Regulating Sodomy in the Pre-Nelson Navy

England’s Commonwealth government produced the first modern code for regulating the navy. The *Laws of War and Ordinances of the Sea*, enacted in 1652, contained thirty-nine articles governing all aspects of shipboard conduct deemed important by members of parliament. As might be expected in a time when Englishmen were firmly committed to expanding seaborne trade and deeply concerned over the threats posed by commercial rivals, particularly the Dutch, the *Laws of War* complemented earlier Navigation Acts and other maritime regulations adopted to enhance the nation’s economic strength. Pressing mercantile concerns were manifest in provisions of the *Laws of War* that governed passports, bills of lading, prize money, piracy, privateering, pillage, and convoying of merchant ships. A good many of the items, over a dozen, were aimed at maintaining good order on board ship. There was to be no quarreling, theft, or embezzlement of the navy’s property. Murder was proscribed along with threatening admirals. At least two of the provisions inadvertently testified to the poor conditions of service in the Commonwealth fleet. One explained that having pay in arrears was not an acceptable reason for refusing to fight, and the other prohibited seditious commentary about the quality of the food. Ten regulations dealt with treasonable activities, spying, sedition, desertion, encouraging others to desert, and aiding the enemy. Several more governed conduct during combat at sea. The punishment most often prescribed for violations of the *Laws* was death, although it could be mitigated by courts of admiralty or councils of war, both of which had extensive powers in capital and non-capital cases. The Commonwealth was concerned with the spiritual well-being of its officers and men as well as with temporal matters. The opening article prohibited profaneness and irreligion, enjoined crewmen to prayer and, not surprising for an enactment from
a Puritan parliament, mandated regular preaching and ordered that the Lord’s day be rigorously observed.

Courts martial were mentioned only twice in the *Laws of War*, both times in connection with minor violations. They had power to levy fines or imprison anyone who spoke menacing words or made objectionable signs or gestures during trials. They could also, at their discretion, punish officers or seamen who failed to find or apprehend an assortment of malefactors. One of the laws cataloged proscribed immoral behaviors such as “unlawful and rash oaths, cursings, execrations, drunkenness, uncleanness, and other scandalous acts.” The councils of war punished breaches of the moral code as they saw fit. There was no compulsory or suggested death penalty for such transgressions, as was the case with most of the other articles.\(^1\)

The restoration of the monarchy in 1660 negated legislation passed during the Commonwealth and Protectorate. Those laws adopted during the decade of Puritan dominance and that were adjudged useful had to be re-enacted by the newly installed parliament. England’s commercial rivalries and overseas economic interests changed little with the ascension of Charles II, and earlier measures dealing with seaborne trade, the merchant fleet, imports and exports, ships’ crews, tariffs, and the like were reaffirmed with only minor alterations. In like manner, the 1652 *Laws of War and Ordinances of the Sea* were slightly revised and then renewed under the title *An Act for the Establishing Articles and Orders for the Regulating and Better Government of His Majesty's Navies, Ships of War and Forces by Sea*. The “King’s most Excellent Majesty” and the Church of England of necessity replaced references to the Commonwealth in the text, and the number of articles decreased from thirty-nine to thirty-five, largely the result of combining several of the provisions in the original 1652 legislation. The councils of war disappeared from the new document, but the functions of courts martial were greatly expanded. They were empowered to determine punishments in over a dozen of the revised articles. Specifications were included for constituting courts martial, staffing them, and denominating the bounds of their authority.\(^2\)

Martial law had been invoked occasionally in times of emergency during the reigns of Mary, Elizabeth, and Charles I, but the thirty-five naval regulations of 1661 provided for their regular and systematic employment. Over the next century, occasional complaints were lodged challenging the legality of such courts in times of peace, but they were largely ignored. Courts martial became a standard method of administering justice in the navy after 1660, and those writing in their defense, if not more persuasive than those who disparaged them, emerged victorious