

Arguing for the Death Penalty: Making the Retentionist Case in Britain, 1945-1979

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Abstract

There is a small body of historiography that analyses the abolition of capital punishment in Britain. There has been no detailed study of those who opposed abolition and no history of the entire post-war abolition process from the *Criminal Justice Act 1948* to permanent abolition in 1969. This thesis aims to fill this gap by establishing the role and impact of the retentionists during the abolition process between the years 1945 and 1979. This thesis is structured around the main relevant Acts, Bills, amendments and reports and looks briefly into the retentionist campaign after abolition became permanent in December 1969. The only historians to have written in any detail on abolition are Victor Bailey and Mark Jarvis, who have published on the years 1945 to 1951 and 1957 to 1964 respectively. The subject was discussed in some detail in the early 1960s by the American political scientists James Christoph and Elizabeth Tuttle. Through its discussion of capital punishment this thesis develops the themes of civilisation and the permissive society, which were important to the abolition discourse. Abolition was a process that was controlled by the House of Commons. The general public had a negligible impact on the decisions made by MPs during the debates on the subject. For this reason this thesis priorities Parliamentary politics over popular action. This marks a break from the methodology of the new political histories that study 'low' and 'high' politics in the same depth.

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Author's Declaration

This is an original thesis. Any work that has been influenced by an external source has been referenced accordingly. The word count for this thesis is 38,714.

Introduction

“I would have made a total confession to the priest before I hanged and would not still be half crippled by the burden of guilt that will not go away. But I didn't hang”, something that Myra Hindley told a journalist she would have preferred. “It would have solved so many problems. The family (sic) of the victims would have derived some peace of mind and the tabloids would not have been able to manipulate them as they do to this day”.¹ On 6 May 1966, she had been sentenced to life imprisonment for the murder of two children. Her partner, Ian Brady, was found guilty of the murder of those children and another. Had the pair been convicted 12 months earlier, both would have hanged.

Hindley's slide into the criminal world has been seen as the result of the moral corruption of British society in the 1960s. She was a naïve young woman who was led astray by the domineering Brady. Their relationship developed around watching adult films, which by this time were shown in specialist cinemas, and reading about crime, torture and Nazi war atrocities.² Brady began taking photographs of Hindley in explicit sexual poses.³ Hindley's corruption was seen as a reflection of the liberalisation of a society which permitted acts that had been considered immoral. It was argued that Hindley was not born evil but was a product of the generally misguided morals that had become prevalent in Britain.⁴

The 1960s have been framed as a decade of great social, cultural and political evolution. The likes of Mick Jagger and Keith Richards shocked some and excited others with their carefree, uninhibited lifestyles. The British state was liberalising its attitude

¹ ‘Hindley: I Wish I'd Been Hanged’, 29 February 2000, <<http://news.bbc.co.uk/1/hi/uk/661139.stm>>, (9 June 2010).

² Pamela Johnson, *On Iniquity: Some Personal Reflections arising out of the Moors Murder Trial*, (London, Macmillan, 1967), pp. 30-2.

³ ‘1966: Moors Murderers Jailed For Life’, 06 May 2005, <http://news.bbc.co.uk/onthisday/hi/dates/stories/may/6/newsid_2512000/2512119.stm>, (24 August 2010).

⁴ Johnson, *On Iniquity*, pp. 17-27.

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towards sex, sexuality and abortion at the time that the link between crime and sin was becoming weaker. For many people, this was a dangerous process happening at a dangerous time. Britain was experiencing an increase in crime and juvenile delinquency.⁵ The appropriate response, they felt, was to retain the deterrent for those crimes which threatened the core of British society. Removing the ultimate deterrent, capital punishment, would blunt the potential of the criminal justice system to tackle this problem before it got further out of control. Society had failed Myra Hindley to the point that she could never live amongst civilised people again. The majority of the British population believed that only capital punishment could deter others from following the path that had led Hindley to commit such atrocious crimes. Of course, the liberalisation that took place during the 1960s does not offer a full explanation for the murders committed by Hindley and Brady or for the abolition of capital punishment. It provides an important context for the abolition process which has been neglected in historiography of this subject.

During this period the abolitionists demanded that capital punishment be abolished only for murder. There were no calls for it to be removed as the punishment for treason or various military offences. The reason for this was twofold. First, the arguments concerning capital punishment for murder were different to those for treason and military offences and would, therefore, be better suited to separate legislation. Secondly, nobody had been executed in Britain during peacetime for any offence other than murder for about a century. The abolitionists saw no reason to spend extra time in Parliament attacking capital punishment for those crimes for which it was no longer used.⁶

⁵ Howard Taylor, 'The Politics of the Rising Crime Statistics of England and Wales, 1914-1960', *Crime, History and Societies*, 2 (1998), pp. 5-28.

⁶ HC Deb 21 Dec. 1964 vol. 704 cc870-1010.

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Although the topic is a familiar one for social scientists, the historiography of the abolition of capital punishment is limited. The only historians to have written in any detail on abolition are Victor Bailey and Mark Jarvis. They have published on the years 1945 to 1951 and 1957 to 1964 respectively. There is no history of abolition that looks at the entire post-war abolition process, starting with the *Criminal Justice Act 1948*, and no in depth study into the role played by the retentionists. Abolition has been discussed in some detail by political scientists. In particular, the studies of the abolition movement in Britain by the American scholars James Christoph and Elizabeth Tuttle in the early 1960s have formed an important part of the historiography. Both discussed the state of the abolition movement in Britain leading up to the *Homicide Act 1957* and offered predictions for the future of the process.

The work of Christoph and Tuttle highlights the need to place British events in an international context. Abolition was a live issue in many countries during this period, including the United States. The interest shown in Britain's abolition movement by American social scientists is unsurprising considering the close relationship between the common law systems in both countries. Britain, as the centre of the common law world, provided, and to a much lesser extent still provides, an important example for other common law countries debating the abolition of capital punishment. Indeed, initial scholarly interest in post-war British abolition came from outside of Britain, while British campaigners and historians have rarely shown interest in abolition from other countries. Successive British governments have had a tendency to view whether a country should abolish capital punishment or not as dependent on the level of civilisation in that country. This can be seen in the British treatment of Mau Mau suspects in Kenya and the private

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remarks of public figures like Arthur Creech Jones, Colonial Secretary in the post-war Labour government.

It is important to understand the methodology for the research and analysis of this thesis. The subject is, broadly speaking, one of political history. New political histories have attempted to widen the focus of study away from the political elite. These histories grant the same level of importance to 'low' politics as they do to 'high'. This has been a departure from the structuralist histories of the nineteenth and early twentieth centuries. This historical method, though, cannot be applied to all political histories. It works only for those instances where popular politics have had an impact on the political centre. There have been many other political events which remained detached from the general public. The abolition of capital punishment was such an event. Abolition was an issue that was driven by MPs. Though there were some influential abolitionists outside of Westminster, control over this issue remained firmly with Parliamentarians. The majority of the discourse on abolition, therefore, stems from politicians and the political elite. There is a difference between those political events that are shaped by public involvement and those that are not. This is a difference which needs to be recognised before applying a methodology to historical research.

One factor which can explain the distinction between political events that are influenced by popular action and those that are not is whether the event in question would influence an election. Issues of conscience, such as abolition, abortion, homosexuality and religion, did not form part of the mainstream political agenda in the manner that they did, and still do, in the USA. Were a party to have taken a firm stance on abolition it would not have benefitted, and may even have hindered, its chances of winning an election. The

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dwarfing of the retentionist campaign by the abolitionist lobby, despite the majority of the population supporting retention, indicated that most people in Britain were uninterested in the abolition question. A Gallup poll in 1959 ranked capital punishment twentieth out of twenty-two issues that may influence the respondents' decision on which party to vote for at the forthcoming general election.⁷ Abolition was not an issue that would have had any meaningful impact on the outcome of an election. Adopting a position on capital punishment was a risky move which would almost certainly have had no electoral benefit for a party and could even cost them votes. There was, therefore, no reason for a government to seek public approval for their approach to the abolition debates. A government would be more inclined to be influenced by political activity from outside of the centre if they believed that it would affect their chances of being re-elected. No government would choose to have the populace influence their decision-making as it limits their ability to govern as they see fit. Politicians have argued that, as they are given the opportunity to study the issues before them in depth, they are in a better position to judge the issue than almost everybody else in society.⁸ Parliament will only involve the general public directly in issues of governance in those few cases where it proves politically expedient to do so.

Academic interest in capital punishment and its abolition in Britain emerged in two clearly definable periods. The first was in the early 1960s, a few years after the *Homicide Act 1957* entered the statute book. By this time it was widely accepted that this compromise Act had failed and the question of abolition would return once again to British politics. It was in this context that the political scientists, Christoph and Tuttle, wrote on the subject.

⁷ George Gallup, *The Gallup International Public Opinion Polls: Great Britain 1937-1975*, (2 vols, New York, Random House, 1976), vol. 1, pp. 531-2.

⁸ Tom Sorell, *Moral Theory and Capital Punishment*, (Oxford, Basil Blackwell Ltd., 1987), pp. 38-9.

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The second period has lasted longer. Beginning in the early 1990s, around the same time that capital punishment was debated for the last time in Parliament, it continues to the present day. This period has seen historians tackling abolition directly. The histories that focus most explicitly on abolition, written by Bailey and Jarvis, are the historiography for this subject. They are complemented by various works on other themes concerning the abolition of capital punishment, most notably religion. Harry Potter's *Hanging in Judgement* provides the most detailed analysis of the various Church attitudes towards abolition.⁹ G. I. T. Machin and E. Christian Brugger have also published on this subject.¹⁰

Throughout the 1970s and 1980s, in the context of the IRA attacks in Britain and Northern Ireland, politicians and members of the media frequently demanded the reintroduction of capital punishment for terrorist offences. It is no coincidence that, after restoration was debated and defeated numerous times in the House of Commons in the thirty years after the *Murder (Abolition of Death Penalty) Act 1965*, the developing peace process in Northern Ireland finally ended capital punishment's status as a 'live' issue. Historians could analyse abolition as a complete process now that its reintroduction was less likely to be debated in the foreseeable future. Although only a few texts have been published on this subject, they have come at fairly frequent intervals. These histories have focused on the abolitionists and their activities in and around Parliament. There has been no detailed study of the retentionists. The central purpose of this thesis, to establish the role and impact of the retentionists during the abolition discourse, will fill this gap in the historiography.

⁹ Harry Potter, *Hanging in Judgement: Religion and the Death Penalty in England from the Bloody Code to Abolition*, (London, SCM Press Ltd., 1993).

¹⁰ G. I. T. Machin, *Churches and Social Issues in Twentieth-Century Britain*, (Oxford, Clarendon Press, 1998) and E. Christian Brugger, *Capital Punishment and Roman Catholic Moral Tradition*, (Notre Dame, IN., University of Notre Dame Press, 2003).

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In assessing the role of the retentionists during the abolition of capital punishment, it is important to question why the retentionists failed to keep capital punishment in Britain. At no time since the Second World War has public opinion in Britain favoured abolition. There has always been strong support for retention. Every debate on a Bill or amendment to abolish capital punishment was subject to a free vote in Parliament. The retentionists hoped that the strength of public opinion would persuade those MPs who were not staunch abolitionists to oppose reform to the punishment for murder. Those who attempted to persuade the Commons to support retention in this manner overestimated the importance of public opinion.

The retentionists lacked a centrally-organised lobby. It is not immediately clear, therefore, who should be included under the label retentionist. Opinion polls indicate that throughout this period the majority of the population supported the retention of capital punishment. Yet the vast majority of these people remained passive throughout the entire abolition process. The most actively involved and vocal retentionists came from Parliament. The Police Federation and Prison Officers' Association lobbied for retention, and were supported by some sections of the media, Church and legal profession. On the whole, but not exclusively, the retentionists were members or supporters of the Conservative Party. This can be seen through the divisions on abolition Bills and amendments in Parliament. Because of this, it is fair to presume that the majority of the retentionists held traditionally Conservative views about issues of morality. Between 1945 and 1979, every Conservative government supported retention, as did the Labour government under Clement Attlee. It is the active retentionists, and in particular the MPs, who are the focus of this thesis. Although the majority of the population were retentionists,

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their lack of involvement in the abolition process means that it would be inappropriate to consider them alongside the active retentionists. Their support is noted throughout this thesis, but they are not included under the retentionist label. The retentionists had no prominent figures to spearhead their campaign in the manner that the abolitionists had in the persons of Sydney Silverman, Victor Gollancz and, to a lesser extent, Gerald Gardiner. Between 1965 and 1969, Duncan Sandys, Conservative MP for Streatham, was the prominent retentionist, but his front-line involvement did not extend beyond this period. Though there were various prominent advocates of retention who spoke out in favour of the cause in the media, none took it upon themselves to become the campaign's figurehead. The problems that arose from this lack of public leadership are discussed in this thesis.

Abolition was a movement led from the floor of the House of Commons. From 1948 MPs consistently voted in favour of abolition, except in February 1955, despite a lack of support from the general public and, until the 1960s, from religious leaders and the legal profession. The most vocal politicians in the resulting debates were Sydney Silverman and Duncan Sandys, but occasional interventions from an incumbent Prime Minister or Home Secretary carried much greater weight. It has been necessary, therefore, to look at the actions, opinions and backgrounds of the key politicians in the abolition process. There were pressure groups and protests that have yet to be studied in any detail. Though there was no large, co-ordinated retentionist lobby to mirror the National Campaign for the Abolition of Capital Punishment [NCACP], smaller campaigns, like Duncan Sandys' retentionist petition and various organisations such as the Police Wives' Action Group, did receive some press attention. Sandys' protest in particular is analysed in this thesis.

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As already mentioned, British society gradually became more liberal in the years after the Second World War. The evolving permissive society had roots in the 1950s, in particular with the Wolfenden Report on sexual offences in 1957, and exploded in the 1960s. Under Harold Wilson's Labour government the laws on divorce and theatre censorship were relaxed, abortion and family planning were available on the NHS and homosexuality was legalised.¹¹ As part of this wave of liberalisation, capital punishment was abolished. The influences of both the increasingly permissive British society and the liberalising legislation from the House of Commons on the abolition debate form an important context for this thesis.

This thesis is based on evidence found in the papers of the Cabinet and Home Office, the archives of the Conservative and Labour parties, lobby groups and the legal profession, official publications, personal papers of key figures from the abolition debates, newspapers, periodicals, television news reports and opinion polls.

The Cabinet and Home Office papers offer an historian a unique glimpse into the decision making processes of the executive. They afford the reader the chance to analyse the private opinions of individuals and groups within the government as well as the methods and reasoning behind the development of policies and Bills and the tactics used to persuade Parliament to support them. In particular, the minutes of Cabinet meetings and the notebooks of the Cabinet secretaries have contained much of the most interesting and occasionally surprising information that has helped to shape this thesis. Though they represent only the views of the political elite, they are useful in outlining the detailed opinions behind government policy. They can also highlight other issues which ministers

¹¹ Peter Thompson, 'Labour's "Gannex Conscience"?: Politics and Popular Attitudes in the "Permissive Society"', in Richard Capew, Steven Fielding and Nick Tiratsoo (eds.), *The Wilson Governments, 1964-1970*, (London, Pinter, 1993), p. 137.

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felt were linked to the capital punishment debate. Notably, abolition in other countries, the state of capital punishment in British overseas territories, legal opinions and advice and public opinions were often mentioned during discussions on capital punishment. These papers are an excellent source for discovering the issues that dominated the British political world at any particular time. These issues often pushed abolition down the agenda.

The archives of the Conservative and Labour parties do not offer the goldmine of unpublished opinions and strategies on capital punishment that an aspiring historian might hope to unearth. Rather, the most interesting and useful information comes from the minutes of what were, effectively, the shadow Cabinets. These have a similar structure to the Cabinet minutes and provide similar insights. A fascinating example of the development of party tactics came from the minutes of the Leader's Consultative Committee [LCC] of the Conservative Party in late 1969. Rumours were spreading between politicians that the Labour government was planning to introduce legislation to make abolition permanent before the five year period of suspension under the *Murder (Abolition of Death Penalty) Act* had been completed. The LCC minutes reveal senior Conservatives' uncertainty over how to react to this, if it were true, and a general acceptance that their chances of success were bleak. The minutes of these meetings create an impression of a sense of desperation amongst the Conservatives. They wanted, at the very least, for legislation to be postponed until the five year period had elapsed. Despite considering various tactics in order to achieve this, they appear to have been resigned to defeat from the start.¹²

¹² Conservative Party Archive, Bodleian Library, Oxford, LCC(69) 259, Leader's Consultative Committee Minutes, 25 November 1969.

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Opinion polls offer the most accurate insight possible into the thoughts of people who were otherwise not involved in political discourse. In this thesis there are frequent analyses of the opinion polls on capital punishment that were conducted during the period. It is important to understand the state of public opinion in order to ascertain the levels of support for the retentionists and appreciate what impact, if any, these polls had on political decision making. While it is no surprise to find that the overwhelming majority of polls on capital punishment were conducted when a particularly infamous murderer was facing trial or abolition was being discussed in Parliament, the lack of polls outside of these flashpoints indicates that capital punishment and its abolition was not an issue that constantly burdened the nation's conscience.

In a free vote on an issue of moral conscience lobby groups can have tremendous influence over politicians, particularly those who are undecided on the issue. The popular movement for abolition was taken up by the well-supported NCACP, jointly chaired by Gerald Gardiner, Lord Chancellor from 1964 to 1970, and the publisher and activist Victor Gollancz. The campaign had numerous well known and respected supporters, a decent budget and, crucially, use of Gollancz's publishing industry. With additional support from the Howard League for Penal Reform and the Haldane Society the abolitionist campaign was well organised, well financed and persistently vocal. In stark contrast, the retentionist lobby was small, uncoordinated and disastrously under-publicised. Throughout the period the Police Federation and Prison Officers' Association opposed abolition along with some members of the legal profession, religious leaders and the media, though support from these sectors declined substantially, particularly after the *Homicide Act 1957*. The only collection that contains many sources about a retentionist campaign is the private papers of Duncan

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Sandys. This includes details of his petition to restore capital punishment that was presented to Parliament in 1969, his correspondence with retentionist groups, particularly the Prison Officer's Association, and his developing relationship with the writer Louis FitzGibbon, who would become Sandys' private secretary. The papers concerning Sandys' petition and the papers of the NCACP highlight the importance of funds and organisation for a lobby movement. Both campaigns attempted to mobilise support across the country and publicise their movement to as many people as possible. The extra resources available to the NCACP allowed them to hold rallies, organise speeches and debates and publish numerous pamphlets and books. Sandys' campaign, which was chronically short of money, relied almost entirely on volunteers collecting signatures on the street and putting up posters.

The Parliamentary debates on abolition have provided useful information for this thesis, not just in the form of what was said during the debates, but also in recording who spoke and voted for and against abolition. Hansard is a good tool for identifying key figures on both sides of the debates and highlighting important issues in the discourse. The other major official publication included in the research for this thesis is the report of the Royal Commission on Capital Punishment, chaired by Sir Ernest Gowers. The remit of the Royal Commission, which interviewed experts and politicians as part of its study, was to establish how the application of capital punishment should be altered in order to make it a more suitable punishment. They were not allowed to discuss abolition. Nevertheless, their report, every major recommendation of which was rejected by the government, formed an important part of the abolition debates.

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There have been no detailed studies into the key individuals from the abolition discourse. Although sources relating to capital punishment are often sparse in the private papers of many of these key individuals, such as R.A. Butler, the papers of Duncan Sandys contain information which adds a new dimension to the history of abolition. For this thesis, it has been useful to develop a portrait of Sandys based on the evidence from his private papers. Information from the memoirs, diaries, autobiographies and biographies of others has helped to improve the understanding of their roles and opinions on capital punishment.

Media sources are the most voluminous and easily accessible of all used for this thesis. Printed reports in newspapers and periodicals and television news reports and documentaries covered the capital punishment debates in some detail, despite the headlines being dominated by other issues. Media reporting both leads and is led by public opinion. These reports, therefore, can be read as indicators of public opinion as well as at face value. It has been impossible, within the time available for this thesis, to read and watch every media report on abolition. In this thesis there is a particular focus on a few newspapers. *The Times*, *Mirror*, *Guardian* and *Daily Express* have all been available on the internet and have been far easier to search and access. The *Daily Telegraph* and *Daily Express* regularly published the results of opinion polls. These provide the bulk of the sources from the media.

This thesis is split into three sections. The first details the successful opposition to abolition, the second looks at the compromise made in the 1950s and the third deals with the failure of the retentionists in the 1960s. The chapters are based around the political developments throughout the period. The sections are defined by the key Acts, Bills and developments during the abolition process.

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Chapter 1, *Criminal Justice Act 1948*, looks at the debates of and government tactics for the Criminal Justice Bill and its abolition amendment in 1947 and 1948. The Criminal Justice Bill, as it was presented to the Lords, made provisions for the abolition of both capital and corporal punishment. This was an attempt by the Commons to remove two of what many traditionalists felt were the key deterrents for serious adult and juvenile crime respectively. Removing them both at the same time would have meant a seismic shift in the method and theory of punishment in Britain at this time. This chapter considers the influence of the abolition of corporal punishment on the retentionists' cause. The debates also required the government to decide how abolition, if passed into law, would be applied to the colonies and dependent territories. The position taken on this by Arthur Creech Jones, the Secretary of State for the Colonies, is analysed in this chapter. His argument was based on the idea of civilisation, a concept which is referred to throughout this thesis. There is also a discussion of the context provided by the Nuremburg Trials and the execution of the serial killer Neville Heath.

Chapter 2, *The Royal Commission on Capital Punishment*, evaluates the creation, composition, research and recommendations of the Royal Commission and analyses its role as a delaying tactic by the retentionist government. The chapter involves a consideration of four of the most important executions in post war Britain: those of Timothy Evans, Derek Bentley, John Christie and Ruth Ellis. During the debates on abolition at this time, Britain was cracking down on the Mau Mau rebellion in Kenya. This involved the imposition of emergency legislation and the widening of the death penalty to many new crimes, resulting in the execution of over one thousand people. The relation of this to the abolition debates in

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Britain is examined in this chapter. This is the last chapter which looks at the period of success for the retentionists, covering the years 1949 to 1955.

Chapter 3, *Death Penalty (Abolition) Bill*, looks at the success in the Commons of Sydney Silverman's abolition Bill in 1956 before its eventual defeat in the Lords in the same year. This Bill, though defeated, forced the government to legislate on capital punishment and the law of murder. It also saw the rise to prominence of the NCACP, which was influential in changing the course of the abolition debate. This chapter considers why the retentionists slipped from their position of strength in the early 1950s to being forced to look for a compromise in 1956. The influence of the Evans, Bentley and Ellis cases are also considered in further detail in this chapter.

Chapter 4, *Homicide Act 1957*, analyses the creation of and debates around the government's compromise legislation. It looks at how this Act, which was pivotal to the entire abolition process, made the failure of the retentionists become almost inevitable. The tactics employed by the government to get this Act into the statute book are explained in this chapter. There is also a discussion of the increasingly permissive nature of society in Britain, as shown through the Wolfenden Report in 1957 and the context provided by the Suez Crisis from 1956.

Chapter 5, *The Shift towards Abolition, 1957-1965*, details the slide towards eventual defeat for the retentionists. It evaluates the almost universal disapproval of the *Homicide Act 1957* and the increasingly abolitionist position taken by the leaders of the Church as factors in the retentionists' demise. Even the views of the retentionist Conservative government appeared to be softening slightly in their approach towards abolition, as can be seen in their meeting with the NCACP in 1962. This chapter considers

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some of the points raised in this meeting. It also looks at how the American political scientists James Christoph and Elizabeth Tuttle, who both published books on the British abolition process during these years, viewed the issue of capital punishment in Britain and how they felt that it would progress in the future.

Chapter 6, *Murder (Abolition of Death Penalty) Act 1965*, looks at the remarkably simple process that led to the abolition of capital punishment for murder in 1965. The only amendment that the retentionists succeeded in adding to this Act was to limit its implementation to just five years. This chapter, which is shorter than the rest, analyses the debates that led up to the abolitionist victory following Harold Wilson's election in 1964. It also considers why there was not a greater retentionist campaign against the Bill before it became law.

Chapter 7, *Permanent Abolition*, analyses Duncan Sandys' petition to restore the death penalty. This was the largest retentionist campaign of the entire post war period, comprising 800,000 signatures. This chapter looks at his campaign and the problems that it incurred. The aim of this petition was to present as many signatures to Parliament as possible from people demanding the restoration of capital punishment on the first day of the debate on whether abolition should be made permanent. The Parliamentary debates and the tactics of the Labour government before this vote are discussed in this chapter.

The conclusion to this thesis, as well as answering its central research question, looks briefly at the retentionist movement in the 1970s, with particular reference to the calls to reinstate capital punishment for murderers of police officers and for terrorists. In particular, the short campaign by the Police Wives' Action Group and the increasing calls

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for the death penalty for terrorists after the escalation of IRA violence in the 1970s are considered in the conclusion.

This thesis on the retentionist campaign during the abolition process is relevant not only to the history of capital punishment in Great Britain. As well as providing a new dimension to the broader history of modern crime and crime prevention, it should also prove a useful addition to the histories of pressure groups and permissiveness in twentieth century Britain. This thesis draws upon the themes of decolonisation and civilisation, which are important in post-war British history. The research links mentioned above demonstrate how this thesis fits into the general history of Britain after 1945.

SECTION I

Success 1945-1955

Criminal Justice Act 1948

Chapter 1

“...the immediate post-war years may not be considered the most appropriate period for such an experiment”, opined the *Law Society Gazette* as Parliament, MPs, politicians and the government contemplated abolishing capital punishment.¹³ Social commentators expressed concern about a wave of violent crime yet to hit Britain following the most devastating war in history. In the late 1940s, their concerns proved well founded as the crime rate rose fast.¹⁴ In October 1946, Britain and her wartime allies executed the leading Nazi officials after the Nuremberg Trials. At the same time, concerns were growing over the state of Britain’s decaying society. In September 1946, just months before the debates on abolition flared up, Neville Heath was found guilty of the murder of two women. It was the sexually violent nature of these murders which made this case particularly shocking to a British society already concerned at the perceived social decay that was afflicting the nation.¹⁵ Heath was executed in October. In this context, many people were appalled to hear of plans to abolish the ultimate deterrent for serious crime.

Contrary to the common interpretation that, on the whole, the Labour Party supported abolition, Attlee’s government favoured retention. They urged the House of Commons to vote against the abolition amendment to the Criminal Justice Bill suspending capital punishment for five years. Upon their defeat they felt duty-bound to advise the House of Lords to vote for suspension in line with the Commons. Again the government was defeated as the Lords voted against suspension. The retentionists failed to keep abolition from successfully passing through the Commons and had to rely on the more

¹³ *Law Society Gazette*, (107 vols, London, The Law Society, 1946), vol. 43, p. 181.

¹⁴ Philip Rawlings, *Crime and Power: A History of Criminal Justice 1688-1998*, (London, Longman, 1999), p. 139.

¹⁵ *Daily Mirror*, 27 September 1946.

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traditionally-minded Lords to defeat it. Why, considering the support for retention from the majority of the legal profession, religious leaders, police, prison officers and general public, did the retentionist government fail to dissuade the Commons from voting for suspension? This chapter offers an answer to this question. There is also an analysis of the concurrent debates over corporal punishment, the attitudes towards capital punishment in the colonies and dependent territories, the impact of the rising crime rate and the context provided by the case of Neville Heath and the Nuremberg trials.

Pressure had been mounting in Westminster during the Second World War for a new Criminal Justice Bill along the lines of the 1938 Bill of the same name. The outcome of the 1945 general election would play a large part in determining what sort of sentence reforms to capital punishment would have in the Bill. Victory for Attlee's Labour Party in July gave the abolitionists hope that their cause could form some part of the new Bill.¹⁶ However, when James Chuter Ede, the Home Secretary, introduced the Bill in 1947 there was no provision for the abolition of capital punishment.

Ede had identified the abolition of corporal punishment as a more pressing issue for Britain than abolishing capital punishment. He was not keen on pushing the abolition of capital punishment within the Criminal Justice Bill, arguing that, if this was to be something which the government wanted to pursue, it would be better suited to an individual Bill.¹⁷ Ede appeared very uneasy over the issue of abolition. It is not clear, at this time, whether he was opposed to abolition in principle or simply felt that Britain was not yet ready for it. He did not carry the support of the entire government on this issue. The Attorney-General, Sir Hartley Shawcross, supported Ede's stance over corporal

¹⁶ Victor Bailey, 'The Shadow of the Gallows: The Death Penalty and the British Labour Government, 1945-51', *Law and History Review*, 18, 2 (2000), p. 319.

¹⁷ Bailey, 'The Shadow of the Gallows', pp. 320-1.

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punishment, but wanted to see abolition form part of the Criminal Justice Bill.¹⁸ However, governmental opposition to retention would not be an issue for Ede. He was supported by the Prime Minister and, as a result, any abolitionist member of the government was under pressure to abstain from backing the amendment for abolition if they could not bring themselves to vote for retention.¹⁹ Greater opposition came from the ordinary Labour MPs. Labour MPs, on the whole, supported abolition. In the upcoming debates on the Criminal Justice Bill, Ede and the other government retentionists faced a struggle to avoid the introduction of the issue of abolition.

The abolition of both corporal and capital punishment were debated during the Criminal Justice Bill. These punishments were, of course, deterrents for different types of criminal. Corporal punishment was largely aimed at tackling juvenile delinquency while capital punishment was a deterrent against the most serious of adult crimes. Abolishing both corporal and capital punishment would remove the primary deterrents for the causes of the crimes which were of most concern at this time. It would have been very difficult for the Labour government to abolish both punishments, despite the support for such a policy that would have come from the Parliamentary Labour Party. The government chose to focus its attention on abolishing corporal punishment. In 1941, there had been an infamous incident where a nine year old boy had been sentenced to be birched, rousing public disapproval.²⁰ There were no equivalent incidents of a widely unpopular execution in the years leading up to the Criminal Justice Bill. Corporal punishment also offered a lesser deterrent to adult criminals than capital punishment. If the government felt that they could only attempt to abolish one punishment, corporal appears to have been the logical choice.

¹⁸ Ibid.

¹⁹ The National Archives: Public Records Office (TNA:PRO), CAB 195/6, CM (48) 27, 8 April 1948.

²⁰ *The Times*, 17 January 1941.

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The government scheduled the Criminal Justice Bill to be debated in the 1947-8 session of Parliament, without any mention of abolition. They could not keep the abolitionists in Parliament from tabling their amendment onto the Bill. The amendment was tabled by Sydney Silverman, the staunchly abolitionist Labour MP. The Commons voted on this amendment in April 1948. They approved it by 245 votes to 222 to the surprise of the government, who had expected it to be defeated.²¹ It was added to the Bill accordingly. These abolitionist MPs were not just voting against the retentionist attitudes of the government. There was widespread opposition to abolition throughout many sections of society. Indeed, there was more at this time than at any other throughout the post-war abolition process. It is important, therefore, to understand the nature of opposition from each of these groups in order to assess how the abolitionists succeeded in passing their amendment through the Commons.

In general the Conservatives opposed abolition. Their opposition to the amendment would always have been anticipated. Considering that Labour had a considerable majority, the abolitionists would have been confident that they could defeat the retentionists in the Commons. Nevertheless, the retentionist Conservative MPs had an important role to play. They were prominent opponents of abolition who would receive some media coverage. However, as the abolition amendment was opposed by the government, opposition from the Conservative MPs was not widely reported, as there were always more senior Parliamentary opponents who could be referenced in the media. Nonetheless, the Conservatives provided a dependable base of support in Parliament for the Labour government's retentionist policy.

²¹ Bailey, 'The Shadow of the Gallows', p. 335.

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The Lords offered a greater obstacle to the amendment for abolition. The government, having seen the Commons vote against their recommendations, felt obliged to recommend abolition to the Lords.²² This would be no easy task. The natural advocate for government policy on this matter in the Lords was the Lord Chancellor, Lord Jowitt. However, he was firmly retentionist and felt deep unease at the Commons decision. There could be no worse proponent of an abolitionist amendment to the traditionalist Lords.²³ He spoke only briefly in the Lords debate, acknowledging that he felt honour-bound to support the amendment.²⁴ The Lord Chief Justice, Lord Goddard, feared the development of lynch mobs if capital punishment were abolished. The abolition amendment, supported by a reluctant government and a retentionist Lord Chancellor, stood no hope of remaining attached to the Criminal Justice Bill on its passage through the Lords. The amendment was defeated by 181 votes to twenty-eight.²⁵

Upon the defeat of the amendment in the Lords, the government had to make a difficult decision. They not only had to achieve the correct balance between the will of the Commons and that of the Lords, but also had to ensure that they did not appear weak in the face of clear pressure for retention from the Other Place. They could appear strong by invoking the *Parliament Act* to force through the amendment that they disliked, weak by bowing to the wishes of the Lords, or they could seek a compromise. A compromise could be reached by extending the use of the royal prerogative of mercy, but that would not seem like a compromise at all to the abolitionists. Another option was to introduce grades of murder. The latter had been advocated by some Lords and newspapers in the build up to the

²² Bailey, 'The Shadow of the Gallows', p. 336.

²³ Bailey, 'The Shadow of the Gallows', pp. 337-8.

²⁴ HL Deb 01 June 1948 vol. 156 c67.

²⁵ HL Deb 02 June 1948 vol. 156 cc176-7.

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vote in the House of Lords. Eventually, the government decided to attempt to reach a compromise, and even managed to persuade the staunchly abolitionist Shawcross to support it, though he did pledge to resign after the vote, an act of professional honour which, subsequently, he felt unable to pursue. The clause kept capital punishment for murder with theft, gang violence, explosives or sexual offences, murder in the course of resisting arrest, murder by poisoning, murder of a police officer and multiple murders. This amendment to the Criminal Justice Bill was debated in Parliament and voted under three-line whips. Though Churchill, the leader of the opposition, attacked the illogicalities of the amendment, the action of the whips allowed the Commons to pass it by 307 votes to 209. The Lords, however, could not see past the flaws in the amendment and duly rejected it. The government decided to drop the amendment completely. The *Criminal Justice Act* received Royal Assent on 30 July 1948 with no change to the law on capital punishment. A few months later, Ede began the process of setting up the Royal Commission on Capital Punishment.²⁶ The Conservative publication *Notes on Current Politics* praised the decision of the Lords to oppose the compromise amendment and credited the Conservatives with highlighting the pitfalls of the clause.²⁷

The legal profession were largely opposed to any abolition of capital punishment. Two of the major legal periodicals, the *Law Society Gazette* and *Justice of the Peace*, came out against the abolition amendment. The government, backed by advice from their law officers, had presumed that judicial opinion would favour retention. They felt, though, that abolition should be judged on the wider social, rather than judicial, implications.²⁸

²⁶ Bailey, 'The Shadow of the Gallows', pp. 341-5.

²⁷ Conservative Party Archive, Bodleian Library, Oxford, PUB 221/6, *Notes on Current Politics*, 15 August 1949.

²⁸ TNA:PRO, HO 45/21951, Note from the Law Officers' Department, 16 April 1947.

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Although abolition was supported by the Attorney General, it does not appear that his views reflected those of the majority of the legal profession. In April 1946, as capital punishment was making its way onto the political agenda, Ede requested that judges refrain from giving their opinions on recommendations for mercy in open court. He was clearly concerned that, at the time when the issue of abolition was being discussed more widely in public, the judges could put pressure on the Home Secretary to make a certain decision on mercy through any recommendation that they made in court. While carrying out the punishment of a criminal fell within the remit of the state rather than the judiciary, as legal experts the judges' opinions on capital punishment could have a dramatic influence on public opinion. If such a recommendation conflicted with the judgement of the Home Secretary over a case for mercy, it could become more difficult for the Home Secretary to make his decision as he would probably face stiffer opposition from the general public. The judges agreed to this request.²⁹

The religious leaders in the Lords were, on the whole, opposed to abolition. No bishops voted for abolition, although only one backed retention. In the debate on the amendment, the Archbishop of Canterbury argued that the amendment, as it stood, was impractical, though he would appreciate reform on capital punishment, preferably in the form of a separate Bill. He did, however, reiterate the eye for an eye Christian philosophy towards punishment, which would allow for capital punishment provided that the punishment was not disproportionately harsh in reference to the crime. It should be noted that the Archbishop said during the debate that he could not speak for the Church, only for himself.³⁰

²⁹ TNA:PRO, HO 45/25139, Ede to Judges, 11 April 1946.

³⁰ HL Deb 01 June 1948 vol. 156 cc42-9.

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Retention was supported by the bishops, the legal profession, the House of Lords, many Conservatives, members of the government and the majority of the public. Though there were only muted statements of opinion from police and prison officers, any noise that did come from this group was firmly in favour of retention. The Home Office was informed that many police and prison officers feared that abolition would lead to criminals becoming increasingly willing to use lethal force to escape arrest.³¹ How, then, did the abolition amendment succeed in its passage through the Commons? The answer comes from the determined abolitionism of the majority of Labour MPs in Parliament. Abolition was an issue of moral conscience. If MPs were personally determined to see capital punishment abolished then pressure from the retentionists was unlikely to change their minds.

In their preparations for the capital punishment debate, the government decided upon their approach to how abolition, if it were to happen, would apply to the colonies, dependent territories and Northern Ireland. The Secretary of State for the Colonies, Arthur Creech Jones, outlined the position that he would take on the subject. In reference to those countries over whose legislation he had control, he said “the population[s] had not yet reached a stage of civilisation at which it was appropriate to abolish capital punishment”.³² This statement displays a discriminatory idea of civilisation and its role in the abolition of capital punishment. The fact that Jones was willing to use this line of argument in public suggests that it was a sentiment that would not have offended or surprised many people, and may well have mirrored the attitudes of many others in politics and wider society. Interestingly, the concept of making, encouraging and recognising a civilised society would

³¹ Bailey, ‘The Shadow of the Gallows’, p. 330.

³² TNA:PRO, CAB 128/10, CM (47) 89, 18 November 1947.

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later form the central idea behind Roy Jenkins' plan for a Labour government, which he published in 1959.

Ideas of civilisation formed an important part of the abolition discourse. As a result of the Second World War, there was a fear that the march of civilisation in British society had been arrested or even reversed. Many people were concerned that there could be an increase in violent crime from ex-service personnel who had been brutalised by their experiences during the war. Capital punishment was seen by the retentionists as a necessary deterrent that was essential for keeping these men from making the transition from heroes to murderers. After the war, Britain experienced the decline of its empire and an increase in immigration, particularly from the colonies. Its largest colony, India, achieved independence in 1947, only a few months before Jones outlined his and the government's stance on capital punishment in the dependent territories. As abolition was deemed inappropriate for those colonies over which Britain had legislative authority, one must infer that the other colonies had become more civilised, using Jones' logic. The irony of the government's line of argument over capital punishment in the colonies is that it felt at the time that it would be inappropriate for abolition to occur in Britain. If abolition comes down to a question of civilisation, as Jones seems to suggest that it does, then in 1947 the government must have felt that British society was too uncivilised for capital punishment to be abolished. Britain's level of civilisation was comparable to that of the colonies to which Jones so disparagingly alluded in Cabinet. It is hard to believe that this was the inference that Jones or the government would have wanted historians to take from this situation, but it is the logical progression of the ideas of civilisation that were being expressed at the time.

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Jones was widely acknowledged as the Labour Party's expert on colonial affairs: his "colour-blindness" brought him the trust and affection of colonial peoples".³³ He worked hard to help many colonies move towards independence, in particular through improvements to adult education, and reorganised the Colonial Office in order to meet the evolving needs of the colonial people.³⁴ Jones was clearly determined to help the various colonies develop in order to achieve independence from Britain. His view that some of them were not yet civilised enough to allow capital punishment to be abolished, though not at odds with his other colonial endeavours, does seem surprisingly old-fashioned in light of his progressive, modernising attitude towards the empire.

The foundations of decolonisation, though in its infancy in the late 1940s, were in place by the time that the Criminal Justice Bill was debated in Parliament. Though the influx of immigrants from the Commonwealth exploded in the 1950s, the movement had started already in the late 1940s. The *British Nationality Act 1948* had confirmed that Commonwealth citizens had the same rights as British subjects. As Nicholas White put it, this "appeared to guarantee" all citizens of the Commonwealth the right of residence in Britain. The racial tensions that developed throughout many sections of society during the explosion of non-white immigration in the 1950s resulted in Parliamentary action, in the form of the *Commonwealth Immigrants Act 1962*.³⁵ These racist, anti-immigration sentiments have been cited as a causal influence on John Christie's murders in the 1940s and 1950s. He lived in an area which became home to a large number of Caribbean

³³ 'Jones, Arthur Creech', <<http://www.oxforddnb.com/view/printable/34224>>, (16 April 2010).

³⁴ Ibid.

³⁵ Nicholas White, *Decolonisation: the British Experience since 1945*, (Harlow, Addison Wesley Longman Ltd, 1999), p. 42.

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immigrants. Links developed between the immigrants and social deprivation.³⁶ There was a clear wedge between the 'civilised' British and 'uncivilised' immigrants in the minds of many Britons. This view that there was an increase in uncivilised elements within society would have made it harder for people who held this belief to support the abolition of capital punishment, following Jones' logic, as British society was gradually becoming less civilised and, therefore, more dangerous.

Predominant in the context for the Criminal Justice Bill was the Second World War. A similar Criminal Justice Bill had been prepared in the 1930s, only to be postponed during the heightening tensions in Europe. The severe dislocation of British society and infrastructure during the war led to an increase in the post-war crime rate. In 1948, recorded crimes passed 500,000 for the first time.³⁷ The country had to deal with the immense damage inflicted on both its fabric and its psyche by the war. This would take time and there were serious problems to overcome. A notable example of a brutal crime in the context of the post-war social dislocation is that of Neville Heath, the serial killer who sexually mutilated his victims whilst murdering them. Society in Britain was still in a state of shock after the War. The retentionists would argue that as a sufficient proportion of the population lacked the self control to live as non-violent, law-abiding citizens, abolition would, at this time, be inappropriate.

Once the Allies had won the war, they set about punishing the defeated Nazi leaders. At the Nuremberg Trials, in 1945 and 1946, the principle Nazis were tried for various war crimes and crimes against humanity. The chief British prosecutor was Sir Hartley Shawcross, the Attorney-General in Attlee's government. His assistant was Sir

³⁶ Frank Mort, 'Scandalous Events: Metropolitan Culture and Moral Change in Post-Second World War London', *Representations*, 93 (2006), p. 130.

³⁷ Taylor, 'The Politics of the Rising Crime Statistics', p. 24.

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David Maxwell-Fyfe, the future Conservative Home Secretary. The judges sentenced twelve of the defendants to death. There was no sympathy in Britain for the execution of these people. Indeed, *The Times* lamented the “dire penalties” of ten or twenty years imprisonment given to some of the other defendants.³⁸ Parliament was debating the abolition of capital punishment within a year of Britain’s involvement in the multiple executions in Germany. Indeed, Albert Pierrepoint, one of the longest serving executioners in recent British history, had carried out the execution of a number of the guards from the Belsen concentration camp.³⁹ Abolishing capital punishment so soon after the Nuremberg Trials was, for the retentionists, a bad idea at a bad time. It is interesting to note, however, that Sir Hartley Shawcross was one of the most vocal supporters of abolition, despite his senior role in the trial of the Nazi war criminals. The executed Nazi leaders, of course, had represented a wholly different threat to any domestic murderer. The moral justification at the time for executing the Nazi leaders cannot be equated to that for the executions of Neville Heath and others.

The retentionists had succeeded in opposing abolition both in the present and, through the decision to set up a Royal Commission, for a while into future. Their success was thanks, in no small part, to the situation in which Britain found itself in 1947. Post-war dislocation had led to a rise in the crime rate. This was coupled with the onset of immigration from the Commonwealth, which disturbed the racist sentiments of some who felt that this would only spread moral decay within Britain. The retentionists could have been excused for presuming that they would have support from many sectors of society.

³⁸ *The Times*, 02 October 1946.

³⁹ ‘The People: Albert Pierrepoint’, 19 November 2008, <http://www.bbc.co.uk/liverpool/content/articles/2006/04/27/pierrepoint_lasthangman_feature.shtml>, (06 August 2010).

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After the war, capital punishment was still widely recognised as being useful for dealing with cases of treason, war crimes and serial killers and there were no obvious incidents of injustice to make people question its justification. The retentionists could now look forward to the Royal Commission and a lull in demands for further debates on abolition.

The Royal Commission on Capital Punishment

Chapter 2

Over the years our history has shown us that we have continually reduced the severities of our criminal law. There was the reference earlier to hanging for sheep stealing and so on. That is our history. We have pruned and pruned, and now we are being asked to prune still further. In the present state of our society, I do not believe that that can safely be done.⁴⁰

With these words the Attorney General, Reginald Manningham-Buller, concluded the debate on the resolution to take note of the Royal Commission's report in February 1955. This included an amendment to abolish capital punishment. The debate came six years after the Commission was established and two years after the publication of its report. The amendment was rejected. Though the Commons took note of the report, none of the Royal Commission's recommendations were implemented until the *Homicide Act 1957*.

The Royal Commission on Capital Punishment allowed Attlee's government to postpone further Parliamentary debate on abolition for a number of years. Abolition was never a vote-winning issue so, in the run up to the 1951 general election, the government would have been pleased to remove it from the agenda. There were obstacles which had to be overcome in order to allow the Royal Commission to be set up and to conduct its research. Some were fundamental: the composition and remit of the Royal Commission. This chapter will address the problems faced by the government in setting up the Royal Commission, as well as the evidence that they heard and their recommendations. This will be followed by an evaluation of the government's response to the recommendations. In the

⁴⁰ HC Deb 10 Feb. 1955 vol. 536 c2178.

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years of the Royal Commission's investigation, some of the most infamous and influential murder cases came before the courts. The executions of Timothy Evans, Derek Bentley, John Christie and Ruth Ellis were major news stories. Their cases had a significant impact on the abolition discourse. At the same time, Britain was enacting emergency legislation in Kenya to deal with the Mau Mau rising, leading to the execution of over a thousand people who were tried in courts which afforded them little representation. Together, these provide an important context for the final years of retentionist success in Britain.

In forming the Royal Commission, the government aspired to achieve the ideal situation where every member had no affiliation either to abolition or to retention. They quickly realised that there was no possibility of forming a commission of people who would be recognised by the public as qualified to review the use of capital punishment who were not known to harbour abolitionist or retentionist beliefs. The plan, then, became to create a commission comprised of a balance of moderate, open-minded abolitionists and retentionists who had not been too vocal in their views on capital punishment. By balancing the commission equally, the abolitionists were afforded greater representation than their number amongst the general population might have warranted. In keeping with the nature of the abolition question, public opinion was ignored by the Royal Commission. Consciously or not, the popular voice was kept out of the political process. This highlights the need to recognise that not all political histories can include a detailed study of popular action, as mentioned in the introduction to this thesis. The government succeeded in keeping the arguments over the composition of the Royal Commission within their own ranks. They did not spill out in any significant way to the media or opposition parties. The task of forming the Royal Commission fell to James Chuter Ede, who was still the Home

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Secretary. In January 1949, Ede submitted a list of prospective commission members to the Prime Minister. He did not receive the response that he would have hoped for. Attlee was distinctly unimpressed with the list and felt that public opinion would not favour it either. He asked Ede to discuss names for the list with him at a future date.⁴¹ Ede received even more scathing criticism from Sir Hartley Shawcross, the Attorney General. In March 1949, Shawcross informed Ede that he was unhappy with almost every person recommended for the Royal Commission. Ede did not take kindly to Shawcross' evaluation. In his response to Shawcross' letter, Ede wrote dismissively: "I take it from your comment on Professor Radzinowicz that you do not have as poor an opinion of him as you have of the other names on the list". Ede told Shawcross that he did not expect the Prime Minister to support many of Shawcross' recommendations.⁴² Few of Shawcross' recommendations were adopted, though he did achieve his wish to see Cartwright Sharp replaced by the solicitor Norman Fox-Andrews. Shawcross, one of the most committed abolitionists in the government, was balanced in his critique of Ede's list. He did not campaign more vehemently against known retentionists than abolitionists. Rather, the only person whose place he questioned in relevance to their stance on capital punishment, Sir Alexander Maxwell, was heavily linked to the Haldane Society, a socialist lawyers' group who supported abolition. Ede's letter was one of many that were sent between government officials and potential committee members in early 1949 concerning the composition of the Royal Commission.

By April 1949, the government were ready to announce publicly the names of the members of the Royal Commission. It would be chaired by Sir Ernest Gowers, the one member of the commission whose appointment appears to have caused no dissent from

⁴¹ TNA:PRO, HO 45/25084, Attlee to Ede, 23 January 1949.

⁴² TNA:PRO, HO 45/25084, Ede to Shawcross, 22 March 1949.

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within the government. Gowers was a lawyer and public servant who chaired numerous government committees in the 1940s and 1950s.⁴³ On 28 April, the media were informed that Sir Ernest Gowers, Norman Fox-Andrews, Sir Leon Radzinowicz, Elizabeth Cameron, Florence Hancock, William Jones, Horace Macdonald, John Mann, Sir Alexander Maxwell, Professor George Montgomery, Earl Peel and Dr Eliot Slater would sit on the Royal Commission. These people came from a variety of backgrounds and represented the academic, medical, legal and political professions as well as the trade unions.⁴⁴ Sir Leon Radzinowicz was the academic expert for the Royal Commission. He was a Polish immigrant who had become an expert in the legal system in his home country. In 1938, he immigrated to England, where he co-founded the discipline of criminology at Cambridge. He had worked closely with the Home Office and developed links with the Howard League.⁴⁵ Radzinowicz had already worked with Sir Alexander Maxwell during his involvement with the Home Office. Maxwell became the permanent under-secretary of state to Samuel Hoare at the Home Office in 1938 and served as the chairman of the Prison Commission of England and Wales. He was the Home Office expert for the Royal Commission.⁴⁶

The other members of the Royal Commission came from areas not connected to the Home Office. Apart from Radzinowicz's association with the Howard League and Maxwell's with the Haldane Society, there were no obvious links between the members of the Royal Commission and the retentionist or abolitionist campaigns.⁴⁷ Interestingly, though, Sir Ernest Gowers would later become a prominent abolitionist on the back of his

⁴³ 'Gowers, Sir Ernest Arthur', <<http://www.oxforddnb.com/view/article/33497>>, (02 August 2010).

⁴⁴ *The Times*, 29 April 1949.

⁴⁵ 'Radzinowicz, Sir Leon', <<http://www.oxforddnb.com/view/article/73693>>, (19 August 2010).

⁴⁶ 'Maxwell, Sir Alexander', <<http://www.oxforddnb.com/view/article/34958>>, (19 August 2010).

⁴⁷ TNA:PRO, HO 45/25084, Press notice of Royal Commission, 28 April 1949.

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experience as chairman of the Royal Commission. The months of deliberation by the government appeared to have been worthwhile. The media did not complain about the composition of the Royal Commission. The reporting of the membership was usually a simple roll-call of participants. The government had formed an acceptable Royal Commission. The next problem to tackle was limiting its terms of reference.

The government was unwilling to allow the Royal Commission to address the issue of abolition. This had not been their initial position. In November 1948, when Ede first recommended appointing a Royal Commission, abolition was included within the proposed terms of reference.⁴⁸ It was later in Cabinet that the Royal Commission lost the right to investigate abolition. It was left to consider limitations or modifications to the use of capital punishment and alterations to the law of murder.⁴⁹ The Cabinet felt that, as abolition was a matter of personal opinion, it would be difficult to achieve any practical results if the Royal Commission investigated it, especially as there were bound to be differing opinions on the subject within the Royal Commission which could prove difficult to overcome.⁵⁰ By limiting the terms of reference, the government succeeded in effectively removing capital punishment from the political agenda for a number of years without exciting the abolitionists into believing that there was the potential for a major step being taken towards abolition. There was nothing for the abolitionists to campaign about in the work of Royal Commission. The government accepted that this would not satisfy all abolitionists but they hoped that some may be placated by being given the opportunity to present evidence to the Royal Commission.⁵¹ Though some members of the government were unsure that creating

⁴⁸ Bailey, 'The Shadow of the Gallows', p. 345.

⁴⁹ Ibid.

⁵⁰ TNA:PRO, CAB 195/6, CM (48) 69, 8 November 1948.

⁵¹ Ibid.

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a Royal Commission to investigate capital punishment was a good idea, it proved a tactical masterstroke which postponed discussion on abolition in the last two years before a general election.

Upon being authorised by the government to research capital punishment, the commission members set about gathering evidence. A number of people were invited to give evidence and a call for other participants to present evidence to the Royal Commission was publicised in newspapers.⁵² Most of the evidence received by the Commission came in the form of oral testimonies. Of the sixty-three meetings held during the Royal Commission, thirty-one were mostly devoted to hearing the oral evidence of 118 witnesses. The commission members wanted their research to be as open as possible. Almost all of the interviews were held in public. Of the ten witnesses who requested a private hearing, eight later agreed to have their evidence published. Official witnesses came from the Home Office, Prison Commission and the Scottish Home Department. The Director of Public Prosecutions, Crown Agent, Lord Chief Justice of England, Lord General Justice of Scotland and various judges, police officers, prison governors, medical officers, chaplains, bishops, Lords, lawyers, doctors and activists were invited to give evidence. The Commission also took evidence from foreign states whose application of capital punishment differed from Britain's.⁵³

The Royal Commission's research looked into many liberalising reforms of capital punishment and the law of murder. They investigated mitigating factors which would change the definition of murder and determine who was liable to face capital punishment. The factors affecting the law on murder which they discussed introducing or reforming

⁵² *The Times*, 29 April 1949.

⁵³ *Royal Commission on Capital Punishment 1949-1953*, Cmd. 8932, (London, HMSO, 1953), pp. 1-2.

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were fairly liberal. In 1949, murder and manslaughter were “felonies at common law” which were not defined by any statute.⁵⁴ As such, the distinction between the two had always rested on precedent and the judges’ interpretation of this. This distinction was based on the presence of “malice aforethought”.⁵⁵ The malice did not have to be the intention to kill. The doctrine of constructive malice meant that anyone who killed a person, even accidentally, whilst committing a felony or resisting arrest had committed murder. Their other offence or resistance was recognised in law as the malice for their killing. The offender would, therefore, be liable to suffer death.⁵⁶ The Royal Commission found this to be a most illogical doctrine and recommended its complete abolition.⁵⁷

The Royal Commission sought to affirm the law concerning provocation as a mitigating factor that determined whether an incident of homicide was manslaughter instead of murder. Provocation had for centuries demoted a charge of murder down to manslaughter. The commission members wanted the definition of provocation to be simplified. An offender was judged to have been provoked into an action if he or she was “deprived of self-control”. The Royal Commission recommended that juries should no longer consider whether the provocation was enough to make a reasonable man lose self-control and accepted that words alone could be provocative. Provocation, under the Royal Commission’s guidelines, would now be judged purely on the individual case rather than on any other precedent.⁵⁸

Possibly the most liberal development to the law of murder that was recommended by the Royal Commission concerned insanity, the M’Naghten Rules and diminished

⁵⁴ *Royal Commission on Capital Punishment 1949-1953*, p. 25.

⁵⁵ *Royal Commission on Capital Punishment 1949-1953*, p. 26.

⁵⁶ *Royal Commission on Capital Punishment 1949-1953*, p. 29.

⁵⁷ *Royal Commission on Capital Punishment 1949-1953*, p. 41.

⁵⁸ *Royal Commission on Capital Punishment 1949-1953*, p. 52.

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responsibility. As the law stood, any person convicted of murder who was judged to be insane had their sentence respited and was sent to an appropriate institution.⁵⁹ To be insane meant that, at the time of the act, the defendant was not responsible for his actions because of his mental state. The test for this, the M’Naghten Rules, had to be applied by the jury in deciding whether the defendant was indeed insane at the time of the offence.⁶⁰ Though the offender would be spared death, they would still suffer an indeterminate period of confinement in an institution, which may not always have been appropriate. In Scotland, the doctrine of diminished responsibility had already been successfully introduced, which blurred the previously sharp division between sane and insane. This allowed lesser forms of mental abnormality than outright insanity to be accepted as mitigating factors in a homicide. Unlike the law on insanity as it stood in England and Wales, in Scotland the defendant did not need to persuade the jury beyond reasonable doubt that they were insane, but rather convince them on the “balance of probability” that they were not fully in charge of their actions and therefore not wholly responsible for the offence. This would result in a verdict of culpable homicide rather than murder and required a less severe punishment.⁶¹ The Royal Commission recommended that England and Wales should adopt the doctrine of diminished responsibility in the manner that it was employed in Scotland.⁶²

The final liberal recommendations in the report of the Royal Commission were the removal of suicide pacts and mercy killings from the category of murder and raising the age-limit for capital punishment. The issue of suicide pacts did not apply to Scotland, where both suicide and attempted suicide were not criminal offences. There was greater

⁵⁹ *Royal Commission on Capital Punishment 1949-1953*, p. 76.

⁶⁰ *Royal Commission on Capital Punishment 1949-1953*, p. 83.

⁶¹ *Royal Commission on Capital Punishment 1949-1953*, pp. 130-1.

⁶² *Royal Commission on Capital Punishment 1949-1953*, p. 143.

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opposition from the witnesses before the Royal Commission to the removal of mercy killings from the crime of murder than there was for suicide pacts. In particular, the Archbishop of Canterbury opposed such a move, arguing that, whatever the motive, there was still a “deliberate and intentional killing” that had to be classified as murder.⁶³ Both of these situations, incidents of which were rare, would be impractical to judge if they ceased to be murder, but the Royal Commission was of the opinion it would be wrong to sentence people to death who should be pitied rather than punished.⁶⁴ The Commission were split by six votes to five in favour of raising the age limit for capital punishment from eighteen to twenty-one. The arguments against raising the age limit were fairly straightforward, stating that a person aged eighteen, nineteen or twenty was fully aware of their actions and the legal consequences and, in a situation where they were not, there would be such a level of immaturity present that the offender would be a suitable candidate for mercy. The number of juvenile offences was increasing at this time. It was seen as counter-intuitive to remove the ultimate deterrent from a type of crime which was becoming increasingly prevalent in society. The opponents were, however, outvoted by the rest of Royal Commission who felt that all people under twenty-one lacked the emotional development and maturity required to make the death penalty a just punishment for this group. They also acknowledged the “especially acute” repugnance in Britain to the execution of young people.⁶⁵

The major topic of debate that would stem from the report of the Royal Commission was the issue of degrees of murder. This subject would be debated for over ten years until capital punishment was eventually abolished for murder in 1965. The Royal Commission devoted a great deal of time to it. There were clear arguments both for and against the

⁶³ *Royal Commission on Capital Punishment 1949-1953*, p. 63.

⁶⁴ *Royal Commission on Capital Punishment 1949-1953*, pp. 59-64.

⁶⁵ *Royal Commission on Capital Punishment 1949-1953*, pp. 68-72.

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introduction of degrees of murder presented to them by the witnesses. However, the Commission members felt that, without a logical and adequate definition of the degrees, there could be no question of categorising murders into capital and non-capital offences.⁶⁶ The Commission members made it clear that they would have liked to have been able to recommend the creation of degrees of murder but felt that they could not do so because of the “theoretical and practical objections” that were borne out of the fact that murder did not have just two categories.⁶⁷

The final significant area of investigation was the method of execution employed in Britain. The Royal Commission considered two other methods of execution alongside hanging that were already in use in the USA: electrocution and lethal gas. Hanging was judged to be slightly more humane and reliable than these other two forms of execution but, perhaps with apparent inconsistency, less “decent”. The Royal Commission did not recommend changing from hanging to either of these forms of execution. The Royal Commission looked for other methods of execution but could not propose any that would be preferable to hanging.⁶⁸

By the time that the Royal Commission presented its report in 1953, the government had changed. Attlee’s Labour government was defeated by Churchill’s Conservatives in 1951. Its recommendations would be considered by a governing party far more inclined towards retention than its predecessor. On 29 July 1954, the Cabinet agreed that they should advise the Commons to reject what they felt were the three major recommendations of the Commission: raising the age limit of capital punishment, allowing the jury to consider further mitigating circumstances for murder and letting the jury decide on cases of

⁶⁶ *Royal Commission on Capital Punishment 1949-1953*, p. 173.

⁶⁷ *Royal Commission on Capital Punishment 1949-1953*, p. 189.

⁶⁸ *Royal Commission on Capital Punishment 1949-1953*, pp. 249-61.

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diminished responsibility on the basis of the defendant's mental state. They did agree, however, with the recommendations to remove the doctrine of constructive malice and to make participation in a suicide pact a crime of manslaughter rather than murder. The government recognised that the only issue left in the capital punishment question was abolition.⁶⁹

The Commons had to wait until February 1955 to debate the recommendations of the Royal Commission, despite many questions being raised to the Home Secretaries, David Maxwell-Fyfe and Gwilym Lloyd George, throughout 1954 about the timing of the debate. As the debate approached, Sydney Silverman tabled an amendment to abolish capital punishment for five years. The debate about the Royal Commission's report took the form of passing a resolution to take note of it and its recommendations. It was the abolition amendment which sparked a debate that lasted over six hours. The Attorney-General, Reginald Mannigham-Buller, summed up the debate for the government by saying, apparently persuasively, that the scope of capital punishment over the years had been "pruned and pruned".⁷⁰ In the end, the government succeeded in persuading the House that Silverman's amendment should be rejected, which it was by 245 votes to 214. The abolition amendment dominated the Commons' debate. The Royal Commission's report was somewhat neglected. In defeating the abolition amendment the government was able to further postpone debate on whether any of the recommendations should be taken into law. The Conservative-led Commons remained in favour of retention and acknowledged the report of the Royal Commission. Debate would now continue throughout 1955 over which of the recommendations should be adopted. The government had succeeded in delaying

⁶⁹ TNA:PRO, CAB 195/12, CC (54) 56, 29 July 1954.

⁷⁰ HC Deb 10 Feb. 1955 vol. 536 c2178.

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further debate on capital punishment and had, for the time being, defeated the abolitionists. The Royal Commission on Capital Punishment had kept abolition from becoming a significant issue in British politics and the media for almost six years. In October 1955, the Cabinet, under the leadership of Anthony Eden, the new Prime Minister, reaffirmed that the government could not accept any of the main recommendations of the Royal Commission and now added that they would not legislate on any of the other recommendations. The time had come, however, for a fresh announcement on the report and capital punishment. The Cabinet knew that this would lead to fresh calls for abolition which would be more difficult to resist in the Commons.⁷¹ The period of success was coming to an end for the retentionists, as the abolitionists gathered momentum through the 1950s, spurred on by controversial executions. The end of the period of success for the retentionists will be discussed in the next chapter.

Reginald Manningham-Buller argued that Britain was not in a state to undergo abolition. But what did he mean by this? The crime rate for the period appears to be the justification for his assertion. Between 1949 and 1953 incidents of crime fell. However, in 1954 this changed dramatically. From then until the early 1960s the crime rate rose by approximately ten per cent every year.⁷² This was very good timing for the retentionists. The crime rate began to rise as the Royal Commission published their report. By the time that capital punishment was debated once again, the retentionists had favourable statistics to add weight to their argument. Whether or not Manningham-Buller believed that the British people were not yet ready, or civilised enough, to experience abolition, the crime

⁷¹ TNA:PRO, CAB 128/29, CM (55) 35, 18 October 1955.

⁷² Taylor, 'The Politics of the Rising Crime Statistics', pp. 24-5.

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statistics meant that he could legitimately claim that Britain was not in a position to remove capital punishment without further endangering law and order within society.

Four murder cases between 1949 and 1955 loomed large over the abolition debates. The executions of Timothy Evans in 1950, Derek Bentley and John Christie in 1953 and Ruth Ellis in 1955 added a crucial sensationalist element to the abolitionists' campaign. These cases provided a widely marketable dimension to the abolitionist movement which would appeal to a much greater proportion of society than any argument based on statutory reform. During the same period, John Haigh, the acid bath murderer, was convicted and hanged. Though there was a crowd of 2,000 outside the court that cheered the judge as he left after sentencing Haigh, they gave no reaction to the convict as he left, apparently smiling and joking with officers. The newspaper articles on him focused more on the fantastical drama of this case rather than the evil actions of Haigh.⁷³ Ellis' case, in particular, added great credence to the abolitionist cause. Evans' and Bentley's cases drew attention because of apparent miscarriages of justice. Christie's execution added credence to the argument that Evans was innocent. Ellis admitted to shooting her partner and was judged to have been in sufficient control of her actions to be guilty of murder. There was little disagreement over her guilt from the media. Her sentence, however, caused much more controversy. The main objections to her execution centred on her status as a young, single mother of two. The fact that she was a blonde, attractive model did not go unnoticed.⁷⁴ The majority of the press were outraged at her execution, though there were a few incidents of support for her fate. Interestingly, the *Daily Mirror* provided two polarised interpretations of the Ellis case within weeks of each other. In one article, which showed no

⁷³ *Daily Mirror*, 20 July 1949.

⁷⁴ *Daily Mirror*, 04 July 1955.

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regret for her execution, the newspaper described how Ellis had become “the jealous and vicious woman who could kill”.⁷⁵ In another they lamented her death and noted the disgust felt at her execution around the world, quoting many foreign newspapers which scorned Britain’s lack of civility: “the hanging has shamed Britain in the eyes of most of the civilised world”.⁷⁶ Though public opinion remained firmly rooted against abolition throughout these cases, a Gallup poll in July 1955, the month of Ellis’ death, found that sixty per cent of respondents supported the execution of women.⁷⁷ By December 1955, the majority in favour had dropped to fifty-two per cent.⁷⁸ Every poll on this subject in the post-war era showed that support was weaker for the execution of women than men. The further decline in support during 1955 was bound to have been influenced, at least in part, by the extensive coverage of Ellis’ execution. There was, however, a general decline in support for capital punishment in the polls during 1955 as politicians and activists began preparing for a major battle on abolition in 1956, though it never dipped below sixty per cent. This movement, and the specific role of Ellis’, Evans’ and Bentley’s cases in it, will be looked at in further detail in the next chapter.

The rare article of support for Ellis’ sentence from the *Daily Mirror* included an interesting notion about her demise. Her ill-fated attempts to escape her humble background in Manchester by using her good looks to achieve a glamorous lifestyle in London, her willingness to pose in “scanty clothing for postcard photographs” and the birth of her child out of wedlock had pushed her from being “a simple, quiet girl” towards

⁷⁵ *Daily Mirror*, 22 June 1955.

⁷⁶ *Daily Mirror*, 14 July 1955.

⁷⁷ Gallup, *The Gallup International Public Opinion Polls*, vol. 1, p. 350.

⁷⁸ Gallup, *The Gallup International Public Opinion Polls*, vol. 1, p. 361.

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becoming a killer.⁷⁹ She was, one can infer from this article, a sour product of the increasingly permissive society in Britain which made it acceptable for young women to sell their body in public for social gain and fostered ideas in impressionable, immature people that they could rise above their station. In the words of the article: “she tried to gatecrash Society”.⁸⁰ These ideas of permissiveness and social place were part of a typical retentionist philosophy on crime. Mid-1950s Britain was beginning to allow people, like Ellis, to employ morally dubious means to rise through society. These freedoms required the state to retain controlling measures over society to ensure that those who were not responsible enough to control themselves did not follow Ellis into the criminal world. For the retentionists, this meant retaining capital punishment as the ultimate deterrent.

At the same time that the majority of the British media was up in arms about Ellis’ execution, as well as those of Evans and Bentley, the British colonial government in Kenya was enforcing Emergency Regulations to defeat the Mau Mau rebellion. As part of this, Britain detained a huge number of Kenyans, usually without trial. Though the figure is unknown, it has been estimated to be around 1.5 million, far higher than the official government figure of 80,000. This accounted for almost the entire Kikuyu population, the native community of the Mau Mau rebels.⁸¹ A similarly uncertain number of Mau Mau’s were killed by the British, estimated by Caroline Elkins to be in the tens, if not the hundreds of thousands.⁸² Of those killed, 1,090 were executed. At no other time in British imperial history was capital punishment used to this extent.⁸³ The Emergency Regulations

⁷⁹ *Daily Mirror*, 22 June 1955.

⁸⁰ *Ibid.*

⁸¹ Caroline Elkins, *Britain’s Gulag: the Brutal End of Empire in Kenya*, (London, Pimlico, 2005), p. xi-xii.

⁸² Elkins, *Britain’s Gulag*, p. xiv.

⁸³ David Anderson, *Histories of the Hanged: Britain’s Dirty War in Kenya and the End of Empire*, (London, Weidenfeld and Nicolson, 2005), p. 7.

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involved collective punishments, curfews, restrictions on movement, confiscations of property, special taxes, heightened censorship and detention without trial amongst other repressive measures.⁸⁴ There were also implications for the use of capital punishment. “Enactments issued between April and June 1953 made it a capital offence to administer or freely participate in the taking of a Mau Mau oath; to be known to be a member of a Mau Mau gang likely to carry out acts prejudicial to public order; to be in possession of any item of explosives, arms or ammunition; to consort with those likely to carry out acts prejudicial to public order; or to consort with persons whom it was reasonable to know were carrying arms or ammunition”.⁸⁵ Anyone who was believed to be linked to a Mau Mau rebel was at risk of being hanged. This resulted in a surge of suspects waiting to stand trial. It was impractical to process all of these cases in the ordinary courts. There would need to be changes to the legal system. New legislation introduced mass trials in specially created courts to deal only with cases concerning the Emergency Regulations. Also introduced were the denial of the opportunity for the defendant to know the evidence against him before the trial and a greatly reduced right to appeal. Though the British government were uneasy with these regulations, in particular the latter two, they did not block them. At the time that the retentionists’ successful opposition to abolition was coming to an end in Britain, in Kenya the British were creating new repressive laws, denying defendants basic rights which were considered sacrosanct back at home, and executing over 1000 people without due process.⁸⁶ And yet, somewhat surprisingly, the abolitionists did not use this example to attack the use of capital punishment. There were only a handful of questions raised in Parliament about the extent of capital punishment in Kenya. The media reported

⁸⁴ Elkins, *Britain’s Gulag*, p. 55.

⁸⁵ Anderson, *Histories of the Hanged*, p. 152.

⁸⁶ Anderson, *Histories of the Hanged*, pp. 152-5.

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the execution of Mau Maus for offences less serious than murder in a matter-of-fact style without comment on the horror of executing people for crimes that were not, in Britain, capital or even, in some cases, crimes at all. In one instance, *The Times* published a small article detailing the execution of nineteen Mau Mau for illegal possession of arms and consorting with persons who were unlawfully armed.⁸⁷ For the British people, Kenya presented a situation that was entirely different to their own country. There was little apparent sense of injustice at the punishments meted out to the Mau Mau rebels. Arthur Creech Jones' statement in 1947 that the dependent colonies required the retention of capital punishment as they were not yet civilised enough to control themselves appears to have been a view that still rang true across Britain in the mid-1950s.

The retentionists, through the Royal Commission on Capital Punishment, had succeeded in delaying further discussion on capital punishment. When debate did arise once again in the Commons, the new, more retentionist Conservative majority and the rising crime rate meant that an abolition amendment could be defeated. Not even the most notorious and unpopular post-war executions or the British repression of the Mau Mau rebels in Kenya could, at this time, persuade Parliament to adopt abolition. Though there would be no benefit for the retentionists in linking the hangings of the Mau Mau rebels or the infamous British murderers to their campaign against abolition, the abolitionists could not sufficiently damage their argument by using any negative publicity that these cases may have received. However, the period of success for the retentionists was coming to an end. In 1955, pressure began to mount once again for a fresh debate on capital punishment. The retentionist government knew that they could not resist for much longer.

⁸⁷ *The Times*, 08 November 1954.

SECTION II

Compromise 1955-1957

Death Penalty (Abolition) Bill

Chapter 3

Cases like that of Ruth Ellis stay in our memories and from them we judge the English people. The continuance of the death sentence in England is a burden for England's good name in the world.⁸⁸

This quote from the Scandinavian newspaper *Aftonbladet*, reported in the *Daily Mirror*, highlights the fact that, in 1956, Britain was one of only four western European countries not to have abolished or stopped using capital punishment in peacetime. The abolitionists sought to remove Britain from this minority. Unlike in 1947, in 1956 the victory of the abolitionists in the House of Commons did not come as a surprise. This time the retentionists could not manoeuvre themselves into a position to simply defeat the abolitionists. What had changed to force the retentionists to search for a compromise? Their opponents had become stronger and had organised themselves into an effective lobby. This chapter will look at this process in detail by focusing on the campaigning work of the NCACP and setting this in the context of several high profile murder cases. In doing so it attempts to explain how the retentionists were forced from the position of strength that they had enjoyed over the previous few years. Before this, though, is an analysis of the debates surrounding the votes in Parliament on the Death Penalty (Abolition) Bill in 1955 and 1956.

Every government since the end of the Second World War had supported retention. The Death Penalty (Abolition) Bill was not the first time that the Commons had voted for abolition against the government's advice. On this occasion, however, the government's

⁸⁸ *Daily Mirror*, 14 July 1955.

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abolitionist opposition was stronger and more numerous. Perhaps the most important factor behind the abolitionists taking control of the Commons away from the retentionists over this issue, despite continuing support for capital punishment from the general public, was the emergence of the NCACP. Following on from the work of the National Council for the Abolition of the Death Penalty, formed in 1925, the NCACP was a major force in the abolitionist campaign. Formed in 1955, the NCACP had two influential leaders: Gerald Gardiner, a prominent barrister, and Victor Gollancz, a publisher and activist. James Christoph credits Gollancz, from whom he received assistance with the writing of his book, with having started the new movement for abolition.⁸⁹ Whether this was genuinely the case is questionable, but the influence of Gollancz was crucial to the abolitionist cause. As well as being heavily involved in founding the NCACP, Gollancz could use his publishing company to widely circulate abolitionist books and pamphlets and his contacts to organise rallies. The output of books on capital punishment from Victor Gollancz Ltd was impressive. Paget and Silverman together in 1953, Gollancz himself in 1955 and Gardiner, Gowers and Koestler separately in 1956 all published abolitionist texts. There were no such publications by the retentionists. Capital punishment had become a subject for the abolitionists to scrutinise intensely. What is more, these arguments and deliberations were no longer being voiced in their greatest detail within the confines of the Palace of Westminster. The books, although most people would not read them, together with the rallies, pamphlets and press coverage finally made the abolitionist campaign easily accessible to the general public. Though this did not sway the public in any great numbers towards abolition, it did heighten awareness of the more intellectual arguments for

⁸⁹ James Christoph, *Capital Punishment and British Politics: the British Movement to Abolish the Death Penalty 1945-57*, (London, George Allen and Unwin Ltd., 1962), p. 113.

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abolition. This, along with the uproar over Ruth Ellis' execution, contributed to the decline in support for capital punishment in the opinion polls in 1955 and 1956, though it never dropped below sixty per cent. Of course, this was not the first time that intellectuals had published on the subject of capital punishment. In the 1760s, Cesare Beccaria, the Italian philosopher and politician, wrote a scathing attack on the use of capital punishment in his study *On Crimes and Punishments*.⁹⁰ In 1930, Roy Calvert published his study on the death penalty.⁹¹ No matter how good these studies were, though, no-one would be influenced by them in the mid-1950s as they did not relate to the present situation. Gollancz's volumes did.

The NCACP worked with many abolitionist MPs, in particular Sydney Silverman, to spread their campaign to as many people as possible. Their mission was to educate people about the merits of abolition. There was no similar lobbying from the retentionists, despite the acceptance in 1956 that they would have to convince the House of Commons to switch their allegiances back to retention.⁹² The government would not spend tax payers' money producing propaganda and there were no other groups large enough to be able to afford the publishing costs of such a campaign. On top of this, legal and religious opinion was becoming hazier on the subject. This will be studied in more detail later in this thesis. The retentionist lobby, despite the public support that it enjoyed, was small, disjointed and insignificant. There were no figureheads like Gardiner, Gollancz and Silverman for the retentionists who did not come from the government. Their campaign lacked a popular leader who could throw weight behind the movement. The only notable incident of

⁹⁰ Cesare Beccaria, *On Crimes and Punishments and Other Writings*, (ed. Richard Bellamy), (Cambridge, Cambridge University Press, 2000), pp. 66-72.

⁹¹ E. Roy Calvert, *Capital Punishment in the Twentieth Century*, (London, G. P. Putnam's Sons, 1930).

⁹² TNA:PRO, CAB 195/14, CM (56) 20, 8 March 1956.

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retentionist opposition to Silverman's abolition Bill came when 4,500 prison officers protested against abolition, with the Prison Officer's Association demanding "special legislation for murderers who kill again in prison".⁹³ Retention, therefore, had support in two separate, unconnected realms: the political, lobbying realm and the general public. The NCACP provided a link between the abolitionists and general public for their campaign through their books and rallies. The retentionists lacked such an infrastructure.

The cases of Timothy Evans, Derek Bentley and Ruth Ellis were influential to the general shift towards abolition. Their executions aided the abolitionist campaign. Timothy Evans was believed at this time to have been wrongly convicted for the murder of his daughter after John Christie confessed to murdering Evans' wife. It was assumed that he had also killed Evans' daughter. It should be noted, though, that in the debate on the government's motion on capital punishment on 16 February 1956, R. A. Butler, the Lord Privy Seal, mentioning the Evans case, maintained that no innocent man had been hanged in Britain in modern times.⁹⁴ In years to come Evans would be pardoned and eventually have his conviction quashed. Derek Bentley was mentally subnormal. He was convicted for the murder of a police officer under the doctrine of constructive malice. He was hanged after being declared sane through the application of the M'Naghten Rules. Ruth Ellis, though guilty of fatally shooting her partner, did so under severe emotional strain. The latter two cases would, under the proposed changes to the law by the Royal Commission, be considered manslaughter on account of diminished responsibility. As well as being causes célèbres for the abolitionist campaign which caused outrage amongst much of the public and media, these cases also embodied three of the major problems identified within

⁹³ *Daily Express*, 23 February 1956.

⁹⁴ HC Deb 16 Feb. 1956 vol. 548 c2643.

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the law on murder and capital punishment: constructive malice, diminished responsibility and hanging an innocent person. The cases, understandably, were mentioned in the Commons by the abolitionists. With the notable exception of his comment mentioned above, Butler refused to be drawn into talking about any particular case as part of the debate.⁹⁵ There was nothing to be gained for the retentionists in entering a discussion of specific cases, as this would greatly favour the abolitionists. The public were more interested in executions that were seen to be inappropriate or unjustifiable. Other executions which were deemed to be justifiable did receive attention from the media and public but did not achieve the celebrity status of Evans', Bentley's or Ellis' cases. These cases were a useful medium through which the abolitionists could engage the general public and media with their arguments. Without them, it would be hard to imagine how the media in particular would have warmed to the abolitionist campaign.

By late 1955, the move towards a compromise had begun. The retentionist Conservative government knew that they would have to address the abolition question once again. In October of that year, the Cabinet acknowledged that there would be pressure on them to state their intentions in relation to capital punishment, particularly after the Howard League for Penal Reform had called for abolition. The Cabinet anticipated fresh, potentially sterner opposition from the abolitionists when they did comment, but recognised that they had no choice but to do so and at the next possible opportunity. They would state that they could not legislate on any recommendations of the Royal Commission and, therefore, would recommend no change to the current law.⁹⁶ The government could be excused for

⁹⁵ Ibid.

⁹⁶ TNA:PRO, CAB 128/29, CM (55) 35, 18 October 1955.

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feeling concerned about their chances of defeating a motion on abolition in the Commons.⁹⁷ Despite an increase in the Conservative majority in the Commons after the general election of 1955, abolition had gained popularity amongst certain groups, thanks in part to the increased activity of the NCACP. For once the abolitionists could look for support from a significant number of Tories. Indeed, the government anticipated that a number of Conservative MPs would support abolition.⁹⁸ Nevertheless, they were convinced that abolition was not appropriate for Britain.

In late November 1955, Sydney Silverman asked a Parliamentary question about the state of public opinion on capital punishment and introduced his Private Members' Bill on abolition, which unanimously passed its first reading under the Ten Minute Rule.⁹⁹ His question caused considerable debate amongst the Cabinet, who spent two meetings formulating an answer. It was decided that the Prime Minister would respond to the question in Parliament. Prime Ministers did not usually involve themselves in the issue of capital punishment. The fact that Anthony Eden chose to do so highlights the gravity of the situation that faced the retentionists. On deciding that Eden would reply, the Cabinet concluded that they believed the Commons now favoured abolition, though they felt that the general public was still mostly retentionist. The Cabinet decided, in this same meeting, that they should be open to the idea of finding Parliamentary time to debate capital punishment. They wanted to delay the debate but did not believe that this would be possible.¹⁰⁰ That the government felt that they could not delay the debate much longer

⁹⁷ TNA:PRO, CAB 128/29, CM (55) 42, 22 November 1955.

⁹⁸ Nationally Library of Wales, Aberystwyth, Gwilym Lloyd George Papers, NLW MS 23668E, Unknown author to Lloyd-George, 1956.

⁹⁹ TNA:PRO, CAB 128/29, CM (55) 42, 22 November 1955.

¹⁰⁰ TNA:PRO, CAB 128/29, CM (55) 43, 24 November 1955.

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shows the strength of feeling towards abolition that was believed to be present amongst MPs.

The government's perception that abolitionist sympathies were now more firmly entrenched within the House of Commons than in 1948 indicates that, in the years since the Criminal Justice Act, MPs had become more determined in their opposition to capital punishment. The Commons supported abolition, against government advice, just a year after voting for retention in February 1955. In between these two votes was a general election which was won by the Conservatives, who increased their majority by thirty-seven. Of the forty-eight Conservative MPs who would vote for abolition in February 1956, thirty-eight had entered Parliament after 1948, eighteen of them in 1955. There were new faces on the Conservative benches in the Commons and many of them had progressive ideas about capital punishment. While the Conservative MPs remained firmly retentionist overall, it is no coincidence that their slight shift towards abolition corresponded with the entry of new members into the Commons.

On answering Silverman's question in Parliament on finding time for the Second Reading of his abolition Bill, Eden told him that abolition would be debated again. Unfortunately for Silverman, this would not necessarily be through finding an opportunity to read his Bill a second time.¹⁰¹ The government were wary of Silverman's Bill. After its first reading, 166 MPs from all parties signed the order paper supporting the call for its second reading.¹⁰² The Bill provided for the complete abolition of capital punishment for murder, either permanently or for a temporary period. Though the government knew that if this Bill were passed by the Commons the Lords would probably defeat it, they would not

¹⁰¹ HC Deb 24 Nov. 1955 vol. 546 cc1653-4.

¹⁰² HC Deb 17 Nov. 1955 vol. 546 c785.

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be able to ignore the will of the Commons on this issue again, particularly if, as expected, there was a majority for abolition in the Commons. The government would have preferred the debate not to be framed around the simple question of whether or not to accept total abolition for murder. This way they could hope to persuade some government-supporting abolitionists to adopt the party line if a compromise were offered.

The Commons was clear in its wish to abolish capital punishment, despite the support for retention from the majority of the population. Why, therefore, could the government not act in defiance of the Commons's will and apply the whips to this vote? The answer lies within the nature of the capital punishment debates. Public opinion was always a weak argument in support of the retentionist case as the House of Commons saw abolition as an issue that belonged to itself. Capital punishment's main proponents and opponents were MPs and they would vote in line with their own opinions or, in some cases, in line with advice from the government. Coupled with the fact that abolition was not an issue that would be likely to affect a general election, the government was always answerable primarily to the Commons over its conduct concerning capital punishment. As the abolitionists had already shown their determination to fight their corner in the face of governmental opposition, the government could not expect to get away with simply skirting the will of the Commons. By performing such a move, they would risk isolating themselves from the vast majority of MPs from both sides of the debate who desired a free vote on this issue.¹⁰³

By January 1956, the government could delay the vote no longer. They recognised that simply blocking a second reading would be dangerously unpopular in the Commons, and so found time for it to be debated. They did have one method, though, which they

¹⁰³ TNA:PRO, CAB 195/14, CM (56) 8, 31 January 1956.

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hoped would scupper Silverman's abolitionist Bill. In February, the month before the second reading, the government tabled a motion under the names of the Prime Minister, the Leader of the House, the Attorney-General and the Secretary of State for Scotland calling for capital punishment to be retained but amended. This was the compromise that they hoped would split the abolitionists and avoid the Commons voting for abolition.¹⁰⁴ Their motion would be debated before time had been found for the second reading of Silverman's Bill. This was all that they could do in the run up to the debate. They did not want to give a clear opinion on Silverman's Bill as it would be subject to a free vote. By stating their opinion, Conservative MPs may have felt pressured to vote with their government, making the government appear to be manipulating the free vote. The government now had to focus on preparing for the debate.

Though there was little doubt that most of the members of the government supported retention, in early 1956 it was still necessary for the Home Secretary, Major Gwilym Lloyd George, to outline the arguments for and against abolition for the Cabinet. In an age when liberalisation was accelerating in society, Lloyd George was somewhat anomalous. He became increasingly conservative throughout his career. Unsurprisingly, as the Home Secretary of a retentionist government, Lloyd George, despite having an abolitionist background, recommended that capital punishment should not be abolished.¹⁰⁵ He did, however, offer the first compromise to the abolitionists: he suggested that the royal prerogative of mercy should be used more frequently. It was under his direction that the government tabled their compromise motion.¹⁰⁶ It is unlikely that the Cabinet were unsure over their collective position on abolition. Rather, by compiling the arguments on both

¹⁰⁴ Christoph, *Capital Punishment and British Politics*, pp. 126-30.

¹⁰⁵ 'George, Gwilym Lloyd', <<http://www.oxforddnb.com/view/article/34571>>, (10 September 2010).

¹⁰⁶ TNA:PRO, CAB 128/30, CM (56) 1, 03 January 1956.

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sides, the Home Secretary could help his colleagues to anticipate the questions and issues that would be raised in the forthcoming debates. The Cabinet also turned to international examples of abolition. Though they accepted that there had been no example where abolition led to a rise in the murder rate, they still viewed abolition as too great a risk to the maintenance of law and order.¹⁰⁷ The Cabinet could add no weight to their argument by using international examples of abolition. In the absence of evidence that abolition elsewhere led to an increase in the crime rate, and yet believing that there was a serious enough risk that the British murder rate would rise if capital punishment were abolished, the Cabinet must have considered that Britain was more inclined towards violence and less civilised than the abolitionist countries, such as Sweden and the Netherlands.

The Cabinet, having previously been resigned to defeat in the Commons, received a confidence boost on 8 February. They were told that “many government supporters who had previously been disposed to favour abolition of the death penalty would be willing to vote in favour of its retention if the government had given a clear indication of their intention to legislate on the secondary recommendations made by the Royal Commission on Capital Punishment and by the Committee of the Inns of Court Conservative and Unionist Society”.¹⁰⁸ The government response to this was immediate and obvious: they were to indicate their intentions. The debate six days later would be held on a government motion which allowed reform to the law of murder whilst retaining capital punishment. Statements would be made by ministers during the debates. Government supporters would be left in no doubt that, while they would retain capital punishment, the government would relax the law concerning constructive malice and provocation and would give serious

¹⁰⁷ Ibid.

¹⁰⁸ TNA:PRO, CAB 129/30, CM (56) 9, 8 February 1956.

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thought to introducing diminished responsibility into the law on murder in England and Wales. If their informant was correct, then their motion could be passed by the Commons if they took a clear lead on the subject of capital punishment.¹⁰⁹ The approval of this motion by the Commons could end any chance that Silverman's Bill had of being accepted before it was read for the second time. This was the only way forward for the government and it carried risk. A defeat for the government would not only pave the way for an abolitionist victory in March but it would also have serious ramifications for the government's authority, due to their inability to deal with a matter of law and order, less than a year after they increased their majority in the general election. Though this was not quite as serious as if the Commons were to reject a government Bill, the defeat of this motion, even on a free vote, would indicate that the government's influence over its own party was not as strong as it should be. They were staking their credibility on this motion and would have to face the consequences if it failed.

There were no new arguments raised during the Commons debate that had not been put forward before. However, as James Christoph explains, the focus on justification had changed. Unlike in 1948, when the Commons was less inclined to support abolition, the retentionists now had to justify their position. While both sides accepted that capital punishment was both a deterrent and an evil thing, for the retentionists it was a necessary evil, whilst the abolitionists argued that it was not a uniquely influential deterrent.¹¹⁰ An abolitionist, now, James Chuter Ede moved an amendment to the government's motion demanding immediate legislation for the abolition or suspension of capital punishment. The debate did not differ greatly in style and substance from those in 1948 or 1955. The

¹⁰⁹ Ibid.

¹¹⁰ Christoph, *Capital Punishment and British Politics*, pp. 135-7.

Death Penalty (Abolition) Bill

government needed to persuade enough MPs to change their minds over abolition. In the absence of any arguments that they would have heard before, such a change was unlikely.

R. A. Butler, who was given the task of concluding the debate for the retentionist government, made a surprising announcement to the House during his speech. He began by outlining the history of the Parliamentary discourse on capital punishment over the last century, stressing the importance of the context which it provided. He then declared that: “when we have a free vote, we [the government] naturally expect to base our actions, if perhaps after necessary further deliberation, on the decision of the House”.¹¹¹ Though this was not quite the promise to act that Christoph suggested it was, Butler had made it very difficult for the government to do otherwise in the likely event that the Commons passed this Bill.¹¹²

When Butler had finished urging MPs to adopt the government’s motion, the House divided. Christoph wrote that there was a buzz of expectation around the Commons. The abolitionists were desperate to win this vote. They even brought one Labour member from hospital to the voting lobby on a stretcher. When the voting paper was handed to the abolitionist teller, Mr de Freitas, there was a “great burst from scores of throats”. De Freitas himself was “pale with suppressed emotion...[he] struggled to control his feelings before he could announce the result”.¹¹³ The government were defeated on their motion by 293 votes to 262. Forty-eight Conservative MPs voted against their government. The subsequent abolitionist amendment was, unsurprisingly, passed, this time by 292 votes to 246.¹¹⁴

¹¹¹ HC Deb 16 Feb. 1956 vol. 548 c2635.

¹¹² Christoph, *Capital Punishment and British Politics*, p. 136.

¹¹³ Christoph, *Capital Punishment and British Politics*, p. 137.

¹¹⁴ HC Deb 16 Feb. 1956 vol. 548 cc2648-55.

Death Penalty (Abolition) Bill

The government was now in an awkward position. It could table a government Bill in line with the resolution of the House. This was the action that the abolitionists hoped the government would take. The other option was to find time for Silverman's Private Members' Bill. This option would allow the government to avoid supporting a Bill that they did not believe in and increase the chance of it being defeated in the Lords, who were expected to vote in line with public opinion. They were keen not to alienate the retentionist Conservatives who had voted with them on 16 February.¹¹⁵ With this in mind and in a move to avoid supporting an abolitionist Bill, the government chose the latter option. This greatly reduced the strength of the Bill and allowed the government to remain fairly confident that it would, ultimately, be defeated. The abolitionists were upset with this decision. They had expected the government to legislate in line with the resolution. Instead, they were told that Silverman's Private Members' Bill would be read for a second time on 12 March.¹¹⁶ Without government backing, the result in both Houses was a foregone conclusion. The Commons passed the Bill by 286 votes to 262.¹¹⁷ The Lords, without the pressure that they would have been under to accept the Bill if it were government sponsored, rejected it by 238 votes to ninety-five on 10 July.¹¹⁸ The abolitionists had failed to achieve their goal. But this was no success for the retentionists. Unlike in 1948, the government was left with a House of Commons which felt betrayed. They could not delay taking further decisive action in the manner of their Labour predecessors. Their course of action is analysed in the next chapter.

¹¹⁵ TNA:PRO, CAB 128/30, CM (56) 16, 22 February 1956.

¹¹⁶ Christoph, *Capital Punishment and British Politics*, pp. 138-40.

¹¹⁷ HC Deb 12 Mar. 1956 vol. 550 cc147-51.

¹¹⁸ HL Deb 10 July 1956 vol. 198 cc840-2.

Death Penalty (Abolition) Bill

At the time of these debates in early 1956, the *Daily Express* epitomised the state of flux in which the British media found themselves over the abolition process. In 1948, the newspaper had been quite firmly retentionist. In the wake of the Commons vote to abolish capital punishment as part of the Criminal Justice Bill, it focused on the retentionist anger at this outcome and pointed to the case of an eleven year old boy who had recently been murdered.¹¹⁹ By 1956, there was a sense of confusion about whether abolition was necessarily a bad thing. On balance the paper reported more about the actions of the retentionists. They also provided an early example of a newspaper criticising the absence of the death penalty for a particular person after the government imposed a moratorium on capital punishment following its defeat in the Commons in February 1956. After the Commons backed the motion to abolish capital punishment, the Home Secretary announced that he would grant mercy to all persons under a sentence of death until the abolition question was resolved in Parliament. Four days later, the paper ran with a front page headline about a woman who was stabbed to death the previous day “by a man who cannot hang”.¹²⁰ However, it also produced an article entitled “This is why hanging should end (say 11 notable people)”, detailing reasons in favour of abolition.¹²¹ The *Daily Express* remained a retentionist newspaper, but it became less staunch in its opposition to abolition. Other newspapers were more positive about the potential abolition of capital punishment. The *Daily Telegraph*, though very matter of fact in its reporting, had no qualms with the end of hanging.¹²² Throughout the years of the post-war abolition process, the *Telegraph* retained an abolitionist stance.

¹¹⁹ *Daily Express*, 15 April 1948.

¹²⁰ *Daily Express*, 20 February 1956.

¹²¹ *Daily Express*, 13 February 1956.

¹²² *Daily Telegraph*, 17 February 1956.

Death Penalty (Abolition) Bill

Timothy Evans, Derek Bentley and, in particular, Ruth Ellis gave the abolitionists human faces with which they could increase their campaign's marketability. The coverage of their cases would have made it easier for Victor Gollancz to enlist supporters when he formed the NCACP. The work of this organisation was important to the abolitionist cause, giving the campaign credibility. This was no longer a movement which, as the *Daily Express* put it in 1948, was led against government advice by a group of socialists in Parliament.¹²³ Influential and intellectual people were throwing their weight behind this organisation and the abolitionist cause. Over the coming years the NCACP would grow in size and have greater influence over the government. The end of the retentionists' success and the move towards compromise was triggered by the causes célèbres of Evans', Bentley's and Ellis's executions and facilitated by the work of Gollancz and the NCACP. However, the abolitionists had not won yet. The government was forced to act following their defeat, but this would not necessarily be to the benefit of the abolitionists. Christoph expressed this well when describing the passing of the abolitionist motion on 16 February 1956: "For many persons [abolitionist MPs and supporters] on the floor of the House and in the gallery, this moment was the climax of years of work and hope. But there also were those present who knew from bitter experience that a climax is not necessarily a consummation".¹²⁴

¹²³ *Daily Express*, 15 April 1948.

¹²⁴ Christoph, *Capital Punishment and British Politics*, p. 137

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Chapter 4

Where degrees of murder have been introduced, they have undoubtedly resulted in limiting the application of capital punishment and for this reason they have commended themselves to public opinion, but in our view their advantages are far outweighed by the theoretical and practical objections which we have described. We conclude with regret that the object of our quest [to examine whether the introduction of degrees of murder could work] is chimerical and that it must be abandoned.¹²⁵

Despite this warning from the Royal Commission, the categorisation of murder would become the most controversial element of the *Homicide Act 1957*. The Conservative government did not waste any time after the defeat of the Death Penalty (Abolition) Bill to formulate their strategy. They had regained the initiative, but their next move in the abolition saga would prove pivotal to the entire process. Although the abolitionists could do no more to further their cause in Parliament following the defeat of Silverman's Bill, the government could not afford to ignore the growing discontent within the Commons about capital punishment and the law of murder. The death penalty could be retained no longer without significant reform. The retentionists had to find a compromise that satisfied both parties. This chapter looks at both the decision making process that led the government to introduce what was to become the *Homicide Act 1957* and how far they were forced into choosing this plan of action by the increasingly strong abolitionists and the developing permissive society in Britain. There will be a consideration of whether the government believed that British society and the British people had evolved in any way to allow capital

¹²⁵ *Royal Commission on Capital Punishment 1949-1953*, p. 189.

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punishment to be limited and a brief discussion of the international context provided by the Suez Crisis.

The government needed to decide how far they should limit capital punishment. They had to satisfy the abolitionists that the reforms were suitably progressive whilst not removing the deterrent by so much that it would anger the retentionists, most of whom were government supporters. New legislation abolishing capital punishment for murder was not on the cards. The government did not take long to formulate the basic structure of their new Bill. Fundamentally, the Cabinet agreed that now was the time for the government to assume responsibility for an issue which affected law and order. The new Bill would be framed around reforms to the law on suicide pacts, provocation, constructive malice and diminished responsibility, in line with the recommendations of the Royal Commission that the government had rejected the previous year. The Attorney-General recommended that the government employ their whips for this legislation in order to prevent another Private Members' Bill on full abolition scuppering their Bill. As this would be a vote on reforming the law on murder, which entailed some form of limitation of capital punishment, the government did not feel honour bound to allow a free vote.¹²⁶ The framing of the Bill around the four areas mentioned above did not include a compromise on abolition. The compromise would come from the limitations that the government would recommend should be applied to capital punishment. On this subject, they were less rapid in their action, and rightly so. This decision would determine not only whether the Bill would be successful or not, but also whether it would solve the abolition issue for the foreseeable future. They decided to form a committee, consisting of the Lord Chancellor, the Home Secretary, the Secretary-of-State for Scotland, the Attorney-General and the Lord

¹²⁶ TNA:PRO, CAB 128/30, CM (56) 69, 8 October 1956.

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Advocate, to investigate how best they could limit capital punishment in this Bill. They would seek advice from the Archbishop of Canterbury and Lord Samuel, a former Home Secretary. The government anticipated that it would be complicated to legislate for a compromise and, for this reason, delayed making an announcement publicly on their intentions until they had decided how to propose to limit capital punishment.¹²⁷ A week later, the Lord Chancellor reported to the Cabinet that the abolitionist Conservative MPs would not be satisfied with the government's legislation unless capital punishment was limited to only certain types of murder. The Royal Commission had recommended that the creation of degrees of murder was impractical and should be avoided. The government would be taking a serious and potentially unpopular risk if they introduced a Bill including this reform. It would involve the near impossible task of finding the correct division between capital and non-capital murders. The Cabinet agreed to send the whips out amongst Conservative MPs to sound out their opinions on the subject.¹²⁸

The government formulated a definition for capital murders. Murder whilst committing theft, using firearms or explosives, of a police or prison officer in the course of their duty and whilst resisting arrest or attempting to escape from prison would all remain capital offences, as would murder on more than one occasion. The reasoning behind this definition was to retain capital punishment only for offences which "threatened the preservation of law and order in a civilised society". For this reason murder by poisoning, which was the most contentious omission from the list of capital offences, could not carry the death penalty.¹²⁹ The purpose of capital punishment was set as deterrence rather than retribution. These reforms would have provided the same limitations on capital punishment

¹²⁷ TNA:PRO, CAB 195/15, CM (56) 48, 11 July 1956.

¹²⁸ TNA:PRO, CAB 195/15, CM (56) 50, 17 July 1956.

¹²⁹ TNA:PRO, CAB 128/30, CM (56) 51, 20 July 1956.

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as Silverman's Bill if the retentionist amendments to it had not been defeated.¹³⁰ This sent a clear message to the Commons. The government had listened to MPs concerns over capital punishment and, although they could not agree to propose abolition, they recognised that some important points were raised in the debates on Silverman's Bill and had adopted them into their own legislation. Although the Cabinet was not ready to make a final decision on this reform, let alone announce their intentions publicly, in late July 1956 they had formulated what was to become the framework of the Homicide Bill.

In their discussions about this Bill, the Cabinet referred to the concept of civilisation as a factor in the abolition of capital punishment.¹³¹ The government believed that Britain was a civilised country and yet it was one which could become dangerous if capital punishment were not in place to deter certain types of murder. Britain was not, in their opinion, civilised enough to warrant the complete abolition of capital punishment, despite evidence from other countries that such a move did not lead to a rise in the murder rate. In their opinion, Britain must have lacked the civilisation present in those countries which had completely removed capital punishment for murder without suffering the repercussions that the British government feared. The government had adopted their post-war predecessors' theory that linked capital punishment to civilisation. Successive governments had failed to realise the contradiction behind the idea that Britain was both a civilised country and one unsuitable to experience abolition. Though Eden's government proposed a limitation to the scope of capital punishment, they still believed, like their predecessors, that there was a serious threat to the maintenance of law and order in Britain which could only be prevented by retaining capital punishment.

¹³⁰ Christoph, *Capital Punishment and British Politics*, p. 157.

¹³¹ TNA:PRO, CAB 128/30, CM (56) 51, 20 July 1956.

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The government were aware that this Bill, if it were to be presented to the Commons in its present form, would, at best, pass through the Commons with only a small majority. They turned, therefore, to public opinion in the hope that this might strengthen their position.¹³² The results were pleasing for the retentionists. Throughout 1956, public opinion tended to favour the creation of degrees of murder, although there was one survey by Gallup which showed that the majority of respondents favoured retaining capital punishment in its present form. In February 1956, thirty-nine per cent of respondents, when asked which of the alternatives they preferred, opted to limit capital punishment, while thirty per cent wanted it kept as it was. Twenty-one per cent wanted abolition.¹³³ The government was preparing to act on an issue of law and order and were carrying a significant proportion of the general public with them. However, any government action was delayed until October, after the Parliamentary recess.

The recess allowed the government extra time to prepare their Bill. Despite this, it was only in September 1956 that they finally decided to introduce the Bill. What ultimately tipped the balance in favour of introducing the Bill was the realisation that the abolitionists could try to force Silverman's Death Penalty (Abolition) Bill into law using the *Parliament Act*.¹³⁴ As this was still in the form of a Private Members' Bill, its position on the Parliamentary agenda was left to a ballot. Though the government acted within its rights in leaving Silverman's Bill to the ballot, many abolitionists felt that they had reneged on their promise to find time for its later stages. The abolitionists were unlucky in the ballot, drawing only numbers eight, eighteen and nineteen out of a possible twenty. Usually, only

¹³² TNA:PRO, CAB 128/30, CM (56) 67, 26 September 1956.

¹³³ Gallup, *The Gallup International Public Opinion Polls*, vol. 1, p. 369.

¹³⁴ TNA:PRO, CAB 195/15, CM (56) 67, 26 September 1956.

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Bills drawn one to six reached reach the floor of the House.¹³⁵ If there were to be time for Silverman's Bill to be debated again, it would be long after the government's Bill had had its second reading. It may even, as the government hoped, have become law by this time. The government believed that, with their Bill having progressed sufficiently through Parliament, MPs would be less inclined to vote again in favour of Silverman's Bill or another Bill on abolition.¹³⁶ Interestingly, the Parliamentary Labour Party was not keen for the abolitionist defeat to become a constitutional issue through the use of the *Parliament Act*.¹³⁷ They were prepared, however, to argue that it was the decision of the Commons, not the government, whether to use the *Parliament Act* in response to the government's unwillingness to find Parliamentary time for Silverman's Bill.¹³⁸ Though the abolitionists were less than happy with the government's handling of the abolition question at the start of the new Parliamentary session, they found themselves in a weak position. The Homicide Bill could be debated without the government fearing that it may be defeated as MPs waited to vote again on the Death Penalty (Abolition) Bill.

In November 1956, the Queen officially opened the new Parliamentary Session. In her speech was a promise to "amend the law of homicide and to limit the scope of capital punishment".¹³⁹ The task of introducing the Homicide Bill fell to Gwilym Lloyd George, the Home Secretary. The second reading of the Bill took place on 15 November 1956 and passed off with little excitement or intrigue, largely because the overwhelmingly abolitionist Labour Party had decided not to attack the Bill at this stage. Defeating the Bill

¹³⁵ Christoph, *Capital Punishment and British Politics*, pp. 157-8.

¹³⁶ TNA:PRO, CAB 195/15, CM (56) 67, 26 September 1956.

¹³⁷ Labour Party Archives, People's History Museum, Manchester, PLP/431, Parliamentary Labour Party Minutes, 20 July 1956.

¹³⁸ Labour Party Archives, People's History Museum, Manchester, PLP/479, Parliamentary Labour Party Minutes, 23 October 1956.

¹³⁹ TNA:PRO, CAB 129/84, CP (56) 255, 5 November 1956.

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now would mean that all of the non-controversial aspects of it, such as the introduction of diminished responsibility, would be lost without any guarantee that they would return in future legislation. Labour would wait until the Committee stage in the Commons to fight the Bill.¹⁴⁰ Because Labour did not oppose the second reading, no division was necessary.¹⁴¹ Government fears of a tight contest proved incorrect. The Bill passed smoothly into the Committee Stage.

During the Committee Stage, which took two and a half months, many amendments were tabled to the Homicide Bill. Both abolitionists and more hard-line retentionists proposed changes. Sydney Silverman attempted to remove any provision for the categorising murder, thus “cut[ting] the heart out of the clause”.¹⁴² Sir Lionel Heald, a former Attorney-General who chaired a committee of Conservative lawyers investigating capital punishment in the mid 1950s, attempted to add poisoning to the list of capital crimes.¹⁴³ In the end, the government successfully defeated every amendment tabled to the Bill, and did so with a healthy majority. All the more pleasing for the government was the fact that they had persuaded a large number of the Conservative abolitionists not to support the various abolitionist amendments.¹⁴⁴

As the Committee Stage took longer than may have been hoped, the government had to schedule the Third Reading of the Bill for 6 February 1957, later than they had originally planned. The first of that month was a Private Members’ Day, when Alice Bacon, an abolitionist Labour MP who had drawn number eight in the ballot months before, would have the opportunity to present her abolition Bill. Even if this Bill was

¹⁴⁰ Christoph, *Capital Punishment and British Politics*, p. 158.

¹⁴¹ HC Deb 15 Nov. 1956 vol. 560 cc1144-259.

¹⁴² Christoph, *Capital Punishment and British Politics*, p. 160.

¹⁴³ ‘Heald, Sir Lionel Frederick’, < <http://www.oxforddnb.com/view/article/67125> >, (13 August 2010).

¹⁴⁴ Christoph, *Capital Punishment and British Politics*, pp. 160-1.

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successfully read on this day, it would not be read again until after 6 February.¹⁴⁵ However, it was still a cause for concern for the government. Such a success for the abolitionists could refocus their efforts and inspire them to defeat the Homicide Bill at its Third Reading in the Commons. On the other hand, if the government successfully blocked the Bill, rules of procedure would prevent the introduction of another abolition Bill in that Parliamentary session.¹⁴⁶ Such a move would demoralise the abolitionists and free up the passage of the Homicide Bill through a Parliament which was beginning to become tired of the abolition issue.¹⁴⁷ Luckily for the government, Bacon's Bill was not scheduled for debate first. On the day, a few Conservative MPs made a series of speeches about a hire purchase Bill. Their filibustering took up the entire five hours allotted for this and Bacon's abolition Bill, which was lost into the Parliamentary ether. The government had outmanoeuvred the abolitionists.¹⁴⁸

The Third Reading of the Homicide Bill passed off without incident. It was introduced this time by R. A. Butler, the new Home Secretary, and passed through the Commons by 217 votes to 131.¹⁴⁹ Butler described this as a victory, as Christoph put it, for "majority opinion in the country and a first step toward what he hoped would be a humanising of British legal and penal practices".¹⁵⁰ The Bill before the House of Lords amending the law on murder and capital punishment, unlike the previous Bills and amendments which involved abolition, was government sponsored and whipped. Dissent against a government Bill, especially one that had secured an easy ride through the

¹⁴⁵ Ibid.

¹⁴⁶ TNA:PRO, CAB 128/31, CC (57) 5, 31 January 1957.

¹⁴⁷ Christoph, *Capital Punishment and British Politics*, p. 163.

¹⁴⁸ Christoph, *Capital Punishment and British Politics*, p. 161.

¹⁴⁹ HC Deb 06 Feb. 1957 vol. 564 cc566-8.

¹⁵⁰ Christoph, *Capital Punishment and British Politics*, p. 161.

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Commons, would not be a sensible move for the Lords at a time when changes to the composition of the Upper House were being considered.¹⁵¹ The Lords accepted the Bill with only a few critical voices raised and without any need for division.¹⁵² The *Homicide Act* received Royal Assent on 21 March 1957 and became law.¹⁵³ The government had succeeded in enacting their compromise legislation. But this was a hollow victory for the retentionists. They had formulated a compromise that was acceptable to MPs at that moment. The price of this was the introduction of degrees of murder, which many people felt could not work. The impact of and reactions to this Act are analysed in the next chapter. Both abolitionists and retentionists understood the argument that capital punishment was a deterrent to murder. The debates centred on whether this deterrent was so unique as to justify continuing with the death penalty. The majority of politicians felt that it was not. In order to keep capital punishment, the retentionists had to artificially limit its scope. Far fewer people could now understand the justification for capital punishment as they were told by the government that it was only a necessary deterrent to certain murders. Capital punishment had lost its logicity. This was a fatal blow from which it would never recover.

The tactics employed by the government to force their legislation through Parliament were not limited to derailing the abolitionist attempts to challenge a new Bill. They also made use of serious international affairs to bury much of the more controversial elements of their Act.¹⁵⁴ In mid 1956, Britain became embroiled in what was to become the Suez Crisis. Nasser's nationalisation of the Suez Canal on 26 July caused significant

¹⁵¹ TNA:PRO, CAB 195/15, CM (56) 104, 20 December 1956.

¹⁵² HL Deb 21 Feb. 1957 vol 201 cc1186-242.

¹⁵³ Christoph, *Capital Punishment and British Politics*, p. 162.

¹⁵⁴ TNA:PRO, CAB 128/30, CM (56) 55, 31 July 1956.

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international alarm. This was the catalyst for the calamitous war which ensued between the Egyptians and the coalition of Britain, France and Israel.¹⁵⁵ By 31 July, Parliament was preoccupied with the Egyptian situation. The government felt that this had sufficiently distracted Parliament to allow them to postpone any announcement of their intentions before the summer recess.¹⁵⁶ Indeed, one can infer from searching the archive of RAB Butler the extent to which Suez stole the spotlight from the Homicide Bill. The man who was Home Secretary through the latter stages of the Bill in Parliament had remarkably few papers on capital punishment, but a plethora of material on the international situation in Egypt.¹⁵⁷ The crisis, in a small way, helped the government to secure the passage of their new legislation.

The limitations placed on the use of capital punishment were an early example of a reforming trend in social regulation that came to be associated with the creation of a permissive society. This was not, however, the only example of the permissive trend. A far more liberal reform came through the publication of the Wolfenden Report into sexual offences. This was an issue poignantly linked with capital punishment. Over the past eleven years Neville Heath, John Haigh and John Christie, three of Britain's most infamous post-war serial killers, were all hanged for murders involving sex and sexual aggression. The Wolfenden Report focused on homosexual offences and prostitution, two sorts of activity which had long been regarded as sinful by the Church. The Wolfenden Report represented a distinct shift away from the idea of sin within the legal system. Practices which were specifically forbidden in the Bible, such as homosexuality and murder, were considered

¹⁵⁵ Keith Kyle, *Suez: Britain's End of Empire in the Middle East*, (London, I. B. Taurus and Co Ltd., 2003), pp. 130-4.

¹⁵⁶ TNA:PRO, CAB 195/15, CM (56) 55, 31 July 1956.

¹⁵⁷ Trinity College Library, Cambridge, The Papers of Richard Austen Butler, RAB, 1945-1968.

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sinful by the Church and were usually illegal in Britain. By considering whether homosexuality and prostitution should be legalised, the state was detaching itself from traditional Christian ethics.¹⁵⁸ Reforming capital punishment, a move that, until the later 1950s, received little support from the clergy, could become simpler if there was a precedent for divorcing law from the issue of sin.

At the centre of every permissive reform was an issue of morality. This framed the decision by Wolfenden's committee to recommend the legalisation of homosexuality whilst retaining prostitution as a criminal offence. The committee felt that there was a distinction between private and public morality which had to be recognised by the law. Both practices were deemed to be immoral by many people within society, but homosexual acts tended to occur in private, whereas many prostitutes plied their trade on the streets. Homosexual acts should be legalised, the Report argued, as the sexual activities of the individual in private were no business of the state, whether or not it felt the acts were immoral. The Wolfenden Report managed to receive the support of many senior members of the clergy who felt that, though homosexuality was sinful, it was a psychological condition and one therefore that should not be punished. Though the members of the committee may not have shared the view that homosexuality was essentially a mental disorder, the tentative support from the Church marked an important step for the evolution of the permissive society.¹⁵⁹ The Wolfenden Report was indicative not only of the decline of the influence of sin over legislation, but also of the diminishing role of the Church in British society. Permissive reforms, such as those recommended in the Wolfenden Report, and the increasing representation enjoyed by women in society, led to what Callum Brown described as the

¹⁵⁸ Matthew Grimley, 'Law, Morality and Secularisation: the Church of England and the Wolfenden Report, 1954-1967', *Journal of Ecclesiastical History*, 60, 4 (2009), p. 727.

¹⁵⁹ Grimley, 'Law, Morality and Secularisation', pp. 727-31.

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greatest decline of Christianity in British history, beginning in 1958.¹⁶⁰ If the Church wanted to retain any influence over society it had to liberalise alongside the rest of the country. This greatly reduced the potential of one of the bastions of morality within society to oppose permissive legislation. The restriction of capital punishment in 1957 to a handful of murders was only loosely permissive. It was introduced by a Conservative Party that was not overly inclined to favour permissive reforms. Despite the recommendation of the Wolfenden Report, it would ten years before homosexuality was legalised by the Labour government of Harold Wilson.¹⁶¹ The mildly permissive nature of the *Homicide Act* represented not only the first throes of the explosion of liberalising legislation in the 1960s, but also a largely traditional, old fashioned, Conservative government being forced, like the Church, to keep up with the new trends in society or risk sliding towards irrelevance. Capital punishment would eventually be abolished in a wave of permissive reforms. The *Homicide Act* was an acknowledgement by the retentionist government that it had to adopt a more liberal approach to certain political issues.

This point raises the question: did the government want to limit capital punishment or were they forced into action by a society which, though still opposed to abolition, was becoming increasingly liberal and by an abolitionist lobby that was growing ever stronger? In the previous chapter the role and influence of the NCACP, and in particular of Victor Gollancz, was discussed. There was no hint before the Death Penalty (Abolition) Bill was introduced by Sydney Silverman that the government was considering creating degrees of murder. Indeed, when discussing Silverman's attempt to abolish capital punishment in early 1955, the Cabinet, under the leadership of Winston Churchill, agreed that there was a "clear

¹⁶⁰ Callum Brown, *The Death of Christian Britain: Understand Secularisation, 1800-2000*, (London, Routledge, 2001), pp. 179-87.

¹⁶¹ Grimley, 'Law, Morality and Secularisation', p. 727.

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case for opposing its [capital punishment's] suspension for a limited period and for holding that the only practicable alternatives were to retain it or abolish it altogether".¹⁶² Restricting capital punishment to only a few murders was not considered to be a viable alternative. There were no prominent supporters for creating degrees of murder until it became clear that the abolitionists could not be defeated without a compromise. Without any evidence to suggest that the government, who felt that capital punishment was undesirable but necessary, supported the categorisation of murder before late 1955, it must be concluded that they only adopted the policy of limiting capital punishment when it became the politically expedient strategy. The decision to take this action had no basis in the personal convictions of the members of the government.

The government was forced into introducing legislation that they did not approve of in order to keep out a Bill which they disliked even more. Degrees of murder were a necessary evil. If there had been a more effective retentionist lobby then the government may have been able to resist the abolitionists more successfully. Once the government had introduced the Homicide Bill, however, did they believe that this was the best way forward for Britain in terms of the law on murder and capital punishment? On the surface it would appear that they did. They defended their Bill strongly and were publicly delighted when it became law. But, of course, the government had to appear to be completely behind their own legislation. Despite being part of the Cabinet that decided on the new definition of capital murder, R. A. Butler would later say during his speech at the Conservative Party Conference in 1958 that he wished that murder by poisoning as well as other forms of

¹⁶² TNA:PRO, CAB 128/28, CC (55) 10, 9 February 1955.

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homicide had remained as capital offences.¹⁶³ As is explained in the next chapter, the *Homicide Act 1957* soon became recognised as illogical and ill-conceived, despite initial support from both the general public and the Conservative Party Conference.¹⁶⁴ Even the Conservative government would eventually have to distance themselves from this statute. It seems highly unlikely that the government ever truly believed that this Act was the best option for Britain. For them, that would always be the full retention of capital punishment. With this no longer possible, the compromise was the next best solution.

The *Homicide Act 1957* was unpopular almost immediately. The abolitionists had pointed out its impracticalities in the debates on the Homicide Bill. These were the same observations that the Royal Commission had made four years earlier. The government did not pass their Bill on the merits of its content. As shown in this chapter, they used Parliamentary tactics and whipping in order to secure its passage into the statute book. They introduced legislation which had had its inadequacies spotted long before it became law. However much the government and Conservative Party stated at the time that they had solved the long running capital punishment issue, it was clear that the *Homicide Act* had only served to fatally weaken the retentionist position.¹⁶⁵ It seems that it would have been sensible, with the benefit of hindsight, for the government simply to accept defeat in 1956 and support the abolition of capital punishment, including, if necessary, through the use of the *Parliament Act*, rather than dragging out their almost inevitable failure across eight years of widely unpopular legislation. But, of course, at this time the majority of the

¹⁶³ Trinity College Library, Cambridge, The Papers of Richard Austen Butler, RAB K/31, Butler's Speech to the 1958 Conservative Party Conference, October 1958.

¹⁶⁴ Trinity College Library, Cambridge, The Papers of Richard Austen Butler, RAB H3, Notes on the 1956 Conservative Party Conference, October 1956.

¹⁶⁵ Conservative Party Archive, Bodleian Library, Oxford, PUB 221/16, *Notes on Current Politics*, 10 November 1958.

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Conservative MPs were still opposed to any form of abolition. The government could not ignore the wishes of the majority of their own party. Compromise was the only solution. The reactions to the *Homicide Act* are examined in the next chapter.

The retentionist Conservative government were forced into introducing compromise legislation in order to avoid a Bill on total abolition for murder becoming law. Whether or not they knew that abolition had become highly likely, none of the senior Cabinet members from 1957 seemed unduly upset when it was finally abolished for murder. They were able to successfully navigate the Homicide Bill through Parliament in part thanks to their tactical outmanoeuvring of the abolitionists, although the useful timing of the Suez Crisis certainly helped their cause. In 1956, abolition had peaked as an issue of importance. It was quickly pushed into the background by Suez and other important political incidents. The passing of the *Homicide Act 1957* into the statute book was the moment that the entire post-war history of capital punishment changed from being about the fight to retain or abolish the death penalty to the shift towards abolition. The *Homicide Act 1957* was no true success for the retentionists, but it was their last involvement in the abolition discourse that did not end in failure.

SECTION III

FAILURE 1957-1969

The Shift towards Abolition 1957-1965

Chapter 5

The vestiges of what was once a very common penalty for crime in this country are found in the *Homicide Act* of 1957. If the Government had wished to heap discredit upon capital punishment in what will probably prove to be the last chapter of its history they could have found no more effective way of doing so than by the Act of 1957. As Mr Gerald Gardiner points out in *The New Statesman* of February 10 last, this is generally recognised by both informed defenders of capital punishment and its informed opponents alike as one of the most irrational and anomalous pieces of legislation of modern times.¹⁶⁶

Through this quote, the *Law Society Gazette* spoke for many people in their criticism of the *Homicide Act 1957*. This statute was not R.A. Butler's creation, and yet it fell to him as Home Secretary to defend this almost universally unpopular legislation. Although there was support for the government's reforms to the death penalty from the Party Conference in 1956, by 1957 the Conservative Party members had turned on the Act. As Home Secretary, Butler had to face down these attacks.¹⁶⁷

This chapter examines the opposition to the *Homicide Act 1957* and questions the effect of this opposition on the failure of the retentionists. It considers other factors which contributed to abolition becoming almost inevitable, particularly after Wilson's abolitionist Labour government came to power in 1964, and looks at the influence of the *Homicide Act* upon the opinions of politicians, lobbyists and the general public, the impact of which was

¹⁶⁶ *Law Society Gazette*, (107 vols, London, The Law Society, 1961), vol. 58, p. 134.

¹⁶⁷ Trinity College Archives, Cambridge, The Papers of Richard Austen Butler, RAB H3-5, Notes on the 1956-1958 Conservative Party Conferences, 1956-1958.

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central to the abolitionists' success. Particular focus is given to the memorial to the Prime Minister by the NCACP in 1962, the shift in religious opinion towards capital punishment and the analysis of the political discourse by the American political scientists Elizabeth Tuttle and James Christoph. There is also an analysis of the context provided by the increasingly permissive nature of British society during these years. As the *Homicide Act* was due for review in 1962, the majority of the activity linked to it appeared in this and the previous years.

There was nothing contentious about the abolition of the doctrine of constructive malice. Few people spoke out against the introduction of diminished responsibility and the relaxation of the law on provocation and suicide pacts. These amendments meant that a person would only be convicted of murder if they had intentionally killed another person. The problems with the *Homicide Act 1957* came from the categorisation of murders into capital and non-capital offences. Whereas previously any sane person who wilfully took another's life would be found guilty of murder and sentenced to death, the only punishment proscribed by law, now there was an artificial distinction which confused the situation. Despite the government's logic that capital punishment was reserved for those murders which endangered the preservation of law and order, this legislation would not find favour unless the politicians and general public were convinced that hanging was reserved only for those who committed the worst, most horrific murders. The government's legislation failed to achieve this balance. The retention of capital punishment for those committing murder in the furtherance of theft was worryingly close to the unpopular doctrine of constructive malice and meant that a nervous burglar who killed unintentionally upon being startled by another person would face execution. Murderers who intentionally killed their victims

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through poisoning, however, would not face the death penalty, despite their act of homicide being far more calculated and sinister than that of the burglar. These problems fatally weakened both the government's legislation and their standing in the abolition discourse.

No matter how well the government had sculpted this compromise, the abolitionists would have criticised it in an attempt to see capital punishment finally abolished. By failing to convince the majority of the retentionists that this was the sensible division for murders, the government lost much of the support that it once held over the issue. The comparison between the burglar and the poisoner is one example of the contradictions within the *Homicide Act* and was mentioned frequently during the capital punishment debates by both abolitionists and retentionists between 1957 and 1965. Although there was logic behind the government's division of murders, it was far from perfect, and the imperfections made the compromise illogical. Both the abolitionist and retentionist opponents to this legislation focused on this illogicality in their criticisms of the *Homicide Act*.

As mentioned at the start of this chapter, the *Homicide Act* failed to find favour amongst the overwhelmingly retentionist delegates at Conservative Party Conferences after 1956. At the time, the Party members were becoming increasingly concerned about the rising crime rate and, in particular, the rate of juvenile delinquency. Blame was apportioned to the breakdown in traditional family values, moral degradation in certain sections of society and the increasing affluence and materialism of many people who had never before enjoyed such privileges and freedom.¹⁶⁸ Perhaps Macmillan was speaking more out of concern than pride when he informed the British people that they had never had it so good.

¹⁶⁸ Mark Jarvis, *Conservative Governments, Morality and Social Change in Affluent Britain, 1957-64*, (Manchester, Manchester University Press, 2005), pp. 22-6.

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The retentionist Conservatives found a simple solution to the problems facing Britain: retain capital punishment and restore corporal punishment.¹⁶⁹ By eroding the scope of capital punishment, ordinary Conservative members feared that the government had crippled its own potential to tackle these problems. They were faced with an accusation that every government fears: that they were weak on crime.¹⁷⁰ The government had manoeuvred themselves into an awkward position. They could not simply bow to the wishes of the ordinary members of their party for fear of appearing weak but also could not ignore their party members completely for fear of a greater backlash. In the end, the government attempted to temporarily fend off criticism by referring dissenters to the planned review of the Act in 1962. In 1958, the Conservative publication *Notes on Current Politics* praised the *Homicide Act* for settling the “highly controversial capital punishment question”.¹⁷¹ It later suggested, in 1962, that it should be reviewed only if there was an increase in murders, of which they claimed that there was no evidence.¹⁷² There was very little else that the government could do. They could not publicly admit that the Act was a mistake, nor could they blindly defend the Act in the face of severe yet sensible criticism. The abolition debates were becoming framed around the *Homicide Act*. The government could no longer control these debates. They had effectively relinquished any influence that they had over the abolition process when the *Homicide Act* became law. All that they could do after 1957 was live with the consequences.

¹⁶⁹ Jarvis, *Conservative Governments*, p. 50.

¹⁷⁰ Jarvis, *Conservative Governments*, p. 52.

¹⁷¹ Conservative Party Archive, Bodleian Library, Oxford, PUB 221/16, *Notes on Current Politics*, 10 November 1958.

¹⁷² Conservative Party Archive, Bodleian Library, Oxford, PUB 221/20, *Notes on Current Politics*, 1 January 1962.

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For the government to regain the support of their own Party over this issue they had to justify the purpose of this limiting Act. At the 1956 conference, the Party had largely accepted that reform was needed for capital punishment.¹⁷³ Most aspects of the legislation were seen as sensible alterations to the law. The categorisation of murder into capital and non-capital offences, against the advice of the Royal Commission, seemed illogical. The much cited example of the poisoner and the burglar was the expression of the fundamental problem within the *Homicide Act*. To retain capital punishment and include such an imbalance in its employment seemed ludicrous. But there was logic to the government's reasoning behind the categorisation of murder. Why, therefore, did the government not use this logic to defend the *Homicide Act*? There is no satisfactory answer to this question. The government believed that public opinion was in support of their limitation of capital punishment along the lines of protecting law and order.¹⁷⁴ A Gallup poll from November 1956 showed that fifty-seven per cent of respondents supported a limitation, with only twenty-five per cent wanting capital punishment to remain as it was and thirteen per cent wanting total abolition.¹⁷⁵ However, there is an important difference between what the government claimed the public supported and what the polls show them supporting. The government said that the public supported their limitation, but the polls only show that the public supported a limitation. There was no mention specifically of the government's proposed limitation in the polls. The outcry against the categorisation of murder under the *Homicide Act* shows that the government failed to limit capital punishment satisfactorily, no matter how logical one finds their justification for the limitation. If the government had

¹⁷³ Trinity College Library, Cambridge, The Papers of Richard Austen Butler, RAB H3, Notes on the 1956 Conservative Party Conference, October 1956.

¹⁷⁴ TNA:PRO, CAB 128/30, CM (56) 53, 26 July 1956.

¹⁷⁵ Gallup, *The Gallup International Public Opinion Polls*, vol. 1, p. 394.

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found a way to limit capital punishment along more acceptable lines than it may have stood a greater chance of retaining the death penalty.

Opposition, of course, came from other sources as well as the Conservative Party. Many members of the Labour Party were appalled by the *Homicide Act*, although interestingly it was never mentioned at the Party Conferences. Sydney Silverman, citing the failure of the Act, tabled a motion in the Commons to completely abolish capital punishment in May 1959, though this was defeated.¹⁷⁶ The *Homicide Act* was frequently mentioned in both Houses of Parliament, particularly in 1961 in anticipation of the review to be conducted in the next year. However, the protests against the Act were not led by the politicians but rather by the lobbies.

The abolitionist lobby recognised the weaknesses of the *Homicide Act*. They did not fail to use this to their advantage. The NCACP organised rallies across the country to raise awareness of the abolitionist cause and encourage people to educate themselves in the subject by reading their publications on abolition.¹⁷⁷ The work of the NCACP was influential enough for James Christoph to contact Victor Gollancz for assistance in the research for his book on capital punishment.¹⁷⁸ The activity of the NCACP was not limited to the public sphere. In 1962, they sent a memorial to the Prime Minister urging him to abolish capital punishment. In discussing the issue with the NCACP upon receiving the memorial, Macmillan expressed his support, in principle, for abolition, though he qualified this by saying that the time was not yet right for it. He said that “abolition was a question of

¹⁷⁶ *The Times*, 14 May 1959.

¹⁷⁷ Modern Records Centre, University of Warwick, The Papers of Victor Gollancz, MSS. 157/3/ CAP/1/5, Speech, probably by Gollancz, on capital punishment, 18 April 1961.

¹⁷⁸ Modern Records Centre, University of Warwick, The Papers of Victor Gollancz, MSS. 157/3/ CAP/3/36, Christoph to Gollancz, 3 March 1958.

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timing and method”.¹⁷⁹ The Home Secretary added that the government were aware of the inequalities in the *Homicide Act* but that it would be “unwise to change the law at the present time”.¹⁸⁰ In private, however, the government had already accepted that mistakes were made in the *Homicide Act*. In a note to the Prime Minister, P. J. Woodfield, a government official, said that “there is a growing recognition that the *Homicide Act* of 1957 was a mistake, though this cannot be said publicly until the government is prepared to propose an alternative”.¹⁸¹ The government could not ignore the NCACP’s memorial as they recognised the position of strength that the abolitionists were now in thanks to the *Homicide Act*. At a time when permissive and reforming attitudes were developing in the country and the abolitionists were in an increasingly strong position, the government could not afford to be seen as a barrier to progress.

The *Homicide Act* stunted any action from the small retentionist lobby. Although there were calls for capital punishment to return to the pre-1957 standard, in reality the situation could only go the other way. The lobby action highlighted the difference between the retentionist and abolitionist campaigns. The retentionists tabled motions at conferences and wrote letters to their MPs in order to advance their cause. The abolitionists organised rallies, mobilised their supporters and held a private meeting with the Prime Minister. The retentionists could only look on in envy.

The *Homicide Act* succeeded in further convincing the already abolitionist House of Commons that capital punishment had to be abolished and facilitated a shift towards abolition in the Lords. The more striking shift in opinion in the years after the Act, however, came from the leaders of the Church and the legal profession. In his monograph

¹⁷⁹ TNA:PRO, HO 291/1017, Secretary of State’s memorandum on capital punishment, 4 September 1962.

¹⁸⁰ TNA:PRO, PREM 11/3686, NCACP to Prime Minister, 5 July 1962.

¹⁸¹ TNA:PRO, PREM 11/3686, P. J. Woodfield to Prime Minister, 3 July 1962.

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Hanging in Judgement, Harry Potter provides an excellent narrative of the evolving opinions on capital punishment amongst the Christian elite in Britain between 1957 and 1965. Christian opinion was already shifting towards abolition by the time of the *Homicide Act*. In 1956, all of the episcopal speakers in the House of Lords' debates on capital punishment supported abolition, whereas eight years before seventy-five per cent were retentionists. However, key bishops remained opposed to abolition, including the Archbishop of Canterbury and Bishop Harland. A number of the clergy also supported retention.¹⁸² The old guard, who had overall control of the Anglican Church, retained their traditional values. However, fiercely abolitionist grass roots religious activism was developing. Christian Action, supported by the NCACP, conducted vigils on the eves of executions, including that of John Vickers in July 1957, the first man to be executed under the *Homicide Act*.¹⁸³ It was the abolitionists who were becoming the more vocal religious commentators on capital punishment.

Anglicanism and Anglican morality had well established links with Conservatism. The Church and Conservatives would expect to support each other for their various moral campaigns. The overwhelmingly Conservative retentionists could be excused, therefore, for believing that they would retain the support of the Church for their cause. However, the Church's primary loyalty remained to its service to society, and society was beginning to reject conservative morality. Church leaders could not afford to be seen as stalwarts of traditional nineteenth century values, more inclined to reaction than reform. The Church was losing what remained of its influence over society, with the greatest decline occurring

¹⁸² *Daily Mirror*, 6 October 1961.

¹⁸³ Modern Records Centre, University of Warwick, The Papers of Victor Gollancz, MSS. 157/3/CA/1/15, Christian Action to parish churches, 1957.

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after 1958.¹⁸⁴ The liberalisation of society forced the bishops to change their approach to capital punishment.¹⁸⁵

Between 1956 and 1965 the Anglican old guard were largely replaced by new, more progressive bishops. Most importantly, the Archbishop of Canterbury, Geoffrey Fisher, was replaced by the more abolitionist Michael Ramsey. Whether these men were appointed by the Church and government in recognition of the need to be seen as reformist or whether retention was a view prominent in only the older bishops is unclear. The result, however, was plain to see. The Church of England was now controlled by abolitionists. This was the last major Church in Britain to come out in favour of abolition, following the Roman Catholics, Quakers and Non-Conformists. The convocations of Canterbury and York passed motions calling for abolition in the early 1960s. The Church had officially set its face against capital punishment.¹⁸⁶ But why, considering the decline of influence of the Church over society, should the opinions of the Church matter? Whilst Britain was becoming an increasingly secular country, key bishops still retained their seats in the House of Lords. They had a legislative duty to the country. On an issue of moral conscience, such as capital punishment, many people, including numerous politicians, would still listen to and respect the opinions of religious leaders. Their influence at this time stretched beyond the political sphere into the public investigations into cases of moral ambiguity. Church representatives had provided much of the most important evidence to both the Wolfenden Committee and the Lady Chatterley Trial.¹⁸⁷ Though the influence of the Church and religion had diminished over society, the respect for the moral judgement of the bishops

¹⁸⁴ Brown, *The Death of Christian Britain*, p. 187.

¹⁸⁵ Potter, *Hanging in Judgement*, pp. 175-92.

¹⁸⁶ Potter, *Hanging in Judgement*, pp. 178-98.

¹⁸⁷ Mark Roodhouse, 'Lady Chatterley and the Monk: Anglican Radicals and the Lady Chatterley Trial of 1960', *Journal of Ecclesiastical History*, 59, 3 (2008), pp. 475-500.

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had not. For this reason the views of the religious elite remained important to the abolition debates.

Legal opinion, like religious opinion, was in the process of evolving when the *Homicide Act* came into law. Whereas the Church tended to focus on the moral implications of retaining the death penalty, the legal profession focused on the impracticality of the new legislation. This chapter's epigraph demonstrates clearly the strength of feeling against the *Homicide Act* that was put forward in Britain's widest-circulating legal periodical. The *Law Society Gazette* and the legal journal *Justice of the Peace*, which in the 1940s were more inclined to support retention, both criticised the *Homicide Act*. The legal profession added no new argument to the weight of opinion against the *Homicide Act*. However, by publicly condemning this Act, professional credence was added to its criticism.

The government found no support for its Act from the media. The *Daily Mirror* reported on the "startling anomalies" of the *Homicide Act* before detailing reasons for and against abolition.¹⁸⁸ The more retentionist *Times* could also find no real positives in the Act.¹⁸⁹ Despite the wide-ranging criticism of the Act, there do not appear to have been many journalists who changed their opinions on abolition because of the *Homicide Act*. It is more difficult to assess the opinions of newspapers on this issue than those of lobbies and organisations, such as the legal profession and the Church. One can infer the opinions of newspapers from the content and tone of their articles. There are not, however, so many statements of opinion outside the comment and letters sections. These do not necessarily represent the opinions of the newspaper. Individual articles may appear to suggest a change

¹⁸⁸ *Daily Mirror*, 16 February 1962.

¹⁸⁹ *The Times*, 17 February 1961.

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in tone from the newspapers but, overall, there is no evidence of any major shift in opinion from the media.

While the newspapers offered no clear example of a change in opinion during this period, the British public remained firm in their opposition to abolition. In July 1955, sixty-one per cent of respondents to a Gallup poll favoured the retention of the death penalty.¹⁹⁰ In July 1962, seventy per cent wanted retention.¹⁹¹ Opinion polls fluctuated throughout the period studied for this thesis. Between 1957 and 1965, there were no unusual fluctuations. The majority of the population supported retention throughout. The media and general public were less inclined to shift towards abolition than the various organisations who stated their opinion on the subject, with the exception of the prison and police officers.

So far this chapter has examined the shift towards abolition as a result of the inadequacies of the *Homicide Act*. However, there is a wider context that needs to be understood. As briefly mentioned earlier in this chapter, the shift towards abolition in these years formed part of the wider reforming nature of an increasingly permissive British society. Many of the permissive reforms that took place during the abolition process became law under Harold Wilson's government after 1964, but their roots were laid in the previous few years. By the 1960s many people in Parliament and wider society were starting to accept the increasingly permissive nature of modern Britain. Peter Thompson has detailed the apathy felt both inside and out of Parliament towards many of the permissive reforms of Wilson's government.¹⁹² That these reforms did not cause much of a stir indicates that there was a lack of meaningful opposition to the new permissive attitudes of the state. It is fair to assume that this muted acceptance of permissive reforms by many

¹⁹⁰ Gallup, *The Gallup International Public Opinion Polls*, vol. 1, p. 361.

¹⁹¹ Gallup, *The Gallup International Public Opinion Polls*, vol. 1, p. 638.

¹⁹² Thompson, 'Labour's "Gannex Conscience"?' , pp. 139-40.

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people in Britain did not occur on the eve of Wilson's election victory in 1964. The change in attitudes was a gradual process which took place over many years, as shown by the support, albeit uneasy, for reform of the law on homosexuality from the Church in 1957. This raises an interesting question concerning the interpretation of how civilised Britain had become by the time that Wilson had come to power. As there was an increasing acceptance in Britain that people could be trusted to act in ways which for centuries had been deemed immoral and sinful, was there a belief developing that the British people had achieved a new level of civilisation? There is no clear answer to this, but increasing numbers of politicians were recognising that society would not be plunged into disorder if people were allowed to act in ways which were still seen by many to be immoral. Under the Labour government, the laws on divorce and theatre censorship were relaxed and abortion and family planning became available on the NHS.¹⁹³ It is hard to point to many specific incidents which mark changes in political and public attitudes towards various permissive reforms. The Wolfenden Report may be one such incident. However, over the years between the *Homicide Act* and the *Murder (Abolition of Death Penalty) Act*, social attitudes had changed to such a degree in Britain that permissive reforms, such as abolition, could now be countenanced.

The best accounts and theories on the impact of the *Homicide Act* and the shift towards abolition in Britain do not come from the United Kingdom. Rather, contemporary American scholars led the field in this area of study. In particular, the political scientists Elizabeth Tuttle and James Christoph published work on this subject. At this time abolition was becoming a bigger academic issue in the USA. Britain, the centre of the common law world, provided an important example of an abolition process from which the Americans

¹⁹³ Thompson, 'Labour's "Gannex Conscience"?', p. 137.

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could learn. Interest in this subject from North America led to its study by political scientists. Both Tuttle and Christoph analysed the abolition process over a number of years and offered a detailed critique of the *Homicide Act*, though they seem to have approached the subject from different angles. On reading her work, one can infer that Tuttle was opposed to capital punishment, a sentiment which does not come through from Christoph, though neither does he appear to oppose abolition. It is, however, their predictions for the future which prove most interesting. Both agreed that the *Homicide Act* was impractical and guessed that the law would change in the near future. They agreed on how they believed the law would change. They were both certain that the *Homicide Act* had not brought the issue of capital punishment to an end and that further debates, whenever they may be, would be educated by the experiences from 1945 to 1957. Interestingly, though, neither predicted that the outcome of any future debates would be the total abolition of capital punishment for murder. As Hall Williams explained in the appendix to Tuttle's book, the opinion polls and crime rates did not favour the abolitionists.¹⁹⁴ Contemporary scholars did not recognise that the abolitionists' success was highly likely, even though in private the Conservative government had already accepted defeat over the issue.¹⁹⁵ Without an intimate knowledge of the often unpublicised opinions of MPs and peers it would have been very hard for contemporary analysts to recognise that abolition was almost inevitable. Through accessing official and private papers, historians can reach this conclusion. It is useful to understand how the abolition process was viewed overseas as this offers a more distant and uninvolved reading of the situation than was possible from contemporary British observers. This foreign interest signified that, though abolition was highly likely, it remained a significantly

¹⁹⁴ Elizabeth Tuttle, *The Crusade Against Capital Punishment in Great Britain*, (London, Stevens and Sons Ltd., 1961), p. 162.

¹⁹⁵ TNA:PRO, HO 291/1017, Secretary of State's memorandum on capital punishment, 4 September 1962.

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radical process that warranted multiple academic studies. It also highlighted what aspects of British politics were important to other states. British abolition, though never an especially major issue in Britain, was important enough to be studied in America.

The crime rate in Britain rose about ten per cent every year from 1954 until the early 1960s, when the rate of increase reduced somewhat. This forced the issue of crime higher on the country's political agenda.¹⁹⁶ Despite the increase in crime during these years, abolition became almost inevitable. This highlights the importance of the context provided by the increasingly permissive society in Britain. The rising crime rate and lack of public support could not silence the abolitionists. Abolition became the predictable outcome of the capital punishment question because of the overwhelming desire to reform and modernise amongst politicians, many professionals and various lobbies by the early 1960s and because of the failure of the *Homicide Act 1957* to provide a satisfactory compromise. It was not because of the infamous murder trials, though these certainly helped, nor was it because of the impact of prominent abolitionists on the British people. In the years leading up to Labour's election victory in 1964 the *Homicide Act* was widely discredited and permissive reforms had become the order of the day. Capital punishment was swept up with this.

¹⁹⁶ Taylor, 'The Politics of the Rising Crime Statistics', pp. 5-28.

Murder (Abolition of Death Penalty) Act 1965

Chapter 6

“...there is no power on earth - or in heaven either, if we believe in a God of mercy and love – that can prevent the abolition of capital punishment”, stated an understandably confident abolitionist, most likely Victor Gollancz, during a rally against the death penalty.¹⁹⁷ Indeed the passage through Parliament of the *Murder (Abolition of Death Penalty) Act 1965* was relatively simple. The subject was raised far less often in Cabinet meetings than any of the other amendments, Bills or Acts analysed in detail in this thesis. This emphasises the point that, by 1965, abolition had become highly likely. Now that there was an abolitionist government in power, there were no great obstacles for the abolitionists to overcome, no complicated strategy to formulate and no requirement for the government to spend too much time trying to persuade a largely retentionist public that this was the best course of action. The Cabinet did not need to concern themselves greatly with the abolition of capital punishment.

Despite opposition from the majority of the general public, more “informed” opinion, as Victor Gollancz put it in an interview with ITV news in 1961, had come out in favour of abolition.¹⁹⁸ The legal profession and religious leaders had, on the whole, become abolitionists. The only professions who maintained their vocal opposition to abolition were the police and prison officers, for reasons of personal safety. This brief chapter outlines the progress of the *Murder (Abolition of Death Penalty) Act* through Parliament, discusses the

¹⁹⁷ Modern Records Centre, University of Warwick, The Papers of Victor Gollancz, MSS. 157/3/CAP/1/5, Speech, probably by Gollancz, 18 April 1961.

¹⁹⁸ ‘Anti Capital Punishment Campaign (Newsfilm Online)’, 18 April 1961, <<http://service.nfo.ac.uk>>, (9 July 2010).

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support for and opposition to the Act and accounts for why there was not a greater retentionist movement against it.

It was not long after Harold Wilson became Prime Minister in October 1964 that preparations began to abolish the death penalty. The Cabinet decided in late October that the issue would be best introduced through a Private Members' Bill as soon as was possible.¹⁹⁹ The duty for introducing the Bill was given, naturally, to Sydney Silverman. As was customary for a debate on the abolition of capital punishment, the Bill was left to a free vote. The government was understandably confident about the success of the Bill. A government note on the forthcoming abolition debate in November 1964 reveals that they were planning for how the Act would take effect “when” rather than if it was accepted by Parliament.²⁰⁰

In December 1964, the Murder (Abolition of Death Penalty) Bill was read for a second time. Silverman introduced the Bill by attacking the use of public opinion as a justification for retention, arguing that it was barely relevant to the decision of the Commons: “We do not govern ourselves in this country by a referendum”. He also criticised the creation of degrees of murder under the *Homicide Act 1957*, citing their failure as a further reason to abolish capital punishment.²⁰¹ Sir Peter Rawlinson, the former Conservative Solicitor General, was the first retentionist to launch an in-depth attack on Silverman's Bill. His argument was based on the deterrent effect of capital punishment. Though he acknowledged that capital punishment was an unpleasant arm of the state's law and order apparatus, he maintained that murder was just as despicable. He defended the necessity to retain the death penalty for the crimes which had remained capital offences

¹⁹⁹ TNA:PRO, CAB 128/39, CC (64) 4, 29 October 1964.

²⁰⁰ TNA:PRO, HO 291/1549, Notes on abolition debate, 23 November 1964.

²⁰¹ HC Deb 21 Dec. 1964 vol. 704 cc870-90.

Murder (Abolition of Death Penalty) Act 1965

under the *Homicide Act*. Rawlinson was unusual in offering any form of defence for the *Homicide Act*. Even the previous Conservative Home Secretary Henry Brooke attacked it in the debate.²⁰² Aside from this, however, he offered nothing new to the retentionist argument.²⁰³

Three and a half hours into the debate, Dr Wyndham Davies, MP for Birmingham, Parry Barr, became only the second retentionist to speak at length and the first to defend the opinion polls. He also developed an intriguing moral argument for retention: “One will find them [the abolitionists] active in the cause of abortion law reform; one will find them active in the cause of euthanasia. In this respect we have people – and we all know that this is true – who are prepared to destroy innocent human life before birth and people who are prepared to destroy our old people and sick people merely because they are feeble and old and sick. Yet these are the people who say that the most important thing for them is the preservation of human life. It is not. It is the preservation of their own aggressive feelings”.²⁰⁴ This attack on the proponents of both abolition and the permissive society, identified as being roughly the same people, would have certainly grabbed the attention of the House. However, Dr Davies would find little support for his claim that murder, abortion and euthanasia were similar acts. His vitriolic attack on the abolitionists was out of keeping with the more respectful tone of the debates on capital punishment in the Commons. This hints at a sense of desperation that may have been felt by some retentionists who recognised that their chances of victory had all but gone. The abolitionist MP Leo Abse quickly put him down, stating that his speech invoked scenes from the history books of a crowd baying for the blood of a pick-pocket about to be hanged at Tyburn. With one

²⁰² HC Deb 21 Dec. 1964 vol. 704 c906.

²⁰³ HC Deb 21 Dec. 1964 vol. 704 cc870-90.

²⁰⁴ HC Deb 21 Dec. 1964 vol. 704 cc932-6.

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allegory Abse had labelled Davies, and by association all those who supported his retentionist beliefs, as old fashioned reactionaries who were out of touch with society, the typical Conservatives who would revel in the widening of the scope of capital punishment to crimes more trivial than murder. This was the image that the retentionists desperately needed to avoid. Davies, in his maiden speech in Parliament, had given the abolitionists an easy point-scoring opportunity.²⁰⁵

The Second Reading of the Bill was dominated by abolitionists. The other retentionists who spoke at length invariably stuck to the issue of deterrence. Brigadier Terence Clarke, Conservative MP for Portsmouth, West, attacked the abolitionists, and Silverman in particular, with the same venom as Dr Davies. His points, however, were too extreme, even stating that he and many of his constituents would be happy to see Silverman hanged or murdered. He attacked lawyers and statisticians for being able to “prove practically anything” and suggested that every child murdered after 1964 would be the fault of Silverman, despite, as Silverman noted, the fact that the murder of children was no longer a capital offence under the Homicide Act. Clarke, like Davies, epitomised the reactionary, ex-colonial Tory who was thoroughly out of touch. His contribution resulted in laughter and disdain from his peers. He and Davies were two of the most vocal retentionists in this debate and yet probably did as much to harm their own cause as any abolitionist who spoke that day. The House divided and secured an indisputable victory for the abolitionists, by 355 votes to 170.²⁰⁶

The retentionist opposition attempted to add many amendments to the Bill. The only amendment to the Bill which remained intact, however, came from a recent abolitionist

²⁰⁵ HC Deb 21 Dec. 1964 vol. 704 cc936-7.

²⁰⁶ HC Deb 21 Dec. 1964 vol. 704 cc1001-5.

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convert. In May 1965, Henry Brooke, who clearly retained some doubts about abolition, introduced a clause limiting the duration of the Bill to five years. This made abolition an experiment which could more easily be reversed if it were to transpire that capital punishment was indeed a unique deterrent. The government was concerned that the Bill should be given the time to become law in that Parliamentary session, due to end in July, without it taking time away from their own Bills. They felt that they could defeat the other amendments easily. This amendment, however, would be more difficult to oppose. For reasons of convenience, and despite Silverman's desire to fight the clause, they instructed him to let the amendment stand.²⁰⁷ This was the only amendment which remained attached to the Bill.

Deterrence dominated the two day debate on Silverman's Bill in the Lords. Though the Lords had the luxury of more time to debate the Bill before them, the retentionists amongst them could not persuade their peers to vote against a clear Commons majority and a government in favour of abolition. On 20 July, they passed the legislation by 204 votes to 104.²⁰⁸ All of the Parliamentary debates on this Bill were rather simple and, on the whole, unremarkable.

Despite supporting abolition and happily giving Parliamentary time to Silverman's Private Members' Bill, the Cabinet refused to make abolition a government-supported issue. Instead they adopted the same tactics that they would go on to use in 1967 to secure the passage of the *Medical Termination of Pregnancy Act* and the *Sexual Offences Act*. These were further permissive statutes supported, but not sponsored, by the government. The government officially remained neutral in the debates and allowed the House a free

²⁰⁷ TNA:PRO, CAB 128/39, CC (65) 35, 1 July 1965.

²⁰⁸ HL Deb 20 July 1965 vol. 268 cc712-4.

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vote. Crucially, though, they found Parliamentary time for the debates, something which Roy Jenkins described as “the normal bane of Private Members’ Bills”.²⁰⁹ Though this may appear to be a slightly unusual and complicated move by the government, it flags up the point that capital punishment was never an issue that would win an election. Everyone in Britain who was politically aware would have known that, on the whole, Labour MPs supported abolition and Conservative MPs supported retention. There was no real surprise when, under a Labour government, a Bill on abolition was successful. But there was no incentive for the government to introduce it. Abolition remained unpopular in the polls. In February 1965, a Gallup poll found that seventy per cent of respondents favoured retention, with twenty-three per cent supporting abolition.²¹⁰ The government would always state their opinion on such a matter but, such was the nature of the issue, no MP was to feel compelled to follow the government line out of duty. As the votes on abolition were always free it would have seemed inappropriate for the government of the day to sponsor a Bill on abolition or create an official party line on such a measure. Labour’s strategy to let Silverman introduce and lead the Bill could work because of the state of opinion on the issue inside the House of Commons. No matter how firmly abolitionist the members of the government were, which is very difficult to quantify, there was no need for Wilson to risk losing his tiny majority at the next election by sponsoring this Bill.

Chapter 5 accounted for the shift in opinion on abolition amongst the religious leaders and legal profession. However, in previous votes on abolition the most important opposition did not come from these groups, or any other lobby. The Lords had always opposed abolition Bills and amendments which had passed successfully through the

²⁰⁹ Roy Jenkins, *A Life at the Centre*, (London, Papermac, 1994), pp. 208-9.

²¹⁰ Gallup, *The Gallup International Public Opinion Polls*, vol. 2, p. 788.

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Commons. So why did the Lords support abolition this time? 204 peers voted in favour of abolition in July 1965. Of these, 123 did not vote, for whatever reason, during the corresponding debate on the Death Penalty (Abolition) Bill in 1956. Forty-eight voted in favour on both occasions. Most interestingly, thirty-three peers who voted against abolition in 1956 voted for it in 1965. There were only fifty-four new retentionist peers who did not vote in the 1956 Bill, although one peer who voted for retention in 1965 had, in 1956, supported abolition. Clearly the 123 new abolitionist peers had the biggest impact on the vote in 1965, in which 308 peers took part. As with the Church of England, this vote in the Lords shows that in the nine years between the two votes there had been a significant influx of abolitionists who changed the dynamic of the House. When the influence of the new Lord Chancellor Gerald Gardiner, the joint chairman of the NCACP, is taken into account, one can see that the House of Lords was, for the first time, dominated by abolitionists.

While the majority of politicians and other professions were now favouring abolition, the police and prison officers remained firm in their opposition to it. Though there was still no consensus on the deterrent effect of capital punishment in relation to the protection that it offered to them, it was clear that the majority of police and prison officers felt that their lives would be put in greater danger if capital punishment were abolished.²¹¹ This time, however, the police and prison officers were standing alone against abolition, without any other groups backing their cause. This was a remarkable position when one considers that about seventy per cent of the population favoured retention.²¹² After the *Murder (Abolition of Death Penalty) Act* more retentionists would begin to make their

²¹¹ *The Times*, 21 July 1965.

²¹² Gallup, *The Gallup International Public Opinion Polls*, vol. 2, p. 788.

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voices heard, as is discussed in the next chapter, but for now the police and prison officers could do nothing to stop the march towards abolition in Parliament.

The newspapers reported the passing of this Act in differing manners. The *Daily Telegraph* offered no discussion of the retentionists when detailing the progression of the Act through Parliament. Their articles created a sense that something important had been achieved in Britain.²¹³ *The Times*, on the other hand, was far less positive about the developments. Their reporting tended to focus on the retentionists' arguments that the government was acting "in contempt of public opinion".²¹⁴ The paper predicted that Silverman may, in the words of Sir John Hobson, end up appearing to be a "misguided crusader suffering from self-induced myopia".²¹⁵ Whereas the *Telegraph* made front page headlines out of the abolitionists' successes, the more retentionist *Times* buried these articles within the main body of the paper. These two newspapers sum up well the media opinions towards abolition. There was no cohesion between the various editors and journalists over this issue. The subject divided them and affected how they reported it. Readers of these two widely respected broadsheets would have been left with very different impressions of the abolition process.

Unlike the previous attempts to abolish capital punishment, there were no major contemporary murder cases that dominated the news and debates in the run up to the 1965 vote. There was one man, though, who returned to the news and political discourse to haunt the retentionists. The case of Timothy Evans once again resurfaced in 1965. Various inquests and reports into his case in the past had concluded that he was justly hanged. This did not appease the many people who believed that an innocent man had been dispatched

²¹³ *Daily Telegraph*, 14 July 1965.

²¹⁴ *The Times*, 14 July 1965.

²¹⁵ *Ibid.*

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by Pierrepoint, the most famous executioner of the twentieth century. On 21 July, one day after the Lords voted for abolition, Sir Frank Soskice, the Home Secretary, made the first moves to set up a new enquiry into Evans' case.²¹⁶ The return of Evans to the capital punishment debates would have been music to the abolitionists' ears. His case outraged many people throughout the country and may have increased support for the abolition of capital punishment. Later that year, Evans was posthumously pardoned.

Despite the opposing opinions on abolition that were expressed in the newspapers, mentioned earlier, the subject appeared far less frequently in the media than it did in the mid 1950s or 1969. How can this lack of interest and activity be accounted for? Why, when facing the very real prospect of defeat on this issue for the first time, did the retentionists not protest more loudly against abolition? It seems that there are two possible answers which, together, could account for the poor retentionist campaigns. Throughout the period various murder cases and abolition debates attracted fairly significant media attention. The minority abolitionist lobby made a lot of noise in order to gain attention from the media when capital punishment was in the news. The occasions of high levels of reporting on capital punishment would not have taken place if there was not a large enough market for it. However, the size of this market must not be misinterpreted. One cannot, from reading the volume of newspaper reports, assess how many people really cared about capital punishment and its abolition. These news stories had a significant sensationalist appeal which would have been of interest to many people. This does not mean that these people were especially bothered whether capital punishment was retained or not. Without a major retentionist campaign it is hard to justify a view that abolition overly concerned many of the people who, in theory, opposed it. The lack of media attention for the *Murder (Abolition*

²¹⁶ *The Times*, 22 July 1965.

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of Death Penalty) Act is symptomatic of the wider lack of interest in society as there had been much more reporting of the subject in previous years. This peculiar lack of interest in 1965 can be accounted for by the second answer to why abolition passed off with little incident. The post-war abolition debates had been rumbling on sporadically since 1948. In 1962, James Christoph attributed part of the success of the *Homicide Act 1957* to a general feeling of tiredness and boredom around the subject.²¹⁷ There is no reason to suggest that, in the years after this, the subject had become any more exciting. The people old enough to have been politically aware throughout the previous seventeen years of debates and votes on abolition would have heard the same arguments time and time again. They would have seen public opinion remain roughly the same throughout the period and make no difference on the voting patterns in Parliament, especially in the Commons. Abolition was a process led and run by politicians. Lobbies comprising of senior professionals, the religious elite and leaders of public opinion would have some influence over politicians, but in the end it always came down to their individual consciences. The subject rarely branched out from the realm of ‘high’ politics. In this situation, one can understand how the ordinary person in the street would have felt disenfranchised from the whole process. They had heard the same politicians discuss the same issues amongst themselves in the media for years. The abolitionist minority had the benefit of a large, influential lobby which ordinary people could join and become involved with in some small way. There was no real alternative for the retentionist majority of the population. It must have been hard for these people to retain interest in the subject if they felt that they had no voice.

The abolitionists had finally achieved their goal, albeit without the attention that some may have hoped for. The only issue that the abolitionists still had to contend with was

²¹⁷ Christoph, *Capital Punishment and British Politics*, p. 163.

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the amendment limiting the duration of the *Murder (Abolition of Death Penalty) Act 1965* to five years. Although this was not a significant amendment to the Act, it meant that the abolition process was not yet complete. The retentionists would have a chance to prove that abolition was a mistake. Now, finally, was the time for a large campaign.

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Chapter 7

...we will find it extremely difficult to fight the Government successfully, if they decide to cut the five years short, without recourse to statistical argument. Abolitionist statistics, like retentionist statistics, are eminently destructible. By attacking them, however, we run the danger of appearing illiberal.²¹⁸

The Conservative Party's Research Department explained one of the major problems facing the retentionists in this warning to the LCC. They had no new arguments to persuade the firmly abolitionist Commons to change its mind. Yet the *Murder (Abolition of Death Penalty) Act 1965* had afforded them the opportunity to debate capital punishment once again in Parliament before the summer recess in 1970. For the retentionists, the four and a half years leading up to December 1969 would prove to be their most active. For the first time ever supporters of capital punishment now had something to achieve rather than defend. They were in a position where, though they had been defeated, in the not too distant future they would be given another chance for victory. This was the context in which the retentionists launched their largest campaign. This chapter looks at the biggest retentionist campaign of the entire post-war abolition process, assesses the tactics of the senior retentionist Conservatives in the weeks leading up to the vote to make abolition permanent in December 1969, relating them to the tactics of the abolitionist Labour government, and

²¹⁸ Conservative Party Archive, Bodleian Library, Oxford, LCC (69) 259, Party Research Department Paper, *Capital Punishment*, 25 November 1969.

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provides a brief narrative of the progression of the amended *Murder (Abolition of Death Penalty) Act* through Parliament.

The retentionist campaign was led by the Conservative MP Duncan Sandys. A former civil servant and son-in-law of Winston Churchill, he was a renowned right-wing politician with a determined, forceful work ethic.²¹⁹ His plan was to present a mass petition to Parliament demanding the restoration of capital punishment. The intention was to remind those MPs who were considering voting for abolition that the weight of public opinion was against them. Opinion polls indicated the proportion of the population that opposed abolition based on a small sample of respondents. Here, Sandys put the signatures of over 800,000 people under the noses of the legislature. The effect of this physical representation of the popular will would, Sandys hoped, compel enough MPs to reject the government's attempt to make abolition permanent.

The petition was the main arm of the retentionist campaign but it was not Sandys' first act on this issue after abolition in 1965. In late 1966, he focused his efforts on persuading Parliament to restore capital punishment for the murder of police and prison officers. This was in the wake of the murder of three policemen in Shepherd's Bush in August 1966.²²⁰ Three months earlier, Ian Brady and Myra Hindley had been given life sentences for the infamous Moors Murders, leaving a number of abolitionists feeling uneasy about the whether prison was sufficient punishment for them.²²¹ Soon after the Shepherd's Bush murders, Sandys circulated his motion amongst MPs calling for the restoration of capital punishment for murderers of police and prison officers.²²² In October

²¹⁹ 'Baron Duncan Sandys', <<http://www.oxforddnb.com/view/article/39858>>, (3 June 2010).

²²⁰ *Daily Mirror*, 13 August 1966.

²²¹ Johnson, *On Iniquity*, pp. 88-9.

²²² *The Times*, 18 August 1966.

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1966, Sandys tabled an Early Day Motion, which was signed by 171 MPs, of which 162 were Conservative. Excluding the shadow Cabinet, this represented two thirds of the Conservative MPs. It was not enough. The Commons refused Sandys leave to move his Bill on restoration by a majority of 122.²²³ Sandys had fully expected this defeat.²²⁴

The next month, Sandys led a deputation of Conservative MPs demanding restoration to the Home Secretary on the same day as similar deputations from the Police Federation and Prison Officers' Association.²²⁵ Sandys had a central role in organising these meetings. In his response to a letter of September 1966 from the Prison Officers' Association, Sandys mentioned the resolution passed by the Police Federation calling for the re-introduction of capital punishment. He said that if the Prison Officers' Association adopted a corresponding resolution, to be sent to all MPs, it "would greatly strengthen the hands of those of us who are raising this issue in the House of Commons".²²⁶ The three groups would work together in an attempt to maximise their influence over the Home Secretary. Unfortunately for the retentionists, their deputations were unsuccessful and failed to excite the media. However, their attempts highlighted the centrality of protecting the state's law enforcement officers to the retentionists' campaign. Their murders had remained capital offences in 1957 and, for many, retaining capital punishment was essential for their protection. This was the view taken by the Prison Officers' Association and Police Federation.²²⁷

²²³ *The Times*, 24 November 1966.

²²⁴ Churchill Archives Centre, Cambridge, The Papers of Lord Duncan Sandys, DSND 12/1, Sandys to FitzGibbon, 21 November 1966.

²²⁵ Churchill Archives Centre, Cambridge, The Papers of Lord Duncan Sandys, DSND 12/1, Notes on Sandys' deputation to the Home Secretary, 14 November 1966.

²²⁶ Churchill Archives Centre, Cambridge, The Papers of Lord Duncan Sandys, DSND 12/1, Sandys to the Prison Officers' Association, 14 September 1966.

²²⁷ *Ibid.*

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Opposition from the police and prison officers had to be taken seriously. The public recognised the extraordinary dangers under which they sometimes worked. Journalists were apoplectic whenever an officer was murdered. The Police Federation and Prison Officer's Association felt that their members' lives had been put in greater danger through abolition. They argued that the only option apart from restoration was to arm the police. This was a move which many people had felt would encourage more criminals to arm themselves.²²⁸ Sandys recognised the importance of the police and prison officers to the retentionist campaign. He informed Louis FitzGibbon, his private secretary, that the issue of retention would be limited to police and prison officers "for tactical reasons".²²⁹ In correspondence with fellow Conservative MP Eldon Griffiths, who had connections with the Police Federation and was seen by many as their spokesperson in Parliament, Sandys agreed that the best way forward for the retentionist campaign would be to drum up support in Parliament using the Police Federation's resolution for the restoration of capital punishment. Griffiths had said this in an article in the *News of the World*, in which he urged members of the public to attempt to persuade their MP to support retention.²³⁰ Though questions about the reintroduction of the death penalty for the murderers of police and prison officers were raised frequently in Parliament in the years of the moratorium on capital punishment, they failed to alter the course of the abolition process. Every time such a question was put to the incumbent abolitionist Home Secretary, be it Soskice, Jenkins or Callaghan, they could always answer as Callaghan did in June 1968, saying that capital punishment "will be reviewed by Parliament in 1970 and I can find no reason to anticipate

²²⁸ *Daily Express*, 17 February 1956.

²²⁹ Churchill Archives Centre, Cambridge, The Papers of Lord Duncan Sandys, DSND 12/1, Sandys to FitzGibbon, 2 November 1966.

²³⁰ Churchill Archives Centre, Cambridge, The Papers of Lord Duncan Sandys, DSND 12/1, Sandys to Griffiths, 21 September 1966.

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that review.”²³¹ Despite the emotive nature of this particular type of murder, the protection of law enforcers would not make the government reopen the debate sooner than 1970. The retentionists had to wait until then. For Duncan Sandys this was the time to start his petition.

Public opinion was still set against abolition. A Gallup poll in July 1966, two months after the Moors Murderers were sentenced to life imprisonment, found that seventy-six per cent of respondents supported the restoration of capital punishment.²³² An NOP report in September 1966 found that forty per cent of respondents wanted to see capital punishment restored for all murders, with forty-one per cent for some murders. The figures, which were divided according to the respondents’ political affiliations, showed no major variation between any of the parties. Almost all of the respondents who favoured some sort of restoration of capital punishment wanted to see police murderers hanged.²³³ Capital punishment was rarely the topic of opinion polls in the later 1960s. However, the few surveys that were carried out show that public opinion had not changed towards capital punishment, despite many of the Lords, bishops and those in the legal profession now supporting abolition.

Although Sandys was the nominal sponsor of the petition, due to his Parliamentary obligations much of the work was carried out by the Society for the Restoration of Capital Punishment [SRCP], a group borne out of Sandys’ appeal for protest against abolition in the wake of the Shepherd’s Bush police murders. The chairman was Louis FitzGibbon, who would become Sandys’ private secretary as a result his involvement in the SRCP.

²³¹ HC Deb 27 June 1968 vol. 767 cc114-5 [wa].

²³² *World Political Opinion and Social Surveys: [microfilm] Series One; British Opinion Polls; Part 1; Basic Set 1960-1988, Gallup Political Index*, 75 (1966), p. 90.

²³³ *World Political Opinion and Social Surveys: [microfilm] Series One; British Opinion Polls; Part 1; Basic Set 1960-1988, N.O.P.*, (1966), pp. 12-3.

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FitzGibbon kept Sandys up to date with the progress of the petition, providing weekly reports for him on how many signatures had been collected and how many letters of support they had received.²³⁴ One of the most involved participants in the petition was Charlotte Hurst, vice-president of the SRCP.²³⁵ Blank petition forms were sent, under Sandys' name, to people who had offered their services. Each person was asked to return 500 signatures. Across the country campaigners stood on street corners and put up posters in an effort to raise awareness of the campaign and fulfil their signature quota. The petition was up and running.

Sandys and the SRCP decided on a tactic that would get the most signatures for their petition: they would target areas where there had recently been a murder.²³⁶ This was probably the best tactic to employ in so far as the primary objective was to collect the highest number of signatures. Emotions in these areas were likely to be running high and many people would be looking for retribution. There would always be questions about whether the victim would still be alive were hanging still the penalty for murder. However, were this tactic to have become public knowledge it may well have devalued the entire petition. By focusing their efforts on these areas the organisers could not honestly claim that their petition reflected the weight of public opinion. Of course, this was no opinion poll. They did not claim that these signatures represented any specific proportion of the population. The biggest problem with this petition lay with the reliability of those who supplied their signatures. Were the same people asked to sign the petition the week before the murder in their area was committed, or, for that matter, a year afterwards, they may not

²³⁴ Churchill Archives Centre, Cambridge, The Papers of Lord Duncan Sandys, DSND 12/2, FitzGibbon to Sandys, 1967-8.

²³⁵ *The Times*, 19 April 1967.

²³⁶ Churchill Archives Centre, Cambridge, The Papers of Lord Duncan Sandys, DSND 12/7, Notes on the petition, undated.

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have complied. However, the importance of this point should not be overstated. Whilst this tactic throws a little doubt over the reliability of the petition due to the emotionally charged atmosphere in which many people were asked to sign it, it was still by far the largest retentionist campaign and, as such, the focal point for retentionist activity. Though some of those who signed the petition from these areas which had recently experienced murder may not have signed otherwise, their opinions in this state of mind were still important.

This campaign may have been modest in comparison to the work of the NCACP, but it succeeded in gaining some attention from regional and national newspapers. However, Sandys and the SRCP felt that their chances of success would be improved if they managed to enlist support from other societies and industries. By 1967, links were developing with the right-wing Conservative group, the Monday Club.²³⁷ In 1968, the restoration campaign received the support of a committee of the Free Church of Scotland.²³⁸ The campaign also received support from the National Cleansing Crusade for the Restoration of Capital Punishment, the Outlawing of Sodomy, and Stiffer Penalties to fit the Crimes, whose objectives were fairly obvious.²³⁹ These were all small, marginal groups who, with the exception of the Monday Club, would have had a negligible impact on the opinions of politicians and the general public. Other groups, such as the British Legion women's section and Securicor, refused to back the restoration bid. Sandys succeeded in advertising the petition in pubs through the Licensed Victuallers' Central Protection Society of London Limited in late 1967, though this again was only a small arm

²³⁷ Churchill Archives Centre, Cambridge, The Papers of Lord Duncan Sandys, DSND 12/8, FitzGibbon to Sandys, November 1967.

²³⁸ Churchill Archives Centre, Cambridge, The Papers of Lord Duncan Sandys, DSND 12/10, Unknown author to Sandys, 23 May 1968.

²³⁹ Churchill Archives Centre, Cambridge, The Papers of Lord Duncan Sandys, DSND 12/1, National Cleansing Crusade to Hurst, undated.

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of the campaign.²⁴⁰ Crucially, the retentionists failed to attract any big organisations to back their cause. Such backing could have dramatically enhanced the impression of the campaign amongst politicians and the general public, potentially improving their chances of success.

The campaign's failure to attract any large organisations to boost its lobby was compounded by a chronic shortage of money. Correspondence with their bank shows that the campaign struggled to make ends meet. Unlike the NCACP, they had few funds to rely on. The petition's bank account was often in the red. This lack of funds dramatically stunted their potential. Whether the campaign would have been more successful with greater financial resources is a matter of conjecture, but the economic situation that Sandys et al found themselves in could only have limited the scope, audience and coverage of the campaign. For them there were no pamphlets or books to be reviewed in the *Law Society Gazette*, which reviewed some abolitionist publications. There were no nationally renowned orators speaking at rallies on behalf of the retentionists. Their campaign struggled to progress beyond the street corners.

The campaign failed to attract the attention of both the Cabinet and the LCC. Neither discussed abolition before mid 1969 and there were never any references made to the petition. However, by late 1969 rumours were spreading that the Labour government was planning to force legislation through Parliament to make abolition permanent. In June of that year, Sandys attempted to pass the Capital Punishment Bill through the Commons. The Bill aimed to guarantee that the government could not extend abolition beyond the five

²⁴⁰ Churchill Archives Centre, Cambridge, The Papers of Lord Duncan Sandys, DSND 12/2, Notes on the petition, 1967.

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year experimental period without a separate Bill specifically for this purpose.²⁴¹ He was defeated by 256 votes to 126.²⁴² This delighted some people in the legal profession.²⁴³ In November 1969, the LCC were told about rumours that the government were planning to make abolition permanent before Christmas 1969.²⁴⁴ In fact, the Cabinet had been planning this since May of that year.²⁴⁵

The Queen's Speech in October 1969 stated that "an order will be introduced early in the session to make the abolition of capital punishment permanent".²⁴⁶ The retentionist LCC did not realise how early this would be. By the time that the rumours had reached them in November there was only a month and a half left before the debate. They felt that they would have a greater opportunity to restore capital punishment if they could delay the debate until after a potential election victory, but the chances of achieving this were slim. From the minutes of the LCC one can sense an air of tension, bordering on panic at times, from those determined to see capital punishment restored.

The LCC had to act fast. From October to mid-November their discussions revolved around establishing their position on the issue. They all, including the abolitionist Iain Macleod, agreed that the five year period should be completed before any attempt was made to make abolition permanent. There was no question of supporting the government in moving their legislation at this time in order to attack it and defeat them as they would have known that this would only end in failure. The best that they could hope for was to delay the vote until July 1970. The LCC identified five options for how they could proceed: (i)

²⁴¹ *The Times*, 16 June 1969.

²⁴² *The Times*, 25 June 1969.

²⁴³ *Justice of the Peace and Local Government Review*, 133, 27 (1969), p. 449.

²⁴⁴ Conservative Party Archive, Bodleian Library, Oxford, LCC (69), Leader's Consultative Committee Minutes, 5 November 1969.

²⁴⁵ TNA:PRO, CAB 128/44, CC (69) 24, 22 May 1969.

²⁴⁶ Conservative Party Archive, Bodleian Library, Oxford, LCC (69) 253, Leader's Consultative Committee Minutes, 8 October 1969.

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attack the abolitionist crime statistics; (ii) call for an extension to the period of suspension; (iii) call for a new investigation into abolition; (iv) a motion of censure on the grounds that the government was committing a breach of faith by attempting to force through legislation before the five year trial period had been completed and (v) an amendment to the *Murder (Abolition of Death Penalty) Act*, again based on the notion of a breach of faith. As shown in epigraph, while it was possible to attack abolitionist statistics, the retentionist statistics suffered from the same frailties. What is more, the fear of appearing “illiberal” was real.²⁴⁷ The retentionists could not afford to be seen as reactionary. Their demand for restoration, whilst supported by the majority of the population, went against the social reforms which had swept through an increasingly permissive Britain over the past few years. In 1969, a year marked internationally by hippies, Woodstock and peace and civil rights protests, any signal by the retentionists that they were turning their face against permissive reforms could have been suicidal with a general election only a matter of months away. Attacking the statistics, for this reason, could not form the basis of the Conservative strategy.

Quentin Hogg, the Opposition spokesman on Home Affairs, was one of the loudest critics in the media of the government’s move to legislate early. He said, however, that he would support extending the five year moratorium by eighteen months. This would allow, he argued, for a detailed analysis of the effect of abolition over the full five years of the moratorium.²⁴⁸ As the law stood, were the five year period to elapse without further legislation, the *Homicide Act 1957* would come back into effect. Hogg’s suggestion appears to have been the ideal solution. It satisfied the retentionists’ desire for the five year

²⁴⁷ Conservative Party Archive, Bodleian Library, Oxford, LCC (69) 259, Party Research Department Paper, *Capital Punishment*, 25 November 1969.

²⁴⁸ Conservative Party Archive, Bodleian Library, Oxford, LCC (69), Leader’s Consultative Committee Minutes, 5 November 1969.

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experiment to be comprehensively analysed while the abolitionists could be content in the knowledge that only severe delays in this analysis would allow capital punishment to return before there had been a vote on further legislation. However, one factor meant that this proposal would never have been agreed to by Labour: the forthcoming general election. Opinion polls suggested that the Conservatives were widely expected to win. In January 1970, forty-three per cent of respondents said that they would vote for the Conservatives compared to thirty-seven per cent for Labour. However, when asked who they thought would win, fifty-four per cent said the Conservatives while only twenty-five per cent said Labour.²⁴⁹ Postponing the vote on making abolition permanent until there was potentially a retentionist majority in the Commons, or at the very least a much smaller abolitionist majority under a retentionist government, would not have been an attractive proposition for the abolitionist Labour government.

The Conservative Research Department believed that “a good battle could be fought on the proposition that we need an entirely new kind of investigation”.²⁵⁰ Not many details are given about what this investigation would entail. However, for the same reasons as with increasing the length of the temporary abolition, this would never be an acceptable proposal for the Labour abolitionists, who were looking to finish the job before the next election.

This left the LCC with two options: push for a motion of censure or try to add their own amendment to the *Murder (Abolition of Death Penalty) Act*. There was disagreement within the LCC as to which path they should follow. Duncan Sandys was pressing the Party to allow him to table an amendment to the government’s impending motion. The LCC, however, were keen not to be too closely associated with his more hard-line retentionist and

²⁴⁹ Gallup, *The Gallup International Public Opinion Polls*, vol. 2, p. 1087.

²⁵⁰ Conservative Party Archive, Bodleian Library, Oxford, LCC (69) 259, Party Research Department Paper, *Capital Punishment*, 25 November 1969.

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reactionary views and would not grant him permission to move.²⁵¹ The Conservative Lord Brooke tabled a motion in December 1969 calling for the five year period to be completed. The LCC decided not to sponsor this action.²⁵² Both actions were rooted in the same principle of delaying further legislation on abolition on the grounds that the government was committing a breach of faith. This was the argument that the Conservatives pushed in the media and Parliament.²⁵³ In the end they chose to adopt the safer option, the motion of censure. Even the abolitionist LCC member Iain Macleod supported this on the grounds of a breach of faith.²⁵⁴ Lord Brooke and Viscount Dilhorne, who wanted to delay the vote on abolition until 1973, were allowed to present amendments in the Lords, though these would not be party-sponsored.

As the LCC were starting to debate which course of action to follow in November 1969, Quentin Hogg met with Jim Callaghan, the Home Secretary, to discuss the government's motion. He reported back to the LCC that the government had decided to breach the five year period and were simply deciding whether it should happen immediately or in June.²⁵⁵ However, the Cabinet had decided back in early October, after a few months deliberation, that they would push forward with legislation before Christmas.²⁵⁶ This misleading tactic may have encouraged the Conservatives to believe that the government could be persuaded to delay the vote by accusing them publicly of a breach of faith. Hogg made it clear to Callaghan that this was the approach that the Conservatives

²⁵¹ Conservative Party Archive, Bodleian Library, Oxford, LCC (69), Leader's Consultative Committee Minutes, 8 December 1969.

²⁵² Conservative Party Archive, Bodleian Library, Oxford, LCC (69), Leader's Consultative Committee Minutes, 10 December 1969.

²⁵³ *Daily Express*, 16 December 1969.

²⁵⁴ Conservative Party Archive, Bodleian Library, Oxford, LCC (69), Leader's Consultative Committee Minutes, 24 November 1969.

²⁵⁵ *Ibid.*

²⁵⁶ TNA:PRO, CAB 128/44, CC (69) 46, 7 October 1969.

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would take.²⁵⁷ Undeterred, the government continued with preparations for their motion. They decided not to tell the Opposition about the dates of the vote until 8 December, the latest protocol would allow them to wait before informing the Lords of an impending debate on the 17th.²⁵⁸

The days and weeks leading up to the votes in Parliament were covered extensively in the newspapers. The articles were generally more impassive than those in the 1940s and early 1950s, even when reporting on a protest by 90,000 police officers against abolition, an event which would have stirred some newspapers into a frenzy twenty years earlier.²⁵⁹ There remained, however, a tendency for a tabloid/broadsheet split whenever opinions on the matter did emerge. Tabloids had always tended to support retention whilst the broadsheets backed abolition, with the notable exception of *The Times*.²⁶⁰ An editorial in the *Daily Telegraph* stated that the newspaper would remain opposed to capital punishment until overwhelming evidence could prove its unique deterrent effect.²⁶¹ The *Daily Express* did not state its position in the same manner. However, in all of its articles on abolition in late 1969 it devoted far more column inches to the retentionists. The articles tended to follow the same pattern: detailed discussion of the retentionists followed by reasonable discussion of the abolitionists and finally further analysis of the retentionist arguments. The tone of this is clearly retentionist.²⁶²

With the Conservatives already angry about the government's apparent breach of faith, the day after announcing the dates of the votes in Parliament Callaghan intensified the

²⁵⁷ TNA:PRO, CAB 128/44, CC (69) 57, 27 November 1969.

²⁵⁸ TNA:PRO, CAB 128/44, CC (69) 58, 4 December 1969.

²⁵⁹ *Daily Telegraph*, 13 December 1969 and *Daily Express*, 13 December 1969.

²⁶⁰ Peter Hodgkinson and Andrew Rutherford, *Capital Punishment: Global Issues and Prospects*, (Winchester, Waterside Press, 1996), p. 197.

²⁶¹ *Daily Telegraph*, 16 December 1969.

²⁶² *Daily Express*, 10-19 December 1969.

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situation by saying that he would resign if the government was defeated.²⁶³ Though this was officially a free vote on abolition it had now become a matter of confidence in the Home Secretary and, by association, the government. Sandys accused the government in the media of trying to “bounce Parliament into a decision to abolish capital punishment” as a result of Callaghan’s promise.²⁶⁴ The government had loaded the free vote to put pressure on the few retentionist Labour MPs to vote with the government. The chairman of the Conservative Party, Anthony Barber, described this as “petty blackmail”.²⁶⁵ The media, however, did not express similar outrage at this move. There were even hints of admiration from the more retentionist *Times* that Callaghan’s principles had made him unwilling to preside over a Home Office that punished murderers in line with the *Homicide Act*.²⁶⁶ Regardless of whether his threat-cum-promise to resign was borne out of a genuine feeling of repugnance towards capital punishment, this was certainly a politically savvy move by Callaghan that was unmatched by any of the retentionists.

Duncan Sandys, after three years of hard work alongside the SRCP, was ready to present his petition to Parliament. At 2.30pm on 15 December 1969, he started the debate on capital punishment by placing over 800,000 signatures from people who supported retention in front the gathered MPs. The twenty-one boxes that contained them certainly made a statement to the members.²⁶⁷ Sandys had done all that he could. The first topic for debate in Parliament was the motion of censure. After a six hour debate the House of Commons divided: the motion was defeated by sixty-two votes.²⁶⁸ The dismissal of the

²⁶³ *The Times*, 9 December 1969.

²⁶⁴ Conservative Party Archive, Bodleian Library, Oxford, The Papers of Lord Duncan Sandys, DSND 12/11, Article by Sandys for the *Sunday Express*, 1969.

²⁶⁵ *The Times*, 10 December 1969.

²⁶⁶ *The Times*, 9 December 1969.

²⁶⁷ *Guardian*, 16 December 1969.

²⁶⁸ HC Deb 15 Dec. 1969 vol. 793 cc939-1062.

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petition reinforced the fact that the abolition question belonged to the Commons. The general public had no influence over its decision. This result was the harbinger of failure for the retentionists.

The next afternoon, the Commons debated making the *Murder (Abolition of Death Penalty) Act* permanent. Callaghan opened the debate by presenting the situation as a simple choice for MPs: permanently abolish capital punishment or return to the *Homicide Act*. The Labour government's positioning of the debate along these lines put the Conservatives at a serious disadvantage. If they opposed the motion they risked being seen as reactionaries and social authoritarians from the officer class who would demand the return of corporal and capital punishment and stand against the permissive reforms within British society. As already mentioned, the LCC was all too aware of the danger of appearing illiberal. With a general election looming they had to appear both modern and modernising.

Unlike the retentionist Conservatives, Callaghan was happy to start a statistical argument and did so in his opening addresses. Callaghan, under pressure from some Conservatives who felt that statistics may improve their argument, offered the crude murder rates for 1969.²⁶⁹ As one would expect, he insisted that the statistics did not show that the murder rate had increased meaningfully since abolition. He acknowledged the opposition of the Police Federation but said that the statistics did not support their view that capital punishment offered them greater protection. The murder of three officers in Shepherd's Bush was the only instance of police murder after July 1965 that would have been a capital

²⁶⁹ *Daily Telegraph*, 16 December 1969.

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offence under the *Homicide Act*. Hogg followed the line of the LCC in not attacking the government's statistics, maintaining that the statistics on both sides were flawed.²⁷⁰

From time to time the debate returned to statistics. The biggest issue, however, was the deterrent effect of capital punishment. Both the abolitionists and the retentionists were equally convinced that they had analysed the situation correctly and, after years of arguing about deterrence, it is doubtful that any of the MPs would have changed their minds on the basis of what was said on this day. There was also debate about whether the *Homicide Act* would actually come back into effect if capital punishment was not permanently abolished, the moral justifications for capital punishment, the influence of emotion on MPs, the reluctance of juries to convict where the crime was capital, the state of public opinion and international examples of abolition. After more than seven hours of debating the House divided for the second time in two days on an issue concerning capital punishment. The result was resounding, a 343 to 185 vote victory for the abolitionists.²⁷¹ Though the retentionists would have expected to be defeated in the Commons, a victory of almost two to one sent a clear message of intent to the Lords. If they defeated this motion then they would be overturning a significant Commons majority that included most of the government. This would seem, to many people, to be an affront to democracy.

The Lords had to vote not only on the amended *Murder (Abolition of Death Penalty) Act* from the Commons but also on the two amendments proposed in the Lords. Lord Brooke put forward an amendment saying that no decision on making abolition permanent could happen before the full crime statistics had been published for 1969. Viscount Dilhorne moved an amendment extending the period of experimental abolition to

²⁷⁰ HC Deb 16 Dec. 1969 vol. 793 cc1148-297.

²⁷¹ Ibid.

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31 July 1973. This debate was far more focused on the deterrent effect of capital punishment. The Lords debated abolition over two days but, eventually, came to the same conclusion as the Commons. Brooke's and Dilhorne's amendments were rejected as the Lords gave their assent to making abolition permanent by 220 votes to 174. The abolitionists had won.

The efforts of the retentionists resulted in a defeat in the Commons by a majority of 158 and in the Lords by forty-six. They could not persuade Parliament to at least delay legislation on capital punishment until after the five year moratorium had elapsed in 1970 because nothing had changed since 1965 to make Parliament reconsider its position on abolition. Many politicians and members of the public felt uncomfortable that the Moors Murderers were sentenced only to life imprisonment, but there were few protests demanding their execution. The retentionists had failed to convince Parliament that capital punishment was a unique and necessary deterrent to murderers.

In this context, the government knew that there would be no serious backlash from Parliament or the public if they did commit what appeared to be a breach of faith. The only problem that they had to worry about was ensuring that abolition was made permanent before the forthcoming general election. Considering the support for abolition in the Commons and the Lords, the retentionists could do little other than accuse the government of breaking their promise. The failure of the *Homicide Act* had convinced most politicians that capital punishment had to be abolished. Twelve years later there was no change in this belief. The retentionists had lost this battle before anyone had mentioned a petition.

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Conclusion

There was no capital punishment from the northern tip of Norway to the southern tip of Italy. In an age of gas chambers and mass executions, those countries had found, as we had, a new safeguard and a new dignity in refusing the state the right to take life.²⁷²

This triumphal declaration in *Justice of the Peace* encapsulated the elation felt by many abolitionists after the demise of capital punishment. By the end of 1969, the retentionists had been comprehensively defeated. Any further change in the law would require a major shift away from the liberalised, permissive attitudes that had become prevalent amongst the majority of MPs. This would have involved a monumental shift in British attitudes, probably sparked by a series of cataclysmic events. The shift never happened. Prison quickly became the established and accepted form of punishment for homicide, despite the on-going support from the majority of the general public for capital punishment. Some retentionist groups continued to campaign for the restoration of the death penalty throughout the 1970s, in particular for the murder of police officers and, in the context of the escalation of violence in Northern Ireland, for terrorist murderers. As well as providing a conclusion for this thesis, this final chapter also offers a brief overview of the retentionist movement up to 1979.

The retentionists failed to retain capital punishment in part because nobody wanted to take full responsibility for the campaign. Every government until Harold Wilson's in 1964 supported retention and managed, with declining levels of success, to resist the pressure from the abolitionist lobby to do away with capital punishment. None of them took

²⁷² *Justice of the Peace and Local Government Review*, 133, 27 (1969), p. 449.

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full control of the subject. Even Wilson left it to Sydney Silverman to introduce the legislation that finally abolished the death penalty. Were any government to have fully committed to retaining capital punishment then they would have eschewed the popular precedent of leaving the subject to a free vote in Parliament and forced the defeat of the abolitionist Bills and amendments through the full use of the party whips. They may not have faced serious repercussions for such an act as, though it would have caused disquiet amongst many MPs, the general public, who were mostly retentionist and not overly concerned by the subject of abolition, would have been unlikely to change their voting habits because of this issue. The successive retentionist governments were not willing to take this drastic but decisive step. As Victor Bailey explains in reference to the Labour government during the debates on the *Criminal Justice Act 1948*: “few governments were willing to go ahead of [public] opinion on so volatile and unpredictable an issue”.²⁷³ Though the issue of capital punishment became more predictable after 1956, there was never any benefit for a government in forcibly opposing abolition. Neither was there any reward for a government in sponsoring a Bill on abolition. While it is unlikely that a firm line on this subject would have cost a government many votes, neither was it a vote winner. There was no electoral benefit to be had from assuming control of the abolition debates. When the increasing concerns over appearing illiberal, at a time when society was becoming ever more permissive, are considered, then one can understand why no government chose to forcibly retain capital punishment. Because successive retentionist governments refused to take control of the capital punishment debates, the increasingly abolitionist MPs were able to dictate the course of the death penalty discourse and proceed without being held accountable to public opinion.

²⁷³ Bailey, ‘The Shadow of the Gallows’, p. 347.

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The passing of the *Homicide Act 1957* was the point at which, in hindsight, the abolition of capital punishment became almost inevitable. In 1956, the government had to reach a compromise to appease the abolitionist majority in the House of Commons. Unfortunately for the government, this compromise was attacked from all quarters as an illogical and badly constructed statute. Contemporary observers noted that it would have to be reviewed and, as the government themselves admitted in 1962, this would lead to abolition rather than a further alteration to the scope of capital punishment.²⁷⁴ Without a major break from the Parliamentary precedent that left all debates on abolishing capital punishment to a free vote, abolition became highly likely. The timing of its demise, however, was less certain. The Commons would have, at almost any time, voted to abolish capital punishment. However, for the Lords to be persuaded to back abolition there would have to be a strong majority from the Commons and support from members of the government. There was no chance of this happening under a Conservative government. Until Labour's election victory in 1964, there was no definite timescale for when capital punishment would be abolished. After 1956, abolition was almost inevitable but, until Labour came to power, no-one knew when it would happen.

It is interesting that the two Home Secretaries who were in power when the Commons voted for abolition against the government's advice were both abolitionists when not in office. James Chuter Ede became one of the major proponents of the 1956 Death Penalty (Abolition) Bill, while Gwilym Lloyd George was "an avowed abolitionist" in 1948.²⁷⁵ This raises questions about the duty of the Home Secretary to maintain law and order and the convictions of these men who were not willing to see capital punishment

²⁷⁴ TNA:PRO, HO 291/1017, Secretary of State's memorandum on capital punishment, 4 April 1962.

²⁷⁵ J. Graham Jones, 'Major Gwilym Lloyd-George, First Viscount Tenby (1894-1967)', *The National Library of Wales Journal*, 32, 2 (2001), p. 196.

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abolished whilst they were in charge of the Home Department and yet voted in favour of abolition when they were not. Were these men so overwhelmed, when they became Home Secretary, by the delicate balance of law and order in Britain that they felt compelled to eschew their own principles in favour of retaining the ultimate deterrent? This may have been the case with Lloyd George who remained a retentionist after being Home Secretary, but it was certainly not the case for Ede. Both men may have put their own opinions aside to act as the voice of the government on this issue at the behest of the Prime Minister or Cabinet. There is no satisfactory answer as to why these men changed their minds about abolition once they had become Home Secretary, but the fact that they did remains an intriguing, if not slightly curious issue that is worth flagging up.

Throughout this thesis there have been many references to the inadequacies of the retentionist lobby. Without a firm, committed lead on abolition from any retentionist government, the onus to take control of the campaign to retain capital punishment fell to senior members of the various lobby groups. But, without a centrally organised lobby movement, there was no-one who could take on this role in the manner that Gerald Gardiner and Victor Gollancz did for the abolitionists. The result was the small, disjointed and easily-ignored retentionist campaign that attempted to oppose the abolitionists outside of Parliament. Despite opinion polls showing that the majority of the general public always backed retention, there was no way for ordinary people to become actively involved in the retentionist campaign. There were no publications or rallies to impress the benefits of retention on to MPs. Duncan Sandys' petition, though attracting significant support from the general public, failed to offer the intellectual grounding for the retentionist campaign that was achieved for the abolitionist campaign by the NCACP. Duncan Sandys merely

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expressed public opinion in a new form. An active, well co-ordinated campaign may have improved the retentionists' chances of success. In the absence of this, the retentionists failed to regain the ground that they gradually lost to the abolitionists on capital punishment after the Second World War.

The abolitionist campaign, led after 1955 by the NCACP, focused on convincing the general public to support their cause. They were promoting the abolitionist principles which had been rooted in the House of Commons since the *Criminal Justice Act 1948*. No-one of any importance demanded that the government listen to public opinion. This was because popular politics was largely irrelevant to the abolition process. When studying political history in the twenty-first century, one can feel obliged to search for the key impact from 'low' politics. This is not always appropriate, as is the case with this subject. An historical study based on 'high' political narratives is not necessarily an example of bad research. For the abolition of capital punishment, governments were never keen to introduce the public into the debates in any meaningful way as there would be no electoral benefit for them to do so. The public, with the exception of a few devoted abolitionists, were apathetic towards abolition and did not strive to become involved in the debates. Decisions on abolition, therefore, were made in the knowledge that the political consequences would only be felt within Parliament.

The failure of the retentionists was not caused simply by their own inaction. The wave of permissiveness in the 1950s and 1960s swept up the abolition of capital punishment along with other reforms. By the mid 1960s, liberalising reforms were the order of the day. The retention of capital punishment, against the will of the House of Commons, would have stood out dramatically against the backdrop of the increasingly permissive

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society. Permissiveness had become embedded in Parliament since Harold Wilson's Labour government came to power in 1964. Sex and sexuality were becoming increasingly visible themes within society thanks to the lifestyles and artistic output of the likes Mick Jagger and John Lennon. The Profumo Affair in 1963 meant that politics could not distance itself from this newly sexualised society. Proponents of pop culture were celebrating the newly permissive nature of British society. If politicians wanted to stay in touch with this new, cool Britain, they could not be seen to support archaic practices such as capital punishment.²⁷⁶

The theme of civilisation has appeared many times in this thesis. It was mentioned on occasion by the retentionists and, when applied to the wider abolition movement, provides an explanation of the basis of many of the pro-capital punishment beliefs that were expressed during this period. This retentionist idea that a country must reach a certain level of civilisation in order to achieve abolition was countered by the abolitionists. They argued a simple yet opposing theory: that only an uncivilised country would put somebody to death.²⁷⁷ This was a more effective philosophy which had a greater appeal to the general public. As this thesis has demonstrated, the retentionist argument over civilisation was fairly complex and could not be explained succinctly. The abolitionists could, and did, point to an execution and proclaim it to be inhuman. It was, in their opinion and propaganda, the act of an uncivilised society. This was a more readily convincing argument with which the retentionists struggled to cope. The retentionists avoided using the civilisation argument in public as it would have involved telling their supporters that they lacked civilisation and could be easily countered by the abolitionists.

²⁷⁶ Marcus Collins, 'The Permissive Society and its Enemies', in Marcus Collins (ed.), *The Permissive Society and its Enemies: Sixties British Culture*, (London, Richard Oram Press, 2007), pp. 8-10.

²⁷⁷ HC Deb 21 Dec. 1964 vol. 704 cc902-3.

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All of the factors mentioned so far contributed to the failure of the retentionists in post-Second World War Britain. However, there was one other factor which, if not present in the abolition process, could have rendered all of the aforementioned issues irrelevant and handed victory to the retentionists. Capital punishment simply was not a big issue. It rarely topped the agendas for Cabinet meetings and only made the headlines when there was a major vote or a particularly noteworthy execution. Normally, the subject was banished to small articles well within the main body of the newspapers. The only people who cared enough about capital punishment to be moved to action were the minority of the population who were abolitionists. Had the retentionist majority of the population had this sort of motivation then capital punishment would most likely have become a vote winning issue and probably would have been retained throughout this period. The general public would have wrested control of the capital punishment question from the Commons. But they did not. Abolition was greeted with groans from a few sections of society but, on the whole, it was met with indifference. This situation was not helped by the fact that, by the time capital punishment was permanently abolished in 1969, it had been twenty-two years since abolition was first debated as part of the Criminal Justice Bill. The majority of the British public were weary of hearing the same arguments put forward in debates in which they were not involved. Whether the few worst murderers were hanged or imprisoned for a considerable period of time did not worry too many people. Abolition is an important part of modern British history which required research. It was the subject of significant Parliamentary debate and formed part of a more extensive liberalising culture that has gone on to define the 1960s. This relevance to the wider history of post-war Britain must not allow the subject to be viewed as an issue which stimulated emotion and intrigue amongst

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the majority of the British population. The apathy towards the debates on capital punishment meant that the retentionists were unable to mobilise the support for retention from the majority of the British public.

The retentionists from the general public formed more vocal lobbies in the 1970s than had been seen in the previous decades. Their focus was on two specific categories of murder: the murder of police officers and murder through acts of terrorism. The former had been the category of murder for which most retentionists had focused their efforts to retain capital punishment over the past few years. The latter became the most popular focus of the retentionist campaigns as IRA activity increased. Though the lobby action remained relatively low-key, it still attracted the attention of the national media.

Soon after capital punishment was permanently abolished in December 1969, a movement began to restore the death penalty for people who killed police officers in the course of their duty. The campaign was led by a group of police officers' wives, who soon formed the Police Wives' Action Group.²⁷⁸ In early 1970, *The Times* reported that police morale was low, in part due to the loss of the protection that they felt was afforded to them by the death penalty.²⁷⁹ The Police Wives led an emotive campaign which highlighted not only the presumed increase in risk to policemen but also the impact on their families if the husband and father should be murdered. Their campaign received a lot of media attention in early 1970, although it was not all positive. One of the founding members of the organisation, Mrs Athlene O'Connell, was accused by a former member of the group of being a right-wing extremist. O'Connell had been a member of Wandsworth council, where her aggressive nature had cost her the Conservative whip. She had also been accused of

²⁷⁸ *The Times*, 09 March 1970.

²⁷⁹ *The Times*, 17 February 1970.

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being a member of the National Front.²⁸⁰ Whilst the Police Wives soon disappeared from the public eye after these accusations, the campaign to restore the death penalty for police murderers remained. A Bill was introduced by the Conservative MP Edward Taylor in April 1973 under the Ten Minute Rule calling for the restoration of capital punishment for people who murdered a police officer or committed murder using firearms or explosives. The Bill was opposed by Roy Jenkins, the former Home Secretary, and defeated by 320 votes to 178.²⁸¹

In the mid to late 1970s, calls began to emerge, largely from Conservative politicians, to restore capital punishment for terrorist offences in the wake of the escalation of IRA violence. The debates surrounding capital punishment in Northern Ireland, where it was retained until 1973, and the issue of terrorism is a topic that is far too large to be satisfactorily analysed in the limited space available in this conclusion. Calls to restore capital punishment for terrorism continued with force until the early 1990s. The 1970s saw these demands become louder and more frequent. They were backed by many members of the Conservative government from 1979, including Prime Minister Margaret Thatcher. In the context of the rise in terrorist attacks, Thatcher voted for the restoration of the death penalty in the Capital Punishment Bill only two months after winning the general election. Thatcher had already broken from precedent by making capital punishment an election issue before she became Prime Minister.²⁸² Though this did not harm her electability, it did not help the retentionist cause. They lost the vote by 362 votes to 243.²⁸³

²⁸⁰ *The Times*, 10 March 1970.

²⁸¹ HC Deb 11 Apr. 1973 vol. 854 cc1332-44.

²⁸² *Daily Express*, 02 April 1979.

²⁸³ HC Deb 19 July 1979 vol. 970 cc2019-125.

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The explosion of terrorist activity in the 1970s caused a new category of murder to be defined, separate from murder using firearms or explosives. Terrorists, who often indiscriminately targeted innocent civilians rather than killing someone known to them, were deemed to require special punishment. For them many people demanded the death penalty. Terrorists became a new group which apparently lacked the civilisation that the retentionists believed was necessary to allow a state to function safely without capital punishment. Despite the horror and outrage that was felt across Britain throughout the 1970s at these attacks, the abolitionist House of Commons stuck to their principles and opposed the restoration of capital punishment. No event in the 1970s could persuade the majority of MPs that capital punishment was a unique deterrent and a necessary evil.

How should history judge the retentionists and the part that they played in the abolition of capital punishment in Great Britain? They were certainly more than just a foil to the abolitionist campaign, at least up until 1956. That year proved to be the turning point of the entire abolition process, after which the retentionists' defeat became almost inevitable. The retentionists, though mostly quiet outside the debates in Parliament, represented the views of the majority of the population and managed to retain capital punishment for almost twenty years after the Commons first decided that they wanted it abolished. Their failure is understandable in the context of post-war Britain. As with many votes on an issue of moral conscience, their defeat does not indicate that they were in any way lacking morals. Rather, they were defending something which they honestly believed would help to maintain law and order in Britain, even if most informed opinion, in the words of Victor Gollancz, disagreed with them. However, they were unable to shake off the impression that they were old fashioned. This was largely because they were old fashioned.

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Britain in the 1960s was a very different place to that in which many of the retentionists had grown up. The retentionists could not persuade the increasingly liberal MPs to follow public opinion and reject abolition. Parliament was sovereign and by 1956 the House of Commons had firmly made up its mind. Despite the support of the silent majority, the retentionists were simply left behind.

Abbreviations

LCC	Conservative Party's Leader's Consultative Committee
NCACP	National Campaign for the Abolition of Capital Punishment
SRCP	Society for the Restoration of Capital Punishment

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