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‘A GREAT REFORMING HOME SECRETARY?’

A Re-evaluation of the Home Secretaryship of R. A. Butler,
January 1957 – July 1962

by

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A thesis submitted for the degree of MPhil in History

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Abstract

Published twenty years ago, Anthony Howard's official biography of R. A. (Rab) Butler remains the most comprehensive study of one of the giants of twentieth century Conservative politics. Howard portrayed Butler as a liberal and progressive politician whose reforming instincts were at times frustrated by stronger-willed colleagues, right-wing backbenchers, or Conservative party activists. Now widely accepted, this view relies strongly on the liberal reforms Butler introduced – on prisons, betting and licensing – during his time as Home Secretary from January 1957 to July 1962. However, it has also been argued that the influence of his junior minister David Renton prevented Butler from implementing the Wolfenden Committee's recommendations on homosexual law reform and forced him to introduce restrictions on Commonwealth immigration. Moreover, Butler was unable to overcome opposition from within the Conservative party to his efforts to abolish capital punishment and consistently battled against demands for the re-introduction of judicial flogging. It is also possible to discern in the writing on Butler the acceptance of a 'Jenkinsian' model that equates the success of a particular Home Secretary with the volume and extent of 'progressive' or even 'radical' legislation that they implemented.

A re-evaluation of Rab Butler's Home Secretaryship is long overdue. Examining government files held at the National Archives -- which were unavailable at the time Howard was writing -- that shed new light on Butler's character and the motives behind his penal and social policies, this thesis challenges several of Howard's conclusions. Most importantly, what this evidence makes clear is that it is vital to adopt a more nuanced view of Butler. The argument that certain policies were forced upon him by colleagues cannot be sustained as it becomes clear that Butler was motivated by a desire to reverse a widely perceived decline in moral and religious values that was leading to an increase in crime and permissiveness. In addition, it is demonstrated that the straightjacket of the 'Jenkinsian' model of Home

Secretaryship gives a distorted view of Home Office history, which detracts from our understanding of Butler's tenure as Home Secretary.

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Abbreviations

ACTO	Advisory Council on the Treatment of Offenders
BD	Welsh Office Files
BN	Home Office Children's Department Files
CCI	Cabinet Colonial Immigrants Committee
CCM	Cabinet Commonwealth Migrants Committee
HC Debates	House of Commons Debates, Fifth Series
HMSO	Her Majesty's Stationary Office
HIO	Home Office Files
PP	Parliamentary Papers
PREM	Prime Minister's Office Files
RAB	Papers of Lord Butler of Saffron Walden, Trinity College, Cambridge
TNA	The National Archives, Kew

Introduction

Richard Austen (Rab) Butler was one of the most significant politicians of the twentieth century. In a Parliamentary career spanning 35 years, Butler rose to the top of government and played a pivotal role in shaping the post-war Conservative party. Despite narrowly failing to become Prime Minister on two occasions (in 1957 and in 1963), the respected journalist and former Conservative MP Bill Deedes considers that Butler ‘left a bigger footprint than many Conservative Prime Ministers have done . . . He stands among the most influential British politicians of the last century.’¹

In January 1957, just hours after missing out on becoming Prime Minister, Butler was appointed Home Secretary. Although generally expected to succeed the ailing Anthony Eden, Butler was outmanoeuvred by Harold Macmillan who was felt to be better able to unite the Conservative party following the trauma of the Suez Crisis.² Macmillan, though, had to find a senior Cabinet post for his defeated rival and so, despite Butler’s desire to go to the Foreign Office, sent Butler to the Home Office.³

Following his appointment, according to one of Butler’s biographers, ‘Articles were written about Butler now setting his mind upon becoming “a great reforming Home Secretary” . . . [and] in many ways he did’.⁴ This conclusion is shared by many, most notably Anthony Howard whose official biography remains the most comprehensive study of Butler’s life and career. Howard’s interpretation of Butler, of a capable and progressive politician responsible for major social reforms and patron of a generation of liberal ‘One Nation’ Tory

¹ W. F. Deedes, *Brief Lives*, (London: Pan Books, 2004), p 45.

² Nigel Fisher, *Harold Macmillan: A Biography by Nigel Fisher*, (London: Weidenfeld and Nicolson, 1982), pp 174-76.

³ Harold Macmillan, *Riding the Storm*, (London: Macmillan, 1971), p 186; and Lord Butler, *The Art of the Possible: The Memoirs of Lord Butler, K.G., C.H.* (London: Hamish Hamilton, 1971), p 196.

⁴ Edward Pearce, *The Lost Leaders: The Best Prime Ministers We Never Had* (London: Little, Brown and Company, 1997), p. 100.

MPs, has been confirmed by subsequent writers.⁵ However, these writers also argue that Butler's radical instincts were frustrated by those around him and that his career was at times impeded by his inability to assert himself. Those with stronger personalities were able to dominate Butler. Thus Harold Macmillan, a shrewd judge of Butler's character, was able to prevent him from becoming Foreign Secretary in January 1957 and to block his bid for the Premiership in 1963.⁶ In addition, it is also argued that Butler was unable to stand up to his junior Home Office minister David Renton, who has been blamed for Butler's failure to act on the Wolfenden Committee's recommendations on homosexual law reform.⁷

Indeed, it was not just ministerial colleagues but also backbench Tory MPs and the mass membership of the Conservative party that acted as a restraint on Butler's reforming instincts. Whilst Butler was able to prevent the re-introduction of judicial corporal punishment, he was unable to abolish capital punishment (which he came to oppose) and was also forced into illiberal legislation to crack down on prostitution and immigration.⁸ Yet Butler 'lived in his own time and among Conservatives' and therefore had to formulate his policies in such a way as to make them as liberal as possible whilst still being able to gain the support of his colleagues in the government and on the backbenches.⁹

Although considered one of the 'great offices of state', the post-war Home Office has received little attention from contemporary historians. Consequently the glimpses into the Home Office that are available are in the form of memoirs and biographies of the ministers that served there or in general histories of the period that touch on Home Office issues. However, from this writing it appears that the idea of the 'great, reforming Home

⁵ Anthony Howard, *RAB: The Life of R. A. Butler* (London: Jonathan Cape, 1986).

⁶ Howard, *RAB*, pp 249-50 & p 318.

⁷ Ian Gilmour and Mark Garnett, *Whatever Happened to the Tories? The Conservatives Since 1945* (London: Fourth Estate, 1997), p 163.

⁸ Gilmour and Garnett, *The Tories*, pp 162-4.

⁹ Pearce, *Lost Leaders*, p 101.

Secretary' has been accepted as the barometer for judging the effectiveness or success of each Secretary of State. According to this interpretation a successful Home Secretary is one who embraces social reform, takes a liberal approach to contentious moral issues and frustrates reactionary policies on crime and punishment. Roy Jenkins, during his first stint at the Home Office between 1965-7 would be seen as the archetypal Home Secretary according to this view. In his memoirs Jenkins portrays himself as a radical taking on vested interests to force through reform of the police and prisons, and ensuring sufficient Parliamentary time to get the Private Members Bills on homosexual law reform and abortion through, whilst using all the authority of his office to support these measures.¹⁰ Indeed, the chapter in Jenkin's memoirs dealing with his Home Secretaryship is entitled 'The Liberal Hour'.

The writing on Butler appears to accept this 'Jenkinsian' model of Home Secretaryship. In their biographies of Butler, journalists Anthony Howard (who dedicated many of his articles in the *New Statesman* to criticising Butler and the Conservative government) and Edward Pearce both argue that Butler's penal policies were consistently progressive, that he implemented a number of necessary social reforms, but that his success as Home Secretary was qualified by his legislation against prostitution, immigration and his failure to implement homosexual law reform. Indeed, Pearce argues that Butler was second only to Jenkins in terms of success as a reforming Home Secretary.¹¹ Meanwhile, former Conservative MP Ian Gilmour, in his treatment of post-war Conservative politics, argues that the pre-Thatcherite era was a liberal and enlightened period for the party which is reflected by Butler's policies at the Home Office. In this view of Butler it is argued that restrictive policies, such as immigration controls, were forced upon him and were the result of right-wing elements within the party scoring some of their few successes.

¹⁰ Roy Jenkins, *A Life at the Centre* (London: Macmillan, 1991), p 187-90 & 208-10.

¹¹ Pearce, *Lost Leaders*, p. 104.

Yet this view of the ideal Home Secretary as liberal reformer contrasts sharply with the common opinion of the Home Office, which has developed a reputation for being reactionary and a 'graveyard of free-thinking'.¹² This image was epitomised by Sir Frank Newsam, the Permanent Secretary at the Home Office when Butler took over. Newsam 'was one of Whitehall's toughest operators' who dominated not just his department but also many Home Secretaries. When Newsam was eased out shortly after Butler's arrival it was seen in Whitehall as a signal that Butler 'in contrast to his immediate predecessors, meant to be master of his own Department'.¹³ Butler selected Sir Charles Cunningham as Newsam's replacement and they were to work closely together for the remainder of Butler's time at the Home Office.¹⁴ However, Roy Jenkins, who inherited Cunningham nine years later, was scathing about his chief mandarin who, Jenkins argued, was the guardian of 'a certain Home Office approach to life which I was convinced had to be broken'.¹⁵

The purpose of this thesis is to analyse Butler's penal and social policies during his Home Secretaryship and, through this investigation, to question aspects of the above interpretation of Butler's character and career that have become commonly accepted and repeated. Moreover, the thesis will discuss the merits of the different sources available to contemporary historians; questioning the value of oral history and comparing the information available in private papers to that at the National Archives. Finally, the effect of the development of the 'Jenkinsian' model of the 'great, reforming Home Secretary' will also be examined to evaluate its usefulness to understanding Butler's Home Secretaryship.

When writing his official biography, Anthony Howard had full access to Butler's private papers, which have been open to researchers for some time now. In addition, Howard interviewed Butler's contemporaries and colleagues

¹² Peter Hennessey, *Whitehall*, (London: Pimlico, 2001), p 457.

¹³ Howard, *RAB*, p 256.

¹⁴ Butler, *Art of the Possible*, p 199.

¹⁵ Jenkins, *Life at the Centre*, p 181.

and also had available public sources such as Parliamentary Papers, newspapers and journals. However, the Home Office, Prime Ministerial and Cabinet files at the National Archives for the period covering Butler's Home Secretaryship had not been opened by the time Howard's biography was published. This raises the question of the relative value of oral and public sources, private papers and the National Archives in the writing of political history. By closely examining the files held at the National Archives and contrasting this with the information available to Howard a decision can be made as to whether a radical re-evaluation of Butler's Home Secretaryship is necessary, or, instead, whether it is purely a matter of challenging certain 'points of interpretation'.¹⁶

This re-assessment will be split into two parts. The first part will look at 'crime and punishment' and will concentrate on Butler's approach to penal and prison reform, judicial corporal punishment and capital punishment. Butler has gained a reputation as a penal reformer who advocated a new approach to the punishment of offenders, which in turn led him into conflict with right-wing elements of his party. In addition, the campaign for the restoration of judicial corporal punishment and the impassioned debates over the future of the death penalty reached a new level during Butler's Home Secretaryship and did much to define his reputation as a liberal and compassionate politician, while damaging his relations with the right-wing of the Tory party.

The second part of the thesis will look at the areas of social policy for which Butler was responsible. Reform of licensing, gambling and Sunday observance laws; the response to the Wolfenden Committee's report on prostitution and homosexuality; and the introduction of legislation to curb immigration from the Commonwealth will be examined in this section. Again, Butler's reputation as

¹⁶ Simon Ball, 'Harold Macmillan and the Politics of Defence. The Market for Strategic Ideas during the Sandys Era Revisited', *Twentieth Century British History* 6 (1995), pp 78-100; Rodney Lowe, 'Plumbing New Depths: Contemporary Historians and the Public Record Office', *Twentieth Century British History* 8 (1997), pp 239-65; and John Barnes, 'Books and Journals', in *Contemporary History: Practice and Method*, ed. by Anthony Seldon (Oxford: Basil Blackwell, 1988), pp. 30-54.

a reformer has been enhanced by his liberal licensing and gambling reforms, but whilst these initiatives have received much praise they have been neglected as an area of study. On the other hand, Butler's failure to act on homosexual law reform, as advocated by Wolfenden, and his introduction of legislation against prostitutes and to control immigration have been blamed on right-wing members of the Conservative party, especially his junior minister David Renton. Through this detailed examination of Butler's penal and social policies a decision will be made as to whether he can accurately be described as 'a great, reforming Home Secretary'.

Part 1 – Crime and Punishment

Chapter 1 – Penal Reform

Rab Butler is generally regarded as having been an enlightened and progressive Home Secretary. Butler's approach to penal reform has frequently been compared favourably to his reforms as President of the Board of Education, and, indeed, Butler himself would use this comparison when trying to persuade colleagues to support his proposals and to demonstrate his earnestness in pursuing certain reforms. Of his achievements in this sphere, one contemporary hailed the 1959 White Paper *Penal Practice in a Changing Society* as one of the most important state papers of the twentieth century¹⁷ and Anthony Howard believes that it 'came in Rab's eyes to rank almost on a par with his Education White Paper of 1943'.¹⁸

And yet, although amongst the most lauded areas of Butler's work it is also possibly the area that has received the least detailed study – with the debates over corporal and capital punishment receiving greater attention. Howard devotes just one paragraph to penal reform, instead emphasising the general mood created by Butler, that in 'the climate of the 1950s his was a refreshingly novel approach'.¹⁹ This lack of detailed study provides an opportunity to consider whether the files held at the National Archives can shed new light on Butler's approach at the Home Office. Howard had many sources available to him, such as public sources (Parliamentary Papers and newspapers), access to former ministerial colleagues and of course Butler's private papers which are now housed at Trinity College, Cambridge. However, it should be noted that of all the areas of his extensive career it is his time at the Home Office on which Butler's private papers seem to have the least information. Moreover, Rodney Lowe has argued that those who do not access the National Archives

¹⁷ W. F. Deedes, *Dear Bill: W. F. Deedes Reports* (London: Pan Books, 1997), p 124.

¹⁸ Howard, *RAB*, pp 255-6.

¹⁹ Howard, *RAB*, p 255.

'deny themselves knowledge of ministers' private remarks during the actual determination of policy, which can then be balanced against frequently misleading public statements and private confidences. They are also less able to judge the vital blend of political and official influence on the ultimate nature of policy'.²⁰

Butler's first public statement on penal matters came during an Opposition sponsored debate on the prison service on 13 March 1957. Although coming just two months after his appointment Butler outlined in his speech his vision for the future of the prison system. The Home Office files held at the National Archives show that, shortly after his appointment, Butler had begun to concentrate on penal issues as a result of an article in the *New Statesman* which directly challenged him to reform the prison service. The article, published on 2 February 1957, was by C. H. Rolph, a member of the executive committee of the Howard League for Penal Reform. Rolph addressed his article directly to Butler claiming that the new Home Secretary had an 'opportunity that must be rare in the history of your office' as it will 'not much longer suit the social conscience to shrug off the state of the prisons'.²¹ Over the next eight pages followed a detailed critique of the prison system. Rolph set out the shortcomings of present practice and offered alternative proposals to diverse problems; from over-crowding to finding employment for prisoners, preventative detention to after-care, and even concern at the 'barbarous' and 'stupid anachronism' that was the Black Maria used to transport prisoners.²²

In concluding Rolph put forward a number of proposals for reform; advocating a change to the very nature of prisons with new, more appropriate, institutions for different categories of prisoner; and better training and a new role for prison staff. Finally a major public education campaign was necessary to tackle the 'unquestioning apathy' that existed towards penal matters. Rolph,

²⁰ Lowe, 'Plumbing New Depths', p. 243.

²¹ The National Archives (hereafter TNA): Home Office: Criminal Files: HO 291/504, article by C. H. Rolph, 'Prisons and Prisoners', *The New Statesman and Nation*, 2 February 1957, p 135.

²² TNA: HO 291/504, Rolph, 'Prison and Prisoners', pp 136-7.

however, accepted that for any of his proposals to be implemented he must first convince Butler of the need for reform which 'is why I have written to you at such length . . . and urge remedies that I hope you will not resist'.²³

Although he based his appeal on the belief that Butler already accepted 'many of the ideas in contemporary penology which are well in advance of penal practice',²⁴ it is unlikely that Rolph can have anticipated Butler's reaction to this challenge to prove himself a penal reformer. The files at the National Archives show that Butler and his junior minister J. E. S. Simon had both read the article with 'great interest' and sought a meeting with officials to discuss the issues raised by Rolph²⁵ and by 13 February 1957 Butler had received from his officials a twelve page memorandum discussing the *New Statesman* article.

As a result, by the time of the debate Butler was able to clearly outline his thinking. In his speech Butler spoke of the need for more research to investigate the causes of crime; the necessity of a prison building programme to alleviate over-crowding; the desirability of introducing remand centres; the problems of under-staffing and improving the working conditions of prison staff; and the problems caused by the lack of constructive work for prisoners.²⁶ Butler was therefore committing himself to act on a number of the issues on which he had been challenged by Rolph and was seeking a new approach to the Prison Service. He concluded his speech declaring that:

I believe that we might one day come to think of our prisons not as places of punishment . . . not only as places where offenders are trained to be better men and better citizens . . . but also as places where an offender could work out his own or her own personal redemption by paying his or her debt not only to the society whose order he has disturbed, but to the fellow members of that society whom he has wronged.²⁷

²³ TNA: HO 291/504, Rolph, 'Prison and Prisoners', pp 141-2.

²⁴ TNA: HO 291/504, Rolph, 'Prison and Prisoners', p 141.

²⁵ TNA: HO 291/504, minute dated 5 February 1957.

²⁶ *House of Commons Debates, 5th Series* (hereafter *HC Debates*), vol. 566, cols. 1140-1206 and 1251-4, 13 March 1957.

²⁷ *HC Debates*, vol. 566, cols. 1154-55.

This approach drew support from both sides of the House of Commons. Replying for the Opposition, the Labour MP Anthony Greenwood stated that one of the reasons for asking for a debate on the prison service was because he hoped that Butler would 'be a great reforming Home Secretary . . . Certainly, the tone of his speech and the breadth of the canvas that he has painted has shown that he will live up to the high expectations that we have of him'.²⁸ Indeed, it was not just politicians who welcomed Butler's new approach, but also civil servants in the Home Office. Sir Lionel Fox, head of the Prison Commission, which was responsible for the day-to-day running of the prison service, wrote to Butler to say 'how exhilarating it has been to have a minister who wanted to deliver such a speech'.²⁹

However, while Butler was outlining a new approach towards the prison system, the Permanent Secretary at the Home Office, the formidable Sir Frank Newsam, was anticipating a less active approach towards other areas of the criminal justice system. In April, Newsam minuted Butler to set out proposals for future work, which consisted of referring a couple of minor issues to Departmental Committees (that were not expected to report until 1961) and the possibility of establishing a Royal Commission by the end of 1958. In addition the Prison Commission would be going ahead, as far as they could, with their planned building programme and would look at the problem of employment and earnings for prisoners in due course.³⁰

Given the concentration since early February on the prison service Newsam may have been under the impression that Butler's desire for reform was confined to this subject. Indeed Butler made it clear that it was on prisons that he wanted to see the most urgent progress. However, there was an air of impatience at the lack of immediate action on the other points outlined by Newsam. Newsam expected eighteen months to pass before any Royal

²⁸ *HC Debates*, vol. 566, col. 1155.

²⁹ Papers of Lord Butler of Saffron Walden, Trinity College, Cambridge (hereafter RAB) RAB G31/79, Letter from Sir Lionel Fox to Butler, 15 March 1957.

³⁰ TNA: HO 291/504, 'Work in Progress and Planned', 8 April 1957.

Commission was appointed, a pause 'which will help prepare public opinion for any radical changes which it may ultimately be thought right to make'. The Home Secretary wanted action sooner than this.³¹ By July Butler's impatience became more apparent after he expressed 'his urgent wish to see substantial progress with penal reform during his period in office, and his great desire to help in whatever way he could',³² and so decided to hold a two day 'Round Table Talk' with officials to decide on future action. This took place on 23-24 July with Butler, junior minister J. E. S. Simon, Newsam and a number of other officials present.

Many of the points raised during the discussion were the issues on which Butler had sought progress since February. Perhaps the most important was the building of alternative institutions suitable for different types of prisoner, with new prisons and prison hostels for adult prisoners and borstals and attendance centres for young offenders being discussed at length. During this discussion it became clear that progress on prison building could be blocked by an unsympathetic Chancellor of the Exchequer. The Chancellor, Peter Thorneycroft, had written to the Home Office on 15 July arguing that the building standards at the recently opened Everthorpe prison were too high and that economies should be sought in future building. In addition, the Treasury also suggested that for future projects a cost per prisoner ratio should be devised which the Prison Commissioners and Ministry of Works should be compelled to work to. The minute records that it 'was agreed that these suggestions were unacceptable . . . If necessary, the Secretary of State might raise the matter with the Chancellor'.³³ It was not surprising that Butler found the Treasury's proposals unacceptable. Butler envisioned a completely new approach, with prisons becoming places of rehabilitation and not just of punishment. Severe over-crowding in the existing Victorian buildings was making this impossible and it was unlikely that Butler would agree to any proposal that would mean abandoning the new approach he had outlined.

³¹ TNA: HO 291/504, 'Work in Progress and Planned', 8 April 1957.

³² TNA: HO 291/504, minute dated 1 July 1957.

³³ TNA: HO 291/504, minutes of 'Round Table Talk', 23-24 July 1957.

Finally the desirability of establishing a Royal Commission on penal reform was examined. In April, Newsam had suggested a delay in appointing a Royal Commission until the end of 1958 as he believed that it would be unwise to move too far ahead of public opinion. At the 'Round Table Talk' this view was explicitly accepted.³⁴ And yet, within a few months Butler was recommending to the Cabinet that a Royal Commission should be appointed and that this should be mentioned in that year's Queen's Speech. Butler and the Lord Chancellor, Lord Kilmuir, circulated a joint memorandum to their Cabinet colleagues on 18 October 1957 in which they proposed a Royal Commission 'to consider the administration of justice by the courts of assize and quarter sessions'.³⁵ When the memorandum was discussed by the Cabinet, the Home Secretary explained the need for a Royal Commission into the superior courts that would consider what alterations were required 'to ensure that these courts, before passing sentence, would have adequate information about the circumstances of offenders convicted before them'.³⁶ As early as his Commons speech in March 1957, Butler had made it clear that he wanted to see prisons not merely as places of punishment but also as places of rehabilitation. The proposed Royal Commission was to ensure that the superior courts would play their role in that process.

It is not clear what had changed between the 'Round Table Talk' in July and the joint memorandum in October to make a Royal Commission suddenly desirable. Newsam had argued that a movement of public opinion was necessary before the Commission was appointed and there is no evidence that this had happened. However, there is some evidence to suggest that Butler may have accepted less radical terms of reference in order to make progress in establishing the Royal Commission. The Home Office files only refer to the

³⁴ TNA: HO 291/504, minutes of 'Round Table Talk', 23-24 July 1957.

³⁵ TNA: Cabinet Memoranda: CAB 129/89, C (57) 236, Administration of Justice – Memorandum by the Secretary of State for the Home Department and Lord Privy Seal and the Lord Chancellor, 18 December 1957.

³⁶ TNA: Cabinet Conclusions: CAB 128/31, CC (57) 75th Conclusions, Minute 4, Tuesday 22 December 1957.

Commission in general terms, but the Cabinet papers show that Butler and Kilmuir's proposal would be unlikely to make recommendations that would horrify Tory backbenchers or the general public. Instead, the proposed Royal Commission was to examine the working of the superior courts and to look at ways of providing judges with the most relevant information to enable them to pass the most suitable sentence. However, in the Butler Papers at Cambridge, notes for a speech to the Law Society that Butler was to make ten years later, in October 1967, show that he 'even thought of abolishing the Assize System which has gone on since Henry II'.³⁷ For Butler to carry out such a radical policy would require the recommendation of a body like a Royal Commission before the Home Secretary could even consider putting such a controversial reform before the Cabinet. Butler and Kilmuir's proposal would not allow the Commission the freedom to make such a recommendation, but rather would allow Butler to achieve a more limited measure of reform.

Another difference in the circumstances of October 1957 was that just weeks after the 'Round Table Talk' Sir Frank Newsam had retired and had been replaced by Sir Charles Cunningham. There is no evidence to confirm whether Newsam's retirement was significant as far as this issue is concerned. However, Newsam's advice was delay, whilst Butler's inclination was for action; and Newsam's reputation was of a man who dominated his department and some of Butler's predecessors, whilst Butler's reputation is of a man who could succumb to strong personalities. Yet, Roy Jenkins remembers in his dealings with the Home Secretary at this time that Butler was in complete command of his officials³⁸ and the announcement that Newsam was to retire was seen throughout Whitehall as a sign that Butler intended to be the master of his own department.³⁹

Whatever the reason for the change of mind over the Royal Commission, the proposal was rejected by the Cabinet. Whilst the Cabinet recognised the

³⁷ RAB K51/1-10, Lecture to the Law Society, 'Preliminary Notes', October 1967.

³⁸ Roy Jenkins, *A Life at the Centre* (London: Macmillan, 1991), p 123.

³⁹ Howard, *RAB*, p. 256.

desirability of judges having as much information as possible before passing sentence, they also thought that 'it was no less important to avoid unnecessary delay between conviction and sentence'. Moreover, ministers believed that it would be dangerous to adopt any proposals that would 'gradually undermine the principle of an itinerant judiciary, which was one of the cardinal features of our legal system'. In summing up the discussion Macmillan rejected the proposal and suggested that more thought would have to be given to the scope of any future review of the administration of justice.⁴⁰

Therefore, at the end of his first year at the Home Office Butler could point to little progress on penal reform. In his speech to the Commons in March, inspired by Rolph's *New Statesman* article, Butler had set out his vision for the future of the Prison Service. However, Butler could provide no new resources to the Prison Commissioners, and, indeed, the Chancellor was seeking economies in prison building. Furthermore, the Commissioners were investigating the difficult problems of work and earnings for prisoners and had yet to devise a practicable solution. The one proposal that was put to the Cabinet, for a Royal Commission, appears to have been less radical than Butler had initially intended, but even this was rejected.

It was not until April 1958 that Butler returned to penal reform, but when he did it was with far greater determination. On 28 April, Butler wrote to his Permanent Secretary, Sir Charles Cunningham, to set out how his thinking had evolved. Butler wrote:

The more I study the penal system the more I am convinced that we must lose no time in laying the foundation for a long term system of reform. I have been long enough employed in tasks of this sort to realise that what matters is launching the scheme. Its execution may have to depend on future circumstances and on other ministers . . . During the past twelve months I think that we have educated public opinion to a point where thinking people are looking for changes.⁴¹

⁴⁰ TNA: CAB 128/31, CC(57) 75th Conclusions, Minute 4, Tuesday 22 October 1957.

⁴¹ TNA: HO 291/504, minute from R. A. Butler to Sir Charles Cunningham, 28 April 1958.

Butler set out three areas where he wanted to see reform. The first of these, as before, was with the prison building programme, of which he believed that 'we need a forward programme, on a scale quite different from anything we have envisaged before, phased over say five to ten years'. The second area of reform, again an area on which he had failed to find a solution the previous year, was employment and earnings for prisoners. However, Butler's final desired area of action was with regard to young offenders; a topic which would have to be handled sensitively as Butler recognised 'the political difficulties we may be up against if we appear to relax the penalties against young offenders at a time when crime is on the increase'. Nevertheless, Butler believed that this should prove no deterrent to looking carefully at the issue. Butler then set out how he would like things to proceed, with a memorandum circulated to the Cabinet and then a White Paper 'charting in general terms the course ahead', and concluded that 'This would be represented as opening a new chapter in penal reform, and the pressure of public opinion would help to preserve the momentum of the advance'.⁴²

Having informed his Permanent Secretary of his intentions Butler then set about gaining the support of his colleagues; starting with the Chancellor of the Exchequer and the Prime Minister. Thorneycroft, having resigned in January, had been replaced by Derick Heathcoat Amory. Had Thorneycroft remained at the Treasury there can be some question as to whether Butler would have been able to secure the funds for the unprecedented prison building programme that he had in mind. Heathcoat Amory, though, was a very different Chancellor, who believed the best approach at the Treasury was to 'fly by the seat of my pants'. In reality he was a weak Chancellor who was unable to resist the demands of the Prime Minister.⁴³ Macmillan, then, was the key.

⁴² TNA: HO 291/504, minute from Butler to Cunningham, 28 April 1958.

⁴³ Edmund Dell, *The Chancellors: A History of the Chancellors of the Exchequer, 1945-90* (London: Harper Collins, 1996), p 244.

Howard, when quoting the correspondence between Butler and Macmillan on 27 June 1958 describes the Home Secretary's tone as 'unusually tough'.⁴⁴ Butler's letter to the Prime Minister certainly reflected his more determined approach:

. . . the longer I remain here, the more it is borne in upon me that the main part of my duty consists in taking what steps I can to carry out long overdue reforms in our penal system.

I would go further and say that I shall be unable to fulfil my mission here unless I find it possible to press forward a comprehensive plan of penal reform. As you know, I am as conscious as you or any of our colleagues of the need to lighten the burden on the country's economy, and I have no intention of embarrassing the Chancellor by making unreasonable demands on the Exchequer. At the same time I am convinced that I must leave behind some permanent record of my period of office here or I shall feel not only that I have been disloyal to myself, but also that I have failed in my duty to you and the Government which you lead.

Of course it is perfectly possible to hold all this up, through over-conscientiousness turning into obstruction, but I am convinced from my life's service to reform and public policy that to open up a few windows on the future cannot but help our Government.⁴⁵

Butler, by highlighting his 'life's service to reform', was directly challenging the Prime Minister's radical credentials, while warning Macmillan off if his intention was to obstruct his plans. Indeed, by stating that he would be 'unable to fulfil my mission' Butler was hinting at resignation should the Prime Minister come out against his proposals.

Macmillan, however, was too canny a politician to attempt to block Butler's proposals and replied to the Home Secretary that:

It would be a fine thing, both for the Government and for your own satisfaction, if you could leave behind you the same kind of record of your work in the Home Office as you did in the Education Office. I am all for it. No doubt it will cost money, but I do not suppose the money will be spent very quickly. I take it, it will mostly be building new

⁴⁴ Howard, *RAB*, p 263.

⁴⁵ TNA: Prime Minister's Office: Correspondence and Papers, 1951-1964: Ministerial discussions on penal reform: PREM 11/4691, correspondence between R. A. Butler and Harold Macmillan, 27 June 1958.

prisons, but they will take some time, especially if the Ministry of Works have anything to do with the plans,⁴⁶

This was classic Macmillan. By mentioning Butler's time at the Board of Education, the Prime Minister was indulging his Home Secretary's reforming ardour and at the same time damning Butler with faint praise by suggesting that the extent of his plans would 'be mostly building new prisons' which would, in any event, take some time to complete.

Having secured the support of the Prime Minister and Chancellor, Butler brought his proposals to the Cabinet. That he wanted to 'leave behind a permanent record' of his time at the Home Office was not an argument likely to win over other ministers. Butler therefore argued that prison over-crowding was both an effect and a cause of the recent increase in crime; that this was preventing staff from doing constructive work with prisoners, which in turn was leading to higher rates of re-offending; that out-dated buildings were disproportionately expensive to run and maintain; and that public concern at the increase in crime 'compels us to show that we are exerting ourselves'.⁴⁷

Butler's proposal was that the Cabinet should agree that he and the Chancellor should look into securing the resources for a greatly expanded building programme and that steps should be taken by the Home Office to put together a White Paper on penal reform. However, it is clear from the memorandum Butler circulated to the Cabinet that he had more in mind than just building prisons. The Home Secretary's memorandum included a proposal to put in place systems to give judges more information on the offender before them so that they could pass the most suitable sentences. This was the policy that had been rejected by the Cabinet the previous October when they vetoed the Royal Commission proposal. Moreover, Butler was increasingly moving his attention towards tackling youth crime and had in mind 'a specialised system of

⁴⁶ TNA: PREM 11/4691, correspondence between Macmillan and Butler, 27 June 1958.

⁴⁷ TNA: CAB 129/93, C (58) 136, Prison Reform -- Memorandum by the Secretary of State for the Home Department and Lord Privy Seal, 30 June 1958; and TNA: CAB 128/32, CC (58) 52nd Conclusions, Minute 6, Thursday 3 July 1958.

treatment for all young offenders, based on a re-assessment of the present systems provided by law'.⁴⁸ However, there was some reluctance amongst members of the Cabinet to committing resources to prison building as some felt that 'increased capital expenditure was overdue in other social services, notably the hospital service'. Nevertheless, a White Paper on penal reform was felt to be 'timely and appropriate' and Butler was given the green light to go ahead with planning his reforms.⁴⁹

Work then began in earnest at the Home Office in preparing the White Paper. By the end of the year Butler was able to circulate a draft to the Cabinet. Briefing the Prime Minister the Deputy Cabinet Secretary, Sir Burke Trend, reported to Macmillan that 'it is a very good White Paper – well written; forward looking; and evenly balanced as between the liberal and the severe approaches to this subject, without conceding so much to the former as to be merely sentimental',⁵⁰ a view shared by the Cabinet.⁵¹ With the Cabinet's agreement, *Penal Practice in a Changing Society* was published in February 1959. The White Paper sought to address the 'disquieting feature of our society' that crime had increased since 1939 despite the rise in prosperity and education standards and the creation of the Welfare State since the end of the War. The assumption that poverty and crime were linked was being challenged and therefore a completely new approach to penal matters was required.⁵²

The tone of *Penal Practice* was very similar to that of Butler's speech to the Commons in March 1957. When discussing the purpose of prisons, the White Paper agreed with the conclusion of the 1895 Gladstone Committee that the 'constructive function of our prisons is to prevent the largest possible number

⁴⁸ TNA: CAB 129/93, C (58) 136, Prison Reform – Memorandum by the Secretary of State for the Home Department and Lord Privy Seal, 30 June 1958.

⁴⁹ TNA: CAB 128/32, CC (58) 52nd Conclusions, Minute 6, Thursday 3 July 1958.

⁵⁰ TNA: PREM 11/4691, memorandum from Sir Burke Trend to Macmillan, 15 December 1958.

⁵¹ TNA: CAB 128/32, CC (58) 85th Conclusions, Minute 3, 16 December 1958.

⁵² Parliamentary Papers (hereafter PP): *Penal Practice in a Changing Society: Aspects of Future Development (England and Wales)*, HMSO, 1959 (645).

of those committed to their care from offending again'. This meant that the primary role of prison was rehabilitation. *Penal Practice* rejected the argument that a more progressive regime would reduce the deterrence value of prison and instead argued that it was the loss of liberty that would have the most effect on the prisoner. However, during their confinement prisoners should be given the best and most appropriate training in order that they would not fall back into old habits once they had been released, which would be continued through a system of 'after-care' that would continue to support offenders once they had been freed. In addition, prison over-crowding and a lack of remand centres was to be solved by a major building programme; understaffing was to be tackled by improving the working conditions and training of prison officers; research to try and understand better the causes of crime would be carried out; and a solution was to be found to the problem of securing appropriate work for prisoners as well as improving the system of earnings.

Another significant inclusion in the White Paper was proposals on the administration of justice. Having failed a year earlier to gain Cabinet approval to appoint a Royal Commission, Butler found a different vehicle for the enquiry he deemed necessary. In *Penal Practice*, Butler and Kilmuir announced that they had established an Interdepartmental Committee, under the chairmanship of Mr Justice Streatfeild, to investigate the workings of the superior courts.⁵³ The remit of the Streatfeild Committee was remarkably similar to that envisioned for the Royal Commission; and, indeed, would be more flexible and would report more quickly than a Royal Commission.

Streatfeild's Committee had been established in June 1958 and it was nearly three years before it completed its work. In February 1961 the Committee published its report which proposed important changes to trial procedures; including proposals to reduce the time spent in custody for those awaiting trial, an attempt to reduce the pressure on the Superior Courts and recommendations on the general organisation of courts of assize and quarter sessions. In addition

⁵³ PP: *Penal Practice*, p 4.

the Committee made recommendations for better providing courts with relevant information on the person convicted that would allow judges to select the most appropriate sentence.⁵⁴ Many of these recommendations could be introduced without legislation and steps were taken to implement the changes; but the proposals that did require legislation were implemented in the Criminal Justice Administration Bill which was introduced in the 1961-62 Parliamentary session and passed quickly through Parliament. Perhaps the most important change included in the Bill, as far as Butler was concerned, was to allow courts of assize to adjourn after conviction so that the judge could order more information on the offender before passing sentence.

In addition to the Streatfeild Committee, *Penal Practice* had also announced the establishment of the Criminal Law Revision Committee, under the chairmanship of Lord Justice Sellers; which Butler used twice during his Home Secretaryship. The first issue to be referred to the Committee was the law relating to indecency with children, which the Sellers' Committee quickly considered and recommended a short Bill that would give added protection to children under 14 years of age.⁵⁵ Butler acted quickly and introduced an Indecency with Children Bill that rapidly passed through Parliament; with the only dissenting voice that of the Tory MP Percy Browne who argued that sex offenders should be birched.⁵⁶

Butler then asked Sellers' Committee to consider the law relating to suicide and attempted suicide. As no criminal proceedings had understandably been launched against those who had successfully committed suicide, and with the Home Office recommending that those who attempted suicide should not be prosecuted except where there was no family or friends to care for them, Butler argued that the offence should be abolished and instead would best be dealt with in a Mental Health Bill. The Cabinet's Home Affairs Committee agreed

⁵⁴ PP: *Report of the Interdepartmental Committee on the Business of the Criminal Courts*, HMSO, 1961 (1289), pp. 119-126.

⁵⁵ PP: *Criminal Law Revision Committee, First Report (Indecency with Children)*, HMSO, 1959 (835), pp. 3-5.

⁵⁶ *HC Debates*, vol. 620, cols. 565-6, 23 March 1960.

and referred the matter to the Sellars Committee to consider the consequent repercussions should these offences be abolished.⁵⁷ Macmillan, however, was alarmed by the proposal and began to argue that the Home Affairs Committee's decision should be brought before a full meeting of the Cabinet, presumably to have the matter quashed. However, he was reluctantly persuaded to accept the decision to refer the issue to Sellars' committee, and, by doing this he was effectively committed to accepting whatever Sellars recommended.⁵⁸

Again the Criminal Law Revision Committee reported quickly and set out a draft Bill, but, due to the pressure on Parliamentary time and the low priority attached to the legislation, the Bill was not introduced until February 1961, nearly two years after Butler had first raised the issue. To make best use of the little time available, it was decided to introduce it in the House of Lords first, rather than the Commons.⁵⁹ However, the Prime Minister remained unconvinced and wrote to ask Butler:

Must we really proceed with the Suicides Bill? I think we are opening ourselves to chaff if, after ten years of Tory Government, all we can do is to produce a Bill allowing people to commit suicide. I don't see the point of it. It is just to please a few cranky peers. I don't mind these noblemen if they commit suicide (which they seldom do) being buried in their damp mausoleums instead of at a crossroads with a stake through their bodies, but beyond that I do not see why we should go.⁶⁰

This is a remarkable letter. The Prime Minister was asking for a Bill to be dropped after it had passed all its stages in the House of Lords, had received its Second Reading in the Commons; had been recommended by a committee of experts established by his Home Secretary; and had been agreed by his own Cabinet. In addition, there was no public concern over the proposed legislation, which had generally gone unnoticed, and to which there was no

⁵⁷ TNA: CAB 134/1976, HA (59) 15th Meeting, 29 July 1959 and HA (59) 18th Meeting, 30 October 1959.

⁵⁸ TNA: PREM 11/3241, correspondence, 4 November 1959.

⁵⁹ TNA: HO 291/141, Suicide and attempted suicide: proposals to amend law, 1958-61.

⁶⁰ TNA: PREM 11/3241, Macmillan to Butler, 24 June 1961.

opposition in Parliament.⁶¹ Macmillan alone seemed opposed to the Bill, which became law later in the summer of 1961.

Butler's commitment to penal reform seems to fit with the idea of the 'great reforming Home Secretary'. Given his dedication to the subject over his four and a half years at the Home Office, it is difficult to argue that the *New Statesman* article by C. H. Rolph is alone the explanation for Butler's desire for reform. Rather, it is more likely that Rolph's article struck a chord with Butler and inspired early action. Yet, in his first year Butler achieved little. It is difficult to assess either the effect Newsam had in frustrating reform or the extent to which Butler compromised on the terms of reference of a Royal Commission, but, in any event, the Cabinet rejected the proposal. And even if the most negative view of Newsam is taken, that he was attempting to obstruct Butler's penal policies, this was not an approach shared by all Home Office civil servants, with Sir Lionel Fox 'exhilarated' by Butler's Commons speech and desire for reform.

However, from April 1958 Butler showed far greater determination. Having outlined his thinking to his new Permanent Secretary, Butler secured the support of the Prime Minister and Chancellor and then convinced the Cabinet of the need for progress, especially in regard to reforming the prisons. *Penal Practice in a Changing Society* set out plans for progress on prison building, work and earnings for prisoners, improved training and conditions for prison staff, and research into the causes of crime. In addition to looking at the prison system, *Penal Practice* also set out plans for the improvement of the working of the courts through the Streatfeild Committee and also to ensure the effectiveness of the criminal law with the committee chaired by Lord Justice Sellers.

⁶¹ *HC Debates*, vol. 645, cols. 822-5, 28 July 1961.

The National Archives prove a valuable resource for those examining Butler's approach to penal reform. While there is little in Butler's private papers on this subject, the National Archives allow an examination of the evolution of Butler's penal policy from its genesis to implementation; with the impact of Rolph's article on inspiring Butler into action and the extraordinary letter from Macmillan on the Suicide Bill revealed. However, it is Butler's Archive at Cambridge that suggest Butler was frustrated in his desire for a more radical terms of reference for the proposed Royal Commission, an issue on which the Home Office files are vague.

Yet, it was not just in his approach to the prison service, court system and criminal law that Butler demonstrated his commitment to reform. Throughout his Home Secretaryship the problem of rising youth crime came increasingly to the public's attention. Butler's approach to the problem, however, was to bring him into conflict with many in his own party.

Chapter 2 – Youth Crime and Corporal Punishment

Although Butler was making progress with his reforms to the prison service, court system and criminal law, his work on these issues was increasingly overshadowed by the debate over how best to tackle the rise in juvenile delinquency. In April 1958, in the same letter in which he set out his renewed determination to reform the penal system, Butler raised the necessity at looking carefully at the rise in crime committed by young people. Butler recognised the ‘political difficulties we may be up against if we appear to relax the penalties against young offenders at a time when crime is on the increase’, but nevertheless felt that a close examination of the issue was required.⁶² However, many members of the Conservative party believed they already had the solution to this problem and began campaigning for the restoration of judicial corporal punishment.

As has been seen in chapter one, Butler’s White Paper *Penal Practice in a Changing Society* tackled many of the issues that Butler had been working on since his appointment. Yet, a marked shift of emphasis had taken place by the time of its publication as the White Paper had come to concentrate heavily on youth crime. When it was considered by the Cabinet it was the provisions on young offenders that received greatest attention, with the rise in youth crime attributed by ministers to ‘a decline in spiritual values among the younger section of the adult population’. It was therefore agreed that the Home Secretary should convene an informal conference with representatives of the churches, educational authorities and youth services to discuss the issue and attempt to identify possible solutions.⁶³

Butler approached the issue of youth crime in the same considered way that he did with other aspects of penal reform. After rejecting the knee jerk reaction of restoring judicial corporal punishment, he instead extended his ideas of more

⁶² TNA: HO 291/504, minute from Butler to Cunningham, 28 April 1958.

⁶³ TNA: CAB 128/32, CC (58) 85th Conclusions, Minute 3, 16 December 1958.

appropriate sentencing; improved and more suitable prison accommodation; effective, positive training; and research into the causes of crime, to young offenders as he had to adult prisoners.⁶⁴ Butler believed that the very nature of imprisonment, isolation from the rest of society, was punishment enough. The State's job was then to rehabilitate the offender and prevent recidivism.⁶⁵ Whilst he rejected the physical punishment through the use of the birch, Butler did believe in the effectiveness of the 'short, sharp shock'. Locking three prisoners in a cell only intended for two for twenty-three hours a day and putting young offenders in adult prisons would do nothing to prevent re-offending. Instead it would be more effective to have dedicated institutions for different categories of offender, where they would receive the intensive and disciplined training that was most appropriate to them. This would be followed by a period of compulsory supervision in the community following release. It is this approach to youth crime that Butler advocated.⁶⁶

This approach was not new. Ten years earlier the Labour Home Secretary Chuter Ede had introduced a number of reforms - abolishing corporal punishment, reducing the power of the courts to imprison offenders under 21 years of age and introducing attendance, detention and remand centres.⁶⁷ However, financial constraints in the intervening ten years in addition to a lack of political will meant that no remand or attendance centres for 17 to 21 year olds had been built and only four detention centres had been established. Butler therefore proposed in his White Paper to accelerate the building programme to ensure that fewer young offenders would end up in adult prisons. In addition, the borstal system would be integrated with imprisonment to provide a new custodial system for young offenders that were sentenced to more than six months detention.⁶⁸ Butler was therefore seeking to build on the start that had been made by Ede. For many backbench Tory MPs and for the

⁶⁴ PP: *Penal Practice*, pp. 6-11.

⁶⁵ HC Debates, vol. 566, cols. 1154-5, 13 March 1957.

⁶⁶ PP: *Penal Practice*, pp. 6-11.

⁶⁷ HC Debates, vol. 444, cols. 2128-2238, 27 November 1947.

⁶⁸ PP: *Penal Practice*, pp. 21-3 & pp. 10-11.

majority of the membership of the Conservative party, however, the best way to re-instil traditional values was to restore traditional punishments.

In 1938 the Cadogan Committee had unanimously recommended the abolition of corporal punishment. This was not due to any objection in principle, but because 'we have come to the conclusion that, as a court penalty, corporal punishment is not a suitable or effective method of dealing with young offenders'.⁶⁹ By that time birching had effectively been abolished as a punishment for adult offenders, but was still available for any indictable offence committed by a boy under the age of 14 years, and for boys under the age of 16 years convicted of certain crimes against the person, for offences of larceny or malicious damage to property.⁷⁰

Where a boy was sentenced to be whipped, a nine ounce birch would be used for those over the age of ten years old, and a six ounce birch for those under ten. The statutory requirement was that the birching should take place in private; as soon as possible after sentencing; by a police constable in the presence of another officer of senior rank; and in the presence, if desired, of a parent or guardian. In addition, the Home Office had issued guidance in 1925 which recommended that a medical examination should take place before the birching was inflicted and that regard should be had for the physical condition of the boy.⁷¹

Corporal punishment, then, was mainly used as a sentence for offences committed by boys under the age of 16 years, and was quickly inflicted after conviction. Yet there had been a steady decline in the number of birchings ordered each year. In 1900 a total of 3,385 whippings had taken place; which had fallen to 1,380 in 1920; and, by 1936, was down to 166. Cadogan's Committee found that 'the decreased use of the birch is due entirely to

⁶⁹ PP: *Report of the Departmental Committee on Corporal Punishment, 1937-38*, HMSO, 1938 (5684), p. 34 and p. 124.

⁷⁰ PP: *Report on Corporal Punishment*, pp. 3-5.

⁷¹ PP: *Report on Corporal Punishment*, pp. 3-18.

increased use of other methods now available to the courts for dealing with young offenders'.⁷² Therefore, as a punishment available to the courts birching had effectively been replaced by more modern punishments. The only circumstance in which Cadogan recommended retention was for extreme offences against discipline in adult prisons. However, due to the intervention of the war it was not until 1948 that Parliament had an opportunity to implement the Cadogan recommendations, which it did despite the opposition of some Tory MPs.

Not long after the Conservative party had been returned to government in 1951 pressure started to build for the re-introduction of corporal punishment. David Maxwell-Fyfe was the first Tory Home Secretary to come under pressure from the flogging lobby, which he resisted despite the Prime Minister, Sir Winston Churchill, having considerable sympathy with those campaigning for the return of the birch. Maxwell-Fyfe countered by arguing that not enough time had passed to properly gauge the effect of abolition and that it would therefore be inappropriate to take any action.⁷³ Nevertheless, the issue continued to simmer throughout the remainder of the 1950s, with motions regularly put to the party conference calling for the re-introduction of the birch.⁷⁴

Butler's first major encounter with the flogging lobby in his own party did not come until October 1958, during the party conference debate on home affairs. When describing the conference agenda, Butler told Sir Charles Cunningham that he would be faced with '28 bloodthirsty resolutions' and that it was 'with the greatest of difficulty that we have chosen one out of the 28 which is at least moderate'.⁷⁵ After the conference debate *The Times* reported that 'When the stormy clamour for the return of flogging, birching, and more hanging by the neck burst over the Conservative conference to-day it seemed impossible that the Home Secretary, a dedicated reformer, would be able to ride and direct it.

⁷² PP: *Report on Corporal Punishment*, p. 20.

⁷³ TNA: PREM 11/2921, discussions on restoration of corporal punishment, 1952.

⁷⁴ TNA: HO 45/25357, corporal punishment, 1953-1956.

⁷⁵ RAB G32/83, memorandum from Butler to Cunningham, 27 August 1958.

But he managed it, and with an infinitude of skill'.⁷⁶ Yet this conference victory did nothing to change the minds of the party membership, and, instead, the campaign for restoring corporal punishment started to gain momentum. In his memoirs Butler himself admitted that it was not until 1961 that he finally gained ascendancy on this issue.⁷⁷

From the end of 1959 Butler started to face persistent pressure from within the Parliamentary party to restore corporal punishment. In October 1959 Lord Parker, who had recently become Lord Chief Justice, made a speech to the annual meeting of the Magistrates' Association in which he, to loud applause, announced himself in favour of shorter prison sentences in conjunction with corporal punishment rather than long sentences.⁷⁸ When Parliament met in November following the general election, Butler started to come under pressure from Conservative MPs. The maverick Tory backbencher Gerald Nabarro suggested 'that a proper policy ought to be to "whack the thugs"',⁷⁹ and Sir Thomas Moore, who was to become the unofficial leader of the Parliamentary floggers, argued that Butler was out of touch with both public opinion and the highest legal opinion in the country.⁸⁰ Butler replied that he understood the pressure on this matter but that 'we cannot solve crime by a single method such as this . . . I am not at all frightened of discussing the matter, but let us discuss it on its merits'.⁸¹

Such was the pressure on Butler, however, that he agreed to the suggestion of another flogger, Norman Pannell, to refer the issue to the Advisory Council on the Treatment of Offenders.⁸² In agreeing to this inquiry, Butler was taking the calculated risk that the Advisory Council, of which he had had extensive experience throughout his Home Secretaryship, would confirm the results of

⁷⁶ *The Times*, 'Mr Butler wins the day on criminal reform', 10 October 1958, p. 12.

⁷⁷ Butler, *Memoirs*, p. 201.

⁷⁸ *The Times*, 'Lord Parker on "upsurge in crime"', 23 October 1959.

⁷⁹ *HC Debates*, vol. 612, col. 1181, 5 November 1959.

⁸⁰ *HC Debates*, vol. 612, col. 1182, 5 November 1959.

⁸¹ *HC Debates*, vol. 612, col. 1183, 5 November 1959.

⁸² *HC Debates*, vol. 615, col. 1631-3, 17 December 1959.

the Cadogan Committee, which had reported more than twenty years earlier. It was a risk, though, for Butler would be committed to the recommendations of his own Advisory Council. Having declared himself opposed to corporal punishment, Butler would look extremely foolish and his reforming image would be tarnished if the Advisory Council reported in favour of restoration, especially as the responsibility for bringing forward legislation would fall to him.

During the course of its investigation the Advisory Council took evidence from a number of people, including representatives of the judiciary, Members of Parliament and also from members of the public. Appearing before the Council, Lord Parker argued that corporal punishment should be re-introduced for use in exceptional circumstances. For example, those convicted for involvement in the Notting Hill race riots should have been birched and received shorter sentences, according to Parker, instead of the long sentences that had been handed down.⁸³ In addition, six Conservative MPs, including Moore and Pannell, also gave evidence to the Advisory Council, in which they advocated restoration as an effective method of meeting the rise in juvenile delinquency.⁸⁴

The Advisory Council also received written evidence, including a memorandum from the Liverpool Garston Conservative Association, which provides a good example of the feelings of grassroots Conservative activists. In its submission the Garston Conservatives declared that:

Throughout Liverpool residents fear, and fear with good reason, that the danger to old persons, young girls and persons incapable of self-defence of being insulted, molested or assaulted in the streets at night by groups of youths or young adults is such that it cannot be said safe for such persons to go out at night unaccompanied.

⁸³ TNA: HO 291/836, ACTO Enquiry into corporal punishment, evidence from Lord Chief Justice, 1960.

⁸⁴ TNA: HO 291/836, ACTO Enquiry into corporal punishment, evidence from Conservative MPs, 1960.

They argued many such crimes went unreported, that the statistics of such incidents were therefore unreliable and so they preferred the 'evidence of feeling among residents'. Superficially there seemed many penalties available to tackle this menace, but it was argued that many of these penalties existed only in official memoranda, and, consequently, many young people felt themselves to be beyond the law; and even when they did go before a court they received only mild sentences. The answer, according to the Garston Conservatives, was 'retribution, by which corporal punishment is meant . . . which is needed, if only because no-one has been able to produce a more-effective one'.⁸⁵

As the Advisory Council carried out its investigation the Home Office continued to work on a Criminal Justice Bill that was intended to implement the proposals contained in *Penal Practice* relating to young offenders. Butler had received the approval of the Cabinet's Home Affairs Committee to begin work on the Bill in July 1959,⁸⁶ but drafting had been dogged by delays. Further delay was caused by the publication of the Durand Report into the disturbances at the Carlton Approved School⁸⁷ and then by the publication of the report of the Ingleby Committee on Children and Young Persons, as Butler preferred to have these recommendations in the Bill from the outset rather than be forced to include them under pressure from the Opposition once the Bill had been introduced in Parliament.⁸⁸ The Criminal Justice Bill was finally ready to be introduced to the House of Commons in November 1960.

Coincidentally, just as the Criminal Justice Bill was introduced in Parliament, the Advisory Council on the Treatment of Offenders also published its report.

⁸⁵ TNA: H.O. 291/836, ACTO Enquiry into corporal punishment; evidence from Liverpool Conservative Association, June 1960.

⁸⁶ TNA: CAB 134/1976, H.A. (59) 14th Meeting, Friday 24 July 1959, Minute 5 – Criminal Justice Bill.

⁸⁷ TNA: CAB 134/1983, H. A. (60) 116, 21 July 1960, Criminal Justice Bill – Memorandum by the Secretary of State for the Home Department.

⁸⁸ TNA: CAB 134/1983, H. A. (60) 140, 13 October 1960, Report of the Ingleby Committee and the Criminal Justice Bill – Memorandum by the Secretary of State for the Home Department.

The Council's report recognised that a large proportion of the general public and judiciary were in favour of restoration, although it also highlighted the point that it was desired for a much wider range of offences, including all crimes of violence and some sexual offences, than it had been available for prior to abolition.⁸⁹ The Report went on:

In view of the great conflict of opinion on this subject, it would have been surprising if, at the outset of our enquiry, some of us had not thought that the reintroduction of judicial corporal punishment might be justified as a means of checking the growing increase in crime generally and in offences of hooliganism in particular. That was, in fact, the case, but, having studied the views expressed to us and the available evidence, we consider that the findings of the Cadogan Committee are still valid, and have come unanimously to the conclusion that corporal punishment should not be reintroduced as a judicial penalty in respect of any categories of offences or of offenders.⁹⁰

The Advisory Council found that there was no evidence to prove that corporal punishment was an especially effective deterrent and instead found that it would frustrate successful reformatory treatment. Moreover, the Council argued that many of the provisions of the 1948 Act had not yet been tried and therefore it was necessary to implement them before gauging their success; and that there were significant practical difficulties as neither the police, prison or probation services wanted the responsibility for carrying out the punishment. In addition it was felt that the delay from the commission of the crime through to eventual punishment could be particularly harmful to young offenders. Furthermore, the Council pointed out that those who were seeking re-introduction wanted it as a punishment for a whole host of offences for which it was never previously applicable and 'If that were to be done it would mean putting the clock back not twelve years but a hundred years'. Finally, the Advisory Council argued that restoration would be damaging to the country's

⁸⁹ PP: *Report of the Advisory Council on the Treatment of Offenders*, HMSO, 1960 (1213), p. 7 and p. 2.

⁹⁰ PP: *Report of Advisory Council*, p. 26.

reputation abroad as it would mean abandoning 'enlightened methods of penal treatment'.⁹¹

Going into the Second Reading debate of the Criminal Justice Bill, on 17 November 1960, Butler was thus armed with another report that argued against the re-introduction of corporal punishment. Opening the debate, Butler made it clear that youth crime was the main target of the Bill, as in 1959 one-third of all convicted offenders were aged between 14 and 21 years.⁹² This highlighted the scale of the problem that the Bill was designed to address. However, there were no easy solutions and Butler urged caution on those who looked for simplistic remedies, stating that 'We cannot solve the problem of crime just by passing Acts of Parliament'.⁹³ Rather, Butler argued, the whole of society needed to be engaged in the fight against crime. Recourse to legislation was only one tool in combating crime, along with the police and probation services, the powers and effectiveness of the courts, and the condition of the nation's prisons.⁹⁴ The Bill had to be seen in that context.

Having placed the Bill into what he considered its proper perspective, Butler then went on to highlight its main features. Many of these were putting into action the proposals in *Penal Practice in a Changing Society*, in addition to the recommendations that had emerged from the Ingleby and Durand reports. The Bill outlined the future pattern of borstal accommodation, detention and attendance centres; the future of approved schools; and extended the system of after-care to young offenders. The effect of the Bill would be to immediately abolish the remaining powers of the courts to imprison offenders under the age of 17 and, as space in borstals, detention and attendance centres became available, the Home Secretary would be able to extend that prohibition to all offenders under the age of 21. Yet Butler stressed that the reduction in the powers of the courts to send offenders under the age of 21 to adult prisons did

⁹¹ PP: *Report of Advisory Council*, pp. 26-7.

⁹² *HC Debates*, vol. 630, col. 562, 17 November 1960.

⁹³ *HC Debates*, vol. 630, col. 563, 17 November 1960.

⁹⁴ *HC Debates*, vol. 630, cols. 564-9, 17 November 1960.

not mean a softening of the system for young offenders. The institutions that these offenders could be sent to would be governed by the principle of the 'short, sharp shock'; a positive but disciplined regime aimed at rehabilitation and at reducing recidivism.

Indeed, when tackling the issue of corporal punishment Butler was again keen to demonstrate that his proposals did not constitute a softer approach to juvenile delinquency. Instead, the Criminal Justice Bill included 'new and severe' measures to tackle youth crime, but the re-introduction of corporal punishment was not one of them. Butler's judgement that it would be wrong to bring back corporal punishment had been confirmed by the Advisory Council on the Treatment of Offenders and, although he was prepared to have a long debate on the matter during the passage of the Bill, he made it clear that he and the government as a whole were convinced by the findings of the report.⁹⁵

Even with the Advisory Council coming out against corporal punishment, its supporters on the Tory backbenches had no intention of giving up the fight. Instead, Sir Thomas Moore argued that the Advisory Council had relied heavily on the Cadogan Report, which was no longer relevant due to the huge social changes that had taken place since 1938. Whereas in 1938 crimes of violence were carried out for economic reasons, with the advent of the Welfare State these reasons no longer existed and now 'They are committed sometimes for excitement, sometimes from frustrated lust, and even, as I have previously said, sometimes apparently for the fun of the thing'.⁹⁶ Furthermore, Moore argued that there seemed to be some conflict within the Advisory Council over the issue (despite protests to the contrary from the Conservative MP John Hobson who was a member of the Council)⁹⁷ which was the reason why they had come down in favour of no change.⁹⁸ Having thus rubbished the report the

⁹⁵ *HC Debates*, vol. 630, cols. 565-7, 17 November 1960.

⁹⁶ *HC Debates*, vol. 630, col. 606, 17 November 1960.

⁹⁷ *HC Debates*, vol. 630, col. 616, 17 November 1960.

⁹⁸ *HC Debates*, vol. 630, col. 607, 17 November 1960.

floggers could safely continue their campaign to have corporal punishment included in the Bill.

Not only did Butler have problems with the flogging element in his own party, the Opposition also had criticisms of certain aspects of the Bill which they did not believe to be liberal enough. Having first blamed the government for having fostered 'a society in which material advancement, personal success, selfishness and disregard for one's neighbours are encouraged',⁹⁹ and therefore responsible for the rise in crime, Patrick Gordon Walker raised the Opposition's three principal concerns. The first was the reduction of the age at which a boy could be sentenced to detention in a borstal, which was to be reduced from 16 to 15 years of age. Although it was intended that eventually no offender under the age of 21 would serve their sentence in an adult prison, young offenders would end up in prison because of the lack of borstal accommodation. There would not be sufficient borstal accommodation until Butler's building programme was well under way, which would be sometime after the Bill had been passed. Therefore, for that period, offenders as young as 15 years could find themselves in adult prisons. Indeed, Gordon Walker questioned whether the building programme was extensive enough, and if it was not, then this would be a permanent problem that would plague the system.¹⁰⁰

A similar objection to the Bill was over the reduction, from 12 to 10 years, of the age at which children could be sent to approved schools. Gordon Walker argued that this was too young an age for boys to be brought into the penal system. In addition he argued that greater state control over approved schools was necessary, with integration with the education system rather than the penal system being more appropriate. Indeed, the Opposition later went on to argue

⁹⁹ *HC Debates*, vol. 630, cols. 586-7, 17 November 1960.

¹⁰⁰ *HC Debates*, vol. 630, cols. 582-3, 17 November 1960.

that this part of the legislation should have been included in a Children and Young Persons Bill rather than a Criminal Justice Bill.¹⁰¹

Gordon Walker's third criticism was over the issue of offenders that defaulted on the terms of their probation. The Bill allowed for the recall to prison for any offender whose Probation Officer reported a serious breach of the terms of their probation. The offender would then be recalled to prison by the administrative procedures that would be operated by the Home Office. Gordon Walker argued that this should be a judicial rather than an administrative matter, with the Home Office having to demonstrate to a court that an offender had breached the terms of their probation. It would therefore be for a judge, rather than a Home Office official, to decide whether an offender should be returned to prison.¹⁰² Despite these concerns the Labour party decided to support the Bill, while seeking amendments, and the Bill received its Second Reading unopposed.

While the Bill was making its way through Parliament the floggers made two attempts to amend it to include corporal punishment. The first attempt was heavily defeated during the Committee Stage by 26 votes to six, with all the Opposition MPs on the Committee voting with the government.¹⁰³ However, when the Bill returned to the floor of the House of Commons for the Report Stage, Sir Thomas Moore tabled another amendment. Moore's amendment proposed to empower the courts to pass a sentence of corporal punishment on young male offenders under the age of 21 for a second, or subsequent, conviction for any crime of violence. This would be an alternative sentence for judges and magistrates from sending these offenders to detention centres. Boys under the age of 17 would be given the cane, whilst those between the ages of 17 and 21 would be birched.¹⁰⁴ Speaking in favour of his amendment, Moore said that the vast majority of public and judicial opinion was on his side; that

¹⁰¹ *HC Debates*, vol. 630, col. 585, 17 November 1960.

¹⁰² *HC Debates*, vol. 630, cols. 584-5, 17 November 1960.

¹⁰³ *The Times*, 'Vote against corporal punishment', 15 February 1961, p. 7.

¹⁰⁴ *HC Debates*, vol. 638, col. 57, 11 April 1961.

social conditions had changed significantly since abolition was advocated in 1938, as crimes of violence were now motivated by thuggery rather than want; and that he rejected the contention that there was no deterrent value in corporal punishment. Rather, Moore believed that any young offender would be deterred by the realisation that, if they were convicted again, they would be caned or birched. He continued:

We do not agree with those whose humanity and reforming zeal appears to be almost entirely directed to the criminal. Our sympathy goes to the victim . . . Instead of waiting until a crime of violence has been committed, and then setting out to reform the wrong-doer and evil-doer, we believe it better to deter him. As I have said before, we would put the horse in front of the cart.¹⁰⁵

Of the nine backbench Tory MPs to take part in the debate, eight argued in favour of the re-introduction of corporal punishment. At times the floggers' speeches turned into personal attacks against the Home Secretary, as they accused Butler of putting his reforming zeal before his responsibility to protect the public.¹⁰⁶ In an almost hysterical contribution the Conservative MP Geoffrey Hirst attacked Butler for being out of line with the opinions of the vast majority of the Conservative party 'of which, on paper at least, he is a leader' and condemned the Home Secretary for so lowering 'the standard which he represents as to fall back on such dishwash for his arguments'.¹⁰⁷ The 'dishwash' was the Advisory Council report, which had only been commissioned to satisfy the demands of the floggers.

In reply, whilst recognising the sincerity of conviction of the floggers, Butler attacked them for becoming obsessed by the issue, especially as they seemed to be suggesting it was the sole answer to the crime problem. The amendment, Butler argued, would extend corporal punishment to offences that it had not been applicable for since 1861, and went on to say that the statistics showed that since abolition there had in fact been a reduction in the number of crimes committed for which the birch was previously available. Furthermore, the Bill

¹⁰⁵ *HC Debates*, vol. 638, col. 60, 11 April 1961.

¹⁰⁶ *HC Debates*, vol. 638, cols. 65 and 106-7, 11 April 1961.

¹⁰⁷ *HC Debates*, vol. 638, col. 114 & 117, 11 April 1961.

before the House was full of alternatives to bringing back a punishment which he, and many others, felt to be 'repugnant'.¹⁰⁸

When the amendment was finally forced to a vote the floggers were heavily defeated. All the support for the amendment, though, came from the Conservative backbenches, with a total of 69 MPs defying the government Whip.¹⁰⁹ Butler had managed to win the day (with a large number of Labour MPs propping up the government's majority) and successfully defeated the rebels. Yet this had only been achieved following a heated debate in which the whole motive and effectiveness of Butler's approach to youth crime had been bitterly criticised by many members of his own party, and had received only lukewarm support from the Labour benches. The defeat of the floggers, however, did bring to an end the Parliamentary campaign for the re-introduction of the birch.

Although he had won the Parliamentary battle, it was to be another six months before Butler was to finally gain the ascendancy over the party membership. Butler's success at the 1961 Conservative conference has traditionally been attributed to the excellent speech that he had made in reply to the law and order debate, which routed the floggers.¹¹⁰ After the speech one Cabinet minister, Iain Macleod, with tears in his eyes, approached Butler's wife Mollie to ask her to 'Tell Rab I have never heard him make a better speech'.¹¹¹ Faced with sixty-five hostile resolutions on the conference agenda, Butler did indeed make a very good speech in which he argued against corporal punishment and in favour of his reforms.¹¹² Yet, while Butler had made a good speech, his success can be attributed more to the stage managing of the conference debate. Butler had continually been singled out, both in Parliamentary and conference

¹⁰⁸ *HC Debates*, vol. 638, cols. 89-97, 11 April 1961.

¹⁰⁹ *The Times*, '69 Conservatives defy leaders on flogging; Home Secretary derided', 12 April 1961, p. 12.

¹¹⁰ Butler, *Memoirs*, p.201; Howard, *RAB*, p. 286; Gilmour and Garnett, *The Tories*, p. 162; Pearce, *Lost Leaders*, p. 105.

¹¹¹ Robert Shepherd, *Iain Macleod: A Biography* (London: Pimlico, 1994), p. 263.

¹¹² *The Times*, 'Mr Butler wins backing for crime policy', 13 October 1961, p. 12.

debates, by hostile speakers from within the Conservative party who wanted to see a crackdown on crime that included bringing back the birch. This was not only damaging to Butler, but was also harming the party's image and giving ammunition to their opponents. With national newspapers writing about 'the blood thirsty woman Tory',¹¹³ and with the issue annually coming before the conference, the party managers decided to take action.

As *The Times* noted, Butler had become the focal point of the floggers' discontent as 'His champions, as much as his opponents, speak of his profound reforming influence at the Home Office'.¹¹⁴ In other words, by playing up to his image as a reformer Butler was not just taking the sole credit for the progress he was making at the Home Office, but was also acting as a shield for his Cabinet colleagues on corporal punishment. Butler therefore stressed in his speech that it was not just his policy, but the policy of the government as a whole, to oppose the re-introduction of corporal punishment; an argument that was highlighted by the range of Cabinet ministers lined up on the conference platform to listen to, and support, Butler's speech.¹¹⁵ In addition, the traditional format of the conference debate was changed, which allowed a moderate amendment to be proposed by a young Geoffrey Howe, whilst Butler lined up speakers to support the government line.¹¹⁶ Butler did well, with the respected penal campaigner Lady Elliot of Harwood (widow of former Tory Cabinet minister Walter Elliot) and aspiring MPs Peter Rawlinson Q.C. and John Hobson Q.C. all speaking in support of Butler.¹¹⁷ Despite fears that the vote would still be lost, Butler won the day with a large majority of constituency representatives backing the moderate amendment.¹¹⁸

¹¹³ Mark Jarvis, *Conservative Governments, Morality and Social Change in Affluent Britain, 1957-64* (Manchester: Manchester University Press, 2005), p. 57.

¹¹⁴ *The Times*, 13 October 1961, p. 12.

¹¹⁵ *The Times*, 13 October 1961, p. 12.

¹¹⁶ RAB H10/11-13, Letters from Butler to W. Compton Carr MP, Peter Rawlinson, QC, MP, and William Lloyd Roots, TD, QC, MP.

¹¹⁷ *The Times*, 13 October 1961, p. 12.

¹¹⁸ RAB H15, circular letter from Macmillan to Association chairman, 29 November 1961; and RAB H16-17, 'Resolutions Passed at the Annual Conference, Brighton' 29 November 1961.

The 'battle of the birch' was a very public clash between Butler and those members of his party that supported corporal punishment and reflected two completely different approaches to law and order. Butler, as he made clear in *Penal Practice in a Changing Society* and his Criminal Justice Bill, sought to implement modern methods to punish and rehabilitate young criminals. However, this approach was anathema to many in the Conservative party who felt that Butler was putting the interests of offenders ahead of his responsibility to the victims of crime. Those in favour of corporal punishment rejected the evidence of two reports that found it had no deterrent value, and instead argued that to 'whack the thugs' would deter young criminals and give some satisfaction to their victims. Butler's rejection of these arguments again seems to play into the idea of him as the liberal reforming Home Secretary.

However, Butler made only modest claims about the scope of the measures he was proposing and in many ways was merely implementing those reforms included in the 1948 Criminal Justice Act that were still to be introduced. Indeed, Butler argued that, like Sir Samuel Hoare in the 1930s and Ede in the 1940s, all he was doing was playing his part in the continual process of reform, which would, in turn, be carried on by one of his successors.¹¹⁹ Moreover, Butler maintained that he was not softening the system, but rather introducing the principle of the 'short, sharp shock'; with discipline and training the ethos behind the new institutions being built to accommodate young offenders. And while Butler opposed the return of judicial corporal punishment, he did nothing to reduce its scope; retaining it as a punishment against extreme breaches of prison discipline, and, with the rest of the government, supporting the right of parents and teachers to discipline the children in their care by slapping or caning.¹²⁰

Little evidence in the National Archives sheds any new light on a debate that was largely conducted in public, but merely confirms that Butler had the

¹¹⁹ *HC Debates*, vol. 638, cols. 442-6, 12 April 1961.

¹²⁰ *HC Debates*, vol. 639, cols. 620-1, 27 April 1961.

Cabinet's support both in his approach to youth crime and also in his opposition to the re-introduction of corporal punishment.¹²¹ However, amongst Butler's Papers at Cambridge seemingly overlooked documents confirm his fixing of the law and order debate at the 1961 party conference and the lining up of speakers to support the government.

Although the issue rumbled on into future conferences, it was not to reach the same prominence that it had during Butler's Home Secretaryship; but his victory had come at the price of further damaging his reputation amongst the right-wing of the party. However, whilst the debate over corporal punishment had polarised feelings within the Conservative party, it was nothing compared to the effect that the campaign to end the death penalty was having on British politics.

¹²¹ TNA: CAB 128/34, CC (60) 58th Conclusions, Minute 1, 17 November 1960.

Chapter 3 - Capital Punishment

Butler became Home Secretary at an important stage of the abolitionist campaign against the death penalty and found himself caught in the middle of a debate that cut across party boundaries. On his appointment Butler inherited the Homicide Bill which was to dramatically reduce the scope of the death penalty; restricting it to those types of murder where capital punishment was felt to be a unique deterrent. However, the Bill pleased neither the retentionists nor the abolitionists and, as a result, the issue continued to rumble on throughout Butler's Home Secretaryship.

In 1948 the Labour government had been forced to establish a Royal Commission on the death penalty as a result of abolitionist pressure. The House of Commons had voted in favour of an amendment to the Criminal Justice Bill that would suspend capital punishment for a five year trial period. However, the Lords rejected suspension and so, in order to save the Bill, the abolitionists withdrew the amendment in return for a government promise to establish a Royal Commission.¹²² However, the remit of the Commission was to investigate the working of the death penalty and not to consider whether it should be retained or abolished. It was five years before the Commission reported and by 1956 still no action had been taken to implement its recommendations.

This lack of government action prompted the Labour MP and veteran abolitionist campaigner Sydney Silverman to introduce a Bill to abolish capital punishment. However, before Silverman's Bill received its Second Reading the government sponsored a debate inviting the Commons to vote in favour of retaining the death penalty; a vote the government lost, with the Commons

¹²² Kevin Jeffreys, 'Ede, James Chuter Chuter-, Baron Chuter-Ede (1882-1965)' Oxford Dictionary of National Biography Online: <http://www.oxforddnb.com/view/article/32414>; and Sarah McCabe, 'Silverman, (Samuel) Sydney (1895-1968)', Oxford Dictionary of National Biography Online: <http://www.oxforddnb.com/view/article/36093>.

instead supporting abolition or suspension.¹²³ As a result, the government made Parliamentary time available for Silverman's Bill, but the Lords again rejected abolition and defeated the Bill.¹²⁴ Silverman wanted the government to demonstrate the supremacy of the Commons over the Lords by forcing the Bill through using the Parliament Act;¹²⁵ but, having no appetite for a fight with the Lords and with the membership of the Tory party overwhelmingly favouring retention, it was decided instead on a compromise Bill.¹²⁶ The Homicide Act, which was designed to maintain the death penalty for murders where its deterrent value was believed to have the most effect, was making its way through the House of Commons as Butler was appointed Home Secretary.

The Homicide Act, just like the appointment of the Royal Commission eight years earlier, was a compromise measure. In 1956, as in 1948, the government wanted to retain the death penalty but had failed to carry the House of Commons in support of this policy. To further complicate matters, on both occasions the House of Lords had rejected the Commons's attempts at abolition. As the previous Labour government had already used the well practiced stalling tactic of appointing a Royal Commission, Eden's administration was forced into legislation. However, the choice facing ministers was to force through abolition using the Parliament Act to bypass the Lords, despite public opinion and the vast majority of Tory activists being against abolition, or frustrating the will of the House of Commons by retaining the death penalty but reducing its scope. The government chose the latter option.

Many of the recommendations of the Royal Commission were included in the Homicide Act, such as those relating to diminished responsibility and suicide pacts. Moreover, the Bill reduced the scope of the death penalty by retaining only five classes of capital murder (such as murder in the course of theft and murder by shooting or causing explosion). In his memoirs, Butler described

¹²³ *HC Debates*, vol. 548, cols. 2536-2656, 16 February 1956.

¹²⁴ Richard Lamb, *The Macmillan Years, 1957-63: The Emerging Truth* (London: John Murray, 1995), p. 408.

¹²⁵ *HC Debates*, vol. 560, cols. 18-135, 6 November 1956.

¹²⁶ Lamb, *The Macmillan Years*, p. 408.

the Bill as 'rather curious' as it sought not to punish the types of murder deemed to be the most wicked, but rather those where capital punishment was believed to have the greatest deterrent effect.¹²⁷ In reality, though, Butler had no choice other than to continue with the Bill as it had already made significant progress through the Commons. In addition, none of Butler's colleagues would have welcomed re-opening the controversy over capital punishment, and, in any event, Butler had no alternative proposals that would gain broader support than the Bill currently going through Parliament.

Butler's less than enthusiastic support of the Homicide Act in his memoirs, together with his declaration that 'By the end of my time at the Home Office I began to see that the system could no go on',¹²⁸ has led to speculation as to his real opinion of capital punishment. Although Butler stoutly supported the government throughout the 1956 debates and saw the Homicide Act safely onto the Statute Book, he has come to be seen as a reluctant hanger. Howard records that despite Butler's defence of the government position the 'suspicion, at least in liberal circles, was that Rab himself was a secret abolitionist'.¹²⁹ This view is shared by Dominic Sandbrook who wrote of Butler that 'Although a private opponent of the death penalty, he had never fought hard for its repeal'.¹³⁰ However, the more accepted view is that Butler went to the Home Office a supporter of capital punishment, but his experiences of having to decide the fate of those convicted of capital murder, whether to reprieve or allow the law to take its course, turned him into a convinced abolitionist.¹³¹

As there is nothing in the Butler Papers to confirm Howard's 'secret abolitionist' theory, and as Butler's public statements had all supported the government's line on capital punishment, it is necessary to look to the National

¹²⁷ Butler, *Memoirs*, p 201.

¹²⁸ Butler, *Memoirs*, p 202.

¹²⁹ Howard, *RAB*, p 253.

¹³⁰ Dominic Sandbrook, *Never Had It So Good: A History of Britain from Suez to the Beatles, 1956-64* (London: Little, Brown, 2005), p 507.

¹³¹ Gilmour and Garnett, *The Tories*, p 162; Pearce, *Lost Leaders*, pp 100-1; and Richard Lamb, *The Macmillan Years*, p 409.

Archives to see if any evidence exists to prove whether Butler's private view differed from his public statements. At the National Archives there is no single document that clarifies Butler's personal position on capital punishment and, indeed, if any such document existed it would have to be treated with some caution. Therefore it is necessary to take the evidence that is available in the Archives, in addition to Butler's public statements and private papers, and try to piece together the most likely explanation.

Firstly, there is nothing to suggest that Butler was an abolitionist at the time he was appointed to the Home Office. During the debate in February 1956, Butler, as Leader of the House, spoke on behalf of the government and concluded his speech declaring that:

I am a Christian myself, and I believe in the retention of the death penalty. I say, at the same time, that my duty to society makes me say that under present circumstances it would be unwise for this House . . . to abolish the penalty of death for murder.¹³²

Butler then supported the government in the Division Lobby. Three members of the Cabinet (Foreign Secretary, Selwyn Lloyd; Agriculture Minister, Derick Heathcoat Amory; and Minister of Labour, Iain Macleod) opposed capital punishment on principle and abstained from voting, even although the government went on to lose the Division. Later, when the government was preparing the Homicide Bill as an alternative to outright abolition there was some concern that Macleod and Heathcoat Amory would not accept this compromise.¹³³ In contrast Butler was willing to speak and vote against abolition and there is no similar concern as to whether he would accept a compromise Bill that retained the death penalty.

It may be argued, however, that Butler had no choice but to support retention. As a senior member of the government, who deputised for the Prime Minister

¹³² *HC Debates*, vol. 548, col. 2646, 16 February 1956.

¹³³ TNA: PREM 11/1747, 1956-57, undated handwritten note.

in his absence, could Butler afford to indulge his conscience as Lloyd, Heathcoat Amory and Macleod had? The Chief Whip, Edward Heath, who as party leader supported permanent abolition in 1970, voted in support of the government in 1956. As Chief Whip, Heath was not in a position to do otherwise.¹³⁴ Even although there was a free vote, it was a government Motion and the Chief Whip could not vote against the wishes of his front bench. Butler may have considered himself to have been in the same position.

Yet, if Butler did vote for retention out of loyalty, he showed no sign of reluctance when he participated in the debate. During his speech he reconciled capital punishment with his Christian faith, argued that he believed that his duty to society demanded he vote for retention and even declared that 'no innocent man has been hanged in recent memory'.¹³⁵ These are hardly the remarks of a man whose conscience was troubled by the continuance of the death penalty and would have demonstrated a cynicism unparalleled at any other stage of his career. The evidence points to the conclusion that Butler went to the Home Office a supporter of retaining capital punishment.

Did, then, Butler's view on capital punishment change over the course of his Home Secretaryship? There are two incidents that may help provide an answer to this question. Firstly, during the passage of his Criminal Justice Bill in 1961 the abolitionists proposed an amendment to raise the minimum age at which a person could suffer the death penalty from 18 to 21 years. This had been recommended by the Royal Commission, but the Commissioners had been split on the issue and had only agreed on the recommendation by six votes to five.¹³⁶

Butler decided to refer the issue to the Cabinet, but in his memorandum he did not deal only with the proposed amendment to his Bill, but also asked the Cabinet to consider whether capital punishment should be retained. Butler

¹³⁴ *HC Debates*, vol. 548, cols. 2646-56, 16 February 1956; and Edward Heath, *The Course of My Life. The Autobiography of Edward Heath* (London: Hodder and Stoughton, 1988), p. 300.

¹³⁵ *HC Debates*, vol. 548, col. 2643, 16 February 1956.

¹³⁶ PP: *Report of the Royal Commission on Capital Punishment*, p. 275.

argued that they had three options. The first was to restore capital punishment for all types of murder, which would be supported by a large number of Tory MPs and the general public, but opposed by the Opposition and by a 'strong minority' of Conservative MPs. Secondly, there was abolition which commanded a majority in the House of Commons but 'would certainly not commend itself to the majority of our supporters, or, I think to public opinion'. Butler's recommendation, though, was 'to play the matter long' and continue with the Homicide Act as it stood, while urging ministers to discourage debate lest it become an election issue.¹³⁷ The memorandum sparked passionate debate within the Cabinet, reflecting the lack of consensus on the issue in Parliament and in the country. As the Cabinet could not agree on any alternative course of action, it accepted the Home Secretary's recommendation to do nothing. As for the amendment to the Criminal Justice Bill 'They agreed that, in view of the prevalence of crimes of violence by young people, this amendment should be resisted'.¹³⁸

It is clear that Butler was in a difficult position over capital punishment. The Cabinet was divided, the Commons supported abolition but the Lords did not, whilst many Tory party members wanted restoration for all types of murder. Full restoration was not possible as the Commons would not support it and using the Parliament Act to force through abolition would cause uproar in the Conservative party. Therefore, Butler had no option but to recommend to his colleagues 'to play the matter long'. Yet this does not mean that Butler was unhappy with the *status quo*. Certainly the tone of his memorandum demonstrates weariness with the issue, which continued to take up much of his time and put him in an awkward position in Parliament, but Butler does not admit to any change of heart. All Butler was seeking was for his colleagues to support the line he was taking on the general issue of capital punishment and specifically the amendment attached to his Criminal Justice Bill, and in this he was successful.

¹³⁷ TNA: CAB 129/104, C (61) 20, Capital Punishment – Memorandum by the Secretary of State for the Home Department, 8 February 1961.

¹³⁸ TNA: CAB 128/35, CC (61) 6th Conclusions, Minute 3, 13 February 1961.

On the amendment to the Bill, the Cabinet agreed with Butler that the proposal to raise the minimum age should be rejected.¹³⁹ A Home Office file set out the reasons. Firstly, it was argued that in considering whether to exercise the Prerogative of Mercy the youthfulness of the offender was taken into consideration. Since the Homicide Act had come into force four people under the age of 21 had been convicted of capital murder – two had been reprieved and two executed, with the Home Secretary taking all factors into account, not just the age of the offenders. Moreover, it was feared that increasing the age might lead to an increase in the number of young people using firearms. As the very nature of a deterrent made it impossible to know how many young people had been put off using guns by the existence of the death penalty for murder committed using firearms, there was no way of measuring the effectiveness of the deterrent effect of the Homicide Act, but it was believed that a rise in gun crime amongst young people was being prevented. Finally, the views of the electorate had to be taken into account and it would be wrong to raise the age limit as ‘such action would inevitably be regarded by public opinion as both dangerous and inopportune’.¹⁴⁰

The second incident that may help answer the question as to whether Butler came to support abolition during his Home Secretaryship came a little over a week before Butler left the Home Office. On 5 July 1962 Butler and Macmillan met a deputation from the National Campaign for the Abolition of Capital Punishment. In advance of the meeting Macmillan had requested a briefing from the Home Office. In a covering note from the Cabinet Secretary, Norman Brook, it was admitted that ‘there is 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’, but Brook went on to

¹³⁹ FNA: CAB 129/104, C (61) 20, Capital Punishment – Memorandum by the Secretary of State for the Home Department, 8 February 1961.

¹⁴⁰ TNA: BN 29/297, Children’s Division, Capital and Corporal Punishment 1961.

stress that the Home Secretary did not feel that the time had come for the death penalty to be abolished.¹⁴¹

As has been seen, despite his consistent public support for the retention of capital punishment, the impression held by some was that Butler was a secret abolitionist. No such confusion surrounded the position of Harold Macmillan. During the debates in 1956, Macmillan recorded his support of retention in both his diary and the Division Lobby.¹⁴² In addition, whilst there was concern as to whether Heathcoat Amory and Macleod would accept a compromise that retained the death penalty, Macmillan was urging that as few concessions as possible should be made to the abolitionists.¹⁴³

The delegation from the National Campaign for the Abolition of Capital Punishment could therefore have had little hope of convincing either the Prime Minister or Home Secretary of the case for abolition. As the minute of the meeting demonstrates, Butler stuck to the line that:

. . . we should not be too ready to jump to the conclusion that Capital Punishment was no longer a deterrent. He was advised by very liberal advisers that there was still a degree of deterrent present and in the present state of crime he would be sorry to see that deterrent removed. He had a full knowledge of the inequalities of the present Act, but he thought it would be unwise to change the law at the present time. He thought that the trend was undoubtedly towards abolition but that the time for it had not yet come.¹⁴⁴

Even although Butler was prepared to admit the short comings of the Homicide Act, he still maintained that there was a deterrent factor, which was confirmed by his 'very liberal advisers'. Furthermore, while Butler was willing to

¹⁴¹ TNA: PREM 11/3686, Briefing Note on Capital Punishment, 3 July 1962.

¹⁴² Peter Catterall, *The Macmillan Diaries: The Cabinet Years, 1950-1957* (London: Pan Books, 2004), pp 542, 560, 572, 576-7.

¹⁴³ TNA: CAB 21/4682, Macmillan to Sir Anthony Eden, 23 July 1956.

¹⁴⁴ TNA: PREM 11/3686, Meeting with deputation from National Campaign for the Abolition of Capital Punishment, 5 July 1962.

concede that 'the trend was undoubtedly towards abolition', he neither welcomed nor condemned this trend and was not yet convinced that it was time for abolition.

Yet, as Butler was still maintaining the deterrent value of capital punishment, Macmillan was declaring that 'Abolition was a question of timing and method' and was therefore inevitable. 'Of course the law must not move too far ahead of public opinion', continued Macmillan, 'but it was sufficient if a change in the law were acceptable to public opinion; it was not necessary for the change to be demanded by public opinion'.¹⁴⁵ A cynic might conclude that the Prime Minister was seeking to wrong foot a colleague with whom he had a strained relationship and at the same time appear more liberal than his Home Secretary. Whatever Macmillan's motive, abolition would not come as easily as he was suggesting. The Cabinet was just as divided over the issue as it had been a year earlier and a majority of the party would still oppose abolition no matter the state of public opinion generally. Moreover, the problem of getting a Bill through the House of Lords remained.

The evidence therefore suggests that right until the end of his Home Secretaryship Butler continued to support retention of capital punishment. At no point, in public or in private, did Butler indicate that he was opposed on principle, but in fact reconciled his Christian faith with the death penalty. In addition, during the Cabinet debate in February 1961 and at the meeting with the abolitionist campaigners just a week before he left the Home Office, Butler was still arguing that capital punishment had a unique deterrent value, despite the anomalies of the Homicide Act.

Given Butler's progressive approach to penal reform, taken together with the view of him as a leading member of the liberal wing of the Conservative party, it is understandable that sympathetic writers would accept the view of Butler

¹⁴⁵ TNA: PREM 11/3686, Meeting with deputation from National Campaign for the Abolition of Capital Punishment, 5 July 1962.

either as a secret abolitionist or of coming to support abolition as a result of his experiences at the Home Office. However, it is too simplistic to argue that all those on the left should have been abolitionists and all those on the right retentionists. Capital punishment cut across party factions. Some members of the liberal One Nation group within the Conservative party, such as Reggie Maudling were supporters of the death penalty, whilst the leading member of the right-wing Suez Group Julian Amory was in favour of abolition.¹⁴⁶ Indeed, rather than contradicting his progressive views on penal matters, Butler saw the death penalty as having its place in a reformed system. The whole thrust of Butler's penal policy was prevention and cutting recidivism, however for some crimes Butler believed the gallows the best deterrent.

One of the Home Secretary's duties was to review every death sentence and decide whether to recommend to the Crown that the Prerogative of Mercy be exercised and the convicted person reprieved, or whether the law should take its course and the execution go ahead. Butler described this as a 'hideous responsibility'.¹⁴⁷ Further pressure was placed on Butler as no executions had taken place during 1956 as all death sentences had been commuted while Parliament debated the issue. With the passing of the Homicide Act, the Home Secretary would again have to decide the fate of those condemned.

Indeed, in April 1957 the Lord Chief Justice, Lord Goddard, wrote to Sir Frank Newsam to confirm that with the advent of the Homicide Act commutations of death sentences would no longer be automatic. Goddard wished this clarification as 'I am sure you understand the Judges object to passing the death sentence if it is never to be carried out'.¹⁴⁸ Newsam's reply, which was approved by Butler, stated that the Home Secretary was:

anxious to avoid any impression that reprieves will in any sense be automatic, and he has authorised me to say that, in his view, in cases of

¹⁴⁶ Reginald Maudling, *Memoirs* (London: Sidgwick and Jackson, 1978), p. 161. Also *HC Debates*, vol. 548, cols. 2646-2656, 16 February 1956.

¹⁴⁷ Butler, *Memoirs*, p. 201.

¹⁴⁸ TNA: HO 291/154, Letter from Lord Goddard to Sir Frank Newsam, 26 April 1957.

capital murder under the new Act the law should be able to take its course, save where there are strong mitigating circumstances.¹⁴⁹

This responsibility over reprieves led Butler to shut himself away for days at a time when considering a case and taking counsel from the judiciary or the Lord Chancellor as he felt necessary.¹⁵⁰ The decision was his alone to make and Butler quickly found that he was in a no-win situation as the reason behind the Home Secretary's decision was never made public.¹⁵¹ Butler would then find himself under attack without being able to explain his decision, by abolitionists if he allowed the execution to go ahead, or if he commuted the sentence by those who believed the execution should have taken place.

Howard, having floated the idea that Butler was secretly an abolitionists, then seems to accept the claim made by the right-wing journalist and author Auberon Waugh that Butler was 'responsible for sending more condemned prisoners to the gallows than any other post-war Home Secretary'.¹⁵² Butler's agreement to the toughly worded reply to Lord Goddard may seem to bear this out. Yet the purpose of the Homicide Act was to significantly reduce the number of executions each year, whilst retaining the death penalty where it was felt to be an effective deterrent. Looking at the post-war Home Secretaries it can be seen that the number of cases that came for Butler's consideration was substantially less than his predecessors. In six years at the Home Office between 1945 and 1951 Chuter Ede allowed 98 executions to go ahead; as Home Secretary for four years between 1951 and 1954 Maxwell-Fyfe sanctioned 52 executions; whilst in his four and a half years Butler allowed the law to take its course 23 times. Between September 1945 and the start of 1956 (when commutations became automatic due to the Parliamentary debates) an average of 16 executions took place in England and Wales each year. In

¹⁴⁹ TNA: HO 291/154, Letter from Newsam to Goddard, 29 April 1957.

¹⁵⁰ Howard, *RAB*, pp. 253-4.

¹⁵¹ PP: *Report of the Royal Commission on Capital Punishment*, pp. 210-11.

¹⁵² Howard, *RAB*, p. 253. Waugh made the claim in the *Sunday Telegraph* on 12 April 1981.

contrast, in the eight years that the Homicide Act was in operation that average fell to four executions a year.¹⁵³

Also implicit in Waugh's claim is the accusation that Butler was less willing to grant reprieves than his predecessors. However, the Home Secretary had very little impact on the quasi-judicial system that had grown round the granting of reprieves. Indeed, the Royal Commission on Capital Punishment found that:

... a body of precedent has built up in the Home Office and Scottish Home Department, which serves as a guide to successive Secretaries of State, confining the exercise of individual judgement to a small number of borderline cases, providing a safeguard against decisions that might seem capricious or arbitrary.¹⁵⁴

This system of precedents would need to be adapted to the new circumstances created by the Homicide Act, but there is no evidence that the basis for the granting of reprieves became stricter during Butler's Home Secretaryship. The Royal Commission found that from 1900 to 1950 about 45 per cent of those sentenced to death had their sentence commuted.¹⁵⁵ For the total duration of the 1957 Act, 48 people were sentenced to death, of which 19 were reprieved.¹⁵⁶ Therefore, just fewer than 40 per cent had their sentences commuted, a figure that fits well within the decade by decade fluctuations noted by the Royal Commission. It can be seen, then, that Butler was neither the most prolific hanger amongst the post-war Home Secretaries as Waugh claimed, or that he was particularly strict in his granting of reprieves as was implied. Instead Butler followed the same body of precedent, with only a few cases remaining that were up to the Home Secretary to decide.¹⁵⁷

Even so, those sympathetic to Butler have questioned his judgement in allowing the executions of Gunther Padola, George Riley and Ronald

¹⁵³ Richard Clark, English and Welsh Executions 1932-1964, Capital Punishment UK website, <http://www.richard.clark32.btinternet.co.uk/hanged2.html>.

¹⁵⁴ PP: *Report of the Royal Commission on Capital Punishment*, pp. 16-7.

¹⁵⁵ PP: *Report of the Royal Commission on Capital Punishment*, p. 11.

¹⁵⁶ Lamb, *Macmillan Years*, p. 409.

¹⁵⁷ PP: *Report of the Royal Commission on Capital Punishment*, p. 12.

Marwood.¹⁵⁸ However, perhaps the most controversial execution that Butler sanctioned was that of James Hanratty.¹⁵⁹ Hanratty was executed at Bedford Prison in April 1962 having been convicted of the 'A6 Murder', despite maintaining that he had been in Wales at the time. Such was the subsequent controversy over the case that Hanratty's parents attempted to sue Butler after he had left public life, claiming that Butler had been negligent in his failure to recommend mercy. The action was dismissed by the High Court,¹⁶⁰ and in July 2002, forty years after Hanratty's execution and twenty years after Butler's death, DNA testing proved 'beyond doubt' that Hanratty had been guilty of the murder.¹⁶¹

Many years of making these decisions, some writers argue, turned Butler into an abolitionist, and this has even been argued by the most determined protector of Butler's reputation, his wife Mollie.¹⁶² However, as has been seen, Butler argued right to the end of his Home Secretaryship for the retention of the death penalty. Butler did once raise the issue of his responsibility over reprieves in Cabinet. In his memorandum of February 1961, Butler stated that there had been a number of criticisms over some cases where he had allowed the law to take its course. 'I must therefore expect increasing criticism of my decisions in individual cases, and increasing Parliamentary pressure for debates about them.'¹⁶³ It was customary for the Home Secretary's decisions on reprieves not to be made public, but given the increased activity of abolitionists like Silverman, a Parliamentary debate may have been forced upon Butler. If a debate was forced then Butler would 'only maintain, as my predecessors . . . that I take account of all the circumstances of each case, and all the information

¹⁵⁸ Pearce, *Lost Leaders*, p. 100-1.

¹⁵⁹ Gilmour and Garnett, *The Tories*, p. 162.

¹⁶⁰ TNA: TS 58/1070, Attempt by Mr and Mrs James Hanratty to serve a writ on Lord Butler, 1970-1.

¹⁶¹ BBC News, *Final Blow for Hanratty Family*, 4 July 2002, <http://news.bbc.co.uk/1/hi/wales/2093650.stm>

¹⁶² Gilmour and Garnett, *The Tories*, p 162; and Richard Lamb, *The Macmillan Years*, p 409 which contains the evidence from Mollie Butler.

¹⁶³ TNA: CAB 129/104, C (61)20, 8 February 1961, Capital Punishment – Memorandum by the Secretary of State for the Home Department.

available to me . . . before coming to what I believe to be the right decision.¹⁶⁴ Again Butler was demonstrating that he took this quasi-judicial responsibility seriously and would only grant reprieves where he felt it the appropriate course of action.

The final element of Butler's dealings with the death penalty came in the shape of the campaign to clear the name of Timothy Evans. Butler's declaration during the February 1956 debate that no innocent man had been executed in recent times was controversial because of the Evans case. Evans had been executed in 1950 for the murder of his daughter, but it was discovered three years later that another man, John Christie, who lodged at the same house as Evans, was a mass murderer. An inquiry held shortly after the discovery of Christie, found that Evans had been correctly convicted and that two murderers had been living at 10 Rillington Place.

As the abolition movement gained momentum the Evans case was often used to illustrate the case against capital punishment. Gradually a campaign developed for a new inquiry, for Evans to be granted a posthumous free pardon and for his remains to be exhumed from its prison grave and returned to his mother for Christian burial. The situation surrounding Evans was the final point discussed by the Cabinet during their debate on capital punishment in February 1961. In his memorandum, Butler stated that:

. . . my conclusion is likely to be that, whether Evans was guilty or not, *it cannot now be established that he was innocent of the murder of the child*. If so, there could be no question of giving him a Free Pardon; and, I suggest, no point in having a further inquiry. The evidence in the case, so far as witnesses survive, is now not only old, but probably influenced by the arguments which have been going on over the last 12 years.¹⁶⁵

When the matter was discussed by the Cabinet, the Colonial Secretary, Iain Macleod, took issue with Butler. Macleod (who, as his biographer points out,

¹⁶⁴ TNA: CAB 129/104, C(61)20, 8 February 1961, Capital Punishment – Memorandum by the Secretary of State for the Home Department.

¹⁶⁵ TNA: CAB 129/104, C(61)20, 8th February 1961, Capital Punishment – Memorandum by the Secretary of State for the Home Department. Italics are Butler's.

is named in the usually anonymous Cabinet minute¹⁶⁶) argued that it was probable that Evans would not have been charged with the murder of his child. Butler, however, remained unmoved and was supported on the issue by the rest of the Cabinet.¹⁶⁷

The debate over Evans then moved from the Cabinet to Parliament where the Timothy John Evans Bill was introduced by the Labour MP Charles Pannell. Pannell was seeking to have Evans' remains returned to his family for burial. Significantly, one of the sponsors of the Bill was Chuter Ede, who as Home Secretary had sanctioned Evans' execution.¹⁶⁸ After the failure of the Bill, the Opposition sponsored a debate on the Evans case in June 1961. Again Ede, who declared that he would have commuted the death sentence if he had known at the time about Christie, argued passionately for another investigation to be instituted to examine the circumstances surrounding Evans conviction.¹⁶⁹

Butler replied that he could not agree to establish another inquiry as he did not believe it would resolve the issue. Moreover, Butler argued that he could not grant a posthumous free pardon because there was no precedent for it, he doubted if he had the legal powers to do so and that, although reprieves were granted if there was any doubt of guilt, a pardon could only be given if there was certainty of innocence, and given the nature of the case this certainty could not exist. Finally on the issue of removing Evans' remains from the prison cemetery and restored to his family, Butler stated that he did not have the legal power to authorise this and that legislation would therefore be required. However, while there was still doubt as to Evans' innocence, Butler could not give the government's support for such legislation.¹⁷⁰

As he was seeking to reduce the opportunities for debate on the issue of capital punishment it is understandable that Butler would not agree to another inquiry.

¹⁶⁶ Shepherd, *Macleod*, p. 487.

¹⁶⁷ TNA: CAB 128/35, CC (61) 6th Conclusions, Minute 3, 13 February 1961.

¹⁶⁸ *HC Debates*, vol. 634, cols. 1245-1248, 14 February 1961.

¹⁶⁹ *HC Debates*, vol. 649, cols. 649-711, 15 June 1961.

¹⁷⁰ *HC Debates*, vol. 649, cols. 702-711, 15 June 1961. Quote col. 711.

Once established Butler would have no control over it, and, as he argued in the Commons, there was no certainty that an inquiry would be able to produce a definitive answer on Evans' guilt or innocence, which would merely drag the issue on indefinitely. Furthermore, whilst Butler's argument about the lack of precedence over the granting of posthumous free pardons may seem like a stalling tactic, as has been seen, precedence played a critical role in the administration of the death sentence. It is upon this that the decisions over reprieves rested and to diminish the importance of precedence could have wider consequences in relation to the exercise of the Prerogative of Mercy. Butler's appeal that the tradition of his office precluded him from taking action may seem weak, but given its importance to his whole approach when deciding the fate of those sentenced to death his reliance on this argument becomes more understandable.

With Butler's progressive reputation on penal reform it is understandable that the idea that he had abolitionist tendencies would gain currency. Yet capital punishment cut across party faction and it is too simplistic to argue that Butler should automatically have been an abolitionist. No evidence exists to support the suggestion that Butler was either a secret abolitionist at the time he went to the Home Office or that he came to favour abolition as a result of his experience over reprieves. Indeed, as the files at the National Archives demonstrate, Butler argued to the very end of his Home Secretaryship for the retention of the death penalty, even although he was coming to see the anomalies created by the Homicide Act. Instead, the most likely explanation is that Butler, like his predecessors Samuel Hoare, Herbert Morrison and Chuter Ede, came to support abolition after he had left the Home Office. Just weeks before the Conservative party lost the 1964 general election, Butler's successor as Home Secretary, Henry Brooke, wrote to Sir Alec Douglas-Home, who was now Prime Minister, that 'The Homicide Act is unworkable in its present form

and the next Home Secretary, of whatever party, will have to end the death penalty'.¹⁷¹ If Butler had come to the same conclusion he kept it to himself.

Compared to his predecessors Butler did have significantly fewer capital sentences to consider due to the advent of the Homicide Act. Waugh's portrayal of 'Bloody Butler' who sent more men to the gallows than any other post-war Secretary of State does not stand up to scrutiny. In fact, Butler sanctioned considerably fewer executions than many of his predecessors, and the average rate of reprieves was consistent with the figures for grants of mercy before the Homicide Act. What does become clear, though, is the importance of precedence in the operation of the death penalty, and a clinging to this crutch may go some way to explain Butler's reluctance to give in to the pressure surrounding the Evans case. In 1966 it cost Roy Jenkins nothing when he granted Evans a Free Pardon at a time when capital punishment was suspended and Jenkins had no responsibility over reprieves; but for Butler the importance of tradition and precedence cannot be over-estimated when making the terrible decision to send someone to the gallows.

¹⁷¹ TNA: PREM 11/4690, Minute from Henry Brooke to Sir Alec Douglas-Home, 22 September 1964.

Part 2 – Social Policy

Chapter 4 – Gambling, Licensing and Sunday Observance Law Reform

In addition to law and order, the Home Secretary also had responsibility for many social issues. The Wolfenden Committee's report on prostitution and homosexuality; possible restrictions to immigration from within the Commonwealth; and reforms to the laws on gambling, licensing and Sunday observance were all to be tackled by Butler. Butler was to develop a reputation as a progressive and liberal reformer on social issues, just as he had with issues of law and order. However just as Butler's approach to penal reform was loudly applauded but little studied, so to was his work on social reform – especially on his betting and licensing legislation.

Reform of the betting and gaming laws had been discussed within government for some years before Butler was appointed to the Home Office. In March 1951 the Royal Commission on Betting, Lotteries and Gaming published its report in which it recommended significant changes to the law. The Commission found that the existing law was 'obscure, illogical and difficult to enforce', with some of the legislation dating as far back as the sixteenth century and therefore no longer suitable for modern conditions.¹⁷² A number of reforms were recommended covering issues as diverse as off-the-course betting; lotteries and competitions; gaming; and slot machines.

However, having received the Royal Commission's report, the government seemed in no hurry to implement its recommendations. In 1953 Winston Churchill asked Christopher Soames, his son-in-law and Parliamentary Private Secretary, to look at the report. Soames concluded that the recommendation to

¹⁷² PP: *Report of the Royal Commission on Betting, Lotteries and Gaming, 1949-1951*, HMSO, 1951 (8190), p. 5.

allow the setting up of betting shops was likely to prove the most controversial provision of the report, but expressed himself 'glad the problem is to be tackled'.¹⁷³ Yet no action was taken during Churchill's premiership and the issue was left to his successor, Anthony Eden, who informed the Home Office that he would like to see the matter brought before the Cabinet.¹⁷⁴ By March 1956 the House of Commons was informed that legislation was being drawn up to bring in the reforms recommended by the Royal Commission.¹⁷⁵

This was the situation when Butler was appointed to the Home Office. Butler recognised that there would be serious consequences to not taking action; as the enforcement of the law was becoming increasingly ineffective and there was a risk of police officers being corrupted by bookmakers bribing them to turn a blind eye to illegal betting. In addition, the existing law was out of step with public opinion, especially as it appeared that the law discriminated in favour of the rich and against the less well off. Despite this Butler advised his colleagues that the best policy would be to postpone introducing legislation. Having taken soundings of backbench Tory MPs, he had found no enthusiasm for tackling this issue as many believed there would be a determined campaign from the churches, bookmakers and racing interests against any proposed liberalisation of the law. Moreover, Butler believed that any Bill would contain 'numerous controversial features' and would be 'complicated, protracted and unrewarding'.¹⁷⁶ The Cabinet agreed as it was felt that 'the balance of advantage appeared to lie in not promoting a measure on so contentious a subject'.¹⁷⁷ Again the aftermath of Suez and the prospect of a general election ensured that there was no appetite for introducing potentially controversial legislation.

¹⁷³ TNA: PREM 11/4690, Minute from Christopher Soames to Winston Churchill, 18 November 1953.

¹⁷⁴ TNA: PREM 11/4690, Minute from P. R. Pittam to the Home Office, 14 December 1955.

¹⁷⁵ TNA: CAB 129/88, C (57) 179, Betting and Gaming Bill – Memorandum by the Secretary of State for the Home Department and Lord Privy Seal, 25 July 1957.

¹⁷⁶ TNA: CAB 129/88, C (57) 179, Betting and Gaming Bill – Memorandum by the Secretary of State for the Home Department and Lord Privy Seal, 25 July 1957.

¹⁷⁷ TNA: CAB 128/31, CC (57) 71st Conclusions, Minute 5, 7 October 1957.

Yet before the end of the Parliament Butler's attitude to betting and gambling reform had undergone a complete transformation. Recent new research has shown that, just as the article by C. H. Rolph in the *New Statesman* had acted as a catalyst to penal reform, another journal article was to have the same effect on Butler in the area of social reform.¹⁷⁸ The Bow Group was a recently formed think-tank of young and ambitious graduates within the Conservative party, which sought to influence policy and publish contributions from members in the group's journal *Crossbow*. The New Year 1959 edition of *Crossbow* concentrated on 'Politics, Morals and Society' in which a series of articles argued for a more liberal approach to various social issues.¹⁷⁹

A look at the National Archives shows the impact that the articles had on Butler. As with the Rolph article, after reading *Crossbow* Butler asked for the issues raised to be examined by senior officials. However, it was not all the issues raised in the journal that interested Butler, but rather those included in the article by Christopher Johnson on betting and gaming, licensing and Sunday observance restrictions.¹⁸⁰ This excluded a number of issues, including policy on prostitution and homosexual law reform, on which Butler had already made up his mind.

Nevertheless, Butler considered the *Crossbow* articles a 'valuable stimulant'. As a result of 'the prodding we have had from *Crossbow*' he made it clear, when writing to Sir Charles Cunningham, that he was already minded to carry out some measure of reform and that 'There is no doubt that much of our legislation in the fields mentioned . . . dates from an age which is now past, and we should prepare our pigeon-holes for some, at any rate, of the pigeons to fly out'.¹⁸¹ Responding to the Home Secretary's letter, Cunningham agreed that

¹⁷⁸ Jarvis, *Conservatives and Morality*, p. 68.

¹⁷⁹ TNA: Home Office: Liquor Files: HO 295/1: *Crossbow*, 'Politics, Morals and Society', January 1959.

¹⁸⁰ TNA: HO295/1, minute from Butler to Cunningham, 16 January 1959.

¹⁸¹ TNA: HO295/1, minute from Butler to Cunningham, 16 January 1959.

action on betting legislation would be desirable as 'it is quite wrong that the existing law should be so totally inconsistent with practice'.¹⁸²

There would be no opportunity for Butler to implement any reforms before Parliament was dissolved for the general election, and so he therefore sought to have a firm commitment to legislating on these issues included in the party's election manifesto, which he achieved despite the reluctance of Macmillan. In his memoirs Butler recorded that he proposed the unexceptional language for the manifesto that: 'We shall revise some of our social laws, for example those relating to betting and gaming and to clubs and licensing, which are at present full of anomalies and lead to abuse and even corruption'. As unexceptional as the wording may have been, Macmillan was unenthusiastic and declared that 'We already have the Toby Belch vote. We must not antagonize the Malvolio vote'. With the intervention of the Chief Whip in support of Butler, Macmillan resignedly gave way.¹⁸³

Macmillan's lack of enthusiasm may have been confirmed by a letter received from the backbench Tory MP Sir Cyril Black. Black, a prominent member of the temperance movement and who believed gambling to be immoral, wrote to Macmillan to express his concern at the rumours circulating that the election manifesto would contain provisions for betting, licensing and Sunday observance legislation.¹⁸⁴ The Prime Minister passed Black's letter to the Home Office for a response, but Butler was unmoved and decided the best policy was to 'Do nothing about Black. Let us carry on'.¹⁸⁵

The effect of Butler's new commitment to reform of the gambling law was for work to begin on a Bill to give effect to the Royal Commission's proposals, for introduction immediately after the general election. Still the Prime Minister remained unconvinced of the desirability of such a Bill, and, there is some

¹⁸² TNA: HO295/1, minute from Cunningham to Butler, 19 January 1959.

¹⁸³ Butler, *Memoirs*, pp. 197-8.

¹⁸⁴ TNA: HO295/1, letter from Sir Cyril Black to Macmillan, 2 July 1959.

¹⁸⁵ TNA: HO295/1, draft correspondence from Butler, 7 July 1959.

evidence to suggest that he made a last minute attempt to have the Bill scrapped. Immediately after the election, Macmillan requested details of what was being proposed as he 'wondered whether it would be setting up Government-owned or Government-run betting shops with E.R. over the door',¹⁸⁶ and Macmillan decided that the matter had to come to the Cabinet again for 'a frank discussion'.¹⁸⁷

If the Prime Minister hoped that the Cabinet would oppose the Bill he was to be disappointed. Interestingly, the Cabinet minute shows no sign of the Prime Minister's concerns, as, summing up the discussion, he concluded that 'it would be preferable to make the Bill as liberal as possible and to insert more restrictive provisions than to introduce it in a more restrictive form and be forced to make concessions'.¹⁸⁸ However, following the Cabinet's approval of the proposed Bill the Prime Minister's Private Secretary, Tim Bligh, was able to inform the Cabinet Office that 'there was no need to alter The Queen's Speech'.¹⁸⁹ This seems to imply that, despite his supportive comments in Cabinet and the commitment made in the party's election manifesto, the Prime Minister believed it was still possible, and even desirable, for the Bill to be dropped.

The main features of the Betting and Gaming Bill were to legalise off-the-course betting on horse-racing through the introduction of betting shops. In addition many of the extensive restrictions on gaming were to be swept away. It quickly became clear that three issues were going to dominate the passage of the Bill; the regulations on the running of betting shops; the status of street betting; and the possibility of forcing bookmakers to give a financial contribution to horse-racing.

¹⁸⁶ TNA: PREM 11/4690, minute from Tim Bligh, October 1959.

¹⁸⁷ TNA: PREM 11/4690, minute, 22 October 1959.

¹⁸⁸ TNA: CAB 128/33, CC (59) 55th Conclusions, Minute 3, 29 October 1959.

¹⁸⁹ TNA: PREM 11/4690, minute from Tim Bligh, 29 October 1959.

MPs of all parties were concerned about the conditions of betting shops. The Bill attempted to ensure that no loitering would be permitted either inside or outside betting shops (in order to try and prevent continuous betting), by not permitting any seating, televisions or radios on the premises.¹⁹⁰ In Butler's words 'the House of Commons was so intent on making "betting shops" as sad as possible, in order not to deprave the young, that they ended up more like undertakers' premises'.¹⁹¹ The general attitude of MPs was that whilst the law should be liberalised to allow people to bet if they wished, nothing should be done that would actually encourage betting.

On the issue of street betting and of a possible levy on bookmakers to support the horse-racing industry, MPs split roughly along party lines. During the Report Stage of the Bill, Chuter Ede, the former Labour Home Secretary, proposed an amendment that would legalise street betting in England and Wales. Despite its illegality, Ede argued that street betting was popular whereas betting shops would not be. He therefore believed that it was pointless to introduce stiffer penalties to discourage street betting whilst introducing betting shops which would be unpopular. Moreover, Ede argued that the existence of betting shops would promote betting; for example that more woman would be encouraged to place a bet when doing their shopping, whereas street bookmakers were unobtrusive and would not have the same effect.¹⁹²

Butler firmly rejected the amendment and argued that, whether it was popular or not, the street was no proper place for betting to take place. Furthermore, street bookmakers were unobtrusive because they were breaking the law, but if their activities were legalised there would be no reason for them to maintain their low profile. This would allow them to solicit for business and would make it more difficult to stop young people from betting.¹⁹³ With the

¹⁹⁰ *HC Debates*, vol. 613, cols. 812-3, 16 November 1959.

¹⁹¹ Butler, *Memoirs*, p. 203.

¹⁹² *HC Debates*, vol. 622, cols. 1311-8, 5 May 1960.

¹⁹³ *HC Debates*, vol. 622, cols. 1336-1344, 5 May 1960.

government imposing a three line whip and the Opposition allowing a free vote, Ede's amendment was decisively defeated.

Tory MPs, however, were mainly concerned with the issue of whether to introduce a levy on bookmakers to support the horse-racing industry; an issue which had not been considered by the Royal Commission. Indeed there is some evidence to suggest that this was one of the factors that convinced Butler not to legislate on betting in 1957. From the debates over the Bill it becomes clear that in many cases 'horse-racing interests' and the Parliamentary Conservative party were one and the same. In April 1957, before he had persuaded the Cabinet to indefinitely postpone the introduction of a betting Bill, Butler had brought the issue to the Home Affairs Committee of the Cabinet. Butler reported that he was being lobbied by the Jockey Club, who were proposing a levy on bookmakers to support horse-racing should off-the-course betting be legalised. While recognising that precedents existed in other industries and that the government could be embarrassed in the House of Lords if a Bill did not apply such a levy, Butler argued that any future Bill should be a 'measure of social reform' and not 'for the benefit of private sporting interests'.¹⁹⁴ The Committee did express sympathy for the views held by the Jockey Club, but agreed with the Home Secretary that 'the prospects of the Bill would be prejudiced by the inclusion of provisions on the lines sought by the Jockey Club'.¹⁹⁵ Despite this determination, just weeks later Butler was advising the Cabinet to postpone the introduction of the Bill. One of the reasons for dropping the Bill was opposition from horse-racing interests, and thereby part of the Conservative party, 'if the Bill did not contain a provision requiring bookmakers to make a financial contribution to the cost of conducting horse-racing'.¹⁹⁶

¹⁹⁴ TNA: CAB 134/1969, HA (57) 41, 12 April 1957, Betting and Gaming Bill – Memorandum by the Secretary of State for the Home Department and Lord Privy Seal.

¹⁹⁵ TNA: CAB 134/1968, HA (57) 10th Meeting, Item 3, 15 April 1957.

¹⁹⁶ TNA: CAB 129/88, C (57) 179: Betting and Gaming Bill – Memorandum by the Secretary of State for the Home Department and Lord Privy Seal, 25 July 1957.

Following his conversion to reform, Butler still had to find a solution to the levy issue and so brought the matter back to the Home Affairs Committee. After much discussion the Committee finally agreed that 'some concession might have to be made to the Jockey Club's views in order to facilitate the passage of the Bill'.¹⁹⁷ This was a complete contrast to the view the Committee had taken in April 1957. The Committee concluded that the only solution was to establish an enquiry to look into the problem, which would allow the government to introduce the betting Bill without being plagued by the issue.¹⁹⁸ The compromise worked. A committee of enquiry was established, under the chairmanship of Sir Leslie Peppiatt, which was welcomed by many Tory MPs during the debates on the Betting and Gaming Bill. Peppiatt's Committee, which reported in April 1960, found in favour of introducing a levy, which the Cabinet agreed should be implemented as soon as Parliamentary time permitted.¹⁹⁹ In the meantime the Betting and Gaming Bill was going through its final stages in Parliament. The only remaining opposition to the Bill came mainly from Nonconformist Welsh Labour MPs who opposed the Bill on principle. At its Third Reading on 11 May 1960, the Bill easily passed its final stage in the Commons, with just 42 MPs voting against it.²⁰⁰

The second issue raised in Johnson's *Crossbow* article which Butler was to tackle was the 'Byzantine' licensing laws. The hours which public houses could open each day were heavily regulated by laws dating back to the First World War and subsequent legislation had opened a number of loop-holes. While pubs had strictly controlled opening hours and could be checked by the police at any time, clubs could operate outside permitted hours restrictions and required the police to obtain a warrant before they could enter. All this, argued Johnson, restricted consumer choice in Britain and was damaging the growth of

¹⁹⁷ TNA: CAB 134/1975, HA (59) 14th Meeting, Item 4, 24 July 1959.

¹⁹⁸ TNA: CAB 134/1976, HA (59) 17th Meeting, Item 1, 9 September 1959.

¹⁹⁹ TNA: CAB 128/34, CC (60) 28th Conclusions, Minute 4, 28 April 1960.

²⁰⁰ *HC Debates*, vol. 623, cols. 426-94, 11 May 1960.

the tourist industry. Johnson's solution was to abolish the permitted hours regulations.²⁰¹

Unlike betting and gaming, on licensing Butler did not have the recommendations of a Royal Commission waiting to be implemented. This point was highlighted by Cunningham who believed that reforming the licensing laws would prove to be more controversial than those on gambling. For that reason he believed it would be best to follow past practice and establish some form of enquiry on which to base any legislation. That said, there could be no guarantee that any enquiry would be able to produce a unanimous report that could be acted upon.²⁰²

Butler disagreed, and instead decided that the Home Office should prepare a Licensing Bill. When bringing the issue of licensing reform before the Home Affairs Committee, Butler was keen to stress that he was not recommending any radical reform; for example he was not considering abolishing the permitted hours regulations and would not be making radical changes to opening times on Sundays, as 'this would bring in Sabbatarian considerations and in particular would raise the special controversy of Welsh Sunday closing'. Rather Butler believed that there was 'room for easement where the shoe pinches'.²⁰³ Indeed, the proposals that Butler recommended to his colleagues reflected this approach, with the section of the Bill dealing with clubs seeking to introduce a rigid system of control. A slight liberalisation of an hour a day was proposed as far as permitted hours were concerned. Perhaps the most radical aspect of Butler's proposals was the creation of new licenses for restaurants and hotels that were mainly aimed at the tourist industry, but contained sufficient safeguards to assuage temperance critics.²⁰⁴

²⁰¹ TNA: HO 295/1: *Crossbow*, 'Puritans Stopped Play', Christopher Johnson, January 1959.

²⁰² TNA: HO295/1, minute from Cunningham to Butler, 19 January 1959.

²⁰³ TNA: CAB 134/1978, HA (59) 66, 30 June 1959, Licensing Legislation – Memorandum by the Secretary of State for the Home Department and Lord Privy Seal.

²⁰⁴ TNA: CAB 134/1982, HA (60) 86, 27 June 1960, Licensing Legislation – Memorandum by the Secretary of State for the Home Department; and *HC Debates*, vol. 631, cols. 32-46, 28 November 1960.

However, Henry Brooke, the Minister for Welsh Affairs, announced that he was, 'currently examining the case, which appeared to be strong, for repeal of the Welsh Sunday closing legislation and would probably propose that this should be dealt with in the present Bill'.²⁰⁵ This was exactly what Butler had tried to avoid. Brooke was now proposing that a moderate liberalising measure should be turned into a contentious piece of legislation that would excite the temperance movement and would rally Nonconformist opinion in the House of Commons in opposition to the Bill.

Over the next few months Butler and Brooke fought to find a solution to the Welsh Sunday closing issue. It soon became clear, however, that they could not agree on how to proceed and so, in a joint memorandum to the Home Affairs Committee, Butler and Brooke argued for completely different solutions.²⁰⁶ In the memorandum they identified four possible ways of proceeding; firstly to include Wales in the Bill and weather the opposition; secondly to put the issue to the proposed Joint Select Committee on Sunday observance; thirdly to remit the issue to an *ad hoc* committee of Welshmen; and finally to decide the matter by a referendum in Wales. Both agreed that the first and third options were unworkable. To include Wales in the Bill regardless of the opposition would make it impossible for Welsh Conservative MPs to support the Bill – and their support was felt to be essential. In addition the idea of appointing a committee of Welshmen was rejected because they would be unlikely to produce a unanimous report and may recommend a referendum anyway.

Of the remaining solutions, Butler was in favour of referring the matter to a Joint Select Committee, whilst Brooke supported a referendum. Butler argued that a referendum was 'alien to our constitutional practice and a negation of

²⁰⁵ TNA: CAB 134/1980, HA (60) 14th Meeting, 1 July 1960.

²⁰⁶ TNA: CAB 134/1983, HA (60) 130, 20 September 1960, Sunday Closing in Wales – Joint Memorandum by the Secretary of State for the Home Department and Minister of Welsh Affairs.

representative government' and would set a dangerous precedent; for example, it may spark calls by Scottish Nationalists for a referendum on establishing a Scottish Parliament. Furthermore, there was no precedent for nationwide referenda in Britain, but rather only 'local option', which were elections held within local authority areas on specific local issues. Finally Butler argued that the industrialised South of Wales, who were largely in favour of Sunday opening, would out-vote the rural North, where it was believed the majority favoured the *status quo*. In addition, although it was not mentioned in the memorandum, it may have been in the back of Butler's mind that to refer the matter to a Joint Select Committee would mean that Butler could proceed with the Bill that he had originally intended without being dogged with the controversial Sunday closing issue. Brooke, on the other hand, believed that the recommendations of a Joint Select Committee, a majority of whose members would be English, would not gain popular support in Wales. Moreover, a referendum would meet the concerns of Welsh Tory MPs and no one would be able to dispute the result as it would be the 'unfettered decision of Wales'.²⁰⁷

When the Home Affairs Committee came to discuss the joint memorandum, it quickly became clear that there was no support for Brooke's proposal for a referendum due to the impact this could have in Scotland.²⁰⁸ Instead the Committee came down in favour of the 'local option'. Both Butler and Brooke had argued against this as they believed that any reform would have to apply right across Wales.²⁰⁹ However, with neither willing to give way, a compromise was required and the 'local option' seemed like the only option. The Committee did recognise that if the local option was to be used the Bill

²⁰⁷ TNA: CAB 134/1983, HA (60) 130, 20 September 1960, Sunday Closing in Wales – Joint Memorandum by the Secretary of State for the Home Department and Minister of Welsh Affairs.

²⁰⁸ TNA: CAB 134/1980, HA (60) 19th Meeting, Item 5, 22 September 1960.

²⁰⁹ TNA: CAB 134/1983, HA (60) 130, 20 September 1960, Sunday Closing in Wales – Joint Memorandum by the Secretary of State for the Home Department and Minister of Welsh Affairs.

would have to be carefully worded so that the main purpose of the legislation was not frustrated 'in at any rate the greater part of Wales'.²¹⁰

As the only solution to the deadlock the Cabinet agreed to local polls.²¹¹ This quickly became a matter of controversy and rallied Welsh MPs in opposition to the Bill. Welsh MPs argued that there was no demand from the Welsh public for such a change and many suggested that the Bill was inspired by the brewers, who, they alleged, were the paymasters of the Conservative party. Furthermore, they attacked the proposal for local polls and instead argued that the decision should be made by Welsh MPs.²¹² It was left to Brooke to defend the government's decision to hold local polls rather than the national referendum that he had supported.²¹³

With the Conservative's large Parliamentary majority the fate of the Bill was never in doubt. Despite the vocal opposition of the Welsh Labour MPs and the Conservative backbencher Sir Cyril Black, the Bill received its Third Reading with just 56 Members voting against. All that remained was to call the elections which were to be held on a county by county basis, which were held on 8 November 1961.²¹⁴ In the elections, eight of the 13 Welsh counties voted against Sunday opening; but all four county boroughs voted in favour. It was not until the 1970s that Sunday opening was finally to spread throughout Wales.²¹⁵

Johnson's *Crossbow* article had inspired Butler to implement the recommendations of the Royal Commission on betting and gaming and had led to a moderately reforming Licensing Act. However, Butler's attempts to act on the third issue raised by Johnson, reform of Sunday observance legislation,

²¹⁰ TNA: CAB 134/1980, HA (60) 19th Meeting, Item 5, 22 September 1960.

²¹¹ TNA: CAB 128/34 CC (60) 57th Conclusions, Minute 7, 8 November 1960.

²¹² *HC Debates*, vol. 631, cols. 32-157, 28 November 1960; vol. 631, cols. 203-334, 29 November 1960; and vol. 641, cols. 888-1054, 6 June 1961.

²¹³ *HC Debates*, vol. 631, cols. 148-157, 28 November 1960.

²¹⁴ TNA: HO 295/1, Licensing Act, 1961, Administrative arrangements for local polls.

²¹⁵ TNA: BD 25/187, Sunday opening of licensed premises in Wales, Press cutting, South Wales Echo, 3 October 1968.

received a very cool reception from within the Home Office as well as in Downing Street. With very little support in the government, Butler was ultimately frustrated in his desire to bring in legislation on this issue.

Under the observance legislation many forms of entertainment were prohibited on a Sunday and many restrictions limited trading. For example, theatres had to remain closed, open-air entertainments where admission was charged, such as football or cricket matches, were prohibited, while cinemas were subject to local option. In addition, there were restrictions on trading which led to some strange anomalies on what shops could and could not sell; 'they may sell fruit, unless it is bottled; cream, unless it is tinned, though tinned clotted cream is all right; newly cooked provisions, but not fish and chips, and so the catalogue of absurdities continues'. Johnson therefore argued that all the Sunday observance laws should be repealed, so that it would be up to each individual to decide how to spend the Sabbath.²¹⁶

In his response to the *Crossbow* articles, Cunningham warned that reform to the Sunday observance laws would be extremely controversial.²¹⁷ Furthermore, there was no consensus on what form any amendment to the law should take and so Cunningham concluded that 'If something must be done, there may be something to be said for putting off the evil day and setting an enquiry on foot'.²¹⁸ Other senior officials shared Cunningham's concerns. When looking at possible future legislation Sir Austin Strutt believed that 'It is unlikely that the Government would take action in a matter which will certainly be controversial of its own motion'.²¹⁹

Butler does seem to have been persuaded that, unlike licensing reform, it would be impossible to legislate on Sunday observance without first establishing

²¹⁶ TNA: HO 295/1: *Crossbow*, Johnson, 'Puritans Stopped Play'.

²¹⁷ TNA: HO 295/1, minute from Cunningham to Butler, 19 January 1959.

²¹⁸ TNA: Home Office: Entertainments: HO 300/2, Correspondence between Butler and Cunningham; minute from Cunningham to Butler, 2 March 1959.

²¹⁹ TNA: HO 300/2, Correspondence between Butler and Cunningham; minute from Sir Austin Strutt to Cunningham, 2 December 1959.

some form of enquiry. He rejected the idea of a Royal Commission as it would not report quickly enough, clearly indicating that Butler wanted early legislation on the issue. Moreover, Butler deemed a Departmental Committee unsuitable for the issue and so recommended to the Home Affairs Committee a Joint Select Committee of members of both Houses of Parliament. This would then allow legislation to be introduced in the 1962-3 session. The Committee agreed to Butler's proposal 'subject to the concurrence of the Prime Minister'.²²⁰

Macmillan, however, had already expressed his concerns about the possibility of a Sunday Observance Bill. A month before the Home Affairs Committee had agreed to Butler's proposal, the Prime Minister had informed him that he was 'a little worried' about having to tackle such controversial legislation so near to a general election and argued that if they were to act it should be as soon as possible.²²¹ Butler agreed with Macmillan's concerns, but argued that 'We are not ready to tackle this problem . . . some form of inquiry will be necessary'.²²² After the Home Affairs Committee had agreed to an enquiry, Macmillan decided to bring the matter to Cabinet, the same tactic that he had unsuccessfully used when trying to block the suicide and betting Bills,²²³ but the Cabinet again backed Butler.²²⁴

Yet it became clear that the issue of timing was of increasing importance. Cunningham advised Butler that a Select Committee could not be set up until the end of 1960 and would then only have a short time to take evidence and report if legislation was to be ready by the end of 1962.²²⁵ In addition, Butler received a minute from the Chief Whip, Martin Redmayne, who had been sounding out Conservative MPs on the possibility of legislation. Redmayne reported that 'The initial reaction was against any more social legislation this

²²⁰ TNA: CAB 134/1980, HA (60) 14th Meeting, 1 July 1960.

²²¹ TNA: HO 300/3, minute from Macmillan to Butler, 13 June 1960.

²²² TNA: HO 300/3, minute from Butler to Macmillan, 20 June 1960.

²²³ TNA: HO 300/3, minute from Macmillan, 4 July 1960.

²²⁴ TNA: CAB 128/34, CC (60) 44th Conclusions, Minute 4, 21 July 1960.

²²⁵ TNA: HO 300/13, minute from Cunningham to Butler, 26 November 1960.

session . . . and indeed it was argued that any Select Committee report received before the next Election would be dangerous'.²²⁶ As a result, Butler started to move in favour of setting up a Departmental Committee, over which he would have more control.

In early 1961 Butler went back to the Cabinet, this time to ask for the authority to appoint a Departmental Committee. When discussing the Home Secretary's proposal with the Prime Minister, the Cabinet Secretary, Sir Norman Brook, seemed to be almost exasperated by Butler's persistence. 'Can we not leave this alone?' asked Brook, 'There is no conceivable possibility of gaining credit from meddling with it. And there is every risk of political embarrassment -- or worse'.²²⁷ Brook's explanation for Butler's determination to act on Sunday observance was that:

The Home Secretary wants to have this enquiry in order to round off his record of "reform" at the Home Office. But I do not believe that there is any credit to be gained by the Government -- indeed, I think a report on this subject will prove a grave political embarrassment. The dog is somnolent now; but, if roused, it can give a lot of trouble.²²⁸

Brook is correct in his opinion that Butler saw action on Sunday observance as part of his record of reform, but it is questionable whether Butler would have pressed for it if he believed it would damage the government. Brook's correspondence with the Prime Minister was taking place as the Suicide, Licensing and Criminal Justice Bills were going through Parliament, when Butler was fighting off demands from Tory backbenchers for a return of the birch, and as the campaign to clear the name of Timothy Evans had reached the Commons. Butler was at the heart of all these debates and was as a result a controversial figure and now he was proposing more controversial legislation.

However, it seems that by this time Butler had ceased to believe that an enquiry would be conducted quickly enough for him to bring in legislation.

²²⁶ TNA: HO 300/13, minute from Martin Redmayne to Butler, 25 November 1960.

²²⁷ TNA: PREM 11/3548, minute from Sir Norman Brook to Macmillan, 6 February 1961.

²²⁸ TNA: PREM 11/3548, minute from Brook to Macmillan, 20 February 1961.

After the Cabinet had agreed that the Departmental Committee should be established, Butler wrote to invite the former Tory Cabinet minister Lord Crathorne to be its Chairman. Crathorne was reluctant to accept, but Butler persuaded him that 'It is not an enquiry which need be carried out with undue expedition'.²²⁹ Butler had resigned himself to the fact that any legislation would have to take place after the next general election, when the likelihood of him still being Home Secretary was slim. The Prime Minister and the Chief Whip had both given warnings against Sunday observance legislation being introduced late in the Parliament, as had Sir Charles Cunningham and even the junior Home Office minister Dennis Vosper.²³⁰ In addition, Butler's experiences over Sunday opening in Wales may have added to the weakening of his resolve on the matter. However, Butler had said in relation to penal reform that 'I have been long enough employed in tasks of this sort to realise that what matters is launching the scheme. Its execution may have to depend on future circumstances and on other ministers'.²³¹ Butler had secured the enquiry, what happened next would be up to others.

The Betting and Licensing Acts have been seen as examples of Butler's inherent liberalism and refusal to give way to right-wing elements of the Tory party.²³² Initially, however, Butler was disinclined to take action on these issues and it was only in response to Johnson's *Crossbow* article that he decided on some measure of reform. Files at the National Archives, which provide a unique insight not to be found either amongst Butler's papers or other contemporary sources, show the impact of the *Crossbow* articles on Butler; demonstrating his *volte-face* on introducing a Betting Bill and highlighting the problems caused by the Jockey Club's clout with Tory MPs and Peers. In addition, the Archives also show that Butler's Licensing Bill was never intended to be the controversial measure that it became. Instead Butler was proposing moderate reforms and had no intention of getting into the Welsh

²²⁹ TNA: HO 300/13, minute from Butler to Lord Crathorne, 11 April 1961.

²³⁰ TNA: HO 300/13, minute from Dennis Vosper to Butler, 1 February 1961.

²³¹ TNA: HO 291/504, minute from Butler to Cunningham, 28 April 1958.

²³² Pearce, *Lost Leaders*, p. 103.

Sunday closing issue. It was Henry Brooke that had insisted on the inclusion of Wales in the Bill.

Meanwhile Butler's failed attempt to reform the Sunday observance laws has, until recently, gone unnoticed. Again the inspiration for this came from Johnson's article, but the issue was so controversial that civil servants and ministers remained unconvinced of the advisability of tackling the issue. Yet, early on Butler had recognised that, unlike licensing reform, an enquiry of some description was necessary as a prelude to legislation; and by the time he invited Lord Crathorne to be chairman, Butler had already concluded that implementing the committee's proposals would be up to a future Home Secretary.

It is also important to note the reaction of civil servants to Butler's activities on these issues. If Jenkins' portrayal of Cunningham as an impediment to reform is accurate, it would be expected that Cunningham would have attempted to block or delay Butler's initiatives. However, Cunningham accepted that the existing laws on betting, licensing and Sunday observance were in need of reform. With the recommendations of the Royal Commission waiting to be implemented there was no delay in producing a Betting Bill; although he certainly was more cautious than Butler when it came to licensing, where Cunningham believed that an enquiry was desirable before taking action. On Sunday observance legislation, Cunningham agreed that the law was in need of reform but again believed that an enquiry was first necessary. In this he was not alone. Sir Austin Strutt believed it would be folly to attempt action on Sunday observance and the Cabinet Secretary was reduced to almost begging Macmillan to force Butler to drop the issue. Other than Butler, there was no one in government who believed it worth the trouble to deliver Sunday observance reform.

Finally, the Prime Minister's lack of sympathy with his Home Secretary becomes even more apparent. On betting and gaming and on Sunday

observance the Prime Minister used the same tactic to try and frustrate Butler that he had attempted to use on the Suicide Bill. Macmillan's attitude to Sunday observance reform is perhaps not surprising as within government there was no real appetite to tackle this issue. However, he only reluctantly accepted the addition of betting and gaming to the party's manifesto and then attempted to have the Bill dropped from the Queen's Speech. Macmillan was unsuccessful in his scheming but it is incredible that not only was he so opposed to the legislation emanating from the Home Office, but also that he was so ineffective at frustrating it.

There are many similarities between Butler's record on penal reform and the social reforms discussed above. Both were inspired by journal articles and, although Butler has been praised for these reforms, both have been largely neglected by those studying Butler's Home Secretaryship. And just as the debates over corporal punishment and the death penalty eclipsed Butler's penal reforms, his social reforms have largely been overshadowed by his response to the rise in Commonwealth immigration and to the Wolfenden Committee's report on prostitution and homosexual offences.

Chapter 5 – The Wolfenden Report

In September 1957 Butler received the Wolfenden Committee's report on homosexual offences and prostitution. The Committee had been established in 1954 by the then Home Secretary, Sir David Maxwell Fyfe, in response to growing Parliamentary pressure for some form of enquiry into the laws relating to homosexual offences. Sir John Wolfenden, the Vice Chancellor of Reading University, was appointed to chair the Committee which spent the next three years producing the report that Butler was to receive in the autumn of 1957.²³³ Butler's response to the report, to implement the recommendations on prostitution but not on homosexuality, has been seen by some as damaging to his liberal reputation.²³⁴

Underlining the Wolfenden Committee's recommendations was the principle that the main purpose of the law was the preservation of public order and decency but that an individual's morality, or immorality, was entirely a private affair and therefore no business of the law.²³⁵ Having established this principle the Committee concluded that 'We do not think that it is proper for the law to concern itself with what a man does in private' and as a result that 'homosexual behaviour between consenting adults in private should no longer be a criminal offence'.²³⁶ In order to protect the young from predatory older men and to allow teenage boys to pass through any 'homosexual phase' the Committee recommended that the age of consent should be set at 21 years.²³⁷

It is easy today to underestimate just how controversial these recommendations were in the 1950s. Before accepting the invitation to chair the Committee,

²³³ Robert Rhodes James, *Bob Boothby: A Portrait* (London: Hodder & Stoughton, 1991), pp. 369-71; and Stephen Jeffery-Poulter, *Peers, Queens and Commons: The Struggle For Gay Law Reform From 1950 to the Present* (London: Routledge, 1991), pp. 19-22 & p. 28.

²³⁴ Howard, *RAB*, p. 265.

²³⁵ Lord Wolfenden, *Turning Points: The Memoirs of Lord Wolfenden* (London: The Bodley Head, 1976), p. 142.

²³⁶ PP: *Report of the Committee on Homosexual Offences and Prostitution*, HMSO, 1957 (247), p. 21 & p. 27.

²³⁷ PP: *Report on Homosexual Offences and Prostitution*, pp. 27-8.

Wolfenden thought carefully about the damage that would be done to his reputation if he accepted and whether it would lead to the bullying of his children at school.²³⁸ In his memoirs he explained that:

Most ordinary people had never heard of homosexuality; and of those that had the great majority regarded it with something nearer disgust than to understanding . . . I am simply pointing out that an effort of memory or imagination is necessary to realise the difference between then and now.²³⁹

Indeed, hostility towards homosexuality was growing during the 1950s as a result of the increased emphasis on the importance of marriage and the family and the association of homosexuality with national decline and even espionage.²⁴⁰ Rather than a softening of approach towards homosexual men, the 1950s saw a crackdown by the police and a large increase in the number of men prosecuted for homosexual offences.²⁴¹

And it was not just the general public that demonstrated a detestation of homosexuality. In response to pressure to take action, Maxwell Fyfe declared that 'I am not going down in history as the man who made sodomy legal'.²⁴² Maxwell Fyfe, now Lord Kilmuir, was Lord Chancellor during Butler's Home Secretaryship, and was reportedly unable to remain in the Cabinet Room whenever the issue of homosexuality was discussed.²⁴³ Another leading member of the Cabinet, Lord Hailsham, had described homosexuality as 'a proselytising religion . . . contagious, incurable, self-perpetuating' and was firmly against any relaxation of the law.²⁴⁴ It was in these circumstances, then, that Butler received the Wolfenden Committee's report.

It has become generally accepted that Butler was initially inclined to act on the Committee's recommendations, but reluctantly had to give way due pressure

²³⁸ Wolfenden, *Turning Points*, pp. 132-3.

²³⁹ Wolfenden, *Turning Points*, p. 132.

²⁴⁰ Sandbrook, *Never Had It So Good*, pp. 563-4.

²⁴¹ Derek McGhee, 'Beyond Toleration: Privacy, Citizenship and Sexual Minorities in England and Wales', *The British Journal of Sociology* 55 (2004) p. 359.

²⁴² Rhodes James, *Boothby*, pp. 369-70.

²⁴³ Leo Abse, *Private Member* (London: Macdonald, 1973), p. 147.

²⁴⁴ Sandbrook, *Never Had It So Good*, p. 562.

from his junior minister, David Renton, in particular and of the Conservative party in general. Renton was appointed to the Home Office in January 1958 and was to stay there for the rest of Butler's time as Secretary of State. According to Anthony Howard, Renton 'was to exercise a decisive influence (not always in line with Rab's own progressive inclinations) over departmental policy, especially on social questions like Commonwealth immigration and homosexual law reform'.²⁴⁵ When appointing him to the position, Butler asked Renton whether he would feel able to help carry through legislation to implement the Wolfenden recommendations. Renton replied that he would be prepared to help implement the sections on prostitution, but his conscience would not allow him to assist with legislation on homosexuality. With Renton's opposition, in addition to the general feeling of the party against the section of the report on homosexuality, Butler caved and dropped any thought of implementing the recommendations.²⁴⁶

The source of this information was David Renton himself, who was interviewed by Howard in 1985. Yet, while it would not be surprising for the Home Secretary to discuss with his new junior minister possible future legislation, it would be surprising if the junior minister dictated the legislative agenda to his new boss. This view of the right-wing junior minister frustrating the more liberal inclinations of his senior colleague has become accepted by those looking at Butler's career.²⁴⁷ Although this reinforces the view of Butler's inability to stand up to stronger personalities, it does offer some explanation for his failure to implement the Wolfenden Committee's recommendations on homosexuality that is not as damaging to his liberal credentials.

Howard did express concern about the reliability of some of the oral evidence he accumulated when he stated 'that there is no more flawed resource for recalling the events of yesterday than human recollection', and emphasised that

²⁴⁵ Howard, *RAB*, p. 258.

²⁴⁶ Howard, *RAB*, p. 265.

²⁴⁷ Gilmour and Garnett, *The Tories*, p. 163; and Pearce, *Lost Leaders*, p. 101.

he preferred contemporary documentary evidence where it was available.²⁴⁸ Anthony Seldon has described oral history 'as a valuable, if problematic, source of information' and added that 'it is vital to check the information remorselessly against other sources'.²⁴⁹ The problem for contemporary political historians, however, is that 'There is broad agreement that the least satisfactory class of interviewees is current or retired politicians, who often encounter pathological difficulties in distinguishing the truth, so set have their minds become by long experience of partisan thought'.²⁵⁰ As Howard did not have the Home Office files available to him when writing his biography, the oral evidence he collected could not benefit from the rigorous checks advised by Seldon.

From the Home Office files it becomes clear that, from the outset, Butler had no intention of implementing homosexual law reform. At a meeting with officials in October 1957, Butler's view was:

. . . that the Committee's major recommendation on homosexual offences was too far in advance of public opinion to permit of the introduction of gov[ernmen]t legislation . . . The S[ecretary] of S[tate] expressed his intention, when the debate took place, to make a speech on general lines "sprinkled with references to Athens and Sparta", and when the time came w[oul]d like a draft prepared on these lines. (It was suggested that Sparta might not provide the best material for a speech intended to knock down the recommendation!)²⁵¹

Having come to this conclusion, Butler then took the matter to the Home Affairs Committee of the Cabinet where he argued that 'the balance of public and Parliamentary opinion would be against implementing it. Accordingly I am not disposed, at the present time, to accept this recommendation'. Butler suggested that the line to be taken in any Parliamentary debate was that the government was against implementing the recommendation 'unless it could be

²⁴⁸ Howard, *RAB*, p. xiv.

²⁴⁹ Anthony Seldon, 'Interviews', in *Contemporary History: Practice and Method*, ed. by Anthony Seldon (Oxford: Basil Blackwell, 1988), pp. 14-5.

²⁵⁰ Seldon, 'Interviews', p. 10.

²⁵¹ TNA: HO291/123, minute dated 23 October 1957.

shown that the change commanded the general approval of public opinion'.²⁵² The Committee, however, wanted a stronger line making it clear that 'the Government foresaw little prospect of being able to introduce legislation on homosexual offences'.²⁵³ Two days later the Cabinet confirmed this decision and authorised the Lord Chancellor, Lord Kilmuir, to announce during the Lord's debate on 4 December 1957 that 'there was no early prospect' of implementing the recommendations on homosexuality.²⁵⁴ All this took place before David Renton was appointed to the Home Office. From the time that Butler had received the Wolfenden Committee's report he had ruled out legislating to give effect to the recommendations on homosexuality, on the basis that public opinion was not ready for such a change. This was what he was to argue publicly for the remainder of his Home Secretaryship.

When the House of Commons discussed the Wolfenden report Butler repeated the government's view that it could not implement the sections on homosexuality, and, after references to Athens and Sparta, stated that in his opinion 'education and time are needed to bring people along' to accept that like adultery 'and other sins' homosexuality should be removed from the realm of the law. Butler did recognise the enormous amount of suffering that resulted from the existing law and the opportunities that were open to the blackmailer, but had to conclude that 'General opinion feels that it would be doing too much to condone a practice which so many people abhor . . . Those who practice the art of government are often painfully aware that it is only the art of what is possible'.²⁵⁵ This was a carefully balanced speech in which he placed rejection of the Wolfenden Committee's recommendations firmly at the door of public opinion.

²⁵² TNA: CAB 134/1971, HA (57) 142, November 1957, Report of the Committee on Homosexual Offences and Prostitution -- Memorandum by the Secretary of State for the Home Department and Lord Privy Seal.

²⁵³ TNA: CAB 134/1968, HA (57) 26th Meeting, Item 7, 29 November 1957.

²⁵⁴ TNA: CAB 128/31, CC (57) 82nd Conclusions, Minute 3, 28 November 1957.

²⁵⁵ *HC Debates*, vol. 596, cols. 365-72, 26 November 1958.

Butler's moderation contrasted with the majority of the contributions which followed, as both Conservative and Labour MPs condemned homosexuality as a perversion and branded homosexuals as weak and feeble creatures who posed a threat to children.²⁵⁶ In winding up the debate, David Renton stated that the government was concerned about the possible spread of homosexuality if it was legalised and argued that young men would not be able to grow out of a homosexual phase if they were allowed to indulge in it. He also agreed with the point made by the Labour MP Jean Mann of the harmful effect on young boys of 'notorious homosexuals' living openly together.²⁵⁷

The difference of approach shown by Butler and Renton could not be starker. On the one hand Butler was arguing that it was public opinion that was preventing action, while Renton was arguing that it was the fear of spreading perversion and damaging children. In fact, from the Home Office records it is clear that Butler saw a draft copy of Renton's speech and forced his junior minister to make cuts, including the following paragraph:

Personally I think strong case for differentiating between Sodomy and other homosexual offences. No wish to enter into revolting details but always understood that penetration per anum quite apart from its abnormality was to be condemned because it spreads disease and whatever else may be said on homosexuality I feel that public opinion is never likely to accept that that particular form of it should cease to be criminal.²⁵⁸

Butler, in his large handwriting scrawled 'omit' next to the offending paragraph. Renton was not to be allowed to express his personal opinion during the speech, even although his and Butler's interpretation of the reasons of the government's rejection of the Wolfenden proposals seemed to be quite different.

This issue was not to be raised again until June 1960 when the Labour MP Kenneth Robinson tabled a motion in the House of Commons calling for the

²⁵⁶ *HC Debates*, vol. 596, cols. 382-501, 26 November 1958.

²⁵⁷ *HC Debates*, vol. 596, cols. 501-8, 26 November 1958.

²⁵⁸ TNA: HO291/123, draft of David Renton's speech, November 1958.

government to implement the recommendations relating to homosexuality. After making it clear that he was in no way advocating the homosexual lifestyle, Robinson argued that it was time for the government to take action. Rather than being dictated to by public opinion, Robinson argued that on many occasions it fell to government to lead and guide it, and implementing the Wolfenden Committee's recommendations was one such occasion.²⁵⁹ Again the majority of MPs opposed any liberalisation of the law, with one Conservative MP arguing that 'the homosexual is a dirty-minded danger to the virile manhood of this country'.²⁶⁰

However, one contribution which did seem to show a shift of opinion was that of the Home Secretary. Butler informed the House that since the last debate he had authorised the use of Home Office funds for research projects that sought to increase understanding of the causes and nature of homosexuality and also to investigate the means and extent of its spread throughout society. In addition, the Prison Medical Service was looking at the possibility of influencing homosexual behaviour by psychotherapy or medical treatment. Butler argued that this research would necessarily take some time before reaching any conclusions, although he was not arguing that this was the sole reason for his delaying homosexual law reform.

Rather, Butler argued, reform should be delayed as there were people 'to whom the criminal law and moral law are co-terminus in the sense that they have no other point of reference'. At a time when religious and ethical restraints were weak, Butler did not believe that this 'first line of defence' should be removed. Butler asked:

Would the removal of the legal sanction make it more or less difficult for the bi-sexual and the young to resist temptation to homosexual conduct? Would homosexuals be more ready, or less, to break their homosexual associations and to seek medical treatment? Would

²⁵⁹ *HC Debates*, vol. 625, cols. 1453-8, 29 June 1960.

²⁶⁰ *HC Debates*, vol. 625, cols. 1474 & 1484, 29 June 1960.

homosexual conduct spread, or, losing the glamour of its rebellion, would it decline?²⁶¹

Contemporary opinion firmly believed that there were only very few 'constitutional homosexuals' in whom homosexuality was an inherent characteristic. For the rest, it was believed, homosexuality was acquired at some point. In his speech Butler was reflecting that contemporary view, which had led him to fund research into the causes of homosexuality and how it was spread. This would allow future action to tackle what was almost universally considered a perversion. David Renton had actually opposed Butler's decision to fund this research believing that it was a waste of public money, but was over-ruled.²⁶²

Moreover, this was also a period where it was felt that religious values were being undermined and the result was an increase of social problems such as rising juvenile delinquency. If there was a certainty that implementing the Wolfenden Committee's recommendations would make it more likely that homosexuals would seek medical treatment and would cause homosexuality to lose its air of rebellion, and thereby its attraction, the government would have acted to implement the recommendations. Yet as no guarantees existed that this would be the result, Butler could not countenance taking the risk when moral values were already sliding.

There is evidence, though, that shows that, by the end of his time at the Home Office, Butler had come to believe that some measure of reform could be possible – but not those recommended in the Wolfenden report. In March 1962 Butler met with a delegation from the Homosexual Law Reform Society. After informing the delegation that there was no majority in the Commons for reform of the law along the lines of the Wolfenden report, Butler instead suggested that the Society should lobby for a Private Member's Bill that would seek to repeal the Labouchere Amendment. This amendment to the 1885 Criminal

²⁶¹ *HC Debates*, vol. 625, cols. 1490-8, 29 June 1960.

²⁶² TNA: HO291/124, minute for Secretary of State, 4 November 1958.

Law Amendment Act had, for the first time, extended the law to cover all forms of sexual behaviour between men and its repeal would remove a law which many thought iniquitous; would also reduce the scope for blackmail; and would have the benefit of not arousing 'the same fundamental objections from many people as the Wolfenden Committee's proposals'.²⁶³

This might seem like an extraordinary suggestion for the Home Secretary to be making to an outside pressure group, but if the Homosexual Law Reform Society had taken Butler's advice the pressure would have moved away from him as far as the main Wolfenden recommendation was concerned. In addition reform by stages may have been more likely to gain the support of a majority of MPs and, indeed, may have been more acceptable to Butler. However, it was unlikely that the Society would accept such a proposal when they had a government sponsored report advocating the very reforms they were seeking.

While the Wolfenden Committee had recommended liberalising the laws relating to homosexuality, in the second part of their report the Committee forwarded proposals that were designed to 'clear the streets' of prostitutes. The Committee had again based its approach on the principle that the purpose of the law was to preserve public order and decency but that whatever a person did in private should be no concern of the law. Prostitution itself was not against the law and the Committee had no intention of recommending that it should become so, believing that no amount of legislation could abolish it. Instead the Wolfenden Committee saw itself as being 'concerned not with prostitution itself but with the manner in which the activities of prostitutes and those associated with them offend against public order and decency, expose the ordinary citizen to what is offensive or injurious, or involve the exploitation of others'.²⁶⁴

²⁶³ TNA: HO291/125, minute of meeting between delegation from Homosexual Law Reform Society and Secretary of State, 15 March 1962.

²⁶⁴ PP: *Report on Homosexual Offences and Prostitution*, pp. 80.

Anthony Howard has argued that Butler's failure to take action on the liberal recommendations on homosexuality while quickly legislating to take action against prostitutes dented his liberal reputation.²⁶⁵ Yet, the Street Offences Bill that Butler introduced in December 1958 made quick progress through Parliament and received no significant opposition. Some Opposition MPs did speak and vote against it and some women's groups made their hostility to the Bill clear, but the Bill was welcomed by Conservative MPs and the general public. However, the files at the National Archives show that this was a piece of legislation from which Butler derived very little satisfaction. Much of this dissatisfaction seems to come from Butler's inability to square the circle of trying to remove prostitutes from the streets while at the same time trying to produce a Bill that did not seem to discriminate against women. During the drafting of the Bill Butler correctly identified the lines along which it would be attacked for illiberalism and tried, unsuccessfully, to close these off.

Perhaps the most important of these was that the Wolfenden Committee recommended the introduction of much stricter penalties against women while taking no action against the male customer. The Committee proposed an increase in the fines for women convicted of first and second offences and also that, for the first time, imprisonment should be introduced as a punishment for women convicted of a third or subsequent offence. However, to mitigate the proposed increased sentences, the Committee recommended that the Scottish practice of cautioning prostitutes on one or two occasions before they were arrested should be extended to the rest of the country.²⁶⁶ Butler told the Cabinet's Home Affairs Committee that these proposals would be attacked by women's organisations 'which feel, as I do, that a law which penalises the prostitute while letting her customer go is unjust'. Butler believed that a Bill that took no action to deal with the customer would be bitterly attacked.²⁶⁷ This problem was caused by the fact that prostitution itself was legal and

²⁶⁵ Howard, *RAB*, p. 265.

²⁶⁶ PP: *Report on Homosexual Offences and Prostitution*, pp. 90-2.

²⁶⁷ TNA: CAB 134/1971, HA (57) 142, November 1957, Report of the Committee on Homosexual Offences and Prostitution – Memorandum by the Secretary of State for the Home Department and Lord Privy Seal.

therefore the male customer was not breaking the law. What was illegal was the loitering and importuning of prostitutes which caused a public nuisance.

The Home Office could find no solution to this problem and as it was seemingly impossible to deal with the male customer in the Street Offences Bill attention started to turn towards including stronger measures against the male pimps who benefited financially from prostitution. Butler's other junior minister, Patricia Hornsby-Smith, discussed the need to tackle this issue with Sir Charles Cunningham and argued that:

In the present temper of the Women's Organisations as shown by their resolutions on crime and punishment and their phobia about male violence, there would be an avalanche of protest if nothing is done about the souteneurs, accommodating landlords who draw fantastic rents from prostitutes, and the male protectors in their prowler cars. I just do not think we would get away with new penalties against women only.²⁶⁸

The result was a decision to implement the minority recommendation of three members of the Wolfenden Committee who had argued that stiffer penalties were required to deal with men who were living on the earnings of prostitutes.²⁶⁹

Even so, in the House of Commons the Bill was criticised for its bias against women. All Butler could do was highlight the fact that the male customer was not breaking the law and the only way to punish him would be to make prostitution illegal (a course of action that nobody was advocating) and stress the increased prison sentences for pimps. In addition, Butler also rather lamely added that incidents of male prostitutes soliciting women were very rare, and were, in any event, covered by the 1956 Sexual Offences Act.²⁷⁰

²⁶⁸ TNA: HO291/123, Patricia Hornsby-Smith to Cunningham, 1 August 1958. The emphasis is Hornsby-Smith's.

²⁶⁹ *HC Debates*, vol. 598, cols. 1270-89, 29 January 1959.

²⁷⁰ *HC Debates*, vol. 598, cols. 1270-89, 29 January 1959.

In addition, Butler also sought to find a way to reform the procedure under which a woman was charged as a 'common prostitute'. This procedure dated back to 1824 and the retention of this term caused Butler to ask his officials to try and find an alternative.²⁷¹ However, after considerable discussion his officials conceded defeat and minuted that they were:

... strongly of the view that it would be impossible for the police to clear up the streets unless it would be possible to proceed against a woman who did not actually speak to a man but who walked about, or stood about, the street for the purposes of prostituting herself.²⁷²

The courts had come to see this as behaviour indicative of a 'common prostitute' and by defining a woman as such action could be taken against her. Neither the Home Office nor the Parliamentary Council had been able to come up with an alternative term that would satisfy the sensibilities of the women's organisations (or the Home Secretary) and at the same time allow the police to take action.

The retention of the term and its appearance in the Street Offences Bill opened an obvious line of attack for the Opposition. Critics of the Bill argued that, apart from the stigma created, such a term would imply antecedent guilt of any woman brought before a court charged with soliciting. In the Second Reading Debate, Butler countered these arguments by stating that of the 12,000 cases that had come before the West End Division in London over a two year period, all of the women charged had pleaded guilty. Butler argued that this proved the use of the term was working and should be retained as no alternative could be found.²⁷³

The final line of attack against the Bill was over the issue of 'annoyance'. As the law stood, in order to secure a conviction for soliciting it had to be

²⁷¹ TNA: CAB 134/1971, HA (57) 142, November 1957, Report of the Committee on Homosexual Offences and Prostitution – Memorandum by the Secretary of State for the Home Department and Lord Privy Seal.

²⁷² TNA: HO 291/124, Sexual Offences: Records relating to homosexual law reform from the departmental committee, 1958-60, undated minute.

²⁷³ *HC Debates*, vol. 596, cols.1270-89, 29 January 1959

demonstrated in court that individual citizens had been 'annoyed' by the activities of a particular prostitute. The Wolfenden Committee had concluded that 'loitering and importuning for the purpose of prostitution are so self-evidently public nuisances that the law ought to deal with them' and therefore the need to prove annoyance should be scrapped.²⁷⁴ Butler realised that to include this provision in his Bill would invite attack and that 'The question which it is necessary to decide is whether the conditions of the streets, particularly in London, is such that the Government ought to face the criticism'.²⁷⁵ In the end Butler concluded that it was necessary to give the police the extra power that would result from including this recommendation in the Bill. As expected this was attacked by the Opposition, who argued that Butler was removing an important legal protection from women and was significantly increasing the powers of the police.²⁷⁶

The Street Offences Bill faced no significant opposition in the House of Commons, as Conservative MPs were solidly behind the legislation and Labour MPs were given a free vote, with some choosing to support the Bill. As a result only 25 MPs voted against its Third Reading.²⁷⁷ Moreover, public opinion generally welcomed the Bill. The most determined opposition came from the women's organisations, a deputation from which Butler had met the day before the Bill received its Second Reading. This formidable group of women strongly argued against the Bill, mostly using the objections that had been foreshadowed when the Bill was in preparation. In response Butler stoutly defended both the necessity and the detail of the Bill.²⁷⁸

Yet, as has been said, Butler derived scant satisfaction from the Bill. During its drafting, Butler complained to Cunningham that the Wolfenden report

²⁷⁴ PP: *Report on Homosexual Offences and Prostitution*, pp. 95-6.

²⁷⁵ TNA: CAB 134/1974, HA (58) 94, 22 July 1958, Report of the Committee on Homosexual Offences and Prostitution – Memorandum by the Secretary of State for the Home Department and Lord Privy Seal.

²⁷⁶ *HC Debates*, vol. 596, cols 1294-5, 29 January 1959.

²⁷⁷ *HC Debates*, vol. 604, cols. 553-4, 22 April 1959.

²⁷⁸ TNA: HO 291/1067, Meeting between Home Secretary and representatives of women's organisations, minutes of meeting 28 January 1959.

seemed 'to avoid moral issues. I cannot see that a mere "cleaning of streets" is a Reform. There seems no redemptive or idealist feature in the proposed action'.²⁷⁹ There are perhaps echoes here of Butler's approach to juvenile crime. Rather than 'whack the thugs' Butler instead introduced measures that were intended to combine the elements of both punishment and rehabilitation, with the aim being to reform the offender. In contrast, the recommendations that Butler was implementing were aimed simply to remove prostitutes from the streets. The Wolfenden Committee had concluded that driving prostitution underground and the extension of the 'call-girl system' was less injurious to public decency than the existing situation.²⁸⁰ There were provisions that could lead to a prostitute being referred to a moral welfare officer, but there was no comprehensive plan to rehabilitate prostitutes and turn them away from their trade; which would become even more difficult to achieve if prostitution was driven underground.

Moreover, the sustained criticism of the women's groups had an impact on Butler. Butler's great-aunt had been the Victorian penal reform campaigner Josephine Butler who, in 1870, had founded the Association for Moral and Social Hygiene (of which Butler was forced to resign as Vice President as the organisation opposed the Street Offences Bill). Butler was sensitive to allegations that he was betraying his great-aunt's legacy by introducing a Bill that penalised the prostitute but not the male customer. Anthony Greenwood, Labour's Home Affairs spokesman during the debates on the Bill, seems to have touched a nerve when quoting Josephine Butler during the Third Reading debate. Butler responded by arguing that prostitutes in the 1950s were:

... making very considerable fortunes per week ... We are not dealing with the poor, pushed out by circumstances of a capitalist society to earn their living by prostitution ... We are dealing with girls who deliberately go into this trade to make a living – and to make a far greater living than do those who do an honest day's work without prostituting themselves or entering into immoral practices ... We are not dealing with the same problem as occurred in Victorian days. It is

²⁷⁹ TNA: HO291/123, minute from Butler to Cunningham, 2 December 1957.

²⁸⁰ PP: *Report on Homosexual Offences and Prostitution*, pp. 95-6.

because I have been able to face that problem that I was able to introduce the Bill personally, otherwise I should have hesitated.²⁸¹

Again there are echoes here of the debate on crime. At a time of full employment and with the advent of the Welfare State politicians were struggling to understand why crime was continuing to rise, particularly amongst the young. It had always been assumed that poverty was one of the key factors in determining the level of crime and yet it was rising at a time of relative prosperity. Butler was arguing that in Josephine Butler's time some women were forced by crushing poverty into prostitution, but these circumstances no longer existed and because they no longer existed Butler was able to bring in this legislation with a clear conscience.

Can, then, Butler's reaction to the recommendations of the Wolfenden Committee be considered a blight on his liberal reputation? To answer this it is first of all necessary to dispense with the idea that David Renton had a decisive influence over Home Office policy, especially as it related to homosexual law reform. The decision not to implement the recommendations on homosexuality had been made by Butler, then endorsed by both the Home Affairs Committee and the Cabinet, and announced in the House of Lords before David Renton had even been appointed to the Home Office. Butler may very well have sought Renton's views on the Wolfenden Committee's report at the time of his appointment, but it is a huge leap to then use this as the explanation for Butler's refusal to implement the proposals on homosexuality.

Furthermore, the debate on homosexuality must be placed in the context of the 1950s when, as Wolfenden himself admitted, most people regarded the issue with disgust. Before accepting the chairmanship of the committee Wolfenden had to consider carefully whether his reputation would be damaged; and newspapers, and even Cabinet ministers, thundered against what was considered a perversion and danger to society. One biographer of Butler has

²⁸¹ *HC Debates*, vol. 604, cols. 551-2, 22 April 1959.

described how he 'lived in his own time and among Conservatives'.²⁸² Yet this seems to have been forgotten, for it would have been more surprising in the climate of the 1950s for Butler to have come out in favour of Wolfenden's recommendations on homosexuality. Even when Anthony Howard was writing in the 1980s it was rare for Conservative MPs to express any tolerance on this issue.

Indeed, not only did Butler live among Conservatives it seems to have been forgotten that Butler was a Conservative. This may be the result of the development of the 'Jenkinsian' image of an effective Home Secretary as taking a radical approach to moral issues. As liberal and progressive as his views were on many issues and as influential as he was in shaping the post-war Conservative party, Butler was a Conservative. In addition, Butler's natural moderation in speech has also been seen to be an indication of his sympathy towards acting on this part of the report. Butler did argue in the first debate on Wolfenden that it was mainly a matter of time before homosexuality was legalised; but in the second debate in 1960 it is possible to see more clearly his personal views. Butler demonstrated that he held the same views as the great majority of liberal opinion: that there were a few 'constitutional homosexuals' and that the rest, at some point in their lives, had been perverted. The idea of the homosexual man proselytising to convert other men was also commonly held. Butler therefore believed in the need for research to establish the causes of homosexuality and to look for possible treatments. And while this research was underway, on a purely practical point, Butler recognised that there was no majority on the Conservative benches, or within the party, to carry homosexual law reform.

A recurring theme throughout Butler's Home Secretaryship was the perception of the weakening of religious and moral values which was felt to be adversely affecting society and corrupting young people. Butler believed that there were people for whom moral law and the criminal law were co-terminus and he

²⁸² Pearce, *Lost Leaders*, p. 101.

would therefore take no action that would further reduce the laws which underpinned these values. The hunt for an alternative term to replace 'common prostitute' or to find a way to punish the male customers of prostitutes were attempts by Butler to cut off certain lines of attack against the Street Offences Bill, but they were not so important that they could delay or prevent Butler from proceeding with the legislation. At no time did Butler dissent from the need to clear the streets of prostitutes and to this end the Bill was certainly successful.

Yet, Butler did not see this as an end in itself. This can be seen in his complaint to Cunningham that the Wolfenden report had no 'redemptive or idealist feature'. Butler was progressive in that he believed that the law was not just for punishing offenders but also had a responsibility to reform and rehabilitate; and Wolfenden's recommendations did not have a comprehensive plan for doing this. Finally Butler's sensitivity relating to his forced resignation from the Association of Moral and Social Hygiene and the attacks on his policy from the women's organisations is perhaps understandable. However, it is clear that his views and those of the women's organisations were completely at odds. While Butler could applaud the efforts of Josephine Butler for working with women forced by poverty into prostitution in the nineteenth century, he simply could not understand why in the twentieth century, at a time of full employment, rising standards of living and the Welfare State, women were choosing to prostitute themselves. Again these views were entirely in line with public opinion, but at odds with those of the organisations that were carrying on the work of Josephine Butler.

Chapter 6 – Commonwealth Immigration

The force of the storm of protest that greeted the publication of the Commonwealth Immigrants Bill seemed to catch Butler by surprise. After more than eleven years of debate within government the decision had finally been taken to introduce legislation that would, for the first time, restrict immigration from the Commonwealth and the responsibility of taking the Bill through the House of Commons fell to Butler. This was to bring him into conflict with many of his natural allies within his party and, in addition, draw furious opposition from the Labour party.²⁸³

Given the years of debate before a decision to introduce controls was taken, it is necessary to investigate how and why this decision finally came to be made. Was Butler, as one historian has claimed, opposed in principle to the introduction of immigration controls,²⁸⁴ and, if so, what was it that, in the words of Anthony Howard, brought his ‘reluctant acquiescence’? Was he all too willing to make concessions during the passage of the Bill as alleged by David Renton?²⁸⁵ How did Butler’s opposition translate into action within government or, alternatively, is this another part of Butler’s Home Secretaryship that has been misinterpreted?

In 1948 the Labour government had passed the British Nationality Act which defined those born in the United Kingdom, Eire, the Colonies, Dominions or the independent members of the Commonwealth as British subjects with the right of free entry into the UK. The purpose of the Act was to attempt to use nationality to bind the old, white, Dominions together, and to confirm the decades old pattern of white emigration from the UK to Australia, Canada, New Zealand and South Africa. However, an unexpected and unintended effect of the British Nationality Act was to allow free access to citizens from

²⁸³ Gilmour and Garnet, *The Tories*, pp. 163-4.

²⁸⁴ Lamb, *The Macmillan Years*, p. 420.

²⁸⁵ Howard, *RAB*, p. 283 & p. 286.

the 'non-white' colonies or the New Commonwealth countries into the UK. From 1948 these citizens started making use of this right.²⁸⁶

The landing in 1948 of 500 immigrants from the West Indies on board the SS *Empire Windrush* is seen as the starting point of what became known as 'coloured immigration' into the UK.²⁸⁷ In response the Labour government established a Cabinet Committee to investigate whether restrictions would be necessary. Although agreeing that large-scale black immigration into the United Kingdom was undesirable the Committee decided that it was not yet time to introduce restrictions, but did feel that this might be necessary in the future. However, it was agreed that administrative controls should be used to try and dissuade potential immigrants from travelling to the UK and that colonial governments should be urged to find ways of preventing emigration.²⁸⁸

During the Churchill and Eden Administrations the immigration issue was regularly discussed by the Cabinet. In November 1955 Eden established a Committee of the Cabinet under the chairmanship of Lord Kilmuir to monitor the issue.²⁸⁹ When the Committee reported back to the Prime Minister in July 1956 only one member, Lord Salisbury, was in favour of the immediate introduction of immigration controls on Commonwealth citizens, whereas the rest of his colleagues believed that the restrictions should be brought in only when 'it could not longer be avoided'.²⁹⁰

The accession of Macmillan to the premiership and the appointment of Butler to the Home Office resulted in no immediate shift in the government's immigration policy. Macmillan wrote to Butler in the summer of 1957 to ask

²⁸⁶ Randall Hansen, 'The Politics of Citizenship in 1940s Britain: The British Nationality Act', *Twentieth Century British History* 10 (1999), pp. 93-5.

²⁸⁷ Zig Layton-Henry, 'Immigration', in *Conservative Party Politics*, ed. By Zig Layton-Henry (London: Macmillan, 1980), p. 52.

²⁸⁸ Paul B. Rich, *Race and Empire in British Politics* (Cambridge: Cambridge, 1986), pp. 166-7.

²⁸⁹ TNA: PREM 11/2920, minute from Brook to Eden, 10 November 1955.

²⁹⁰ TNA: PREM 11/2920, Cabinet Committee on Immigration, 4 July 1956.

for an update on the position on Commonwealth immigration and whether 'it is something we ought to face or not?'.²⁹¹ Butler replied that 'The presence of some 120,000 coloured people in this country has not so far given rise to such difficulties as to make legislation imperative'.²⁹² In fact the Cabinet Committee on Colonial Immigrants that Eden had established continued to meet until the general election in October 1959.²⁹³ Although Butler retained departmental responsibility for the immigration issue, recommendations to the Cabinet on policy were to come from the Committee on Colonial Immigrants and not from the Home Secretary.

With the resignation of Salisbury in March 1957 the most vocal proponent of immigration control was removed from the Cabinet. As a result the Colonial Immigrants Committee repeatedly recommended that no action was necessary. This represented a continuity of approach by the various Cabinets since the issue was first raised in 1948. A number of arguments were used by the Committee to support their recommendations. Firstly, and perhaps most importantly, 'It would draw a distinction between the British subject from overseas and the British subject domiciled in this country; as such it could be represented as being a major departure from principle'.²⁹⁴ As has been seen, ideas of nationality were believed to help bind the Commonwealth together and, as a result, the principle of free access for every citizen to the 'Motherland' had to be maintained.²⁹⁵

Secondly, it was felt that to take action against the Commonwealth could damage constitutional advances that were being made in certain colonies and could damage the unity of the Commonwealth.²⁹⁶ Relations had been badly

²⁹¹ TNA: PREM 11/2920, minute from Macmillan to Butler, 21 June 1957.

²⁹² TNA: PREM 11/2920, minute from Butler to Macmillan, 3 July 1957.

²⁹³ TNA: PREM 11/2920, Brook to Eden, 10 November 1955.

²⁹⁴ TNA: CAB 129/96, C (59) 7: Commonwealth Immigrants – Memorandum by the Lord Chancellor, 20 January 1959.

²⁹⁵ Butler, *Memoirs*, p. 205.

²⁹⁶ TNA: CAB 129/88, C (57) 162: Colonial Immigrants: Report of the Committee of Ministers – Memorandum by the Lord Chancellor, 12 July 1957; and CAB 129/93, C (58)

strained by the Suez Crisis and at one point it looked likely that India and Pakistan would leave the Commonwealth.²⁹⁷ Given the importance of the Commonwealth to securing Britain's role in world affairs it was necessary to avoid anything that might further undermine the institution. Moreover, constitutional advances were being made in certain colonies as the pace towards independence quickened and the government would do nothing that might hamper further progress.

Thirdly, it was felt that there was no need for controls to be introduced as there was no demand for them from the electorate and, indeed, it 'would come as a shock for which public opinion was still not prepared'.²⁹⁸ This is repeatedly used as a key argument against immigration restrictions until September 1958. Furthermore, it was felt that before embarking on controversial legislation every administrative method available should first be tried. Indeed, there were some indications that this could prove a successful policy. After immigration from India, Pakistan and Ceylon had started to rise in 1958 the Commonwealth Secretary, Lord Home, opened discussions with the three governments and urged them to take action, which they did with some (albeit temporary) success.²⁹⁹

Finally, the Cabinet wanted to avoid introducing legislation that 'would be regarded as discrimination on the grounds of race and colour'.³⁰⁰ This was extremely difficult given the purpose of any legislation would be designed to dramatically reduce immigration from the West Indies, Pakistan and India, but, at the same time, avoid restrictions on the white Dominions.³⁰¹ When the

132: Commonwealth Immigrants – Memorandum by the Secretary of State for the Home Department and Lord Privy Seal, 25 June 1958.

²⁹⁷ D. R. Thorpe, *Alec Douglas-Home* (London: Sinclair-Stevenson, 1996), pp. 178-9.

²⁹⁸ TNA: Cabinet Committee on Colonial Immigrants: CAB 134/1466, CCI (57), 6 June 1957; and CAB 129/88, C (57) 162: Colonial Immigrants: Report of the Committee of Ministers – Memorandum by the Lord Chancellor, 12 July 1957.

²⁹⁹ TNA: CAB 134/1466, CCI (58) 2nd Meeting, 19 May 1958; and CAB 129/93, C (58) 129, Commonwealth Immigrants – Memorandum by the Lord President of the Council, 20 June 1958.

³⁰⁰ TNA: CAB 134/1466, CCI (57), 6 June 1957.

³⁰¹ TNA: CAB 134/1466, CCI (58) 2nd Meeting, 19 May 1958.

Labour government established its committee on Commonwealth immigration in response to the landing of the *Empire Windrush* the black population in Britain was estimated at only 30,000; but the Cabinet was already considering the possibility of introducing immigration controls.³⁰² At the same time the Labour government had negotiated emigration schemes with Australia and South Africa in 1945, New Zealand in 1947, and Canada in 1951, which would continue the flow of white emigration from the UK to these countries which would, in turn, allow them to restrict immigration from Southern and Eastern Europe and the New Commonwealth.³⁰³ If the government was willing to collude in schemes designed to keep the white Dominions white, it would hardly be likely to welcome large-scale black immigration into Britain.

Yet Macmillan's Cabinet was sensitive to any charge that their actions were the result of 'colour prejudice' and consequently could not agree on the form any restrictions should take. The system of quotas operated in the United States was rejected as it would appear to be transparently racist as the quotas would be operated against the New Commonwealth countries and not the white Dominions.³⁰⁴ Following the willingness of the governments of India, Pakistan and Ceylon to co-operate with administrative controls, Lord Home suggested that these countries may be willing to accept legislation that applied only to them, although this idea was never taken up by the Cabinet.³⁰⁵ Another suggestion, made by the Home Office, was that legislation could be brought in that would allow the numbers of people entering the UK from individual Commonwealth countries to be altered at any time by the use of Orders in Council. However, when the government came to make the Orders, the discriminatory intention of the legislation would become clear as controls would only be applied against New Commonwealth countries.³⁰⁶ Finally, the Committee considered legislation that would apply not just to the Commonwealth but also to 'aliens'. Immigration from outside the Empire was

³⁰² Rich, *Race and Empire*, pp. 166-7.

³⁰³ Hansen, *The Politics of Citizenship*, p. 76.

³⁰⁴ TNA: CAB 134/1466, CCI (57), 6 June 1957.

³⁰⁵ TNA: CAB 134/1466, CCI (58) 2nd Meeting, 19 May 1958.

³⁰⁶ TNA: CAB 134/1466, CCI (58) 2nd Meeting, 19 May 1958.

strictly controlled by the Aliens Act which had to be annually renewed by Parliament. However this was eventually rejected, with Butler firmly against any Bill dealing with both Commonwealth immigrants and aliens.³⁰⁷

The debate was fundamentally changed by the outbreak of race riots in Notting Hill and Nottingham in late August and early September 1958. Butler may have ceded responsibility for immigration policy to the Cabinet Committee, but he was still responsible for the maintenance of law and order. Following the riots Butler met with the Commissioner of the Metropolitan Police to discuss the causes of the disturbances. According to the Commissioner the riots had been caused by the local white residents' belief that black immigrants were reducing the amenities of their neighbourhoods; that black residents lived in over-crowded conditions unacceptable to white people; and that black landlords bought property and then raised rents to extortionate levels in order to get rid of white tenants. In addition, 'much hostility was caused by the coloured men (in fact, about two dozen or so) known to be living on the immoral earnings of white prostitutes'.³⁰⁸ This analysis was shared by the Labour MP George Rogers, whose constituency covered Notting Hill, who told David Renton 'that white people in the area felt they had been subjected to long provocation by coloured people living disreputable lives in appalling conditions'.³⁰⁹ Although it was the immigrants that 'were usually the objects of suspicion, prejudice and contempt' and subjected to over-charging in housing and discrimination in employment,³¹⁰ it was the white community that felt resentment at black immigration.

The consequence of the riots was to turn the Cabinet towards immigration controls, rather than, for example, race relations legislation. At the Cabinet

³⁰⁷ TNA: CAB 129/93, C (58) 132: Commonwealth Immigrants – Memorandum by the Secretary of State for the Home Department and Lord Privy Seal, 25 June 1958; and CAB 134/1466, CCI (58) 2nd Meeting, 19 May 1958.

³⁰⁸ TNA: PREM 11/2920, Minute of meeting between Butler and Commissioner of the Metropolitan Police, 4 September 1958.

³⁰⁹ TNA: PREM 11/2920, Minute of meeting between Renton and George Rogers, 3 September 1958.

³¹⁰ Sandbrook, *Never Had It So Good*, pp. 307-12.

meeting on 8 September 1958 which discussed the riots Butler proposed three courses of action. The first was to meet with representatives of the Federal Government of the West Indies and urge them to take similar administrative action that Lord Home had persuaded Pakistan, India and Ceylon to undertake. Secondly, Butler argued that it would be desirable to re-consider introducing a Bill to give the government powers to deport 'undesirable immigrants from other countries'; and, thirdly, to implement the recommendations of the Wolfenden Committee in relation to prostitution and bring in increased penalties on men convicted of living on the immoral earnings of prostitutes. The Cabinet agreed to introduce the Street Offences Bill (see chapter five), to look at a draft Deportation Bill, and also delegated Butler, Lennox-Boyd (Colonial Secretary) and Macleod (Minister of Labour) to meet representatives of the West Indian government to try and persuade them to introduce administrative controls.³¹¹

In proposing this meeting Butler was doing nothing more than seeking to extend to the West Indies a policy that had seemingly been effective with India, Pakistan and Ceylon. However, this clearly demonstrates that Butler had no principled objection to introducing some form of immigration control. Certainly this was not yet the controversial step of legislating to introduce statutory controls, but it was still an attempt to prevent and obstruct the entry into the UK that was the right of these Commonwealth citizens. If Butler was willing to accept administrative controls there is no reason to suppose that he would oppose statutory controls if he felt the circumstances required it. In the end, however, the West Indian government refused to cooperate and rejected any form of control.³¹²

This left Butler's proposed Deportation Bill, which was discussed by the Colonial Immigrants Committee on 6 November 1958. The purpose of the Bill was to allow for the deportation of Commonwealth citizens in certain

³¹¹ TNA: CAB 128/32, CC (58) 69th Conclusions, Minute 3, 8 September 1958.

³¹² TNA: PREM 11/2920, Minute of meeting between Butler, Lennox-Boyd and Ministers of Federal Government of the West Indies, 8 & 9 September 1958.

circumstances, subject to the approval of the Home Secretary. Butler argued that the Bill was necessary as the Home Office feared further racial disturbances and that it would benefit the government to be seen to be taking 'some action regarding coloured immigrants before the General Election'. However, the Committee was reluctant to accept Butler's proposal as they were concerned that introducing a Deportation Bill might 'prejudice the introduction of more comprehensive legislation later on';³¹³ a view shared by the Cabinet which rejected Butler's proposal.³¹⁴

The race riots in Notting Hill and Nottingham played an important part in convincing a majority of the members of the Cabinet's Colonial Immigrants Committee of the need for restrictions.³¹⁵ Butler's Deportation Bill was rejected not because it was felt to be unnecessary, but rather in case it delayed the introduction of immigration restrictions. Yet, despite the majority of the Committee's members being in favour of controls, they still shied away from recommending legislation to the Cabinet. One of the effects of the riots, though, was to remove from the Committee's deliberations the argument that public opinion would oppose immigration restrictions. Indeed, in advocating the Deportation Bill Butler argued that it would be electorally advantageous to be seen to be taking some form action.

Yet, even with this new majority in favour of controls and the new conditions created by the riots no action was taken before the 1959 election. After the election Macmillan did not re-appoint the Cabinet Committee that had been regularly reviewing immigration policy since it had been established by Eden in November 1955. With the Committee no longer in existence Butler now became responsible for immigration policy. The Home Office continued to watch the immigration statistics which had shown a marked decline in 1958 and 1959. When Eden had established the Colonial Immigrants Committee

³¹³ TNA: CAB 134/1466, CCI (58) 3rd Meeting, 6 November 1958.

³¹⁴ TNA: CAB 134/1467, CCI (59) 1st Meeting, 13 January 1959; and CAB 129/96, C (59) 7: Commonwealth Immigrants — Memorandum by the Lord Chancellor, 20 January 1959.

³¹⁵ TNA: CAB 134/1467, CCI (59) 2nd Meeting, 22 July 1959.

black immigration had jumped from just 2,000 a year in 1953 to nearly 43,000 in 1955 and continued at that level for the next three years. However, in 1958 there was a reduction to just under 30,000 and then to 21,600 in 1959.³¹⁶ Whatever the cause for this reduction, it removed the urgency from the government's discussions and seemed to justify Macmillan's decision not to re-appoint the Cabinet Committee.

This reduction did not last, however, and in July 1960 Butler warned his Cabinet colleagues of a dramatic rise in immigration.³¹⁷ In November 1960 Butler again brought the issue to the Cabinet's attention and this time formally proposed that the Cabinet Committee should be reconstituted. Butler was primarily concerned with the huge increase of immigration from the West Indies which in the first ten months of 1960 was more than double the rate of the previous year. There were as yet no serious employment concerns but there was no guarantee that this would remain the case if the present rate of immigration continued. Furthermore, the serious over-crowding in housing continued, especially as the immigrants tended to concentrate in certain areas and while the economic conditions in the UK remained good it would continue to attract yet more immigrants. In addition, Pakistan would be unable to continue to maintain the administrative controls that it had introduced, which would create another source of pressure.³¹⁸

The Cabinet agreed that the situation was 'disquieting' and that 'Although it would represent a break with tradition, it might become necessary to introduce legislation to control immigration from the Commonwealth'. Furthermore, it was felt that 'It was no longer possible to expect that administrative action in their countries of origin could stem this high rate of immigration'. This conclusion represented the removal of a second significant obstacle to the introduction of controls. In the past, legislation had been decided against until

³¹⁶ Peter Dorey, *British Politics Since 1945* (Oxford: Blackwell, 1995), p. 96.

³¹⁷ TNA: CAB 129/102, C (60) 128: Coloured Immigration – Memorandum by the Secretary of State for the Home Department, 19 July 1960.

³¹⁸ TNA: CAB 129/103, C (60) 165, Coloured Immigration from the Commonwealth – Memorandum by the Secretary of State for the Home Department, 15 November 1960.

administrative methods of control had been tried. However, the West Indian Federal government had consistently refused to co-operate in the application of administrative controls and now Pakistan was indicating that it would be unable to continue with theirs. Consequently the Prime Minister agreed to appoint a committee under the chairmanship of Lord Kilmuir.³¹⁹

By the end of 1960 Butler clearly believed that legislation on Commonwealth immigration to be likely. In a circular to senior ministers Butler wrote that 'if we are to legislate in the Home Office field next Session the issues will not fall so much under the heading of reform as of surgery, e.g. the possible need to control immigration'.³²⁰ Yet, when Kilmuir's Committee held its first meeting in February 1961 Ministers were still reluctant to introduce controls. Apart from the objection on principle, the Committee was concerned about the damage that would be done if they were seen to be discriminating on racial grounds, especially as delicate negotiations were currently on going with Southern Rhodesia to try and secure safeguards to prevent discrimination against the black population. In addition, it was hoped to make further progress in the West Indies with a constitutional conference planned as a prelude to early independence. Again it was decided that no action should yet be taken, although a working party of officials was appointed to look at methods of control that would not appear discriminatory in nature.³²¹

It was at the second meeting of the Committee, in May 1961, that it was agreed that the principle of free entry into the United Kingdom of all Commonwealth citizens should be abandoned. The Committee recognised that the restrictions 'whatever form they took, would be represented as a measure of discrimination against coloured people. But the influx and the social problems could no longer be ignored'; although it was agreed that the announcement should be

³¹⁹ TNA: CAB 128/34 CC (60) 59th Conclusions, Minute 8, 25 November 1960.

³²⁰ RAB G36/71, 'The Forward Programme of the Party', circular from R. A. Butler to Cabinet Ministers, Christmas 1960.

³²¹ TNA: Cabinet Commonwealth Migrants Committee: CAB 134/1469, CCM (61) 1st Meeting, 16 February 1961; and CAB 128/35, CC (61) 7th Conclusions, Minute 2, 16 February 1961.

delayed until after the referendum was held in Jamaica on whether it would remain part of the West Indian Federation. The decision therefore had been taken to introduce controls and for a Bill to be included in the Queen's Speech of the following Session.³²²

On 1 November 1961 the Commonwealth Immigrants Bill was published to fierce opposition from the Labour party and certain sections of the press. Such was the force of the opposition that Harold Macmillan claimed that he had never seen the House of Commons 'in so hysterical a mood since the days of Suez'.³²³ The Bill categorised immigrants into three main types. On two of these categories of immigrant (those that were able to financially support themselves and those who were entering under administrative arrangements, such as, for example, students) there would be no restriction of numbers. The third category related to those entering under new Ministry of Labour vouchers. These vouchers were split into those who could demonstrate that they had a job to go to; those who could demonstrate that they had skills useful to the economy; and finally unskilled workers without a job to go to. It was this latter category of immigrant that would face restriction, with the number of vouchers available periodically set by the government and issued on a first come first served basis.³²⁴ Moreover, the Bill also included the provision to deport 'undesirable' immigrants along the same lines as Butler had proposed to the Cabinet in the wake of the race riots.³²⁵

Opposition to the Bill concentrated on three main points. Firstly, and most obviously, that the Bill was intended to introduce a 'colour bar'. As Patrick Gordon Walker, who led on behalf of the Opposition in the Commons debate, argued:

It sounds as if there will be no racial discrimination, but everyone knows that the overwhelming majority of those trying to get in on the

³²² TNA: CAB 134/1469, CCM (61) 2nd Meeting, 17 May 1961; and CCM (61) 3rd Meeting, 31 July 1961.

³²³ Horne, *Macmillan, 1957-86*, p. 423.

³²⁴ *HC Debates*, vol. 649, cols. 696-7, 16 November 1961.

³²⁵ *HC Debates*, vol. 649, col. 703, 16 November 1961.

open quota will be coloured people. The net effect of the Bill is that a negligible number of white people will be kept out and almost all of those kept out by the Bill will be coloured people.³²⁶

As has been seen, the Cabinet Committee had rejected an open quota system or the use of Orders in Council as they would appear blatantly racist. By opting to control immigration by labour vouchers the scheme did not appear overtly discriminatory in intent, but it would be in effect as wealthy, well educated or skilled workers, who would mainly be from the white Dominions, would be allowed to enter freely, while unskilled black workers from the New Commonwealth would have to take their chances under the voucher system.

All Butler could do was refute any allegation of racism by stating that the 'Bill is drafted so that there is no racial discrimination'. Butler argued that it was the numbers entering the UK that was causing the problem as Britain was already a 'thickly' populated country, with over fifty million inhabitants and limited space. Massive immigration was therefore a considerable problem. In addition, Butler stressed that most, if not all, the other Commonwealth countries themselves restricted immigration, with many of them operating laws much stricter than that which he was proposing.³²⁷

The second area of criticism came over how the Bill would operate against the Republic of Ireland. This caused as much concern amongst liberal Tories as it did on the Labour benches. Butler had warned the Cabinet as far back as June 1958 that the question of whether to operate the restrictions against the Republic of Ireland could lead to considerable trouble;³²⁸ and when outlining this part of the Bill in the Commons Butler defensively quoted his Labour predecessor Chuter Ede who had argued when passing the British Nationality Act that 'if one can do anything at all it is sure to be either by way of creating an anomaly or of recognising one'. Although the Bill applied the restrictions

³²⁶ *HC Debates*, vol. 649, col. 709, 16 November 1961.

³²⁷ *HC Debates*, vol. 649, cols. 687-9, 16 November 1961.

³²⁸ TNA: CAB 129/93, C (58) 132, Commonwealth Immigrants – Memorandum by the Secretary of State for the Home Department and Lord Privy Seal, 25 June 1958.

against the Republic of Ireland, Butler told the Commons that he 'thought we would not be justified in operating this control unless circumstances compelled us, or compel us to do so'.³²⁹

Butler explained that there were many practical difficulties in operating the Bill against Eire. During wartime it had been found to be almost impossible to secure the border between Northern and Southern Ireland and the only other option would be to institute controls within the United Kingdom itself, which would require Northern Irish residents to produce a passport when landing in mainland Britain, which would be resented by the people of Northern Ireland.³³⁰ When asked why the Republic appeared in the Bill at all, Butler stated that the provisions on deportations would apply to citizens of the Irish Republic and that it may be in future necessary to operate the entry restrictions if circumstances were to change.³³¹

Gordon Walker argued that not operating the entry controls against the Irish merely served to highlight the racist intent of the Bill:

In its first form, before the Irish were taken out, the Bill was very careful to cover up this racial discrimination, but this only makes it worse, because a colour bar clothed in hypocrisy provokes even deeper resentment than a straight forward colour bar.³³²

This was a view shared by the Conservative MP Nigel Fisher who believed that not operating the Bill against the Republic of Ireland made Butler's argument that the Bill was not aimed at black immigrants look 'phony'.³³³

However, not operating immigration restrictions against Southern Ireland opened a loop-hole in the Bill as Commonwealth immigrants would be able to travel to Ireland and then through to Britain. Talks had been held with the Irish

³²⁹ *HC Debates*, vol. 649, col. 700, 16 November 1961.

³³⁰ *HC Debates*, vol. 649, cols. 700-1, 16 November 1961; and TNA: CAB 128/35, CC (61) 63rd Conclusions, Minute 2, 16 November 1961.

³³¹ *HC Debates*, vol. 649, cols. 700-1, 16 November 1961.

³³² *HC Debates*, vol. 649, col. 708, 16 November 1961.

³³³ *HC Debates*, vol. 649, col. 780, 16 November 1961.

government that indicated that they would be willing to introduce controls against Commonwealth immigrants as long as the UK did not operate controls against them.³³⁴ However the opposition view of this is best summed up by the Labour MP R. T. Paget:

As I understand what the Home Secretary has said about the Irish problem, it is that the control is not to be applied to the Irish unless there is an absolute necessity; that the absolute necessity will not arise as long as Irish immigrants continue to be white, but if, owing to Commonwealth people coming through Irish ports, the Irish immigrants begin to be black, an absolute necessity will arise.³³⁵

Finally, the third aspect of the Bill to be criticised was the provision that required it to be renewed every five years or the legislation would lapse. The Aliens Act, which regulated immigration from all countries outside the Commonwealth, had to be renewed annually by Parliament. Given the close ties and shared citizenship between Commonwealth countries it was felt to be intolerable for Parliament to have more influence over the Aliens Act than it would have over legislation dealing with the Commonwealth.

In fact, as late as October 1961, just a few weeks before the Bill was published, there was no provision included to make it renewable at all and instead it was intended to be permanent. However, on 16 October Butler informed the Commonwealth Migrants Committee that he had asked the Parliamentary Council to amend the Bill to insert a provision to make it renewable every five years.³³⁶ When the Opposition began to demand annual renewal Butler was willing to give way despite Prime Ministerial misgivings. Macmillan sent a note to Butler on 24 November to say that 'I see suggestions in the Press that we are going to yield on the period of the Bill from five to one year. Would not this be thought rather weak? No doubt you will let me know your feelings'.³³⁷ Butler rejected the suggestion that giving way would look weak arguing that it would gain a good deal of Parliamentary support and that it

³³⁴ TNA: CAB 128/35, CC (61) 63rd Conclusions, Minute 2, 16 November 1961.

³³⁵ *HC Debates*, vol. 650, cols. 1186-7, 5 December 1961.

³³⁶ TNA: PREM 11/2920, minute from Butler to Commonwealth Migrants Committee, 19 October 1961.

³³⁷ TNA: PREM 11/2920, minute from Macmillan to Butler, 24 November 1961.

would just be a matter of bringing the Bill into line with the aliens legislation.³³⁸ This and the publication of the guidelines that were to be given to immigration officers were the only two concessions that Butler made during the passage of the Bill and disproves any accusations that he was 'far too eager' to yield to pressure from the Opposition or liberal wing of the Tory party.³³⁹

Butler later lamented the furious Labour attack on the Bill and argued that only by both parties reaching a consensus could the policies of control and integration make it more difficult for extremists to exploit racial tensions.³⁴⁰ In fact, it could be argued that such a consensus already existed. It was a Labour government that had first considered the issue of controls, when the black population in Britain was just 30,000; the first debates in both the Commons and the Lords were sponsored by Labour Members who argued the need for controls due to the strain immigration was placing on the resources of a small country;³⁴¹ and according to one historian of race relations, the majority of Labour MPs agreed with Butler's argument that 'if the numbers of new entrants are excessive, their assimilation into our society presents the gravest difficulties'.³⁴² In addition, by the 1964 general election the Labour manifesto committed to retain immigration restrictions and the following year the Labour government introduced stiffer controls.³⁴³ Certainly, the Labour Leader Hugh Gaitskell was sincere in his passionate opposition to the Bill, but many in his party and the Trade Unions were very much in favour of immigration controls;³⁴⁴ which led, following Gaitskell's death, to the Labour party abandoning its opposition.

³³⁸ TNA: PREM 11/2920, minute from Butler to Macmillan, 24 November 1961.

³³⁹ Howard, *RAB*, p. 287.

³⁴⁰ Butler, *Memoirs*, pp. 206-7.

³⁴¹ Andrew Roberts, *Eminent Churchillians* (London: Weidenfeld & Nicolson, 1994), pp. 231-3.

³⁴² Rich, *Race and Empire*, p. 190.

³⁴³ Butler, *Memoirs*, p. 207.

³⁴⁴ Horne, *Macmillan, 1957-86*, p. 423.

Meanwhile, on the Conservative benches there were certainly those who for racial reasons wanted to see restrictions on immigration. Many of these were stalwarts of the flogging campaign, such as Norman Pannell and Sir Cyril Black. At party conferences during Butler's Home Secretaryship members had overwhelmingly supported motions in favour of control and on occasions throughout the 1950s some Tory MPs had raised the issue in the Commons.³⁴⁵ In July 1958 the junior Home Office minister, Pat Hornsby-Smith, met with the Parliamentary party's Commonwealth Committee to discuss the immigration issue. Whilst 'The Committee unanimously agreed that discriminatory legislation on a colour basis was quite unacceptable' some members argued that their constituencies were now being affected by immigration 'and they made it plain that if the influx continued and coloured unemployment mounted, they would press for legislation'.³⁴⁶ Yet this remained an issue taken up by only a few Conservative MPs and no campaign ever developed that came near to equalling, for example, the backbench agitation for the return of judicial corporal punishment. This perhaps reflected the concentrated nature of immigration to only a few parts of the country, but certainly the majority of Conservative MPs were happy to support the legislation when it was introduced – with a few like Black and Pannell disappointed the legislation did not go further.

By not having the National Archive files available to him, Anthony Howard was unable to get a sense of the scale of the debate within government over Commonwealth immigration, or of Butler's role in that debate. This was an issue which governments of both Parties had struggled with for years as they sought to reconcile the desire to restrict 'coloured' immigration while at the same time trying to make it appear that they were not motivated by racial prejudice.

³⁴⁵ Howard, *RAB*, p. 264; and Horne, *Macmillan*, 1957-86, p. 422.

³⁴⁶ TNA: HO 344/27, Miscellaneous complaints and enquiries about unrestricted immigration, Miss Hornsby-Smith's Meeting with the Conservative Commonwealth Committee, minute dated 17 July 1958.

The movement towards control can be seen to have come in three stages. Firstly the riots in Notting Hill and Nottingham in the autumn of 1958 ended any argument in government that the public would be either shocked or opposed to immigration controls; secondly, after immigration began to sharply increase again from 1960 administrative controls had shown they were ineffective; and finally, by May 1961, the scale of immigration and rapid decolonisation since 1959 led to the abandoning of the principle of free entry for all Commonwealth citizens. Through all this at no time did Butler ever demonstrate any opposition to the introduction of immigration restrictions as a matter of principle.

Furthermore, as this was a policy under the control of the Cabinet, David Renton's role in the discussions was minimal. Renton did deputise for Butler at some of the Commonwealth Immigrant Committee's meetings, but Butler proved capable of determining and advocating his own opinions on immigration. Neither was he over-eager to make concessions; making just two that helped ease the passage of the Bill. However, perhaps the most important point that has been missed in the accounts of this episode is that, notwithstanding the passionate opposition of Hugh Gaitskell and a few others, this was an issue on which a political consensus was already emerging and was to be confirmed in following years. Therefore, by introducing immigration controls, Butler and the government were acting in line with political opinion; and although not taking a radical approach to the issue, the Commonwealth Immigrants Act did not mark a dramatic lurch to the right.

Conclusion

It is clear that it is necessary to revise a number of the commonly held assumptions relating to Rab Butler's Home Secretaryship. The government papers at the National Archives offer an insight into Butler's approach to penal and social reform that was unavailable to his biographer and questions the reliability of the 'Jenkinsian' model of Home Secretaryship. From the public sources available and the information in the Butler Papers at Cambridge, Anthony Howard was unable to obtain a fully rounded view of Butler's time at the Home Office.

Certainly Butler believed himself to be a progressive Home Secretary, was committed to reform where he believed it was necessary and introduced a number of liberalising measures. However, he never saw himself as a radical; but rather felt that, like Samuel Hoare in the 1930s and Chuter Ede in the 1940s, he was playing his part in a continual process of reform and that a future Home Secretary would take over from where he left off. Moreover, Butler's reforms were defined by the fear of the effects to society caused by a perceived decline in moral and religious values and the consequent requirement of a 'reformatory' element in the measures he brought forward. Politicians struggled to reconcile the rise in standards of living, which resulted from full employment and the creation of the Welfare State, with rising crime and permissiveness. This struggle was to have a big impact on Butler's approach at the Home Office.

As a result, Butler placed great emphasis on the need for research to try and discover the causes of crime, and of homosexuality and prostitution. Only by understanding the origins of these problems could solutions be found and the further erosion of moral values halted. In the meantime, the penal system was reformed to turn prisons into places of rehabilitation and not just of punishment; and corporal punishment rejected as two government reports had confirmed it would do nothing to prevent recidivism. In addition, homosexual

law reform was delayed as there were those who believed the moral and criminal law to be co-terminus, which meant that the existing law, no matter how iniquitous, was preventing a spread of homosexuality; and the streets were cleared of prostitutes and prostitution sent underground to remove temptation, despite the fact this would make it harder to reform the prostitutes.

Butler's decision to take action on betting and gaming, licensing, and Sunday observance reform may appear to contradict his concerns over declining moral values. Yet, in his Betting and Gaming Act Butler was merely implementing reforms recommended by a Royal Commission which had concluded that reform would not be as harmful to society as allowing the existing outdated laws to continue in operation; although initially Butler had been disinclined to take action due to the problems created by the Jockey Club's influence over Conservative MPs and Peers. Furthermore, although he did not have the recommendations of an enquiry to implement as far as licensing reform was concerned, all Butler sought was a mild measure to liberalise opening hours, bring in new restaurant and hotel licenses, whilst introducing heavy regulations on the operation of independent clubs. The Bill caused controversy only because Henry Brooke, the Minister for Welsh Affairs, was determined to tackle the Sunday closing issue. Again, on Sunday observance reform Butler believed that action was necessary as the existing laws were so full of loopholes as to bring them into disrepute. However he quickly concluded that some form of enquiry was necessary before any action could be taken, but initially he was determined to implement some measure of reform. In this he was frustrated, yet it must be assumed that Butler believed liberalisation of Sunday observance legislation would be less harmful than continuing with the existing observance laws.

It has variously been argued that Butler was secretly opposed to the death penalty from the beginning of his Home Secretaryship, or that he came to support abolition as a result of having to decide the fate of those sentenced to death. Certainly Butler was in a difficult position, with an abolitionist majority

in the Commons, a retentionist Lords, and the majority of Tory activists in favour of restoration for all murders. However, although he had little room for manoeuvre, Butler consistently argued in favour of the *status quo*. Butler believed that, despite the anomalies created by the Homicide Act, capital punishment retained a deterrent value, which at a time of declining moral standards, it would be wrong to dispose of; hence his rejection of the amendment to increase the minimum age that the death sentence could be suffered from 18 to 21. Like many of his predecessors, it is most likely that Butler came to support abolition only after he left the Home Office.

On Commonwealth immigration, there is no evidence that Butler opposed restrictions on principle. The common view of the multi-cultural Commonwealth did not include the vision of a multi-cultural Britain. However, the high-minded principles held by many politicians, who saw Britain as the Motherland to a quarter of the world's population, and the practical difficulties caused by ushering the remaining colonies towards independence acted as a restraint to the introduction of immigration controls. The race riots in 1958, the failure of administration controls, and the large increase in the scale of immigration in 1960 caused the government to eventually accept controls, but only after the black population in Britain had risen from 30,000 in 1950 to over 500,000 in 1960. Butler did not oppose the introduction of these controls, nor was he pressurised into accepting them. Neither was he desperate to make concessions on the Bill, as Renton had claimed. Rather, Butler was part of the growing cross-party consensus that was to develop more fully later in the 1960s, especially following the sudden death of Gaitskell, which accepted the need for immigration control to ensure the full integration of the immigrants.

Since Howard's biography it has become commonly accepted that David Renton had considerable influence over policy on the Wolfenden Report and Commonwealth immigration. Yet it is clear from the National Archives that this is not the case. This does not mean that oral evidence has no place in

contemporary political history, but does warn of the dangers of relying on oral testimony without being able to crosscheck the information with documentary sources. However, acceptance of Renton's claims has had a considerable impact in the interpretation of Butler's Home Secretaryship. Butler had decided not to implement the Wolfenden report's recommendations, the Cabinet had agreed, and the Lord Chancellor had announced this in the House of Lords before Renton had even been appointed to the Home Office. Moreover, due to its sensitivity immigration policy was placed in the hands of a Cabinet Committee, which meant that Renton was only a peripheral figure in these debates and was unable to wield the influence that he claimed. This has significant consequences as far as Butler is concerned, for he can no longer be portrayed as a frustrated liberal, but rather a more nuanced view is required that places him in the context of his time; taking into account his concern about sliding moral values and recognising the prevailing political and public attitudes.

Moreover, Harold Macmillan, like Renton, is also alleged to have been able to easily manipulate Butler. The lack of sympathy that Macmillan had for what Butler was trying to achieve is apparent and is perhaps best demonstrated in his extraordinary letter on the Suicide Bill. The Prime Minister's lack of sympathy also extended to trying to prevent Sunday observance legislation and also the introduction of the Betting Bill, despite its inclusion in the party's election manifesto. Yet, Macmillan's attempts to block these initiatives were half-hearted and, with one exception, ineffectual. Indeed, Butler was rarely frustrated by his colleagues in the policies that he sought to pursue. It is true that in his first year as Home Secretary Butler achieved little other than a good speech. However, by demonstrating more determination Butler got the enquiry that he wanted the following year which eventually led to reform to the working of the courts. Only over the Sunday observance laws did Butler hit a brick wall and have to settle for a committee of enquiry whose report was not to be published until after his retirement.

It is also necessary to revise the view of the Home Office as a reactionary department. On his appointment as Home Secretary in 1965, Roy Jenkins quickly disposed of Sir Charles Cunningham. Yet Cunningham can hardly be described as a reactionary or portrayed as a roadblock to reform, but rather was instrumental in implementing Butler's penal and social policies. Cunningham was more cautious than Butler on licensing reform, but a Bill was quickly produced in line with Butler's instructions. And on Sunday observance reform, Cunningham was just one of many voices throughout government questioning the desirability of taking action on such a controversial issue. Perhaps only with Sir Frank Newsam's recommendation of delay over the appointment of a Royal Commission can a civil servant be accused of trying to obstruct Butler. However, the evidence that exists on this episode is so vague as to make it impossible to come to any definite conclusion as to Newsam's influence, negative or otherwise; and, in any event, it was ultimately the Cabinet that frustrated this proposal.

The files at the National Archives offer this new interpretation of Butler's Home Secretaryship. Perhaps the most remarkable thing to emerge from the Archives is the effect that two journal articles had on Butler. Christopher Johnson's *Crossbow* article was to set Butler's agenda for social reform. Butler reversed his previous opposition to betting and gaming reform, and took up Sunday observance and licensing reform in response to Johnson's article. C. H. Rolph's article in the *New Statesman* set the tone of Butler's approach to penal reform. Coming as it did just weeks after Butler's appointment it is impossible to tell if this led to a radically different approach from that which Butler would otherwise have taken. Yet it was not just reform of prisons to which Butler set his mind, but also to the law and the courts. Butler was one of the key figures in determining the direction of the post-war Conservative party and as chairman of the party's research department for twenty years he did much to influence policy. It is extraordinary, then, that two journal articles did so much to set his agenda when at the Home Office.

Can Butler, therefore, be described as 'a great, reforming Home Secretary'? Given his dedication to penal reform, opposition to corporal punishment, legislation on betting and licensing; and if the Street Offences Act, restriction of Commonwealth immigration and failure to implement homosexual law reform is blamed on right-wing elements in the Conservative party, it may be possible to portray Butler as the radical Home Secretary who fits into the 'Jenkinsian' mould. Yet, to do this is to fundamentally misinterpret Butler's Home Secretaryship, ignore much of the available evidence and take no account of the circumstances of the times in which he worked. The straightjacket of the 'Jenkinsian' model which can be discerned in the writing on Butler does nothing to help understand his Home Secretaryship. Butler was an effective Home Secretary and demonstrated a sureness of touch that has been lacking in so many holders of that office; but if 'greatness' is equated with perceived liberalism and 'reforming' equated with radicalism, then it is clearly not possible to ascribe this epithet to Butler. It would perhaps be more accurate to describe Butler as 'a mildly reforming Home Secretary'. Yet, that is all Butler ever claimed for himself, believing instead that he was one of a line of Home Secretaries to whom fell the responsibility of continuing the process of reform.

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