society was to protect those in the propertied classes from the defiance of their social inferiors.

Hay’s Marxist influence provoked a significant critique by John Langbein in 1983.⁹ Unlike Hay, a social historian who used criminal records to study eighteenth-century English people, Langbein was a professor of law who turned to history to analyze the origin of contemporary law.¹⁰ Believing that social influences and distinctions simply did not influence

⁴ Douglas Hay, Peter Linebaugh, John Rule, E.P. Thompson and Cal Winslow, *Albion’s Fatal Tree: Crime and Society in Eighteenth-Century England* (London: Verso, 2011), xxxi.

⁵ E. P. Thompson, *The Making of the English Working Class* (London, 1968), 8.

⁶ Hay *et al*, 63.

⁷ Hay *et al*, 56.

⁸ Hay *et al*, 31.

⁹ John Langbein, “Albion’s Fatal Flaws,” *Past and Present*, No. 98 (Feb. 1983).

¹⁰ “John H. Langbein,” Yale Law School Faculty, accessed on 30 November 2018, <https://law.yale.edu/john-h-langbein>.

the inner working of the legal system, Langbein argued that “the historian does not need a conspiracy theory to explain the discretion used by the eighteenth-century legal system. Rather, such discretion existed as a protection for the common man.”¹¹ In a society that did not develop a professional investigative police force until the mid-nineteenth century, the deterrent threat invoked by the death sentence served a crucial role in the criminal justice system, with legal discretion providing a “loophole” through which individual rights could be maintained.

The work of Hay and Langbein sparked a historiographical debate that was hotly contested for several years. Although some have engaged with this debate more explicitly than others, many historians refuse to fully accept either position, instead choosing to adopt a more blended and balanced position. One of these scholars was J.M. Beattie, whose *Crime and the Courts in England* became the field’s seminal text following its publication in 1986. Beattie’s book combined the spirit and intent of the “history from below,” as espoused by Thompson and Hay, with the field of quantitative social history that had emerged by the 1980s. Additionally, *Crime and the Courts* highlighted the issue that historians face when conducting research – availability of sources, which necessitated Beattie’s focus on the courts of Surrey and Sussex.¹² Beattie was not the first legal historian to use court records to analyze eighteenth-century English crime, but he was the first to do so on so large and comprehensive a scale. Counting of indictment records formed the bases of Beattie’s statistical analysis, in which he was clear to emphasize his use of cross-referencing evidence to provide the best possible account of criminal statistics from 1660-1800.¹³ Any minor inaccuracies in Beattie’s counting were not so significant as to greatly alter his general findings, as his work was intended as a broad analysis of a large

¹¹ Langbein, 120.

¹² Beattie, *Crime and the Courts*, 4.

¹³ Beattie, *Crime and the Courts*, 643.

temporal period. Even still, the quantitative study of the criminal law received some significant critiques through the late twentieth century. Most prominently, a lengthy historiographic essay by Joanna Innes and John Styles questioned some of the trends present in the writing of legal history in 1986. Most relevant to Beattie's work was what they saw as statistical trends of positivist social science beginning to influence the work of historians, which was seen to detract from the lived human experiences shown through more traditional historical narratives.¹⁴ Perhaps most importantly, Innes and Styles highlight the obvious shortcoming of indictment-focused statistics – counting of criminal records does not necessarily bear any relation to the actual patterns of offences during the same period.¹⁵

The “indictment-based statistics” present in *Crime and the Courts* and many other works enjoyed a resurgence in the early twenty-first century when the expansion of the internet allowed for the creation of the single greatest resource for studies of modern English crime – the *Old Bailey Proceedings Online* (OBPO). One of the largest online databases of its type, the OBPO provides free and easy access to the Old Bailey Proceedings from anywhere in the world, allowing for studies of much greater scale than ever before. As will be further elaborated in chapter two, the project *Datamining with Criminal Intent* (2011) used mass analysis of the OBPO to quantify trends present in court records in a manner that had not previously been possible, and the websites *London Lives* (2010) and *The Digital Panopticon* (2017) have further expended the use of trial records far beyond the courtroom. Even still, the warnings of Innes and Styles against the dangers of unexamined statistical analysis are no less relevant now than the 1980s, and it is still the historian's responsibility to corroborate such evidence and properly

¹⁴ Joanna Innes and John Styles, “The Crime Wave: Recent Writing on Crime and Criminal Justice in Eighteenth-Century England,” *Journal of British Studies* 25 No. 4 (1986): 382-3.

¹⁵ Innes and Styles, 431.

contextualize it. Through the work of Hay, Langbein, Beattie, and more recently by others such as Peter King in *Crime and Law in England* (2000), the field of English legal history developed drastically from 1975 onwards. Quantitative analysis of indictment and trial records became a central feature of the field's methodological framework and many of the works mentioned remain foundational.

Historians have approached the study of crime in the navy for much the same reason that Beattie and others stated was true for civilian courts – ordinary sailors, like all other ordinary people, left few historical records, written or otherwise.¹⁶ Disciplinary records are among the only information that exists regarding a very substantial portion of the population of the time. No general history of crime in the Royal Navy has ever been published, and even general analyses of the court martial process itself are few and far between.¹⁷ Scholars have instead focused on a specific period, crime, location, or have mentioned the topic only as a minor point of a larger discussion. As time has passed, naval historians have become more interested in incorporating legal knowledge and historiography into their work, while legal historians have taken up the study of crime in the navy. Despite a continuing lack of large-scale collaboration between these two schools of historical study, by the late-twentieth century it became increasingly clear that legal historiography had fundamentally shaped the study of naval crime and punishment, a comparison made all the more evident as these distinct fields both went through the quantitative turn. Although numerous writers have contributed to the study of crime in the Royal Navy on one aspect or another, it was through the works of John Byrn and Markus Eder that one of the

¹⁶ William Spavens, *Memoirs of a Seafaring Life*, ed. N.A.M. Rodger (Bath: The Folio Society, 2000), 9.

¹⁷ See David Hannay, *Naval Courts Martial* (1913), John Byrn, *Naval Courts Martial 1793-1815* (2009). Note that Byrn's work is a collection of primary documents rather than a historical monograph.

most fundamental questions of naval law has been studied – how similar were the naval and criminal justice systems of the eighteenth and nineteenth centuries?

Byrn's *Crime and Punishment in the Royal Navy: Discipline on the Leeward Islands Station* (1989) explicitly invoked the comparison between the fields of legal and military history and approached the topic with a specific goal in mind: to challenge the popular image of discipline in the Georgian navy that was based largely on romanticized anecdotes.¹⁸ Byrn used a thorough analysis of statistical data and other sources to reach his conclusion, stating that “the system used to maintain order aboard His Majesty’s sailing ships was a branch of eighteenth-century British criminal law.”¹⁹ This explicit comparison was directly challenged in the work of Markus Eder twenty years later, but still remains the closest tie between the study of naval and criminal law.

Another feature of Byrn’s book is his subtle application of new theories of discipline, specifically regarding the discourse of decentralized power structures that emerged in the latter half of the twentieth century. Specifically, while listing his reasons for the choice of the Leeward Islands as the focus for his study, Byrn stated that

as a foreign station which was approximately 3,500 nautical miles from London, the Leewards were free from excessive meddling by the Admiralty. Thus, if the rule of law was to prevail there, it had to be instituted by the officers on the spot rather than be imposed from above by a powerful regulatory agency.²⁰

Although the chain of command was by no means circumvented, the suggestion of the decentralization of power within a naval context is relatively unique in the historical literature of

¹⁸ Not to be confused with Markus Eder’s *Crime and Punishment in the Royal Navy of the Seven Years’ War*. To avoid issues, I will refer to both books by their authors rather than their titles.

¹⁹ John Byrn, *Crime and Punishment in the Royal Navy, Discipline on the Leeward Islands Station 1784-1812* (Southampton: Camelot Press, 1989), 185.

²⁰ Byrn, *Crime and Punishment*, 6.

its time, further emphasizing the importance of Byrn's work in this shared historiography. Byrn suggested that naval justice at the time found itself somewhere between Hay's argument, that the criminal law was "one of the chief ideological instruments used by the ruling class to maintain its hegemony over the rest of British society,"²¹ and Langbein's counter that "the criminal law is simply the wrong place to look for the active hand of the ruling classes."²² Byrn argued that naval justice was undeniably used to preserve discipline and enforce the authority and power of the senior officers of a ship of war, but it "was not abused in such a callous, calculating, conspiratorial manner as to become little more than a vehicle for the unbridled self-interests of the elite."²³

It was not until Markus Eder's *Crime and Punishment in the Royal Navy of the Seven Years' War* (2004) that another major attempt was made to further draw on what had become evident links between criminal and naval law during the age of sail. Eder began with a thorough analysis of the contemporary study of legal history before tracing its development all the way back, as others did before him, to the works of Radzinowicz, Hay, and Beattie. He very clearly laid out the questions commonly asked by historians when approaching modern British law, ranging from the size and patterns of crime and punishment to the age and gender of prosecutors and accused.²⁴ His study of the interaction of naval and criminal courts was based on Byrn's analysis fifteen years earlier, one that Eder took further than any previous writer on the topic.

In this sense, Eder was fortunate in that he had the luxury of using digitized sources afforded by the new internet world. Eder focused more on secondary analyses of the Old Bailey

²¹ Hay *et al*, 26.

²² Langbein, 119.

²³ Byrn, *Crime and Punishment*, 186.

²⁴ Markus Eder, *Crime and Punishment in the Royal Navy of the Seven Years' War, 1755-1763* (Aldershot: Ashgate Publishing, 2004), 2.

Proceedings than the records themselves, but the turn of the twenty-first century brought with it an explosion in the field of digital humanities that undoubtedly affected his research to some degree. Unfortunately, it appears that this influence had some negative effects as well, as Eder not only largely ignored the issues raised by the use of quantitative crime statistics, but even went so far as to praise the naval records for their “much more complete” nature than their civil counterparts, claiming that he was able to “paint a much fuller ... picture of eighteenth-century naval misdemeanours and crimes ... than is feasible with regard to the situation on shore.”²⁵ Although he was not incorrect with this statement, his faith in statistical data may be somewhat misplaced, as made evident by previous legal scholars such as Beattie and Langbein, as well as those in the new generation of quantitative historians.²⁶ More data is always a good thing, especially for those hoping to undertake a digital or quantitative analysis of any topic, but unquestioned statistical analysis can quickly lead to entirely false arguments.²⁷

Like Byrn, Eder also engaged with the Hay/Langbein debate to a degree not seen in the earlier naval literature. He lays out the debate quite clearly, citing the “controversial view... held by Marxist historians... who regard the eighteenth-century penal code as an instrument of the ruling class.”²⁸ He also acknowledged the contribution to the debate made by Beattie, who argued that assize trials were designed to generate feelings of deterrent fear, a statement that can easily be applied to the draconian procedures outlined in the navy’s Articles of War.²⁹ Eder rejected Byrn’s argument that “naval discipline applied the principles and practices of the

²⁵ Eder, 4.

²⁶ S. Graham, I. Milligan and S. Weingart, *Exploring Big Historical Data: The Historian’s Macroscope* (London: Imperial College Press, 2015), 35.

²⁷ See N.A.M. Rodger, *The Wooden World: An Anatomy of the Georgian Navy* (London: Collins, 1986), 80-81.

²⁸ Eder, 5.

²⁹ Eder, 6.

criminal law.”³⁰ Although Eder’s entire book is built on the assumption that there is at least *some* comparison between these fields, he did not believe it to be as close a comparison as Byrn suggested. Interestingly, these subtle yet important differences have drawn differing opinions from scholars of different historical backgrounds. Clive Emsley complimented Eder on his analysis of naval law, only taking issue with his apparent lack of interest in “petty criminality.”³¹ This was a very different opinion to that of naval historian N.A.M. Rodger, who maintained that Eder’s work “adds...very little to social history at large.”³² This suggests that despite the work of Byrn, Eder, and earlier scholars, legal and naval historians are still of strongly differing opinions regarding the goals and methods of interdisciplinary analyses.

Although not a specific study of crime in the Royal Navy, among the most important works on the nineteenth-century navy is Eugene Rasor’s *Reform in the Royal Navy* (1975), in which trends of reform are traced from the Napoleonic era through to the advent of the first Naval Discipline Act in 1860. In an effort to expand on a largely ignored period of the navy’s history, Rasor provided “a history from below decks” in his study of the social reforms of the period. However, Rasor chose to focus not only on the conditions of the lower decks, but also of developments in naval architecture and ship design, innovations in ordinance and weaponry, and of discipline in the mid-Victorian navy.³³ Although the book contained a substantial discussion of discipline and punishment, Rasor only briefly discussed its connections to contemporary criminal law, with no direct comparison to writings on that subject at the time.³⁴ Despite this

³⁰ Eder, 156.

³¹ Clive Emsley and Pieter Spierenburg, review of *Crime and Punishment in the Royal Navy of the Seven Years’ War* by Markus Eder, *Crime, History & Societies*, Vol. 8 No. 1 (2004): 118-120.

³² N.A.M. Rodger, review of *Crime and Punishment in the Royal Navy of the Seven Years’ War* by Markus Eder, *The English Historical Review* 119, No. 483 (Sept. 2004), pg. 1069.

³³ Eugene Rasor, *Reform in the Royal Navy: A Social History of the Lower Deck, 1850-1880* (Hamden: Archon, 1976), 121-23.

³⁴ Rasor, 38.

absence, Rasor emphasized the increasing authoritarian nature of the nineteenth-century Admiralty, highlighting that “commanders were intimidated, upbraided, and in other ways forced to rigidly adhere to the regulations,” all due to the Admiralty’s bowing to parliamentary and public pressure.³⁵ Rasor was still able to demonstrate that the Admiralty was an advocate for the “positive approach” in discipline, choosing to increase incentives for good behaviour, such as medals, to offset the perceived slackening of punishments by the 1860s.³⁶ It is within this understanding that the actions of the Admiralty and the legal changes within the nineteenth-century navy must be understood, especially in instances where direct oversight was sorely needed, such as the trial of Commander Nicolas of the *Trident*.

More recent works on the subject also exist. John Dacam’s 2009 doctoral thesis studied patterns of discipline and punishment in the Royal Navy of the Revolutionary and Napoleonic Wars. Focusing on captains’ and masters’ logs of select ships, Dacam echoes the arguments of his supervisor, John Byrn, and other historians who have argued that shipboard punishments at the turn of the nineteenth century were not particularly more brutal than those issued by civilian courts ashore.³⁷ Although Dacam chose to exclude courts martial records from his study for reasons of scope, many of the trends present in the logbooks of the Napoleonic period can also be seen in the Courts Martial Returns of the 1860s. Individual sailors and marines aboard larger ships were often punished less frequently, even if proportionately these ships appeared in the records with a higher consistency.³⁸ Perhaps more importantly, Dacam noted the role that geography played in trends of punishment in the Royal Navy. As I will show in chapter four, the

³⁵ Rasor, 43.

³⁶ Rasor, 59.

³⁷ John Dacam, “‘Wanton and Torturing Punishments’: Patterns of Discipline and Punishment in the Royal Navy, 1783-1815” (PhD thesis, University of Hull, 2009), 2.

³⁸ See Dacam, 252, and page 76 of this work.

relatively fluid definitions of stations over the nineteenth century make any sort of proportionate study fraught with difficulty, but the increased number of punishments on foreign stations shown by Dacam is still shown in some degree in the Courts Martial Returns half a century later.³⁹

Another recent publication was Thomas Malcomson's *Order and Disorder in the British Navy* (2016).⁴⁰ Malcomson discussed similar topics to Dacam, although from a significantly different angle – questions of power and control rather than the purely legal questions asked by others. The book has received extremely varied reviews. Barry Gough acknowledged Malcomson's contribution to the understanding of naval punishment as a defence of authority rather than simply enforcing the Articles of War, a trend clearly shown by which offences received the harshest punishments.⁴¹ Conversely, other historians have questioned not only the quality of Malcomson's research and writing, but the value his book brings to the wider discussion. Richard Wilson questioned its "absurd degree of statistical analysis," decrying it as simply a postmodern repetition of previous studies.⁴² Although both conclusions have some justification, Malcomson's unique merging of the apparently disparate fields of statistical and post-modern history have shed new light on a topic that is as old as the navy itself.

Many short works exist regarding specific instances of naval crime, whether in relation to a particular crime, location, period, or some combination thereof. This narrow focus has produced a broad historiography of crime in the navy, consisting of numerous writers with a variety of backgrounds. In addition to previously mentioned works, Nicholas Rogers' writings on

³⁹ Dacam, 251.

⁴⁰ Thomas Malcomson, *Order and Disorder in the British Navy, 1793-1815: Control, Resistance, Flogging, and Hanging*. (Woodbridge: Boydell Press, 2016).

⁴¹ Barry Gough, review of *Order and Disorder in the British Navy, 1793-1815: Control, Resistance, Flogging, and Hanging*. by Thomas Malcomson, *CHOICE: Current Reviews for Academic Libraries*, vol. 54, no. 7, Mar. 2017, p. 1077.

⁴² Richard Wilson, review of *Order and Disorder in the British Navy, 1793-1815: Control, Resistance, Flogging, and Hanging*. by Thomas Malcomson, *The Mariner's Mirror* 103 no. 2 (2017): 235.

impressment and desertion, B.R. Burg's analysis of sodomy and indecency, and a plethora of writings on mutiny form only a small section of the vast literature on naval crime and punishment.

As one of the more popular strands of the study of naval crime, writings on "black, bloody mutiny" account for a very large proportion of the writings on naval discipline. Popularized by the classic novel *Mutiny on the Bounty* and sensationalized in the horrific yet hardly typical tale of the bloodbath aboard HMS *Hermione* in September 1797, mutiny in the Royal Navy is one of the most fascinating yet misrepresented crimes in the academic and public imagination, and its causes have been the source of significant debate for centuries.⁴³ Studies of the topic range from contemporary accounts of the Spithead and Nore mutinies of 1797 to modern studies from numerous fields analyzing the causes of mutiny and group insurrection. Unlike many other naval offences, mutiny deserves its somewhat macabre reputation. Mutineers were believed to act to "the prejudice of good order and naval discipline," and mutiny was one of the few crimes in the Royal Navy where the death sentence would actually be carried out.⁴⁴ Due to its intricacies, the study of mutiny is often tied to many other fields of historical inquiry, such as social history, capital punishment, and the study of social uprisings. However, its popularity has also attracted causal arguments that invoke Langbein's caution against conspiracy theories in historical analysis. Some mutineers during the "golden age of sail" may well have been influenced by the continental ideals of "*liberté, égalité, fraternité*," but it is highly unlikely that any sort of unified revolutionary sentiment was more than a minor component of the majority of

⁴³ Ann Coats and Philip MacDougall (ed), *The Naval Mutinies of 1797: Unity and Perseverance* (Boydell, 2011).

⁴⁴ Byrn, *Crime and Punishment*, 67.

naval mutinies, despite the claims of E.P. Thompson and others.⁴⁵ Rather, notwithstanding issues with their predictive modelling, the nuanced revisiting of the seamen's grievances argued by Hechter, Pfaff, and Underwood in 2016 appears to be among the best recent analyses of mutiny in the Royal Navy. They argue that a confluence of structural grievances, such as pay and harsh discipline, and incidental grievances, such as incompetent officers or disease, were the central factors in provoking mutiny in the Royal Navy, an argument that appears accurate in the vast majority of historic cases.⁴⁶

Alongside mutiny, desertion is another major focus for those studying crime in the Royal Navy. Like mutiny, desertion was a capital offence under the Articles of War; even in times of war, however, execution for desertion was rarely carried out. The common association of desertion and impressment have given desertion a similarly infamous reputation. However, as argued by N.A.M. Rodger in 1986 and Nicholas Rogers in 2007, it is very difficult to determine the origins of the vast majority of the crews of the sailing navy. Ships' muster books are adequate records of transfers, pay, desertions, and other such information, but they are often highly inaccurate or incomplete in their records of sailors' provenance.⁴⁷ Like mutineers, deserters were not necessarily pressed men, and many of the grievances that have often been cited as the cause of mutiny can equally be argued to be the causes of desertion.⁴⁸ Even using only the courts martial records, much can still be ascertained regarding patterns of desertion and the geographical and temporal context for its occurrences. Byrn discussed many of the causes of

⁴⁵ See Thompson, *The Making of the English Working Class*, 183-4, Niklas Frykman, "The Mutiny on the Hermione: Warfare, Revolution and Treason in the Royal Navy." *Journal of Social History* 44 no. 1 (2010): 159-187.

⁴⁶ Michael Hechter, Steven Pfaff, and Patrick Underwood, "Grievances and the Genesis of Rebellion: Mutiny in the Royal Navy, 1740-1820." *American Sociological Review* 81 no. 1 (2016): 167.

⁴⁷ Nicholas Rogers, *The Press Gangs: Naval Impressment and its Opponents in Georgian Britain* (London: Continuum, 2007), 5.

⁴⁸ Byrn, *Crime and Punishment*, 163.

desertion in the wartime Leeward Islands, which extend much further than the grievances highlighted in mutiny cases. Desire for the higher wages of the merchant marine, distaste with naval life, or any other of a number of personal reasons could convince a man to desert. The sheer number of desertion trials in the Courts Martial Returns emphasize how seriously the navy took this threat to its manpower, with numerous captains taking extreme measures to prevent it.⁴⁹

Sexual crime in the Royal Navy remains one of the least studied of all such offences outlined in the Articles of War. Despite some claims that “the detestable and abominable crime of sodomy” did not exist in the Royal Navy in any appreciable numbers, a brief glance at courts martial records is enough to disprove this claim.⁵⁰ Burg’s *Boys at Sea: Sodomy, Indecency and Courts Martial in Nelson’s Navy* (2007) clearly shows that accused sodomites were tried by courts martial in much higher numbers than suggested by Rodger.⁵¹ In particular, Burg’s examination of the case of HMS *Africaine* in the early nineteenth century demonstrates the extent to which homosexual practices were indeed quite prevalent in the Royal Navy, even if most other ships were evidently more discrete as to the practice. The lack of records regarding a certain practice by no means suggests that it did not exist – after all, crimes are only recorded if they were caught or reported. In his earlier work on the topic, Arthur Gilbert discussed this “cultural blindness” to sodomy in the Royal Navy and in the general British society of the time, arguing that a lack of significant evidence in court martial records is hardly reason to doubt the commonality of homosexual practices in the navy. References to “uncleanliness” in the punishment books or instances of “indecent assault” in the court records were almost certainly

⁴⁹ Byrn, *Crime and Punishment*, 155.

⁵⁰ For such an argument, see N.A.M. Rodger, *The Wooden World: An Anatomy of the Georgian Navy* (London: Collins, 1986), 80-81.

⁵¹ B.R. Burg, *Boys at Sea: Sodomy Indecency, and Courts Martial In Nelson’s Navy* (London: Palgrave Macmillan, 2007).

references to acts that would have been classified as buggery or sodomy had they been reported, and officer's memoirs clearly reveal its presence in the navy of the time.⁵² Gilbert maintained that proof of penetration was extremely difficult to come by in cases of sodomy (required for conviction), and courts were clearly guilty on numerous occasions of either ignoring existing evidence or fabricating it where it did not exist.⁵³ The 1860 Naval Discipline Act lessened the punishment for sodomy from death to penal servitude, which resulted in a major increase in the number of charges and convictions for the practice.⁵⁴ However, the numerous continuing instances of indecent assault and like charges suggests that the navy's blindness to many sexual crimes was still very much in effect.

Many of the remaining crimes listed in the Articles of War or the Naval Discipline Acts, or tried by courts martial, have received little focused historical attention. Theft in particular is a very difficult crime to trace, as it was not technically an offence under the 1749 Articles of War, although officially categorized as an "offence punishable by ordinary law" in the Naval Discipline Act of 1860. Many instances of petty theft would likely have been summarily punished on individual ships or even by shipmates, but many other cases were brought to court, even some that may seem quite minor, such as theft of clothes or other personal effects.⁵⁵ Unfortunately, as noted by Byrn, "theft" is used quite loosely in naval courts martial, especially in the eighteenth and early nineteenth centuries, and is applied to a vast variety of crimes against private property. Additionally, court records themselves rarely provide sufficient details to

⁵² A.N. Gilbert, "Buggery and the British Navy, 1700-1861." *Journal of Social History* 10 (1976): 73.

⁵³ Gilbert, "Buggery and the British Navy", 75.

⁵⁴ Average trials for sodomy or indecent assault increased from an average of one per year from 1816-59 to nearly eight per year post-1860. (ADM 194/42, 194/180 and 194/181).

⁵⁵ ADM 194/180, Trial of John Wiles, 18 November 1863.

determine the specifics of the crime, leaving very little contextual information about the specifics of theft in the navy.⁵⁶

Another understudied crime was drunkenness. Although discussed in social histories, few scholars have approached drunkenness in the navy from a legal perspective. For an organization that both outlawed drunkenness and mandated a rum ration, it is no surprise that liquor-related offences were so prevalent – nearly 20% of all charges in 1860 alone.⁵⁷ As emphasized by Rodger, shipboard spirits were a two-edged sword: although drunkenness had been illegal since the earliest days of the Articles of War, alcohol was a necessary evil for much of the navy’s history, first to replace the horrendous quality of shipboard fresh water, and later as one of the seamen’s few pleasures on board.⁵⁸ The rum ration was a fiercely guarded privilege until its controversial termination in 1970, and any attempt to temper drunkenness by watering the rum was seen by the sailors as an insult and a punishment.⁵⁹ The legal classification of drunkenness was debatable during much of the eighteenth and nineteenth centuries, but for all intents and purposes a seaman was not considered drunk “unless he was so incapacitated by drink that he was unable to execute the nautical functions comprising his job,”⁶⁰ a belief clearly shown in the wording of court records.⁶¹ Byrn also noted the role that captains’ summary judgments had in prosecuting drunkenness, as only forty-three of the over two thousand seamen punished for drunkenness in the Leewards were sentenced by court martial, the remainder being flogged on

⁵⁶ Byrn, *Crime and Punishment*, 133.

⁵⁷ ADM 194/180.

⁵⁸ N.A.M. Rodger, *The Command of the Ocean: A Naval History of Britain 1649-1815* (New York: Penguin Books, 2004), 496.

⁵⁹ Lloyd, 256.

⁶⁰ Byrn, *Crime and Punishment*, 132.

⁶¹ The exact language used in the Courts Martial Returns was “drunkenness, through which he was incapacitated for the performance of his duty.” ADM 194/180, Trial of Lt. Cavendish Gore Harvey, 21/04/1863.

board their ships.⁶² This statistic clearly shows that court martial records are but one avenue scholars must take when discussing crime and punishment in the Royal Navy, and again displays that a lack of sources by no means suggests the absence of the crime.

⁶² Byrn, *Crime and Punishment*, 132.

Chapter 2 – The Traditions of the Navy: Methodology and Context

From the studies of contemporaries such as W.J. Neale (1812-1893) to more recent publications by historians Byrn, Eder, and Rodger, crime and its related subjects have long been recognized as providing crucial contributions to the larger study of the Royal Navy. Yet, the scope of historical analyses, such as those by Byrn and Eder, have always been quite limited. As Franco Moretti has argued however, it is sometimes necessary to take a broad look at a topic, sacrificing detail in the interest of understanding phenomena in a more systemic fashion.¹ Yet there is, in fact, a very simple reason why scholars of the navy have yet to do so. Historians of law in the Royal Navy face a problem of sources, albeit a somewhat more benign problem than that which faced legal historians fifty years ago. Scholars of the Royal Navy face an enormity of materials in various archives that continue to be prohibitively large and unwieldy. In his classic work *The British Seaman* (1968), Christopher Lloyd emphasized that, regarding the manning of ships, “information about the men actually on board a ship in any given month can be obtained from a ship’s muster book, but to discover the totals over a century [or longer] would require a computer.”² More recently, Shawn Graham, Ian Milligan and Scott Weingart emphasized the necessary role of digital research methods in allowing historians to “keep up” with the exponentially increasing volume of data humankind is generating.³

The legal records of the Royal Navy are organized into three categories: the punishment books of individual ships, the Courts Martial Reports and the Returns. The most numerous of these records are the punishment books, which are interspersed in the ships’ logs of ADM 53.

¹ Franco Moretti, *Distant Reading* (London: Verso, 2013), 49.

² Lloyd, 121.

³ Graham *et al.*, 28.

The punishments for these minor offences were summarily inflicted by ships' captains without the need of a trial by court martial, and these sources comprise the single largest register of crime and punishment in the Royal Navy. In terms of archival volume, the Courts Martial Reports fall a distant second. The complete minutes of court proceedings, the Reports provide the most comprehensive record of the happenings of courts martial from the late seventeenth century through the twentieth. Lastly, the Courts Martial Returns provide a useful index of court proceedings from the 1740s through the early twentieth century. Published quarterly for the Admiralty as summaries of the complete court proceedings, the Returns contain less detail than the Reports but still provide essential information regarding instances of specific charges and sentences in the navy, as well as their temporal and geographic breakdown. The sheer enormity of the punishment books and Courts Martial Reports limit their usefulness for any sort of long-term study, at least until significantly more work has been done to make these records digitally readable. Some particularly distinctive naval records have been digitized, such as Nelson's Trafalgar logs, the trials of Admiral Byng and Richard Parker, and the memoirs of many officers, a large number of which are held by the University of Michigan. The HathiTrust digital library holds the rights to digital copies of the Navy Lists for much of the nineteenth century, and numerous ships' logs have been digitized in an effort to study global meteorological trends.⁴

Most naval records, however, remain undigitized, limiting their use in a long-term comparative study, and it is here that the Courts Martial Returns supply a critical alternative. Their relatively small size (approximately 13,000 pages) made them a much more manageable source for a single historian, and the systematic manner in which they were recorded greatly aids

⁴ UK Colonial Registers and Royal Navy Logbooks Project; Met Office; University of Sunderland (2011): CORRAL: Historical meteorological recordings from the UK colonial registers and Royal Navy logbook images. NCAS British Atmospheric Data Centre. Accessed on 24 February 2020.

transcription efforts.⁵ That said, even 13,000 pages proved too much for a restricted timeframe, so this study is limited to the 1860s – the years immediately surrounding the various Naval Discipline Acts, which will be discussed below. In addition to this emphasis on the 1860s, I also transcribed selected years from the previous five decades in an effort to provide context for the changes brought about by the Naval Discipline Acts, and to illustrate trends in naval courts martial over the long term.⁶ The use of LibreOffice Calc, a spreadsheet program similar to Microsoft Excel, aided the analysis once transcription was complete, allowing for various queries to be made of the digitized records. These included basic trial, charge and sentence counts, as well as advanced searches including breakdowns by rank, ship, station or date. Studying the Courts Martial Returns in this way allows for many interesting comparisons to be made between stations, or regarding instances of specific charges and sentences. The most useful of these categories proved to be station records, which allowed a geographic comparison of various branches of the global navy during the 1860s. Comparing these records with those of earlier decades, it became clear just how quickly the navy had expanded globally following peace in 1815 – even despite its significantly reduced manpower. Trends in charges and sentences across widely separated stations eventually gave some insights into the factors that influenced crime and punishment in the nineteenth-century navy.

Some understanding of the laws of the navy is required to recognize these trends. The formal system of crime and punishment in the Royal Navy began with the passing of the *Act for Establishing Articles and Orders for the regulateing and better Government of His Majesties*

⁵ Contained within ADM 12/27, ADM 13/103, ADM 194/42, and ADM 194/180-185. The records are referred to by several terms, including ‘digests,’ ‘indices,’ and ‘returns,’ but contain largely the same information for the entire period from 1755 to 1910.

⁶ The years transcribed include: 1816/17, 1826/27, 1836/37, 1846/47, 1856/57, 1860-69. Certain other notable trials were also transcribed, such as those of the 1797 Nore Mutineers (ADM 1/5486).

Navies Ships of Warr & Forces by Sea, better known as the 1661 Articles of War. Passed shortly after the Restoration, this Act was the first consolidation of the traditional system of naval justice, which dated back to the days of the Elizabethan sea dogs and earlier. Consistent and unwavering focus on the penalty of death was the hallmark of these early Articles, as their goal of deterrence was firmly rooted in the jurisprudence of its day. Unlike later iterations of the Articles, when the concept of legal mercy had firmly taken root in the naval justice system, the 1661 Articles made no explicit allowance for the Royal Pardon, even going so far as to explicitly forbid it in cases of sodomy.⁷

Despite their severity the 1661 Articles remained unchanged until 1749, when “*An Act for amending, explaining and reducing into one Act of Parliament, the Laws relating to the Government of His Majesty's Ships, Vessels and Forces by Sea*” formally abolished them in favour of this new expression of justice in the Royal Navy. The 1749 Act repealed and amended several other pieces of naval legislation passed during the reigns of William and Mary, and George I, relating to crime, punishment, courts martial, and piracy. Most of the articles of the 1749 Act remained unchanged from 1661, although an emphasis on legal mercy was now explicitly included, and the provision against pardon in cases of sodomy was removed (at least in writing).⁸ The 1749 Articles remain one of the most infamous pieces of legislation relating to discipline within the Royal Navy; under their provisions Admiral Byng was executed for “failing to do his utmost,” as well as countless other officers, sailors and marines during the so-called “golden age of sail.”

⁷ 13 Cha. II St. 1 Cap. 9, Article 32.

⁸ 22 Geo. II c. 33, Article 29.

The final iteration of the Articles of War relevant to this study arose in 1860, when the Naval Discipline Act formally repealed the 1749 Articles. Numerous amendments to this Act during the ensuing decade highlighted the many reforms it contained. So despite some scholars lamenting the lack of actual change from 1749, it is clear that the Acts of the 1860s changed a great deal.⁹ As will be further emphasized in the pages to come, questions of pardon, intent, and formal legal protection of prisoners from “arbitrary and cruel punishments” absent from earlier versions of the Articles were explicitly included in the 1860s, revealing both a formal and active desire for legal reform in the navy, reforms that were evident in the subsequent court records.

The other major document that defined discipline in the Royal Navy was the *Queen’s (or King’s) Regulations and Admiralty Instructions*. Much more than a simple disciplinary manual, the *Regulations* was a guidebook that listed the duties and theoretically governed the actions of each member of Her Majesty’s Navy. Commanding officers were solely authorized to punish those who broke the regulations, although the punishments were often restricted by the *Regulations*. For example, captains were forbidden from inflicting corporal punishment on petty officers and charged with protecting the men from “cruelty and oppression.”¹⁰ The *Regulations* also limited to twelve the number of lashes captains could issue. Unlike the Articles of War, the *Regulations* had no centralized list of offences, and punishments were at the captain’s discretion, barring the limitations in the *Regulations*. However, as shown in the trial of Commander Nicolas and numerous accounts of shipboard floggings, officers often ignored the restrictions imposed by the *Regulations*. The limit of twelve lashes was

⁹ See Eugene Rasor, *Reform in the Royal Navy*, Stanley Bonnet, *The Price of Admiralty*.

¹⁰ *Regulations and Instructions relating to HIS MAJESTY’S SERVICE AT SEA*. (London: W. Winchester and Son, 1806), 163.

almost universally ignored, and it was not until the publishing of punishment returns in the mid-nineteenth century that some centralized effort to enforce this element of the *Regulations* was undertaken.¹¹

On a basic level, the distinction between the offences listed in the Articles of War and those outlined in the *Regulations* was the same that distinguished felonies and misdemeanours in the criminal law. Felonies were defined as “crimes, conviction for which resulted in an automatic forfeiture of all the felon’s property to the Crown...’venomous’ offences which cost a man his property...and his life.”¹² By the turn of the nineteenth century nearly all felonies carried the sentence of death, although the liberal use of pardon ensured that relatively few executions actually took place. Misdemeanours, on the other hand, were “lesser crimes,” for which punishments included fines and various forms of corporal punishment, transportation overseas, and (by the late eighteenth century), short terms of imprisonment. The distinction between felonies and misdemeanours was, at least in part, shared in the Royal Navy; as the Crown protected its power to sentence felons to death, so too did the Admiralty uphold that amongst its sailors.

Scholars have been cautious in making too direct a comparison between civilian courts and naval courts martial.¹³ The two had functional differences obvious even to contemporaries, but the theoretical purpose of both naval and criminal law also had evident similarities. The obvious deterrent goals of both the 1661 and 1749 Articles of War were mirrored in the brutally draconian legislation of the 1723 Black Acts, which specified over forty capital offences that

¹¹ Rasor, 51.

¹² David Bentley, *English Criminal Justice in the Nineteenth Century* (London: The Hambledon Press, 1998), 2.

¹³ N.A.M. Rodger, review of *Crime and Punishment in the Royal Navy of the Seven Years’ War* by Markus Eder in *The English Historical Review* 199 No. 483 (2004).

would exist for the next century. Despite the appearance of such apparently strict legislation, historians of both naval and criminal law emphasize that, given ample use of the pardon, few of these numerous capital offences ever saw the death sentence deployed. A quick search of the legal database the *Digital Panopticon* shows that less than 30% of the 5443 capital convicts sentenced at the Old Bailey from 1750-1850 were actually put to death.¹⁴ Barring extreme circumstances, the death sentence was even rarer in the Royal Navy, especially during times of war. Although execution was still used, as Voltaire famously stated, “*pour encourager les autres,*” even in major instances of murder, mutiny, and sodomy, the Royal Navy had a very practical reason to avoid the death penalty wherever possible: shortage of manpower.

As Arthur Gilbert has argued, the professionalization of both the officer corps and seamen of the mid-to-late eighteenth-century navy had a decided impact on both corporal and capital punishments, especially when compared to their army counterparts of the same period. Unlike the average foot soldier, who was easily replaceable, able seamen were skilled labourers in every sense of the word, and the mutual respect that existed between such sailors and their officers would often preclude such horrific punishments.¹⁵ Richard Woodman has emphasized such a social contract, arguing that the harsh punishments meted out by both captains and courts martial were seen as fair, provided that the officers respected the professional capabilities of the seamen.¹⁶ This bears some comparison with the goals of the criminal law as described by both Hay and Langbein, as naval law provided protection from abusive officers (at least in theory) while emphasizing the rigid rank and social strata which framed life aboard a warship – a much clearer example of Hay’s thesis, perhaps, than any provided in civilian society.

¹⁴ *The Digital Panopticon* Search Builder; results. Consulted 29th November 2019.

¹⁵ A.N. Gilbert, “The Changing Face of British Military Justice,” 83.

¹⁶ Richard Woodman, *A Brief History of Mutiny* (London: Robinson, 2005), 100.

One of the obvious intersections between civilian and naval justice was the High Court of Admiralty, which was responsible for the administration of maritime law in the waters of the United Kingdom and its colonies.¹⁷ However, due to the number of records available (and even more when Vice-Admiralty courts are considered), any project involving these records would be prohibitively enormous, even with digital assistance. Another, occasional point of intersection between conventional crime and punishment in the merchant service is afforded by London's Old Bailey, which occasionally tried crimes in the merchant marine. Woodman analyzed the case of the mutiny on the merchant brig *Lennie* in 1875. Note the specifics of the indictment against the four prisoners, particularly the sentence and jurisdiction:

MATTEO CARGALIS, otherwise called French Peter (36), GIOVANNI CACARIS, called Joe the Cook (21), PAROSCOS LEOSIS, called Nicolas (30), PASCALES CALUDIS, called Big Harry (33), GEORGE KAIDA, called Lips (22), CHARLES RENKEN, called Charley (27), GEORGE GREEN, called Boatswain (34), and GEORGIOS ANGELOS, called little George (19), *were indicted for the wilful murder of Stanley Hatfield on the high seas within the jurisdiction of the Admiralty of England.*¹⁸

Many offences listed in any version of the Articles of War mirrored those deemed illegal by the regular criminal law, and they would be punished by relevant courts in the navy, the merchant marine, and in civilian society. However, one crime where this was not the case was mutiny. Cargalis *et al* were charged and found guilty of murder, for which most were hanged: but not of mutiny as defined in the tenth article of the Naval Discipline Act.¹⁹ Had the seizure of the ship not turned deadly, it is likely the master or owner of the *Lennie* would have charged the mutineers with grand larceny or some other such offence. But mutiny, like desertion or “failing

¹⁷ N.A.M. Rodger, review of *Crime and Punishment in the Royal Navy of the Seven Years' War* by Markus Eder in *The English Historical Review* 199 No. 483 (2004): 1069.

¹⁸ Old Bailey Proceedings Online (www.oldbaileyonline.org, version 8.0, 26 November 2019), May 1876, trial of MATTEO CARGALIS *et al*, (t18760501-360). Author's emphasis.

¹⁹ The Digital Panopticon, Records of MATTEO CARGALIS *et al*, <https://www.digitalpanopticon.org/life?id=obpdef1-360-18760501>.

to do ones' utmost," was a purely naval offence and therefore not indictable in Admiralty or civilian courts.

Many questions need to be asked when using any aspect of legal records for historical analysis. Among the most obvious is the simple fact that, by their very nature, courts martial record those who were caught or charged with offences. Those whose crimes went unreported, for whatever reason, do not show up in the records. While this may seem obvious, some historians are not above making claims that fail to recognize this basic fact. Certainly, instances of some offences can be easily determined through other methods. Desertion, for example, is unique in that "successful" instances can be determined simply by analyzing ships' muster books.²⁰ Another question that frames the study of naval courts martial is at what point infractions against discipline were no longer the responsibility of the vessel's commander and drew the attention of a formal naval court. The punishments captains were empowered to summarily inflict changed dramatically from the sixteenth century, when Francis Drake's trial and execution of Thomas Doughty set a precedent that allowed naval commanders to summarily try subordinates and condemn them to death.²¹ This changed by the reign of Charles II, as the 1661 Articles of War and every iteration since placed limitations on a captain's ability to capitally convict. Captains were also limited as to the severity of the corporal punishment they were able to order, although these legal limitations were often ignored in practice.²²

The 1861 court martial of Commander Nicolas of the *Trident* demonstrated that serious violations of these regulations were at least occasionally dealt with by direct Admiralty

²⁰ Rogers, 6.

²¹ Woodman, 31.

²² For the regulation in question, see *Regulations and Instructions Relating to His Majesty's Service at Sea, 13th Edition* (1790), 46.

intervention. But it stands to reason that many similar abuses of power went unreported. There are numerous examples in the courts martial returns for the 1860s of part or all of a sentence being remitted “in consideration of punishment already received,” so it is clear that such summary punishment was still being undertaken for offences that legally required trial by court martial.²³ By law, a court martial was required whenever an Article of War was violated. Yet, although violations of the King’s Regulations and the Articles of War on this point were quite common, it is equally evident that sufficient Admiralty oversight was in place to ensure that serious offenders would not have escaped trial by formal court martial.

Although the conviction of such “serious offenders” may seem simple, intent was as difficult to ascertain in the nineteenth century as it is today. The distinction between murder and manslaughter was narrowly defined, and in the accident-prone environment of a ship of war, many “murders” could easily have been the result of unfortunate circumstances, just as seemingly accidental deaths may have had more malicious causes. The 1749 Articles of War make no explicit distinction between murder and manslaughter, or any such “greater” and “lesser” offences, instead judging such charges “according to the laws and customs in such cases used at sea.”²⁴ A century later, the 1860 Naval Discipline Act provided a more explicit indication of the courts’ powers of discretion in such cases where intent was unclear. In a subsection entitled “Offences Punished by Ordinary Law,” the punishments for murder (death), and manslaughter (penal servitude or other lesser punishment) were explicitly laid out, as were the differing circumstances surrounding sodomy and indecent assault.²⁵ Additionally, the 1860 Act prohibited courts from finding the accused guilty of a greater offence than that for which they

²³ ADM 194/180, Trial of John Bannatyne, 26/11/1861.

²⁴ 22 Geo. II c. 33, Article 36.

²⁵ 23/24 Vic c.123, XXXVIII.

were indicted. With the difficulty of proving intent in instances of murder, sodomy, or even desertion, it is no wonder that the relative proportion of these “lesser offences” grew dramatically by the mid-nineteenth century: by the 1860s, the annual ratio of trials for sodomy vs indecent assault had fallen to 1:6, compared to approximately 1:1 earlier in the century, primarily on foreign stations.²⁶ It is much more difficult to draw similar comparisons for the charge of murder due to its rarity, but the whole of the 1860s saw only two charges of murder, two of manslaughter, and four of attempted murder.

Douglas Hay emphasized a class-centric view of the criminal law that has provoked a strong backlash in some circles. Yet even if Hay’s Marxist approach was deemed to be questionable so far as civilian law as concerned, rank and social class are much more important when discussing crime and punishment in the navy. As the meritocratic Napoleonic-era officer corps gave way to a stagnant social hierarchy during the Victorian period, class became increasingly important for promotion and opportunity in the navy and was therefore important in the discussion of crime and punishment. The ratio of officers to men fell from 1:28 in 1813 to 1:3 in 1817, displaying the oversaturation of the post-Napoleonic Navy List.²⁷ As the only officially accepted method of promotion, seniority ensured that the vast majority of officers were well past their prime by the time they reached command rank. The 1836 Navy List contains one lieutenant whose commission dated from 1 December 1778, fifty-nine years previous, and hundreds of other officers who had not been promoted in decades.²⁸ Yet in spite of this, the navy remained somewhat meritocratic in the selection of its officers. Systems of patronage ensured that senior officers would show favouritism only to those who would enhance their reputation,

²⁶ Data collated from ADM 194/42, ADM 194/180-181. For more on the subject, see Gilbert, “Buggery and the British Navy”, 72.

²⁷ Lloyd, 268. These figures include those officers on half-pay.

²⁸ *The NAVY LIST corrected to 20 December 1836* (London: John Murray, 1837), 19.

and the standardized lieutenant's examination ensured that prospective officers maintained at least some level of professional competency.²⁹ In the case of Lieutenant William Bligh, of *Bounty* fame, navigational excellence did not necessarily result in good leadership abilities, although his command ability has been severely underrated by much modern scholarship.³⁰

As noted at the time, rank afforded some privileges to those facing naval courts martial. Officers were not permitted to be flogged, and petty officers were only flogged for mutiny.³¹ Execution of officers, although exceedingly rare, was to be carried out via firing squad rather than hanging, as noted in Admiral Byng's 1757 example.³² Proportionately, officers were much more likely to receive acquittals or to be "adjudged to be more careful in future."³³ However, the Admiralty was not above severely punishing those whom they deemed to be dangerous to the service, whatever their rank or status. Captain Edward Sotheby, C.B., although declared innocent in his 1862 trial, was blacklisted by the Admiralty, and social standing did not protect Lord Albert Sydney Pelham Clinton from dismissal from the service in 1864 following charges of desertion.³⁴ Corruption, of course, existed, and many officers were likely acquitted on false pretences; in at least one case an officer dismissed the service was reinstated within a few months following his court martial.³⁵ However, as shown by the closer oversight and scrutiny in the case of Commander Nicolas and other notable examples, by the 1860s the Admiralty was more willing to ensure that many of these systemic infractions against the *Regulations* and Articles of War were put to an end.

²⁹ Arthur Herman, *To Rule the Waves* (New York: Harper Collins, 2004), 427.

³⁰ Woodman, 95.

³¹ ADM 194/180, Trial of John Wilcox, 15/10/1862.

³² Not one officer in any of the years transcribed received a sentence of death.

³³ ADM 194/180, Trial of Captain Edward Southwell Sotheby, C.B., his officers and crew, 8/2/1862.

³⁴ ADM 194/180, Trial of Lord Clinton, 10/11/1864.

³⁵ ADM 194/42, Trial of Commander Isham Fleming Chapman, 19/01/1826.

Alongside sailors and officers, the other major social category in the Royal Navy was that of marines. Providing both amphibious assault capabilities and security aboard naval vessels, the Royal Marines were viewed with scorn by many officers and sailors, and by the nineteenth century, their role in the navy was clear:

“What is the use of you lobsters?” said the bluejacket to the marine. “You don't know nothing, and you ain't no good.” “The use of us,” said the marine with solemn brevity, “is to keep you from mutinying.”³⁶

During the early nineteenth century, marines made up anywhere from 20-30% of the men voted for the navy each year, yet in some years were highly over-represented in the Courts Martial Returns. In 1836-37, for example, 9,000 marines were voted of a total of 33,700 seamen (27%), but marines account for 57% of those years' courts martial. In addition to marines' higher representation, they also generally received more severe punishments than seamen, one poor soul in 1826 receiving six hundred lashes for theft and striking a superior.³⁷ Many marines in the Courts Martial Returns were not attached to any particular ship, or at least not listed as being so, and the resulting lack of geographic information made including them in the wider analysis quite difficult. However, by the end of the 1860s this over-representation had been reduced, and the reforms of punishment for sailors were also legislated for the Royal Marines.³⁸

A key question with which scholars are faced, when using legal sources, is to ask why such sources were created in the first place. As argued by Simon Devereaux in his 1996 article on the Old Bailey Proceedings, the substance and detail provided by that publication changed dramatically over the eighteenth and nineteenth century, as it transitioned from a simple report of

³⁶ As quoted in Byrn, *Crime and Punishment*, 36. Also, see J.L. Moulton, *The Royal Marines* (London: Leo Cooper, 1972), 29.

³⁷ ADM 194/42, Trial of Thomas Foster, 04/01/1826. This was, by far, the most severe non-capital punishment listed in all the transcribed records. It was not clear from the Returns if he survived.

³⁸ ADM 194/181. 20 of the 171 trials in 1869 (12%) involved an officer or soldier of the Royal Marines.

the goings-on of London's central criminal court to a more substantial transcript of criminal trials of the nineteenth century.³⁹ The increasing popularity of the Proceedings also coincided with a shifting public morality, which saw the self-censorship of certain cases, particularly sodomy, rape and murder, becoming more prevalent as time went on.⁴⁰ Devereaux particularly emphasized the increasing length of the Proceedings during the late eighteenth century. However, such simple quantitative analysis does not alone suggest anything substantial regarding trends in crime and punishment. As noted at the time, an increase in the number and volume of legal records by no means proves "the increase in vice; it indicates also an increased population, and extended commerce, and improved police."⁴¹ Similar trends make themselves shown in the legal records of the nineteenth-century Royal Navy, but it is also important to avoid drawing too many comparisons between these sources. The Proceedings increased in length as the length and complexity of criminal trials grew over the nineteenth century, a trend that was finally quantified in the project *Datamining with Criminal Intent* in 2011.⁴²

No similar trend is particularly evident in the Courts Martial Returns, for a number of reasons. Perhaps most importantly, the returns were meant to be a quick-reference guide to the full records of the courts martial proceedings, so extremely brief summaries of charges and sentences are quite common – 20% of the two thousand charges in the 1860s were only five words long or less, with over 13% being only a single word. However, these varied dramatically based on the charge in question. Instances of drunkenness, desertion, theft, and other similar offences were almost always summarized in a single word, whereas trials for the loss of a ship,

³⁹ Simon Devereaux, "The City and the Sessions Paper," *The Journal of British Studies* 35 No. 4 (1996), 468. Also, see Robert Shoemaker, "The Old Bailey Proceedings and the Representation of Crime and Criminal Justice in Eighteenth-Century London," *The Journal of British Studies* 47 No. 3 (2008): 559-580.

⁴⁰ Devereaux, 491.

⁴¹ As quoted in Devereaux, 466.

⁴² Dan Cohen, Tim Hitchcock, *et al*, "Data Mining with Criminal Intent," Final White Paper, 2011.

assault, or charges against senior officers often went on for pages. With so many outliers, it becomes impossible to draw any sort of significant conclusion from the length of the returns, even if, on average, both charges and sentences increased in detail over the nineteenth century.

As many historians have emphasized, the increasing population of nineteenth-century Britain was one of the most important factors influencing the increasing size of the Old Bailey Proceedings. Whatever the length of individual trial accounts, the vast growth of total trials by the early nineteenth century inevitably produced a more extensive collection of Proceedings. In contrast to the steadily increasing civilian population, however, the size of the nineteenth-century navy varied dramatically. Determining the exact size of the navy at any given moment during the eighteenth or even the nineteenth century is extremely difficult, due to numerous discrepancies between the numbers of men voted, mustered and borne, let alone those who died through disease or combat, deserted, or were simply discharged. Interestingly, Christopher Lloyd acknowledged the role that computational analysis would play in such a study decades before digital research methods were widely used.⁴³ However, the numbers collated by several other naval historians allow for an approximation of the navy's growth and decline during the eighteenth and nineteenth centuries, and extrapolating these numbers can give a rough indication of many of the periods not as comprehensively catalogued.

⁴³ Lloyd, 121.

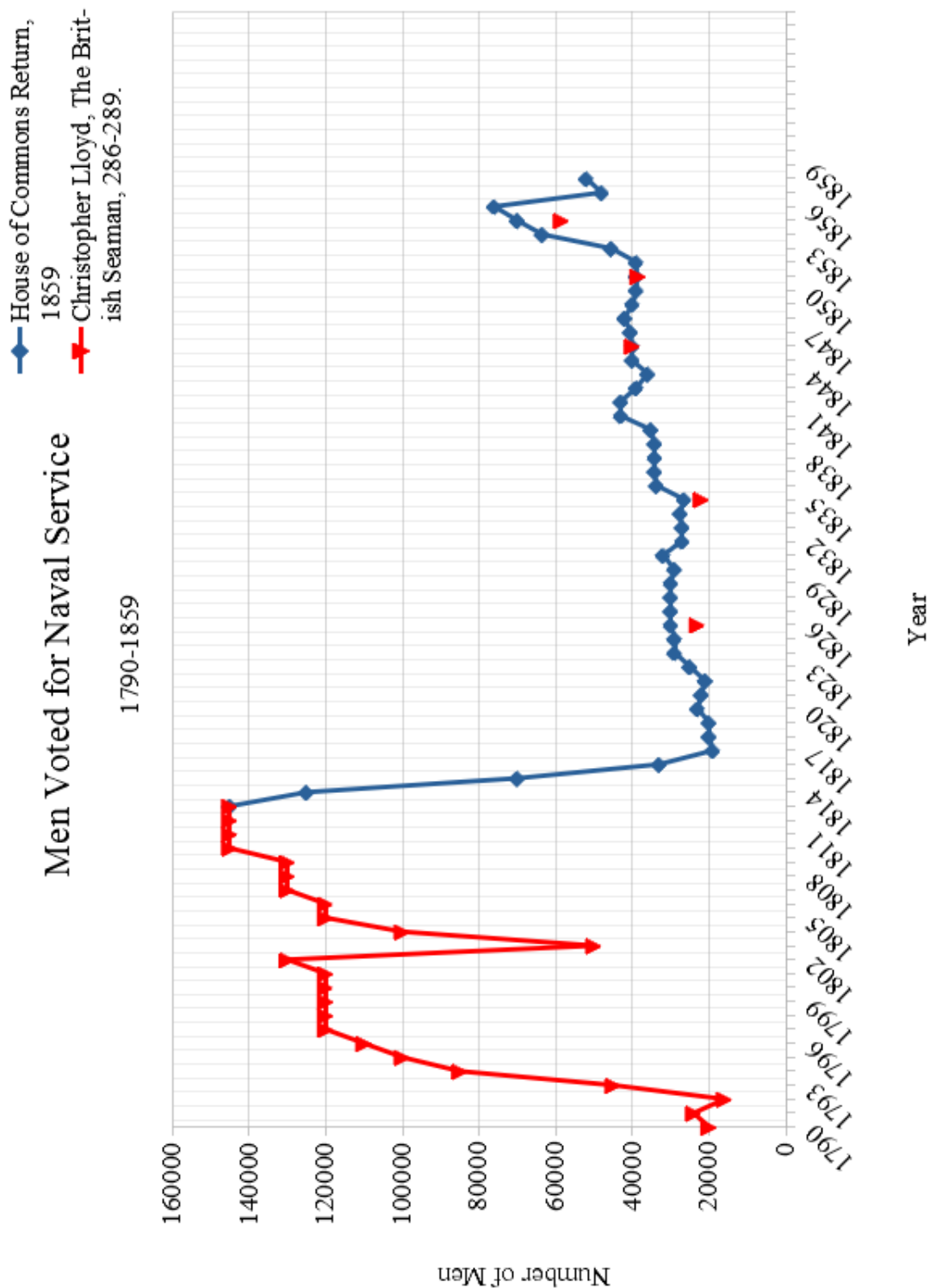


Figure 1: Data collated from 1859 Parliamentary Return, Men Voted for the Sea Service, and C. Lloyd, the British Seaman, 286-289. Note the sharp decline following peace in 1815, and the gradual re-expansion over the following decades.

During the nineteenth century, the Royal Navy experienced one of the most turbulent demographic periods of its history (Figure 1). The navy began the century as one of the largest military forces on the planet, only to shrink by nearly 90% within a decade of peace in 1815. Finally, following a period of reorganization in the 1820s and 30s, the navy began its gradual regrowth as the need for a professional standing fleet became evident during the *Pax Britannica* (1815-1914). This is quite a different trend to that of the overall population of the United Kingdom during the same years, which increased steadily from approximately 16 to nearly 29 million between 1800 and 1860.⁴⁴ Population increase is clearly shown in the increasing volume of the criminal court records of the period, and a similar correlation exists regarding the number of naval courts martial. Although not as immediately obvious a correlation as exists between the population of the United Kingdom and the increasing number of trial records, it is still possible to see through trial records the decline and re-expansion of the navy over the nineteenth century. Additionally, the introduction of the Naval Discipline Act 1860 had a clear effect on the annual number of courts martial, as the professionalization of the navy and the “formalization” of its courts led to a stark increase in the frequency of courts martial.

To quote Moretti again, sometimes it is necessary to take a step back and conduct a “distant read” of our sources. Although some amount of detail may be lost with such an analysis, these studies are useful in determining long-term trends and patterns which may in turn guide further research. As Beattie and others have shown, quantitative methods can suggest answers to many questions that may be asked of legal records, even though it is always necessary to properly contextualize such records. Much like the development of the criminal law, the Royal

⁴⁴ B.R. Mitchell and Phyllis Deane, *Abstracts of British Historical Statistics* (Cambridge UP, 1962). Data collated from ‘Estimated mid-year Population, 1801-1939,’ 8-9.

Navy's Articles of War evolved significantly from their original introduction under Charles II in 1661 until their repeal and replacement in the 1860s. When combined with a large-scale demographic overview, the reform of naval crime and punishment in the nineteenth century should come as no surprise. For the first time in nearly a hundred years, the relatively small bureaucracy of peacetime allowed the social and legal attitudes of civilian society to extend throughout the navy, ensuring that when it underwent its period of regrowth and reform during the *Pax Britannica* such legal customs would be carried with it around the world.

Chapter 3 – The Maintenance of Discipline: Crime, Punishment and Legal Reform

The naval traditions of the United Kingdom date back many centuries, but it was not until well into the eighteenth that Britain can truly be said to have ruled the waves. The navy's rise in prominence was accompanied by a corresponding surge in popular and historical interest, and it was quickly recognized that discussions of the social and legal history of the world's navies were essential for the more nuanced understanding that these scholars sought.¹ Due to such infamous instances of excessive discipline as the sadistic Captain Pigot of the *Hermione*, or the mass executions following the Nore mutiny of 1797, it is not terribly surprising that the navy achieved the reputation of having the draconian discipline claimed by Churchill, nor that such a reputation has lasted down to the present day.

When approaching the naval courts martial records of the early nineteenth century in their entirety, however, such a description of the legal system of the Royal Navy seems simplistic, if not outrightly wrong. The British navy was one of the nation's largest institutions, and even following its dramatic reduction during the years following 1815 its reach (like that of the Empire itself) was truly global. A broad approach to the topic reveals a fascinating pattern. Contrary to the popular view of naval discipline, that the Admiralty was dragged quite unwillingly into a period of legal and social reform, trends in charges and sentences of courts martial of the early nineteenth century actually predate official naval legislation by several decades in many cases. The average number of lashes handed down by courts martial decreased dramatically by the early decades of the nineteenth century; and the death penalty, which for

¹ For example, note the expansive scholarship surrounding the Great Mutinies of Spithead and the Nore.

centuries was the ultimate sentence in the sailing navy, was (on average) imposed less than once per year from 1816 to 1869 – far, far below the corresponding numbers in civilian courts.²

While some aspects of naval punishments pre-empted similar trends in criminal courts, not all aspects of the naval justice system followed this pattern. As shown by Rasor's study, individual captains were still fully capable of living up to the traditionally draconian standards of naval punishment, and many further examples certainly remain, lying undiscovered in some ship's punishment book, or simply unrecorded. Officers such as Captain Pigot of the *Hermione* or Commander Nicolas of the *Trident* existed, but courts martial records and official memoranda show that the Admiralty was making at least some effort to implement a more comprehensive system of direct oversight for its far-flung fleet, developing alongside a comparable system in civilian society. Taking inspiration from the same jurisprudence that influenced contemporary criminal courts, naval courts martial had little choice but to bend to the tides of reform which swept early nineteenth-century British society, and the Courts Martial Returns bear clear evidence of this.³

Naval Legislation

Trends in naval courts martial can most easily be studied, at least initially, through the legislation that influenced them. The various iterations of the Articles of War and the later Naval Discipline Acts took obvious inspiration from the same legal theories which influenced their counterparts in contemporary criminal courts, most clearly in the concept of legal deterrence which formed the basis of both naval and criminal law well into the nineteenth century.⁴ The initial foundation of discipline in the navy, however, was the twelfth-century Rolls of Oleron, the

² *The Digital Panopticon* Search Builder; consulted 23 January 2020.

³ Asa Briggs, *England in the Age of Improvement 1783-1867* (London: The Folio Society, 1999), 235-237.

⁴ Emsley, 263.

medieval traditions that influenced the development of early maritime law. These were written many centuries before formal standing navies developed in western Europe, and their audience was clearly intended to be mercantile rather than military. Still, their early influence on the Royal Navy's Articles of War was quite significant, through the clear outlining of such offences as desertion, loss of ship, as well as the general responsibilities held by both master and mariner.⁵ Unfortunately, very few examples of early courts martial records exist, limiting the ability of historians to study the early effects of formal naval law.

The Courts Martial Returns used in this study were not recorded consistently until 1755, some time after the 1749 Articles replaced those of Charles II in 1661. The obsession with the death penalty can clearly be seen in these early articles, although the 1661 Articles of War provided at least some protection against abuse. Perhaps the most famous example of such abuse was the trial and execution of Thomas Doughty by Francis Drake during his circumnavigation of the globe in 1578. In a sham of a trial, Doughty was sentenced to death on charges of treason and witchcraft in what was clearly a highly politicized clash of personalities between Doughty and Drake.⁶ Nearly a century later, the 1661 Articles of War limited the powers of any single officer to issue a death sentence, Article 34 stating that

no Court martial where the pains of death shall be inflicted shall consist of less than Five Captains; at least the Admiral's Lieutenant to be as to this purpose esteemed as a Captain and in no case wherein [the] sentence of death shall pass by virtue of the Articles aforesaid or any of them (except in case of mutiny) there shall be execution of such Sentence of Death without the leave of the Lord High Admiral if the offence be committed within the Narrow Seas. But in case any of the Offences aforesaid be committed in any Voyage beyond the Narrow Seas whereupon Sentence of Death shall be given in pursuance of the aforesaid Articles or of any of them then Execution shall not be done but by Order of the

⁵ A.B. Wood, "The Laws of Oleron," *The Mariner's Mirror* 4 No. 6, 1914: 195-199.

⁶ Woodman, 29.

Commander in Chief of that Fleet or Squadron wherein [the] Sentence of Death was passed.⁷

This effectively ended the sole power that commanders traditionally held over those whom they commanded and was seen as a major step in legal reform in the navy.

The Articles of Charles II stood as the cornerstone of the naval justice system for nearly a century, until they were replaced by the government of George II in 1749. These latter Articles contained relatively few changes from their 1661 predecessors, still authorizing the death penalty for the vast majority of offences. However, by the mid-eighteenth century, the concepts of “discretionary justice” that permeated the “Bloody Code” were also manifest within the navy. Many of the offences, which were punishable by death in 1661, were now punished “upon Pain of Death, or such other Punishment as a Court Martial shall think fit to impose, and as the Circumstances of the Case shall require.”⁸ This was not always the case.

Among the most famous and widely cited exceptions to the use of legal discretion was the execution of Admiral John Byng in 1757 for “failing to do his utmost” to protect Minorca from French invasion during the Seven Years’ War. Article 12 of the 1749 Articles clearly stated that

Every Person in the Fleet, who through Cowardice, Negligence or Disaffection, ... shall not do his utmost to take or destroy every Ship which it shall be his Duty to engage, and to assist and relieve all and every of His Majesty's Ships or those of his Allies, ... and being convicted thereof by the sentence of a Court Martial, shall suffer Death.⁹

Unlike most other sections of the Act, Article 12 omitted any provision for clemency; even so, the officers who comprised Byng’s court martial unanimously recommended him to the King’s

⁷ 13 Cha. II c. 9, Article 34. Spelling modernized by author.

⁸ 22 Geo. II c. 33, Article 27. The wording here is mirrored in many other articles.

⁹ 22 Geo. II c. 33, Article 12.

Mercy. It is still disputed whether Byng was actually guilty of these charges, but it is after the sentencing that the trial becomes truly noteworthy.¹⁰ There were numerous political aspects to the king's refusal, including his personal rivalry with the ministry of Pitt the Elder and Parliament, as well as the Admiralty's desire for Byng as a scapegoat for their own strategic and logistical failings. N.A.M. Rodger noted that Byng's execution had a long-lasting effect in the offensive mindset of British Flag officers, perhaps even justifying Voltaire's famous quip: "in this country, it is good to kill an admiral from time to time to encourage the others."¹¹ From a legal standpoint, Byng's execution was described on his grave as a "disgrace to public justice." And indeed, Byng's death was the exception rather than the rule of naval justice under the 1749 Articles of War.

Unlike the Articles of Charles II, which stood for nearly a century without any major amendments, the 1749 Articles of George II were significantly altered several times prior to their total repeal in 1860. The 1779 Naval Courts Martial Act was notable for its direct response to the execution of Admiral Byng thirty years earlier, as it explicitly added an element of discretion in the sentencing of courts martial for those found guilty of violating the twelfth Article of War, freeing naval courts from solely relying upon Royal Mercy in cases of cowardice before the enemy. Additionally, the 1779 Act included a provision to prevent procedural delays for courts martial, allowing replacements to be called should members of the court be called away during the proceedings.¹² The 1797 Naval Courts Martial Act, more formally entitled "An Act to enable His Majesty more easily and effectually to grant conditional Pardons to Persons under Sentence by naval Courts Martial, and to regulate Imprisonment under such Sentences," was passed in the

¹⁰ Daniel A. Baugh, "Byng, John (bap. 1704, d. 1757), naval officer." Oxford Dictionary of National Biography. 23 Sep. 2004; Accessed 23 Jan. 2020.

¹¹ Rodger, *Command of the Ocean*, 272.

¹² 19 Geo. III c. 17, sections 2 and 3.

immediate aftermath of the “Great Mutinies” of Spithead and the Nore mere months earlier.¹³

This Act further increased the discretionary elements of the naval justice system, making it easier for those condemned to death to receive conditional pardons.

The last of those minor Acts that amended and expanded the powers of the 1749 Articles of War was the 1816 Naval Courts Martial Act. This largely concerned the role that gaols and imprisonment played in the early nineteenth-century naval justice system, specifically regarding methods by which convicted seamen could be removed from such gaols by government authority, on such grounds as pardon or insanity.¹⁴ Coming into effect shortly after the final peace with Napoleonic France, the Naval Courts Martial Act mirrored the increasing popularity of imprisonment and other forms of incarceration within civilian courts, emphasizing that their use was also migrating to the navy, in turn highlighting the reforms which these systems underwent simultaneously.¹⁵

While these minor acts were responsible for significant changes in the procedure of naval courts martial and resulting sentences, it was not until the 1860 Naval Discipline Act that the Articles of War themselves were more substantially overhauled. The most significant change included in the 1860 Act was the explicit inclusion of leeway in sentencing for naval courts. Only in the cases of traitorous conduct and murder did the Act not provide alternative sentences to be used by discretion of the court, although several other offences allowed death as a possible ruling.¹⁶ Additionally, the 1860 Act was the first piece of naval legislation that acknowledged the concept of degrees of offences, emphasizing lesser punishment for cases of manslaughter rather

¹³ 37 Geo. III c. 140, preamble.

¹⁴ 56 Geo. III c. 5, sections 2 and 4, respectively.

¹⁵ See, for example, Bentley, *English Criminal Justice in the Nineteenth Century*, xi-xv.

¹⁶ 23 & 24 Vic. c. 123, Part 1.

than murder, or absence without leave rather than desertion.¹⁷ This was combined with a hierarchy of punishment listed in Articles 45 and 46, specifically defining which punishments were available under what circumstances to be used in the navy, echoing a similar trend in the criminal law of the time.¹⁸ For example, the sentence of death was prohibited unless passed by the court with a four-fifths majority.¹⁹ Other regulations were put in place to lessen the frequency of the death sentence, such as that which required the confirmation of the sentence by a station's commander-in-chief or the Admiralty itself, where possible, with clear procedure for those sentenced to receive Royal Pardon.

In addition to the death sentence, the 1860 Act imposed tight restrictions on sentences of corporal punishment, limiting such sentences to no more than forty-eight lashes under *any* circumstances.²⁰ For decades beforehand, the *Queen's Regulations and Admiralty Instructions* had, at least theoretically, limited the number of lashes a captain could issue summarily to twelve. In practice, however, innumerable instances of higher numbers occurred, with some sentences reaching several hundred lashes: a death sentence in all but name. Such a limitation, combined with the abolition earlier in the century of several related offences such as starting, flogging round the fleet and running the gauntlet, emphasized the degree to which the Admiralty wished to limit such punishments, even if only to appease public and parliamentary pressures.²¹

Unlike the 1661 or 1749 Articles of War, the Naval Discipline Act 1860 did not go unamended for decades. In fact, no less than five more Naval Discipline Acts were passed from

¹⁷ 23 & 24 Vic. c. 123, Articles 19-22, 38.

¹⁸ Peter King, *Crime and Law in England 1750-1840* (Cambridge UP, 2006), 9.

¹⁹ 23 & 24 Vic. c. 123, Article 46 Section 2. Or a two-thirds majority in cases where more than five officers made up the court.

²⁰ 23 & 24 Vic. c. 123, Article 46 Section 7.

²¹ "Parliamentary Intelligence," *The Times*, 24 August 1860, 6.

1860 to 1866, with further amendments in 1884 and into the twentieth century. The sheer frequency of these Acts suggests the importance of legal reform in the navy in the minds of Parliament and the Admiralty.²² The 1861 Act was almost entirely identical to that of 1860: over 94% of the language was exactly the same.²³ The few differences further defined discretionary freedoms in sentencing under the 1861 Act, freedoms that were not always explicit in the 1860 measure. The Naval Discipline Act 1864 contained even fewer changes than its predecessor, but its alterations also focused on emphasizing the various punishments available to naval courts. This was especially the case with the addition of new Articles 39 and 40, which expanded on sentencing regulations for officers guilty of breaking Prize Law.²⁴ The year 1865 saw the passing of the Naval Discipline Act Amendment Act, by far the shortest of any of these measures. Its sole provision increased the minimum term of penal servitude sentenced by court martial from three to five years.²⁵

The final statute relating to naval discipline passed during the 1860s was the Naval Discipline Act 1866 which, unsurprisingly, was extremely similar in wording and intent to all others. Like many of its former iterations, the changes of 1866 largely centred around more explicit definition of sentences for various offences. Unlike the previous Acts, however, it also provided several new Articles. The majority of these additions related to instances of desertion and absence without leave, specifically emphasizing the difference between these two offences and the consequences which those found guilty would suffer. The Act also included a major alteration in the court martial process itself, providing an opportunity for the accused to raise any objection to the court's constitution they wished, with the final decision resting on the court

²² Rasor, 117.

²³ As noted through the use of anti-plagiarism software, <https://copyleaks.com/>

²⁴ 27 & 28 Vic. c. 119, Articles 39 and 40.

²⁵ 28 & 29 Vic. c. 115, Article 1.

itself.²⁶ In all, the flurry of legislation following the original Naval Discipline Act brought forth only minor changes to the statute law of the navy, and the lack of debate surrounding the amending Acts of 1864-6 emphasized the ease by which they were accepted by the Admiralty and Parliament.²⁷

The legislation that shaped naval law and the courts martial process during the nineteenth century had a very long pedigree. From the Law of Oleron through to the various iterations of the Articles of War, to the Naval Discipline Acts of the 1860s, the law of the Royal Navy built upon legal traditions stretching back centuries, evolving constantly and symbiotically with the criminal law which developed alongside it. Even in the earliest versions of the Articles of War, provisions were made for pardon or discretion on behalf of the courts; and despite exceptions, such as the infamous trial of Admiral Byng, these provisions only became more explicit and expansive as time passed. However, to claim that legislation gives an accurate representation of patterns of crime, punishment, and legal reform is naïve at best, necessitating a deeper look into the Courts Martial Returns of the Royal Navy to determine to what effect, if any, the aforementioned legislation actually had.

Trends in Courts Martial

Churchill's summation of the "traditions of the navy" was equally evocative and cynical, but the very fact that such an understanding of naval society was common knowledge suggests that it had at least some basis in fact. For those well-versed in popular perceptions of the Royal Navy, perhaps "the noose" might be added to Churchill's list. But how did the reality of corporal and capital punishment measure up to the popular image of it? How often did naval courts live

²⁶ 29 & 30 Vic. c. 109, Article 62.

²⁷ Rasor, 117.

up to the reputation of flogging a man round the fleet or hanging him from a yardarm? Most importantly, perhaps, did the changing legislation of the *Pax Britannica* have any appreciable effect on long-term patterns of corporal and capital punishment in the nineteenth-century Royal Navy?

In the case of the death penalty, such questions are relatively easy to answer. With its principally deterrent goal, hanging was an inherently public affair in both civil and naval society, so any reports of those put to death are generally well documented. In the navy, the death penalty was the most severe possible punishment, reserved for the most serious of offences. However, despite the infamous history of being “hanged from a yardarm,” the death sentence had been closely regulated since the earliest days of the formal navy. The earliest official iteration of the Articles of War prohibited officers of any rank from summarily awarding the death sentence, although execution was not removed from the statute books. Twenty of the thirty-two Articles of War for 1661 listed the death sentence as a possible outcome, with many listing it as the only sentence. Little changed when these Articles were replaced in 1749, which specified almost as many offences pronouncing the death penalty to be the sole acceptable punishment. Still, just because an Article specified the death penalty did not mean that naval courts routinely followed through.

Many scholars of English criminal law have noted that the death penalty was routinely implemented only in such cases where courts particularly wished to make a deterrent example.²⁸ For much of its history, manpower was the Royal Navy’s most valuable resource and many of its administrative and disciplinary efforts – including the death penalty – were focused on

²⁸ Emsley, 267.

maintaining it. The need for skilled sailors was all the more acute in times of war, which prevailed during much of the eighteenth century. Volunteers were almost always in short supply, and many of the methods used to acquire the necessary sailors did not deliver them in sufficient numbers. Impressment, the most successful and infamous of the methods of forced recruiting, was generally successful in achieving the quantity of men needed to man the thousand-ship fleet of the Napoleonic-era navy, but these “recruits” rarely afforded the quality sorely needed by ships’ commanders. This was especially true when the impressed sailors were delivered not by naval press gangs, but by local magistrates eager to rid their towns of criminals and vagabonds.²⁹ It was for this reason that the majority of the offences against naval manpower listed under the Articles of War threatened death to those who violated them.

For the sake of discussion, there are effectively two categories of these “offences against manpower.” First were crimes that directly struck against naval manpower, such as murder and desertion. Although the intention behind such offences was not necessarily to directly attack the navy itself, their success might have that effect. Additionally, the Articles of War recognized the culpability of those who encouraged and abetted such offences.³⁰ The second category included those offences that, despite not directly attacking the manpower of the navy in the manner of murder or desertion, still affected its fighting capacity in a similar manner. These included charges of cowardice and “failing to do [one’s] utmost,” but also more infamous crimes such as mutiny, which exists in a grey zone between the two categories.

In short, the first category includes actions that remained capital offences from the earliest days of formal naval law through the Naval Discipline Acts, whereas those in the second

²⁹ Rogers, *The Press Gangs*, 4-5. Denver Brunzman, *The Evil Necessity: British Naval Impressment in the Eighteenth-Century Atlantic World* (Charlottesville: University of Virginia Press, 2013), 22.

³⁰ 22 Geo. II c. 33, Article 16.

may well have originated as capital sentences but were reduced in severity during the two centuries separating the reigns of Charles II and Victoria. It should be noted that this reduction in severity did not always refer to an explicit change in the wording of the Article in question, but rather the *de facto* response of naval courts to the offence and how often pardons were issued for it. Additionally, in such periods where manpower was in short supply, it was hardly in the navy's best interest to execute all those who violated capital statutes, to say nothing of the moral or ethical aspects of such a decision.

Another method of categorizing naval courts martial is that proposed by John Byrn, who argues that the trials can loosely be grouped into two major categories: social crimes and naval offences.³¹ The former are crimes, as defined under the British criminal law, which the Admiralty was also empowered to punish, including murder, sodomy, and theft, for example. The latter category included offences to “the prejudice of good order and Naval Discipline,” such as cowardice, desertion, or mutiny. Byrn argued that the category to which the trial belonged influenced its very structure, as trials for social crimes were much more likely to use civilian legal precedent in their sentencing than were trials for naval offences.³² Although he treats an era significantly earlier than the one studied here, Byrn's analysis of courts martial during the Revolutionary and Napoleonic Wars provides a convenient method of categorization that still holds true fifty years later.

For these reasons, determining patterns of execution in the Royal Navy is not so easy as simply studying statute law. The Spithead mutiny of 1797, which saw the entire Channel Squadron rise up “to the prejudice of order and Naval Discipline,” did not result in a single

³¹ John Byrn, *Naval Courts Martial 1793-1815* (Aldershot: Ashgate, 2009), xvii.

³² Byrn, *Naval Courts Martial*, xxiv-xxv.

execution: a general pardon was issued by the King. Even the following mutiny at the Nore, after which over sixty sailors were sentenced to death under Article 19 of the 1749 Act, resulted in fewer than thirty executions over the weeks to follow – certainly a very large group for the day, but significantly fewer than may have been executed.³³ The remainder received various sentences, ranging from hundreds of lashes to transportation, but still significantly less severe than the death sentence that the Articles of War prescribed. On the other hand, Admiral Byng's death sentence was exactly in line with the Articles, but his lack of a pardon surprised many contemporaries both within and outside of the navy. Clearly, the Articles of War were at least as flexible as the criminal law.

In his *Reveries of the Art of War* (1759), Maurice de Saxe spent a significant portion of his first volume discussing crime and punishment in the eighteenth-century French Army. Although numerous aspects are incompatible for purposes of discussion, given the plethora of differences between English and French legal systems, de Saxe emphasized a matter of such stark practicality that it bears mentioning even in the foreign context. Emphasizing one particular article of French military law, de Saxe noted the methods by which execution may be avoided

We have, for example, one very pernicious custom; which is, that of punishing marauders with certain death, so that a man is frequently hanged for a single offence; in consequence of which they are rarely discovered; because every one is unwilling to occasion the death of a poor wretch, for only having been seeking perhaps to gratify his hunger.³⁴

De Saxe argued that such regulations were often avoided, not necessarily due to any great level of sympathy from commanders, but from the very real desire not to hang valuable soldiers.

Arthur Gilbert argues that the highly skilled, professional nature of the trained seaman made this

³³ James Dugan, *The Great Mutiny* (London: The Trinity Press, 1966), 359.

³⁴ Maurice de Saxe, *Reveries or Memoirs Concerning the Art of War* (Edinburgh: Sands *et al*, 1759), 109.

desire particularly strong in the navy, which is clearly borne out in the death sentences of nineteenth-century naval courts martial.³⁵ As shown in Figure 2, of the twenty-two death sentences passed during the years 1816-1869, over half were pardoned.

Perhaps even more notably, aside from one instance of murder in 1837 (not pardoned), all of the death sentences were pronounced for either sodomy or assault on a superior officer, both of which were much more likely to be pardoned as the century progressed. The final execution in the years studied, that of Royal Marine Private John Dalliger of the *Leven* in July 1860, involved the theft of a bottle of brandy, as well as shooting and wounding his Commander and Acting Second Master in his escape attempt.³⁶

When perusing the Courts Martial Returns, it is somewhat surprising to note that the presence or absence of war was a fairly minor factor in influencing the frequency of death sentences. Many of the navy's listed capital offences were specific to wartime, such as cowardice in the face of the enemy, but those charges which actually saw men hanged in the nineteenth century were not. The trial records of the *Pax Britannica*, therefore, show little correlation between active war and executions, even long before the legislation changed in the 1860s.

³⁵ See Figure 2. Note the extremely low number of death sentences (confirmed or pardoned) compared to the total courts martial in Figure 3, pg. 63.

³⁶ ADM 194/180, Trial of John Dalliger, 12/7/1860.

Royal Navy Death Sentences in Selected Years

1816/17, 1826/27, 1836/37, 1846/47, 1856/57, 1860-69

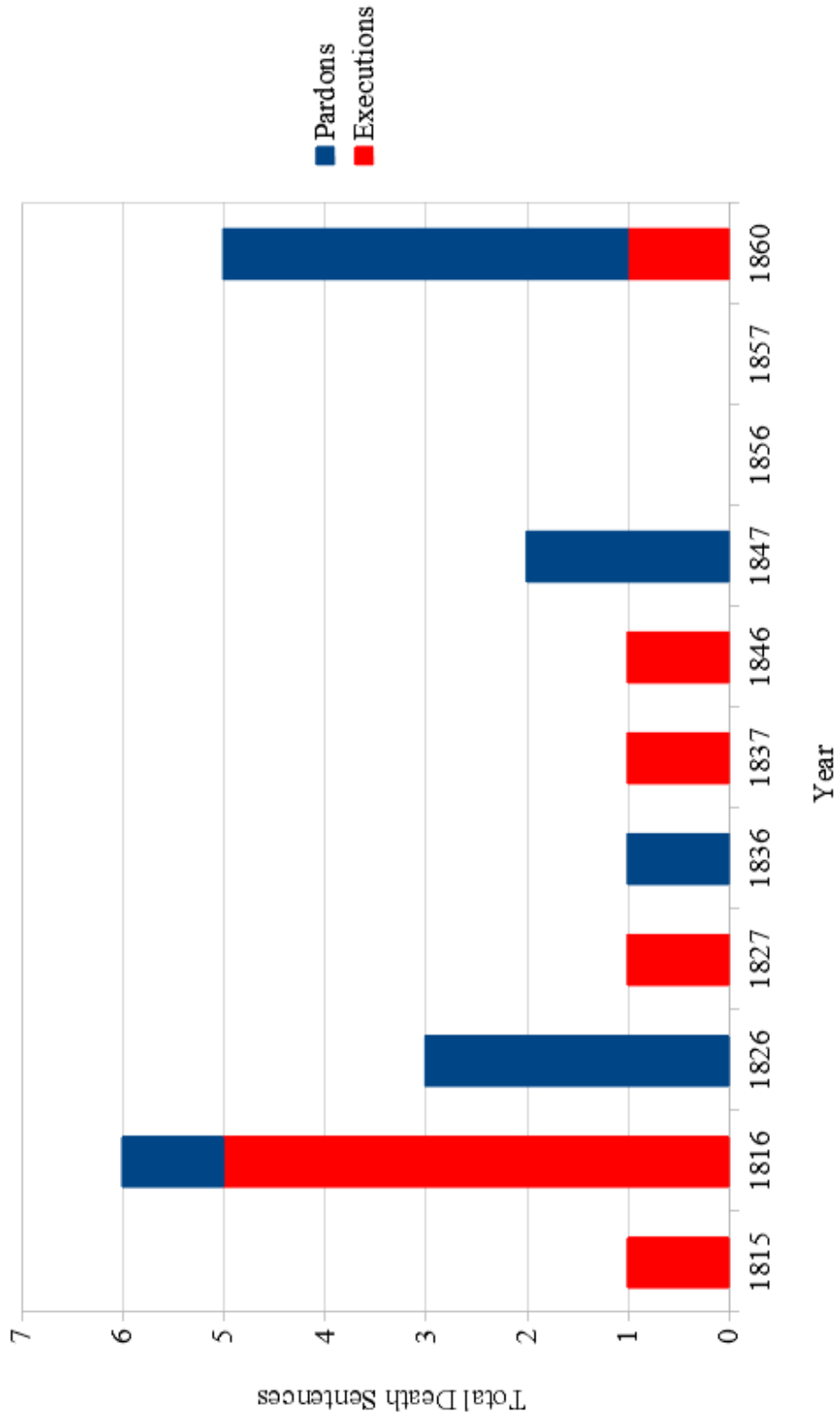


Figure 2: Data collated from ADM 194/42, 194/180, and 194/181. Includes trials where the sentence was “to suffer death.”

In the years studied, only 1816 saw a significantly higher number of death sentences than the general average of two per year. As will be shown in the following chapter, the executions aboard HMS *Africane* in late 1815 and early 1816 were quite anomalous, and clearly display the acute disdain society at the time felt for sodomites. Comparatively, the single sodomy trial held at London's Old Bailey in 1816/1817 also saw the accused executed.³⁷

Despite these instances, by far the most notable observation regarding capital convictions in the nineteenth-century Royal Navy was the complete absence of such sentences following the passing of the 1860 Naval Discipline Act. The number of annually reported courts martial exploded in 1860 compared with previous years, despite a proportionally minor increase in the actual population of the fleet. However, aside from the five death sentences passed in 1860, only one of which was carried out, not one of the nearly two thousand Courts Martial Returns of the remainder of the decade involved the death penalty in any capacity, despite numerous offences that still carried that sentence. As previously discussed, the Naval Discipline Act 1860 completely overhauled the punishments and sentences laid out in previous iterations of the Articles of War, providing a formal hierarchy of punishment and offering significantly more flexibility in sentencing to naval courts.³⁸ And it is quite clear that the Admiralty and naval courts made full use of this leeway, not only during the 1860s but long before as well.

Even more so than execution, corporal punishment has long been a hallmark of the abuses of the naval justice system. To this day, flogging with the feared cat 'o nine tails remains the most infamous of the navy's punishments because, unlike the death penalty, it was well within a commanding officer's rights to issue some manner of corporal punishment without trial.

³⁷ *The Digital Panopticon* Robert Yandell b. 1772, Life Archive ID obpt18160918-10-defend184 (<https://www.digitalpanopticon.org/life?id=obpt18160918-10-defend184>). Version 1.2, consulted 8th January 2020.

³⁸ 23 & 24 Vic. c. 123, Part 3, Article 45.

Additionally, it was well known that, despite the limitations of a captain's power in such matters by the *King's Regulations and Admiralty Instructions*, officers frequently assigned more than the maximum twelve lashes. Both Rasor and Byrn emphasized that these violations often saw floggings of several dozen lashes or more, a truly horrific punishment even by the standards of the nineteenth century.³⁹

Although the receipt of "a dozen on the rack" was the most common form of flogging, corporal punishment took several forms in the Royal Navy of the eighteenth and nineteenth centuries. One of the most infamous, "flogging round the fleet," was a death sentence in all but name and was employed only by particularly strict disciplinarians for the most serious offences. Usually the punishment for an offence convicted by court martial, as a single captain did not have the authority or ability to issue it, a sailor flogged round the fleet received a set number of lashes (usually twelve, possibly more) from every ship in the squadron.⁴⁰ Depending on the number of ships, this could easily involve several hundred lashes, when far fewer were often fatal. Fortunately, such a punishment was only used for a short period of the navy's history and was never issued by any of the courts martial this study analyzed.⁴¹

Corporal punishment in the Royal Navy took on another particularly grisly aspect in the form of "running the gauntlet," sometimes referred to as "gauntlope." Such a punishment, usually reserved for theft or some other crime which affected the ship's company as a whole, allowed the crew to beat the prisoner with pieces of belt or rope while the victim was escorted around the deck by an officer and marine.⁴² It is questionable whether such a punishment was

³⁹ Byrn, *Crime and Punishment*, 64-65.

⁴⁰ Peter Kemp, *The Oxford Companion to Ships and the Sea* (Oxford UP, 1988), 317.

⁴¹ Byrn, *Crime and Punishment*, 70.

⁴² Byrn, *Crime and Punishment*, 338.

ever explicitly sanctioned by the Admiralty, and it was formally banned in 1806. As with flogging round the fleet, it never appeared in the analyzed records. Much like the death sentence, flogging round the fleet and running the gauntlet were every bit intended as a deterrent for the witnesses as they were a punishment for the prisoner, as the crews of the ships involved would either witness or perhaps even take part in these extreme forms of corporal punishment.

A much more common form of corporal punishment in the Royal Navy was the practice of “starting.” Unlike a true flogging, starting was the practice whereby senior petty officers would use lengths of rope or other blunt objects to drive men to work harder or faster. Issued at the discretion of the petty officers, starting did not require the oversight of a senior officer or formal court to implement, and is therefore extremely difficult to study with any sort of consistency. That being said, numerous social historians of the Royal Navy, both contemporary and modern, as well as many first-hand accounts, emphasize how widespread the practice of starting was, and the extremely negative public response it generated was a large factor in its banning by the Admiralty in 1809. However, as Peter Kemp has noted, the practice continued for quite some time even after this order, and given its unregulated nature, it is extremely difficult to determine exactly how widespread illegal starting actually was.⁴³

Flogging round the fleet, running the gauntlet, and starting were only officially sanctioned for a short period, but traditional flogging was formally employed by the Royal Navy for a much longer time. The *King’s Regulations* and the 1860 Naval Discipline Act, at least in theory, greatly limited the number of lashes that officers and courts martial could assign, and numerous governmental reports during the nineteenth century kept Parliament and the Admiralty

⁴³ Peter Kemp, *The Oxford Companion to Ships and the Sea*, 830.

well informed as to the number of lashes handed out annually.⁴⁴ Unlike capital punishment, which rested solely in the hands of naval courts, corporal punishment and flogging were tools of discipline used by commanding officers at their discretion until their eventual prohibition in 1879. Therefore, the story that is told in the Courts Martial Returns is only part of a much larger narrative, and likely a small part at that. Rasor noted, in his study of legal reform that, although the numbers of sailors annually flogged fell quite dramatically during the mid-1800s, the average lashes awarded grew steadily from approximately two to three dozen between 1830-65.⁴⁵

Of course, the use of Courts Martial Returns to analyze corporal punishment can only reveal so much. Quarterly returns and stricter oversight by the Admiralty, at least in theory, helped to enforce the regulations surrounding flogging. As shown by the aforementioned trial of Commander Nicolas of the *Trident*, however, particularly tyrannical or sadistic captains chose to ignore these regulations well into the 1860s. Even those officers who chose to obey the new regulations regarding crime and punishment were left feeling as if their hands were tied, barred from their traditional methods of quelling disorder and restoring discipline by an Admiralty too eager to cave in to public demands.⁴⁶ The ultimate end to corporal punishment in the navy in 1879, not long after the passing of the Naval Discipline Acts, shows that public and parliamentary concern was not alleviated by the extreme tightening of regulations surrounding the lash.

The eventual decline of corporal punishment in the Courts Martial Returns was every bit as complex as the flogging used for shipboard discipline. Clearly naval courts were willing to sentence prisoners to even several hundred lashes rather than death, and such sentences

⁴⁴ A RETURN “of the Number of PERSONS FLOGGED in the NAVY in the Year 1859,” C.H. Pennell, Admiralty.

⁴⁵ Rasor, 128.

⁴⁶ Rasor, 45.

continued well into the nineteenth century. The years analyzed throughout the first decades of the century show frequent sentences of over one hundred lashes. One particular case, the court martial of Marine Private Thomas Foster “for having struck one Ensign Butler of the 39th Regiment, who had prevented him from committing a robbery on a sailor,” imposed six hundred lashes.⁴⁷ Unsurprisingly, the most severe sentences were as punishment for equally serious crimes, such as mutiny and striking superior officers. As has been noted in comparisons between army and navy punishment, however, soldiers were often punished much more severely than sailors, and marines were often more likely to receive harsher floggings than seamen or petty officers. Even after the Naval Discipline Act prohibited sentences of over four dozen lashes, over 20% of the nearly two-thousand courts martial of the 1860s prescribed some magnitude of corporal punishment, nearly always the full four dozen lashes. Even after imprisonment became a more widely accepted punishment, gaol terms nearly always incorporated some manner of corporal punishment alongside. Still, by the end of the decade the number of corporal sentences handed down by courts martial had fallen dramatically: only twenty in 1868 and 1869 combined (Figure 3).

Why was this the case? For an organization that had depended on the lash for centuries to uphold order and discipline, why was the Royal Navy of the 1860s now so willing to strictly regulate its use, then fully to give up corporal punishment less than twenty years later in 1879?⁴⁸ The answer, as noted earlier, was public and parliamentary pressure.

⁴⁷ ADM 194/42, Trial of Thomas Foster, Marine, 4 January 1826.

⁴⁸ Note that flogging was technically never abolished, only ‘suspended.’

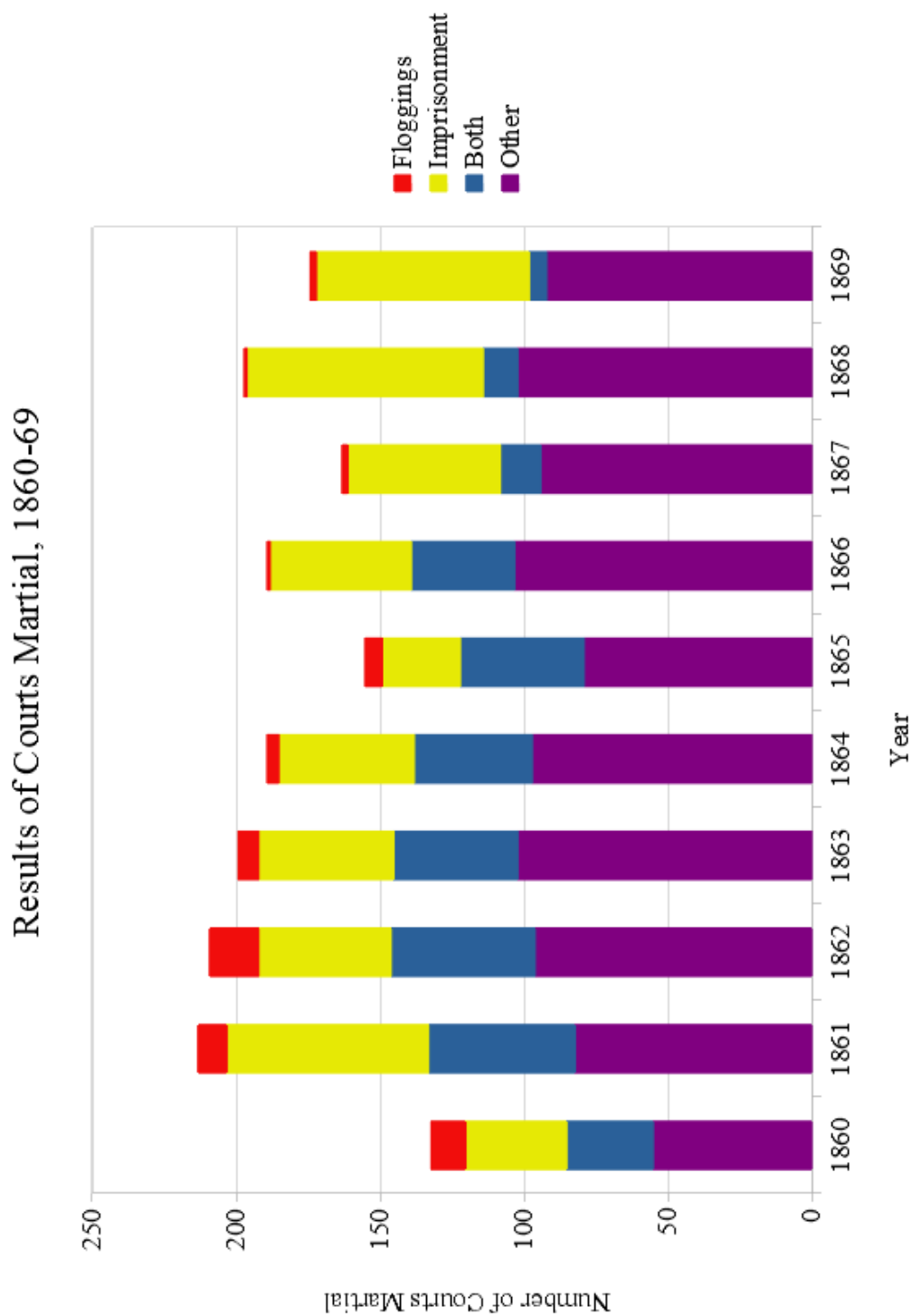


Figure 3: Data collated from ADM 194/180 and 194/181. Note the sharp decrease in floggings during the last years of the decade, especially compared to the proportionately consistent sentences of imprisonment. “Other” includes reductions in rank/seniority, monetary punishments, acquittals, and other less common outcomes.

In a parliamentary debate shortly before the passing of the first Naval Discipline Act, the first major topic of contention with the bill arose from discussion surrounding the question of flogging, with a stated desire that Parliament “should like to have some assurance that corporal punishment would be limited to a certain number of stripes, as it was in the army.”⁴⁹ Even at this early date the MP for Sheffield argued:

that severe corporal punishments did not promote discipline, and that public opinion was much against such punishments. In the prisons in Yorkshire the “cat” had been abolished, and with advantage. ... [The MP] disapproved of flogging entirely, both in schools and in the military services, and he contended that as the discipline of neither service had been relaxed by the relaxation of corporal punishment, it might safely be dispensed with altogether.⁵⁰

Additional debate surrounded what a “lash” actually entailed:

but from the mode in which the lashes were laid on, [naval flogging] was much more severe than in the army. It was usual to strike with greater force, and take time between the lashes. He had been told that 50 lashes in the navy were equal to 200 in the army.⁵¹

This was confirmed by Admiral Sir Charles Napier, an extremely reform-minded officer, and the limit of four dozen lashes was eventually agreed upon.

Through these debates, it becomes somewhat more clear how the general opinion regarding corporal punishment changed during the mid-nineteenth century. The beginning of the century saw sentences that would often prove fatal due to their severity and a social environment that normalized corporal punishment through the practice of starting and public flogging. The publishing of quarterly Punishment and Courts Martial Returns by mid-century assisted in improving the power of Parliament and the Admiralty in overseeing the actions of the far-flung navy. Despite somewhat frequent violations of these limiting regulations, as shown by the work

⁴⁹ House of Commons Debate (21 August 1860). Vol. 160, Col. 1664.

⁵⁰ House of Commons Debate (21 August 1860). Vol. 160, Col. 1665.

⁵¹ House of Commons Debate (21 August 1860). Vol. 160, Col. 1664.

of other historians and the occasional trial for their violation, it is clear from the courts martial records that, as with the trends surrounding the death sentence during the same period, the general reduction in flogging in the nineteenth-century navy actually pre-dated these reforms by a significant margin.

Chapter 4 – “Our Far-Flung Battle Line:” The Royal Navy Around the World

The nineteenth-century Courts Martial Returns of the Royal Navy can provide significant insights into the functioning of naval courts on the global scale. However, it is also necessary to counter this macroscopic look into trends in naval discipline with a more focused study. Such a study must inevitably begin with the Royal Dockyards, the core of the navy’s global support network. Portsmouth, Devonport, Halifax, Bermuda and Malta are among the most important ports mentioned in the coming pages, but Chatham, Sheerness, Gibraltar and many others were also part of the vast logistical network that ensured that the Royal Navy was master of the world’s oceans in the nineteenth century. As the British Empire expanded and its navy was needed further from home, this global network expanded alongside; new dockyards opened at Esquimalt, Singapore, Simonstown (South Africa), and Trincomalee (Sri Lanka). Although the vast majority of these dockyards were eventually closed, transferred to civilian ownership, or surrendered to former colonies, the shore architecture of the Royal Navy has remained as a lasting reminder of its once-global reach and its immense logistical, industrial and military power.¹

Due to the importance these locations still hold for tourism and historical value, it proves much easier to define a dockyard than a naval “station,” a much more abstract concept. Often used synonymously with dockyard, base, or fleet, a naval station refers to a specific geographic location that was the responsibility of a particular fleet or squadron.²

¹ Jonathan Coad, *The Royal Dockyards 1690-1850* (Aldershot: Scholar Press, 1989), xxv-xxvi.

² Coad, 309-311.

Courts Martial by Station, 1860-69

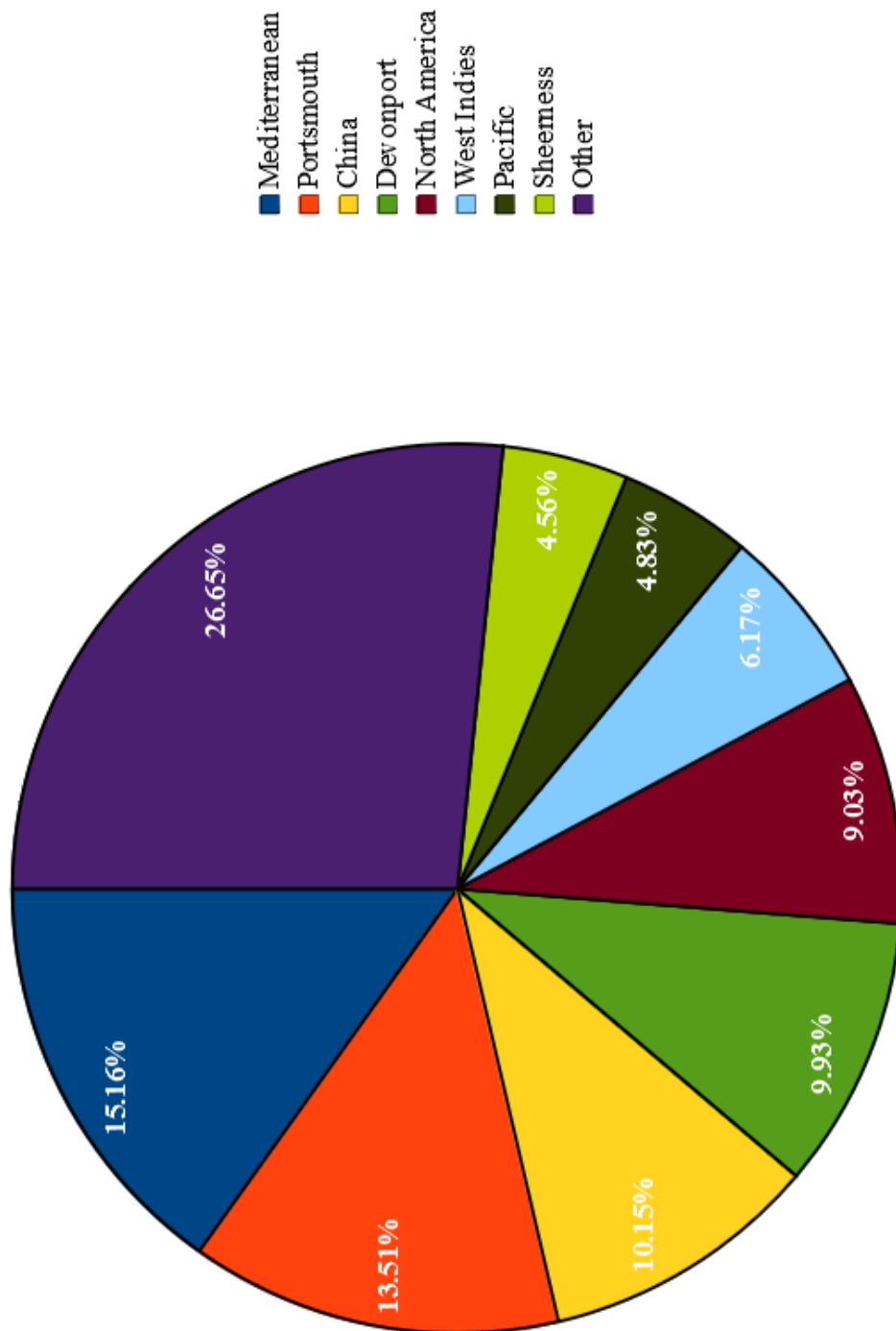


Figure 4: Data Collated from ADM 194/180 and 194/181. "Other" contains records from fifty-seven other locations, including Chatham, Woolwich, New Zealand, and many others.

Such squadrons were usually “stationed” at major dockyards, although this was not always the case, such as with the navy’s South-East Coast of America Station, based in the Falkland Islands. Stations were inherently quite fluid throughout the navy’s history, emerging, merging, or disappearing to suit the requirements of the service, making any long-term study extremely difficult. Importantly, it must be noted that the five “stations” closely studied in the following pages are of my own classification. Although all existed as formal squadrons of the nineteenth-century navy, my use of the term is looser to encompass inconsistencies within the Courts Martial Returns of the period. Thus, Devonport and Plymouth constitute a singular station, the Channel Fleet is studied as part of Plymouth, and the discussion on the China Station includes trials from the East Indies, Hong Kong, and China that occurred prior to the formal creation of the squadron in 1865.

Five stations were chosen for closer study because of their prominence in the period’s Courts Martial Returns, as well as the geographic and contextual variances they provide in a study of the global navy (see Figure 4). Portsmouth and Devonport/Plymouth, as major home ports, were the location of much of Britain’s battlefleet during the period, and closer Admiralty oversight at home ensured a rigid discipline that proved harder to maintain on foreign stations. The Mediterranean was among the navy’s most important strategic locations in the world, and its active role in the region ensured an interesting mix of trends that bore similarities to both home and foreign stations. North America and the West Indies, as one of the navy’s largest stations, was tasked with policing vast swaths of the Empire that often took its ships far from any major port. And finally, the Royal Navy’s China station was among the most isolated and active stations of the period, owing to two major wars and numerous smaller conflicts on the far side of the world from England. In all, these five “major stations” provide a comprehensive overview of

both general trends and specific contexts and case studies of the period's navy, as well as numerous instances of both legal reform and "arbitrary and cruel punishments."

Portsmouth – The Heart of Oak

While not initially the most important of the Royal Dockyards, no station is more synonymous with the successes of the Royal Navy than Portsmouth and the nearby Spithead anchorage. Like many English coastal settlements, the city enjoys a maritime heritage dating back millennia, but it was the building of the world's first drydock at Portsmouth by Henry VII in 1495 that cemented the reputation that the dockyard would eventually enjoy in later centuries.³ Along with the Chatham and Woolwich Dockyards on the Medway and Thames Rivers, respectively, Portsmouth provided the foundation of the Royal Navy's shipbuilding for centuries, and the current location remains among the most important bases for the Royal Navy to this day. The nineteenth century saw many of Britain's largest ships stationed at Portsmouth, and the dockyard, as the permanent location of three of its most famous historic ships – *Mary Rose*, *Victory*, and *Warrior* – remains central to the public's imagination of the history of the navy.⁴

One of the most infamous events in the navy's history ensured that the Spithead anchorage would leave an indelible mark on discussions of discipline in the Royal Navy. In early 1797 the Channel Fleet rose up to protest numerous grievances with the state of affairs for the average sailor, most notably the poor quality of food and the state of pay.⁵ The sailors at Spithead were quickly joined in solidarity by sailors based at Plymouth, and they continued in their protest for several weeks. Despite the popular image of mutiny in the sailing navy,

³ Rodger, *Safeguard of the Sea*, 377.

⁴ Hans Busk, *The Navies of the World: Their Present State and Future Capabilities* (London: Routledge, Warnes and Routledge, 1859), Appendix A, 34-5.

⁵ G. Manwaring, and B. Dobrée, *The Floating Republic* (London: Geoffrey Bles, 1935), 46.

however, the Spithead mutiny was characterized by the rigid discipline of the mutineers, the lack of any reported acts of violence against officers, and a stated willingness to pause the mutiny if there was a French invasion attempt.⁶ Such actions forced a rapid response, and an Act of Parliament combined with a general pardon from George III ensured that many of the sailors' grievances were addressed and that no courts martial were convened. This was not, however, the end of the navy's troubles in 1797. Shortly before the conclusion of the mutiny at Spithead, another broke out in the fleet at the Nore anchorage in the Thames estuary. The Nore mutiny was nowhere near as successful as that at Spithead, resulting in sixty death sentences, of which thirty were carried out, and no explicit concessions from Parliament or the Admiralty.⁷ Although debate continues to this day as to the causes of the Nore mutiny's outbreak and the identity of its leadership, the highly publicized trial of Richard Parker, the "President of the Delegates of the Fleet," clearly displayed the Admiralty's lack of patience with mutineers. England's sailors had received their due following the uprising at Spithead; asking for more was simple greed.⁸ To state that the "Great Mutinies" of 1797 had no long-term outcome on naval law, however, is not fully accurate. Passed immediately following the mutinies in July, the 1797 Naval Courts Martial Act repealed and amended previous legislation, making it significantly easier for sailors sentenced to death to receive pardons.⁹ It would still be some time before such legal flexibility was explicitly included within the Articles of War, but the Spithead and Nore mutinies were clearly instrumental in the development of naval law.

The years immediately following peace with France in 1815 kept Portsmouth courts quite busy, as the rapid demobilization of the Royal Navy resulted in over a quarter of the courts

⁶ Manwaring and Dobrée, 66.

⁷ Dugan, 359.

⁸ ADM 1/5486, Trial of Richard Parker, Vol. 3, 26/06/1797, 57.

⁹ 37 Geo. III c. 140.

martial of 1816/17 being held at Spithead.¹⁰ This period of rapid change also saw the greatest number of death sentences handed out at any one time in the studied years. In December 1815 and January 1816, sixteen members of the crew of the frigate *Africane* were tried for violations of the Second and Twenty-Ninth Articles of War, respectfully pertaining to “scandalous Actions” and “the unnatural and detestable Sin of Sodomy.”¹¹ This was during a period when sodomy and other “unclean acts” were very much still perceived as a hanging offence in civilian courts, and the navy was of similar opinion.¹² Seven of those tried were hanged, the others receiving other forms of serious punishment including upwards of three hundred lashes. One James Bruce was sentenced to be dismissed

from His Majesty's Service, rendered incapable and unworthy of ever serving His Majesty, His Heirs and Successors, in any capacity, to have their uniform coats publicly stripped off their backs on the Quarter deck [of the *Africane*], and to be imprisoned in solitary confinement in the Marshalsea Prison for the term of two years.¹³

B.R. Burg went into much greater detail on these trials, in which he noted that the *Africane* was infamous within the navy of the time, colloquially known as the “man-fucking ship.”¹⁴ No amount of punishment appeared capable of deterring the actions of its crew, and not even the ship’s decommissioning and breaking-up later in 1816 ended its infamous reputation, as recent publications have shown.¹⁵

Given the evident determination with which the Portsmouth courts acted against sodomy aboard the *Africane*, it is somewhat surprising that other trials for serious offences later in the

¹⁰ ADM 194/42.

¹¹ 22 Geo. II c. 33, Articles 2 and 29. The *Africane* had a crew of approximately 300, meaning that over 5% of its compliment were tried in that month.

¹² Peter King, *Crime and Law in England*, 176.

¹³ ADM 194/42, Trial of James Bruce, 6/1/1816.

¹⁴ Burg, 157.

¹⁵ See *Boys at Sea*, and other works by B.R. Burg.

century did not provoke similarly draconian responses. Aside from the *Africane* trials, only a single death sentence was passed at Portsmouth during the years analyzed, that of John Fox for striking his superior officer in 1826. However, Fox received a pardon on condition of two years' imprisonment in Marshalsea.¹⁶ As Fox's trial suggests, imprisonment was rapidly replacing the more draconian forms of naval punishment during the nineteenth century, as instances of court-mandated hangings and floggings became increasingly regulated. Less than 10% of the two hundred and fifty Portsmouth courts martial of the 1860s listed any number of lashes as punishment, compared to 66% that listed imprisonment (Figure 5).

The continuous naval presence at Portsmouth for over five hundred years has ensured that the station saw far more courts martial than most during the nineteenth century. The vast numbers of ships, sailors and soldiers that transferred through Portsmouth ensured its consistently busy status, while the large standing battlefleet that called Portsmouth home meant that the biggest ships in the nineteenth-century Royal Navy were always well represented in the court records. For example, HMS *Edgar* (ninety-one guns) saw over thirty of its crew appear before courts martial in the 1860s, the vast majority of which took place at Portsmouth.¹⁷ Due to the higher-than-average concentration of line-of-battle ships in the home stations, courts martial held at Portsmouth often followed the pattern of the *Edgar*, consisting of more cases from the crews of fewer, larger ships than on foreign stations. It should also be noted, however, that for much of the century the majority of Portsmouth's ships were held in ordinary, not prepared for active combat.

¹⁶ ADM 194/42, Trial of John Fox, 4/5/1826.

¹⁷ ADM 194/180-181.

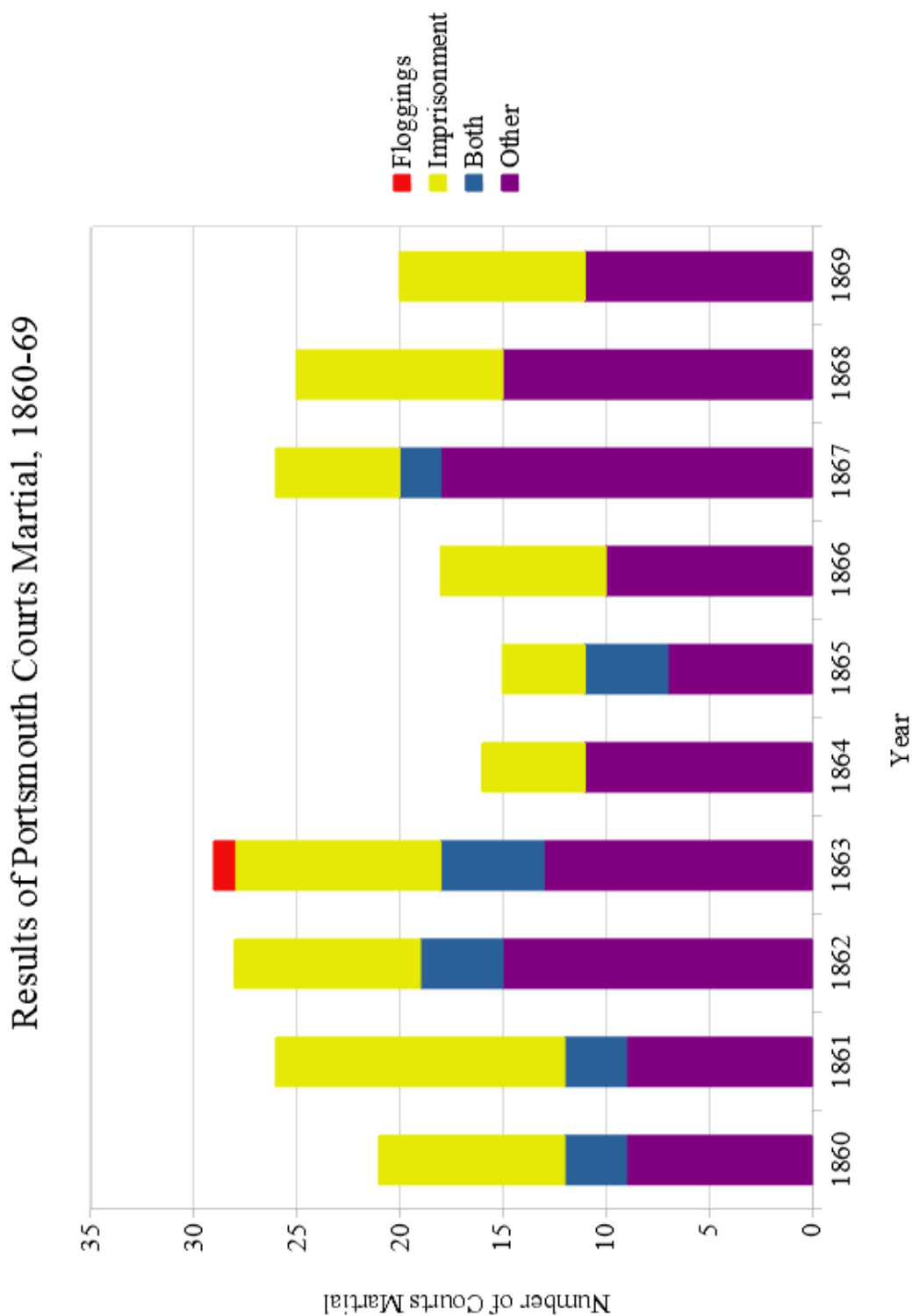


Figure 5: Data collated from ADM 194/180 and 194/181. Note the extremely few instances of flogging at Portsmouth through the 1860s. Sentences in the category of 'other' include dismissal from the service, reduction in rank/seniority, or simple fines.

This reality is borne out in the records, all the trials being for peacetime offences, such as drunkenness, disobedience and other such misdemeanours. Even the conclusion of the Crimean War in the late 1850s made no appreciable change in the trends in sentencing at Portsmouth.

It must be noted that statistical analysis of the nineteenth-century Courts Martial Returns is not entirely trustworthy where station records are concerned. The Returns list the station to which the ship was attached, which in certain cases was not necessarily the location of the trial itself. The most egregious offenders of this nature were those who lost their ship, as the surviving officers and crew would often return to England, or another major dockyard, whenever the ship was lost or sufficiently damaged to warrant repair. Given the serious nature of these mandated trials, the records often went into significantly more detail than those of lesser offences and were also unique in that the charges were rarely made against individuals, but rather “the Officers and ship’s company” of the vessel in question.

The most infamous of these trials to be held at Portsmouth in the 1860s was for the loss of the *Orpheus*, a screw-corvette and flagship of the Australian Squadron. The ship was wrecked on the sandbar at the entrance to the Manakau River in New Zealand with the loss of nearly 200 of its crew of 260. At the court martial on 27 April 1863 blame was assigned to the shifted sandbar, which supposedly was not accurately portrayed in the charts available to the *Orpheus*. The Portsmouth court ruled that no blame was attributable to Commodore Burnette or the other senior officers who died in the wreck, and fully and honourably acquitted the surviving officers and crew who “deserve[d] very great credit for their persevering and skilful efforts to save the lives of those who had unfortunately perished.”¹⁸ Unsurprisingly, such a finding was deemed

¹⁸ ADM 194/180, Trial of Lt. Charles Hill *et al* of the *Orpheus*, 27/4/1863.

insufficient by many, especially as the *Orpheus*' wreck was a topic of great public concern as the worst maritime disaster in New Zealand's history.¹⁹ Blame was eventually laid at the feet of Commodore Burnette, who had overruled the course plotted by the Master with the use of newer charts. The ruling suggests the court was hesitant to publicly announce the failings of such a senior officer, especially at a time when maintaining the professional image of the navy was its primary goal.²⁰ The precedent suggested in the ruling of the *Orpheus*' court is in fact consistent with those of other trials for loss of ship – rarely were the guilty parties issued with more than a minor reprimand as punishment.

The Portsmouth Courts-Martial Returns share one significant trend that is mirrored in those of nearly every other station during the 1860s – the increasing popularity of imprisonment in place of flogging. The Admiralty's establishment of a dedicated naval prison at Lewes, Sussex in 1862 featured prominently in the records, but many other gaols featured in the records as well, such as Maidstone, Marshalsea, or any other "of Her Majesty's Gaols in England." Interestingly, prison hulks were completely absent from the records, even in the early nineteenth century. Numerous decommissioned ships of the navy were used as hulks well into the 1850s, but their complete absence from the Courts-Martial Returns suggests a hesitance to employ their use for naval purposes, especially as their notorious conditions made them extremely controversial to legal reformers.²¹ Their use to relieve overcrowded prisons and as holding cells for convicts awaiting transportation was fairly widespread, but by the 1840s had largely declined as various

¹⁹ W.P. Gosset, *The Lost Ships of the Royal Navy, 1793-1900* (London: Mansell Publishing Ltd., 1986), 116.

²⁰ Lloyd, *The British Seaman*, 268-70.

²¹ Emsley, 263.

reformers protested their use. The last of the English hulks, the *Defence*, was destroyed by fire in 1857, bringing an end to the use of hulks as places of imprisonment in England.²²

Overall, the Portsmouth station of the nineteenth century provides both concrete examples and long-term trends in courts martial sentencing procedures. The Spithead and Nore mutinies of the late-eighteenth century display the traditional vein of naval punishment, which was based on the 1749 Articles of War of George II. Reforms during and after the Revolutionary and Napoleonic Wars did much to influence long-term trends in sentencing, particularly regarding corporal and capital punishment; but there were exceptions, notably the sodomy trials of the *Africaine*. Finally, the trial for the loss of the *Orpheus* in 1863 provides a particular example of the difficulties in sentencing officers during the nineteenth century, where social standing and public image tied the Admiralty's hands as surely as the legislation of the previous century had the court of Admiral Byng.

Plymouth – The Western Power

Although not as old as Portsmouth, the Royal Dockyard at Plymouth carries just as prominent a legacy in the history of the Royal Navy. Its major military presence dates to the sailing of the Elizabethan fleet against the Spanish Armada in 1588, but the formal establishment of the Plymouth Dockyard would not occur until the reign of William III. Despite navigational difficulties at the entrance to Plymouth Harbour, King William recognized what many by the seventeenth century had already concluded: that a major naval presence to the west of Portsmouth was required for defensive purposes. The prevailing winds up the Channel would greatly delay the response of a fleet from Portsmouth or the Thames to a threat from the west,

²² W. Branch Johnson, *The English Prison Hulks* (London: Christopher Johnson, 1957), 198.

necessitating the presence of a rapid-response sailing fleet in the region, the use of which was clearly demonstrated against the Spanish Armada.²³ Shortage of funds and major wars against the Dutch during the seventeenth century delayed the establishment of a major western dockyard, but greater English involvement in continental affairs following the Glorious Revolution necessitated the navy's permanent expansion into Plymouth.²⁴

In addition to its strategic importance, Plymouth Dockyard also carries with it a maritime tradition dating back centuries.²⁵ England's West Country has a long-standing connection to the sea, given its relative ease of access to the Mediterranean and the Newfoundland fisheries.²⁶ This tradition is clearly shown in the social history of the Royal Navy, and many of the navy's most famous officers called this region of England home. Plymouth, Bristol and many other major western coastal regions were prime candidates for press gang "recruitment" and thus were also home to a very substantial portion of the navy's lower decks.²⁷ As the largest naval base in western Europe, Plymouth's connection to the Royal Navy continues to this day, and the foundation of this is clearly seen through Devonport's presence in the nineteenth-century courts martial records. As a Royal Dockyard, Plymouth also saw more than its share of trials for loss of ship, and like Portsmouth, many trials listed as occurring on foreign stations would likely have occurred here instead.²⁸ Only a single death sentence was passed at Devonport in the years studied – for assault on a superior officer – but this was commuted to penal servitude for life.²⁹

²³ Herman, 118.

²⁴ Rodger, *Command of the Ocean*, 188.

²⁵ Known properly as Her/His Majesty's Naval Base (HMNB) Devonport from 1845. Many of the courts-martial records use "Plymouth" and "Devonport" interchangeably through the 1860s. I attempt to use the correct term for the time, but there is no practical distinction in the given context.

²⁶ Herman, 27-28.

²⁷ Rogers, 7.

²⁸ See the trial of Lt. John Jackson of the *Whiting*, 03/10/1816 (ADM 194/42).

²⁹ ADM 194/180, Trial of John Dillon, 11/1/1860.

Instances of sodomy and indecent assault were also much rarer at Plymouth than at other stations, although this might simply have been a choice on the part of officers and crews to not press charges. Given the size of the Devonport station there is no major contextual reason for there to have been significantly fewer charges there proportional to other stations.³⁰

The vast majority of charges pressed at Plymouth, especially during the 1860s, were for drunkenness, disobedience of orders, and absence without leave. As numerous scholars have emphasized, the prevalence of drunkenness at Plymouth, like anywhere else in the Royal Navy, is no great surprise.³¹ However, it is of some note that many of the charges of this nature were simply for “drunkenness,” with relatively few including the modifier “and incapable of performing his duty.” These instances, which easily included as many officers as seamen, were punished relatively lightly, often with loss of seniority for officers and a minor prison sentence for seamen, generally six months or less, usually at Exeter Gaol. Although the lack of recorded effect of drink on sailors’ duty may well have simply been a bureaucratic oversight, the generally lighter sentences in such cases suggests the opposite. Despite previous statements that drunkenness itself was not a crime, it appears that this was not necessarily true at Devonport.

Disobedience of orders and absence without leave are both interesting charges, especially given their status as “lesser offences” under the 1860 Naval Discipline Act. Although the records show that naval courts made a distinction between “mutiny” and “desertion,” on the one hand, and “disobedience of orders” and “absence without leave” on the other, it was not until 1860 that a clear distinction was made between these offences.³²

³⁰ Burg, 46-48.

³¹ Lloyd, 256.

³² 23 & 24 Vic. c. 123, Articles XXXIX.

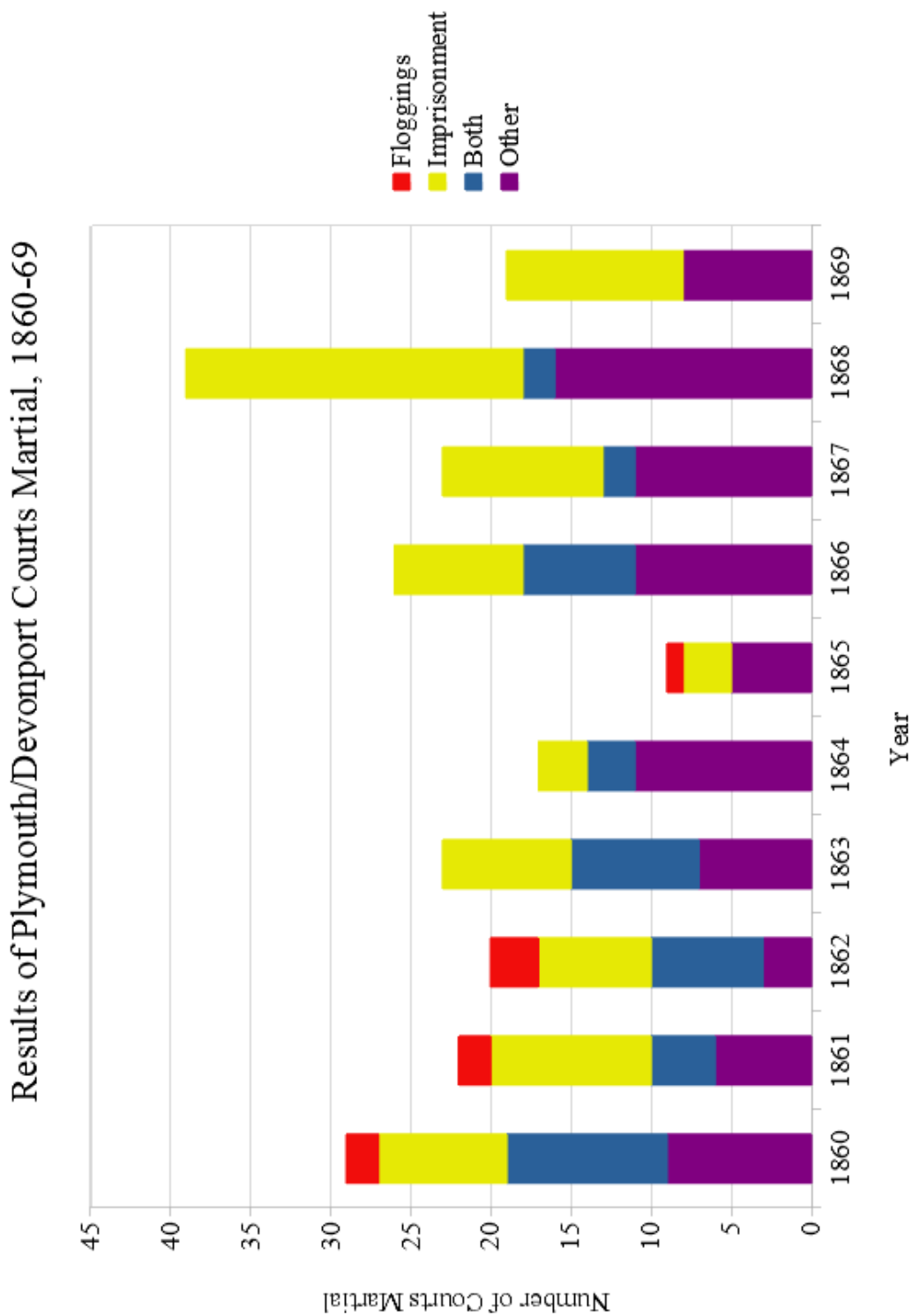


Figure 6: Data collated from ADM 194/180 and 194/181. Note the proportionately high numbers of floggings compared to Portsmouth (Figure 5). No apparent reason exists in the Courts Martial Returns for the sudden increase in trials in 1868.

Mutiny and desertion both carried clear death sentences under the 1749 Articles, although these punishments would be significantly reduced in 1860. As Arthur Gilbert argued regarding sodomy, the use of these “lesser charges” offered courts the option to punish unruly and illegal behaviour without necessarily condemning the accused to death, and it is clear that the courts at Plymouth were perfectly willing to make use of this form of discretionary justice decades before the distinction was explicitly emphasized.³³

Whether due to differences in the charges, sentences, or simply the presence of more lenient officers who composed the courts, Plymouth saw only a single capital conviction during the years covered in this study, and the culprit was pardoned.³⁴ Although no seamen were executed at Devonport, a surprisingly high number were flogged during the 1860s – 22%, compared to 9% at Portsmouth, with proportionately equal numbers of trials. Churchill’s famous quotation regarding the “traditions of the navy” was clearly true at Plymouth in the nineteenth century, and the number of lashes inflicted suggests that although Plymouth did not possess a “hanging court,” the officers that comprised its courts during the nineteenth century were definitely of the older school of naval discipline. Byrn’s argument regarding flogging in the West Indies remains true at Plymouth; the records contain how many lashes were administered by court order, but not those inflicted summarily under captains’ orders. Plymouth courts clearly took full advantage of the leeway present in the Articles of War, frequently assigning the maximum number of lashes (four dozen) following 1860, and often sentencing sailors to many hundred strokes in the years and decades prior. Interestingly, the prevalence of corporal punishment at Plymouth in the 1860s did not result in fewer prison sentences. Whereas

³³ Gilbert, “Buggery and the British Navy,” 73.

³⁴ ADM 194/180, Trial of John Dillon, 11/01/1860.

Portsmouth saw approximately 47% of its courts martial end in sentences of imprisonment, 58% of Plymouth's trials received the same for roughly the same number of total trials in each location. Ease of access to Exeter Gaol may provide some answer for this outcome, although just as many prisoners were sentenced to terms at Lewes Naval Prison in Sussex, a significantly greater distance from Plymouth. As in Portsmouth, no explicit mention is made of prison hulks, naval courts instead sentencing prisoners to serve their terms in gaols ashore.

The apparent hesitancy to abandon the naval "tradition" of corporal punishment, combined with the acceptance of imprisonment as an alternative punishment for the navy, effectively made Plymouth one of the strictest naval stations of the 1860s. As part of the Channel Squadron, ships at Devonport saw very little action during the 1860s, and perhaps such inaction proved a breeding ground for ill-discipline in the eyes of naval courts. Scholars have often argued that the peacetime navy was more hesitant to sentence to death, an inclination that Plymouth in the 1860s seemed to reinforce.³⁵ However, it is important to note that trends in Plymouth's courts martial still followed the general trends present in the global trials and those on other stations. The surprising lack of death sentences following the Napoleonic Wars, the sharp decline in floggings in the late 1860s, and the comparatively high proportion of prison sentences, echo tendencies seen elsewhere, and much like the global navy, Devonport courts martial seem to anticipate the legislation of late-nineteenth century naval justice.

The Mediterranean – The Centre of Empire

The long histories of the dockyards at Portsmouth and Plymouth and their evident importance to the Royal Navy cemented their place in the annals of naval history, but no station

³⁵ Eder, 42-43.

of the eighteenth or nineteenth centuries came close to the strategic importance of the Mediterranean. Playing a central role in European naval conflicts for millennia, the geographic features of the Mediterranean and its importance to European trade confirmed its status as the longest-lasting and largest of the Royal Navy's stations for over three centuries. The capture of Gibraltar and Minorca from the Spanish in the early eighteenth century gave the British two strategic strongholds in the Mediterranean, and although Minorca changed hands several times by the end of the century the Royal Navy's presence in the Mediterranean had been cemented.³⁶ The end of the century also saw Malta's annexation by the British, whose more central location quickly allowed it to supplant Minorca, and whose Grand Harbour serviced British men-of-war as well as it had Roman galleys two thousand years earlier.

The Mediterranean's strategic importance was well known, not just to the Admiralty but to the general population of the eighteenth- and nineteenth-century navy and British society as well. The station was generally seen as one of the most preferable, as its strategic location usually commanded the newest and best ships and the most capable officers. In turn, this preference ensured that the Mediterranean offered the best chance for prize money and promotion out of any of the navy's stations, making it extremely popular among officers, sailors, and soldiers alike.³⁷ Some of those posted to the Mediterranean became the most famous figures in British naval history, including Horatio Nelson, John Jervis, Cuthbert Collingwood, and many others. The influence of such officers, especially Jervis (later the Earl St. Vincent) had an enormous effect on the maintenance of naval discipline during the Napoleonic era, and it would have lasting repercussions for the century to come. St. Vincent's strict disciplinarian manner was

³⁶ Coad, 329 and 341.

³⁷ Sam Willis, *In the Hour of Victory* (London: W.W. Norton & Co., 2014), 165.

legendary, even more so after he hanged several sailors of his fleet for merely expressing sympathy with the Spithead mutineers of 1797.³⁸ When combined with the necessity of keeping those on the Mediterranean station in top fighting form, the command style that St. Vincent and his successors laid down would come to define the mentality of the nineteenth-century Royal Navy sailor in the Mediterranean.

Even after the end of the Revolutionary and Napoleonic Wars, the Mediterranean saw some of the most active combat out of all the navy's nineteenth-century stations. Shortly after the signing of peace with France, Edward Pellew led a squadron of Anglo-Dutch ships against the Barbary Corsairs of the North African coast, forever breaking the power of the pirates in the region. In 1827 the British participated in the battle of Navarino, the last major naval battle of the "golden age of sail," during the Greek War of Independence. Later in the century, the Mediterranean squadron would be the forefront of the anti-slavery fleet that patrolled the coasts of Africa, and it had a frontline position in the war against Russia in the Crimea (1853-56).³⁹ Following the 1860s, the Mediterranean squadron would be involved, in one degree or another, with many of Queen Victoria's "little wars," such as the bombardment of Alexandria (1882). The fleet would grow even more prominent when its duty of protecting the land routes to the Far East expanded to cover the extremely busy sea lanes that opened with the finishing of the Suez Canal in 1869.⁴⁰ By the end of the nineteenth century, the Mediterranean station was the largest standing formation of the Royal Navy anywhere in the world, possessing more than twice the number of heavy battleships in the Channel Fleet.⁴¹

³⁸ Rodger, *Command of the Ocean*, 464.

³⁹ Barry Gough, *Pax Britannica: Ruling the Waves and Keeping the Peace Before Armageddon* (New York: Palgrave MacMillan, 2014), 7-8.

⁴⁰ Herman, 440.

⁴¹ Busk, Appendix A, 34-52.

Unsurprisingly, the Mediterranean's active status and important role in the Royal Navy's global strategy made an indelible mark on the nineteenth-century Courts Martial Returns – it saw the most courts martial of any station of the 1860s: over 15% of the trials. What *is* surprising is that when measured proportionately to the station's size, the Mediterranean actually saw comparatively few trials overall. Despite being nearly twice the size of the North American station by population, it saw 30% fewer trials per capita during the same period.⁴² Several potential explanations exist for this apparent inconsistency. First and foremost, the geographic size of many of the other foreign stations was much larger than that of the Mediterranean, and the relatively concentrated fleet and command structure at Malta likely had the same effect on instances of courts martial as it had at Portsmouth and Devonport. Next, the nineteenth-century Royal Navy rarely used its standing squadrons for major naval engagements, and the bulk of the ships that fought in the Crimean war and other engagements were likely drawn from ships in ordinary at Portsmouth or other home ports rather than the standing Mediterranean fleet.⁴³ This of course means that actually tracking down court martial records from these engagements can be quite tricky as, without explicit reference in the court transcripts, it is not always possible to determine where they took place. It stands to reason that many of the related courts martial would have taken place on-station, but the relevant information is not included in the Courts Martial Returns.

Another likely explanation is the vital importance of the Mediterranean to wider British strategy. Even discounting the major nineteenth-century engagements in the region, the Mediterranean and its ports and dockyards were crucial strategic strongholds on the route linking

⁴² Station populations estimated from Busk, Appendix A, 34-52.

⁴³ Gough, 30-31.

Britain to its empire in the East, all the more so following the completion of the Suez Canal. This strategic importance would have provided ample reason for the station's commanders to enforce greater discipline than that which prevailed on other stations. As emphasized by Byrn, many captains were quite willing to take the law into their own hands, and numerous offences that should have been tried by court martial never progressed past a captain's summary punishment, a practice that had not been stopped by the nineteenth century.⁴⁴

Of course, the Mediterranean's prominence also made it a flashpoint for the reforms that swept the nineteenth-century navy. As Rasor highlighted, the quarterly Punishment Returns were intended not only for their deterrent effect, but as a method by which the summary punishments of captains could be monitored and controlled.⁴⁵ Such a system of oversight could easily be circumvented, of course, but an enormous public and parliamentary desire for limitations on the "arbitrary and cruel" system of naval punishment ensured that at least some of the more brutal officers were caught and punished for their failure to comply with regulation. One of the most infamous examples was the aforementioned trial of Commander Nicolas of the *Trident*, who was strongly censured by the Admiralty for his excessive punishment of two of his ship's boys. Rasor emphasized the Returns' importance for deterring similar actions to those of Commander Nicolas, and trends in lashings on the Mediterranean station lend some credence to this, even if there was no explicit reference to the case in further legislation.⁴⁶ As shown in Figure 7, the trends of corporal punishment did not follow those present in the whole navy of the 1860s, dropping only temporarily in 1862-4 before rising again prior to the global drop in the latter part of the decade (see Figure 3).

⁴⁴ Byrn, *Crime and Punishment*, 106.

⁴⁵ Rasor, 44.

⁴⁶ Rasor, 45.

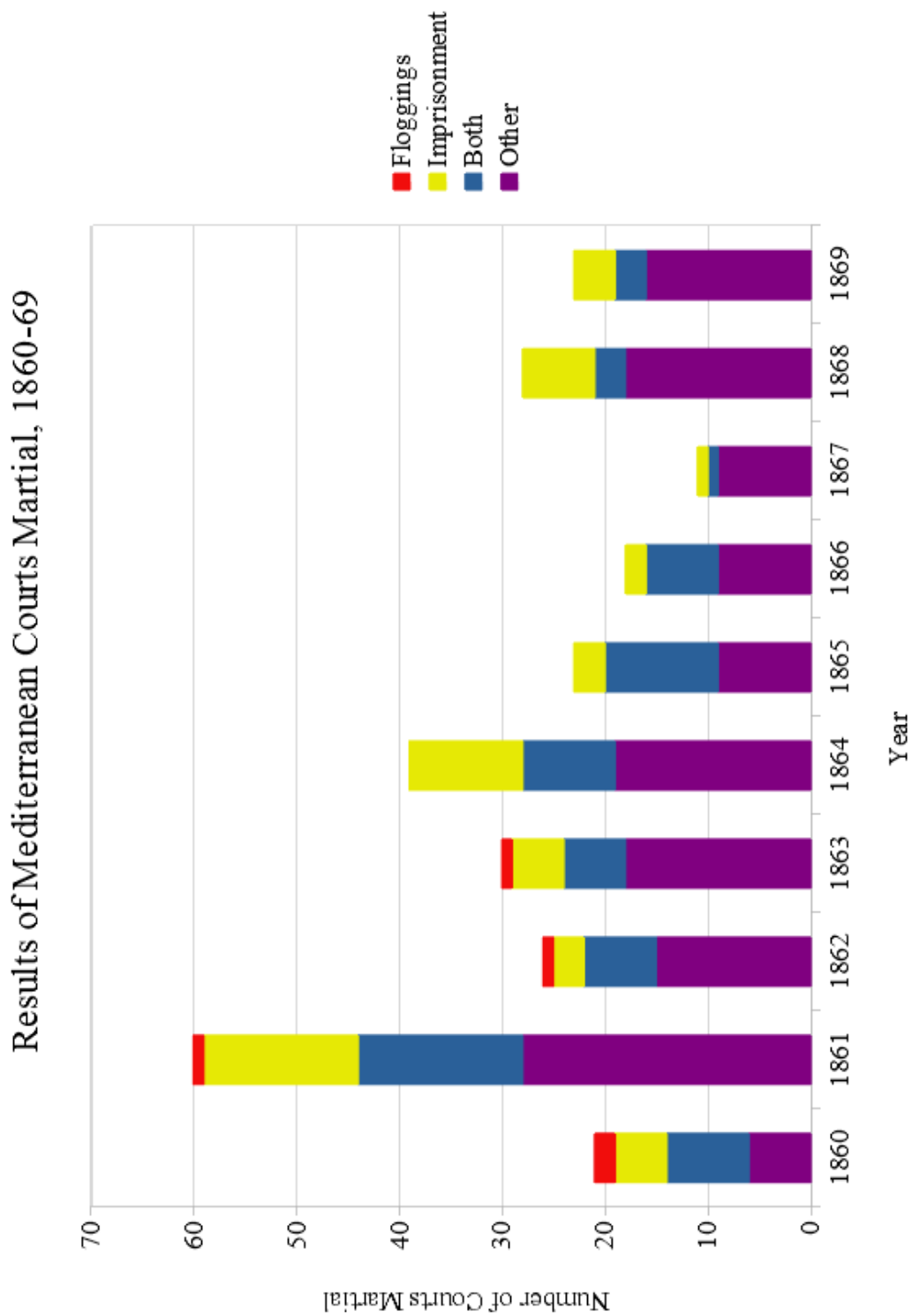


Figure 7: Data collated from ADM 194/180 and 194/181. Note the sharp drop in corporal punishments in following 1861 (likely resulting from Cmdr. Nicolas' trial), and the surprising lack of imprisonments when compared to other stations.

The changing legislation of the nineteenth-century navy of course had a role to play in decreasing the maximum-allowable lashes per sentence, and the trial of Commander Nicolas of the *Trident* likely had some effect on sentencing in naval courts, even if this only appeared true for a few years.

Aside from the trial of Commander Nicolas, the Mediterranean was a fairly unremarkable station during the early nineteenth century. It saw relatively few trials compared to its size. Its strategic importance as the guardian of one of Britain's most valuable trade routes is not clearly visible from the Courts Martial Returns. The rare death sentence in the early nineteenth century or censure for loss of ship still occurred, but the Mediterranean squadron clearly did not suffer sufficient disorder to warrant the numbers of courts martial seen on other stations. This returns us to the suggestion of Byrn and Rasor, who emphasized that the logical reason for this was the strict discipline and punishments of individual officers, a mentality that had existed for centuries in the Mediterranean, and was still present long into the nineteenth century.⁴⁷

North America and West Indies – A Deserter's Paradise

As with many of the Royal Navy's foreign commands, that of North America and the West Indies has a long, convoluted history, having been renamed and reclassified many times over the centuries. The North America Station originated in Halifax in the mid-eighteenth century to counter the French presence in the region, and the headquarters shifted back and forth between Halifax and Bermuda several times over the following century, leaving both locations with a central position in the navy's command structure in the region. To further complicate matters, North America was merged with the West Indies Station at Jamaica in 1830, which

⁴⁷ See Byrn, *Crime and Punishment*, 78, Rasor, 50-51.

itself possessed a long history of conflict with French, Spanish, and later American interests in the region.⁴⁸

The navy's presence in the region was further influenced by the extremely turbulent geopolitical landscape of North America and the West Indies of the eighteenth and nineteenth centuries. The area was rife with conflict for much of the period, and due to the sheer size and the centrality of Atlantic trade, this warfare almost always possessed an important nautical element. The Royal Navy played a central role in the capture of Louisbourg and Québec during the Seven Years' War, was vital to Britain's initial successes in the American Revolution, and was crucial in shaping the balance of power that would eventually define the War of 1812. This period of near-constant warfare for over half a century left an indelible mark on the navy in the region. As Eder and Byrn show in the navy's legal records of both the Seven Years' War and the Revolutionary and Napoleonic Wars, active combat had a very significant effect on patterns of crime and punishment on the North American and West Indies Station. The desire of local commanders to maintain rigid order and discipline ensured that even minor offences received major sentences, and captains often violated the *King's Regulations and Admiralty Instructions* in the pursuit of discipline.⁴⁹ Byrn's discussion of drunkenness in the West Indies clearly encapsulates this: of the approximately three thousand cases during the Revolutionary and Napoleonic Wars, over 97% of those accused were flogged.⁵⁰

Officers occasionally took the pursuit of discipline too far, as the infamous story of the mutiny on the *Hermione* reminds us. The frigate's captain, Hugh Pigot, was a ruthless sadist, who had a reputation for ordering floggings for even the most trifling of offences. He supposedly

⁴⁸ Coad, 365.

⁴⁹ Eder, 8.

⁵⁰ Byrn, *Crime and Punishment*, 132.

took great joy in flogging the last sailor down from the ship's rigging when making or shortening sail. In September 1797, after one particular instance when three boys of the ship fell to their deaths in an effort to avoid such punishment, the crew rose in rebellion, killing all the officers and turning the ship over to the Spanish – the bloodiest mutiny in the navy's history.⁵¹ Captain Pigot's cruelty showed that, left unchecked, such severe punishment could drive even well-disciplined sailors into open disobedience, something that rarely ended well for the mutineers. The Royal Navy spent nearly a decade hunting the *Hermione* mutineers, even as the Napoleonic Wars raged, and eventually captured thirty-five of the crew of 160. Twenty-four were hanged, of whom fifteen were also gibbeted, two were transported for life, and the remainder either pardoned or acquitted.⁵²

Whereas mutiny was a rare occurrence on the North American and West Indies Station of the nineteenth century, desertion was common. This is hardly a new realization. Ample opportunity to desert on the North American and West Indies station paired nicely with the promise of liberty made by the newly founded United States. Contemporary officers easily recognized the trend as well, leading to numerous measures aimed at preventing successful desertion.⁵³ The reluctance of captains to issue shore leave and the imposition of stricter discipline were almost certainly by-products of this goal. But perhaps the most notable action taken to suppress desertion was that which some cite as a factor that led to the outbreak of the War of 1812 – forced searching out and seizure of British deserters aboard foreign ships. Among the most infamous of these cases was the attack upon and search of USS *Chesapeake* by HMS *Leopard* in 1807. Four men were carried off by the *Leopard*, all of whom were eventually proven

⁵¹ Woodman, 124.

⁵² Niklas Frykman, "The Mutiny on the *Hermione*: Warfare, Revolution and Treason in the Royal Navy." *Journal of Social History* 44 no. 1 (2010): 175.

⁵³ Byrn, *Crime and Punishment*, 163.

to be deserters from the Royal Navy. However, three were pressed Americans and not British citizens. Impressment of foreign nationals was a common enough practice at the time, but one that drew further ire from the United States.⁵⁴ Although not a direct result of searches at sea, the outbreak of war five years after the *Chesapeake-Leopard* Affair was at least in part the outcome of Britain's continuing the policy, and North America continued to be among the most lucrative locations for deserters.

This did not end with peace in 1815. The nineteenth-century Courts Martial Returns clearly display an inordinately high number of desertion trials on the North American station through the 1860s, as nearly 40% of the station's trials list desertion or absence without leave as the primary charge. However, by comparison with the war years, the post-1816 desertion trials were relatively forgiving with their sentences, which ranged from minor reprimands and loss of seniority to dismissal from ones' ship or, in the most serious cases, from the service entirely. Among the most common punishment was imprisonment, clearly emphasizing the increasing role that practice had in the legal processes of the era. Following the passing of the 1860 Naval Discipline Act, even flogging became quite rare as a punishment for deserters, despite the crime's former notoriety (Figure 8).

⁵⁴ Andrew Lambert, *The Challenge: America, Britain, and the War of 1812* (London: Faber and Faber Ltd., 2012), 7.

Results of North America/West Indies Desertion Trials, 1860-69

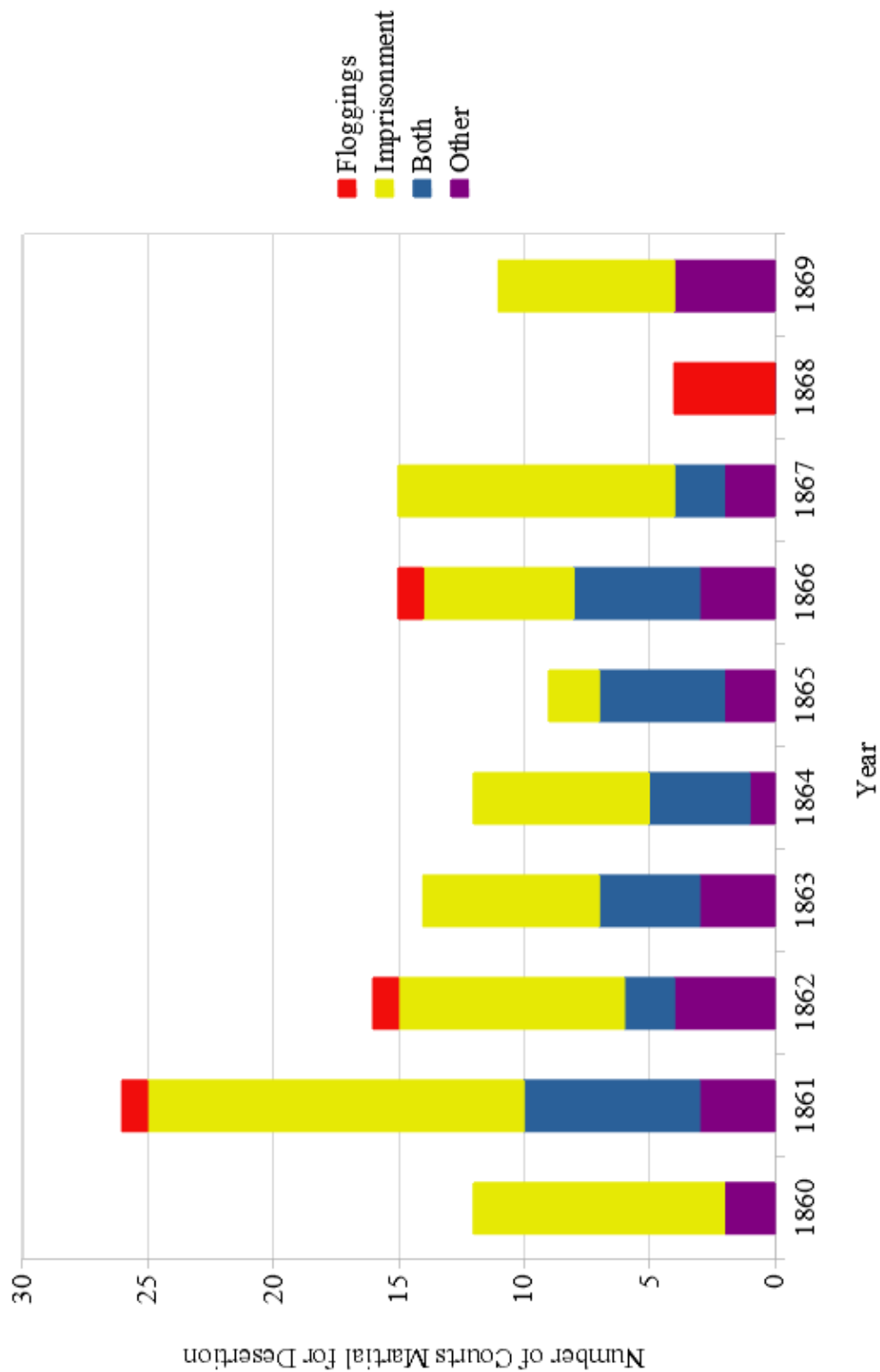


Figure 8: Data collated from ADM 194/180 and 194/181. Given the crime's former notoriety, the swift decline in corporal punishment for desertion is quite surprising.

Another notable offence that appeared with some consistency in the North American Courts Martial Returns was loss of ship. More so than those tried under similar circumstances at Portsmouth and other stations, courts martial in North America appeared to be more inclined to pardon those facing such charges, with nearly all of the twenty-one cases resulting in total acquittal for the accused. The most historically significant of these cases was the trial of Captain Edward Sotheby, C.B., for the loss of HMS *Conqueror* in 1862. The *Conqueror*, a 100-gun first-rate, was among the largest of the Royal Navy's vessels lost during the nineteenth century, and its sinking drew significant attention from the public and the Admiralty.⁵⁵ Unlike similar occurrences, not a single life was lost during the wreck, largely due to the extremely shallow depth in which the ship was sunk off Rum Cay. Despite the serious nature of the wreck, Sotheby was fully acquitted, and the Lieutenant of the Watch and the ship's Master were only admonished to "be more careful in future." Such a simple sentence is telling in and of itself – whereas the sentences of other trials for loss of ship went on for pages, Sotheby's trial was barely two paragraphs in the Returns.⁵⁶

The Admiralty Memorandum dated 20 March 1862 sheds some light on the ill-reported trial. Sotheby was acquitted of any navigational error based on an argument of his that was highlighted in the memorandum:

if after the scrutinizing test that the Master's work has undergone, it should be found incorrect; proper allowance not made; or the place of the Ship not properly noted in the Chart; *I maintain; in which opinion I have no doubt shall have the full concurrence of the Members of this Court, that a Captain is not supposed to doubt the accuracy of such work, when he can conscientiously place most thorough confidence in the Master; and that it is not his duty under those circumstances to work the reckoning himself, that Officer being appointed for that specific purpose.*

⁵⁵ Gosset, 116.

⁵⁶ ADM 194/180, Trial of Captain Edward Southwell Sotheby, C.B., his officers and crew, 8/2/1862.

My Lords cannot dissent in too strong terms from the views expressed by Captain Sotheby.

As the Admiralty stepped in to enforce the punishment of Commander Nicolas, so too did it intervene to lodge a formal complaint against Captain Sotheby and the court that tried him. Despite his official acquittal and further promotions and honours, pressure from the Admiralty ensured that Sotheby would never again command a ship in the Royal Navy. Perhaps more importantly, the aforementioned memorandum included an amendment to the *Queen's Regulations and Admiralty Instructions*, ensuring that the particular loophole exploited by Sotheby was closed and that the commanding officers of Her Majesty's vessels had the final responsibility for the safe conduct and steering of their ships.⁵⁷

As one of the largest of the Royal Navy's stations, the North American and West Indies records provide a valuable case study for the trends in mid-nineteenth century naval Courts Martial. The relative rarity of major offences such as mutiny, murder, and sodomy is comparable to trends at the other stations, and the abandonment of execution following the 1860 Naval Discipline Act, as well as the sharp decline in floggings decades prior to the ban of the lash in 1879, emphasize the changes in sentencing that had swept the nineteenth-century navy. More common charges, such as desertion, saw increasingly lighter sentences as the century continued and the regulations which defined punishments became increasingly lenient.

China – The Imperial Navy

The China Station enjoyed a relatively unique reputation in the history of the Royal Navy, in that it was one of the navy's most isolated stations but also saw significant action in the Opium Wars of the nineteenth century and other major conflicts in the region. Although the

⁵⁷ ADM 194/180, Admiralty Memorandum 20/3/1862. Emphasis in original.

formal station was not created until 1865, the navy was present in the region from the mid-eighteenth century, first as the East Indies Station (1744), then the East Indies and China Station (1831), and finally splitting into the separate China and East Indies Stations in 1865.⁵⁸ As with many of the navy's foreign stations in the eighteenth and nineteenth centuries, the establishment of the China Station was an effort to provide protection for British trade and commercial interests in the region, with an additional goal of needed political and military pressure whenever deemed necessary.⁵⁹

Britain's interests in the region were explicitly stated in the late-eighteenth century, with the first attempt at opening official relations between the United Kingdom and the Qing Dynasty by the Macartney Embassy of 1793. This ended in failure, but Britain again embarked on a failed attempt to open official diplomatic relations with China shortly after the end of the Napoleonic Wars in 1816. The lack of official ties between the two governments did not stop British merchants from trading, but such trade was greatly imbalanced toward the Qing for much of the eighteenth century. The restrictions of the Canton system and the requirement that all Western trade be conducted in silver were seen as extremely unfavourable for British merchants. Such restrictions led to the growth, and eventual banning of, the trade in opium. The confiscation and destruction of over a thousand tons of the drug by Chinese viceroys in 1839 led to the outbreak of war with Britain. The First Opium War (1839-42) saw the tactical and technological superiority of the British and East India Company forces achieve a decisive victory. Numerous concessions were demanded by the British, including the ceding of Hong Kong and the opening of more ports to British trade.⁶⁰ Failure to follow through on many of these concessions led to

⁵⁸ Parkinson, *The Royal Navy, China Station* (Troubador Publishing, 2018).

⁵⁹ Parkinson, vii.

⁶⁰ Glenn Melancon, *Britain's China Policy and the Opium Crisis: Balancing Drugs, Violence and National Honour, 1833-1840* (Aldershot, England: Ashgate Publishing Ltd., 2003), 133.

another war breaking out (1856-60), which saw direct attacks against the Qing carried out by British and French forces, with later American aid. As a result of another decisive Western victory, further concessions were demanded of China, and shortly thereafter the formal establishment of a China Station of the Royal Navy ensured a permanent military presence to protect British interests through “gunboat diplomacy.”⁶¹

By number of trials, China and nearby stations formed a very large proportion of the recorded courts martial of the 1860s: approximately 12% of the over two thousand trials.⁶² Although the earliest portion of these trials correspond with the last months of the Second Opium War, no explicit mention of the conflict is made in the trial records, suggesting that the naval aspects of the war were largely complete by 1860 and that the trials after this point had no relation to the war specifically. Conversely, numerous mentions are made of Britain’s military aid to the Qing during the final stages of the Taiping Rebellion (1850-64), usually involving drunkenness or desertion “when on shore whilst on the march against the rebels.”⁶³ Given the opportunity, it is no surprise that sailors took advantage of the relative ease of desertion that shore duty promised, even if China was perhaps a less favourable region for desertion than elsewhere.⁶⁴

Perhaps most notably, the China Station saw half of the navy’s death sentences passed in the whole of the 1860s. On Christmas Eve 1860, John McIntyre and James John Woodhouse were sentenced to death under the twenty-ninth Article of War, which “Her Majesty [was]

⁶¹ Gough, 127-8.

⁶² The total of trials from China (227), the East Indies (32), and Hong Kong (3), 1860-1869. ADM 194/180-181.

⁶³ ADM 194/180. Trial of Joseph Morgan *et al*, 10/04/1862.

⁶⁴ Approximately 27% of trials in China were for desertion or absence without leave, compared to approximately 40% in North America in the same period.

graciously pleased to commute ... into penal servitude for life.”⁶⁵ The issue with this sentence, however, is that it was illegal. Under the 1749 Articles of War, death was the clearly defined punishment for buggery or sodomy.⁶⁶ However, these Articles were repealed five months prior to the trial, and the 1860 Naval Discipline Act had a very different stance on the issue. The 29th Article of the 1860 Act guarded against fraud and embezzlement, and the death penalty had been removed from the Act’s provision against sodomy in Article 38, which listed penal servitude as the only possible punishment.⁶⁷ The question, of course, is why this trial was not deemed to be illegal, especially if the death sentence was clearly falling out of favour by that time?

The obvious answer is communication, as the sheer distance between Europe and China would greatly delay the passing of any news in a time before widespread international communication systems. The *Cutty Sark*, one of the fastest sailing vessels of its period, took nearly one hundred days to reach China, and even steamships took months to sail from London following the opening of the Suez Canal. The 1870s would see the opening of an international telegram line, but this was not an option for the Admiralty of the previous decade.⁶⁸ Figure 9 displays the monthly courts martial totals at both Portsmouth and China, and allowing for the occasional extreme monthly deviance, it is notable that the average monthly trials in China do not match those at Portsmouth until well into 1861, and do not exceed them until a year later. Given the resulting average increase in yearly trials following the passing of the 1860 Naval Discipline Act (see Figure 3), it seems that it took the better part of a year for the legislative change to have any measurable impact on naval courts on the far side of the world.

⁶⁵ ADM 194/180, Trial of John McIntyre and James John Woodhouse, 24/12/1860.

⁶⁶ 22 Geo. II, c.33, Article 29.

⁶⁷ 23 & 24 Vic. c.123, Articles 29 and 38.

⁶⁸ Gough, 118, 198.

Monthly Courts Martial at Portsmouth and China

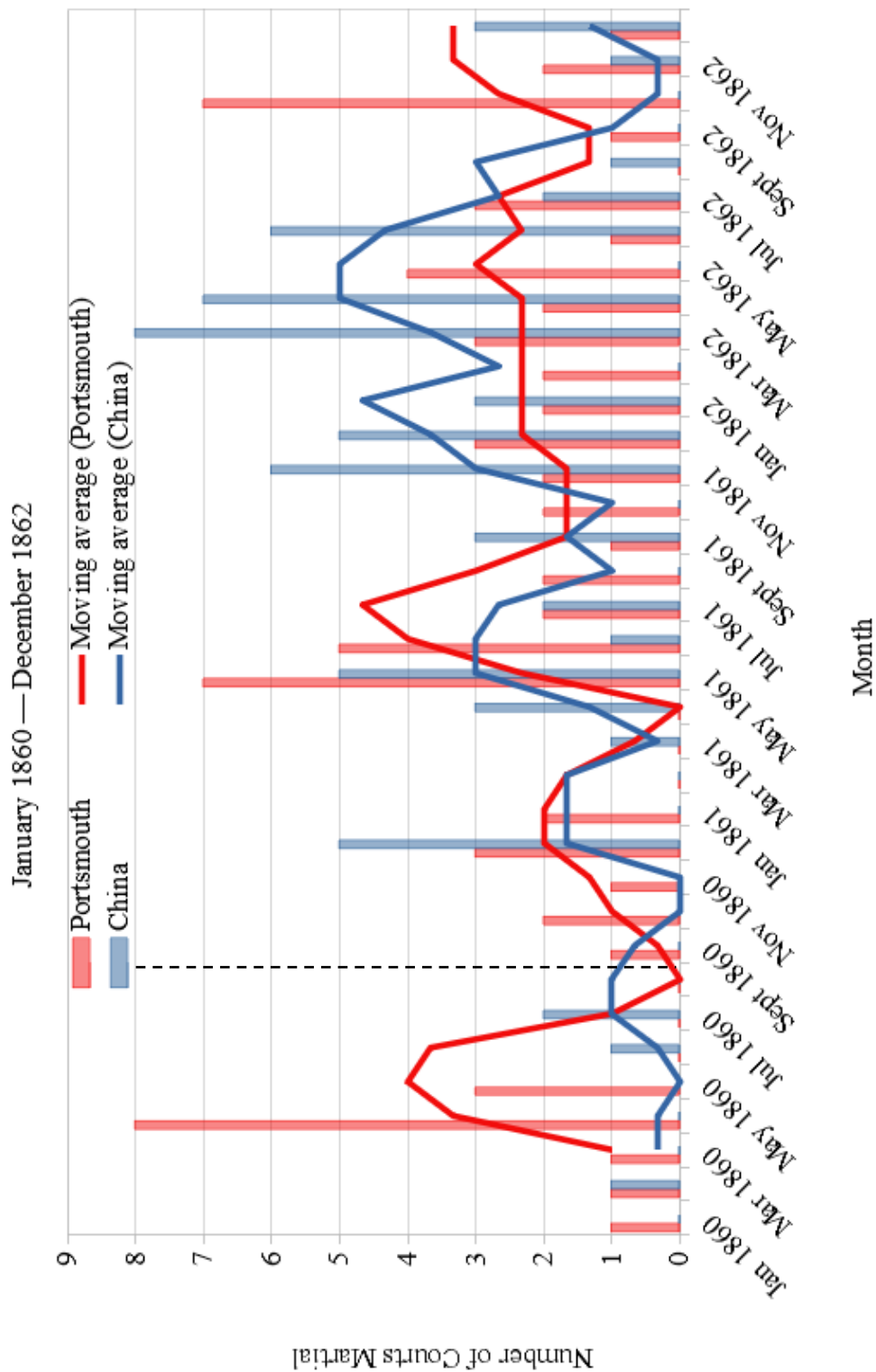


Figure 9: Data collated from ADM 194/180. The vertical dashed line represents the passing of the first Naval Discipline Act, 28 August 1860.

The other aspect that made this trial unusual was the fact that the charge itself was not deemed illegal. There are numerous instances of trials throughout the nineteenth century which were deemed to be illegal due to some violation of proper procedure, and so too should have been the trial of John McIntyre and James Woodhouse following the passing of the 1860 Act.⁶⁹ The lack of such a distinction, by either the station's Commander-in-Chief Sir James Hope or the Admiralty, is significant, as it suggests the lack of desire for reform in the instance of sodomy trials. Hope is cited as "an officer of great personal courage but lack[ing] the intellectual and diplomatic skills required for high command" in his biography, but there is no specific evidence regarding his reputation as a disciplinarian, and he left no recorded memoirs to provide evidence of his personal opinions.⁷⁰ The queen's pardon to McIntyre and Woodhouse suggests changing attitudes towards the crime, emphasized by the removal of sodomy from the list of capital statutes in civilian courts the following year.⁷¹ However, the legality of such a sentence is still cause for concern, especially given the relatively few death sentences passed by the navy in the 1860s.

In addition to the trial of McIntyre and Woodhouse, the China Station also saw the only execution in the Royal Navy of the 1860s. On 12 July 1860 John Dalliger, a Private Marine of HMS *Leven*, was convicted of shooting and wounding Lt. Joseph Hudson and Mr. Ashton, Acting Second Master of the *Leven*, and was hanged at the yardarm the next day – the last sailor of the Royal Navy to receive such punishment.⁷² Given that the trial was held nearly two months

⁶⁹ For an amusing example, see the trial of Mr. David Douglas, *et al*, on 07/09/1846. "The Court acquitted Mr. D. Douglas, the charge against him not having been proved owing to a mistake in the letter of complaint describing him as a Second Engineer instead of Acting Second Engineer." ADM 194/42. Numerous like examples exist.

⁷⁰ J.K. Laughton and Andrew Lambert. "Hope, Sir James (1808–1881), naval officer." Oxford Dictionary of National Biography. 23 Sep. 2004; Accessed 14 Feb. 2020.

⁷¹ 24 & 25 Vic. c. 100, s. 61.

⁷² ADM 194/180, Trial of John Dalliger, 12/7/1860.

prior to the passing of the Naval Discipline Act 1860, Dalliger was legally charged under the provisions of the 1749 Articles of War, which clearly mandated death for striking and assaulting a superior officer, let alone shooting them with a firearm. Much like the charge of sodomy, the punishment for striking a superior officer was downgraded from death to penal servitude for life following the passing of the 1860 Act.⁷³ However, unlike the trial of McIntyre and Woodhouse, no temporal delay or legislative confusion could cast doubt on the legality of the sentence, if not the ethical debate surrounding it.

The final exception to the “normality” of crime, punishment and courts martial on the China Station of the 1860s was the mutiny aboard HMS *Ringdove* in June of 1863, when fourteen of the crew of seventy were tried for

joining in a mutiny, refusing to come on deck when the hands were turned up, and unshipping the fore-hatchway ladders to prevent others from doing so... refusing to come on deck when the hands were piped to muster by open list, after the occurrences in the first charge... going below when the hands were piped to holystone the upper deck according to routine, and wilfully disobeying the order, and persisting in doing so after having been warned that they would be punished for their disobedience.

Although the mutiny never turned violent, the actions of such a substantial proportion of the ship’s company “to the prejudice of good order and Naval Discipline” would have been highly disruptive to the functioning of the *Ringdove*, a fact on which the court clearly agreed. Three of the mutiny’s ringleaders were sentenced to seven years’ penal servitude, with the remainder “in consideration of the youth and inexperience, only adjudged to receive forty-eight lashes.”⁷⁴

Unlike sodomy and the striking of superiors, mutiny still carried the death sentence under the 1860 Act, but only for the ringleaders or those who engaged in violence. The relatively benign

⁷³ 22 Geo. II c. 33 Article 22, 23 & 24 Victoriae, c. 123 Article XVI. It should be noted that ‘assault with a weapon’ is not a specifically listed offence under the 1860 Act.

⁷⁴ ADM 194/180, Trial of George Say *et al.*, 23/6/1863-24/6/1863.

sentencing of George Say, Samuel Carsons and John Davis suggest that the mentality of eighteenth-century “hanging courts” had at last given way to the more benign language of nineteenth-century naval jurisprudence.

Despite these examples, the China Station did not see many particularly sensational trials for the remainder of the decade. Few sentences varied drastically from those specified in the Naval Discipline Act, and even periods of war failed to have any noticeable effect on the sentences of courts martial on the Station. Proportionally, very substantial percentages of those brought before court martial were charged with drunkenness, desertion or verbal assault, common charges on many stations, and ones that rarely drew serious punishments during the 1860s. In this manner, the crime and punishment trends present in the China Station were fairly average when compared to those of the global navy, showing that even the vast distances from Admiralty authority and public pressure did not substantially alter the practices of naval crime and punishment immediately following the passage of the Naval Discipline Act.

Conclusion

On 26 November 1862, Lieutenant Thomas Simeon of HMS *Miranda* was brought before court martial in Australia on charges of “neglecting to come on board from the shore to keep the watch; and for being off the deck during his watch.”¹ The following day he was adjudged to be “placed at the bottom of the List of Lieutenants of Her Majesty’s Navy, and to be dismissed from HMS *Miranda*,” a fairly common sentence for officers and petty officers during the period. However, the sentence was ultimately suspended by the station’s commander-in-chief, Commodore Burnett, due to an objection Simeon had raised regarding the makeup of the court.² Specifically, the captain of the *Miranda* was serving as the President of the Court, something explicitly outlawed in the 1860 Naval Discipline Act.³ Questions of guilt aside, the fact that a senior officer of the Royal Navy was clearly so invested in the proper practice of courts martial in a period of abrupt legal reform emphasized how fundamentally the legal attitudes of the navy were changing. Another such example took place five years later, when on 7 December 1867, Stourton Needham, assistant paymaster of HMS *Landrail*, was charged with being unfit for the performance of his duty from the effects of intoxicating liquors... and behaving in a contemptuous manner ... to his Commanding Officer.”⁴ In this case, the proceedings and sentence were cancelled due to two of the members of the court also being called as witnesses – something not technically illegal under the Naval Discipline Act, but sufficiently conjectural that the Admiralty issued a memorandum to guide courts on this issue in future.⁵

¹ ADM 194/180, Trial of Lt. Simeon, 26 & 27 November 1862.

² This was the same Commodore Burnett whose lapse of judgment in the navigation of the *Orpheus* led to his death and many of those aboard, which casts some doubt on his decision-making abilities.

³ 23 & 24 Vict., cap. 123, Article fifty, Section eight: “The prosecutor shall not sit on any Court-Martial for the trial of a prisoner whom he prosecutes.”

⁴ ADM 194/181, Trial of Stourton Needham, 7/12/1867.

⁵ Unfortunately the memorandum was not included in the Returns.

Unlike the trials of Commander Nicolas or Captain Sotheby, which were as unique for their extraordinary circumstances as for the Admiralty's response to them, the trials of Lieutenant Simeon and Mr. Needham were mundane. Failing to appear for watch was not an uncommon offence listed in officers' trials, and the combination of drunkenness and contemptuous language was likely the single most common charge of the 1860s. The response of the Admiralty (or other senior officers) to these trials, therefore, is quite significant, especially given the memorandum published in the wake of Needham's trial. The willingness of senior naval administrators to not only work with Parliament to fundamentally change the governing legislation of the Royal Navy, but also of individual officers and sailors to effect change from within, reveals a very different Admiralty than that described in previous centuries.

Reform was unquestionably rooted in self-preservation, as public and Parliamentary pressures convinced the Admiralty that such change was necessary for their survival as an institution, but reform-minded officers such as Admirals Sir Charles Napier and Lord Clarence Paget worked from within the navy to advocate for change as well. Within a few short years of the passing of the first Naval Discipline Act, its effects were clearly visible in the Courts Martial Returns from around the world, in such examples as the virtual disappearance of the death sentence, the sharp decline in flogging, and the corresponding increase in imprisonment and other forms of non-corporal punishment. Charges which began the century carrying the unwaveringly imposed death penalty, such as sodomy and mutiny, had lessened in degree, and within a few decades even flogging would become illegal in the navy. Such changes in legislation took time to travel the world, as the "far-flung battle-line" was spread thin across the Empire, and remote stations such as China clearly took longer to implement the changes than

home ports such as Portsmouth or Devonport.⁶ However, by the end of the decade and after numerous Naval Discipline Acts, it had become obvious that the traditions of “rum, buggery, and the lash” had given way to a more formalized approach to crime and punishment in the Royal Navy, one which placed the primary responsibility for maintaining discipline in the fleet upon the Admiralty and naval courts rather than individual officers.

⁶ Rudyard Kipling, ‘Recessional’, in *Rudyard Kipling Selected Poems*, ed. by Andrew Lycett, (Folio Society, 2004), V. 4. 2.

Works Cited

Primary Sources

ADM Series, The National Archives, Kew:

ADM 194/42, Courts Martial Indices, 1812-1855.

ADM 194/180, Courts Martial Returns, 1855-1864.

ADM 194/181, Courts Martial Returns, 1865-1872.

Parliamentary Statutes:

Act for the Establishing Articles and Orders for the regulateing and better Government of His Majesties Navies Ships of Warr & Forces by Sea, 1661 (13 Cha. II St 1, cap. 9).

An Act for amending, explaining and reducing into One Act of Parliament, the Laws relating to the Government of His Majesty's Ships, Vessels and Forces by Sea, 1749 (22 Geo. II, cap. 33).

An Act to explain and amend an Act made in the Twenty-second Year of the Reign of His late Majesty King George the Second, intituled "An Act for amending, explaining, and reducing into One Act of Parliament the Laws relating to the Government of His Majesty's Ships, Vessels, and Forces by Sea", 1779 (19 Geo. III., cap. 17).

An Act to extend the Powers of an Act of the Thirty-seventh Year of His present Majesty, for enabling His Majesty more effectually to grant conditional Pardons to Persons under Sentence of Naval Courts-martial, and to regulate Imprisonment under such Sentences, 1816 (56 Geo. III., cap. 5.).

Naval Discipline Act, 1860 (23 & 24 Vict., cap. 123).

Naval Discipline Act, 1861 (24 & 25 Vict., cap. 115).

Naval Discipline Act, 1864 (27 & 28 Vict., cap. 119).

Naval Discipline Act Amendment Act, 1865 (28 & 29 Vict., cap. 115).

Naval Discipline Act, 1866 (29 & 30 Vict., cap. 109)

Naval Discipline Act, 1884 (47 & 48 Vict., cap. 39).

Hansards and Parliamentary Documents:

House of Commons Debate (21 August 1860). Vol. 160, Col. 1664.

Pennell, C.H. *A RETURN of the Number of MEN Voted for the SEA SERVICE in each Year, from the Year 1815 to 1858-59 inclusive, distinguishing Boys, Marines, and Coast Guard.* Admiralty, 24 February 1859.

Pennell, C.H. *A RETURN of the Number of PERSONS FLOGGED in the Navy in the Year 1859.* Admiralty, 1859.

Newspapers:

The Times

Other Documents:

The Navy LIST corrected to 20 December 1836. London: John Murray, 1837.

Regulations and Instructions relating to HIS MAJESTY'S SERVICE AT SEA. London: W. Winchester and Son, 1806.

Secondary Sources:

Baugh, Daniel A. "Byng, John (bap. 1704, d. 1757), naval officer." Oxford Dictionary of National Biography. 23 Sep. 2004; Accessed 23 Jan. 2020.

Beattie, J.M. *Crime and the Courts in England 1660-1800.* Oxford University Press, 1986.

Behrman, Cynthia. *Victorian Myths of the Sea.* Ohio UP, 1977.

Bentley, David. *English Criminal Justice in the Nineteenth Century.* London: The Hambledon Press, 1998.

Branch Johnson, W. *The English Prison Hulks.* London: Christopher Johnson, 1957.

Briggs, Asa. *England in the Age of Improvement 1783-1867.* London: The Folio Society, 1999.

Brunsmann, Denver. *The Evil Necessity: British Naval Impressment in the Eighteenth-Century Atlantic World.* Charlottesville: University of Virginia Press, 2013.

Burg, B.R. *Boys at Sea: Sodomy, Indecency and Courts Martial in Nelson's Navy.* London: Macmillan, 2007.

Busk, Hans. *The Navies of the World: Their Present State and Future Capabilities.* London: Routledge, Warnes and Routledge, 1859.

Byrn, John. *Crime and Punishment in the Royal Navy, Discipline on the Leeward Islands Station 1784-1812.* Southampton: Camelot Press, 1989.

Byrn, John. *Naval Courts Martial 1793-1815.* Aldershot: Ashgate, 2009.

Coad, Jonathan. *The Royal Dockyards 1690-1850.* Aldershot: Scholar Press, 1989.

Coats, Ann and Philip MacDougall. (editors) *The Naval Mutinies of 1797: Unity and Perseverance.* Boydell, 2011.

Cohen, Dan, Tim Hitchcock, et al. "Data Mining with Criminal Intent," Final White Paper, 2011.

Dacam, John. "'Wanton and Torturing Punishments': Patterns of Discipline and Punishment in the Royal Navy, 1783-1815." PhD thesis, University of Hull, 2009.

De Saxe, Maurice. *Reveries or Memoirs Concerning the Art of War.* Edinburgh: Sands et al, 1759.

- Devereaux, Simon. "The City and the Sessions Paper," *The Journal of British Studies* 35 No. 4 (1996), 466-503.
- Dugan, James. *The Great Mutiny*. London: The Trinity Press, 1966.
- Eder, Markus. *Crime and Punishment in the Royal Navy of the Seven Years' War, 1755-1763*. Aldershot: Ashgate Publishing, 2004.
- Emsley, Clive, and Pieter Spierenburg. Review of *Crime and Punishment in the Royal Navy of the Seven Years' War* by Markus Eder, *Crime, History & Societies* 8 No. 1 (2004): 118-120.
- Emsley, Clive. *Crime and Society in England 1750-1900*. London: Routledge, 2010.
- Frykman, Niklas. "The Mutiny on the Hermione: Warfare, Revolution and Treason in the Royal Navy." *Journal of Social History* 44 No. 1 (2010): 159-187.
- Gilbert, A.N. "Buggery and the British Navy, 1700-1861." *Journal of Social History* 10 (1976): 72-98.
- Gilbert, A.N. "The Changing Face of British Military Justice," *Military Affairs* 49 No. 2 (1985): 80-84.
- Gosset, W.P. *The Lost Ships of the Royal Navy, 1793-1900*. London: Mansell Publishing Ltd., 1986.
- Gough, Barry. *Pax Britannica: Ruling the Waves and Keeping the Peace Before Armageddon*. New York: Palgrave MacMillan, 2014.
- Gough, Barry. Review of *Order and Disorder in the British Navy, 1793-1815: Control, Resistance, Flogging, and Hanging*. by Thomas Malcomson, *CHOICE: Current Reviews for Academic Libraries* 54 No. 7, (2017): 1077.
- Graham, S., I. Milligan and S. Weingart. *Exploring Big Historical Data: The Historian's Macroscope*. London: Imperial College Press, 2015.
- Hay, Douglas, Peter Linebaugh, John Rule, E.P. Thompson and Cal Winslow. *Albion's Fatal Tree: Crime and Society in Eighteenth-Century England*. London: Verso, 2011.
- Hechter, Michael, Steven Pfaff, and Patrick Underwood, "Grievances and the Genesis of Rebellion: Mutiny in the Royal Navy, 1740-1820." *American Sociological Review* 81 No. 1 (2016): 165-189.
- Herman, Arthur. *To Rule the Waves*. New York: Harper Collins, 2004.
- Innes, Joanna and John Styles, "The Crime Wave: Recent Writing on Crime and Criminal Justice in Eighteenth-Century England," *Journal of British Studies* 25 No. 4 (1986): 380-435.
- Kemp, Peter. *The Oxford Companion to Ships and the Sea*. Oxford UP, 1988.
- King, Peter. *Crime and Law in England 1750-1840*. Cambridge UP, 2006.
- Kipling, Rudyard. 'Recessional', in *Rudyard Kipling Selected Poems*, edited by Andrew Lycett. Folio Society, 2004.

- Lambert, Andrew. *The Challenge: America, Britain, and the War of 1812*. London: Faber and Faber Ltd., 2012.
- Langbein, John. "Albion's Fatal Flaws," *Past and Present* 98 (Feb. 1983): 96-120.
- "John H. Langbein," Yale Law School Faculty, accessed on 30 November 2018, <https://law.yale.edu/john-h-langbein>.
- Lloyd, Christopher. *The British Seaman 1200-1860*. London: Collins, 1968.
- Malcomson, Thomas. *Order and Disorder in the British Navy, 1793-1815: Control, Resistance, Flogging, and Hanging*. Woodbridge: Boydell Press, 2016.
- Manwaring, G. and B. Dobrée. *The Floating Republic*. London: Geoffrey Bles, 1935.
- Melancon, Glenn. *Britain's China Policy and the Opium Crisis: Balancing Drugs, Violence and National Honour, 1833-1840*. Aldershot: Ashgate Publishing Ltd., 2003.
- Mitchell, B.R. and Phyllis Deane. *Abstracts of British Historical Statistics*. Cambridge UP, 1962.
- Moretti, Franco. *Distant Reading*. London: Verso, 2013.
- Moulton, J.L. *The Royal Marines*. London: Leo Cooper, 1972.
- Old Bailey Proceedings Online (www.oldbaileyonline.org, version 8.0, 26 November 2019).
- Parkinson, Jonathan. *The Royal Navy, China Station*. Troubador Publishing, 2018.
- Razor, Eugene. *Reform in the Royal Navy: A Social History of the Lower Deck, 1850-1880*. Hamden: Archon, 1976.
- Rodger, N.A.M. review of *Crime and Punishment in the Royal Navy of the Seven Years' War* by Markus Eder, *The English Historical Review* 119, No. 483 (Sept. 2004): 1096.
- Rodger, N.A.M. *The Command of the Ocean: A Naval History of Britain 1649-1815*. New York: Penguin Books, 2004.
- Rodger, N.A.M. *The Safeguard of the Sea: A Naval History of Britain 660-1649*. New York: HarperCollins, 1998.
- Rogers, Nicholas. *The Press Gangs: Naval Impressment and its Opponents in Georgian Britain*. London: Continuum, 2007.
- Spavens, William. *Memoirs of a Seafaring Life*, ed. N.A.M. Rodger. Bath: The Folio Society, 2000.
- The Digital Panopticon Search Builder; results. Consulted 29th November 2019.
- Thompson, E.P. *The Making of the English Working Class*. London, 1968.
- UK Colonial Registers and Royal Navy Logbooks Project; Met Office; University of Sunderland (2011): CORRAL: Historical meteorological recordings from the UK colonial registers and Royal Navy logbook images. NCAS British Atmospheric Data Centre. Accessed on 24 February 2020.

Willis, Sam. *In the Hour of Victory*. London: W.W. Norton & Co., 2014.

Wilson, Richard. Review of *Order and Disorder in the British Navy, 1793-1815: Control, Resistance, Flogging, and Hanging*. by Thomas Malcomson, *The Mariner's Mirror* 103 no. 2 (2017): 234-235.

Wood, A.B. "The Laws of Oleron," *The Mariner's Mirror* 4 No. 6, 1914: 195-199.

Woodman, Richard. *A Brief History of Mutiny*. London: Robinson, 2005.