

Letting the Wolf through the door: public morality, politics and "permissive" reform under the Wilson Governments, 1964-1970

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Letting the Wolf through the door

Public morality, politics and “permissive” reform
under the Wilson Governments, 1964-1970.

ANDREW JAMES HOLDEN

(PhD thesis: Queen Mary, University of London, 2000)



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Abstract

Letting the Wolf through the door: Public Morality, politics and ‘permissive’ reform under the Wilson Governments 1964-1970

The thesis presents an analysis of the process by which the Wolfenden ‘strategy’ of separating sin from the ambit of the criminal law translated into legislative change under a Labour Government wedded to a broad philosophy of legal and social reform.

It examines in turn the reform of the laws governing homosexuality, abortion, theatre censorship and divorce, which were passed during the first Wilson administration, and the attempts to reform the laws governing Sunday entertainments.

It is based on extensive archival research including much previously unused material, and analyses the key influences on the reform process – the Cabinet, Whitehall, the Labour Party, MPs, the House of Lords, the Churches, the press, pressure groups and public opinion – to establish their attitudes and influence on the debates.

The thesis begins with a reassessment of the continuing debate about “permissiveness” and the significance of “permissive” reform in the historiography of the 1960s and the Wilson Governments. It then examines the underlying causes of evolving social and moral attitudes in post-war Britain, particularly secularisation, the disruption of the Second World War and increasing economic affluence from the mid-1950s onwards.

Chapters three to seven look at each reform, or “Conscience Bill” as they were termed in Whitehall, including a comparison with their treatment by the preceding Conservative administration, particularly after the publication of the Wolfenden Report.

Chapter 8 analyses the relationship between the Government, publicly neutral but privately sympathetic on the issues involved, and the tortuous procedures which Private Members' Bills faced in becoming law, even in such a hospitable atmosphere.

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There are a great number of people whose contribution towards the completion of this thesis I would like to record.

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Public Record Office, Kew; Stephen Bird and the National Museum of Labour History; Lambeth Palace Library; Warwick University Modern Records Centre; the Wellcome Institute Contemporary Medical Archive Centre; the British Library of Political and Economic Science at the LSE.

Finally, I must record my debt, of every kind, to family and friends who have supported me; to Alan and Gabrielle Holden, whose professional and personal values underpinned the spirit of reform during the 1960s; Caroline Holden, Navin Reddy, Maxine Tate, Inon Barnatan, Colin Bell and the countless others who have made the rest of life worth living.

Chapter 1: Interpretations of “permissive” reform under the Wilson Governments, 1964-1970.

i. The reputation of the Wilson Governments, 1964-1970:

No other administration in post-war Britain has been the subject of such disappointment and criticism as have the Wilson Governments of 1964-1970. The recent rehabilitation of certain aspects of government in the 1960s from the nadir in which its reputation stood for much of the 1970s and 1980s has been seen partly in relation to the continuing poor economic performance in terms of growth and competitiveness of the British economy since the death of Keynesianism in 1976.¹ However, it also reflects the maturation of a generation that cannot remember the failures and setbacks of the 1960s. For those historians, politicians and journalists who between them established the orthodox view of the Wilson era, the disappointment was all the greater for being personally felt. They were the generation who most fervently supported Wilson in 1963, helped sweep him into office in October 1964, but then began to wonder what had gone so badly wrong when the disappointments started to set in after the sterling crisis of July 1966.²

Of those who felt betrayed by Wilson, and his failure to modernise Britain as promised in the 1964 Manifesto Labour - The New Britain,³ many travelled the width of the political spectrum during the 1970s and embraced the nascent Thatcherite ideology.⁴ For many in the Conservative Party, both its older and newer recruits, and others on the Right, the Wilsonian failure of economic management was matched only by the other *bête noire* of the 1960s, the liberal Left's creation of 'the permissive society'. Some historians acknowledge that the legislative changes commonly identified with the permissive society (a concept whose usefulness will be discussed below) which took place under the Wilson

¹ David Walker, 'The Wilson Governments 1964-1970', in Peter Hennessy and Anthony Seldon (eds), Ruling Performance (Oxford: Blackwell, 1987) p. 189.

² Conversation with Peter Hennessy 1.6.95.

³ Labour - the New Britain, reprinted in The Times, The House of Commons 1964 (London: Times Books, 1964).

⁴ Two notable examples from the Labour Party of the 1960s were Woodrow Wyatt, MP for Leicester Bosworth from 1959 to 1970, and Paul Johnson, editor of the New Statesman 1965-1970.

Governments were in fact part of a process stretching back to the mid-1950s and the effects of economic affluence under the Conservatives.⁵ The more perspicacious on the right note the significance of the Second World War in the changes which took effect a decade or two later. Lord Deedes, as William Deedes a junior Home Office Minister in the 1950s and Cabinet Minister under Macmillan and Douglas-Home, has commented that:

"The Second World War had a very marked effect on social attitudes. The fact that we didn't see all this happening in the 1940s is irrelevant... Wars on the scale of those wars [the two World Wars] have a profound effect on attitudes which take some time to work through."⁶

However, for many on the Right it was the failure of Government in the 1960s to reinforce a traditional and uniform moral code within society which produced the legislative symbols of the Left's embrace of moral equivalence. For Mary Whitehouse, the most celebrated moral crusader of the last three decades, Roy Jenkins (sponsor of the 1959 and 1964 Obscene Publications Acts and Home Secretary between 1965 and 1967) and Sir Hugh Carlton-Greene (Director-General of the BBC during the 1960s) were almost the creators of the permissive society.⁷

Of those who remained on the Left there were the critics of the Wilsonian Labour Party who cited the weakness of its statist, *dirigiste* economic policies as much as the Right condemned their deployment.⁸ Yet those on the left of the Labour Party like Barbara Castle and Tony Benn (who throughout the period in question drifted from loyalty to Wilson to a position far to the left of him) who resisted the dilution of socialist principles by Wilson and his more moderate lieutenants - most importantly Jim Callaghan, Jenkins and Anthony Crosland - could still look back to the 1960s with pride at the 'civilising' reforms, enacted

⁵ Christopher Booker, The Neophiliacs (London: Collins, 1969).

⁶ Interview with Lord Deedes 23.9.97.

⁷ Mary Whitehouse, Whatever happened to Sex? (London: Hodder and Stoughton, 1971) pp. 17, 135.

⁸ Coopey, Tiratsoo and Fielding (eds.), The Wilson Governments 1964-1970 (London: Pinter Press, 1993).

between 1964 and 1970, which are listed below. Despite the ideological fissures that opened up in the Labour Party in the late 1970s, those from the left and right of the Party could still find satisfaction that a Labour government had achieved such measures.

They did not, however, command unanimous support across the Party. Callaghan, on becoming Home Secretary after the devaluation of sterling in 1967, was anxious not to be associated with the more notorious and radical alleged consequences of moral pluralism which emerged under his Home Secretaryship. He announced in Parliament after the publication of the Wootton Report on drugs in 1969 that he wanted to “call a halt to the rising tide of permissiveness... one of the most unlikeable words that has been invented in recent years.”⁹ Significantly, though, this Royal Commission had been set up by Jenkins, his predecessor, in 1966.¹⁰ Whilst democratic socialists on the right of the Party were in favour, many union-sponsored politicians, and union leaders themselves (for whom Callaghan was the main Cabinet representative), were extremely hostile to the whole raft of reforms, both from conviction and for fear of the reaction of ordinary, Labour-voting, working-class people. Race relations and equal pay legislation introduced by the Government were welcomed by unions officially, but there was latent hostility by some union members towards equal pay, jealous of their wage differentials,¹¹ and “on the question of race [trade union policy] was at best ambiguous and at times openly racist”.¹²

Although many of the measures were Private Members' legislation, the Labour Party has largely taken the credit for allowing them through Parliament and providing the support of their more liberal-minded MPs. So to what did this period of reform, towards which the Government of the day maintained an official neutrality throughout, amount? To imply a linear nature to the series of legislative changes would be to over-emphasise their homogeneity. However,

⁹ Kenneth O. Morgan, *Callaghan: A Life* (Oxford: OUP, 1997) p.320.

¹⁰ *Report of the Royal Commission on Drugs*, Cmnd.3263 (London: HMSO, 1969).

¹¹ Robert Taylor, *The Trade Union Question in British Politics: Government and Unions since 1945* (Oxford: Blackwell, 1993) p. 172; Celia Briar, *Working for Women? Gendered work and welfare policies in Twentieth Century Britain* (London: UCL Press, 1997) p.101.

¹² John Solomos and Les Black, *Race Politics and Social Change* (London: Routledge, 1995) pp.49-50.

their cumulative effect on society was considerable. Inevitably, as pressure for reform in different areas grew during the 1966-1970 Parliament, especially after the 1967 Sexual Offences Act (which decriminalised homosexual acts between consenting males over 21 in private), ardent reformers, their opponents and the Government discussed the consequences of reforms still outstanding concerning abortion, theatre censorship, divorce and Sunday entertainment under one umbrella, be it as “civilising” measures, “permissive” reform or that of “Conscience Bills” as they were dubbed by Whitehall officials.¹³

Under the Macmillan/Douglas-Home governments, Parliament enacted the Obscene Publications Bills of 1959 and 1964. In 1963 the Suicide Act removed suicide from the criminal law.¹⁴ Sidney Silverman’s long battle to abolish capital punishment effectively ended in the first year of the new Labour Government in 1965 when the Homicide Act removed the death penalty for an experimental period of five years.¹⁵ (The provision of time and a free vote for Parliament to come to a decision on capital punishment had been a pledge made by Wilson in 1964.¹⁶) Callaghan, in his incarnation as Home Secretary in 1969, pre-empted the expiry of this period in order to out-flank recidivist Conservative opposition, bringing forward an affirmative motion which made permanent the 1965 Act.¹⁷

The Sexual Offences Act 1967, as stated, decriminalised homosexual acts for consenting male adults in private (in England and Wales).¹⁸ Termination of pregnancy before 28 weeks with the consent of two doctors was legalised in the same year.¹⁹ The abolition of the Lord Chamberlain’s rôle in theatre censorship in 1968 removed censorship from the stage almost ten years after it had been

¹³ PRO, CAB 130/ 329 MISC 158(67)1, ‘Private Members’ Bills involving issues of conscience’, 27.7.67.

¹⁴ Mark Cason Jarvis, The Conservative Party and the Adaptation to Modernity 1957-1964 (London: unpublished PhD thesis, 1998).

¹⁵ Murder (Abolition of Death Penalty) Act, 1965; Richards, Parliament and Conscience (London: Allen & Unwin, 1970) pp.35-62.

¹⁶ Harold Wilson, Speech to Society of Labour Lawyers, 20.4.64, quoted in PRO, CAB 130/329, MISC 158 (67)1, ‘Private Members Bills involving issues of conscience’, Annex A, 27.7.67.

¹⁷ Morgan, *op.cit.*, p.297; Richards, *op.cit.*, pp.59-60; Benn, Office Without Power: Diaries 1968-1972 (London: Arrow, 1989) 25.9.69, p.203.

¹⁸ Sexual Offences Act, 1967.

¹⁹ Abortion Act, 1967.

lifted from literature by the Obscene Publications Act.²⁰ Reform of the divorce laws followed on to the Statute Book in 1969.²¹ However, wide support for a new divorce law and for reform of the antiquated Sunday observance laws was stymied by a combination of conflicting political priorities and successfully mobilised opposition, particularly in the latter case, where no comprehensive reform was enacted. These main measures were all introduced as Private Members' Bills, but received Government support except in the provision of extra time and drafting assistance where Parliament had already made its opinion clear.

In areas of more direct concern to Government policy, Labour promoted related ideas or amended current policy. The removal of flogging from the Penal Code was achieved by Jenkins in 1967.²² The promotion of contraception through local authorities by the National Health Service (Family Planning) Act, 1967 and the introduction of the contraceptive 'Pill' under the NHS were major planks of Government health policy.²³ To these can be added Government measures in the field of race relations and equal pay. Despite the stricter controls on immigration which the Wilson Government felt obliged to impose in 1965 and 1968 which pandered to racist sentiments,²⁴ it established the Race Relations Board in 1966 to combat discrimination in housing and employment and backed this up with the Race Relations Act, 1968, which outlawed discrimination on grounds of race in housing and employment.²⁵ For the first time the principle of equality in the workplace between men and women was established under the Equal Pay Act, 1970.²⁶ As Wilson's biographer, Ben Pimlott, has put it:

"The effect of this exceptional period of reform was to end a variety of judicial persecutions of private behaviour; quietly to consolidate a mood

²⁰ Theatres Act, 1968.

²¹ Divorce Law Reform Act, 1969.

²² Jenkins, *op.cit.*, p.200.

²³ NHS (Family Planning) Act, 1967; Weeks, *op.cit.*, p. 260.

²⁴ Shamit Saggat, *Race and Politics in Britain* (London: Wheatsheaf, 1992) pp.76-93.

²⁵ Race Relations Acts, 1965, 1968; Commonwealth Immigrants Act, 1968.

²⁶ Equal Pay Act, 1970.

change in British society; and to provide a legal framework for more civilised social values."²⁷

This was the culmination of the hopes of those in the Labour Party who had long sought to loosen the bonds of social convention and Victorian morality. These had persisted, and indeed were re-asserted after the disruption of the Second World War, by moral conservatives across the political spectrum who sought to re-emphasise the importance of the family and traditional roles within it at a time of increasing uncertainty.²⁸ This civilising philosophy was enshrined firstly in Anthony Crosland's The Future of Socialism in 1956. Crosland's grand sweep of modern democratic socialism encompassed not only policies surrounding the socialist-capitalist conflict, but also those of personal liberty and behaviour:

"Socialists cannot go on indefinitely professing to be concerned with human happiness and the removal of injustice, and then, when the programmes are decided, permitting the National Executive, out of fear of certain vocal pressure-groups, to become more orthodox than the bench of bishops."²⁹

Jenkins' electioneering pamphlet of 1959, The Labour Case, restated this argument.³⁰ He outlined a range of reforms, with which he was to be identified as Home Secretary between 1965 and 1967, as part of a Labour philosophy intended to create a more civilised and tolerant society. This now reads as a kind of job application for the post that he was eventually to fill.³¹

The pattern of the early historiography of the first two Wilson governments was established by journalists and commentators after the July 1966 deflationary débâcle when, as noted above, conservative opponents of the Government and those former supporters who felt disappointed by the Governments' setbacks

²⁷ Ben Pimlott, Harold Wilson (London: HarperCollins, 1992) p. 487.

²⁸ See Chapter 2, pp.69-73.

²⁹ C.A.R. Crosland, The Future of Socialism (London: Jonathan Cape, 1956) p.522.

³⁰ Roy Jenkins, The Labour Case (London: Penguin Harmondsworth, 1959).

³¹ Jenkins, op.cit., pp. 135-140.

and failures began to write early obituaries of Wilsonism.³² The capitulation by the Government in accepting the devaluation of sterling in November 1967, and the continuing economic difficulties which the Government faced until late 1969, reinforced these conclusions.³³ Other episodes contributed to this view of the administration's weakness, despite a majority of 90 in the House of Commons after the 1966 election. The conduct of foreign policy over Rhodesia and support for American military action in Vietnam, in particular, severely disturbed backbench and Labour Party morale.³⁴ Political scandal involving the Prime Minister such as the D-Notice Affair further tarnished the image of Harold Wilson's premiership.³⁵

Wilson's own defence of his administration's performance, in The Wilson Governments 1964-1970: A Personal Record, perhaps predictably, glossed over the more embarrassing events of those years.³⁶ He laid the blame for the more serious failures, such as the slow deaths of the Department for Economic Affairs and George Brown's National Plan which were intended to break the trend of Britain's relative economic decline, at the feet of others – in that case the inherited balance of payments deficit and later the intransigence of the Treasury.³⁷ However typical the genre of self-serving political memoir, this book did nothing to endear Wilson to journalists and scholars who continued to pour scorn on the record of 1964-1970.³⁸

Only with a resurgence of interest in the politics of the 1960s after the political demise of Margaret Thatcher in 1990 did a reassessment of the politics of Wilsonism and the 1964-1970 Governments begin. Pimlott's biography of

³² Pimlott, *op.cit.*, pp.428-431.

³³ Paul Foot, The Politics of Harold Wilson (London: Penguin Harmondsworth, 1968)

³⁴ Chris Wrigley, Now you see it, now you don't: Harold Wilson and Labour's foreign policy 1964-1970 in Coopey *et al*, *op.cit.*, p. 133.

³⁵ Pimlott, *op.cit.*, pp.443-449; Matthew Creevy, 'A critical review of the Wilson Government's handling of the D-Notice Affair 1967' in Intelligence and National Security vol.14 no.3, pp.209-227.

³⁶ Harold Wilson, The Labour Governments 1964-1970: A Personal Record (London: Weidenfeld and Nicolson, 1974).

³⁷ *Ibid.*, p.710; Interview by Harold Wilson with Peter Hennessy, 'Smoking is not Compulsory', first broadcast as no. 3 in the BBC Radio 3 series 'The Quality of Cabinet Government' in 1985.

³⁸ David McKie and Chris Cook (eds), The Decade of Disillusion: British Politics in the Sixties (London: Macmillan, 1972).

Wilson, published in 1992, led the way. Whilst pointing to the undoubted disappointments and failures of these years, he paints a more balanced picture of the Governments' record. He elucidates a rounder character in Wilson, sloughing off some of the excessive reputation for cynicism and dishonesty for which Wilson had so often been reviled.³⁹ Pimlott cites the overblown expectations of the new Labour government in 1964, for which Wilson was so centrally responsible, but also the difficulties of the political and economic dilemmas which Wilson and his ministers faced. The economic performance of the Wilson governments, Pimlott and others point out, was not actually worse in terms of growth rates than other post-war British governments.⁴⁰

Also important to Pimlott's argument are the many successes in social policy which have often been ignored by historians. A collection of essays on the 1964-1970 Governments, published in 1993, ploughed a similarly revisionist furrow. It unearthed hitherto unexplored aspects of the broad policy areas, reassessing the audit sheet for each by questioning the bases for previous attacks on this administration and comparing its successes and failures particularly in the light of subsequent events, notably the rise and fall of Thatcherism, whose blanket demonisation of the Wilson legacy is severely challenged.⁴¹ Measures on race relations, equal pay, pensions, the expansion of higher education and the establishment of the Open University are emphasised. The work of Coopey, Tiratsoo, Fielding *et al* provides an interesting comparison with the collection of essays published in 1972, edited by David McKie and Chris Cook, The Decade of Disillusion: British Politics in the Sixties, the most balanced volume published before the 1990s. Covering a similar range of policy areas as the contributors in McKie and Cook, they provide a more objective view of the Wilson Governments, an achievement made considerably easier for the historical perspective lent by the distance of time.

³⁹ Pimlott, Harold Wilson, pp.561-563.

⁴⁰ Alec Cairncross, The British Economy since 1945 2nd ed. (Oxford: Blackwell, 1995) pp.288, 318; Thelma Liesner, One Hundred Years of Economic Statistics (London: The Economist, 1989) pp.324-325.

⁴¹ Pimlott, *op.cit.*, pp.563-566; Coopey, Tiratsoo and Fielding eds, The Wilson Governments 1964-1970.

A comparison between these revisionist studies of the Wilson era and work done only five years earlier is instructive. Few books written during the 1980s were not bound by the historiographical dictates of the Thatcher period and agenda, or found little that was positive to say about the record of the 1960s.⁴² Clive Ponting's account of the 1964-1970 governments, whilst making some effort to describe the difficulties faced by Labour and its achievements, cannot hide his visceral contempt for the Party's failure in government. Ponting concludes that "in all major areas of policy the approach of the 1965-1970 government [sic] was backward looking." Ponting's own prescription is that policies developed in the 1950s by Labour and the Socialist parties and governments of other countries, notably Sweden, would have constituted a radical alternative to the Conservative governments of 1951-1964.⁴³ The fact that Labour was not elected on such a programme in 1964 and carried the enthusiastic support of all the left at that time, including Ponting presumably, seems to escape his memory. The publication of this book was, in any case, soon made marginal by the release of Pimlott's biography of Wilson.

Of utmost importance to the argument of the Wilson revisionists are the 'civilising' or 'permissive' reforms under discussion here. Wilson himself considered the issues at best a distraction and at worst unpalatable, and certainly in some cases a vote-loser. In this political calculation he was no different from Gaitskell,⁴⁴ neither of whom was prepared to vote on homosexuality in opposition.⁴⁵ Wilson pays no attention to issues of personal morality in his memoir.⁴⁶ The most relevant published pronouncement on the subject by Wilson is contained in his pre-election collection of speeches published in 1964 - The New Britain: Labour's Plan. In his lecture "Law Reform and the Citizen". Wilson promised a free vote on capital punishment (the abolition of which he supported) and government action in the fields of race relations and women's rights. Interestingly, in reference to Henry Brooke, he

⁴² Hennessy and Seldon (eds), op.cit.

⁴³ Clive Ponting, Breach of Promise (London: Hamish Hamilton, 1989) p.407.

⁴⁴ Thompson, op.cit., p. 139.

⁴⁵ Interview with Lord Jenkins, 25.11.99; HC Deb., vol. 625 col. 1510, 29.6.60.

⁴⁶ Wilson, op.cit.

remarked that “we have a Home Secretary not notable for either his humanity or his liberality”.⁴⁷

For Wilson there was a personal distinction between the issues specifically mentioned above and homosexuality or abortion, both conspicuous by their absence from his account. However, Wilson was savvy enough to understand that, even if he had no personal interest in these causes, the public mood and especially that within the Labour Party, was in favour of reform. As Gwyneth Dunwoody, MP for Exeter from 1966, has commented, “he was quite happy if people did controversial things, to try and balance the interests of all the different groupings”.⁴⁸ According to Jenkins these issues did not make Wilson’s blood run cold, and he must have appointed Jenkins as Home Secretary in the knowledge that the latter would pursue his reformist agenda.⁴⁹ A note by Derek Mitchell, Wilson’s principal private secretary, in the Prime Minister’s file at the PRO is evidence that Wilson briefly considered Arthur Bottomley, the rather grey Gaitskellite Colonial Secretary, for the Home Secretaryship in the August 1965. However, from the following month he seems firmly to have fixed on the more charismatic and radical Jenkins.⁵⁰

The attitude taken towards these reforms by individual Labour Cabinet ministers from the 1964-1970 Governments was predictable. In his memoirs Jenkins trumpets his own achievement as a “Young Home Secretary” implementing the reforms which he outlined in The Labour Case in 1959 and piloted as a backbench sponsor of the Obscene Publications Acts of 1959 and 1964. However, his personal attachment to these legislative measures is eloquently described at the expense of any detail of the issues under discussion or the wider context of public morality and a changing society, despite Jenkins’ own close association in historical memory with the period.⁵¹ His successor at the Home Office, Callaghan, who, as mentioned earlier, viewed reform of a

⁴⁷ Wilson, The New Britain: Labour’s Plan (London: Penguin, 1964) pp.81-90.

⁴⁸ Interview with Gwyneth Dunwoody MP, 27.3.00.

⁴⁹ Interview with Lord Jenkins, 25.11.99.

⁵⁰ PRO, PREM 5/1965, ‘1965 Ministerial Appointments’, notes by Mitchell (Principal Private Secretary to Prime Minister) 2.8.65; 21.9.65; 13.12.65.

⁵¹ Roy Jenkins, A Life at the Centre (London: Macmillan, 1991); The Labour Case.

'permissive' nature from a position closer to Wilson than to Jenkins, also glided over this aspect of the administration of which he for six years was one of the three most powerful ministers. He was, however, more candid than Wilson about his distaste for the supposedly 'permissive society', and the direction he thought it was taking whilst he was at the Home Office.⁵²

Other significant contributions to the literature on this period from ministers at the time constitute two different approaches, both more revealing than these standard political memoirs. The first is that of the political diarists, whose unrelenting charting of the highs and lows of the Wilson Governments exposed the daily life of Cabinet government, shone a uniquely intense spotlight on a British administration and provided such a rich style political journal and crucial historical source. They give considerable insight into the political strategies and manoeuvring which characterised attempts to pass backbench legislation on capital punishment, homosexuality, abortion, divorce, and censorship. Approaching these reforms from viewpoints of sympathy, the accounts given by Crossman, Castle and Benn are the perhaps the best and most graphic records of the increasing frustration felt by parliamentary reformers during the 1960s.⁵³ Furthermore, their position as ministers not only showed the sometimes colourful and passionate disputes which erupted over these sensitive issues between government colleagues, but demonstrated the tightrope which both pro and anti-reformers had to walk whilst the Government attempted to maintain its line of official neutrality towards the issues of morality under discussion in Parliament. All three may have been at the forefront of calls for reform from within the Government, but (and this seems particularly true of Crossman) they still manage to evoke the uncertainty which existed about how far reform could be taken in the face of a public which was often hostile towards the changes proposed, and the opposition of many within their own Party.⁵⁴

⁵² Callaghan, *Time and Chance* (London: Collins, 1987).

⁵³ R.H.S. Crossman: *The Diaries of a Cabinet Minister* vols.1-3 (London: Hamilton Cape, 1974, 1976, 1977); Barbara Castle, *The Castle Diaries 1964-1970* (London: Weidenfeld and Nicolson, 1984); Tony Benn, *Out of the Wilderness: Diaries 1963-1967* (London: Hutchinson, 1987); *Office without Power: Diaries 1968-1973* (London: Hutchinson, 1988).

⁵⁴ See below at Chapter 8, p.310.

The other important interpretation provided by a Wilson Government minister is that given by Lord Longford in his concise memoir published in 1974, The Grain of Wheat.⁵⁵ Unlike other former ministers, Longford, Leader of the House of Lords and Lord Privy Seal from 1964-1968 (the latter post was swapped briefly for the Colonial Secretaryship from 1965-1966), attempts to analyse the concepts of 'permissiveness' and the 'permissive society' whilst making a justification for his position as a Catholic supporting homosexual law reform, but opposing abortion and championing the conservative right against a tide of unwelcome 'pornographic' literature, drama and cinema from 1968 onwards.⁵⁶ Longford gives perhaps the most succinct description of the position of a reformer in the 1960s which to the ear of the late 1990s seems distinctly conservative:

“...I am in favour of the permissive society if it involves a more humane attitude to prisoners, drug addicts, unmarried mothers, and other outcasts. I insist that I am utterly against it if it involves a lowering of moral standards, whether in sexual or other fields.”⁵⁷

He does, however, argue within the boundaries of a debate about permissiveness which often indulges in clichés and simplifications about trends in sexual behaviour, patterns of family life and cultural change during the 1950s and 1960s, especially on divorce.⁵⁸

The demise of the Labour Government in 1970, at a time when condemnation by the right of the worst excesses of the 'permissive society' was increasing, was a period of prolific output by writers keen to link the Government, and its moral relativist supporters, to the collapse in standards of public morality. Mary Whitehouse, Chairwoman of the National Viewers and Listeners Association (NVALA), and John Selwyn Gummer, prominent conservative Anglican layman, member of the Inner London Education Authority from 1967 to 1970, were

⁵⁵ Lord Longford, The Grain of Wheat (London: Collins, 1974); A History of the House of Lords (Stroud: Sutton, 1999) pp.191-204.

⁵⁶ *Ibid*, pp.177-185.

⁵⁷ *Ibid*, p. 179.

⁵⁸ *Ibid*, p.182.

leading activists and writers for the cause of 'moral rearmament'. Whitehouse's Cleaning up TV and Whatever happened to Sex? and Selwyn Gummer's The Permissive Society: Fact or Fantasy? are most representative of this argument.⁵⁹ For them the links between the disaffection of youth from society, sexual promiscuity, pornography, drugs, the media and the legislative reforms carried out under the Wilson Governments are self-evident.

The failure of the Christian Churches to give any strong moral prescriptions during the 1950s and 1960s was also deemed a major contributory factor in declining moral standards. Gummer, unlike most other commentators actually revels in using the term 'permissive' – contemporary society is morally more permissive than Victorian society, but economically much less so – both of which are deplored.⁶⁰ Other contemporary commentators who, to differing extents, disliked the forces at work during the 1960s, but who were less moralistic than those who took an essentially religious position, pointed to the economic and commercial causes of 1960s cultural and social trends. Just as Richard Hoggart condemned the "sex in shiny packages" of the late 1950s, Christopher Booker attacked the chimera of 1960s culture.⁶¹ Less harshly, George Melly, the art critic, analysed the ephemeral qualities of 'pop' music and culture whilst not criticising the sexual or social mores of the young.⁶²

The empirical studies conducted by sociologists during the 1960s provided rich evidence upon which other sociologists and historians could later draw. Schofield's and Gorer's studies of the sexual attitudes of the young in 1963 and 1969 respectively provide firm evidence that the supposed sexual corruption and immorality of the young in the 'permissive society' were largely misconceptions. Although attitudes were changing, especially with different patterns of marriage and demography, most young people still desired what their parents had, and approved and disapproved of the same sorts of

⁵⁹ Mary Whitehouse, Cleaning up TV (London: Blandford, 1967); Whatever happened to Sex?; John Selwyn Gummer, The Permissive Society: Fact or Fantasy? (London: Cassell, 1971).

⁶⁰ Gummer, *op.cit.*, pp.3-6.

⁶¹ Richard Hoggart, The Uses of Literacy 2nd ed. (London: 1984); Christopher Booker, *op.cit.*

⁶² George Melly, Revolt into Style (Oxford: OUP, 1970).

behaviour.⁶³ This, of course, would never be accepted by moral traditionalists for whom the floodgates were opening ever wider.

Similarly, Tessa Blackstone's analysis of the student protests at the LSE during 1967 concluded that, contrary to the general perception of events, the radical student element was not drawn more from one social class or level of academic success than others. It was in that sense representative, at least of the 7% of the age group who attended university during the mid-1960s.⁶⁴ Stereotyping the young of that decade, as most commentators, especially in the press, but also many in academia were prone to do, painted a crudely inaccurate picture of the times.

⁶³ Michael Schofield, The Sexual Behaviour of Young People (London: Harmondworth Penguin, 1963); G. Gorer, Sex and Marriage in England Today (London: Nelson, 1971).

⁶⁴ T. Blackstone, Students in Conflict (London: , Weidenfeld and Nicolson, 1970) p.236.

ii. The Nature of “Permissive” Reform in the 1960s:

To the extent that these reforms allowed greater personal freedom, they were undoubtedly ‘permissive’. However, the indiscriminate use of the adjective since the late 1960s, and the pejorative context in which it is often used, has rendered it increasingly meaningless. This has been due, in part, to the successful linking of liberalising social trends and policy to the destruction of an agreed public morality, by the moral army of the right which opposed the reforms enacted under the Wilson Governments and tried with varying degrees of success to reverse the tide of ‘moral decline’ in Britain during the 1970s and 1980s. Equally important has been the inability, or unwillingness, of the liberalising left to capture the vocabulary of social morality. Permissive reformers have either denied that proposed measures or aims are permissive in nature, or disputed that the logical conclusion of permissiveness is a breakdown of traditional morality and social stability.

Very few of those who supported the reforms of the 1960s were aiming to arrive at a position where individuals could act as they pleased, where homosexuals could behave as they liked, where women could obtain abortion on demand or where pornography could be freely distributed. The intention was to define the legitimate areas of personal freedom within a continuing framework of social stability. Interestingly, Leo Abse, one of the foremost Parliamentary advocates of reform during the 1950s and 1960s, regrets that what he saw at the time as being an essentially humanitarian, civilising, and pragmatic measure (the 1967 Sexual Offences Act), has resulted in demands from a highly organised ‘gay’ lobby and its supporters for social equality, and the development of an almost normative yet ghettoised ‘gay’ culture.⁶⁵ Yet it was a largely utilitarian philosophy which underpinned much of the legislation from the Obscene Publications Act 1959 through to the Sexual Offences Act 1967 which decriminalised homosexual acts between consenting adults over the age of 21.

⁶⁵ Interview with Leo Abse, 5.12.97.

'Permissiveness' has become an ever more muddied concept because of its blanket application across different fields of public policy and social behaviour. Sexual behaviour, the arts and entertainment – the major areas in question here – are those to which the term permissiveness was applied from the 1960s onwards. However, in the political argot of the 1990s, permissiveness is equally linked to education and penal/judicial structures and policies, which have become unfashionable and associated with a permissive philosophy originating in the 1960s. This is true of many commentators of the left as well as the right, and means that distinguishing between different 'permissive' policies, which are not necessarily connected, continues to be politically difficult. This reflects back on to the policies and changes of the 1960s. Whether or not these were permissive is often considered more important than why and how they occurred, and what effects they had.

It was work done by sociologists during the 1970s which began to break the mould of misinterpretation by both right and left about the reforms carried out under the Wilson Governments under discussion here, and the wider causes and characteristics of the so-called 'permissive society'. Instead of characterising the period as one of continuous lowering of standards or a liberating relaxation of the assumed Victorian straitjacket, they sought to analyse the different dynamics at work, and the extent to which these corresponded with deeper changes in society.

Two major perspectives can be seen here. The first is represented by Christie Davies, whose book, The Permissive Society, published in 1975, is the major conservative analysis of a period which is seen in a largely negative light, despite Davies' claims that he approves of individual reforms carried out. Davies' argument is based upon a change in the construction of legislation concerning issues of personal morality from a "moralist" to a "causalist" one. The basis of a "moralist" juridical argument is clearly meant – a moral and implicitly Christian one. By "causalist" Davies argues that Parliament began to legislate during the 1960s to decriminalise or legalise activities if it were considered that

more harm was done by forbidding them than legalising them.⁶⁶ This simplistic analysis is then further weakened by an irrelevant aside that “activities which no one considers wrong in themselves may be forbidden by law if Parliament or the courts decide that they constitute... an intolerable nuisance.”⁶⁷ Christie goes on to assert that “the causalist utilitarian is not concerned with positive utility or happiness... Causalism is a form of utilitarianism that looks only at the short term and only at the ‘painful’ consequences of a rule or law.”⁶⁸ Davies’ research is thorough, but he is still little more than the thinking man’s Mary Whitehouse.

The second main perspective is that of left-wing, often Marxist, sociologists who stress the dichotomy inherent in much of the legislation under discussion here between the liberalising aspects (decriminalising homosexuality in certain circumstances, legalisation of abortion approved by two doctors in certain circumstances, relaxation of the divorce law), and accompanying conservative measures which often betrayed the truer intentions of many politicians including some of the reformers.⁶⁹ Where private behaviour impinged on public morality (or more precisely where harm to others might be caused) controls were still in place, and often tightened by supposedly ‘permissive’ legislation.

Greenwood and Young explore this complexity in terms of three different “processes” at work in the legislation. The first is the “normalisation” of certain forms of behaviour which had previously been criminal offences, for example abortion. The second is “medicalisation”. This is taken to mean the use of scientific techniques and therapies to treat those who are now considered “sick deviants” rather than evil criminals. The third trend is “criminalisation”, whereby prosecution of new and continuing criminal offences is increased, and often

⁶⁶ Christie Davies, The Permissive Society (London: Pitman, 1975) pp.3-8, 200.

⁶⁷ *Ibid.*, p.3.

⁶⁸ *Ibid.*, p.6-7.

⁶⁹ Jeffrey Weeks, Coming Out: Homosexual Politics in Britain from the Nineteenth Century to the Present (London: Quartet, 1977); Sex, Politics and Society (London: Longman, 1981); Stuart Hall, J. Clarke, B. Critcher, B. Roberts, Policing the Crisis (London: Macmillan, 1978); Lucy Bland, Trisha MacCabe and Frank Mort, ‘Sexuality and Reproduction: Three Official Instances’ in Philip Corrigan, Annette Kuhn, Janet Wolff (eds), Ideology and Cultural Reproduction (London: Croom Helm, 1979; National Deviancy Conference (ed.), Permissiveness and Control (London: Macmillan, 1980); Carol Smart, The Ties that Bind, (London: Routledge and Kegan Paul, 1984); Tim Newburn, Permission and Regulation (London: Routledge, 1992).

becomes more punitive.⁷⁰ In the same volume of lectures Stuart Hall, whilst acknowledging the liberalising aspects of the legislation, focuses on the “new modalities of control” which were one result of reform.⁷¹ His label “legislation of consent” is taken from his broader theory that the masses had been co-opted after 1945 into the consensus of the political parties within the mixed economy and the welfare state. Hall positions the “legislation of consent” within this state of bipartisanship.⁷² However, since Policing the Crisis was published in 1977, the “post-war consensus” theory has been widely challenged and made more sophisticated.⁷³ Yet, as Paul Addison maintains, the concept of a ‘post-war consensus’ continues to be a “useful if imperfect measure of the difference between two contrasting periods of post-war British history”.⁷⁴ This thesis will contribute towards this process in its analysis of the extent to which reform of laws governing private behaviour and personal morality were Labour causes, even if not explicitly sponsored by the Government.

Carol Smart, in her analysis of the indirect relationship between the law and the oppression of women, criticises “the sensible and stolid version of matrimony which still permeated most public policy discussions of the institution”.⁷⁵ This hardly adds to the debate on the family and morality in the post-war period. There was no pretence at any level of society that the family should be anything other than the bedrock of society. (A more interesting point Smart makes is the social ostracism suffered by divorced women who did not remarry.⁷⁶) The weakness within the arguments of many of these sociologists is that their aim is to portray the perceived shortcomings of the legislation in question in terms of idealist social and economic change which the Wilson Governments ‘failed’ to

⁷⁰ Victoria Greenwood and Jock Young, ‘Ghettos of Freedom’, in National Deviancy Conference (ed.), op.cit. pp.149-150.

⁷¹ Hall, ‘Reformism and the Legislation of Consent’ in National Deviancy Conference (ed.), op.cit. pp.1-43.

⁷² Hall et al., Policing the Crisis, pp.227-240.

⁷³ Pimlott, ‘The Myth of Consensus’ in Frustrate their Knavish Tricks (London: HarperCollins, 1994); Rodney Lowe, ‘The Second World War, Consensus and the Foundations of the Welfare State’, 20th Century British History vol.1 no.2 (1990), pp.152-182.

⁷⁴ Paul Addison, op.cit., pp.280-292; British historians and the debate over the “post-war consensus” (Austin, Texas: Harry Ransom Humanities Research Center, 1996) p.12.

⁷⁵ Smart, ‘Good wives and moral lives’ in Christine Gledhill and Gillian Swanson (eds), Nationalising Femininity (Manchester: MUP, 1996) p.96.

⁷⁶ Smart, op.cit., p.101.

achieve. Many of the academics in question are Marxists who championed the emerging feminist and gay rights movements of the 1970s, often in the face of powerful resistance from moral conservative groups who were riding a wave of popular and political disgust at the supposed moral degradation wrought by the permissive society.

They acutely dispel the myth that the dynamic of the reform of legislation concerning public morality during the 1960s was all in one direction (i.e. “permissive” – whatever that term should be taken to mean). However, their determination to portray the 1960s as failing to complete the liberation of women, homosexuals and other traditionally subservient or deviant groups in society, prevents them from accepting at face value the impact and implication of legislation passed by Parliament between 1965 and 1970. This is compounded by their naïveté concerning the political and legislative process. They inaccurately depict the political compromises and sacrifices made by the sponsors and supporters of legislative change as a lack of commitment to the cause of reform and weakness in the face of opposition.⁷⁷

Jeffrey Weeks, the leading scholar of the history of sexuality and particularly homosexuality in Britain, has, in two seminal works in particular (Coming Out and Sex, politics and society), developed a less mechanistic analysis of why the reforms of the 1960s were so modest and self-contradictory. Rather than placing an emphasis as Hall *et al* do on a restructuring of the modalities of social control, Weeks concentrates on the importance of the Wolfenden ‘strategy’ as set out in the Wolfenden Report of 1957,⁷⁸ and the position of this liberal reformist attitude in the history of sexual regulation and social attitudes. Wolfenden proposed to remove sin from the ambit of the law, the purpose of which was not to “impose a particular pattern of moral behaviour on individuals”, but to preserve public order and decency.⁷⁹ This philosophy did indeed infuse the reformers of the 1960s. But there were many other different personal and

⁷⁷ Greenwood and Young, ‘Ghettos of Freedom’ in National Deviancy Conference ed., op.cit., pp.173-174.

⁷⁸ Report of the Departmental Committee on homosexual offences and prostitution Cmd.247 (London: HMSO, 1957).

⁷⁹ Weeks, Sex, Politics and Society, pp.242-243.

institutional motivations for supporting reform. The relationship between these can be seen in the process of parliamentary compromise which ensured the passage of any legislation at all, amidst the usual horse-trading and emotional blackmail of the House of Commons. As Weeks more delicately puts it:

“They [the reforms] were the end results of a variety of different pressures; liberal reformist, pragmatic acceptance of the need for change, eccentric libertarianism, religious, especially Roman Catholic counter-pressure, and other sustained special interest agitation or opposition, channelled through MPs.”⁸⁰

A more recent study than most of these, Tim Newburn’s Permission and Regulation: Law and Morals in Post-War Britain, frames his discussion in terms of how liberal the reforms in question were in the context of the debate surrounding the term “permissiveness”.⁸¹ In particular he looks at how the campaigns of those such as Whitehouse and the Thatcherite new right have constructed a picture of the 1960s which has rarely been challenged, even by the liberal left. Newburn argues persuasively, following Hall, Weeks and others, that the dynamic of reform was not simply a choice between “permission or regulation” but “a redrawing of the boundaries between state control and private morality [and] progressive social pressure towards self-control”.⁸²

However, most historical studies of the 1960s have been either biographical, like Pimlott’s, edited collections of essays like Coopey, Tiratsoo and Fielding’s, or general histories of post-war Britain, either political or social. Arthur Marwick’s 1998 monograph on the 1960s, however, is an in-depth analysis of the cultural and social changes which affected Britain, the USA, France and Italy from the 1958 to 1974.⁸³ With typical attention to detail, Marwick presents a dazzling array of cultural and anthropological evidence to support his argument that what was happening during the 1960s amounted to a “cultural revolution”, which had

⁸⁰ Ibid., p.267.

⁸¹ Newburn, op.cit.

⁸² Ibid., p.179.

⁸³ Marwick, The Sixties (Oxford: OUP, 1998).

little to do with political or governmental change,⁸⁴ a proposition which this thesis will, to some extent, contest. The Sixties builds very much on work done in Marwick's earlier book, A Social History of Britain since 1945, tracing the economic and social roots of the cultural developments of the 1960s. He examines acutely concepts such as 'culture' and 'sub-culture' which have been over-used in recent decades, their meaning consequently becoming vague. On the plethora of genre of popular culture in the fields of music, literature and art and even fashion, Marwick's analyses are particularly impressive, as they are on the increasing use of drugs by young people.⁸⁵

There are, however, a number of major drawbacks to Marwick's approach. First, for an ostensibly comparative study, his discussion of France, Italy and the USA are notably sketchy. Perhaps understandably, Britain is very much to the fore, but this rather weakens his general comparison of international trends. Secondly, and more pertinent here, is his strange, almost total obliviousness to the changing attitudes towards sex and morality under discussion in this thesis. Marwick adds little to his earlier, wider study of Britain in which he makes some use of Schofield and Gorer's research and somewhat prematurely heralds the "End of Victorianism" in 1967.⁸⁶ In The Sixties there is scant reference made to the demand for, and effects of, legislative change concerning homosexuality, abortion, divorce or censorship. Indeed, in an incredibly brief conclusion, there is only glancing reference made to sex at all.⁸⁷ The broad overview presented in British Society since 1945 of the major social and cultural patterns and trends is a more coherent work which this thesis has drawn on particularly.

The significance of this period of reform in Britain during the 1960s demands closer scrutiny, both in political and social terms. There have been many studies of individual areas of reform during the 1960s. Barbara Brookes' Abortion in England 1900-1967 tracks how the abortion issue came to be seen primarily as a medical one rather than a question of a woman's control over her own fertility,

⁸⁴ Ibid., pp. 8-9.

⁸⁵ Ibid., pp.16-20.

⁸⁶ Marwick, British Society since 1945 2nd ed. (London: Penguin, 1990) pp.141-153, 167-173.

⁸⁷ Marwick, The Sixties, pp.801-806.

a prejudice that was eventually reflected in the Medical Termination of Pregnancy Act, 1967.⁸⁸ Anthony Aldgate, in Censorship and the Permissive Society: British Cinema and Theatre 1955-1965, examines a number of seminal works of stage and screen to demonstrate the changing nature of the genres and the censorship to which they were subjected.⁸⁹

Some work has been done on the important role of lobbying or pressure groups in the path to reform. The most notable is Keith Hindell and Madeleine Simms' study of the Abortion Law Reform Association (ALRA). Theirs is a thorough account of the way in which a controversial pressure group must educate both public opinion and, with discretion, public officials (to use Oscar Wilde's formulation),⁹⁰ though such groups will ultimately be at the mercy of MPs, as to whether any or which of their demands are enacted into law. There is no comparable study of other areas of reform. Pressure group politics is one area of the broader examination of the parliamentary aspects of the subject as analysed by Peter Richards in Parliament and Conscience. Richards' exploration of the various influences (religious, Lords, pressure groups, etc.), the motivations of MPs and ministers, and the progress of individual measures of reform is, to date, unrivalled, even though it was published over thirty years ago.⁹¹

Recently Mark Jarvis has convincingly re-assessed the importance of the Conservatives' approach to modernising social trends between 1957 and 1964, and he emphasises the dichotomy of their liberalising and conservative tendencies. Jarvis drew on previously untapped archival sources to elucidate the "nuances" of Government policy-making and political attitudes towards social policy and public morality. Most important were the Conservative Party Home Affairs Committee, and the Bow Group, whose organ, Crossbow, provided much of the impetus within the Conservative Party for liberal social

⁸⁸ Barbara Brookes, Abortion in England 1900-1967 (London: Croom Helm, 1988).

⁸⁹ Anthony Aldgate, Censorship and the Permissive Society: British Cinema and Theatre 1955-1965 (Oxford; OUP, 1995).

⁹⁰ Quoted in Weeks, Coming Out, p. 168: Wilde to George Ives in 1898 – "It is not so much public opinion as public officials who need educating."

⁹¹ Richards, op.cit.

reform.⁹² This thesis will have cause to draw on some of his conclusions, and takes further this attention to Governmental and institutional archives.

This thesis will re-assess the confluence of different factors involved in the push towards reform of the laws relating to homosexuality, abortion, divorce, theatre censorship and Sunday entertainment, and relate these to an assessment of the wider societal trends, apparent from the Second World War onwards, from economic affluence and its effects on women, youth and the family, to secularisation. It will investigate the roles of Labour ministers, MPs and their Party, the Cabinet and departmental officials, which have, hitherto, been poorly accounted for. Chapter eight examines the specific importance of the process of Private Members' legislation. That such matters should be addressed by Private Members' Bills rather than through Government legislation was a policy to which the Wilson Governments held fast. The influence of the Press, the Churches, the House of Lords and pressure groups will also be examined. These specific reforms will be related to Labour Government policies including the expansion of higher education, penal policy, social policy, race relations and equal pay. Central to the argument presented here are archival documents from a wide range of previously unmined seams of historical evidence including the Public Record Office, the Labour Party Archive, Lambeth Palace Library, the Lord Chamberlain's Office,⁹³ the Homosexual Law Reform Society (HLRS) and ALRA.

Apart from analysis of each individual area of reform, a number of important questions will be answered by this thesis, including: How did post-war social and cultural change, inform and persuade the changing attitudes of politicians, officials, churchmen and others during the late 1950s and 1960s? How did the Government's attitude to Conscience Bills evolve over the life of the administration? How different were the approaches of the Conservative (1957-1964) and Labour Governments (1964-1970) to issues of morality? How far

⁹² Jarvis, *op.cit.*

⁹³ Although the correspondence relating to plays submitted to the Lord Chamberlain's Office is at the British Library and is available for study, other papers from the Office are still held as part of the Royal Archives at Windsor Castle and have not yet been catalogued. Lady de Bellaigue, Registrar, Royal Archives, to the author, 9.6.00.

were Whitehall departments involved in discussions on reforms involving issues of conscience? What were the motivations of different groups of reformers, their supporters and opponents? What were the intentions behind legislation? In other words, were they designed to be “permissive” or regulatory in a new way, and to what extent was the Wolfenden strategy embodied in legislative reform? What was the effect of the parliamentary process on ‘liberal’ ideas? What was the extent of influence on the Government and Parliament of the Churches, pressure groups, the press and public opinion?

iii. Public morality and philosophical debate:

A major difficulty for historians looking at changing moral values during the 1950s and 1960s has been to define the 'traditional' public morality being defended, undermined or reasserted. For moral entrepreneurial groups, such as Whitehouse's NVALA or the Festival of Light, which emerged during the 1960s the issues were clear. The teachings of the Church should guide individual behaviour. Sex should be monogamous, heterosexual and within marriage. Civil divorce should be strictly limited, abortion illegal (except in cases where the mother's life was in danger) and corruption of youth prevented by blanket censorship of indecent and pornographic material. The embodiment of these Christian virtues would continue to be upheld by the observance of the 4th Commandment, with Sunday preserved as a day of rest, despite the size of the ever-dwindling minority of Churchgoers.⁹⁴ What has become known as the nuclear, patriarchal family is the central institution in this social philosophy. Most (if not all) reformers during the 1960s agreed with the central importance of the traditional family structure (if not in a patriarchal one). Indeed, liberal sociologists like Ronald Fletcher, in repeated editions of The Family and Marriage in Britain, maintained that the strength of the family was undiminished and even bolstered by legislative changes like the Divorce Law Reform Act 1969.⁹⁵

However, the existence of a traditional moral consensus of the rigidity to which conservatives referred is difficult to demonstrate in historical terms. Figures like John Selwyn Gummer (later a Cabinet minister under Thatcher and Major) were certain about the existence of a Victorian moral consensus before the Second World War:

“[Men] accepted that the State had a duty to uphold morality and that private morality ought to be subject to the law as it affected society. They then experienced little difficulty in deciding of what private morality consisted. There was a consensus - at least among the articulate. People

⁹⁴ See Chapter 2.i, p.50.

⁹⁵ Ronald Fletcher, The Family and Marriage in Britain 3rd ed. (London: Pelican, 1973).

knew what the standards were and knew when they and, more particularly, others were falling short of them”.⁹⁶

The idea that a ‘golden era’ dating from either the 1950s, the 1930s or the Victorian period in which a uniform public morality embodying the traditional value system outlined above had actually existed, was practised and enforced, and was either defensible or recoverable, was a misconception of social history. This has been corrected by many scholars, particularly over the last two decades.⁹⁷

The legal framework, which underpinned such a traditional morality until the reforms of the 1960s, had indeed been the dominant political discourse concerning the family and private sexual behaviour for nearly one hundred years. The first obscene publications legislation was enacted in 1857⁹⁸, and the definition of obscenity as being; “a tendency to deprave and corrupt those whose minds are open to such immoral influences, and into whose hands a publication of this sort may fall”, followed in case law in 1868.⁹⁹ The famous Labouchère amendment, which criminalised for the first time all homosexual practices, was passed in 1885.¹⁰⁰ Whilst abortion had long been a social (and religious) taboo it was only under the Offences against the Person Act, 1861 that specific offences dealing with abortion were created.

The increasing political power of the proponents of evangelical and Nonconformist religious morality during the second half of the nineteenth century was represented by both the Gladstonian Liberal Party and, to some extent, by the Conservative and Unionist Party after the Chamberlainite split with Gladstone in 1886.¹⁰¹ It was this religious morality which also spawned the stricter controls on licensing of gambling and drinking which were to come under

⁹⁶ Gummer, *The Permissive Society* p.7.

⁹⁷ For example see Geoffrey Pearson, *Hooligan: A history of respectable fears* (London: Macmillan, 1983) pp.1-11.

⁹⁸ Sale of Obscene Books Act, 1857.

⁹⁹ 1868 L.R. 3 Q.B. 360 at p.371.

¹⁰⁰ Criminal Law (Amendment) Act, 1885, section 11.

¹⁰¹ D.W. Bebbington, *The Nonconformist Conscience: chapel and politics 1870-1914* (London: George Allen and Unwin, 1982) pp. 11-14, 84-105.

attack during the 1950s and 1960s.¹⁰² This period during the nineteenth century did establish a legal moral code based on religious teaching which was enforced by the courts in all areas of behaviour during the first six decades of the twentieth century, though not consistently or evenly, but it was a code which moral conservatives defended during the 1960s and beyond.

Two important points should be made about the dominance of this Victorian morality. First is the problematic nature of the theoretical concept of dominant value systems in society. It is recognised that within society there is a constant discourse or contest between different social, political and moral groups, and that the dominance of the religious morality outlined above depended on the political power which its advocates held.¹⁰³ However, as is now generally accepted by historians, Victorian religious morality was by no means uniformly adhered to in the late nineteenth century, any more than in any other age, although it did represent the dominant political discourse. Nor did this morality go completely unchallenged.¹⁰⁴ Furthermore, the legal regulation of sexual behaviour became an increasingly key concern during the nineteenth century, as the social consequences of industrialisation, urbanisation and a falling death-rate began to disrupt the 'folk' regulation of licence and unnatural sexual acts which had existed hitherto. Jeffrey Weeks points out that the accretion of formal legal prohibitions of moral deviance reflected the social aspirations and lives of the middle class. One might add especially the socially ambitious, Nonconformist lower-middle class. Weeks insists, however, that interference and regulation of working-class morality was a secondary concern for middle-class Victorian moralists, which erupted primarily during periods of political and social unrest, for example, the 1830s and 1840s and the economically depressed period during the 1880s and 1890s.¹⁰⁵

Importantly, Nonconformists were able to secure new legislation in the field of public morality because of the value of their political allegiance, particularly after

¹⁰² Marwick, *British Society Since 1945* p. 141.

¹⁰³ Newburn, *op. cit.* p. 160.

¹⁰⁴ Smart, 'Good wives and moral lives: marriage and divorce 1937-1951' in Christine Gledhill and Gillian Swanson eds., *Nationalising Femininity* (Manchester: MUP, 1996), p.92.

¹⁰⁵ Weeks, *Sex, Politics and Society*, pp. 19-33.

1886. The general misconception in the mid- to late- twentieth century about Victorian morality stems from the fact that this was the first time when private behaviour and morality were comprehensively legislated for, and partly from the nationalist and imperial heritage of Britain which such conservatives so valued and which had become deeply embedded in the country during the last quarter of the nineteenth century.

The second point refers more specifically to the period after the Second World War. Economic change and increasing secularisation after 1945 accentuated the differences between 'competing moralities' which had always existed, and gave stronger voice to those minority groups and activities, homosexuals and 'Sunday entertainers' for example, which had previously (or at least since the late nineteenth century) been constricted or outlawed by social pressure or legislation. Opponents of reform during the 1960s were, therefore, defending a 'uniform' morality which firstly had never possessed the status which they believed it had, and secondly was already giving way to a more open moral pluralism by the time Labour came to office in 1964. For example, during the Second World War attitudes towards sexual morality were unusually permissive. As Leo Abse has commented;

"I often think, when I hear this business of the great fascination, [that] sex began in the sixties - that poet fellow [Larkin]¹⁰⁶ - what the hell did he think that lusty young men like myself were doing during the war?"¹⁰⁷

Furthermore, other factors, like the attitude of some West Indian immigrant couples towards marriage began to influence thinking on marriage and divorce in general, and other areas of policy like birth-control and contraception.¹⁰⁸

¹⁰⁶ The reference is to Philip Larkin's poem 'Annus Mirabilis', reproduced in Collected Poems (London: Faber and Faber, 1988) p. 167, which begins, "Sexual Intercourse began/ in nineteen sixty-three/ (which was rather late for me)..."

¹⁰⁷ Interview with Leo Abse, 5.12.97.

¹⁰⁸ Elizabeth Wilson, Only half-way to paradise: women in post-war Britain 1945-1968 (London: Tavistock, 1980) p.109.

The first and most philosophical debate over the defence of an established public morality during the post-war period came in the wake of the Wolfenden Report in 1957. It was dominated by the contributions of the Law Lord, Lord Devlin, and the Oxford Professor of Jurisprudence, H.L.A. Hart. In a lecture in 1959 Devlin roundly condemned the Wolfenden strategy of removing sin from the ambit of the criminal law and distinguishing between private behaviour and public morality where no harm is caused to others and argued for the maintenance of legislative proscription of immorality.¹⁰⁹ He asserted that the basis of Western morality was essentially Christian and that this was defensible in the modern world on the basis that what he conceived as the 'right-thinking man' in society would agree with the Christian ethic and the importance of the Church in maintaining the moral order.¹¹⁰

Devlin also thought that strict control of public morality was as essential to the survival of society as the suppression of sedition and treason.¹¹¹ He referred to historical precedent for this statement, though without giving any evidence that moral decline had ever contributed to the collapse of a society, although he presumably meant Classical Rome. Devlin answers for himself three questions which are determined by his, and many other people's pre-determined certainties about public morality:

- i. Has society the right to pass judgement at all on matters of morals?
- ii. If society has the right to pass judgement, has it also the right to use the weapon of the law to enforce it?
- iii. If so, ought it to use that weapon in all cases or only in some; and if only in some, on what principle should it distinguish?

Wolfenden and all the parliamentary reformers involved in the legislative changes which occurred during the 1960s would have answered 'yes' to the first two questions. However, Devlin is arguing from an *a priori* assumption, as

¹⁰⁹ Lord Devlin, The Enforcement of Morals (Oxford: OUP, 1959).

¹¹⁰ *Ibid.*, p.23.

¹¹¹ *Ibid.*, pp.14-15.

mentioned above, that the preservation of public morality is essential to the survival of society, and that this morality is a basically Christian one upon which all right-thinking people can agree. Devlin refutes the Wolfenden notion of privacy where no harm is done to others, insisting that the breach of the moral principles of the criminal law is an offence not merely against the person who is injured but against society as a whole.¹¹² Therefore there can be no withdrawal of the sanction of the criminal law from any area of traditional (Christian) public morality.

H.L.A. Hart, in his book Law, Liberty and Morality adopts the utilitarian philosophy inherent in the Wolfenden strategy.¹¹³ He acknowledges that legal paternalism, where the law is designed “to protect individuals against themselves”,¹¹⁴ seems increasingly to be the motivation behind much legislation, for example in the field of drugs. But what is implicit in Hart’s attack on Devlin is that the latter cannot allow for changes in public morality in society at any given time, whilst defending a morality which had only existed, at least in law, for around one hundred years. The neglect of the construction of this morality in the nineteenth century is, therefore, a weakness in Devlin’s argument, according to Hart. Devlin, Hart asserts, leaps from:

“the acceptable proposition that some shared morality is essential to the existence of any society, to the unacceptable proposition that a society is identical with its morality *as that is at any given moment of its history*, so that a change in its morality is tantamount to the destruction of a society.”¹¹⁵

This was roughly where the battle-lines were drawn in relation to the issues of morality which confronted politicians and the wider political class during the 1960s. Was the absolutist Christian morality to be upheld in the face of the increasing visibility of deviant or dissenting groups, made more so by the

¹¹² Ibid., pp. 8-9.

¹¹³ H.L.A. Hart, Law, Liberty and Morality (Oxford: OUP, 1963). Original italics.

¹¹⁴ Ibid., pp.31-34.

¹¹⁵ Ibid. p.51. Emphasis added.

continuing enormous changes wrought in British society since the Second World War? Or should the degree of moral pluralism which undoubtedly existed be recognised in law, provided that safeguards for vulnerable groups were in place, leaving individual moral behaviour to private self-control? In the Wolfenden formulation that meant:

“To preserve public order and decency, and to protect the citizen from what is offensive and injurious and to provide sufficient safeguards against exploitation or corruption of others, particularly those who are specially vulnerable because they are young, weak in body or mind or inexperienced...”¹¹⁶

The Devlin/Hart debate was still a live philosophical issue during the Wilson Governments, and was quoted in aid by both reformers and conservatives¹¹⁷. It is interesting to note, however, that when it came to deciding on the specific issues relating to divorce and homosexuality, Lord Devlin signed the Church of England report Putting Asunder which recommended divorce reform,¹¹⁸ and supported Leo Abse’s Sexual Offences Bill in 1967 which proposed the decriminalisation of homosexuality for consenting male adults in private, despite his “theoretical criticisms” of the Wolfenden jurisprudence.¹¹⁹ His religious position as a “lapsed Catholic” may give a partial explanation for the difference between his theoretical dogmatism and his pragmatic position on specific issues.

¹¹⁶ Report of the Departmental Committee on Homosexuality and Prostitution, Cmnd.247, (HMSO, 1957) para. 13.

¹¹⁷ BLPES, HC/AG 1/4/56, Antony Grey, Secretary HLRS, to Baroness Wootton, 20.5.66.

¹¹⁸ The Report of a Group appointed by the Archbishop of Canterbury, Putting Asunder (London: SPCK, 1966).

¹¹⁹ BLPES, HC/AG 1/5, Lord Arran to Lord Devlin, undated but presumably May 1965.

iv. Public Morality and Political Change:

Historians have focused on the legislation which embodied the reforms under study here as the defining symbol of the changing social and cultural climate in which they took place, describing them either as 'permissive' or 'libertarian', depending on their viewpoint.¹²⁰ What most studies have been less interested in is the political context through which social and cultural change produced legislative action. Analysis of the various reforms has become more sophisticated in recent years, and has attempted to emphasise the way in which society continued to exercise social control over the individual during a supposedly permissive age. However, the role of the political parties, the House of Lords, the relationship between the Government and Private Members' legislation, and extra-Parliamentary influence has continued to be more two-dimensional. Although the bifurcative nature of the direction of change has become clearer, the structure of the agent of change, that is, the political process, has not.

The changes in British society, which brought loud calls for both libertarian reform and moral retrenchment, were common to many countries in Western Europe in the two decades after the Second World War.¹²¹ Rising affluence began to lessen the economic inequalities between the middle and working classes and the young and older generations. Coupled to this was the continuing and accelerating process of secularisation, more pronounced in Britain than in many other European countries, and encouraged by immigration from the sub-Continent which began in large numbers in 1961.¹²² The Church, by the 1960s, could no longer claim to have a monopoly on defining public morality, and the social mores of other groups, even those nominally Christian, were no longer consistent with traditional Christian doctrine.¹²³

¹²⁰ Newburn, *op.cit.*, pp.6-7; Jenkins, *A Life at the Centre*.

¹²¹ Donald Sassoon, *One Hundred Years of Socialism* (London: I.B. Tauris, 1996) pp. 241-273; Phillips, *Putting Asunder: A History of Divorce in Western Civilisation*; Marwick, *The Sixties* pp.36-38.

¹²² Marwick, *British Society since 1945* 2nd ed. (London: Penguin, 1990) p.163.

¹²³ See below at Chapter 2.i, pp.50-57.

But the reaction of politicians to these social changes was highly complex. Advocates of the Wolfenden 'philosophy' of removing legal sanctions on private behaviour where no public harm was caused, establishing effectively the individual's self control of moral behaviour (alongside continuing informal social pressures), gained ground in politics as elsewhere. This trend continued as the law became increasingly incongruent with a *de facto* moral pluralism which was at least more visible and arguably more pronounced than it had been before the Second World War. This political development accelerated as at successive general elections the age, social background and political colour of Parliament changed between 1958 and 1966.¹²⁴ However, not only were reactions often personal rather than party political, many in Parliament were frightened of public opinion, or simply wished such unpleasant issues would go away.

It is important to remember that many politicians, including leading Labour Ministers like Callaghan, strongly supported reforms on homosexuality and other issues on utilitarian and humanitarian grounds whilst still finding such practices distasteful.¹²⁵ It is interesting to note that within the Labour Cabinet in 1966, Lord Longford estimates that almost half were Christians (though he was not 100% accurate¹²⁶), six non or anti-Christians and four 'don't knows'. He goes on to point out that Wilson cultivated particularly good relations with religious leaders (especially in the Roman Catholic Church), and that there was an interesting mix of Anglican, non-conformist, and Catholic influence and a new humanism represented by Jenkins and Crosland which was pressing for reform in this area.¹²⁷ (It is instructive to note the difference between this assessment and that made by Robert Beloe, Private Secretary to Michael Ramsey, Archbishop of Canterbury, of the religious dispositions of the Conservative Cabinet in 1963, which was considerably more committed to the Established Church.¹²⁸)

¹²⁴ David Butler, 'Electors and the elected' in A.H. Halsey (ed.), British Social Trends since 1900 2nd (London: Macmillan, 1988) pp.314-320.

¹²⁵ Morgan, op. cit., p.319.

¹²⁶ Ibid., p.15.

¹²⁷ Longford, op.cit., pp.57-58.

¹²⁸ LPL, RP/43, 71-76, Beloe to Ramsey, 25.2.63.

The Labour Party's reaction to the influence of religion in politics was often extreme. When Shirley Williams was appointed as Parliamentary Under-Secretary at the Department of Education in January, 1967 there was a considerable backlash against a Catholic being responsible for education. The implication was, from the anti-Catholic left, that a Catholic could not be trusted to have a higher loyalty than to the Pope, a view supported even by the editor of Tribune.¹²⁹

The influx of younger, university-educated Labour Members at the general election of 1964 was a trend which accelerated in 1966.¹³⁰ But the 'revisionism' within the Labour Party which was epitomised by Crosland's The Future of Socialism and Jenkins' The Labour Case never became dominant within the Party. It should be remembered that, even after 1966, Labour MPs had a higher average age than those of other parties.¹³¹ Before 1963, with a sympathetic leader in Hugh Gaitskell, the 'revisionists' were faced with an overwhelmingly traditional Party. In 1964 and 1966, although the composition of the PLP and the influx of the progressive middle classes into the Party somewhat altered this balance, the leadership had passed to Wilson who represented a more traditional strand of Labourism, the Nonconformist respectable working and lower-middle class with a rather old-fashioned puritan moral outlook.¹³² According to Crossman the 1966-1970 Parliament contained "120-150 Labour people who are progressives",¹³³ by which he meant the core committed to the Crosland-Jenkins philosophy of a more liberal society.

Such tensions within the Labour Party have been analysed by Stuart Hall in his essay on 'Reformism and the Legislation of Consent'.¹³⁴ However, there are

¹²⁹ Tribune, 'No shake-out at the top', editorial, 13.1.67; letters, 20.1.67, 3.2.67, 24.2.67.

¹³⁰ 39% of the PLP were university-educated in 1959, 46% in 1964 and 51% in 1966. David Butler, 'Electors and Elected' in A.H. Halsey, British Social Trends since 1900 2nd ed (London: Macmillan, 1988) p.318.

¹³¹ *Ibid.*, p.317.

¹³² Stuart Hall, 'Reformism and the Legislation of Consent', in National Deviancy Conference ed., *op.cit.* pp.26-40.

¹³³ Crossman, Diaries of a Cabinet Minister: vol.2 Lord President of the Council and Leader of the House of Commons 1966-1968, (London: Hamish Hamilton and Jonathan Cape, 1976) p.401, 29.6.67.

¹³⁴ Hall, *op.cit.*

three main weaknesses in Hall's portrait of the Labour Party during the late 1950s and 1960s. Firstly, he ignores the important left-wing element during the 1960s mainly composed of former Bevanites who supported libertarian reform, notably Barbara Castle, Richard Crossman and Michael Foot. Secondly, although Wilson was Party Leader and then Prime Minister, there were few other Cabinet ministers in his Governments who were strictly Wilsonites or had a 'Wilsonian' social perspective.¹³⁵ Wilson's strategy for maintaining Party unity after humiliating the Gaitskellite candidate, George Brown, in the leadership election in January 1963, was to give several of the main portfolios to Gaitskell's former acolytes, most importantly Brown, Douglas Jay, Patrick Gordon-Walker, Crosland and Jenkins.¹³⁶

Thirdly this argument assumes that 'revisionists' within the Labour Party were an homogenous group. This, like most factional demarcations in politics, is not the case. Gaitskell's liberal credentials were not as pure as some of his young lieutenants. During the drafting of Labour's 1961 policy statement, Signposts for the Sixties, he supported Wilson's assertion that endorsing the Wolfenden recommendations on homosexuality would cost the Party six million votes, saying: "Can't we be sure this time not to say things which are going to lose us votes?".¹³⁷ Although more instinctively liberal than Wilson,¹³⁸ Gaitskell also remained aloof from parliamentary efforts at reform during the early 1960s.¹³⁹ Most important with respect to 'permissive' reform during the 1960s was the visceral opposition of George Brown, particularly in regard to the laws on homosexual acts. Castle recorded in her diary for 11 February 1966 that;

"George set off on a remarkable diatribe against homosexuality... 'This is how Rome came down. And I care deeply about it - in opposition to most of my Church [he was Anglo-Catholic]. Don't think teenagers are able to evaluate your liberal ideas. You will have a totally disorganised, indecent

¹³⁵ Pimlott, op.cit., p.334.

¹³⁶ Ibid., p.327.

¹³⁷ Peter Thompson, 'Labour's 'Gannex Conscience'? Politics and popular attitudes in the 'permissive society' in Coopey, Tiratsoo and Fielding (eds), The Wilson Governments 1964-1970 (London: Pinter, 1993) p.139.

¹³⁸ Interview with Lord Jenkins of Hillhead, 25.11.99.

¹³⁹ For example, HC Deb, vol.625 col.1510, 29.6.60.

and unpleasant society. You must have rules! We've gone too far on sex already. I don't regard any sex as pleasant. It's pretty undignified and I've always thought so."¹⁴⁰

What is important about this argument is that it highlights the divisions within the Labour Party and the fact that the arguments are not contained within ideological or party lines, the Labour Revisionists allying with progressive and libertarian Conservatives. Peter Richards, writing in 1970, pointed out that; "If our party system resembled more closely a European model, it might be that social issues could fit neatly into the established party complex... Religious differences are submerged into a two-party system. Any government, Conservative or Labour, must offend some of its supporters if it dares to approach issues of this nature."¹⁴¹

As noted earlier, a large number of Catholics who generally supported and voted Labour faced a cruel dilemma over reform of homosexuality, abortion and divorce during the 1960s - reform encouraged largely by Labour politicians and their supporters. Within the House of Commons there was an increasing amount of bitterness during the discussion of the various Bills introduced on these subjects between 1965 and 1969. The small band of Catholic Labour MPs, around 20,¹⁴² felt they were wrongly accused of being reactionary by secular-minded Labour MPs and socialist elements of the Press, despite decades of active support of social reform and equality. This condemnation was felt to be particularly severe during the passage of Abse's successful Bill in 1967 when patience amongst those supporting reform was wearing thin with those stubbornly opposed to change.¹⁴³ Nor is it true to say that the new, younger, better educated Labour MPs were all pro-reform. Many found such issues marginal to the real concerns of their working-class constituents. One of the most prominent, Roy Hattersley, MP for Birmingham Sparkbrook, railed against

¹⁴⁰ B. Castle, The Castle Diaries 1964-1970 (London: Weidenfeld and Nicolson, 1974) 11.2.66, p.103.

¹⁴¹ Richards, op.cit. p.199.

¹⁴² Interview with Leo Abse, 5.12.97. As Peter Richards shows, precise figures for religious affiliation of MPs are hard to determine; Richards, op.cit., p.183.

¹⁴³ Davies, op.cit. p.325.

the spate of “trendy reforms”, especially abortion, at a lunch hosted by Christopher Price for the abortion law reform cause.¹⁴⁴

The legislation enacted during this period of ‘permissive’ reform has tended to be seen as an homogeneous group. Reformers like Jenkins tended to ‘lump together’ everything from homosexuality to the arts, and opponents like Mary Whitehouse were equally apt to fail to distinguish between different areas of reform.¹⁴⁵ However, what emerged under the Wilson Governments was a utilitarian approach to the modification of legal controls of individual behaviour according to what Parliament thought the public mood would countenance. The extent of reform proposed by each Bill which came before Parliament was the subject of minute negotiation among competing interest groups. The Government tried only to introduce an element of consistency insofar as the treatment of different Private Members’ Bills should not prejudice the Government’s general line of neutrality on such matters. As will be seen though, the contortions forced upon the Government in pursuit of this impartiality impressed few and satisfied even fewer.

Individual reforms also differed widely in their origins. Homosexual and divorce law reform were motivated by the Wolfenden strategy of removing sin from the ambit of the law, reducing unnecessary suffering of innocent individuals (both adults and children of married couples) and protection of the family. This last reason, usually the clarion call of the conservative right, was actually one of the main defences of proposed legislation by parliamentary reformers like Abse and Lord Silkin.¹⁴⁶ For the right, the defence of the family could only be achieved by resisting the slide towards a moral pluralism. For the reformers, laws which had become anachronistic for many within society, and were clearly either unenforceable or unevenly applied, must be amended or repealed to reflect changes in society. Rates of homosexual offences varied greatly from one police authority to another, depending on the zeal of the local police policy. The

¹⁴⁴ Interview with Alistair Service, 12.4.00. (At the time of submission, no reply had been received from Lord Hattersley to a letter seeking corroboration of this episode.)

¹⁴⁵ Whitehouse, *op.cit.* pp.8-9.

¹⁴⁶ Leo Abse, Private Member (London, MacDonald, 1973) p.160; Carol Smart, *op.cit.*, p.58.

divorce laws were regularly manipulated by couples who wished to end their marriage, or by spouses (usually husbands) who often left in misery their abandoned partner (usually wives) unable to remarry or provide a stable life for their children. A deplorable trade in dangerous and sometimes lethal back-street abortions continued largely unchecked. Private theatre clubs evaded the censor's blue pencil, and sports clubs and other recreational facilities openly flouted the Sunday observance laws.

By the time in 1968 when divorce reform, theatre censorship and Sunday entertainments legislation began their final passage through Parliament, the atmosphere within the political system had shifted significantly from only a year or two earlier. With Callaghan installed at the Home Office, concern about "permissiveness" moved on to the more radical student protests, drugs scene and the nascent women's movement, debate over the Wolfenden philosophy was no longer the issue it had been. These issues encompassed more universally felt, or at least internationally resonant themes at the end of the 1960s, than domestic reform of laws on sexual morality and censorship. Earlier popular political movements such as the Campaign for Nuclear Disarmament (CND) were overtaken during the 1960s by the growing horror for many young people of the Vietnam War. Outrage at American foreign policy, supported by their allies (principally Labour-governed Britain), combined with a common desire for greater personal freedom in the face of political decadence (as radicals saw it) to produce what the right saw as the collapse of social cohesion into the permissive abyss. However, the British Government was less worried about revolutionary student protest in 1968 than other Western governments were,¹⁴⁷ or than the protestors themselves would have liked. In such conditions as prevailed in 1969 figures as varied as Mary Whitehouse, Jim Callaghan and Lord Longford could easily talk the same language of moral retrenchment. At the end of a radical reforming Parliament, the Sunday observance laws, which were

¹⁴⁷ The Guardian, 31.5.00; PRO, FCO 13/193, paper commissioned for Cabinet's Anti-Communism (Home) Official Working Group (AC(H)), 'Student Protest', 22.5.68.

in any case largely ignored, seemed marginal to both Parliament and the world outside.

Chapter 2:

Social and Economic Change and the Pluralism of British Life 1945-1964:

For both the supporters and opponents of reform during the 1960s, the enormous economic and social changes which had occurred in Britain since the outbreak of the Second World War were phenomena which had to be tackled by the political class. As noted above, it was only after the destructive effects of the war had been addressed by the nation during the first decade of peace that legislators felt able to turn to the more underlying social trends under discussion here. For the liberal left this meant the accommodation of hitherto proscribed or restricted practices, and newly emergent social and cultural groups within a framework of existing social norms, as a new post-war generation grew to maturity. For conservative opponents to reform the buttressing of established institutions and the strict maintenance of traditional moral values were essential to social cohesion and therefore political stability as outlined by Lord Devlin.

What has always been of some debate is when social attitudes began to change in Britain, and the degree to which they shifted. As mentioned above, the disruptive effects of the war meant that both on the Home Front and in the Services women and men were experiencing a period of insecurity, danger and freedom which loosened considerably the attitudes of many towards sex, marriage and the family. It also disrupted the social controls normally exercised upon sexual behaviour by family members and other figures of authority. This was continued after the war as a result of the high divorce and illegitimacy rates in the years immediately after the war.¹ According to William Deedes it was these changes during the war which were in large part the cause of changes over the following two decades.² Leo Abse agrees with him;

“A break-up had taken place [during the war]. Therefore for quite a section of the population there had been a great change in attitudes to sex... Naturally there was all the inertia of the centuries [he was clearly

¹ See Appendix, p.327.

² Interview with Lord Deedes, 23.9.97.

forgetting the eighteenth century]... But I think the turning point in the erosion of Victorian standards publicly... took place in the Swinging Sixties."³

Although many people have commented that the publication of the Wolfenden Report in 1957 signalled a new political and juridical approach to morality and the law, others, particularly on the right, have emphasised the moral laxity of the 1960s under a Labour Government as the period in which standards were allowed to fall.⁴

The exhausted Labour administration which left office in 1951 was perhaps unlucky that, with the vagaries of the British electoral system, its Conservative successor was the recipient of the economic upturn which began in 1952, though Labour had won a larger popular vote in 1951 than it had done in 1945.⁵ As Arthur Marwick has pointed out, movement at the political margins had little effect on the social climate in Britain in the early 1950s.⁶ Indeed Labour and Conservative politicians were largely in agreement on the social and moral values which underpinned society, although as Marwick and other historians have argued, consensus in other areas of policy between Labour and Conservative has been considerably overstated.⁷

Despite this fact it is important to remember, for example, that the clampdown by the prosecuting authorities on homosexual offenders began with the appointment by an arch-Victorian (in moral terms), Herbert Morrison, of Sir Theobald Matthew as Director of Public Prosecutions in 1944, and intensified until the celebrated homosexual trials in 1953 and 1954.⁸ The most active period of judicial prosecution against women and doctors involved in obtaining or performing abortions occurred in 1944, but police activity against abortionists

³ Interview with Leo Abse, 5.12.97.

⁴ For example see Peter Hitchens, The Abolition of Britain

⁵ David Butler, British General Elections since 1945 2nd ed. (London: Macmillan, 1965) p.13.

⁶ Marwick, British Society since 1945 2nd ed. (London: Penguin, 1990), p.12.

⁷ Marwick, *ibid.* pp.98-107; see chapter 1.ii.

⁸ See Chapter 3.i, p.76.

increased greatly after the war.⁹ Despite any difference between the religious complexion of Conservative and Labour politicians, it was still true in post-war Britain that socialism in Britain owed more to Methodism than to Marx. Although other Labour politicians were atheist rather than Anglican or non-Conformist, there was a strong affection among some, like the agnostic Attlee, for the traditional institutions of the British nation, of which the Established Church was an integral part, and those who believed in the ethics of Christianity but not the 'mumbo-jumbo', as Attlee himself later put it.¹⁰ Neither Party could view the decline of the influence of the Churches with personal detachment.

⁹ Brookes, *op.cit.*, p.137.

¹⁰ Kenneth Harris, Attlee, (London: Weidenfeld and Nicolson, 1982) pp.563-564.



ii. Secularisation and the loosening of traditional authority and convention:

Perhaps the most profound change in British society (as elsewhere in post-war Western Europe) to have occurred during the twentieth century, was the continuing decline in the influence of the Christian Churches, whose theology had, as noted, formed the basis for traditional public morality in the mid-twentieth century throughout Western societies. This trend had been going on gradually for many decades but accelerated after 1945 and had a more widespread effect across all social classes, ages and geographical regions. Churchgoing fell dramatically. At the beginning of the 1950s 26% of men and 18% of women confessed to no religious affiliation. Only 11% of men and 7% of women were regular churchgoers (of any denomination). 40% never went to church.¹¹ This was particularly true of congregations in working-class urban areas, especially for example the East-End of London. This was later accentuated by Asian immigration during the 1960s. 90% of all churches in the diocese of London had been damaged during the bombing raids of the Second World War.¹² An official index of active Anglican Church involvement might be taken as the enrolment rate on the Church Electoral Roll. This fell steadily from 143 per 1000 of population in 1925 to 81 per 1000 of population in 1964, a fall of over 40%. Despite the well-documented conservatism and convention of the 1950s, this fall was not halted during that decade.¹³ The one important exception to this Anglican decline was the burst of evangelism during the 1950s, encouraged financially and personally by famous American preachers like Billy Graham in his 'Greater London Crusade' in 1954, which attracted 1.3 million people in three months.¹⁴

The Roman Catholic Church saw, in contrast to this Anglican atrophy, a swelling of its congregations with the large number of Irish immigrants especially to the Midlands and the South-East, rather than the more traditional areas in the North

¹¹ Marwick, *op.cit.* p.106.

¹² Grace Davie, *Religion in Britain since 1945* (Oxford: OUP, 1994) p.30.

¹³ *Facts and Figures about the Church of England* (London: Church Information Office, 1965) p.59.

¹⁴ Adrian Hastings, *A History of English Christianity 1920-1990* (SCM Press; London 1991) pp.453-457.

and North-West,¹⁵ and the Church of Scotland was growing until 1956.¹⁶ During the five years up to 1964 Catholic infant baptisms totalled more than 15% of live births in Britain, and in 1961 Catholic marriages made up 12.76% of the total for England and Wales.¹⁷ The increased size and prominence of the Catholic Church was to play an important part in debates, especially on abortion and contraception during the 1960s. More broadly the Catholic Church fought a strenuous battle in the twenty-five years after 1945 to preserve its segregated educational system in England and Wales. This it maintained, securing massive public subsidy to cover the crippling financial costs of the school expansion programme of the 1960s.¹⁸ Catholicism also influenced strongly those politicians who were themselves Roman Catholic, like Shirley Williams and Lord Longford, and those with a political interest in Catholic votes, like Wilson in his Huyton constituency.¹⁹

Christie Davies, in his essay 'Religion, Politics and Permissive Legislation', points to a crisis of "Catholic Labourism" during the mid to late twentieth century, not only in Britain but also in other countries where a Catholic minority was "tolerated but disesteemed by the dominant white Anglo-Saxon Protestants". According to Davies' persuasive argument, the poor, often immigrant origins of many within these Catholic minority communities led them generally to support political parties of the Left. However, these parties often developed policies which came into conflict with official Catholic doctrine.²⁰ This dilemma was obviously acutely felt by British Catholics from the late 1950s onwards when Labour politicians and supporters became increasingly vocal in their support for the reform of laws relating to homosexuality and, more particularly, abortion and divorce. However, there is no evidence that the Labour Party's association with socially liberal measures had any discernible effect on individual or broader

¹⁵ Michael P. Hornsby-Smith, 'The Roman Catholic Church in Britain since the Second World War', in Paul Badham ed., Religion, State and Society in Modern Britain (New York; Elwin Mellen Press, 1989) p.88.

¹⁶ G.I.T. Machin, 'British Churches and Social Issues, 1945-1960' in Twentieth Century British History vol.7 no.3 (1996) p.345.

¹⁷ Hastings, op.cit., p.561.

¹⁸ Hornsby-Smith, op.cit. p.92.

¹⁹ Longford, op.cit.; Weeks, op.cit. p.267.

²⁰ Davies, 'Religion, Politics and the Permissive Legislation', in Badham ed., op.cit., p. 324; cf. Hastings, op.cit. p.562.

voting patterns. Although 45% of Labour parliamentary candidates in 1970 mentioned the “compassionate” or “humane society”, only 13% talked of the “civilised society”.²¹

It should also be noted that, despite the general national decline in churchgoing, religious belief was less slowly affected. If 26% of men had no religious affiliation then conversely 74% still felt that they did. 50% of parents still sent their children to Sunday School in the early fifties.²² Religious festivals still attracted large congregations. Although since the end of the nineteenth century the rate of attendance at Church for Easter had been falling, this decline was not as steep as for other indicators like the size of the electoral roll.²³ Richard Hoggart, in his seminal work The Uses of Literacy, pointed to a continued latent working-class religious belief, especially among the middle-aged and older generations. Most people would be imbued with a strong sense of right and wrong, even though it might not be expressed in religious terms. As far as chapel was concerned, this might involve one family member being a regular churchgoer, the children attending Sunday School (though partly to give their parents a quiet Sunday afternoon), important family and social occasions at chapel, and major church festivals.²⁴

What certainly became more apparent during the late 1950s and 1960s was that fewer people were basing their personal morality on the direct influence of the pulpit or the Bible. Especially for the young this meant “the freedom to leave Sunday School and read the News of the World at home like Dad”.²⁵ Not only were changing patterns of urban communities responsible for this, but also economic affluence which increased markedly from 1953 onwards, and the development of alternative forms of entertainment which were increasingly affordable to working-class people. Moreover, the advent of widespread television ownership from the late 1950s meant that the home became ever

²¹ David Butler and Michael Pinto-Duschinsky, The British General Election of 1970 (London: Macmillan, 1970) p.438.

²² Marwick, *op.cit.* p.106.

²³ Facts and Figures about the Church of England *op.cit.*, p.60.

²⁴ Richard Hoggart, The Uses of Literacy 2nd edition (London: Pelican, 1958) pp. 93-99.

²⁵ *Ibid.* p. 94.

more the focus of wider family gatherings rather than other social loci such as the Church.

The role of the media, and especially television, in the continuing process of the decline of the (non-Catholic) Churches was controversial in itself. The air-time devoted to religious broadcasting did not decline between 1962 and 1976. The BBC broadcast about two and three quarter hours on television per week and about eight hours on radio. ITV's output was a consistent two and-a-half hours per week during this period, and the beginning of commercial television had obviously increased the range of religious programming considerably. When emergency ministerial broadcasts on devaluation and a National Union of Railwaymen strike encroached on the 'closed period' on Sunday evenings (which was reserved for religious programmes), there was uproar.²⁶ However, it was often felt, especially by programme-makers, that the Churches did not make effective use of the opportunities afforded them through the airtime and resources given by television "to reach a vast number of people who are out of touch with the Christian church".²⁷ Both the BBC and ITV responded to the evident breakdown of the hegemony of the Christian faith by introducing broadcasts by humanists and other non-Christians. This was much to the consternation of the conservative press, drawing comments like "an explosive attack on the Christian faith" in relation to Humanist broadcasts.²⁸

However, the increasing popularity of other secular programmes, particularly those like *Coronation Street*, and other forms of entertainment already mentioned, meant that their significance dwindled, even as television viewing increased exponentially with wider ownership.²⁹ The scheduling of *The Forsyte Saga* and *Dr. Finlay's Casebook* on Sunday evenings at 7:25pm, clashing with

²⁶ LPL, RP/126, 74, Penny Jones, Head of religious broadcasting, to Michael Seward, Church Information Board, 20.12.67; RP/126, 94, Wilson to Ramsey, 15.1.68.

²⁷ LPL, RP/154, 69-70, Rev. Todd, Anglican Adviser, Southern Television Company, to Ramsey, 14.10.69.

²⁸ Daily Express, 7.1.55; Asa Briggs, 'Christ and the Media' in Eileen Barker, James A. Beckford and Karel Dobbelaere eds., Secularisation, Rationalism and Sectarianism (Oxford: Clarendon Press, 1993) p.269.

²⁹ *Ibid.*, pp.279-281.

the normal timing of Evensong, had potentially haemorrhaging consequences for church attendance, and drew complaints accordingly.³⁰

The Church responded to these challenges in two different ways. In the first decade after the Second World War there was a mood of optimism which characterised British society in which the Churches (especially the Anglican Church) shared. Despite the years of austerity immediately after the war, the post-war settlement, by which both major political parties accepted a mixed economy and the establishment of the Welfare State, engendered an optimism (or complacency) about the future for the British nation.³¹ This was fuelled by displays of a modernised, reconstructed country as at the Festival of Britain in 1951.³² This duality between modernisation and tradition was perhaps most symbolically represented by the supposed beginning of a new Elizabethan age with the accession of Queen Elizabeth II in 1952. The conservative nature of British society in the early 1950s was especially evident in its revelling in the events surrounding the Coronation in 1953. According to Richard Weight this was “not so much a conservative celebration of tradition per se as a conservative definition of how progress could be achieved in postwar Britain”.³³ At this time, the Established Church, at least, could feel that it still held a central place in national life. The mixture of national ceremony and religion which, it might be said, has always been prone to confuse many people that Britain is more Christian than it really is, was particularly potent at this moment. Hastings analyses it thus;

“The general feeling of religious revival, or perhaps better, of restoration, continued for about a dozen years. It fitted well with the dominant mood of the fifties, its politicians, its literary figures, its art. ‘The church’, declares a character in Pamela Hansford Johnson’s novel The Humbler

³⁰ LPL, RP/153, 321-3, Major-General Block, Chief Information Officer, Church Information Board, to Beloe, 9.4.69.

³¹ Hennessy, Never Again (London: Vintage, 1992) pp.427-429.

³² Richard Weight, Pale Stood Albion: The formulation of English National Identity 1939-1956 (London: unpublished PhD thesis, 1995) pp.140-158.

³³ Weight, op.cit., p.160.

Creation 'is respectable again. People have to say they believe in God'.³⁴

It was undoubtedly the over-comfortable age of gentle Ealing comedy, in which victory in the war lead to an ostensible retrogression to pre-war customs and values. Significantly these Ealing films of the early fifties (best symbolised by The Ladykillers) were far less successful than those of the late forties (for example Passport to Pimlico) which celebrated the continued yearning for freedom from restrictions within an anti-acquisitive community during the years of austerity immediately after the war.³⁵

A more accurate cultural barometer at the beginning of the 1950s are the novels of Barbara Pym, with their insecure and faded Anglican settings.³⁶ In any case, as the statistics bear out, any religious revival was at best the superficial confidence of conservative Anglicans. Social and economic changes during the 1950s made clear the Churches' increasing marginalisation from the lives of more and more people, and prompted a very different reaction. There was an obvious contradiction between the complacency described above and the unorthodox way in which the Churches began to confront issues of public morality from the 1950s onwards.

This posed two inter-related problems. How should the Christian churches, and principally the established Church of England, shore up its position whilst recognising the new moral pluralism of a more secular society? Secondly in this less Christian world, should the law continue to be closely based on traditional Christian teaching? The attitude adopted by the majority of senior clergymen and theologians towards these problems was to seek to redefine Christian theology in a contemporary context. This began with the report of the Church of England Moral Welfare Council (CEMWC) on homosexuality in 1952,³⁷ through

³⁴ Quoted in Davie, *op.cit.* p.30.

³⁵ Charles Barr, Ealing Studios 3rd ed. (London: University of California Press, 1998) pp.146-173, 94-107.

³⁶ Hazel Holt, A Lot to Ask: The Life of Barbara Pym (2nd ed.) (London: Macmillan, 1992).

³⁷ CEMWC, The Problem of Homosexuality (London: Church Information Board, 1952).

its evidence to the Wolfenden Committee,³⁸ to its influential reports on abortion in 1965³⁹ and divorce in 1966.⁴⁰ These deliberations were shadowed by the efforts, not entirely welcomed by the Anglican establishment, of the South Bank theologians like Bishop John Robinson to modernise the theology of the Anglican Church during the 1960s.⁴¹ Such an unconventional response to social change brought the Churches into conflict with many in their pews (and pulpits) who wanted them to reinforce traditional morality in order to balance the “extremism” and “error” into which the secular state was allowing the population to fall.⁴² Furthermore, during the 1950s senior figures like successive Archbishops of Canterbury, Geoffrey Fisher and Michael Ramsey, led a wave of comment about the interventionist welfare state effectively usurping whole areas of Church social activity.⁴³ The Anglican dilemma was keenly felt in reverse by Conservative politicians anxious at the effects of the emerging “affluent society” on moral values, particularly amongst the young. As Prime Minister, Harold Macmillan sought to involve the Church of England in political discussions about this issue by holding meetings at the House of Commons with senior clergy.⁴⁴

This religious shift in philosophy from regulatory enforcement of morality to a detached exhortation for individuals to behave more “honestly and decently towards one another”⁴⁵ dovetailed with the jurisprudential arguments of H.L.A Hart and others who embraced the Wolfenden strategy. However, the process of reassessment within the Church was not, however, as even as this list of publications might suggest. The Church’s difficulties were compounded by the fact that it was less and less able to speak with one united voice on matters of ethics and morality. Many Christians staunchly resisted pressure to loosen the Church’s teaching on morality and sexual behaviour. Such religious

³⁸ CEMWC, Sexual Offenders and Social Punishment (London: Church Information Board, 1956).

³⁹ CEBSR, Abortion: an ethical discussion (London: Church Information Board, 1965).

⁴⁰ Archbishop of Canterbury’s Group, Putting Asunder (London: Church Information Board, 1966).

⁴¹ J.A.T. Robinson, Honest to God (London: SCM Press, 1963).

⁴² Gummer, *op.cit.*, p.154.

⁴³ Machin, *op.cit.*, p.348.

⁴⁴ W.F. Deedes, Dear Bill (London: Penguin, 1998) p.137, cited in Jarvis, *op.cit.*, p.225.

⁴⁵ Jane Lewis, ‘Public Institution and Private Relationship: Marriage and Marriage Guidance, 1920-1968’, Twentieth Century British History vol.1 no.3 (1990) p.234.

fundamentalism led to the creation of pressure groups to fight against 'permissive' reform, notably Mary Whitehouse's 'Clean up TV Campaign' in January 1964, which became the National Viewers' and Listeners' Association (NVALA) in 1965, and the Society for the Protection of the Unborn Child (SPUC) in January 1967 in response to the progress of abortion law reform.⁴⁶ The lack of unity between, and within, the different denominations which made up the Church lobby meant their voice did not carry the influence which they hoped.⁴⁷ As will be seen, division, particularly within the episcopacy on the issues addressed by the above reports was particularly damaging. This was supremely true of Michael Ramsey, Archbishop of Canterbury from 1961 to 1975, who was ambivalent or hostile about much of the resulting legislation. He, in many cases, sowed the seeds of these doctrinal innovations by establishing committees of inquiry, and then reaped the harvest of public division with those of his senior bishops who championed them, for example Robert Mortimer, Bishop of Exeter, over divorce law reform in 1967.⁴⁸

⁴⁶ Hindell and Simms, Abortion law reformed (London: Peter Owen, 1971) pp.95-103; Newburn, Permission and Regulation (London: Routledge, 1992) pp.17-18.

⁴⁷ Interview with Leo Abse, 5.12.97.

⁴⁸ See Chapter 6, p.245.

ii. The Problem of Youth

Restrictions on consumption via the ration book were finally lifted in 1954,⁴⁹ and consumer spending began its upward spiral towards the heights caricatured by Trogg in a cartoon featuring Macmillan and a group of electrical appliances after the Conservatives' General Election victory in 1959⁵⁰. Between 1951 and 1961 average male earnings rose from £8.30 per week to £15.35 and by 1966 they were £20.30⁵¹. Significantly for consumption, prices of consumer goods were steadily falling through the same period. It has become axiomatic that during the 1950s this increased spending-power among the working-class, fuelled by a period of continuous full employment, led to the reduction in inequalities with the middle-class, between women and men, and perhaps most importantly between the young and the old. As parents became far less economically dependant on the incomes of their children with the rise in their own wages, so youth became proportionately better off than their parents, and achieved a spending power from the late 1950s which they had never previously enjoyed.⁵²

As these economic differentials in age lessened, so the cultural gaps between age groups, and within age groups, widened. Greater financial autonomy allowed more visible and heterogeneous displays of cultural identity. It was estimated that compared with their parents, the income of the young had risen twice as quickly, and disposable income four times as fast.⁵³ Coupled with this was the unprecedented variety of modes of consumption, particularly for the young. New styles of popular music influenced by America, a burgeoning fashion industry, the cinema, television, and the concomitant advertising, all began to be focused more on the appetites of a younger generation. The advent of commercial television with the launch of ITV in September 1955 encouraged the explosion in television ownership (which reached 75% of households by 1961) and viewing,⁵⁴ although in 1960 only two thirds of the viewing public were

⁴⁹ Marwick, *op.cit.*, p.12.

⁵⁰ Daily Mail, Trogg, 31.10.59.

⁵¹ Thelma Liesner, One Hundred Years of Economic Statistics (London: The Economist, 1989) p.25.

⁵² M. Abrams, The Teenage Consumer (London: Routledge and Keegan, 1959).

⁵³ *Ibid.*, p.9.

⁵⁴ Marwick, *op.cit.*, p.117.

regularly watching ITV.⁵⁵ Importantly, as with their parents, leisure time also increased with a reduction in working hours during the 1950s. Moreover, for young men, in 1955 conscription was reduced from two years to one, and finally abolished in 1960.⁵⁶ It is hard to determine whether or not National Service had been a force for social control, or possibly social disruption, as young men were removed from parental supervision and given financial and sexual freedom. Certainly in the new climate of youth culture emerging in Britain in the late fifties, there were plenty of opportunities for men to gain the experiences of travel and association with people of different backgrounds which the army offered. Conversely National Service undoubtedly restricted the ability of the young to follow emerging fashions like the Teddy Boys in 1954; discipline and conformity being the watchwords of military service.⁵⁷

Two opposing trends were at work within this emergence of youth culture during the late 1950s and 1960s. Firstly, as elsewhere in society, new technology and communications prompted the development of mass culture, transcending for the first time class, geography and gender which allowed youth to be seen as a separate and problematic group in society. Again, the coming of independent television and advertising during the late fifties was an important agent of synthesising the cultural and consumer habits of the young.⁵⁸ The idea that cultural polarisation between the old and the young was a novelty has, according to some, been over-stressed. Similar divides and conflicts can be identified at other times during the last hundred years. For example the term 'hooligan', popularised by the Irish comedians O'Connor and Brady, first entered the language to describe violent youths during a particularly riotous summer in 1898.⁵⁹ The 1960s merely saw an unusually large cultural gulf between pre- and post-war generations.

⁵⁵ Bernard Sendall, Independent Television in Britain vol.1: Origin and Foundation (London: Macmillan, 1982) p.371.

⁵⁶ Marwick, *op.cit.*, pp.72-73.

⁵⁷ Marwick, *op.cit.* p.72; P. Chambers and A. Landreth, Called Up (London, 1955).

⁵⁸ See, for example, Raymond Williams, Communications 3rd ed. (London: Pelican, 1976) pp.82-116 for a contemporary discussion of the effects of commercial television and advertising.

⁵⁹ G. Pearson, Hooligan: A History of Respectable Fears (London: Macmillan, 1983) pp.53-116.

Moral conservatives were so concerned by the explosion in teenage consumerism that American-style capitalist consumption ironically became a *bête noire* of the right. Gummer wrote that; “society has become more free largely because the young have become the prime target of the advertising man and the marketer.”⁶⁰ Working-class commentators like Hoggart bemoaned the influx of American “candy-floss” mass-art and “sex in shiny packets” at the expense of morally and culturally more profound British working-class traditions and activities.⁶¹ The Teddy Boy cult of the mid-fifties spread throughout the country and was demonised by the media and older commentators,⁶² soon followed by the explosive arrival of rock ‘n’ roll with Bill Haley and the Comets’ ‘Rock Around the Clock’.⁶³

At the same time a diversification in music and fashion styles encouraged an explosion of cultural sub-groups, or at least this was the perception with the newly assertive demeanour of the age. Thus came the plethora of groups including the pugnacious Mods and Rockers, which so scandalised provincial Britain.⁶⁴ George Melly, the musician and critic, acutely defined pop culture as the presentation of;

“an honesty based on indifference to any standards or earlier terms of reference, an exact image of our rapidly changing society, particularly in relation to its youth... Pop culture is for the most part non-reflective, non-didactic, dedicated only to pleasure. It changes constantly because it is sensitive to change, indeed it could be said that it is sensitive to nothing else. Its principal faculty is to catch the spirit of its time and translate this spirit into objects or music or fashion or behaviour.”⁶⁵

⁶⁰ Gummer, op.cit., p.14.

⁶¹ Hoggart, op.cit. pp.171-223.

⁶² T. Jefferson, ‘Cultural Responses of the Teds’, Working Papers in Cultural Studies no.7 (1977) p.63.

⁶³ Dick Bradley, Understanding Rock ‘n’ Roll: popular music in Britain 1955-1964 (Buckingham: Open University Press, 1992) pp.55-60.

⁶⁴ Marwick, The Sixties pp.77-78.

⁶⁵ G. Melly, Revolt into Style, (Oxford, OUP 1970) p.5.

Melly is worth quoting at length because, writing during and shortly after the revolution in question, he was an artist and critic of a more traditional genre, Jazz, but one who was not wholly unsympathetic in his criticism of the ephemeral nature of much of pop culture in the fifties and sixties.

At the same time as these essentially working-class cultural phenomena were emerging, middle-class youth was also asserting its identity in relation to its elders. One outlet was to adopt working-class modes of fashion and music unappealing to their parents. It is interesting that in the mid-sixties it was middle-class college students, including Mick Jagger, at the London School of Economics (LSE), who formed the wilder, more anti-establishment rock band the Rolling Stones, the main competitor to the more cosy image of the working-class Beatles. However, political expression was also an important factor for middle-class youth from the late 1950s onwards. Support for radical political movements like the Campaign for Nuclear Disarmament (CND) (and later the anti-Vietnam movement) could be one avenue for anti-establishment rebelliousness against one's parents. (Alternatively many young people were drawn to CND by family socialisation within the movement.)⁶⁶

Student protest became one of the major themes of the sixties to preoccupy those worried about the direction youth was taking. Suggestions that such student protestors were either from more privileged middle-class backgrounds, or the opposite, are difficult to establish. However, in her quantitative study of the 1967 protests at the LSE, Tessa Blackstone, then a lecturer in Social Administration at the college, concluded that the demonstrations and sit-ins were roughly representative of a cross-section of the social background of the students at the School (although, naturally, this was itself heavily over-representative of the middle-class).⁶⁷ As mentioned above, the student protest threat was not of the same scale to that which faced the French or US governments. British officials at the Foreign and Commonwealth Office were sanguine about danger to universities and the wider social order, saying that;

⁶⁶ F. Parkin, Middle Class Radicalism- The Social bases of the British Campaign for Nuclear Disarmament (Manchester: Manchester University Press, 1968) chapter 7.

⁶⁷ T. Blackstone, Students in Conflict (London: Macmillan, 1970) p.233.

“the reaction of the broad mass of British students to the disturbances at Grovesnor Square [the Vietnam protest at the US embassy in 1968] suggests that at present at least an explosion on the scale of the Sorbonne is unlikely to happen here.”⁶⁸

They resisted plans by other European administrations to meet student leaders, thinking this would strengthen the protestors' hand.⁶⁹ Whilst officials conceded that there was resentment at “the survival of Victorian ideas of student discipline, and in dissatisfaction with the level of student grants”, there were key differences in between British and continental student populations. These included a more socially mixed profile of students in Britain, leading one minister to conclude that “Student effervescence [on the continent] seemed therefore curiously to be a function of the proportion of students of ‘bourgeois’ origins.”⁷⁰

The increasing (perceived) generation gap of which the parents and grandparents of youth were so apprehensive, was also represented in literature, drama and film, the walls of which, for the first time in the late 1950s, were breached by writers who were often working-class. They were not always exactly young, as the soubriquet ‘Angry Young Men’ (gleaned from John Osborne’s play Look Back in Anger) suggested. Neither, as Osborne, Alan Sillitoe and others have since insisted, were they particularly angry. However, they were at least fifteen years younger than the middle-class writers and intellectuals who dominated the early fifties. They included Osborne, Sillitoe, Shelagh Delaney and Anthony Burgess. For the first time they addressed issues relevant to working class men and, for the first time, women, in a naturalistic environment. Delaney’s A Taste of Honey, written as a play in 1958 when she was just nineteen and translated to the cinema in 1960, was the first such work to place women at the centre of the action around whom the male characters

⁶⁸ PRO, FCO 13/193, J.S. Champion to Cosmo Stewart (Head of Department), both Cultural Relations Department, 4.6.68, Paper commissioned for Cabinet’s Anti-Communism (Home) Official Working Group (AC(H)), ‘Student Protest’, 22.5.68.

⁶⁹ PRO, FCO 13/193, Stewart to J.H. Peck, Superintending Under-Secretary, 28.5.68; The Guardian, 31.5.00.

⁷⁰ PRO, FCO 13/193, speech by Shirley Williams, Minister of State, Department of Education and Science, at Chatham House, 27.5.68, quoted in Stewart to Peck, 28.5.68.

revolve (though it was certainly exceptional in this respect even during the 1960s).⁷¹ Youth, with its insecurities, disaffection and aspirations, was also a major concern. Sex and violence in society became central themes. Such innovations helped finally to breach the dam of the Lord Chamberlain's stage censorship between 1958 and 1968.

The portrayal in film of Osborne's Look Back in Anger and John Braine's Room at the Top in 1959 was also a litmus test for the new Secretary of the British Board of Film Censors (BBFC), John Trevelyan. His pragmatic, liberal approach towards 'New Wave' film-makers became an important part of the blossoming of realist films during the 1960s.⁷² This dynamic in the arts had two main expressive strands during the 1960s. The first was the unprecedented realist expression of working-class life, without stereotypical characterisation, and all the uncomfortable insecurities and unpleasantness which became so controversial. Second was the brash, materialistic and socially aspiring genre, best represented by films like *Alfie* (1966) which caught the mood of the more "permissive" mid-sixties. Sex for sex's sake replaced the rather darker and desperate longings of characters in earlier 'New wave' films.⁷³ Whilst much of this output reached a largely middle-class audience (except at the cinema), it formed the artistic expression of a changing society in which social and cultural identity could be enunciated by groups and individuals of all classes, ages and both genders without due deference to a traditional middle-class, middle-age norm.

With this explosion of a visibly different youth culture and the artistic portrayal of hitherto proscribed subjects, came the threat, as far as conservatives were concerned, of a decline in moral standards amongst the young. The idea that there was a process of commodification of sex during the 1950s and 1960s by which private sexual behaviour was encroached upon by commercialism is one which is common to left and right. The depiction of non-marital sex, abortion,

⁷¹ Michelene Wandor, Look Back in Gender: Sexuality and the Family in post-war British drama (London: , 1987) p.40.

⁷² Anthony Aldgate, Censorship and the Permissive Society: British Cinema and Theatre 1955-1965 (Oxford: OUP, 1995) p.41.

⁷³ *Ibid.*, pp. 89-90.

homosexuality, and violence in film, drama and in print confirmed for older generations the abandonment of Christian morality which had to be resisted and reversed.

Undoubtedly there occurred a greater degree of openness in the discussion of sex and sexuality.⁷⁴ Indeed the changing attitude of the press towards the discussion of sex was an important barometer of how social and political attitudes were already changing. As Marwick argues, newspapers were increasingly a part of mass consumer society rather than a mould for public opinion.⁷⁵ The press's uneven and changing reaction to the recommendations of the Wolfenden Report after 1957 was one such indicator.⁷⁶ The increasing inclusion of sex education on school curricula was both a response to the increasing discussion of sex by young people, and (according to conservatives) a cause of their deteriorating sexual morality.⁷⁷

A crucial development was the gradual separation of sexual behaviour from sexual reproduction as a result of technological leaps in contraception, most famously in the release of the oral contraceptive pill in 1960, and, implicitly, in eventual legalisation on abortion in 1967. Also the development of antibiotics with which to fight sexually transmitted diseases took off during the 1950s. It should be emphasised though, that contraception was still predominantly used by married couples, and birth-control advice available only to married couples until the mid-1960s.⁷⁸ Indeed, the increasing availability of contraception to, for example, unmarried university students, still caused considerable public controversy during the mid-1960s - the press often asking whether this would "increase student immorality".⁷⁹

⁷⁴ Gorer, *op.cit.* p.3.

⁷⁵ Marwick, British Society since 1945, p. 133.

⁷⁶ See Chapter 3.v, pp.118-119.

⁷⁷ Barbara Wootton, 'The Affluent, Acquisitive, Permissive Society' in Contemporary Society, (London; Allen and Unwin, 1971) pp.26-7.

⁷⁸ See below at section iii, p.72.

⁷⁹ Dr Lorraine Fox, Vice-President, Sheffield University Student Union, 1965, to the author, 1.6.00.

Studies of the sexual behaviour of the young in the 1960s paint a far less permissive picture of their personal morality than moral conservatives credited. Michael Schofield's 1963 study revealed that of his sample of 1,873 teenagers aged between fifteen and nineteen only 12% of the girls had had intercourse.⁸⁰ According to Geoffrey Gorer, whose research was carried out some six years after Schofield's, 26% of men and 63% of women were virgins when they married; 20% of men and 26% of women married the person to whom they had lost their virginity.⁸¹ Moral concern among some conservatives about loose sexual behaviour led Anthony Storr to comment wearily in The Sunday Times that;

“Lord Longford, Macolm Muggeridge and Mrs Whitehouse can pack up and go home. We swing not, neither are we lechers. The majority of English people lead sexual lives of extreme respectability, in spite of Soho, television, and the erotic bletherings of the press.”⁸²

According to Leo Abse:

“the sixties were rather arch... There's a whole lot of nonsense talked about the sixties. [However] it's true that the Bills that we're talking about which came out in the sixties[,] that there were resonances which you could find in the public which there wouldn't have been in the pre-war years, and weren't in existence still in the 1950s.”⁸³

An important distinction needs to be drawn between the permissiveness which existed, and which had always existed, albeit in a less visible form, and the moral attitudes, or changes in moral authority which influenced young people more.⁸⁴ Young people were reaching sexual maturity earlier, escaping the authority of their parents earlier, with less financial dependence on both sides in

⁸⁰ M. Schofield The Sexual Behaviour of Young People (London: 1965) p.30.

⁸¹ G. Gorer, Sex and Marriage in England Today (London, 1971).

⁸² Anthony Storr, Sunday Times 14.11.71.

⁸³ Interview with Leo Abse, 5.12.97.

⁸⁴ Newburn, op.cit. p.172. Gummer, op.cit., pp.18-19. Kenneth Leech, Youthquake: The growth of a counter-culture through two decades (London: Sheldon Press, 1973) p.23.

smaller families, and marrying younger.⁸⁵ In other words, the changes affecting the moral and particularly the sexual behaviour of youth were partly a natural demographic and physiological process, as well as reflecting improvements in health care, education, employment, housing and available leisure time, which had been going on since the Second World War.

All these factors were reflected in the outcome of the Latey Committee on the Age of Majority in 1967. This had been established by the Wilson Government in July 1965 to consider the legal and social status of young people. It recommended the lowering of the age of majority from 21 to 18, concluding that:

“by 18 most young people are ready for these responsibilities and rights and would greatly profit by them as would the teaching authorities, the business community, the administration of justice, and the community as a whole...”⁸⁶

As Lady Serota, one of the members of the Latey Committee, emphasised, the genesis and results of this inquiry comprised one of the most important reforming episodes of the 1960s,⁸⁷ although the effect of this change on young people at work, in education or at home has been neglected by scholars.

However, moral traditionalists did not approve of such moves, and refused to condone what they saw as a decline in moral standards. The Macmillan/Douglas-Home governments, as Jarvis reveals, wrestled constantly with the social implications of a moral decline among the young which was linked to the rise in juvenile delinquency, and resulted from “the imbalance between material advancement and moral resources”.⁸⁸ Some Conservatives feared even for the survival of the family as a result of increased permissiveness, and the responsibility for the cohesion of traditional family life

⁸⁵ J. Gillis, *Youth in History* (London: Academia Press, 1981) p.190.

⁸⁶ Report of the Committee on the Age of Majority, Cmnd.3342 (London: HMSO, 1967) para. 518, p.125.

⁸⁷ Interview with Lady Serota, 18.1.00.

⁸⁸ Jarvis, *op.cit.*, p.225.

lay primarily with mothers and women in general, whose lives had been undergoing similarly profound changes since the Second World War.

iii. Women and the Family.

The inter-war period saw the final embrace of women within the pale of the constitution through the staged achievement of equal voting rights. Their property rights within marriage and in relation to custody of children were also strengthened, continuing the trend of the nineteenth century. Furthermore the role and position of women changed dramatically during the war years, particularly in relation to work. However, as many feminist scholars have pointed out, none of this meant that women had achieved anything more than theoretical legal equality, despite the patronising and superficial arguments of some senior judges.⁸⁹

The retrenchment which occurred in the immediate post-war years, towards modes of work and social values of a more pre-war nature, reversed many of the wartime changes. Following the temporary hike in the rate of divorce to a rate of 60,000 in 1947 from a pre-war level of 30,000 per year and the introduction of legal aid which made divorce accessible to couples to whom the cost had previously been financially prohibitive, concern turned towards re-asserting the social and moral importance of the family.⁹⁰ Also, after the post-war 'baby-boom', the birth rate declined somewhat until a second baby boom in the early 1960s.⁹¹ Two Royal Commissions monitored and reported on these twin pillars of family life. The Royal Commission on Population had been set up in 1944 to consider the worrying decline in the birth rate which, according to the Beveridge Report, threatened the continued existence of the British race.⁹² Whilst concurring with the general disapproval of the declining birth rate, the Report supported voluntary parenthood, and gave official sanction to the expansion of family planning services.⁹³ It also sought to promote family life by giving more preparatory education in schools on marriage and parenthood.

⁸⁹ Smart, *op.cit.*, pp.28-29.

⁹⁰ Smart, *op.cit.*, p.32.

⁹¹ D.A. Coleman, 'Population' in A.H. Halsey ed., *op.cit.*, pp.48-49; see Appendix.

⁹² Report of the Royal Commission on Population Cmnd.7695 (London: HMSO, 1949), William Beveridge, Social insurance and allied services, Cmnd.6404 (London: HMSO, 1942) p.154.

⁹³ Report of the Biological and Medical Committee, Papers of the Royal Commission on Population, Cmnd.7695, (London: HMSO, 1950) p. 18.

Significantly it pointed to the importance of accommodating changes in women's position within the family and society, saying;

“it should be assumed also that women will take an increasing part in the cultural and economic life of the community, and [public policy] should endeavour, by adjustments of social and economic arrangements, to make it easier for women to combine motherhood and the care of a home with outside interests.”⁹⁴

In 1951 the Royal Commission on Marriage and Divorce was established by the second Attlee government in response by an attempt by Eirene White, Labour MP for East Flintshire, to extend the grounds for divorce. Whilst some members of this Commission felt that the current state of the divorce laws was somewhat unsatisfactory, none was keen to be seen to be derogating the institution of marriage. Its report in 1956 recommended only minor reform of the divorce laws.⁹⁵

Not only were post-war policy-makers, from Beveridge onward, keen to emphasise the central social importance of the family, but demographic and social trends were also having implications for patterns of family size and behaviour. Increasing urbanisation and the rapid development of housing estates and new towns (built to replace housing stock destroyed in the war or demolished for the purposes of slum-clearance) encouraged the breakdown of traditional, extended, family networks.⁹⁶ It was these networks which had always provided child care, midwifery, nursing care and financial security in times of hardship. The post-war development of the Welfare State began to challenge the use of the extended family in favour of aid available from the State; movement of families to new homes, often far from their relatives, prevented traditional forms of family assistance.⁹⁷ Post-war social trends and public policy

⁹⁴ Cmnd.7695, Chapter IV, p. 227.

⁹⁵ Report and Papers of the Royal Commission on Marriage and Divorce, Cmnd.9678. (London: HMSO, 1956).

⁹⁶ Michael Young and Peter Wilmott, Family and Kinship in East London (London: Routledge and Kegan Paul, 1957) pp.164-165.

⁹⁷ Marwick, *op.cit.* pp. 60-61.

therefore combined to make the nuclear family the most important institution. A declining birth rate, increasing illegitimacy, demands for abortion, a continuing high divorce rate and fears about the growing problems of the nation's youth during the late 1940s were all seen as threatening the position of the family and, consequently, the moral health of the British population. These trends were generally reversed during the early 1950s, with birth, illegitimacy and divorce rates rising again from varying points later in the decade.⁹⁸

Although the moral welfare and standards of women as individuals were not a prime concern during the 1950s, and only emerged as such as demands for reform of laws on abortion and divorce increased during the 1960s, women's position as the home-makers and child bearers and rearers made their position in the family - especially in relation to youth - of central importance.⁹⁹ According to Jeffrey Weeks, the post-war Welfare State concentrated attention on the;

“conditions of ‘reproduction’ both in its widest social sense, of producing a healthy workforce in the context of comprehensive social security and full employment; and in the narrow, biological sense, of improving the conditions of parenthood and childbirth.”¹⁰⁰

As full employment encouraged more married women to remain in, or return to, the workforce during the 1950s (after the reinforced domesticity of the post-war years), their position as mothers and home-makers became more complex. This trend was accentuated by the increasingly compressed time-span of female fertility, a younger marriage age and fewer children, followed by more and better-paid work opportunities. The Report of the Royal Commission on Population in 1949 had recognised this trend.¹⁰¹ However, the importance of motherhood and the family to economic growth, social stability and the maintenance of the birth-rate, had been emphasised even earlier by Beveridge, particularly by the promotion of Family Allowances, and the refusal of means-

⁹⁸ See Appendix, p.327.

⁹⁹ Newburn, *op.cit.*, pp. 163-166.

¹⁰⁰ Weeks, *Sex, Politics and Society* (London; Longman, 1981) p.232.

¹⁰¹ Cmnd.7695, p. 237.

tested and some other benefits to women living independently, or with a man whilst unmarried.¹⁰²

Some left-wing sociologists have seen this direction of social policy after the Second World War as a capitalist attempt by the state to reassert hegemony over female fertility in order to control more effectively the labour market after the disruptions of wartime contingencies, as well as to manage population policies designed to boost the birth-rate and family health for the future workforce.¹⁰³ Whilst figures like Beveridge did see social policy partly in such a mechanistic way, an economistic interpretation of the post-war Welfare State ignores the political and social experience which lay behind the motivation of most policy-makers and the population at large; that is, notably, the threat of social disharmony brought by mass poverty in the 1930s, and the experiences of war which sharpened the desire for a more cohesive and egalitarian society.¹⁰⁴ A more subtle sociological approach recognises both the importance of the continued policy of full employment on women in the labour market, and the re-focusing on the family as a source social stability after wartime disruption.¹⁰⁵ Furthermore, labour shortage during the 1950s was, of course, addressed partially by encouraging West Indian immigration.¹⁰⁶

However, social policy after the war was concerned to emphasise the family and the role of motherhood for women. There was an explosion in the scope of local authority social work. First was the establishment of Children's Departments in local authorities in 1949.¹⁰⁷ Second was the genesis of the Marriage Guidance Council, which was to be particularly influential over divorce law reform during the 1950s,¹⁰⁸ and also underwent a philosophical transformation from attempting to regulate sexual morality within marriage to promoting reform

¹⁰² Lucy Bland, Trisha McCabe and Frank Mort, 'Sexuality and Reproduction: Three Official Instances', in Philip Corrigan, Annette Kuhn and Janet Wolff (eds.), *op.cit.* pp. 86-87.

¹⁰³ For example, *ibid.*

¹⁰⁴ For example, Hennessy, *op.cit.*; P. Addison, The Road to 1945 3rd ed. (London: Pimlico, 1994).

¹⁰⁵ Weeks, *op.cit.*, pp.232-248.

¹⁰⁶ Shamit Sagggar, Race and Politics in Britain (London: Wheatsheaf, 1992) p.66.

¹⁰⁷ Lorraine Fox Harding, Perspectives in Child Care Policy (London: Longman, 1991) pp. 136-137.

¹⁰⁸ See below at Chapter 6, p.240.

during the 1960s.¹⁰⁹ This was all reinforced by a vast literature on the subject. “Family life is perpetuated of itself and by no artificial teaching, and if it is to be kept alive this can only be done by deliberately fostering of its vitality,” declared one social work expert, rather enigmatically, at the end of the 1950s.¹¹⁰

At the same time, however, the new openness to the discussion of sex meant that sexual pleasure within marriage was being actively encouraged as a means of cementing the marriage partnership, and women were actively exhorted to enhance their femininity in order to stimulate their husband’s appetites both by women’s magazines and sociologists alike.¹¹¹ This new attention to sexual relations within marriage stemmed partly from the awareness that during the war increased marital breakdown had entailed a rise in promiscuity and sexual freedom, especially for women, which was to be firmly discouraged after the war.¹¹² Additionally, married couples reaped the benefits of the explosion in the availability of contraception, particularly after the introduction of the Pill. Although, as mentioned, unlike in the United States,¹¹³ the Pill was not particularly popular until the 1970s compared to traditional methods of contraception like the sheath, its existence did facilitate discussion of contraception and increased use of other methods.¹¹⁴ However, it continued to be the case that poorer, working-class couples were less likely to use formal contraception, and more likely to have unwanted pregnancies.¹¹⁵ It was only in 1964 that the Brook Advisory Centres began giving birth control advice to unmarried women. The Family Planning Association only changed its policy to address the needs of unmarried women in 1966. As Elizabeth Wilson concludes, this move had something to do with the West Indian immigrant

¹⁰⁹ Jane Lewis, *op.cit.*, p.261.

¹¹⁰ J. Heywood, *Children in Care* (London: Routledge and Paul Kegan, 1959) p.139, quoted in Weeks, *op.cit.* p. 237.

¹¹¹ Elizabeth Wilson, *Only half-way to paradise: women in post-war Britain 1945-1968* (London: Tavistock, 1980) pp.93-94.

¹¹² *Ibid.*, p.83.

¹¹³ Elizabeth Siegal Watkins, *On the Pill: a social history of oral contraceptives* (Baltimore: John Hopkins University Press, 1998) p.34.

¹¹⁴ C.M. Langford, *Birth control practice and marital fertility in Britain* (London: Population Investigation Committee, 1976) pp.45-51.

¹¹⁵ Weeks, *op.cit.*, p.260.

community, among whom there were many couples who had never been married, as well as latent fears about the fertility of immigrant groups.¹¹⁶

Along with a very formalised expression of female sexuality, the importance of motherhood was emphasised, with the influential John Newsom, Chief Education Officer for Hertfordshire from 1940-1957 and later Chair (1961-1963) and Vice-Chair (1963-1966) of the Central Advisory Council for Education, going so far as to say that women who did not recognise the primacy of motherhood were “normally deficient in the quality of womanliness and the particular physical and mental attributes of their sex”.¹¹⁷ The increase in women’s average earnings during the 1950s and 1960s, and their typical role as controller of domestic expenditure made their position as consumers, for the family even more than for themselves as individuals, of prime importance. The home was the main centre of expenditure, and so women became the focus of marketing of domestic appliances and other household goods, as well as for female fashion, cosmetics and literature. This responsibility had been focused on by Newsom as early as 1948 when he warned sternly that;

“It is not an exaggeration to say that woman as a purchaser holds the future standard of living in this country in her hands... If she buys in ignorance then our national standards will degenerate.”¹¹⁸

This pattern of idealised female domesticity was only gradually challenged by pioneers such as Betty Friedan, whose study of American women’s attitudes towards themselves, The Feminine Mystique, acutely dissected the social and economic pressures exerted on women (including by each other) to focus on the home and family.¹¹⁹

Paid employment during the 1950s and 1960s was a double-edged sword for women in respect of their position within the family. Although the extra spending

¹¹⁶ Wilson, op.cit., p.100.

¹¹⁷ John Newsom, The Education of Girls (London: Faber, 1948) p. 146.

¹¹⁸ Ibid., p.102.

¹¹⁹ Betty Friedan, The Feminine Mystique (London: Victor Gollancz, 1963).

power which such work, often in the commodity-producing industries, gave to families to participate in the economic boom was welcomed, the social pressures on women to remain within their accepted sphere of activity - home-making and child-rearing - were considerable, and were a positive bar to such work for many for whom the wages were not wholly necessary. Although politically women had gained a considerable improvement in their status since the extension of the franchise during the 1920s, there was little challenge to accepted gender roles within the family.¹²⁰ For those mothers who did work the newly 'discovered' phenomenon of 'latch-key' children was a reminder of where their real duties were thought to lie. 'Maternal deprivation' was thought to be contributing towards the problems which were leading Britain's youth into moral decline. According to Bouchier, "a monstrous weight of guilt was thus heaped on working mothers whilst those who stayed at home were assured that their child rearing task was more challenging and worthwhile than the vain pursuits of any career woman".¹²¹

An important difference between the social and cultural temptations for newly affluent youth, and the pressures exerted on women was a difference of class. Whereas there was an increasing uniformity of appeal for middle and working-class youth in the cultural attractions available, for women, the message of the media still depended very much on their class. As Carol Smart points out, the more down-market weekly women's magazines approved of women taking paid jobs outside the home (and presumably fewer working-class women had the choice), whereas the monthly magazines like Good Housekeeping, read by middle-class women, exhorted the virtues of child-rearing and husband-tending.¹²²

The position of women as individuals was not therefore a central theme until the development of a women's rights movement at the end of the 1960s. Before then women were seen largely in relation to the protection of youth and the family, or as victims - a weak group in society to be protected. They can be seen

¹²⁰ Smart, op.cit., pp.28-30.

¹²¹ Bouchier, quoted in Newburn, op.cit. p. 167.

¹²² Smart, op.cit., p.52.

in this way in relation to homosexual law reform, divorce, abortion and theatre censorship. In the first case women should be protected against marriages into which male homosexuals felt compelled to enter. Similarly the divorce laws were felt to be particularly harsh towards women forced to remain married to errant or cruel husbands who refused a divorce. Conversely divorce reform was resisted because middle-aged women who had supposedly lost their looks would more easily be abandoned for younger women. Calls for abortion reform were principally seen not as 'a woman's right to choose', but as a therapeutic solution to the social problem of unwanted pregnancies which would harm women's health¹²³. The removal of the term "well-being" from Clause 1(i)(a) of David Steel's Abortion Bill reinforced the conditions under which the procedure could be carried out - the medical profession was strictly in charge, not the woman.¹²⁴ Concerning censorship, the protection of vulnerable groups in society, the young and women especially, was always the concern of moral conservatives and also reformers who were keen to make a clearer distinction between literature and pornography.

¹²³ Brookes, *op.cit.*, p.156.

¹²⁴ Newburn, *op.cit.*, pp.143-147.

Chapter 3: Homosexual Law Reform.

“I know that we have a Home Secretary and Ministers at the Home Office who are modern-minded and realistic people – but I sometimes wonder whether this applies to the general run of judges, magistrates and law enforcement officials. (It would, I know, be unsporting to add “civil servants.)”¹

i. The Departmental Committee on Homosexual Offences and Prostitution:

The Wolfenden Report has been credited, particularly by its detractors at the time, of creating, at least in part, the so-called “permissive society” of the 1960s. However, its genesis was far from being motivated by the liberal sympathies of those like Roy Jenkins, who were eventually responsible for implementing its recommendations on homosexuality. Politicians espousing such views had little influence and courted much scorn in 1954 when the Wolfenden Committee was appointed. The Home Secretary who appointed Sir John Wolfenden to chair the inquiry, Sir David Maxwell-Fyfe (later Lord Kilmuir and Lord Chancellor), was staunchly against lessening the penalties or pariah status to which homosexuals were subject.² As Kilmuir he would not, according to Leo Abse’s memoirs, sit at any Cabinet meeting where homosexuality was on the agenda,³ although Deedes says that this is an exaggeration.⁴ Maxwell-Fyfe was only the latest in a line of senior politicians and officials who responded eagerly to fears about a moral decline after the Second World War by seeking to clamp down on vice and sexual deviancy. Herbert Morrison, Home Secretary during the war, Lord President of the Council and then Foreign Secretary in the Attlee Governments was equally fervent in this crusade. These two Ministers were backed up by officials with an equally public determination; Morrison by Sir Theobald Matthew, Director of Public Prosecutions from 1944, and Maxwell-Fyfe by Sir John Nott-Bower, Commissioner of the Metropolitan Police from 1953.⁵

¹ BLPES, HC/AT 7/28a, Grey to Abse, 6.4.67.

² HC Deb, vol. 521 cols.1296-1299, 3.12.53.

³ Leo Abse, *Private Member*, (London: MacDonal, 1973) pp.146-147.

⁴ Interview with Lord Deedes, 23.9.97.

⁵ Newburn, *op.cit.*, p.49.

The spread of a moral panic about homosexuality during the early 1950s among the political class, and also in the press, is a cliché oft-repeated by historians and sociologists, and one which needs a brief re-examination. Those who emphasise the existence of this 'panic' consider it to be an extreme and draconian reaction to numerous celebrated trials and scandals; the flight to the Soviet Union of Burgess and Maclean in 1951, and the prosecutions of Lord Montagu and Peter Wildeblood, Robert Croft-Cooke and Michael Pitt-Rivers in 1954.⁶ It was also in response to the rapid increase in indictable offences at the time - five-fold between 1945 and 1960.⁷ But this itself was a reflection of the political drive, particularly by Maxwell-Fyfe to impose greater uniformity across the country in the prosecution of homosexual offences.⁸ What seemed to be an increase in incidence was, in fact, an increase in police activity. Entrapment was frequently used and, in court, the charge of conspiracy was revived, the more easily to obtain convictions than could a simple charge of indecency or sodomy.⁹ The fear of an increase in homosexuality was succinctly captured by Wolfenden in his memoirs;

"nobody had any idea how much of it there was... but there was an impression that it was increasing; and there was a feeling that if it was then it ought to be curbed."¹⁰

What reforming pressure there was came initially from the Church of England Moral Welfare Council (CEMWC), which, in 1952 published its report, The Problem of Homosexuality. This recommended an inquiry into the law relating to homosexuality and the separation of 'sin' from the criminal law.¹¹ For itself, the Labour Party Research Department, as early as 1948 produced a paper on 'Reform of Substantive Criminal Law', which included a section on homosexuality advocating decriminalisation of acts committed by those over 18,

⁶ Weeks, Sex, politics and Society pp.160-161; H. Montgomery Hyde, The Other Love (London: Heineman, 1970) pp.216-228.

⁷ Weeks, *op.cit.* p.158.

⁸ *Ibid.* p.159.

⁹ Hyde, *op.cit.*, p.215.

¹⁰ J.F. Wolfenden, Turning Points: Memoirs (London: Bodley Head, 1976) p.131.

¹¹ CEMWC, The Problem of Homosexuality (London: Church Information Board, 1952).

compared the existing law with the legal ignorance of lesbianism, and criticised the judiciary's cruel and out-dated attitudes.¹² Further support came from the Howard League for Penal Reform and *New Statesman* after the Montagu-Wildeblood trial, but these were lone voices.

As Maxwell-Fyfe would have been very satisfied with the custodial sentences handed down at that time, it is curious that the establishment of the Wolfenden Committee has often been attributed to a head of pressure which built up in 1954 after those trials. In fact it was prostitution, not homosexuality, which was the original remit of the Committee. The latter area was only added to balance out the inquiry with a 'related' problem. Lord Allen of Abbeydale, Deputy Secretary at the Home Office in 1954, and later Permanent Secretary under Roy Jenkins, has revealed that, in the way of much policy-making, the twin areas to be considered 'emerged' after discussion, rather than being decided at the start as a matter of principle, or as the result of public pressure. Interviewed in 1994 he recalled that the visibility of prostitution on the streets of the West End and elsewhere was the prime motive behind the establishment of the Committee;

"And as we were having an inquiry into prostitution, almost as a make-weight as I recall, we threw in the other half... It [homosexuality] wasn't a live issue... to that extent... although I know the contrary has been said since."¹³

According to this view, the 'moral panic' about homosexuality misses the point. There was a general concern that traditional family roles and values be reinforced during the first decade of the Welfare State. The intense focus on London during the Festival of Britain and the Coronation in 1953 threw the problem of soliciting by prostitutes into public debate.¹⁴ The iconic importance which the homosexual trials and the establishment of the Wolfenden inquiry in the early 1950s have taken on in retrospect demand a grander explanation than they deserve.

¹² NMLH, RD/109, May 1948.

¹³ Interview with Peter Hennessy for Channel 4 series, *What has become of us?*, 31 May 1994.

¹⁴ Weeks, *op.cit.*, p.240.

An alternative thesis is provided by Lord Deedes, Home Office Minister at the time of the establishment of the inquiry, who cited the concentration on reconstruction after the disruption of the Second World War, as the reason why social reform and attitudes had not been addressed before:

"It was fairly natural that around the middle 1950s that a change of view began to take place, we hadn't reviewed the social scene for 20 years... people hadn't got the mind, at least in Government, to deal with these matters until roughly the middle 1950s."¹⁵

These are the keys to how a socially reactionary Conservative Government set up an inquiry which recommended removing homosexual activity between consenting adults, in private, from the Statute Book as a criminal offence. Maxwell-Fyfe and most other Conservative ministers did not expect the controversial recommendations on homosexuality which the Committee set out in its report. At the same time the Committee was deliberating, the Eden Government was consolidating disparate pieces of legislation on sexual offences concerning rape, incest, buggery, soliciting and other crimes, some of which fell into Wolfenden's remit.¹⁶ The Sexual Offences Act 1956 did not amend the late nineteenth century legislation on which it drew but reinforced the existing view of sexual deviance by both men and women that motivated people like Maxwell-Fyfe and Matthews.¹⁷

On the other hand, Wolfenden and his colleagues were not concerned with the moral issues involved, but with;

"the law and practice relating to homosexual offences and the treatment of persons convicted of such offences by the courts."¹⁸

¹⁵ Interview with Lord Deedes, 23.9.97.

¹⁶ Sexual Offences Act, 1956.

¹⁷ Carol Smart, 'Law and the control of women's sexuality: the case of the 1950s' in Bridget Hutter and Gilliam Williams (eds.), Controlling Women: the normal and the deviant (London: Croom Helm, 1981) pp.53-57.

¹⁸ Report of the Departmental Committee of Homosexual Offences and Prostitution, Cmnd.247, para. 1(a).

As with prostitution it was visibility and the efficacy of the criminal law which was under consideration. The Committee worked from the premise that the function of the criminal law was to protect, in particular, the weak in society and maintain public order and decency. It was not, however, the function of the law to set or reinforce a particular moral code, save that implicit in the maintenance of public order and decency. Just as prostitution had never been, in itself, a criminal offence, the Committee quickly concluded that homosexual acts in private should be removed from the ambit of the law. Conversely the penalties for soliciting and for importuning should be strengthened in order to preserve public decency and curb the visibility of these offences which had given rise to the Committee's inquiry.¹⁹

The limited extent of the reform proposed reflected the utilitarianism of the Wolfenden strategy, removing private sin where no harm was committed from the criminal law (a distinction Wolfenden described as being "incredibly unnoticed by so many of our fellow countrymen"²⁰), whilst retaining strong sanctions against public offences and the corruption of the young. In fact the Committee argued their proposals would increase protection for the young because;

"With the law as it is there may be some men who would prefer an adult partner, but who at present turn their attention to boys because they consider that this course is less likely to lay them open to prosecution or blackmail."²¹

If consensual adult homosexual acts were decriminalised then homosexuals would not need to seek out young boys.

What is perhaps most interesting about the Committee's deliberations is the uncertainty among its members about how far their recommendations might

¹⁹ Wolfenden, *op.cit.*, pp.141-142.

²⁰ LPL, GFP/193, Wolfenden to Fisher, 24.9.57.

²¹ Cmnd.247, para.97.

offend, or be misunderstood by public opinion, and how much they should lead or be guided by the national mood. This was a problem that was to trouble politicians long after even the Sexual Offences Act 1967 was on the Statute Book. How much should the Committee, and politicians, be educators? The direction of the Committee appeared to be heading towards setting the age of consent at 18 for homosexuals and abolishing buggery as a separate offence. However several members were concerned about the public and political reaction to this. During a general discussion in 1955 William Wells, Labour MP for Walsall, and a Roman Catholic, said that;

"public opinion had perhaps produced the Committee; politicians were timid folk and there would be nothing politically attractive in its recommendations. In consequence it must be very careful about its relations with the public."

Other members of the Committee, like Wolfenden, took a longer view, considering it more important to come to the right conclusions for the future, rather than worry about what public opinion would stand now;

"the Chairman thought that the primary objective was not immediate legislation, but an educational process which might perhaps have the effect that one day public opinion would accept these changes."²²

This was the game politicians would be playing until 1967. As Lord Allen assessed it;

"I suppose... to some extent the Rab Butlers of this world did set... going policies which in the end had influence on... the public. But no politician can afford to get too far ahead of public opinion... he can't really get away with policies which fly flat in the face of public opinion."²³

²² PRO, HO 45/25306, 'Minutes of Committee', 14th Meeting, 4.10.55.

²³ Interview with Peter Hennessy for Channel 4 series, What has become of us?, 31 May 1994.

Butler, made Home Secretary after the re-election of the Conservative government in 1955, of course judged the Wolfenden recommendations on homosexuality to be way ahead of public opinion when the Wolfenden Report was debated in 1958 but agreed with Wolfenden's thoughts on a process of education.²⁴ To what extent he was correct is uncertain. Despite the Anglican support for his strong personal support for Wolfenden (he was appointed chair of the new Church of England Moral Welfare Council), Geoffrey Fisher, Archbishop of Canterbury, agreed with Butler, thinking that immediate implementation might cause "the vulgar" to "suppose that it was legalising vice".²⁵ However, Wildeblood said he was surprised at the level of support expressed after his trial,²⁶ and Wolfenden described a similarly positive reaction to his Report.²⁷ Most politicians, regardless of public opinion, just wished such an unpleasant topic would go away. That it would not do so is owing to the Wolfenden Committee, the politicians and the extra-Parliamentary groups who continued a campaign of reform for ten years.

²⁴ H.C. Deb. vol.596 col.369, 26.11.58.

²⁵ LPL, GFP/193, 14, Fisher to Wolfenden, 14.9.57; GFP/193, 180, Fisher to Wolfenden, 18.11.57.

²⁶ Weeks, *op.cit.* p.164.

²⁷ Wolfenden, *op.cit.*, pp.140-141.

ii. Social attitudes and political change under the Conservatives 1957-1964.

Despite the clear recommendation of the Wolfenden Report, that homosexual acts between consenting male adults over the age of twenty one in private be decriminalised, and the support for such a move from bodies like CEMWC, there was no mood in Parliament to act on the Report's conclusions on homosexuality. The Government demonstrated that it was in no way inclined to promote a course of action which it considered to be way ahead of public opinion, although it remained officially neutral on the issues themselves. At a meeting of the Cabinet's Home Affairs Committee in November 1957, Butler emphatically stated that there was no prospect of introducing legislation to implement Wolfenden's recommendations on homosexuality.²⁸ This was reinforced a year later shortly before the Commons debate on the Report.²⁹

Without being wholly logical, Butler implied that public opinion might not actually disagree with the Wolfenden principle of removing sins such as homosexual behaviour from the ambit of the law, but would be likely to misinterpret the recommendations as a general approval of homosexuality per se, which would outrage public morality. One might, however, infer from Butler's stance that in this area, as in others with which he was to deal as Home Secretary such as prison reform and the obscenity laws, he was personally of a more liberal mind than most of his Conservative colleagues. He was certainly considered to be the leading reforming influence on the Conservative Party from the time of the 1944 (Butler) Education Act until his move to the Foreign Office in 1963. According to Deedes his "influence was not always on the record", but who he had a great effect on young Conservative MPs, "...he made the Tories feel it was respectable to indulge in social reform" and would probably have been in favour of the Wolfenden proposals himself.³⁰ However, this reforming bent to his political character should be qualified. As Hugo Young points out,

²⁸ PRO, CAB 134/1968 H(57) 26th meeting, 29.11.57.

²⁹ PRO, CAB 134/1972 H(58) 20th meeting, 24.10.58.

³⁰ Interview with Lord Deedes, 23.9.97.

“he was among those Conservative politicians who were usually more sensitive to what the party might not like than to what it ought to be persuaded, against its better instincts, to accept. Although a reformer, he seldom went about the business of social change by means of explicit challenge to the past. He did not, in that sense, have a brave political imagination.”³¹

His Prime Minister, Macmillan, had a perhaps even more socially liberal outlook. Certainly looking back to his inter-war period he was described by Attlee (a prominent supporter of implementation of Wolfenden on homosexuality³²) as “by far the most radical man I’ve known in politics... He was a real Left wing radical in his social, human and economic thinking”.³³

Impressed by the level of support shown for the Wolfenden recommendations in the press and the House of Lords debate, there was considerable discussion among Ministers and officials about the possibility of some kind of compromise solution. Sir Charles Cunningham, Permanent Secretary at the Home Office, and W.S. Murrie at the Scottish Home Department, both suggested to Butler that decriminalisation of gross indecency, but not buggery, between consenting males in private (which would restore the law to the position before the Labouchère amendment to the Criminal Law (Amendment) Act 1885) might satisfy both pro- and anti-reformers. Conservatives would be comforted by the retention of sanctions against the age-old offence of buggery, whilst the difficulty of proving the commission of buggery, by having the same practical effect as acceptance of the whole of Wolfenden, might satisfy the reformers.

Cunningham suggested that this would have the support of the Lord Chief Justice, Lord Goddard, and other members of the judiciary.³⁴ These two officials

³¹ Hugo Young, This Blessed Plot: Britain and Europe from Churchill to Blair (London: Macmillan, 1998) p.95.

³² The Times, 6.3.58.

³³ James Margach, The Anatomy of Power (London: Allen & Unwin, 1979) pp.116-7, quoted in Hennessy, The Prime Minister: the office and its holders since 1945, (London: Penguin, forthcoming).

³⁴ PRO, HO 291/123, Cunninham to Butler, 21.10.57; W.S. Murrie, Secretary, Scottish Home Department, to Butler, 30.10.57.

were prepared to ignore the fact that this would create a risible legal anomaly when one of the main arguments of the reformers was that the law was illogical. However, Theobald Matthew, Director of Public Prosecutions, would not brook this. Writing to the Home Office to oppose any of the subsidiary proposals in the Wolfenden report he insisted that:

“I am sorry to be so unhelpful, but my experience of compromise legislation in the criminal field is that it inevitably leads to anomalies that disturb public confidence, and it makes the task of judges, juries and prosecutors extremely difficult.”³⁵

However, even the supposedly arch-reactionary Maxwell Fyfe, now Viscount Kilmuir, had some sympathy with the desire to prevent blackmail and stale offences being brought up, despite what Kilmuir self-ironically described as his “Old Testament attitude” (a label given him by Punch magazine).³⁶ A number of MPs and peers were pressing for all offences over a year old to be referred to the DPP.³⁷ Butler seems to have taken the point, for at Cabinet’s Home Affairs Committee at the end of November, he merely offered that it was “impractical, in the present state of public opinion” to move on homosexual law reform.³⁸

One minor recommendation of the Wolfenden Report which Butler was prepared to sanction, which did not require legislation, was the re-introduction of oestrogen treatment for prisoners convicted of homosexual offences.³⁹ This had been discontinued during the Attlee administration by the Director of Medical Services in the Prison Commission in October 1950 because of the risk of sterility inherent in the treatment. According to a note from Sir Charles Cunningham, Permanent Secretary at the Home Office, to Butler in January 1958 on this subject, Maxwell Fyfe had wanted to re-introduce the procedure,

³⁵ PRO, HO 291/123, Theobald Matthew to F.L.T. Graham-Harrison, Assistant Under-Secretary, Police Division, Home Office, 4.11.57.

³⁶ PRO, HO 291/123, Kilmuir to Butler, 3.3.58.

³⁷ For example, Desmond Donnelly, Labour MP for Pembroke, HC Deb, vol.588 cols.1475-6, 16.5.58.

³⁸ PRO, CAB 134/1968 HA(57) 26th meeting, 21.11.57.

³⁹ Cmnd.247, para.209-211, p.69.

but had instead referred it to the Wolfenden Committee in order to deflect any political controversy.⁴⁰

Now, following Wolfenden's approval of oestrogen treatment for homosexuals where a prisoner wanted it, and where the prison medical officer considered it might be beneficial, Cunningham recommended Butler approve the treatment.⁴¹ The extra safeguard that prisoners should sign a written acknowledgement that they understood the risks involved was added. The Prison Commission had already agreed with the re-introduction in discussions with the Wolfenden Committee and the Home Office.⁴² Butler concurred with the recommendation.⁴³ It was left only for David Renton, Parliamentary Under-Secretary at the Home Office, to notify Parliament during the Commons debate on Wolfenden, in response to a question by Mr Leslie Hale, Labour MP for Oldham West, that it was being implemented.⁴⁴

The Labour front bench did not demur from the Government line of inaction on the Wolfenden Report, and the House merely 'took note' of it.⁴⁵ At this point such a position was understandable. Neither party wanted to be seen to endorse a proposal with dubious public support and considerable opposition based on religious feeling, defence of traditional public morality (however much questioned) and the perceived danger to the family and the young. Furthermore, a considerable amount of indignant protest had been stirred by the co-incidental circulation to MPs before the debate of a pamphlet by the Homosexual Law Reform Society (HLRS), Homosexuals and the Law, Wildeblood's Against the Law and Eustace Chessser's Live and Let Live.⁴⁶ It was clear that no immediate prospect of Parliamentary action lay ahead.

⁴⁰ PRO, HO 291/124, Sir Charles Cunningham to Butler, dated January 1958, but presumably before 14.1.58 when Butler initialled his agreement.

⁴¹ PRO, HO 291/124, Sir Charles Cunningham to Butler, dated January 1958.

⁴² PRO, HO 291/124, J.H. Walker, Secretary, Prison Commission, to Conwy Roberts, Principipl, Criminal Department, Home Office, 11.11.57.

⁴³ PRO, HO 291/124, Cunningham to Butler, January 1958.

⁴⁴ HC Deb, vol. 596 cols. 503-504, 26.11.58.

⁴⁵ HC Deb, vol. 596 col. 365, 26.11.58; Interview with Lord Deedes, 23.9.97.

⁴⁶ Peter G. Richards, Parliament and Conscience (London: Allen and Unwin, 1970) p.75; Anthony Grey, 'Homosexual Law Reform' in Brian Frost ed. The Tactics of Pressure (London: Stainer and Bell, 1975) p.43; HLRS, Homosexuals and the Law; Peter Wildeblood, Against the Law; Eustace Chessser, Live and Let Live (London: Heinemann, 1958).

The process of public education on which Parliament waited is not a trend which can easily be measured. A Gallup poll conducted shortly after the Commons debate showed 47% against the main Wolfenden recommendation and 38% supporting it. The margin of disapproval was slightly higher among women.⁴⁷ According to officials the Lord Chancellor's postbag was fairly evenly divided on the report.⁴⁸ What did begin to happen, however, even under the Conservatives, was that a number of events, innocuous perhaps when looked at in isolation, gradually shifted the political debate, supporting Oscar Wilde's observation sixty years earlier that it was public officials rather than public opinion which needed educating.⁴⁹ In 1958 the Lord Chamberlain, responsible for licensing stage performances, relaxed the rules on the treatment of homosexual subjects.⁵⁰ This led to two, largely factual, plays about the trial of Oscar Wilde, and the 1960 film Victim, starring Dirk Bogarde. In this last production Bogarde had to fight strongly with the Censor to prevent removal of key scenes in which homosexuality, and homosexual desire, were referred to directly. It discussed law reform and endorsed the Wolfenden proposals, and the liberal view of homosexuality as an unfortunate and abnormal condition to be pitied but not condemned.⁵¹

The first test of the Parliamentary temperature after the 1958 Commons debate came two years later in June 1960, when the Labour MP Kenneth Robinson, later to be Minister of Health in the Wilson Government, tabled a motion calling on the Government to take early action to implement the Wolfenden recommendations. Though it was heavily defeated, by 99 votes to 213,⁵² this reflected the large Conservative majority in the House and the age and seniority of the majority of members compared to the composition of the Parliament

⁴⁷ News Chronicle, 'Gallup Poll on the Vice Report', 10.9.57.

⁴⁸ PRO, LCO 2/5762, J.W. Bourne, Legal Assistant, LCD, to R.R. Pittam, Private Secretary to Home Secretary, 12.12.57.

⁴⁹ Quoted in Weeks, Coming Out p.168.

⁵⁰ See below at Chapter 5.iii, pp.195-198.

⁵¹ Andrew Holden, 'Victim and homosexual law reform', unpublished lecture, Department of History, Queen Mary and Westfield College, 22 March 1999; Weeks, op.cit. p.174.

⁵² HC Deb, vol.625 col.1510, 29.6.60.

which succeeded it.⁵³ Signs of change were there. The liberal Tory Bow Group, in its journal Crossbow had published an edition devoted to 'Politics, Morals and Society' in January 1959, which advocated among other social reforms, the implementation of the Wolfenden recommendations on homosexuality.⁵⁴ Furthermore, Bill Deedes, made Minister without Portfolio in the Macmillan Cabinet two years later, indicated that he had changed his mind from outright opposition to acceptance of the inevitability of reform.⁵⁵ Deedes himself denies that he had significantly changed his mind, but was influenced by Butler on the issue, as he was on many others:

"Butler, in this instance what he did, was to shift me from downright hostility to reluctant neutrality. That's about as far as he changed my mind."⁵⁶

Twenty two Conservatives voted for the motion, including one Margaret Thatcher, who had become MP for Finchley at the 1959 General Election.⁵⁷

Many of those supporting Robinson's motion on the Labour side were, like him, to become ministers under Wilson after 1964. Most significant of these was the future Home Secretary Roy Jenkins. Informed parliamentary debate was hampered by the undetailed nature of the criminal statistics, which gave no geographical breakdown nor identified which offences were consensual, in private, or committed by adults over the age of 21. Nor was it possible to ascertain how many cases involved an element of blackmail. Butler refused to sanction the work on grounds of cost, blocking the evidence for two of the main arguments for reform; that the law as it stood was unevenly applied and that it encouraged other criminal offences.⁵⁸

⁵³ The Times, The House of Commons 1959 (London: The Times, 1959); The House of Commons 1964 (London: The Times, 1964).

⁵⁴ Norman St. John Stevas, 'Wolfenden Reconsidered - I' Crossbow vol.2 no.2 , pp.12-14.

⁵⁵ Richards, op.cit. p.75.

⁵⁶ Interview with Lord Deedes, 23.9.97.

⁵⁷ HC Deb., vol.625 col.1489. 29.6.60.

⁵⁸ HC Deb., vol. 615 written answers cols. 215-216, Butler in response to a question by Peter Rawlinson, 17.12.59; HL Deb., vol. 228 written answer col. 1008, Earl Bathurst, Joint Parliamentary Under-Secretary, Home Office, in response to a question by the Marquess of Lothian.

However, at Butler's request, a 'Draft analysis of the advantages and disadvantages of repealing section 13 of the Sexual Offences Act 1956' was made, despite Matthew's earlier refutation of this idea.⁵⁹ Such a move had been suggested during the 1960 debate by William Shepherd, Conservative MP for Cheadle,⁶⁰ and was supported by Archbishop Fisher.⁶¹ This produced some interesting results and points up the some of the essential differences between the approach of the Conservative Government and its Labour successor. One of the main advantages of this course of action was thought to be the retention of a:

“symbol of society's moral disapprobation of homosexual conduct... which has been part of the criminal law for 400 years, and before that was part of the ecclesiastical law...”

Later the paper added the rather forlorn hope that:

“With the absence of discriminatory legislation and the virtual absence of proceedings for homosexual conduct in private public interest in and sympathy for homosexuals would decrease.”⁶²

However, it would have created new legal anomalies and avenues for blackmail the avoidance of which had been a central aim of reform.⁶³ The Wolfenden philosophy of separating sin from the ambit of the law had clearly not yet taken hold, and compromise measures to assuage the growing parliamentary pressure for reform, against the better judgement of moral traditionalists, were being sought. No further work was initiated on this proposal.

Recognising that whatever the atmosphere outside the House of Commons, the current Parliament would not countenance the main Wolfenden

⁵⁹ PRO, HO 291/125, 'Draft Analysis...', unsigned, 26.7.60.

⁶⁰ HC Deb, vol.625 cols.1480-1489, 29.6.60.

⁶¹ LPL, GFP/193, 182, Fisher to Canon J.S. Bezzant, St. John's College, Cambridge, 21.11.57.

⁶² PRO, HO 291/125, 'Draft Analysis...', unsigned, 26.7.60.

⁶³ LPL, GFP/193, 195, Peter Wildeblood to Fisher, 5.12.57.

recommendation, Leo Abse, Labour MP for Pontypool, sought to introduce a Sexual Offences Bill in 1962 under the Ten Minute Rule which would enact some of the subsidiary proposals which had been dismissed in 1957 and 1958. The Bill would: require the DPP to authorise all action against offences in private between consenting adults; require that prosecutions must commence within twelve months of their commission; order the courts to ask for psychiatric reports before sentencing.⁶⁴ There was some concerted support in the press,⁶⁵ and again from the CEMWC, which circulated a draft Bill which proposed the novelty of using the criminal law to show moral disapproval for homosexual acts in private which, under its terms, would no longer be criminal. One can almost see the raising of the collective eyebrow in the Home Office at this idea.⁶⁶

At a meeting with Abse, Charles Fletcher-Cooke, Parliamentary Under-Secretary at the Home Office, could not be positive about the Bill's provisions. For the Conservative opponents of reform, even Abse's minor reform represented the thin end of the wedge, one complaining that such 'abominable' offences were included with 'more respectable' sexual crimes in the title of the Bill⁶⁷. At Cabinet's Legislation Committee it was agreed that the Bill should not be allowed to receive a Second Reading.⁶⁸ The committee included Kilmuir and Reginald Manningham-Buller, the Attorney-General (shortly to be elevated to the Woolsack as Lord Dilhorne). Such voices, combined with backbench feeling, ensured that the Bill was easily talked out.⁶⁹

Shortly after Abse's Bill, Butler received a deputation from the HLRS including Robinson and Christopher Chataway MP. As well as pressing, in increasingly wearied tones, the irrefutability of the Wolfenden recommendations, the deputation strongly urged Butler to step up resources for treatment of homosexual offenders.⁷⁰ However, Home Office officials dealing with research

⁶⁴ H.C. Deb. vol.625 cols.1453-1514, 29.6.60.

⁶⁵ For example, The Spectator, Desmond Donnelly, 'Blackmailer's Charter', 23.2.62; The Guardian, 'Action on Wolfenden', Editorial and Peter Wildeblood to the Editor, 2.3.62.

⁶⁶ PRO, HO 291/125, unidentified note on draft Bill by CEMWC, undated but presumably February 1962.

⁶⁷ HC Deb, vol. 655 cols. 858-859, 9.3.62.

⁶⁸ PRO, CAB 134/2173 LC(62) 6th meeting, 27.2.62.

⁶⁹ HC Deb, vol.655 col. 860, 9.3.62.

⁷⁰ PRO, HO 291/125, Note of meeting held, 15.3.62.

projects already undertaken were beginning to realise that, despite such work providing interesting information about homosexuality, it had little bearing on the political feasibility of achieving reform.⁷¹ Neither Cunningham nor Butler felt that there was any imminent prospect of successful legislation. In discussions before the meeting they both felt that repeal of the Labouchère amendment was the best way forward, but that the legal anomalies created ruled this out. As Cunningham wrote, “this distinction between one form of indecent conduct and others would have no apparent basis in logic or in morals.”⁷² Hardly a helpful position. Butler made it clear that it was too near to the next general election to act, and that there was no point until a fresh House of Commons had been elected.⁷³ This was reinforced by the Prime Minister, Sir Alec Douglas-Home, in a letter to the Earl of Arran,⁷⁴ as well as by Butler’s successor, Henry Brooke, to Sir Thomas Moore, Conservative MP for Ayr.⁷⁵

Brooke has gained a considerable reputation as one of the most illiberal Home Secretaries this century. Yet there is some reason to believe that, in relation to ongoing pressure on Wolfenden, this is not entirely deserved. Brooke made no effort to push reform. After all, as Butler had pointed out, the parliamentary arithmetic remained the same as it had been in 1960. However, he did enter into discussions in his department on the alleviation of blackmail of homosexuals, prompted partly by a parliamentary question from William Shepherd on behalf of the HLRS.⁷⁶ He felt that, whilst the police rarely prosecuted in cases where a *bona fide* complaint of blackmail had been made, the threat of prosecution deterred complaint.⁷⁷

Cunningham, Lord Jellicoe, Minister of State, and Fletcher-Cooker, all voiced their support for the implementation of the main Wolfenden recommendation on homosexuality. (In fact Earl Jellicoe attended a lunch with Edgar Wright from the

⁷¹ PRO, HO 291/125, Graham-Harrison, Assistant Under-Secretary, Criminal Department, to Cunningham, 18.4.62.

⁷² PRO, HO 291/125, Cunningham to Butler, 14.3.62.

⁷³ BLPES, HC/AG 1/2a 46, minutes of meeting of HLRS, 21.3.62.

⁷⁴ BLPES, HC/AG 1/2a 124, minutes of meeting of HLRS, 23.3.64.

⁷⁵ HC Deb., vol.693 cols. 586-7; BLPES, HC/AG 1/5, Arran to Grey, 28.4.64.

⁷⁶ HC Deb., vol. 682, written answer col.242, 24.10.62.

⁷⁷ PRO, HO 291/125, Brooke to Cunningham, 1.12.62; Cunningham to Brooke, 28.12.62, note by Brooke, 1.1.63.

HLRS to discuss reform that was arranged by David Astor, Editor of The Observer, in May 1963.⁷⁸) In the previous year's reshuffle Sir John Hobson, Conservative MP for Leamington Spa, and a liberal-minded Tory who was a main participant in debates on abortion and homosexuality under Labour, had been made Attorney-General. He favoured some public encouragement of complaints of blackmail.⁷⁹ However, as Fletcher-Cooke pointed out, to make the practice of non-prosecution in blackmail cases more widely known would be impracticable unless an absolute rule were introduced.⁸⁰ Again, no further work seems to have been done on this.

The last three years of the Conservative administration under Macmillan and Douglas-Home were a period of intense political controversy in which any general change in attitudes towards Wolfenden was strongly affected by rumour and scandal in which homosexuality was a frequent factor. The Vassall spy affair in 1962 was the first incident which gave grist to the mill of those who thought such behaviour should be more strongly rooted out, not accommodated, in public services and politics.⁸¹ Lords Arran and Longford were careful to emphasise the disconnectedness between the homosexual and security aspects of the scandal, except that a bad law made homosexuals easy targets.⁸² Hobson warned that any announcement of new procedures on prosecution of homosexuals must wait until July 1963, well after the tribunal report and parliamentary debate on Vassall.⁸³

When accusations against John Profumo, Minister of War under Macmillan, that he had had a sexual relationship with Christine Keeler, a call girl who was alleged also to be having a relationship with a Russian diplomat, surfaced, Macmillan's failure to investigate properly Profumo's denials was greeted with scorn and incredulity. The government's reputation, and more particularly the

⁷⁸ PRO, HO 291/125, Astor to Brooke, 26.4.63; Wright to Jellicoe, 8.5.63.

⁷⁹ PRO, HO 291/125, Hobson to Cunningham, 19.3.63.

⁸⁰ PRO, HO 291/125, Cunningham to Brooke, 4.1.63 and comments by Jellicoe, 11.1.63, Fletcher-Cooke, 14.1.63.

⁸¹ Rebecca West, The Vassall Affair (London: Sunday Telegraph, 1963) p.16.

⁸² HL Deb, vol.249 cols. 752-754; BLPES, HC/AG 1/5, Grey to Arran, 14.5.63.

⁸³ PRO, HO 291/125, Hobson to Cunningham, 19.3.63.

Prime Minister's, never recovered,⁸⁴ although there was some electoral recovery under Douglas-Home during 1964.⁸⁵ With the Conservative Government battered after the Profumo scandal which itself contained an element of homosexuality, the summer of 1964 saw rumours of homosexual links between the Conservative peer, Lord Boothby, the Labour MP, Tom Driberg and the East End gangster Reggie Kray. Papers in the Prime Minister's file at the Public Record Office record the paranoid tension which seems to have overcome senior Government figures at the prospect of a repeat of earlier scandals, making any toleration of reform even less likely.

After Macmillan's resignation in October 1963 nervous attempts to remove politics from investigations into such rumours were made. In a note to Sir Alec Douglas-Home, the new Prime Minister, on 19 July 1964, Derek Mitchell his Principal Private Secretary wrote, regarding the Boothby/Driberg/Kray allegations that:

"the key-note of the handling of the whole situation would be that it was being removed as rapidly and as far as possible from Members of the Government as politicians."⁸⁶

At a meeting at the Home Office on 21 July 1964 which included Henry Brooke, Lord Blakenham, Chancellor of the Duchy of Lancaster, Deedes and Hobson, fears were voiced by Hobson of a homosexual scandal along the lines of Profumo;

"He said that his information was that a number of Labour backbenchers were plotting something with the Mirror which they intended should be detonated on August 1... the right day to start off a new series of rumours similar to 1963."⁸⁷

⁸⁴ John Turner, *Macmillan* (London: Longman, 1994) pp.262-263.

⁸⁵ John Ramsden, *The Winds of Change: Macmillan to Heath 1957-1975* (London: Longman, 1996) pp.189-230.

⁸⁶ PRO, PREM 11/4689, Mitchell (Principal Private Secretary to the Chancellor of the Exchequer), to Home, 19.7.64.

⁸⁷ PRO, PREM 11/4689, Sir Timothy Bligh (Principal Private Secretary to Prime Minister) to Home, 21.7.64.

The exchanges between the Home Office and Downing Street indicate that Boothby's protestations of innocence were not believed by his colleagues, and shadowy minor players from the Profumo affair were frequently connected to Boothby. In a note to Brooke by the Chief Whip on 30 July the extent of the paranoia is clearly evident. Writing concerning the two Conservative MPs who started the rumours about Boothby and Kray, the Chief Whip, Martin Redmayne, reminds Brooke of their East German connections;

"Without being unnecessarily suspicious[!], one does not forget that the Profumo affair was seriously thought to have been based on Soviet subversion and I do not think that this should be lost sight of in this case."⁸⁸

At the 21 July meeting at the Home Office the discussion of the rumours was preceded by one about the directive from the new DPP, Sir Norman Skelhorn, to Chief Constables that all proceedings where homosexuals acts had been committed in private or twelve months previously should be referred to him.⁸⁹ This makes clear that Skelhorn did not consult either the Attorney General, the minister to whom the DPP is responsible, nor the Home Secretary. Hobson said that "in his opinion the DPP should have consulted him in his capacity as Chief Adviser to the Government on prosecutions." Interestingly he also made the fine distinction that in carrying out his "statutory duty to advise Chief Constables on any cases that might give rise to points of difficulty... he [the DPP] was not acting on behalf of the executive." Both Hobson and Brooke agreed to say that they knew nothing of the directive. In Brooke's answer to Parliamentary Questions from Robinson and Abse the same day he insisted that:

"There is no question of any general change in prosecuting policy or law enforcement or of any reflection on the exercise by Chief Constables of their discretion to prosecute where they see fit."⁹⁰

⁸⁸ PRO, PREM 11/4689, Redmayne to Brooke 30.7.64.

⁸⁹ Richards, *op.cit.* pp.74-75.

⁹⁰ PRO, PREM/11/4689, Bligh to Home, 21.7.64.

What is most striking about the episode is the close connection made between the rumours of a new scandal and the coincidental directive from the DPP, and the effect which the one had on the tetchy manner in which Skelhorn's announcement was dealt with. Deedes insists that the two issues were indeed coincidental, and that the Boothby affair was "fatuous". He also denies any link between the series of scandals and the issues surrounding homosexual reform,⁹¹ although his close involvement in the former and his opposition to the latter must be weighed against these statements .

Had the Conservative Government been re-elected in October 1964, in retrospect a possible outcome given the closeness of the election result,⁹² it is unlikely that in such an atmosphere any further move towards law reform would have been possible. Douglas-Home, in a letter to Lord Arran, had denied any change in parliamentary or public opinion since 1960, and was evasive about the Government's future position after an election.⁹³ Though it was to be a Conservative Member, Humphrey Berkeley, who first introduced a Bill in the 1964 Parliament, sufficient change in the opinions of Conservative MPs to allow a Bill through would have taken many years and a massive turnover of Members. Moreover, as it was not an issue which senior figures like Douglas-Home, William Whitelaw (Opposition Chief Whip after the defeat) or Heath would have been happy to address, there would not have been enough ministerial sympathy.⁹⁴

⁹¹ Interview with Lord Deedes, 23.9.97.

⁹² Butler, The British General Election of 1964 (London: Macmillan, 1965) pp.289-300.

⁹³ BLPES, HC/AG 1/2a/124, HLRS meeting, 23.3.64.

⁹⁴ Interview with Lord Deedes, 23.9.97.

iii. The Wilson Governments: Changing Attitudes.

The period between the election of the Labour Government on 15 October 1964, with a majority of just four seats, and its triumphant return after 31 March 1966 with a majority of 97 was a curious time of limbo for the advocates of reform of laws concerning public and individual morality. The composition of the House of Commons changed significantly in 1964, with an influx of younger Labour MPs from middle and working class backgrounds, more often with a university education than those in the Parliamentary Labour Party of the 1950s, and a more liberal social outlook than the Conservative members whom they had displaced⁹⁵. But the knife-edge Government majority and the consequent prospect of another general election within the year meant that there was no momentum within the Government or amongst its supporters on the backbenches to legislate in controversial areas affecting public morality for fear of incurring the moral wrath of the electorate. Reformers realised that motivating support from liberal Conservatives, especially those in the House of Lords was still crucial with such a small Labour advantage.⁹⁶

However, the atmosphere within the House of Commons had undoubtedly changed. Within this short Parliament legislation abolishing capital punishment was enacted for an initial period of five years despite a considerable eruption of public protest against the reform, demonstrating that where it was thought right, Parliament could exert its powers to act against the wishes of the majority of the country, even in such a controversial area.⁹⁷ As Leo Abse has recorded, on the subject of homosexuality the change of Government meant that it "no longer needed to be spoken about in sanctimonious whispers".⁹⁸ Yet when Abse introduced a Bill under the Ten-Minute Rule on 28 May 1965 it failed to get a Second Reading by 159 to 178.⁹⁹ This was due in part to the successful pressure exerted by Manny Shinwell, Chairman of the Parliamentary Labour Party (PLP), on his fellow trade union members to resist the intellectual follies of

⁹⁵ See above at chapter 1.iv, p.40.

⁹⁶ BLPES, HC/AG 1/5 Grey to Arran, 4.11.64.

⁹⁷ Richards, *op.cit.*, pp.35-62.

⁹⁸ Abse, *op.cit.* p.148.

⁹⁹ HC Deb, vol. 713 cols. 611-620, 26.5.65.

middle-class liberals like Abse.¹⁰⁰ Roy Jenkins had claimed in The Labour Case that the minorities within the two main Parties on such issues were minor deviants from the dominant feelings within their parties.¹⁰¹ This was still true but changing by the mid-1960s. Whereas only 22 Conservatives voted for Robinson's motion in 1960, 47 voted aye on the First Reading of Abse's Bill in 1966.¹⁰² However, the tensions within the Labour Party on such issues were very real, and were only added to by the precarious political position between 1964 and 1966.

During the 1964-1966 Parliament the Labour Government maintained almost the same strictly neutral attitude that the previous administration had adopted towards implementation of the Wolfenden recommendations. Although the pressure for reform came largely from the Government side, when the Cabinet discussed Abse's and the Liberal Lord Arran's approaching Bills in May 1965 several Ministers were wary of moving towards a position of co-operative neutrality, which would be necessary to ensure the Bill were not killed by its opponents' tactics, "because of the present political situation", ie. the small majority and impending General Election.¹⁰³

Jenkins has dismissed his predecessor at the Home Office, Sir Frank Soskice, as indecisive and uninterested in 'Home Office Questions' of reform.¹⁰⁴ This is both pompous and unfair. Although not fired with the same passion for the subject as his fellow Gaitskellites Jenkins and Crosland, Soskice had shepherded through Sydney Silvermann's Bill abolishing capital punishment. Indeed it was Soskice who first initiated renewed discussion of Wolfenden at the Home Office when he asked Cunningham for a note on possible reform at the beginning of December 1964.¹⁰⁵ Then in reply to a request for advice from his Minister of State in the Lords, Victor Stonham, Soskice stated that:

¹⁰⁰ Abse, *op.cit.*, p.149.

¹⁰¹ Jenkins, *op.cit.*, p.134.

¹⁰² HC Deb, vol. 731 col. 268, 5.7.66.

¹⁰³ PRO, CAB/128/40 (part 1), CC(65) 28th Conclusions, 6.5.65.

¹⁰⁴ Jenkins, A Life at the Centre (London:Macmillan, 1991) pp.175-176.

¹⁰⁵ PRO, HO 291/125, Cunningham to Soskice, 9.12.64.

“It is, I think, best to have the debate. I very much dislike, in effect, sweeping social questions of this sort under the carpet; (and personally would like to give effect to Wolfenden)...”¹⁰⁶

Furthermore, it is clear from the Cabinet minutes of the 6 May 1965 discussion of homosexuality that he was considerably in advance of the agreed Cabinet line on that day. In his memo to Cabinet he stated that:

“I am reluctant... to adopt a wholly neutral attitude, without offering some guidance to the growing body of opinion in favour of a change in the law on how in the Government's view a change might be brought about.”

Soskice's reforming instincts were, though, definitely limited. Rather like Butler, he felt that the Government could not “force this on an unwilling public opinion, which is not yet ready for it. There is nothing we can do at the present”.¹⁰⁷ Soskice, Stonham and Alice Bacon, Parliamentary Under-Secretary at the Home Office, received a deputation from the HLRS two days before this Cabinet meeting. Despite Bacon agreeing with Leo Abse that public opinion in reality cared little about the issue of homosexuality (certainly not in comparison to capital punishment), Soskice could not countenance the idea that attitudes had progressed far enough to permit the legislation with which they all agreed.¹⁰⁸ He also came under considerable criticism during 1965 for the timidity of his Race Relations Act in 1965,¹⁰⁹ his attitude to abortion reform,¹¹⁰ and showed little appetite for the long-overdue abolition of the Lord Chamberlain's powers of theatre censorship.¹¹¹

However, he did indicate his support for granting sufficient Parliamentary time for a Bill to be debated if the House should so wish, although not in the current

¹⁰⁶ PRO, HO 291/125, note by Soskice, 19.12.64.

¹⁰⁷ PRO, HO 291/126 Cunningham to Soskice, 4.12.64, comment by Soskice, 12.12.64.

¹⁰⁸ PRO, HO 291/127, Note of a meeting at the Home Office, 4.5.65.

¹⁰⁹ Jenkins, *op.cit.*, pp.175-176.

¹¹⁰ Keith Hindell and Madeleine Simms, Abortion Law Reformed (London: Peter Owen, 1971) p.130.

¹¹¹ See below at Chapter 5, p.214.

session.¹¹² Summing up this discussion on 6 May, Wilson instructed that "the spokesman should "maintain a strictly neutral attitude... he should make it clear that it [the Bill] would have to follow the usual course without Government assistance." The Cabinet seems to have concurred with the comment made in discussion that "no undertaking should be given to provide time for a Private Member's Bill, although this need not preclude reconsideration of the matter in the light of any later developments in public opinion."¹¹³

It was not public opinion on the specific issue of homosexuality that shifted significantly in the following year before the introduction of Abse's next and successful Bill. More important was the clear indication of both Houses on separate occasions that a natural majority in each supported reform and would carry it if the procedural obstacles could be overcome. Two days before Abse's Bill fell, Lord Arran's Bill in the House of Lords received a Second Reading by 94 votes to 49, despite the Government's stoical approach and the fierce opposition of some senior conservative judges and former Conservative ministers including Lords Denning, Dilhorne and Kilmuir.¹¹⁴

However, once it reached its Committee stage the Government was forced to co-operate in some measure with the progress of a Bill which, it was now clear, a majority of the Lords favoured. Whilst remaining neutral on the substance of the Sexual Offences Bill, Lord Stonham, in conjunction with Herbert Bowden, Lord President of the Council, Leader of the House of Commons and chairman of the Cabinet's Legislation Committee, agreed that re-drafting assistance for amendments should be provided in Committee. Bowden concurred without referring the matter to Legislation Committee.¹¹⁵ As Cunningham pointed out to Soskice, if the amendments were privately revised and were in a form to which the Government must object for legal or practical reasons, these would have to be addressed at Third Reading, and:

¹¹² PRO, CAB 128/126 (part 1), C(65) 68, 4.5.65.

¹¹³ PRO, CAB 128/40 (part 1), CC(65) 28th Conclusions, 6.5.65.

¹¹⁴ HL Deb, vol. 266 col. 712, 24.5.65.

¹¹⁵ PRO, HO 291/126, Soskice to Bowden, 28.6.65; Bowden to Soskice, 30.6.65.

“it is hardly dignified for the House to be frustrated in this way when its wishes were made known at the Committee stage.”¹¹⁶

On 28 October it passed its Third Reading by 116 to 46 votes.¹¹⁷

Stonham’s co-operative stance continued in the new Session when he promised Arran “any assistance as a persuader” after the private members’ ballot. He was sure that “whatever the discouragement or ignorant abuse there can be no question of giving up”.¹¹⁸ Not needing any such persuasion on 8 December 1965 Humphrey Berkeley, Conservative MP for Lancaster, risked the opprobrium of his colleagues and introduced his own Private Member’s Bill after coming near the top of that Session’s ballot. Before the end of the year Soskice was replaced by Jenkins as Home Secretary, who immediately pushed Cabinet’s Home Affairs Committee for a more encouraging line on reform of homosexuality, abortion and theatre censorship. Jenkins put in a paper to the Committee recommending that the Government line towards Berkeley’s Bill should be one of “benevolent neutrality” including more drafting assistance¹¹⁹. Although this was not agreed at the Committee’s meeting on 26 January 1966¹²⁰, ministers and MPs now had a more positive lead from the Home Office, and Jenkins insisted that he be allowed to demonstrate his own ‘benevolence’ towards homosexual reform.¹²¹ However, in private, senior Cabinet supporters of reform, Jenkins and Bowden, were giving Berkeley hope of Government help if the Bill reached its Report stage. Jenkins and Berkeley discussed switching the Bill to a Committee other than that normally used for Private Members’ Bills. However, the Home Secretary recommended that, tactically it would be better not to be indebted to the Government until absolutely necessary.¹²²

¹¹⁶ PRO, HO 291/126, Cunningham to Soskice, 24.6.65.

¹¹⁷ HL Deb., vol. 266 cols. 71-172, 631-712, 24.5.65; HC Deb., vol. 713 cols. 611-620, 26.5.65.

¹¹⁸ PRO, HO 291/127, Stonham to Arran, 11.11.65.

¹¹⁹ PRO, CAB 134/2852 C(66) 6, 18.1.66.

¹²⁰ PRO, CAB 134/2851 (66) 2nd meeting, 26.1.66.

¹²¹ PRO, HO 291/127, Jenkins to Houghton, 28.1.66. Jenkins was complaining that an agreement to this effect had been omitted from the meeting’s minutes.

¹²² PRO, HO 291/127, Note for the record, meeting between Humphrey Berkeley and Jenkins, 18.2.66.

On 11 February 1966 the Bill was given a Second Reading by 164 votes to 107.¹²³ The raw figures mask the fact that the significant shift was because of attendance more than change of heart (only three members changed their minds towards reform and one against from the Abse vote the previous May). But it was the pro-reform vote that held up rather than opposition to it, and although it was clear that a general election was imminent, opponents of reform could not have taken for granted that the Bill's passage would be cut short, as it was, by the announcement on 28 February by Wilson that the Election date would be 31 March. Despite the misfortune for Berkeley's Bill the glass could be said to have been half full. The favourability of the composition of the new House towards reform, combined with the gradual promotion of more liberal-minded Ministers to key posts during 1966 was bolstered by the long parliamentary Session in prospect after a Spring election.

Indeed the ballot for private members' legislation on 12 May 1966 produced the hope among reformers that David Steel, the youthful Liberal MP for Roxburgh, Selkirk and Peebles, would introduce a homosexual reform Bill. Lord Arran lobbied Steel strongly in this direction, using fair means and foul to try and persuade him. Arran's points that the majorities in both Houses in favour of Wolfenden and a similar endorsement by the Liberal Council should give homosexual reform precedence over abortion were valid. However his arguments that homosexual law reform, concerned the happiness of more people than abortion and was concerned more with personal liberty, were highly suspect, as was the assertion that Berkeley's loss of his seat at the General Election, along with twenty opponents of reform proved that the political risks were minimal. Steel, after consulting his constituency, the Home Office and colleagues plumped for abortion. This was not surprising, since Arran's Bill did not even cover Scotland, the Church of Scotland had come out against reform, and Steel's constituents were also staunchly opposed.¹²⁴

¹²³ H.C. Deb., vol.724 cols.782-873, 11.2.66.

¹²⁴ David Steel, *Against Goliath* (London: Weidenfeld and Nicolson, 1989) p.60-6; Hindell and Simms, *op.cit.*, pp.155-6.

Abse was given leave to introduce a Bill under the Ten Minute Rule by 244 votes to 100.¹²⁵ As Peter Richards has argued, the passage of Abse's Sexual Offences Bill was achieved through the enormous energy and dedication of the Member for Pontypool and his links with Jenkins, Crossman and the Chief Whip, John Silkin.¹²⁶ Abse's zealous pursuit of legislative reform in areas of private morality and family law was matched only by some eccentric opinions of men and women. Asked whether Abse's obsession with Freudian pschoanalysis, including of his parliamentary colleagues, was found annoying by MPs, Roy Jenkins agreed:

“Yes I think they did rather. He wasn't exactly the person I would have chosen to be the sponsor of the Bill, but given that he didn't do it badly at all.”¹²⁷

This view may, however, have been coloured by Abse's public views on the influence on the young Roy Jenkins of his socially pretentious mother.¹²⁸ Jenkins again raised homosexual reform at a Cabinet Committee, this time the Legislation Committee, suggesting a more positive attitude, considering “the cat and mouse element” to recent parliamentary attempts.¹²⁹ Despite an agreement that future Government time would not be ruled out, the Government's stance remained unchanged.¹³⁰ During the summer recess pressure on this policy from reformers became intense. Even Wilson had to field letters from impatient Labour MPs on the subject of homosexual law reform.¹³¹ When Jenkins met Crossman in September, after his replacement of Bert Bowden the previous month, to discuss progress, Crossman agreed that a half-day under the new parliamentary dispensation which included two morning sittings per week, might be possible.¹³² He recommended that Jenkins raise the matter at Cabinet.

¹²⁵ HC Deb., vol. 731 cols. 259-268, 5.7.66.

¹²⁶ Richards, *op.cit.*, p.77; interview with Leo Abse, 5.12.97.

¹²⁷ Interview with Lord Jenkins, 25.11.99.

¹²⁸ Abse, *op.cit.*, pp.34-36.

¹²⁹ PRO, HO 291/128, 'Legislation Committee, Sexual Offences Bill (to be raised orally)', 24.6.66.

¹³⁰ PRO, CAB 134/2951, LG (66) 14th meeting, 28.6.66.

¹³¹ PRO, HO 291/128, Edmund Dell, MP for Birkenhead, to Wilson, 29.8.66; Wilson to Dell, 2.9.66; Dell to Crossman, 1.9.66.

¹³² PRO, HO 291/128, note of meeting between Jenkins and Crossman, 6.9.66; Crossman to Jenkins, 28.9.66.

Having promised Abse he would secure extra Government time for the Bill if it passed the Ten-Minute Rule procedure, Jenkins argued that in light of the previous votes in both Houses, the difficulty of administering the Criminal Law until the issue had been decided and the precedent of the treatment of Silverman's Homicide Bill, half a day of Government time should be given. Crossman recorded in his diary for 5 July, the day of the ten-minute rule vote:

"The Lords have now twice passed this particular Private Member's Bill, and we can only get it through the Commons by showing that the Members want it so much that any reasonable Government must provide the time."¹³³

As the Cabinet minutes show there was considerable opposition to this, although the arguments put against providing time for the Bill seem fairly spurious, the overriding one being the existing votes in both Houses.¹³⁴ The Bill's primary supporters within Cabinet became ever more crucial to its survival. Jenkins, backed up by Crossman, argued in Cabinet on 27 October that now both Houses had voted for the Bill the Government could rightly provide more Parliamentary time for the Report stage without compromising its neutrality.¹³⁵ According to Crossman's diary it was "Callaghan, the Prime Minister, George Brown and others" who resisted the change of attitude on the part of the Government. But Crossman, again according to his diary, pointed out the risk of letting "the subject drag on until nearer the Election. With this highly tactical argument we persuaded the P.M. to drag the rest of his colleagues with him".¹³⁶

Wilson's stance on homosexual law reform is more enigmatic than those of most of his colleagues. He clearly had little interest in the subject, less certainly than he had on abortion for personal, electoral reasons,¹³⁷ but "it did not make

¹³³ Crossman, Diaries of a Cabinet Minister: vol.2: Lord President of the Council and Leader of the House of Commons 1966-1968, (London: Hamish Hamilton and Jonathan Cape, 1976), 5.7.66, p.410.

¹³⁴ PRO, CAB 128/41 (part 3), CC(66) 52nd Conclusions, 27.10.66.

¹³⁵ PRO, CAB 129/127 (part 3), C(66) 144, 24.10.66.

¹³⁶ Crossman, *op.cit.*, 27.10.66, p.538.

¹³⁷ See Chapter 4, p.160.

his blood run cold".¹³⁸ According to Robert Beloe, Private Secretary to Michael Ramsey, Archbishop of Canterbury, Arran was convinced that Wilson was in favour of legislation and was prepared to find parliamentary time for it.¹³⁹ This may, of course, have been over-egging the pudding for the benefit of Ramsey. Although he may have resisted the pressure on Cabinet and himself to push reform through,¹⁴⁰ Wilson was probably content to go with the tide of opinion in the Cabinet, provided the political consequences were not too severe.

However during the Second Reading debate on 19 December it was clear that there was still a vociferous minority of Labour MPs opposed to the Bill. Crossman recorded in his diary that:

"Like a lot of our northern Members [George] Lawson [MP for Motherwell April] is passionately opposed... much more so than those of us who come from the Midlands and the South. He and several other Whips objected fiercely that it was turning our own working-class support against us."¹⁴¹

Such conservative Labour MPs repeatedly objected to the special treatment being afforded a topic like homosexuality, and many felt similarly about abortion. In June 1967 this culminated in clashes at PLP meetings as supporters of reform, like Lena Jeger, MP for Holborn and St. Pancras South, complained about the loading of amendments at the Report Stage of Abse's Bill.¹⁴²

A special Standing Committee to avoid the queue of Private Members' legislation saw the Bill through in one sitting owing to Abse's outmanoeuvring of opponents by unexpectedly accepting amendments to exclude the Merchant Navy from the Bill after heavy lobbying by both sides of the industry¹⁴³. When days allocated for Report stage and Third Reading of Private Members' Bills

¹³⁸ Interview with Lord Jenkins, 25.11.99.

¹³⁹ LPL, RP/98, 250, note by Beloe of telephone conversation with Arran, 25.11.66.

¹⁴⁰ The Times, 'Sex Law Plea goes to Mr. Wilson', 8.2.66.

¹⁴¹ Crossman, op.cit., 19.12.66, p.610.

¹⁴² NMLH, PLP/LC, 26.5.65; PLP, 29.6.67.

¹⁴³ See below at section v, pp.116-117.

approached in May 1967, Crossman returned to Cabinet to plead for extra time for Abse's Bill and Steel's Bill on abortion. Against the usual opposition, the Prime Minister agreed that, provided the Government's own programme and the date for the summer recess were not jeopardised, extra time should be given. The clinching argument was, no doubt, Crossman's warning that if these Bills did not pass, then pressure to provide time for them would only increase in the following Session.¹⁴⁴

When an extra Friday proved insufficient because of filibustering by hard-core opponents, Jenkins persuaded Crossman to allow the debate to continue past 10pm on 3 July until the Report Stage was completed at 5.50 the next morning.¹⁴⁵ Crossman's diary, however, reveals that he and Silkin, despite their delicate positions as Leader of the House and Chief Whip, were using their influence rather more than Cabinet might have supposed, given the nominally neutral Government position. His entry for 3 July states that "the Chief and I spent the night going round the lobbies and encouraging the troops"¹⁴⁶. Such high profile unofficial whipping was an important factor in the passage of successive reform Bills.

¹⁴⁴ PRO, CAB 128/42 part 2 CC (67) 30th Conclusions, 11.5.67.

¹⁴⁵ Richards, *op.cit.* pp.77-79; Abse, *op.cit.* pp.152-158; Crossman, *op.cit.*, 29.6.67, pp.400-401.

¹⁴⁶ Crossman, *op.cit.*, 3.7.67.

v. The role of the House of Lords

The importance of the role of the House of Lords in influencing the Lower Chamber to implement the Wolfenden recommendations on homosexuality was perhaps greater than in other areas discussed below.¹⁴⁷ This is a curious statement when one considers the composition of the Upper House during the 1960s; mainly elderly, almost exclusively male and predominantly Conservative. The Lords had played some part in the move to initiate an inquiry into the subject of homosexuality. However this was done in a reactionary rather than reformist spirit. Earl Winterton started a debate in the upper House the same day that the Wolfenden Committee was announced in the Commons aiming to strengthen the law against the moral decline of the nation.¹⁴⁸ Although the Lords discussed the Wolfenden Report shortly after its publication, it showed no more interest in further action than did the Commons during its debate at the end of 1958.

The major cause of its change into a forum more sympathetic to reform in areas of morality was the effect of the Life Peerages Act 1958.¹⁴⁹ This gradually transformed the body of working peers. The few Liberal and even fewer Labour Members were bolstered by new life peers who helped to redress the balance with the Conservative side. This process was accelerated after the election of the Labour Government in 1964. It also introduced younger peers than the average of the hereditary ones and brought the first women to the House. Yet when a hereditary peer, the Earl of Arran, laid a motion calling for homosexual law reform there was still a surprisingly small number of speakers against - four compared to 23 in favour.¹⁵⁰ The one clause Bill that followed was approved by 94 to 49. A similar majority of hereditary peers, 26 to 13, voted for reform.¹⁵¹ As the Marquis of Queensberry remarked to Antony Grey of the HLRS that:

¹⁴⁷ Interview with Lady Serota, 18.1.00.

¹⁴⁸ HL Deb., vol. 187 cols. 937-745, 19.5.54

¹⁴⁹ Life Peerages Act, 1958.

¹⁵⁰ HL Deb., vol. 266 cols. 72-172, 24.5.65.

¹⁵¹ HL Deb., vol. 266 cols. 631-712, 24.5.65.

“the House of Lords must represent, on the whole, a conventional and reactionary approach to most subjects and if they are so very much in favour of reform, then it seems unlikely that public opinion in the country holds the opposite view”¹⁵².

Other factors were at work which influenced peers more readily than members of the Commons although the importance of each is hard to determine. Perhaps the crucial difference from the Commons was the independence with which peers can think and act. Although most peers take a Party whip there is no sanction which can operate against a Member who defies his or her Party line - in this case one of inaction or studied neutrality. Secondly there are no constituents to whom a peer must answer at an election. Free of these considerations the Lords can allow themselves to be influenced only by the arguments and their own prejudices and experience. Thirdly cross-bench peers comprise a important section of the House, free entirely from any party allegiance, and often more eminent and respected than those who take a party whip.¹⁵³ As will be seen, the Lords spiritual although often operating an informal whip to ensure representation at important debates, were often profoundly divided on issues such as homosexuality and divorce in particular.

It was personal experience which, it seems, prompted Lord Arran to adopt the cause of homosexual law reform. In an article in Encounter in 1972, he cited a newspaper colleague who "went to prison over a case so contrived as to stink for ever in the annals of the police and the judiciary", and the need through stress for a "new anxiety" to distract him from other troubles.¹⁵⁴ The one an admirable motive, the other an understandable stimulus. However, Leo Abse finds a more personal reason for Arran's indefatigable support for homosexual reform. In his memoirs Abse states that he met a man who had been the lover of Arran's older brother. This previous Earl had died after a long psychiatric illness which Abse attributes to his covert life. Arran succeeded to the Earldom and, in

¹⁵² BLPES, HC/AG 1/5, Queensberry to Grey, 25.5.65.

¹⁵³ Janet Morgan, The House of Lords and the Labour Government 1964-1970 (London: Clarendon, 1975) pp.97-104.

¹⁵⁴ Lord Arran, 'A Personal Memoir', Encounter, March 1972, p.3. It has not been possible to identify the friend of Arran's in question.

Abse's Bill made "a fitting memorial to his ill-fated brother".¹⁵⁵ Such personal experiences of friends and relations who had suffered the unjust consequences of the criminal law relating to homosexuality, and the blackmail, ostracism and police persecution which accompanied it, were often the catalysts which changed the minds of those who would not otherwise have countenanced reforming the law.

The dispassionate and thorough work done by the Wolfenden Committee was the first influence to which the Lords were open. The Committee itself included the Marquess of Lothian and Lady Stopford among its members. In March 1958 a letter to The Times calling for implementation of the Wolfenden Report was signed by such respected figures from inside and outside the Lords as Earl Attlee, Earl Russell, Isaiah Berlin and the Bishops of Birmingham and Exeter, Ronald Williams and Robert Mortimer.¹⁵⁶ When Arran's Motion was debated in the Lords both Archbishops spoke in support of it and a majority of the Lords Spiritual voted the same way on the two subsequent bills.¹⁵⁷ Opposition to Arran rallied somewhat during the Committee and Report stages but the Lords were consistently in favour of reform by large majorities, even after the third Bill Arran had to introduce because of the ending of Parliamentary sessions and the 1966 General Election, repetition which usually engenders parliamentary ennui. But this tactic kept the debate alive and further prompted the Commons into action.¹⁵⁸

As in the Commons the opposition to reform often took the form of rather wild, jeremiads about the consequences of 'opening the floodgates'. Despite the distinction of some of these opponents – Viscount Montgomery of El Alamein, Lord Rowallan, the Chief Scoutmaster, Lords Dilhorne and Kilmuir and the Catholic Lord Iddesleigh - the emotional and irrational way in which their cases were argued compared to the measured and understated arguments of the

¹⁵⁵ Abse, op.cit. p.150.

¹⁵⁶ The Times 7.3.58.

¹⁵⁷ For example, on Second Reading of Arran's Sexual Offences (no.1) bill the bishops voted 7 to 0 in favour, HL Deb., vol. 274 col. 652, 10.5.66. At no stage did any bishop vote against the bill proceeding.

¹⁵⁸ Arran, op.cit. p.4.

reformers, backed up with medical and social evidence, tended to swing vacillators behind the Bill not away from it. Perhaps the most outrageous of these was Lord Kilmuir's outburst - "Are you Lordships going to pass a Bill that will make it lawful for two senior officers of police to go to bed together"?¹⁵⁹

After the success of his first Bill on 28 October 1965 Arran was able to move more confidently when piloting his further Bills than the sponsors of reform in the Commons. He benefited from overtly sympathetic advice from Peter Henderson, Clerk of the Parliaments, later well known as a campaigner in the House of Lords on gay rights, abortion and cruelty to children.¹⁶⁰ Henderson wrote to Arran on the best tactics for progressing with a Commons Bill, stepping considerably beyond the limits of civil service propriety by concluding:

"I should be strongly in favour of your introducing the Bill next Session in exactly the same form as it was passed last Thursday in this Session. If you do not do so you may well be open to the charge that you have broken faith with... your supporters."¹⁶¹

However, the resistance within Parliament and the Government to allowing the Commons to come to a decision became increasingly frustrating for Arran, who despaired with the position in the hiatus before Abse introduced his Ten Minute Rule Bill in June 1966, saying:

"I am honestly beginning to wonder whether there is any purpose in the House of Lords at all, and whether we are not just being used as a platform for the airing of progressive views on which no action will be taken."¹⁶²

The strain of the effort took its toll on Arran who suffered two mild strokes shortly before Abse's Bill passed to the Lords in July 1967.¹⁶³

¹⁵⁹ HL Deb., vol. 266 cols. 631-712, 24.5.65.

¹⁶⁰ Obituary, *The Guardian*, 3/2/00.

¹⁶¹ BLPES, HC/AT, Henderson to Arran, 3.11.65.

¹⁶² LPL. RP/98, 242, Arran to Beloe, 3.6.66.

¹⁶³ LPL, RP/115, 226, Beloe to Ramsey, 13.6.67.

However, as Beloe pointed out, by this time some of the more violent opponents in the Lords had died, including Kilmuir in January 1967. Importantly Lord Dilhorne was less obstructive than before, particularly as the age of consent had been set at 21.¹⁶⁴ However, Arran stuck to the same moderate arguments in support of decriminalising consenting adult homosexual acts in private. The measure was in no way a condonation of homosexuality per se. It was merely an acknowledgement that homosexuals found themselves in an unfortunate and abnormal condition through no fault of their own, who deserved to be pitied not persecuted, and that criminal condemnation was not the way to discourage such practices. When Abse's successful Bill passed through the Lords Arran made his final declaration on the subject:

"Homosexuals must continue to remember that while there may be nothing bad in being a homosexual, there is certainly nothing good. Lest the opponents of the new Bill think that a new freedom, a new privileged class has been created, let me remind them that no amount of legislation will prevent homosexuals from being the subject of dislike and derision, or at best of pity."¹⁶⁵

¹⁶⁴ LPL, RP/115, 226, Beloe to Ramsey, 13.6.67.

¹⁶⁵ HL Deb., vol. 285 col. 523, 21.7.67.

vi. Outside Pressure: The Homosexual Law Reform Society and the Press.

The role of extra-parliamentary pressure in the years between the publication of the Wolfenden Report and the implementation of its recommendations on homosexual practices is a complex phenomenon. Like similar campaigns on abortion, divorce and Sunday observance its influence is difficult to quantify. The Homosexual Law Reform Society (HLRS), which was founded in the spring of 1958, saw itself as the main instrument of this education, following the publication of the Wolfenden Report and an upsurge in the 'chain' prosecutions of the early 1950s by police authorities in different parts of the country.¹⁶⁶ Having enlisted the support of some one hundred public figures, including most of the signatories of the letter published in The Times in March 1958, and fifteen eminent married women who wrote a second letter to The Times in April, the small active staff of the HLRS (its Secretary the Rev. A. Hallidie Smith, Chairman Kenneth Walker and a small Executive Committee, including the university lecturer A.E. Dyson) embarked on a campaign of public meetings and speeches to educate progressive public opinion, and thus indirectly politicians. Crucial to the later influence of the HLRS with the Labour Government was the involvement of Kenneth Robinson, Minister of Health from 1964-1967 and C.H. Rolph, the barrister and journalist.

The Society, as with many pressure groups in the vanguard of public opinion, was in a delicate position. Although it was not a group advocating homosexuality, it was a focused and subjective organisation. However its membership included differing strands of opinion, from those who advocated a change in the law for purely humane or judicial reasons but were still opposed to homosexual acts, to those of a more liberal mind or who were themselves homosexual. Its middle-class, moderate membership clung to a cautious, liberal utilitarianism and the Wolfenden philosophy. Its politics were opportunistically sympathetic to Labour, and necessarily ignored the merits of homosexuality.¹⁶⁷ Its attempts at educating, in Wilde's formulation, public officials, were further

¹⁶⁶ Grey, op.cit. p.43.

¹⁶⁷ Weeks, op.cit. p.170.

threatened by the backlash which greeted the circulation to MPs of its pamphlet, Homosexuals and the Law.¹⁶⁸ Sympathetic parliamentarians who worked with the Society warned that this was alienating support and to concentrate on the attitude of the public at large.¹⁶⁹

This involved mainly Hallidie Smith, touring the country and providing speakers for meetings of university student unions, church organisations, constituency parties, humanist groups. Kenneth Walker has written that at no meeting was there a "predominantly hostile audience".¹⁷⁰ However most of these meetings, it is fair to presume, were held in broadly sympathetic surroundings; those staunchly against reform would rarely arrange meetings on the subject or attend them. Once the intense phase of Parliamentary campaigning began in 1965, even the Labour Party showed little interest in this educational campaign, either in the NEC or at local government or constituency level.¹⁷¹ When a Party member wrote to several local parties:

"suggesting it was time the Labour movement began to give some attention to it [homosexual law reform]... In every case except one I did not even receive the courtesy of a reply. The exception, my home town party, wrote to say 'they had decided to receive my letter', but they didn't see what they could do about it."¹⁷²

Despite this reticence or even distaste among those groups whom the HLRS might want to persuade, its first public meeting in 1960 was counted an unqualified success. Over one thousand people filled the Caxton Hall, Westminster on 12 May 1960, including notable supporters of reform as well as unknown members of the public. The audience again displayed a wide range of attitudes loosely collected under the banner of reforming the "monstrous injustice" of the present situation, as the Bishop of Exeter put it.¹⁷³

¹⁶⁸ HLRS, op.cit.

¹⁶⁹ Richards, op.cit. p.73.

¹⁷⁰ K. Walker, Sexual Behaviour, Creative and Destructive (London: Macmillan, 1966) p.244.

¹⁷¹ NMLH, NEC papers; Interview with Lady Serota, 18.1.00.

¹⁷² Tribune, 11.6.65.

¹⁷³ Grey, op.cit. p.46.

The strategy of reformers, especially after the election of Labour in 1964 was to demonstrate two rather contradictory states of public opinion. The first, which was becoming easier to measure with the increasing popularity and sophistication of opinion polls, was that public opinion was becoming more favourable to reform. One could point to polls producing wildly different results. Gallup issued figures in July 1966 which showed 44% opposed, 39% in favour but 17% undecided.¹⁷⁴ The most favourable for reform, conducted by National Opinion Polls (NOP) for the Daily Mail in October 1965 found that only 36% now thought that "homosexual acts between adults in private should be criminal" – 63% thought they should not¹⁷⁵. This finding was reinforced in November 1965 with detailed breakdowns into sexes, ages, socio-economic groups and regions showing no majority against reform.¹⁷⁶

The second argument put forward was that if a majority in favour of reform could not be found, this was merely a reflection of the fact that the public did not really care about the issue of homosexuality. As mentioned above, this was what Abse and Alice Bacon argued to Soskice at a meeting with the HLRS in 1965. The November 1965 NOP poll found, in addition to widespread support for homosexual reform, that the voting intentions of only 21% of people would be affected either way by reform.¹⁷⁷

Whatever the effect of the HLRS's educational side on the public at large, by 1965 the mood of the political class was moving towards acceptance of reform. Anthony Grey (whose real name was Edgar Wright) has claimed that "the Society's chief contribution had been made before the debates of 1965 began, in creating the climate of opinion in which they could be held at all".¹⁷⁸ But the most tangible effects of the Society's work lay in its liaison with the parliamentary sponsors of the various Bills which were laid before Parliament, particularly between 1965 and 1967, its assiduous, but moderate lobbying of Home Office

¹⁷⁴ Richards, op.cit. p.40.

¹⁷⁵ Daily Mail, 1.11.65.

¹⁷⁶ PRO, HO 291/127, 'NOP Poll on Wolfenden', 11.65.

¹⁷⁷ Daily Mail, 1.11.65.

¹⁷⁸ Quoted in Weeks, op.cit. p.177.

ministers, and communication with potential supporters and opponents. The HLRS was particularly scrupulous about asking for evidence to support the wilder claims of certain peers like Lord Goddard and Lord Kilmuir's knowledge of "sodomitic societies" and "buggery clubs", which the Viscount had raised during the debate on Arran's first bill in May 1965.¹⁷⁹ Kilmuir declined to reply.

Though the Society has been rightly credited with skilful and pioneering tactics in helping reform on to the Statute Book, its relationship with Parliament has been somewhat contentious. After the 1958 experience when some MPs were alienated by blanket approaches by the Society and others, the HLRS largely subordinated itself to the sponsors of reform: providing information, distributing 'whipping' letters to supporters, monitoring closely the sympathies of all MPs, and even answering queries of parliamentarians opposed to reform.¹⁸⁰ However this meant that the Society had little influence on the actual content of proposed Bills. Although they did organise amendments for sympathetic MPs and peers¹⁸¹, they were not as closely involved in the drafting process for Bills as were ALRA for abortion law reform.

The identical Bills moved by Arran and Abse in 1966-1967 were considerably more restrictive than the Wolfenden recommendations. This was despite the Society's own tabling of amendments through sympathetic members like Lady Wootton (the first life peer created along with Lord Boothby in 1958). The cautious approach of Arran and Abse, anxious not to jeopardise the Government's procedural co-operation, prevailed.¹⁸² Both the supineness of the HLRS in this respect and the timidity of the Parliamentary reformers have been criticised by historians and sociologists like Jeffrey Weeks for conceding so many amendments relating to the Merchant Navy, the Armed Forces and the concepts of 'in private', 'public', and 'conspiracy'.¹⁸³

¹⁷⁹ BLPES, HC/AG 1/2b, Wright to Kilmuir, 26.5.65; Wright to Goddard, Brocket and Iddesleigh, 26.5.65; Iddesleigh to Wright, undated but presumably June 1965. HL Deb., vol. 266 col. 655, 24.5.65.

¹⁸⁰ Grey, op.cit. p.45.

¹⁸¹ BLPES, HC/AG 1/4, eg. Wright to Wootton, 20.5.66.

¹⁸² Grey, op.cit., pp.49-50.

¹⁸³ Weeks, op.cit., pp.176-177.

However, this fails to appreciate the difficulty with which reform was achieved, even ten years after the publication of Wolfenden and the limited influence the HLRS could have on parliamentary intransigence. The Society was critical of the illogical definition in the Bill of 'privacy', and argued that it should be the same as for heterosexual acts.¹⁸⁴ In addition it pushed for the age of consent to be set at 18, arguing that the 21 figure had been arrived at by Wolfenden to match the age of majority and contractual obligation.¹⁸⁵ Since the Latey Committee had recently recommended reducing the age of majority to 18,¹⁸⁶ and was supported in this by the Labour Party,¹⁸⁷ the lower age seemed to be more sensible. However, even HLRS campaigners like Edgar Wright admitted that such "blemishes" on the Bill were not as important as the main principle of decriminalisation,¹⁸⁸ though he told Abse, in peevish tones, that an "over-legalistic approach" to the Bill showed a "lamentable lack of insight into human situations" on the part of "officialdom".¹⁸⁹ The role of other pressure groups in pushing to amend the Bill in a more liberal direction should also be noted. The National Council for Civil Liberties (NCCL) passed emergency resolutions requiring independent corroboration of police evidence of public indecency, and calling for less punitive treatment of all homosexuals under 21.¹⁹⁰ The Howard League for Penal Reform was also active in this field.¹⁹¹

Grey summed up the difficulty of the delicate relationship of the pressure-group to Parliament, particularly in the relatively primitive age of the 1960s:

"sponsors rightly tend to emphasise that the final decisions... must be their prerogative. Politics is the 'art of the possible' although there is room

¹⁸⁴ PRO, HO 291/130, note of HLRS meeting at Conway Hall, 24.4.67.

¹⁸⁵ PRO, HO 291/129, Houghton to Jenkins, 20.2.67.

¹⁸⁶ Report of the Departmental Committee on the age of majority (London: HMSO, 1967).

¹⁸⁷ NMLH, NEC; Interview with Lady Serota, 18.1.00.

¹⁸⁸ PRO, HO 291/130, Dick Taverne, Parliamentary Under-Secretary, Home Office, to Edgar Wright, 19.5.67; Wright to Taverne, 23.5.67.

¹⁸⁹ BLPES, HC/AT 7/28b, Grey to Abse, 6.4.67.

¹⁹⁰ PRO, HO 291/130, NCCL Annual General Meeting, 'Emergency resolution on Sexual Offences Bill', 29.4.67.

¹⁹¹ Weeks, *op.cit.*, p.239.

for legitimate differences of opinion as to what is in fact possible... those within Parliament must inevitably have the last word."¹⁹²

It is also important to remember that the HLRS was in no way akin to the more radical pressure group politics espoused by the gay rights movement which developed during the 1970s. Criticism of politicians for producing a law based on a view of homosexuals hardly less condemnatory than before, ignores the fact that groups like the HLRS were not advocating rights for homosexuals or equality. Indeed the HLRS was as keen to see well-resourced and effective medical treatment of homosexuals as the Wolfenden Committee and the Butler-led Home Office.¹⁹³ In fact, one of the main arguments advanced for an age of consent of eighteen by the HLRS was that it would "encourage young men to seek help and treatment much sooner".¹⁹⁴ Moreover, the Society was in advance of many other organisations in advocating 'psycho-sexual counselling centres' as one therapeutic method of treating homosexuals, which the Government felt unable to finance,¹⁹⁵ and which the Church of England were advised by Brian Young, Director of the Nuffield Foundation, would be ineffective.¹⁹⁶ It was only during the mid-1960s that research carried out, often on behalf of the Home Office, began to reinforce the view that the various therapies available had little success, that homosexuality was a permanent state and that adult homosexuality and paedophilia were separate phenomena.¹⁹⁷

As has been mentioned above, one of the main amendments restricting the scope of the Sexual Offences Bill was that conceded by Abse during Committee which exempted the Merchant Navy from the Bill's provisions. This had been the subject of fierce pressure from both sides of the service for some time,¹⁹⁸ and they were supported in this by both Douglas Jay, President of the Board of

¹⁹² Grey, *op.cit.* p.50.

¹⁹³ PRO, HO 291/125, note of meeting at Home Office between Butler and HLRS, 15.3.62.

¹⁹⁴ BLPES, HC/AG 1/2b, HLRS meeting, 1.8.66.

¹⁹⁵ BLPES, HC/AG 1/2b, HLRS meeting, 14.9.65; Houghton to C.H. Rolph, 5.8.65.

¹⁹⁶ LPL, RP/78, 229, Grey to Beloe; 227-8, Brian Young, Director, Nuffield Foundation, to Beloe, 17.9.65.

¹⁹⁷ Schofield, *Sociological Aspects of Homosexuality* (London: Longman, 1965) pp.166-172; PRO, HO 291/126, unsigned and undated note on 'Mr Schofield's research on homosexuality', but presumably May 1965.

¹⁹⁸ PRO, HO 291/129, Bill Hogarth, General Secretary NUS, to Wilson, 16.11.66.

Trade,¹⁹⁹ and Roy Mason, his Minister of State,²⁰⁰ A deputation from the National Maritime Board (NMB) met Dick Taverne, Parliamentary Under-Secretary at the Home Office, in September 1967 to put their views. The deputation argued that it was not interested in individual morality, only with discipline on board ship.²⁰¹ Whilst the Board of Trade supported the claim, the Home Office saw the problem more subtly, concerned as it was with the Ministry of Defence's concerns about the Royal Navy.²⁰² However, in almost parodic fashion, the National Union of Seamen resisted the agreement between Abse and the NMB to make homosexual acts in the Merchant Navy a disciplinary offence, even though they agreed with the principle, because this would involve alteration to the disciplinary provisions.²⁰³ A blanket exemption from the Bill introduced during the Committee stage proved more satisfactory to the NUS.²⁰⁴

The attitude of the press towards homosexual law reform was coloured, not surprisingly, by considerations beyond the substantive issues involved. Although liberal publications like the New Statesman were in the vanguard of the demand for reform in the early 1950s, newspapers were largely hostile. More than that they were supportive of demands to reassert traditional moral values and clamp down on deviant sexual behaviour. The atmosphere surrounding the scandals and trials of the early 1950s (and later at the time of Vassall and Profumo) was grist to the mill of the popular press in particular. As Jeffrey Weeks has pointed out newspapers, at this time, were expressing a new found freedom on the subject not possible before the Second World War and 'magnified' the images of deviance which it took to be the opinions of its readers, and reported them as almost scientific facts about homosexuals.²⁰⁵ But despite their claims to the contrary, editors were more interested in the sensationalist possibilities of features on homosexuals at times of publicity than in inquiries into the nature of, or punishment and remedies for the condition.

¹⁹⁹ PRO, HO 291/129, Jay to Jenkins, 28.10.66.

²⁰⁰ PRO, HO 291/127, Taverne to Mason, 4.8.66.

²⁰¹ PRO, HO 291/127, note of meeting between Taverne and NMB, 7.9.66.

²⁰² PRO, HO 291/127, Sir Philip Allen to Jenkins and Taverne, 1.12.66.

²⁰³ PRO, HO 291/127, S.G. Norris, (Private Secretary to Taverne) to Miss P.G.W. Hunt (Private Secretary to Permanent Under-Secretary), 7.12.66.

²⁰⁴ Sexual Offences Act, 1967, section 2.

²⁰⁵ Weeks, op.cit. p.162.

The pernicious influence of the Press in relation to sexual scandal during the 1950s and early 1960s was compounded by the symbiotic relationship which many newspapers had with the police. Many papers had arrangements by which the police passed over information concerning investigations, particularly involving prominent public figures, for example the allegations against Lord Boothby in 1964, in return for gifts, favours or sometimes money.²⁰⁶ If prosecutions were not then forthcoming the newspaper was left with a dead story which it could either drop, with some embarrassment, or continue to run, often with little fear of litigation.²⁰⁷

However, the reaction of the press to the publication of the Wolfenden Report, even amongst the popular papers was far more balanced. The Daily Mirror declared; "Don't be shocked by this Report. It's the Truth. It's the Answer. It's Life."²⁰⁸ The Times, the Daily Telegraph and the Manchester Guardian gave less dramatic approval to the modest, utilitarian proposals of the Committee. The Daily Express, Daily Mail and the Sunday Times, conversely, were more concerned with the threat in the Report's proposals to public morality.²⁰⁹ When the Commons came to debate Wolfenden the following year, the Times neatly outlined the disequilibrium between the reformers and progressive opinion, and what Parliament thought that public opinion would stand:

"It is a foregone conclusion that the homosexual laws will not be reformed yet. it is equally a foregone conclusion that reform must eventually come. For the majority of well-informed people are now clearly convinced that these laws are unjust and obsolete in a society which refuses to punish lesbian practices, adultery, fornication or private drunkenness."²¹⁰

²⁰⁶ Private Information.

²⁰⁷ Private Information.

²⁰⁸ Daily Mirror, 5.9.65.

²⁰⁹ Richards, op.cit. p.73.

²¹⁰ The Times, 26.11.58.

By the time of the parliamentary debates and Bills of the mid-1960s the "great majority of national daily and weekly newspapers... strongly and consistently advocated the reform".²¹¹ As the issues surrounding the Government's accommodation of Private Members' Bills gathered to a head in 1966 and 1967 the Press took a keen interest in the progress of these Bills, which they broadly supported. It was partly press speculation during negotiations over the exemption of the Merchant Navy from Abse's Bill in 1966/7 which stirred the supporters of reform within Parliament to ensure its continued passage through the Commons.²¹² In the same way that parliamentarians could be made to support reform by reasoned and moderate discussion of the justice and efficacy of the law, rather than the moral issues surrounding homosexuality itself, so the press could draw a distinction between the dramatic and emotional portrayal of the homosexual with which many editors liked to sell newspapers and their support for implementing the Wolfenden recommendations.

²¹¹ The Times, 11.5.65.

²¹² Abse, *op.cit.* pp.156-157; Tribune, 'Homosexuality: The Labour Reactionaries', editorial, 16.12.66.

vii. Outside Pressure: The Influence of the Churches

Just as politicians and the press were able to distinguish between behaviour which they found undesirable and immoral, and the treatment of such behaviour by the law (in certain restricted circumstances), so the prescriptions of the governing bodies of the various Christian Churches for the criminal law increasingly diverged from their theological condemnation of homosexual acts as sinful. The speed with which ecclesiastical opinion rallied to the cause of homosexual law reform between the publication of The Problem of Homosexuality by the CEMWC in 1952 and the beginnings of the parliamentary campaign in the late 1950s is remarkable. There were two clerics on the Wolfenden Committee, Canon V.A. Demant and Rev. R.F.V. Scott, and Churchmen were at the forefront of the work of the HLRS, the Rev. A. Hallidie Smith being its first Secretary.²¹³ Perhaps because of the religious imprimatur with which the existing law was stamped and the Christian banner under which the opponents of reform stood, the significance of the shift which the Church underwent in respect of the Wolfenden proposals has often been understated. However, real divisions at all levels of the ecclesiastical hierarchy remained.

The Problem of Homosexuality advocated homosexual law reform on the lines which the Wolfenden strategy would pursue.²¹⁴ This was updated as Sexual Offenders and Social Punishment in 1956 as evidence to the Wolfenden Committee.²¹⁵ In this document a universal age of consent of 17 was recommended, contrary to the eventual recommendation of the Wolfenden Report and its final implementation in the Sexual Offences Act 1967, (as well as the later opinion of the Lords spiritual).

In the years immediately after the publication of the Wolfenden Report the majority of senior Churchmen publicly supported reform. Indeed by the time that Lord Arran began his lengthy parliamentary battle in the House of Lords homosexual reform had been endorsed by the British Council of Churches, the

²¹³ Grey, *op.cit.*, p.41.

²¹⁴ CEMWC, *op.cit.*

Church Assembly, the Roman Catholic Advisory Committee appointed by Cardinal Griffin and the Methodist Church.²¹⁶ This ecclesiastical revolution was given a philosophical edge in 1963 with the publication of two seminal books, Bishop John Robinson's Honest to God and the Friends' Home Service Committee's Towards a Quaker View of Sex.²¹⁷ Whilst these were alarmingly unorthodox to most of the Anglican hierarchy, they showed how far things had come. The former book advocated a reassessment of traditional Christian teaching in the modern world, and the adoption of a system of "situational ethics", in which a measurement of harm involved in personal behaviour should be considered.²¹⁸

"Our moral decisions must be guided by the actual relationships between the persons concerned at a particular time in a particular situation, and compassion for persons overrides all law. The only intrinsic evil is lack of love."²¹⁹

This was very close to the Quaker position in the second book on homosexuality:

"Surely it is the nature and quality of a relationship that matters: one must not judge it by its outward appearance but by its inner worth. Homosexual affection can be as selfless as heterosexual affection and therefore we cannot see that it is in some way morally worse."²²⁰

Christopher Booker, looking back from 1970 with a characteristic disregard for historical cause and effect, condemned Honest to God in particular:

²¹⁵ CEMWC, Sexual Offenders and Social Punishment (London: Church Information Board, 1956).

²¹⁶ The Times, 11.5.65.

²¹⁷ J.A.T. Robinson, Honest to God; A. Heron ed., Towards a Quaker View of Sex (London: Friends Home Service Committee, 1963); Tony Benn, Out of the Wilderness: Diaries 1963-1967 (London: Hutchinson, 1987) 13.5.63, pp.17-19.

²¹⁸ Newburn, op.cit., p.175.

²¹⁹ Quoted in P.A. Welsby, A History of the Church of England (Oxford: Oxford University Press, 1984) p.113.

²²⁰ Heron ed., op.cit. p.39.

"In no way was the disintegration of authority more subtly and profoundly reflected, however, than in a book... [which] brought to a head all the doubts and insecurities which had recently been afflicting many leading members of the Church of England."²²¹

However, as with members of the Government, commitment to the Wolfenden recommendations among Churchmen depended as much on personal proclivities as on institutional philosophy. Archbishop Ramsey was considerably cooler on the issue than his predecessor Geoffrey Fisher had been, despite his vice-Presidency of the HLRS. He was far more concerned about measures in any reform Bill to protect the young and reinforce penalties for public offences than in decriminalisation, telling Arran that "reforming the law should be presented in the best way for edifying the public".²²² He was also not averse to criticising the HLRS when it seemed to him to underplay the evils of homosexuality.²²³ Such was the cleft tongue with which bishops like Ramsey and stauncher opponents of reform like Ronald Williams (Bishop of Leicester) spoke, that many ordinary people were unaware (and sometimes shocked to hear) that the Lords spiritual generally supported the Wolfenden proposals.²²⁴

However, by the time that parliamentary efforts to achieve reform gathered pace from 1965 it was difficult for opponents to argue with any institutional support that homosexual reform was against the position of the Church, even if homosexual practices were still considered sinful and to be avoided. This left them without a focused or organised campaign in Parliament and the best of the argument with the reformers. Sir Cyril Black, Conservative MP for Wimbledon tried to assert that his own Church, the Baptists, was against reform, whereas in fact they had been deeply divided on the Wolfenden proposals.²²⁵ Even if the Roman Catholic Advisory Committee had sanctioned the implementation of Wolfenden, Catholic parliamentarians would not. The most immovable and

²²¹ Booker, *op.cit.*, pp.194-195.

²²² LPL, RP/78, 47, Ramsey to Arran, 18.5.65.

²²³ LPL, RP/98, 254, C.H. Rolph, Chairman, HLRS, to Ramsey, 15.12.66.

²²⁴ LPL, RP/78, 30, Ronald Williams to Beloe, 6.4.65; RP/98, 260, Humphrey Berkeley to Ramsey, 23.2.66.

²²⁵ HC Deb., vol. 724 col. 798, 11.2.66.

successful church lobby against homosexual reform came from Ulster Protestants. Their determination both to resist the sinful abominations which they saw in reform proposals, and their desire to maintain the insulated social and religious structure of their section of Northern Irish society, coupled with the political sensitivity of dealing with the province, meant that any question of the Sexual Offences Act 1967 covering Northern Ireland was not thought of. The Ulster Unionist Campaign to "Save Ulster from Sodomy" was unsubtle but effective. Indeed these MPs, Church of Ireland by denomination, were more vociferous in their opposition to reform than their Anglican co-religionists in England.²²⁶

In the face of such vehement attacks, reformers in Parliament were especially sensitive to the danger of igniting religious objection to liberalising control of homosexuality, particularly in regard to youth.²²⁷ Any radical arguments about the equalisation of homosexual and heterosexual conduct were eschewed. As Richards has pointed out "their task was to arouse Christian compassion, not Christian controversy".²²⁸ In this regard the active support of Lords spiritual, in sponsoring amendments and speaking, was regarded as crucial.²²⁹ Indeed Ramsey, writing to Humphrey Berkeley in July 1967, said:

"I think we all feel that it was your Bill in the Commons which really turned the tide and made the ultimate success only a matter of time and procedure. I am sure that history will remember this and thank you for it."²³⁰

²²⁶ Davies, *op.cit.*, pp.337-8.

²²⁷ Abse, *op.cit.*, pp.153-154; Arran, *op.cit.*, p.6.

²²⁸ Richards, *op.cit.*, p.82.

²²⁹ LPL, RP/78, 71, Arran to Ramsey, 26.5.65; RP/98, 242, Arran to Beloe.

²³⁰ LPL, RP/115, 254, Ramsey to Berkeley, 21.7.67.

In the event, the Archbishop of Canterbury did consider the Sexual Offences Bill a great, humanitarian achievement, and paid tribute to one of the most courageous reformers who had paid a price for his views.

Chapter 4

Abortion Law Reform

“The public opinion behind the Bill is millions of women up and down the country who are saying ‘we will no longer tolerate this system whereby men lay down, as if by right, the moral laws, particularly those relating to sexual behaviour about how women should behave’.”¹

“If pregnancies are to be terminated for reasons other than health the doctor should not be called on to make the decision. If judgements are to be formed on wellbeing one should turn to the Swedish system, with a committee of social workers and doctors concerned with all the problems which can be involved in consideration of the word “wellbeing”.”²

i. Introduction

Although the extension of legal abortion was achieved a few months after the Sexual Offences Act was given Royal Assent, organised pressure for abortion law reform began much earlier, in the 1930s, and the issue formed part of the changing currents of debates on population, the family and women’s sexuality for three decades before legislation was delivered in 1967. It was also, unlike homosexuality since 1885, a legally accepted practice, albeit heavily circumscribed. Discussion of the issue was not, therefore, taboo to the same extent, despite the passionate religious and ethical convictions which it aroused.³

The exhaustive discussion of abortion since the 1930s, and its inextricable link with wider questions of birth control and family planning, did not prevent the parliamentary discussion of abortion being sanitised and rationalised in the same way that homosexuality was during the reforming period of the Wilson Governments. Just as Leo Abse and the Homosexual Law Reform Society

¹ Christopher Price, Labour MP, Birmingham Perry Barr, HC Deb., vol. 750 col. 1372, 13.7.67.

² Sir John Hobson, Conservative MP for Leamington Spa, HC Standing Committee F, vol. X, 5th sitting, col.226, 15.2.67.

³ Peter G. Richards, Parliament and Conscience (London: George Allen & Unwin, 1970) p.111.

(HLRS) underplayed the wider questions of morality and sexuality in relation to homosexual law reform,⁴ so abortion law reformers, by the time Parliament was ready to debate the subject seriously, were similarly keen to underplay the wider issues of population policy and feminism involved in the extension of legal abortion.⁵ Rather they concentrated on, amongst other issues: the number of illegal abortions and the uneven application of the law; the cost of illegal abortion in human injury and to the NHS financially; the inequality in treatment between working class women and the better off; and the health issues raised by the recent thalidomide tragedy and rubella epidemics.⁶ Once again, this suited the discussion of controversial moral issues within a parliamentary setting, and facilitated the unofficial sympathetic treatment which the issue received from the Government from 1965. This was in the face of a demographically small but concentrated Catholic electorate and influential Catholic members of the Government who attempted, more than on other issues of reform, to fight a rearguard action against abortion in the press, Parliament and Cabinet.

Analyses of the Abortion Act 1967 and its supporters have increasingly concentrated on the non-permissive aspects of the legislation and the motivations behind it;⁷ the attempts to maintain, and in some instances tighten, official control over 'deviant' sexual individuals and groups through a more subtle matrix of regulatory systems, in the case of abortion through control by the medical profession. This analysis confessedly owes much to Michel Foucault's theories of diffusion of loci of power away from the central state to a "multiplicity of force relations".⁸ Such an approach has been invaluable in its deconstruction of the ideologically loaded and pejorative terms 'permissive' and

⁴ Leo Abse, *Private Member* (London: Macdonald, 1973) pp.154-155.

⁵ CMAC, SA/ALR A.16/7, note of meeting held between Soskice, Bacon and ALRA deputation, 2.2.65.

⁶ Richards, *op.cit.*, pp.95-96.

⁷ See especially, Victoria Greenwood and Jock Young, *Abortion in Demand* (London: Pluto, 1976); 'Ghettos of Freedom: an examination of permissiveness' in National Deviancy Conference (ed.), *Permissiveness and Control* (London: Macmillan, 1980); Sally Sheldon, 'The British Abortion Act 1967: A permissive reform?', *European University Institute Working Papers*, 1994 no.2; Lucy Bland, Trisha McCabe and Frank Mort, 'Sexuality and Reproduction: Three 'Official' Instances' in Michèle Barrett, Philip Corrigan, Annette Kuhn and Janet Wolff (eds), *Ideology and Cultural Production* (London: Croom Helm, 1979) pp.78-111.

⁸ Michel Foucault, *A History of Sexuality, Volume 1: an Introduction* (London: Harmondsworth: Penguin, 1990) pp.92-7, quoted in Sally Sheldon, *op.cit.*, p.5.

'permissiveness', encouraging a better understanding of the contrasting dynamics at work within the reforms of the period from the Wolfenden Report onwards. However this has often been at the expense of a degree of historical perspective which less jaundiced, Marxist scholars have sought to embrace.⁹ Some studies of these reforms 'put the cart before the horse' by projecting the expectations of radical libertarian groups of the 1960s and feminist and gay rights groups of the late 1960s and 1970s on to the social mores of the general population before 1968 and the motivations of reformers in Parliament and elsewhere.¹⁰

More specifically, such analyses fail to understand the difficulties of the parliamentary hurdles which Private Members' Bills had to cross to become law. For example, Sally Sheldon's study of the motivation behind the Abortion Act 1967 makes considerable use of the record of Parliamentary debates to demonstrate that pro-reform MPs and peers were primarily concerned with the autonomy of the medical profession, the control of deviant women and the prevention of abortion more than the extension of women's control over their own sexuality and fertility.¹¹ However, she takes no account of the strategy employed by reformers outlined above, to steer discussion away from emotive questions of morality and women's rights. She goes further by selectively quoting Dr. Glanville Williams, author of The Sanctity of Life and the Criminal Law,¹² and the academic guru of abortion and birth control reform during this period, in support of her thesis that reformers sought the medicalisation of abortion as the most important benefit of reform.¹³ This despite Williams' statement of belief in abortion on demand, as a permissive measure until the thirteenth week of pregnancy, and his explicit separation of the ethical and medical reasons for the procedure.¹⁴

⁹ For example, Barbara Brookes, Abortion in England 1900-1967 (London: Croom Helm, 1988).

¹⁰ Sheldon, Beyond Control: Medical power and abortion law (London: Pluto Press, 1997) pp.9-48.

¹¹ Sheldon, 'The British Abortion Act 1967: A permissive reform?', European University Institute Working Papers, 1994 no.2, p.23.

¹² Glanville Williams, The Sanctity of Life and the Criminal Law (London: Faber and Faber, 1958).

¹³ Sheldon, *op.cit.*, p.24.

¹⁴ CMAC, SA/ALR, ALR Annual General Meeting 1963.

Opposition to abortion law reform, in common with that to homosexual law reform, attempted to stress the relative rarity of the phenomenon compared with the Pandora's box which reform would open up, especially in terms of promiscuity. As Madeleine Simms has sarcastically described the stance:

“Before that [the Abortion Act 1967], in that hazy golden age that prevailed before our present irreligious era of permissiveness and licentiousness, women cheerfully had all the babies God sent them, and did not complain.”¹⁵

Apart from the absolutist Roman Catholic position, Anglican and Nonconformist Churches again showed the radicalism with which they were prepared to engage changing modern social and sexual mores during the 1950s and 1960s as part of the effort to counter the trend of secularisation. However, the liberalism with which the Church Assembly (and even more so maverick Bishops like John Robinson, Bishop of Woolwich, who likened abortion to suicide¹⁶) pronounced on the issue, was in stark contrast to some of the more senior bishops who spoke in the House of Lords debates in 1965-1967.¹⁷ Church bodies, parliamentarians and the media were successfully lobbied and petitioned by the Abortion Law Reform Association (ALRA) from its inception in 1936. However, its female, middle-class, well educated members were increasingly forced, as the legislative moment grew nearer, to temper their ‘abortion on demand’ views to jar rather less with what Parliament was prepared to enact.¹⁸

By far the most important influence on Parliament and the Government was the medical profession. Its position was during the 1950s and early 1960s a mixture of opposition to a relaxation of restrictions on abortion and a wish to protect

¹⁵ Madeleine Simms, ‘Abortion: the myth of the golden age’ in Bridget Hutter and Gillian Williams (eds.), *Controlling Women: the normal and the deviant* (London: Croom Helm, 1981) p.168.

¹⁶ CMAC, SA/ALR A.15/9, Canon Bryan Bentley to David Steel, 17.12.66.

¹⁷ For example, Church of England Board for Social Responsibility, *Abortion: An ethical discussion* (London: Church Information Board, 1965); J.A.T. Robinson, *Beyond Abortion* (London: Abortion Law Reform Association, 1966).

¹⁸ CMAC, SA/ALR A.16/7, note of interview with Sir Frank Soskice, Home Secretary, and deputation from ALRA, 2.2.65.

doctors from a legally and morally sensitive issue. After 1965 the British Medical Association (BMA), gradually realising that reform was inevitable, was determined that; “the ultimate decision to advise termination of pregnancy rests with the doctors... the law should not seek to influence this decision”.¹⁹ The success with which the BMA and the Royal College of Obstetricians and Gynaecologists (RCOG) captured the terms of the successful Bill with the support or compliance of the Government, MPs, the Churches and some members of ALRA has caused debate of the Abortion Act to focus on the failure of the ‘abortion on demand’ argument. However, despite public pronouncements, as will be seen, divisions within different branches of the medical profession and, not surprisingly, between individual doctors were profound. Furthermore, doctors’ desire for total responsibility for abortion decisions was always a chimera. In the legislative event a loophole in the restrictive terms of the Abortion Act 1967 allowed doctors who were so minded to shirk this responsibility and to grant women the abortion they wanted, on the basis that to grant an abortion would involve less risk to the mother than the continuance of the pregnancy.²⁰ The decision remained, nonetheless, with the doctors.

The complexity of the discussions on abortion, compounded by the absence of an official investigation into the subject since 1939, was a natural breeding ground for the usual tactics of the opponents of private members’ legislation. This emphasised the importance of the support of key Government Ministers and their nurturing of the Bill through the encouraging but apprehensive Government discussions about granting parliamentary assistance to such Bills of which Parliament had indicated its approval. As shall be seen, Ministers departmentally concerned with the legislation occasionally found themselves in contradictory positions, apart from their personal declarations of support or

¹⁹ Report by the BMA Special Committee, ‘Therapeutic Abortion’, British Medical Journal, 2.7.66 p.44.

²⁰ Abortion Act, 1967, section 1(1)(a).

opposition to abortion law reform, and these difficulties had consequences for future similar private members' legislation.

ii. Population, the family and the individual 1936-1967

Britain never evolved an official policy aimed at the maintenance or control of the quantity or eugenic quality of its population. Although concern about the birth-rate did not reach the obsessive levels which it did in Germany, France or Italy at different times, social scientific research, official inquiries and political debate both immediately before, during and after the Second World War did show considerable concern about reversing a declining birth-rate. This concern only subsided during the 1950s when it became clear that a possible population explosion was a more worrying demographic crisis than a low birth-rate. Indeed the disparity between the birth control practices of the middle and working classes, which reformers began to campaign against during the inter-war period, was seen as exacerbating the depletion of the population of healthy young men which the carnage of the First World War had inflicted.¹ ALRA argued with Norman Birkett, Chairman of the Interdepartmental Committee on Abortion, about the effect of abortion on the birthrate, Birkett claiming that legalised abortion would encourage its downward trend, with ALRA witnesses claiming that the medical and family planning benefits that would result would encourage more births.² A declining birth rate was considered to pose a threat to Britain's military and imperial prestige and power, a concern reflected in the Beveridge Report in 1942,³ the Royal Commission on Population in 1949,⁴ and was of more domestic social concern to academics like Richard Titmuss.⁵

However, the post-war architects of the Welfare State recoiled from advocating the eugenic policies of pre-war years to boost the quantity and quality of the birth-rate for two reasons. Firstly, the taint which eugenics had acquired through fascist population policies, though these policies continued in different forms in countries such as the USA, made talk of sterilisation and the feckless less

¹ K. Hindell and Madeleine Simms, *Abortion Law Reformed* (London: Peter Owen, 1971) p.63.

² *Report of the Inter-departmental Committee on Abortion* (London: HMSO, 1939) para.227, p.82.

³ William Beveridge, *Social Insurance and Allied Services* (London: HMSO, 1942) p.154.

⁴ *Report of the Royal Commission on Population*, Cmnd.7695 (London: HMSO, 1949)

⁵ Richard Titmuss, *Problems of Population* (London: Association for Education in Citizenship, 1943).

fashionable than it had been during the 1930s.⁶ Secondly, the effectiveness of negative eugenic policies, that is, limiting the reproduction of racially 'poorer' stock, was seen to be insignificant. By the Second World War seven decades of progress in reducing infant death rates, widening education and gradual elimination of child labour for the working class, and longer-term planning of career and reproductive patterns for the middle-class exerted a downward pressure on average family size. Indeed this trend was felt by some professionals to have created for the first time a real social stigma attached to large families.⁷

What post-war welfarism sought to do was create economic and social conditions in which the procreation of a healthy, larger family was easier. Family Allowances, introduced in 1945 after the break-up of the wartime coalition, were an indirect means of supporting child-bearing, through marginal alleviation of poverty (and fairly ineffectual at only five shillings per week)⁸. Other allowances and tax concessions for the family also encouraged the normative family unit. The official sanction of birth-control and voluntary parenthood, as long advocated by the Family Planning Association, was an important part of this strategy, aiming not so much at limiting the number of births as giving parents more control over 'planning' and 'spacing'.⁹

Legal judgements during this period confirmed the seminal Bourne judgement of 1939. In this case Dr. Aleck Bourne was acquitted of procuring an abortion for a fourteen year old girl who had been raped by four Guards Officers, on the grounds that he had acted in good faith. The important legal innovation was that the judgement encompassed the mental effects of a continued pregnancy as well as the physical risk to the mother.¹⁰ The case was further complicated by the heroic status which Bourne subsequently acquired. It should be remembered, as Hindell and Simms point out, that Bourne only operated once

⁶ Maria Sophia Quine, Population Politics in Twentieth Century Europe (London: Routledge, 1996) pp.129-139.

⁷ Weeks, Sex, politics and society, pp.233-234.

⁸ *Ibid.*, p.233.

⁹ *Ibid.*, p.234.

¹⁰ R v Bourne, 1 K.B. 687, 1939.

he was convinced of the girl's good moral character, and he later failed to support legislative reform.¹¹ However, the idea of permitting therapeutic abortion was still anathema to official policy. It would discourage child-birth and undermine the foundations of marriage and the family, it was argued. Investigation and prosecution of those procuring and performing abortions increased during and after the Second World War,¹² as with increased police activity against homosexuals, as if this presented a viable deterrent edge to the legal position.

If no progress was made towards legislative reform of the abortion law during the 1950s as concern over population decline faded, then the subject at least began to be seen in terms more of the individual family than the population at large. The 'eroticisation' of marriage during the 1950s, involving an increased focus on a happy sex-life within marriage as a way of bolstering marriage and the family, was encouraged by the explosion of marriage guidance services and the growing respectability of contraception, at least for married couples.¹³ It has been argued that the concession of abortion to married couples was resisted because it implied general economic frailty or matrimonial discord.¹⁴ However, one of the first calls of post-war reformers was for the legalisation of abortion for women with four children already. This had in fact been the modest recommendation of the Minority Report, written by Dorothy Thurtle, leader of the Labour group on Shoreditch Council and future ALRA stalwart, to the Birkett Inquiry.¹⁵ It was, of course, ignored by opponents of reform that the majority of maternal deaths were caused by illegal abortion, and the majority of these occurred in married, not unmarried women.¹⁶ Furthermore, consideration was given to the health of all women and children, and the need to maintain welfare and health service provision within the limited resources of the Welfare State.¹⁷

¹¹ Hindell and Simms, Abortion Law Reformed (London: Peter Owen, 1971) pp.70-71.

¹² Brookes, *op.cit.*, pp.137-144.

¹³ See above at Chapter 2.iii, pp.71-72.

¹⁴ Greenwood and Young., *op.cit.*, p.170.

¹⁵ Report of the Inter-departmental Committee on Abortion, *op.cit.*, pp.139-155.

¹⁶ Arnold Walker, Report on confidential enquiries made into Maternal Deaths in England and Wales 1958-1960 (London: HMSO, 1961).

¹⁷ Richards, *op.cit.*, p.95.

Acknowledgement and increasing acceptance of changing attitudes towards sex and marriage meant that, although abortion on demand would be resisted, the clamour from women for more control over their fertility had to be heeded, even if still regulated by the law and the medical profession. However, despite the medical profession's insistence on the supremacy of their judgement in cases of unplanned pregnancy, the eugenic argument during the 1960s could be used effectively to advocate abortion on demand. As one clinician argued, "if a woman really wants an abortion it will nearly always be eugenically desirable that she should have it",¹⁸ implying that otherwise the baby would be willfully harmed during pregnancy.

Between the late 1930s and 1967, therefore, the abortion issue was refracted through a changing series of debates on population and the family. From a period concerned primarily with population decline in which advocates of abortion saw it as one tool to effect an improvement in the eugenic quality of the working class, the subject became inextricably linked with post-war welfarism's planned support of the traditional family and marriage through a variety of services and benefits, and rejected because it threatened to subvert this. From the 1950s onwards a gradual encroachment on these concerns about the family involved the changing social and economic conditions of the family, the efficacy and consistency of the law, and the gradual diffusion of new ideas of sexual morality – factors present in debates on divorce and homosexuality following the Wolfenden Report.

¹⁸ C.O. Carter, 'Eugenic aspects of abortion' in Family Planning Association (ed.), Abortion in Britain (London: Macmillan, 1966) p.26.

iii. The progress of political debate 1936-1964

The political debate and legislative events surrounding abortion which followed the contours of changing policies and social attitudes towards the family, women and birth control have been well documented.¹⁹ The foundation of ALRA in February 1936 and the subsequent publication of the BMA's Report of the Committee on the Medical Aspects of Abortion in July of that year added to pressure on the Government to examine an issue which, in the BMA's words, constituted "a public health problem of great gravity".²⁰ The Ministry of Health's own investigation into maternal mortality which reported in 1937 also recommended addressing the issue of abortion, specifically in relation to "maternal mortality and morbidity and future child-rearing", the last aspect giving scope for discussion of social conditions, birth rate and eugenic aspects of reproduction.²¹ However, the remit which the Birkett Committee was given was restricted to the medical and legal aspects of the problem.²² These were:

"to inquire into the prevalence of abortion and the present law relating thereto and to consider what steps can be taken by more effective enforcement of the law or otherwise to secure the reduction of maternal mortality and morbidity arising from this cause."²³

This narrow medico-legalistic analysis presaged the similar remit given to the Wolfenden Committee on Homosexuality and Prostitution, which examined the legal position of the two problems and recommended both legal and medical solutions. Although the Birkett Report was to eschew the reformist trail which Wolfenden was to blaze twenty years later, it established a precedent that religious concepts of sin, which would have been predominant in Victorian discussions of sexual conduct and reproduction, were now separated from the review of the criminal law. However, the Majority Report rejected any suggestions that legal abortion should be extended for social reasons, and

¹⁹ Hindell and Simms, *op.cit.*

²⁰ BMA, Report of the Committee on Medical Aspects of Abortion (London: BMA, 1936) p.6.

²¹ Report on an investigation into maternal mortality 1936-1937 Cmnd.5422, 1937.

²² Brookes, *op.cit.*, p.105.

²³ PRO, MH 71/19, 'Committee on abortion', J.E. Pater to J.M. Ross, 20.4..37.

especially not for the increased happiness of women, as advocated by ALRA.²⁴ The medical profession was firmly in charge of making the abortion decision if, in good faith, continuation of the pregnancy was thought “likely to endanger her life or seriously impair her health”.²⁵

As Brookes has summarised, the Report, fearing worsening of the declining birth-rate, ignored the wider considerations of fertility control, refusing to sanction state-sponsored birth control advice, but concentrated on seeking to protect doctors against prosecution when acting in good faith.²⁶ Dorothy Thurtle, the sole author of the Minority Report, argued partly on medical grounds that women who had had four pregnancies should automatically be allowed an abortion because of the *medical* risks inherent in further pregnancies. Furthermore she argued that birth control clinics were essential for individual, family and social health to avoid the possibility of married women achieving their maximum fecundity.²⁷ Thurtle insisted, however, that health and women’s happiness were two sides of the same coin. The outcome of the Committee had, at least, confirmed legal judgements such as *R v Bourne*.

Although, as mentioned above, police attention to criminal abortion increased during the 1940s, political attention did not, consistent with Lord Deedes’ thesis about the political preoccupation with wider social and economic concerns after the Second World War.²⁸ However, as Brookes has pointed out, the burden of the increase in prosecution fell most heavily on women (73% of convictions), punished often for their compassion in assisting friends or relatives, as opposed to the more publicised cases which involved doctors; professional abortionists accounted for a small proportion of cases.²⁹ Judgements in the late 1940s and 1950s reinforced the *Bourne* case:

²⁴ Report of the Inter-departmental Committee on Abortion (London: HMSO, 1939) p.82.

²⁵ *Ibid.*, p.25.

²⁶ Brookes, *op.cit.*, p.126

²⁷ Report of the Inter-departmental Committee on Abortion, *op.cit.*, p.139.

²⁸ Interview with Lord Deedes, 23.9.97.

²⁹ Brookes, *op.cit.*, p.144; Great Britain, Criminal Statistics for England and Wales, 1965, Cmnd.3037 (London: HMSO, 1966) pp.3, 8.

“was there honesty of purpose? Was it done honestly believing that it was the right thing to do? If that is so then it was not done unlawfully.”³⁰

As with Leo Abse's initial attempt at implementation of the Wolfenden recommendations on homosexuality in 1962, the first Private Member's Bill dealing with abortion law reform was a modest measure. In 1953 Joseph Reeves, Labour MP for Greenwich, sought to make statutory the case law from the Bourne judgement on therapeutic abortion, but it was talked out by a successful filibuster.³¹ The Parliamentary attitude towards abortion continued throughout the 1950s to be hostile and ignorant of the issues, except for a small band of, mainly, Labour MPs who supported, and were in turn supported by ALRA. These included Ernest Thurtle, MP for Shoreditch and husband of Dorothy Thurtle, John Parker, MP for Dagenham and frequent sponsor of Sunday observance reform, Kenneth Robinson, sponsor of Bills on homosexuality and abortion and a Health Minister from 1964 and, crucially, Douglas Houghton, MP for Sowerby and Lord President of the Council from 1964 to 1966 who chaired the Home Affairs Committee of the Cabinet. His wife, Vera, was also on the Executive Committee of ALRA. The most notable Conservative supporter of reform during the 1950s was the ever-liberal Robert Boothby.³²

Between 1952 and the next abortion law reform Bill, introduced by Robinson in the 1960-1961 Session, successive Conservative governments showed a determination to avoid the issue, despite regular parliamentary questions, and a continuing national debate on abortion which gradually saw relevant professionals coming round to the acceptance of extending legal abortion. The National Association of Maternity and Child Welfare and the Magistrates' Association (the latter prompted by a JP who was a member of ALRA³³) both

³⁰ 'R v Newton and Stungo', Criminal Law Review 1958, quoted in Hindell and Simms, op.cit., p.75.

³¹ HC Deb., vol. 511 col. 2506, 27.2.53.

³² Hindell and Simms, op.cit. p.82.

³³ L.J.F. Smith, The Abortion Controversy 1936-1977: a case study in 'emergence of law' (Edinburgh: unpublished PhD thesis, 1979) p.99.

voted to extend the boundaries of legal abortion for medical reasons.³⁴ However, Women's organisations including the National Council of Women and the Women's Co-operative Guild went further and were strongly in favour of legalised abortion for married and unmarried women as a right in certain circumstances.³⁵

In 1958, the same year that the Wolfenden Report was debated in the House of Commons and Lord Devlin delivered his Maccabean lecture attacking the Wolfenden strategy of removing sin from the ambit of the law, Professor Glanville Williams published his seminal work, The Sanctity of Life and the Criminal Law.³⁶ The erudition of his research covered not only abortion, but also birth control, artificial insemination, suicide, euthanasia and sterilisation. As President of ALRA he was critical of that organisation for the narrowness of its work on abortion. Although the permissiveness of his views, particularly on abortion, were shocking even to moderate opinion he was widely respected for his legal reputation.³⁷

Unlike many of the parliamentary and extra-parliamentary reformers whom he encouraged, he was not ashamed of strongly advocating abortion on demand until the thirteenth week of pregnancy. Rather than accept the case for control of abortion by the medical profession, Williams sought to separate the medical and ethical arguments against abortion. The increasing safety of legal abortion having been established, Williams insisted that the real reason for criminalising abortion had always been religious. The criminal law, following Wolfenden, could no longer be constructed or amended on the basis of religious morality. Dismissing adverse medical and demographic effects of legalising abortion, Williams moved to the central argument of moral conservatives during the 1950s and 1960s – that liberalisation would “license incontinence”.³⁸ He continued;

³⁴ Record of Magistrates' Association Annual General Meeting 1955, The Magistrate, December 1955, pp.135-136.

³⁵ Hindell and Simms, *op.cit.*, pp.127.

³⁶ HC Debs., vol. 596 cols. 365, 26.11.58; Lord Devlin, The Enforcement of Morals (Oxford: OUP, 1959); Glanville Williams, The Sanctity of Life and the Criminal Law (London: Faber and Faber, 1958).

³⁷ Hindell and Simms, *op.cit.*, p.119.

³⁸ Williams, *op.cit.*, p. 204.

“It seems an odd idea that a woman is to be punished for the sin of sexual intercourse by being forced to bring an unwanted life into the world – odder still when the mother is feeble-minded or psychopathic, so that the child, if only because of the upbringing it will get, is likely to be no asset to the community.”³⁹

He then brings starkly to bear the Wolfenden strategy;

“Is the sanctity of the embryo or foetus a moral absolute, or are we to be allowed to look to utilitarian considerations? In utilitarian philosophy, the welfare of every member of society must be considered, even when he [the individual] is breaking the law.”⁴⁰

By advocating safe legal abortion until the thirteenth week of pregnancy, Williams believed he was removing restrictions on women to consult their own doctor rather than an abortionist, and making recommendation of the operation easier for timid doctors more concerned about the courts than the welfare of their patients. The proposed legislation was, he said to the Annual General Meeting of ALRA in 1963, “purely permissive” – an honest description which would soon be disclaimed by most reformers,⁴¹ and later by many scholars.⁴² Indeed, the Labour MPs Dr. David Kerr, MP for Wandsworth Central and Christopher Price were almost the only public exponents of abortion on demand in Parliament during the 1960s.⁴³ Despite the radicalism of Williams’ views he was responsible for drafting the three subsequent abortion reform Bills introduced by Kenneth Robinson in 1960, Renée Short, Labour MP for Wolverhampton North-East in 1962, and by the former Labour minister Lord Silkin, father of Chief Whip John Silkin, in 1965.

³⁹ Ibid., p.204.

⁴⁰ Ibid., pp.204-5.

⁴¹ Hindell and Simms, *op. cit.*, p.119.

⁴² For example, Sheldon, *op.cit.*

⁴³ Interview with Alistair Service, 12.4.00.

The other key book on abortion which influenced the debate during the early 1960s also emanated from ALRA. Written by Alice Jenkins, the indefatigable Secretary of ALRA, Law for the Rich was a scathing attack on the hypocrisy of a society which turned a blind eye to the ease with which middle-class women could avail themselves of relatively safe but costly abortions in private sanatoria, whilst working-class women were forced to resort to dangerous amateur operations and the often extortionate practices of back-street abortionists.⁴⁴ This book had a direct emotive influence on Robinson's reform Bill the same year, as Williams' ethico-legal analysis of the issue fashioned the clauses of the Bill.⁴⁵

The thalidomide epidemic which began in 1961, during which babies born to mothers who had been prescribed the drug Distaval suffered severe deformities, had a dramatic impact on the debate surrounding abortion and on the views of many laymen, as well as doctors, Churchmen and politicians.⁴⁶ Furthermore, although ALRA failed to capitalise on the episode, it spurred a younger generation of campaigners including Houghton, Diane Munday, a Labour Councillor in Wheathampstead, and Madeleine Simms, who soon became the Association's new leaders.⁴⁷ Thalidomide was perhaps the deciding influence on the direction of opinion in the early 1960s.⁴⁸ It compounded ongoing fears about the effects of maternal rubella (German measles) on babies, particularly on their sight and hearing. Research as early as 1941 pointed to the dangers to such pregnancies,⁴⁹ and the weight of evidence led Lord Denning informally to recommend, in a speech to King's College Hospital in 1956, that doctors performing abortions in such cases would be legally justified.⁵⁰ This was backed up by the British Medical Journal advising that psychiatric grounds would constitute justification for termination in such circumstances.⁵¹

⁴⁴ Alice Jenkins, Law for the Rich (London: Victor Gollancz, 1961).

⁴⁵ Hindell and Simms, *op.cit.*, p.134.

⁴⁶ *Ibid.*, p.108.

⁴⁷ Smith, *op.cit.*, p.103.

⁴⁸ Tim Newburn., Permission and Regulation: Law and morals in post-war Britain (London: Routledge, 1992) p.140.

⁴⁹ Hindell and Simms, *op.cit.*, p.19.

⁵⁰ Brookes, *op.cit.*, pp.150-152.

⁵¹ British Medical Journal, 27.2.60, pp.581-8.

These episodes highlighted the tragedy of unwanted pregnancy and the difficulty of separating completely medical and social reasons for abortion. The guilt-ridden acceptance by many doctors of abortion in such cases actually followed a period of gradual increase in the number of NHS abortions performed on therapeutic grounds, indicating that wider social consideration for mother, child and family were being accounted for by doctors.⁵² But even the public outcry engendered by such tragedies was insufficient to move the Government to include foetal abnormality as grounds for therapeutic abortion. Conservative ministers stood firm on easier abortion for foetal abnormality.⁵³

⁵² Brookes, *op.cit.* pp.152-153.

⁵³ *Ibid.*, p.143.

iv. Abortion law reform under Labour 1964-1967

With a re-invigorated ALRA the effect on public opinion of health scandals like the thalidomide tragedy, and then the election of a Labour Government in October 1964, abortion law reform achieved increasing public prominence from the early 1960s. Its prospects were also improved by the volume on law reform by Gerald Gardiner, the new Lord Chancellor and barrister Andrew Martin. The influence this publication had on politicians should not be underestimated.⁵⁴ Initially, little attention was paid by the newly elected House of Commons to reform concerning these issues of conscience, except for the final passage of an experimental abolition of capital punishment.⁵⁵ However, crucially, the Church of England radically modified its position in relation to abortion, after a decade of resolutely opposing all Private Members' Bills on abortion.⁵⁶ In autumn 1965 the Church Assembly Board for Social Responsibility published the results of its inquiry into abortion entitled Abortion: an ethical discussion.⁵⁷

This report, chaired by Ian Ramsey, Bishop of Durham, was highly influential. (This despite the reticence some members of the inquiry felt about its radical conclusions.⁵⁸) Although it attracted considerable criticism from reformers who considered its recommendations inadequate,⁵⁹ its timing (released after the Second Reading of Lord Silkin's first Bill in 1965, the text of which was appended to the report), and its moderation in relation to clauses on sexual assault, social conditions and deformity of the foetus, highlighted the unradical nature of Silkin's proposals.⁶⁰ On sexual assault the report was, however, in line with the Government views on the practicality of a rape clause and the sufficient protection given by therapeutic abortion in such cases.⁶¹ The essence of the

⁵⁴ Interview with Alistair Service, 12.4.00.

⁵⁵ HC Deb., vol. 716 cols. 408-66, 13.7.65.

⁵⁶ LPL, GFP/207, 40-44, 'report of a committee chaired by the Bishop of Exeter to consider certain recent Papal utterances on questions of moral theology', February 1958; GFP/266, 6, 'report of small expert committee... to consider the [Robinson abortion] Bill', 8.2.61.

⁵⁷ Church of England Board for Social Responsibility, Abortion: An ethical discussion (London: Church Information Board, 1965).

⁵⁸ LPL, RP/91, 216, Bentley to Steel, 17.12.66.

⁵⁹ Hindell and Simms, op.cit., p.94.

⁶⁰ Church of England Board for Social Responsibility, op.cit., pp.61-62.

⁶¹ PRO, CAB 130/275, MISC 102(66) 1st meeting, 18.1.66.

Anglican position was the conviction that the grounds for abortion should be centred solely on the health of the mother. This was not because they felt the decision should be taken solely by the doctor. A clause about maternal health could include wider environmental (social) factors. The Anglican bishops were walking a tight-rope between losing any abortion reform and risking the legalisation of abortion on demand.⁶²

Furthermore, the engagement into which the Anglican Church entered with the sponsors of abortion reform enabled them materially to influence the progress of debate on the issue on a number of fronts. The report clearly made Church authorities believe they had regained some of the initiative from ALRA, and that this pressure group would now compromise with the Church on some points in order to get a Bill passed after so many failed attempts, and in return the Church would benefit from their lobbying skills.⁶³ In an effort to maximise their influence on abortion the Bishops' informal whipping system was particularly important. At crucial stages of Bills, Robert Beloe arranged for Bishops attending Lambeth Palace to rush over to the Lords to "take over a number of heavy guns for the second wave of attack!"⁶⁴

The assumed monopoly of the Roman Catholic Church on religious doctrine on abortion was further eroded in the mind of the public and parliamentarians in 1966 by the support voiced for reform by the Free Church Federal Council⁶⁵ and the Methodist Conference at which the Labour peer, Lord Soper, Superintendent of the West London Mission, played a central part.⁶⁶ However, it would be a slight caricature to suggest the pattern of religious opinion and influence over the debate were so clear cut in terms of the isolation of Roman Catholic doctrine versus the rest. As Canon Bryan Bentley observed to Steel, there continued to be a considerable range of Anglican opinions on abortion which made one denominational line hard to determine.⁶⁷ Not only was the

⁶² LPL, RP/110, 67, Ramsey to Wilson, 5.7.67; RP/110, 133-134, Beloe to Ramsey, 16.10.67.

⁶³ LPL, RP/91, 81, Dunstan to Beloe, 21.12.65.

⁶⁴ LPL, RP/91, 107, Beloe to Ronald Williams, 31.12.65.

⁶⁵ 'Report of the Free Church Federal Congress report on abortion reform', British Weekly, 31.3.66.

⁶⁶ Methodist Recorder, 14.7.66.

⁶⁷ CMAC, SA/ALR A.15/9, Canon G. Bryan Bentley to Steel, 17.12.66.

Anglican Church divided, but Catholic doctrine did not remain wholly fixed. Many lay Catholics and their clergy began to take a lead from a softening of the Papal line on general moral issues. As noted enthusiastically by Diane Munday, now Vice-chairman of ALRA:

“recently there has been a great change in their approach to this – as to many other things – [Catholics] are accepting the basic immorality of forcing their beliefs on others who conscientiously [sic] hold different views...”⁶⁸

Neither were Roman Catholics by any means the most irrational defenders of religious morality. The fissiparous Scottish Churches included the Free Presbyterian Church of Scotland, which declared in the most misogynistic terms possible that:

“God has fixed [in women] compassionate feelings for the protection and preservation of her off-spring before as well as after their birth. Where these feelings are lacking, and the opposite tendency assert itself, it is always regarded as unnatural. This [Medical Termination of Pregnancy] Bill provides for the gratification of these unnatural desires.”⁶⁹

Such was the shifting religious atmosphere when a deputation from ALRA went to see the Home Secretary, Sir Frank Soskice, and his Minister of State, Alice Bacon, to discuss the prospects for reform in February 1965. Although Soskice indicated his support for limited reform on grounds of health, rape and cases of deformity like the Thalidomide tragedy, he opposed “complete legalisation”, in effect abortion on social grounds or decided by the woman. The deputation was stonewalled with excuses about lack of parliamentary time for the subject and the advice that:

⁶⁸ CMAC, SA/ALR H.15, ‘Memo on RC attitudes to abortion’, Diane Munday, 22.11.65.

⁶⁹ CMAC, SA/ALR A.15/9, Rev. D.B. Macleod, Convenor, Free Presbyterian Church of Scotland, Religion and Morals Committee, to Steel, ‘Protest re: Termination of Pregnancy Bill’, 2.5.67.

“the task of the ALRA was to crystallise public opinion in support of legislation. A rapid change of opinion could come about, as in the case of the abolition of capital punishment.”⁷⁰

This was a blatant misunderstanding of attitudes to both issues. As Glanville Williams pointed out in response, the abolition of hanging had proceeded way ahead of public opinion whilst abortion law reform waited despite a majority in favour.⁷¹

In June 1965 Renée Short introduced a Ten Minute Rule Bill drafted, as Kenneth Robinson’s 1961 Bill had been, by Glanville Williams, which would decriminalise abortion by a medical practitioner until the thirteenth week of pregnancy.⁷² William Hamilton, Labour MP for Fife, and Short also kept the issue alive by judicious questioning of Ministers.⁷³ This did finally elicit from Bacon the possibility that in the new Session the Government might look more favourably on a Private Member’s Bill on the subject.⁷⁴

However, the Government was not aching to court controversy whilst it still had such a precarious majority. The Cabinet, supported by advice from Burke Trend, the Cabinet Secretary, agreed at this stage to a neutral line on such matters, and that Private Members’ Bills should be left to “fare as best they can”.⁷⁵ The Bill’s progress was cut short by William Wells, Labour MP for Walsall, a Catholic,⁷⁶ who had sat on the Wolfenden Committee a decade earlier. Wells was to become one of the main campaigners in the Commons against reform in the following Session. Short and Hamilton continued to pursue the cause, putting down an Early Day Motion which collected 144 signatures, useful names

⁷⁰ CMAC, SA/ALR A.16/7, Confidential note of interview with the Home Secretary, deputation on abortion law reform, 2.2.65.

⁷¹ CMAC, SA/ALR A.16/7, note of interview..., 2.2.65.

⁷² HC Deb., vol. 714 cols. 254-8, 15.6.65.

⁷³ HC Deb., vol. 709 cols. 719-720, 25.3.65; HC written answers, vol. 712 col. 271, 20.5.65.

⁷⁴ HC Deb., vol. 715 cols. 1789-1790, 8.7.65.

⁷⁵ PRO, CAB 128/ 39 part3, CC(65) 64th conclusions, 25.11.65; PREM 13/1563, Trend to Wilson 5.5.65.

⁷⁶ HC Deb., vol. 714 cols. 258, 15.6.65.

of pro-reformers with which the increasingly active lobbyists of the ALRA could rally supporters during debates.⁷⁷

Pressure on the Government was increased during the following winter by a number of developments. Lord Silkin introduced an abortion Bill in the Lords in November 1965.⁷⁸ Silkin was undogmatic about the abortion issue, and this readiness either to accept amendments to his Bill, or consider a departmental inquiry, made opposition more difficult.⁷⁹ The Bill won a Second Reading by 77 to 8.⁸⁰ Simultaneously Simon Wingfield Digby, Conservative MP for Dorset West, introduced a Commons Bill.⁸¹ Parallel to these was the progress of similar Bills relating to homosexuality. However, the Government line of neutrality was not to be compromised by the granting of any extra time to such Bills even when a majority in either House showed the direction in which Parliament was thinking. As Trend advised the Prime Minister:

“The Government’s programme is over-full, however, and the Lord President [Herbert Bowden] will be reluctant to accept the proposition, sometimes advanced in discussion of measures raising controversial moral issues, that, if the House has shown itself willing in principle to amend the law, the Government should make an opportunity for it to do so.”⁸²

This second guessing by Trend of Bowden’s attitude (who never voted in any divisions on abortion) was an ominous foot-dragging sign of the Cabinet Secretary’s attitude to such Private Members’ Bills. However, the majority in the Lords for Silkin’s Bill strengthened the hand of reformers in Cabinet.

Roy Jenkins immediately pushed the Home Affairs Committee, to take a more benevolent view of the progression of private members’ bills relating to abortion,

⁷⁷ Hindell and Simms, *op.cit.*, pp.126-127.

⁷⁸ HL Deb., vol. 270 cols. 1139-1242, 30.11.65.

⁷⁹ LPL, RP/70, 217-219, note by Beloe of conversations in House of Lords, 25.11.65.

⁸⁰ HL Deb., vol. 270 col. 1242, 30.11.65.

⁸¹ HC Deb., vol. 725 cols. 837-56, 25.2.66.

⁸² PRO, PREM 13/1563 Trend to Wilson, 2.2.66.

homosexual law reform and theatre censorship at his first two successive meetings as Home Secretary,⁸³ following the reshuffle of 23 December in which the less reform-minded Soskice was relieved of his portfolio.⁸⁴ (Although Jenkins' role has been questioned by Hindell and Simms, he was undoubtedly crucial. This is most characteristically demonstrated by Jenkins' hosting of a party at the Treasury in November 1967 to celebrate the final success of Steel's abortion bill.⁸⁵) The Home Affairs Committee was chaired by Douglas Houghton, Chancellor of the Duchy of Lancaster and supervisory Cabinet minister for Health and Social Services whose wife, Vera, was a leading lobbyist for ALRA throughout the Parliamentary debates of 1965-1967. Houghton was as committed as his wife to abortion law reform.⁸⁶

Jenkins presented a paper to its members on 12th January 1966 in advance of the Committee stage debate of Silkin's Bill in the Lords' and Digby's Commons Bill which argued that continued strict neutrality after the Lords vote would indicate hostility to reform.⁸⁷ Much was made during the ensuing discussion about the maternal health issues. Once again, those who supported reform were forced to employ primarily judicial and medical arguments as at other times and in relation to other areas of reform. There was still considerable opposition within the Committee, which would countenance no more movement than a Ministerial indication that the Government would advise on the practicality of different amendments.⁸⁸

As a result of this discussion a Cabinet Committee, MISC 102, was formed, to discuss further the Government's position on the law on abortion. This met only once, on 18 January.⁸⁹ The list of its members is pertinent to its discussion of abortion. It was chaired by Houghton. Another key member Lord Gardiner, the Lord Chancellor, had been an adviser to ALRA during the 1950s, and had felt prevented from taking a more prominent role only by the marginal seat, Croydon

⁸³ PRO, CAB 134/2851 H(66) 1st meeting, 12.1.66; H(66) 2nd meeting, 26.1.66.

⁸⁴ PRO, PREM 5/439, '1965 Ministerial appointments', note by Mitchell, 13.12.65.

⁸⁵ Interview with Alistair Service, 12.4.00.

⁸⁶ Hindell and Simms, *op.cit.*, pp.82-3; Vera Houghton biography of Houghton.

⁸⁷ PRO, CAB 134/2852 H(66) 2, 10.1.66.

⁸⁸ PRO, CAB 134/2851 H(66) 1st meeting 12.1.66.

⁸⁹ PRO, CAB 130/275, MISC 102(66) 1st meeting, 18.1.66.

West, in which he was then a candidate.⁹⁰ He had also stated his personal support for abortion on social grounds in an interview before the 1964 election on the wider subject of Labour's plans for law reform,⁹¹ as well as co-editing a volume on legal reform which advocated abortion law reform (although including some system of voluntary sterilisation for defectives as well) in 1963.⁹² Kenneth Robinson and Roy Jenkins were the other noted supporters of reform on the Committee. Of the remaining members Attorney-General, Sir Elwyn Jones, was considered liberal, especially in relation to divorce and theatre censorship, and Judith Hart, Joint Parliamentary Under-Secretary of State for Scotland, represented a left wing, woman's viewpoint and voted assiduously for Steel's Bill in the 1966-7 Session.

Only Lord Longford, Leader of the House of Lords and Lord Privy Seal, and a Catholic, was avowedly anti-abortion. He was, however, unrelenting, describing Silkin as:

“an old man, a Jew, who had given up practising his religion and like such men radical in his views and not caring any longer about the family.”⁹³

It seems he was taking advantage of the slim Government majority to push, threatening to resign on the issue, and certain that the Government would therefore not assist Silkin's Bill.⁹⁴

Houghton had reported to Wilson the Home Affairs Committee's decision to maintain the Government's line of neutrality in the forthcoming debates if Digby's Bill went any further than merely putting existing case law on a statutory footing, as well as particular Catholic feeling on abortion and the personal position of Longford. Wilson had replied by suggesting a Royal Commission or other

⁹⁰ Hindell and Simms, *op.cit.*, p.80

⁹¹ *The Economist*, 28.3.64.

⁹² C.H. Rolph, 'Criminal Law', in Gerald Gardiner and Andrew Martin eds., *Law Reform Now* (London: Gollancz, 1963) pp.240-243.

⁹³ LPL, RP/70, 217-219, note by Robert Beloe of conversations in House of Lords, 25.11.65.

⁹⁴ LPL, RP/70, 217-219, note by Beloe..., 25.11.65.

committee of inquiry to look into the issue to form a basis of consensus for legislative proposals.⁹⁵ MISC 102, however, thought that such a move would look like prevarication in the face of considerable research and discussion by various bodies, and would commit the Government to act on whatever recommendations emerged. It was also a distraction from the immediate question of how the Government should respond to the two Bills in Parliament. Those in favour of an official Government inquiry advanced the view that the position of unmarried mothers and the relationship between large families and mental deficiency could be explored.⁹⁶ These were some of the concerns which have, since the Act, been cited as evidence of the aim to medicalise and transform control of women's reproduction, rather than give control to women themselves.⁹⁷ However, it was also pointed out that in the Committee's discussion "reform of the law would not, however, prejudice consideration of these important issues, and it would give at least some relief to unmarried mothers".⁹⁸

The Committee then considered the particular issues raised by two draft Bills, the first, Lord Silkin's Bill, containing amendments he proposed to introduce in Committee, the second by Lord Dilhorne, which merely gave statutory effect to existing case law.⁹⁹ This part of the discussion was particularly crucial, as argument over the scope of clauses of Bills introduced in both the Lords and the Commons nearly scuppered the whole issue. Throughout debates in the Upper House, Lord Dilhorne provided the main source of opposition to a number of points in the latest Glanville Williams-drafted Bill. He was particularly scathing about the proposed social clause and the provision for abortion in cases of rape, which were later narrowed and dropped respectively.¹⁰⁰

MISC 102 felt that a specific rape clause was impractical, but that, since sexual intercourse with a girl under sixteen was illegal, young girls would be protected,

⁹⁵ PRO, PREM 13/1563, Trend to Wilson, 2.2.66.

⁹⁶ PRO, CAB 130/275 MISC(66) 1st meeting, 18.1.66.

⁹⁷ Sheldon, *op.cit.*, pp.24-7.

⁹⁸ PRO, CAB 130/275 MISC(66) 1st meeting, 18.1.66.

⁹⁹ PRO, CAB 130/275 MISC(66) 2, 'The Law on abortion – Proposals for reform of the law', 17.2.66.

¹⁰⁰ HL Deb., vol. 272 cols. 605-634, 7.2.66.

and that, with the law on a statutory footing, doctors “would probably be readier to hold that to bear a child resulting from rape would be detrimental to the mother’s health”. Yet again, conservative opinion on the Committee objected that “it might be thought anomalous that a promiscuous girl of fifteen who had consented to intercourse should thereafter be able to have pregnancy terminated lawfully, while the 16-year-old victim of rape would not”. Not for the first or last time, opponents of abortion cried that it would encourage promiscuity among young girls. This fallacy was countered by the recognition that the Bill contained the safeguards of parental consent and confinement of operations to NHS hospitals.¹⁰¹ However, Lord Stonham, Home Office Minister in the Lords, when speaking against the rape clause in Silkin’s Bill, continued to pursue the line that it would encourage false allegations of rape to obtain an abortion.¹⁰²

The Cabinet Committee agreed, as both Bills now concurred, to advise the House of Lords that notification was desirable and that two doctors, one of whom was a consultant gynaecologist, must consent to the operation. The burden of proof in Silkin’s Bill was thought to be unworkably tight for the prosecution, and left the Home Secretary and the Law Officers to look for a better solution. Whilst considering the “total environment, actual or foreseeable” wording of Silkin’s social clause too vague, the Committee preferred that social concerns should be tied to the maternal health issue, and that in considering “whether there was serious risk of grave injury to the mother’s health, mental or physical, the doctors should be entitled to take into account “all circumstances, present or prospective, relevant to her physical or mental health”. On the questions of foetal abnormality and mental deficiency of the mother, Silkin’s less restrictive wording was considered more practicable.¹⁰³

Although MISC 102 was supposed only to be advising on the practicality of different proposals, it is difficult not to conclude from these deliberations that they were, in effect, coming to their own conclusions about the desirability and morality of different restrictions or reforms. The broad outcome of MISC 102’s

¹⁰¹ PRO, CAB 130/275, MISC 102(66) 1st meeting, 18.1.66.

¹⁰² HL Deb., vol. 272 cols. 545-6, 3.2.66.

¹⁰³ PRO, CAB 130/275, MISC 102(66) 1st meeting, 18.1.66.

meeting was reported to Wilson, or at least those parts relating to a Committee of Inquiry and the use of Parliamentary draftsmen to ensure workable legislation emerged.¹⁰⁴ At Cabinet on 3 February, continued neutrality was agreed, although Ministers would be allowed to express their sympathies either way (this was to have repercussions which would cause the Cabinet to rethink this policy¹⁰⁵), and the use of Parliamentary draftsmen was approved.¹⁰⁶

The Bill, which fell when Parliament was dissolved in February 1966, was considerably more restrictive than reformers had hoped. Yet the restrictions imposed by Dilhorne and his allies in the Lords closely resembled the proposals which were eventually to become law in the Abortion Act 1967. When Digby introduced his Bill in February 1966 it did indeed go further than putting existing case law on a statutory basis whilst incorporating some of the amendments which had been secured in the Lords to Silkin's Bill. A similar fate to that which befell Short's Bill the previous Session prevented its further progress (which would have been impeded in any case by the Dissolution of Parliament that month). Those responsible were two brothers, the Catholic Labour MPs Simon and Peter Mahon, members for Preston South and Bootle respectively, in the strongly Catholic areas of the North-west.¹⁰⁷

The beginning of the new Session brought an unprecedented opportunity for reformers to press their case. The 1966-7 Session, because of the timing of the General Election, was unusually long, lasting from April 1966 until autumn 1967. This meant that the time for debating private members' bills would be extended.¹⁰⁸ At this point both chance and personal proclivities decided the path for abortion reform. The ballot of members produced two possible sponsors: Edwin Brooks, Labour MP for Bebington, who immediately offered to introduce a Bill, had come seventh and David Steel, Liberal MP for Roxburgh, Selkirk and Peebles, had come third. Steel, the son of a presbyterian minister and missionary, spent some time deciding whether to promote abortion or homosexual law

¹⁰⁴ PRO, PREM 13/1563, Trend to Wilson, 2.2.66.

¹⁰⁵ See below at Chapter 8.iii, pp.301-305.

¹⁰⁶ PRO, CAB 128/41 part 1 CC(66) 5th Conclusions, 3.2.66.

¹⁰⁷ HC Deb., vol. 725 cols. 837-856, 25.2.66.

¹⁰⁸ Richards, *op.cit.*, p.99.

reform, after Willie Ross, the Scottish Secretary, flatly refused the co-operation of his department with a Border Development Bill.¹⁰⁹ The staunchly anti-abortion and anti-homosexual Ross might have thought twice about this considering the reform which Steel eventually sponsored.

Steel carefully gauged the opinion in his new constituency (he had won it from the Conservatives in a by-election only in March 1965). He announced in The Sun that he would welcome all suggestions about which reform he should champion.¹¹⁰ This produced the usual enormous postbag of advice and supplication from the rational to the insane which probably tipped the balance still further from homosexuality towards abortion. The most interesting aspect of these letters is the widespread view amongst Liberal supporters that Steel should not be pressurised into sponsoring a controversial measure that might cost him a valuable Liberal seat simply to satisfy Labour's reforming impulses, and that Labour MPs should be performing the task.¹¹¹ This was also a strongly held view among those Labour MPs who were reform-minded. Lena Jeger, MP for Holborn and St.Pancras South, writing in The Guardian in 1966 stated that:

“What worries me much more than the rightness or wrongness of this particular piece of legislation is the possibility that members of Parliament should accept sanctions in which they do not themselves believe for the sake of electoral considerations. A Government cannot govern by the counting of correspondence.”¹¹²

Home Office ministers, led by Jenkins, preferred Steel to take on homosexuality because it was a less complicated Bill for a private member to pilot through the House.¹¹³ However, Steel also took into account the opposition of the Church of Scotland to the Wolfenden proposals on homosexuality, he was, after all, a Presbyterian born and bred.¹¹⁴ He decided against taking up Lord Arran's Bill

¹⁰⁹ Hindell and Simms, op.cit., p.134.

¹¹⁰ The Sun, 19.5.66.

¹¹¹ CMAC, SA/ALR A.15/3, Steel Papers; letters from general public on what cause to adopt, May to June 1966.

¹¹² The Guardian, 'Pressure on MPs', 18.11.66.

¹¹³ David Steel, Against Goliath (London: Weidenfeld and Nicolson, 1989) p.61.

¹¹⁴ *Ibid.*, p.19.

which had recently passed the Lords, and plumped for abortion instead. This was despite the devious argument of Lord Arran that homosexuality, which had been approved by the Liberal Council, would not be a political albatross. He pointed to the fact that some MPs who had supported it, though not the Conservative Humphrey Berkeley, had survived the 1966 General Election.¹¹⁵ Steel himself refutes the idea that the abortion issue made much difference at the 1970 General Election, saying that the brouhaha caused by the South African Springboks' rugby tour was far more damaging.¹¹⁶ Alistair Service naturally emphasises the influence that ALRA's promise of a national organisation and lobbying skills had on Steel's decision.¹¹⁷

The second reading of Steel's Medical Termination of Pregnancy Bill was on 22 July 1966, and this first full-scale debate of abortion reform in the Commons attracted 32 MPs wishing to speak, prompting the Speaker to request short speeches, then an unusual step as Peter Richards points out.¹¹⁸ Although the cause of abortion reform attracted greater natural sympathy within the Commons than reform of homosexuality, as can be seen from Steel's majority of 194 on Second Reading,¹¹⁹ the Bill's path was considerably more tortuous than that of Abse's Sexual Offences Bill, running pretty much parallel to it. This path has been minutely recounted in Keith Hindell and Madeleine Simms' definitive book on the first three decades of ALRA (where Simms was Press Officer) until the Abortion Act.¹²⁰

This was in part because there was a credibility gap which existed between reform measures which were supported by the recommendations of an independent committee of inquiry, such as homosexuality (by Wolfenden) or abolition of theatre censorship (by a Joint Select Committee of Parliament in 1966¹²¹) and those which did not, like abortion. This became crucial during the

¹¹⁵ Hindell and Simms, *op.cit.*, pp.155-156; Leo Abse, Private Member (London: Macdonald, 1973) p.222.

¹¹⁶ Steel, *op.cit.*, pp.80-81.

¹¹⁷ Interview with Alistair Service, 12.4.00.

¹¹⁸ Richards, *op.cit.*, p.99; Tony Benn, Out of the Wilderness: Diaries 1963-1967 (London: Hutchinson, 1987) 22.7.66, p.460.

¹¹⁹ HC Deb., Vol. 732 cols. 1166, 22.7.66.

¹²⁰ Hindell and Simms, *op.cit.*, pp.132-213.

¹²¹ Report of the Joint Select Committee on Censorship of the Theatre (London: HMSO, 1966).

Committee stages of Bills, contrary to MISC 102's conclusion that "since the facts [on abortion] were known and the issues had been considered at length by a variety of bodies" such an inquiry was superfluous.¹²² (The failure of William Hamling's Sunday Observance Bill in the 1968-1969 Session despite the recommendations of the Crathorne Committee points to other deciding factors.¹²³)

With conflicting interests not filtered out by such an inquiry, they were brought as myriad amendments to Steel's Bill in numerous attempts to improve, tighten, neuter, and scupper it. These concentrated mainly on the issue of medical independence and control of abortion and the 'social' or environmental exemptions under which abortion would be allowed.¹²⁴ As with similar measures, there was little discussion of public morality or permissiveness, even from opponents of reform, except in relation to the proposed rape clause which had been excluded from Silkin's previous Bills and opposed by MISC 102.¹²⁵ Furthermore, as Sally Sheldon has argued, women's control of their own fertility was a minor concern, especially that of unmarried mothers who were considered more in terms of their position as minors, victims and "tarts".¹²⁶

The Government's line of neutrality can be seen to have been compromised in a number of ways on the abortion issue. Firstly majorities on MISC 102, Home Affairs Committee and the full Cabinet all supported going further than merely putting existing case law on the Statute Book.¹²⁷ Importantly neither Silkin nor Steel felt strongly committed personally on particular clauses in their Bills. This meant that they were potentially far more susceptible to pressure from the Government, opposition in Parliament and the influence of outside lobbies.

¹²² PRO, CAB 130/275, MISC 102(66) 1st meeting, 18.1.66.

¹²³ See Chapter 7.ii, pp.285-286.

¹²⁴ For example, HC Standing Committee F, vol. X, 5th sitting, cols. 225-9, 15.2.67.

¹²⁵ HC Standing Committee, vol. X, 7th sitting, cols. 311-360, 1.3.67.

¹²⁶ Sheldon, *op.cit.*, pp.35-46.

¹²⁷ PRO, CAB 130/275, MISC 102(66) 1st meeting, 18.1.66; PRO, CAB 134/2851 H(66) 1st meeting, 12.1.66; Interview with Lord Jenkins, 25.11.00.

v. The Government tight-rope

As with other reforms key Ministers – Jenkins at the Home Office, Robinson at Health, Crossman as Leader of the Commons and John Silkin (son of Lord Silkin) as Chief Whip – ensured that facilities for the Bill were provided to an unprecedented degree for a private Bill. However, in discussion of particular clauses of Silkin’s and Steel’s Bills it is clear that Ministers were not simply judging them on their practicability, but also on the weight of opinion in Parliament and the general public, as well as on their personal proclivities. Controversy caused by declarations by ministers, especially those with relevant departmental responsibilities, during the abortion debates led directly to a redrafting of the rules governing ministers’ personal speeches on Private Members’ Bills by ad hoc Cabinet Committees later in 1967¹²⁸ and again in 1968.¹²⁹

During the Second Reading debate, Jenkins’ eloquent declaration of his own views on abortion followed immediately his Ministerial declaration of the Government’s neutrality, with the *caveat* that assistance would be given to the Bill in drafting in order to give practical effect to whatever the considered decisions of the House might be.¹³⁰ Hindell and Simms’ description of the Government’s “stated” position as “benevolent neutrality” is a misnomer.¹³¹ Benevolence would imply a value judgement of the Bill, whereas the Government, throughout the Parliament, and on all such measures, maintained a strict line of neutrality. Whether that line was breached in practice is another matter, but the declared line was not benevolence. Previously, during the Committee stage of Lord Silkin’s first Abortion Bill in the previous Session, Lord Stonham, speaking for the Home Office, commenting on the protracted discussion of an amendment put down by Lord Dilhorne removing the rape clause 1(d) from the Bill, failed to distinguish his own views from those of the

¹²⁸ PRO, CAB 130/329, MISC 130 1st meeting; see below at Chapter 8.iii.

¹²⁹ PRO, CAB 130/380, MISC 202 1st meeting, 11.3.68.

¹³⁰ HC Deb., vol. 732 cols. 1140-1146, 22.7.66.

¹³¹ Hindell and Simms, *op.cit.*, p.163.

Government and went further than had been agreed he should by MISC 102¹³².

That meeting had decided that:

“It was not thought practicable to make any special provision for cases of rape, but it was thought that with the law on a statutory basis doctors would probably be readier to hold that to bear a child resulting from rape would be detrimental to the mother’s health”.

Whilst it was mentioned that a rape clause might encourage promiscuous young girls to make false allegations of rape, that was not the basis on which the Committee decided against the provision. Rather, the desire not to curb the medical discretion of doctors, and the legal difficulties were the main reasons.¹³³ Stonham, however, included the fear of encouragement to amorality and slander in his ministerial disquisition on the merits of the rape clause.¹³⁴ Furthermore, supposedly supportive, liberal Labour MPs on the Committee were seduced by such moralistic arguments. Dr David Owen, MP for Plymouth Devonport from 1966, did not confine himself to medical expertise on this subject, and was openly sceptical about the motives of some women.¹³⁵ Steel recalls that Owen “did not join the [pro-reform] team but supported it in the way he thought best.”¹³⁶

In contrast to Stonham’s inconsistent, and strictly speaking improper, ministerial interventions, Alice Bacon, Minister of State at the Home Office, trod a dispassionate and legalistic path during the Committee Stage of the Steel Bill, especially when advising on the same rape provision which had provoked her counterpart in the Lords.¹³⁷ However, Bacon’s reluctance, or inability, in Committee to pronounce for the Home Office on whether amendments would in fact incorporate the substance of the original clause 1(c) and satisfy the intention of the Bill to “amend and *clarify* the law” (emphasis added) was criticised by

¹³² HL Deb., vol. 272 col. 545-6, 3.2.66.

¹³³ PRO, CAB 130/275, MISC 102(66) 1st meeting, 18.1.66.

¹³⁴ HL Deb., vol. 272 col. 545-6, 3.2.66.

¹³⁵ HC Deb., Standing Committee F 1966-1967, vol. X, 5th sitting cols. 239-240, 15.2.67.

¹³⁶ Steel, op.cit., p.357.

¹³⁷ HC Deb., Standing Committee F 1966-1967, vol. X, 7th sitting cols. 331-2, 1.3.67.

other members of the Committee, and later by Hindell and Simms.¹³⁸ In her defence, however, the position of the Home Office was a delicate one because the Bill was not Government legislation. As it was pointed out in a discussion at Home Affairs Committee in March 1967 the department

“was placed in the difficult situation of acting as technical adviser and channel of communication, without having any responsibility for the Bill’s content. The proceedings of Standing Committees on such Bills suffered from the lack of clear departmental guidance...”¹³⁹

This lack of clarity from the Government was compounded by the difference of opinion between Bacon and Julian Snow, Parliamentary Under-Secretary at the Ministry of Health, over Abse’s ‘consultant clause’. This amendment, supported by the BMA and the RCOG,¹⁴⁰ would have restricted those doctors licensed to perform abortions to consultant gynaecologists. Snow had inspired the amendment on the grounds of safety for women and discouragement of profiteering.¹⁴¹ Bacon demurred, although she did not vote in the division, and this confusion meant that the amendment was only lost by two votes.¹⁴² Even more confusingly, Home Office Parliamentary Under-Secretary, Dick Taverne, had earlier written to Steel saying that “there was something to be said for the consultant clause”.¹⁴³

As the time for the Committee Stage of Steel’s Bill finally approached, the key Government Ministers began to exert their influence more profoundly. Dick Crossman, having taken over from the elderly Bert Bowden as Lord President and Leader of the Commons, took action to rescue the Bill from its first threatened collapse from starvation of the oxygen of parliamentary time. The two Bills preceding Steel’s in the order of debate, especially the Employment

¹³⁸ HC Deb., Standing Committee F, vol. X, 7th sitting, cols. 331-332, 1.3.67; Hindell and Simms, *op.cit.*, pp.183-4.

¹³⁹ PRO, CAB 134/2854, H(67) 8th meeting, 17.3.67.

¹⁴⁰ *BMJ*, 31.12.66.

¹⁴¹ HC Deb., Standing Committee F, vol. X, 8th sitting, cols. 393-406, 8.3.67; 9th sitting, 15.3.67, col.422; Service Papers, Snow to Mrs M. Vaughan, ALRA, 6.3.67.

¹⁴² HC Deb., Standing Committee F, vol. X, 9th sitting, cols. 413-440.

¹⁴³ CMAC, SA/ALR A.15/5 Dick Taverne to David Steel, 20.6.66.

Agencies Bill had consumed much of this oxygen by the Christmas recess in 1966, so the Government business managers resorted to moving the Termination of Pregnancy Bill to Standing Committee F, usually reserved for Government legislation,¹⁴⁴ a tactic which was later used for the Theatres Bill.¹⁴⁵

Curiously Silkin did not, it seems, exert his influence on the House of Commons Committee of Selection for the Committee Stage of the Bill. Renée Short certainly leaned on the committee's Chair to this end,¹⁴⁶ though to little effect. According to Hindell and Simms' analysis, despite the heavy vote on Second Reading, Catholics were over-represented by their three members.¹⁴⁷ However, governments were never willing to concede that places on committees should ever be allocated denominationally.¹⁴⁸ There were five moderate sceptics who voted in the 'Aye' lobby on Second Reading to facilitate further debate, for example Bill Deedes, Conservative MP for Ashford.¹⁴⁹ However, this seems a rather unfair judgement as the Selection Committee could not be expected to know that four of the members who had abstained on Second Reading would turn out to vote consistently against the Bill in Committee.

It took twelve sittings to complete the Bill's Committee stage. Although this was not unusual, Abse remarked that Steel and his supporters had created many of their own difficulties in Committee by tabling too many amendments *ad hoc* and without proper co-ordination with supporters,¹⁵⁰ contrary to the popular view that Steel was particularly skillful in his handling the Bill.¹⁵¹ Abse's opinions can partly be attributed to his opposition to abortion and his jealous guarding of his reputation as a sponsor of Private Members' Bills. In any case, the Bill emerged amended but intact on 5 April 1967.

¹⁴⁴ Richards., *op.cit.*, p.111.

¹⁴⁵ See Chapter 6.i, pp.268-269.

¹⁴⁶ Service Papers, Short to Service, 9.12.66.

¹⁴⁷ Hindell and Simms., *op.cit.*, p.180.

¹⁴⁸ PRO, HO 300/13, C.M. Woodhouse to Henry Brooke, 5.9.62; See below at Chapter 7.ii.

¹⁴⁹ HC Deb., Standing Committee F, vol. X, 1st sitting, cols. 1-2, 18.1.67.

¹⁵⁰ Abse, *op.cit.*, p.227.

¹⁵¹ BLPES, HC/AT 7/28b, Abse to Antony Grey, Secretary, HLRS, 1.4.67; Interview with Lord Jenkins, 25.11.99.

However, concerted Government efforts to assist the full discussion of the Bill were still necessary, and involved Ministers in further complicated disagreement about two particular clauses and amendments which had been tabled for the Report Stage, and whether the Bill should be given sufficient parliamentary time to complete the Report Stage and Third Reading. The first occasion for disagreement was at Cabinet on 11 May. In a general discussion about which, if any, of the current crop of Private Members' Bills should be given extra time Steel's abortion Bill was the main supplicant. According to Hindell and Simms the main objectors to the Bill were Longford (of course), Anthony Greenwood (Minister of Housing and Local Government), Ray Gunter (Minister of Labour) and Ross (again no surprise). Apart from distaste for the actual content of the Bill, they recall the opponents' arguments as being:

“[they] considered that it might be an electoral liability... Labour might acquire a permissive, not to say, beatnik, image which would not go down well in the provinces. In any case abortion was not important enough to be worth valuable government legislative time.”¹⁵²

The Cabinet minutes merely record that it was put that it would be:

“invidious to facilitate the progress of some Private Members' Bills and not others and it was desirable to avoid creating an expectation that, if a Bill made reasonable progress in the House of Commons or were passed in the House of Lords, the Government would give sufficient time to enable it to reach the Statute Book.”¹⁵³

The minutes confirm that the opponents of the Bill feared that it would alarm some sections of the country, and that the Government should not give the impression that it was in favour of the Bill. However, the precise composition of this oppositionist phalanx is unclear. Neither Crossman nor Castle mentions this

¹⁵² Hindell and Simms, *op.cit.*, p.196.

¹⁵³ PRO, CAB 128/42 part 2, CC (67) 30th Conclusions, 11.5.67.

discussion in their diaries, and other attenders at the 11 May meeting are not sure of Gunter's or Ross's position.¹⁵⁴

The delicacy of the position moved Wilson to accommodate Longford by suspending the rule, which he himself had introduced in 1964, by which only the chairman of a Cabinet Committee could decide whether an item on which there was some dissent from the majority should be brought to full Cabinet for further discussion.¹⁵⁵ The Prime Minister instructed that, after the Home Affairs Committee had discussed amendments to Steel's Bill the following day, the Legislation Committee should consider the issue of granting extra time for its debate.¹⁵⁶ Despite concern about Catholic opinion both within the Government and in his own constituency of Huyton, Wilson realised that the abortion issue would be raised every session until it had been settled, and that extra parliamentary time was therefore necessary.¹⁵⁷

Longford again proposed restrictions on the qualifications of doctors performing abortions at Home Affairs Committee on 12 May, this time to either a consultant in the NHS or those specially approved by the Minister of Health. Robinson firmly rejected this, saying that this would be "a most undesirable precedent".¹⁵⁸ Changing the Ministry of Health line that had been given by his junior Minister, Snow, during the Committee Stage. The Committee was, however, concerned about the inclusion in the Bill of the World Health Organisation's (WHO) definition of health, which they, and importantly the medical organisations, considered too broad. On this point at least the Government had been consistent since the introduction of Steel's Bill the previous year.¹⁵⁹ It could not, Robinson argued, insist that the Bill's sponsors should remove this definition of health, but it should be pointed out to them that it would "antagonise" supporters

¹⁵⁴ Interview with Lord Jenkins, 25.11.99.

¹⁵⁵ Amy Baker, *Prime Ministers and the Rule Book* (London: Politico's, 2000) p.30.

¹⁵⁶ PRO, CAB 128/42 part 2, CC(67) 30th conclusions, 11.5.67.

¹⁵⁷ Crossman, *Diaries of a Cabinet Minister: vol.2 Lord President of the Council and Leader of the House of Commons 1966-1968*, (London: Hamish Hamilton and Jonathan Cape, 1976) 5.7.67, p.410.

¹⁵⁸ PRO, CAB 134/2854, H(67) 14th meeting, 12.5.67.

¹⁵⁹ CMAC, SA/ALR A.15/5, Taverne to Steel, 20.6.66.

of social grounds for abortion, and jeopardise the Bill's passage. More pointed was his advice that:

“They might be told that the Home Secretary and the Minister for Health were prepared to vote for the proposed amendment of clause 1(a) [taking account of the mother's total environment] but could not vote for the WHO definition. It was for consideration in light of the discussion with the sponsors of the Bill whether Ministers should not merely refrain for [sic] voting for the WHO definition if pressed but vote against it.”¹⁶⁰

The loss of personal support from Jenkins and Robinson would undoubtedly have killed the Bill, and Steel sensibly followed the Government's preferred line.¹⁶¹ The Legislation Committee's meeting on 30 May rehashed the arguments that had been made at various ministerial fora since 1965. Longford, pressed hard for no time to be given to Steel's Bill, citing recent correspondence in The Times from the Archbishops of Canterbury and York and the Bishops of London and Durham, and the RCOG,¹⁶² the outrage to Catholic opinion, and the precedent that would be set by which sponsors of Private Members' Bills would expect time to be given if their Bills made sufficient progress in Parliament. In addition he made the rather disingenuous argument that if the Bill fell, a better drafted measure could be introduced in the following Session, and that Cabinet should be given the opportunity to discuss the policy issues involved.¹⁶³ These were rather desperate moves on his part, since he opposed outright any relaxation of abortion law, had no intention of allowing a Bill to pass in any Session and was arguing that the Government should not be seen to commit itself on the policy issues.

Longford was the only minister pursuing the Bill with any vigour.¹⁶⁴ Other Ministers put strongly the case for giving the abortion Bill more time in order to settle the issue, rather than effectively kill it, as the Conservative administration

¹⁶⁰ CMAC, SA/ALR A.15/5, Taverne to Steel, 20.6.66.

¹⁶¹ PRO, CAB 134/2956, LG(67) 15th Meeting, 30.5.67.

¹⁶² PRO, CAB 134/2956, LG(67) 15th Meeting, 30.5.67; The Times, 24.5.67.

¹⁶³ PRO, CAB 134/2956, LG(67) 15th Meeting, 30.5.67.

¹⁶⁴ Interview with Lord Jenkins, 25.11.99.

had done to previous Bills. They were clearly tiring of the Lord Privy Seal's dogged determination not to give abortion law reform any quarter by trying to take the policy issues to full Cabinet, despite the fact that Home Affairs had already discussed them at length. As Crossman recorded in his diary:

“He [Longford] made the most menacing speech and when I pointed out that Cabinet was neutral he shouted, ‘Neutral be blowed. You have all the hierarchy against you. I warn you of it.’”¹⁶⁵

However, the new principle of allowing Parliament to decide on important social questions was considered crucial, countering Longford's claim that a distinction should be made between this Bill and the commitment which had been made, and honoured, to give time to consider fully the issue of capital punishment.¹⁶⁶

Crossman replied in this vein to a question by Steel on 1 June, saying:

“This is solely concerned with the House of Commons having spent so much time that we think it vital that we should come to a decision one way or another.”

He reinforced this reasoning by linking the abortion Bill to Abse's bill on homosexuality, on which Parliament had also spent considerable time.¹⁶⁷ In a rather sham attempt to prove the Government's neutrality, Crossman and Silkin left the House as soon as debate began on Thursday 29 June in order to keep “my management above suspicion”.¹⁶⁸ Longford, of course, chose to ignore the pledges made by many Ministers, including the Prime Minister in a speech to the Law Society in 1964, to allow Parliament to have the opportunity to decide on such issues.¹⁶⁹ However, he was allowed to exercise the latitude given him by Wilson to refer the matter back to Cabinet, despite the majority on the Committee for giving time to Steel's Bill.¹⁷⁰

¹⁶⁵ Crossman, *op.cit.*, 30.5.67, p.357.

¹⁶⁶ *Ibid.*

¹⁶⁷ HC Deb., vol. 747 cols. 260-261, 1.6.67.

¹⁶⁸ Crossman, *op.cit.*, 30.6.67, p.403.

¹⁶⁹ See Chapter 8.i, p.287; Labour Party Research Department, Twelve Wasted Years (London: Labour Party, 1963) p.297.

¹⁷⁰ PRO, CAB 134/2956, LG(67) 15th Meeting, 30.5.67.

The familiar arguments were deployed once again at full Cabinet on 1 June, with Longford adding the weight of opinion demonstrated by the petition of over 500,000 signatures organised by SPUC. Ross said that he opposed the Bill on the grounds that the law in Scotland, where there were fewer prosecutions for illegal abortion, was satisfactory.¹⁷¹ (Steel had, at one point, to reject the idea put forward by the Earl of Dalkeith MP, Secretary of State for Scotland from 1962-1964, that Scotland should be omitted from the Bill, both because of the anomaly that would be created and the absurdity of a Scottish MP introducing a Bill which would apply only to England and Wales.¹⁷²) The rather cynical point was made that:

“the issue was not of such outstanding importance that the Government, who had already thought it right in the national interest to take measures which attracted public criticism, need feel bound to risk further criticism in order to give an opportunity for the Bill...”¹⁷³

Jenkins, no doubt heartily sick of Longford’s diatribes against the Bill, corrected the false impression given that the medical organisations were against the Bill because the Government had rejected a qualification restriction on doctors performing abortions. He did, however, concede that Ministers should vote against the Bill on Third Reading if the amendments which he had persuaded Steel to accept were defeated, and said that it would be unfortunate if many Ministers voted against these amendments, since the Government had pressed them on the basis of making the Bill workable. It was suggested, not unreasonably, and with a simplicity that was too disarming for abortion’s opponents, that the mere fact that there was a free vote on which Ministers, and not just backbenchers would vote in different lobbies, demonstrated the Government’s neutrality. Cabinet agreed to give the Bill a night to complete its final Commons stages.¹⁷⁴

¹⁷¹ PRO, CAB 128/42 part 2, CC(67) 35th Conclusions, 1.6.67.

¹⁷² HC Deb., Standing Committee F, vol. X, 9th sitting, 15.3.67, cols. 441-459.

¹⁷³ PRO, CAB 128/42 part 2, CC(67) 35th Conclusions, 1.6.67.

¹⁷⁴ PRO, CAB 128/42 part 2, CC(67) 35th Conclusions, 1.6.67.

In the Commons before this all-night session, Crossman was asked by Hamilton whether, if this time proved insufficient, the Government would provide further facilities to complete the last stages of the Bill.¹⁷⁵ As he admitted, this caught him unawares, because Steel's supporters had been told, allegedly by Jenkins' Parliamentary Private Secretary, Tom Bradley, that the following Monday would be given if necessary. Crossman accused Jenkins of "throwing his weight around a bit and trying to decide the allocation of parliamentary time"¹⁷⁶. Stones and glasshouses come to mind.

When this proved insufficient, Cabinet had, once again, to decide the Bill's fate. This time there seems to have been greater agreement that the Bill should be given as much time as necessary in order to forestall any further filibuster.¹⁷⁷ This supports Hindell and Simms' assertion that the Government had been persuaded of the PLP's support for the measure by the maintenance of large votes from Labour MPs during the inconclusive all-night sitting of 29th June.¹⁷⁸ There were also repeated appeals made by sympathetic MPs to the business managers at PLP meetings during June and July.¹⁷⁹ Crossman and Silkin had already discussed the possibility of postponing the parliamentary recess for a week to complete the Bill.¹⁸⁰ Wilson wobbled again, but was stiffened by Callaghan, who reminded him that abortion would haunt the Government until it was settled, and Longford's last "comical intervention" was thwarted¹⁸¹.

The extensive wrangling over parliamentary time for the abortion and homosexual Bills before Parliament prompted the suggestion at Cabinet that the Government should consider the reform of the drafting procedure for such legislation and the provision of time for them.¹⁸² The Government's double-bind, in which their neutral position was allegedly abandoned whatever decision they

¹⁷⁵ HC Deb., vol. 748 col. 1964, 22.6.67.

¹⁷⁶ Crossman, *op.cit.*, 22.6.67, pp.292-294.

¹⁷⁷ PRO, CAB 128/42 part 2 CC(67), 45th Conclusions, 6.7.67.

¹⁷⁸ Hindell and Simms, *op.cit.*, p.197.

¹⁷⁹ For example, NMLH, PLP, 4.7.67.

¹⁸⁰ Crossman, *op.cit.*, 4.7.67, pp.408-409.

¹⁸¹ B. Castle, The Castle Diaries 1964-1970 (London: Weidenfeld and Nicolson, 1984) 6.7.67, p.274.

¹⁸² PRO, CAB 128/42 part 2 CC(67), 45th Conclusions, 6.7.67.

took, had been resolved, and Jenkins defended the Government's strategy for allowing Parliament to come to a final decision. Unlimited time was provided for the abortion Bill after normal business on Thursday 13 July.¹⁸³ However, the business managers' unofficial threat to the opponents of the Bill that an open-ended sitting would be provided would, as Crossman admitted, never have been accepted by Cabinet.¹⁸⁴

Crossman's is the most candid account of the Government's back-room support for the Bill. Hansard records him as maintaining the Government line of neutrality, playing the Government's cards close to its chest, and not promising unlimited time to complete the Bill's Report stage until absolutely necessary, despite the goading of William Hamilton on this point.¹⁸⁵ The granting of Government time was, Crossman felt, a "House of Commons matter", which did not entail a commitment of principle.¹⁸⁶ However, suggestions of an organised filibuster at this stage would, the Leader of the House agreed, have to be included in the consideration of extra time for completion.¹⁸⁷ As Crossman recorded in his diary:

"if... I get up to say that the Government can give no more time for the Abortion Bill I will be knifed in the back by 160 daggers within seconds. Yet constitutionally the argument would be perfectly respectable."¹⁸⁸

Crossman admitted that the extra time had "pulled us off our neutrality fence. The Government will be pushing the Bill through and will get the credit or discredit for it."¹⁸⁹ At Business Questions he clung to "the fig-leaf of neutrality", as John Boyd-Carpenter, Conservative MP for Kingston-upon-Thames, described it.¹⁹⁰ This was made all the more embarrassing by the "resounding cheer from our own side organised by Douglas Houghton as a response to the

¹⁸³ PRO, CAB 128/42 part 2 CC(67), 45th Conclusions, 6.7.67.

¹⁸⁴ Crossman, *op.cit.*, 13.7.67, p.426.

¹⁸⁵ HC Deb., vol. 747 cols. 260-261, 1.6.67; vol. 748 col. 1964, 22.6.67..

¹⁸⁶ HC Deb., vol. 749 col. 759, 29.6.67.

¹⁸⁷ HC Deb., vol. 749 col. 757, 29.6.67.

¹⁸⁸ Crossman, *op.cit.*, 4.7.67, p.409.

¹⁸⁹ Crossman, *op.cit.*, 6.7.67, p.411.

¹⁹⁰ HC Deb., vol. 749 col. 1996, 6.7.67; Crossman, *op.cit.*, 6.7.67, p.412.

announcement of the all-night sitting”.¹⁹¹ However, it would seem from the records of the PLP that there was also a small number of opponents of abortion who questioned the Government assistance to the Bill at Party meetings right up to this point.¹⁹² In the end Greenwood remained the only Cabinet Minister to vote against the Bill on Third Reading, but was joined in the ‘No’ lobby by six other Ministers including, most notably, Shirley Williams (Minister of State at the Department of Education) and Bob Mellish (Minister for Public Building and Works), both of whom were Roman Catholics.¹⁹³

This, as one might suspect, was not the end of the story. When the Bill returned to the Lords after the summer recess, Dilhorne and his supporters re-introduced a consultant clause and an amendment removing reference to the woman’s “existing children” which were passed by the House (before being reversed in October in the dying days of the Session). This threatened an unprecedented constitutional crisis. In a letter to the Daily Telegraph, the Marquess of Salisbury argued that there was a distinction between government legislation (which the Salisbury Doctrine of 1945 conceded that the Lords should not seek to frustrate) and Private Members’ Bills, and that the sponsors of the abortion Bill would be wise to accept the Lords’ amendments.¹⁹⁴ In a furious reply to this Lord Silkin refuted these claims saying:

“No such distinction is made in the Parliament Act... There can be no doubt that it was the will of the Commons that the Bill should go forward without the amendments passed by the Lords... to insist upon these amendments against the will of the Commons surely involves a constitutional issue which may have far-reaching effects on the House of Lords.”¹⁹⁵

¹⁹¹ Crossman, *op.cit.*, 6.7.67, p.412.

¹⁹² NMLH, PLP, 22.6.67; PLP, 6.7.67.

¹⁹³ HC Deb., vol. 732 col. 1166, 22.7.66; vol.750 col.1385-1386, 13.7.67.

¹⁹⁴ Daily Telegraph, 5.8.67.

¹⁹⁵ Daily Telegraph, 11.8.67.

Whilst the Government was appalled at the prospect of a clash between the two chambers occurring over an issue like abortion,¹⁹⁶ Crossman had had to admit that the Parliament Act could be invoked in such a case.¹⁹⁷ In order not to entangle the imminent proposals on House of Lords reform with the abortion Bill, the Government decided to prepared the ground on the former measure with Opposition leaders to prevent them using the impasse as ammunition in the abortion debate in the Lords.¹⁹⁸ According to Crossman, however, embittered by his defeat in Cabinet and Parliament on abortion, Longford had already leaked the Government plans to the Conservatives.¹⁹⁹ Had the fluid attendance of so many peers not reversed the anti-abortion majorities then a crisis might have resulted which, personally, Crossman was starting to relish.²⁰⁰

Significantly for the future implementation of the Bill, Dilhorne and his allies, who had been grappling with the concept of relative risk to the health of the mother, introduced the wording allowing abortion if:

“...the continuance of the pregnancy would involve risk... greater than if the pregnancy were terminated.”²⁰¹

Their motivation was to allow doctors a clearer basis on which to reach their medical judgement about the need for an abortion. However, the implications of this, considering the increasing safety of the abortion operation, were not immediately realised by the Bill’s opponents. Despite Summerskill pointing out the effects of the amendment, Dilhorne ignored it and Lord Waverley used misleading statistics based on those women who were currently seen in hospitals for abortion, and were thus usually having abnormal pregnancies, to dismiss her claim. The Government spokesman did not even comment on the far-reaching amendment.²⁰²

¹⁹⁶ Crossman, op.cit., 17.10.67, p.522.

¹⁹⁷ Ibid., 26.7.67, p.444.

¹⁹⁸ Ibid., 17.10.67, p.522.

¹⁹⁹ Ibid., 24.10.67, p.532.

²⁰⁰ Crossman, op.cit., 29.10.67, p.539.

²⁰¹ Abortion Act, 1967, 1(1)(a).

²⁰² HL Deb., vol. 285 cols. 1471-2, 23.10.67.

The eleemosynary verdicts passed on the difficult passage of the Bill masked considerable disquiet about the confusion which reigned during the Commons stages. As A.J.E. Brennan, Assistant Secretary (Criminal Department) at the Home Office commented, Steel's "inexperience had led to a rather botched up Bill... because he had not stuck to one line all through".²⁰³ Leo Abse blamed the "ham-handed" spinsters from ALRA,²⁰⁴ but this might reasonably be attributed to the impossibility of reaching a general consensus on abortion. Service admits more experience of piloting a Bill would have given Steel and ALRA a marginally better Act.²⁰⁵ However, the complexity of the abortion issue, as with divorce law reform, and the implications for the NHS and wider Government health policy are indications that this was perhaps unsuitable for a private member's bill.

²⁰³ LPL, RP/110, Beloe to Ramsey, 10.8.67.

²⁰⁴ BLPES, HC/AT 7/28a, Abse to Antony Grey, 10.3.67.

²⁰⁵ Interview with Alistair Service, 12.4.00.

vi. Outside Pressure: ALRA and the anti-abortion lobbyists:

The sudden quickening of the pace of Parliamentary reform in 1965 meant an explosion of activity on the part of ALRA in terms of lobbying MPs and Ministers, assisting with drafting amendments and public meetings.²⁰⁶ Much of its growing income now financed surveys from NOP covering, apart from the views of the general public, the division of opinion among doctors and both Catholic, Protestant and non-Conformist clergy.²⁰⁷ The results of these opinion polls plainly gave the lie to claims that the public was not ready for reform (Soskice's position), that the medical profession was lukewarm, that general opposition was not wholly Roman Catholic or even that Roman Catholics were solidly opposed to legal abortion.²⁰⁸

In July 1966 an NOP survey revealed that 75% of women favoured easier legal abortion, only 20% were opposed.²⁰⁹ In 1965 NOP found that 66% of doctors agreed with the provisions contained in the Steel Bill or thought them too restrictive, whilst only 10% were totally opposed to abortion.²¹⁰ NOP also demonstrated that Catholic women were no less likely to have had an abortion than other women,²¹¹ and that 44% of Catholic women surveyed in March 1967 supported abortion "if the woman is unable to cope with any more children".²¹² However, a note of caution should be entered here. These surveys also threw up some highly dubious statistics. For instance whilst 30% of women surveyed by NOP in July 1966 thought "women alone" should make the decision whether or not to have an abortion, 52% thought that "no one else should be consulted".²¹³ NOP's calculation that there were 31,000 illegal abortion each year was also considerably lower than previous estimates.²¹⁴

²⁰⁶ Hindell and Simms, *op.cit.*, pp.112-124.

²⁰⁷ CMAC, SA/ALR A.13/1/1-5, surveys on abortion 1965-1967.

²⁰⁸ CMAC, SA/ALR A.15.18, 'ALRA Press release: Survey of clergymen's opinions about abortion', 22.11.66.

²⁰⁹ CMAC, SA/ALR A.15.18, 'NOP Press release: Survey on abortion', 14.7.66.

²¹⁰ NOP, Survey of General Practitioners' opinions of the Medical Termination of Pregnancy Bill (London: NOP, 1967).

²¹¹ CMAC, SA/ALR A.15.18, 'NOP Press release: Survey on abortion', 14.7.66.

²¹² CMAC, SA/ALR A.15.18, 'NOP Survey on abortion', 7.3.67.

²¹³ CMAC, SA/ALR A.15.18.

²¹⁴ CMAC, SA/ALR A.15.18.

The press, radio and television rapidly developed a reciprocal relationship with the abortion lobbyists after the election of the Labour Government in 1964. Unlike homosexuality, abortion was a subject which serious political debates, documentaries and dramas were eager to tackle, and ALRA took full advantage of the opportunities this development gave for promoting the cause of reform, particularly from 1965. Catholic opponents, and the Society for the Protection of the Unborn Child (SPUC) from 1967, also vigorously pursued these avenues for publicity, if sometimes demanding exposure on different terms. Mary Whitehouse complained that Munday had been allowed to appear on the BBC 24Hours programme on abortion, on the grounds that she might influence public opinion against the terms of the BBC Charter. This despite the appearance in the same programme by members of SPUC.²¹⁵ Whilst most of the press and broadcast media were favourable to reform, two prominent exceptions were The Times and The Daily Telegraph. The Catholic William Rees-Mogg's editorial policy at The Times was a particularly determined effort to exclude pro-reform arguments from the paper, despite his attention to other changing social attitudes among the young.²¹⁶ However, The Times editorial line was not, as Hindell and Simms contest,²¹⁷ all in one direction. A number of leaders pointed to the need for some reform and a clearer Government position.²¹⁸

Although very late in its formation compared to its opponents, SPUC quickly gained widespread exposure from its inaugural press conference in January 1967. Their explicitly non-Catholic Council included the Anglican Bishops of Exeter²¹⁹ and Bath and Wells, and prominent gynaecologists including Professor Hugh McLaren of Birmingham University, a Presbyterian father of seven who was particularly active in the programme of meetings and debates which SPUC organised across the country.²²⁰ However, the vociferous and

²¹⁵ Hindell and Simms, *op.cit.*, p.102.

²¹⁶ John Grigg, History of The Times: vol. 6 the Thomson years 1966-1981 (London: Times Books, 1993) p.60.

²¹⁷ Hindell and Simms, *op.cit.*, p.128.

²¹⁸ The Times, 'Unclear and uncertain', 7.2.67; 'Neutrality out of place', 13.12.67.

²¹⁹ Mortimer had been a member of the Anglican inquiry on abortion in 1965, but opposed abortion on social grounds. This was in contrast to his more reformist position on homosexuality and divorce.

²²⁰ Hindell and Simms, *op.cit.*, p.95.

personal nature of many of the attacks made by members of SPUC, and particularly some of their Catholic members, had a counter-productive effect on some sections of the public and of Parliament. Iain Macleod, Conservative shadow Chancellor, writing in his column in the Daily Mail commented that “I would have thought that it would infuriate any doubter into voting for and not against the Bill”.²²¹ The overzealousness of some of the Catholic press in estimating its support among MPs as well as the general public also assisted their opponents. A number of MPs whom the Catholic Herald assumed to be Catholic, much to their annoyance, were later discovered not to be by ALRA’s canvassers, including Dr John Dunwoody and Gwyneth Dunwoody Labour MPs for Falmouth and Camborne and Exeter respectively and Nicholas Scott, Conservative MP for South Paddington.²²²

The activities of SPUC were, however, not as broad-based or sophisticated as those of its opponents, especially ALRA. According to Paul Tulley, General Secretary at SPUC from 2000, there was little lobbying by them of ministers, MPs and professional groups. Rather, they concentrated, especially in their early years on grassroots canvassing of support, organising petitions and encouraging people to write to their MPs individually against the abortion Bill.²²³ This was a similar tactic to that used by the Lord’s Day Observance Society, though with less experience and success. What their tactics lacked in sophistication they made up in fervour. As Gwyneth Dunwoody recalls:

“People don’t understand now I don’t think just exactly how much pressure there was. I was told in my constituency that I was a murderess. You got an absolutely vicious type of letter. A lot of people found it very difficult to deal with that kind of pressure.”²²⁴

²²¹ CMAC, SA/ALR A.15.19, ‘Mr Macleod supports Mr Steel’s Bill’, press release by David Steel, 7.12.66.

²²² CMAC, SA/ALR A.15.19, ‘note of Roman Catholics thought either to support or not note against reform’ undated (but probably 1965); SA/ALR H.15, note by Vera Houghton ‘MPs supporters and others’, 7.7.66.

²²³ Conversation with Paul Tulley, SPUC, 8.2.00.

²²⁴ Interview with Gwyneth Dunwoody MP, 27.3.00.

David Steel conducted correspondences on reform with many religious groups opposed to reform, including the Catholic Church,²²⁵ but the wide support for a conscience clause within Parliament made these absolutist objections less pressing. Moreover, when this clause was debated at the end of the Committee Stage in the Commons, reformers had resisted Jill Knight, Conservative MP for Edgbaston's, demand that the burden of proof should rest with the courts not with the doctor. In the Lords this was further strengthened with assistance from the Home Office so that an objection would not:

“affect any duty to participate in treatment which is necessary to save the life or to prevent grave permanent injury to the physical or mental health of a pregnant woman.”²²⁶

A greater restraining influence on the progress of the Bill was the opposition of non-religious opponents of abortion in Parliament. The principal representatives of this group were both Labour politicians - Abse in the Commons and Barbara Wootton, the economist and sociologist, in the Lords. Abse admits that, “thanks largely to the ALRA, [his] intervention in the Abortion Bill [sic] debates was a total failure”.²²⁷ However, both these two were held in extremely high regard in Parliament, especially by reformers and the uncommitted. Abse, of course, was the sponsor of the successful homosexual reform bill and in the vanguard of divorce law reform as well. Wootton was equally prominent in these matters in the Lords. They did not argue from a condemnatory, absolutist position like Roman Catholics, but saw the danger of abortion in terms of the pernicious eugenic effects that social abortion would have on the deprived groups whom they saw as the targets of abortionists.²²⁸ As Wootton phrased it:

“women in this position who are pregnant may often be subject to very considerable pressure from within the family and sometimes, I think, from

²²⁵ For example, CMAC, SA/ALR A.15.9, J.K. MacGuire, Hon Sec, Scottish Committee of the Catholic Union of Great Britain to Steel 17.10.66.

²²⁶ Abortion Act, 1967, 4(1)(2).

²²⁷ Leo Abse, *Private Member* (London: Macdonald, 1973) p.217.

²²⁸ HL Deb., vol. 285 cols. 1068-1070, 26.7.67.

doctors who have their own ideas about who ought to have children and who ought not.”²²⁹

The sponsors of reform attempted to some degree to meet their concerns, but they also heartened the more moderate religious opponents of abortion because of their rationalism. Norman St. John-Stevas, Conservative MP for Chelmsford, later wrote that:

“One of the things that has convinced me that the present struggle is more than sectarian has been the support given to me by people of no religion. Lady Wootton is one, Mr Leo Abse is another. I am indeed grateful for their dedication and enthusiasm.”²³⁰

However, Abse, at least, was not entirely rational. In his memoirs he shows considerable respect for Glanville Williams, saying of one television debate, “we ended the occasion with the same quality of mutual regard and esteem for each other as we began”. However, his description of the female pioneers of ALRA and their successors, is a rather less flattering picture of twisted and barren female sexuality:

“The Association was originally dominated by a cluster of intelligent, shrill viragos, Janet Chance [Chairman], Stella Browne [Vice-Chairman] and Alice Jenkins [Honorary Secretary]. The three women all resented their feminine identity, and their writing and speeches reveal their keen sense of deprivation.”²³¹

Unlike the myriad admirers of ALRA’s tactics, Abse considered their campaigns to be “ham-handed” and “counter-productive”.²³² However, as in other areas of reform, Abse was sensible enough not to foist on to his parliamentary colleagues the more outlandish conclusions of his confirmed Freudian world

²²⁹ HL Deb, vol.285, col.1069, 26.7.67.

²³⁰ Catholic Herald, 21.8.1970, quoted in Hindell and Simms, op.cit., p.149.

²³¹ Abse, op.cit., p.218.

²³² BLPES, HC/AT 7/28b, Abse to Antony Grey, Secretary, HLRS, 10.3.67.

view, confining his arguments to more practical and moderate considerations of social policy and concerns over racketeering²³³.

²³³ Abse, *op.cit.*, pp.219-228.

vii. The medical profession

Despite the continued confusion surrounding the case law on abortion, and the refusal of successive Governments to consider extending the grounds for abortion to allow doctors to perform abortions in such cases, there was little organised interest within the medical profession on abortion before 1965. Analysis of doctors' attitudes towards and influence on abortion reform like John Keown's Abortion, doctors and the law have largely ignored the period between the Bourne judgement and the introduction of Silkin and Steel's Bills in Parliament.²³⁴

However, soon after ALRA's publication of the surprising findings of its North West London Group Survey of NHS doctors,²³⁵ there were studies conducted by the Royal Medico-Psychological Association (RM-PA), the BMA, the RCOG and the Medical Women's Federation (MWF) on abortion.²³⁶ The resulting reports produced a picture of a partially divided profession, generally supporting some element of reform but more conservative than the new public opinion surveys or the atmosphere in Parliament were proving to be. What was becoming ever more apparent was that the governing bodies of the various organisations were considerably more conservative than their grassroots members, as evinced from the various polls conducted for ALRA. The only medical professional organisation staunchly to support radical reform was the Socialist Medical Association which declared at its annual conference that:

“the law on abortion is out-dated, unclear, cruel and should be reformed... We call on the Government to draw up new legislation to

²³⁴ John Keown, Abortion, doctors and the law: some aspects of the legal regulation of abortion in England from 1803 to 1982 (Cambridge: CUP, 1988). One exception is L.J.F. Smith, *op.cit.*, p.96.

²³⁵ CMAC, SA/ALR A.13/3/1, January 1965, Full Figures of survey of London doctors (last quarter 1964).

²³⁶ 'The Royal Medico-Psychological Association's memorandum on therapeutic abortion', British Journal of Psychology (1966) vol.112, p.1071; 'Therapeutic abortion: report by BMA Special Committee', British Medical Journal (1966) no.2, 2nd July, pp.40-44; 'Legalised abortion: report by the Council of the RCOG', BMJ, 2.4.66, pp.850-852.

enable abortions to be carried out under the NHS before the twelfth week of pregnancy.”²³⁷

Such collective voices were represented by individual Labour MPs with real experience of the horrors of illegal abortion. According to Gwyneth Dunwoody;

“when I was a young doctor’s wife large numbers of working-class women did the most horrendous things to themselves... [Abortion] existed in different ways for those who were able to go into a private clinic and those who had to do terrible things to themselves on a Friday night.”²³⁸

The cautious concerns of the medical profession were of the utmost importance to the Government, and doctors’ prime concern, professional autonomy from both the provisions of the law and the demands of the female patient, became a central plank of the Steel Bill, as they sought to remove as many specific provisions for legal abortion from the Bill in order to allow doctors the maximum discretion. However, the divisions within the profession’s ranks, and the changing position of the various representative bodies during the debates on Silkin and Steel’s Bills, meant that doctors were not able wholly to capture the terms of the final Bill for themselves.²³⁹

The publication of Steel’s Bill in November 1966 caused the BMA and RCOG to publish a joint report on abortion in a concerted effort to persuade Parliament to remove the undesirable clauses which remained in the Bill. This meant in particular the social clause which would require doctors to consider non-medical factors which, as Keown has observed, would be outside their expert knowledge.²⁴⁰ This was not unwise, considering some doctors’ understanding of some non-medical issues. When Drs. Stevenson and Gullick from the BMA met

²³⁷ CMAC, SA/ALR A.16/7, ‘notes for speakers’, 3.11.65.

²³⁸ Interview with Gwyneth Dunwoody, 27.3.00.

²³⁹ PRO, CAB 134/2854, H(67) 14th meeting, 12.5.67.

²⁴⁰ Keown, *op.cit.*, p.97.

Silkin in December 1965 to press him to remove social conditions as grounds for abortion Silkin was “surprised” when Gullick:

“referred to the fact that there were adoption societies and other means to look after a child if it were necessary to take it out of the charge of the mother and that this was, therefore, not particularly a ground for an abortion.”²⁴¹

Instead the BMA/RCOG report argued that “account may be taken of the patient’s total environment actual or reasonably foreseeable”. This phrase was lifted directly from Abortion: an ethical discussion; hence the views of the two most influential interests groups, the medical profession and the Church had coalesced.²⁴² How decisive this report, and the direct intervention by the RCOG’s President, Sir John Peel (the Queen’s gynaecologist), was on the eventual amendment removing the social clause, is unclear.²⁴³

Debates on amendments during the protracted Committee stage of the Bill between January and April 1967 were frequently dominated by the desire of many MPs and the representatives of the Home Office and Ministry of Health to confine the grounds for legal abortion to those based strictly on health, leaving doctors to take into account the patient’s ‘total environment’.²⁴⁴ This ‘catch-all’ clause would replace the original specific clauses covering medical defectives, over-stretched mothers and victims of rape (under which provision Steel argued that the public might gain the wrong impression that abortion in cases of rape was automatic rather than permissible²⁴⁵).

For opponents of abortion this satisfied the BMA argument that a social clause contravened medical ethics, and for reformers allowed liberal doctors sufficient

²⁴¹ CMAC, SA/ALR A.16/7, note of meeting between Silkin and Drs. Stevenson and Gullick, 14.12.65.

²⁴² BMJ, 31.12.66.

²⁴³ Keown, *op.cit.*, pp.97-8; Hindell and Simms, *op.cit.*, pp.176-7.

²⁴⁴ HC Deb. Standing Committee, vol. X, 3rd to 5th sittings, cols. 107-260, 1.2.67, 8.2.67, 15.2.67.

²⁴⁵ HC Deb. Standing Committee, vol. X, 7th sitting, cols. 220-221, 1.3.67.

leeway to approve abortion on social grounds.²⁴⁶ As Sir John Hobson's opinion, quoted at the beginning of this chapter shows, no consideration was being given to the idea of allowing the woman to make the decision, only authorised professionals.²⁴⁷ However, division among doctors on the necessity of the consultant clause,²⁴⁸ despite the BMA/RCOG demand for it reiterated in a letter to The Times,²⁴⁹ allowed the Home Office argument on practicality to support the sponsors of the Bill in their fight to prevent the clause's insertion.²⁵⁰ The payoff, as seen above, was that all mention of the "well-being" of the mother, which Steel had inserted during the Committee stage to widen the grounds for abortion in Clause 1(a), was removed. On this point the Ministry of Health agreed with the medical organisations, saying that "well-being" was unworkable.²⁵¹

As in other areas, the period 1965-1967 saw a concatenation of the different arguments which had been advanced in favour of abortion law reform since the 1930s. The campaign to allow women greater control over their own fertility, led by ALRA, was consistently the main force driving the debate. However, these campaigners were viewed with suspicion, not only by a religious minority which objected to the violation of the sanctity of life of the unborn child, but also by those who held general concerns about the sexual consequences of a permissive abortion law. In addition, respected figures, many of whom had otherwise liberal sympathies, feared the encroachment of eugenics by stealth in encouraging poorer women to have abortions.

Evidence pointing to the iniquity of the existing abortion law by campaigners like Alice Jenkins, the effects on maternal health and particularly the tragedies of the thalidomide scandal and the effects of rubella epidemics sharpened the public and political focus of debate on the harshness and archaism of the status quo. These last factors also encouraged members in all branches of the medical profession to challenge the general silence on the issue which pervaded the

²⁴⁶ HC Deb. Standing Committee, vol. X, 3rd sitting, cols. 144-145, 1.2.67.

²⁴⁷ HC Deb. Standing Committee, vol. X, 5th sitting, col. 261, 5.2.67.

²⁴⁸ Hindell and Simms, op.cit., pp.192-193.

²⁴⁹ The Times, 1.6.67.

²⁵⁰ PRO, CAB 128/42 part 2, CC(67) 35th Conclusions, 1.6.67.

²⁵¹ PRO, CAB 134/2854 H(67) 14th meeting, 12.5.67.

profession, and support some measure of reform. They were prompted not only by guilt over recent medical tragedies and humanitarian concern for their patients, but also strongly by their vulnerability to prosecution under the uncertain case law on abortion.

The jealous guarding of professional autonomy by the medical lobby heavily shifted the focus of debate in Parliament away from the alleviation of economic hardship and women's rights towards, as Sally Sheldon has argued, the complete medicalisation of the issue.²⁵² Government, Parliament, the media and public opinion were encouraged to see the problem as one of health. The woman was merely a patient to be advised and treated as necessary by her doctor, and was often viewed in this context in parliamentary debates as either victim, incapable mother or fallen woman, even by reformers. Despite insisting that a reformed law could only ask doctors to consider health grounds for an abortion, the "total environment" phrase would, doctors maintained, allow them to consider the broadest relevant context. Some doctors, like David Owen, argued that sympathetic doctors would always be able to allow an abortion.²⁵³ Furthermore, it must be remembered that the tactics and strategy involved in securing parliamentary success precluded the deployment and trumpeting of more radical, strictly permissive arguments for reform, let alone advocating abortion on demand. It is a mistake to rely too much on the Hansard record of parliamentarians' views, as Sheldon does.²⁵⁴ Reformers from ALRA took advantage of the political changes of 1964 to 1966 and wisely followed the advice, if a little reluctantly, of the parliamentary sponsors of reform. However, they took full advantage of the moderate sympathies of prominent Conservatives like Selwyn Lloyd, former Chancellor of the Exchequer, whose chairmanship of a crucial all-party meeting on Steel's Bill on 9 May 1967, was undoubtedly persuasive with uncommitted Tories.²⁵⁵

²⁵² Sheldon, op.cit., pp.29-31.

²⁵³ HC Deb. Standing Committee F, vol. X, 3rd sitting, cols.142-148, 1.2.67.

²⁵⁴ Sheldon, op. cit.; 'The British Abortion Act 1967: A permissive reform?', European University Institute Working Papers, 1994 no.2.

²⁵⁵ Service papers, Service to Steel, 25.4.67.

A new political context existed after the election of the Labour Government in 1964 which spurned traditional religious and other moral objections, and was more ready to accommodate changing social and sexual mores by permitting Parliament to reach its own conclusions on new limits for public regulation of private behaviour. The disproportionately voluble opposition of the Catholic minority was particularly over-represented in the Commons and the media, and fear of the electoral harvest that would be reaped by allowing or appearing to allow abortion law reform was encouraged by Catholic politicians, particularly in Cabinet by Lord Longford.

Despite this, the Cabinet, led from the front by ministerial supporters of reform who dominated the key Cabinet Committees – MISC 102, Home Affairs and Legislation – resisted the disingenuous stalling tactic of opponents of pushing for a Royal Commission, arguing that all the facts were already available and had been exhaustively discussed by the Home Affairs Committee. Wilson, although initially tempted by a Royal Commission, readily allowed Jenkins and his allies to make the running and carry the majority in Cabinet with him. The Government policy of official neutrality was ostensibly preserved, despite considerable confusion between Home Office and Ministry of Health positions during the passage of Steel's Bill. However, the damage which was done to the Government charade of neutrality (considering the overwhelming ministerial support for reform) by ministers departmentally concerned with the issue speaking in a personal capacity, was to have serious implications for the future treatment of Private Members' Bills by the Government.

Chapter 5

The liberalisation and abolition of theatre censorship

“Now, of course, if any considerable body of Englishmen are arranging to marry their mothers, whether by accident or design, it must be stopped at once. But it is not a frequent occurrence in any class of English society. Throughout the course of my life I have not met more than six men who were anxious to do it.”¹

i. Introduction

As has been demonstrated above, the 1960s did not see a revolutionary change in the sexual behaviour of people in Britain, even among the young. What did occur, however, was a relaxation of the taboos surrounding the discussion of sexual and violent behaviour, and a gradual softening of attitudes towards sex. The development of new artistic styles and genres from the mid-1950s onwards often gave representation and new voice to hitherto ignored or silenced groups, as well as newly emergent ones in society. This was a challenge to the complacent and antediluvian character of much of cultural life in immediate post-war Britain, epitomised by the later Ealing comedies, Barbara Pym and the atmosphere surrounding the Coronation in 1953.

The increasing depiction of sex and violence in film, drama and literature continually pushed forward the boundaries of acceptability for the defenders of traditional public morality, and questions of what words and images women, the young and the working class generally should hear, became matters of grave concern to the political class. What made the new frankness about sex and violence more controversial was that it was often being portrayed in a naturalistic, working-class context which had (apart from a brief period of limited candour during the Second World War) typically been sanitised or caricatured

¹ Henry Arthur Jones on the banning of Sophocles' *Oedipus Rex* by the Lord Chamberlain. Quoted in Kenneth Tynan, *A View of the English Stage* (London: Davis Poynter, 1975) p.357. An English translation of *Oedipus Rex* by Gilbert Murray was eventually licensed in 1910, British Library (BL), LCP/814.

by most artistic media.² The re-organisation of film censorship at the British Board of Film Classification (BBFC), changes in the regulatory regimes at the BBC and the nascent ITV and the passage of the Obscene Publications Act 1959 all sought to accommodate a limited widening of acceptable moral behaviour encouraged particularly by economic affluence and the increasing secularisation of society.³ They also allowed its cultural discussion. This whilst at the same time reinforcing the basic tenets of traditional public morality for all classes and generations, and attempting to reserve the now legitimised discussion of sexual morality and social dysfunction to the discriminating middle-class.

Regulatory regimes governing broadcasting and film developed during the late 1950s and early 1960s as those media matured and their popularity waxed and waned. As Mark Jarvis has argued the 1964 Obscene Publications Act was an attempt to put the genie of pornography back in the regulatory bottle from which it had, to some extent, been released by the 1959 Act.⁴ Debate over whether this Act represented an anti-permissive regression tends to miss the point. Pornography was seen as a legitimate area for legal control and criminal sanction by all strands of reformist opinion.

Although defenders of traditional Christian morality continued to fight against literature which they considered to be pornographic or blasphemous after the Obscene Publications Act 1959, the freedom of authors to plead literary merit for their work expanded the accepted boundaries of writers' artistic freedom. Whilst these regulatory prescriptions developed and liberalised with the changing social and sexual mores of the nation, the censorship of stage plays remained in letter, and to some extent in spirit, the most reactionary within the arts.⁵

² Martin Priestman, 'A critical stage: drama in the 1960s' in Bart Moore-Gilbert and John Seed eds., Cultural Revolution? The challenge of the arts in the 1960s (London: Routledge, 1992) p.120.

³ Jarvis, *op.cit.*, pp.146-147.

⁴ Jarvis, *op.cit.*, pp.149-150.

⁵ Wandor, Look Back in Gender, (London: Methuen, 1984). p.6; William Gaskill, A Sense of Direction (London: Faber and Faber, 1988) p.34.

Theatre in the mid-1950s was in a doubly anachronistic position. Licensing of all stage plays was one function of the Lord Chamberlain, the second-ranking official in the Royal Household. This system of pre-censorship dated back to 1737. In that year Walpole successfully clamped down on dramatic criticism and satire of his venal and corrupt administration by persuading Parliament to pass a licensing Bill giving the Lord Chamberlain statutory powers of pre-censorship.⁶ A House of Commons Select Committee had recommended the retention of pre-censorship in 1832,⁷ and the Theatres Act 1843 had restated these political Georgian provisions for the increasingly moralistic Victorian age.⁸

Despite the efforts of many of the most eminent writers and playwrights of the following century or more, the recommendations of a Joint Select Committee in 1909⁹ and a Private Member's Bill in 1949 (which secured a majority on second reading by 76 votes to 37, but ran out of Parliamentary time),¹⁰ no Government of any hue showed any inclination to allow reform to proceed. The Lord Chamberlain was in no way accountable to Government or Parliament, he was under no obligation to give reasons for refusal to grant a licence, and there was no form of appeal against his decisions.¹¹ The 1843 Theatres Act laid down no criteria for refusal of a licence. Moreover appointees to the post of Lord Chamberlain (a Crown appointment on the advice of the Prime Minister) were always peers, and usually former soldiers who had little, if any, experience or sympathy for the theatre or the arts in general. It should be remembered that it was but one function of the office of Lord Chamberlain otherwise responsible for ceremonial occasions.¹² Although the background of the Examiners of plays, who wrote the reports on submitted scripts upon which the Lord Chamberlain acted, broadened considerably during after the war to include actors, producers and university lecturers,¹³ the social milieu was distinctly military and aristocratic.

⁶ V.J. Liesenfeld, The Licensing Act of 1737 (Wisconsin: University of Wisconsin, 1984), pp.3.5.

⁷ Report of the Joint Committee on Censorship of the Theatre, (London: HMSO, 1966) p.v.

⁸ Peter Richards, Parliament and Conscience (London: Unwin and Allen, 1970) p.115.

⁹ Report of the Joint Select Committee on the stage plays (censorship), (London: The Stage, 1909).

¹⁰ HC Deb., vol. 463 cols. 713-798, 25.3.49.

¹¹ Tynan, *op.cit.*, p.366.

¹² John Johnston, The Lord Chamberlain's Blue Pencil (London: Hodder and Stoughton, 1990) p.7.

¹³ *Ibid.*, pp.119-125.

However, the creative atmosphere of post-war British theatre did little to challenge this archaic system of regulation, despite the distinguished ranks of politicians (including the 1909 Joint Committee) and playwrights (including George Bernard Shaw) who had railed against it. Theatre was still divided into two very different genres, separated by social as much as stylistic differences. Plays featuring French window-encased drawing rooms looking out over gardens hosting tennis parties attended by the leisured upper-middle class, were watched by largely middle class audiences. Against this was the music hall tradition (in decline since the development of cinema between the wars), and touring nude revues, watched largely by the working class.¹⁴

In the face of this stultified and undynamic scene, developments in the funding structure, dramatic content and audience profile of the theatre after the war fostered an atmosphere which increasingly jarred with the moral and artistic prescriptions which the Lord Chamberlain's pre-censorship applied.

¹⁴ Roger Wilmut, Kindly leave the stage: the story of Variety 1919-1960 (London: Methuen, 1985).

ii. Developments in the theatre 1945-1968

The establishment of the Arts Council in 1946 marked a watershed in the funding of the arts in general, and theatre in particular which encouraged innovation, and represented the cultural side of Labour's post-war nationalisation programme.¹⁵ Following a period during the 1950s of gradual increases in the number of regional and civic theatres which were given modest, below-subsistence level grants, and which saw the establishment, most notably, of the Mermaid Theatre in the City of London and the English Stage Company at the Royal Court Theatre, the Arts Council was, crucially, persuaded to subsidise two effectively national theatre companies in the Royal Shakespeare Company (RSC) and the Royal National Theatre from 1961 (although the failure of these two embryonic companies to merge resulted in their joint subsidy being halved).¹⁶ Much of this expansion work was based on a survey of the state of the nation's theatres, Housing the Arts, carried out by the Arts Council¹⁷. This was published in 1959 and again in 1961 and concentrated attention, and what funds were available, on renovating existing regional theatres or building new ones.

The *raison d'être* of the expansion of theatre subsidy from the mid-1950s onwards, apart from the vacuum left by the collapse of private patronage of the arts since the 1930s, was the emergence of new dramatic styles and forms. The English Stage Company at the Royal Court Theatre had an announced policy of championing new playwrights and giving them a right to fail.¹⁸ This was a long-term investment in new talent amid the otherwise stultified atmosphere on the British stage. The immediate success of John Osborne's Look Back in Anger (1956) and the shock it caused heralded a period of ascendancy, at least in terms of public profile, of new writers bringing hitherto unseen characters, settings, issues and, above all, unheard language to the stage. Although most of

¹⁵ Richard Weight, Pale Stood Albion: The formulation of English National Identity 1939-1956 (London: unpublished PhD thesis, 1995) pp.55-87.

¹⁶ Elsom, op.cit., pp.161-162.

¹⁷ The Arts Council of Great Britain, Housing the Arts in Great Britain (London: Arts Council of Great Britain, 1959).

¹⁸ Elsom, op.cit., p.82.

these writers for stage, screen and literature defied, at least to some degree, the soubriquet 'Angry Young Men' either by virtue of temperament, age or gender, their work at least had the coherence of challenging established forms by saying new things and in new ways. In the theatre, as in other art forms, a new generation of writers from lower-middle or working class backgrounds began to break into the public arena.¹⁹

The election of the Labour Government in 1964 represented, in Martin Priestman's words, "a quantum leap in the philosophy, and ultimately the reality, of state funding for theatre".²⁰ Wilson appointed Jennie Lee as Parliamentary Under-Secretary at the Ministry of Works, responsible for the Arts.²¹ Responsibility for the arts then rested officially with the Treasury, with other departments having administrative control over certain areas, as the Ministry of Works did with museums and historic buildings. Under Lee's chairmanship the Cabinet Arts and Amenities Committee swiftly surveyed the horizon and made ambitious plans, (Labour's opposition pronouncements on the arts were thin and vague, giving little material with which to work²²) supported by cautious Treasury backing from the Chief Secretary to the Treasury, John Diamond, encapsulated in the White Paper A Policy for the Arts: the first steps, published in March 1965, which addressed existing provision and the gaps therein which the Government proposed to fill.²³

Lee was extremely effective at balancing all the artistic, financial and political influences which bore down on her. As her Private Secretary, Keith Jeffrey, recalled she was:

"as apolitical as anyone could be when it came to the arts. Although she had a hot line to the Prime Minister, she knew when to use it and when

¹⁹ See Chapter 2.ii, pp.60-64.

²⁰ Priestman, *op.cit.*, p.122.

²¹ Patricia Hollis, Jennie Lee (Oxford: OUP, 1997) pp.254-256.

²² *Ibid.*, p.257.

²³ A Policy for the Arts: the first steps (London: HMSO, 1965).

not to. And she never let her own left-wing prejudices show – she had to be seen to be impartial.”²⁴

A tactful course, and one applauded more by civil servants than bankrupt producers no doubt. However, according to files at the Public Record Office, her reputation at the time amongst ministers was less cosy. When, in February 1965, the Government considered the position of the arts within the machinery of government, it was decided that responsibility should be wrested from the Treasury and brought together under a more suitable department, initially against the wishes of the Chancellor of the Exchequer, Jim Callaghan.²⁵ Although Wilson toyed with the possibilities of Land and Natural Resources or Housing and Local Government, he and Sir Laurence Heslby (Permanent Secretary to the Treasury, and Head of the Home Civil Service) decided that the Department of Education and Science, under the heading of higher education, would be more appropriate.²⁶ As Wilson explained in Cabinet, “the time had now come to relieve the Chancellor of the Exchequer of the potentially embarrassing anomaly of being the sponsoring Minister in this context...”.²⁷ Lee had had delusions of grandeur about being Minister for the Arts in her own right, but wisely accepted her patron’s own solution.²⁸

However, the switch of Lee from her position as Parliamentary Under-Secretary at the Ministry of Works and Public Buildings to Education and Science was not trouble free. Michael Stewart, Secretary of State for Education, had agreed to a straight swap of Lee with his present Parliamentary Under-Secretary, James Boyden. Promotion in January 1965 to the Foreign Office intervened, and he was replaced by Tony Crosland at Education. Crosland’s enthusiasm for the Arts was somewhat tempered by his antipathy towards Lee. As Mitchell minuted to Wilson:

²⁴ Sinclair, *op.cit.*, p.164.

²⁵ PRO, PREM 5/439, ‘Ministerial Responsibility for the Arts’, Derek Mitchell, Principal Private Secretary to the Prime Minister, to E. Cooper, Cabinet Office.

²⁶ PRO, PREM 5/439, ‘Ministerial Responsibility for the Arts’, Lee to Wilson, 26.1.65.

²⁷ PRO, CAB 128/39 part 1 10th conclusions, 18.2.65.

²⁸ PRO, PREM 5/439, ‘Ministerial Responsibility for the Arts’, Lee to Wilson, 26.1.65.

“...Mr. Crosland is uneasy – to say the least – at the prospect of evolving a working relationship with Miss Lee as his Parliamentary Secretary. Apart from old political wounds, she makes no secret of the fact that she has no allegiance to any Minister below yourself. He is afraid that she will try to consolidate this relationship when she is moved to the Department of Education and Science.”²⁹

After several meetings, and a disquisition from the Cabinet Secretary, Sir Burke Trend, on the constitutional position of junior ministers, both Crosland’s position as Secretary of State and Lee’s control of arts policy under Wilson’s direct patronage seem to have been satisfied.³⁰ Indeed, Lee’s importance to Wilson was underlined by her promotion to the rank of Minister of State in 1967,³¹ and retention of the same portfolio for the duration of the two governments (one of only three ministers to do so, including Gardiner and Denis Healey).

The previous Conservative administration had devoted some thought to the organisation of Government arts policy. In July 1959 David Eccles, Minister of Education, minuted to the Prime Minister, Macmillan, on the subject of a combined Ministry for the Arts, arguing that:

“The case... rests on the obvious desire of a growing number of... (especially the young) to bring something into their lives which is not money or the cruder diversions of sport and sex. Politicians could give different answers to this compound of guilt and boredom; one is to go witch-hunting after sinners; that we can leave to Mr Harold Wilson. Another is to extend the field of the Arts. The second suits our Party. Public interest in the arts is gathering force without, as yet, the Government being very plainly identified with it. E.g. we see growing rapidly gramophone record clubs; paper-back editions of the classics;

²⁹ PRO, PREM 5/439, ‘The Arts’, Mitchell to Wilson, 29.1.65.

³⁰ PRO, PREM 5/439, ‘Ministerial Responsibility for the Arts’, Trend to Wilson, 1.2.65; ‘The Arts’, Mitchell to Wilson, 9.2.65.

³¹ PRO, PREM 5/474, Press Notice, 15.2.67.

ballet and drama societies; visits to historic houses; amateur classes in drawing and painting etc.”³²

The most remarkable features of this minute are the political cynicism involved in Eccles' view of the value of the arts to the Conservative Government and his opinion of the young as thirsting after the “cruder diversions of sport [whatever they might be] and sex, and the modish pastimes he identifies with youth. New creative movements in theatre or film exploring the changing social and sexual mores of the nation do not seem to have had any part of this vision. Eccles recommended that the arts be brought under the Ministry of Works, encompassing the logic of bringing tourism under this banner, it being:

“easier to justify the spending of money to promote the earning of foreign exchange than for the purpose of subsidising the arts. But if the latter were done well the results must attract the tourist.”³³

Eccles pursued this strategy more vigorously later in 1959, arguing for a scheme of emergency aid for the arts from the Ministry of Public Works, followed by devolution of much arts and leisure funding to local authorities.³⁴ He was supported in his aim by a Crossbow pamphlet on ‘Patronage and the Arts’.³⁵ However, strong Treasury resistance, not unpredictably, neutered the plan. Describing Eccles' paper as “wordy and diffuse”,³⁶ officials, including an ascendant Burke Trend, then Second Secretary at the Treasury, argued merely for an inter-departmental committee to co-ordinate more closely arts and leisure policy³⁷. Derek Heathcote Amory, the Chancellor did not want “disturb the excellent relationship which has developed over many years between the Treasury and [funded institutions]”.³⁸

³² PRO, FO 1109/277, Eccles to Macmillan, 6.7.59.

³³ PRO, FO 1109/277, Eccles to Macmillan, 6.7.59.

³⁴ PRO, T 18/169, Eccles to Macmillan, ‘Leisure in our affluent age’, 23.12.59

³⁵ Richard Carless and Patricia Brewster, Patronage and the Arts (London: Conservative Political Centre, 1959).

³⁶ PRO, T 18/169, R.C. Griffiths, Assistant Secretary, to Trend, 8.1.60.

³⁷ PRO, T 18/169, Trend to Griffiths, 29.2.60.

³⁸ PRO, T 18/169, Heathcote Amory to Macmillan, 9.2.60.

In 1964 Lee built quickly on the acceptance which had taken place under the previous Conservative administration of public patronage of the arts. Their development with state aid, and wider public access across the country had, of course, been an important element in Crosland's revisionist philosophy set out in The Future of Socialism, and echoed by Roy Jenkins in his electioneering pamphlet The Labour Case.³⁹ Lee's aims, as set out in A Policy for the Arts: the first steps were very much in this mould, although her interest in bridging the gaps between 'higher' and 'lower' forms of art might have been less to Jenkins' taste. The paper set out its aims by opening on a defensive note:

"The relationship between artist and State in a modern democratic community is not easily defined. No one would wish State patronage to dictate taste or in any way restrict the liberty of even the most unorthodox and experimental of artists.

But if a high level of artistic achievement is to be sustained and the best in the arts made more widely available, more generous and discriminating help is urgently needed, locally, regionally and nationally."⁴⁰

Lee was strongly supported by Wilson in these aims (contrary to the puritan caricature perpetuated in Eccles' memo to Macmillan above), who declared to Cabinet when Lee presented the White Paper that regional development, backed by financial commitment from the Arts Council should be balanced with strong support of national institutions as the Government's strategy in the field of the arts.⁴¹ Some of these national institutions were the principal enemies of the cosy, trivial philosophy of the previous Conservative administration.

Most contemporary commentators and historians see Lee's tenure as *de facto* 'Minister for the Arts' as a highly fruitful period when the Government enabled an

³⁹ C.A.R. Crosland, The Future of Socialism (London: ,1956); Roy Jenkins, The Labour Case (London: Penguin Harmondsworth, 1959).

⁴⁰ A Policy for the Arts, op.cit.

⁴¹ PRO, CAB 128/39 part 1, CC(65) 10th conclusions, 18.2.65.

enormous expansion of the arts, and the theatre in particular, encouraging quality and stylistic innovation as well as quantity.⁴² Wilson's support for Lee was, of course, more than matched by that of Lord Goodman, Chairman of the Arts Council, who worked very closely with and, indeed, was in love with her.⁴³

However, the expansion of national and local state subsidy of the theatre involved, in Lee's terms, a good deal of discrimination.⁴⁴ At a time when the continued pre-censorship of plays was seen as increasingly absurd, the control of policy and subsidy could be used by various interested parties to stifle writing which was considered unworthy or unsuitable. Local councils could, and did, withhold or withdraw grants to productions. For example in August 1968 Waltham Forest Council, which had been captured from Labour by the Conservatives in the previous year's local elections, refused the necessary grant for the local youth theatre company to stage Edward Bond's Saved. That play's violent and foul-mouthed West End reputation no doubt failing to endear itself to the borough's councillors (though whether they had actually read the script or seen the production is doubtful).⁴⁵

The heavily subsidised national companies and others quickly presumed that their grants were sacrosanct and bound to expand as their ambitions did.⁴⁶ As these were the companies which were producing the most experimental and, for the censor, risqué plays (at least until the explosion of fringe theatre in 1968), there was inevitable conflict between the role of the Lord Chamberlain's office and the more liberal, artistic priorities of the Arts Council as a grant-making body. These came to a head over the legal challenge made by the authorities to the use of private theatre clubs to stage unlicensed plays in 1966-1967, when Lord Goodman took the decision to stop funding such productions because of a court ruling against their legality.⁴⁷

⁴² Lord Goodman's tribute to Lee on her retirement, London Evening Standard 25.6.70; Priestman, op.cit., pp.122-3.

⁴³ Brian Brivati, Lord Goodman (London: Richard Cohen, 1999) pp.94-95.

⁴⁴ PRO, PREM 129/133 C(65) 22, 'A Policy for the Arts: the first steps' 15.2.65.

⁴⁵ Paul O'Higgins, Censorship in Britain (London: Nelson, 1972) p.90.

⁴⁶ Elsom, op.cit., p.129.

⁴⁷ Johnston, op.cit., p.217.

Even the subsidised companies exercised their own forms of censorship. Osborne's creative dynamism, it has been argued, was impeded by the commercial priorities of the Royal Court Theatre.⁴⁸ Furthermore the National Theatre, without the coercion of the Lord Chamberlain, refused to produce Hochhuth's Soldiers because of the implication that General Sikorski's death during the Second World War was the responsibility of Churchill. The National Theatre's chairman, Lord Chandos, had been a member of the War Coalition Government with Churchill and Lord Cherwell, both portrayed in the play. He refused to allow the production.⁴⁹ When Tynan struggled vainly with the Lord Chamberlain to obtain a licence for Soldiers either at the National or elsewhere if the National turned the play down, he accused the censor of discriminating against the commercial theatre in favour of the subsidised sector, a comment which John Johnston, Assistant Comptroller at the Lord Chamberlain's Office, found libellous.⁵⁰ Despite what the Arts Council's critics may say about its bureaucracy and lack of judgement,⁵¹ arts funding policy did become increasingly motivated by artistic diversity, innovation and the broadening of the appeal of theatre. Yet official censorship continued to restrict innovation according to ill-defined and class-bound rules based on increasingly outdated moral strictures.

⁴⁸ Ronald Hayman, British Theatre since 1955: a reassessment (Oxford: OUP, 1979) p.34.

⁴⁹ BL, LCP/WB 26, Cobbold to Johnston, 18.1.67.

⁵⁰ BL, LCP/WB 26, Tynan to Johnston, 10.4.67.

⁵¹ For example see John Pick, Vile Jelly: the birth, life and lingering death of the Arts Council of Great Britain (Doncaster: Brynmill, 1991).

iii. Relaxation of the censorship 1957-1964

The Joint Select Committee of 1909 had recommended the abolition of the Lord Chamberlain's powers of pre-censorship in favour of a voluntary system, whereby theatre managers could obtain a licence in order to protect them from future prosecution for obscenity or other offences.⁵² The Committee supported the innovation of an advisory committee to assist the Lord Chamberlain with licensing difficult cases, whilst regarding this as inadequate to remedy the iniquities of the existing system and liable to worsen them over time.⁵³ However, these recommendations were never implemented (although Lords Chamberlain continued intermittently to consult an advisory committee), and the law continued unchallenged until Ben Levy, Labour MP for Eton and Slough and a member of the Arts Council Executive after leaving Parliament in 1951, attempted the same proposals by his Censorship of Plays (Repeal) Bill in 1949.⁵⁴

The other main Private Member's Bill which sought to abolish the censorship before the election of the Labour Government in 1964 was introduced by Dingle Foot, Labour MP for Ipswich, in 1962 which went for outright abolition. This modest attempt to implement optional licensing as set out by the 1909 Committee did not even command the support that Levy's Bill had in 1949.⁵⁵ Foot, as Solicitor-General from 1964 to 1967, was to be a key participant in the final death of the censorship. No post-war Government until 1964 showed any great concern either over the position of the Lord Chamberlain as censor, or over the system of censorship itself. The classic argument of British government and administration – the system has worked quite satisfactorily until now – was the oft-repeated mantra to complaining artists.⁵⁶

⁵² Report of the Joint Select Committee on stage plays (censorship), op.cit., p.185.

⁵³ Report of the Joint Committee..., p.189.

⁵⁴ HC Deb., vol. 463, cols. 713-798, 25.3.49.

⁵⁵ HC Deb., vol. 668 cols. 1321-1334, 5.12.62.

⁵⁶ PRO, HO 300/12, Miss N. Hornsby, SEO, General Department, to N.D. Walker, Assistant Secretary, Scottish Home Department, 29.10.57; HO 300/56, Witney to Guppy, 28.10.65; Report of the Joint Committee...

The ante-penultimate Lord Chamberlain to exercise the powers of theatrical censor, Lord Clarendon, canvassed opinion among the great and the good in 1946 about whether discussion of the subject of homosexuality should be allowed on the stage. The ban on its treatment was re-confirmed by this exercise, which was repeated in 1951.⁵⁷ This was perhaps a bizarre move, by a particularly reactionary Lord Chamberlain, at a time when other public officials and politicians were seeking to clamp down on homosexual activity and the temporary sexual relaxation which was experienced during the War. The failure of Ben Levy to garner more than 79 votes for his bill to abolish theatre censorship in 1949 demonstrated the general atmosphere of moral recidivism in Britain after the Second World War. However, there was no great tension between this political position and the creative direction of the theatre. As John Elsom argues, "theatre was continually trying to set standards. Writers on all levels were ready to chip in with sturdy defences of traditional values".⁵⁸

Clarendon's successor, the Earl of Scarborough, refused to grant a licence to Oscar Wilde by Leslie and Sewell Stokes in 1957, eleven years after Clarendon had refused the same play.⁵⁹ But there were few other challenges to the prohibition of homosexual themes. Tea and Sympathy was also refused a licence in 1954 as were a number of other plays, some of which even the examiners considered to be dramatically very good.⁶⁰ Scarborough was not to be swayed by such considerations commenting on Ronald Duncan's The Catalyst that:

"...I am not prepared to pick and choose between the good and the bad plays which deal with the subject of homosexuality and lesbianism, and so long as that policy prevails I regret I cannot license the play."⁶¹

⁵⁷ Johnston, op.cit., p.193.

⁵⁸ Elsom, op.cit., p.204.

⁵⁹ BL, LCP/WB 19, E.Penn, Assistant Comptroller, to Scarborough, 21.12.60. The original correspondence relating to these two submissions for a licence has not survived.

⁶⁰ BL, LCP/1459, Sir Norman Gwatkin, Comptroller, to Donald Albery, Director, New Theatre, 18.5.54.

⁶¹ BL, LCP/1452, comment by Scarborough on reader's report, presumably mid-May, 1957. The Catalyst was eventually licensed on 13.11.58, though no correspondence relating to this decision survives in the file.

The Catalyst contained a lesbian element, not even a criminal offence like male homosexuality. Serious Charge was granted a licence the previous year, but this play dealt only with a false accusation of pederasty which was obliquely alluded to and reinforced the traditional view of homosexuality as sinful and abhorrent. Despite Scarborough's concern that he was not "convinced by the retort that because the accusation was untrue no question of propriety can arise", he had no difficulty with the overall treatment of the theme.⁶² The imminent publication and parliamentary debate of the Wolfenden Report shifted the boundaries of public discussion of homosexuality. The Lord Chamberlain was now forced to reconsider his position on licensing plays dealing with the subject.

Scarborough went to see Rab Butler, then Home Secretary, in June 1957 to discuss the problem. He was prompted initially by the production of a number of plays dealing with homosexuality, including Tea and Sympathy, by the Watergate Theatre Club at the Comedy Theatre.⁶³ The abuse by this theatre of an oft-used loophole of the private theatre club to present unlicensed plays "had created a position", in the words of Scarborough, "in which the law and the censorship was [sic] becoming rather farcical". In this case the issue was homosexuality, and Scarborough, asserting that the censorship had always adjusted gradually to changing social attitudes, for example towards the discussion of prostitution, thought that "the same position was arising with regard to perversion."⁶⁴ Some plays dealing with homosexuality the Lord Chamberlain "recognised to be of substantial literary and artistic merit".⁶⁵ Both Butler and Scarborough agreed that it was undesirable to launch prosecutions against theatre clubs for presenting such plays, for fear of inciting press and public outcry against the censorship. The Watergate's productions had indeed aroused considerable press comment, which generally remarked on the mildness of the plays presented, the sensible function of the theatre club and the archaism of the Lord Chamberlain's powers of censorship over the stage.

⁶² The Times, 9.11.53; BL, LCP/5355, Reader's report by C.D. Heriot and comment by Scarborough, 16.3.53.

⁶³ The Spectator, Letters to the Editor, B.A. Young, 26.10.56; BL, LCP 1459 Nugent to Scarborough, 25.10.56.

⁶⁴ PRO, HO 300/12, note by Scarborough of meeting with Rab Butler, 4.6.57.

⁶⁵ PRO, HO 300/12, note for the record, 4.6.57.

The Daily Mail, in advocating that the censorship either be abolished or a classification system introduced, commented that:

“neither of the two plays so far presented under the New Watergate’s cloak of legalised hypocrisy could be called a shocker. They were not “plays about homosexuality” as the gossips loosely called them; they only lightly touched on the theme.”⁶⁶

The Daily Express followed the same line, arguing that censorship should be left to the laws of obscenity, as with books. (It should be remembered that this comment was made before the Obscene Publications Act 1959 introduced a defence of ‘literary merit’ for publishers and writers.⁶⁷) It also compared contemporary plays to relatively much bawdier classic plays like Shakespeare’s Titus Andronicus or Sophocles’ Lysistrata (although the latter continued to be banned by the Lord Chamberlain).⁶⁸

The solution, for Scarborough and Butler, was to relax the censorship “and permit for limited audiences plays dealing seriously with what could be regarded as a social question.”⁶⁹ The proposal, as worked out between the Home Office and the Lord Chamberlain’s Office was for legislation to confer on the Lord Chamberlain the power to declare a play unsuitable for children under eighteen, and create a new offence of admitting a child to a performance of such a play⁷⁰. Initially, the mechanism by which Butler intended to proceed with this reform was a private member’s bill.

By the time these proposals reached the Home Affairs Committee of the Cabinet in June 1958 other ministers were alarmed at the prospect of the pre-censorship system being submitted to parliamentary and press scrutiny. However the Committee was keen to liberalise the censorship of controversial

⁶⁶ Daily Mail, 30.1.58.

⁶⁷ Obscene Publications Act, 1959.

⁶⁸ Daily Express, 31.1.58.

⁶⁹ PRO, HO 300/12, note by Scarborough of meeting with Rab Butler, 4.6.57.

⁷⁰ PRO, HO 300/12, Amendment of the Theatres Act 1843, Memorandum by the Secretary of for the Home Department and Lord Privy Seal, February 1958.

issues whilst retaining the existing system. This resulted in the idea of a voluntary classification scheme which the Lord Chamberlain would agree with theatre managers.⁷¹ However at the next meeting of the Committee, Butler had clearly had second thoughts about the Lord Chamberlain seeking “informal agreements” on censorship.⁷²

This failure of the Conservative Government to legislate for a more sophisticated censorship system on the lines agreed by Scarborough and Butler left the Lord Chamberlain in a difficult position. By the end of 1958 he was forced to deal with the realities of plays continuing to push the limits of the censorship when dealing with homosexuality, swearing and other controversial topics. Scarborough therefore outlined strict terms on which homosexuality might now be dramatised:

“I... propose to allow plays which make a serious and sincere attempt to deal with the subject... Licences will continue to be refused for plays which are exploitations of the subject rather than contributions to the problem [sic]...

- a. Every play will continue to be judged on its merits. The difference will be that plays will be passed which deal seriously with the subject.
- b. We would not pass a play that was violently pro-homosexual.
- c. We would not allow a homosexual character to be included if there were no need for such inclusion.
- d. We would not allow any ‘funny’ innuendos or jokes on the subject.
- e. We will allow the word ‘pansy’, but not the word ‘bugger’.
- f. We will not allow embraces between males or practical demonstrations of love.
- g. We will allow criticism of the present Homosexual Laws [sic], though plays obviously written for propaganda purposes will fall [sic] to be judged on their merits.
- h. We will not allow embarrassing display by male prostitutes.”⁷³

⁷¹ PRO, CAB 134/1972, H(58) 12th meeting, 17.6.58.

⁷² PRO, CAB 134/1972, H(58) 16th meeting, 25.7.58.

⁷³ BL, LCP/WB 23, Minute by Scarborough, 31.10.58.

The only merit of these prescriptions could be said to be that it was the first time that rules operated by the Lord Chamberlain were set out in such detail. However, this did not leave much scope for a profound discussion even of the limited legal and penal content of the Wolfenden Report, let alone the moral issues involved or the real life experiences of homosexuals. However, opinions within the Lord Chamberlain's office on the operation of these rules were contradictory, as with other subjects. Delaney's seminal play A Taste of Honey received differing assessments by Play Examiner Charles Heriot and Comptroller-General (the head of the Lord Chamberlain's office) Sir Norman Gwatkin. Heriot, while sympathising with the merits of the play and recommending a licence was keen to see the 'queerness' of the Geof character toned down, and referred to homosexuality as "the forbidden subject", despite the revision of the ban the previous year⁷⁴. Gwatkin was repelled by it and was strongly against allowing it through. Scarborough sided with Heriot, and minuted after his meeting with Butler that:

"For one thing this subject had now become one which was much talked about, and it was bound to appear rather ostrich-like that it should never be mentioned on the stage."⁷⁵

This statement highlights the impossible dilemma in which the Lord Chamberlain stood. He had no precise rules by which to work. The arbitrary system of bartering over controversial subjects to be presented on stage in realistic vernacular language could not be squared satisfactorily with his other declared role of protecting the public from distasteful or shocking material, especially once ground had been conceded in a liberal direction.

Although, as Johnston points out, both Scarborough and Lord Cobbold, former Governor of the Bank of England and the last Lord Chamberlain to exercise powers of theatre censorship, refused a licence to only a tiny percentage of plays (30 out of 10,219 under Scarbrough between 1952 and 1963, and 11 out

⁷⁴ BL, LCP/1017, Reader's report by C.D. Heriot, 5.5.58.

⁷⁵ BL, LCP/1017, comment by Gwatkin, undated but presumably 5th or 6th June 1958; PRO, HO 300/12, Note of meeting between Scarborough and Butler, 4.6.57.

of 4,405 under Cobbold between 1963 and 1968), there was an increasing number during the decade before abolition where the Lord Chamberlain's Office required significant alterations or cuts before granting a licence. There was also an increasing number of so-called 'waiting-box' plays, where the producer would not assent to the required alterations and was in dispute with the Lord Chamberlain's Office.⁷⁶ This masked the number of 'banned' plays because they were often performed without a licence under the illegal but permitted loophole of the private theatre club.

What added to the pressures on the Lord Chamberlain to relax the bounds of the censorship, and swelled the calls for its reform or abolition, was the increasingly close relationship between the theatre and other media. The regulatory regimes for BBC and television, commercial television, the cinema, literature, and the press were all more relaxed than that operated by the Lord Chamberlain for the theatre. Scarborough, perhaps, had some right to feel the ground was constantly shifting underneath him. No sooner did one public episode result in a modification of his rules, for example that over Wolfenden and homosexuality, then another medium relaxed its rules further, for example the degree of liberation afforded to writers of literature by the new era of the Obscene Publications Act 1959. Whilst this Act meant that 'literature of merit' such as D.H. Lawrence's Lady Chatterley's Lover could be published for the first time, containing descriptions of adulterous sex embellished with 'four-letter' words, such genuine expressions of real life, and use of the vernacular could not be tolerated in any realistic measure on the stage.

More crucially for the process of liberalisation within the arts and media, these other regulatory regimes contained more precisely defined rules within which artists and their producers and publishers could work. Where there was argument over the limits to which these rules could be pushed, for example the attempted prosecution of Penguin for publishing a book, Lady Chatterley's Lover, for its alleged tendency "to deprave and corrupt" under the Obscene

⁷⁶ Johnston, op.cit., p.278.

Publications Act 1959,⁷⁷ the law could be tested. An unfair decision by the Lord Chamberlain could not be challenged. The failure of the Government to establish an adult certificate play licence threw the system's archaism into greater relief as other media enjoyed more subtle and sophisticated regulation. Some supporters of the censorship failed to recognise the legitimacy of asking that stage plays should be put on the same footing as literature, with living persons and others afforded the same protection through the courts. Examiner Fletcher, commenting on Soldiers in 1967, wrote:

"If there is a case of improper behaviour [by Churchill during the War] let the facts be stated in a pamphlet, or book, the charges supported by evidence, and the matter submitted to the Courts if any of the accused are in a position to take action."⁷⁸

The effect of the growth of television ownership and viewing during the 1950s on the cinema industry, which was in continuous decline, and the injection of competition into this market in 1955, have already been mentioned above.⁷⁹ Although television did not intrude greatly into the world of film at this point,⁸⁰ there were strong links made between the two trends.⁸¹ The BBC enjoyed considerably more freedom than either cinema under the BBFC or theatre under the Lord Chamberlain to broadcast material which challenged the stuffy, conventional middle-class perspectives of the 1950s. BBC Radio soon had a close relationship with new authors. Despite some adverse comment, audiences reacted well to new radio plays like Bill Naughton's Alfie Elkins and his Little Life (1962), broadcast on the Third Programme which later became the film Alfie.⁸² The large audiences which radio, and increasingly, television could garner for new playwrights made these media very attractive to writers – Harold Pinter's A Night Out which featured on BBC TV's Armchair Theatre programme in 1960

⁷⁷ Obscene Publications Act, 1959, section 1(1).

⁷⁸ BL, LCP/WB 26, Reader's report by Fletcher, 11.1.67.

⁷⁹ See above Chapter 2.ii, pp.58-59.

⁸⁰ Asa Briggs, The History of Broadcasting in the United Kingdom vol.V 'Competition' (Oxford; OUP, 1995) pp.186-187.

⁸¹ O'Higgins, op.cit., pp.134-135.

⁸² BBC IR/62/58, 'Alfie Elkins and his Little Life', 30.1.62.

attracted 6,380,000 viewers.⁸³ In addition, BBC executives had a specific remit to find as many new writers as possible and explore “contemporary British themes”, especially with the advent of Play for Today in 1962.⁸⁴ Although the growth of subsidised theatre companies mirrored this to some extent, the scale of economies was somewhat different. Film gave no such organised artistic encouragement to new and innovative writing.

However, when a book or radio play was translated into stage play or film, writers and producers found that the liberalising rhetoric of censors like John Trevelyan at the BBFC about ‘moving with the times’ did not prevent them from trying to impose much severer restrictions than had Heads of Department at the BBC⁸⁵. Because of the nature of external pre-censorship of cinema and theatre, and the grey area in which controversial scripts found themselves, both sides were dragged into a process of often lengthy discussion about the level of swearing or the explicitness with which abortion, homosexuality, violence or sex could be depicted. Many scripts, especially during the decade before the end of theatre censorship had to undergo this ordeal twice.

The Lord Chamberlain and the BBFC kept in close contact, and followed a policy of keeping in line with each other over what they would permit.⁸⁶ Cobbold met Lord Harlech, President of the BBFC, frequently, and Johnston had a similarly close relationship with Trevelyan.⁸⁷ Yet, despite the younger, mass audience to which the cinema was catering, Trevelyan’s regime at the BBFC always inclined towards greater liberality than any at the Lord Chamberlain’s Office. Whereas plays licensed for the theatre rarely had trouble being passed as ‘X’ certificate films, scripts which had made it to the big screen could have their content questioned by the Examiners of Plays. When the play of the film of the book of Alan Sillitoe’s Saturday Night and Sunday Morning reached their office they took the same attitude towards the use of the word ‘bogger’ as had

⁸³ Daily Telegraph 30.5.60.

⁸⁴ Briggs, op.cit., p.395-396; BBC T16/543, ‘Control over the subject matter of programmes in BBC television’, note by Huw Wheldon, Controller of Programming (Television), 28.9.66.

⁸⁵ Aldgate, op.cit. p.8.

⁸⁶ Ibid., p.7.

⁸⁷ Johnston, op.cit., p.183.

the BBFC, but also cut other far more innocuous swear words.⁸⁸ (Interestingly when the play was revived in 1966 the licence was amended to disallow “closely related euphemisms” like “beggared” because they put “too great a strain upon the actors and actresses”.⁸⁹) A process of keeping in contact over specific scripts sent to both offices lasted for the rest of the lifetime of the censorship of the theatre.⁹⁰

This close link between the Lord Chamberlain’s Office and the BBFC between 1958 and 1968 encouraged some to favour the reform of theatre censorship along the same lines as cinema.⁹¹ These calls were made on the basis that the archaism of the office of Lord Chamberlain, his lack of accountability and the absence of rules of gradation between plays was what offended. However, for the ‘total’ opponents of theatre censorship this was not the point. Many objected to the system operated by the BBFC and to the still oppressive operation of the new Obscene Publications Act 1959. For conservatives the ‘bottom line’ was that the size of the audience at a theatre meant that imperfect libel and obscenity laws were insufficient protection against offence for, and corruption of, the public.

Although some moderate reformers like Lord Cobbold wanted to include the BBC in any discussion of reform of censorship, the BBC continued to argue that, as a special case, its methods of editorial control over programmes were:

“more akin to similar processes in large newspapers than they are to the machinery of censorship in the theatre and film industry.... Newspapers act within the laws of libel and obscenity, and are tempered by the necessity to maintain an editorial policy and a relationship with their readers. The BBC acts similarly. Its controls emerge out of a profound sense of corporate unity, and at the same time are handled within the context of an organisation with an equally profound sense of its duty to

⁸⁸ BL, LCP/4112, Reader’s report by Heriot, 14.3.64.

⁸⁹ BL, LCP/4112, Johnston to Michael White, Nottingham Playhouse, 10.2.66.

⁹⁰ Johnston, *op.cit.*, pp.194-5.

⁹¹ See below at section v, p.215.

break new ground, provide new growing points, and grasp the future; not simply in broadcasting, but in the life of the nation."⁹²

This grandiloquent distinction between broadcasting editorial policy and pre-censorship of other media by Huw Wheldon, Controller of Programmes at the BBC, is instructive. The BBC was a monolithic entity, and it was considerably more influential and powerful than the disparate, poorer theatre.

As Lord Cobbold later recalled in a letter to his family:

"It [the censorship] had, however, become an obvious nonsense, particularly with the cinema censorship arrangements and the growth of radio and television, which had quite different and rather vague 'censorship' regimes, and with the inter-change with an entirely free New York theatre, not to mention increasing freedom of general public taste, I soon decided that the position was going to become untenable."⁹³

With the advent of Lord Cobbold in 1963 as Lord Chamberlain the realisation of the implications of these tensions between different media for the theatre at last pointed towards reform of the censorship. Cobbold eventually moved, in advance of an inquiry into the censorship, in 1966 to relax further the proscriptions, this time in respect of the ban on representation of the Deity. Following consultation with Anglican, Catholic and Nonconformist Churches, he agreed to consider individual plays on their own merits⁹⁴. This was, however, an easier problem to deal with than other developments between 1964 and 1966.

⁹² BBC T16/543, 'note by Wheldon, 28.9.66.

⁹³ Johnston, *op.cit.* p.179.

⁹⁴ LPL, RP/93, 79, Cobbold to Ramsey, 9.5.66.

iv. Before and after Saved – the abuse of the private theatre club

The Lord Chamberlain's Office had, of course, contributed considerably towards creating this untenable position by trying irrationally and inconsistently to balance liberal and conservative demands on the theatre's regulatory regime, with increasingly bizarre restrictions on and alterations of controversial plays. However, the acrimonious and litigious atmosphere between the Lord Chamberlain's office and producers and writers which resulted as the expectations of censorship abolition rose, after the election of the Labour Government in 1964, was partly due to Lord Chamberlains' connivance with successive Attorneys-General in an illegal loophole which permitted the production of plays which were refused a licence for fear of the outrage or offence they would cause by the play being performed in a 'private theatre club' where the audience was restricted to paying members.

This was an age-old ruse dating back to the nineteenth century designed to evade the Sunday Observance Act 1780. Some theatres had developed into proprietary clubs catering for a special audience, rather than staging individual private performances of unlicensed plays.⁹⁵ However, as an increasing number of plays fell foul of the blue pencil during the second half of the 1950s normal theatres re-created themselves specially for the purpose of selling membership to view an unlicensed play 'in private'. The Lord Chamberlain allowed such performances in the following circumstances:

- "a. Tickets must be sold only to its members, on production of a membership card, who may bring up to four guests.
- b. No tickets to be sold at the door or money taken there.
- c. Any advertisement must clearly state that performances are for members only.
- d. No alcoholic drinks (to comply with the Theatres Act 1843)."⁹⁶

⁹⁵ Richards., op.cit., p.119.

⁹⁶ Johnston, op.cit. p.210.

Despite the clear lack of provision under the Theatres Act for such arrangements, the Lord Chamberlain's Office, Conservative and Labour Governments, theatre managers and production companies all connived in a fictitious loophole in order to allow, in the words of Lord Scarborough, "experimental laboratories for the theatre",⁹⁷ and avoid having to relax or abolish restrictions generally. Many newspapers agreed. The Times, in tones more suited to Pall Mall than the West End, thundered that:

"If the tolerance of the Lord Chamberlain is not to be tested, then clubs may be trumps... Elected members can witness scenes and hear lines that would perhaps be kept from the ordinary public... Still, doubts persist – aesthetic rather than moral. When no holds are barred, you may get a rough house, a free fight, instead of a display of hard skilful boxing."⁹⁸

In 1957 the Home Secretary was asked by Marcus Lipton, Labour MP for Brixton, whether, in the light of the performance of unlicensed plays, the censorship would be abolished. A flat denial was given.⁹⁹ But the upsurge in unlicensed performances continued, with Actors' Equity expressing concern at the conditions in such clubs and suggesting a legal challenge to them should be made. The Theatres National Committee, representing theatre managements, also complained to the Home Office.¹⁰⁰

As seen above, the establishment of clubs like the Watergate Theatre Club which pioneered the production of unlicensed plays dealing with homosexuality and other controversial themes, forced the Government and the Lord Chamberlain to relax the ban on homosexuality on the stage. This happened without their securing the amendment to the Theatres Act which would have allowed the presentation of other themes considered unsuitable for under eighteens and stamped out what were seen as the worst abuses of the private theatre clubs - the ease of acquiring membership and the number of members

⁹⁷ PRO, HO 300/12, Scarborough's note of meeting with Butler, 4.6.57.

⁹⁸ The Times, 1.2.58.

⁹⁹ HC Deb., vol. 570 cols. 33-34, 13.5.57.

¹⁰⁰ Johnston, op.cit., p.212.

enrolled, given the attraction of the plays performed. While the Home Office and Lord Chamberlain waited for Parliament to debate the Wolfenden Report and thus a suitable opportunity to introduce an amending Bill on play classification, the Watergate staged Cat on a Hot Tin Roof, refused a licence by the Lord Chamberlain, which caused considerable comment in the press as well as amongst officials. The press response to the play was generally favourable, the Manchester Guardian reporting that; “its extraordinary, gripping speech rhythm... and not the fearsome soul-baring nor the psychological surgery which lifts the play above a mere sexual grand guignol... and stamps it as a very impressive if distressing study in neurosis and marital misery.”¹⁰¹ However, The Home Office noted that:

“This type of club uses the fact that a play has been “banned” for publicity purposes; in fact I understand that they sometimes deliberately arrange for a play to be submitted to the LC so that it can subsequently be billed as “banned”. The “X” certificate given to films is similarly abused and it is likely that the “adult” classification of plays will be too.”¹⁰²

Officials were clearly not convinced of the efficacy of the solution proposed by Butler, the Lord Privy Seal and Scarbrough. They had opposed any alteration to the *modus vivendi* evolved between the censor and the various interests in the theatre world when Scarbrough and Butler had first discussed it. One official note commented that:

“the Act of 1843 is obscure and unsatisfactory in many respects but the local authorities and theatre managements have evolved a workable system which we should not wish to disturb or call in question at this stage...”¹⁰³

They were clearly supported by other ministers on the Home Affairs Committee who did not wish the boat to be rocked by increased public interest in the Lord

¹⁰¹ Manchester Guardian, 1.2.58

¹⁰² PRO, HO 300/12, Note by Miss M. Hornsby, General Department, 17.2.58.

¹⁰³ PRO, HO 300/12, Hornsby to N.D. Walker, Scottish Home Department, 29.10.57.

Chamberlain's control of theatre censorship.¹⁰⁴ In any case, there were a number of technical difficulties encountered during attempts to draft a Bill covering Scotland as well as England and Wales which would satisfactorily amend the "obscure" 1843 Act as well as the numerous regulations governing different types of performance and location.¹⁰⁵ These, combined with the time which elapsed before the Wolfenden Report was debated in Parliament in November 1958, with which the introduction of the above amending legislation was to coincide, scuppered the chances of a play classification system. Private theatre clubs were left undisturbed.

It was only when the large flag-ship companies, the RSC and particularly the Royal Court Theatre, expanded their 'club' performances and their unrestricted membership considerably, that Scarbrough's successor, Cobbold, felt compelled to act against any unlicensed production where paid acting and charging was involved. In other words he would now effectively implement the 1843 Theatres Act. As O'Higgins points out, "we can only be astonished at the naiveté of this approach".¹⁰⁶ The Royal Court staged Osborne's A Patriot for Me in 1965 under the thin disguise of a private theatre club production after a licence had been refused because of two significant scenes in which physical homosexuality was displayed and which "exploited the subject",¹⁰⁷ contrary to the terms by which Scarbrough had relaxed the censorship in 1958. Both the Lord Chamberlain and the DPP, Sir Norman Skelhorn, were of the opinion that a successful prosecution was likely against the theatre.¹⁰⁸ However, the Attorney-General, Sir Elwyn Jones, and the Solicitor-General, Sir Dingle Foot (who had introduced the last private member's bill for abolition in 1962), decided for political reasons not to proceed:

"...we were strongly of the opinion that it would be inexpedient to institute such a prosecution in connection with a play which had attracted a great

¹⁰⁴ PRO, CAB 134/1972, H(58) 12th meeting, 17.6.58

¹⁰⁵ PRO, HO 300/12, S.A. Gywnn, Superintending Inspector, Children's Department, to Walker, 19.11.57; H.W. Stotesbury, Assistant Secretary, Home Office to Walker, 6.2.58.

¹⁰⁶ O'Higgins, op.cit. p.93.

¹⁰⁷ BL, LCP/WB 23, Johnston to Christine Smith (Royal Court Theatre), 1.9.64; Daily Telegraph, 'Osborne play bar by Lord Chamberlain', 17.9.64.

¹⁰⁸ BL, LCP/WB 23, Johnston to Skelhorn, 2.7.65; PRO, HO 300/56, note of meeting, 22.11.65.

deal of public interest and a good deal of support and had, in any case been running for some time.”¹⁰⁹

The production of Edward Bond’s Saved as an eight week run ‘club performance’ at the Royal Court, which followed soon after A Patriot for Me, was a step too far for the Lord Chamberlain and Ministers. Cobbold pointedly said that if no action were taken against such productions then the 1843 Act would be difficult to administer (as if it had been easy before),¹¹⁰ and suggested that an intervention might “serve to mark a point of principle and hold the line”. Jones still moved carefully, worried about stirring controversy against the current regime, and argued for a fresh inquiry along the lines of the 1909 Select Committee.¹¹¹ The Home Office’s view of the position seems to have changed little since reform was last discussed in 1958. Commenting on the Attorney-General’s letter, an official note remarked that:

“our view has always been that it would be best to let sleeping dogs lie; We continue to receive very few complaints... This does not mean that there is not some rumbling dissatisfaction in literary or dramatic circles which finds occasional expression, but certainly there is no evidence yet of what could be described as a campaign.”¹¹²

This display of typical Civil Service *sang froid* against all the evidence of which way the wind was blowing at least chimed in with the thoughts of Sir Frank Soskice, Home Secretary at the time.

When Soskice, Foot and Lord Gardiner, the Lord Chancellor, met to discuss the matter, Soskice cheerfully argued that “it continued to work by and large remarkably well”. With an uncanny air of officialese he continued;

¹⁰⁹ PRO, PREM 13/2152, ‘Theatre Censorship’, Sir Elwyn Jones to Frank Soskice, 22.10.65.

¹¹⁰ PRO, PREM 13/2152, Jones to Soskice, 22.10.65

¹¹¹ BL, LCP/WB 29(B), Cobbold to Sir Norman Skelhorn Director of Public Prosecutions, 6.10.65.

¹¹² PRO, HO 300/56, K.P. Witney to Guppy, 28.10.65.

“as regards an inquiry, his greatest fear was that the wrong sort of public interest would be aroused by it and pressures thus engendered which would result in the institution of a fresh system which, though more logical than the present one, would be effectively more onerous”¹¹³.

Foot and Gardiner were predictably much more positive about reform of the censorship. Foot did attempt to mollify Soskice by saying that what the Jones Bill and he proposed would retain a voluntary use of the Lord Chamberlain’s licensing system to protect producers against libel. The Lord Chancellor, however, made a special plea for improvisation and spontaneity in the theatre. Their concern at stirring opposition to a continued loosening of moral standards in society was outweighed by the neutrality of merely setting up an inquiry into the current system.¹¹⁴

At a meeting with the Home Secretary in November 1965, Cobbold threatened to go public on his above point.¹¹⁵ He continued to support an inquiry, in conjunction with proceedings against the Royal Court, but, in a remark that sums up neatly the blindness of successive Lords Chamberlain, ministers and officials to the anachronistic position of the Lord Chamberlain being responsible for censoring stage plays, he said:

“any inquiry should be handled in such a way that The Crown should not in any way whatsoever be thought to be implicated: he and his predecessors, though Court Officers, had always sought to disassociate their public function as theatre censors from their other functions as Officers of the Household.”¹¹⁶

It simply did not register that the public, press, actors and playwrights did not make a such a distinction between public and royal duties, and for the changing social and political mores of the 1960s it was the Lord Chamberlain’s complete

¹¹³ PRO, HO 300/56, note of meeting, 19.11.65.

¹¹⁴ PRO, HO 300/56, note of meeting, 19.11.65.

¹¹⁵ PRO, HO 300/56, note of meeting, 22.11.65.

¹¹⁶ PRO, HO 300/56, note of meeting, 22.11.65.

identification with 'the Establishment' which the censorship protected that barred him from performing such a function, were that function necessary at all.

From the end of 1965 supporters and opponents of reform or abolition were beginning to press the Government for some resolution of the absurd anomalies and contradictions in the administering of the Theatres Act 1843 and the powers exercised by the Lord Chamberlain. As William Gaskill observed in his memoirs:

“the Saved affair had brought to a head the case against the Lord Chamberlain's power of pre-censorship. The following three years were dominated by the fight to break his power...”¹¹⁷

The decision to ban Saved had been a swift one, both Eric Penn, now Comptroller-General, and Lord Nugent, Lord-in-Waiting and former Comptroller-General, finding the language and plot revolting, particularly the scene where a baby is stoned to death in its pram. But even with a play which offended the moral sensibilities of the Lord Chamberlain's office this much caused some uncertainty about refusing it a licence. Nugent worried that because the themes of “hopelessness, fecklessness and the complete amorality which springs from them” had been broached before they should grant a licence with the script “cut to ribbons”, even though this would allow the “tasteless [George] Devine [Managing Director of the Royal Court]” to put it on as a club performance.¹¹⁸ Cobbold, as he reported to Ministers was “not disposed to compromise very much” with Saved.¹¹⁹

The correspondence file relating to this play reveals how symbolic it had become for the supporters of reform and theatrical freedom. Following the prosecution of the Royal Court in April 1966, the Lord Chamberlain's office was inundated with requests for clarification about the legal status of the play and the exact conditions under which club performances would be tolerated by the Lord Chamberlain, principally by university theatrical companies. His responses to

¹¹⁷ William Gaskill, A Sense of Direction (London: Faber and Faber, 1988), p.70.

¹¹⁸ BL, LCP/WB 29(A), Penn to Nugent, 25.7.65; Nugent to Cobbold, 27.7.65

¹¹⁹ BL, LCP/WB 29(A), Johnston to Cobbold, 3.8.65, comment by Cobbold.

these letters were often opaque, and failed to correct the common misapprehension that the Lord Chamberlain, rather than the DPP on the advice of the Attorney-General, instituted criminal proceedings.¹²⁰ This confusion, resulting from the lack of detailed rules by which the censorship operated, was compounded, in Lord Goodman's words, by the fact that "the Authorities have exercised a considerable element of caprice in the past". It was true, however, as Goodman reiterated to Cobbold, that; "your views on a matter such as this [the possible prosecution of a theatre club] would, I hope, be very influential on the minds of the unlettered police". Cobbold, quite rightly, felt that the Attorney-General would object to being called an unlettered policeman.¹²¹

¹²⁰ BL, LCP/WB 29(A), Johnston to Cobbold, 3.8.65, comment by Cobbold.

¹²¹ BL, LCP/WB 26, Goodman to Cobbold, 23.10.67.

v. *Fait accompli* – the Joint Committee on Censorship of the Theatre

The parliamentary dispositions on censorship had changed dramatically since Dingle Foot's Bill fell in 1962. The introduction of other liberalising private members' bills from 1965 was steeling many MPs to challenge the status quo in several areas of the law. Despite some prevarication, characteristic on issues which he considered thorny, Wilson had not been hostile to reform when challenged by several MPs over the position of the Lord Chamberlain in July 1965,¹²² and continued to be supportive of Lee's arts policy, despite the Arts Council's increasing largesse towards companies producing avant-garde and controversial works. In response to William Hamling, Labour MP for Woolwich, in November, he virtually committed the Government to an inquiry.¹²³

The Attorney-General outlined in his memo to the Home Secretary in October 1965 the criticism levelled against the censorship in terms which showed the anachronistic position in which theatre stood when compared to other media in the modern world:

- “1. Censorship applies only to the theatre. Nowadays a play vetoed by the Lord Chamberlain may not be performed on the stage before a few hundred spectators. But it can appear before millions of viewers of the television screen.
2. No other country censors stage plays. The result is that a play which can appear in Washington, or in any other capital, may be prohibited in London.
3. The rules laid down from time to time by the Lord Chamberlain appear to many people to be quite absurd. For example, no representation of the Deity or of the head of a foreign State can appear on the British stage.”

His suggested approach, given the messy position in which the law, the Lord Chamberlain and the Government found themselves, was a fresh inquiry into

¹²² HC Deb., vol. 716 cols. 1335-1336, 20.7.65.

¹²³ HC Deb., vol. 721 col. 1229, 30.11.65; PRO, HO 300/56, note by Cunningham to Soskice, 2.12.65.

the subject, either a Royal Commission or, he commented rather wearily “a Committee of Inquiry of a type with which we are all very familiar...”.¹²⁴ Then there opened up some debate within the Government about the most suitable type of committee or commission, with Wilson and a few other senior Ministers favouring a Joint Select Committee of both Houses of Parliament, and the majority led by Soskice and the Lord Chancellor, Lord Gardiner, though not carrying the day, arguing for a departmental Committee.¹²⁵

However, there had been some concern within the Government to avoid an investigation into theatre censorship until the current furore caused by Mary Whitehouse’s ‘Clean-up TV Campaign’ had subsided.¹²⁶ These, combined with other voices, argued for a wider examination of censorship and standards within the arts and other media. Cobbold had already expressed his view that this was an opportune moment for such a broad inquiry. A more partisan view came from the Scottish Secretary, Willie Ross. He was one of a few Cabinet Ministers who opposed all the ‘permissive’ reforms under discussion in this thesis. In response to Soskice’s draft paper to the Home Affairs Committee, Ross said that Scottish opinion favoured greater restriction for television than for the stage. He was strongly suspicious that Soskice’s motives were to relax the censorship:

“I do not dissent from your main thesis that public attitudes and social custom have changed so much since 1843 that a review of the Theatres Act is overdue... [But] if we touch this subject at all, what we need, I think, is an examination of the whole question of what control over entertainments modern society requires, or is prepared to accept, in the interests of public morality and decency...”¹²⁷

This attitude was shared by the Presbyterian Church of England,¹²⁸ and reinforced by a condemnatory resolution by the Free Church on relaxing

¹²⁴ PRO, PREM 13/2152, Jones to Soskice, 22.10.65.

¹²⁵ PRO, PREM 13/2152, Jones to Soskice, 22.10.65; see below at Chapter 8.ii.

¹²⁶ PRO, PREM 13/2152, Douglas Houghton to Wilson, 14.12.65.

¹²⁷ PRO, HO 300/56, Ross to Soskice, 1.12.65.

¹²⁸ LPL, RP/93, 69, A.L. Macarthur, General Secretary, Presbyterian Church of England, to Ramsey, 31.3.66.

ensorship.¹²⁹ The Home Affairs Committee of the Cabinet was anxious to prevent the widening of any inquiry, despite the fact that this would delay reform of theatre censorship which it supported.¹³⁰

However, two events precipitated swifter action. The first was the replacement of Soskice by Roy Jenkins in December 1965. His reforming credentials were immediately established in Cabinet and the Home Affairs Committee. Officials picked up quickly on the change of tempo. They encouraged Jenkins to bring the matter of an inquiry back to the Home Affairs Committee, despite the decision having been deferred until after the Lords debate.¹³¹ Jenkins agreed, seeing an inquiry as essential once proceedings were launched against the Royal Court Theatre in January in respect of Saved. He took his cue from Wilson's positive responses to Parliamentary Questions, and suggested the inquiry be limited to London theatre, which would cleverly cut out the necessity of hostile Scottish representation on the inquiry Committee.¹³² Having pressed forward with the progress of private members' bills on abortion and homosexuality,¹³³ Jenkins turned to theatre censorship at his second Home Affairs Committee meeting. Using the proceedings against the Royal Court as a reinforcement of the case for launching an inquiry, Jenkins argued that:

“It should be possible to confine the inquiry to theatre censorship on the ground that the arrangements in this field, unlike those for films and broadcasting, were plainly outmoded...”

Whether out of characteristic nostalgia for the Asquith administration, or strategic alliance with the Prime Minister, Jenkins supported a Joint Select Committee as the best forum for an inquiry rather than a departmental committee.¹³⁴

¹²⁹ PRO, HO 300/56, Morris to Guppy 30.11.65.

¹³⁰ PRO, CAB 134/2850, H(65) 28th meeting, 3.12.65.

¹³¹ PRO, HO 300/56, Shuffrey, Principal, Criminal Department, to Guppy, 11.1.65.

¹³² PRO, HO 300/56, official note of conversation between Jenkins and Lord Stonham, Minister of State at the Home Office, 7.1.66.

¹³³ PRO, CAB 134/2852, H(66) 1st meeting 12.1.66; H(66) 2nd meeting, 26.1.66.

¹³⁴ PRO, CAB 134/2852, H(66) 2nd meeting, 26.1.66.

The second spur to action was the pressure being exerted by Lord Cobbold to delegate his powers of pre-censorship to some form of “board of theatre censors” like the BBFC whilst the future of the censorship was decided. His own view was that such a board might be a longer term solution.¹³⁵ This idea was backed by both Archbishops and senior Methodists.¹³⁶ However, Jenkins argued the Government must take the initiative.¹³⁷ The Lord Chancellor was more direct. His Private Secretary reported to the Home Office his Minister’s view that to anyone:

“interested in the free expression of ideas in the theatre, a Board of Theatre Censors would be as objectionable as the present censorship. What he actually said was “Over my dead body”.¹³⁸

The main opposition to reform of the censorship was coming from those supporting the views of Mary Whitehouse *et al* who found the contemporary theatre’s profanity, sex, violence and attacks on religion and the royal family outrageous, and a number of theatre managers who feared the removal of protection from libel and obscenity laws and the growth of local watch committees.¹³⁹ In addition the Churches, rather naïvely, saw a reformed censorship as allowing more freedom to thoughtful religious drama and preventing “kitchen sink” drama.¹⁴⁰

The debate in the House of Lords which was used to air the proposal of an inquiry revealed nothing unexpected. Many cross-benchers and Conservatives including Scarbrough, Harlech, Chairman of the National Theatre and the BBFC, and Dilhorne, a former Conservative Lord Chancellor, favoured some system of censorship. Other cross-benchers, Labour and Liberal peers were generally more abolitionist, but with some reservations about the actual effects

¹³⁵ PRO, PREM 13/2152, Derek Mitchell, No.10, to Shuffrey, Home Office, 7.1.66; note by Cobbold to Wilson, 11.1.66.

¹³⁶ LPL, RP/93, 68, Donald Coggan, Archbishop of York, to Ramsey, 28.3.66; 63, Eric Barker, Secretary to the Methodist Conference, to Ramsey, 21.3.66.

¹³⁷ PRO, CAB 134/2852, H(66) 2nd meeting, 26.1.66.

¹³⁸ PRO, PREM 13/2152, T.S. Legg (Private Secretary to Lord Chancellor), to Shuffrey (Private Secretary to Home Secretary), 19.1.66.

¹³⁹ PRO, PREM 13/2152, note by Cobbold to Wilson, 11.1.66.

¹⁴⁰ LPL, RP/93, 63, Barker to Ramsey, 21.3.66.

on artists' freedom and the protection afforded to ordinary people. Perhaps the most telling contribution was from Lord Kennet, the writer Wayland Young, who pointed to the fact that the only other non-Communist Western country which operated a system of pre-censorship of the theatre was Franco's Spain.¹⁴¹ This assertion was backed up by the research carried out for the Joint Committee on Censorship of the Theatre.¹⁴²

The composition of the Joint Committee, when it was finally announced in July 1966, pointed immediately to a recommendation of abolition. Only Lords Scarbrough, Kilmuir (a former Conservative Home Secretary and Lord Chancellor who was replaced by Lord Brooke of Cumnor, another former Home Secretary, on his death) and Tweedsmuir, plus Sir David Renton, Conservative MP for Huntingdonshire and Home Office minister from 1958 to 1962, were obviously pro-censorship out of a total membership of sixteen.¹⁴³ However, reports of the proceedings of the Committee in the Press showed a distinct suspicion of the motives of its members. The Times was indignant that advance notice had been given to the press of the appearance before the Committee of the Lord Chamberlain, but not of John Mortimer, the playwright and QC who had been defence counsel in the Lady Chatterley case, John Osborne and Ben Levy¹⁴⁴. The only evidence, oral or written, submitted to the Committee which supported the existing system was from the Society of West End Theatre Managers, who saw the censorship as protection against prosecution and local watch committees, and the Association of Municipal Corporations.¹⁴⁵ Even the apprehensive Church of England had come to the unpatronising conclusion that:

“it would be morally healthy for the nation both if responsibility for maintaining standards were transferred to the theatrical profession itself

¹⁴¹ H.L. Deb., vol. 272 cols.1151-1248, 17.2.66.

¹⁴² Report of the Joint Committee..., op.cit., appendix 24, pp.188-199.

¹⁴³ Report of the Joint Committee..., op.cit., pp.iii-iv.

¹⁴⁴ The Times, 5.12.66.

¹⁴⁵ Report of the Joint Committee..., op.cit., pp.87-102, 147-152.

and also if the adult population were faced with the choice of condemning by withholding patronage.”¹⁴⁶

Lord Cobbold was a lone voice for the continuation of pre-censorship by another body than the Lord Chamberlain’s office. But his suggestion that this might be the Arts Council because of its independence and good relationship with the theatre drew a swift rejection by Lord Goodman.¹⁴⁷ This was precisely because the Arts Council was independent and had a good relationship with the theatre.

The Committee’s report was finally published officially in the autumn of 1967, but its findings were made public in June 1967, very soon after its final deliberations on 6 June. The Report was succinct and precise in its recommendation to abolish pre-censorship. It was sanguine and rational about the future position of the theatre:

“The ending of pre-censorship in its present form will not necessarily mean that henceforth there will be a complete free-for-all. Censorship in the widest sense of the word will inevitably continue and by various means control will be exercised over what appears on the stage. Managements will continue to refuse to put on plays whenever they think fit. Theatre critics will continue to describe plays as they wish. The public will be free to refuse to attend plays or to walk out if they do not like them. Finally the Courts will have the task of ensuring that those responsible for presenting plays which transgress the law of the land will receive appropriate punishment.”¹⁴⁸

This reinforced the fact that the Arts Council, local authorities and other parties contributed to a subtle, unofficial system of censorship. The report ended, however, on a positive note, averring that freedom of censorship would not now be curtailed, except by the criminal law.

¹⁴⁶ LPL, RP/93, 147, draft evidence to the Joint Select Committee, Pauline Claisse, Board for Social Responsibility, 21.11.66.

¹⁴⁷ Report of the Joint Committee..., pp.38,45.

¹⁴⁸ Report of the Joint Committee..., para.39.

vi. The achievement of anti-climax? – The protection of living persons and the passage of the Theatres Bill

Even apart from the difficulties of finding parliamentary time for a Bill to implement the Joint Committee's recommendations, there was no swift end to pre-censorship of the theatre. Summonses were eventually issued against the Royal Court Theatre in respect of Saved in January 1966. The position of private 'club' performances was not entirely clarified by the judgement which followed in April 1966 – that any unlicensed public productions were illegal, and the fig-leaf of a 'private theatre club' gave no protection against prosecution. What actually constituted a public rather than a private performance was not clear. In the event both the Lord Chamberlain and many producers backed off. Cobbold desisted from further prosecutions, but warned the Vaudeville Theatre not to accept a transfer from the Royal Court of a 'private' production of the satire America Hurrah.¹⁴⁹ The ruling alarmed the Arts Councils, which in England and Wales and Scotland were financing such productions. The Scottish Arts Council decided to continue its grant to the Edinburgh Traverse Theatre Club.¹⁵⁰ Lord Goodman decided to consult Cobbold, who indicated sufficient willingness to seek a prosecution again if he thought necessary. This persuaded Goodman that the Arts Council should end all grants to theatre clubs.¹⁵¹

However, during the spring and summer of 1967, around the time the Report's findings were made public, there was increasing concern raised among ministers about the protection of living persons if there were to be no pre-censor. This had been one of the main concerns of Lord Cobbold in the evidence he gave to the Committee.¹⁵² But he received little encouragement to press the issue until the controversy stirred up by Richard Ingrams' and John Wells' play Mrs Wilson's Diary, a rather gentle satire, nevertheless described by the Lord Chamberlain's office as "so cheap and gratuitously nasty, and so completely worthless that it is not recommended for licence",¹⁵³ in which the *dramatis*

¹⁴⁹ Findlater, *op.cit.*, p.201.

¹⁵⁰ O'Higgins, *op.cit.*, p.95.

¹⁵¹ Johnston, *op.cit.*, p.217.

¹⁵² Report of the Joint Select Committee, *op.cit.*, p.36.

¹⁵³ BL, LCP/1758, Reader's report by Heriot, 24.4.67.

personae included the Prime Minister and his wife, the Foreign Secretary, George Brown and the Governor of the Bank of England, Lord Cromer (ironically the son of an earlier, reactionary Lord Chamberlain).¹⁵⁴ The feathers that were ruffled within the Government about the play were well summed up by Richard Findlater: "...behind the vaunted permissiveness of the new regime, many of the old royal, political and religious prohibitions are still stubbornly defended, in spite of some apparent retreats."¹⁵⁵ Cobbold sent the script to the Prime Minister for those portrayed to comment on, as was his custom with plays depicting living persons.¹⁵⁶

However, it was not only read by the Wilsons and Brown (who reportedly commented defensively to Wilson that he had "had just about enough of this sort of thing"¹⁵⁷), but also by the Chancellor of the Exchequer, his wife and George Wigg, Paymaster-General and Wilson's adviser on security matters. Both Brown and Audrey Callaghan had requested extra deletions.¹⁵⁸ Cobbold, having discussed the play with Michael Palliser, one of Wilson's private secretaries, concluded that refusing a licence would be unwise and futile, since it would only be produced as a club performance. Wilson, in any case, was content to leave the decision to Cobbold's discretion.¹⁵⁹ As Examiner Fletcher remarked over Hochhuth's Soldiers, "where there is a political context to a play the Lord Chamberlain is at his weakest, since the last thing he can afford to be accused of is political bias."¹⁶⁰

The Prime Minister did, however, then lead a rearguard action to see a clause protecting living persons inserted into any Bill to abolish the censorship. In July he requested information on the division of opinion within the Home Affairs Committee on the issue. The reply came that only Wigg favoured some restrictions, and both the Home Secretary and Patrick Gordon-Walker, Minister

¹⁵⁴ Richard Ingrams and John Wells, Mrs Wilson's Diary (London: Private Eye, 1966); BL, LCP/1758.

¹⁵⁵ Findlater, *op.cit.*, p.202.

¹⁵⁶ Johnston, *op.cit.*, p.117.

¹⁵⁷ BL, LCP/1758, Johnston to Cobbold, 8.5.67.

¹⁵⁸ PRO, PREM 13/1395, A.N. Halls (PPS to Prime Minister) to Miss E.M. Fisher, LCO, 18.5.67.

¹⁵⁹ BL, LCP/1758, Note by Cobbold, 15.8.67.

¹⁶⁰ BL, LCP/WB 26, Reader's report by Fletcher, 18.1.67.

without Portfolio, pointed out the anomalies that would arise with other media.¹⁶¹ His Private Secretary, Peter Le Cheminant, then had to point out to Wilson that it had been Labour backbenchers who had insisted in a living persons clause being removed from the Television Act 1963 which recast the law relating to commercial television (which had previously been unable to broadcast satirical programmes like That was the Week that was (TW3), and that the distinction was between television and the theatre.¹⁶² The Committee Report was discussed in full Cabinet on 27 July, where Wilson followed the usual line about heads of foreign States and the Sovereign, adding:

“...while no exception could be taken to political satire as such, plays portraying public men for purposes of political advantage or private malice might well do harm to the public interest.”¹⁶³

This meeting coincided with the submission to the Lord Chamberlain's office of Ronald Millar's adaptation of William Clark's novel Inside No.10. The scrupulousness with which the Lord Chamberlain prohibited reference to foreign states was reiterated by the requested alteration of the name of the capital city of the fictional country in No.10 the play from Lusaka to the inoffensive Lusimba. This despite Clark's assurance that he had “sent my friend Kenneth Kaunda [President of Zambia] an inscribed copy of the novel and got a grateful reply”.¹⁶⁴ Examiner Heriot, consistently the Lord Chamberlain's official with the most liberal outlook and driest sense of humour, failed to see what could be objected to in No.10, commenting in his report that:

“This seems to me to be an amusing, exciting play without any personal axes to grind. I do not know why the Commonwealth Office should be ‘interested’ in it – but admit that, politically speaking, I am a moron, and

¹⁶¹ PRO, PREM 13/2152, Le Cheminant, No.10, to Wilson 24.7.67; CAB 134/2154 H(67) 23rd Meeting, 19.7.67.

¹⁶² PRO, PREM 13/2152, Le Cheminant to Wilson 25.7.67; Television Act, 1963.

¹⁶³ PRO, CAB 128/42 part 3 CC(67) 53rd Conclusions, 27.7.67.

¹⁶⁴ BL, LCP/1748, Reader's report by Heriot, 6.8.67; Clark to Cobbold, 15.8.67.

that the interplay behind the scenes may be either too close to life or too flagrantly false to it.”¹⁶⁵

Wilson was assisted by the gentle urgings of Cobbold, and the convenient legal assistance of Goodman, who produced a draft section on living persons.¹⁶⁶ Against this the main influence continued to be Jenkins, who expounded on both the principled and practical difficulties of a living persons clause, the former being the equality sought between different media and the popularity of political satire. The practical reasons were the intransigence of many MPs, especially George Strauss, Labour MP for Lambeth and the sponsor of the Theatres Bill, and the difficulty of casting a workable solution.¹⁶⁷

The wielding of the Prime Ministerial axe, or, more to Wilson’s style, the shuffling of the ministerial cards, intervened at the end of November 1967, Callaghan resigning as Chancellor of the Exchequer after the humiliating devaluation of the pound, and swapping places with Jenkins.¹⁶⁸ This might have been expected to strengthen the hand of the Prime Minister and a living persons clause, given Callaghan’s own outlook compared to Jenkins’. However, this does not seem to have been the case. Callaghan gave assurances to Cobbold at a meeting shortly before Christmas that he would raise the matter in Cabinet. This he did on 21 December, but, although still keeping the door open to such a clause, Callaghan clearly sided with Jenkins, the minutes recording that:

“he agreed without his predecessor’s conclusion that the best course of action was to make defamation in a play... a ground for libel.”¹⁶⁹

Strauss’s Bill did not receive its Second Reading until 23 February 1968. It became clear to Wilson and Cobbold individually that the main pressure was now that of parliamentary time. The Lord Chamberlain pressed the Prime Minister on this emphasising that if the Bill were not passed that Session he:

¹⁶⁵ BL, LCP/1748, Reader’s report by Heriot, 6.8.67.

¹⁶⁶ PRO, PREM 13/2152, Cobbold to Wilson, 29.11.67; Goodman to Wilson, 30.11.67.

¹⁶⁷ PRO, PREM 13/2152, Jenkins to Wilson, 26.7.67.

¹⁶⁸ Ben Pimlott, *Harold Wilson* (London: HarperCollins, 1992) p.485.

¹⁶⁹ PRO, CAB 128/42 part 3 CC(67) 74th Conclusions, 21.12.67.

“would have to continue with his responsibilities as Lord Chamberlain for censorship in circumstances when everyone knew that a Bill was about to be passed and would in consequence cause not only embarrassment to himself but would bring the existing law – about to be amended – into disrepute.”¹⁷⁰

Wilson, also realising that having started on the road to abolition the Bill had to be passed, assisted in having the Bill moved from the normal Committee for Private Members’ legislation to Standing Committee ‘E’. Despite amendments put down by Cobbold in the Lords and Norman St. John Stevas, Conservative MP for Chelmsford, in the Commons on living persons, the Bill emerged untarnished by caveats and was read for a third time in the Lords on 19 July and received the Royal Assent on 26 July,¹⁷¹ thus avoiding the embarrassment of another year of pre-censorship.

Hugh Jenkins, Labour MP for Putney, a member of the Joint Committee and former Assistant General-Secretary of Actors’ Equity, later wrote to John Johnston that: “There may have been other committees where... recommendations were so promptly put into effect but I don’t know of them.”¹⁷² Yet the very existence of pre-censorship of plays by a royal official like the Lord Chamberlain in a liberal democracy in the third quarter of the twentieth century might be thought to have been rather strange. The controversy aroused might not have been so great as other contemporary Bills such as those on abortion and homosexuality, but the very extent to which reform or abolition was supported, including by so many influential Conservatives, begs the question why it took so long to achieve. According to the Report of the Joint Committee:

“The main arguments adduced in its [the censorship’s] favour are that it is quick, simple and cheap: that the Lord Chamberlain by virtue of his office possesses a unique authority which no other censorship body could

¹⁷⁰ PRO, PREM 13/2152, Culf to Le Cheminant, 12.3.68.

¹⁷¹ HL Deb., vol. 295 cols. 594-624, 19.7.68.

¹⁷² Johnston, *op.cit.*, p.234.

have: that the licence of the Lord Chamberlain affords adequate and necessary protection to theatre managers: that recent Lord Chamberlains have been increasingly tolerant: and that any change might lead to a greater rigidity and restriction.”¹⁷³

The plain truth was, in fact, that it could only rationally be defended by those for whom the discussion and portrayal of real life in all its ugliness, and the changing sexual and social morality of many young people, must be prevented. Secondly, the habits and unaccountability of the Lord Chamberlain led to the perpetuation of unwritten rules in the examination of plays long after they had become irrelevant, for example the refusal to grant a licence to the Stokes’ Oscar Wilde because of the intervention of Wilde’s son, and the absurd bartering over vernacular language in countless plays.¹⁷⁴ It may also be a truism, but the innate tendency of the British political system to resist the radical change of traditional institutions and their functions also played a part in the lingering death of the Lord Chamberlain’s powers of theatre censorship. It was argued by the Cobbold that the system had aroused little public criticism and in reply to a question by Lord (Ted) Willis, playwright and sponsor of the Theatres Bill in the Lords, in May 1964, Conservative Home Office Minister Lord Derwent argued that: “the Government consider that it has worked well in practice and that no alternative system is likely to be found which would command general support.”¹⁷⁵

However, the closeness of step with which the Lord Chamberlain and the BBFC had moved on the subject of homosexuality demonstrated that a real pressure came from the growing influence and liberality of broadcasting, film and literature. In an age where the mass media could disseminate to millions the thoughts and opinions of radical young artists, it was simply impossible for the small world of the theatre to deny the same works to an audience which was more socially sophisticated and educated than the even more middle-class, staid audiences of the early 1950s. Finally, the efforts to which all concerned

¹⁷³ Report of the Joint Select Committee... op.cit., para.18.

¹⁷⁴ BL, LCP/WB 19.

¹⁷⁵ HL Deb., vol.257, cols.1325-1326, 7.5.64.

had gone to protect unlicensed plays from complete obscurity – the private theatre club – was shown not to be a controllable compromise.

The Labour Governments' own treatment of the issue, apart from the personal conflict of interest concerning Mrs Wilson's Diary and other such prospective plays, was fairly even-handed. Lacking the deep personal differences of conscience as on abortion or homosexuality, alongside which the issue was being debated, the arguments expounded by the reformers were allowed to proceed, given the overwhelming majorities in favour in both Houses of Parliament. The lengthy discussions over the form any inquiry should take, the drafting of the Theatres Bill, and Wilson's expedition of that Bill's passage in Committee, disprove George Strauss's later claim that the Bill only went through Cabinet because "Wilson was away that day".¹⁷⁶

¹⁷⁶ Interview with George Strauss, cited in Hollis, op.cit., p.274.

Chapter 6 – Divorce Law Reform

“once create an appetite for such licence... and the demand to be permitted to satisfy it will become irresistible.”¹

“the House may consider it a little impertinent to introduce a Bill in respect of Royal Commission recommendations upon which the dust has settled for a mere eight years. In matters affecting human relationships this House always moves with considerable caution.”²

Introduction:

If opponents of greater personal freedom considered the relaxation of the sanctions against homosexuality and abortion to be symptomatic of a general loosening of moral standards, then the threat of reform of the divorce laws struck directly at the heart of what they were trying to protect – ‘the family’. For moral conservatives, the equation was, and remains, simple. Easier divorce results in the increased break-up of families. This ignored the previous unknowable extent of the breakdown of unhappy marriages without divorce, and the harm this caused to families. However, this debate has been exhaustively examined by historians and sociologists on both sides of the argument.³ Furthermore, the course of divorce law reform during the 1960s has been repeatedly addressed.⁴ This chapter, therefore, will focus on those areas where new historical evidence is available, new conclusions are to be drawn, or these existing sources illuminate the wider argument about public morality and ‘permissiveness’ in the 1960s.

¹ Lord Reesdale in the First Report of the Royal Commission on Law of Divorce 1604 (1853), quoted in O.R. MacGregor, Divorce in England, (London: Heinemann, 1957) p.151.

² Leo Abse, Second Reading debate on Matrimonial Causes and Reconciliation Bill, HC Deb., vol.671 cols.806-884, 8.2.63.

³ Lawrence Stone, Road to Divorce (Oxford: OUP, 1990); Phillips, Putting Asunder: A History of Divorce in Western Civilisation; Ronald Fletcher, The Family and Marriage in Britain (London: Pelican, 1973).

⁴ Peter Richards, Parliament and Conscience (London: George Allen & Unwin, 1970); B.H. Lee, Divorce Law Reform in England (London: Peter Allen, 1974).

The Divorce Law Reform Act 1969 substituted the principle of no-fault divorce for that of matrimonial offence (although the pre-existing legal grounds for divorce remained evidence of the breakdown of the marriage).⁵ This turned the marriage bond into an essentially private contract recognised by the state, the terms and longevity of which were largely removed from the state's control, except in concern for the continued welfare of both spouses and any children through fiscal policy and the Welfare State.⁶ This was Wolfenden-style utilitarianism in family law. As with reform on homosexuality and abortion, reformers argued that this measure would bolster the institution of the family rather than undermine it. (One Bill introduced in the House of Lords in 1966 was even titled the Strengthening of Marriage Bill.⁷) They preferred to emphasise the importance of the quality of marriages rather than their terminability⁸. Permissiveness was not an end in itself.

The ground on divorce law reform had been as well prepared as in any other field, debated over decades and subject to more committees and commissions of inquiry than any other. Yet its passage was particularly protracted, both in the period between 1945 and the return of Labour to power in 1964, and in the parliamentary debates on bills in successive sessions until the Divorce Reform Act was passed in 1969. This was the result of several factors.

The centrality of the concept of marriage and the family to discussion of post-war economic, social and cultural change meant that resistance to easier divorce was a principle weapon for stemming the weakening of family bonds caused by women's changing position and opportunities in society.⁹ As the theme of moral degradation intensified during the early 1960s, whatever the empirical evidence to the contrary about the stability and popularity of traditional family life,¹⁰ resistance to change was made easier.

⁵ Divorce Law Reform Act, 1969.

⁶ Carol Smart, *The Ties that Bind* (London: Routledge and Kegan Paul, 1984) p.100.

⁷ HL Deb., vol. 276 col. 1311, 3.8.66.

⁸ Jane Lewis, 'Public Institution and Private Relationship: Marriage and Marriage Guidance, 1920-1968', *Twentieth Century British History* vol.1 no.3 (1990) pp.233-234.

⁹ Smart, *op.cit.*, pp.32-33.

¹⁰ Ronald Fletcher, *The Family and Marriage in England* 3rd ed. (London: Pelican, 1973) p.164.

Secondly the role of the Church was even more crucial to the debate on divorce than it was in relation to homosexuality, abortion or even Sunday entertainment. The 'secularisation' of divorce law had occurred only in 1857,¹¹ and the continuing dominance by the Church of the institution of marriage, even when the proportion of the population professing Christian belief (let alone regular church-going) was in steep decline, stymied the attempts of reformers to modernise the archaic and adversarial system of matrimonial offence. According to Michael Ramsey, Archbishop of Canterbury, the principle of difference between secular and Christian divorce had only been conceded with the passing of the Herbert Act in 1937.¹² However, as with other areas of reform, once the Churches (and particularly the Church of England) had revised their position on divorce, legislative process became inevitable, though no less controversial.

Thirdly, there was a change in atmosphere in politics during 1967 and 1968 during which the overtly liberal era of Roy Jenkins' tenure of the Home Secretaryship gave way to a more cautious period in which the initiative passed to those who had been willing to see reform in certain areas, but now reacted to concerns about wider social problems, to which further liberal reform was not a politically attractive solution. Parallel to this shift in emphasis was the intensification of crises in Government, next to which law reform, particularly when entailing controversial moral issues, was considered by many Labour ministers and MPs to be an irrelevant distraction.

Fourthly, there was the complication during the parliamentary efforts at reform from 1966 to 1969 of a body of opposition to the proposals brought forward from women's groups, who were anxious that the financial position of (particularly deserted) wives should be protected before divorce legislation, allowing divorce without consent after long separation, was passed.¹³ Combined with the

¹¹ Matrimonial Causes Act, 1857.

¹² LPL, RP/62, 37, Ramsey to Canon Bentley, undated but presumably January 1964.

¹³ For example PRO, BC 2/380, Mrs V. Horton, Secretary, Fawcett Society, to Sir Arthur Irvine, Solicitor-General, 22.2.68.

objections of religious conservatives, the diluted political will for reform caused considerable delay in passing a Bill which was broadly acceptable.

Interestingly, a Royal Commission on Divorce under Lord Gorell, which had reported in 1912, had produced a majority report which recommended a considerable extension of the grounds for divorce.¹⁴ However, the interruption of the Great War, as was the case with theatre censorship, prevented the extension of enlightened social reform under the Asquith administration into new areas. Although some of the Commission's recommendations were enacted during the 1920s (the gender equalisation of grounds for divorce and the gradual decentralisation of divorce proceedings¹⁵), it was the Divorce Act 1937 sponsored by the MP and writer A.P. Herbert, which finally breached the 1857 restrictions along the lines of the 1912 report, extending the grounds for divorce to include desertion for more than three years, cruelty, habitual drunkenness and incurable insanity (what one might call the "Rochester" ground for divorce after Jane Eyre's would-be bigamist).¹⁶ As Peter Richards has said, this Act, introduced as a Private Member's Bill, was "a trail-blazer" for the later conventions governing issues of morality discussed here, as was the implied Government attitude of "benevolent neutrality".¹⁷

¹⁴ The Divorce Commission Cmnd.6478 (London: P.S. King, 1912), pp. 1-58, minority report, pp. 59-69.

¹⁵ O.R. McGregor, Divorce in England (London: Heinemann, 1957) p.29.

¹⁶ A.P. Herbert, The Ayes have it (London: Methuen, 1937); see Holy Deadlock (London: Methuen, 1934) for a thinly disguised polemic by Herbert in favour of divorce reform.

¹⁷ Peter Richards, Parliament and Conscience (London: Allen & Unwin, 1970) pp.135-6.

ii. Defence of the offence: 1945-1964

The temporary surge in divorce after the Second World War, caused by the fragility of many wartime marriages and the upheaval of conditions during war, prompted the first critical examination of matrimonial offence as the basis for divorce. It was manifestly apparent, to all but the most immovable religious zealot, that in many of these wartime marriages the moral blame of one or other partner for their adultery or other offensive behaviour was merely symptomatic of the harshness of circumstances beyond their control. These circumstances promoted for almost the first time the concept of the breakdown of marriage which was to underpin future reform.¹⁸ This fact had, however, been apparent, particularly to Labour politicians and reformers working in deprived areas for over a decade. As Leo Abse, one of the primary sponsors of divorce law reform during the 1960s, has pointed out, the operation of the means test during the 1930s, forcing young men to travel long distances to find work, had a similar effect to that of war on young marriages, though without the widespread sympathy generated.¹⁹ Also, the Labour Party's Research Department produced two cogent papers on divorce in 1948 and 1949 advocating divorce by consent after long separation or without consent after two years' desertion which forshadowed imminent attempts at reform, although these did not become Party policy.²⁰

The Attlee administration took pragmatic steps to decentralise and expand further facilities for divorce hearings to cope with the post-war demand.²¹ Furthermore, under the Legal Aid Act 1949, the recommendation of the 1912 Gorell Commission that no person should be denied access to divorce through poverty was finally implemented, extending the rather harsh means-test which had existed under the 1914 Poor Persons Procedure.²² However, the

¹⁸ Robert Chester, 'Divorce in England and Wales', in Chester ed., *Divorce in Europe* (Leiden: Netherlands Interuniversity Demographic Institute, 1977) pp.72-3.

¹⁹ Leo Abse, *Private Member* (London: Collins, 1973) p.165.

²⁰ NMLH R.D.100, 'Memorandum on Divorce', anonymous, April 1948; R.D.104, 'Marriage and Divorce Law Reform', Robert Pollard, May 1948.

²¹ Peter Richards, *Parliament and Conscience* (London: Allen and Unwin, 1970) p.136.

²² Legal Aid Act, 1949; Richard I. Morgan, 'The Introduction of Civil Legal Aid in England and Wales, 1914-1949' in *Twentieth Century British History* vol.5 no.1 (1994) pp.38-76.

importance of this last change to the uptake of divorce is hotly debated. In the first year of the operation of the Legal Aid and Advice Act (1951) divorce increased by 31% before returning to 1950 levels. According to Robert Chester this rise can be explained by people delaying their divorce petition until the Act came into force.²³ These reforms were seen very much as dealing with the practical problems thrown up by the war, and henceforth that every effort should be made to promote the “pre-war ideal” of stable marriage.²⁴ In 1949 Lord Mancroft introduced a Marriage (Enabling) Bill with the rather esoteric aim of treating a divorced spouse as a deceased one in relation to the prohibited degrees of affinity by which, previously, in-laws could not marry. This was rejected as being a sinister danger to the family.²⁵ However, when the concept of breakdown of marriage was proposed under Eirene White’s 1951 Bill through seven years’ separation as a ground for divorce (with or without consent), the Government scuppered the Bill by the establishment of another Royal Commission, despite a majority of 131 to 60 on Second Reading, conveniently near to a general election which it was widely anticipated Labour would lose.²⁶

Evidence to the Morton Commission, chaired by Lord Morton of Henryton, a Lord of Appeal, which sat for a leisurely four years, set up the arguments for the next fifteen years (and beyond). As MacGregor has described it, witnesses to the Commission fell into three broad spheres; “institutionalists” who argued for the retention of the matrimonial offence; “abolitionists” who argued either that the existing system encouraged collusion and perjury and therefore (as in other areas under discussion) brought the law into disrepute, or that keeping people in “holy deadlock”, as A.P. Herbert had described it, harmed the institution of marriage and the individuals trapped by it; and finally were those who supported the extension of the grounds outlined in White’s 1951 Bill, weakening but not replacing the matrimonial offence.²⁷

²³ Chester, *op.cit.*, p.78.

²⁴ Smart, ‘Good wives and moral lives’, pp.92-93.

²⁵ HL Deb., vol. 160 col. 275, 26.1.49; vol. 161 cols. 695-701, 24.3.49.

²⁶ HC Deb., vol. 485 cols. 1535-1537, 14.3.51.

²⁷ MacGregor, *op.cit.*, pp.134-147.

The Morton Commission had serious flaws in its composition and methodology. Strangely, it was dominated by legal opinion, with no representative of the Church and three people associated with the National Marriage Guidance Council, which accounts for the emphasis on counselling in the report.²⁸ The membership of other inquiries like the Gorell Commission over forty years earlier and concurrent inquiries like the Wolfenden Committee were much broader. Also, despite its wide terms of reference, it failed to employ or recommend any social scientific research of the kinds that had informed every type of inquiry for over half a century, being content merely to collect opinions.²⁹ One indication about Morton's suitability for the chair of this Commission should have been the plan which he supported in 1953 to separate Christian from civil marriage, under which access to the divorce courts would be denied to those who had married in Church. Not surprisingly senior Churchmen swiftly rejected this idea.³⁰ Compared to the seminal philosophy of the Wolfenden Report, Morton's timidity did not even justify a Commons debate on the subject, yet Lawrence Stone manages to see the Report as yet another lurch down the slippery slope towards "the unknown waters of no-fault divorce on demand".³¹

Despite various commendable tinkering with laws and regulations, principally governing property and maintenance,³² the Conservative administrations continued to duck the main issue as in other areas of social reform involving controversial matters of morality. This was despite the inclinations of the growing group of Tory liberals under the informal inspiration of R.A. Butler, Home Secretary from 1957 to 1962.³³ At the Cabinet's Home Affairs Committee before the Report's debate in the Lords, the Lord Chancellor, Lord Kilmuir, displayed a certain anxiety that the Government would be exposed to the criticism that such reports were left to gather dust. However, even on the subsidiary recommendations which the Government hoped could be introduced by subordinate legislation, amendment of regulations and Private Members' Bills,

²⁸ MacGregor, *op.cit.*; Smart, *op.cit.*, p.35.

²⁹ MacGregor, *op.cit.*, pp.177-189.

³⁰ LPL, GFP/128, 218-221, Morton to Fisher, 20.7.53; 226-235, 'note of conversation between Fisher and Morton, 28.7.53.

³¹ Stone, *op.cit.*, pp.401-9.

³² Lee, *op.cit.*, p.32.

³³ See Chapter 3.ii, p.88.

the Government did not feel able to move during the current Session. The Committee agreed to look again at the report in the light of the report from an official committee which would look at the Royal Commission's report.³⁴ That is, if they could still see it through the long grass.

The official committee did report the following year, and Home Affairs Committee did approve legislation on a number of minor recommendations from the Morton Commission. However, no further mention was made of the major principle on which the Commission had been divided.³⁵ The Government was anxious not to give quarter to social and economic trends which were altering patterns of family life, and particularly the economic position of women during the 1950s, by encouraging divorce. Rather, they took comfort from the gradual decrease in divorce petitions from 1952 to 1958.³⁶

Despite her insistence on the reactionary nature of the Morton Commission Report, Carol Smart is not correct to assert that it "closed any broad discussion of changes... for almost two decades", for during last two years of the Conservative administration, 1962-1964 the concept of matrimonial offence was effectively challenged in political discussion, even if legislation came only after six years of intense public debate.³⁷ Motivated, as ever, by his compassion and his respect for the administration of justice, Abse introduced a Private Member's Bill in 1963 to give effect to White's 1951 ground of separation for seven years, with or without consent. In addition he sought to bolster the support for reconciliation between estranged couples. According to Abse, attempts by Eric Fletcher, Labour MP for Islington East, Opposition Home affairs spokesman and, significantly, member of the Church Assembly, to wreck the Bill on Second Reading and in Committee were met with principled resistance at a meeting of the PLP by Charles Pannell, MP for Leeds West, and Herbert Bowden, Labour Chief Whip. Fletcher had sought to stack the Labour membership of the

³⁴ PRO, CAB 134/1253, HP(56) 17th meeting, 22.10.56.

³⁵ PRO, CAB 134/1968, H(57) 15th meeting, 28.6.57; H(57) 22nd meeting, 18.10.57; PRO, LCO 2/6140, 'Report of the Official Committee on the Royal Commission on Marriage and Divorce', 18.6.57.

³⁶ See Appendix, p.327.

³⁷ Carol Smart, 'Good wives and moral lives', p.102.

Committee to examine the Bill with himself and like-minded conservatives. His ineptitude, however, allowed Abse to employ, not for the last time, the tactic of rallying his Welsh colleagues.³⁸ As he later recalled:

“with the aid of my Welsh colleagues I managed to get a Committee that was packed with Welsh MPs, some of whom were fiercely anti-clerical, and they would smell incense about a thousand miles away, so all the conspiracies of the Church lobbies were defeated, and by 1 vote [it was in fact 2 votes] we got it through Committee.”³⁹

What is missing from Abse’s account is the active part that the Cabinet’s Home Affairs Committee played at this stage of the Bill’s progress. Whilst admitting that there was a strong case for radical change in the divorce law, the Committee felt that “it would scarcely be possible publicly to support major innovations so soon after a Royal Commission had reported”.⁴⁰ As with the main Wolfenden recommendation on homosexuality, the Conservative Government, despite liberal opinion within its ranks, could not countenance the thought that public opinion had shifted enough to justify implementation of radical social reform. The Committee did approve of, with some amendment, the Bill’s provisions aimed at improving the chances of reconciliation, though “the impression should not be given that support for this... implied an official Government view on the wider issues of divorce law”.⁴¹

The Lord Advocate, Ian Hamilton Shearer, stated that Scottish ministers took a firm stance against any part of the Bill applying to Scotland, and, rather enigmatically, that the long-separation clause “would meet with objection in Scotland, looking to the source of the Bill”. The Committee agreed to his suggestion that, tactically Scottish members should therefore be included on the

³⁸ Abse, *op.cit.*, pp.164; see above at Chapter 3.iii.

³⁹ Interview with Leo Abse, 5.12.97.

⁴⁰ PRO, CAB 134/1993 HA(63) 3rd meeting, 22.2.63.

⁴¹ PRO, CAB 134/1993 HA(63) 3rd meeting, 22.2.63.

Committee.⁴² With the Bill scraping through Committee by two votes, this nearly worked.⁴³

Startled at the prospect of easier divorce contained in Abse's Bill, and in stark contrast to the divisions among denominations only four years later, the Churches combined to condemn Abse's Bill publicly,⁴⁴ and their representatives of all parties in the Commons succeeded in "castrating" it on Report. This satisfied Home Affairs Committee's 'plan B', which put its hope in opposition at the Report stage in the Commons or, failing that, outright opposition in the Lords.⁴⁵ Abse was left with the crumb of comfort of the reconciliation clauses to pass as the Matrimonial Causes Act 1963.⁴⁶

The attitude of the Churches towards divorce reform is normally taken to have hinged on the publication of Putting Asunder in 1966. However, the general ecumenical consensus which had successfully defeated Abse's 1963 Bill masked Anglican doubts. Anti-clerical opinion which that episode encouraged overwhelmed ecclesiastical resistance to reform, and the writing was (at least faintly) on the wall once discussion of divorce in the Church was expedited by the appointment of the Archbishop's Group.⁴⁷ Following lengthy discussions during 1963 with the Lord Chancellor, Lord Dilhorne, and Henry Brooke, Home Secretary, and their officials, Ramsey established a group in April 1964 to "review the law of England concerning divorce",⁴⁸ virtually at the request of these ministers.⁴⁹ According to Stone, "the national mood had changed

⁴² PRO, CAB 134/1993 HA(63) 3rd meeting, 22.2.63.

⁴³ HC Deb. Standing Committee C, 1962-1963, vol. ii, 1st to 4th sittings, 6.3.63 to 27.3.63.

⁴⁴ The Times, 3.4.63. According to Abse he was called by the editor of The Times, who said: "A rather interesting event is taking place which will rather disturb you. For the first time in ecclesiastical history all the Churches have come together... to make a statement condemning your Bill." Interview with Leo Abse, 5.12.97.

⁴⁵ PRO, CAB 134/1993 HA(63) 7th meeting, 9.4.63.

⁴⁶ Abse, op.cit., pp.170-171; Matrimonial Reconciliation Act, 1963.

⁴⁷ LPL, RP/43, 5-6, note of meeting at Home Office between Cunningham, Guppy, Assistant Under-Secretary, Dosbon, Deputy Clerk of the Crown in Chancery, LCD and Robert Beloe, 21.5.63.

⁴⁸ LPL, RP/43, 144, Eric Fletcher to Ramsey, 16.4.63; 1, Beloe to Ramsey, 2.5.63; 5-6; 24, note of meeting at Home Office with Brooke, Charles Woodhouse, Parliamentary Under-Secretary, Guppy and Beloe, 7.10.63; 57, press release, 'Archbishop of Canterbury appoints group to consider divorce law', 10.4.64.

⁴⁹ LPL, RP/82, 111, note of telephone conversation between Beloe and Fletcher, 18.3.65.

drastically from what it had been even a decade before".⁵⁰ However, it is likely that the national mood supported easier divorce during the 1950s, but that the political conditions, such as the agreement of the Churches, were not yet in place. The other key ingredient, of course, was the election of Labour in 1964.

⁵⁰ Stone, *op.cit.*, p.406.

The Labour Governments and the Law Commission 1964-1969:

If Roy Jenkins, as Home Secretary, was the Labour minister most closely identified with homosexual and abortion law reform, then Gerald Gardiner, as Lord Chancellor from 1964-1970, was the minister who made the running on divorce. As with Jenkins' The Labour Case in 1959,⁵¹ Gardiner, with fellow barrister Andrew Martin, had set out a comprehensive plan of law reform for a new Labour administration in Law Reform Now.⁵² The cornerstone of their argument was that English law needed a systematic review and codification, bringing often archaic, mediaeval laws into line with contemporary society and its mores. This book was an unofficial Labour manifesto for law reform, following a similar volume, also written by members of the Society of Labour Lawyers in 1951, edited by Glanville Williams.⁵³

As Lee has noted, Gardiner's four immediate objectives as Lord Chancellor were to abolish capital punishment, establish the Law Commission, reform the system of Assizes and Quarter Sessions and to alter the divorce law. By the time of Labour's 1970 defeat all these, and many other reform proposals, had been implemented.⁵⁴ Gardiner thus had a considerable strike rate compared to other ministers in an administration of notable disappointments and failures. This must have been, at least in part, the result of Gardiner's security of tenure on the Woolsack, while the other ministerial cards were shuffled with disturbing and deleterious frequency.

The main instrument for executing this plan, which the Labour Government established in 1965 was the Law Commission,⁵⁵ consciously modelled on such bodies in other countries. The first President of the Law Commission was Sir Leslie Scarman, a similarly liberal lawyer with immense practical experience on which to draw in the enormous task of modernising English law. Scarman

⁵¹ Roy Jenkins, The Labour Case (London: Penguin Harmondsworth, 1959).

⁵² Gerald Gardiner and Andrew Martin, 'The Machinery of Law Reform'; Olive Stone and Antonia Gerard, 'Family Law'; C.H. Rolph, 'Criminal Law', in Gardiner and Martin eds., Law Reform Now (London: Victor Gollancz, 1963).

⁵³ Gardiner and Martin eds., op.cit., pp.x-xi.

⁵⁴ Lee, op.cit., pp.61-2.

⁵⁵ Law Commissions Act, 1965.

himself was bullish about the impetus which the Commission could give to legislative reform, saying that its work would improve communication between courts and legislature, as well as advise “an amateur and indolent” Parliament on law reform, and spur it into action.⁵⁶ Lee comments that the Law Commission “in selecting its materials and in the preparation and presentation of its proposal and reports, has virtually appropriated an important aspect of the lawmakers’ business...”.⁵⁷ This is a miscomprehension. The Law Commission was an institutionalisation of the *ad hoc* process of appointing commissions, including the Conservative initiated Lord Chancellor’s Law Reform Committee on which Gerald Gardiner sat until 1963, the legislative output of which Gardiner and Martin condemned.⁵⁸ More recently there has been considerable comment that the Law Commission, despite its independence should, following publication of a report, press the merits of its recommendations more forcefully with Government.⁵⁹

Far from usurping the role of Parliament in law-making, the Commission’s detachment from Government facilitated a more strategic and authoritative system of review which the short-termist and politically febrile House of Commons was ill-suited to and unwilling to attempt, especially in fields which touched on controversial issues of morality. The radicalism of the Law Commission’s work on its inception reflected the Government’s own instincts and policy in this area, and the general demand for the law to catch up with the huge social changes the country had undergone since the war after a period of Conservative timidity and complacency. It stands as one of the most durable results of the 1964-1970 administration.⁶⁰

One of the main planks of the Commission’s work, as Gardiner and Martin proposed, and as set out in the Commission’s first annual programme, was family law. The establishment of the Family Division of the High Court and

⁵⁶ Quoted in Gavin Drewry, ‘The Legislative implementation of law reform proposals’, in Graham Zellick ed., The Law Commission and Law Reform (London: Sweet and Maxwell, 1988) p.36.

⁵⁷ Lee, *op.cit.*, p.66.

⁵⁸ Gardiner and Martin, *op.cit.*, pp.4-6.

⁵⁹ Drewry, *op.cit.*, pp.37-38.

⁶⁰ Abse, *op.cit.*, p.173.

reforms in the field of taxation, inheritance, property and custody were set out as a systematic review of the law and the legal system, as opposed to the complicating piecemeal reforms of the previous decade. These 'programmes' became a main organisational plank of the Commission's work.⁶¹ The aim was to reflect the modern recognition (in theory) of equality of men and women in marriage, and the elevation of the status of children above that of mere property.⁶²

However, in the field of divorce the Commission felt it wise to wait until the Archbishop of Canterbury's Group had published its report to present its own proposals,⁶³ (although in view of the impracticability of some of the former's ideas Scarman might have come to regret this decision). Putting Asunder was a seminal document in that it recognised for the first time the fact that secular divorce law could no longer be dictated by a religious ideal:

"in a modern plural society the concept of human law is very different from that which obtained when the traditional theology of law was being formulated."⁶⁴

The Committee recommended that breakdown of marriage be substituted for matrimonial offence in order to deal with the complexities rather than the superficialities of the causes of divorce.⁶⁵ This confluence of the thinking of the Established Church with reformist opinion paved the way for the introduction of a Bill with some chance of becoming law. However, the proposed system of administration recommended in Putting Asunder, that the courts should hold an inquest to determine whether a marriage had reached the point of irretrievable breakdown, was both impractical and inquisitorial in a paternalistic way which divorce reform was supposed to reject.⁶⁶

⁶¹ S.M. Cretney, 'The Programmes: Milestones or Millstones', in Zellick ed., op.cit., pp.3-20.

⁶² Stone and Gerard, op.cit., pp.122-149; The Law Commission, First Annual Report 1965-1966 (London: HMSO, 1966).

⁶³ The Law Commission, First Annual Report 1965-1966 (London: HMSO, 1966) p.15.

⁶⁴ The Archbishop of Canterbury's Group, Putting Asunder (London: SPCK, 1966), p.10.

⁶⁵ Putting Asunder, p.37.

⁶⁶ Putting Asunder, pp.38-9.

The speedy publication of the Law Commission's own report, The Field of Choice, pointed up these shortcomings, and whilst it presented three options for consideration by Government and Parliament – divorce by consent, divorce based on separation, and irretrievable breakdown of marriage without an inquest – it hesitated to favour one option until the various proposals had been debated.⁶⁷ The Field of Choice was not, as some academics have asserted a “direct response to Putting Asunder”.⁶⁸ Scarman had merely been keen, for obvious practical reasons, not to come to firm conclusions without taking into account the position of the established Church.⁶⁹ At this point Gardiner began to get restive about the increasing range of options on offer and the lack of progress.

Shortly before the House of Lords debated these two reports in November 1966 the Cabinet's Home Affairs Committee discussed what the Government line should be. Gardiner, and he was strongly supported in this, argued that, divorce should not be left to the vagaries of a Private Member's Bill. The importance of divorce, the implications for wider family law and social policy and the exhaustive nature of deliberations so far, meant that the time had come for the Government to take charge of legislation on divorce itself. He proposed that after the Lords debate the Government should bring forward its own Bill and, incidentally, take a more positive line on other areas involving issues of conscience discussed here.⁷⁰

A gradual consensus built up during the first half of 1967, based on the expressions of optimism of key figures in the House of Lords debate in November 1966.⁷¹ The Law Commission and the Mortimer Group thrashed out a joint set of proposals, published in June 1967, in which the Church's inquests were dropped and the old matrimonial offences retained as evidence of breakdown of marriage.⁷² Gardiner presented these proposals to the annual

⁶⁷ The Law Commission, Reform of the Grounds of Divorce: The Field of Choice Cmnd. 3123 (London: HMSO, 1966).

⁶⁸ Carol Smart, The Ties that Bind, p.68.

⁶⁹ LPL, RP/102, 185, Scarman to Ramsey, 7.3.66.

⁷⁰ PRO, CAB 134/2851, H(66) 25th Meeting, 18.11.66.

⁷¹ HL Deb., vol. 278 cols. 239-262, 264-348, 23.11.66.

⁷² The Law Commission, Third Annual Report 1967-1968 Appendix III, pp. 30-32.

conference of the National Marriage Guidance Council, with a passionate personal statement of support.⁷³ However, even Gardiner's radicalism was somewhat tempered. He strongly supported the proposal that the traditional matrimonial offences should be treated as evidence of breakdown saying that they:

“are often very reliable indications that the marriage has, in fact, broken down... such offences could be used by the law as guide posts – pointing in the absence of evidence to the contrary, or forgiveness, to breakdown.”⁷⁴

Similarly the Law Commission had recoiled from the idea that divorce by consent should be the sole ground for divorce, arguing that this “might lead to the dissolution of marriages that had not broken down irretrievably”.⁷⁵ The courts still held the power of discretion over petitions if errant behaviour did not prove to be satisfactory evidence of “irretrievable breakdown”. It was a fudge, but at least, for reformers, a radical fudge.

⁷³ PRO, BC 3/377, Lord Chancellor's speech to annual conference of NMGC, 5.5.67.

⁷⁴ PRO, BC 3/377, Lord Chancellor's speech to annual conference of NMGC, 5.5.67.

⁷⁵ The Law Commission, The Field of Choice, para.84, p.42.

Distraction and *ennui* 1967-1969

Reform was frustrated for two years. Why this should be have been so was examined by Peter Richards, and he has pointed to a number of factors. The complexity of the issue when the details were examined by Parliament was greater than in other areas of reform considered here, as were its ramifications for wider social policy. Ramsey was particularly concerned for these reasons that the issues should be thoroughly discussed before a Bill was introduced. This would also prevent the mobilisation of Church opinion against reform.⁷⁶ In addition, the opposition of women's groups to divorce reform (the 'Casanova's Charter' as Lady Summerskill, former Labour MP and junior minister under Attlee, called it⁷⁷) without the concomitant reform of financial provisions for divorced spouses combined with outright opponents of reform. In addition the vagaries of parliamentary procedure conspired with the opposition to delay for two parliamentary Sessions the eventual Act. However the Government's role in this delay deserves further investigation, especially considering the almost total support among Labour politicians for reform, except for the small band of Catholic Labour MPs whose opinions were ably represented in the Cabinet by Lord Longford until his resignation in 1968. Gwyneth Dunwoody, MP for Exeter at the time, blames the obstruction of the legal profession,⁷⁸ though this seems a rather unfair charge, considering the complexity of the issue and their crucial role in administering any reformed system.

The divorce issue again reached Home Affairs Committee at the end of September 1967, at which the usual arguments were wheeled out for and against reform being handled by a private member and the propriety of giving Government assistance to such a Private Member's Bill. When it was suggested in discussion that a Joint Select Committee of both Houses of Parliament might look at producing a Bill one can almost hear the sound of Gardiner banging his head on the table in desperation. In the minutes this translates as "On the other hand, the proposals had already been extensively discussed and it might be

⁷⁶ LPL, RP/102, 198, Beloe to Duncan Sandys, Conservative MP for Streatham, 13.5.66.

⁷⁷ HL Deb., vol. 303 col. 310, 30.6.69.

⁷⁸ Interview with Gwyneth Dunwoody MP, 27.3.00.

better to test the feeling of the House in the Second Reading debate". George Brown, by now Foreign Secretary, chairing the meeting, insisted that Cabinet would have to decide the course of action.⁷⁹

Some members of Cabinet indulged in the usual hand-wringing about departing from the traditional line of neutrality by providing even drafting assistance to a Private Member's Bill of such a controversial nature. However, the argument was put that making sure Bills were introduced in a workable form would reduce the necessity for Government involvement in amending private members' legislation. The recent experience of ministers having to intervene in the passage of the Abortion Bill to amend it was cited. This was decisive, and Cabinet approved the drafting of a Bill to be given to a private member. This decision was eased through partly due to the absence of notable opponents of reform, especially that of Scottish Secretary, Willie Ross.⁸⁰ Once the Bill had been prepared, the Cabinet's Legislation Committee approved its delivery to William Wilson, MP for Coventry South. Bill Wilson's constituency neighbour, Crossman, chairing the meeting, added that the Cabinet had decided that a 'substantial' Second Reading majority would justify the provision of sufficient Government time to enable the House to come to a decision on it.⁸¹

However, a number of negative factors gradually accumulated which conspired to thwart the passage of Wilson's Bill at its Report Stage. Although women's groups in particular were already opposed to reform without attention to the financial provisions for divorced spouses, in the 1967-1968 Session this opposition was held off by the provision that a divorce would only be granted when the court was satisfied that an adequate settlement had been made.⁸² The main problem was the wider political weather, which was deteriorating rapidly for the Government.

⁷⁹ PRO, CAB 134/2854, H(67) 27th Meeting, 26.9.67.

⁸⁰ PRO, CAB 128/42 part 3, CC(67) 59th conclusions, 12.10.67; PRO, CAB 129/133 C(67) 154, 'Divorce Law Reform', memorandum by Gardiner, 5.10.67.

⁸¹ PRO, CAB 134/2956 LG(67) 27th meeting, 19.12.67.

⁸² Abse, *op.cit.*, p.174.

Callaghan, Home Secretary from December 1967, was no “saboteur” according to Jenkins, although he was also no enthusiast for such ‘permissive’ reforms.⁸³ No mention is made in his memoirs of the need for, or passage of any of the issues under discussion here, whether before or during his period as Home Secretary.⁸⁴ His biographer, Kenneth O. Morgan, depicts a tolerant man who was alarmed at the idea of liberal reform meaning any more than tolerance for involuntary moral deviance.⁸⁵ Also significant was the replacement of Crossman as Leader of the House with Fred Peart in April 1968, not a notable enthusiast for social reforms of this kind,⁸⁶ although he was eventually helpful towards the Bill introduced in the autumn of 1968.⁸⁷ Then in April 1969 Wilson demoted the congenial Chief Whip, John Silkin, to the Ministry of Public Buildings and Works, and replaced him with Bob Mellish, a Catholic opponent of abortion and divorce.⁸⁸

Sir Dingle Foot had been replaced by Sir Arthur Irvine as Solicitor-General earlier in 1967. This meant the substitution of a declared opponent of the 1967 divorce Bill for an ardent reformer in an important legal post. Irvine had briefly been a member of the Anglican Group which produced Putting Asunder. However, he resigned from it after only a few months, having realised that the direction of its deliberations was leading towards the principle of matrimonial breakdown, with which he would be “out of sympathy”.⁸⁹ Whilst speaking for the Government during the Second Reading of Wilson’s Bill in February 1968 he expressed his personal ambivalence to reform.⁹⁰ With Gardiner so publicly in the vanguard of pushing for reform, such confusion caused a complete rethink of the position of ministers during debate on Private Members’ Bills.⁹¹

⁸³ Interview with Lord Jenkins, 25.11.99.

⁸⁴ James Callaghan, Time and Chance (London: Collins, 1987).

⁸⁵ Kenneth O. Morgan, Callaghan: A Life (Oxford: OUP, 1997) pp.290-322.

⁸⁶ Crossman, Diaries of a Cabinet Minister: vol.2: Lord President of the Council and Leader of the House of Commons 1966-1968, (London: Hamish Hamilton and Jonathan Cape, 1976) 6.4.68, p.764; Interview with Lord Jenkins, 25.11.99.

⁸⁷ Lee, *op.cit.*, p.114.

⁸⁸ PRO, PREM 5/500, Press Notice, 29.4.69; Crossman, Diaries of a Cabinet Minister: vol.3 Secretary of State for Social Services 1968-1970 (London: Hamish Hamilton and Jonathan Cape, 1977) 29.4.69, p.463.

⁸⁹ LPL, RP/82, 160, Irvine to Ramsey, 17.11.65.

⁹⁰ HC Deb., vol. 758 col. 840, 9.2.68.

⁹¹ See below at Chapter 8.iii, pp.300-305.

The 1967-1968 Session of Parliament witnessed not only such dramatic events as devaluation, violence in Northern Ireland and continued crises in Vietnam and Rhodesia, but was also subject to a heavy load of Government legislation at a time when Labour supporters were becoming increasingly disillusioned with Harold Wilson's Government. Reform in the field of personal behaviour and relationships, marginal at the best of times to most politicians, came to be seen by some Labour MPs and ministers as an irrelevant distraction.⁹² Abse partly blames Crossman for allowing too much legislation to crowd the parliamentary timetable,⁹³ though few Labour politicians would have thanked him for sacrificing say, education or prices and incomes legislation, for the sake of divorce law reform. Furthermore, the doomed attempt to reform the House of Lords was exhausting much reformist time and energy.

The historic enactments of 1966-1967 had also, perhaps, bred an atmosphere of inevitability among reformers. Majorities in Parliament, opinion polls outside and the consensus among most organisations and religious groups confirmed that the arguments had been won. It was a rude shock to discover that the Government was now, if not disturbed by, then a little bored with, discussion about morality and the law. Reformers also tended to ignore logistical considerations. 1966-1967 had been an inordinately long Session because of the timing of the March 1966 general election. In 1967-1968 there wasn't this luxury, and Government business once again took priority.

Despite these underlying currents pulling against the implementation of reform, William Wilson's Bill continued to progress during the 1967-1968 Session. After securing a thumping Second Reading majority of 159 to 63,⁹⁴ the committee stage of the Bill was negotiated, with the help of the Lord Chancellor's Department and the Law Commission on amendments to satisfy those concerned about financial provisions,⁹⁵ after thirteen sittings – no more than

⁹² Crossman, *Diaries... vol.2*, 19.12.66, p.610.

⁹³ Abse, *op.cit.*, pp.183-184.

⁹⁴ HC Deb., vol. 758 col. 907, 9.2.68.

⁹⁵ HC Deb., Standing Committee C 1967-1968 vol.iv, 1st to 13th sittings, 27.3.68-29.5.68.

similar Bills, but finishing very late in the Session. As Lee calculates it the House had spent more than thirty-eight hours discussing Wilson's Bill.⁹⁶

At this point the expectation was still that the Bill could pass during the current Session. Abse and his 'group' of parliamentary supporters had kept the Bill on track, with overwhelming extra-parliamentary support, despite the mercurial statements of Archbishop Ramsey in the press.⁹⁷ Extra Government time in the Commons to complete the remaining stages had been promised to the Bill's sponsors⁹⁸ and agreed by the Cabinet on 20 June, although the logistics of this were left for the Parliamentary Committee, Wilson's inefficient inner-Cabinet,⁹⁹ to arrange at its meeting later that day.¹⁰⁰ However, the Government was already in negotiations to delay the summer recess and hold a long 'spill-over' sitting for the Lords in October so that Government legislation could pass the Lords. At the Parliamentary Committee meeting Lord Shackleton, Leader of the Lords, argued that to secure passage of divorce and Sunday entertainment legislation as proposed would require two extra weeks for the spill-over Session in October. The Committee thus agreed that the Bills would have to be re-introduced.¹⁰¹ A lack of political will, added to these pressures of time, killed the Divorce Reform Bill. Understandably this caused considerable consternation among MPs supporting reform, especially on the Labour benches. As Richards records, Abse and others raised protests in the PLP.¹⁰² There was also harshly expressed disapproval, even in the conservative press.¹⁰³

With an agreement already in place to provide sufficient time for the Bill to pass in the 1968-1969 Session,¹⁰⁴ the Lord Chancellor authorised a new Bill to be drafted on the assumption that the Government position remained, as one

⁹⁶ Lee, *op.cit.*, p.106.

⁹⁷ Daily Telegraph, 'Dr Ramsey "broke faith" on divorce', 19.1.68; Abse, *op.cit.*, p.182.

⁹⁸ Abse, *op.cit.*, p.185.

⁹⁹ Stephen Bailey, The Use of 'Inner Cabinets', formal and informal, since 1964 (unpublished undergraduate research project: History Department, Queen Mary and Westfield College, 1999).

¹⁰⁰ PRO, CAB 128/43 part 2, CC(68) 31st conclusions, 20.6.68.

¹⁰¹ PRO, CAB 134/3031, P(68) 8th meeting, 20.6.68.

¹⁰² Richards, *op.cit.*, p.149; The Times, 'Divorce Bill is blocked', 6.7.68.

¹⁰³ Sunday Telegraph, 'Parliament's 70 wasted hours', 28.7.68.

¹⁰⁴ Abse, *op. cit.*, p.185.

official put it, “quasi-benevolent neutrality”.¹⁰⁵ Yet the crucial problem remained of finding a backbencher successful in the ballot who was prepared to introduce a divorce Bill. Reformers could have been forgiven for having a distinct feeling of *déjà vu* after the ballot. No MP in the first eight was a suitable target for reformers to pressurise, just as had been the case with homosexual law reform in the Spring of 1966 after the election. The prospect of having to introduce a Bill under the Ten Minute Rule, as Abse had on homosexuality, loomed. However, the ninth name in the ballot was Alec Jones, Labour MP for the Rhondda who, like Liberal MP David Steel before him, assumed the responsibility for piloting a Bill of major social reform through the Commons less than two years after winning his seat in a by-election.

The arguments and early course of the Jones’ Bill were necessarily repetitious. Abse and Jones planned the Second Reading more strategically, choosing a debate immediately after the less contentious Employers (Liability) Bill.¹⁰⁶ However, even this precaution nearly came unstuck because, as Gardiner had predicted,¹⁰⁷ opponents of divorce used a long filibuster during this Bill, leaving only eighty minutes for the Divorce Bill. By using a new Standing Order allowing a Minister to move a Morning Sitting, a successful Second Reading debate was won by 118 to 30 on 17 December, nearly two months earlier in the Session than Wilson’s Bill had done. Thus, despite the need again for thirteen Committee sittings on the Bill, there was considerably less pressure of time.¹⁰⁸

The Government, suitably chastened by their failure to save Wilson’s Bill, gave careful consideration to the steps necessary to make sure sufficient time was available for Jones’ Bill. Before its Second Reading, Gardiner explained the various hurdles to the Parliamentary Committee and Legislation Committee. The idea of introducing a parallel Bill in the Lords to encourage the Commons was rejected as counter-productive, but the use of one or two morning sittings was

¹⁰⁵ PRO, BC 3/381, Bourne, LCD to J.M. Cartwright Sharp, Secretary, Law Commission, 25.10.68; PRO, CAB 134/3031, P(68) 12th meeting, 7.11.68; PRO, CAB 134/3031 P(68) 12, ‘Divorce Law Reform Bill’, memorandum by Gardiner, 4.11.68.

¹⁰⁶ Richards, *op.cit.*, p.150.

¹⁰⁷ PRO, CAB 134/2960 LG(68) 28th meeting, 3.12.68.

¹⁰⁸ Richards, *op.cit.*, pp.149-151; HC Deb., vol.775 cols.1057-1136, 17.12.68.

agreed. The importance of providing this extra time as soon as possible was stressed by Gardiner, bearing in mind the earlier embarrassment of a Labour Government running out of time for a measure of popular social reform because of a log-jam in the House of Lords.¹⁰⁹ Burke Trend, Cabinet Secretary, in his note to Wilson on Gardiner's memorandum also stressed the advantage of relatively cheap Government assistance on Second Reading compared to more risky attempts to see the Bill through later.¹¹⁰

The Government's involvement in the Bill continued to be a complicated one throughout the Session because of the introduction of a Matrimonial Property Bill by Edward Bishop, Labour MP for Newark, who had won third place in the ballot. This Bill, as Richards has stated, would have introduced whole new principles into divorce proceedings and property law in general which the Government could not ignore.¹¹¹ Most advocates of divorce reform supported Bishop's Bill, as did some opponents, including women's groups, who sought the greater financial protection of divorced spouses and children. However, the Government, advised by the Law Officers considered the Bill to be seriously defective and were determined to defeat it.¹¹² This led to some ugly scenes at meetings of the PLP, some hasty back-peddling and a face-saving compromise during January 1969.

Legislation Committee decided that the Government would oppose the Matrimonial Property Bill when it came up for Second Reading, with a three-line whip for Ministers and a two-line whip for backbenchers. Ministers felt that this could be justified on the grounds that the Law Commission was already looking at the subject, and related matters would soon be announced in a White Paper on National Superannuation and Social Insurance.¹¹³ This was reinforced at Cabinet the day before the Second Reading debate.¹¹⁴

¹⁰⁹ PRO, CAB 134/3031, P(68) 12th meeting, 7.11.68; PRO, CAB 134/2960, LG(68) 28th meeting, 3.12.68; PRO, CAB 134/3031, P(68) 12, 'Divorce Law Reform', 4.11.68.

¹¹⁰ PRO, PREM 13/2754, Trend to Wilson, 'Divorce Law Reform', 7.11.68.

¹¹¹ Richards, *op.cit.*, pp.151-152.

¹¹² PRO, CAB 134/2964, LG(69) 8, 'Matrimonial Property Bill', memo by Gardiner, 9.1.69; Richards, *op.cit.*, pp.151-152.

¹¹³ PRO, CAB 134/2964, LG(69) 1st meeting, 14.1.69.

¹¹⁴ PRO, CAB 128/44 part 1, CC(69) 5th conclusions, 23.1.69.

However, at the following PLP meeting this caused such a furore that Wilson was forced to make a speech announcing that a free vote would now be given and a negotiated solution would be found.¹¹⁵ Despite this climb-down the Bill passed on Second Reading by 86 votes to 32,¹¹⁶ due in part to a less than inspirational performance on the part of Irvine,¹¹⁷ Jennie Lee, minister for the arts, was the only Government front-bencher to vote for the Bill.¹¹⁸ Shirley Williams, who abstained, angrily protested that she had, as a matter of conscience, already promised to support the Bill, before Silkin had announced the whip. Her defiant speech at the PLP meeting on the eve of the vote, before Wilson had removed the whip (although he later insisted that he had not heard Williams' speech¹¹⁹), and the widespread anger over the whipping of ministers¹²⁰ prompted Cabinet to refer the subject of "the political implications of Private Members' Bills" to a new ministerial group which was considering the not altogether connected subject of specialist Commons committees, or select committees.¹²¹ Shortly afterwards, Edward Bishop agreed to withdraw his Bill in exchange for a promise on Government legislation based on the Law Commission's findings,¹²² although according to Abse this agreement was largely cosmetic for both sides as the Government would have legislated on matrimonial property in any case.¹²³

The general enthusiasm among MPs for the principles embodied in Bishop's Bill, combined with Government efforts to pour oil on extremely choppy waters, meant that the issue of matrimonial property assumed a new importance after the withdrawal of the Bill. The previous arrangement under which a divorce

¹¹⁵ NMLH, PLP minutes, 23.1.69; The Times, 24.1.69 'Ministers give way to revolt on divorce vote'; Abse, op.cit., p.200.

¹¹⁶ HC Deb., vol. 775 col. 1057-1136, 17.2.68.

¹¹⁷ Abse, op.cit. p.200.

¹¹⁸ HC Deb., vol. 776 cols. 801-896, 24.1.69; Evening Standard, 'Wilson's Whip in trouble,' 25.1.69.

¹¹⁹ PRO, PREM 13/2710, Wilson to Williams 30.1.69; Williams to Wilson, 14.2.69.

¹²⁰ NMLH, PLP minutes, 23.1.69; NEC/NLWAC, minutes of meeting, 27.2.69.

¹²¹ PRO, CAB 134/3032, P(69) 1st meeting, 27.1.69; PRO, CAB 128/44 part 1 CC(69) 6th conclusions, 30.1.69.

¹²² PRO, PREM 13/2710, Michael Blair (Private Secretary to Lord Chancellor), to P.L. Gregson (Private Secretary to Prime Minister, Parliamentary Affairs), 25.2.69.

¹²³ Abse, op.cit., pp.199-200.

would not be granted unless the court were satisfied that an adequate financial settlement had been agreed, was now not enough for the opponents of Jones' Divorce Bill. Those who wished financial provisions to be strengthened secured a promise from Irvine that the Divorce Bill would come into operation at the same time as a Government matrimonial property Bill to be introduced in the next Session,¹²⁴ although for the most vociferous opponents of divorce reform, especially Sir Lionel Heald, former Conservative Attorney-General, this was merely an admission that the Divorce Bill had always been inadequate, as he had claimed.¹²⁵

The Report stage of the Divorce Bill was extremely protracted both because of the success of opponents of the Bill in spinning out debate, and because its sponsors were finding it increasingly difficult to motivate sufficient numbers of supporters to attend and speak.¹²⁶ For once, George Brown's complaint to the DLRU that he wanted some sleep rather than a divorce all-nighter, was more than idiosyncratic.¹²⁷ Gardiner once again went to Cabinet to secure extra time for the Bill's completion and dispatch to the Lords, again with the concern that, with a heavy programme of Government legislation still to be passed, time was of the essence.¹²⁸ Despite the proverbial complaint that this would antagonise public opinion and compromise the Government's line of neutrality, the proposal was agreed. The Bill would be given as much time as was needed to be completed, on the same lines as the 1967 Abortion Bill. In order to galvanise Party approval of this, Wilson instructed Mellish to bring this decision to a meeting of the PLP.¹²⁹

At this point in the protracted saga it became clear why Mellish's appointment as Chief Whip in April had been disadvantageous for the sponsors of divorce reform. As Abse records, Mellish had been party to the "cabal" that had 'done for' his 1963 divorce Bill. Abse is cautious, though, about accusing him of malice

¹²⁴ Abse, *op.cit.*, p.200.

¹²⁵ HC Deb. Standing Committee C, 1968-1969, vol. ii, 10th sitting, cols. 434-436, 19.3.69.

¹²⁶ Service papers, Sponsors of Bill to MPs, 5.2.68; Richards, *op.cit.*, p.153.

¹²⁷ Service papers, 'list of MPs intentions', undated but presumably February 1968.

¹²⁸ PRO, CAB 129/142, C(69) 51 'Divorce Law Reform', memo by Gardiner, 13.5.69.

¹²⁹ PRO, CAB 128/44 part 1, CC(69) 23rd conclusions, 15.5.69.

in 1969.¹³⁰ However, as discussions within the Government about how best to facilitate passage of the Bill continued, Mellish's opposition to the Bill was well-known.¹³¹ His mistake, whether deliberate or naïve, was to accede to the demands of Heald for a debate on a Motion he had tabled which condemned the Government's assistance for the Divorce Bill.¹³²

Richards is inaccurate when he says that "Ministers decided that this challenge must be met".¹³³ Mellish informed his colleagues at a meeting of the re-constituted Parliamentary Committee, now called the Management Committee, on the morning of 12 June. Because of the serious implications it was immediately referred to that day's Cabinet meeting.¹³⁴ At both one can detect considerable impatience with Mellish for agreeing to the debate which, it was said, was obviously a filibuster, and one which could set a dangerous precedent. To compound matters, Mellish admitted that:

"he had subsequently realised that the Motion amounted to a Motion of censure and that they might have difficulty in securing its rejection, since the day's business was subject only to a one-line Whip."

Cabinet had to arrange for a three-line whip and a closure of the debate at midnight, before the Divorce Bill's Report stage could hopefully continue into the night.¹³⁵ Heald's Motion actually went to the heart of the whole debate about the Government's position. They were, he alleged, pretending to be neutral whilst taking no responsibility for a measure they were assisting. Unfortunately for Heald, the House approved these disingenuous tactics by 166 to 62.¹³⁶ Interestingly it was Friday 13 June when the Bill passed to the Lords, although by parliamentary convention the second day of a continuous all-night sitting does not actually exist, so technically it was still Thursday 12th.

¹³⁰ Abse, *op.cit.*, p.187.

¹³¹ PRO, PREM 13/2754, Gregson to Wilson, 9.5.69.

¹³² HC Deb., vol. 784 col. 1797, 12.6.69.

¹³³ Richards, *op.cit.*, p.153.

¹³⁴ CAB 134/3118, PM(69) 7th meeting, 12.6.69.

¹³⁵ PRO, CAB 128/44 part 1, CC(69) 27th conclusions, 12.6.69.

¹³⁶ HC Deb., vol. 784 cols. 1789-1852, 12.6.69.

The Lords stages of the Bill were comparatively undramatic. Unlike discussion of other measures like abortion and homosexuality, the ermine-clad opponents of reform were relatively restrained, with no sign of filibustering. Although Lady Summerskill kept up her attacks against the “Casanova’s Charter” on behalf of women’s organisations,¹³⁷ the concessions made on financial provisions lessened the support she attracted. Perhaps her invocation of the timid Morton Commission, by then thirteen years old, and hardly radical when it was published, rallied the supporters of radical change. In addition the Bill was suavely piloted through by Lord Stow Hill, formerly Sir Frank Soskice, who belied his earlier reputation as an indecisive Home Secretary and only half-hearted reformer.¹³⁸

¹³⁷ HL Deb., vol. 303 col. 667, 3.7.69.

¹³⁸ Abse, *op.cit.*, p.201; HL Deb., vols. 303 and 304, 30.6.69 to 13.10.69.

Outside pressure – DLRU, women’s organisations, the Churches and the press:

The unprecedented concentration during the 1966-1970 Parliament of reform campaigns on controversial social issues encouraged an embryonic lobbying industry. Once abortion law reform seemed secure, the Parliamentary Officer for the Abortion Law Reform Association (ALRA), Alistair Service, offered his skills to the Divorce Law Reform Union (DLRU) in a similar capacity, when David Steel’s abortion Bill became law.¹³⁹ Until this point, despite its venerable age (the DLRU had been established in 1906), this pressure group had not been quite the force which either of its larger contemporaries, ALRA or HLRS were. These other two from the mid-1950s onwards had more resources and a larger membership, a curious anomaly in view of the more controversial and limited causes of abortion and homosexuality compared to the ubiquity of marriage and potential divorce.

However the main brake on the progress of the DLRU’s lobbying activities was the continued absence of a political consensus on proposals for reform. This was compounded by the Morton Commission’s ineffectual and divided conclusions. Without a clear majority of informed opinion, represented by a majority in Parliament on the question of reforming the concept of matrimonial offence, the Union was restricted to routine meetings, publication of pamphlets, and contact with Parliamentary supporters. It was involved in Abse’s 1963 efforts and drafted the Strengthening of Marriage Bill which was introduced in the Lords shortly after the publication of Putting Asunder in August 1966 by a Vice-President of the Union, Earl Balfour.¹⁴⁰ This Bill would permit either spouse to remarry after a separation of five years.¹⁴¹ The abstract, unrealistic nature of this Bill demonstrated the lack of sophistication within the Union which Service’s arrival soon changed. He re-invigorated the Union, just as a new, younger generation of women had done to ALRA in the early 1960s after their lengthy campaign became stale and dispirited. There was considerable interest in the

¹³⁹ Lee, *op.cit.*, p.89.

¹⁴⁰ Lee, *op.cit.*, p.35.

¹⁴¹ HL Deb, vol. 276 col. 1311, 3.8.66; vol. 284 cols. 8-10, 26.6.67.

press about Service, with laudatory comments by Madeleine Simms and others about his “value and dedication”.¹⁴² Abse described Service as “a charming political voyeur with considerable lobbying skill”.¹⁴³

With close links to Gardiner and Abse, once parliamentary discussion about reform took off after the consensus document hammered out between the Law Commission and the Archbishop’s Group, the DLRU was well placed to influence the reform debate. Its pamphlet, published in 1968, mirrored both William Wilson’s 1967 Bill – divorce with consent after two years, without consent after five years, improved reconciliation provisions, and a proposed thorough revision of financial safeguards.¹⁴⁴ During the passage of Wilson’s Bill Service and his colleagues were deeply involved in press correspondence and motivating, persuading and cajoling wavering supporters. They also filled in some alarming gaps in the understanding by the sponsors of the Bill of the grounds for divorce contained in it.¹⁴⁵ Service was particularly subtle at ‘smoke and mirrors’ tactics, convincing MPs that their qualms had been addressed, even if no ground had been given. For example, after the Second Reading he wrote to the Law Commission in rather Trollopian terms that:

“they will continue to support the Bill if some improvements can be made in Committee. Most of them have no very clear idea of what these improvements should be, but [if we say] that the Bill has been most carefully examined in Committee and we have been able to make one or two improvements, outlining what these are; we can then call for their continued support. If I have to say that the Bill has been carefully examined in Committee, and has been found unimprovable, it is going to put many people’s backs up.”¹⁴⁶

The Union was also particularly prominent during the summer recess in 1968 in whipping up protest and disapproval of the Government’s failure to provide

¹⁴² The Times, ‘Service: he puts the ball in the MPs’ courts’, 21.4.68.

¹⁴³ Abse, *op.cit.*, p.174.

¹⁴⁴ DLRU, Divorce in a Modern Society (London: DLRU, 1968) p.2.

¹⁴⁵ Service papers, Service to W. Wilson, 12.12.67.

¹⁴⁶ PRO, BC 2/380, Service to Cartwright-Sharp, Law Commission, 11.4.68.

sufficient time for the Wilson Bill to pass, and with pressure of time in the Lords being the main concern for another Bill in 1968-1969, the Union's contacts there were particularly useful in building up a group of sponsors who were prepared to support the Bill and counter the expected opposition. Service was active in 'educating' this group, including Baronesses Stocks, Serota, Birk and Gaitskell, in the details particularly of the financial safeguards in the proposed Bill.¹⁴⁷

The most effective opposition to the two divorce Bills introduced in 1967 and 1968 came, not from religious conservatives determined to uphold the concept of matrimonial offence, but from women's organisations who supported this aspect of reform, but who feared that divorce without consent even after five years would encourage middle-aged men to abandon their wives for younger women. Where supporters of the Bill described this provision as divorce after 'long separation', Summerskill described it as divorce by 'compulsion'. Representing the Married Women's Association she doughtily campaigned against Abse's 1963 Bill, including the "kiss and make-up" reconciliation clause which women's groups felt acted as an extra boon to adulterous husbands.¹⁴⁸ She was ably matched in the Commons by her daughter, Dr. Shirley Summerskill, MP for Halifax. Abse and Service were concerned before the Second Reading of William Wilson's bill that Summerskill was deciding the major issue, whereas they wished to keep the debate focused on the substantive grounds for divorce.¹⁴⁹

However, it is difficult not to gain the impression from her speeches in the Lords and from her memoirs that the concentration on campaigning for financial safeguards, which was supported by almost all, was less important than the moral concerns about the damage to the institutions of marriage and the family, which more conservative women's groups like the MWA, avowed.¹⁵⁰ Summerskill was buoyed up whenever the outspoken Sir Jocelyn Simon, President of the Probate, Divorce and Admiralty Division from 1962 and

¹⁴⁷ PRO, BC 2/381, Service to Cartwright-Sharp, 1.7.68.

¹⁴⁸ Lady Summerskill, *A Woman's World* (London: Heinemann, 1967) p.237.

¹⁴⁹ Service papers, Abse to Service, 23.1.68.

¹⁵⁰ Summerskill, *op.cit.*, pp.233-243.

previously Conservative Solicitor-General, despite his duty of judicial impartiality, inveighed against the weakening of the matrimonial offence, ignoring the human factor in divorce. As Abse characterised their position:

“Just as a death certificate records the death of the individual, so does a divorce only record the death of a marriage... [they] would believe death certificates caused death.”¹⁵¹

(Simons’ very public pronouncements on divorce, apart from their unconstitutionality, were extremely flawed, a disturbing feature in so senior a judge. In a well-reported article in the Law Society Gazette, he argued that divorce by consent should be permitted for couples without dependent children, but unobtainable to those with dependent children – a certain recipe for dysfunctional families and infanticide.¹⁵²)

One must be careful, as with looking at ALRA, that Abse’s rather unpleasant, Freudian picture of passionate women campaigners on divorce reform (at least those with whom he disagreed) is discounted. His depiction of middle-aged political women as sexually frustrated and psychologically damaged is offensively distorted.¹⁵³ Despite the vocal and well-organised lobby of Summerskill and the conservative MWA, who justifiably pointed to the long-term dependency of many married women, other women’s groups supported the reformers’ argument that married women stood to benefit from a new divorce Act as much as men, and that statistics from Scandinavian countries which had already liberalised their divorce laws proved this. In February 1968 the National Council of Women (NCW) approved irrevocable breakdown of marriage as the only ground for divorce.¹⁵⁴ The National Joint Committee of Working Women’s Organisations (NJCWWO), affiliated to the National Labour Women’s Advisory Committee (NLWAC), actively supported divorce reform once they were satisfied that adequate financial safeguards were in place, and discussed tactics

¹⁵¹ Abse, *op.cit.*, p.169.

¹⁵² The Law Society’s Gazette, June 1965, p.350.

¹⁵³ Abse, *op.cit.* pp.175-179.

¹⁵⁴ The Guardian, ‘Women vote on marriage breakdown’, 2.2.68.

with peers and MPs. However, these umbrella committees were considerably alarmed by the Government's cavalier attitude towards Bishop's Matrimonial Property Bill in January 1969, and would have preferred parallel Bills on the two legal aspects of divorce.¹⁵⁵ The pressure brought to bear by women's groups on the divorce bills was intensified by the assistance they received from the Church of England, particularly by the Lords spiritual, whose authority, as in other areas, was persuasive.¹⁵⁶

Other denominations, notably the Methodist Church,¹⁵⁷ rallied to the proposals in Putting Asunder, and official Roman Catholic doctrine on divorce could not prevent prominent Catholics like Lord Iddesleigh agreeing that, despite personal convictions, reform was inevitable.¹⁵⁸ More ardent (convert) Catholics remained orthodox, Lord Longford blindly arguing (as in other debates) that his position might be a Roman Catholic one, but of course that was the general opinion of millions across the country.¹⁵⁹ The more mainstream Catholic view was that, despite the abandonment of full inquests into the breakdown of a marriage, reform would achieve the eradication of deceit by couples.¹⁶⁰ This accommodation between the religious and the secular was further smoothed by the successful negotiations between the Law Commission and the Anglican group chaired by the Bishop of Exeter, Robert Mortimer.

However, as has been stated, Ramsey found the emerging proposals hard to stomach, and he shied away from consultation with the other Churches, damaging his reputation for ecumenical co-operation.¹⁶¹ Ramsey's lack of strategic vision hampered his cause as, by questioning the whole direction of divorce reform, he brought the debate back to fundamental principles, rather than the more technical financial issues raised by Summerskill and her supporters, which were threatening Wilson's Bill at Second Reading.¹⁶²

¹⁵⁵ NMLH, NEC/NLWAC/M, 5.12.68; NJC/M/ 16.1.69; NLWAC/M, 27/2/69.

¹⁵⁶ LPL, RP/103, 125, Beloe to Geoffrey Derby, 24.6.66.

¹⁵⁷ Methodist Recorder, 20.7.67.

¹⁵⁸ HL Deb., vol. 278 cols. 319-324, 313-315, 23.11.66.

¹⁵⁹ HL Deb., vol. 303 col. 370, 30.6.69.

¹⁶⁰ Catholic Herald, 'Catholics keep eye on new divorce bill', 19.1.68.

¹⁶¹ The Daily Mirror, 'Eye-to-eye on divorce: Leo and the Archbishop', 27.7.67.

¹⁶² Service papers, Abse to Service, 23.1.68.

Ramsey's was not the only important source of dissent from the tide which seemed to be sweeping the Church towards divorce by consent. Bryan Bentley, who had served on the Archbishop's group, was particularly worried, writing melodramatically to Ramsey that:

“divorce by consent... would be evidence of regression to the morality and law that prevailed in the Roman Empire before Christianity came on the scene...”¹⁶³

Nevertheless, the publication of Putting Asunder was received with considerable favour in newspaper columns. The reaction of The Times encapsulated the general media approval of reform from July 1966 until the enactment of Jones Bill in 1969:

“It is doubtful whether there has been published in recent times a more persuasive, thoughtful or constructive plea on behalf of the breakdown of marriage doctrine or a more effective condemnation of the present method of divorce.”¹⁶⁴

This same approbation for the Report, and the joint proposals worked out with the Law Commission, became a contentious issue between the Church and the press because Ramsey claimed that “propaganda” had misrepresented the Report as being the confirmed view of the Church of England and himself.¹⁶⁵ However, this distinction between the group Ramsey had set up, and any official Anglican position was both naïve and disingenuous, since Ramsey had always intended that reform proposals should incorporate the results of his group.

As Lee has said, the divorce issue was treated more dispassionately than, for example, abortion was. However, his contention that “Politically apathetic, many people were not even aware that the Divorce Reform Bill was going through

¹⁶³ LPL, RP/102, 288, Bentley to Ramsey, 6.11.66.

¹⁶⁴ The Times, editorial, 29.7.66.

¹⁶⁵ LPL, RP/138, 196-197, Ramsey to Bentley, 13.2.68.

Parliament, although the press coverage was relatively detailed...¹⁶⁶ is hard to sustain. It also true that newspapers could be provoked into attack. The Daily Express was particularly annoyed by Simons' coercive proposal that marriages under three years should be subject to compulsory reconciliation assistance,¹⁶⁷ and the Daily Telegraph, amongst others, was extremely exercised by Archbishop Ramsey's lack of leadership over divorce.¹⁶⁸

However, the media, and newspapers in particular were, as with abortion and homosexuality, key instruments for the disputation about how popular or unpopular this measure of reform would be. The explosion of opinion poll data clearly demonstrated the extent to which the public supported the main proposals based on the Anglican Group/Law Commission consensus. As in other areas, however, such opinion polls could still speak with cloven tongue. Those commissioning polls were, naturally, most concerned to see the questions structured in order to secure the best results possible.¹⁶⁹

This was particularly awkward for the Daily Telegraph which crowed that only 38% had approved easier divorce in its February 1968 Gallup poll. However, the responses to the detailed provisions of the Wilson Bill were all heavily in favour of reform which, the paper grudgingly admitted, gave reformers "at least some measure of satisfaction".¹⁷⁰ The Daily Telegraph, in common with other opponents was left to concentrate on attacking the financial safeguards in the Bill and complaining, not without some justification, that divorce was too important a subject to be left to a private member, although it also suggested that divorce reform would encourage the increasing spread of the 'permissive society'.¹⁷¹

The contention that easier divorce would lead to the breakdown of traditional family life has been rejected, not only by parliamentary reformers like Abse and

¹⁶⁶ Lee, op.cit., p.101.

¹⁶⁷ Daily Express, 'Let's wipe out this hypocrisy', 13.7.67.

¹⁶⁸ Daily Telegraph, 'Dr Ramsey 'broke faith on divorce', 19.1.68.

¹⁶⁹ Service papers, Abse to Service, 6.12.67.

¹⁷⁰ Daily Telegraph, 8.2.68.

¹⁷¹ Daily Telegraph, 18.12.68.

Gardiner, but also, from rather different perspectives to each other, sociologists like Ronald Fletcher and Carol Smart. The divorce statistics show a huge increase in divorce, but this is taken as an indication partly of 'catch-up' after the 1969 Act came into force and also of increasing external pressures on marriage, particularly since the late 1950s in terms of the division of labour, women's increasing chance of viable independent life, and other reasons discussed amply elsewhere.

The abandonment of the principle of matrimonial offence in favour of breakdown of the marriage, toyed with by reformers and inquiries since the Gorell Commission in 1912, dove-tailed with the Wolfenden philosophy of removing sin from the ambit of the law. Equally the aim of divorce law reform was more accurately to reflect the *de facto* position of second families with no legal status, the deleterious effects for relationships within these families, and the administration of justice and the image of the law. All this fitted neatly with the Labour Government's thrust in the field of law reform represented by the Law Commission under the inspiration of Lord Chancellor Gardiner.

Gardiner's strong lead on law reform in the Labour Government, and the support of other senior ministers however, was not sufficient to push reform through quickly in the face of competition from other, more controversial issues of reform against a background of Government crisis and a packed legislative timetable. Even though the arguments had largely been secularised by the time of the Morton Commission, it was only once the Church of England, against the reservations of its senior prelate, came out in support of reform, that consensual proposals were possible. Perhaps the most interesting feature of the ill-organised opposition to the divorce reform Bills in 1968 and 1969 was the non-religious opposition of women's groups represented by Lady Summerskill. They took considerable advantage of the parliamentary delays, caused by the lack of interest and urgency on the part of the Government during the 1967-1968 Session, to ensure that their priority of parallel legislation on matrimonial property came into force at the same time as divorce reform.

Chapter 7 – Sunday entertainment: “scribes, Pharisees and hypocrites” versus “scribes, licensees and hippodromes”.¹

“The fact that there are anomalies about Sunday legislation ought not to upset us. Cold logic rarely solves emotive issues such as this. There is nothing more illogical than the British Constitution...”²

“The fewer the people who go out to a public entertainment on Sunday the more who will stay at home, wilfully mentally inhaling the claims for some detergent or breakfast cereal...”³

The course of the debate on Sunday entertainment during the 1960s highlights the problematic nature of analysing the changing relationship between public morality and politics in post-war Britain. Like all the reforms under discussion here, the question of ‘Sunday observance’ had periodically troubled the minds of legislators and the political class since the nineteenth century. The laws governing what activities were permitted apart from churchgoing on Sundays were a jumble of some of the most archaic still theoretically in force, dating back to the seventeenth and eighteenth centuries.

The original bases for much of this legislation, public order and encouragement of piety, were no longer considered legitimate reasons for their enforcement by 1945, except by the vocal minority who made up the Lord’s Day Observance Society (LDOS), a group of low-church Anglican and Presbyterian sabbatarian fundamentalists who continue at the beginning of the twenty first century to pursue their antediluvian utopia. Mark Jarvis has argued that reform of the Sunday observance laws was a key part of Butler’s strategy to modernise the Conservative approach to personal freedom in a society with changing mores, and in the wake of the Wolfenden Report.⁴

¹ Malcolm MacMillan, Labour MP for the Western Isles, Second Reading debate on Hamling’s Sunday Entertainments Bill, HC Deb., vol.755 cols.1909-1910, 8.12.67.

² George Thomas, Joint Parliamentary Under-Secretary, Home Office, HC Deb., vol. 706 col. 961, 15.2.65.

³ Lord Moynihan, Second Reading Debate on Lord Willis’ Sunday Entertainments’ Bill, HL Deb., vol. 278 col. 64, 21.11.66.

⁴ Mark Jarvis, *The Conservative Party and the adaptation to modernity 1957-1964* (London: unpublished PhD thesis, 1998) pp.128, 132-138.

However, despite a growing consensus that the status quo was desirable neither in principle or in legal-administrative terms, and five Commons Bills on the subject between 1953 and 1969, reform of the Sunday observance laws managed to survive the backbench energies of the 1964-1970 Wilson Governments. The reasons for this are, unsurprisingly, a combination of underlying tendencies within British politics and society, and short-term factors, particularly the deteriorating position of the Wilson Government from 1967 to 1969 and competition with other similar issues considered to be more pressing than relaxation of Sunday observance laws.⁵

⁵ Interview with Gwyneth Dunwoody MP, 27.3.00.

Suppression of debate 1945-1964

Unusually in this study, and crucially, the opposition to the relaxation of Sunday observance laws made the social and political weather on the subject. The obstruction by the LDOS of the South of England Table Tennis Championships in Hastings in 1949⁶ perhaps jarred particularly harshly with the growing unease at continuing post-war austerity, a yearning for fewer controls on consumption and greater gaiety in life.⁷ It certainly sparked into life the first organised campaign for the repeal of the three main acts in question – the Sunday Freedom Association, which attracted the support of screen stars like Jack Warner and the parliamentary sponsorship of John Parker, Labour MP for Dagenham, who championed the issue until the fall of the Labour Government in 1970.⁸

However, the LDOS successfully harried the Attlee Government's plans for the 1951 Festival of Britain, by securing an amendment to Morrison's Enabling Act (for the Festival's opening on Sundays) to prevent the amusement part of the Festival Gardens operating in Battersea Park. In the event, because of the illogicality of the existing laws, merry-go-rounds were still allowed. Not for the first time, a Government with a slim majority and MPs from marginal seats seem to have castrated a piece of liberalising legislation.⁹

The considerable power of the LDOS relative even to its impressive 35,000 membership¹⁰ continued through the 1950s and 1960s to block efforts at parliamentary reform. Despite the extremity of their position it should be noted that they did have some influence with mainstream Anglican thinking. Their insistent lobbying of senior Churchmen did have a restraining effect, and their most prolix parliamentary sponsor, Cyril Black, Conservative MP for Wimbledon,

⁶ John Parker, *Father of the House* (London: Routledge and Kegan Paul, 1982) p.118.

⁷ Peter Hennessy, *Never Again* (London: Jonathan Cape, 1992) p.316.

⁸ Parker, *op.cit.*, pp.218-125.

⁹ *The Economist*, 23.12.50, Letter from Phillip Williams and David Butler, quoted in Richards, *Parliament and Conscience* (London: Allen and Unwin, 1970) p.163.

¹⁰ This figure was estimated by the *Report of the Departmental Committee on Sunday Observance*, Cmnd.2528, para.43.

was in constant correspondence with Archbishop Ramsey during the 1960s.¹¹ Parker's first attempt to introduce a Bill in the 1952-1953 Session was defeated on Second Reading by 281 to 57, and a subsequent proposition that a Royal Commission be appointed by 172 to 164, after the LDOS organised a campaign which produced a petition with over half a million signatures. The Home Office itself received well over a hundred protests about the Bill.¹² The Home Secretary, David Maxwell-Fyfe, was advised by Downing Street effectively not to touch the subject with a barge-pole¹³ - a sentiment, considering Maxwell-Fyfe's conservative social views,¹⁴ he had no difficulty agreeing with. He breezily reported to Cabinet's Legislation Committee, in the sure knowledge that the Bill would not make progress, that:

"He did not believe that there was much public support for the Bill or that performers themselves generally would be in sympathy with its objects. On the other hand there was undoubtedly a considerable body of opinion opposed to any substantial relaxation of the existing law."¹⁵

The interesting features of this early Bill were two-fold. Firstly the inclusion of a compulsory contribution to charity of a proportion of the profits from Sunday opening of cinemas and theatres.¹⁶ This sop to the Christian injunction that works of charity should be the only occupation other than divine worship on the Sabbath was a curious 'tax' in a piece of liberalising legislation. Secondly, a local option could allow councils to exempt themselves from the Bill's provisions after a local ballot for a period of 3 years.

This second clause remained an important concession employed by private members over the next seventeen years to appease particularly Welsh Nonconformist opposition. However, the implications of evasion of the law and local anomalies through local options was not considered by reformers to be an

¹¹ LPL, RP/122, 149-150, H.J.W. Legerton, General Secretary, LDOS, to Ramsey, 23.1.67.

¹² PRO, HO 300/2, undated (presumably January 1953) and unsigned note.

¹³ PRO, HO 300/2, J.S., No.10, to Maxwell Fyfe, 22.1.53.

¹⁴ See above at Chapter 3.ii, p.85.

¹⁵ PRO, CAB 134/998 LC(53) 1st meeting, 20.1.53.

¹⁶ HC Deb., vol. 510 col. 1350, 1343, 30.1.53.

ideal improvement on laws which had already come into disrepute. This concept of 'variable regional permissiveness', as one might term it, although continued in other areas like censorship of theatres, did not appear in the Acts which eventually repealed the 1780 Sunday Observance Act.¹⁷

If the late 1940s had witnessed some popular frustration with controls and shortages, then the rise in family incomes from the economic upturn from 1952 and the increasing employment of married women gave families more scope for leisure activities on Sundays.¹⁸ Public debate after the 1953 Bill led to a growth in Sunday entertainments, some within the law, others not, and organisations like the National Trust discovered the popularity of their properties on Sundays.¹⁹ The cause of those opposed to relaxation of the Sunday observance laws might not have been assisted, however, by the public and criticised participation of the young Duke of Edinburgh in Sunday polo matches.²⁰ Archbishop Fisher was sufficiently worried about the impression this was having to write a highly critical letter to Prince Philip, suggesting that his behaviour gave:

"great encouragement... to all who now are constantly seeking to invade the domesticity of Sunday rest and recreations..."²¹

This was given fairly short shrift by the Duke, who, despite being prepared to play behind a screen thought the Archbishop should "go on the offensive and attack the most glaring cases of the misuse of Sunday".²² This obviously did not include himself. However, parliamentary interest in the subject was still not sufficient to stimulate reform. Despite a vote in favour of an inquiry in 1958, it was only 54 to 31.²³ However, the Government was sufficiently moved, partly by these developments, but also by the controversy aroused by its own Bill on licensing hours. One provision in this Bill would have extended the Sunday

¹⁷ Cinema Act, 1972.

¹⁸ See above at Chapter 2, pp.58, 74.

¹⁹ Parker, *op.cit.*, p.120.

²⁰ *Sunday Times*, 'Scots critic of Duke's Sunday Polo', 4.9.55.

²¹ LPL, GFP/182, 183-184, Fisher to Edinburgh, 9.9.55.

²² LPL, GFP/182, 188-192, Edinburgh to Fisher, 27.9.55.

²³ HC Deb., vol. 584 cols. 777-876, 14.3.58.

licensing hours. However, there was considerable protest from housewives that Sunday lunch would be affected and this proposal was dropped (although the Bill was amended by Parker to extend evening hours to 10:30pm).²⁴

From 1959 onwards Butler, stimulated by Crossbow, the journal of the liberal Tory Bow Group (which gave obeisance to Butler), was in discussion with his officials about the possibility of an inquiry and legislation. The 1959 New Year edition of Crossbow had recommended abolition of Sunday observance laws, as well as relaxation of other restrictions and general penal and social reform.²⁵ Butler, asked Sir Charles Cunningham, his Permanent Secretary, for memoranda on licensing laws, betting and gambling, shopping restrictions and Sunday observance, on the basis that:

“There is no doubt that much of our legislation in the fields mentioned – and some others – dates from an age which is now past, and we should prepare our pigeon-holes for some, at any rate, of the pigeons to fly out!”²⁶

It was suggested by one official that the Government should wait until further demand from a private member arose before instituting an inquiry, and predicted that any resulting report would be divided and public opinion strongly so.²⁷ One can feel considerable sympathy for Cunningham, who seems torn between his desire to see archaic social legislation gradually tidied up to reflect contemporary society, and his palpable horror at the difficulty the Government would have in legislating on any proposals which would be broadly acceptable. He recommended that:

“If something is to be done, there may be something to be said for putting off the evil day and setting an enquiry on foot.”²⁸

²⁴ Parker, op.cit., p.120.

²⁵ Crossbow 1959, vol.2 no.2.

²⁶ PRO, HO 300/2, Butler to Cunningham, 16.1.59.

²⁷ PRO, HO 300/2, draft minute on ‘Sunday Observance Law’, unidentifiable initials, 25.2.59.

²⁸ PRO, HO 300/2, Cunningham to Butler, 2.3.59.

Despite Butler's personal desire to have at least an inquiry discussed, the issue was not mentioned in the Conservative election Manifesto because of political sensitivity.²⁹ After the general election in October 1959 discussions at the Home Office resumed on the possible lines and form of an inquiry. It was agreed, following advice from Sir Austin Strutt, Assistant Under-Secretary at the Home Office,³⁰ that an inquiry should be set up quickly, to avoid the prospect of demands for controversial legislation in the last Session of the new Parliament, close to the next general election.³¹ Cunningham recommended that a Select Committee, rather than a Royal Commission be established because its members would better reflect public opinion and a political judgement about what would be acceptable.³²

However, Dennis Vosper, junior Home Office minister, was more forthright. He claimed he had never, in ten years, received any constituency correspondence on Sunday observance and could detect no parliamentary pressure for reform. However, he advocated legislation in the first Session of the next parliament, with a manifesto commitment. In the intervening period an enquiry could gauge public opinion. What type of enquiry was more troublesome. Vosper did not think a select committee would work, but was worried that the Home Office was becoming known as "the department which surrounds itself with Commissions and Committees".³³

Butler, in taking the matter to Cabinet's Home Affairs Committee leaned towards a Joint Select Committee,³⁴ although the Committee reached no conclusions and referred the matter to full Cabinet, where the principle, though not the timing of a Joint Select Committee Inquiry into Sunday observance was agreed.³⁵ The shift away from a parliamentary select committee to a departmental committee, considering the political judgment it had been agreed the former type would

²⁹ Jarvis, *op.cit.*, p.138.

³⁰ PRO, HO 300/2, Sir Austin Strutt to Cunningham, 2.12.59.

³¹ PRO, HO 300/2, Note of meeting between Butler, David Renton (Parliamentary Under-Secretary, Home Office), Cunningham and Strutt, 14.12.59.

³² PRO, HO 300/3, Cunningham to Dennis Vosper, 2.6.60.

³³ PRO, HO 300/3, Cunningham to Vosper, 2.6.60, note by Vosper, 20.6.60.

³⁴ PRO, CAB 134/1982 HA(60) 85, 24.6.60.

³⁵ PRO, CAB 134 1980, HA(60) 14th meeting, 1.7.60; PRO, CAB 128/32 44th conclusions, 21.7.60.

deploy, was due, ironically, to political considerations. Vociferous opposition was voiced in the backbench Conservative Home Affairs Committee about both the principle of reform and the dangerous timing of any legislation close to the next general election.³⁶ Despite Butler's continued preference for a select Committee, hoping it could report in the 1961-1962 Session, Vosper, Sir Martin Redmayne (Chief Whip) and Cunningham persuaded him that the best solution was to keep the issue alive by appointment of a departmental committee.³⁷ In Cunningham's words the Government could plan:

“the timing any enquiry in such a way that its results would not be available before the next General Election, so that the way for legislation would have been prepared and legislation could follow at the beginning of the new Parliament.”³⁸

Vosper, more nobly, and despite Party concerns about the timing of any report, still preferred a report before the next general election on the basis that he “would rather electioneer with the facts ascertained rather than otherwise”.³⁹

The Crathorne Committee, chaired by Lord Crathorne (formerly Sir Thomas Dugdale, Conservative minister during the 1930s and 1940s), was eventually established by Butler in July 1961.⁴⁰ The most notable aspect of the appointment of its members was the consideration given to religious affiliation. When Sir Peter Rawlinson, a Catholic, resigned from the Committee on his appointment as Solicitor-General in July 1962, ministers were anxious that no impression should be given by appointing another Catholic that they were conceding denominational representation. This would hand a weapon to the Nonconformist Churches who were not represented on the Committee, and might feel that the Government were “being craftily seduced into Romish practices” in any liberalising Report. Because of the less ultramontane position

³⁶ PRO, HO 300/13, Vosper to Butler, 25.11.60.

³⁷ PRO, HO 300/13, Vosper to Butler, 28.11.60; Redmayne to Butler, 5.12.60; Cunningham to Butler, 16.12.60.

³⁸ PRO, HO 300/13, Cunningham to Butler, 26.11.60.

³⁹ PRO, HO 300/13, Vosper to Butler, 19.12.60; Cunningham to Butler, 26.1.61, note by Vosper 29.1.61.

⁴⁰ HC Deb., vol. 644, written answers, col. 69, 13.7.61.

of Catholics on this issue, it was therefore felt that it was not necessary to replace Rawlinson with another Catholic.⁴¹

The Committee took an inordinate two and a half years to produce its report, though this was because of its leisurely approach to its schedule from the beginning, which was designed to fit in with its chairman's other commitments.⁴² The Report was not published until December 1964.⁴³ It had been completed in June but its presentation was delayed to avoid becoming, as ministers had feared, an issue in the coming election.⁴⁴ This was an awkward period because in April 1964 the Conservative MP for Middleton and Prestwich, Sir John Barlow, secured a Second Reading for his Bill introduced under the Ten Minute Rule to remove restrictions on sporting events. Anxious not to prejudice the recommendations of the Crathorne Report, whilst hoping that a parliamentary debate would sate some of the reforming pressure within Parliament, ministers did not attempt to have the Bill talked out,⁴⁵ and were no doubt relieved when it ran out of time.⁴⁶ As Jarvis concludes Sunday observance "exposed the limitations of the Conservative agenda to modernise social legislation"⁴⁷.

The evidence the Crathorne Committee gathered represented the whole spectrum from the LDOS position, which the Committee strongly rejected,⁴⁸ to a more libertarian stance, although most organisations supported the 'special character' of Sunday.⁴⁹ As in other areas the Churches, particularly the British Council of Churches (Protestant), eschewed theological or religious arguments in favour of the effect on the whole community, here in terms of enforced employment.⁵⁰ However, they must have calculated that a relaxation of Sunday

⁴¹ PRO, HO 300/13, C.M. Woodhouse to Henry Brooke, Home Secretary, 5.9.62.

⁴² PRO, HO 300/13, Cunningham to Butler, 7.4.61.

⁴³ Report of the Departmental Committee on the Law on Sunday Observance Cmnd.2528, December 1964.

⁴⁴ PRO, HO 300/14, Cunningham to Brooke and Woodhouse, 1.5.64; Jarvis, op.cit., p.139.

⁴⁵ PRO, HO 300/14, Cunningham to Brooke and Woodhouse, 1.5.64; PRO, CAB 134/2150, L(64) 15th meeting, 5.5.64.

⁴⁶ HC Deb., vol. 696 cols. 837-88, 12.6.64.

⁴⁷ Jarvis, op.cit., p.141.

⁴⁸ Cmnd.2528, para.43.

⁴⁹ Cmnd.2528, para.48.

⁵⁰ LPL, RP/27, memorandum to Crathorne Committee, December 1961.

observance laws would only increase the competition they faced from other activities, and marked the 'point-of-no-return' for the secularisation of Sundays.

As Richards observes, the Report's recommendations were far more radical than might have been expected from the composition of the Committee,⁵¹ and against the predictions of Sir Charles Cunningham they were almost unanimous. The Report began from the secular premise that:

"there was no objection to these forms of entertainment in themselves, and that there was no theological or ethical reason why they should be prohibited. The modern view appears to be that if an entertainment is improper on Sunday it is just as undesirable on weekdays."⁵²

Its main proposal was that all activities permitted on weekdays should also be allowed on Sundays after 12:30pm, with safeguards to prevent unnecessary employment and noisy disturbances.⁵³ However, in attempting to reconcile the divisions between those sports which wanted to operate on Sundays and those which did not, the Committee ignored its earlier premise and produced the illogical fudge that only amateur competition would be permitted,⁵⁴ to the derision of some newspapers.⁵⁵ This despite their assertion that:

"In framing our recommendations we have endeavoured to make proposals which, if adopted, would produce a law that would be respected and could be enforced. To achieve this, the law must be clear, certain, and acceptable to a majority of the public."⁵⁶

The Committee's attitude towards public opinion on Sunday observance was a curious mix of respectful and wary. The Report began by saying that the inquiry had not had enough views from the general public to form an impression of the

⁵¹ Richards, *op.cit.*, p.166.

⁵² Cmnd.2528, para.38.

⁵³ Cmnd.2528, pp.64-5, summary of recommendations.

⁵⁴ Cmnd.2528, para.117.

⁵⁵ The Sun, 'Freedom on Sundays', 15.2.65.

⁵⁶ Cmnd.2528, para.52.

opinion of “the man in the street”,⁵⁷ presumably the same reasonable man on the Clapham omnibus to whom Lord Devlin had referred in his lecture, The Enforcement of Morals, six years earlier.⁵⁸ However, the broad range of submissions that had been received appeared to confirm the impression given by the 1958 Gallup Survey that a “consistent and clear though small majority was in favour of reducing legal restrictions on Sunday activities”, though with huge variation of opinion from the Sabbatarian to the libertarian.⁵⁹

Bizarrely (as with the Morton Commission on Marriage and Divorce), the Committee did not commission any more up-to-date research on the state of public opinion, despite the increasing sophistication and popularity of such social surveys. The Report claimed that opinion on such a complicated topic could not be obtained by such research.⁶⁰ In any case, in reaching its conclusions the Committee did not consider itself bound by the range of opinion “where the evidence seemed to us to indicate a different approach”.⁶¹

The publication of the Crathorne Report, unlike reports of previous inquiries like those of the Wolfenden Committee on Homosexuality and Prostitution or the Morton Commission on Marriage and Divorce, was swiftly debated by Parliament following its publication. These debates, though poorly attended, showed opinion clearly favoured some reform, whilst ensuring that Sunday was retained as a special day.⁶² The division among Home Office ministers was instructive. Soskice, ever the balanced mediator, was careful to make sympathetic noises about the prospects of reform, whilst reserving the Government’s position and making no personal statement of views.⁶³ This reticence was more than made up for by his junior ministers. George Thomas, winding up the Commons debate strongly expressed his personal Methodist opinion that the seventeenth-century statutes governing Sunday observance

⁵⁷ Cmnd.2528, para.47.

⁵⁸ Lord Devlin, The Enforcement of Morals (Oxford: OUP, 1959).

⁵⁹ Cmnd.2528, para.47.

⁶⁰ Cmnd.2528, para.47.

⁶¹ Cmnd.2528, para.49.

⁶² HC Deb., vol. 706, cols.858-964, 15.2.65; HL Deb., vol. 264 cols. 344-416, 17.3.65.

⁶³ HC Deb., vol. 706 cols. 858-866, 15.2.65.

were valuable.⁶⁴ Privately, Thomas argued that there would be no political benefit in this reform because those who wanted it would not be grateful, and it would foolishly antagonise religious opinion.⁶⁵ In common with other Labour opponents of liberalising social measures Thomas thought priorities lay elsewhere.⁶⁶ This disparity of view between ministers did not prevent the press from predicting, and how mistakenly, that the Government would itself go ahead with reform in the following Session.⁶⁷

Conversely, Lord Stonham, Home Office Minister of State, succinctly expounded the moderate, rational, reforming Anglican position:

“religious observance and the teaching of Christian doctrine cannot be secured by law, and that some, at least, of the present restrictions have become an embarrassment to the Church... It would, I think, help make our society much healthier and even more moral if we removed stupid anomalies and unjustifiable restrictions...”⁶⁸

Whilst appreciating the delicacies involved as much as their predecessors, ministers were aware that parliamentary pressure for reform was increasing, and supported repeal of archaic social legislation across the board. Soskice even argued that the poor attendance at the Commons debate indicated that there was less hostility than only a few years earlier.⁶⁹ Cabinet decided that a private member should be given drafting assistance for a Bill on the lines of the Crathorne recommendations but that no promise of parliamentary time could be given in the next Session. Soskice duly made a statement to this effect in July 1965. He received considerable criticism from the Conservative benches for the Government’s refusal to take the measure as a Government Bill in view of the ubiquitous effect of the Crathorne proposals. Soskice was helpfully reminded by a Labour backbencher that, for all their bluster, the previous administration had

⁶⁴ HC Deb., vol. 706 cols. 960-962, 15.2.65.

⁶⁵ PRO, HO 300/40, Guppy Assistant Under-Secretary, to Witney, Assistant Secretary, 26.10.64.

⁶⁶ PRO, HO 300/41, memorandum by Thomas, 10.3.65.

⁶⁷ Daily Express, ‘Brighter Sundays: Cabinet to go ahead’, 8.3.65.

⁶⁸ HL Deb., vol. 264 cols. 409-411, 17.3.65.

⁶⁹ PRO, CAB 129/121 part 2, CC(65) 84, ‘Sunday Observance’, 14.6.65.

not thought the issue so important as to legislate on it.⁷⁰ Considering the Conservative Government's deliberate delay of the Crathorne Report beyond a general election which even they believed they would lose, this was a fair point.

⁷⁰ HC Deb., vol. 715 cols. 1791-2, 8.7.65.

Cock-up and conspiracy – 1966-1969:

Roy Jenkins' promotion to the Home Office at the end of 1965, and the increasingly positive noises emanating from the Government during the debates on Private Members' Bills on abortion in early 1966, led to considerable public expectation that a similarly nurturing stance would be taken by ministers on relaxation of the Sunday observance laws. After all, such matters had been an important part of Jenkins' vision of a more civilised, cultured Britain, as set out in The Labour Case.⁷¹ The Times⁷² and the Daily Telegraph both came out in support of a Sunday Entertainment Bill, with the Telegraph deploying the unusually pragmatic argument that:

“Licence in the legal sense need not imply licence in the moral... Such amusements are in themselves harmless. If they were not available, the idle might get up to much worse mischief.”⁷³

According to the Sunday Times, Cabinet goodwill and sympathy meant that “the prospects for the proposed reform becoming law this year must now be regarded as excellent”.⁷⁴ This prediction was over-optimistic, not to say naïve. This rash of speculation came on the discovery by the press that Lord Willis, the writer, intended to introduce a Bill. He had informed the Government of his interest before Christmas 1965, and the Home Office had been giving him drafting assistance.⁷⁵ But pressure of personal time and the legislative timetable in the Lords persuaded him to postpone his Bill until after the summer recess.⁷⁶ This was perhaps unfortunate. As Cunningham minuted to Jenkins and George Thomas, junior Home Office minister, a Lords Bill would have little chance without Government help, and extra time in the Commons could not be promised until the Bill actually reached the Lower House.⁷⁷ In view of what

⁷¹ Jenkins, The Labour Case (London: Penguin Harmondsworth, 1959)

⁷² The Times, ‘A Quarter of population go to church on Sundays’, 29.4.66.

⁷³ Daily Telegraph, 2.5.66.

⁷⁴ Sunday Times, ‘New law likely this year for Sunday games’, 1.5.66.

⁷⁵ PRO, HO 300/91, Willis to Gardiner, 16.12.65; Bowden to Jenkins, 21.1.66; Willis to Stonham, 2.5.66.

⁷⁶ PRO, HO 300/91, Willis to Stonham, 2.5.66.

⁷⁷ PRO, HO 300/91, Cunningham to Jenkins and Thomas, 14.1.66.

happened to three successive Bills between 1966 and 1969, a start in the Spring of 1966 might have been wiser. However, this did allow extra time for discussion with sympathetic ministers on the advisability or not of certain provisions, for example horseracing and dog racing, which might become controversial during debate.⁷⁸

So as with homosexual law reform, and to some degree abortion law reform, the initial parliamentary impetus came in the form of a Bill introduced in the House of Lords rather than the Commons, of which The Guardian approved as smoothing the eventual path of the Commons stages.⁷⁹ Willis' Bill covered the entertainment and sport sections of the Crathorne Report, but it diverged from the Report in two respects. Firstly Willis' Bill set the time from which Sunday entertainments would be allowed at 2pm rather than 12:30, to take account of housewifely protests about the Sunday lunch.⁸⁰ Secondly, it removed the puritan distinction between amateur and professional sports⁸¹ which had set the Crathorne Report's recommendations against its own logical reasoning. By now there was some acknowledgement in the press that Crathorne had not been the entirely rational document that had had so much praise heaped upon it during its discussion in Parliament.⁸²

There was comparatively little protest about the Bill's basic provisions, although there was more discussion about those areas where it deviated from Crathorne.⁸³ The few amendments tabled were defeated and the Bill swiftly passed all its stages. Perhaps the most insightful part of the Lords debate was Willis' Second Reading speech in which he talked about the advent of television on a nationwide scale as the most significant change about Sunday in the previous ten years:

⁷⁸ PRO, HO 300/91, Willis to Parker, 22.6.66; note of meeting between Bacon, Stonham and Howell, 21.7.66.

⁷⁹ The Guardian, 'On Sunday afternoons', 21.11.66.

⁸⁰ HL Deb., vol. 278 col. 16, 21.11.65.

⁸¹ HL Deb., vol. 278 cols. 15-16, 21.11.65.

⁸² The Economist, 'Willis Hands, light work', 7.1.66.

⁸³ HL Deb., vol. 278 cols. 8-24, 29-77, 21.11.66.

“Sir Laurence Olivier or Dame Peggy Ashcroft may appear in a Sunday night play on television, but they may not appear in their own theatres. If the law was absurd before, television has made it ridiculous.”⁸⁴

Lord Soper, the prominent Methodist Labour peer, was stinging in his criticism of the existing Cinematograph Fund, through which cinemas paid a charitable levy for opening on Sundays, saying:

“was practically as ineffective as it was morally dubious and, I think, a great matter of embarrassment to those who expected to receive it... the burial of this indecent corpse is a very good thing.”⁸⁵

The Government’s initial worry about the Bill’s provisions was its deviations from Crathorne. Ministers were anxious that it should reflect the consensus achieved in that unanimous report.⁸⁶ It was even claimed by Douglas Houghton, Minister without Portfolio and chairman of the Cabinet’s Home Affairs Committee, that Willis’ proposal on sport would be more difficult to administer than Crathorne’s distinction between amateur and professional sports. Curiously, the Scottish Office used the unjuristic argument that Scotland’s exemption from the Bill was justified because:

“whilst there are a number of old laws still on the statute book they are not in practice enforced and Sunday observance rests on the pressure of public opinion rather than on the operation of the criminal law.”⁸⁷

The Government maintained its attitude of neutrality.⁸⁸ However, soon after the Bill’s Second Reading towards the end of November, senior officials were questioning the practicability of the distinction between amateur and professional sports in the Crathorne Report, and the ease with which it would be

⁸⁴ HL Deb., vol. 278 col. 13, 21.11.66.

⁸⁵ HL Deb., vol. 278 col. 45, 21.22.66.

⁸⁶ PRO, CAB 134/2851, H(66) 22nd Meeting, 21.10.66.

⁸⁷ PRO, HO 300/50, memorandum by G.F. Belfourd, Assistant Secretary, Legal and General Division, Scottish Home and Health Department, November 1966.

⁸⁸ PRO, CAB 128/41 part 3, CC(66) 52nd meeting, 27.10.66.

evaded.⁸⁹ This caused Jenkins to write to Willis to attempt to stiffen him against his suggestion that there should be a local option on professional sport, saying that the Crathorne recommendations were:

“very much less liberalising than they look...for in effect it is virtually only professional sport that is banned now on Sunday afternoons by the admission charge test.”⁹⁰ [original emphasis]

Even less appealing to the Home Office was the proposal by the Bishop of Leicester, Ronald Williams, approved by Lord Longford, the Leader of the House of Lords, for a system of quinquennial licensing for Sunday afternoon sport, overseen by the Home Secretary.⁹¹ This smacked of the amendment to successive abortion Bills, which almost reached the Statute Book, that the Home Secretary should personally license those approved to perform the procedure.⁹² Such impracticable suggestions were difficult to handle, as well as distasteful, for departments in a Government which was remaining neutral on the issues involved, and therefore giving only technical advice. Stonham insisted that Parliament decide “what is to be allowed or not allowed”.⁹³ These problems, which applied to other complex Bills being handled by private members like abortion, led the Home Affairs Committee to set up a Ministerial Group to examine the handling of “Conscience Bills”.⁹⁴ This reported in the autumn, using the progress on Sunday entertainments as a ‘case study’.⁹⁵

Despite these difficulties, press optimism about the prospects for Willis’ Bill in the long 1966-1967 Session seemed, for a time, justified. Crossman brought to Cabinet on 11 May the number of Private Members’ Bills which needed

⁸⁹ PRO, HO 300/51, Sir John Lang, Advisor on Sport, Department of Education and Science, to Miss Owen, Principal, General Department, Home Office, 14.12.66.

⁹⁰ PRO, HO 300/51, Jenkins to Willis, 29.12.66.

⁹¹ PRO, HO 300/52, Note for the record of meeting between Bishop of Leicester and Lord Longford by Miss Owen, 16.2.67; Stonham to Ronald Williams, 9.3.67; Daily Mail, ‘Bishop’s defeat hastens Sunday freedom’, 25.4.67.

⁹² See above at Chapter 4.v.

⁹³ LPL, RP/122, 156, Williams to Beloe, 17.3.67.

⁹⁴ PRO, CAB 134/2854, H(67) 8th meeting, 17.3.67.

⁹⁵ PRO, CAB 130/329, MISC 158(67) 1, ‘Private Members’ Bills involving issues of conscience’, 27.7.67.

Government assistance if they were to progress, including Willis' Sunday Entertainments Bill. Approval was given for finding extra time, provided that the Government's own programme was not jeopardised, and no precedent was set for private members wanting extra time for Bills that made any progress.⁹⁶ Crossman was particularly keen to push the Bill through the Commons with the Sexual Offences, Abortion and Employment Agencies Bills, sponsored by Hugh Jenkins (Labour member for Putney), which sought to regulate these agencies.⁹⁷

Jenkins put a paper to Home Affairs Committee suggesting that a Bill could be introduced identical to Willis', but that the Government must resist any amendments it considered unworkable, for example compensatory holidays for workers or the exclusion of Wales. Significantly he also opposed the Crathorne distinction between amateur and professional sports.⁹⁸ However, as Crossman records in his diary, he had received the night before a 'round-robin' from ten Welsh MPs objecting to this use of Government time. At the meeting of the Home Affairs Committee this manifested itself as a concerted attack by the Welsh Secretary, Cledwyn Hughes, and the Deputy Chief Whip, Charlie Grey, who, according to Crossman, was "nearly as religious as some of the Welsh... the Bill will be stopped all right".⁹⁹

Although a Government Bill on the issue, which had been mooted at Cabinet, had not officially been ruled out yet, it was admitted that the difference of opinion among Ministers on the treatment of Wales made this option less attractive.¹⁰⁰ Crossman and Jenkins duly met a contingent of Welsh MPs to discuss the issue, at which the idea of local option was welcomed, but some members vowed to fight a Bill tooth and nail, the division being between north Welsh Sabbatarians and south Welsh sports fans. By this time, however, Crossman seems to have gone off the idea of assisting a Bill even by providing time for a

⁹⁶ PRO, CAB 128/42 part 2, CC(67) 30th conclusions, 11.5.67.

⁹⁷ Crossman, Diaries of a Cabinet Minister: vol.2 Lord President of the Council and Leader of the House of Commons 1966-1968, (London: Hamish Hamilton and Jonathan Cape, 1976), 6.6.67, p.366; Employment Agencies (Regulation) Bill, (43) vol.ii p.1031.

⁹⁸ PRO, CAB 134/2854, H(67) 16th meeting, 9.6.67.

⁹⁹ Crossman, op.cit., 9.6.67, p.373.

¹⁰⁰ PRO, CAB 134/2854, H(67) 16th meeting, 9.6.67.

Second Reading debate to demonstrate support for its provisions, preferring to use the time on legislation that could pass that Session, and introducing a Bill in the next Session.¹⁰¹ Alice Bacon, Home Office Minister of State, and Dennis Howell, Minister of Sport at the Department of Education and Science, both vented their anger at the tiny minority of Welsh MPs preventing reform even for England.¹⁰²

The approaching end to the parliamentary Session meant that any progress in the Commons would have to wait until the following autumn and a willing sponsor successful in the private members' ballot. A lowly ninth place drawn by William Hamling, Labour MP for Woolwich West, who adopted the Willis Bill in the Commons, meant that the time for debate on Second Reading would be limited. As in other debates on Sunday observance Bills in this Parliament, there was considerable criticism that the subject was being left to the initiative of private members.¹⁰³ Speaking for the Government, David Ennals, Parliamentary Under-Secretary at the Home Office, ingeniously defended the Government's detachment on the grounds that the long history of statutory Government intervention in Sunday observance law was the reason that reformers were so anxious for a liberalising measure.¹⁰⁴ As Richards observes, "a superb piece of parliamentary gamesmanship" on the part of John Parker secured a division just when the few opponents who had bothered to stay thought that Parker himself was going to talk the Bill out because of its poor chance.¹⁰⁵

At this point the Government, taken unawares by the success of the Bill on Second Reading, rushed to knock into shape a local option clause for Welsh authorities to permit entertainments and sports for which a charge was made, which could be inserted as a separate clause in Hamling's Bill in Committee.¹⁰⁶ However, the regime at the Home Office had now changed. Jenkins had been

¹⁰¹ PRO, HO 300/53 Alice Bacon, Minister of State, Home Office, to Jenkins, 16.6.67; Crossman, *op.cit.*, 13.6.67, p.382.

¹⁰² PRO, HO 300/53 Bacon to Jenkins, 16.6.67; Howell to Jenkins, 24.7.67.

¹⁰³ HC Deb., vol. 755 cols. 1910, 1916, 8.12.67.

¹⁰⁴ HC Deb., vol. 755 col. 1918, 8.12.67.

¹⁰⁵ Richards., *op.cit.*, p.167; HC Deb., vol. 755 col. 1931-1932, 8.12.67.

¹⁰⁶ PRO, CAB 134/2854, H(67) 33rd meeting, 17.11.67; PRO, CAB 134/2956, LG(67) 25th meeting, 5.12.67; PRO, CAB 134/2960, LG(68) 2nd meeting, 23.1.68.

translated to the Treasury and the humiliated Chancellor of the Exchequer, Callaghan, was now at the Home Office. Callaghan's markedly less enthusiastic tone for what he saw as "permissive" legislation might have led to a fall off in interest in causes like Hamling's Private Member's Bill.¹⁰⁷ Indeed, the agreed Welsh option clause raised an aggressive minute from Callaghan on consultation with the Welsh Office, he being MP for Cardiff South-East.¹⁰⁸ However, when the issue of providing time for the Bill's completion in the Commons arose in April 1968, Callaghan was firmly on the side of the sponsors, despite lobbying from Welsh MPs, including through the Prime Minister.

Yet the division among ministers on the issue became a real problem during the progress of Hamling's Bill. George Thomas' conscientious objection to Sunday entertainment led him to demand the right to speak as well as vote on the Bill, as did John Morris, Parliamentary Under-Secretary at the Ministry of Transport. Sir Burke Trend, Cabinet Secretary, thought it illogical that ministers should be allowed to vote and not speak.¹⁰⁹ However, an ad hoc committee (MISC 202) was established to decide the position of ministers in relation to "Conscience Bills",¹¹⁰ despite the earlier ministerial group (MISC 158) on wider Government involvement. MISC 202 decided that only Ministers with departmental responsibility should speak, and in future they should confine themselves to advising on technical matters not personal views either way on an issue.¹¹¹ In spite of this ruling, during the Second Reading debate on Parker's 1968 Bill on 28 February 1969, Merlyn Rees, Parliamentary Under-Secretary at the Home Office, could not help voicing sentimental concern about quiet Sundays, rooted in "the Nonconformist tradition in the Labour Movement".¹¹² This might be thought to have been more than technical advice.

¹⁰⁷ Morgan, *op.cit.*, pp.318-22; Interview with Lord Jenkins, 25.11.99.

¹⁰⁸ PRO, HO 300/73, David Ennals to Hamling, 24.1.68, comment by Callaghan, 29.1.68.

¹⁰⁹ PRO, PREM 13/2291, Thomas to Wilson, 2.2.68; Trend to Wilson, 21.2.68.

¹¹⁰ PRO, PREM 13/2291, D.G. Jones (Private Secretary to Cabinet Secretary), to R.J. Dawe (Private Secretary to Prime Minister, Home Affairs and General), 1.3.68.

¹¹¹ PRO, CAB 130/380, MISC 202(68) 1st meeting, 11.3.68; PRO, PREM 13/2291, Stewart to Wilson, 12.3.68; Wilson to Thomas, 20.3.68; PRO, CAB 128/43 part 1, CC(68) 20th conclusions, 14.3.68; Crossman, *op.cit.*, 11.3.68, p.701.

¹¹² HC Deb., vol. 778 col. 2113, 28.2.69.

What became apparent during the Committee and Report stages of Willis' Bill in the Lords was the strength of opposition to the growth of noisy disturbances caused by large sporting events.¹¹³ Opponents of the Bill tried to link this to the division between amateur and professional sports, although it was made clear by Hamling that this distinction did not work.¹¹⁴ This concern about the prevention of disturbance was a demonstration of the balanced utilitarianism of the Crathorne Report. As with the Wolfenden recommendations on homosexuality, vulnerable groups, that is those who wished to preserve a quiet Sunday, were to be protected from the results of the liberties of others. In this case their own freedom (to have a quiet or religious Sunday) was also at issue.

Only at the Report stage did the Sabbatarian opposition to the Bill rally its supporters, many of whom had no direct interest in the Bill as they were Scottish and Northern Irish members whose constituencies were not covered in the Hamling Bill. Cyril Black presented a petition of 367,312 signatures against the Hamling Bill.¹¹⁵ It might be noted that this was considerably down on the 1953 petition, though this may have been a reflection on falling Church attendance rather than a deterioration in the organising abilities of the LDOS. Objections on the grounds of noise disturbance were now combined with the fear of labour exploitation. The venerable James Griffiths, Secretary of State for Wales in his last ministerial incarnation, rose as a trade union MP to defend the principle of double pay on Sundays which his younger colleagues were prepared to throw away. He concluded:

“...in this modern, permissive, materialistic society, if we had not inherited Sunday as a day of rest, we should have had to invent it. With all the speed and noise of modern life, it has become even more absolutely essential to have one day on which people can get quiet and rest.”¹¹⁶

¹¹³ Parker, *op.cit.*, p.122.

¹¹⁴ HC Deb. Standing Committee C, 1967-1968, vol. iv, 1st to 4th sittings, cols. 1-190, 31.1.68-21.2.68.

¹¹⁵ HC Deb., vol. 673 col. 199, 24.4.68.

¹¹⁶ HC Deb., vol. 673 col. 689, 26.4.68.

Furthermore, despite the fact that the jeremiads about social and moral disintegration were in a minority, the Bill's sponsors could not muster enough support to force a closure of their debate. The final division during the second Report stage debate was 72 to 28, still 28 short of the 100 necessary to force a closure.¹¹⁷ Labour MPs who supported the Bill, and other Private Members' Bills which were running out of time were becoming increasingly frustrated at the Sisyphean process of attempting to pass such measures. However, despite repeated calls to Fred Peart, Leader of the Commons for Bills to be allowed to carry over from one Session to the next,¹¹⁸ the Government failed to act.

Home Office ministers were determined to resist any further concessions to the Sabbatarian lobby after the Welsh option clause, but wanted to secure extra Government time for the Bill to pass to the Lords.¹¹⁹ Officials were ready to accept that the shortage of time for Government measures in the Lords made this impossible, after consulting the Whips' Office in the Lords. However, even the Parliamentary Clerk at the Home Office seems to have been confused about the Government's attitude towards the Bill, describing it as "a Government sponsored measure".¹²⁰ Unfortunately, business managers in the Lords were opposed to pushing through any more Private Members' Bills that Session, particularly Eddie Shackleton, Longford's successor as Leader.

At Cabinet on the morning of 20 June, the Leader of the House of Commons, Fred Peart, made the case for giving time to pass the Sunday Entertainments and Divorce Law Reform Bills. Cabinet agreed and Wilson said that the Parliamentary Committee would look at the logistics at its meeting the same day.¹²¹ Shackleton, however, at that meeting persuaded senior ministers that too long a spill-over session in October would be required. Here however, a difference of opinion emerges about whether or not the Government made a commitment to a Sunday entertainments Bill in the following Session. The

¹¹⁷ HC Deb., vol. 673 col. 1507, 3.5.68.

¹¹⁸ NMLH, PLP, 29.2.68; 4.7.68; 11.7.68; The Times, 'Bills may be carried over', 6.7.68.

¹¹⁹ PRO, HO 300/74, Hewison, Assistant Secretary, General Department, to Cubbon (Private Secretary to Home Secretary), undated but presumably 1.6.68.

¹²⁰ PRO, HO 300/74, D.S.J. Evans, Senior Executive Officer, to Cubbon, 12.6.68.

¹²¹ PRO, CAB 128/43 part 2, CC(68) 31st conclusions, 20.6.68.

minutes of the Parliamentary Committee meeting on 20 June refer only to a new divorce law reform Bill.¹²² However, it was reported at the Home Office that he said “provision had been made in the 1968-1969 legislative programme for this Bill...”.¹²³ Ministerial enthusiasm for the Bill by the beginning of 1969 certainly reflected the former summary rather than the latter.

John Parker’s incredible luck in drawing third place in the 1968-1969 Session ballot was squandered through his unlikely ignorance of the parliamentary rule that a private member cannot pick up a Lords Bill in order to reduce debate in the Upper House.¹²⁴ Second Reading of Parker’s Bill did not take place until 28 February 1969.¹²⁵ Despite this difficulty and the previous mammoth efforts made, particularly at the Home Office, to help Hamling’s previous Bill, Legislation Committee refused to give any indication of help before the Second Reading debate.¹²⁶

The arguments in the Second Reading debate were interesting for a number of reasons. As Parker himself set out, the Crathorne division between amateur and professional sports, which he criticised as “shamateurism”, had been discredited. He later confessed that to have conceded on professional sports might have secured the Bill’s passage, but he agreed with the Government that the anomalies created would have been too serious.¹²⁷ He also argued that the recent increase in Sunday working had been predominantly in industry, not entertainment. Public opinion was moving in the direction of liberalisation.¹²⁸

Once again rational division came down to discussion about the avoidance of noise and disturbance. However, Cyril Osborne, Conservative MP for Louth and scourge of Private Members’ Bills including Abse’s Sexual Offences Bill, rose to make the moral case for resisting reform:

¹²² PRO, CAB 134/3031, P(68) 8th meeting, 20.6.68.

¹²³ PRO, HO 300/74, Evans to Hewison, 25.6.68.

¹²⁴ Parker, *op.cit.*, p.123.

¹²⁵ HC Deb., vol. 778 cols. 2069-2174, 28.2.69.

¹²⁶ PRO, CAB 134/2964, LG(69) 5th meeting, 11.2.69.

¹²⁷ Parker, *op.cit.*, p.124.

¹²⁸ HC Deb., vol. 778 cols. 2069-2079, 28.2.69.

“The general moral background is that, since the war, we have had many small Bills like this which have helped to produce the permissive state, one thing after another. If this Bill were by itself then, from my point of view, it would not be so objectionable. But it is only one more step, though a small one, towards a permissive society.”¹²⁹

This well-argued conservative statement, which might well have appealed to many MPs on both sides of the House, was rather spoilt by Osborne’s comparison of the importance of Sunday observance to the law of perjury.

The opposition’s attack was somewhat rescued by that star performer, W.F. Deedes, journalist and Minister without Portfolio from 1962-1964. He was typically sanguine about the Bill, saying it would not be “the end of the world” if it were passed. However, his ironic musings had a sting in the tail:

“it is one of the consequences of social reform by Private Members’ Bills that one tends never to reach a finite point. It is reform by instalments...”

He criticised equally religious dogmatism and over-zealous modernisation, but on balance, considering the possibility of disruption of working-class family Sundays, he was “reluctantly opposed”.¹³⁰

The closeness of the division on Second Reading meant that in Standing Committee the Bill’s supporters had a majority of only one. Despite having two sittings a week in Committee B, this stage was therefore protracted, stretching from 5 May until the very last day for private members’ business on 15 July,¹³¹ by which time there was no prospect of finding sufficient time for its passage. By the 1969-1970 Session the Government seems to have given up all interest in Sunday observance legislation. A Ten-Minute-Rule Motion introduced in December 1969 was given cursory examination at Legislation Committee, with Shirley Williams concluding that - “The opposition of the Sunday observance

¹²⁹ HC Deb., vol. 778 col. 2083, 28.2.69.

¹³⁰ HC Deb., vol. 778 cols. 2113-2114, 8.2.69.

¹³¹ HC Deb., Standing Committee B, 1968-1969, vol. ii, 1st to 19th sittings, 8.5.69-15.7.69.

lobby would probably ensure that the Bill did not make progress". The Government would maintain its stance of neutrality, and no mention was made of its previous efforts on behalf of Willis, Hamling and Parker.¹³²

This anti-climatic end to the Sunday entertainments debate during the Wilson Governments is puzzling. It is true that in 1969 the Statute Law (Repeals) Act repealed the relevant seventeenth century legislation. However, as Parker points out in his memoirs the 1780 Act remained on the Statute Book, "a testimonial to British hypocrisy which refuses to bring the law into line with current practice".¹³³ As has been seen, opponents of reform could not resist exploiting conservative fears about the "permissive society", which, after 1968 became more of a political *bête noire* than it had been even the previous year. This spectre haunted politicians of every party, not least the new Home Secretary, Callaghan, who, as his biographer points out:

"took pride in his public stance against permissiveness and spoke with contempt in later years of the cynical, unrepresentative, and destructive view of the bourgeois chattering classes."¹³⁴

This concern about the wider atmosphere of social experimentation clouded the individual issue of Sunday entertainment which, in isolation, only the sabbatarian LDOS and its supporters could oppose on principle. However, the ramifications of relaxing the Sunday observance laws in terms of employment and peace and quiet were seen to be important, though this did not stop the gradual widening of shop hours on Sundays.

As John Parker argues, one of the main reasons for the loss of pressure for the Bill was the increasingly flagrant disregard for the existing law, with few legal consequences. Importantly, he says, most MPs were not constricted in their habits by the obsolete laws:

¹³² PRO, CAB 134/2964, LG(69) 22nd meeting, 9.12.69.

¹³³ Parker, op.cit. p.125.

¹³⁴ Morgan, op.cit., p.321.

“where MPs have strong views on an issue, they vote in accordance with them. If they have no strong views, then they are influenced by pressure put on them in their constituencies.”¹³⁵

Despite one of the Government’s guiding principles of removing indefensible anomalies in the criminal law, the lack of interest in this issue, reflected in the reformers’ inability to secure the necessary majorities in the House of Commons, meant that the assistance afforded to similar Bills was not forthcoming. Requests to reform the procedures for Private Members’ Bills, especially from frustrated members of the PLP, were ignored. Government priorities lay in securing passage of its own heavy legislative programme at a time of continuing political crisis during 1968-1969 and then concentration on the forthcoming general election.

¹³⁵ Parker, *op.cit.*, p.125.

Chapter 8: The Wilson Governments and “Conscience Bills”

“We feel that as this [capital punishment] is an issue on which people have strong views and which is to some a matter of conscience it should be left to a free vote of the House and we are prepared to find Government time for it.”¹

“We are much more impartial at the Home Office than we are when we are sitting on the back benches. Sheer necessity is the mother of neutrality...”²

“all Ministers are neutral, but some are more neutral than others.”³

i. Private Members’ Legislation:

The most complex political aspect of legislating in the area of public morality and private behaviour has always been the convention that such legislation, which normally cuts across party lines, is introduced as private members’ bills. This convention had become evolved since early attempts to reform divorce laws and abolish capital punishment in the 1930s.⁴ Harold Laski thought that any subject important enough to warrant legislation should be a Government measure.⁵ However, the rigidity of party lines in Britain after 1945 dovetailed only with the ‘election-winning’ issues of economic and social, leaving issues of narrower scope but considerable social importance unaddressed. In the nineteenth century when Government was responsible for bringing forward less legislation,

¹ Harold Wilson, Speech to Society of Labour Lawyers, 20.4.64, quoted in PRO CAB 130/ 329 MISC 158 (67)1, ‘Private Members’ Bills involving issues of conscience’, 27.7.67, Annex A paragraph 3. No ministerial group met as MISC 158. The paper was considered by other committees and full Cabinet.

² George Thomas, Joint Parliamentary Under-Secretary, Home Office (debate on Crathorne Report on Sunday Observance) HC Deb., vol. 706 col. 960, 15.2.65.

³ Patrick Gordon Walker MP, quoted in Hindell and Simms, Abortion Law Reformed (London: Peter Owen, 1971) p.86.

⁴ Peter G. Richards, Parliament and Conscience (London: Allen and Unwin, 1970) p.197.

⁵ *Ibid.*, p.197.

and party lines were more fluid such subjects were easier to legislate upon.⁶ As Ivor Jennings succinctly put it in 1957, "The fact that much Government legislation is either vote-catching or of a departmental character renders desirable the provision of time for other measures."⁷

However Leo Abse observed from his long experience:

"A Private Member... lacking official Party support and no enforceable whipping... is entirely dependent on the goodwill of his colleagues if the Bill is to be completed in the limited Private Members' time available."⁸

The difficulties facing Private Members' Bills dealing with issues of conscience were, as has been noted above, somewhat mitigated by the attitude of the Labour Government after 1966. Before 1964 governments had reserved the right, frequently exercised, to obstruct any such legislation of which they did not approve, regardless of the feelings of the House.⁹ 'Talking out' Bills was the usual ploy of Government whips of both main parties, and it remained an important weapon in the Executive's armoury. Furthermore there is considerable pressure, exerted mainly by Government departments for MPs successful in the ballot, to adopt one of the myriad small, uncontroversial Bills left over from the Government's own priority lists. As David Steel recalled, had he consented, he could have been immortalised for his sponsorship of the Plumbers' Registration Act rather than the Abortion Act.¹⁰

The attitude of the Labour Party towards issues of law reform concerning public morality before 1964 was constrained by three factors – the realities of the parliamentary arithmetic, the urgent desire not to offend sections of the electorate with controversial opposition policies and the lack of consensus within the leadership, PLP and the Party at large for particular legislative solutions.

⁶ PRO, PREM 13/2291, Oglesby (Private Secretary to First Secretary of State), to D.H. Andrews (Private Secretary to Prime Minister, Home Affairs and General), 26.9.67.

⁷ Ivor Jennings, Parliament 2nd ed. (Cambridge: Cambridge University Press, 1957) p.373.

⁸ Abse, *op.cit.* p. 151.

⁹ Dick Leonard, 'Private Members' Bills since 1959', in Leonard and Valentine Herman eds., The Backbencher and Parliament (London: Macmillan, 1972).

¹⁰ David Steel, Against Goliath (London: Weidenfeld and Nicolson, 1989) p.60.

However, in the Labour Party Research Department's publication of 1963 Twelve Wasted Years a brief section is devoted to this area entitled "Reforming the Law" which stated that:

"There remains one wide field in the relationship between the State and the individual in which there is great scope for reforms aimed at increasing personal freedom..."

The usual party political caveat that such issues must be left to the "initiative of Private Members" was qualified by the suggestion that:

"The main duty of the Government in this respect is to facilitate the passage of such legislation as commands the support of a majority of MPs expressed without pressure from Party Whips."¹¹

This subtly foreshadowed the less obstructive stance which the Labour Government and its whips consciously adopted after the 1966 General Election, once Labour had secured a comfortable majority:

"If we don't like a Bill we think it's more honest to vote it down rather than to block it by procedural means."¹²

Perhaps more important than this was the provision of extra parliamentary time and drafting assistance, as suggested in the pre-1964 Research Department document, to ensure better legislation came before the House requiring fewer amendments. As Douglas Houghton, Chancellor of the Duchy of Lancaster until 1967 and soon after Chairman of the PLP, and ardent supporter of all the liberalising reforms discussed here, noted in 1968:

"The Labour Government has given facilities for Parliament to come to conclusions upon Bills which reflect a substantial body of opinion in the

¹¹ Labour Research Department, Twelve Wasted Years (London: Labour Party, 1963) p.297.

¹² *Ibid.*, p.132.

House and outside in favour of change. This has enabled Parliament to function in a field in which Parties and Governments have feared to tread."¹³

Despite this new stance, shepherding such legislation through was a complicated process negotiated between sponsors of Bills and the Commons business managers, the Leader of the House of Commons, the Chief Whip and his Private Secretary. Crossman noted that with small, non-controversial Bills, the Government's own legislation and these Private Members' Bills "the skill of the job is to keep them running and pack in a few extras when you can, but not to get overloaded".¹⁴

Most historians and commentators have concentrated on the encouragement given to Private Members' Bills during this Parliament on principled grounds. That is to say, because key ministers like Jenkins, Crossman and Castle were sympathetic towards reform. What has tended to be overlooked is the practical reasons for encouraging such legislation, whilst attempting to preserve a neutral line on the substance of such measures. Ministers and officials were concerned about the quality of Private Members' legislation and the consequences of the passage of any Bills.

¹³ Douglas Houghton, *The Labour Backbencher*, *Political Quarterly* vol.40, 1969, p.462.

¹⁴ Crossman, *Diaries of a Cabinet Minister: vol.2 Lord President of the Council and Leader of the House of Commons 1966-1968*, (London: Hamish Hamilton and Jonathan Cape, 1976) 6.6.67, p.366.

ii. Government policy on Private Members' Bills from 1967:

A meeting of the Cabinet's Home Affairs Committee in March 1967 had been exercised about the treatment and fate of private members' legislation, and a suggestion had been made, quickly batted away by Crossman, that:

“[the Government] must seriously consider whether it would be better to deal with such issues in Government Bills, though allowing all Members, including Ministers, freedom to abstain or vote against them or any of their provisions.”¹⁵

There was considerable pressure from some Labour MPs, Opposition members, pressure groups and members of the public for the Government to take more responsibility. There was particularly bad feeling among, for instance, Liberals who felt that the small Liberal parliamentary party could ill-afford to sponsor such controversial issues compared to Labour.¹⁶ Against this it was argued at Home Affairs Committee that:

“In practice the decision how to handle a particular social issue would have to be taken when it arose, in the light of the state of public opinion and other relevant factors, but such decisions should be taken against the background of a general policy on the method of dealing with controversial social reforms.”

There was little clarity in the Government's current position which, although this might suit the Government to an extent, was so vague that ministers and officials themselves had no clear idea how they should proceed. Should the extent of public interest be the deciding factor on whether the Government should assist passage of a Bill in some way, or should the demonstration of parliamentary support for reform be the more important criterion?¹⁷

¹⁵ PRO, CAB 134/2854, H(67) 8th meeting, 17.3.67.

¹⁶ See above at Chapter 4.iv, p.152.

¹⁷ PRO, PREM 13/1563, Trend to Wilson, 10.5.67.

The decision was taken that the subject should be looked at by a group of Ministers, supported by officials.¹⁸ At the end of July 1967 an official paper was produced to advise ministers on the position of the Government, individual ministers and the provision of extra facilities for "Conscience Bills".¹⁹ This was shortly after the successful passage of the Sexual Offences and Medical Termination of Pregnancy Bills through the House of Commons. Their progress had been tortuous for the Government's declared line of neutrality given the generous provision of extra time to prevent them being talked out.²⁰ However, there were still in the pipeline several "Conscience Bills" whose fate was yet to be decided. The memorandum's comprehensive analysis of the issues involved assumed the Government would continue to pursue a policy of neutrality and outlined four different categories of Bill depending on the degree of controversy involved in each:

- i. A proposal introduced by a small group of Members responding to a small but vocal group in the country on a matter of limited public interest. Here, unless there are strong political reasons for taking a different line, the Government are probably concerned only to see that if the Bill makes progress it is put into technically acceptable form before reaching the Statute Book, but they will probably not feel it necessary to facilitate its progress.
- ii. An issue raised by a strong pressure group in favour of a particular solution of a problem in which there is widespread interest but on which opinion is divided with the reformers basing themselves on proposals by a departmental committee or other influential inquiry.
- iii. A similar situation to that in (ii) but a majority of the Government and the Government Party supporting a particular solution.

¹⁸ PRO, CAB 134/2854, H(67) 8th meeting, 17.3.67.

¹⁹ PRO, CAB 130/ 329 MISC 158(67) 1, 27.7.67.

²⁰ Crossman, *op.cit.*, 4.7.67, pp.408-409; PRO, CAB 128/42 CC(67) 45th conclusions, 6.7.67.

iv. An issue on which there is strong pressure for reform but no agreed basis and no single group strong enough to mobilise opinion in the House behind their own preferred solution.”²¹

Whilst the paper continued on the assumption of Government neutrality it found some justification for giving assistance to Private Members’ Bills, in the form of extra parliamentary time and Government draftsmen. This justification was based on the assertion that the Government’s executive responsibilities meant that acceptable legislation had to be ensured. In consequence the Government might amend or block any Bill which risked emerging as either:

“imprecise, ambiguous or contradictory; or in a form which is unworkable because, for example, it makes assumptions about the function or the capacity of institutions such as the courts or the police which are unfounded; or which may erode the bases of law and order, or so distort existing services for which the Government are responsible that they are unable to operate efficiently.”²²

Interestingly officials advocated early intervention in the passage of such Private Members’ Bills where an inquiry was thought necessary or where the Government wanted sponsors to accept particular amendments to ensure the workability of the legislation. This was thought prudent because of the entrenched positions which sponsors and opponents quickly took up on Bills. If the Government wished to intervene, this would be easier the earlier it happened. Public opinion might also accuse the Government of failing to discharge its responsibilities in an area of public concern.²³ Such complaints were already being voiced by both pro and anti-reformers in a number of areas. Furthermore, the Government had hardly rushed to legislate, or facilitate legislation after the Crathorne inquiry or on homosexuality or abortion. Early intervention is not normally a course of action that any Government likes to follow in controversial areas such as “Conscience Bills” because of the political

²¹ PRO, CAB 130/ 329 MISC 158(67)1, 27.7.67, para.4.

²² PRO, CAB 130/ 329 MISC 158(67)1, para.5.

²³ PRO, CAB 130/ 329 MISC 158(67)1, para.9.

sensitivity involved with such issues both within political parties and the wider electorate.

The paper concluded that to ensure the passage of workable legislation the Government should offer principally drafting assistance. The perception of compromise of the Government's neutral position was still "inevitable", but this would be better than allowing through bad Bills which might later compel the Government to introduce its own correcting legislation. The susceptibility of private members to the pressures of interest groups and different strands of opinion within Parliament was a main concern for the Government in this area. This was thought most likely where a Private Member's Bill had not been based on the recommendations or inquiry of a Committee or Commission. In such a case a private member was thought likely to be tempted to "secure the greatest possible agreement by sacrificing the coherence and practicability of the Bill... to ensure that they will continue to support the Bill".²⁴ There was considerable criticism that David Steel's inexperience had led to "a rather botched up Bill... because he had not stuck to one line all through".²⁵

The Government was clearly to favour assisting Bills where a "firm basis" for legislation in the form of a departmental committee or commission of inquiry gave some authority to a particular course of action and attracted moderate opinion in Parliament. The Government could then assist such a Bill on the principle that it was fulfilling the wishes of the House. Conversely, where no such consensus had formed the Government could refuse assistance on the basis that public opinion needed more time and debate in order to form itself more clearly, or the matter could be referred to a select committee, departmental committee or royal commission.

There was a rather complacent attitude among those politicians who recommended inquiries into issues of morality in the hope of achieving a consensual basis for reform, as opposed to those who saw such them as a

²⁴ PRO, CAB 130/ 329 MISC 158(67)1, para.7.

²⁵ LPL, RP/110, 129, Beloe to Ramsey, 10.8.67.

delaying tactic (as many Catholics did over abortion in particular). Firstly, the example of the Wolfenden Report could hardly have been said to have produced recommendations which moderate opinion in the House leaped to implement. Furthermore, the more recent example of the Crathorne Report proved less than perfect. Despite its warm welcome in both Houses one of its main recommendations, that amateur but not professional sport should be permitted on Sundays, was soon criticised for being unworkable. The advantage of a Select Committee was seen as being that any basis for legislation which emerged would stand a reasonable chance of being acceptable to a majority of the whole House of Commons.²⁶

However, the main example of using a Select Committee for reaching such a consensus, the Joint Select Committee on Theatre Censorship, was also proving to be highly intractable. There had been discussion of the best means of dealing with the issue for some months before the Committee's appointment in January 1966. In October 1965 Sir Elwyn Jones, the Attorney General, wrote to Soskice, Home Secretary until December that year, suggesting a fresh inquiry into theatre censorship. An inquiry would, Jones argued, pre-empt a renewed public controversy over censorship. He recommended a Royal Commission or departmental committee of inquiry, along the lines of Wolfenden, which would consist of members from "different walks of life".²⁷

There was, however, the precedent of a Select Committee in 1909 whose report recommended the abolition of censorship. Jones, however, made reference to the recent desuetude of such Select Committees compared to late Victorian and Edwardian Parliaments.²⁸ Soskice supported him in this view in a paper for the Home Affairs Committee of the Cabinet, arguing that a government department (presumably the Home Office), would be better able than the staff of the House of Commons to provide the facilities necessary for a complex inquiry. Political sensitivity could be assuaged by including MPs of both sides of the House on the Committee, as had been done with the Wolfenden Committee, and previous

²⁶ PRO, CAB 130/329, MISC 158(67)1, 27.7.67, para. 8.

²⁷ PRO, PREM 13/2152, Elwyn Jones to Soskice, 22.10.65.

²⁸ PRO, PREM 13/2152, Jones to Soskice, 22.10.65.

inquiries on literary censorship.²⁹ These two lawyers were also backed by the Lord Chancellor, Lord Gardiner and the Solicitor-General, Sir Arthur Irvine.³⁰

There then developed a division between those ministers who thought a departmental or commission inquiry best suited to the subject, and the Prime Minister, supported primarily by Herbert Bowden, Lord President of the Council and Leader of the House of Commons, who chaired the Home Affairs Cabinet Committee which discussed the issue, and Douglas Houghton, Chancellor of the Duchy of Lancaster, who also sat on the Committee.³¹

Wilson had had in mind for some time the creation of pre-legislation committees in the House of Commons which would both scrutinise legislative proposals and occupy backbenchers. Soon after the election of the Labour Government, in November 1964, Wilson sent a memo to Herbert Bowden, Lord President of the Council, in which he outlined his ideas on the subject. His reasons were fourfold:

- “1. There is a general desire for modernisation of the work of Parliament...
2. There is a need to show that this Government, far from being arrogant in its relations with Parliament is desirous of giving more work and authority to the House as a whole...
4. There is good reason to think that Back Benchers encouraged to do a constructive job really can do something... and I simply do not accept that all wisdom and human knowledge – particularly knowledge of outside affairs – necessarily resides either in the members of the Government or in the departmental machines.”³²

Wilson went on to outline some of the policy areas which might suitably be addressed by pre-legislation committees:

²⁹ PRO, CAB 134/2001, H(65) 132, 'Theatre Censorship', memo by Soskice, 1.12.65.

³⁰ PRO, PREM 13/2152, R.M. Morris, Private Secretary to Soskice, to Peter Le Cheminant, No.10, 24.11.65.

³¹ PRO, PREM 13/2152, Bowden to Wilson, 10.12.65; Houghton to Wilson, 14.12.65.

³² PRO, PREM 13/1076, Wilson to Bowden, 21.11.64.

“...there is a wide range of possible legislation where there are no clear white lines and where it is important to tap not only the expertise and judgement of MPs but also – before the details of legislation are decided on – the knowledge and professional experience of members of the public. Many Bills within this sphere of the Home Office fit into this category.”³³

Wilson’s third basis for his argument for pre-legislation committees was far more party political in nature:

“There is a need to find useful and constructive employment for our own Back Benchers... This will be increased by the inevitable feeling in any Parliament that those Government members who are excluded from the Administration feel that they should be in it.”³⁴

Whether the legislative and procedural improvements Wilson hoped to achieve were more or less important than the political danger of inactive and reform-minded backbenchers is difficult to gauge. There was, in the event, little extension of the idea of pre-legislation committees to discuss policy and propose, or draft, legislation during the 1964-1966 Parliament.

However, the re-election of the Labour Government in February 1966 with a greatly increased majority meant that the imperative of keeping backbenchers “active, busy and happy” became even more crucial.³⁵ In another memo to the Lord President in April 1966, Wilson emphasised the need to devote more attention to an enlarged PLP, and revived plans for pre-legislation committees. He proposed to concentrate the sphere of their activities on issues related to Home Office and Department of Education responsibilities. He specifically mentioned “human rights” and the liberal inclinations of many MPs, and with

³³ PRO, PREM 13/1076, Wilson to Bowden, 21.11.64.

³⁴ PRO, PREM 13/1076, Wilson to Bowden, 21.11.64.

³⁵ PRO, PREM 13/1077, Wilson to Bowden, 6.4.66.

great humility reiterated that not all wisdom lay within the minds of Government Ministers and officials.³⁶

If this correspondence did not specifically mention “Conscience Bills”, the link between the two types of legislative process was obviously waiting to be made. This Wilson did when discussion of the official memo on “Conscience Bills” began in the summer of 1967. Wilson in a note on a letter from the office of the First Secretary of State at the DEA, Michael Stewart, to No. 10, emphasised the role of pre-legislation committees in drafting Bills as well as making proposals for legislation. He pointed once again to the practice in the 1840s under Peel. Stewart, or at least his officials, had thought about this in rather less misty-eyed terms than Wilson did. His office wrote to No.10 that:

“Select Committees did a great deal of work in investigating particular questions and in recommending action, including legislative action, since Governments at that time did not generally themselves promote legislation, nor was the Civil Service of the day able to conduct the sort of departmental inquiries and consultations which have gone a long way to replacing the inquiries carried out by the Committees...”³⁷

The official doubted that using Parliamentary Counsel to assist a committee in drafting legislation would be a quick or economical means of producing legislation. He did, however, include the caveat that:

“There might be some advantage in this... if in a particular case the attachment of Parliamentary counsel to a Committee enabled them to direct their minds to particular issues which were most easily considered in the terms of a draft clause and so both to formulate more specific recommendations and possibly to obviate difficulties which might otherwise arise in Standing Committee.”³⁸

³⁶ PRO, PREM 13/1077, Wilson to Bowden, 6.4.66.

³⁷ PRO, PREM 13/2291, Oglesbey to Andrews, 26.6.67.

³⁸ PRO, PREM 13/2291, Oglesbey to Andrews, 26.6.67.

This glorious prose pointed directly (if not deliberately) to the reduction of difficulties set out in MISC 158(67) 1 above in relation to 'Conscience Bills', where the use of a Committee or Commission to achieve a consensus for reform and to draft better legislation was advocated.³⁹ The translation of reform proposals into legislative clauses was particularly tortuous and divisive during debates on abortion and Sunday entertainments.

Wilson's eagerness to sate MPs' energies boiled over in a comment on a note from Soskice's Private Secretary to No. 10: "Our reliance on departmental committees and Royal Commissions is becoming a joke. Why shouldn't we give MPs a job to do for a change?"⁴⁰ However, the Prime Minister noted on Soskice's paper, rather more temperately, that he "would prefer a select committee as a move in parliamentary reform and giving members something to do (like my pre-legislation committees)".⁴¹

Despite the vehement opposition of senior ministers to a Select Committee, the Home Affairs Committee decided on this forum for an inquiry on theatre censorship, considering that this would both contain political sensitivities, and enable a report to be produced reasonably quickly by members with useful experience of the theatre. It would, it was also hoped, be possible to confine the inquiry to theatre censorship, rather than expanding it to include broadcasting and film, as many conservatives wanted.⁴²

³⁹ PRO, CAB 130/329 MISC 158 (67)1, para. 7-9.

⁴⁰ PRO, PREM 13/2291, R.M. Morris, (Assistant Private Secretary to Home Secretary) to P. Le Cheminant, (Private Secretary to Prime Minister, Parliamentary and Home Affairs), 24.11.65.

⁴¹ PRO, PREM 13/2291, H(65) 132, note by Wilson, 7.12.65.

⁴² PRO, PREM 13/2291, Houghton to Wilson, 24.1.66; H(66) 8, 21.1.66.

iii. The position of Government ministers

A more thorny problem for the Government was the difficulty that either drafting or timetabling assistance for Private Members' Bills would cause for Ministers who, for reasons of conscience, objected to the policy line being taken by Bills which were afforded assistance.⁴³ There had already been difficulties caused for officials in the Lords, in particular the Government Whip's Secretary, Michael Wheeler-Booth, because of Gardiner and Longford's diametrically opposed views on abortion.⁴⁴ Even if ministers were content to be able to vote for or against Bills which had been given Parliamentary time or drafting assistance, according to their conscience, where the Government had insisted on certain amendments to facilitate the workability of a Bill, the position was more complex. This had already arisen during the Report stage of the Abortion Bill, where the Government had insisted on amendments removing the vague concept of "well-being". At a full Cabinet meeting in June 1967 concern was expressed that "a substantial number of Ministers voted on Report against the amendments... which the Home Secretary... had persuaded the sponsors to accept".⁴⁵ The brief for MISC 158 put it in even starker terms:

"It would not be in keeping with either collective responsibility or the normal traditions of the House for a Minister to vote against the line taken by his colleagues in such a situation, and in this situation a Minister might find himself compelled to resign."⁴⁶

The position of ministers during debates on "Conscience Bills" became an increasingly central concern of government discussions of such legislation. On four previous occasions ministers had spoken in favour of or against Private Members' Bills on which the Government was neutral. Jenkins had spoken in favour of both the Sexual Offences Bill (as had Lord Stonham, his junior at the Home Office) and the Medical Termination of Pregnancy Bill in 1967, and Lord

⁴³ PRO, CAB 128/ 42 part 3, CC(67) 35th Conclusions, 1.6.67.

⁴⁴ LPL, RP/70, 229, note by Robert Beloe, 29.11.65.

⁴⁵ PRO, CAB 128/ 42 part 3, CC(67) 35th Conclusions, 1.6.67.

⁴⁶ PRO, CAB 130/329 MISC 158 (67)1, para.10.

Longford had spoken against the latter measure, despite the convention that only ministers with a departmental responsibility speak during debates on Private Members' Bills. From the previous Conservative administration, there was the precedent of Eric Fletcher who had, much to the consternation of Abse and his supporters, used his position as Opposition front bench spokesman during the Second Reading debate to help neuter Abse's Matrimonial Causes Bill.⁴⁷

In February 1968 George Thomas wrote to the Prime Minister asking for permission to speak in the forthcoming debate on John Parker's Sunday Entertainment Bill.⁴⁸ Sir Burke Trend, writing to Wilson on the subject, saw no conflict of interest, but he suggested that a group of ministers consider the matter further, as the question could arise over any "conscience" Bill. He advised that it should consist of the First Secretary, Michael Stewart (chairing), the Lord President, Richard Crossman, Home Secretary, Callaghan, Leader of the House of Lords, Edward Shackleton, the Lord Chancellor, Lord Gardiner, the Secretaries of State for Scotland and Wales, Willie Ross and Cledwyn Hughes, and the two Chief Whips.⁴⁹ Wilson, clearly growing weary of his ministers' stubbornness over such matters, and not sharing the passions which were felt either way, appended to the memo the comment "I should have thought freedom to vote, without speaking, is enough".⁵⁰

The committee (MISC 202) met, comprised as suggested by Trend, on 11 March⁵¹. Stewart prepared a paper for its consideration, and summarised the questions as follows:

- "i. Where the Government have as a matter of policy decided to adopt a neutral attitude on a measure of social importance, should a Minister be free to indicate a personal view either for or against the principle of the Bill or a particular provision of it?

⁴⁷ HC Deb., vol. 671 cols. 814-5, 823, 866-869, 870, 876, 880, 8.2.63; Abse, *op.cit.*, p.163.

⁴⁸ PRO, PREM 13/2291, Thomas to Wilson 2.2.68.

⁴⁹ PRO, PREM 13/2291, Trend to Wilson, 21.2.68; Dawe to Trend, 23.2.68.

⁵⁰ PRO, PREM 13/2291, Jones to Dawe, 1.3.68.

⁵¹ PRO, CAB 130/380, MISC 202 1st meeting, 11.3.68.

- ii. Does the answer to (i) depend on the extent to which the Government, though neutral, have given the MP help, for example, by making Government time available as well as by providing a draft, so that a dissenting Minister may be thought to be speaking against the inclination of the Government?
- iii. Should a distinction be drawn between a Minister who has some departmental responsibility for the subject matter of the Bill and one who has not?
- iv. If it is agreed that a Minister is free to express a personal view on the principle of the Bill, should he nevertheless refrain from discussing a particular provision on which a spokesman for the Government has advised the House on questions of practicability and technical merit?⁵²

Opinion among the Committee's members weighed heavily against any Ministers being allowed to give their personal views in debates on "Conscience" Bills.⁵³ As Stewart reported to Wilson the following day, support for Thomas and other ministers wishing to speak was led by Lord Gardiner.⁵⁴ The Lord Chancellor was anxious not to inhibit freedom of speech. Such applications could be considered on their merits "having regard to the known views and personal position of the Minister in question". In the light of previous cases, he felt Thomas could not now be barred, and that departmental Ministers would also find a complete prohibition on their expressing a personal view difficult since Jenkins and Stonham had already done so as Home Office ministers. Gardiner was probably also influenced by his interest, as discussed by the Committee, in the forthcoming debates on Alec Jones' Divorce Bill. The Solicitor-General had already spoken of his misgivings about the Bill, and

⁵² PRO, CAB 130/380 MISC 202(1), 6.3.68.

⁵³ PRO, CAB 130/380 MISC 202 1st meeting, 11.3.68.

⁵⁴ PRO, PREM 13/2291, Stewart to Wilson 12.3.68.

Gardiner's support for it was well known. The Committee agreed that this could be made a special case.⁵⁵

Thomas' was a religious objection, and the Committee thought that there would be many outside England in a similar position. "Scottish and Welsh Ministers would be in a special difficulty because they would be expected to speak for the view held by influential sections of opinion in those countries [sic]."⁵⁶ According to Crossman's diary entry, he was backed up strongly by Callaghan, and although Crossman himself agreed in principle, both he and Stewart were eager to reach a compromise which would preserve the Government line of neutral facilitation of such Bills.⁵⁷ Stewart saw the new procedure which had evolved between 1965 and 1967 unravelling into a free-for-all:

"If Ministers were permitted to speak there would therefore be a tendency for more of them to do so, with the result that there would be less opportunity for Private Members to take part in the debate; the public would be confused; and the future of what the majority of the committee regarded as a useful new procedure for permitting Parliament to take action on important issues would be jeopardised."⁵⁸

Trend continued, in a memo to Wilson, to support Gardiner and Thomas, perhaps, for once, baffled by the tip-toeing of his politically-minded masters.⁵⁹ However, when the issue was discussed briefly at full Cabinet the next day, Stewart emphasised that proceeding on the problem of deciding which Ministers were allowed to speak on the merits of each case "would place the Prime Minister under the necessity of reaching a series of difficult personal judgements." This assessment cannot have been unwelcome to Wilson, and the Cabinet agreed that Ministers, including those departmentally concerned with a measure, should not speak either for or against a "Conscience" Bill.⁶⁰

⁵⁵ PRO, CAB 130/380 MISC 202 1st meeting, 11.3.68.

⁵⁶ PRO, PREM 13/2291, Stewart to Wilson, 12.3.68.

⁵⁷ Crossman, *op.cit.*, 11.3.68, p.701.

⁵⁸ PRO, PREM 13/2291, Stewart to Wilson, 12.3.68.

⁵⁹ PRO, PREM 13/2291, Trend to Wilson, 13.3.68

⁶⁰ PRO, CAB 128/43 20th Conclusions, 14.3.68

During 1968 there was considerable discussion in Parliament and Whitehall of the establishment of a national lottery. The Government decided that this was an issue which, if it were to proceed, demanded Government legislation rather than a Private Members' Bill,⁶¹ and such a Bill introduced by James Tinn, Labour MP for Cleveland, which had been given a second reading in the Commons at the beginning of February, was to be discouraged.⁶² Jenkins, as Chancellor, produced a paper for Cabinet proposing to test Parliamentary opinion on the issue with an amendment to the Finance Bill. The Government could then move ahead with substantive legislation if the votes were heavily in favour.⁶³ Involving, as it did, an issue of conscience, and one on which the Government did not have a firm view, a free vote would apply to the amendment. It was felt important to avoid coming, at this stage, to a firm Government line because of possible division within the Government and among its MPs. Trend suggested that:

“Experience with Conscience Bills suggests that at least one resignation has been averted by the Government's adopting formal neutrality and thus avoiding a Cabinet decision for or against the principle of a particular Bill...”⁶⁴

Trend was probably referring to Longford's opposition to Government assistance for David Steel's Abortion Bill, over which Longford had threatened to resign.⁶⁵ Should the votes on a Lottery be heavily in favour, the Government would be “virtually committed to going ahead with substantive legislation.”⁶⁶ In this scenario ministers who had objected as a matter of conscience to the clause in the Finance Bill would be in the unacceptable position of having opposed what was now proposed Government legislation. It would therefore be incumbent

⁶¹ PRO, PREM 13/2148, Trend to Wilson, 5.3.68.

⁶² Crossman, *op.cit.*, 2.2.68, p.658.

⁶³ PRO, CAB 129/136 C(68)53, 'National Lottery', memo by Jenkins, 6.3.68.

⁶⁴ PRO, PREM 13/2148, Trend to Wilson, 5.3.68.

⁶⁵ LPL, RP/70, 217-219, note by Beloe of conversations in House of Lords, 25.11.65.

⁶⁶ LPL, RP/70, 217-219, note by Beloe, 25.11.65.

upon ministers not to oppose in the initial vote what might become Government policy in a Bill. As Trend outlined the position of ministers:

“a Minister who votes against the clause [in the Finance Bill] could... find himself in an embarrassing position unless he is already clear that he would have to resign rather than accept collective responsibility for a Bill promoting a national lottery. It might therefore be preferable that Ministers should at this stage go no further than abstention: they should not of course speak against the clause, but even this might (as we have seen from Mr. Thomas’ request... [to speak against the Sunday Entertainment Bill]) be insufficient to satisfy a tender conscience.”

When Cabinet discussed Jenkins’ paper, there was more opposition than that expected from Celtic Nonconformists.⁶⁷ Had Parliament voted strongly for the clause, which it did not, division among ministers would indeed have presented some problems.

⁶⁷ PRO, CAB 128/43 19th Conclusions, 12.3.68; Crossman, *op.cit.*, 12.3.68, p.704.

iv. The behaviour of MPs

The cynical theory put forward for Labour's co-operation with backbench legislators after 1966 was that it provided a non-trouble-making outlet for the energies of the large pool of MPs without Government posts.⁶⁸ However, it is clear that those MPs primarily involved in Private Members' initiatives were not those liable to criticise the Government from its left or right wing.⁶⁹ More important was the constructive use of Private Members' time, especially when the Government's popularity was waning, both generally and with its own MPs. As outlined above constructive legislative activity for MPs had been one of Wilson's preoccupations since coming to office. Such social measures generated more enthusiasm with some sections of the PLP than the Government's own legislation.

"All that", noted Crossman, "belongs to the Government up there, whereas homosexuality and abortion are issues where they enforce their own discipline and are free to vote according to their own consciences."⁷⁰

As Crossman wrote to Andrew Faulds, Labour MP for Smethwick, he and John Silkin were agreed that backbenchers should not feel that they were "mere lobby-fodder".⁷¹ Adopting his "stratospheric matron" role (his own words), Crossman observed schoolmasterly that it was important for backbenchers to feel they could push the Government on matters that did not directly involve Government policy.⁷²

The issue of private members' time was certainly a 'hot potato' in the PLP, and was frequently an issue of contention at Party and Liaison Committee meetings. Despite the fact that Edward Short, Chief Whip, complained in 1965 that few Labour members were interested in introducing Bills,⁷³ MPs were exercised by

⁶⁸ Leonard, *op.cit.*, p.137.

⁶⁹ Richards, *op.cit.* p.199 note.

⁷⁰ Crossman, *op.cit.* 4.7.67, pp.408-409.

⁷¹ WMRC, MSS.154/3/LPO/2, Crossman to Faulds, 25.8.66.

⁷² WMRC, MSS.154/3/LPO/9/22, Crossman to Hugh Massingham, political journalist, Daily Telegraph, 8.11.66.

⁷³ NMLH, PLP/LC, 17.11.65.

how Private Members' Bills were treated by the Government, particularly after the Government's general attitude towards them changed more noticeably in 1966.

A minority of Labour MPs including Catholics George Lawson, MP for Motherwell April, and Kevin McNamara, MP for Hull North, resented Government assistance being given to Bills dealing with homosexuality and abortion. They demanded a clear set of principles under which such assistance should be given. In this they were supported by more opportunistic MPs who were jealous that their own causes, for example Eric Heffer's passionate fight for blood sports legislation, were not so fortunate.⁷⁴ There was even concern that the Government was not more even-handed about allowing debate on Private Members' Bills introduced by Conservative MPs,⁷⁵ and suggestions that there should always be votes on Private Members' Bills, so that the "awkward procedure of 'talking Bills out' could be done away with".⁷⁶ The Government, of course, did not want to be tied down to any such policy on Private Members' Bills, saying that each Bill would be treated on its own merits.⁷⁷ Frustration increased when Bills to which the Government was not opposed, and even granted assistance, were allowed to fall, wasting hours of parliamentary time. This was particularly the case with divorce law reform, Sunday entertainments, hare coursing and the Employment Agencies Bill. There were repeated calls from Labour MPs (and many outside Parliament) for Private Members' Bills to be carried over from one Session to another.⁷⁸

However, this was resisted, and it is probable that the Government did not want to hand too much initiative in passing legislation to private members. It was still concerned to have the final say in the passage of Private Members' Bills, and felt duty-bound to block or amend those which it felt were technically faulty or contravened other Government policy. This ultimate clash of interests caused a furore in the PLP in January 1969 when the Government sought to block

⁷⁴ NMLH, PLP, 12.12.68.

⁷⁵ NMLH, PLP, 22.2.68.

⁷⁶ NMLH, PLP, 23.2.67.

⁷⁷ NMLH, PLP, 12.12.68.

⁷⁸ NMLH, PLP, 11.7.68.

Edward Bishop's Matrimonial Property Bill, which was hugely popular with Labour MPs and women's organisations.⁷⁹

Importantly for reform during the 1960s, liberal-minded Conservative and Labour Members were acutely aware of the electoral risks involved in supporting reform. The dangers of taking on controversial issues as a backbencher were no less formidable than taking on the might of the Party and Government machine as a rebel or maverick MP. As Humphrey Berkeley discovered there were great personal misfortunes for a bachelor Conservative adopting the cause of homosexual law reform. Not only was he ostracised by many colleagues, a predictable and tangible problem, but there was the unknown factor of a constituency's reaction. Berkeley lost his marginal seat at the 1966 Election and the supposition was widely made that this was the result of his Sexual Offences Bill, not least by Berkeley himself.⁸⁰ Although the swing to Labour in Lancaster was twice the national average at 6.1%, the constituency had been marginal, and in the landslide of 1966 would undoubtedly have been won by Labour however innocuous a cause its Member had sponsored.⁸¹ Moreover, the idea of voting for a Labour candidate to protest against homosexual law reform seems rather illogical. (Berkeley soon became disenchanted with the Conservative line on another reform issue, race relations, on which he sympathised with Government measures, and left the Conservative Party altogether.⁸²) David Steel doubts that abortion cost him many votes. An anti-abortion candidate standing against him in 1970 polled only 103, and the swing was lower than average at 2.2%.⁸³ A far more important issue, Steel felt, was rugby, and even the local Catholic priest remained loyal.⁸⁴ The real threat was the fear that support for such causes, especially homosexuality and abortion, provoked among MPs whose opinions needed to be swung over. Leo Abse was very conscious of this - pointing out to others that "every time I introduced a sex Bill

⁷⁹ See above at Chapter 6.iv.

⁸⁰ Humphrey Berkeley, Crossing the Floor (London: Allen and Unwin, 1972) pp.128-129; Abse, *op.cit.*, p.151.

⁸¹ The Times, The Times House of Commons 1966 (London: The Times, 1966) p.133.

⁸² PRO, PREM 13/2310, Berkeley to Wilson; Berkeley to Sir Edward Heath 19.4.68.

⁸³ The Times, The Times House of Commons 1970 (London: The Times, 1970) p.191.

⁸⁴ David Steel, *op.cit.*, pp.80-81.

my majority increased". He maintained that he was careful to cultivate support in Pontypool through assiduous constituency efforts.⁸⁵

Where Abse had more trouble was on the Floor of the House of Commons. At almost exactly the same time as the Sexual Offences Bill was proceeding through the House during the 1966/1967 Session, David Steel's Abortion Bill was undergoing an equally tortuous route to the Statute Book. However, Abse was as firmly opposed to this measure as he was in support of his own Bill. He was instrumental in trying to amend the Abortion Bill, which, as he admits, found him nearly hoist on his own petard. He managed to annoy severely many of his own supporters on homosexuality who were also pushing for abortion reform.⁸⁶ This applied equally to Norman St John-Stevas, Conservative Member for Chelmsford, who employed a lengthy filibuster against the Abortion Bill, in alliance with Abse, during its Committee stage but was strongly in favour of the Sexual Offences Bill and divorce reform.⁸⁷ Crossman breathed a sigh of relief that St John-Stevas had "absented himself on Monday night [during the Sexual Offences Bill's Committee stage]; if he had [not] we might have had the greatest difficulty in getting a hundred of our backbenchers to stay."⁸⁸ They were, in Lord Jenkins' phrase, "heroes one night and devils the next".⁸⁹

The homogenous image of the reforms enacted at this time makes it easy to forget that opinions cut sharply across different camps, particularly in relation to abortion. Shirley Williams and Lord Longford are other examples of Labour politicians in Abse's position, although in Williams' case she was, Jenkins claims, doing her duty by her Church and no more than her duty.⁹⁰ On the backbenches Lady Summerskill and her daughter Shirley Summerskill MP, whilst actively supporting homosexual and abortion reform were, like many campaigners for women, fervently against proposals for divorce reform as they were introduced in the Commons in 1967 and 1968.⁹¹ Even Crossman, despite

⁸⁵ Abse, *op.cit.* p.150-151.

⁸⁶ Abse, *op.cit.*, p.157.

⁸⁷ *Ibid.*, p.230; Crossman, *op.cit.*, pp.408-409.

⁸⁸ Crossman, *op.cit.* 29.6.67, p.402.

⁸⁹ Interview with Lord Jenkins, 25.11.99.

⁹⁰ Interview with Lord Jenkins, 25.11.99.

⁹¹ See above at Chapter 6.v, pp.254-255.

his active support for the Sexual Offences Bill, does not always seem to have been hugely sympathetic on the issues involved. After his translation to the new Department of Health and Social Security in April 1968 Crossman's diaries do not mention once the continuing battles for reform over divorce and Sunday entertainments.⁹² He saw homosexual reform as a tactical means of ensuring the success of the Abortion Bill. After the Bill passed to the Lords he wrote that:

"we [he and Tam Dayell] discussed the effect of getting the 'Buggers' Bill' through. Frankly it's an extremely unpleasant Bill and I myself didn't like it. It may well be twenty years ahead of public opinion."⁹³

However, Crossman's notoriously arrogant manner, according to Lady Serota, who served as his minister of state at the DHSS from 1969-1970, masked passionate feelings on such social issues.⁹⁴

The twin dangers to the Sexual Offences Bill at Report Stage were the filibustering tactics of the core of opponents, and the apathy of tired MPs as the debate dragged on into morning of 4 July 1967. Whilst on each division opponents usually numbered only twenty or so, but occasionally forty, the crucial number was of the Bill's supporters which on the final division numbered only 101 - a single vote more than necessary to prevent the Bill falling.⁹⁵ Even after the build-up of support and goodwill over a decade, its fate was decided by the smallest possible margin. With another all-night sitting the previous Thursday on the Abortion Bill the danger of alienating tired supporters was a problem. Crossman was worried that "the 120 to 150 Labour people who are progressives will have two all-night sittings to face very close together".⁹⁶ The majority which carried David Steel's Abortion Bill fell sharply between Second and Third Readings from 194 to 84.⁹⁷

⁹² Crossman, Diaries of a Cabinet Minister: vol.3 Secretary of State for Social Services 1968-1970 (London: Hamish Hamilton and Jonathan Cape, 1977).

⁹³ Crossman, Diaries... vol.2, 3.7.67, p.407.

⁹⁴ Interview with Lady Serota, 18.1.00.

⁹⁵ HC Deb., vol. 749 cols. 1403-1525, 3.7.67.

⁹⁶ Crossman, op.cit., 29.6.67, p.402.

⁹⁷ HC Deb., vol. 732 col. 1166, 22.7.66; vol. 750 col. 1386, 13.7.67.

However, the tight-rope walking which occurred during the Report stage of Abse's Bill did not occur over Steel's Abortion Bill. Large majorities against opponents' amendments were achieved in the latter case because opposition was divided between those against abortion in principle and those who wished only to restrict the scope of the legislation. In the case of homosexuality there was less room for shades of opinion. Essentially opinion was divided between supporters and opponents of the original Wolfenden recommendations. Furthermore, the Sexual Offences Act reversed a previously established principle of social policy – abortion had, for certain medical reasons, long been accepted and confirmed in case law.⁹⁸

Combined with the urgent wish of the Lord Chamberlain, Lord Cobbold, to be rid of his powers of theatre censorship, this was exactly the type of issue to which the Government could show benevolent neutrality, and provide drafting assistance. Parliamentary time proved unnecessary, although the Government might well have been prepared to afford such assistance in this case. Despite only winning tenth place in the ballot, George Strauss's Bill found itself passing the Commons with only one division at Committee stage,⁹⁹ because of his correct calculation that the preceding Bill on adoption would be uncontroversial and consume little time. Added to which, as Strauss commented in The Times, "none of the troglodytes turned up" as they did in such numbers for other "Conscience Bills".¹⁰⁰

The main tests for the Government's detailed policy on Private Members' Bills, as set out by officials for the meeting of MISC 158 in July 1967, were the continuing attempts to reform the divorce and Sunday observance laws. Both issues had been discussed extensively in Parliament and outside, and proposals drawn up by committees of inquiry. Both had come before the Cabinet's Home Affairs Committee and full Cabinet itself, and clearly came into the third category in the official paper- that is:

⁹⁸ Richards, *op.cit.*, p.111.

⁹⁹ Richards, *op.cit.*, p.129.

¹⁰⁰ The Times, 24.9.68.

“issue[s] raised by a strong pressure group in favour of a particular solution of a problem in which there is widespread interest but on which opinion is divided with the reformers basing themselves on proposals by a departmental committee or other influential inquiry... [with] a majority of the Government and the Government party supporting a particular solution.”¹⁰¹

Drafting assistance had already been provided to a Sunday Entertainments Bill introduced in the House of Lords by Lord Willis which, although departing from the recommendations of the Crathorne Committee (to which the Government was initially keen to adhere), passed the Lords easily, but lapsed thereafter because of insufficient time in the Commons for debate. Cabinet had approved the drafting of a Bill on divorce so that the issue might be settled by Parliament.¹⁰² However, when a Divorce Reform Bill sponsored by William Wilson came before the House, the Government failed to provide sufficient time for the Report stage, despite the Bill having negotiated a mammoth Committee stage of thirteen meetings, and the Bill fell.

A similar fate befell William Hamling’s [MP for Woolwich] Sunday Entertainment Bill in the same Session. Having passed the Committee stage, successful filibustering, once again led partly by Cyril Black, Conservative Member for Wimbledon, during Report ensured the Bill’s demise, as the Government refused to provide further time.¹⁰³ Once again, the symbiotic relationship between different Private Members’ Bills being debated at the same time was demonstrated. Hamling’s Bill could have been tabled for Report stage on either of the two preceding weeks before it finally came to the House on 24 May. Reformers calculated, however, that this would invite filibustering on other measures, such as the Theatres Bill.¹⁰⁴

¹⁰¹ PRO, CAB 130/329 MISC 158 (67)1, para 4.ii-iii.

¹⁰² PRO, CAB 128/42 part 3 CC(67) 59th Conclusions, 12.10.67.

¹⁰³ Richards, *op.cit.*, pp. 148, 167-168.

¹⁰⁴ Richards, *op.cit.*, p.168.

This outcome in the 1967-1968 Session seems to have fallen short of the Government's strategy with Private Members' Bills of this type on several grounds. Not only had the issues been extensively debated, and proposals for reform agreed, but the continued expectation of legislation in these fields took up valuable time, prolonged the issues in the minds of the public and parliamentarians, and laid the Government open to the accusations of denying Parliament the opportunity to decide finally on the principles involved and of ducking its responsibilities in important areas of social policy. Furthermore, when divorce had been discussed by the Cabinet and its Home Affairs Committee, the Lord Chancellor, Lord Gardiner, had been particularly supportive of reform.¹⁰⁵ The Government was caught in the dilemma which it had studiously tried to avoid; the competing demands for assistance from different Private Members' Bills with claims to that time, whilst not wanting to risk the official line of neutrality by favouring one Bill rather than another. Refusal to help either Bill was the unsatisfactory result.

Dissatisfaction about the procedures for private members' business had been growing in the Party for some months, despite the conspicuous assistance given to certain Bills by the Government. Liberal-minded ministers had supported important social measures such as abortion being rescued from private members' with a new "pre-gestation" procedure as Crossman described it¹⁰⁶. The pressure on Peart, Leader of the House from 1968, came to a head when MPs made last ditch attempts to persuade him to pass an enabling Motion to permit divorce and other Private Members' Bills to be carried over into the next Session in July 1968. Despite agreeing to consider this, no agreement was reached.¹⁰⁷ The Government failed to tackle either of these two aspects of reformers' complaints.

When the issues came back before the House of Commons in the autumn, a number of factors had changed which facilitated the successful passage of

¹⁰⁵ PRO, CAB 128/ 42 part 3 CC(67) 59th Conclusions, 12.10.67; PRO, CAB 134/ 2854, H(67) 27th Meeting, 26.9.67.

¹⁰⁶ B. Castle, The Castle Diaries 1964-1970 (London: Weidenfeld and Nicolson, 1984) 6.7.67, p.274.

¹⁰⁷ NMLH, PLP 11.7.68; PLP 18.7.68; The Times, 'Bills may be carried over', 19.7.68.

legislation on divorce. Furthermore, the Government gave assistance to John Parker's Sunday Entertainments Bill by allowing it to be taken in a Standing Committee away from that which was already blocked up with other Private Members' Bills. However, the lack of sustained and passionate outside pressure for reform, combined with small majorities and turnouts for Commons votes on Sunday entertainments, meant that provision of Government time continued to be seen as too expensive a price to pay.

The reforming energies of Labour MPs had not been entirely exhausted. The nascent women's rights movement, growing in size and volume towards the end of the 1960s, encouraged Joyce Butler, Labour MP for Wood Green, to introduce a bill to outlaw discrimination across all areas of public policy in 1969.¹⁰⁸ Once again, the parliamentary timetable prevented the bill's debate, but it was an important marker, followed soon after by Barbara Castle's Equal Pay Act¹⁰⁹, disproving the dictum that only sedate measures are passed towards the end of a parliament.¹¹⁰

¹⁰⁸ HC Deb., vol. 778 col. 214, 18.2.69.

¹⁰⁹ Equal Pay Act, 1970.

¹¹⁰ Interview with Gwyneth Dunwoody, 27.3.00.

Conclusion:

This thesis has presented an empirical analysis of the process by which the Wolfenden strategy of separating 'sin' from the ambit of the criminal law translated into legislative change under a Labour administration wedded to a broad philosophy of legal and social reform. This philosophy had been expounded as an integral part of The Future of Socialism and The Labour Case during Labour's wilderness years. Although not discussed here, wider Government policy on equal pay for women, racial discrimination, family planning, higher education and penal policy (particularly the abolition of capital punishment and flogging), were inextricably linked to the principle of granting more control over personal morality to the individual which underlay successive "Conscience Bills".

The social changes to which reformers were responding – the decline of the Churches, the disruption of the Second World War and the embedding of democracy – were, after a period of post-war reconstruction and social complacency, re-ignited by the consequences of economic affluence, particularly for women and young people. Conservative efforts to address these trends, focusing on accommodating the materialism of affluence within traditional Christian spiritual bounds, denied the basic principle of individual control of private morality established successively by Wolfenden, Crathorne, Mortimer and other key inquiries.

This thesis has supported earlier studies which revealed the way in which the law continued to exert social and legal control over pregnant women, homosexual men, married couples and the artists and consumers of culture. However, arguments about how permissive the 1960s actually were are marginal to the effect the reforms had and the intentions behind them. If sociologists are right to claim, as they frequently do, that supposedly permissive reform during the 1960s was, in fact, simply an attempt to control sexual and personal behaviour by a different "modality", then why, in such great numbers, have the groups which these reforms addressed continued to cite them as such important milestones in the official establishment of a new civilised, moral

plurality, which made a tangible difference to their lives? Is this a question of false consciousness on their part, of the powerless in society being duped by an unradical, liberal establishment? Foucaultian theory has blinded these scholars to both the social and political realities under which reform of archaic laws was achieved in Britain during the 1960s.

Between 1957 and 1964 the Conservative response, guided primarily by Rab Butler as Home Secretary, attempted to re-mould social policy more on the lines of the Wolfenden philosophy of separating 'sin' from the criminal law. "In the case of the law governing suicide, Butler had modernised regulation by shifting it from a religious basis towards a more clearly defined border between law and private morality." This strategy was being promoted by the liberal Bow Group, especially in relation to Sunday observance laws. Yet as Mark Jarvis concludes, "the agenda was fixed firmly on the areas of betting and drinking – not Victorian legislation regulating sexual behaviour. It marked the limit of the modernisation agenda."¹

As Jarvis rightly contests, rather than acting on the major Wolfenden recommendation, Butler pursued more research into the subject of homosexuality, to satisfy a general sociological desire to understand better and thus inform policy-making.² The re-introduction of oestrogen treatment for homosexuals was in line with Wolfenden and the demands of many reformers. It was only by around 1964 that it became clear that homosexuality was largely untreatable by the methods being explored. Butler himself approved the decriminalisation of adult homosexuality in private, but, in common with other liberal Conservatives, was worried where this would take them and how far ahead of public opinion they would be.

Despite Brooke's position in discussions on homosexuality and divorce, during which he did not completely disavow reform, Butler's transfer to the Foreign Office in 1962 did mark an important atmospheric shift, similar to that which

¹ Jarvis, *op.cit.*, p.159.

² Jarvis, *op.cit.*, p.161.

occurred in 1967 when Callaghan replaced Jenkins as Home Secretary. The closeness of a possible general election, the deepening black swirl of suspicion and paranoia after the Vassall and Profumo affairs, and a rowing back from what the Government considered to be the unpalatable consequences of their relaxation on licensing and betting, all contributed towards a resistance to change. Furthermore, the Conservative Government was advised by officials that tinkering with the minor Wolfenden recommendations on homosexuality, or repealing the Labouchère Amendment and retaining buggery as a separate offence would merely construct new legal anomalies and difficulties of administration, just as the Labour Government discovered with Sunday entertainment and local option in 1967-1969.

One Home Office view was that abortion and homosexual law reform were “institutionalising what was already becoming practice”. As one Assistant Secretary put it:

“[the Abortion Act] would be giving statutory enactment [sic] to what is becoming the generally increasing practice in the medical profession. When the [Sexual Offences Act] was passed... the Home Office looked in all the prisons for men who would not have been sentenced to prison had the Act been in force at the time of their conviction and found none. The [Abortion] Bill was virtually telling doctors to do what they thought was right.”³

This was perhaps a reflection of the length of the public and political debate on these issues, causing medical and judicial judgement to anticipate the broad margins of inevitable legislative change. Despite his jurisprudential objections to the Wolfenden distinction between private morality and the criminal law, even Lord Devlin came to accept decriminalisation of homosexuality in 1967.

The temperate language used by parliamentary reformers to convince sceptical MPs of the moderation of reform and the protection, even reinforcement, it

³ LPL/RP 110, 129, Beloe to Ramsey (note of conversation with Brennan, Home Office), 10.8.67.

would provide for the family, does not diminish the radicalism of much of the legislation in question. This has been one of the main misconceptions of sociologists and historians who have criticised the weakness of Abse and Steel, Arran and Silkin *et al.*⁴

Although the 1967 Abortion Act put doctors firmly in control of the decision whether a woman should have an abortion or not, reform legally expanded the grounds for abortion to include consideration of the woman's "total environment".⁵ Furthermore, after all the efforts of the opponents of easier abortion, it was one of their parliamentary leaders, Lord Dilhorne, himself the previous Lord Chancellor, who moved the successful amendment which weighed the risk of termination against the risk of the continued pregnancy. With the advance in the techniques of medical termination this meant that prosecuting aborting doctors would be virtually impossible.

The institutions of marriage and the family were not being attacked by the campaign for easier divorce during the 1960s. Carol Smart and others are right to emphasise the determination of politicians, Church leaders and others to reinforce stable marriage, the legitimisation of second families being a key aim. However, the 1969 Divorce Law Reform Act, and the raft of matrimonial property legislation between 1965 and 1970, not only sought to remove the stigma of blame and sin from the process of ending a dead marriage, but went a considerable way to levelling the playing field in terms of financial support for wives.

The slowness with which reform concerning theatre censorship and Sunday observance laws progressed reflected the marginality of the issues, the ease with which these laws were circumvented, and the increasing choice in entertainment which ordinary people faced. Reform of the Sunday observance laws was shelved, and the anomalies partially corrected through a series of minor Acts. However, the Labour Government was more concerned about

⁴ Sally Sheldon, 'The British Abortion Act 1967 – a permissive reform?' European University Institute Working Papers 1994, no.2; Interview with Leo Abse, 5.12.97.

⁵ Abortion Act 1967, clause 1i(c).

Sunday trading laws and the employment and disturbance implications of 'liberated' Sundays, which presented a real dilemma between the freedoms of two different groups.

In an age where the media was increasingly important, the anomalies between cinema, broadcast media, the press, literature and theatre brought the law into disrepute. However, the Labour Government was reluctant to remove all controls over the theatre, particularly where living persons (such as Cabinet ministers and monarchs) were concerned, until it had been demonstrated by the Joint Select Committee of 1966 that no other option was viable. Despite grumbling from avant-gardists about the suffocation of truly working-class writing by the commercial theatre and the middle-class prejudices of the Arts Council,⁶ the abolition of censorship marked an important liberation for dramatists, and equalisation of treatment through their subjection to the normal criminal law. Furthermore, it underlined the removal of archaic state control of discussion of contemporary society and politics. This was symbolised by the consignment to ceremonial triviality of the Lord Chamberlain, an embodiment of the Victorian mix of religious, political and royal control of public morality.

A combination of (twentieth century) convention that issues concerning morality should be dealt with by private members' legislation and political timidity in the face of uncertain public opinion and vocal minorities such as Roman Catholics, the LDOS and conservative trades union MPs, shackled the Labour Governments to a policy of neutrality. Despite wider rumblings of discontent that the Government was shirking its responsibilities in important areas of social policy, leading reformers were content with this position, because neutrality was known to be a façade.⁷ The close co-operation between relevant departments, especially the Home Office, the Ministry of Health and the Lord Chancellor's Department (backed up by the Law Commission in relation to divorce and wider family law), is evidence of the unprecedented Government involvement in a

⁶ John McGrath, *A Good Night Out: popular theatre: audience, class and form* pp.1-17; John Pick, *Vile Jelly: the birth, life and death of the Arts Council of Great Britain* (Doncaster: Brynmill, 1991).

⁷ Interview with Lord Jenkins, 25.11.99.

series of Private Members' Bills, the passage of which the Government largely approved.

However, the insistence on dealing with each Bill on its own merits according to the amount of support it had garnered in Parliament, and the basis for consensus on which reform was proposed, caused as many political problems for the Government as it solved. As the General Secretary of the LDOS reasonably stated on Sunday entertainments in a now resonant phrase, reform:

“must be supported or opposed as it stands. There can be no third way. Better retain present anomalies... than have a copy of new and equally ridiculous ones.”⁸

Government papers have revealed that concern among those Labour ministers who were anxious about running too far ahead of public opinion, like Soskice as Home Secretary until December 1965, was encouraged by liberal officials, particularly at the Home Office and Ministry of Health. Despite his authoritarian reputation,⁹ Sir Charles Cunningham continued to press the case for Wolfenden after 1964 as he had to Conservative ministers. However, officials were worried about the administration of the law, and therefore supported early drafting assistance to Bills to ensure they were workable, and that entrenched positions by either side were avoided where wider Government policy had an interest.¹⁰

The Wilson Governments divided on the issues addressed by “Conscience Bills” roughly into three groups, though with considerable dissent on abortion: advocates of reform like Jenkins, Abse and Silkin; those who acquiesced in their implementation despite some private misgivings like Wilson and Callaghan; and those whose aversion to such moral decadence and degradation coalesced around religious fervour or working class resentment at middle-class distractions, for example Longford, George Thomas or the Merseysiders Peter

⁸ LPL, RP/122, 149-150, Legerton to Ramsey, 23.1.67.

⁹ Interview with Lord Jenkins, 25.11.99.

¹⁰ Interview with Lord Jenkins, 25.11.99; PRO, HO 300/126, Cunningham to Soskice and Stonham, 24.6.65; CAB 130/329, MISC 158(67)1, 27.7.67.

and Simon Mahon. Although Crossman's estimate of 150 progressives after 1966 was not a majority of a PLP of 363,¹¹ as a proportion of those who actively participated in debates on issues of public morality, it was a more powerful group.

Given that a majority of the Government and Labour Party either advocated reform or accepted its enactment, the contortions which Cabinet performed whenever the question of assisting "Conscience Bills" arose seem short-sighted. As papers at the Public Record Office show, efforts by ministers to rationalise their approach towards "Conscience Bills" were complex and largely unhelpful. The paper which was the product of MISC 158 did not make future decisions on theatre censorship, divorce, Sunday entertainment or other Private Members' Bills easier. It was a typically quixotic, Wilsonian attempt to remove the political heat from the issues in question. These decisions remained highly contentious and were decided on political and pragmatic grounds.

Essentially, once the Government was re-elected with a greatly increased majority in 1966 it pursued an unwritten policy of giving the minimum assistance required to ensure that measures of liberal reform reached the Statute Book before its own supporters became too impatient. This policy was greatly helped by the long parliamentary Session from April 1966 to October 1967 during which there was more time for Private Members' Bills to pass unaided. However, two counterfactual points may be made here. Had the 1965-1966 Session lasted until the autumn as usual, Wingfield Digby's Abortion Bill and Humphrey Berkeley's Sexual Offences Bill might both have passed, producing the paradoxical result that the two most cited reforms of the decade had been introduced by Conservative MPs. However, their Committee and Report stages would have been fiercely opposed, and the Government would have been called on to intervene much earlier than it did. Yet assuming these Bills had passed, the log-jam of such liberal measures would have been eased considerably.

¹¹ Crossman, *op.cit.*, 29.6.67, p.402.

It is clear that there was little discussion of issues of sexual and public morality within Labour Party organs during the 1950s or 1960s. Despite earlier Research Department papers during the Attlee Government, and the 1963 document Twelve Wasted Years, there does not seem to have been even the level of debate which the Conservative Party had over licensing, Sunday entertainment and associated issues under Macmillan and Butler.¹² In the Labour Party these issues were driven by the broad strength of feeling among Party supporters, MPs and peers, and particularly through their membership and leadership of outside pressure groups like the HLRS, ALRA and DLRU. However, when the pace of reform stalled during 1967 and 1968, the PLP witnessed considerable protest which weighed heavily on the side of assisting “Conscience Bills”.

Despite the caveats and prevarications with which the Government sought to square some of its supporters and important groups like the Church and the medical profession, archival research, at the Public Record Office in particular, has emphasised the central role played by key Government ministers, most notably Jenkins, Crossman, Houghton and Silkin. Sympathetic colleagues (and officials) responded to the change of pace which Jenkins pushed from the Home Office on his promotion in December 1965. Once the will of the House of Commons had been demonstrated, Callaghan and Wilson were not obstructive, perhaps sensing that lancing the boil earlier rather than later was preferable, although Wilson remained anxious to avoid an electoral backlash towards the end of the 1966-1970 Parliament, particularly over capital punishment.¹³ Even George Brown voted against an amendment which would have put a time limit on the abortion bill, presumably on similar grounds.¹⁴

This thesis has highlighted the influence of outside pressure on both governmental and parliamentary discussion of issues of public morality. In the words of Tony Benn, “real change always begins outside Parliament”.¹⁵ In the case of the DLRU and ALRA this partly meant organising speakers and public

¹² See Jarvis, *op.cit.*

¹³ Tony Benn, Office Without Power: Diaries 1968-1972 (London: Arrow, 1989) p.215.

¹⁴ HC Deb., vol. 747 col. 529, 2.6.67.

¹⁵ Tony Benn MP to a seminar for the Cabinet and Premiership course at Queen Mary and Westfield College, House of Commons, 16.3.00.

meetings over decades of official inertia or hostility. Whilst the HLRS saw progress rather more quickly, pressure groups struggled to convince politicians that public opinion had shifted significantly from its supposed belief in traditional public morality. They took advantage of the developing sophistication and popularity of opinion polls to demonstrate, not always with stunning accuracy, that abortion, homosexuality or 'liberated' Sundays were not as controversial as politicians feared.

It was always true that pressure groups had to defer, in the last instant, to the judgement of their political supporters in Parliament over strategy and tactics. However, their role in developing and sustaining issues in the public consciousness whilst waiting for the political weather to change was vital. Furthermore, without official whipping, campaigners like Alistair Service and Antony Grey became vital organisers and 'gaugers' of support during the passage of Bills. Despite acceptance of the Government's hard-fought position of neutrality on "Conscience Bills" ministers who were also at the forefront of these campaigns were crucial to the push for reform, particularly from January 1966 onwards – Lord Chancellor Gardiner, Kenneth Robinson at the Ministry of Health and Douglas Houghton as Chancellor of the Duchy of Lancaster should be mentioned here.

These pressure groups were not, as some later commentators have argued, weak defenders of their causes in the face of legislative compromise and political cowardice. Firstly, although many within ALRA wanted abortion on demand and many within the HLRS supported an Act closer to the recommendations of the Wolfenden Report than was eventually passed in 1967, these campaigners cannot be equated to feminist and gay rights groups in the 1970s. For example, the HLRS led the way in demanding psycho-sexual counselling and other research into homosexuality that emphasised altering homosexual behaviour. Secondly, experience and wisdom taught them that parliamentary reform, especially through the vagaries of private members' legislation, demanded moderate language and compromise on minor aspects of reform. This sometimes exasperated them, and, as Antony Grey recognised, half the battle was to "ensure that the administration of the new law will in

practice be a great deal less punitive than a literal interpretation of its text would imply".¹⁶

The response of the Churches to increasing secularisation and a more visible moral pluralism from the late 1950s onwards was as crucial for the evolving direction of public policy and legislation as it was for the pattern of Church attendance itself. Nonconformist denominations and the Roman Catholic Church all sought to adapt their doctrine to the conditions of the contemporary world (with the obvious exception of the Catholic position on abortion and contraception). However, it was the Church of England which most readily attached itself to separating the unchanging religious ideal from the secular law. Occasionally, as in the case of John Robinson's work, theologians tried radically to alter Church teaching, though without success.

In some instances, such as their pioneering report on homosexuality in 1952, the Anglican Church pre-empted official inquiry and public campaign. With regard to divorce, however, they were stung into action by the criticism which ensued after the blocking of Abse's 1963 Matrimonial Causes and Reconciliation Bill, and at the request of Government ministers. With reports on abortion in 1965 and divorce in 1966 the Anglican Church wielded considerable influence over moderate opinion in Parliament, the press and the country at large in favour of departing in major principle from the legal *status quo*. The Church maintained close contact through the Lords Spiritual and the indefatigable Robert Beloe, Private Secretary to Archbishop Ramsey, with the parliamentary sponsors of reform and Government ministers. However, there continued to be difficulties between those Churchmen who embraced reform wholeheartedly, like Robert Mortimer, Bishop of Exeter, and those who clearly wished to limit the damage, as they saw it, to traditional Christian morality. Michael Ramsey, in spite of his courageous appointment of the group on divorce and the expedition of the abortion inquiry, fell into the latter category. Papers at Lambeth Palace Library reveal the extent to which Ramsey operated rearguard actions against certain aspects of legislation in all areas under discussion here,

¹⁶ BLPES, HC/AT 7/28b, Grey to Abse, 6.4.67.

but particularly in relation to the divorce proposals worked out initially in Putting Asunder, and then between the group on divorce and the Law Commission, much to the consternation of Government ministers, Sir Leslie Scarman, President of the Law Commission and Leo Abse. Roman Catholicism punched above its weight in debates on morality and the individual during the 1960s. Although Lord Longford was the only diehard opponent of abortion reform to threaten resignation, and he left the Cabinet in early 1968, Catholic influence may have been felt more subtly through fear of the Catholic vote in some areas, as well as ministers like Bob Mellish as Chief Whip, and the small band of Labour Catholic MPs and peers who attacked abortion and divorce reform in particular, joining gleefully with Conservatives at the Committee stages of "Conscience Bills".

The role of the House of Lords has been much commented on in this thesis and elsewhere. The injection of new blood through life peerages from 1958 coincided with the upsurge in discussion of the relationship between the criminal law and personal morality. However, it should be remembered that many of the leading reformers in the Lords, the Earl of Arran most notably, were hereditary peers. The key to the often detached and dispassionate manner of their debate, despite the wilder jeremiads of some, seems to be their true political independence on such issues. Even with a free vote MPs were constrained by fear of electoral vengeance; this applied to Labour Conservative and Liberal alike, and Party ostracism for Conservative MPs like Humphrey Berkeley. The House of Lords, largely unencumbered by such concerns, channelled the professional, religious, legal and political arguments in favour of liberalising the criminal law.

Extensive wrangling over Private Members' Bills was perhaps an unsatisfactory way in which to pass such important legislation, both for reformers and their opponents. Nevertheless, as campaigners outside Parliament and politicians inside recognised, debate of such controversial issues of morality had to work with the grain of the British political system. Storming the gates with permissiveness was neither possible, nor what reformers desired. Despite this, social attitudes and the political landscape under Labour were ready for the

'wolf' of utilitarianism to replace Victorian control of public morality. Between 1964 and 1970 the change in attitude of the criminal law towards those who had previously been morally stigmatised was tangible and permanent.

Appendix

Birth rate and illegitimacy rates for England and Wales 1945-1966 (per 1,000 of population)

Year	1945	1946	1947	1948	1949	1950	1951	1952	1953	1954	1955
Birth rate	15.9	19.2	20.5	17.8	16.7	15.9	15.5	15.3	15.5	15.2	15.0
Illegitimacy rate	9.3	6.6	5.3	5.4	5.1	5.1	4.8	4.8	4.7	4.7	4.7

Year	1956	1957	1958	1959	1960	1961	1962	1963	1964	1965	1966
Birth rate	15.6	16.1	16.4	16.5	17.1	17.6	18.0	18.2	18.5	18.1	17.7
Illegitimacy rate	4.8	4.8	4.9	5.1	5.4	6.0	6.6	6.9	7.2	7.7	7.9

Source: Central Statistical Office, Annual Abstract of Statistics nos. 97-98 (1960-1961), 109-110 (1972-1973) London: HMSO, 1962, 1973)

Divorce: Number of Decrees Absolute granted 1945-1968

Year	1945	1946	1947	1948	1949	1950	1951	1952	1953	1954	1955	1956
No. of Divorces	15,634	29,829	60,254	43,698	34,856	30,870	28,767	33,922	30,326	28,027	26,816	26,265

Year	1957	1958	1959	1960	1961	1962	1963	1964	1965	1966	1967	1968
No. of Divorces	23,785	22,654	24,286	23,868	25,394	28,935	32,052	34,868	37,084	38,352	42,378	45,036

Source: B.H. Lee, Divorce Law Reform in England (London: Peter Owen, 1974) p.246.

Abbreviations:

AG – Antony Grey Papers
 ALRA – Abortion Law Reform Association
 AT – Albany Trust Papers
 BC – Law Commission Papers
 BL – British Library
 BLPES – British Library of Political and Economic Science
 CAB – Cabinet Papers
 CMAC – Contemporary Medical Archive Centre
 DLRU - Divorce Law Reform Union
 GFP – Geoffrey Fisher Papers
 FCO - Foreign and Commonwealth Office
 FO - Foreign Office
 HC – Henry Carpenter Archive
 HLRS – Homosexual Law Reform Society
 HO – Home Office Papers
 LCO – Lord Chancellor’s Department Papers
 LDOS - Lord’s Day Observance Society
 LCP – Lord Chamberlain’s Plays Correspondence
 LPL – Lambeth Palace Library
 MH – Ministry of Health Papers
 NEC – Labour Party National Executive Committee
 NMLH – National Museum of Labour History
 PLP – Parliamentary Labour Party
 PREM – Prime Minister’s Papers
 PRO – Public Record Office
 RP – Michael Ramsey Papers
 T- Treasury Papers
 WMRC – Warwick Modern Records Centre

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CAB 134: Cabinet Committee minutes and memoranda

The Foreign Office:

FO 1109: Lord Butler of Saffron Walden's Private Papers

The Foreign and Commonwealth Office:

FCO 13: Cultural Relations Department

The Home Office:

HO 45: Registered Papers

HO 291: Criminal Files

HO 300: Entertainments

Law Commission:

BC 3: Registered Files

Lord Chancellor's Department:

LCO 2: Lord Chancellor's Office and Lord Chancellor's Department
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