

SIR EDWARD COKE (1552-1634), LAWYER, LEGAL WRITER, AND POLITICIAN. Edward Coke had a long and distinguished career as a lawyer, judge, member of Parliament and jurist. He became recorder of London and solicitor-general in 1592 and attorney-general in 1594. He acted for the Crown in a number of sensational, high-profile cases, including the trials for treason of Essex and Southampton (1600-01), Sir Francis Bacon, and the Gunpowder Plot conspirators (1605). He was appointed chief justice of the Common Pleas in 1606. Unfortunately, his political career stalled when he opposed James I's attempts to limit the jurisdiction of the common law courts, and although he became chief justice of the King's Bench and a member of James' Privy Council in 1613, this continued conflict with the King and political jockeying with Bacon led to Coke's dismissal in 1616. His popularity, however, was testified to by his return to the political scene as an MP in 1621. He is often seen as the champion of the rule of common law; his last and most significant act was the drafting of the Petition of Right (1628).

Between 1600 and 1615, Coke published his *Reports*, essentially learned commentaries on cases in common law, along with the multi-volume *Institutes*, the first volume of which was an enormously influential commentary on an earlier law book popularly known as 'Littleton's Tenures'; the last three volumes comprise an important foundation for modern English law.

From THE THIRD PART OF THE INSTITUTES OF THE LAWS OF ENGLAND (1644)

#### CHAPTER 10: OF BUGGERY, OR SODOMY

If any person shall commit buggery with mankind, or beast, by authority of Parliament this offence is adjudged felony without benefit of clergy.<sup>1</sup> But it is to be known (that I may observe it once for all) that the statute of 25 Henry VIII was repealed by the statute of 1 Mar[y], whereby all offences made felony or praemunire<sup>2</sup> by any act of Parliament made since 1 Henry VIII were generally repealed, but 25 Henry VIII is revived by 5 Eliz[abeth].

Buggery is a detestable and abominable sin, amongst Christians not to be named, committed by carnal knowledge against the ordinance of the Creator and order of Nature, by mankind with mankind, or with brute beast, or by womankind with brute beast.<sup>3</sup>

*Bugeria* is an Italian word, and signifies so much as is before described.<sup>4</sup> *Paederastes* or *paiderestes* is a Greek word, *amator puerorum*,<sup>5</sup> which is but a species of buggery, and it was complained of in Parliament that the Lombards had brought into the realm the shameful sin of sodomy, that is not to be named, as there it is said.<sup>6</sup> Our ancient authors do conclude that it

---

<sup>1</sup> *is judged [...] clergy* Persons charged with this type of felony could not appeal to their 'benefit of clergy,' where literate persons could be exempted from the jurisdiction or sentence of the ordinary courts of law by reading a passage from Scripture aloud.

<sup>2</sup> *praemunire* a writ accusing a person of recognizing the power of the pope [instead of the monarch]; often a charge brought against those who attempted to have common law matters tried in the Church courts.

<sup>3</sup> COKE'S MARGINAL NOTE: 5 Eliz. CH., 17

<sup>4</sup> According to the *OED*, 'buggery' is derived from the French 'bougre,' which means literally a 'heretic.'

<sup>5</sup> *Latin*, 'lover of boys.'

<sup>6</sup> COKE'S MARGINAL NOTE: Rol. Parl. 56. E. 3. au. 58 [*Editor's note*: Parliament's 1376 petition to the King begged him to expel immigrant businessmen from Lombardy for usury and other more vaguely-defined vices: "Some among

deserveth death, *ultimum supplicium*,<sup>7</sup> though they differ in the manner of punishment. Britton sayeth that sodomites and miscreants shall be burnt, and so were the Sodomites by Almighty God.<sup>8</sup> Fleta sayeth, *pecorantes et sodomitae in terra vivi confodiantur*,<sup>9</sup> and therewith agreeth the *Mirror*, *pur le grand abomination*,<sup>10</sup> and in another place, he sayeth, *Sodomie est crime de majesty, vers le roi celestre*.<sup>11</sup> But (to say it once for all) the judgment in all cases of felony is that the person attainted<sup>12</sup> be hanged by the neck until he or she be dead. But in ancient times in that case, the man was hanged, and the woman was drowned, whereof we have seen examples in the reign of Richard I.<sup>13</sup> And this is the meaning of ancient franchises granted of *Furca* and *Fossa*, of the Gallows and the Pit, for the hanging upon the one, and drowning in the other, but *Fossa* is taken away and *Furca* remains.<sup>14</sup>

*Cum masculo non comniscearis coitu foemineo, quia abominatio est. Cum omni pecore non coibis, nec maculaberis cum eo: Mulier non succumbet, jumento, non miscebitur ei, quia scelus est, etc.*<sup>15</sup>

The Act of 25 Henry VIII hath adjudged it felony,<sup>16</sup> and therefore the judgment for felony doth now belong to this offence, *viz.*, to be hanged by the neck till he be dead. He that readeth the preamble of this act shall find how necessary the reading of our ancient authors is: the statute

them [...] Have lately practiced in this land a very horrible vice which should not be named. By which the kingdom cannot fail shortly to be destroyed, if stiff punishment be not speedily ordained” (qtd. in J. Katz, *Gay/Lesbian Almanac*, New York, 1983, p. 36)].

<sup>7</sup> *ultimum supplicium* Latin, the ‘utmost, ultimate, or final punishment.’

<sup>8</sup> COKE’S MARGINAL NOTES: Britton, ca. 9; Gen. 19.9; Rom. 1.7; F.N.B. 269a. [*Editor’s Note*: Britton, a legal compilation produced during the reign of Edward I (1239-1307), is essentially an abridgement of the work of Bracton, sometimes called the father of English law; in *Gen 19.9*, God slays the Sodomites in the famous story of Sodom and Gomorrah; for Genesis 19 [the destruction of Sodom and Gomorrah], and Romans 1 [Paul’s comments on pagan sexual practices], see excerpts in the print anthology. I have not been able to identify *F.N.B.*]

<sup>9</sup> COKE’S MARGINAL NOTE: Fleta, li. 1. ca. 35. [*Editor’s note*: Like Britton, *Fleta* refers to a legal compilation produced during the reign of Edward I; like Britton, *Fleta* relied heavily on Bracton.] *pecorantes et sodomitae in terra vivi confodiantur* Latin, ‘those who are guilty of bestiality and sodomy should be buried alive.’

<sup>10</sup> French, ‘for the great abomination.’

<sup>11</sup> French, ‘Sodomy is a crime against majesty (i.e., a crime defined as that of lese-majesty), against the King of Heaven.’ COKE’S MARGINAL NOTES: *Mirror*, ca. 4 § de Majesty, ca. 1 § 15, and cap. 2, and etc. 11 [*Editor’s note*: *The Mirror of Justices* (c. 1300?) condemns sodomy as a crime against the king (a “crime of *laesa majestas*”): “The crime of *laesa majestas* is a horrible sin committed against the king, and this may be the king of heaven or earth. Against the king of heaven in three ways: by heresy, apostasy [these include sorcery], and sodomy.” The text goes on to claim that ancient precedent dictated a more than usually expeditious journey to execution: “[...] those notoriously guilty should be judged without respite and the judgements executed.” For those so charged but not so obviously guilty, the text shows enormous anxiety about the possible gossip that would accompany their trials, since ancient precedent also dictated that in the latter cases “every tongue should hold its peace” (see *The Mirror of Justices*, ed. William Joseph Whittaker [London, 1895], pp. 15, 53).]

<sup>12</sup> *attainted* the process of condemning (a person convicted of treason or felony) to death, corruption of blood, and extinction of all civil rights and capacities; to subject a person to the legal process of attainer.

<sup>13</sup> Richard I (1157-1199).

<sup>14</sup> *Furca* and *Fossa* simply, the Latin terms for ‘gallows’ and ‘ditch (or pit),’ respectively

<sup>15</sup> COKE’S MARGINAL NOTES: Leviticus 18.22, 23; 1 Timothy 1.10. [*Editor’s note*: The Vulgate Latin translates as: “Thou shalt not lie with mankind as with womankind; it is an abomination. Neither shalt thou lie with any beast to defile thyself therewith; neither shall any woman stand before a beast to lie down thereto; it is confusion” (AV, Lev. 18.22-23)].

<sup>16</sup> *felony* i.e., punishable by death. On felony, see ‘Sodomy Statutes,’ *Online Companion*, n5.

doth take away the benefit of clergy<sup>17</sup> from the delinquent. But now let us peruse the words of the said description of buggery.

*Detestable and abominable.*] Those just attributes are found in the Act of 25 Henry VIII.

*Amongst Christians not to be named.*] These words are in the usual indictment of this offence, and are in effect in the Parliament Roll of 50 E[dward] III, *ubi supra. nu. 58.*

*By carnal knowledge, and etc.*]: The words of the indictment be, *contra ordinationem Creatoris, et naturae ordinem, rem habuit veneream, dictū[m]que puerum carnaliter*\*<sup>18</sup> *cognovit, etc.*<sup>19</sup> and etc. So as there must be *penetratio*, ‘penetration,’ that is, *res in re*,<sup>20</sup> either with mankind or with beast, but the least penetration maketh it carnal knowledge. See the indictment of Stafford, which was drawn by great advice for committing buggery with a boy, for which he was attainted and hanged.<sup>21</sup>

The Sodomites came to this abomination by four means: *viz.* by pride, excess of diet, idleness, and contempt of the poor.<sup>22</sup> *Otiosus nihil cogitat, nisi de ventre et venere.*<sup>23</sup> Both the agent and consentient<sup>24</sup> are felons: and this is consonant to the law of God: *Qui dormierit cum masculo coitu foemineo, uterque operatus est nefas, et morte moriatur.*<sup>25</sup> And this accordeth with the ancient rule of law: *agentes et consentientes pari poena plecentur.*<sup>26</sup>

*Emissio seminis*<sup>27</sup> maketh it not buggery, but is an evidence in case of buggery of penetration; and so in rape the words be also *carnaliter cognovit*,<sup>28</sup> and therefore there must be penetration, and *emissio seminis* without penetration maketh no rape. *Vide*<sup>29</sup> in the Chapter of

---

<sup>17</sup> *benefit of clergy* See n1.

<sup>18</sup> COKE’S MARGINAL NOTES: \*This is grounded upon the Word of God. *viz.*, Gen. 19.4, 5; Jg. 19.22. Ut cognoscamus eos. [Editor’s note: *Latin*, ‘in order that we may recognize them’].

<sup>19</sup> *Latin*, ‘against the ordinance of the Creator, and the order of nature, he had sexual relations with and carnally knew the before-mentioned boy.’ *Veneris res* (*lit.*, the matters of Venus), often refers to sexual intercourse, while *rem habere* often refers specifically to intercourse with a prostitute (and is a term taken from Latin commerce: ‘to have dealings with’); the Biblical euphemism for sexual intercourse (‘had carnal knowledge of’) was also part of the classical Latin idiom. See J.N. Adams, *The Latin Sexual Vocabulary* (Baltimore, 1982), p. 203, 190.

<sup>20</sup> *Latin*, ‘thing in thing.’ On *res* in the Latin sexual vocabulary, see n19.

<sup>21</sup> COKE’S MARGINAL NOTES: Coke, lib. Intr. 352. Mich 5. Ja. Coram rege. [Editor’s note: See the account of Stafford’s trial, conviction, and execution for sodomy in the print anthology, and the preface to this account in the *Online Companion*].

<sup>22</sup> COKE’S MARGINAL NOTES: Ezek. 16.49; Gen. 18.29; Dt. 29.33; Is. 13.9; Jer. 23.14, 49.18, 50.4; Lk. 17.28-29; 2 Pet. 2.6; Jude 7; Rom. 1.26-27; Wis. 10.6-7.

<sup>23</sup> *Latin*, ‘The idle man thinks of nothing except food and drink.’

<sup>24</sup> *agent and consentient* i.e., the person who commits the crime and the person who fully consents to the crime.

<sup>25</sup> COKE’S MARGINAL NOTES: Lev. 20.13; 1 Cor. 6.10. [Editor’s note: The quotation is from the Latin Vulgate, “If any man lie with a man as with a woman, both have committed an abomination: let them be put to death” (Lev. 20.13)].

<sup>26</sup> *Latin*, ‘those who perform an act and those who simply consent to said act are to be punished equally.’

<sup>27</sup> *Latin*, ‘emission of semen.’

<sup>28</sup> *Latin*, ‘he knew carnally’ [i.e., he sexual relations with another person or beast]. On *cognovit* and *carnaliter* in the Latin sexual vocabulary, see nn18-19.

<sup>29</sup> *Latin*, ‘See.’

Rape.<sup>30</sup> If the party buggered be within the age of discretion,<sup>31</sup> it is no felony in him, but in the agent only. When any offence is felony either by the common law or by statute, all accessories both before and after are incidently included.<sup>32</sup> So if any be present, abetting and aiding any to do the act, though the offence be personal, and to be done by one only, as to commit rape, not only he that doth the act is a principal; but also they that be present, abetting and aiding the misdoer, are principals also, which is a proof of the other case of sodomy.

*Or by woman.*] This is within the purview of this Act of 25 Henry VIII. For the words be, *if any person*, and etc., which extend as well to a woman as to a man; and therefore, if she commit buggery with a beast, she is a person that commits buggery with a beast, to which end this word *person* was used. And the rather for that somewhat before the making of this Act, a great lady had committed buggery with a baboon, and conceived by it, etc.

There be four sins in Holy Scripture called *clamantia peccata*, ‘crying sins,’<sup>33</sup> whereof this detestable sin is one, expressed in this *distichon*:

*Sunt vox clamorum, vox sanguinis, et Sodomorum,  
Vox oppressorum, merces detenta laborum*<sup>34</sup>

---

<sup>30</sup> Chapter 11 following in Coke’s *Third Part of the Institutes*.

<sup>31</sup> *within the age of discretion* i.e., if the person buggered was under the age of fourteen (the age of legal responsibility), then that person was counted a victim of rather than a participant in the said sexual act.

<sup>32</sup> *accessory* someone who aids in the commission of a crime, either before or after the crime has taken place.

<sup>33</sup> *crying sins* so-called because these sins are thought to proclaim themselves no matter how hard the perpetrators attempt to keep them secret (silent); they ‘cry out’ to God for punishment. These sins were murder, sodomy, oppression of the weak and the stranger, and defrauding of the labourer and the poor.

<sup>34</sup> Latin, ‘They are the voice of clamorous cries, the voice of blood, the voice of sodomy / The voice of the oppressed, [the voice ] of those who labour whose wages are withheld.’ I have not been able to trace this couplet, but it appears in a number of contemporary texts, since it neatly summarizes the ‘crying sins.’