

**‘A barbarous penalty which the community has no
right to exact’: why capital punishment was
abolished in Britain, 1947-69**

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Abstract

This thesis examines why capital punishment was abolished in Britain in spite of the consistent retentionism of the majority of the electorate. It addresses the period between 1947, when abolition was debated as part of the Criminal Justice Bill, and 1969, when capital punishment was abolished permanently for murder.

In explaining why capital punishment was abolished, this thesis engages primarily with two broad historiographical narratives for the period: public opinion and liberalisation. It investigates how politicians used public opinion within their arguments and why the electorate's retentionism did not convince a sufficient number of them to oppose abolition. It places abolition alongside the other socially liberalising legislation of this period, notably the legalisation of homosexuality and abortion and the other permissive reforms. In doing so, it assesses the relationship between abolition and this wider liberalisation. The emerging liberalising ethos after the Second World War is an important context for understanding abolition.

This thesis identifies the collective identities of the abolitionists and retentionists. It examines the abolitionists' and retentionists' cases separately, assessing how they argued their cases, why they supported or opposed abolition and why the abolitionists succeeded and the retentionists failed. It also considers whether the abolitionists were social liberals and, conversely, whether the retentionists were social authoritarians.

This thesis engages with the political discourse on civilisation, which permeated both these debates and many of the justifications for politicians' beliefs. In addressing and considering these issues, this thesis provides an original explanation for the abolition of capital punishment in Britain.

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Author's declaration

This thesis is entirely my own work. It has not been submitted for examination elsewhere. All references to other authors' works are cited clearly and appropriately.

Introduction

In May 1969 James Callaghan, the Home Secretary, and William Ross, the Secretary of State for Scotland, prepared a confidential memorandum for the cabinet about the process by which capital punishment could be abolished permanently. Under the Murder (Abolition of Death Penalty) Act 1965, Parliament could make the temporary abolition of capital punishment permanent by resolution, thus avoiding the lengthy series of debates that had been a feature of the previous attempts to abolish capital punishment. Since the Second World War, politicians were always free to vote on abolition without pressure from the party whips. As part of this tradition, abolition had always been introduced as a Private Members' Bill rather than by the government. In 1969, Harold Wilson's Labour government broke with this tradition by introducing the resolution itself, although the free vote was preserved.

In preparation for the debate on the resolution, Callaghan and Ross outlined why the abolitionists despised capital punishment:

The essential case for abolition is in our view a moral one. Capital punishment is a barbarous penalty which the community has no right to exact, however heinous the crime. There are however other subsidiary arguments in favour of abolition. The death penalty is a denial of the principle underlying the rest of our penal thinking, that no criminal is beyond the hope of redemption. In the event of doubt arising about the verdict after the sentence has been carried out, there is no opportunity to right the wrong. We think that those who advocate capital punishment are under the onus of establishing that this barbarous penalty is a unique deterrent; but there is no conclusive evidence, either here or elsewhere, to support such a contention.¹

Callaghan and Ross placed moral outrage at the heart of their and other abolitionists' beliefs, labelling the punishment as being uncivilised and not a unique deterrent to murder. Callaghan's and Ross' memorandum, which was

¹ The National Archives: Public Records Office (TNA:PRO), Confidential memorandum by the Secretary of State for the Home Department and the Secretary of State for Scotland on the Permanent Abolition of Capital Punishment for Murder, CAB/129/141, C(69) 48, 6 May 1969.

one of the clearest statements of why the abolitionists wanted to remove the death penalty, was made as the abolition process was reaching its conclusion. The parliamentary journey to this moment has been documented within the sparse historiography of capital punishment. What remains unexplained, though, is why the death penalty was abolished.

Callaghan's and Ross' memorandum is interesting in part because it touched on the two themes which are most pertinent for understanding the abolition process. They described capital punishment as a right that should not be permitted within the community and cited a reformed penal policy that was based upon redemption rather than retribution. This placed abolition within the liberalising ethos of the age, as the death penalty denied the criminal the possibility of redemption and reform. This was contrary to a common Christian belief. Furthermore, the description of capital punishment as community penalty alluded to the fact that the government was acting against the will of the electorate. As the memorandum went on to explain, politicians abolished capital punishment despite knowing that the electorate wanted it to be retained. Every opinion poll on capital punishment had found support for retention. During the period between 1947 and 1969, opinion polling grew in both volume and prominence. That Callaghan and Ross dismissed it so freely is indicative of politicians' dismissive attitude towards public opinion. Liberalisation and public opinion are the two well-established historiographical themes with which this thesis engages. However, neither the association of capital punishment with liberalisation nor the opposition to the reform from public opinion have been challenged or examined within the historiography. These are important themes within this thesis' examination of politicians' arguments and beliefs on capital punishment.

This thesis examines why Parliament abolished capital punishment after the Second World War despite British public opinion being overwhelmingly in favour of it, as it is today. Until now, the historiography of abolition has chronicled how the death penalty was removed. It has not explained why parliamentarians distanced themselves from the electorate when arriving at their decisions on capital punishment. In addressing this issue, this thesis examines the formative causes of politicians' beliefs on the death penalty. Hitherto, there has been no attempt to explain why politicians believed that capital punishment was

either repugnant or desirable. In addressing this issue, this thesis provides the first historical explanation for why capital punishment was abolished.

This thesis sheds light on the relationship between politicians, both elected and non-elected, and the public in post-war Britain. This was an important moment for several reasons. First, successive Conservative and Labour governments introduced liberalising reforms that their critics blamed for creating a ‘permissive society’ that rejected conventional morality, variously described as Christian or Victorian. These reforms represented a revolution from above, a coup d’état by a liberal elite whose endeavours forced a form of liberalisation upon society, with regard to abolition at least, that was not wanted by the majority of the population. Abolition was a liberalising reform because it relaxed penal policy towards murder, but it was not permissive as it did not permit any behaviour that was previously illegal or restricted. Abolition was part of the liberalisation that members of Margaret Thatcher’s government blamed for what they perceived to be the problems facing Britain in the 1980s, as vocalised by Norman Tebbit in his 1985 Disraeli Lecture.² Secondly, these debates occurred at a time when the rise in popularity of opinion polling techniques was challenging the notion of what constituted public opinion. This thesis provides new ideas within the historiographical debates on liberalisation and public opinion, explaining politicians’ negation of public opinion for an issue of conscience and identifying the liberalising mentality that was at the heart of abolitionism and the growth of the permissive society. These points aside, campaigners for abolition in the USA have sought to draw inspiration and lessons from the British experience, and might learn much from considering how abolition succeeded in the face of political opposition. While this is a national study, it forms part of a wider transnational story that lies beyond the contextual remit of this investigation, which is located within the post-war British political culture. This thesis’ engagement with the themes of liberalisation and public opinion and its original research into MPs’ voting records and backgrounds,

² *The Times*, 14 Nov. 1985. This article quoted the key points from Tebbit’s speech, which blamed the ‘era and attitudes of post-war funk’ for the contemporary crime and violence. Tebbit referred to the public desire for sterner penalties for criminals, which the article inferred to be a reference to capital punishment, and to the ‘valueless values of the permissive society’.

which is explained later, has led to its new explanation for why capital punishment was abolished.

This thesis arrives at the conclusion that capital punishment was abolished because the determination of the vast majority of Labour MPs to remove the death penalty was bolstered by the abolitionism of a significant minority of the Conservative MPs born after 1920. These younger abolitionist Conservatives, who entered the House of Commons after the 1955 general election, enabled abolitionism to become entrenched within the House. Since this election, the abolitionists have been victorious in every debate on the subject, regardless of the party in government. They were becoming politically active at a time when Britain's legal and political culture was secularising and embracing a liberalising ethos. The need for the state to maintain strict control over society, which included the severe penalty of death for murder, was being challenged. The diminishing influence of religion within British political culture, and in particular of traditional Anglican morality which many if not all Anglicans would have agreed provided tacit support for retention, meant that an important element of doctrinal support for the death penalty had reduced in value as a justification for politicians' arguments and beliefs. The marginalisation of public opinion from the debates meant that the electorate's retentionist opinions did not compel the abolitionists to vote against their consciences. The politicians believed that they alone were sufficiently informed on the subject to decide whether capital punishment should be abolished.

Most abolitionists opposed capital punishment because they felt repugnance towards executions. Their desire to abolish capital punishment within this liberalising ethos was supported by the concept of civilisation. The widespread perception that British and European civilisation was eroded in the interwar period, before being destroyed during the War, led to a recognition that reform was required to make Britain civilised once again.³ The dominant trend in the civilising process after the War was to move away from the austere Victorian morality and instead permit individuals to have greater freedom from state interference. Roy Jenkins' and Tony Crosland's visions for a civilised, progressive Britain applied to a state that was becoming increasingly secularised.

³ Richard Overby, *The Morbid Age: Britain between the Wars* (London: Penguin Books Ltd., 2009), 13-25.

Their visions were based upon a more humanitarian appreciation of individual liberties through encouraging gaiety and full enjoyment in society, including permitting behaviour that was sinful according to Christian doctrine.⁴ Capital punishment had no place within these visions. This liberalising, civilising, abolitionist ethos was already dominant within the Labour Party, although many of their number were uneasy with the permissive reforms. The younger Conservatives, who matured and entered politics whilst this liberalising ethos was developing within the House of Commons, were more receptive to this process. This caused a number of them to eschew their party's orthodoxies on the death penalty to support abolition. With almost total support from Labour and from a few Conservatives, the Commons voted for abolition on every occasion that the reform was debated after the 1955 general election. This enabled capital punishment to be abolished.

This thesis is the first history of abolition to examine the retentionists in detail. The retentionists, who were primarily the older Conservatives, failed to retain capital punishment because they could not counter the liberalising ethos that encapsulated the abolition debates. Their defeat in Parliament was assisted by the Royal Commission on Capital Punishment's report, which concluded that the death penalty could not be proved to be a unique deterrent to murder. This provided evidence for the abolitionists' causalist argument that the death penalty was neither a unique nor necessary sanction against murder. The retentionists lacked the evidence to counter-balance this argument. The legal and political secularisation of this period reduced the influence of traditional Anglican morality within politician's beliefs and arguments, thus removing a doctrine that had traditionally provided tacit support for the retention of the death penalty. Most importantly, their desire to see murderers executed did not correlate with the increasingly liberal, abolitionist ethos within the Commons and, after the passage of the Life Peerages Act, the Lords. A significant recognition of the retentionists' defeat occurred during a meeting in September 1964 between the retentionist Prime Minister, Alec Douglas-Home, and the soon-to-be abolitionist Home Secretary, Henry Brooke, who together acknowledged that the next

⁴ C.A.R. Crosland, *The Future of Socialism* (London: Jonathon Cape, 1956); C.A.R. Crosland, *The Conservative Enemy: A Programme of Radical Reform for the 1960s* (London: Jonathon Cape, 1962); Roy Jenkins, *The Labour Case* (Harmondsworth, Middlesex: Penguin Books Ltd., 1959).

government, formed by whichever party, would have to abolish capital punishment.⁵

Politicians' calculation that they could ignore public opinion placed abolition alongside other social reforms that opponents of reform considered to be permissive. These are better characterised as liberalising reforms. Although capital punishment was linked to this liberalisation both chronologically and, through Jenkins and Crosland, conceptually, its status as a reform that helped to liberalise Britain should not go unchallenged. This thesis assesses abolition's place alongside the permissive legislation as a liberalising, civilising reform. Abolition was liberalising as it relaxed the state's control over crime within society and shifted the emphasis of punishment from deterrence and retribution towards prevention and rehabilitation. It was not permissive, though, as mentioned earlier. This difference has not been appreciated within the historiography and is examined within this thesis.

The dwindling ranks of retentionists were unable to challenge the abolitionists, whose numbers grew with the arrival of a new generation of Conservative MPs from the mid-1950s onwards, which framed the issue. Lack of funding and poor leadership compared to the abolitionists explained much, but the retentionists' unwillingness to challenge the Burkean notions of representation to let them bring public opinion, as measured and defined by the polls, within the debates was also important. For the crucial issue of deterrence, they lacked the evidence to counter-balance that that supported the abolitionists' argument.

Before embarking on an overview and analysis of the relevant historiography for this thesis, it would be useful to outline the parliamentary events that led to the abolition of capital punishment. The following brief synopsis is designed to orientate readers to the chronology of the post-war abolition process. It has been included because this thesis deliberately avoids the chronological, narrative approach of other studies, providing instead a more analytical examination of abolition.⁶

⁵ TNA:PRO, PREM 11/4690, Notes for the Record, 22 Sep. 1964.

⁶ For a more detailed chronological narrative of abolition, see: Neville Twitchell, *The Politics of the Rope: the Campaign to Abolish Capital Punishment in Britain 1955-1969* (Bury St. Edmunds: Arena Books, 2012).

The abolitionists' success in 1969 was consolidated over twenty years after the post-war abolition process began. Clement Attlee's new Labour government tabled a Criminal Justice Bill without any provision to abolish capital punishment.⁷ However, there was a determination amongst the rank and file of the Parliamentary Labour Party for abolition to be included within the Bill. The most prominent of their number, Sydney Silverman, tabled an amendment to the Bill, which was approved by the Commons in April 1948 but defeated by the Lords. Although abolition was excluded from the Criminal Justice Act 1948, the debates forced the government to act on this matter to satiate the MPs' abolitionist desires. To achieve this, they appointed a Royal Commission to investigate capital punishment.

The Royal Commission on Capital Punishment, 1949-53, examined most of the contentious aspects within the death penalty question, with the significant exception of abolition. However, the Commission concluded that the unique deterrent effect of the death penalty could not be proved, which provided support for the abolitionists' case.⁸

Abolition was next debated when the Commons passed a motion to recognise the Commission's report in February 1955. This was the only occasion during this period that the Commons voted for retention. The 1955 general election, though, resulted in a demographic change within the House of Commons that created an abolitionist majority under a retentionist Conservative government. The following year, the Commons voted for abolition once again. The new Conservative government's retentionist motion was defeated in February 1956. The defeat of the government's motion contained some of the most eloquent arguments for and against capital punishment in what was, with hindsight, the first debate after abolitionism had become entrenched in the Commons.

The following month, the Commons voted in favour of Silverman's Death Penalty (Abolition) Bill, although as in 1948 this Bill was defeated in the Lords. However, the strength of feeling amongst the majority of MPs, including a significant minority of the younger Conservative MPs, meant that the

⁷ Kevin Manton, "Labour Governments and Capital Punishment, 1924-1970," *Labour History Review* 76, no. 1 (2011): 20-1.

⁸ *Royal Commission on Capital Punishment 1949-1953: Report*, Cmnd. 8932, (London: HMSO, 1953).

government could not ignore the desire for reform. The outcome was the compromise Homicide Bill, which created degrees of murder and became law with the help of the government's whips. However, this did not satiate the reformist appetite of the abolitionists and was decried as being illogical by politicians and commentators of all opinions on capital punishment. The Homicide Act was widely perceived to have failed to address the problems with capital punishment. The foundations were laid, therefore, for an abolitionist Labour government to remove the death penalty.

Historiography

Party identity has been recognised within the historiography as a common background amongst both the abolitionists and retentionists. The vast majority of Labour MPs were committed abolitionists. The retentionism of Clement Attlee's Labour government was relatively anomalous. Kevin Manton notes that retentionism was not uncommon amongst the older Labour elite. Although he overemphasises this point, as 87 per cent of the Labour MPs to take part in at least one abolition debate were committed abolitionists, he acknowledges that the peculiar social context in the years immediately after the Second World War meant that the Labour government felt unable to support abolition.⁹ Despite the retentionism of their leadership, though, a large enough majority of Labour MPs supported abolition to enable the abolition amendment to become part of the Criminal Justice Bill, although it was defeated in the Lords. The Conservatives were an overwhelmingly retentionist party, although this situation changed somewhat with the arrival of the younger Conservatives into the House of Commons after the 1955 general election. As these young Conservatives enabled abolition to become entrenched within the Commons, they are the key group to understand when examining the abolition of capital punishment. The importance of the younger Conservative MPs for the abolition process has not been recognised previously within the historiography of the death penalty.

Until recently, Britain's abolition process has been the preserve of political scientists on both sides of the Atlantic. Many of these studies were contemporary narrative accounts that drew on newspaper reports and official

⁹ Manton, "Labour Governments and Capital Punishment," 16-33.

publications. Of note are the monographs by James Christoph and Elizabeth Tuttle, which chronicle the abolition process in Parliament as far as the passage of the Homicide Act.¹⁰ Over the past two decades a handful of historians, beginning with Harry Potter's account of Church opinion and activism on abolition, have begun to pay more attention to the subject as the relevant archives opened. Potter, Victor Bailey, Kevin Manton, Mark Jarvis and Neville Twitchell have added considerably to the understanding of what happened when. However, the focus of their work is largely upon the abolitionists and Labour. There are some deviations from this within the literature, as Jarvis looks at the Conservatives during R.A. Butler's tenure at the Home Office and Manton highlights the retentionism of a few senior Labour politicians. Nevertheless, the focus does not stray dramatically from these groups. In a recent article, Claire Langhamer has presented a new perspective on the abolition process with regard to the nature of public opinion. Her study examines the public's emotional reactions to capital punishment, although she does not extend the analysis to consider the influence of popular emotion on politicians' voting behaviour. This study, therefore, does not explain why politicians distanced themselves from public opinion in order to abolish the death penalty.¹¹

The most detailed study into abolition is Twitchell's *The Politics of the Rope*. Twitchell is the first historian to examine the entire abolition process. His work provides a detailed account of the parliamentary discourse, campaigners' activities, famous murder cases and the recorded opinions of newspapers, religious groups, professional organisations and the general public, the latter expressed through the poll. This work, though, is more akin to a comprehensive chronicle than an analytical study. For instance, Twitchell examines public

¹⁰ James Christoph, *Capital Punishment and British Politics: the British Movement to Abolish the Death Penalty 1945-57* (London: George Allen and Unwin Ltd., 1962); Elizabeth Tuttle, *The Crusade Against Capital Punishment in Great Britain*, (London: Stevens and Sons Ltd., 1961).

¹¹ Victor Bailey, "The Shadow of the Gallows: The Death Penalty and the British Labour Government, 1945-51," *Law and History Review* 18, no. 2 (2000): 305-49; Mark Jarvis, *Conservative Governments, Morality and Social Change in Affluent Britain, 1957-64* (Manchester: Manchester University Press, 2005); Claire Langhamer, "'The Live Dynamic Whole of Feeling and Behavior': Capital Punishment and the Politics of Emotion, 1945-1957," *Journal of British Studies* 51, 2 (2012): 416-41; Manton, "Labour Governments and Capital Punishment," 16-33; Harry Potter, *Hanging in Judgement: Religion and the Death Penalty in England from the Bloody Code to Abolition* (London: SCM Press Ltd., 1993); Twitchell, *The Politics of the Rope* (2012); Neville Twitchell, "The Politics of the Rope: the Campaign to Abolish Capital Punishment in Britain 1955-1969," (PhD dissertation, London Metropolitan University, 2009).

opinion on abolition by chronicling the opinion poll results without examining how they were used in Parliament, any other forms of public opinion or their influence on politicians' decisions. Like the contemporary political scientists, he does not examine the causes of the politicians' beliefs on abolition or the reasons for their use of certain arguments, despite benefitting from access to many of the relevant archives.¹² His work, therefore, is of limited use as an explanation for why abolition occurred.

Victor Bailey provides a useful account of the Attlee government's retentionism during the passage of the Criminal Justice Bill through Parliament. He attributes their retentionism, and that of wider British society at this time, to the impact of the Second World War and the associated rising crime rate after the end of the War. His study takes the form of a narrative account of the events in Parliament and of the decisions taken by the Labour government when formulating their Criminal Justice Bill. He briefly outlines a number of possible hypotheses for the Labour government's retentionism, including that abolition could have cost Labour votes and that the post-war crime wave meant that the time was not right to remove the death penalty. He does not offer a detailed analysis of these hypotheses though, which means that his suggestions remain undeveloped.¹³ His article is of limited use for explaining why Attlee's government opposed capital punishment despite the abolitionist beliefs of the majority of backbench Labour MPs. Of greater use is Kevin Manton's article "Labour Governments and Capital Punishment". Manton attempts to explain why Attlee's government supported retention, focusing on the potential political ramifications of being portrayed as soft on crime. As this thesis explains in the following chapter, though, psephology was still in its infancy as a discipline in the 1940s. The government would have been unable to discern the issues on which the electorate based their votes. Furthermore, as politicians marginalised public opinion from these debates, they had no intention of making it an electoral issue. It is impossible to ascertain, therefore, how far the Labour government feared any electoral ramifications from supporting abolition. Although he over-represents the level of retentionism within the Labour Party, his article is an important addition to the understanding of the nuances within Labour's opinions

¹² Twitchell, *The Politics of the Rope*, 310-28; Twitchell, "The Politics of the Rope," 56-88.

¹³ Bailey, "The Shadow of the Gallows," 328-32.

on capital punishment.¹⁴ However, like Bailey he also does not examine the backgrounds of these MPs in an attempt to understand the reasons for their beliefs on capital punishment. This is necessary to understand why capital punishment was abolished.

Capital punishment has been placed within the wider framework of post-war liberalisation by a number of academics, including Twitchell. Stuart Hall and Christie Davies include abolition within their analyses of the liberalising legislation of the 1950s and 1960s. Abolition was liberalising through its role in reducing the state's strict social control over crime. Davies, however, is explicit in listing abolition as a permissive reform. This label is erroneous as abolishing the death penalty did not legalise an action that was previously illegal or restricted. Abolition was associated with the permissive reforms by contemporary politicians, including Roy Jenkins and Anthony Crosland, through the common purpose of liberalising and civilising society. It is a mistake, though, to homogenise abolition with permissiveness.¹⁵

Arthur Marwick uses the concept of civilisation to link abolition to the permissive reforms, describing it as 'the most significant of all the pieces of civilising legislation'.¹⁶ This overstates the importance of abolition within the corpus of social liberalising legislation, as the legalisation of homosexuality, abortion and suicide were at least as significant, if not more so. Indeed, H.L.A. Hart highlighted the significance of the legalisation of suicide as it was the first Act of Parliament 'for at least a century' that legalised an act deemed sinful within Christian morality.¹⁷ However, Marwick's description recognises the importance and widespread appeal of this concept for the abolitionists and also for historians who agree that the socially liberalising agenda was civilising.

Richard Overy has explained that civilisation was a common theme in political and popular discourse in the interwar years, with many people perceiving that civilisation was declining in Britain and Europe. It is

¹⁴ Manton, "Labour Governments and Capital Punishment," 16-33.

¹⁵ Crosland, *The Future of Socialism*, 521-2; Crosland, *The Conservative Enemy*, 131; Christie Davies, *Permissive Britain: Social Change in the Sixties and Seventies* (London: Sir Isaac Pitman and Sons Ltd., 1975); Stuart Hall, "Reformism and the Legislation of Consent," in *Permissiveness and Control: the Fate of the Sixties Legislation*, ed. National Deviancy Conference (London and Basingstoke: The Macmillan Press Ltd, 1980), 1-43; Jenkins, *The Labour Case*, 135-7.

¹⁶ Arthur Marwick, *British Society Since 1945* 4th ed. (London: Penguin Books Ltd., 2003), 117.

¹⁷ H.L.A. Hart, *Law, Liberty and Morality* (London: Oxford University Press, 1963), preface.

understandable that the discourse on the decline of society became the discourse for its regeneration after the War. Overy explains that those who wrote about civilisation, namely the political and social elites, defined the concept. The decline of society's civilisation was perceived to trigger the decline of the individual's state of mind.¹⁸ This understanding continued after the War, except that those who wrote about civilisation now focused upon society's progression rather than its collapse. This progression was charted by the Left, notably Jenkins and Crosland, who wanted to steer Britain away from the Victorian morality that existed whilst its civilisation crumbled. Matthew Grimley has explained that Christianity was a defining element of Englishness prior to the end of the Second World War.¹⁹ The process of secularisation that diminished the influence of Christianity within Britain's legal and political culture would have impacted upon this national identity. The progressive civilising programmes of Jenkins and Crosland, which were to be applied within an increasingly secularised political culture, were an attempt to alter Britain's, or at least England's, national identity.

In the context of post-war Britain, it is understandable why Jenkins' and Crosland's liberalising, civilising programmes found support amongst a number of politicians and faced little active opposition from those who disagreed with their ambition. Furthermore, abolition fitted into the civilisation discourse neatly. The way in which a society treated its weakest was an established test of a society's civilisation, a notion supported by the Gospel according to Matthew amongst other sources.²⁰ Winston Churchill extended this definition of the weakest to explain that civilisation was measured by looking at the treatment of prisoners.²¹ Abolition was part of the liberalising process after the Second World War, and arguably a necessary part of the civilising process.

No historian, though, has explored this concept in its function as a both a reason and justification for abolishing the death penalty. A belief that capital punishment damaged society's civilisation was an embodiment of the emotional reaction against the death penalty. Those politicians who were repulsed by the

¹⁸ Overy, *The Morbid Age*, 15-6; 22-3.

¹⁹ Matthew Grimley, "The Religion of Englishness: Puritanism, Providentialism, and "National Character," 1918-1945," *The Journal of British Studies* 46, no. 4 (2007): 884-906.

²⁰ Matthew 25: 31-46 (New International Version).

²¹ HC Deb 20 Jul. 1910 vol. 19 c. 1354.

death penalty believed that this immoral act harmed society. Similarly, those politicians who did not find capital punishment sufficiently repulsive to support its abolition, or whose emotional response to murder was to desire the execution of the murderer, argued that the death penalty was necessary to protect society's civilisation. The retentionists' uses of civilisation were less common than those of the abolitionists. Nevertheless, civilisation was a major theme within the parliamentary discourse on abolition. It was both the expression and justification of the emotional reactions to a particularly emotive issue.

This thesis engages with the concept of civilisation, particularly in the chapters on the retentionists' and the abolitionists' cases. It is the first historical study to examine this concept in detail with reference to capital punishment. This helps to explain why capital punishment was abolished, as it provides an insight into politicians' emotional reactions to the death penalty and into the morality that directed their arguments during debates. This thesis applies Overy's framework for civilisation outside its context of interwar decline, using it for a post-war political culture of social liberalisation. This adds to the historiography of civilisation in twentieth century British politics, as it improves the understanding of how the concept was interpreted within this liberalising issue of conscience. Thus far within the historiography, it has been used somewhat as a synonym for liberalisation. Although the two were closely linked in this period, they were not identical concepts. This thesis recognises these differences and analyses them as separate concepts.

The concept of modernisation has not been engaged with as frequently as civilisation and liberalisation within either the historiography of capital punishment or the parliamentary debates. When the abolitionists used it, it was often as a synonym for civilisation in describing capital punishment as being anathema within a modern state such as Britain.²² It was more frequently used in the debates to describe the developments in criminal psychiatry and the Home Office's penal reforms.²³ The historiography of modernisation encapsulates the wider aspects of social, political and cultural reform after the Second World War.

²² John Paton used modernisation to argue that capital punishment was anachronistic in the Commons debate on Silverman's abolition amendment to the Criminal Justice Bill; HC Deb 14 Apr. 1948 vol. 449 cc. 1014-5.

²³ An example of this is Leo Abse's speech during the second reading of the Murder (Abolition of Death Penalty) Bill in December 1964; HC Deb 21 Dec. 1964 vol. 704 c. 941.

An excellent example of this is the edited volume by Becky Conekin, Frank Mort and Chris Waters.²⁴ However, this concept does not add an extra dimension to the frameworks provided by the civilisation and liberalisation discourses, which were used more frequently within the debates. For this reason, it is these concepts rather than modernisation that are focused upon within this thesis.

This thesis engages with a number of accounts of the wider reformist culture in Britain after the Second World War. Noel Annan's memoir of his generation, *Our Age*, describes the reformist characteristics of the new establishment, of which he was part, that campaigned for and enacted the socially liberalising legislation. Although it does not address capital punishment, his representation has informed this thesis' understanding of the generation of politicians and campaigners who championed abolition and the permissive reforms.²⁵ Annan's work offers a vision of the post-war liberalisation that credits the political and cultural elites for the socially liberal reformist culture. Annan's revolution from above was present for abolition, as the politicians demonstrated a form of liberal paternalism in acting against the will of the electorate by enforcing a reform that they believed would benefit society, despite the opposition to the reform from that society. The liberalisation that occurred through abolition was not the result of the increasingly dominant youth culture, the 'youthquake' as termed by Diana Vreeland and explored by Kenneth Leech, although it was a significant minority of the young Conservatives in the 1950s and 1960s who split from their Party's orthodoxies to support abolition, thereby securing its enduring support within the Commons.²⁶ Although the 'youthquake' was an important part of the broader social liberalisation, for abolition the opinions of young people should be viewed as part of public opinion and therefore distant from politicians' decision-making processes, as there was no vocal movement or sentiment for abolition within the youth counter-culture. This thesis, therefore, engages with Annan's portrayal of the liberal elite steering the liberalising reformism of the post-war decades, as abolition was a reform from above.

²⁴ Becky Conekin, Frank Mort and Chris Waters, eds., *Moments of Modernity: Reconstructing Britain 1945-1964* (London: Rivers Oram Press, 1999).

²⁵ Noel Annan, *Our Age: the Generation that made Post-War Britain* (London: Fontana, HarperCollins Publishers, 1991).

²⁶ *Vogue*, 1 January 1965, 112; Kenneth Leech, *Youthquake: the Growth of a Counter-Culture through Two Decades* (London: Sheldon Press, 1973).

Mark Jarvis includes capital punishment within his account of the liberalisation that has been associated with R.A. Butler's tenure at the Home Office. Jarvis focuses upon Butler's efforts to introduce liberalising legislation through his actions in Parliament, in government and at the party conferences. He exposes the levels of opposition that Butler faced in these arenas. Jarvis' account outlines the strength of Conservative opposition to abolition, portraying Butler as the principal reformer of the death penalty in the Party.²⁷ As with the rest of the historiography of capital punishment, though, Jarvis does not examine why the more traditional Conservatives opposed abolition or why a significant minority of the younger Conservatives supported this reform. His work is another largely narrative account of the abolition process in the mid-1950s that does not explain why the death penalty was abolished. Even so, Jarvis' monograph is the most detailed historical account of Conservative opinions on capital punishment.

The recent scholarship on public opinion in Britain has examined the advent of polling and the ways in which it was used by politicians. Notable works include articles by Laura Beers, Joe Moran, Mark Roodhouse and Andrew Taylor. These examine the methodology and impact of public opinion, as represented by the poll, on the presentation and shaping of policy. Beers arrives at the conclusion that public opinion influenced the presentation of policy only and did not affect its creation or amendment. Moran focuses upon the work of Mass-Observation (M-O) and offers some analysis of the political and newspaper reactions to those people who answered 'don't know' to relatively straightforward survey questions. Roodhouse examines the rise of the Gallup poll in Britain, noting many of the methodological weaknesses within its practice that reinforced the politicians' apprehension towards its evidence. Moran and Roodhouse's findings are useful for this thesis' examination of the abolitionists' rejection of mass public opinion as being uninformed. This thesis develops these ideas to explain why the abolitionists were able to separate parliamentary opinion from that of the electorate. Taylor focuses more upon the Conservatives' evolving electoral strategy in the burgeoning age of polling. Its subject is primarily psephology rather than the formation of policy, and thus is of limited use for this

²⁷ Jarvis, *Conservative Governments*, 50-62.

thesis. Nevertheless, as part of the recent corpus of historical literature on public opinion, it is noteworthy within this analysis.²⁸

Langhamer has examined the nature of public opinion towards the death penalty. Her study explores emotion within public opinion, which is drawn particularly from M-O's surveys. This is an important development in the historiography of capital punishment as, to use Langhamer's phrase, it examines the 'texture' of the electorate's retentionist opinion. She does not extend her study, though, to consider in detail the influence of public opinion on politicians' divisions during the parliamentary debates on abolition.²⁹

James Thompson's monograph on public opinion within political affairs examines the capital punishment debates of the late nineteenth and early twentieth centuries. He devises a framework for dividing and defining the public based upon politicians' prejudices about the groups within society. The general socio-economic prejudices that formed this framework were similar to those used by the politicians studied within this thesis, although the nineteenth century politicians used enfranchisement and active engagement in politics to categorise the population. The politicians studied within this thesis viewed one's professional background and education as a key factor in determining whether a person was informed or uninformed. Although Thompson's work is not directly relevant to the study of public opinion within the capital punishment debates, it is noteworthy that he has identified a similar division of the population within his recent study.³⁰

Politicians ignored the bulk of the public when it came to matters that parliamentarians considered to be issues of conscience or technical matters. One of the interesting facets of abolition is that politicians conflated the two. This was an issue of moral conscience upon which only experts, moral or legal, could

²⁸ Laura Beers, "Whose Opinion?: Changing Attitudes Towards Opinion Polling in British Politics, 1937-1964," *Twentieth Century British History* 17, no. 2 (2006): 177-205; Joe Moran, "Mass-Observation, Market Research, and the Birth of the Focus Group, 1937-1997," *Journal of British Studies* 47, no. 4 (2008): 827-51; Mark Roodhouse, "'Fish and Chip Intelligence': Henry Durant and the British Institute of Public Opinion, 1936-63," *Twentieth Century British History* 24, no. 2 (2012): 224-48; Andrew Taylor, "'The Record of the 1950s is Irrelevant': The Conservative Party, Electoral Strategy and Opinion Research, 1945-64," *Contemporary British History* 17, no. 1 (2003): 81-110.

²⁹ Langhamer, "The Live Dynamic," 419.

³⁰ James Thompson, *British Political Culture and the Idea of 'Public Opinion', 1867-1914* (Cambridge: Cambridge University Press, 2013).

decide. Politicians made use of the Burkean rhetoric about representation to justify this position, whether they believed it or not, and positioned themselves as the experts. This thesis draws upon Langhamer's appreciation of the nature of public opinion as being more complex than that represented by the opinion poll. It extends Beers' conclusion to apply it to an issue of conscience. Furthermore, it identifies the politicians' recognition of the multiple publics that were within society and the different influences that were afforded to each. These are original developments within the wider historiography of public opinion in Britain.

This thesis develops the malnourished historiography of capital punishment by analysing the beliefs of the two main parties on capital punishment and their influences upon the judgements of their own and other politicians. Although most studies recognise a party split on abolition, only Jarvis and Manton have written in any detail on the party dimension. Their works do not extend sufficiently beyond narrative accounts to explain fully the importance of this factor. On the influence of religion and religious morality, Harry Potter's *Hanging in Judgement* is a chronological account of church opinion towards the death penalty. This focuses in particular on the views of the Church of England and discusses its leadership's swing towards abolition in the early 1960s. Potter's work too suffers from the perennial problem within the historiography of providing little more than a narrative account of opinions and of events in Parliament, extending this to the Convocations of Canterbury and York.³¹ This thesis draws upon Potter's narrative and the academic studies into secularisation during this period, notably by Matthew Grimley, Callum Brown and Jeremy Morris, in assessing the influence of religious beliefs, primarily from Anglican morality, upon the politicians' beliefs and arguments. In particular, it follows Grimley's argument that secularisation was more evident in law and politics than in wider society during this period. Given that public opinion did not greatly influence politicians' beliefs on capital punishment, the continued prominence of the Church and Anglican morality within wider society would not have influenced greatly the politicians' arguments and beliefs. Legal and political secularisation, therefore, had a pronounced influence on the abolition debates.³²

³¹ Potter, *Hanging in Judgement*.

³² Callum Brown, *The Death of Christian Britain: Understanding Secularisation, 1800-2000* (London: Routledge, 2009); Matthew Grimley, "Law, Morality and Secularisation: The Church of England

This thesis' examination of secularisation focuses upon the Church of England and Anglican morality. As this was the established Church, both it and its leaders had a particularly significant role within the political process, a role which diminished as a result of legal and political secularisation.

Twitchell's work is noteworthy because he uses a wider range of sources to examine Britain's post-war capital punishment debates than any previous historical study. It is not, though, the first narrative of the abolition debates. Brian Block and John Hostettler provide an almost-exclusively parliamentary narrative of the death penalty debates for this period in a survey of capital punishment that extends back to Anglo-Saxon Britain. Almost all of their sources for the post-war debates are taken from newspapers, notably *The Times*, and from the parliamentary debates as recorded in Hansard.³³ The more analytical examinations of capital punishment have focused on other countries in which the death penalty is still applied for civilian crimes, notably the United States. Austin Sarat has published extensively on capital punishment in the United States. Recently, David Garland has examined the United States' continued use of the death penalty within an international context in which many other western countries have already abolished the death penalty. On a broader international scale, Peter Hodgkinson and William Schabas outline the contemporary abolition processes in a variety of countries. Roger Hood attempts to provide a contemporary overview of abolition and the application of the death penalty from an even wider range of states.³⁴ The analytical depth that is afforded to the capital punishment debates within other countries, in particular the United States, is absent from the historiography of Britain's abolition debates.

and the Wolfenden Report, 1954-1967," *The Journal of Ecclesiastical History* 60, no. 4 (2009): 725-41; Jeremy Morris, "The Strange Death of Christian Britain: Another Look at the Secularisation Debate," *The Historical Journal* 46, no. 4 (2003): 963-76.

³³ Brian P. Block and John Hostettler, *Hanging in the Balance: a History of the Abolition of Capital Punishment in Britain* (Winchester: Waterside Press, 1997).

³⁴ David Garland, *Peculiar Institution: America's Death Penalty in an Age of Abolition* (Oxford: Oxford University Press, 2010); Peter Hodgkinson and William A. Schabas, ed., *Capital Punishment: Strategies for Abolition* (Cambridge: Cambridge University Press, 2004); Roger Hood, *The Death Penalty: a Worldwide Perspective* (Oxford: Oxford University Press, 2002); Austin Sarat, *When the State Kills: Capital Punishment and the American Tradition* (Princeton: Princeton University Press, 2001); Austin Sarat, ed., *The Killing State: Capital Punishment in Law, Politics and Culture* (New York: Oxford University Press, 1999).

This thesis addresses the gaps identified within the historiography to provide the first explanation of why politicians supported or opposed capital punishment and why the death penalty was abolished. It draws upon a number of factors that are ill-developed or absent within the historiography, including the importance of the politicians' ages, their professional backgrounds, the conceptual and emotional bases for their beliefs and their associations with other liberalising campaigns and reforms. Other historians, notably Twitchell, have examined many of the archives accessed for this thesis, although they have not focused on identical sources to those used within this thesis. By not considering why capital punishment was abolished and not engaging with a broad historiography of liberalisation and public opinion, previous histories of capital punishment have not utilised these sources effectively to explain why, rather than how, capital punishment was abolished. This thesis' database of MPs' votes on capital punishment and of their backgrounds is the most significant analytical resource for this thesis. It can be found within the enclosed CD-R. Figures derived from it are located within the body of this thesis and in the Appendix. It has been compiled by the author for this thesis and is of the utmost importance for demonstrating and identifying the common backgrounds and beliefs that directed politicians' decisions on capital punishment. The existing historiography's analytical potential has been restricted by the absence of the evidence that has been derived from this database. This thesis, therefore, is the first history of capital punishment that attempts to understand and explain the formative causes of MPs' beliefs on capital punishment.

Methodology

This thesis' examination begins in 1947, the year that the Criminal Justice Bill was introduced. This was not the first year that abolition was discussed in the British Parliament. It was debated briefly in the mid-nineteenth century before public executions were outlawed.³⁵ In the 1920s and 1930s there were protracted abolition debates in Parliament. During this period, the National Council for the Abolition of the Death Penalty (NCADP) campaigned for abolition in a similar manner to the National Campaign for the Abolition of Capital Punishment

³⁵ James Gregory, *Victorians against the Gallows: Capital Punishment and the Abolitionist Movement in Nineteenth Century Britain* (London: I.B. Tauris, 2011).

(NCACP) in the 1950s and 1960s.³⁶ Furthermore, capital punishment continued to be debated after permanent abolition in 1969, particularly in the context of the fighting in Northern Ireland and terrorist acts throughout the country. However, the debates before and after the period from 1947 to 1969 have not been included within this thesis. This is because the political context provided by the post-war social liberalisation was peculiar to the two decades after the Second World War. This thesis, therefore, focuses upon this period in isolation, as to include the debates from other periods would require engaging with other contexts, for which there is insufficient time and space within this study. The limitation of this period to between 1947 and 1969 charts the post-war abolition process from its first debate to permanent abolition.

One of this thesis' additions to the historiography is its investigation of the formative causes of politicians' beliefs on capital punishment. It is necessary to examine these in order to understand why most politicians wanted to abolish capital punishment, and why the others did not. No previous study has attempted to identify the factors that directed politicians' beliefs on the death penalty. Callaghan's and Ross' memorandum indicates that emotion was the driving factor behind the abolitionists' rejection of capital punishment. What neither it nor any other source can provide is a definitive explanation of the formative causes of politicians' beliefs. This thesis, therefore, cannot explain conclusively why politicians supported or opposed abolition, but it can provide original hypotheses about the factors that directed their beliefs.

It is not possible to examine the beliefs on capital punishment of every individual politician beyond examining their voting records. This is due to both the impracticality of accessing the private papers of all politicians involved in the debates and the lack of files on capital punishment that existed in the papers of politicians who were prominent within the abolition debates. One cannot use the politicians' arguments within parliamentary debates as definitive evidence of their beliefs, as the factors used to support an argument often would be deployed to justify an argument and to persuade others to agree with it. They cannot be presumed to be accurate representations of beliefs. A common example of this was the abolitionists' frequent citation of the Royal Commission's conclusion that

³⁶ Twitchell, *The Politics of the Rope*.

capital punishment could not be proven to be a unique deterrent to murder. This was a key argument within the capital punishment debates, but it did not represent the emotional repugnance towards the death penalty that directed many abolitionists' opposition to capital punishment. Despite the problems associated with using parliamentary debates to analyse politicians' beliefs, though, they are examined for this purpose within this thesis, as in most cases they are the only available evidence. Parliamentary debates were one of the few occasions when politicians outlined their views on capital punishment. Although other factors have been examined, including the politicians' ages and occupational backgrounds, given the dearth of sources available to analyse politicians' beliefs the parliamentary debates are a necessary resource for this research.

Causalism is a key concept for this thesis that requires some explanation. In *Permissive Britain*, Christie Davies coined the term 'causalist morality' to describe the justifications for supporting or opposing legislation that were based upon the consequences of that reform for the individual and for society. This was the antithesis of the moralist justification, which used an often religious-based morality to support or oppose legislation on the grounds of whether or not the relevant action was sinful.³⁷ This framework succinctly describes the impact of secularisation within the political discourse on abolition and other socially liberalising reforms within post-war Britain. For capital punishment, the primary justification for an argument on abolition became the causalist issue of deterrence. This causalist argument was based upon the measurable consequences of retaining or abolishing capital punishment rather than the morality of the application of the death penalty. This was based upon evidence from the Royal Commission's report and from foreign countries that had abolished the death penalty without experiencing an increase in the murder rate. This evidence largely supported the abolitionists' case. The moralist justification was based on various interpretations of Biblical doctrine and could be found to support both sides, though importantly the Church of England and Anglican morality had often provided a level of tacit support for retention. Although moralist arguments were used throughout this period to support either position

³⁷ Davies, *Permissive Britain*, 3.

on the death penalty, a consequence of the secularisation of the law was that such arguments became less convincing justifications within political discourse. It was the causalist issue of deterrence that dominated the post-war discourse, despite the various methodological problems with capital punishment statistics. It is important to note, though, that this secularisation within the political discourse did not mean that causalism was the determining principle behind politicians' beliefs on capital punishment. Their desires to abolish or retain the death penalty were based upon the moralist emotions of repugnance towards the notion of executions and retribution against the convicted murderer. The impact of secularisation and causalism was to be found in the justifications for politicians' arguments rather than in their beliefs. This framework of causalist arguments overtaking moralist ones is analysed within this thesis' chapters on the abolitionists' and retentionists' cases.

The primary source for the analysis of MPs' beliefs is a database of the votes of every MP who took part in at least one of the principal capital punishment debates during this period. For a comparison between the votes on abolition and on other liberalising reforms, the divisions from the second readings of the Sexual Offences Bill and the Medical Termination of Pregnancy Bill are also included. These Bills sought to legalise homosexuality and abortion respectively, and both became Acts of Parliament. They are two of the most notable permissive reforms from the 1950s and 1960s.³⁸ This database also includes the MPs' ages, occupations and their affiliation with political parties and other relevant organisations and campaigns. This database has been created by the author of this thesis. The information within it has been gathered from the division records from Hansard and from the politicians' profiles from *Who Was Who*, the *Oxford Dictionary of National Biography* and the catalogues published by Andrew Roth, Michael Stenton and Stephen Lees.³⁹ This identifies some of the

³⁸ The debates included in the database are: HC Deb 14 Apr. 1948 vol. 449 cc. 979-1098; HC Deb 15 Jul. 1948 vol. 453 cc. 1411-545; HC Deb 10 Feb. 1955 vol. 536 cc. 2064-183; HC Deb 16 Feb. 1956 vol. 548 cc. 2536-655; HC Deb 12 Mar. 1956 vol. 550 cc. 36-151; HC Deb 6 Feb. 1957 vol. 564 cc. 454-568; HC Deb 21 Dec. 1964 vol. 704 cc. 870-1010; HC Deb 13 Jul. 1965 vol. 716 cc. 358-465; HC Deb 16 Dec. 1969 vol. 793 cc. 1148-297; HC Deb 11 Feb. 1966 vol. 724 cc. 782-874; HC Deb 22 Jul. 1966 vol. 732 cc. 1067-165.

³⁹ Oxford Dictionary of National Biography, various pages, <http://www.oxforddnb.com>, [accessed 2011-2013]; Who's Who and Who Was Who, various pages, <http://www.ukwhoswho.com>, [accessed 2011-2013]; Andrew Roth, *The Business Background of*

abolitionists' and retentionists' common backgrounds and their attitudes towards contemporary permissive legislation.

The collection and collation of information for this database was occasionally problematic. The database requires politicians to be labelled as either abolitionists or retentionists. The debate on the third reading of the Homicide Bill complicates this division somewhat, as MPs voted on whether or not to limit capital punishment to certain murders, thus creating degrees of homicide. This division, therefore, was not on abolition. However, the Bill was introduced by the Conservative government to wreck Sydney Silverman's abolition Bill before its third reading in the Commons. The government applied its whips to their Bill to ensure its success. This placed it at odds with the divisions on abolition Bills, for which MPs were permitted a free vote. In voting for the Homicide Bill, therefore, MPs would have been aware that they were voting in opposition to abolition. Very few abolitionists voted for the Homicide Bill, with the exception of a number of Conservative abolitionists who were pressured by their Party to support the reform. Therefore, this database's labelling of politicians in this debate as abolitionists or retentionists is valid.

There are a couple of factors, though, that have not been included within the database. It does not consider the location of the politicians' constituencies as this factor is closely connected to the political parties. The religious backgrounds of the MPs have been analysed by Peter Richards for the debate on the second reading of the Murder (Abolition of Death Penalty) Bill in the Commons.⁴⁰ Due to the detail of his investigation and the impracticalities of accessing the religious beliefs of politicians, the database for this thesis has not included this factor. Finally, there is more biographical information available for some MPs than others, in particular regarding their professional backgrounds. An occupation has been obtained for all MPs, but it is possible that some were employed primarily in other careers than that which is recorded in the database. This database is

M.P.s: 1972 edition (London: Parliamentary Profile Services Ltd., 1972); Andrew Roth, *The M.P.s' Chart* (London: Parliamentary Profile Services Ltd., 1967); Michael Stenton and Stephen Lees, *Who's Who of British Members of Parliament vol. IV 1945-1979: A Biographical Dictionary of the House of Commons based on Annual Volumes of 'Dod's Parliamentary Companion' and Other Sources* (Brighton: The Harvester Press Limited, 1981).

⁴⁰ Peter G. Richards, *Parliament and Conscience* (London: George Allen and Unwin Ltd., 1970), 183.

reliant on biographical catalogues that sometimes provide bare descriptions of politicians' careers before and during their time in Parliament. The careers given within this database are the most accurate occupational backgrounds available. Furthermore, a year of birth has been obtained for all MPs who took part in an abolition debate, with the exception of Sir William Bennett, Unionist MP for Woodside, for whom surprisingly only a year of death is recorded within the catalogues. He has been excluded from the analysis of MPs' ages.

Through the evidence from parliamentary debates, this database and the government, party, politicians and campaigns' archives, this thesis arrives at hypotheses on the factors that can be expected to have directed politicians' beliefs on capital punishment. The formative causes are examined principally within the chapter identifying the retentionists and abolitionists and within the beliefs sections of the chapters on the retentionists' and abolitionists' cases.

Sources

Due to the limited historiography of this subject, the majority of the evidence for this thesis is derived from primary sources. A significant amount of evidence is taken from the principal parliamentary debates on capital punishment, government publications, notably the report of the Royal Commission on Capital Punishment, and government departmental papers.⁴¹ Although the vast majority of the work on abolition was conducted and discussed by the Cabinet and Home Office, other departments sporadically provided extra evidence and opinions on capital punishment from Britain and other countries. There are many sources drawn from the archives of various professional, religious and campaigning organisations, political parties, the private papers and memoirs of many politicians involved in the debates, published programmes and manifestos written by influential politicians and newspaper and television reports on capital punishment.⁴²

The largest archives of private papers available belonged to members of the NCACP. Gerald Gardiner's papers at the British Library contained many of

⁴¹ The departments include the Cabinet Office, Colonial Office, Dominions Office, Foreign Office, Foreign and Commonwealth Office, Home Office, Law Officers Department, Lord Chancellor's Office, Metropolitan Police Office and Prime Minister's Office.

⁴² The organisations whose archives have been accessed include the British Council of Churches, Police Federation, Prison Officers Association and Mass-Observation.

the most relevant files for this thesis. They were concerned primarily with the activities of the NCACP but also contained many of Gardiner's opinions on capital punishment and the progress of legislation. There is similar material in the archives of Victor Gollancz and Arthur Koestler, both of whom were influential members of the NCACP. Archbishop Michael Ramsey's archive at Lambeth Palace contains a significant number of sources on his opinions and actions on the death penalty. There are equivalent resources available at Lambeth Palace for Geoffrey Fisher, Ramsey's retentionist predecessor as Archbishop of Canterbury. The only other retentionist who retained a significant number of files on capital punishment was Duncan Sandys, who was the only figurehead for the retentionist campaign. R.A. Butler's archive contains a larger number of files on capital punishment than the archives of most other politicians who were prominent on either side of the debate. Yet, in total he retained few relevant sources within his archive. The lack of sources demonstrates that, on the whole, political parties and governments honoured politicians' free votes on abolition by not attempting to persuade them to vote in a certain way. It indicates also that politicians did not discuss their views with or seek inspiration from others. This supports this thesis' argument that politicians adhered to the Burkean principle of using their own judgements when voting on issues rather than following the opinions of others.

There have been a few restrictions within certain archives that have prohibited access to important sources. Roy Jenkins' papers, which are held at the Bodleian Library in Oxford, are currently being catalogued and, therefore, are inaccessible. The papers of Sir Hartley Shawcross, the staunchly abolitionist Attorney General during Clement Attlee's premiership, and Sydney Silverman, arguably the pre-eminent abolitionist politician after the Second World War, are both held privately and have proved to be inaccessible. These three were amongst the most vocal abolitionists within Parliament and access to their archives would have benefitted this thesis. The papers of a number of other politicians who were prominent within the capital punishment debates have been accessed for this thesis. Although some provided valuable sources, most of the archives had very few, if any, files on capital punishment. The archives of James Callaghan, James Chuter Ede, Quintin Hogg, William Jowitt, Gwilym Lloyd George, David Maxwell Fyfe and Frank Soskice contained either very few or no

files on capital punishment, despite the prominent role of these politicians within the debates. It is reasonable to expect that these were the politicians who were most likely to have kept files on capital punishment, as they were all either Home Secretaries or Lord Chancellors during key moments of the debates. The exception to this was Hogg, who was especially vocal within the debates throughout the period and was the shadow Home Secretary when Harold Wilson's Labour government tabled the resolution to make abolition permanent in December 1969. He later became Lord Chancellor. This absence of material from their archives again supports the point that politicians' free votes on abolition were deliberately preserved.

Some of the gaps within the private papers of the prominent politicians are filled partially by their published memoirs and autobiographies. These are more subjective than private papers as they have been written to present the author in a certain light, with some aspects of the history overemphasised and other areas omitted. However, they do provide the best insight into the opinions and actions of many of these protagonists. The research for this thesis has engaged most closely with the publications by Roy Jenkins, R.A. Butler and Jim Callaghan. The other key politicians who published memoirs did not discuss capital punishment in great detail. This indicates again that capital punishment was not a party political issue about which there were likely to be many interesting anecdotes.

The Conservative and Labour Party archives include some discussion of capital punishment, although they contain fewer sources on capital punishment than Gardiner's and Sandys' papers. Although there was a strong party identity amongst the abolitionists and retentionists, it is unsurprising that there was limited discussion of capital punishment recorded by parties, as politicians were generally afforded a free vote on the subject. There was more discussion of capital punishment within the Conservative Party's archive than within Labour's. Again, this is not surprising. The vast majority of Labour Party politicians supported abolition and, with the exception of Attlee's government, their leadership concurred with this opinion. There was no need for the Party's leadership to attempt to persuade its members to support abolition through any forum other than parliamentary debates. The Labour Party, therefore, did not need to exert much pressure on their MPs to convince them to support abolition.

They did not have the same luxury within the House of Lords, though they did not appear to have made any determined attempts to appeal to the retentionist peers. The retentionists dominated the House before the Life Peerages Act enabled the appointment of a number of liberalising, abolitionist Lords. On the other hand, the retentionist Conservative leaders did attempt occasionally to persuade a number of their MPs to support capital punishment when the debates assumed a more party political nature. This occurred twice, first in 1956 during the passage of the Homicide Act and then in December 1969 when the Labour government attempted to make abolition permanent before the Murder (Abolition of Death Penalty) Act's five-year experimental period of abolition had elapsed. These efforts generated a greater volume of sources than those produced by the Labour Party, which did not need to persuade its members to support abolition. The Conservative leadership's efforts in 1956 and 1969 to persuade their abolitionist members to support retention demonstrates that the abolitionist cabal within the Party was recognised to be large enough to produce an abolitionist victory in the Commons, even whilst there was a retentionist Conservative government.

This thesis would benefit from research in constituency archives to ascertain further the extent to which MPs were influenced by constituents' opinions. By examining the MPs' constituency surgery files and newsletters, it would be possible to analyse the manner in which they attempted to persuade their constituents that it was correct for them and their fellow politicians to vote on capital punishment according to their own judgements rather than public opinion, if indeed they did attempt to persuade them of this at all. These archives would also shed further light on the MPs' backgrounds and religious beliefs. Unfortunately, during the study for this thesis there has been insufficient time to conduct this research. It is, though, an area for further research beyond this thesis.

This thesis does not examine the published treatises on abolition that were written by abolitionist campaigners, although it recognises their significance in forming part of the NCACP's campaigning strategy. There were no equivalent publications in support of the retentionists' case, as the retentionists lacked the support and finances to publish such material. Unlike the abolitionists' campaign, the retentionists' rather humble campaign was out of keeping with the

liberalising, agitating movements of the period, such as the Campaign for Nuclear Disarmament (CND). These texts can be categorised as both an attempt to inform public opinion and as an expression of public opinion. They are examined in the following chapter as part of the NCACP's campaign.

Structure

This argument is presented within four main chapters. Chapter One examines the place of public opinion within the capital punishment debates. Chapter Two identifies the collective identities of the retentionist and abolitionist politicians. Chapters Three and Four analyse the retentionists' and abolitionists' arguments and beliefs respectively. The thesis has been structured in this manner in order to ascertain first what influence public opinion had within the capital punishment debates before analysing the politicians' arguments and beliefs in order to explain why the death penalty was abolished. The role of public opinion is examined first in order to explain why the majority of politicians were willing to vote against the desire of the electorate.

Chapter One, titled "Marginalising the mob: the influence of public opinion within the capital punishment debates", provides an original framework for understanding politicians' interpretations of public opinion after the Second World War, which adds to the recent historiography of the subject. It recognises that the abolitionists split the public into two groups, which were labelled the informed public and uninformed public. Many politicians' arguments in parliamentary debates adhered to this division of the public. However, this chapter explains that there were actually three identifiable groups within the political discourse on public opinion: expert, informed and uninformed. The retentionists cited opinion polls as the representation of the popular will. The abolitionists decried these as representing irresponsible, uninformed opinion, and instead claimed that the loosely defined informed public was more important to the political process. Expert opinion, which was not explicitly separate from informed opinion within the political discourse on public opinion, could be found to support both cases. However, all public opinion was marginalised from the votes, with MPs following their own consciences in reaching their judgements. An analysis of MPs' votes during the capital punishment debates demonstrates that they rarely changed their minds even after receiving new evidence, reports

and statistics. This analysis of the use of public opinion within the capital punishment debates and this division of the public into three groups are original contributions to the historiography of both the abolition debates and public opinion.

This thesis provides an original examination of the demography of the politicians involved in these debates within Chapter Two, titled “Who were the retentionists and abolitionists?”. This chapter is based upon the database of MPs’ votes. It identifies that the Conservative politicians who were born after 1920 were more likely to support abolition than were their older Party colleagues, as were the vast majority of Labour MPs of any age. The characteristics of this younger generation are analysed in part through a study of Annan’s *Our Age*. This chapter is the first academic attempt to identify the retentionists and abolitionists beyond the recognition of the general party split, by which most Conservatives voted for retention and most Labour MPs for abolition, and beyond the highlighting of a few key actors. In doing so, this chapter creates a better understanding of the collective identities of the retentionists and abolitionists, thus providing invaluable evidence for the explanation of why politicians either supported or opposed the death penalty.

Chapters Three and Four, titled “The abolitionist case” and “The retentionist case”, are structured identically to allow a straightforward comparison between the two. The names for these chapters are inspired by *The Conservative Case* and *The Labour Case*, written by Quintin Hogg and Roy Jenkins respectively. Both were published by Penguin before the 1959 general election and have been useful for this thesis. Both chapters are based on four questions, the answers to which help to explain why capital punishment was abolished. The questions examine how the abolitionists and retentionists argued their cases, why their proponents either supported or opposed abolition, whether the abolitionists and retentionists could be seen as socially liberal or socially authoritarian respectively, and finally why the abolitionists succeeded and the retentionists failed. This examination draws upon the evidence from the database of MPs’ votes that was analysed in Chapter Two. Although the abolitionists’ and retentionists’ arguments have been examined previously within the historiography, they have not been appreciated within the context of secularisation. This thesis uses Christie Davies’ framework of moral arguments

diminishing in influence and being replaced by causalist arguments.⁴³ This separation of the arguments allows them to be examined in more analytical depth than has been achieved previously within the historiography and enables the impact of secularisation to be appreciated fully. As a result, this thesis arrives at an original conclusion for the success of the abolitionists' arguments over those of the retentionists based upon the dominance of the causalist issue of deterrence within the parliamentary debates at a time when moral arguments were becoming less persuasive.

The conclusion to this thesis draws together the assertions and analysis within this thesis to explain why capital punishment was abolished for murder. Having achieved this, it looks beyond the period analysed within this thesis to examine briefly the implications of this research for the understanding of later British and foreign abolition debates. It outlines some broader historical issues to which this thesis has added and identifies areas for further research.

This thesis engages with the principal themes from the context in which capital punishment was abolished, which were liberalisation, secularisation, increasing engagement with opinion polls and two periods of rising crime rates. The desire to liberalise British society after the Second World War encapsulated abolition. The increasing legal and political secularisation, which inspired the Hart/Devlin debate into the right of the state to legislate on matters of private morality, was influential within this liberalisation.⁴⁴ There were two periods where incidents of violent crime increased. The first followed the end of the Second World War in late 1940s. The second began in the late 1950s and continued throughout the 1960s, when society was perceived to be more permissive and affluent. The rising crime rates were an important aspect of the context for the capital punishment debates and were referred to frequently by politicians. The increasing engagement with opinion polling required politicians to justify their neglect of public opinion, in part to ensure that capital punishment did not become an issue on which the electorate decided how to vote. This final theme is examined in the following chapter.

⁴³ Davies, *Permissive Britain*, 4-8.

⁴⁴ Patrick Devlin, *The Enforcement of Morals* (London: Oxford University Press, 1965); Hart, *Law, Liberty and Morality*.

Chapter One: Marginalising the mob: the influence of public opinion within the capital punishment debates

On 22 July 1948, Sydney Silverman rose to address the House of Commons after the Lords had destroyed the last scraps of his attempt to abolish capital punishment.⁴⁵ On numerous occasions the debate focused upon public opinion. Silverman was clear on this matter:

Something has been said about public opinion. There is a difference between rule of the people and rule of the mob. It is democracy that we believe in; not "mobocracy." Here [the Commons] is the forum of public opinion; here is where decisions have to be made and taken, and the right way to take them is the way in which we took a decision on 14th April; each hon. Member relying on his own conscience in the end in making the choice he has to make, giving effect to the argument both ways.⁴⁶

Silverman used the imagery of the 'mob' to dismiss the influence of public opinion from politicians' judgements. With one exception, every vote on abolition in the Commons was successful.⁴⁷ This abolitionism was at odds with the opinion of the electorate. Though Silverman put his rejection of the electorate's opinion in rather bolder terms than many of his colleagues, it struck at the heart of much of the criticism directed towards the use of popular will within parliamentary debates. For Silverman and many other politicians, the general public was too uninformed and sentimental to be permitted influence in legislative affairs.⁴⁸ Politicians would be neglecting their duty if they allowed the 'mob' such influence.

In 1948, the opinion poll was in its infancy in Britain. The Conservative Party had begun to experiment with this new tool following its defeat in the 1945 general election. However, many politicians were unconvinced of the efficacy of

⁴⁵ The Lords rejected the government's amendment to the Criminal Justice Bill retaining the death penalty for certain murders, having previously opposed Silverman's own abolition amendment: HL Deb 2 Jun. 1948 vol. 156 cc. 102-78; HL Deb 20 Jul. 1948 vol. 157 cc. 1004-73.

⁴⁶ HC Deb 22 Jul. 1948 vol. 454 c. 744.

⁴⁷ An abolition amendment to the government's resolution to take note of the Royal Commission's report in February 1955 was defeated: HC Deb 10 Feb. 1955 vol. 536 cc. 2064-183.

⁴⁸ Sentimentality was a common theme within the debates: Langhamer, "The Live Dynamic," 429-32; Manton, "Labour Governments and Capital Punishment," 30.

seeking uninformed public opinion on matters of policy.⁴⁹ In recent years, historians have examined the advent of polling and M-O in Britain, notably Laura Beers, Claire Langhamer, Joe Moran, Mark Roodhouse and Andrew Taylor.⁵⁰ They have studied the roots of opinion polling in Britain and highlight the limited impact of these polls upon British politics from their inception through to the 1960s. M-O and the polling companies conducted their research in part to increase the public's involvement in politics and improve the state of Britain's democracy.⁵¹ These historians have established a rich historiography of the surveys of public opinion and the manner in which politicians used them. They provide an important context for this chapter. However, the surveys represented only Silverman's 'mob'. Politicians identified groups within the public, categorised as being either uninformed, which was the 'mob', or informed. This division of the public has not been recognised within the recent historiography, which has focused upon the surveys as the representation of public opinion. This chapter examines politicians' uses and interpretations of the various public opinions. The conclusion drawn from this, however, is consistent with that of the existing historiography, which is best summarised by Beers, who explains that politicians adhered to the Burkean principle of representative democracy.⁵² Politicians quoted a form of public opinion where convenient for their arguments. Their judgements, though, were not influenced by any form of public opinion.

The climate of opinion towards abolition was perceived to vary between the different groups within the public. The polls presented an unequivocal opposition to abolition from the majority of the electorate. This opposition never diminished throughout this period. Politicians could not deny that most British people wanted the death penalty to be retained as the punishment for murder. Many politicians did challenge the relevance of this mass opinion, though, over that of the apparently informed public. The abolitionists were largely successful in claiming that the majority of the informed public supported abolition. Both the abolitionists and retentionists were able to cite supporting opinions from experts

⁴⁹ Beers, "Whose Opinion?," 178-9.

⁵⁰ Moran, "Mass-Observation," 827-51; Roodhouse, "Fish and Chip Intelligence," 224-48; Taylor, "The Record of the 1950s is Irrelevant," 81-110.

⁵¹ Beers, "Whose Opinion," 185; Roodhouse, "Fish and Chip Intelligence," 225.

⁵² Beers, "Whose Opinion," 205.

in the field, which had the effect of nullifying both sides' arguments on this particular point. The majority of politicians viewed informed opinion as superior to that of the uninformed. Therefore in per capita terms, the informed public's support for abolition had a disproportionate impact upon politicians' perception and presentation of the climate of opinion towards abolition within British society.

The politicians' hesitancy to engage with popular, uninformed opinion was in part the result of the infancy of psephology as a scientific discipline. Opinion polling had yet to become sufficiently sophisticated during this period to identify the issues on which the public based their votes during elections. For this reason, politicians were unsure whether capital punishment was an electoral issue. Many were concerned, though, that it should not be encouraged to become one. This can be seen as another reason for the negation of the electorate's opinions within the parliamentary debates, as many politicians did not want to encourage the population to decide which party to vote for based upon an MP's opinion on capital punishment. This would have introduced a party political element to the issue, which would have threatened the continuance of the MPs' free vote during parliamentary debates on abolition, thus reducing the politicians' ability to vote according to their consciences.

There was no set definition of what, and more importantly who, constituted the public or its opinion. Those looking to gauge public opinion would read newspaper articles, letters pages and comment sections, pay attention to campaigns, count the signatures on petitions and, in the view of Silverman at least, listen to politicians' speeches. Additionally, politicians used constituency correspondence to measure opinion. All of these, plus the poll, could claim to represent the opinion of the public without defining the public that they were representing. Politicians cited all of these expressions of public opinion, though some were used more frequently than others. Historians, therefore, need to consider all of these sources to fully appreciate what was interpreted to be public opinion and politicians' reactions to it.⁵³

The differentiation between the uninformed and informed public was undefined. It often hinged on whether a person or group was deemed to be

⁵³ Jon Lawrence, *Electing Our Masters: The Hustings in British Politics from Hogarth to Blair* (Oxford: Oxford University Press, 2009).

‘responsible’, a concept that was mentioned frequently during the debates.⁵⁴ This, again, was an undefined term that was used liberally by politicians. Without a given definition, one is left to presume that politicians judged a person’s responsibility and status as part of the ‘informed’ public on traditional qualifiers for discrimination and division within British society, notably class, education, occupation and gender. James Thompson notes that the public was defined in a similar manner in the decades before the First World War. One’s inclusion within the public in that period was based upon enfranchisement and active engagement in debates.⁵⁵ The division within the period studied for this thesis drew upon the concept of what could be termed a responsible class. George Rogers used this concept in the Commons debate on 16 February 1956 and Stuart Hall described the role of pressure groups as providing evidence to ‘sway “responsible opinion”’.⁵⁶ These are not unique examples from the parliamentary debates and the historiography.

The labels uninformed and informed were used primarily by the abolitionists to justify their arguments and criticise the retentionists’. They dismissed surveys of public opinion as representing only the uninformed public and perceived that those who were deemed to be responsible were therefore informed on the matter and, as a result, supported abolition. Many abolitionists claimed that the opinions of the informed were the most important. The NCACP compiled for the Home Secretary two memorials of persons favouring abolition, targeted only at people from this informed group, such as head teachers and Fellows of the Royal Society.⁵⁷

However, the uses of informed opinion indicate that politicians identified three groups within the public. The type of informed opinion targeted by the NCACP’s memorials can be categorised as non-expert. This opinion was practically immeasurable, despite the NCACP’s attempts to do so, as there was no definition of who qualified for the group. The opinions of experts in capital punishment, however, were more tangible. Politicians and campaigners often

⁵⁴ HC Deb 16 Feb. 1956 vol. 548 cc. 2536-655; HC Deb 22 Jul. 1966 vol. 732 c. 1106.

⁵⁵ Thompson, *British Political Culture*, 28-83; 244.

⁵⁶ HC Deb 16 Feb. 1956 vol. 548 cc. 2596-7; Hall, “Reformism and the Legislation of Consent,” 4.

⁵⁷ Lambeth Palace Library, London, Papers of Archbishop Ramsey (Ramsey Papers), Ramsey 16 f. 156, Letter from Gardiner and Gollancz to Archbishop Ramsey, 5 Jul. 1962.

sought the opinions of those who were either involved in a stage of the law enforcement process or had studied capital punishment academically. The most significant survey of such opinion was the Royal Commission on Capital Punishment. For centuries, Royal Commissions had been a standard method for the state to measure public opinion, receiving evidence from experts and interest groups.⁵⁸ Politicians included experts within the informed public. Yet, although most groups of experts were found to favour abolition, a few tended to support retention, notably the police and prison officers. This differed from the abolitionism that was widely perceived to be prevalent amongst the informed public. Both abolitionists and retentionists cited support from experts during the capital punishment debates. Their opinions, therefore, require a separate category for examination. The first three sections of this chapter are structured around these uninformed, expert and informed categories of public opinion. The final section examines those who sought to inform public and political opinion. Through this division, it is possible to analyse how politicians used, and ultimately dismissed, the various guises of public opinion.

Politicians did not rely solely upon external agencies, such as polling organisations, to provide an account of public opinion that supported their arguments. They manipulated the concept of the public and its opinions through the informed and uninformed categories to create a public opinion that suited their argument. James Chuter Ede used uninformed opinion to support the Labour government's retentionist position in 1948 and informed opinion to justify his own abolitionism in 1956.⁵⁹ Yet, none of these had a significant influence upon politicians' judgements. Public opinion affected the presentation rather than the development of policy.⁶⁰ This chapter demonstrates that politicians based their votes upon their own opinions. For this issue of conscience, politicians insisted that they be allowed to vote unfettered from the influences of public opinion or party pressure. They felt that they alone were sufficiently responsible and informed on the issue to make a judgement independently of others' opinions.

⁵⁸ T.J. Cartwright, *Royal Commissions and Departmental Committees in Britain: A Case-Study in Institutional Adaptiveness and Public Participation in Government* (London: Hodder and Stoughton Educational 1975), 5-6; 32-45; 102.

⁵⁹ HC Deb 15 Jul. 1948 vol. 453 c. 1528; HC Deb 16 Feb. 1956 vol. 548 c. 2558.

⁶⁰ Beers, "Whose Opinion," 196.

Politicians positioned themselves as the most informed group within society. They demanded and received a free vote for debates on abolition.⁶¹

The database of votes compiled for this thesis identifies that only 146 of the 1,304 politicians who voted in an abolition debate between 1947 and 1969 changed their views on capital punishment, despite the increasingly publicised opinions of the various groups within society. This represented eleven per cent of the politicians who took part in a debate on abolition. A number of MPs praised the insights of experts into the matter, claiming that their views were more important than others'. Yet, such praise did not result in a change of voting patterns. MPs were reluctant to relinquish their independence or to be swayed by any other body of opinion, regardless of who made up that body. This was in keeping with the nature of the British political system. There was little difference in the use of public opinion between politicians within the House of Commons and the House of Lords. As Beers has explained, many MPs subscribed to the Burkean principle that they were elected to use their judgement on political issues rather than follow popular consensus.⁶² This chapter, therefore, focuses upon parliamentary discourse. Silverman may have been referring to the uninformed public when he spoke against a 'mobocracy', but this dismissal extended to all non-politicians.

Uninformed Opinion

In an interview with ITN news in April 1961, Victor Gollancz explained that:

The, what I would call, informed opinion is, in my view, overwhelmingly in favour of abolition and people not so informed, people that don't know the arguments one way or the other, people who respond to rather more primitive emotions are always behind informed opinion. You can't expect anything else.⁶³

This attitude was not uncommon within the political debates on the death penalty. It was fortified when Gallup asked its respondents in February 1956 whether they were well acquainted with the subject of capital punishment. Sixty-

⁶¹ HC Deb 9 Feb. 1956 vol. 548 cc. 1813-4.

⁶² Beers, "Whose Opinion," 205.

⁶³ "Anti Capital Punishment Campaign (Newsfilm Online)," 18 Apr. 1961, <http://service.nfo.ac.uk>, [accessed 9 Jul. 2010].

five per cent said no.⁶⁴ Furthermore, every time Gallup asked a question on abolition, between five and seventeen per cent of respondents said that they did not know whether they supported or opposed the death penalty.⁶⁵ As Langhamer has shown, M-O found that people did not understand the capital punishment debates, with some women suggesting that the questioner wait until their husbands returned home.⁶⁶ *The Times* complained that ‘the opinion polls still have to go on confessing that there persists in Britain a not small number of men and women who refuse to know anything.’⁶⁷ Opinion polls were recognised as representing those who were uninformed both on the issue of abolition and more generally. They were criticised widely by politicians and commentators, who used this to justify their negation of popular opinion.

Discussion of capital punishment appeared frequently in newspapers at various stages throughout this period, usually coinciding with major parliamentary debates and notable executions. A few opinion polls were commissioned to complement this coverage. For instance, between 1947 and 1969, the year that capital punishment was permanently abolished for murder, there were twenty-four Gallup polls on various issues concerning the death penalty (see Figure 1.1, which depicts only those polls that asked a question about abolition). The conclusion from the polling data was unequivocal. The majority of the British public supported the execution of murderers. Every time Gallup asked if capital punishment should be abolished or retained during this period, between sixty-one and seventy-three per cent of respondents favoured retention. When the question included retention for certain murders as well as for all, the total support for capital punishment rose to between sixty-nine and eighty-nine per cent.⁶⁸

Figure 1.1 indicates that the debates in Parliament had an effect on the shape of uninformed public opinion. The greatest support for abolition was in March 1956, when thirty-eight per cent of respondents favoured this reform. The

⁶⁴ George Gallup, *The Gallup International Public Opinion Polls: Great Britain 1937-1975* (2 vols) (New York: Random House, 1976), 370.

⁶⁵ Gallup, *The Gallup International Public Opinion Polls*.

⁶⁶ Langhamer, “The Live Dynamic,” 441; Mass-Observation Archive, University of Sussex Special Collections, SxMOA1/2/72/1/F, Capital Punishment: A Survey specially conducted for The Daily Telegraph, May 1948.

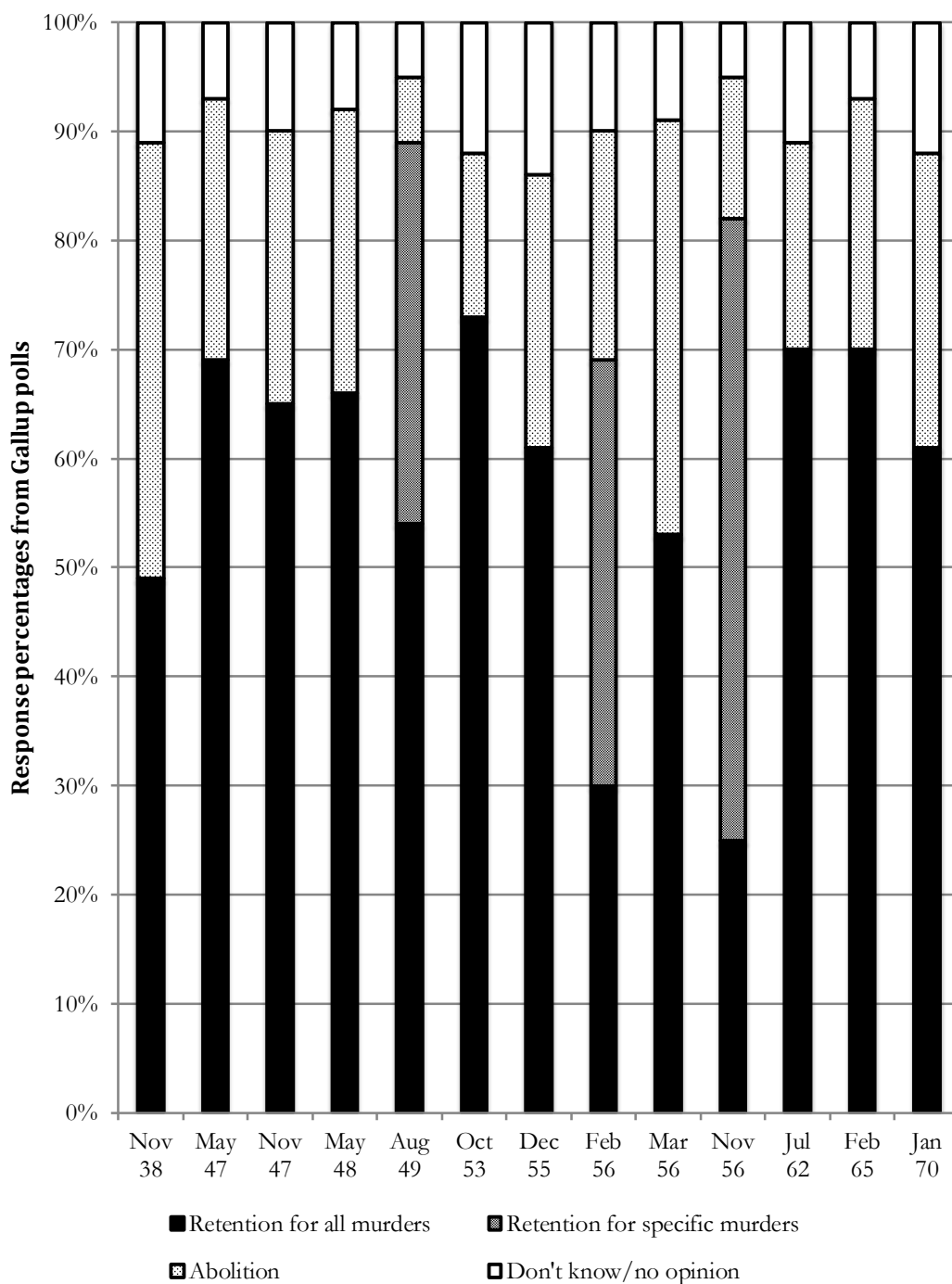
⁶⁷ *The Times*, 3 Feb. 1950, quoted in Moran, “Mass-Observation,” 842.

⁶⁸ Gallup, *The Gallup International Public Opinion Polls*, numerous pages throughout both volumes.

Commons had voted that month for Sydney Silverman's abolition Bill, a few weeks after defeating the Conservative government's motion to retain the death penalty but modify its application. These debates, along with the Royal Commission's report and the unpopularity of the executions of Timothy Evans, Derek Bentley and Ruth Ellis, can be presumed to have had some influence on the outcome of the opinion polls in finding greater favour for degrees of murder in November 1956 than it did in August 1949.⁶⁹ Furthermore, it is unsurprising that the composition of the questions asked by pollsters reflected contemporary political events. Respondents were only asked for their views on retaining the death penalty for certain murders at times when Parliament debated this reform. This did not result, though, in any significant shifts in public opinion.

⁶⁹ For more information on Evans', Bentley's and Ellis' cases, see: Twitchell, *The Politics of the Rope*, 194-203.

Figure 1.1 Gallup poll results for capital punishment 1938-70



Gallup, *The Gallup International Public Opinion Polls*. The May 1948 and March 1956 polls asked whether capital punishment should be suspended for five years or retained. The August 1949, February 1956 and November 1956 polls asked whether capital punishment should be retained for some or all murders or abolished completely. The rest of the polls asked only whether capital punishment should be retained or abolished. The polls in August 1962 and November 1964 have been excluded from this figure because the responses for retention and don't know/no opinion were grouped together and cannot be separated. The polls from November 1938 and January 1970 have been included to indicate the state of public opinion outside the chronological limits of this chapter.

It is possible to get an impression of the impact of mass public opinion on MPs by comparing the outcomes of the divisions in the House of Commons that closely followed the publication of opinion polls on capital punishment. There were two opinion polls in the year before the April 1948 vote on the abolition amendment to the Criminal Justice Bill. These votes registered 69 and 65 per cent support for the retention of capital punishment. The outcome of the vote was that 245, or 52.5 per cent, of MPs supported abolition, whereas 222, or 47.5 per cent, opposed it. The Conservative government's motion to retain the death penalty but amend its application in February 1956 was in the same month as an opinion poll that asked respondents for their view on retaining capital punishment for some or all murderers. In total, 69 per cent wanted capital punishment for at least some murderers. Two months earlier, another poll returned 61 per cent support for retention. Yet again, though, the retentionists lost the debate in the Commons, gaining 262 votes, or 47 per cent, compared to the 293, or 53 per cent, who opposed the motion. They voted in the knowledge that, in the following month, the Death Penalty (Abolition) Bill would provide them with the chance to abolish capital punishment. In that month, another poll returned 53 per cent support for retention, but yet again the Commons voted differently. There were 286 abolitionists, comprising 52 per cent of the MPs who took part in this division, compared to 262 retentionists, who made up the other 48 per cent.

The debates in 1948 and 1956 were separated by three general elections. It is interesting that, despite the changes in both the personnel in the Commons and the party in government, the proportion of support for abolition during these three divisions was always between 52 and 53 per cent. This indicates that neither the opinion polls nor any other external factors had caused a significant shift in MPs' opinions on capital punishment. There was a retentionist vote in February 1955 that was caused by a more retentionist Conservative presence in the Commons than existed after the 1955 general election. Importantly for this point, this vote did not follow closely a published opinion poll. The third reading of the Homicide Bill in February 1957 did result in 217, or 62 per cent, of MPs voting for retention, albeit with capital punishment limited to certain murders. One hundred and thirty-one, or 38 per cent, voted against the Bill. Four months before this division, a poll returned 57 per cent support for retention for only certain murders. Although this appears to indicate that the poll might have had some

influence on the outcome of this debate, it is in fact the result of the Conservative government applying their whips during this Bill, thus manipulating its outcome by removing the MPs' free vote on this matter. This vote, therefore, is not evidence for the influence of opinion polls on MPs' decisions.

When the Commons debated the Murder (Abolition of Death Penalty) Bill in 1964 and 1965, the political environment was more conducive for the success of this Bill through both Houses of Parliament. There were a greater number of younger Conservative MPs who were more sympathetic to abolition, the Life Peerages Act 1958 had resulted in more reformist peers being appointed to the House of Lords and there was for the first time an abolitionist government. These factors all contributed to higher levels of support in Parliament for abolition. In December 1964, the second reading of the Bill was passed by 355 votes to 170, or 68 per cent to 32. In July 1965, the third reading passed by 200 votes to 98, or 67 per cent to 33. In between these votes, in February 1965, another opinion poll found 70 per cent support for retention. As with the votes in 1948 and 1956, the proportions in favour of abolition and retention were very similar across both debates.

There were a number of factors that influenced the outcome of these debates, including demographic shifts within Parliament and government action, notably the Conservative government applying the whips during the Homicide Bill. The factors that affected politicians' beliefs on the death penalty are examined in the following three chapters of this thesis. It is apparent, though, that the results of opinion polls did not greatly influence MPs' decisions.

The percentages in the polls offered no information about the strength of feeling or the cause of the respondents' opinions, or indeed how well they understood the issue. When retentionists claimed support from the public based upon polling data, the abolitionists dismissed their evidence. For instance, after Forbes Hendry claimed, during the 5 March 1965 debate on the Murder (Abolition of Death Penalty) Bill, to have canvassed his constituents' opinions on capital punishment through a private poll, Dr David Kerr retorted: 'The whole idea of the hon. Member for Aberdeenshire, West knocking diligently at door after door and demanding of his constituents an answer to a question which I

cannot conceive will evoke an intelligent answer, is really almost derisory.⁷⁰ Kerr's stinging criticism was typical of many politicians who portrayed uninformed opinion as both unintelligent and insignificant. The proponents of such opinion had no response to refute these accusations.

Callaghan's and Ross' 1969 cabinet memorandum on the permanent abolition of capital punishment for murder demonstrated that public opinion did not concern the abolitionists within Harold Wilson's government. Their only mention of public opinion was to state briefly that the House of Commons was 'ahead' of it. They provided a one-paragraph summary of the recent opinion polls in the appendix. This was considerably less than the two pages in the appendix afforded to the recent crime statistics, despite Callaghan and Ross writing that the abolitionists' case should not 'stand or fall on statistics'. It is clear, therefore, that public opinion did not concern the abolitionist Labour government during their preparations for the debate on the resolution to make abolition permanent. Callaghan's and Ross' memorandum outlined the government's and abolitionists' beliefs plus other factors that might be pertinent for a debate on the subject, notably crime statistics. That Callaghan and Ross wrote this in 1969, by which point opinion polling was more prominent than in 1947, emphasises that mass public opinion had little significance within the abolitionists' arguments or beliefs.⁷¹

One of the reasons for the lack of influence of opinion polls on politicians was that there were methodological problems with their sampling.⁷² Yet despite these issues, retentionist politicians and campaigners continually cited the support of uninformed public opinion within their arguments.⁷³ The abolitionists' arguments were supported by evidence from foreign countries that had abolished the death penalty and, after 1953, by the Royal Commission's conclusion that capital punishment offered no discernibly unique deterrent to murder. In particular, the abolitionists cited the examples of abolition from Scandinavia. Their uses of the Scandinavian countries as examples are examined in more detail

⁷⁰ HC Deb 5 Mar. 1965 vol. 707 c. 1795.

⁷¹ TNA:PRO, Confidential memorandum by the Secretary of State for the Home Department and the Secretary of State for Scotland on the Permanent Abolition of Capital Punishment for Murder, CAB/129/141, C(69) 48, 6 May 1969.

⁷² Roodhouse, "Fish and Chip Intelligence," 234-5.

⁷³ HC Deb 15 Nov. 1956 vol. 560 c. 1173.

in this thesis' chapter on the abolitionist case. The retentionists lacked this evidence and thus relied on the surveys. At a time when political parties were experimenting increasingly with polling, it is not surprising that some MPs attempted to use this data during these debates. The retentionists' lack of evidence to support their arguments and assertions, though, was a major factor behind their defeat in Parliament. This issue is examined in greater detail within this thesis' chapter on the retentionist case.

The retentionists did not identify the public's retentionism purely from these surveys. During the Lords debate on the Death Penalty (Abolition) Bill, the Marquess of Salisbury commented that, with just one exception, every letter in 'the largest postbag I have had on any subject in a great many years' opposed abolition. Although Salisbury acknowledged that these letters were not conclusive, his use of them as evidence of public opinion was attacked by Lord Silkin:

I have no doubt that he [Salisbury] has a very big postbag at all times. But when one takes the number of people who have taken the trouble to write to him, I do not think he would claim that that has any special significance. In judging of this matter, have we not to do the best we can on the assumption that public opinion is not very vociferous on this issue, and that Gallup Polls change so rapidly that they can hardly be relied upon at any particular moment?⁷⁴

Silkin dismissed the relevance of the public's opinions by relating it to the perceived unreliability of polling data. For Silkin, there was no measure of uninformed public opinion that should influence politicians' judgements. Although the Lords voted against the Bill, abolitionists such as Silkin were able to reject the value of uninformed public opinion for matters of policy and conscience.⁷⁵ Although both the public's and constituents' letters were mentioned in a few debates on capital punishment, they did not provide a convincing reason for politicians to alter their position on abolition. They were treated in the same manner as the polls.

The public opinion that was pronounced in newspaper comment sections received similar disdain from politicians. It was not unusual for politicians and

⁷⁴ HL Deb 10 Jul. 1956 vol. 198 cc. 822-3; 834.

⁷⁵ Beers, "Whose Opinion?," 196.

commentators to criticise newspapers for sensationalising murder cases and executions. However, published letters were rarely discussed in Parliament. One of the few occasions that such letters were cited was during the Lords debate on the Murder (Abolition of Death Penalty) Bill. Lord Francis-Williams stated:

All my life I have been a newspaperman, concerned inevitably, because of the interest that is aroused when publicised executions are afoot, with the emotions, and often the hysteria, which surround such affairs. The emotions as they are evidenced by the letters that flow into newspaper offices on such occasions are not pleasant emotions.⁷⁶

Francis-Williams attacked emotion to dismiss the opinions of the contributors. Although these letters were used infrequently during debates, the views expressed towards similar indicators of public opinion imply that Francis-Williams would not have been alone in criticising comment sections for representing uninformed opinion.

Politicians' rejection of uninformed public opinion also came from their uncertainty about whether the electorate considered a party's or individual's stance on capital punishment when deciding how to vote during general elections. Psephology was in its infancy, meaning that they had no accurate way to gauge the issues that influenced the direction of the electorates' votes. Furthermore, criminal justice policy was not especially politicised until the 1970s.⁷⁷ This position is supported by the fact that politicians were always afforded free votes when they entered the division lobbies on a question on abolition. There were no perceivable electoral gains, therefore, from appealing to or citing mass public opinion in support of an argument on capital punishment. In addition to this, politicians on both sides of the debate made little to no attempt to inform or influence the public about the death penalty. There was one notable exception to this, which was Duncan Sandys' mass petition for retention in the latter half of the 1960s. Politicians were not willing to engage with the public on this issue for fear of it becoming an electoral issue. This desire to avoid abolition becoming an

⁷⁶ HL Deb 19 Jul. 1965 vol. 268 c. 544.

⁷⁷ David Downes and Rod Morgan, "Dumping the 'Hostages to Fortune'? The Politics of Law and Order in Post-War Britain," in *The Oxford Handbook of Criminology*, eds. Mike Maguire, Rod Morgan and Robert Reiner (Oxford: Oxford University Press, 1997), 87-134.

electoral issue was expressed by a number of politicians, including Herbert Morrison during a cabinet meeting in November 1948.⁷⁸ Unsurprisingly, this was a greater fear for Labour MPs than for the retentionist Conservatives, as the latter would expect that they would receive extra support from the public were they to encourage abolition to become an electoral issue. The fact that these retentionists did not attempt to engage with public opinion in any meaningful way indicates, therefore, that politicians from all sides of the argument were unwilling both to take heed of uninformed opinion and to make this a party political issue. By deliberately sidelining the public from the debates, politicians were able to act and vote as they pleased on abolition, regardless of the public's clear opposition to the reform, as they needed not fear any repercussions during general elections.

Although the opinion of the uninformed public did not appear to influence the votes of MPs on capital punishment, they did influence other, more procedural aspects of the debate. For instance, the timing of the abolition debates in 1956, and indeed the formation of the NCACP in mid-1955, followed the widely unpopular execution of Ruth Ellis in July 1955. After Ellis' death, the polls found diminishing support for the execution of women. Gallup polls returned 68 per cent in favour of executing female murderers in August 1949. In December 1955 this had reduced to 52 per cent.⁷⁹ At this time, M-O conducted their second investigation into the death penalty for the *Daily Telegraph*.⁸⁰ It was after this swelling of public comment and interest in the death penalty that the Commons once again debated capital punishment, with Ellis' name mentioned eight times during the first parliamentary debate on the issue after her death.⁸¹ Furthermore, the polls aided the Conservative government in 1956 and 1957 when they introduced their compromise Homicide Bill, which created degrees of murder. The Royal Commission had recommended that a separation of murders was not practical.⁸² However, there was support for this reform from the polls. A Gallup poll in February 1956 returned 30 per cent support for retention for all murders

⁷⁸ TNA:PRO, CAB/195/6, CM 69(48), 8 Nov. 1948.

⁷⁹ Gallup, *The Gallup International Public Opinion Polls*, 205; 361.

⁸⁰ Mass-Observation Archive, SxMOA1/2/72/2-6, Capital Punishment Survey 1956 (multiple files), Dec. 1955 – Mar. 1956; *Daily Telegraph*, 6 Feb. 1956.

⁸¹ HC Deb 16 Feb. 1956 vol. 548 cc. 2536-655

⁸² *Royal Commission on Capital Punishment*, 167-89.

and 39 per cent for limiting capital punishment to certain murders.⁸³ The government used this support to justify proceeding with the Bill, for which they used their whips to secure its passage through Parliament.⁸⁴

Public opinion provided an opportunity for the retentionists to remind abolitionist MPs that they were acting in defiance of the electorate on occasions when they complained that, having voted for abolition, the Lords dissented against their will.⁸⁵ Such arguments, though, attracted criticism. An article in *The Spectator*, published a few days after the publication of the M-O survey in the *Daily Telegraph*, criticised politicians whose judgements on capital punishment were based upon public opinion. Titled “Burke or Gallup”, it focused its ire upon the Conservative retentionists who, it argued, quoted public opinion because their case for hanging had ‘no merits’. It concluded by stating that the ‘argument from public opinion has neither moral nor intellectual validity...Perhaps it is too much to hope that Conservatives should pay as much attention to Edmund Burke as they do to Dr. Gallup.’⁸⁶ This criticism, however, only applied to the minority of MPs. The majority were unconcerned about voting against the will of the electorate. Politicians’ open criticism of mass public opinion within parliamentary debates indicates that they anticipated few if any negative repercussions as a result of these statements. *The Spectator* article demonstrates that there was support for such views. The public opinion that was expressed through the polls did not persuade the opponents of capital punishment to change the direction of their votes. MPs persisted in operating within the Burkean framework of representative democracy.⁸⁷

Expert Opinion

The Royal Commission on Capital Punishment, which was formed following the failure of the abolition amendment to the Criminal Justice Bill in 1948, was the most significant survey of expert opinion during the abolition debates. The commissioners heard evidence from 118 witnesses during their investigation. Of

⁸³ Gallup, *The Gallup International Public Opinion Polls*, 369.

⁸⁴ TNA:PRO, CAB/128/30, C.M. 55 (56), 31 Jul. 1956.

⁸⁵ HC Deb 15 Jul. 1948 vol. 453 c. 1434.

⁸⁶ “Burke or Gallup?,” *The Spectator*, 10 Feb. 1956, 4.

⁸⁷ Beers, “Whose Opinion?,” 199.

these, a third were from the police and prison services, a quarter were from the medical profession and a fifth were from the legal profession.⁸⁸ Through focusing their interest in this way, the commissioners were targeting evidence from those who were directly involved in the process of putting somebody to death. The entire procedure was covered, from the murderer's capture, through their trial and into their incarceration and medical examination. The Commission did hear evidence from Albert Pierrepoint, Britain's most famous executioner, though his evidence was criticised by Sir Leon Radzinowicz, one of the commissioners, as a 'callous, impertinent and bombastic testimony'.⁸⁹ Clearly, Pierrepoint did not fit the profile of an expert or an informed person.

The commissioners were representatives of groups that the government deemed to be informed on the subject. They came from the academic, medical, legal and political professions as well as the trade unions.⁹⁰ The ten commissioners from these first four professions had an interest and expertise in capital punishment. The inclusion of two trade unionists amongst the twelve commissioners is slightly peculiar, as they were disconnected from the study and procedure of capital punishment. Indeed, trade unions did not take any real interest in capital punishment. There were no resolutions or debates on the death penalty at any Trades Union Congress (TUC) congress during the period from 1947 to 1969.⁹¹ Furthermore, Radzinowicz felt that the two union representatives were not qualified to serve on the Commission.⁹² Their inclusion can be attributed to the fact that it was a Labour government that formed the Royal Commission. It was not unusual for this government to include trade unionists in such investigations, as was the case with the appointment of Frank Wolstencroft, a former president of the TUC, to the Royal Commission on Betting, Lotteries and Gaming.⁹³

In forming the Royal Commission, the government aspired to achieve the ideal situation where the commissioners had no affiliation either to abolition or to

⁸⁸ *Royal Commission on Capital Punishment*, 289-91.

⁸⁹ Leon Radzinowicz, *Adventures in Criminology* (London: Routledge, 1999), 257.

⁹⁰ *The Times*, 29 Apr. 1949.

⁹¹ Trades Union Congress, *Congress Report* (London: Trades Union Congress, 1947-70).

⁹² Radzinowicz, *Adventures in Criminology*, 257.

⁹³ *Royal Commission on Betting, Lotteries and Gaming 1949-51: Report*, Cmnd. 8190 (London: HMSO, 1951); *The Times*, 12 Nov. 1941.

retention. They did, however, need to be recognised as informed, and hopefully expert, individuals. The government realised quickly that it was not possible to find a group of people who would be recognised by the public as being qualified to review the application of capital punishment yet who had no known abolitionist or retentionist beliefs. Instead, they created a balanced Commission comprised of moderate, open-minded abolitionists and retentionists who had not been too vocal about their views on capital punishment.⁹⁴

There was a widely held acknowledgment that Royal Commissions were used to push issues from the political agenda. The capital punishment Commission was no different. Clement Attlee, who was Prime Minister when the Commission was formed in 1949, commented a year after the publication of its report that:

It is, after all, an old tradition that Royal Commissions are set up to bury subjects. Capital punishment seems to be buried rather deep, and so does the subject of betting and gambling.⁹⁵

This sentiment was reinforced by two of the commissioners. Ernest Gowers, the chairman of the Commission, in a letter to Barbara Wootton expressed his disdain at the ‘astonishing force of *vis inertia*’ that permeated the investigation.⁹⁶ Radzinowicz claimed in his autobiography that the Commission was formed in part to delay the debate on capital punishment.⁹⁷ Ede, in forming the Commission, was able to utilise this delaying measure in part because the electorate was not demanding the end of hanging and so would be unlikely to criticise the government over this appointment. However, with a general election looming in 1950, the government was worried about any potential electoral ramifications of the capital punishment debate rumbling on, as most Labour Party MPs were voting against the wills of their constituents. Indeed, various members of the cabinet were concerned that the publication of the Commission’s report could be too close to the 1950 general election.⁹⁸ Although very few politicians would have wanted abolition to become an electoral issue, making the

⁹⁴ TNA:PRO, CAB/195/6, C.M. 69 (48), 8 Nov. 1948;

⁹⁵ HC Deb 30 Nov. 1954 vol. 535 c17.

⁹⁶ Ann Scott, *Ernest Gowers: Plain Words and Forgotten Deeds* (Basingstoke: Palgrave Macmillan, 2009), 161.

⁹⁷ Radzinowicz, *Adventures in Criminology*, 253-4.

⁹⁸ TNA:PRO, CAB/195/6, C.M. 69 (48), 8 Nov. 1948.

cabinet's unease with the timing of the Commission understandable, the Labour MPs' desire for reform had to be placated. This thorough investigation based on expert opinion could largely satisfy both requirements.

Although the Commission was created partly as a device to postpone further political discussion on abolition, its report became essential reading for politicians in Britain and abroad who were engaged in capital punishment debates.⁹⁹ Sir Frank Soskice, Home Secretary from 1964 to 1965, praised the Royal Commission for its thorough research, stating that 'we could not have a higher or more persuasive authority'.¹⁰⁰ Such recognition allowed the Commission's report to become an established expression of expert opinion on capital punishment.

The Royal Commission's terms of reference precluded the commissioners from considering abolition. However, at the end of their primary conclusions they stated that it was the main issue yet to be resolved within the capital punishment debates.¹⁰¹ Indeed, three years after the Commission's report was complete, its chair, Ernest Gowers, published a book explaining how his involvement with the Commission had convinced him to support abolition.¹⁰² This placed an expert opinion explicitly behind the need for further debate on abolition. The report provided greater support for the abolitionists than the retentionists, as it concluded that the unique deterrent effect of the death penalty could not be proved and that there should be no gradation of murders into capital and non-capital offences.¹⁰³ The Conservative government's Homicide Act flouted the latter recommendation and was widely criticised for this, including by the formerly retentionist Lord Chief Justice Hubert Parker, who claimed to have been persuaded to support abolition by the failings of the Act.¹⁰⁴ This evidence from

⁹⁹ Pauline Engel, *The Abolition of Capital Punishment in New Zealand, 1935-1961* (Wellington: Department of Justice, 1977); "Furman v. Georgia: Marshall, J., Concurring Opinion," 29 Jun. 1972, http://www.law.cornell.edu/supct/html/historics/USSC_CR_0408_0238_ZC4.html, [accessed 13 Jan. 2012].

¹⁰⁰ HC Deb 21 Dec. 1964 vol. 704 c. 923.

¹⁰¹ *Royal Commission on Capital Punishment*, 278.

¹⁰² Ernest Gowers, *A Life for a Life?: The Problem of Capital Punishment* (London: Chatto and Windus, 1956).

¹⁰³ *Royal Commission on Capital Punishment*, 274-83.

¹⁰⁴ HL Deb 19 Jul. 1965 vol. 268 cc. 480-1.

experts was more useful as support for the abolitionists' arguments than were the claims of public support for the retentionists'.

However, expert opinion was not solely abolitionist. The Police Federation and Prison Officers Association supported retention. On 14 November 1966, a year after capital punishment had been abolished for murder for an experimental five-year period, Duncan Sandys led a deputation to the Home Secretary of members of these organisations and retentionist politicians. They demanded the restoration of the death penalty for murderers of police and prison officers. This deputation was timed to support Sandys' Early Day Motion for the same cause, which was to be debated the following week.¹⁰⁵ The Commons, in which abolition had become entrenched by this time, rejected this Motion.¹⁰⁶ Furthermore, Sandys was meeting with a Home Secretary, Roy Jenkins, who was committed to abolition. Indeed, Sandys and Jenkins had clashed recently in the Commons over the police and prison services.¹⁰⁷ Failure was no surprise, as was the case with other aspects of Sandys' campaign that are examined later in this chapter. This failure demonstrated the unwillingness of the majority of MPs to adhere to a retentionist interpretation of expert opinion. Most MPs supported abolition and thus were more receptive to the opinions of experts who agreed with their position.

Of all expressions of expert opinion, the most significant and frequently cited was the Royal Commission's report. Even this, though, had little impact on politicians' opinions on capital punishment. Of the 146 MPs who voted for both abolition and retention during this period, 13 voted only for retention before the publication of the Royal Commission's report. Of these, only five voted exclusively for abolition after the report was published. Furthermore, three of these five MPs were Labour members who voted for retention on just one occasion, which was when Attlee's government adopted a retentionist position against the abolition amendment to the Criminal Justice Bill. It is apparent, therefore, that this prominent expression of expert opinion did not exert much influence over MPs' decisions, though it did have some impact upon their

¹⁰⁵ *The Times*, 9 Nov. 1966; *The Times*, 15 Nov. 1966; Churchill Archives Centre, Cambridge, The Papers of Lord Duncan Sandys (Sandys Papers), DSND 12/1, Nov. 1966.

¹⁰⁶ *The Times*, 24 Nov. 1966.

¹⁰⁷ *The Times*, 9 Nov. 1966.

arguments. The notable exception to this was the Royal Commission's support for the argument and belief that capital punishment was not a unique deterrent against murder. Yet, it was this conclusion rather than the fact that this was the opinion of experts that appears to have influenced a minority of politicians, who were unsure whether capital punishment was an unpleasant but necessary sanction against murder, to support abolition. The impact of this evidence is explored further in the following chapters of this thesis.

Although most MPs were more willing to interact with and receive expert opinion than general public opinion, expert opinion also had little discernible influence on the direction of their votes. Although some politicians claimed to have found the experts' evidence useful, nonetheless most came to their own conclusions on the matter. Only a few MPs altered their votes between debates on capital punishment. Expert opinion provided more persuasive support for an argument than the opinion polls. Nevertheless, politicians retained their independence when arriving at their decisions on the matter.

Informed Opinion

Many politicians, particularly the abolitionists, cited informed opinion without quantification or qualification whilst lambasting the opinion polls as mere indicators of uninformed opinion. Sydney Silverman demanded that politicians seek out this undefined opinion rather than that of the uninformed public:

We cannot test public opinion by a random reaction of buttonholing somebody in the street, in a pub, in a club, or in a railway station and getting his random casual answer to a question of this kind. We cannot test public opinion by a mere casual counting of the first heads we happen to come across. It is instructed and informed public opinion that counts.¹⁰⁸

The only attempts to create a more tangible representation of this informed opinion were two memorials organised by the NCACP in 1956 and in 1961 to 1962 that were sent only to the members of certain professions, outlined below. For the most part, abolitionists simply claimed that they knew what this group thought, sometimes based on their own experiences, but without a measure to

¹⁰⁸ HC Deb 15 Jul. 1948 vol. 453 c. 1452.

prove this. John Paton claimed that ‘where one gets an audience which has a reasonable chance of being informed upon the subject...their decision is in favour of abolition’.¹⁰⁹ The label represented no concrete insight into the thoughts of any identifiable section of British society. Instead it was the device around which was hinged the criticism of polling data that allowed the abolitionists to claim support from the public. It was necessary to have an informed group in order to have an uninformed group, and vice versa. It enabled the abolitionists to use public opinion to attack public opinion, despite having no statistics or measures to support their argument. The abolitionists labelled those people who supported their cause as being informed. Those who disagreed with them were simply uninformed.

The NCACP’s memorials provide an insight into which individuals and groups were considered to be informed on the subject of capital punishment. The 1962 memorial was signed by 6,825 people who, the NCACP argued in a letter to Archbishop Ramsey, occupied ‘positions of standing in different aspects of our national life’. This included bishops, artists, architects, writers, musicians, Fellows of the Royal Society and principal and senior probation officers. These had all been asked to sign the 1956 memorial as well. Other probation officers were asked to sign the 1962 memorial only. The NCACP outlined the purpose of the 1962 memorial in the same letter and explained that it was different from a survey of uninformed opinion:

The Memorial is not intended to be in any sense a mass petition, and no attempt has been made to obtain as many signatures as possible. This is exemplified by the fact that in the Schools, signatures have only been accepted from Head Teachers, and in the field of science only from Fellows of the Royal Society.¹¹⁰

With the exception of the probation officers, these groups would not have had any specific expertise in crime and punishment. Rather, it was their status as respectable professionals that the NCACP hoped would make a greater impression on politicians than would polling data. It is notable for this point that junior probation officers were not invited to sign the 1956 memorial. Status rather

¹⁰⁹ HC Deb 22 Jul. 1948 vol. 454 c. 720.

¹¹⁰ Ramsey Papers, Ramsey 16 f. 156, Letter from Gardiner and Gollancz to Ramsey, 5 Jul. 1962.

than occupational experience was key for whether one qualified as a member of the informed public. It is fair to presume that the NCACP believed that politicians would recognise the individuals listed as being informed on the subject because of the education and backgrounds that were required to pursue these careers. Harold Macmillan and R.A. Butler, in receiving the 1962 memorial on behalf of the government, appeared to be positive towards both it and the NCACP's cause, but were not swayed from their retentionist position by this expression of informed opinion.¹¹¹

It is unsurprising that this informed opinion was not criticised vociferously in Parliament, as the majority of MPs were abolitionists throughout this period and so would have been keen to advance any argument that supported their cause. Informed opinion, though, was perceived widely to be of greater importance to the debate. Victor Gollancz demonstrated this in his interview with ITN in April 1961.¹¹² Similarly, Terence Donovan claimed that his fellow MPs invoked 'all too glibly the support of public opinion for the views in which we believe. How do we know what informed public opinion thinks? I do not know.'¹¹³ Neither man attempted to define the public to which they were referring. There was an assumption by both men that the existence and character of this public would be recognised by their peers, despite the lack of definition. Both Gollancz and Donovan used informed opinion to detract credibility from the retentionist uses of the opinion polls by stating that these did not represent the informed public. Although uninformed opinion was cited more frequently in parliamentary debates, informed opinion did not attract the level of criticism that politicians aimed towards the polls.

It was not only pronounced abolitionists who subscribed to this weighting of the various public opinions. In 1961 Norman Brook, the Cabinet Secretary, explained to the retentionist Prime Minister, Harold Macmillan, that public

¹¹¹ TNA:PRO, PREM 11/3686, Notes on the Memorial from the NCACP to the Prime Minister and Home Secretary, 5 Jul. 1962; British Library, London, The Papers of Gerald Gardiner (Gardiner Papers), Add MS 56460, Minutes of the NCACP, 13 Sep. 1962.

¹¹² "Anti Capital Punishment Campaign (Newsfilm Online)," 18 Apr. 1961, <http://service.nfo.ac.uk>, [accessed 9 Jul. 2010].

¹¹³ HC Deb 22 Jul. 1948 vol. 454 c. 713.

opinion was ‘pretty evenly’ split between abolition and retention.¹¹⁴ There was no quantifiable evidence to support Brook’s claim that opinion was divided thus. Expert opinion appeared to be more in support of abolition than retention, but crucially there existed this unqualified assertion that the responsible public largely favoured abolition. For Brook’s interpretation of the state of public opinion to be so disconnected from all evidence from the polls, he had to have weighted informed opinion more greatly than uninformed opinion. This was symptomatic of politicians’ perceptions that there was an informed, responsible public whose opinions were more important than those of the general, uninformed public.¹¹⁵ Yet, it is important to remember that, as with uninformed opinion, informed opinion failed to influence politicians’ judgements. The weight given to this informed public’s opinions demonstrates that their opinions were more convincing as a rhetorical device in debates than was the polling data of uninformed opinion. The voting patterns from these debates, though, demonstrate that politicians’ decisions remained personal and disconnected from the will of those outside Parliament. The percentages quoted earlier in this chapter, showing MPs’ consistent support for abolition of between 52 and 53 per cent during the Commons’ abolition debates in 1948 and 1956, also applies to informed opinion, as the 1956 votes were in the same year as the NCACP’s first memorial. Furthermore, the increase in the Commons’ abolitionism in the 1960s can be attributed to factors other than the NCACP’s second memorial, as is explained in the following chapters. This memorial, which was produced more than two years before the second reading of the Murder (Abolition of Death Penalty) Bill, can be afforded little responsibility for the increase in the proportion of MPs who were committed abolitionists. Politicians believed that they alone were sufficiently informed and responsible to judge the issue. They were the most informed group within society, according to their own weighting of public opinion.

¹¹⁴ TNA:PRO, PREM 11/4690, Letter from Norman Brook to the Prime Minister, 10 Feb. 1961.

¹¹⁵ Beers, “Whose Opinion?,” 196.

Informing Opinion

Although public opinion had no great influence over politicians' judgements, nevertheless a number of organisations attempted to inform their opinions and those of the public. This section examines the opinion-informing role primarily of the campaigns for and against capital punishment and also of the Church and newspapers, and analyses politicians' reactions to them. The NCACP was the largest abolitionist campaign. No retentionist campaign rivalled it in terms of publicity, influence or finance.¹¹⁶ The most significant retentionist campaign was the Society for the Restoration of Capital Punishment (SRCP). These organisations' methods for disseminating and influencing public opinion were markedly different. The NCACP felt that they were 'educating' politicians and the public through their publications and public meetings.¹¹⁷ The SRCP's primary tactic was to compile a petition, physically representing public opinion through a list of hundreds of thousands of signatures. This was a more active representation of opinion than the poll, in the sense that MPs encountered the volume of signatures in support of the petition rather than a single sheet containing percentages. Unlike the poll, though, it took no account of those who refused to sign the petition because they did not support the restoration of capital punishment.

The NCACP was formed after two key moments in the abolition process. First, despite being based upon expert opinion, the Royal Commission's recommendations were largely rejected by the House of Commons in February 1955. By the time that the Commission's report was published in September 1953, Attlee's Labour government had been defeated by Churchill's more staunchly retentionist Conservatives. Despite the influence that the report would have on the arguments in future debates, the Conservative government was unwilling to accept its major proposals.¹¹⁸ Secondly, the execution of Ruth Ellis in July 1955 caused outrage within sections of the media in Britain and other countries.¹¹⁹ With capital punishment becoming an increasingly important, or at

¹¹⁶ Gardiner Papers, Add MS 56455 B, Open Letter from the NCACP, 27 Feb. 1956; Add MS 56457 A, Letter from Gardiner to Lord Altrincham, 10 Jan. 1957.

¹¹⁷ Gardiner Papers, Add MS 56455 B, Letter from Gardiner to John Tyrer, 3 Feb. 1956.

¹¹⁸ TNA:PRO, CAB/128/27, C.C. (54), 29 Jul. 1954.

¹¹⁹ TNA:PRO, HO 291/94, Letter from R.M.A. Hankey (British Ambassador to Sweden) to Harold Macmillan, 19 Jul. 1955. The Daily Mirror published accounts from newspapers from a

least sensational, subject, a group of prominent non-parliamentary abolitionists decided that this was an ideal moment to launch their campaign. In an open letter announcing the establishment of their campaign, the NCACP stated that they had formed because capital punishment had become increasingly prominent within the public consciousness.¹²⁰

The NCACP tailored its campaign to influence and inform both uninformed and political opinion. Its leaders felt that the informed public would support abolition without any intervention from the NCACP, as demonstrated in Gollancz's interview with ITN in 1961.¹²¹ The portrayal of those who opposed abolition as being uninformed indicates that the NCACP viewed public opinion as something that was malleable that could be converted to support abolition with the appropriate education from the campaign. The NCACP's work was split to appeal separately to uninformed and political opinion. Although the NCACP felt that it was important to educate the public, an alternative campaign was required to appeal to politicians. Had they felt that uninformed opinion could influence politicians' judgements then a separate campaign would not have been necessary.

The responsibilities for campaigning to both uninformed and political opinions were divided within the Executive Committee of the NCACP. From 1960, the campaign had two chairs. One was Gollancz, who could use his publishing company to produce and distribute a large volume of material. The other was Gerald Gardiner, a QC who became Lord Chancellor during Harold Wilson's premiership in the 1960s.¹²² Gollancz was the public face of the campaign and was an experienced social activist. In the campaign's infancy another Executive Committee member and dedicated agitator, Arthur Koestler, joked in a letter to Gollancz that 'the Gollancz-Koestler combination of names is already a red rag to God-fearing people'.¹²³ Gardiner focused upon the

number of European countries that criticised the British state for Ellis' execution: *Daily Mirror*, 14 Jul. 1955.

¹²⁰ Gardiner Papers, Add MS 56455 A, Open Letter from the NCACP, 26 Aug. 1955.

¹²¹ "Anti Capital Punishment Campaign (Newsfilm Online)," 18 Apr. 1961, <http://service.nfo.ac.uk>, [accessed 9 Jul. 2010].

¹²² Gardiner Papers, Add MS 56457 A, Letter from Gardiner to the members of the NCACP's Committee of Honour, Apr. 1957; Add MS 56458 B, NCACP: Official Announcement, 7 Dec. 1960.

¹²³ Edinburgh University Library Special Collections, Edinburgh, Papers of Arthur Koestler (Koestler Papers), MS 2400/1, Letter from Koestler to Gollancz, 13 Aug. 1955.

parliamentary campaign. He liaised frequently with politicians and wrote the majority of the letters that were sent to them to persuade them to vote for abolition.¹²⁴ The combination of the media-savvy publisher and the politically astute QC enabled the campaign to target both the general public and politicians. The interest in educating the general public on the issues surrounding abolition set the NCACP apart from politicians. Whereas politicians had little involvement with general public opinion during these debates beyond the retentionists' quoting of polling data, the NCACP were keen to appeal to the public to convert them to their cause. The NCACP wanted to change attitudes as well as the law.

The NCACP's leadership was keen for the campaign to avoid any portrayal as an agitating group that utilised public emotions. During the first meeting of the NCACP's Executive Committee, it was agreed that there were to be no vigils outside prisons on the eve of an execution in the manner of those organised by other campaigners, such as Violet Van Der Elst.¹²⁵ Some politicians felt that these were sentimental.¹²⁶ Gardiner labelled such activists as 'the lunatic fringe' who were 'the curse of any cause.'¹²⁷ At the same meeting of the Executive Committee it was agreed that there would be no mass national petition. Church services, the closure of shops on execution days and a newspaper campaign were to complement the drive to educate the public on the reasons for abolition.¹²⁸ By maintaining a campaign that used informed opinion and quiet displays of dissent to impress their message upon politicians and the general public, the NCACP created a movement that was detached from what they considered to be the sensational and fluctuating sentiments that were driven by famous murder cases. As Koestler explained to the abolitionist and newspaper publisher David Astor: 'Wait for two or three particularly nasty murders in London...and there will be a great comeback of the retentionists, blaming it all on too many recent reprieves.'¹²⁹

¹²⁴ Gardiner Papers, Add MS 56455 A-56463 B.

¹²⁵ Langhamer, "The Live Dynamic," 417.

¹²⁶ HC Deb 15 Nov. 1956 vol. 560 c. 1169.

¹²⁷ Gardiner Papers, Add MS 56455 B, Letter from Gardiner to Sir Frank Medlicott, 30 Jan. 1956.

¹²⁸ Gardiner Papers, Add MS 56460, Minutes of NCACP, 11 Aug. 1955.

¹²⁹ Koestler Papers, MS 2400/1, Letter from Koestler to Astor, 25 Jan. 1956.

The execution of Ruth Ellis was a convenient incident for the formation of the NCACP. Such an incident, though, could never be the foundation of its campaign, as this would rely on and induce sentimental reactions of the sort from which the Executive Committee had distanced itself. However, as a perceived miscarriage of justice the Ellis case was for the NCACP the equivalent of the ‘nasty murders’ for the retentionists. There was no proven case of an innocent person being hanged for the abolitionists to use in their campaign, as Gwilym Lloyd George, Home Secretary from October 1954 to January 1957, noted in 1955.¹³⁰ Nonetheless, the widespread perception of innocence or an inappropriate execution that surrounded the deaths of Ellis, Timothy Evans and Derek Bentley was useful for the abolitionist campaign. It provided the *causes célèbres* to support their argument despite no miscarriage of justice being acknowledged until after abolition, with Evans posthumously pardoned in 1966 and Bentley’s conviction quashed in 1998.¹³¹ Indeed, in 1955 the Howard League for Penal Reform prepared slogans and short poems about these cases for use in their campaign.¹³² These cases could alter the shape of general public opinion, but they did not have a significant impact upon politicians’ judgements, except potentially for those few MPs who changed their votes on abolition. These cases might have persuaded these few MPs that capital punishment was too problematic to be retained. Although the context provided by these cases undoubtedly was important for the debates, the parliamentary discourse was focused upon other issues, notably deterrence. The doubt surrounding these cases was based upon common perceptions rather than evidence. In this respect they were treated similarly to uninformed public opinion within these debates, as the majority of politicians perceived general public opinion to have no foundation in evidence and, therefore, to be unreliable. These cases were of limited use for the abolitionists.

The NCACP was not the only organisation that campaigned for abolition. The Howard League for Penal Reform worked closely with the NCACP. When the NCADP disbanded in 1948, having achieved its aim whereby abolition was

¹³⁰ TNA:PRO, CAB/129/78, C.P. (55) 202, 16 Dec. 1955.

¹³¹ HL Deb 18 Oct. 1966 vol. 277 c. 27-9; *Guardian*, 31 Jul. 1998.

¹³² Koestler Papers, MS 2400/2, List of suggestions for the direction of the Howard League’s campaign, Jul./Aug. 1955.

debated in the Commons, its Executive Committee recommended that its members joined the Howard League to continue the pursuit of abolition. Many members of the NCADP were already members of the Howard League's Executive Committee, including Gerald Gardiner. Indeed, the NCADP's chairperson, Theodora Calvert, was the vice-chair of the Howard League.¹³³ When the NCACP was formed in 1955, a number of the NCADP supporters joined, having been affiliated with the Howard League, notably Gardiner. It is understandable, therefore, that there was coordination between the organisations. The NCACP, unlike the Howard League, focused its efforts exclusively on abolition. It was the NCACP rather than the Howard League, therefore, that led the campaigning activities

In terms of their representation of public opinion, the SRCP's methods were the polar opposite of the NCACP's. Their campaign was centred upon a nationwide petition demanding the restoration of the death penalty for the murders of police and prison officers. Like the NCACP, Duncan Sandys' formation of the campaign followed an important vote in Parliament and an infamous murder case. Capital punishment was suspended in July 1965 for a five-year period following Labour's victory in the 1964 general election. One year later, three police officers were murdered in Shepherd's Bush.¹³⁴ Unlike the NCACP, the SRCP used the public outrage against these murders as a key justification for their campaign. In September 1966, a National Opinion Poll (NOP) survey found that 82 per cent of the electorate favoured the retention of the death penalty. It cited the murder of the three police officers in Shepherd's Bush that year as a reason for this level of support, but added that 'NOP has always found a substantial majority in favour of capital punishment.'¹³⁵ For 'tactical reasons', Sandys limited the campaign's efforts to the restoration of capital punishment for the murder of police and prison officers.¹³⁶ These murders were always particularly shocking and received significant newspaper attention.

¹³³ Gardiner Papers, Add MS 56460, Minutes of the National Council for the Abolition of the Death Penalty, 4 Jun. 1948; 21 Jul. 1948.

¹³⁴ *Daily Mirror*, 13 Aug. 1966.

¹³⁵ British Library, London, P.P. 8005.cf., NOP Bulletin from September 1966, Sep. 1966, 12-3.

¹³⁶ Sandys Papers, DSND 12/1, Letter from Sandys to Louis Fitzgibbon (SRCP chair), 2 Nov. 1966.

The Shepherd's Bush murders were used to enhance the public's appetite for the restoration of the death penalty.

The SRCP's campaign was not as sophisticated as that of the NCACP. It could not compete financially with the NCACP and it lacked the seasoned campaigners of the sort who dominated the abolitionist campaign, such as Gollancz, Gardiner and Koestler. Both campaigns were run on a tight budget and were often in debt. The NCACP, though, had many wealthy backers, such as Gollancz, and a membership of tens of thousands of people from whom they requested donations.¹³⁷ Through Gollancz and Koestler the NCACP could cajole prominent authors for support, such as J.B. Priestley.¹³⁸ Gardiner approached fellow solicitors and was on the committees of the Howard League and the Haldane Society of Labour Lawyers.¹³⁹ This helped these groups to co-ordinate their efforts. In the margins of the letters sent by the NCACP was a list of the prominent individuals who were members of their Committee of Honour. By the 1960s this list contained over 150 names and required both sides of the page.¹⁴⁰ The SRCP lacked this support. Though supported by the majority of the public, the SRCP did not attract any notable persons to publically endorse their campaign. Sandys alone was the SRCP's figurehead. Although the Police Federation and Prison Officers Association provided expert support for the retentionists' case, they were not involved in the campaign beyond their participation in the deputation to the Home Secretary.¹⁴¹

When the SRCP began its activities in 1966, political parties were utilising public opinion and opinion polls for party and election strategy more frequently than they were in the 1940s.¹⁴² However, the increased use of polling did not extend to party policy or issues of conscience, including capital punishment. Sandys' Early Day Motion in 1966 contained the signatures of 171 MPs, of whom

¹³⁷ Gardiner Papers, Add MS 56455 B, Letter from Koestler to Gardiner, 18 Feb. 1956; Open Letter from the NCACP to its supporters, 27 Feb. 1956.

¹³⁸ Koestler Papers, MS 2400/1, 3 Dec. 1955.

¹³⁹ Gardiner Papers, Add MS 56460, Minutes of the Nation Council for the Abolition of the Death Penalty, 21 Jul. 1948; TNA:PRO, HO 45/21954, Letter from the Haldane Society to Sir Hartley Shawcross, undated.

¹⁴⁰ Warwick Modern Records Centre, University of Warwick, Papers of Victor Gollancz (Gollancz Papers), MSS.157/3/CAP/1/1-239, 1961-4.

¹⁴¹ Sandys Papers, DSND 12/1, various files, Nov. 1966.

¹⁴² Beers, "Whose Opinion?" 199.

162 were Conservatives, and was supported by the opinion polls. Nevertheless, the Commons refused Sandys leave to move his Bill by a majority of 122.¹⁴³ Sandys had fully expected this defeat.¹⁴⁴ Even at a time when capital punishment was an especially emotive subject within the media as a result of the Shepherd's Bush police murders, the majority of MPs were unwilling to debate any form of restoration.

Unlike the NCACP, the SRCP relied upon uninformed opinion to persuade politicians to change their minds on capital punishment. They did not attempt to educate the public. As with most retentionists, the SRCP did not differentiate public opinion into informed and uninformed categories. Instead they represented the will of a homogenous public through a national petition. With this lack of financial and notable support, the SRCP was limited to running a campaign based upon quantitatively measuring public opinion. Their ability to inform opinion was stunted. They could afford to do little else.¹⁴⁵ Whereas the NCACP produced numerous pamphlets and publications and held meetings across the country to educate both politicians and the public, including at the Royal Albert Hall and the Royal Festival Hall, the SRCP's activities could not extend beyond their posters and petitioning on pavements and in pubs.¹⁴⁶

Sandys planned to collect as many signatures as possible by instructing the SRCP to focus its efforts upon areas where there had been a recent murder.¹⁴⁷ As with the use of the Shepherd's Bush police murders, the SRCP exploited the emotional responses to crime to boost their campaign. The SRCP's petition was precisely the sort of campaign that the abolitionists labelled as being based upon uninformed and sentimental opinion.¹⁴⁸ As such opinion had always been marginalised from the abolition debates, the SRCP hoped that the physical representation of public opinion through the sheer volume of signatures would persuade the Commons to support capital punishment for the first time since 1955. After three years of working with the SRCP, Sandys presented 858,647 signatures in 21 boxes to Parliament on 15 December 1969, in preparation for the

¹⁴³ *The Times*, 24 Nov. 1966.

¹⁴⁴ Sandys Papers, DSND 12/1, Sandys to FitzGibbon, 21 Nov. 1966.

¹⁴⁵ Sandys Papers, DSND 12/1-15, various files, 1966-9.

¹⁴⁶ Sandys Papers, DSND 12/1-2, various files, 1966-8.

¹⁴⁷ Sandys Papers, DSND 12/7, various files, 1967.

¹⁴⁸ HC Deb 16 Feb. 1956 vol. 548 c. 2599; HL Deb 17 Dec. 1969 vol. 306 c. 1160.

debate on the resolution to make abolition permanent.¹⁴⁹ The petition was unsuccessful. The government's amendment by resolution to the Murder (Abolition of Death Penalty) Act comfortably passed through both Houses of Parliament.¹⁵⁰ Uninformed opinion had previously failed to encourage the Commons to retain capital punishment. The SRCP's strategy of basing their campaign solely on this form of opinion was virtually doomed from the outset. The limited means of the campaign meant that it was able to attempt little else.

The NCACP and SRCP were the principal campaigns for appealing to public and political opinion on capital punishment. However, newspapers and the Church also could shape public opinion. The Church, and to a lesser extent newspapers, were perceived to be part of the informed public. Indeed, when the Howard League formed its Campaign for the Prevention of Legal Cruelty in 1955, newspapers and the Church were listed in an internal note as 'levers or manipulators of public opinion'. The author of this list also included the House of Lords, although there is little evidence beyond this note to suggest that peers had any more influence than MPs on public opinion.¹⁵¹

Newspapers held a variety of attitudes towards abolition. Some were firmly abolitionist throughout this period. In his 'note on the press', Arthur Koestler compiled a list of newspapers' stances on capital punishment. He listed six dailies (*Daily Herald*, *Daily Mirror*, *Manchester Guardian*, *Daily Worker*, *News Chronicle* and *Star*), three Sunday nationals (*News of the World*, *Observer* and *Reynolds News*), 11 periodicals and 28 provincial newspapers that were known to support abolition. He also noted that five dailies, one Sunday national, one periodical and 19 provincial newspapers were known to support retention, though he did not name them.¹⁵² Gradually, more newspapers converted to support abolition. John Grigg, formerly Lord Altrincham and the treasurer of the NCACP, claimed that 'to my mind, the "Daily Telegraph" is the most important citadel that has fallen yet – more important than any number of bishops and professors.'¹⁵³ By 1969,

¹⁴⁹ *Guardian*, 16 Dec. 1969; Sandys Papers, DSND 12/12, 15 Dec. 1969

¹⁵⁰ HC Deb 16 Dec. 1969 vol. 793 cc. 1148-297; HL Deb 17 Dec. 1969 vol. 306 cc. 1106-258; HL Deb 18 Dec. 1969 vol. 306 cc. 1264-321.

¹⁵¹ Koestler Papers, MS 2400/2, List of suggestions for the direction of the Howard League's campaign, Jul./Aug. 1955.

¹⁵² Koestler Papers, MS 2400/2, Note on the press, undated.

¹⁵³ Gollancz Papers, MSS.157/3/CAP/1/100, Letter from Grigg to Gollancz, 27 Oct. 1964.

Gardiner claimed that no national newspaper supported capital punishment.¹⁵⁴ The Howard League was correct to identify that newspapers informed public opinion. However, they had no more influence over the decisions of politicians than did any other expression of popular will. Indeed, as with uninformed opinion, some politicians criticised certain newspapers for sensationalising murder.¹⁵⁵ Politicians, therefore, treated newspapers in a similar manner to uninformed opinion. They were cited when they assisted an argument but otherwise were criticised for their emotional responses to murders. They had little influence over politicians' judgements. Furthermore, although the principal debates in Parliament and the most notable executions were often reported on the front pages of the newspapers, no publication embarked on a determined campaign to either support or oppose abolition. There were no long-standing attempts by newspapers to influence the opinions of the public or politicians.

By the early 1960s, there was explicit support for abolition from the Church of England. The convocations of Canterbury and York endorsed abolition in the early 1960s, coinciding with the abolitionist Michael Ramsey succeeding the retentionist Geoffrey Fisher as the Archbishop of Canterbury. This swing away from the death penalty by the established Church meant that an important organisation that was both informed and could inform public opinion was now largely behind the abolitionists' case.¹⁵⁶ Unlike the other expressions of and influences on public opinion, religious opinions can be expected to have influenced the decisions of some politicians on abolition. Furthermore, the lords spiritual would have had no less influence than any other peers during debates in the House of Lords. The Church of England was unique from other informing and informed organisations in that the most senior members of its leadership were part of the legislature. However, the support for abolition from some of the central organs of the Church of England from the 1960s onwards did not result in a significant number of politicians altering their votes. Underlying religious beliefs rather than the pronouncements of the leaders of the Church of England influenced the decisions of a number of politicians, although legal and political secularisation reduced the influence of traditional Anglican morality within an

¹⁵⁴ TNA:PRO, HO 291/1551, Letter from Gardiner to Callaghan, 19 Nov. 1969.

¹⁵⁵ HL Deb 9 Nov. 1961 vol. 235 c. 480.

¹⁵⁶ Potter, *Hanging in Judgement*, 192-8.

increasing number of politicians' arguments and beliefs. This is examined in greater detail in this thesis' chapters on the abolitionist and retentionist cases.

Politicians manipulated public opinion to find support for their arguments. They were less interested in what support could be found from the actions of opinion-forming bodies such as newspapers, the Church and campaign organisations.

Conclusion

In the Commons debate on the second reading of the Medical Termination of Pregnancy Bill, another issue of moral conscience, Norman St John Stevas explained his view of public opinion:

It may be that the Bill commands the support of the majority of members of the public. That for me does not decide the issue. I would not submit my views or conscience on an issue of this kind to a public opinion poll any more than I would submit them to a Church or a political party. I view with dismay a society which combines a low level of thinking on matters of principle with a high degree of benevolence and good will. That can be a very lethal combination.¹⁵⁷

This epitomised the attitude of the majority of politicians towards public opinion. Although public opinion was sometimes presented as a single entity during the capital punishment debates, the dominant understanding of it within Parliament was as a collection of opinions from different groups, only some of whom were deemed to be informed. This division suited the abolitionists' case, which was supported by the majority of MPs during this period. Informed opinion, both in its expert and non-expert guises, was a more effective rhetorical device than uninformed opinion within the parliamentary debates. Yet, the decision on abolition rested solely with politicians. They may have been influenced by outside forces if they chose to be, but the outcome of the matter was based upon their own consciences, which they felt were more informed and responsible than any of the electorate's.

¹⁵⁷ HC Deb 22 Jul. 1966 vol. 732 c. 1157.

The majority of MPs favoured abolition, yet they were unable to abolish capital punishment before 1965. This was the result of the retentionism of the House of Lords and the governments prior to Labour's election victory in 1964. The Lords' retentionism only diminished following the passage of the Life Peerages Act, after which a number of Labour members, predominantly abolitionists, entered the House.¹⁵⁸ The Lords were under no pressure from the retentionist governments to vote in accordance with the will of the Commons. Public opinion could not justify action but it could justify inaction through not using the Parliament Act.¹⁵⁹ Abolition, therefore, was only achieved once there were reformers within government and the Lords.

This chapter has departed from the recent historiography of public opinion within parliamentary debates by extending its analysis beyond the surveys of the general public and identifying the three groups that were present within politicians' uses of public opinion. However, the conclusion remains the same as that reached elsewhere in the historiography. Politicians distanced themselves from the influence of all public opinion, especially when they were afforded a free vote. They had no appetite to be led by their parties in reaching a decision on capital punishment and neither did they want to be led by the electorate. They arrived at their own conclusions and used public opinion purely as a rhetorical device to support their arguments. The efforts of the campaigners, commissioners and pollsters had little influence on the outcome of the debates. Silverman's fear of a 'mobocracy' was never realised.¹⁶⁰

The politicians' refusal to allow public opinion to influence their judgement removed a significant obstacle to the abolitionists' success. It is important to examine the place of public opinion within the abolition process, as this concept was cited frequently within the debates and has become an increasingly prominent feature of political discourse since the end of the Second World War. Furthermore, the opposition to abolition from the majority of the population was unequivocal. It is essential to account for politicians' continued defiance of this opinion. Having achieved this through establishing the public's

¹⁵⁸ Janet P. Morgan, *The House of Lords and the Labour Government 1964-1970* (London: Oxford University Press, 1975), 23-5.

¹⁵⁹ TNA:PRO, CAB/128/13, C.M. (48) 53, 22 Jul. 1948.

¹⁶⁰ HC Deb 22 Jul. 1948 vol. 454 c. 744.

lack of influence, the explanation for why capital punishment was abolished requires the focus of examination to shift to the politicians. It is necessary to analyse the retentionists' and abolitionists' arguments and beliefs, which can be found in this thesis' chapters on their cases. Before this, though, these two groups require identification in order to discover the common backgrounds of those politicians who either supported or opposed abolition. Having established that public opinion did not affect politicians' beliefs on capital punishment, it is apparent that the majority of them voted according to their consciences. It is necessary, therefore, to examine their collective identities in order to identify the formative causes of their beliefs.

Chapter Two: Who were the retentionists and abolitionists?

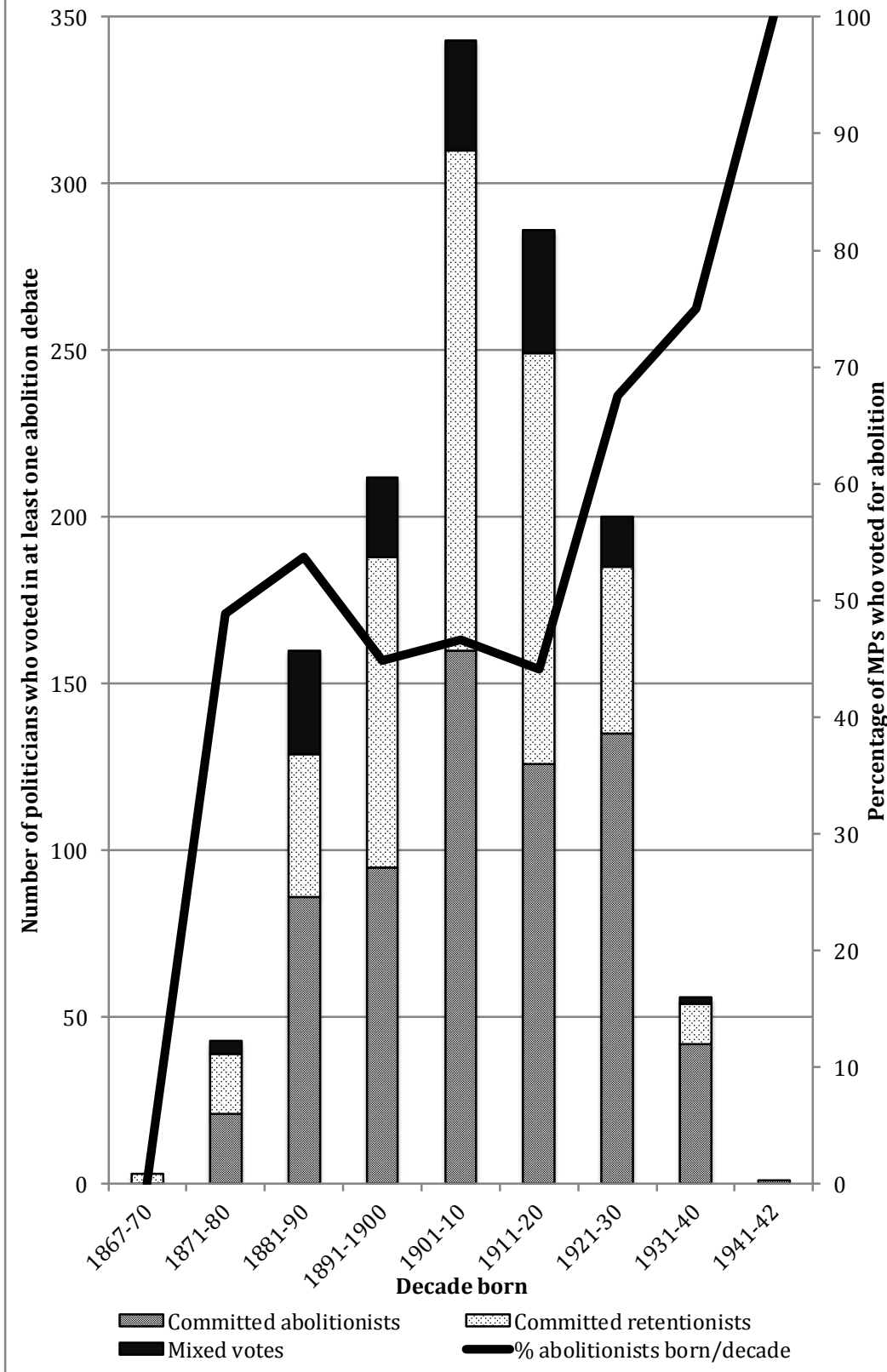
Within the historiography of the capital punishment debates, historians have ascribed the label ‘retentionist’ to those who supported the continuance of the death penalty for murder and ‘abolitionist’ to those who opposed it. These are sensible labels as they describe the opinions of these two groups. Furthermore, the politicians and activists who took part in the debates used these labels. Yet, the existence of these labels has led to a degree of homogeneity being ascribed to those who were identified within each group.¹⁶¹ Understandably, the retentionists have been seen as almost synonymous with the Conservatives, the abolitionists with the Labour Party (see Figure 5.1, Appendix). This homogeneity is not necessarily something to avoid, as to examine the backgrounds and motivations of every individual involved in these debates would be impractical. However, there is a need for qualification. In order to understand why the retentionists failed and the abolitionists succeeded, a finer-grained approach is required to enable both an examination of why they adopted these positions and, to reach this conclusion, an examination of who these people were that took part in the debates. These questions have not been addressed in the historiography of capital punishment. The final question, who they were, is the focus of this chapter. The other question is addressed in the following chapters on the abolitionist and retentionist cases. In order to identify the retentionists and abolitionists this chapter examines the ages and occupations of those involved in the abolition debates, focusing in detail on the backgrounds of the prominent characters from the debates. It looks in particular at the identity of the Conservative MPs who were born from the 1920s onwards, as a significant minority of these MPs broke the traditional party divide on this issue by supporting abolition. These Conservative MPs were key for the abolition of capital punishment, as their entry into Parliament led to abolitionism becoming entrenched within the Commons, regardless of which Party was in government. This chapter uses the database of MPs’ votes to examine the correlation between how politicians voted on abolition and how they voted on other issues of conscience, particularly the permissive reforms. It compares the divisions during the second readings of the Sexual

¹⁶¹ For an example of this see: Davies, *Permissive Britain*, 27-44.

Offences Bill and Medical Termination of Pregnancy Bill with those from the principal abolition debates. The support for the permissive reforms was a significant factor within the identity of the abolitionists, as was the opposition to it for a number of the retentionists. This association was manifest within the capital punishment discourse. The correlation between the supporters and opponents of both abolition and the permissive reforms is outlined within this chapter. Its conceptual background is examined further within the chapters on the abolitionist and retentionist cases, as this was an important characteristic of the politicians' beliefs on capital punishment.

The most important factor in identifying abolitionists and retentionists, aside from party allegiance, was their age. This information is displayed in Figure 2.1. This charts the number of MPs who took part in the abolition debates by their decade of birth and orders them into committed abolitionists, committed retentionists and those who voted for both abolition and retention. The trend line indicates the percentage of the MPs born each decade who were committed abolitionists. The trend line demonstrates that there was a far greater proportion of abolitionists amongst the politicians who were born from the 1920s onwards. When the politicians are divided by year of birth rather than by decade, the dramatic increase in the proportion of abolitionists began after 1922. Forty-two per cent of the politicians born in 1922 who took part in the abolition debates were committed abolitionists. For 1923, the proportion was 67 per cent. 1922's percentage was indicative for the years before it, as was 1923's for the years after. To ease analysis, though, this chapter divides the births into decades rather than individual years. It uses the decade after 1920 as the turning point rather than 1922. As the vast majority of Labour MPs were committed abolitionists, the proportional increase in abolitionists amongst those MPs born after 1920 can be attributed to a change in Conservative attitudes towards the death penalty amongst a significant minority of their younger MPs. Figure 2.1 is referred to at various points throughout this chapter, though its closest examination can be found in the final section.

Figure 2.1 MPs' votes on capital punishment organised by decade born



The mixed votes at the top of the columns on Figure 2.1 require explanation. This accounts for every MP who voted for both retention and abolition during these debates, including those who voted frequently in one direction in these debates, choosing the other direction only once. These MPs, who voted predominantly but not exclusively for either abolition or retention, have been grouped together with those few MPs whose votes were more evenly distributed in favour of and against the death penalty in order to focus attention on those who voted consistently in one direction. This enables greater clarity in the examination of these consistent MPs. In total, 146 MPs voted both for and against abolition during these debates. This was just 11 per cent of the 1,304 MPs who participated in the debates.

The biggest incident that caused MPs to vote against their normal opinion was the Labour government's retentionist position in 1948. This led to a number of Labour MPs voting in line with their government before voting for abolition in all of the other debates in which they took part. Seventy-four Labour MPs voted for retention during the successful second reading of the abolition amendment to the Criminal Justice Bill in April 1948. Of these, 55 voted exclusively for abolition after this debate. Ten voted for retention again, although five of these did vote for abolition at least once, and nine did not vote again after April 1948. This vote alone accounted for 55 of the 146 mixed voters. They are only categorised as such because they voted with their government in 1948. The same is true for a number of the Conservatives who voted in favour of the Homicide Bill in February 1957 under the pressure of the party whips. The passage of this Bill ended the chances of the Death Penalty (Abolition) Bill reaching the statute book.¹⁶² Twenty-one of the Conservative MPs to vote for the Homicide Bill voted for abolition on every other occasion. A further seven voted for abolition in many of the other debates. Government pressure was a major factor in 76 of the 146 mixed voters choosing to back retention on just one occasion. There were numerous other factors that caused the other MPs to change their votes between debates, many of which were personal to the members. However, a party line accounts for much of this and thus hides the votes of 76 MPs on Figure 2.1 who were otherwise committed abolitionists.

¹⁶² Christoph, *Capital Punishment and British Politics*, 150-64.

The data used in this chapter for the numbers of MPs who came from various occupational and membership group backgrounds should be read as indicative rather than exhaustive. This is because there is more evidence readily available for some members than for others. The main sources for these backgrounds are *Who Was Who* and Roth's catalogues of MPs. These figures, though, are useful as they give a decent indication of the levels of support for abolition and retention from MPs from various backgrounds. This chapter first attempts to identify the retentionists and the abolitionists before examining the nature of what the author has termed the class of the 1920s. This term refers to the politicians, in particular the Conservatives, who took part in the abolition debates and were born after 1920. It does not refer to anybody outside Parliament because, as the previous chapter has shown, politicians' opinions on abolition in this period were detached from the predominantly retentionist electorate's.

Who were the retentionists?

Within the historiography of the death penalty, the retentionists have been associated with the Conservative Party.¹⁶³ This association is sensible, as almost all of the Conservative MPs who voted in the capital punishment debates before 1956 supported retention. Only 14 of the 157 Conservative MPs who took part in the debates on the Criminal Justice Bill in 1948 voted for abolition. During the Conservative government's motion to acknowledge the Royal Commission's report in 1955, just 15 of the 245 Conservative MPs voted for the abolitionist amendment.¹⁶⁴ They comprised only nine per cent of the Conservative MPs present in the 1948 vote and six per cent in the 1955 vote. The association between retention and the Conservative Party is strengthened by the fact that few Labour MPs voted for the death penalty, with the exception of the 1948 vote on the Criminal Justice Bill. The 74 Labour MPs who voted for retention in April 1948 were only 26 per cent of the 288 Labour MPs who voted in that debate, with 214 voting for abolition against the advice of their government.¹⁶⁵ Kevin Manton is correct to assert that Labour was not a party of uniform abolitionists.

¹⁶³ For example see: Christoph, *Capital Punishment and British Politics*, 85.

¹⁶⁴ HC Deb 14 Apr 1948 vol. 449 cc. 979-1098; HC Deb 10 Feb. 1955 vol. 536 cc. 2064-183.

¹⁶⁵ HC Deb 14 Apr 1948 vol. 449 cc. 979-1098.

He examines an important retentionist strand within the party that was visible in the late 1940s.¹⁶⁶ However, this was an exception, as the overwhelming majority of Labour MPs after the Second World War were abolitionists. The retentionists, therefore, can be strongly associated with the Conservative Party. The reasons for the Labour government adopting a retentionist position are examined in the chapter on the retentionist case.

Older age was one of the major characteristics of the retentionist MPs. Regardless of their year of birth the vast majority of Labour MPs were abolitionists. Therefore, this analysis will focus on the Conservatives. Of those Conservative MPs to take part in the abolition debates, 130 were born before 1900. Of these MPs, only two were committed abolitionists. A further six voted both for and against abolition in various debates, but the other 122 were committed retentionists. The proportion of Conservative MPs born after 1900 who were abolitionists increased, although the most marked rise came in the 1920s (see Figure 3.1, Appendix). It is the older Conservative MPs, therefore, who provided a dependable spine of support for the retentionists.

The division between older and younger Conservatives, sometimes portrayed as the traditional and Right Progressive Tories, has been the framework for much of the historiography of the Party after the Second World War. Andrew Gamble identifies the younger Conservatives with the desire for economic and social reforms that developed towards the end of the war. He argues that this liberalisation was behind the rekindling of One Nation Conservatism.¹⁶⁷ Stuart Hall and Mark Jarvis ascertain that the Right Progressives were at the heart of the Conservative liberalisation of the 1950s and early 1960s that is viewed by Hall as the beginning of the liberalising ‘legislative moment’.¹⁶⁸ Although not all Right Progressive MPs were abolitionists, as is examined in this thesis’ chapter on the abolitionist case, the correlation between the younger Conservative MPs, liberalisation and abolition cannot be ignored. Indeed, Brigadier Terence Clarke made this connection when unsuccessfully attempting to defend the death penalty in December 1964:

¹⁶⁶ Manton, “Labour Governments and Capital Punishment,” 16-33.

¹⁶⁷ Andrew Gamble, *The Conservative Nation* (London: Routledge and Kegan Paul, 1974), 33-4.

¹⁶⁸ Hall, “Reformism and the Legislation of Consent,” 1-43; Jarvis, *Conservative Governments*, 10-21.

If we [the Conservatives] had [tabled a Bill to abolish the death penalty], half the Conservative Party would have voted against it, anyhow. Unfortunately, we have a few young people on this side of the House who came in in about 1956 and who are of a rather different calibre. They are about as wet as the last three Home Secretaries...¹⁶⁹

This ‘wetness’ of the young abolitionist Conservatives, to whom Clarke is referring, is an example of the accusations of emotionalism that both abolitionists and retentionists targeted at their opponents, as is examined by Claire Langhamer.¹⁷⁰ Quintin Hogg epitomised this change in Conservative thinking in his book *The Case for Conservatism* in 1947 and its second edition *The Conservative Case* in 1959. In 1947, Hogg wrote: ‘Our ancestors learned and taught that a disregard of these rules [passed down by what he termed a ‘Celestial Cabinet’] brought calamity upon our heads, as apple-stealing might bring the birch for a small boy, or burglary penal servitude for a criminal’. In 1959, Hogg repeated this sentiment verbatim, except he replaced the birch with a slipper.¹⁷¹ Hogg was a retentionist but demonstrated here that a liberalising strand was developing within the Conservative Party in the years after the Second World War. These Conservatives largely became distinct from the older, traditional Party members who, on the whole, supported retention. This different identity can be found in Noel Annan’s book *Our Age*, which extols the generation born between the First and Second World Wars who Annan felt modernised Britain. This identity will be examined in more detail later in this chapter. Although most Conservatives born after 1920 were retentionists, the older Conservative MPs were almost unanimous in their retentionism, particularly those born before 1900.

As one would expect, the retentionist MPs came from a variety of occupational backgrounds. However, some occupations tended to produce a high proportion of retentionists (see Figure 6.1, Appendix). The vast majority of MPs who came from business and military backgrounds were retentionists. 148 of the MPs that took part in the abolition debates are listed in the bibliographical

¹⁶⁹ HC Deb 21 Dec. 1964 vol. 704 c. 949.

¹⁷⁰ Langhamer, “The Live Dynamic,” 416-41.

¹⁷¹ Quintin Hogg, *The Case for Conservatism* (Harmondsworth, Middlesex: Penguin Books Ltd., 1947), 22; Quintin Hogg, *The Conservative Case* (Harmondsworth, Middlesex: Penguin Books Ltd., 1959), 26.

catalogues as having had a military career, although these catalogues do not expose the nature of the politicians' military service. Of these, 104 were committed retentionists, comprising 70 per cent of the military professionals in the Commons. A further 15 voted for both abolition and retention during the debates and 29 of the 148 were committed abolitionists. There was a strong base of support for retention from those with military careers. The reasons for this support could be linked to an appreciation of both the sanctity of life and the necessity to take life in certain circumstances that was different to other MPs' appreciations of these issues. However, it is difficult to ascertain the direct impact that a career in the military might have had on MPs' beliefs on capital punishment, as it is perceivable that such experience could make a person either more or less inclined to support the death penalty. This is explored in greater detail in this thesis' chapter on the retentionist case. Furthermore, there was a strong Conservative identity amongst those who had a career in the military. Of the 148, 125 were Conservatives, comprising 84 per cent of the military MPs. Therefore, the overwhelming retentionism of those with military careers supports the well-established party divide, whereby the retentionists were associated with the Conservatives. Indeed, between 8 and 14 per cent of Conservative MPs during these years had previously held careers in the armed services. By comparison, only one per cent of Labour MPs came from this background.¹⁷²

The other occupational background that was common for a significant number of retentionists was business management and directorships. The following does not include those MPs who were listed in Roth's catalogues as non-executive directors. Two hundred and twenty-six of the MPs who took part in the abolition debates had a business background. Of these, 146 voted for retention in every debate that they attended. This constituted 55 per cent of the business MPs. This is a significantly lower figure than the 70 per cent of military MPs who were committed retentionists. However, in a House of Commons that voted for abolition in every vote bar one after 1947, a large group of MPs that has over half of its members exclusively supporting retention merits recognition. There were considerably fewer abolitionists from this occupation, with 75 voting exclusively against the death penalty. This equated to 28 per cent of the group.

¹⁷² Great Britain. House of Commons Library, *UK Election Statistics: 1945-2003*, Research Paper 03/59 (London: HMSO, 2003).

Forty-five of the MPs with business backgrounds voted for both abolition and retention over this period, comprising 17 per cent of the total MPs. As with the armed services, those MPs who had forged a career in business tended to be members of the Conservative Party. During the various governments of this period, between 18 and 24 per cent of Conservative MPs were company executives or directors. Only between one and four per cent of Labour MPs came from these careers.¹⁷³ The particular dominance of retentionists amongst the ranks of MPs from the armed services and business leaders supports the theory, therefore, that those who favoured retaining the death penalty were predominantly members of the Conservative Party. There were no career backgrounds common to a number of MPs from parties other than the Conservatives that produced a high proportion of retentionists.

A number of retentionist MPs had been involved in colonial service prior to the post-war capital punishment debates. Thirty-six of the MPs who took part in the abolition debates are listed in *Who Was Who* as having served in some capacity in the colonies.¹⁷⁴ Of these 36, 24 voted exclusively for retention. Another two voted once for abolition but were retentionists in all other debates. Only ten of the 36 MPs with colonial experience voted exclusively for abolition. Seventeen of the 36 MPs had occupations in either business management or the military. Twelve of these 17 were committed retentionists.

A further 26 of the MPs who took part in the abolition debates represented constituencies in Northern Ireland. Of these MPs, 22 were committed retentionists. This is perhaps unsurprising given the political unrest that plagued Northern Ireland and Éire. Those with experiences from the colonies and of British rule in Northern Ireland, many of which were locations that featured sporadic violence, tended to support retention.

There was a link between the retentionists and the opponents of permissive legislation. One hundred and six MPs who took part in at least one abolition debate voted against the second reading of the Sexual Offences Bill (see Figure 7.1, Appendix).¹⁷⁵ Of these, 86 were committed retentionists, eight

¹⁷³ Great Britain. *UK Election Statistics: 1945-2003*.

¹⁷⁴ *Who's Who and Who Was Who*, various pages, <http://www.ukwhoswho.com>, [accessed 6-10 Jun. 2013].

¹⁷⁵ HC Deb 11 Feb. 1966 vol. 724 cc. 782-874.

registered mixed votes and 12 were committed abolitionists. Of these 86 retentionists, 80 were Conservatives. There was a more even split between the abolitionist and retentionist opponents of the Medical Termination of Pregnancy Bill at its second reading (see Figure 8.1, Appendix).¹⁷⁶ There were 11 committed retentionists and 13 committed abolitionists who voted against this Bill. However, this split opposition is less surprising, as both abortion and capital punishment concerned the sanctity of life. A small minority of abolitionists, therefore, opposed this liberalising measure because they disagreed with the taking of life in any form, including abortions. Similarly, some retentionists might have opposed the legalisation of abortions because of either a belief in the sanctity of life or an opposition to liberalisation. This is examined in greater detail in the following two chapters.¹⁷⁷

There was a general perception during this period that those in the legal profession favoured retention. Lord Elton, speaking during the Lords debate on the Death Penalty (Abolition) Bill, felt that ‘the odds are that the Bishops will vote one way [abolition] and the lawyers the other [retention].’¹⁷⁸ Although this may have been the case with the judges in the Lords, as is explained later, this pattern was not borne out in the Commons. Of the 244 MPs with legal backgrounds to take part in these debates, 108 voted for retention exclusively and 106 for abolition. As with other occupations, the split between abolition and retention within the legal profession was orientated around party lines. All retentionist MPs with legal careers came from the Conservative Party, except for seven Ulster Unionists, one Labour, one independent and one National MP. The legal journal *Justices of the Peace and Local Government Review* showed some favour for capital punishment in the 1940s. In April 1948 it included an article titled “Capital Punishment”, which argued that the death penalty was a deterrent to some criminals. It did not stress, though, that it believed it to be unique in its effectiveness.¹⁷⁹ Yet, between then and the 1960s the attitude of those involved in

¹⁷⁶ HC Deb 22 Jul. 1966 vol. 732 cc. 1067-165.

¹⁷⁷ An example of this was Shirley Williams, who voted against the legalisation of abortion because of her views on the sanctity of life: Hall, “Reformism and the Legislation of Consent,” 6.

¹⁷⁸ HL Deb 10 Jul. 1956 vol. 198 c. 695.

¹⁷⁹ “Capital Punishment,” *Justices of the Peace and Local Government Review* 112, no. 17 (1948): 255.

the journal softened towards abolition. In 1969 it published a strong indictment of capital punishment:

There was no capital punishment from the northern tip of Norway to the southern tip of Italy. In an age of gas chambers and mass executions, those countries had found, as we had, a new safeguard and a new dignity in refusing the state the right to take life.¹⁸⁰

Through this use of language that was closely associated with the abolitionist discourse on civilisation, this article placed one expression of legal opinion firmly against the death penalty. The *Law Society Gazette* was less opinionated in its interpretation of the abolition debates, critiquing both sides' arguments. The greatest criticism was aimed at the Homicide Act, describing it as 'one of the most irrational and anomalous pieces of legislation of modern times.'¹⁸¹ There was, though, no statement of affiliation to either a retentionist or abolitionist position. The evidence from MPs' voting records and the opinions published in legal journals does not support Lord Elton's comment that lawyers were firmly in favour of retention.

Although lawyers in general showed no strong inclination towards retention, there was greater support for the death penalty from judges. William Jowitt, the Lord Chancellor during Attlee's premiership, stated during a cabinet meeting in July 1947 that 'His Majesty's judges were unanimously opposed to the abolition of the death penalty on the ground that it constituted the only effective deterrent in certain cases.'¹⁸² In 1956, the Conservative government sought the opinions of judges on their draft of the Homicide Bill. All of the judges who submitted reports found anomalies within the Bill, with many stating explicitly that they did not like the reform. Justice Donovan was the only judge to express a clear desire for the full retention of capital punishment, arguing that the only reform should have been to constructive malice and suicide pacts. Although no other judges argued explicitly for retention or abolition, there was a strong inference from all of the reports that the judges favoured the continued use of capital punishment. They questioned why certain murders were not included in the list of capital offences rather than why those murders on this list had been

¹⁸⁰ *Justices of the Peace and Local Government Review* 133, no. 27 (1969): 449.

¹⁸¹ *Law Society Gazette* 58 (March 1961): 134.

¹⁸² TNA:PRO, CAB/128/10, C.M. (47) 61, 15 Jul. 1947.

exempted from abolition. Certainly there were no abolitionist sentiments from these judges.¹⁸³ The judges were largely supportive of the retention of the death penalty. Due to the presence of the judges within the Lords, it is unsurprising that Lord Elton felt that lawyers were mostly retentionists. This label, though, only applies to the judges rather than all lawyers.

One of the principal issues with identifying the retentionists is that they lacked a figurehead before 1965 to rival the abolitionists Sydney Silverman, Victor Gollancz and Gerald Gardiner. After 1965, Duncan Sandys became the retentionist figurehead. His campaign was examined in the previous chapter and is developed later in this chapter. The retentionists, though, were more visible within the House of Lords. The Lords only voted for abolition after Harold Wilson's Labour government came to power in 1964. With their electoral success in that year, the Lords also received its first abolitionist Lord Chancellor in this period, Gerald Gardiner. Prior to this success, the Lords were firmly entrenched within the retentionist camp. The fact that the Lords' rejection of the abolition Bills from the Commons went unopposed during this period is an indication of the retentionist natures of the governments prior to 1964 rather than any control over the issue from the Lords. Nevertheless, the character of the Lords as retentionists merits some examination, as there were numerous committed supporters of the death penalty within this chamber.

The retentionist nature of the Lords can be ascribed to a large extent to the political orientation and age of the peers. Their occupational backgrounds can also be presumed to have had some effect. Indeed, the Lords contained a number of judges, lawyers and bishops who were senior within their professions. However, as was the case with the Conservative MPs, the younger bishops and members of the legal profession who entered the House of Lords during this period, with perhaps the exception of the judges, seemed more willing to embrace abolition than their older colleagues. Occupation, therefore, was of secondary importance compared to age and political orientation as a cause of the Lords' retentionism.

Of those Lords whose political affiliation was known, the vast majority were Conservatives throughout this period, despite Harold Wilson's efforts in

¹⁸³ TNA:PRO, HO 291/102, Judges' comments on the Homicide Bill from Justice Hilbery, Justice Hallett, Justice Donovan, Justice Byrne and Justice Devlin, Oct. 1956.

opposition and in government to add Labour peers under the Life Peerages Act 1958.¹⁸⁴ The life peers, law lords and lords spiritual were predominantly older members of their respective professions.¹⁸⁵ The first life peers appointed in 1958 were all born before 1920, with only two of the 14 new peers born after 1910 and seven born before 1900.¹⁸⁶ This demographic within the chamber means that it is unsurprising that the Lords remained firmly retentionist until the arrival of an abolitionist government and Lord Chancellor in 1964, by which time there were more Labour peers.

There were many vocal retentionists within the Lords during these years, in particular the Lord Chancellors and Lord Chief Justices. The four Lord Chancellors prior to Gerald Gardiner were all retentionists, although William Jowitt voted for abolition in 1948 against his conscience, as he felt obliged to follow the government's line.¹⁸⁷ Robert Stevens' legal caricatures of Lord Chancellors Jowitt, Simonds, Kilmuir and Dilhorne provides useful insights into their political characters.¹⁸⁸ The analysis for this thesis, though, excludes Simonds and Dilhorne as their tenures as Lord Chancellor, between 1951 and 1954 and between 1962 and 1964 respectively, did not coincide with any major abolition debates.

Stevens describes Jowitt as being 'more conservative than many Conservative M.P.s'. Jowitt, although a Labour Party member, 'had little in common with the leading Labour supporters' and was again separated from the rank-and-file of the Party by supporting retention in the Lords. His role as Lord Chancellor, however, meant that he felt obliged to vote for abolition, as the retentionist Labour government had recommended that the Lords vote for abolition in line with the Commons' will rather than the government's own

¹⁸⁴ Philip Norton, "The House of Lords," in Bill Jones (et al.) eds., *Politics UK*, 3rd ed. (Hemel Hempstead: Prentice Hall Europe, 1998), 277; Morgan, *The House of Lords and the Labour Government*, 15-20; 237.

¹⁸⁵ Nicholas D. J. Baldwin, "The Membership of the House," in Donald Shell and David Beamish eds., *The House of Lords at Work: a Study based on the 1988-1989 Session* (Oxford: Oxford University Press, 1993), 34-5.

¹⁸⁶ Chris Ballinger, *The House of Lords 1911-2011: a Century of Non-Reform* (Oxford: Hart Publishing Ltd., 2012), 95; Who's Who and Who Was Who, various pages, <http://www.ukwhoswho.com>, [accessed 6-10 Jun. 2013].

¹⁸⁷ HL Deb 28 Apr. 1948 vol. 155 cc. 545-6.

¹⁸⁸ Robert Stevens, *Law and Politics: The House of Lords as a Judicial Body, 1800-1976* (London: Weidenfeld and Nicolson, 1979).

retentionist position.¹⁸⁹ Jowitt's retentionism was in line with the opinions of many of his colleagues in government, but he was more vocal than many of those in speaking against this Bill and, unlike most members of Attlee's cabinet in the Commons, maintained his retentionist stance after 1948.

Lord Kilmuir had a different career leading to his appointment as Lord Chancellor as, unlike his predecessors Jowitt and Simonds, he was previously a member of the government in the Commons. Kilmuir, as David Maxwell Fyfe, was Home Secretary before entering the Lords. He voted for retention during every abolition debate that he attended in the Commons and was an outspoken proponent of the punishment in both houses.¹⁹⁰ Stevens, in his rather flattering portrayal of Maxwell Fyfe, acknowledges that 'liberals found themselves out of sympathy with Kilmuir'. Stevens used his refusal of mercy for Derek Bentley as an example of his support for capital punishment and his authoritarian approach to issues regarded as socially liberal.¹⁹¹

Both Kilmuir and Jowitt were involved with the Nuremberg Trials. Kilmuir was the deputy British prosecutor, serving under the staunchly abolitionist Sir Hartley Shawcross. Jowitt had been involved in drafting the procedures for the war crimes trials.¹⁹² Kilmuir's and Jowitt's involvement in the Nuremberg trials added an expert element to their position as retentionist figureheads within the Lords through their recent involvement, as representatives of the British state, in the executions of Nazi war criminals. It is interesting that, although Shawcross was one of the most vocal abolitionists at the beginning of the period investigated within this thesis, he was not one of the abolitionists' figureheads. This is perhaps a result of his close involvement with the executions at Nuremberg, which did not correlate with the image of a committed abolitionist.

Stevens also sheds some light onto to the character of Rayner Goddard, the Lord Chief Justice from 1946 to 1958. Goddard's retentionist nature was the

¹⁸⁹ Stevens, *Law and Politics*, 336; TNA:PRO, CAB/195/6, CM 28(48), 15 Apr. 1948.

¹⁹⁰ Examples of Maxwell Fyfe's retentionist speeches are: HC Deb 14 Apr. 1948 vol. 449 cc. 1075-82; HL Deb 09 Jul. 1956 vol. 198 cc. 573-86.

¹⁹¹ Stevens, *Law and Politics*, 424.

¹⁹² David Cesarani, "The International Military Tribunal at Nuremberg: British Perspectives," in *The Nuremberg Trials: International Criminal Law since 1945*, eds. Herbert R. Reginbogin et al (Munich: K.G. Saur Verlag GmbH, 2006), 36.

first characteristic drawn out in his caricature: ‘Goddard was an ardent supporter of capital and corporal punishment and of more severe sentences for criminals. He attacked J.P.s for being too lenient and insisted that homosexuality be met with the full force of the law.’ Stevens continued: ‘for many, Goddard embodied the anti-intellectual, somewhat sadistic, tone of the English judiciary in the 1940s and 1950s.’¹⁹³ During the Lords’ second reading of the Death Penalty (Abolition) Bill in 1956, Goddard defended the importance of capital punishment as a deterrent and lamented the stereotype of judges as enemies of reform and, in particular, his depiction in one newspaper as a ‘bewigged obscurantist’.¹⁹⁴ Nevertheless, his continued opposition to abolition fitted in with the traditional Conservative retentionism in both Houses.

Goddard’s successor, Lord Parker, spoke only once during a capital punishment debate in the Lords. During the second reading of the Murder (Abolition of Death Penalty) Bill, he pledged himself to be a ‘full-blooded abolitionist’ but stated that this was due to the ‘complete absurdities’ of the Homicide Bill rather than any moral repugnance towards capital punishment.¹⁹⁵ Parker’s abolitionism was based on legal practicalities rather than a strong belief in reform. His lack of involvement in the capital punishment debates, compared to that of Jowitt, Kilmuir and Goddard, means that his opinion should be read more as a judicial repudiation of the Homicide Act in favour of abolition rather than as an expression of a senior member of the House of Lords on the repugnance felt towards the death penalty. It is interesting, though, that his declaration of support for abolition coincided with the Lords voting for abolition for the first time. It is Jowitt, Kilmuir and Goddard who led the Lords in their retentionist stance before Wilson’s Labour Party won the 1964 general election. There were other peers who were not from legal backgrounds that spoke against abolition, including a number of bishops. These three, though, were the figureheads for the retentionist campaign in the Lords. Unlike the abolitionist figureheads, though, their role as figureheads did not extend into the public realm.

¹⁹³ Stevens, *Law and Politics*, 362.

¹⁹⁴ HL Deb 10 Jul. 1956 vol. 198 cc. 735-6; 738-9.

¹⁹⁵ HL Deb 19 Jul. 1965 vol. 268 cc. 480-1.

Outside the Lords, the retentionists lacked a figurehead before 1965 who could champion their case in the Commons and in public. Quintin Hogg was one of the more vocal retentionists during these debates and led the unsuccessful Conservative demands to delay the resolution to make abolition permanent from its scheduled time of December 1969 until at least the following year.¹⁹⁶ He did this, though, because of his role as the shadow Home Secretary rather than because he was an especially committed retentionist. He was the representative rather than the figurehead of the retentionist Conservative Party. Indeed, he had previously explained, in a letter to the abolitionist Arthur Koestler about a television debate on capital punishment to which they were both invited, that ‘I find it [capital punishment] less interesting than perhaps I should’.¹⁹⁷ Hogg, therefore, was no figurehead.

Duncan Sandys was the retentionist figurehead for the campaign after capital punishment was abolished for a five-year period in 1965. Sandys was Winston Churchill’s son-in-law and had served in the Foreign Office before being elected to Parliament.¹⁹⁸ His campaign was examined in the previous chapter.¹⁹⁹ The petition followed two previous, unsuccessful Early Day Motions in November 1966 and June 1969.²⁰⁰ Sandys, however, stood alone in his crusade to restore the death penalty. He had few notable supporters and did not enjoy the full backing of the Conservative Leader’s Consultative Committee. They agreed with him in 1969 that the five-year experiment should be completed before the vote was taken to make abolition permanent, but they were not keen on his reasons for this, which were not specified.²⁰¹ The isolated nature of his failure highlighted the fact that the retentionists were not able, and potentially not willing, to mount a serious campaign both to retain the death penalty and to compete with the abolitionists.

¹⁹⁶ Bodleian Library, Oxford, Conservative Party Archives (Conservative Party Archives), LCC (69), 24 Nov. 1969.

¹⁹⁷ Koestler Papers, MS 2400/1, Letter from Hogg (Viscount Hailsham) to Koestler

¹⁹⁸ Oxford Dictionary of National Biography, “Sandys, (Edwin) Duncan,” <http://www.oxforddnb.com/view/article/39858?docPos=1>, [accessed 3 Jul. 2013].

¹⁹⁹ Sandys Papers, DSND 12/1, Letter from Sandys to Louis FitzGibbon (his private secretary), 2 Nov. 1966.

²⁰⁰ HC Deb 23 Nov. 1966 vol. 736 cc. 1409-18; HC Deb 24 Jun. 1969 vol. 785 cc. 1228-36; *The Times*, 15 Dec. 1969.

²⁰¹ Conservative Party Archives, LCC (69), 19 Nov. 1969; 24 Nov. 1969.

The retentionists were predominantly a traditional Conservative group whose members were born before the 1920s. There were a number of retentionists from the Labour Party in the late 1940s, although this can be attributed in part to the feeling that capital punishment was a necessary deterrent during the years of post-war dislocation. The lack of genuine desire from these Labour retentionists to keep the death penalty was demonstrated by the fact that only a small proportion of them voted for retention again after the 1940s. Some of the smaller parties, notably the Ulster Unionists, supported the death penalty, as did those MPs with colonial experience. The retentionists were more prominent in the Lords than they were in the more progressive Commons, although this diminished after Harold Wilson's Labour Party won the 1964 general election, as is discussed in the next section of this chapter. Ultimately, the retentionists were dominated by older members of the Conservative Party, whose ideas on capital punishment and liberalisation did not match those of the burgeoning socially liberalising culture in the Commons. This conclusion revises the established association of the retentionists with the Conservative Party, as the abolitionism of a significant minority of the younger Conservatives does not conform to a uniform identity of the Conservatives as the Party of retention. This identity applies only to the older Conservatives.

Who were the abolitionists?

Unlike the retentionists, the abolitionists had a number of vocal and identifiable figureheads in the Commons and in the wider campaign against the death penalty. These figureheads are examined later in this section. As with the retentionists being generally linked with the Conservative Party, the abolitionists have been widely associated with the Labour Party by both academics and contemporary commentators, although as mentioned earlier Kevin Manton challenges the strength of this association.²⁰² There is no doubt that the majority of Labour MPs favoured abolition (see Figure 5.1, Appendix). After the 1948 vote that was analysed earlier in this chapter, almost every Labour MP voted for abolition when the issue was debated in the Commons. Only six of the 200

²⁰² An example of this view of Labour as the party of abolition is: Neville Twitchell, "Abolition of the Death Penalty," in Peter Dorey ed., *The Labour Governments 1964-70* (London: Routledge, 2006), 330-44.

Labour MPs present voted for retention when an abolition amendment was added to the motion acknowledging the Royal Commission's report.²⁰³ Eight Labour MPs voted for retention in the 1956 divisions on the government's motion to retain capital punishment and on the Death Penalty (Abolition) Bill.²⁰⁴ By the 1960s, the number of Labour retentionists in the Commons had reduced to two per vote.²⁰⁵ The predominance of abolitionist thought amongst Labour MPs after the Second World War is clear.

The two decades after the Second World War saw the number of Conservative abolitionists increase dramatically. In April 1948, 14 out of 157 Conservative MPs voted for the abolition amendment to the Criminal Justice Bill. In February 1955 there were 15 abolitionists out of the 245 Conservatives who voted on the abolition amendment to the motion acknowledging the Royal Commission's report. However, in 1956 this number increased dramatically. Forty-five out of 289 Conservatives voted against their government's motion for the retention of the death penalty in February 1956. In the vote on the Death Penalty (Abolition) Bill in the following month there were 44 Conservative abolitionists supporting the successful Bill. The rise in the number of Conservative abolitionists between the votes in February 1955 and February 1956 can be attributed largely to the general election in May 1955. The number increased yet again in the second reading of the Murder (Abolition of Death Penalty) Bill in December 1964, with 77 of the 237 Conservative MPs voting for abolition. This was the highest proportion of Conservatives to vote for abolition during these debates, with 32 per cent supporting this reform. The number of abolitionists decreased to 52 out of the 228 Conservative MPs who took part in the December 1969 vote to make abolition permanent, although this decrease can be ascribed to the more party political nature of the vote. Many Conservatives were unhappy that the Labour government was attempting to force through this resolution before the five year experiment was completed.²⁰⁶

²⁰³ HC Deb 10 Feb. 1955 vol. 536 cc. 2064-183.

²⁰⁴ HC Deb 16 Feb. 1956 vol. 548 cc. 2536-655; HC Deb 12 Mar. 1956 vol. 550 cc. 36-151.

²⁰⁵ HC Deb 21 Dec. 1964 vol. 704 cc. 870-1010; HC Deb 16 Dec. 1969 vol. 793 cc. 1148-297.

²⁰⁶ Unlike previous abolitionist bills and amendments, it was the government rather than a private member that moved this motion. James Callaghan had threatened to resign as Home Secretary had the government lost the vote. Quintin Hogg was especially vocal in his criticism of this, accusing the government of renegeing on their promise to Parliament by attempting to pass

This increase in the number of Conservative opponents of the death penalty necessitates a more nuanced understanding of the identities of the abolitionists beyond their associations with the Labour Party.

The first dramatic increase in the number of Conservative abolitionists occurred after a general election in 1955, the second after two further elections in 1959 and 1964. These elections introduced a number of younger Conservatives into the Commons. One hundred and eight of the Conservative MPs who voted in at least one abolition debate in this period were born after 1920 (see Figure 3.1, Appendix). Of these, only two took part in debates before the 1955 general election. Furthermore, only 21 of these 108 younger Conservatives took part in debates before Labour's 1964 general election victory, although there were no major debates between the elections in 1959 and 1964. These younger Conservatives had a greater tendency to support abolition than their predecessors, though this support never rivalled the almost unanimous abolitionism of the Labour MPs. Thirty-seven of these younger Conservatives voted solely for abolition during these debates, and a further 16 voted both for and against abolition, a marked increase in the proportion of abolitionists when compared to their older Party colleagues. Opposition to the death penalty became increasingly common amongst the younger Conservatives who were born later, with more committed abolitionists born in the late 1920s and beyond than at the start of the decade. In 1969, the final year of study for this thesis, the Young Conservatives' national committee voted against the reintroduction of the death penalty by 23 votes to 14. It is important to remember, though, that it was a minority of younger Conservatives who were abolitionists. Indeed, the Young Conservatives' national committee acknowledged that they were not representative of all younger Conservatives. A survey of 4,000 young party members returned only 23 per cent support for abolition.²⁰⁷ This was not too dissimilar to the percentage of committed abolitionists amongst the Conservative MPs born after 1920, which was 34 per cent. Interestingly, the difference of

this Bill before the end of the experiment. In a meeting of the Conservative Party's Leader's Consultative Committee on 24 November 1969, even the abolitionist Iain Macleod gave his support to a breach of faith motion against the government over this matter: HC Deb 15 Dec. 1969 vol. 793 cc. 939-1062; HC Deb 16 Dec. 1969 vol. 793 cc. 1148-297; Conservative Party Archives, LCC (69), 24 Nov. 1969.

²⁰⁷ *The Times*, 15 Dec. 1969.

opinion between the Young Conservatives' national committee and the young party members replicated the divergence of opinion on capital punishment that existed between the political class and the general public. The public, as represented by these 4,000 party members, wanted capital punishment whereas the majority at the centre did not.

The Labour MPs born after 1920 displayed a more united desire for abolition than their young Conservative counterparts. One hundred and thirty-three Labour MPs born after 1920 voted in abolition debates. One hundred and thirty-two of these MPs voted for abolition on every occasion, with the other MP voting once against this reform in 1969 when abolition was made permanent. However, this did not represent any real deviation away from the trend of Labour MPs voting for abolition, regardless of the year that they were born (see Figure 4.1, Appendix). The rise in the proportion of abolitionists born after 1920 in Figure 2.1 can be attributed largely to the younger Conservatives rather than Labour MPs, as it was these Conservatives that bucked the retentionist trend within their party and thus overcame the traditional party divide on capital punishment. Overall, of the 257 MPs born after 1920 that took part in at least one capital punishment debate, 178 voted for abolition on every occasion, comprising 69 per cent of this group. A further 17 voted both for and against abolition and 62 were committed retentionists. The voting records on capital punishment indicate that the abolitionists were predominantly Labour MPs who were supported by a number of younger Conservatives born after 1920.

The occupations that were well represented in these debates and that had the largest proportions of abolitionist MPs were the unions, mining, engineering, railways, lecturing and teaching (see Figure 6.1, Appendix). Unsurprisingly, these were occupations that had a strong association with the Labour Party. For example, between 14 and 20 per cent of all Labour MPs were teachers during these years, compared to between one and two per cent of Conservative MPs.²⁰⁸ One hundred and twenty of the MPs that voted in these debates were either teachers or lecturers. Of these, 106 voted for abolition in every debate that they attended, comprising 88 per cent of the representatives of this profession. Six MPs voted both for and against abolition and a further eight were committed

²⁰⁸ Great Britain. *UK Election Statistics: 1945-2003*.

retentionists. Ninety-nine of the 106 abolitionist teachers were Labour MPs, with five of the other seven representing the Conservative Party. Similar figures exist for these other professions. Ninety-one of the 108 union workers were committed abolitionists, although interestingly the TUC conference never debated or took a line on capital punishment during this period.²⁰⁹ Fifty-six of the 63 miners were committed abolitionists, as were 20 of the 30 engineers and 26 of the 35 railway workers. There were only six committed retentionist engineers, five committed retentionist union workers, one committed retentionist miner and no committed retentionists amongst the railway workers. The vast majority of MPs from these professions represented the Labour Party. There was one Conservative who had worked for a union, two Conservative miners, both of whom became company directors, six Conservative engineers, two of whom were company directors, and two Conservative railway workers, of whom one was a company director. The predominance of abolitionism amongst these occupations supports the identity of the majority of abolitionists as being members of the Labour Party.

The previous section of this chapter established a link between the retentionists and the opponents of other liberalising reforms. There was also a link between the abolitionists and the supporters of these liberalising reforms. One hundred and sixty three MPs who voted in at least one abolition debate voted in favour of the second reading of the Sexual Offences Bill. Of these, 132 were committed abolitionists whereas only 18 were committed retentionists. Only 25 of the 132 committed abolitionists were not Labour MPs (see Figure 9.1, Appendix). Similarly, 214 of the MPs who took part in an abolition debate voted in favour of the second reading of the Medical Termination of Pregnancy Bill. Of these, 169 were committed abolitionists and 31 were committed retentionists. One hundred and fifty of these committed abolitionists were Labour MPs (see Figure 10.1, Appendix). There is a clear link between the abolitionists and the supporters of the other liberalising reforms, which is examined further in this thesis' chapter on the abolitionist case.

²⁰⁹ There was no motion or resolution on capital punishment mentioned in the TUC conference reports, which is surprising for an organisation that debated a wide spectrum of issues. London Metropolitan Library, London, Trade Union Congress Library, Trade Union Congress Conference Reports, 1945-69.

There was a peculiarly strong correlation between the abolitionists and the supporters of the CND. The CND archive contains lists of MPs who were members of or sympathetic to their campaign. 147 MPs who took part in the abolition debates were included in these lists, including Sydney Silverman. All 147 were committed abolitionists. 136 were members of the Labour Party, alongside one member of the Éire Labour Party, seven Liberals and one Conservative.²¹⁰ Other key members of the CND were involved in the abolition campaign outside the Commons. Peggy Duff was one of the secretaries of the NCACP and was the first Organising Secretary of the CND. Gerald Gardiner and Victor Gollancz, the chairmen of the NCACP, were also involved in the CND, as was Canon L. John Collins, another member of the NCACP's Executive Committee.²¹¹ This connection with the CND was one of the associations that linked the abolition campaign with other liberalising, agitating and pacifist movements.

It is difficult to measure how many politicians were conscientious objectors, as there are not any sufficiently comprehensive lists or records of these politicians to enable an investigation into their voting patterns on abolition. It is possible, though, to create an impression of the relationship between politicians' pacifism and their opinions on abolition by looking at their biographies and memoirs. An inference can be drawn from this about whether the conscientious objectors in Parliament were abolitionists, although no percentage can be derived from this to indicate the level of support. For this purpose, the backgrounds of some of the most prominent abolitionists and retentionists have been examined. These politicians are the abolitionists Sydney Silverman, Roy Jenkins, Anthony Crosland, Hartley Shawcross, John Paton and Jim Callaghan and the retentionists David Maxwell Fyfe, Duncan Sandys, R.A. Butler, Terence Clarke, Reginald Manningham-Buller and Quintin Hogg. Of these politicians, only Silverman and Paton were not involved in war service. Silverman was imprisoned during the First World War for being a conscientious objector and

²¹⁰ London School of Economics and Political Science Library, London, Archive of the Campaign for Nuclear Disarmament (CND Papers), CND/2/13, Lists of MPs who were members of or sympathetic to CND, undated.

²¹¹ Peggy Duff, *Left, Left, Left: a Personal Account of Six Protests Campaigns 1945-65* (London: Allison and Busby Ltd., 1971), 115-257.

Paton was a prominent anti-war propagandist during the same conflict.²¹² This sample of politicians is too small to permit a precise conclusion to be drawn. It indicates, though, that although most politicians did not actively oppose the World Wars, those that did oppose them tended to support abolition. This pacifism correlated with a belief in the sanctity of life, which included a rejection of the right of the state to take life in any circumstance.

There were notable abolitionist figureheads both inside and outside Parliament. The principal parliamentary abolitionist was Sydney Silverman, who introduced the abolition Bills in 1956 and 1964 and the abolition amendment to the Criminal Justice Bill in 1948. Roy Jenkins was another prominent abolitionist within the Commons, as was Iain MacLeod for the Conservatives. In the Lords, the two abolitionist leaders were Michael Ramsey, the Archbishop of York and later Archbishop of Canterbury, and, after 1964, Gerald Gardiner. Outside the Commons the campaign was led by Victor Gollancz, L. John Collins and Arthur Koestler. These figures from the abolition campaign warrant examination in order to understand who were the abolitionists.

Sydney Silverman was the architect of the abolition of capital punishment. In his obituary in the *Daily Express*, Wilfred Sendall, quoted in Emrys Hughes' biography on Silverman, described Silverman's name as 'synonymous with Left-wing opposition.'²¹³ Abolition was Silverman's greatest pursuit in Parliament, but he was a committed agitator and supporter of liberal reforms. He voted in favour of the legalisation of homosexuality and abortion. He was a pacifist and conscientious objector, although these views were tempered slightly during the Second World War due to the genocide of the Jews on

²¹² R.A. Butler, *The Art of the Possible: the Memoirs of Lord Butler* (London: Hamish Hamilton Limited, 1971), 61-82; Susan Crosland, *Tony Crosland* (London: Jonathon Cape Limited, 1982), 13-8; Quintin Hogg, *A Sparrow's Flight: the Memoirs of Lord Hailsham of St Marylebone* (London: William Collins Sons and Co. Limited, 1990), 128-94; Roy Jenkins, *A Life at the Centre* (London: Macmillan London Limited, 1991), 45-58; David Maxwell Fyfe, *Political Adventure: the Memoirs of the Earl of Kilmuir* (London: Weidenfeld and Nicolson, 1964), 53-64; Kenneth O. Morgan, *Callaghan: a Life* (Oxford: Oxford University Press, 1997), 41-56; "Buller, Reginald Edward Manningham-"; "Paton, John"; "Sandys, (Edwin) Duncan"; "Shawcross, Hartley William"; "Silverman, (Samuel) Sydney"; Oxford Dictionary of National Biography, <http://www.oxforddnb.com>, [accessed 3 Dec. 2013]; "Clarke, Brig. Terence Hugh," Who Was Who, http://www.ukwhoswho.com/view/article/oupww/whowaswho/U171703/CLARKE_Brig._Terence_Hugh?index=1&results=QuicksearchResults&query=0, [accessed. 3 Dec. 2013].

²¹³ *Daily Express*, 10 February 1968, quoted in Emrys Hughes, *Sydney Silverman: Rebel in Parliament* (London: Charles Skilton Ltd., 1969), 208.

mainland Europe.²¹⁴ Silverman's committed and passionate opposition to abolition was grounded in a wider rejection of a state's right to take life and a desire for a liberalised society.

Roy Jenkins' opposition to capital punishment was expressed clearly in his book *The Labour Case*. In this, Jenkins listed abolition as the first of the reforms required to civilise Britain. In doing so, he linked this to the other liberalising reforms under the banner of civilisation.²¹⁵ This was a theme that was common in many abolitionist arguments in Parliament. Jenkins best described the place of abolition alongside the other liberalising legislation. It was his use of civilisation that was the most prominent example of this concept within the political discourse on capital punishment. The importance of the concept of civilisation is examined in greater depth in the following two chapters of this thesis.

Jenkins, of course, later became the leader of the Social Democratic Party. Another key abolitionist, Sir Hartley Shawcross, was from a famous liberal family. It is possible that part of the explanation for the dominance of Labour within both the abolition process and the other liberalising reforms was that there did not exist at this time a viable liberal party where liberals such as Jenkins and Shawcross could achieve their ambitions.

Although Archbishop Ramsey was firm in his opposition to capital punishment, he was aware that he was the head of an organisation that represented a variety of views on abolition.²¹⁶ He was not comfortable with introducing the Murder (Abolition of Death Penalty) Bill in the Lords due to fears that he would be perceived to be both alienating a portion of his congregation and suggesting that he was representing the view of the Church of England in opposing capital punishment, although both convocations of Canterbury and York had expressed their support for abolition in the early 1960s. Furthermore, there were fears from some of Ramsey's abolitionist confidants that he would not be able to defend himself properly in a debate against seasoned retentionist politicians who would attack his argument if he

²¹⁴ Hughes, *Sydney Silverman*, 8-14; Oxford Dictionary of National Biography, "Silverman, (Samuel) Sydney," <http://www.oxforddnb.com/view/article/36093?docPos=1>, [accessed 01 July 2013].

²¹⁵ Jenkins, *The Labour Case*, 135-7.

²¹⁶ Ramsey Papers, Ramsey 76, f. 152, Letter from Ramsey to Sir Stephen Holmes, 16 Feb. 1962.

were to introduce the Bill.²¹⁷ Nonetheless, he was active within the campaign. He had opted to make his maiden speech to the House of Lords during the second reading of the Death Penalty (Abolition) Bill in 1956, whilst he was Archbishop of York.²¹⁸ As Archbishop of Canterbury, he communicated regularly with prominent abolitionist politicians and campaigners to assist with the preparations for the debates on the Murder (Abolition of Death Penalty) Bill.²¹⁹ Ramsey represented a respectable and intelligent moral opposition to capital punishment through his roles as Archbishop of York and later Canterbury.

Like Ramsey, Gerald Gardiner represented another respectable profession, law, in his support for abolition, particularly once he was Lord Chancellor. Gardiner's appointment as Lord Chancellor marked a departure from the retentionism of his post-war predecessors. Gardiner was one of the most active abolitionist campaigners in Britain before he was appointed as Lord Chancellor. By making this appointment, Harold Wilson emphasised that Britain had for the first time a government that supported abolition. As a prominent lawyer and head of the judiciary, Gardiner's appointment also served to dispel somewhat Lord Elton's assertion that the lawyers in the Lords were predominantly retentionists.²²⁰ Gardiner added credibility from the legal profession to the abolition campaign.

A minority of Conservative MPs supported abolition. One of the Party's most senior abolitionists was Iain Macleod, a minister in the 1950s and 1960s.²²¹ Macleod voted for abolition in the 1960s, although he supported the government's Homicide Bill in the mid-1950s. However, his more retentionist position in the 1950s did not represent his opinion. He stated his desire to abstain from voting on the government's motion to retain but amend the use of capital punishment in February 1956 and on various aspects of the Homicide Bill. He was afforded the freedom to abstain in the division on the government's motion but not on the Homicide Bill. As a member of the government, Macleod was

²¹⁷ Ramsey Papers, Ramsey 76, ff. 181-2, Note from Robert Beloe (Ramsey's Private Secretary) to Ramsey, 12 Mar. 1965; Potter, *Hanging in Judgement*, 193-6.

²¹⁸ HL Deb 09 Jul. 1956 vol. 198 cc. 595-8.

²¹⁹ Ramsey Papers, Ramsey 16; 33; 54; 76; 82; 148; 154; 176, various files, 1962-9.

²²⁰ HL Deb 10 Jul. 1956 vol. 198 c. 695.

²²¹ Oxford Dictionary of National Biography, "Macleod, Iain Norman," <http://www.oxforddnb.com/view/article/34788?docPos=1>, [accessed 2 Jul. 2013].

expected to support the government Bill, despite his stated strong feelings against it.²²² Macleod was a vocal abolitionist within cabinet meetings and was free to express his support for abolition in the Commons' divisions after the Conservatives lost the 1964 general election. Interestingly, Macleod, like the previous abolitionist MPs examined in this chapter, also supported the legalisation of homosexuality and abortion. This demonstrates again that a liberalising ethos was an important factor behind many politicians' abolitionism.

Thus far this section has examined briefly some notable abolitionists within Parliament. However, unlike the retentionists the abolitionists were supported by a large national campaign, the NCACP, which sought to educate the public and politicians against the death penalty. Some of the other key figures from this campaign, aside from Gardiner, warrant attention. These figures are Victor Gollancz, the other chair of the campaign, and Canon L. John Collins and Arthur Koestler, two of its most prominent members. All of these men were committed agitators. Gollancz and Collins were early members of the CND.²²³ Indeed, Collins was the campaign's first chair. He had also helped to create Christian Action, a movement dedicated to involving religion in matters propagating social and political reforms, and had set up a legal defence fund for political activists in South Africa who were imprisoned under the apartheid regime.²²⁴ Koestler referred to his and Gollancz's agitating reputations when writing to Gollancz in 1955, stating that their names together on the NCACP's Executive Committee would be 'a red rag to God-fearing people'.²²⁵ Another with strong agitating and liberalising campaign credentials was Peggy Duff, the NCACP's first secretary and the first Organising Secretary of the CND.²²⁶ The presence of a number of seasoned activists, however, led to clashes and threats of resignation within the Executive Committee. Most notably, Gollancz, Koestler

²²² TNA:PRO, CAB/195/14, C.M. 9 (56), 8 Feb. 1956; CAB/195/15, C.M. 69 (56), 8 Oct. 1956.

²²³ Duff, *Left, Left, Left*, 154-6.

²²⁴ Oxford Dictionary of National Biography, "Collins, (Lewis) John," <http://www.oxforddnb.com/view/article/30954>, [accessed 02 Jul. 2013].

²²⁵ Koestler Papers, MS 2400/1, Letter from Koestler to Gollancz, 13 Aug. 1955.

²²⁶ Christopher Driver, *The Disarmers: A Study in Protest* (London: Hodder and Stoughton Ltd., 1964), 43.

and John Grigg fell out with one another at various times.²²⁷ However, despite the sometimes tempestuous relationships between these strong-minded agitators, the campaign was able to enjoy some success because it was headed by well-known figures who were recognised as being committed to liberalisation and the preservation of the sanctity of life.

The abolitionists were by no means a homogenous group. However, there were a number of characteristics that were common to many of them. The vast majority of Labour MPs were abolitionists, as were a significant number of the Conservatives who were born after 1920. A high proportion of the abolitionist MPs were supporters of other liberalising reforms, particularly those taking part in debates in the 1960s. Unlike the retentionists, the abolitionists had a number of figureheads inside and outside Parliament to promote their case. There were a large number of pacifists and social agitators amongst the ranks of the abolitionist MPs. Support for abolition was most visible, though, amongst the vast majority of Labour members. It was only once the class of the 1920s entered Parliament in the mid-1950s and 1960s that the numbers of Conservatives supporting abolition increased, thus entrenching abolitionism within the Commons regardless of the party in government. This, coupled with the Labour election victory in 1964 and the arrival of a number of abolitionists in the Lords, including the Lord Chancellor, created the environment necessary for abolition to be approved by both Houses of Parliament.

Who were the class of the 1920s?

The marked increase in the percentage of Conservative MPs born during or after the 1920s who voted for abolition was a deciding factor in the outcome of the capital punishment debates. Unlike those born earlier, these years produced a significantly higher proportion of abolitionist MPs. Two hundred and fifty-seven MPs who voted in the abolition debates were born during or after the 1920s. Of these, 178 were committed abolitionists, 62 committed retentionists and 17 registered mixed votes. Just over 69 per cent of these MPs were committed abolitionists. These politicians have been termed the class of the 1920s for this

²²⁷ Gardiner Papers, Add MS 56455 B, Letter from Koestler to Gollancz, 14 Mar. 1956; Gollancz Papers, MSS.157/3/CAP/1/9, Letter from Gollancz to Gardiner, 31 Aug. 1961; Koestler Papers, MS 2400/1, Letter from Grigg to Koestler, 8 Oct. 1956.

thesis. Of those MPs born before the 1920s, just under 47 per cent were committed abolitionists. The dramatic change that occurred amongst those MPs born after 1920 can be recognised when comparing it to those born in the decade before. Forty-four per cent of the MPs born between 1911 and 1920 were committed abolitionists whereas, for those born between 1921 and 1930, 67.5 per cent consistently favoured this reform. Of the 178 committed abolitionists born after 1920, 132 were Labour MPs and 37 were Conservatives. All of the committed retentionists were Conservatives, except for 7 Ulster Unionist MPs. The increased prominence of abolition amongst younger politicians was recognised contemporaneously. Callaghan and Ross, in their 1969 cabinet memorandum, noted that the House of Commons was becoming stronger in its support for abolition as a result of the 'shift in political balance' whereby the older MPs were replaced by younger politicians. They were referring to all MPs, but this process was limited primarily to the Conservatives. Where a younger Labour MP replaced an older Party colleague for the same seat, the transition was almost always from one abolitionist to another.²²⁸ As quoted earlier in this chapter, Terence Clarke, one of the most vocal retentionist MPs, criticised his younger Conservative colleagues for supporting abolition.²²⁹ For Clarke, Callaghan and Ross, amongst others, there was no doubt that the younger Conservatives were more likely to join with Labour MPs in believing that capital punishment should be abolished. This section attempts to explain what common backgrounds influenced and formed these younger politicians' abhorrence towards the death penalty.

There was an earlier increase in the proportion of Conservative abolitionists amongst those Conservative MPs who were born after the turn of the century. One hundred and thirty-three of the 144 Conservative MPs born before or during 1900 who took part in the capital punishment debates were committed retentionists, equating to over 92 per cent of this group. Only two of these Conservatives were committed abolitionists. Two hundred and fifty-nine of the 328 Conservatives born between 1901 and 1920 were committed

²²⁸ TNA:PRO, Confidential memorandum by the Secretary of State for the Home Department and the Secretary of State for Scotland on the Permanent Abolition of Capital Punishment for Murder, CAB/129/141, C(69) 48, 6 May 1969.

²²⁹ HC Deb 21 Dec. 1964 vol. 704 c. 949.

retentionists, which represented 79 per cent of the group. Seventeen of the 328 were committed abolitionists, equivalent to five per cent, and 52 registered mixed voted. However, as was noted earlier, the sharpest increase in Conservative abolitionism occurred amongst those born after 1920. Thirty-seven of the 108 Conservatives born in this period, or 34 per cent, were committed abolitionists. Fifty-five of these Conservatives, or 51 per cent, were committed retentionists whilst 16 voted for both abolition and retention (see Figure 3.1, Appendix).²³⁰ Although there were still more retentionists than abolitionists amongst these younger Conservatives, there was a far greater proportion of abolitionists amongst their number than was the case with their older Party colleagues.

In order to understand the characteristics of this younger group, though, it is necessary to examine the liberalising generation as a whole. The increasing desire for liberalisation after the Second World War was felt primarily amongst Labour MPs, especially their younger members. However, there were many younger Conservative MPs who shared this liberalising ethos. Fifty-four of the 108 Conservative MPs born after 1920 who took part in an abolition debate also voted in either or both of the second readings of the Sexual Offences Bill and the Medical Termination of Pregnancy Bill. Of these 54, 33 voted in favour of liberalisation only, 18 voted consistently against reform and three voted for one of the Bills and against the other. The liberalising attitudes of the young Conservative abolitionists are investigated in the following chapter of this thesis. The fact that, on capital punishment, most Labour MPs of all ages already supported this reform did not mean that the younger Conservatives' shift towards abolition, away from their Party's traditional retentionism, was isolated from the wider liberalisation that engulfed Parliament and the liberal elite in the 1950s and 1960s. The best way, therefore, to understand why more Conservatives who were born after 1920 supported abolition than those born earlier is to examine the nature of the liberalising generation.

The liberalising generation was the group whose modernising virtues were extolled by Noel Annan in *Our Age*. The widespread recognition, at least from those within this group, of Annan's interpretation of their achievements and the role of the author within them was demonstrated by the praise for the book

²³⁰ William Gordon Bennett, Conservative MP for Glasgow (Woodside) between 1950 and 1955, has not been included in the analysis of MPs' ages as his date of birth could not be verified.

on its front cover from another member of this generation, Roy Jenkins: ‘A *tour de force*; a major intellectual achievement by a man who has been a fine exemplar of the civilisation he portrays’.²³¹ Again using the civilisation discourse, Jenkins placed this generation at the heart of the liberalising and modernising movement that encapsulated the abolition of the death penalty. Having the review from Jenkins, the Home Secretary most closely associated with these liberalising reforms, alone on the front cover of the book placed Annan and his interpretation of the generation within a recognisable context of liberalisation and abolition. Indeed, Annan described Jenkins as ‘the politician of Our Age who did more than any other to increase personal liberty.’²³²

Annan’s generation was not all encompassing. It was temporally limited to those ‘who came of age and went to university in the thirty years between 1919, the end of the Great War, and 1949’.²³³ The broadly abolitionist generation born from the 1920s onwards, therefore, only correlates with those born in the latter half of Annan’s generation. Annan’s examination of his generation, though, is important for his portrayal of its context and identity.

There were further requirements for somebody to be considered part of this group:

How did one get accepted as a member of Our Age? In the same way that most people have always got accepted – by ability, by family connections and knowing somebody...far more came from another aristocracy – the intellectual families that intermarried in the nineteenth century and were in full flower between the wars. These families produced a disproportionately large number of eminent men and women and a fair share of those of not outstanding ability but who occupied top posts in academic and cultural life.

Annan continued to say that, while the members of ‘Our Age’ shunned the metaphorical wearing of the ‘old school tie’, with the exception, he claims, of the Etonians, a large number of this group went to the same public schools. He claims that their experiences were ‘shared at school and reinforced by their experiences

²³¹ Annan, *Our Age*, front cover.

²³² Annan, *Our Age*, 177.

²³³ Annan, *Our Age*, 3.

at university’, predominantly Oxford and Cambridge but also the London School of Economics. Annan claimed, though, that the old ‘grammar school boys’ reached a more equal footing in society with those educated at public schools, particularly in the 1950s and 1960s.²³⁴ Annan saw his generation as an intellectual elite that set about to modernise the country. This certainly did not include everybody who had this education, but was rather a characteristic of this group. This equates to the liberal paternalism of the political elite, which abolished capital punishment against the will of the electorate out of the elite’s belief that only it was sufficiently informed to decide what was best for society on this matter.

Annan identified the First World War as the moment that caused his generation to be ‘preternaturally critical’ of their fathers’ generation, titled by one of his peers as ‘the Establishment’.²³⁵ Annan portrayed the rejection of both the war and the perceived need for military action as a major factor that helped to create and galvanise his generation. Although this does not translate precisely to the pacifism of some of the abolitionist MPs, it helps to explain why such sentiments were not uncommon during the abolition debates, particularly in the wake of the Second World War. This challenging of the establishment included the established morality of Britain. Annan identified some of the cultural developments that came out of the sexual liberalisation and pleasure seeking of this period.²³⁶ Such reforms were supported and enabled by the legal and political secularisation that the class of the 1920s encouraged and worked within.

Annan celebrated the liberalising nature of his generation and criticised those senior government figures that opposed it. He argued that David Maxwell Fyfe, the Conservative Home Secretary and later Lord Chancellor, was ‘convinced that Britain should take the lead in uniting Europe. On other matters he was less enlightened.’²³⁷ His portrayal of Maxwell Fyfe as being unenlightened correlated with both the abolitionists’ civilisation narrative and Annan’s own assertion that the members of his generation were an intellectual elite. Much like the abolitionists who argued that those who disagreed with their view on capital punishment were uninformed, Annan viewed those who disagreed with the

²³⁴ Annan, *Our Age*, 9-12.

²³⁵ Annan, *Our Age*, 14.

²³⁶ Annan, *Our Age*, 107-10; 123-6.

²³⁷ Annan, *Our Age*, 170.

liberalism of his generation as being uneducated. Annan did suggest that Maxwell Fyfe was more intelligent than Sir William Joynson-Hicks, ‘the puritanical Home Secretary of the 1920s’, but continued to argue that despite this he was ‘determined to loose the police on to these deviants [homosexuals].’²³⁸ For Annan, Maxwell Fyfe’s comparatively higher intelligence did not match that of this enlightened generation. The victories of this generation against the established morality were credited to the desire for sexual liberalisation and more specifically to the obscenity case regarding the publication of *Lady Chatterley’s Lover*. Amongst his analysis of the desire for increased liberalisation, there was virtually no mention of capital punishment. Annan made only one passing reference to the death penalty in his book as again he criticised the unenlightened nature of Maxwell Fyfe as Home Secretary. Annan did not afford abolition a place within the great achievements of his generation.²³⁹ However, it was this liberalising ethos that encapsulated abolition under the banner of civilisation, as demonstrated by Jenkins and others.²⁴⁰ Annan outlined the identity and nature of the generation that removed the death penalty. It was others, though, who recognised the place of abolition within such a movement. It is possible that Annan made only a passing reference to capital punishment in *Our Age* because the issue did not fit with the ideals of his entire generation. Nevertheless, this generation provided an important context for abolition.

This class of the 1920s is represented in Figure 2.1 by the sharply rising trend line, which indicates the percentage of all MPs born in each decade who were committed abolitionists and rises dramatically from the 1920s. The rise in abolitionist support from the class of the 1920s was caused by the more liberalising attitudes of the Conservative MPs born in these years, who were part of Annan’s age. As mentioned earlier, though, Annan’s generation did not match precisely the expansion in abolitionism in this period. The trend line in Figure 2.1 is relatively steady from 1871-1920. This does not mirror the shift in morals and practices that Annan recognised within his broader generation.

The generational shift identified by Annan does not explain fully why there was an increased prominence of abolitionism amongst the younger

²³⁸ Annan, *Our Age*, 171.

²³⁹ Annan, *Our Age*, 172-83.

²⁴⁰ Jenkins, *The Labour Case*, 135-7.

Conservatives. As well as conforming to this liberalising ethos, there would have been other reasons for why these younger Conservatives disagreed with their older colleagues by finding capital punishment repugnant. It is not possible to explain definitively why there was a sharp rise in abolitionism amongst Conservative MPs born after 1920. However, it is appropriate to outline some hypotheses on factors that can be presumed to have had some influence on these politicians' beliefs on capital punishment.

Mark Jarvis has argued that the Conservatives needed to embrace modernisation after their electoral defeat in 1945 in order to remain in touch with their electorate.²⁴¹ This accounts for the Party elite's willingness to adopt some liberalising measures in the latter half of the 1950s and early 1960s, but does not explain why younger Conservative MPs voted against this elite when supporting abolition. The youngest of the MPs from the class of the 1920s would not have fought in the Second World War, although the experience of war could have influenced MPs to either support or oppose capital punishment. It is not possible to quantify or qualify the extent to which not fighting in war affected MPs' beliefs on the death penalty without accessing many politicians' private archives. Many of these are not accessible to the public and there has been insufficient time during the research for this thesis to visit all of the archives that are accessible. The following, therefore, are the most probable hypotheses for the younger MPs' beliefs on abolition, particularly those of the younger Conservatives, which can be reached without having a lot more time to visit more archives.

What is evident is that for Labour MPs and for many younger Conservatives there was a greater propensity to feel that the country required liberalisation. The younger Conservatives, though, split from their Party's orthodox approach on capital punishment to support abolition. The younger Conservative MPs were politically maturing and then elected at a time when Britain's political culture was secularising. This legal and political secularisation diminished the influence of religious doctrine and morality within the parliamentary process, particularly that of traditional Anglican morality which was most influential within the Conservative Party. Anglican morality and the

²⁴¹ Jarvis, *Conservative Governments*, 1-3.

leaders of the Church of England had previously provided a level of support for retention, although by the early 1960s the Church's older retentionist leaders had largely been replaced by abolitionists.²⁴² Secularisation can be presumed to have had some formative influence on at least some of the younger Conservatives' beliefs and moral frameworks, as they were maturing within a political environment in which Anglican morality was becoming less influential.

These younger Conservatives entered the House of Commons at a time when the liberalising ethos was gripping much of the Labour Party and senior elements of the Conservative Party, notably R.A. Butler. The widespread recognition for the relaxation of both state control over society and state interference in individuals' lives was linked with the post-war discourse of civilisation, based on a progressive programme to humanise and liberalise British society. As Overy explains with reference to the inter-war period, those who wrote about civilisation defined the concept. Those writing about it, notably Jenkins and Crosland, defined it as improving both the sanctity of life and the individual's freedom of behaviour in order to create a society based upon gaiety and full enjoyment.²⁴³ The younger Conservatives entered a House of Commons that was embracing these notions of liberalisation and civilisation. For most politicians who adhered to these notions, this included abolishing the death penalty. It is unsurprising, therefore, that an increasing number of the Conservatives who matured politically and entered Parliament within this environment supported abolition. It is also unsurprising that this shift did not affect the majority of the younger Conservatives, as this new political culture cannot be expected to have caused a sudden, seismic shift away from traditional Conservative values amongst all younger Conservatives. Such changes happen more gradually. The lack of a central doctrine behind Conservatism, of the sort that existed for the Labour Party, meant that it was not especially problematic for groups within the Party to shift away from traditional Party orthodoxies on certain issues, as was happening contemporaneously with R.A. Butler and the

²⁴² Potter, *Hanging in Judgement*, 193.

²⁴³ Overy, *The Morbid Age*, 15-6, Crosland, *The Conservative Enemy*, 131; Crosland, *The Future of Socialism*, 521-2; Jenkins, *The Labour Case*, 135-7.

Right Progressives supporting an element of economic and social liberalisation.²⁴⁴ The shift towards abolitionism within the Conservative Party accelerated with the arrival in Parliament of the younger MPs born after 1920. It developed in the following decades to such an extent that when Margaret Thatcher, as Prime Minister, spoke publically of her desire for capital punishment to be retained, she did so in the knowledge that the majority of her front bench disagreed with her.²⁴⁵

It is likely that the politically secularising, liberalising and civilising ethos within the British political culture of the 1950s and 1960s helped to form some of the abolitionist beliefs of the younger Conservatives. This mentality was common amongst members of all parties who favoured the separation of crime and sin, which was particularly prominent within the permissive legislation. However, a number of the senior members of both major parties were uncomfortable with the developing permissive society. This is examined in the following two chapters of this thesis. There were other factors, though, that could have influenced the class of the 1920s, and in particular the younger Conservatives, to support abolition.

The widespread perception that Evans, Bentley and Ellis should not have been executed might have persuaded a few politicians that the death penalty should be abolished. It may have also reinforced the abolitionism of others, particularly those younger politicians who were more likely to be formulating their opinions when these executions were carried out. Similarly, the emerging evidence during this period from the Royal Commission's report and from foreign countries that had abolished the death penalty indicated that capital punishment was not a uniquely effective deterrent to murder. This would have removed the sense for some politicians that it was a necessary penalty to maintain law and order within society and could have thus persuaded some to support abolition. The committed abolitionism of most of the abolitionists, though, indicates that their opposition to capital punishment would not have required such evidence or cases to convince them that the death penalty should be

²⁴⁴ Lawrence Black, *Redefining British Politics: Culture, Consumerism and Participation 1954-70* (Basingstoke: Palgrave Macmillan, 2010), 77; Gamble, *The Conservative Nation*, 33-4.

²⁴⁵ Richard Vinen, *Thatcher's Britain: the Politics and Social Upheaval of the 1980s* (London: Simon and Schuster, 2009), 99-100.

removed. Their opposition was a more innate, emotional rejection of executions, based on a view that capital punishment was barbaric, to quote Callaghan and Ross.²⁴⁶

This abolitionism was not the result of a ‘youthquake’, as demonstrated by the retentionism of the general membership of the Young Conservatives. This and the abolitionism of their national committee, mentioned earlier, was a microcosm of the difference of opinion on abolition between the political elite and the electorate. There were no youth protests or vocal demands for abolition. The young in society did not differentiate themselves from the opinions of the rest of the broadly retentionist population. These younger abolitionist Conservative MPs, as part of the political elite, enabled abolitionism to become entrenched within the Commons. The majority of the abolitionists in Parliament, though, were members of the Labour Party of all ages. Politicians did not act with the support of, or under pressure from, the electorate. There was no clear demand for abolition from the younger members of society. It was, therefore, a reform that was imposed upon them by a liberal elite.

Party characteristics and conceptual backgrounds are examined in the following chapter as formative aspects of the abolitionists’ beliefs. Abolitionism was stronger amongst the younger Conservatives than it was amongst their older Party colleagues. In the absence of further evidence for the formative causes of their beliefs, one must presume that the secularised, liberalising, civilising political culture of the 1950s and 1960s influenced a minority of young Conservatives to believe that capital punishment was an unpleasant and unnecessary element of Britain’s criminal justice system. This was in line with the established Labour orthodoxy on the issue.

It is likely that there would have been other factors that pushed the parliamentary class of the 1920s towards abolition, regardless of their affiliations to political parties. Without accessing the private papers of a significant number of politicians, though, one can only speculate as to what these factors might have been.

²⁴⁶ TNA:PRO, Confidential memorandum by the Secretary of State for the Home Department and the Secretary of State for Scotland on the Permanent Abolition of Capital Punishment for Murder, CAB/129/141, C(69) 48, 6 May 1969.

Conclusion

The retentionists and abolitionists were broadly divided along party lines, with the former predominantly aligned with the Conservatives and the latter with the Labour Party. The notable exception was the abolitionist minority of younger Conservative MPs. Although a number of historians have highlighted the party divide over abolition, no study has investigated this or examined the characteristics of those involved in either group. This chapter has explained that the retentionists were generally more traditional Conservatives, many of whom had careers in the military and business management. The abolitionism of the younger Conservatives, though, enabled abolition to become entrenched within the Commons, regardless of which party was in government.

The previous chapter on public opinion explained that politicians disregarded the popular will and were liberated from party pressure when they voted on capital punishment. The directions of their votes were based upon their own consciences. It is impossible to identify the specific reasons for the votes cast by each individual politician during these debates. Yet, this detachment from public opinion and party pressure means that it is essential to understand the backgrounds that shaped politicians' decisions when examining why capital punishment was abolished. It is necessary, therefore, that their collective identities as retentionists and abolitionists are established in order to understand why the abolitionists were successful. This chapter has qualified these labels, which have been used in much of the historiography without qualification beyond a basic division by party allegiance. The politicians' occupational backgrounds that have been extrapolated from the database of MPs' votes support the broad party split of the Conservatives as retentionists and Labour members as abolitionists. The abolitionism of the younger Conservatives is significant, though, for explaining why capital punishment was consistently opposed within the House of Commons after the 1955 general election.

This identification of these collective identities exposes some of the causes of politicians' beliefs on capital punishment. It goes some way, therefore, to explaining why the death penalty was abolished. In order to address this question fully, though, the arguments and beliefs of the retentionists and abolitionists have to be examined in detail, drawing upon the backgrounds uncovered within this chapter. This is conducted in the following two chapters of this thesis.

Chapter Three: The abolitionist case

When Sydney Silverman moved that his Murder (Abolition of Death Penalty) Bill be read for a second time, he did so in confidence that, finally, his attempt to abolish capital punishment would be successful. He took the inclusion of his Bill in the Queen's Speech, the only Private Members' Bill to make the programme, to be a 'good omen'. He stated in Parliament that this debate would not look at the 'pros and cons of the preservation or abolition of the death penalty for murder', as that 'battle—a long, grim, sometimes dreary, sometimes exciting battle—was won in 1957 in the Homicide Act.'²⁴⁷ Although many retentionists would have disputed this assertion, Silverman's speech reflected the wider feeling amongst the prominent abolitionists that the matter would be resolved imminently and successfully. Six months before the 1964 general election, Gardiner and Gollancz had written to the members of the NCACP: 'Whatever Government is returned will be younger and we believe that there is a probability that success will at last crown our efforts during the lifetime of the next Parliament.'²⁴⁸ By 1964, the abolition process had become long and grim, as the abolition Bills of 1948 and 1956, which had received the support of the Commons, were defeated because of the retentionist attitudes of both the presiding governments and the House of Lords.

This chapter examines how the abolitionists argued their case within Parliament, the reasons why they believed that abolition was necessary, the place of abolition alongside the other socially liberal reforms and, finally, why the abolitionists succeeded. These four areas of investigation form the structure of this chapter and explain how the abolitionists achieved their aim. Civilisation was an important aspect of the abolitionists' arguments and beliefs and is examined in this chapter, along with the other principal components of their case, namely a moral repugnance towards the state taking life and their challenge to the argument that capital punishment was a unique deterrent to murder.

An analysis of the abolitionists' arguments and an appraisal of their movement have been absent thus far from the historiography of capital

²⁴⁷ HC Deb 21 Dec. 1964 vol. 704 cc. 870-1.

²⁴⁸ Gardiner Papers, Add MS 56459 C, open letter from Gerald Gardiner and Victor Gollancz to the members of the National Campaign for the Abolition of Capital Punishment, April 1964.

punishment. In particular, there has been no challenge to the assumption that there was a genuine link between abolition and the permissive society. This chapter provides an original analysis of the abolitionists' case in order to understand why capital punishment was abolished in Britain. As the vast majority of abolitionist MPs were members of the Labour Party, this chapter examines the conceptual backgrounds of this party in explaining the nature of and reasons for the abolitionists' arguments and beliefs. However, this thesis' previous chapter has explained that there was a group of younger Conservative MPs who also favoured abolition. These have been loosely associated with the Right Progressive movement within the Conservative Party. It is essential, therefore, that the analysis of the abolitionists' case extends beyond the Labour Party. This extension is underdeveloped within the historiography.

How did the abolitionists argue their case?

This section splits the abolitionist argument into three primary groups: civilisation, moralism and causalism. These three aspects of their arguments are examined in this order. A significant number of abolitionists used language associated with civilisation to criticise the retention of the death penalty, including Silverman during the same speech mentioned at the beginning of this chapter. His use of civilisation is quoted a little later in this section. These were emotional expressions within the discourse of high politics that were used to invoke repugnance and disgust amongst fellow politicians. Such expressions did not tend to be scorned by politicians, despite their dismissal of dissenting public opinion on the grounds of perceived emotionalism.²⁴⁹ Arguments based upon civilisation were not the sole preserve of the abolitionists. The retentionists argued that Britain's level of civilisation would be diminished were capital punishment abolished. This argument is examined in this thesis' chapter on the retentionist case. However, civilisation was utilised more successfully by the abolitionists in Parliament and formed a central part of many of their arguments.

Many abolitionists used moral arguments, some of which were based on Christian teachings and non-conformist ideals. The influence of these declined during this period, though, as Britain's law and political discourse became

²⁴⁹ Langhamer, "The Live Dynamic," 419.

increasingly secularised. The major aspect of their case was the causalist argument that capital punishment did not provide a uniquely effective deterrent to murder. This became the crucial point of contention during the capital punishment debates, ahead of arguments based on morality. Both the abolitionists and retentionists attempted to persuade their audiences in the Commons and Lords that their interpretation of the deterrent effect of capital punishment was correct. This examination of the abolitionists' arguments uses Christie Davies' framework of causalist issues becoming more important than moralism within the political discourse on issues of conscience in this period.²⁵⁰

Civilisation, although predominantly a moral, emotional argument, somewhat transcends the division of arguments into moralist and causalist. There were aspects of causalism within the abolitionists' uses of civilisation, such as the perception that a more civilised society would be safer and less violent. Most uses of civilisation, though, were moral reactions to capital punishment. For this reason, civilisation is analysed separately in this section, before moralism and causalism. This thesis' chapter on public opinion explained that politicians did not allow their views on capital punishment to be influenced greatly by the opinions of those outside Parliament. Politicians did not engage in any significant attempts to present their arguments to the electorate. For this reason the majority of the evidence for the abolitionists' arguments is taken from politicians' speeches, as recorded in Hansard.

Silverman's first sentence after moving that the Bill be read was one of gratitude to the government for providing time for the debate to bring about the 'final end of the last remnant of a grotesque barbarity'.²⁵¹ This language immediately placed Silverman's argument within the well-established discourse on civilisation. Callaghan and Ross echoed the use of this concept in their cabinet memorandum of 1969.²⁵² This concept was a common feature of both the abolitionist and retentionist arguments, although the abolitionists had a better-developed conceptual framework and used the concept more frequently in their arguments. Roy Jenkins' use of civilisation is perhaps the most noteworthy within

²⁵⁰ Davies, *Permissive Britain*, 28.

²⁵¹ HC Deb 21 Dec. 1964 vol. 704 c. 870.

²⁵² TNA:PRO, Confidential memorandum by the Secretary of State for the Home Department and the Secretary of State for Scotland on the Permanent Abolition of Capital Punishment for Murder, CAB/129/141, C(69) 48, 6 May 1969.

the capital punishment debates. He used the concept to link abolition to other liberalising reforms within the final chapter of *The Labour Case*, which he titled “Is Britain Civilised?”.²⁵³

Raymond Williams has broadly defined civilisation as ‘an achieved state or condition of organised social life.’²⁵⁴ None of the politicians who took part in the capital punishment debates would dispute Williams’ description. Retentionists and abolitionists disagreed with one another about whether capital punishment positively or negatively impacted on the condition of organised society and about whether Britain had achieved this state of social life. There was a widespread acceptance, though, that capital punishment did have an effect on the level of civilisation within a society. Although there was no uniformity in either the abolitionist or retentionist interpretations of civilisation, it was widely understood to be a concept by which Britain could be compared to other countries.

Jenkins’ chapter “Is Britain Civilised?” demonstrated both the relationship between capital punishment and civilisation and the belief that this relationship would be recognised by the book’s audience. There was a well-founded conceptual framework that linked society’s treatment of its prisoners to its level of civilisation. The Gospel according to Matthew stated that it was right to care for the weakest members of society, including prisoners.²⁵⁵ Winston Churchill, a committed retentionist, developed this concept in a speech to the House of Commons in 1910:

The mood and temper of the public in regard to the treatment of crime and criminals is one of the most unfailing tests of the civilisation of any country. A calm and dispassionate recognition of the rights of the accused against the State, and even of convicted criminals against the State... are the symbols which in the treatment of crime and criminals mark and measure the stored-up

²⁵³ Jenkins, *The Labour Case*, 135-7.

²⁵⁴ Raymond Williams, *Keywords: a Vocabulary of Culture and Society* (London: Fontana Press, 1988), 57.

²⁵⁵ Matthew 25: 31-46 (New International Version).

strength of a nation, and are the sign and proof of the living virtue in it.²⁵⁶

It is understandable, therefore, that retaining or abolishing capital punishment was perceived by politicians to have some effect on Britain's civilisation. As a result, the concept was used frequently within the death penalty discourse.

Civilisation was both a conceptual framework for abolition and an emotional device within the discourse. Roy Jenkins provided the most detailed example of the former use of civilisation. He opened the final chapter of *The Labour Case*, in which he set out his programme to abolish the death penalty and enact other liberalising legislation, by explaining that: 'this chapter is about the need to make this country a more civilised place in which to live.'²⁵⁷ The chapter framed Jenkins' proposed legislative programme around this concept. He used civilisation to connect capital punishment to other liberalising reforms, such as the legalisation of homosexuality and abortion. Abolition was mentioned first in this list of reforms. Jenkins emphasised the importance of removing the death penalty for achieving civilisation through his language on capital punishment, describing it as 'a barbaric and useless penalty' and the gallows as the 'ghastly apparatus'. This emotive language highlighted that abolition was a key reform for Jenkins. He concluded his paragraph on capital punishment by claiming that Britain 'stands out as one of the few advanced countries which retains this presumptuously final penalty'.²⁵⁸ Jenkins was one of many abolitionists to base his argument for abolition on the concept of civilisation. As a senior Labour politician using this framework to support and unite abolition with other liberalising legislation, his chapter is of particular interest and importance as it represented an argument that it is fair to presume was supported by at least some of the other senior members of the Labour Party.

The same was true for Tony Crosland, another senior Labour politician, who outlined a programme for modernising Britain that was broader than Jenkins'. This contained many of the same reforms, including the 'libertarian reform of existing laws on capital punishment, police powers, homosexuality,

²⁵⁶ HC Deb 20 Jul. 1910 vol. 19 c. 1354.

²⁵⁷ Jenkins, *The Labour Case*, 135.

²⁵⁸ Jenkins, *The Labour Case*, 136.

aliens and immigration, and so on.²⁵⁹ Although he did not frame this around the concept of civilisation, he used similar ideas that were often linked to this, notably progressiveness. Civilisation was present, though, in his earlier vision of a society based upon increased enjoyment and leisure activities pursued outdoors and in cafés, restaurants, pubs and theatres. This was published in the conclusion of *The Future of Socialism*. Crosland defined the society that he was picturing as being ‘a more colourful and civilised country to live in.’²⁶⁰ Although this vision is well-known, this chapter of this thesis uses his programme within *The Conservative Enemy* more closely, as it contained a more detailed list of proposed legislation to realise his ambition. The absence of the term civilisation from Crosland’s later programme is a reminder that the concept was not used universally and consistently by all abolitionists. Other concepts were used in a similar manner, notably progressiveness, liberalisation and modernisation, though they were not synonyms for civilisation. These other concepts were used somewhat interchangeably, but it was civilisation that appeared the most frequently within abolitionists’ arguments.

The abolitionists’ appeals to civilisation within parliamentary discourse were emotional. Their decrying of executions as a barbaric practice was intended both to incite disgust towards capital punishment and to inspire support for abolition based upon their audience’s now-heightened moral and aesthetic repudiation of the death penalty. Civilisation was used primarily in two ways by the abolitionists. The majority viewed Britain as a civilised country whose use of the death penalty did not match this status. Some, though, portrayed it as a country that could only become civilised by abolishing capital punishment. For most abolitionists, therefore, the portrayal of capital punishment as an uncivilised practice placed the death penalty at odds with their impression of the state that they represented. This was a crucial aspect of the emotional nature of the civilisation arguments, as it challenged the presentation of Britain as a superior society at a time that it was losing its empire. According to this portrayal, sympathetic politicians could only satisfy themselves that their state was ‘Great Britain by abolishing the death penalty.’

²⁵⁹ Crosland, *The Conservative Enemy*, 131.

²⁶⁰ Crosland, *The Future of Socialism*, 521-2.

Speaking in 1956, the Earl of Listowel's argument was founded upon this former idea that the death penalty was harmful to Britain's status as a civilised country:

There are only three countries left in Western Europe—which, after all, is still the main repository of Christian civilisation—the United Kingdom, France and Spain, that still retain the death penalty for murder. I have always taken the view, which I think may be shared by many other noble Lords, that the British character is more Scandinavian than Latin; and I think this holds good in spite of our predominantly urban way of life. I cannot believe that we are, on the whole, less self-disciplined or more prone to violence than our Scandinavian neighbours, and I venture to think that this may be just as forcible an explanation of the low murder rate, to which frequent reference has been made, in the United Kingdom as the explanation that it is accounted for by the existence of the death penalty.²⁶¹

Listowel supported his abolitionist position through a comparative, international understanding of civilisation. His view of civilisation was Euro-centric, which is perhaps unsurprising. His interpretation of Scandinavian and Latin countries could be presented as a comparison between the cold-climate states, where emotionalism was limited, and the hot-climate states in which tempers boiled. The latter encouraged greater incidences of murder whereas the former kept homicide rates low. He argued that capital punishment was unnecessary in Britain because the country had a similar level of civilisation and climate as the Scandinavian states that had abolished the death penalty. He saw no reason why capital punishment would be a unique deterrent in Britain if it were not in those other countries. By referring to the comparative levels of civilisation between Britain and the Scandinavian and Latin countries, Listowel was challenging his fellow peers to find a reason to portray Britain as a more dangerous and barbarous state. Although some peers were willing to do this in other debates, citing gangsterism in cities and the increasing incidents of violent crime, a

²⁶¹ HL Deb 10 Jul. 1956 vol. 198 c. 783.

significant number of politicians adhered to Listowel's use of civilisation within the abolition debates.²⁶²

It is noteworthy that Listowel compared Britain to the Scandinavian countries. The experiences and opinions from these countries, in particular Sweden and Norway, were of particular interest to various politicians and governments across this period. The Royal Commission's members visited Scandinavian countries, along with the Benelux countries, France, Italy, Switzerland and some of the states of the United States, in order to inform their report.²⁶³ The Howard League for Penal Reform invited foreign experts, primarily from Scandinavia, to speak to MPs in 1956.²⁶⁴ Finally, the British ambassadors to Sweden and Norway sent a number of letters to the British government outlining the opinions of people and politicians in these countries towards Britain's use of capital punishment. There is no record in The National Archives of opinions from other countries being recorded in the same manner.²⁶⁵ It is apparent, therefore, that both Listowel's admiration for Scandinavia and his perception of Britain as having a similar level of civilisation to the Scandinavian countries would have resonated amongst a number of politicians and others involved in studying capital punishment.

The Earl of Listowel's view of Britain as a civilised country was the most common use of civilisation by abolitionists. There were some politicians, though, who argued that Britain was not civilised because of its use of the death penalty. One such politician was Lord Merthyr, who argued in 1948:

I share the views of a good many foreigners who point to this country and say: "Your country cannot be wholly civilised so long as you have the death penalty," and who say that in any so-called

²⁶² Lord Milverton's speech during the Lords' debate on the Criminal Justice Bill in April 1948 was an example of a retentionist argument that utilised civilisation and suggested that there were too many murders to allow Parliament to abolish the death penalty: HL Deb 28 Apr. 1948 vol. 155 c. 539.

²⁶³ *Royal Commission on Capital Punishment*, 2-3.

²⁶⁴ Gardiner Papers, Add MS 56455B, Letter from the Howard League to Torsten Sellin (Swedish expert on the death penalty), 15 Mar 1956.

²⁶⁵ TNA:PRO, HO 291/94; HO 291/98; FO 188/655; FO 188/690; FO 371/106642, Letters from the British Ambassadors to Sweden and Norway sent to the British Government, various dates between 1948 and 1956.

civilised country which retains the death penalty there is an element of barbarism.²⁶⁶

Merthyr's use of civilisation compared Britain to foreign countries that, it can be inferred, had abolished capital punishment. His denunciation of Britain as an uncivilised country, or at least one whose status as being civilised was dubious, portrayed capital punishment as having a greater barbaric effect upon society than did Listowel in his speech. However, the use of foreign examples indicates that, although Merthyr viewed capital punishment as having a more uncivilising influence on society than did Listowel, both men used and justified the concept as a comparative tool. This is common throughout the debates, both for abolitionists who viewed Britain as civilised and for those who did not. The differences in the gravity afforded to the uncivilising influence of capital punishment, therefore, should not overshadow the broad commonality in the abolitionists' uses of this concept. The concept, therefore, can be examined as a broadly uniform idea.

Abolitionist MPs attacked the retentionists' uses of civilisation. Sydney Silverman, in criticising the Conservative government's Homicide Bill, stated:

The whole of these discussions [about the compromise Homicide Bill] are exempt from argument, reason and logic. We are to have this, because it must stand between our civilisation and its irretrievable collapse—the execution of 2.35 murderers every years. That is the *reductio ad absurdum* of the whole argument, and the Government appeal to us to help them along with the Bill; not to waste time. They are determined to have it on the Statute Book, when they are saying that there is nothing satisfactory to anyone; that there is nothing intelligible or rational to be said in support of it.²⁶⁷

There was nothing unusual in Silverman lambasting a retentionist argument. His criticism of the retentionist argument on Britain's civilisation, though, is interesting. Although Silverman did not utilise civilisation in his own argument, he found fault with this alternative interpretation, accusing the retentionists of using the concept for political expediency. This was a charge that was also leveled against the abolitionists, as was demonstrated by Stanley Evans when, during the

²⁶⁶ HL Deb 01 Jun. 1948 vol. 156 c. 73.

²⁶⁷ HC Deb 24 Jan. 1957 vol. 563 c. 438.

debate on the government's retentionist motion in February 1956, he attacked the abolitionists for labeling those who disagreed with them as being uncivilised.²⁶⁸ This argument is examined in greater detail in the following chapter. Both abolitionists and retentionists used arguments based on civilisation to enhance their case. It was the abolitionists, though, who published programmes to civilise the country. The retentionists did not develop the concept to a similar extent.

The civilisation discourse extended beyond Westminster. William Temple, the Archbishop of York between 1929 and 1942 and Archbishop of Canterbury from 1942 to 1944, delivered a sermon against the continuance of the death penalty that was published by *The Spectator* and reprinted by the NCADP in 1935. Temple's final sentence of his sermon presented the crux of his opposition to capital punishment:

To me, at least, it seems clear that few public actions would at the present time so much demonstrate and secure an advance in the ethics of civilisation as the abolition of the death penalty.²⁶⁹

Temple's rejection of capital punishment pre-dates the scope of this thesis, but it demonstrates that the civilisation discourse within the capital punishment debates was well established. He added a prominent and respectable voice to those of the politicians who decried the uncivilised nature of capital punishment. Throughout the capital punishment debates both abolitionists and retentionists praised the contributions made to the debates from senior bishops, particularly in the House of Lords.²⁷⁰ Temple's argument was cited in the capital punishment debates in both Houses of Parliament after his death. This demonstrates Matthew Grimley's argument that secularisation was not total during this period. It influenced the arguments and, occasionally, the beliefs of politicians. It did not mean, though, that senior clerics lost all influence within politics or society.²⁷¹ Temple's

²⁶⁸ HC Deb 16 Feb. 1956 vol. 548 cc. 2612-3.

²⁶⁹ William Temple, *'The Death Penalty' by the Archbishop of York, reprinted, by kind permission of the Editor and the Author, from "The Spectator"* (London: National Council for the Abolition of the Death Penalty, 1935).

²⁷⁰ One of the examples of such praise for a bishop's speech can be found in the House of Lords' debate on the second reading of the Criminal Justice Bill. Viscount Stansgate, though an abolitionist, praised the more retentionist Archbishop of Canterbury for his 'enormously valuable contribution to our debate': HL Deb 01 Jun. 1948 vol. 156 c. 57.

²⁷¹ Grimley, "Law, Morality and Secularisation," 740.

contribution and interpretation of civilisation, therefore, had an impact upon these debates.²⁷²

The widespread appeal of the civilisation discourse within the abolitionist arguments was not limited to Britain. The Norwegian newspaper *Aftenbladet* criticised Britain's civilisation in relation to the execution of Ruth Ellis but praised it when the House of Commons passed the Death Penalty (Abolition) Bill in 1956. It was another example of the emotionalism that rested at the heart of the arguments based on civilisation:

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

This quote, published in the *Daily Mirror*, was accompanied by a similar quote from the *Melbourne Argus* in Australia, which claimed that:

The hanging has shamed Britain in the eyes of most of the civilised world – not because Ellis was a woman, but in the application of the death penalty itself. It amounts to state murder.²⁷³

Aftenbladet later portrayed British civilisation in a more positive light after the Commons debate on the Death Penalty (Abolition) Bill:

In these cruel times when we have to cling to everything which speaks for humanity, we must welcome the agreement of the House of Commons with this view (that the death penalty should be abandoned). Our faith in Great Britain, whether under a Labour or Tory Government, as the surest guardian of civilisation has been confirmed afresh.²⁷⁴

These examples demonstrate that abolitionists in foreign countries believed that capital punishment was connected to civilisation and that Britain's reputation as a civilised country was affected by its use of the death penalty. *Aftenbladet*

²⁷² Temple's opinion was cited by the Bishop of Chichester in the Lords' debate in the committee stage of the Criminal Justice Bill and by William Reid and Llewellyn Williams in the Commons' debate on the Conservative government's motion to retain capital punishment but modify its application: HL Deb 02 Jun. 1948 vol. 156 cc. 123-30; HC Deb 16 Feb. 1956 vol. 548 cc. 2585-9; 2623-7.

²⁷³ *Daily Mirror*, 14 Jul. 1955.

²⁷⁴ TNA:PRO, HO 291/98, Quote from *Aftenbladet* within a letter from the British Embassy in Oslo to the Foreign Office, 24 Feb. 1956.

apportioned particular importance to capital punishment as a device that determined a society's civilisation, arguing that Britain's civilisation had been burdened by the execution of Ruth Ellis, yet less than a year later claiming that it was a 'surest guardian of civilisation' after it appeared that the death penalty would be abolished. Civilisation was both an emotional device for politicians and others to defend their arguments whilst attacking their opponents' and a conceptual framework that epitomised the nature of society that was to be protected or desired.

Morality, and in particular religion, were fairly common themes within the abolitionists' arguments, although they were not used as frequently as arguments based on civilisation or deterrence, thus demonstrating secularisation within law and politics. Although Davies is correct to assert that moralism declined in prominence within the debates on abolition and other issues of conscience, being overtaken by causalist arguments, moralism remained a feature of the abolitionist arguments throughout this period.²⁷⁵ Furthermore, as the next section of this chapter explains, it was still the most important reason for the abolitionism of most MPs. Davies' framework of secularisation applies to the arguments within the abolition debates to a large, but not total, extent.

Nonconformist Christian practices had a distinct influence over many of those who were involved in the formation of the Labour Party, though this influence declined after 'the Party's formative years'.²⁷⁶ The religious backgrounds within the Labour Party are examined in the next section of this chapter. The reduction in the presence of nonconformists within the Party, though, did not equate to a decline in moral justifications for abolition.

Religion was a fairly fundamental aspect of a number of abolitionist arguments. Lord Rochester, speaking during the Lords debate on the abolition amendment to the Criminal Justice Bill in June 1948, based much of his argument on Biblical doctrine. He criticised the Archbishop of Canterbury, Geoffrey Fisher, who had spoken in favour of capital punishment in the debate on the previous day and whose speech is examined in this thesis' chapter on the

²⁷⁵ Davies, *Permissive Britain*, 28.

²⁷⁶ Henry Pelling and Alastair J. Reid, *A Short History of the Labour Party* 11th ed., (Basingstoke: Macmillan Press Ltd., 1996), 14; Patrick Syed and Paul Whiteley, *Labour's Grass Roots: the Politics of Party Membership* (Oxford: Clarendon Press, 1992), 36.

retentionist case. Rochester argued that Canterbury focused too heavily on the Old Testament and yet omitted ‘all reference to the words of Jesus Christ himself.’²⁷⁷ He did not employ Christianity, though, merely to criticise the religious arguments of his opponents. His abolitionist argument was centred largely on Christian teachings:

While the death sentence remains, it colours the whole of our penal system, whereas to abolish it would be a civilising step and a gleam of light on a dark horizon when so many steps backward are being taken all over the world... This is an issue that far transcends all Parties. My appeal is to Christian principles, of which the first and most important is the sacredness of human personality and the value of every individual life in the sight of God.²⁷⁸

Rochester found the support necessary for his argument from the Bible. He sought to convince the other Lords of the need to abolish the death penalty because of the unchristian and uncivilised nature of the punishment.

Reginald Paget, one of the more prominent abolitionist MPs, and the Bishop of Chichester also used religion in their arguments. During the November 1956 debate on the Homicide Bill, Paget stated:

Young men like these, however violent, ill-guided and wicked, should not be denied the chance of becoming fit to meet their Maker. That seems to be the all-important consideration... There are just three phrases from St. Matthew which I should like to read with regard to this. They are: “Pilate saith unto them, What shall I do with Jesus who is called Christ? They all say unto him. Let him be crucified.” “And the Governor said, Why, what evil hath he done? But they cried out the more, saying. Let him be crucified.” “When Pilate saw he could prevail nothing, but that rather a tumult was made, he took water, and washed his hands before the multitude, saying, I am innocent of the blood of this just person.” Was he innocent? Do we judge him innocent? Can we judge ourselves innocent if we consent to the killing, the unnecessary killing, wrongful killing, because we think that the crowd likes it?

²⁷⁷ HL Deb 02 Jun. 1948 vol. 156 c. 153.

²⁷⁸ HL Deb 02 Jun. 1948 vol. 156 c. 155.

Can we justify this, for it is our action? The hangman is our servant—is there one of us here who would do his job? Very few, I hope, because in our hearts and souls we know that what he is doing is indecent and wrong.²⁷⁹

Paget's reference to Christian doctrine was at the end of a speech that lasted a little over thirty-five minutes. Religion was not the primary justification for his entire argument. By citing a religious reason to abolish the death penalty at the end of a long speech, Paget would have hoped or expected that this would have a greater impact upon his audience. He was not, however, using religion simply to state that hanging was wrong. The main purpose of his use of religious doctrine was to draw upon an example that would be both familiar to and respected by his audience in the Commons. His strategy appears to have been to remind his fellow politicians of their culpability in an execution in order to persuade them to oppose capital punishment. His use of religious doctrine, therefore, was as an emotional and persuasive device rather than as the central justification for an argument. In this way, it differed from the position espoused by Lord Rochester in 1948 that was based on Biblical teachings.

The Bishop of Chichester, Roger Wilson, in speaking in favour of the Murder (Abolition of Death Penalty) Bill in the Lords in July 1965, referred infrequently to Christianity. His argument instead was based upon a morality that was not specific to the Church. He did, though, make some reference to the Church, notably the opinions of the clergy towards the death penalty:

The Churches have made their own pronouncements through their assemblies on this. They would not dream of saying they represent all Christian opinion or that there has been any Gallup Poll among the Churches on this. In the Convocations they have said as representatives what they thought right; and I take it that this is the business of this House also; and in the end I believe we shall be seen in a far more creditable light and far more Christian light if, instead of waiting for positive evidence, which will never occur, on grounds of principle and of utility we grasp the nettle at

²⁷⁹ HC Deb 15 Nov. 1956 vol. 560 c. 1249.

this time and make our decision, as indeed I hope we shall do tomorrow afternoon.²⁸⁰

As with Paget, Chichester's inclusion of religion was at the end of his speech to the House. Chichester used religious opinion to influence other peers. He placed specific importance on Christian opinion on the death penalty, following the recent pronouncements in favour of abolition from the Convocations of Canterbury and York.²⁸¹ Prior to the quoted passage from his speech, Chichester had stated that it was 'certainly not our business to wait for public opinion in such an important issue.'²⁸² Christian, and more specifically Anglican, opinion was placed here above the opinion of the general public. In order to support his abolitionist argument, Chichester argued that the opinions of religious leaders were more informed than those of the public. He did not utilise Biblical doctrine.

The examples quoted in this section demonstrate that religion and religious morality were important for the abolitionists' arguments. There were individuals, such as Lord Rochester early in this period, for whom religion was an important justification for an abolitionist argument. Furthermore, others such as Paget and the Bishop of Chichester used Christianity to conclude their speeches. They would not have done so had they believed that religion would not have had a particular influence upon the decisions and consciences of their audiences. Christian leaders were also present within the abolition movement. One of the founding members of the NCACP was Canon L. John Collins. Another important abolitionist was Michael Ramsey, the Archbishop of York who succeeded Geoffrey Fisher at Canterbury in 1961. Ramsey had agreed to Silverman's request that he introduce the Murder (Abolition of Death Penalty) Bill in the House of Lords, an invitation that demonstrated the continuing importance of religious figures within the political process towards the end of this period. However, it was decided later that it was unwise for Ramsey to do this, as it risked alienating part of the congregation, could cause resentment amongst opposition peers that an Archbishop was introducing a controversial subject and

²⁸⁰ HL Deb 19 Jul. 1965 vol. 268 cc. 527-8.

²⁸¹ Potter, *Hanging in Judgement*, 193-8.

²⁸² HL Deb 19 Jul. 1965 vol. 268 c. 527.

would force Ramsey to face more skilled politicians than himself in debate.²⁸³ This demonstrated, though, the enduring importance of religious figures during a period of secularisation.

Christie Davies is correct to identify that religious arguments were less prominent in the capital punishment debates than were other issues, notably the causalist issue of deterrence.²⁸⁴ However, they remained present within abolitionist arguments across this period. Although their influence diminished in relation to deterrence within the presentation of the abolitionists' arguments, they remained a valuable aspect of the case for abolition. Furthermore, they were always a significant factor in shaping the beliefs of this cohort.

The abolitionist uses of morality were not limited to religion. During the Lords debate on the abolition amendment to the Criminal Justice Bill in June 1948, the Bishop of Chichester, George Bell, proposed a moral argument against the death penalty on the grounds that it was unpleasant for those involved in the process:

There is another consideration, from the moral point of view. The Lord Chief Justice reminded us that he and other Judges are face to face with the murderer, and he has described the effect on the Judge, the jury and the people in court of the sight of the murderer—a human monster he may be—and of the grim unfolding of the details of a horrible crime. That is caused by the murder itself. But consider the effect of the whole circumstances of the verdict and the execution on the prison officers, the prison population, the relatives, and others whose duty brings them near the sentenced criminal.²⁸⁵

Chichester's argument that capital punishment had a damaging effect on those involved in the process was not uncommon. He alluded to a causalist issue by arguing that the negative effect on those involved with or close to an execution was a detrimental outcome of the application of the punishment. Chichester, though, felt that this was a moral issue based on the sense of repugnance and

²⁸³ Ramsey Papers, Ramsey 76 f. 173, Letter from Ramsey to Silverman, 19 February 1965; Ramsey 76 ff. 201-2, Note from Robert Beloe (Ramsey's Personal Secretary) to Ramsey, 17 June 1965.

²⁸⁴ Davies, *Permissive Britain*, 28.

²⁸⁵ HL Deb 02 Jun. 1948 vol. 156 c. 125.

unease that was generated by executions. He continued his speech by recounting stories and reports of those who suffered after witnessing or enabling an execution. His recognition that there was a moral issue to be resolved within the capital punishment debates that was not connected directly to religion was a common point raised by abolitionists.²⁸⁶

A number of abolitionist arguments were based upon the principle of the sanctity of life. During the second reading of the Murder (Abolition of Death Penalty) Bill, John Hynd based part of his argument upon this principle:

...we have not any concrete evidence to suggest that it is right to continue this barbaric method of punishment, which I think by general agreement reduces the conceptions of the sanctity of human life and society and therefore to some extent undermines the basis of our civilisation.²⁸⁷

The retentionists had a counter-argument that the sanctity of life was preserved through the deterrent effect of the death penalty. Sir S. Knox Cunningham raised this point during the debate in February 1956 on the Conservative government's motion to retain the death penalty but modify its application:

I am in favour of its retention, and I have come to this conclusion because I believe in the sanctity of human life...I believe we must see that the Queen's peace is kept and that right and law are the rule in this land.²⁸⁸

As was often the situation, both the abolitionists and retentionists cited moral justifications for their cases that could be countered by their opponents but not easily disproved. They were based upon individual opinions and morality rather than evidence. This was one reason why the causalist issue of deterrence became the most important argument within the abolitionist case once evidence had become available from the Royal Commission's report and from foreign abolitionist countries that the retentionists were unable to refute. However, the sanctity of life was a significant reason why many abolitionists opposed the death penalty. This is examined further in the next section of this chapter.

²⁸⁶ Sydney Silverman argued that there were 'deeply moral issues' to be decided within the capital punishment debates: HC Deb 16 Feb. 1956 vol. 548 c. 2627.

²⁸⁷ HC Deb 21 Dec. 1964 vol. 704 c. 976.

²⁸⁸ HC Deb 16 Feb. 1956 vol. 548 c. 2599.

Moralism declined somewhat in importance whilst causalism became a more prominent factor in the capital punishment debates as this period developed. The decline in the prominence of moralist abolitionist arguments in this period was part of the legal and political secularisation of the post-war decades. Furthermore, the connection between law and morality was being challenged and reduced through developments in the application of legal morality, notably the Wolfenden Report and H.L.A. Hart's lectures at Stanford University, published in 1963.²⁸⁹ Davies explains that these links were borne out in the political discourse, demonstrating that arguments and justifications for issues of conscience became less moralist and more causalist.²⁹⁰ For the death penalty, the Royal Commission's report was a turning point in both the nature of the debate and the abolitionists' arguments. Some MPs had called for an investigation such as this in the wake of the failure of the abolition amendment to the Criminal Justice Bill in 1948, including the abolitionist Christopher Hollis: 'the best chance of having a settlement lies in our scientifically investigating the question whether the death penalty is or is not a deterrent.'²⁹¹ The Royal Commission's report provided a scientific, dispassionate investigation into capital punishment that informed and educated the debates, which resulted in the politicians focusing on the causalist issue of deterrence above other, moralist factors.

Causalism dominated the Royal Commission's report. The commissioners reached a conclusion concerning the principal causalist issue of deterrence:

Prima facie the death sentence is likely to have a stronger effect as a deterrent to normal human beings than any other form of punishment. There is some evidence (though no convincingly statistical evidence) that this is in fact so; and also that abolition may be followed for a short time by an increase in homicides and crimes of violence. But there is no clear evidence of any lasting increase, and there are many offenders on whom the deterrent effect is limited and may often be negligible. It is therefore

²⁸⁹ *Report of the Committee on Homosexual Offences and Prostitution*, Cmnd. 247 (HMSO: London, 1957); Hart, *Law, Liberty and Morality*.

²⁹⁰ Davies, *Permissive Britain*, 3-8.

²⁹¹ HC Deb 22 Jul. 1948 vol. 454 c. 717.

important to view the question in a just perspective and not to base a penal policy in relation to murder on exaggerated estimates of the uniquely deterrent force of the death penalty.²⁹²

Although the report stated that it was impossible to properly assess the deterrent effect of the death penalty, it found no evidence that capital punishment was a unique deterrent to murder.²⁹³ This lack of evidence provided significant support for the abolitionists' case. They could argue both that the report was evidence that capital punishment was not a discernibly unique deterrent to murder and that the retentionists were required to prove otherwise.²⁹⁴ The retentionists did not have competing evidence to support their argument that capital punishment was a unique deterrent. This pushed the causalist issue of deterrence to the forefront of the abolitionists' case.

Deterrence became the principle subject of the arguments within both the abolitionists' case and the capital punishment debates. A number of MPs said that they were morally opposed to the death penalty but would support capital punishment if it could be proved to reduce the number of murders.²⁹⁵ The retentionists' failure to prove the unique deterrent effect of capital punishment weakened their case. The abolitionists' persuasive causalist argument, that the death penalty offered no uniquely effective deterrent to murder, enabled those MPs who were morally opposed to the death penalty to support abolition without being burdened by the concern that they would encourage the murder rate to rise. These politicians, who were a minority amongst the abolitionists, are examined in the next section of this chapter.

The abolitionists used arguments on deterrence prior to the publication of the Royal Commission's report. However, they lacked the evidence to support their assertions. During the Commons' second reading of the abolition amendment to the Criminal Justice Bill in April 1948, Silverman stated:

²⁹² *Royal Commission on Capital Punishment*, 274.

²⁹³ *Royal Commission on Capital Punishment*, 274.

²⁹⁴ William Reid, Labour MP for Glasgow Provan, outlined this argument during the Commons' debate on the Conservative government's motion to retain capital punishment but modify its application: HC Deb 16 Feb. 1956 vol. 548 cc. 2585-6.

²⁹⁵ One example of this was Mark Carlisle's maiden speech to the House of Commons during the second reading of the Murder (Abolition of Death Penalty) Bill: HC Deb 21 Dec. 1964 vol. 704 cc. 918-22.

I understand the Government's case to be, not that they were in favour of the death penalty in principle but that, in the circumstances that now obtain, this is the wrong moment in which to live up to those principles. I cannot understand that argument. Either the death penalty is a deterrent in the case of crimes of violence or it is not. If one thinks it is a deterrent, one ought to retain it for ever. If one thinks it is not a deterrent, one ought to abolish it. But it is a complete non sequitur to say, "We think the death penalty ought to be abolished because it is not a deterrent, but we will not abolish it now because if we do murders will increase."²⁹⁶

Silverman disputed the government's assertion that capital punishment provided a necessary deterrent to murder at that moment, but did not have conclusive evidence to support his claim. This lack of evidence meant that Silverman could not yet disprove the retentionists' argument on deterrence in favour of his own. It is important to note, though, that although the abolitionists could not prove their position concerning deterrence at this stage, they still won the vote in the Commons despite the opposition to this reform from the Labour government. This is a reminder that the moral arguments, and more pertinently the moral beliefs, remained significant, though these arguments were delivered to a House that had a Labour majority and, thus, a large number of abolitionists. This alone was insufficient to remove the death penalty at this time, though, as the House of Lords, a minority of Labour MPs and the vast majority of the Conservative Party opposed this reform.

Kenneth Younger, Labour MP for Grimsby, used the Royal Commission's report to support his argument when responding to a point raised by Gwilym Lloyd George during the capital punishment debate of 16 February 1956:

I think I made it clear that I accept the fact that there is no conclusive evidence either way. That is what the Royal Commission said, but anyone who reads the evidence must, I think, feel that there is a great body of evidence tending in the one direction— but not amounting to proof—and, on the other hand,

²⁹⁶ HC Deb 14 Apr. 1948 vol. 449 c. 986.

an extraordinary absence of evidence. It is surprising how many people who come to the problem with open minds become convinced. I can quote my own case. I had no particular views on this matter when I went to the Home Office, but in the Home Office, I became convinced that the death penalty was unnecessary. We have a much more important example in Sir Ernest Gowers himself. We also have had two ex-Home Secretaries today and, as everyone knows, there is a third in another place, all of whom, after long experience, and reading the recent evidence, have reached the same conclusion.²⁹⁷

Younger acknowledged that the Royal Commission did not find that capital punishment was either a unique deterrent to murder or was categorically not unique in its effectiveness. However, he used this irreconcilable doubt over its deterrent effect to explain that many people became abolitionists because of it. This is just one example where the lack of evidence for the retentionists' argument on deterrence greatly aided the abolitionists' case because they were able to cast doubt over this key aspect of the retentionists' case, as a result of the Royal Commission's report.

A number of abolitionists used the experiences from foreign countries that had removed the death penalty within their arguments, notably from Scandinavia and the Low Countries. The Royal Commission also visited these countries when researching for their report. The abolitionist John Paton claimed that there were 'more than 30 states and countries in the world today which have had experience of the abolition of capital punishment.' He raised the question of whether these countries experienced a rise in the incidences of murder or numbers of armed criminals: 'In every one of the abolitionist countries, the experience was the same, the answer was, No.'²⁹⁸ Although Scandinavia, specifically named by Paton, was of particular interest to politicians involved in the abolition debates throughout this period, the examples from these and other countries were not especially convincing to the retentionists, who could respond by saying that the situation in Britain was different to that in other countries. David Maxwell-Fyfe, the future Conservative Home Secretary and Lord Chancellor, was such a retentionist. He

²⁹⁷ HC Deb 16 Feb. 1956 vol. 548 cc. 2604-5.

²⁹⁸ HC Deb 14 Apr. 1948 vol. 449 cc. 1013-4.

stated that there was ‘a difficulty in taking Scandinavia and the Low Countries as examples.’ However despite the retentionists’ efforts to dismiss their relevance, these countries did provide further evidence to support the abolitionists’ case, as none experienced a rise in their murder rate after abolishing the death penalty.²⁹⁹ The retentionists had no equivalent examples to support their case.

In February 1956 Herbert Morrison, by this time an abolitionist convert, used foreign examples from abolitionist countries to attack the retentionist position and advance the abolitionists’ case:

The awkward fact for the Home Secretary to overcome, the awkward fact that impressed the Royal Commission, and one of the important facts which must have impressed Sir Ernest Gowers, who is himself a convert after being Chairman of the Royal Commission, is that it is shown that in countries or States where the death penalty has been abolished, the number of murders has, in general, not increased. Indeed, in some of them it has diminished, although I would not argue that that was the result of the abolition of the death penalty.³⁰⁰

William Reid, Labour MP for Provan, Glasgow, supported this position in the same debate by arguing that, as the Commission found no evidence of higher murder rates in abolitionist countries, capital punishment should not be retained in Britain because of the fear of increased incidents of murder.³⁰¹ These foreign examples added credence to the abolitionists’ argument that capital punishment was not a unique deterrent to murder. They provided, therefore, useful evidence that enabled the abolitionists’ arguments to succeed.

The evidence from the Royal Commission’s report and foreign countries provided much of the support for the abolitionists’ arguments on deterrence. There was further support for their case in the mid 1950s from the popular doubt regarding whether Timothy Evans, Derek Bentley and Ruth Ellis should have been executed. These cases, in particular Evans’, were mentioned during

²⁹⁹ *Royal Commission on Capital Punishment: Evidence from Foreign and Commonwealth Countries* (London: HMSO, 1950), 1-4.

³⁰⁰ HC Deb 16 Feb. 1956 vol. 548 cc. 2574-5.

³⁰¹ HC Deb 16 Feb. 1956 vol. 548 c. 2586.

parliamentary debates and within the abolitionists' campaign material.³⁰² These cases were prominent within the public discourse on capital punishment, as was evident in the numerous newspaper articles, books and, in later years, television programmes about their executions. However, unlike the Royal Commission's report and evidence from foreign countries, these cases did not provide any irrefutable evidence in support of the abolitionists' arguments. The abolitionists could not prove that Evans and Bentley were not guilty, and indeed neither man was pardoned before the death penalty was abolished for murder in 1965. The retentionists could respond to claims that they were executed in error by saying that they trusted the decisions of the courts and the presiding Home Secretaries.³⁰³ The outcry against Ellis' execution was based on the perceived inhumanity of executing a young, single mother who was guilty of a *crime passionnel*. The influence of these cases within Parliament, therefore, was based upon the abolitionists' and retentionists' interpretations of them. This placed these cases closer to the arguments based on morality, in that they could not be proved to be miscarriages of justice during the debates. They did aid a causalist argument for abolition, though, as the perception that these were wrongful executions added further weight to the argument that the negative outcomes of capital punishment outweighed the positives.

Within the abolitionists' arguments was a wider fear that an irreconcilable mistake could be made. This fear was demonstrated by the executions of Evans and Bentley. During the debate on the Conservative government's motion to retain capital punishment but modify its application, Kenneth Younger addressed the dismissal of this fear by the Home Secretary at the time, Gwilym Lloyd George:

³⁰² Numerous abolitionist politicians raised doubts over Evans' guilt during the Commons debate on the Conservative government's motion to retain capital punishment but modify its application: HC Deb 16 Feb. 1956 vol. 548 cc. 2536-655. Amongst the many references to these cases from the abolitionist campaigns, the Howard League for Penal Reform produced a short poem about Evans to aid the dissemination of their argument: "Timothy Evans was arraigned by a cop,/Timothy Evans took the fatal drop/And all the Queen's Counsel and Home Office men/Could not put Evans together again": Koestler Papers, MS 2400/2, List of suggestions for the direction of the Howard League's campaign on capital punishment, July/August 1955.

³⁰³ An example of this was Sir Lionel Heald's response to James Chuter Ede's argument that Evans might have been innocent in February 1956: HC Deb 16 Feb. 1956 vol. 548 cc. 2583-4.

My third point on these reforms is that one of the things about which public opinion is most exercised is the possibility of mistake by the courts and by the Home Secretary. That is a major anxiety. I was surprised that the Home Secretary made so light of it. These reforms, so far as I can see, cannot affect the likelihood of a mistake, and would leave the consequences of a mistake as shocking as ever.³⁰⁴

Younger viewed the possibility of a mistake as a causalist justification for abolition relating to the inability to rectify a miscarriage of justice. Younger was not alone in using the fear of executing an innocent person within an argument for abolition. However, the issue was not raised as frequently as the other issues concerning morality and deterrence that have been examined thus far within this section. The abolitionists used the perceived but unproven miscarriages of justice relating to these cases. For this reason, retentionists such as Lloyd George were able to claim that sufficient mechanisms were in place to avoid a miscarriage from occurring.³⁰⁵ There was no sufficiently convincing argument or counter-argument on this issue to make it particularly persuasive within the debates.

Davies' narrative that moralism was replaced by causalism within the debates on issues of conscience was borne out largely in the arguments for the abolition of capital punishment, particularly after the publication of the Royal Commission's report. Causalism was the most persuasive aspect of the abolitionists' arguments, based upon the evidence from the Royal Commission's report and from foreign countries that had abolished capital punishment. The retentionists were unable to produce evidence to counter that that supported the abolitionists' case. Morality remained a feature of these arguments, though, demonstrating that legal and political secularisation was not a complete process. What this section has shown, though, is that moralist and causalist arguments were often inter-linked. Civilisation provided an important and well-established conceptual framework for these arguments, which were rooted in the abolitionists' repugnance towards capital punishment. This repugnance, though, requires investigation in order to explain why capital punishment was abolished.

³⁰⁴ HC Deb 16 Feb. 1956 vol. 548 c. 2603.

³⁰⁵ HC Deb 16 Feb. 1956 vol. 548 cc. 2540-1.

Why did the abolitionists want to remove the death penalty?

There were two broad opinions on the death penalty that led to politicians supporting abolition. The majority of abolitionists found the death penalty abhorrent. They were determined to achieve this reform and only unequivocal evidence of the unique deterrent effect of the death penalty would have stood any chance of shaking them from this opinion. A smaller proportion of the abolitionists were not overwhelmed by a repulsion against the death penalty. Their number would have accepted the continuation of the death penalty had it been proven to have a unique deterrent effect. The emerging evidence to the contrary, the unease concerning the executions of Evans, Bentley and Ellis, and the perceived failure of the Homicide Act convinced them that there was no discernibly unique deterrent from this irreversible punishment. Under this circumstance, their latent disgust towards capital punishment was able to direct them towards the abolition lobby. These beliefs are two broadly drawn paths towards support for abolition. They do not represent the many nuances within and surrounding them that would have influenced many politicians to support abolition. The impracticality of studying all of these nuances has precluded them from being examined within this thesis. These two schools of thought, therefore, provide the framework through which the abolitionists' beliefs can be examined.

This section will examine first the committed abolitionists, whose abhorrence towards the death penalty overwhelmed the other factors within the abolition question to lead them to support abolition on every occasion. It will develop the previous chapter's hypotheses for the formative causes of these beliefs to examine the various aspects of their beliefs, primarily based upon both the concept of the sanctity of life and the perceived need to liberalise society, both of which can be seen as part of a civilising process, which itself was an aspect of the abolitionists' beliefs. These are especially important aspects of the abolitionists' disgust towards capital punishment, as they encompassed the sense of its barbarity and its negative moral impact upon society. Of particular interest are the abolitionists' opinions on abortion, as they voted both for and against this reform dependent on whether their opposition to the death penalty was based on either a belief in the need to civilise Britain or in their interpretations of the sanctity of life. This is examined within this section in order to understand the abolitionists' beliefs. This section also examines their party identity and religious backgrounds.

Due to the limited time available to conduct research for this thesis, the MPs' religious backgrounds have been taken only from Peter Richard's account of the 1964 Commons vote.³⁰⁶ It has not been possible to investigate religious beliefs in detail, for instance whether the younger Conservative abolitionists adhered to different religious practices to their older retentionist colleagues. For this reason, the religious differences examined follow a more straightforward party divide. This section will finish by looking at the beliefs of those who needed to be convinced that capital punishment was not necessary to maintain law and order. This will focus on the impact of both the deterrence argument and the notable executions on their abolitionism. Of course, they would have shared the disgust towards the death penalty of the other abolitionists, as if they approved of the retributive impact of capital punishment then one would expect them to have voted for retention.

The voting records of MPs indicate that the majority of abolitionists were committed to their cause and, thus, can be presumed to have opposed capital punishment predominantly because of a moral disgust towards executions. Of the 1,304 MPs to take part in at least one abolition debate, 146 voted for both abolition and retention during different debates. Of these 146, 55 were Labour MPs who voted with their government to oppose the abolition amendment to the Criminal Justice Bill but then supported abolition in every debate in which they participated thereafter. Twenty-one of the Conservatives who supported retention when the three-line whip was applied to the third reading of the Homicide Bill voted for abolition during every other debate in which they took part. In total, of the 146 MPs who registered mixed votes on abolition, 104 only voted for retention once. Thirty-nine of these 104 only voted twice on abolition in total, although again 25 of these were Labour MPs who voted with their government against the abolition amendment to the Criminal Justice Bill. Of the 42 to vote for retention at least twice, 36 were Conservatives. There were 666 committed abolitionists and a further 104 MPs who predominantly supported abolition but voted once for retention.

Of the 666 committed abolitionists, 316 voted for abolition for the first time before the publication of the Royal Commission's report. One hundred and

³⁰⁶ Richards, *Parliament and Conscience*.

seventy-eight of the 666 were born after 1920, of whom only one took part in an abolition debate before the publication of the Royal Commission's report. It is apparent, therefore, that the majority of the committed abolitionists had either supported the reform before the Royal Commission's report concluded that the unique deterrent effect of capital punishment could not be proved or were part of the younger generation of politicians that was increasingly unwilling to accept the continuation of the death penalty. Some of this younger generation may have been influenced by the Royal Commission's report before entering Parliament, but their generation's liberalising ethos was a significant factor behind many of their beliefs. It is with as much confidence as is possible in this pursuit that a conclusion can be reached that the majority of abolitionists wanted to remove the death penalty because they found it abhorrent. Their opposition, which was based on their innate disgust towards capital punishment, did not require authoritative evidence that the death penalty was not a necessary sanction to maintain law and order.

Of course, such a conclusion from the voting figures does not account for the many variations in the abolitionists' beliefs. Certainly, the balance between moral and causalist factors in reaching an opinion that the death penalty should be abolished would have been different for each MP. The impossibility of measuring these nuances, though, instead requires a broad commonality to be identified. These figures identify that morality and emotion appear to have been more influential in shaping the abolitionists' beliefs than were causalist issues of deterrence and the irreversibility of mistaken convictions. If this were not the case then one would expect to have found that a greater number of abolitionists voted for retention in the late 1940s, before both the publication of the Royal Commission's report and the notable, dubious executions provided causalist evidence that supported the case for abolition. The figures quoted earlier for mixed votes on abolition indicate that this was not the case.

James Callaghan's and William Ross' cabinet memorandum, quoted in the title of this thesis, is an excellent summary of the principal reason for why the majority of abolitionists were determined to remove the death penalty:

The essential case for abolition is in our view a moral one. Capital punishment is a barbarous penalty which the community has no right to exact, however heinous the crime. There are however

other subsidiary arguments in favour of abolition. The death penalty is a denial of the principle underlying the rest of our penal thinking, that no criminal is beyond the hope of redemption. In the event of doubt arising about the verdict after the sentence has been carried out, there is no opportunity to right the wrong. We think that those who advocate capital punishment are under the onus of establishing that this barbarous penalty is a unique deterrent; but there is no conclusive evidence, either here or elsewhere, to support such a contention.³⁰⁷

This passage puts simply and eloquently the emotion that lay at the heart of most abolitionists' opposition to capital punishment. The belief that capital punishment should be abolished was caused primarily by the abolitionists' feelings of disgust and repugnance towards the death penalty. It was linked to the liberalising mentality that was common amongst the abolitionists, as Callaghan and Ross expressed when outlining the principle whereby no criminal was beyond redemption. It placed all other causes of a belief in abolition, and indeed a belief in retention, behind this disgust towards a barbarous penalty. The memorandum also reinforces the point that abolitionism had become entrenched in the Commons as a result of younger MPs replacing older ones, which was particularly important within the Conservative Party. A moral opposition to capital punishment can be recognised broadly as resulting from two desires: to preserve or improve the sanctity of life in society and to liberalise and civilise British society.

A significant aspect of the moral opposition to the death penalty was a belief in the sanctity of life. This was common to abolitionists from all parties. Mark Carlisle, the Conservative MP for Runcorn, expressed clearly the belief of many of his fellow abolitionists during the second reading of the Murder (Abolition of Death Penalty) Bill in 1964:

I support the Bill because of my belief in the sanctity of human life.

It is because I believe that it is wrong to take human life that I

³⁰⁷ TNA:PRO, Confidential memorandum by the Secretary of State for the Home Department and the Secretary of State for Scotland on the Permanent Abolition of Capital Punishment for Murder, CAB/129/141, C(69) 48, 6 May 1969.

believe that it is equally wrong whether that life is taken by the individual or by the State.³⁰⁸

Born in 1929, Carlisle was one of the young Conservative MPs who supported abolition.³⁰⁹ He stated later in his speech that he would support retention if the death penalty had a proven deterrent effect.³¹⁰ The lack of such proof, however, meant that he felt able to vote in accordance with his conscience. The sanctity of life was a moral belief at the heart of many abolitionists' opposition to the death penalty. It encapsulated the general attitude that no person had the right to take away another person's life, alongside a variety of other beliefs concerning the detrimental effect of executions upon society.

The idea that capital punishment normalised the taking of life was of central importance to Sydney Silverman's abolitionist amendment to the Criminal Justice Bill in 1948. The quote below outlines his belief that removing the death penalty would increase the sanctity of life following the devastation of the First and Second World Wars:

Finally, it was said that crimes of violence are increasing because the sense of the sanctity of human life is lower than it used to be, and that for that reason we should ourselves destroy life. I think that the argument is really all the other way...after we have had two world wars with infinite loss of human life...I suppose it may seem a very small matter whether half a dozen worthless human beings, who have themselves taken human life, should die or live. But, surely, it is the duty of all of us who value our civilisation not to depress still further those moral and spiritual values, but to seek to raise them, and to seek to raise them at precisely this moment when they are most in danger. If they are most in danger now, now is the time to restore the sense of the ultimate value of every human being, rather than to seek further to undermine that value.³¹¹

Silverman's belief in the preservation of the sanctity of life through the abolition of the death penalty was grounded in the wider concept of civilisation. By

³⁰⁸ HC Deb 21 Dec. 1964 vol. 704 cc. 919-20.

³⁰⁹ Roth, *The M.P.s' Chart*, 12-3.

³¹⁰ HC Deb 21 Dec. 1964 vol. 704 c. 920.

³¹¹ HC Deb 14 Apr. 1948 vol. 449 c. 987.

embracing the context provided by the world wars, Silverman produced possibly the finest example of an abolitionist interpretation of the sanctity of life, arguing that human existence and society within Britain would only improve and civilise if capital punishment were abolished. This was one of the most important reasons behind many politicians' beliefs that the death penalty must be abolished.

A belief in the sanctity of life linked many of the abolitionists to other causes through their shared personnel. In particular, there were a number of members of the CND within the ranks of the abolitionists, who demonstrated their belief in the sanctity of life through opposing both the death penalty and indiscriminately destructive warfare. The correlation between the abolitionists and members of the CND was remarkably strong. One hundred and forty-seven of the MPs listed by the CND as being members of or sympathetic to their cause took part in the abolition debates. This was the vast majority of the MPs listed. All 147 of these MPs voted for abolition on every occasion that they were present for a debate on capital punishment.³¹² The chapter of this thesis identifying the retentionists and abolitionists noted that a number of the prominent abolitionists, both from within and outside Parliament, were prominent members of the CND, including Sydney Silverman, Victor Gollancz and Canon L. John Collins. The association between these causes through those who were active within both indicates that one of the reasons why many abolitionists opposed the death penalty was because they did not believe that the state had the right to take life in almost any circumstance, including through executing murderers or using weapons of mass destruction.

Abortion, however, was an issue that divided the abolitionists who based their belief on the sanctity of life. It was a dilemma for some abolitionists who opposed capital punishment because of both their belief in the sanctity of life and their desire to liberalise Britain along the lines of the programmes set out by Jenkins and Crosland. Kevin McNamara, Labour MP for Hull North, expressed his view on what he believed to be a misnomer:

This is what the Bill seeks to change [the United Nations Declaration of Human Rights, protecting children with physical and mental immaturity before and after birth], for if it does nothing

³¹² CND Papers, CND/2/13, Lists of MPs who are members of or sympathetic to CND, undated.

else it legalises the taking of human life. I find it tragic that so many hon. and right hon. Members who in the last Parliament walked through the Lobby in support of the Murder (Abolition of Death Penalty) Act outlawing capital punishment could at the same time support the Bill before us today. Had I been a Member of the House then, the same motives which would have taken me into the Lobby in support of my hon. Friend the Member for Nelson and Colne (Mr. Sydney Silverman) would make me reject this Bill.³¹³

McNamara, who saw no dilemma in this matter, felt that a belief in the sanctity of life should lead an MP to support abolition and oppose abortion. He was shocked that other members who cherished this sanctity could vote otherwise. Such abolitionists, though, were in the minority. The majority of abolitionists who voted in the second reading of the Medical Termination of Pregnancy Bill supported the legalisation of abortion. One hundred and sixty-nine committed abolitionists voted to legalise abortion, whereas only 13 voted against the Bill (see Figures 8.1 and 10.1, Appendix). The overwhelming support for the legalisation of abortion from the abolitionists is significant as it demonstrates that, for many politicians, the repugnance felt towards the death penalty stemmed primarily from their liberalising ethos, incorporating the view that liberalisation was creating a more civilised society. The view that life in all forms was sacred certainly was an important issue, but it was of less importance than the general ethos that British society required liberalisation, which included abolishing capital punishment, to encourage greater enjoyment and gaiety.

The liberalising zeal to civilise Britain was common to many abolitionists, but it was most apparent amongst Labour politicians, in part because they were the most vocal abolitionists. The desire to civilise and to liberalise Britain was a broad theme of Jenkins' and Crosland's visions. These concepts were not merely discursive tools. They described many abolitionists' genuine desires for reform. They believed that the British state needed to treat its population with more humanity, in terms of both the social freedoms which they were permitted and the manner in which convicts were treated. Removing the death penalty was a natural aspect of the second of these humane, civilising principles. Historians,

³¹³ HC Deb 22 Jul. 1966 vol. 732 c. 1123.

such as Arthur Marwick, have concurred with this view, particularly in terms of civilisation:

Perhaps the increase in crime [from the mid-1950s onwards] should be seen more as a return to Victorianism rather than a move away from it, but there can be no doubts about the most significant of all the pieces of civilising legislation, the abolition of capital punishment.³¹⁴

Marwick's praise for abolition is not uncommon amongst academics, though few are as explicit as Marwick in conferring their opinions upon their audience. This is indicative of the widespread appeal of the civilising ethos amongst the liberal elite and within academia.

This ethos became an unofficial Labour policy in the 1950s and 1960s, placing the belief that the death penalty was uncivilised at the heart of the liberal reforms desired by the majority of the party. In the words of Peter Thompson, the aim of senior Labour politicians, such as Crosland, was to evolve the party to strive not only for full employment but also full enjoyment.³¹⁵ This desire can be found within Jenkins' vision in *The Labour Case* and Crosland's within *The Conservative Enemy* and *The Future of Socialism*. Jenkins' and Crosland's visions were of a society with greater individual freedom and leisure. Jenkins wrote of the need to 'create a climate of opinion which is favourable to gaiety, tolerance, and beauty, and unfavourable to puritanical restriction, to petty-minded disapproval, to hypocrisy, and to a dreary, ugly pattern of life'. This involved encouraging the arts, creating 'towns which are worth living in' and preserving 'a countryside which is worth looking at'.³¹⁶ This ideal was manifest within Crosland's well-known acclamation of the virtues of a society that inspires outdoor pursuits and relaxation in cafés.³¹⁷ It was through this vision that the permissive reforms outlined by Crosland and Jenkins were linked to capital punishment. The inhibitions on personal liberty and the existence of state-sanctioned killing were part of the puritanical restrictions that were at odds with their drive to make

³¹⁴ Marwick, *British Society Since 1945*, 117.

³¹⁵ Peter Thompson, "Labour's 'Gannex Conscience'? Politics and Popular Attitudes in the 'Permissive Society'," in *The Wilson Governments 1964-1970*, eds. Richard Coopey, Steven Fielding and Nick Tiratsoo (London: Pinter, 1993), 138.

³¹⁶ Jenkins, *The Labour Case*, 135.

³¹⁷ Crosland, *The Future of Socialism*, 521-2.

Britain a more pleasant country in which to live. In their view, one could not enjoy life and enjoy living within British society if the state was judicially executing its citizens. For them, the death penalty had to be abolished to achieve this utopia.

Jenkins' and Crosland's visions for a civilised, progressive society were important because they were prominent expressions of the liberalising utopia to which the supporters of the relevant legislation appeared to adhere. They can be presumed to be indicative of the views of many abolitionists due to both the strong correlation between the abolitionists and the supporters of the permissive legislation and the successful realisation of most of Jenkins' and Crosland's desired reforms. Indeed, 92 per cent of the abolitionist MPs to take part in one or both of the second readings of the Medical Termination of Pregnancy Bill and Sexual Offences Bill voted in favour of reform if they were present for the debate. As was the case with all abolitionist MPs in the 1960s, the majority of these liberalising abolitionists were members of the Labour Party, although 11 per cent were Conservatives.

There were no published Conservative works to rival those of Jenkins and Crosland outlining a liberalising, civilising programme of reform or a treatise on the need to abolish or retain capital punishment. There was a little discussion of these issues within *Crossbow*, the journal of the Bow Group of young Conservatives. Criminal justice policy was the focus of the July to September 1965 issue and was discussed in articles in the New Year 1959 and October to December 1968 issues of the publication. Capital punishment was barely mentioned in any of these issues. These issues highlighted problems within criminal justice policy and suggested a few specific changes, but did not produce any overarching programmes for reform based upon concepts such as civilisation. The October to December 1969 issue included two contributors outlining their cases for and against abolition, but this was published after the passage of the Murder (Abolition of Death Penalty) Act 1965, by which time abolitionism was firmly entrenched within the Commons. The death penalty was discussed in the New Year 1960 issue, but only insofar as the Homicide Act being an example of ill-judged compromise within Parliament.³¹⁸ Abolition generated little discussion

³¹⁸ *Crossbow*, New Year 1959; New Year 1960; Jul.-Sep. 1965; Oct.-Dec. 1968; Oct.-Dec. 1969.

within *Crossbow*, especially when compared to the more opinionated stances taken on other aspects of penal policy within the same issues, such as prison reform. This suggests that there was recognition amongst the younger Conservatives that their opinions were divided on the matter and that their members were unlikely to be criticised by their peers for holding either an abolitionist or retentionist opinion. It suggests also that perhaps abolition was not as significant an issue for these younger Conservatives as were other aspects of penal policy.

Socially liberal reformism was more naturally a Labour concept, but it received support from a significant minority of younger Conservatives. With regard to abolition, it is likely that they were more heavily influenced by the secularised, liberalising and civilising ethos within the Commons than by their Party's orthodoxies on capital punishment. The desire to create a civilised, liberal society certainly was a prominent cause of many abolitionists' beliefs that executions had to stop. The two-fold belief that capital punishment was uncivilised and that it did not accord with the liberal elite's vision for modern Britain was the manifestation in policy of the overriding belief that, in the words of Callaghan and Ross, the death penalty was 'barbarous'. As Callaghan's and Ross' memorandum exhibits, the need to liberalise and civilise society did not override the general disgust that the abolitionists felt towards capital punishment as the cause of their beliefs, but it was an important, connected theme that was an aspect of many of their beliefs.

The previous chapter of this thesis identified that the increased prominence of abolitionism amongst the Conservative MPs who were born after 1920 enabled abolitionism to become entrenched within the Commons. The section of that chapter on the class of the 1920s provided some hypotheses regarding the formative causes of the young Conservatives' abolitionism, taking into account the political culture that developed in the 1950s and 1960s and the increasing evidence that capital punishment was an unnecessary punishment that had been used mistakenly in the recent past. Mark Jarvis identifies the reform to capital punishment through the Homicide Act as part of the liberalising reforms that R.A. Butler supported as Home Secretary. Stuart Hall has associated this Conservative liberalising mentality with what he calls the Right Progressive

element of the Party.³¹⁹ However, as the next chapter explains, Butler was a committed retentionist. Hall does not provide a definition or identity for the Right Progressives within his chapter. In the absence of this, this thesis uses Butler, their recognised figurehead, as an indicator for their wider opinions. This is not ideal, as there would have been many variations of opinion amongst this group, but the time available for this thesis has not permitted further investigation into the Right Progressives. It would be wrong to presume, though, that the abolitionism of the younger Conservatives was solely born out of the liberalising ethos of the Right Progressives. Conservative abolitionism existed beyond the liberal reformism of Butler and the Right Progressives. It was more radical than both the Party's traditional orthodoxies on capital punishment and some of its members' liberalising attitudes. It was more closely associated with Labour's prevailing attitudes towards socially liberal reforms.

Evidence for the lack of central support for abolition from the Conservative Party can be found by comparing the Party's archive with Labour's. Capital punishment barely features within the Labour Party archive, whereas there are a greater number of relevant sources within the Conservative Party archive, particularly from 1969 when the Conservative Leader's Consultative Committee frequently discussed the Labour government's attempt to make abolition permanent.³²⁰ This demonstrates that the Conservative abolitionists took a position that differed from the Party's accepted morality on the death penalty. The Conservative elite were sufficiently committed to their belief that the death penalty should be retained that in 1969 they attempted to persuade their Party's abolitionists to avoid supporting the measure, albeit in a gentle manner and whilst not infringing on their free vote. The notable exception to this gentle approach occurred before the third reading of the Homicide Bill, to which the Conservative government applied its whips.³²¹ The Right Progressives' liberal reformism, which included reform to penal policy, certainly was an important aspect of the political environment in which the Conservative abolitionists' beliefs fostered. The liberal reformism also included the legalisation of suicide and a

³¹⁹ Hall, "Reformism and the Legislation of Consent," 27; Jarvis, *Conservative Governments*, 50-64.

³²⁰ Conservative Party Archives, LCC (69), Minutes of the Leader's Consultative Committee, Oct.-Dec. 1969.

³²¹ Christoph, *Capital Punishment and British Politics*, 154.

relaxation of the laws relating to gambling, licensing and Sunday Observance.³²² It is clear, though, that other factors must have had a greater influence upon the Conservative abolitionists to account for their divergence from the Party's traditional support for capital punishment.

The penal reforms that have been associated with the Right Progressives were aimed at liberalising the British system of crime and punishment. They involved research into the causes of crime in the wake of the crime wave within affluent Britain, new methods to deal with juvenile delinquency and rebuilding many of the older prisons.³²³ The Right Progressives embraced this new criminological research, although this did not provide conclusive evidence for or against the death penalty.³²⁴ Some Right Progressives supported both retention and the liberalisation of other aspects of penal policy. Furthermore, a number of the Conservatives who did support abolition in 1956, which may have included some Right Progressives, were pressured by their Party to support the government's Homicide Bill. James Christoph stated that Conservative abolitionists were pressured by the Chief Whip, Edward Heath, to support the Homicide Bill, citing popular knowledge rather than governmental records due to the chronological proximity of his study to the events of 1956 and 1957. He wrote that those MPs from safe seats who were 'less personally indispensable' were treated more harshly than the others. According to Christoph, 'several dozen' of the 48 Conservatives that supported Silverman's Bill were persuaded in this manner to vote for the government's compromise legislation.³²⁵ It is apparent, therefore, that some of the more liberalising Conservative MPs in the mid-1950s voted for retention through the Homicide Bill because of party pressure rather than for more principled reasons.

The professional backgrounds of the 37 committed abolitionist Conservatives who were born after 1920 were similar to those of their older Party colleagues. Twenty-three of them had either served in the military or were company directors. These were careers which were common to many Conservatives and which were dominated by Conservatives. The young

³²² Hall, "Reformism and the Legislation of Consent," 1-43; Jarvis, *Conservative Governments*, 19-49.

³²³ Jarvis, *Conservative Governments*, 20-4.

³²⁴ Hall, "Reformism and the Legislation of Consent," 27.

³²⁵ Christoph, *Capital Punishment and British Politics*, 154.

Conservatives did not have noticeably different occupational backgrounds, therefore, to provide them with alternative experiences to those of their older Party colleagues. With little evidence of other variations in experience, the notable difference in the backgrounds of the younger abolitionist Conservatives appears to have been generational. These Conservatives born during or after the 1920s politically matured and entered Parliament at a time when Britain's law and politics were becoming increasingly secularised. The liberalising and civilising ethos that became ever more dominant in the Commons within this period appears to have had a greater influence on a number of these younger Conservatives' beliefs and attitudes towards abolition than did their Party's traditional support for the death penalty.

It is possible to improve the understanding of the young Conservatives' abolitionism by looking again at the votes on abortion. Eight of the 37 young Conservative abolitionists voted in the second reading of the Medical Termination of Pregnancy Bill. Seven supported the reform, whereas only one opposed it, thus mirroring the general pattern amongst the abolitionists who took part in this division. Furthermore, 14 of the 17 who voted during the second reading of the Sexual Offences Bill voted for the legalisation of homosexuality. What is apparent from these statistics is that, as with all abolitionist MPs, these young Conservative abolitionists were driven more by a sense that abolition would liberalise Britain rather than by a belief in the sanctity of life. It is fair to presume that both were important to the disgust felt towards capital punishment. The overwhelming support for liberalisation over the sanctity of life, though, from those who voted in the abortion debate, and the further support for liberalisation during the Sexual Offences Bill, demonstrates that the majority of these young Conservative abolitionists believed that there was a need to reform British society along the lines of Roy Jenkins' civilising programme. This, therefore, can be seen as a driving force behind their abolitionist beliefs.

The vast majority of Labour MPs voted for abolition in all capital punishment debates, except for the abolition amendment to the Criminal Justice Bill in 1948 when Attlee's Labour government supported retention. Furthermore, most abolitionists were members of the Labour Party. It is necessary, therefore, to look at the nature of the Party in order to understand why so many of its members demanded abolition. Stuart Hall and Kevin Manton explain that there was a

revisionist strand to the Labour Party that developed during the twentieth century. The members aligned with this strand tended to be more inclined to support liberalising reforms than the more traditional Party members.³²⁶ Hall assigned the label ‘revisionist’ to this wing of the Labour Party, while Manton identifies a post-Second World War shift towards abolition amongst the Labour leadership.³²⁷ The extent to which abolitionists can be seen as social liberals is examined in the next section of this chapter. However, this identified divide in the Party cannot be extended to abolition as Manton has done, as there was a desire to remove the death penalty amongst almost all Labour MPs throughout this period regardless of their age. Abolition was more than just a liberalising reform for Labour MPs. It adhered to the Party’s non-conformist identity. Interestingly, Hall does not analyse abolition in the same depth as the other reforms that he lists within his study. This is potentially because abolition was not just a liberalising issue, but that humanitarian ideas concerning the sanctity of life were also important. As such, it does not quite fit in with the other liberalising reforms.

Attlee’s government opposed the dominant abolitionism of the Labour Party through its support for capital punishment in the 1940s. This point, though, should not be overemphasised to suggest that a significant proportion of the Labour Party were retentionists at this time, in the manner of which Manton is guilty. Seventy-four per cent of Labour MPs who voted against the abolition amendment to the Criminal Justice Bill in 1948, including a number of ministers, voted exclusively for abolition in the later debates. Their retentionism can be ascribed to the response to the rising crime rate during the social dislocation after the Second World War and to the government’s fear of appearing soft on crime, as Manton notes.³²⁸ After the war, the crime rate rose steadily from 2,967 offences against the person in 1947 to 3,707 in 1951.³²⁹ With the increase in incidents of violent and sexual crime and a lack of evidence to show that capital punishment was not a unique deterrent to murder, which arrived with the publication of the Royal Commission’s report in 1953, the abolitionists did not have sufficient

³²⁶ Hall, “Reformism and the Legislation of Consent,” 31-4.

³²⁷ Hall, “Reformism and the Legislation of Consent,” 27; Manton, “Labour Governments and Capital Punishment,” 16-33.

³²⁸ Manton, “Labour Governments and Capital Punishment, 1924-1970,” 30.

³²⁹ These statistics are for those offences that were heard at assizes and quarter sessions: *Criminal Statistics England and Wales* (London: HMSO, 1945-1952).

evidence to persuade all of the typically abolitionist Labour MPs to vote against the wishes of their government. Manton, however, overlooks the fact that although 74 Labour MPs voted against the abolition amendment in 1948, 214 defied their government to vote for abolition. In the same vote, only 14 Conservatives voted for abolition, with 157 supporting the government in rejecting the amendment.³³⁰ This thesis' database of MPs' votes has identified that 87 per cent of Labour MPs voted exclusively for abolition throughout this period, and 87 per cent of committed abolitionists were members of the Labour Party.

The notion of Labour becoming the party of full enjoyment, which required the abolition of capital punishment, was a departure from traditional Labour thinking and was not universally popular within the Party. Jeremy Nuttall notes that the relaxation of the law in areas of personal behaviour 'stressed the promotion of individual liberty more than the importance of duty.'³³¹ Men, such as Crosland and Jenkins, were vocal proponents for an evolving, socially liberal morality that embraced the new lifestyles of the British public, which were perceived to be the product of the affluent society. Some members of the Party treated with skepticism the growth in affluence and permissiveness. Aneurin Bevan, Richard Crossman and Michael Foot argued that increasing affluence bred vulgarity whilst George Brown, amongst others, was uneasy with the permissive reforms enacted during Wilson's premiership.³³² Nuttall quotes Jenkins' criticism within *The Labour Case* of those who opposed these reforms: 'those who themselves enjoy living standards which are above average should be extremely cautious about pointing out to others the corrupting effects of the motor-cars or the refrigerators which they themselves have long possessed'.³³³ Although the vast majority of Labour MPs supported abolition, the wider framework of full enjoyment, extolled by Jenkins and Crosland, did not appeal to all within the Party. The wide support for these reforms, though, suggests that most party members did adhere to this framework.

³³⁰ HC Deb 14 Apr. 1948 vol. 449 cc. 979-1098.

³³¹ Jeremy Nuttall, "Labour Revisionism and Qualities of Mind and Character, 1931-79," *English Historical Review* 120, 487 (2005): 676.

³³² A.J. Davies, *To Build a New Jerusalem: The British Labour Party from Keir Hardie to Tony Blair* (London: Abacus, 1996), 293; 317.

³³³ Jenkins, *The Labour Case*, 55, quoted in Nuttall, "Labour Revisionism," 677.

There was no predominant religious morality governing many of the beliefs of either the abolitionists or the Labour Party to rival that that was identified within Conservatism by Quintin Hogg, which is examined in the following chapter.³³⁴ Peter Catterall explains that Labour had a history of involvement from the Free Churches and other nonconformist sects, which helped to shape the Party's social liberalism:

This nonconformist presence was not perhaps reflected in the minutiae of party policy. It can, however, be discerned in the stress on moral ends, the tendency to see the Labour Party as a vehicle of righteousness and the Biblically-flavoured sense of moral outrage that coloured the party's ideology, self-image and rhetoric.³³⁵

Catterall's study ends before the Second World War, but it establishes a morality and mentality that, it may be inferred, was a more traditional framework for beliefs within the Labour Party. Harry Potter suggests that this radicalism from the established state Anglicanism was recognised by many within the Party during the inter-war years as being an influential background that enabled them to enact their desired reforms.³³⁶ This religious culture within the Labour Party can be presumed to have contributed to the liberalising ethos of the post-war decades, even though it went too far for some of its members. The Quakers were particularly influential within the abolition movement. They established a Penal Reform Committee and were amongst the early abolitionist leaders, most notably Roy Calvert who formed the NCADP.³³⁷ Along with the nonconformists, Catholics were also often attracted to the Labour Party. These religious groups, who were prominent within the Party, were all prepared to dissent from the established Church of England with regard to abolition. The Conservatives, on the other hand, represented much of the dominant Anglican community.³³⁸ The Conservatives' defence of the established order and Labour's inclination to move away from and reform orthodoxy within religion can be translated to their social

³³⁴ Hogg, *The Case for Conservatism*, 16-23.

³³⁵ Peter Catterall, "Morality and Politics: the free churches and the Labour Party between the wars," *The Historical Journal* 36, 3 (1993): 667-8; 679.

³³⁶ Potter, *Hanging in Judgement*, 124.

³³⁷ Potter, *Hanging in Judgement*, 125.

³³⁸ Laurence A. Kotler-Berkowitz, "Religion and Voting Behaviour in Great Britain: a Reassessment," *British Journal of Political Science* 31, no. 3 (2001): 527-8.

policies and general approaches to capital punishment. Although these religious backgrounds were not necessarily a direct reason for the abolitionism of most Labour Party members or for the retentionism of the majority of Conservatives, the cultures that they created and supported within these parties would have influenced their wider attitudes towards liberalisation and reform.

Peter Richards has examined these backgrounds for the vote on Silverman's abolition Bill in December 1964 and for the debates on homosexuality, abortion, divorce and Sunday entertainment between 1966 and 1969. Richards's data was split into six groups: Roman Catholic, Anglican, Free Churches, Jewish, atheist/agnostic and no information. For all six groups there was a significantly higher percentage voting in favour of abolishing the death penalty than there was in favour of any other liberalising reform. Although there was no information for well over half of the MPs who voted on abolition in December 1964, there was clear support for abolition from the Roman Catholics, Free Churches, Jews, atheists and agnostics. Between 69 per cent and 89 per cent of each of these groups voted for abolition. The exception was the Anglicans. This was the largest religious group, of whom 41.1 per cent voted for abolition compared to 42.6 per cent against. The Anglicans provided the smallest proportion of supporters for all of these liberalising reforms, with the exception of abortion and divorce for which there was less support from the Roman Catholics. The other groups' support for abolition was much stronger than that of the Anglicans.³³⁹ There was a desire to support liberalising legislation from many of those MPs who practised non-established religions or who had no religious background. This trend was particularly strong for abolition. In general, it was the Anglicans who opposed this liberalisation. This corresponds with the generally accepted party divide on capital punishment and liberalisation and adds to the theory that the desire for widespread social reform that was common amongst Labour politicians was a reason for many of their abolitionist beliefs. Furthermore, the declining influence of Anglicanism through legal and political secularisation can be expected to have had some influence amongst the younger Conservative abolitionists. This would have removed or reduced the influence of

³³⁹ Richards, *Parliament and Conscience*, 183.

a moral framework that had traditionally provided a level of support for the retention of the death penalty.

As explained earlier, there existed a minority of abolitionists who were more sympathetic to the perceived need for the death penalty, often voting at least once for its retention. It is fair to presume that many of these felt a moral repugnance towards capital punishment that led them to vote for abolition. However, their feelings of repugnance towards the death penalty do not appear to have been as strong as those of the committed abolitionists, as they were willing to support its retention because of a belief that it was a necessary sanction against murder. They required more convincing than the committed abolitionists that the death penalty was not necessary to allow their dislike of capital punishment to direct their votes. One of the most prominent politicians to change his opinion on capital punishment was Henry Brooke, the former Conservative Home Secretary who became an abolitionist as a result of his experiences in that department. He outlined his abolitionism, and the reason for it, during the second reading of the Murder (Abolition of Death Penalty) Bill in 1964:

I hope that I shall carry the House with me in saying that the taking of life is so grave a matter that the onus of proof must be on those who very sincerely believe that the death penalty should be retained. I do not share the view that the taking of life by the State is contrary to moral principle. I think that if it can be shown that by retaining the death penalty for some or for all types of murder one is materially lessening the likelihood of innocent people suffering death by murder, then there is no ground of moral principle on which one should dismiss the death penalty as utterly out of date in the present age. But I believe that retention of the death penalty can be justified only on the ground that it is a unique deterrent. If it is a unique deterrent, there is justification for it. If it is not, I do not think that the case for it can be upheld.³⁴⁰

Brooke was explicit in placing the primary causalist reason for supporting abolition, deterrence, ahead of any moral justifications. Previously in his speech he had argued that the anomalies of the Homicide Act rendered it impossible to

³⁴⁰ HC Deb 21 Dec. 1964 vol. 704 cc. 908-9.

successfully separate murders into capital and non-capital offences and that the necessary reform was abolition. Brooke was one of the minority of abolitionists to base his beliefs on such causalist issues. Others drew their abolitionism from the Royal Commission's report and from the evidence from foreign countries.³⁴¹

Another factor that convinced some politicians who were not firm abolitionists to support the reform was the perceived failure of the Homicide Act. A number of politicians cited their perception that the Homicide Act was unworkable as their reason for supporting abolition. Hubert Parker, the Lord Chief Justice from 1958 to 1971, demonstrated this position in the Lords debate on the second reading of the Murder (Abolition of Death Penalty) Bill:

I am in favour of abolition not, I am afraid, on any moral ground, but merely because of the working of the Homicide Act 1957. I confess, looking back eleven years, that if anybody had then said that I should come out as a full-blooded abolitionist, I should have been surprised. But during that time, and particularly during the last seven years when I have held my present office, I have seen the complete absurdities that are produced, and have been completely disgusted at the result.³⁴²

Parker's support for abolition was set apart from the majority of abolitionists in that it was based upon legal practicalities rather than a specific desire to remove the death penalty. Others shared this reason for supporting or accepting abolition. The perceived failure of the Homicide Act did not convince a significant number of politicians to oppose the death penalty, as many were abolitionists before 1957 and had reached their conclusions on this matter for a variety of other reasons. However, it was a factor that was especially relevant to a few abolitionists who, like Parker, were previously sympathetic to the retentionist case.

Similarly, the impact of the executions of Evans, Christie and Ellis could be expected to have had a significant impact upon the abolitionist beliefs of MPs who previously were not committed to this reform. However, the sole retentionist

³⁴¹ Herbert Morrison, who supported retention as a member of Attlee's government during the debates on the Criminal Justice Bill in 1948, cited both the Royal Commission and the examples from foreign countries in explaining his reasons for voting in favour of abolition, against the Conservative government's motion to retain capital punishment but modify its application: HC Deb 16 Feb. 1956 vol. 548 cc. 2574-5.

³⁴² HL Deb 19 Jul. 1965 vol. 268 cc. 480-1.

victory in the Commons occurred a few years after the executions of Evans and Bentley, when there was already public doubt concerning the justifications for their executions.³⁴³ These cases did not persuade a sufficient number of MPs to support abolition at this time on the basis of the fear of a miscarriage of justice, though these cases and the wider fear of such a miscarriage were mentioned occasionally within the debates. As with public opinion, and to a lesser extent deterrence, these cases did not have a decisive influence on the majority of abolitionists' opposition to capital punishment, most of whom were unwavering in their opinion across the various debates. The shifts towards abolitionism occurred within the House of Commons after general elections, when younger politicians replaced older members, and within the House of Lords following the passage of the Life Peerages Act. The election of an abolitionist Labour government further supported these shifts. Harold Wilson, in particular, increased the number of Life Peers and both he and Harold Macmillan added a significant number of Labour members into the House in order to balance somewhat its party demographic. These new Labour peers tended to be particularly active within the House.³⁴⁴

There is little evidence of politicians stating that the fear of making a mistake was of central importance to their opposition to the death penalty. The significant number of politicians who advocated abolition and supported other issues of conscience indicates that there was a wider moral desire to initiate a programme of reform under the banners of civilisation and liberalisation. Causalism was the root of a number of politicians' abolitionism, but it was less influential overall than the moralist factors.

The primary cause of the abolitionists' beliefs was a moral disgust towards executions, which is almost impossible for a historian to measure. Within this was the perceived need to civilise and liberalise Britain and the desire to preserve the sanctity of life. The voting record of the abolitionists on abortion demonstrates that liberalisation was a greater driving force behind their beliefs than was the sanctity of life, at least in the latter half of the 1960s. Both, though, were key

³⁴³ The retentionist victory was over the abolitionist amendment to the government's motion to take note of the Royal Commission's report: HC Deb 10 Feb. 1955 vol. 536 cc. 2064-183. There were calls for an investigation into Evans' case two years before this vote, in 1953: Surrey History Centre, Woking, Papers of James Chuter Ede, 390/4/1/1: Timothy Evans Case, various documents, 1953.

³⁴⁴ Morgan, *The House of Lords and the Labour Government*, 17; 26.

aspects of their beliefs and could be encapsulated within the concept of civilisation. Abolitionism was a manifestation of Labour radicalism and non-conformism, and was supported by many of the Party members' religious backgrounds. The younger abolitionist Conservatives, though, were more influenced by the increasingly secularised, liberalising and civilising ethos that was developing within the Commons than they were by their Party's traditional orthodoxies on capital punishment. There was some support for this abolitionism from the Right Progressive movement within the Party, which has been associated with Butler. However, many of the Right Progressives, notably Butler himself, were not abolitionists. These young abolitionist Conservatives split further from the party orthodoxy than did Butler and his like-minded liberalisers. A minority of abolitionists needed more convincing that capital punishment was not a necessary sanction to murder in order to feel able to vote in accordance with their feelings of disgust towards the death penalty. Nevertheless, their desires to remove the death penalty can be presumed to have followed the same principles as those of the committed abolitionists. The perceived need to civilise Britain was a moral and emotional belief that was at the heart of abolitionism and wider social liberalisation. However, the place of abolition within this liberalisation, in particular alongside the permissive reforms, requires detailed examination.

Were the abolitionists social liberals?

Politicians and academics have associated abolition with the liberalising legislation of the 1950s and 1960s somewhat unquestioningly. This association cannot be accepted without qualification. Permissiveness was a dominant aspect of the liberalising legislation of the 1950s and 1960s and was present within the legalisation of homosexuality and abortion and the relaxation of the laws concerning theatre censorship, divorce and contraception. These reforms all permitted behaviour that was previously illegal or considered to be immoral. However, permissiveness was just one expression and outcome of the liberalising mentality that was common amongst many Labour MPs and a number of Conservatives. In other areas, notably penal policy, liberalisation manifested itself in the guise of relaxed punishments for certain crimes, such as murder, and improved prison conditions. In order, therefore, to assess whether the abolitionists were social liberals, it is necessary to address why it was a liberalising reform and

whether it was a permissive reform before examining the contemporary political links between the permissive legislation and abolition. This final area of investigation includes a study of the personnel involved in these reforms and finishes by examining the liberalising credentials of Jim Callaghan. It challenges Manton's assertion that Callaghan was a determined abolitionist and examines his opinions on the permissive society in order to add an extra dimension to the affiliation between the abolitionists and the permissives.

Abolition was a liberalising reform through its role in reducing the severity of Britain's penal policy. There was a general shift from viewing the purpose of punishment as being deterrence and retribution to seeing it as being prevention and reform. R.A. Butler's support for Britain's first Institute of Criminology at the University of Cambridge in 1959 was a sign that penal policy was an intended target for the liberalising ethos that flourished in the 1950s and 1960s.³⁴⁵ These reforms to penal policy, though liberalising, were certainly not permissive as they did not legalise any act that was previously outlawed. The abolition of capital punishment occurred within the context of the emerging permissive society, but it was not part of the permissive reforms. This differentiation has not been recognised explicitly within the historiography, although Matthew Grimley alludes to this point in his article "Law, Morality and Secularisation". Grimley lists abolition amongst the legal reforms in which the Church of England played an important campaigning role, but crucially does not then include it later when discussing the permissive legislation that was passed from 1966 onwards. By looking at the legislation passed from the year after the death penalty was abolished for murder, Grimley separated abolition from the permissive reforms.³⁴⁶

A characteristic of a permissive reform is that it reduced the level of state control over a certain area. Abolition can only be considered to be a permissive reform if one accepts that it provided a uniquely effective deterrent to murder and that without capital punishment the murder rate would have increased. This is a loose connection with permissiveness as, unlike the legalisation of homosexuality and abortion, abolition did not permit murder or make it a more acceptable form of behaviour. Instead, a belief in capital punishment's unique deterrent effect would mean that abolition was permissive in the sense that those supporting

³⁴⁵ Jarvis, *Conservative Governments*, 21.

³⁴⁶ Grimley, "Law, Morality and Secularisation," 726; 738.

abolition were wilfully accepting that their actions might encourage more people to commit murder. The label ‘permissive’ does not apply, though, to the vast majority of abolitionists. Most believed that capital punishment was not a unique deterrent to murder. Their position was supported by the Royal Commission’s report and by evidence from foreign abolitionist countries. It would be difficult to identify an abolitionist who supported the reform in the belief that, as a result, more people would become victims of murder. As such, abolitionists should not be classified as permissives. They were social liberals, though, through their support for a relaxation of the punishment for murder. The abolitionist position on this issue would have seen this reform as removing an unnecessary penalty without reducing state control over society.

Christie Davies, however, has argued that the relaxation of penal policy, and in particular abolition, was permissive rather than just liberalising:

Even for those acts that remained the subject of strong legal sanctions permissiveness prevailed in that punishments were reduced and to that extent such actions became more permissible.

Perhaps the most important change in this last category was the abolition of the death penalty for murder.³⁴⁷

Davies’ argument that murder became increasingly permissible and forgivable after abolition is curious, given that he published this study long after the Royal Commission had found that the unique deterrent effect of capital punishment could not be proved. There was no evidence to support his assertion that murder had become more permissible. Although Britain was experiencing a high level of violence associated with Northern Ireland when Davies published this work in 1975, the death penalty had not been used at all in connection to The Troubles, despite it remaining on the statute book for the province until 1973.³⁴⁸ Although it is becoming apparent that there were numerous extra-judicial killings taking place during this time, the fact that the state did not utilise capital punishment at all indicates that it was not deemed to have had a useful deterrent effect.³⁴⁹ Of course, the context in Northern Ireland in the 1970s was markedly different to that in Britain between 1947 and 1969. Nevertheless, even within this context

³⁴⁷ Davies, *Permissive Britain*, 13-4.

³⁴⁸ Northern Ireland (Emergency Provisions) Act, 1973, c. 53 (UK).

³⁴⁹ *Independent*, 21 Nov. 2013.

there was no evidence to support Davies' assertion that capital punishment kept the murder rate lower, as it was not used to tackle the murder rate in Northern Ireland.

An interesting issue within the use of morality during the capital punishment debates can be found in the Hart/Devlin debate. The permissive reforms within the socially liberalising corpus of legislation followed H.L.A. Hart's principle that personal morality should be outside the remit of the law. Homosexuality, abortion and theatre censorship, amongst others, were not deemed to be detrimental to society and thus were removed from the remit of the law.³⁵⁰ Capital punishment was a different issue, as since 1868 executions had taken place within prisons.³⁵¹ According to Hart's principle, an execution was a personal matter that took place in private between the condemned and the state. Of course, this was entirely different to the other examples due to both the involvement of the state and the improbability of consent from all parties involved in the execution. Nevertheless, capital punishment certainly could not be characterised as an issue of morality concerning behaviour in public that should remain within the remit of the law, as was the case for prostitution.

The desire for abolition fitted more closely with Lord Devlin's theory that, by permitting acts that were deemed to be immoral, societal morality was degraded.³⁵² According to the abolitionists, executions damaged the morality of society by being carried out in any place, including in private.³⁵³ This chimes with the civilisation discourse, which suggested that British society was tarnished by the continuance of the death penalty. The abolitionists wanted a practice that they deemed to be immoral to be severely limited by the state, placing it at odds in this respect with much of the liberalising legislation. There is not a perfect relationship between Devlin and the abolitionist arguments for some of the same reasons as with the relationship with Hart. However, Devlin's theory did correspond more

³⁵⁰ Hart, *Law, Liberty and Morality*, 5.

³⁵¹ Capital Punishment Amendment Act, 1868, 31 and 32 Vict., c. 24.

³⁵² Devlin, *The Enforcement of Morals*, 5-7.

³⁵³ Lord Francis-William's speech in the House of Lords debate on the Murder (Abolition of Death Penalty) Bill, quoted earlier in this chapter, was an example of an abolitionist recognising that society and societal morality was damaged by the existence of capital punishment: HL Deb 19 Jul. 1965 vol. 268 cc. 544-5.

closely with the arguments for abolition than did Hart's. This is an example of the complex relationship between abolition and the corpus of liberalising legislation.

There were a number of politicians and campaigners who were important within the abolition campaign and other liberalising debates and agitating movements. The links in personnel with the agitating campaigns, mentioned in this thesis' chapter identifying the retentionists and abolitionists, indicate that there was a particular mentality and ambition amongst this corpus of activists. This was demonstrated particularly clearly by the 147 members and sympathisers of the CND who took part in the capital punishment debates all voting for abolition on every occasion that were involved in a division. The same is true for the 92 per cent of the abolitionist MPs who voted in favour of reform in the second readings of the Medical Termination of Pregnancy Bill and Sexual Offences Bill. One must not homogenise the MPs and campaigners who were active in these movements or presume that supporters of some measures and campaigns necessarily supported the rest of these causes within the broadly defined civilising, liberalising programmes, or even that they recognised the existence or desirability of such a programme. There were, however, a significant number of activists who subscribed to multiple aspects of this programme. There was no official policy encompassing abolition, permissiveness and anti-violence organisations nor any well-established framework that set out to achieve these goals under one united ambition beyond the published personal, albeit partisan, musings of Jenkins and Crosland. The fact that there was a correlation between the activists for these various causes demonstrates that a significant proportion of the abolitionists subscribed to a broader liberalising agenda.

In Jenkins' and Crosland's visions, a liberalised society was one based upon gaiety and full enjoyment. This included the permissive legislation but also the removal of aspects of the penal policy that were deemed to be repulsive, notably capital punishment. Jenkins framed his programme of reforms around the concept of civilising Britain.³⁵⁴ Abolition's place within the corpus of socially liberal legislation is justified, therefore, through its consistency with the shift in attitudes towards penal policy and through the collective concept of civilisation that many liberalisers believed was present within all of the reforms. Its lack of

³⁵⁴ Jenkins, *The Labour Case*, 135-46.

permissiveness separated it from many of the other reforms in *The Labour Case*, but it did not preclude abolition from being liberalising.

The majority of the abolitionist MPs were members of the Labour Party. The same was true for the supporters of permissive legislation and other agitating causes. However, this identity was not appropriate for all Labour MPs. Peter Thompson explains that some Labour MPs were ambivalent towards permissiveness, linking it to their discomfort with the affluent society that they blamed for the rise of this culture.³⁵⁵ Hall claims that the Revisionist Labour MPs and Right Progressive Conservatives were conceptually closer to each other than they were to the ‘traditionalist’ factions within their own parties. According to Hall, the socially liberal reformism during Wilson’s premiership was largely limited to the Home Office rather than the whole government. He explains that it ‘was Wilsonian not revisionist modernisation which secured the political centre and gained the slender electoral majority in 1964’.³⁵⁶ Thompson notes that permissiveness did not ‘dominate Labour thinking’. He explains that Gaitskell and Wilson were unimpressed with a progressive draft of Labour’s 1961 policy statement, *Signpost*, noting that the passage endorsing the Wolfenden Report’s findings on homosexuality might lose the Party six million votes.³⁵⁷ A.J Davies records that George Brown, a Labour cabinet minister under Wilson who opposed legalising homosexuality, remarked on this reform to Barbara Castle: ‘This is how Rome came down.’³⁵⁸ However, such views were uncommon amongst the majority of abolitionists and Labour MPs and became less prevalent amongst the younger members of the Conservative Party, as was demonstrated in this thesis’ chapter identifying the retentionists and abolitionists. It is, however, a reminder that not all abolitionists supported the permissive reforms.

One of the principal abolitionists who was unconvinced by the permissive society was James Callaghan. Callaghan also appears to have been somewhat unenthused by abolition, despite his prominent role in making the reform

³⁵⁵ Thompson, “Labour’s ‘Gannex Conscience’?,” 140.

³⁵⁶ Hall, “Reformism and the Legislation of Consent,” 27; 35.

³⁵⁷ Thompson, “Labour’s ‘Gannex Conscience’?,” 138-9.

³⁵⁸ Davies, *To Build a New Jerusalem*, 317.

permanent. Manton has portrayed Callaghan as one of the most important abolitionists in the post-war decades.³⁵⁹ This judgement warrants investigation.

Callaghan's portrayal of capital punishment, quoted in the title of this thesis, was unambiguous in its support for abolition, though this was in part a presentation of the abolitionists' beliefs in general.³⁶⁰ Furthermore, as Home Secretary, Callaghan had a central role in guiding through Parliament the government's resolution to make abolition permanent in December 1969. One of his tactics to achieve this was to pledge to resign as Home Secretary if the resolution was not passed.³⁶¹ Historians have used this as evidence for his commitment to removing the death penalty. Kenneth Morgan, in his biography of Callaghan, includes this promise when describing his 'very powerful' speech during the debate on the resolution.³⁶² However, Callaghan did not mention capital punishment in his autobiography.³⁶³ This would be a surprising omission from a devoted abolitionist. If capital punishment were such an important issue to Callaghan that he would gamble his ministerial office on the successful passage of an abolitionist resolution, then one would reasonably expect that it would be mentioned in his autobiography. The fact that it is not suggests that Callaghan neither viewed abolition as a major issue nor felt that his pledge to resign was a significant risk to his office. Rather, it was a safe tactic to absolutely guarantee that enough abolitionists from his own Party refused to adhere to the Conservative attempts to delay the vote to make abolition permanent. As this thesis has explained, abolitionism was already entrenched within the Commons by 1969.

Manton is correct to argue that Callaghan's activity was important in order to ensure that the matter was concluded before the New Year, after which it would have risked becoming an electoral issue. This matter of timing, though, did not render Callaghan's activity as being as decisive as Manton suggests for

³⁵⁹ Manton, "Labour Governments and Capital Punishment," 26-30.

³⁶⁰ TNA:PRO, Confidential memorandum by the Secretary of State for the Home Department and the Secretary of State for Scotland on the Permanent Abolition of Capital Punishment for Murder, CAB/129/141, C(69) 48, 6 May 1969.

³⁶¹ *The Times*, 9 Dec. 1969.

³⁶² Morgan, *Callaghan: a Life*, 297.

³⁶³ James Callaghan, *Time and Change* (London: William Collins Sons & Co. Ltd., 1987).

ensuring that the resolution passed through Parliament.³⁶⁴ The overwhelmingly retentionist Conservative Leader's Consultative Committee were informed by the Party's Research Department in November 1969 that they should not expect to defeat the resolution.³⁶⁵ There were only two Labour MPs in each of the capital punishment debates in December 1964 and December 1969 who voted for retention. Furthermore, 77 Conservatives backed abolition in 1964 and 52 in 1969. The reduced support for abolition from the Conservatives in 1969 can be explained in part by the more partisan nature of this debate as a result of Callaghan's pledge. His pledge was not as decisive as Manton and Morgan have suggested. He did not put his tenure at the Home Office at risk in ensuring that the resolution passed through Parliament before it could become an election issue.

This thesis' challenge to Manton's and Morgan's portrayal of Callaghan as an especially determined abolitionist goes beyond his role in the 1969 debate. Morgan argues that Callaghan 'had always been a vehement and enlightened supporter of abolition', while Manton credits him with being a driving force behind the abolitionist resolution of 1969.³⁶⁶ This role was, of course, understandable for the Home Secretary of an abolitionist government. These accounts, though, create a false impression of the level of Callaghan's passion for abolitionism. Peter Kellner and Christopher Hitchens note that Callaghan did not vote during the Murder (Abolition of Death Penalty) Bill, quoting him as saying that the debates were 'opportunities for getting on with other things.'³⁶⁷ Callaghan was undoubtedly a committed opponent of the death penalty, a point that Kellner and Hitchens agree with, but this quote demonstrates that he was not the determined and active abolitionist that is portrayed by Morgan and Manton.

³⁶⁴ Manton, "Labour Governments and Capital Punishment," 28-9.

³⁶⁵ The Research Department paper stated that would the Party leadership would 'find it extremely difficult to fight the government successfully': Conservative Party Archives, LCC (69) 259, Conservative Research Department Paper on Capital Punishment, 25 Nov. 1969.

³⁶⁶ Morgan, *Callaghan*, 297; Manton, "Labour Governments and Capital Punishment," 27-30.

³⁶⁷ Peter Kellner and Christopher Hitchens, *Callaghan: the Road to Number Ten* (London: Cassell & Company Limited, 1976), 77-8.

Further to this point, Kellner and Hitchens highlight Callaghan's opposition to some permissive reforms, emphasising that the abolitionists must not be homogenised with the supporters of the permissive society:

As for the other reforms: [quoting Callaghan] 'Abortion, yes as it finally came out; homosexuality I was indifferent to.' He referred several times to the vital role of his 'God-given common sense' and remarked 'of course, I cannot bear the young men with hair hanging over their shoulders.'³⁶⁸

Callaghan was not cut from the same liberalising cloth as Roy Jenkins. His disdain for men with long hair was indicative of his ambivalence towards the burgeoning permissive youth culture of the 1960s. He was unconvinced by some aspects of the liberalising legislation that were enacted by his predecessor at the Home Office. Indeed, his opinions on the permissive legislation may allow him to be labelled as a modernised social authoritarian. He supported without vigour some relaxation of state control over society, including the abolition of capital punishment, in some cases because this was the prevailing desire of the Party that he represented.

In the 1940s and 1950s, the social authoritarian position towards permissiveness and broader liberalisation took the form of straightforward opposition. By the late 1960s it was increasingly represented instead by the ambivalence of men such as Callaghan. Such a lack of enthusiasm and occasional opposition towards permissive legislation was not dominant amongst the abolitionists, the majority of whom favoured such reforms when they participated in the relevant debates. However, the presence of more socially authoritarian-minded politicians such as Callaghan is a reminder that not all abolitionists can be grouped together with the supporters of the permissive society.

Abolition was a liberalising reform through its relaxation of penal policy. As such, abolitionists were social liberals. This did not mean that they were permissives. Indeed the abolitionists should not be portrayed as permissives, as they did not accept that capital punishment was a unique deterrent to murder and thus did not believe that their actions would encourage more murders to be committed. A significant proportion of the abolitionists were also supporters of

³⁶⁸ Kellner and Hitchens, *Callaghan*, 78.

the permissive society. This emphasised that together these liberalising reforms were necessary for the majority of them to realise their collective vision of a civilised society. As exemplified by politicians such as Callaghan, though, not all abolitionists shared this vision.

Why did the abolitionists succeed?

The abolitionists' success can be attributed to the increasing secularisation of Britain's law and politics, the demographic shift within Parliament whereby more opponents of the death penalty entered Parliament, the liberalisation of criminal punishment and of society in general, the evidence that supported their deterrence argument and the failure of public opinion, in any form, to direct the opinions of politicians. These are all examined within this final section of this chapter.

The impact of legal secularisation was important for reducing the influence of Anglican morality over politicians' arguments and beliefs on abolition. This resulted in fewer politicians, especially the younger Conservatives, adopting a retentionist position supported by traditional Anglican morality. The reduced influence of this morality allowed deterrence to become the principal issue within the parliamentary debates, thus enabling the abolitionists' arguments to triumph over those of the retentionists due to the supporting evidence for abolition from the Royal Commission's report and from foreign abolitionist states.

This thesis' chapter identifying the retentionists and abolitionists explained that a significant number of Conservative MPs who were born after 1920 joined the vast majority of Labour MPs in supporting abolition. This was a major factor behind the abolitionists' success. From 1955 onwards, the arrival in the Commons of younger Conservatives, a significant minority of whom were more sympathetic to abolition and other liberalising reforms than were their older Party colleagues, meant that a majority of the Commons supported abolition, regardless of which party was in government. Abolitionism persisted after this period, as every vote on capital punishment after 1969 resulted in an abolitionist victory.³⁶⁹ In September

³⁶⁹ Twitchell, "Abolition of the Death Penalty," 337.

1964 Henry Brooke, the Conservative Home Secretary, told the Prime Minister that abolition was likely to occur after the general election of that year, irrespective of the party that would be victorious: 'The Homicide Act is unworkable in its present form and the next Home Secretary, of whatever party, will have to end the death penalty.' The Prime Minister's response was simply that the matter 'will probably take care of itself'.³⁷⁰ The Commons' continued opposition to the death penalty during various Parliaments provided the environment in which abolition could be successfully realised. The parliamentary environment that was conducive to abolition was supported further by the passage of the Life Peerages Act 1958, which allowed abolitionists gradually to enter the largely Conservative House. Most of these new abolitionist Labour peers were active members of the Lords. This meant that by the end of the 1960s there were a similar number of Conservative and Labour peers who participated regularly in debates.³⁷¹ By the 1960s, therefore, Parliament had become more favourable to abolition. Silverman's Murder (Abolition of Death Penalty) Bill, which had the tacit support of the Labour government, was debated in a House of Lords that was more supportive towards this reform than it was in 1948 and 1956, as a result of this demographic change.

The culture of reform within the Home Office was an important context for the abolition of capital punishment even though some of those involved in the reforms, notably Butler, favoured retaining the death penalty. Jarvis credits Butler with leading 'an imaginative programme of penal reform' that went beyond the achievements of Labour's Criminal Justice Act 1948.³⁷² Butler's arrival at the Home Office and his subsequent reforms occurred after the 1955 general election, which resulted in an increased number of younger Conservatives entering the Commons, many of whom were more inclined to support abolition and other liberalising, civilising reforms. The Conservative governments and Party, therefore, were becoming influenced to a greater extent by members who were favourable to liberalisation, of whom Butler was the most notable for this study, albeit a retentionist one. He helped to create an

³⁷⁰ TNA:PRO, PREM 11/4690, Note for the record on Brooke's conversation about abolition with the Prime Minister, 22 Sep. 1964.

³⁷¹ Morgan, *The House of Lords and the Labour Government*, 17; 26.

³⁷² Jarvis, *Conservative Governments*, 20.

environment that was conducive to Hall's 'legislative moment' within the Home Office.³⁷³ Indeed Butler, when referring to his appointment of 'modern-minded officials' whilst he was Home Secretary, said that he had brought 'into the work of the Home Office the same spirit of reform and zeal for progress as [he] had called into being [for] the Education Act of 1944.'³⁷⁴ Even Roy Jenkins praised Butler's achievements at the Home Office, albeit in a restrained and partisan manner, in *The Labour Case*, published before the 1959 general election:

It may be thought that Mr Butler's reforming zeal in this department has cleared most of them [Home Office questions] out of the way...But its effect should not be exaggerated. He has made a start with prison reform. He operates with moderate humanity the unsatisfactory Tenby compromise [Homicide Act] with the clearly expressed view of the House that hanging is a barbaric and useless penalty...he has overcome his colleagues' objection to a mild reform of the archaic and vague laws relating to the censorship of literature and has encouraged this to proceed as a Private Members' Bill. And he has so far resisted the ardent desire of the Conservative Party militants that flogging should be reintroduced into our penal code.³⁷⁵

Considering that Jenkins was a leading member of the party in opposition to the government, this outline of a Labour vision for a civilised Britain is relatively complimentary towards Butler's tenure as Home Secretary.

Jenkins, though, felt that Butler's penal reforms did not go far enough and should be extended to include the abolition of capital punishment. He continued immediately from the quote above:

All this [Butler's reforms] is something. But it is certainly not equivalent to the wholesale reform of which the Home Office is still in urgent need. The ghastly apparatus of the gallows continues to exist, and is used much more often than was thought likely when the Homicide Act was passing into law.³⁷⁶

³⁷³ Hall, "Reformism and the Legislation of Consent," 3.

³⁷⁴ Butler, *The Art of the Possible*, 199.

³⁷⁵ Jenkins, *The Labour Case*, 135-6.

³⁷⁶ Jenkins, *The Labour Case*, 136.

Jenkins' extension of liberalisation to include abolition and the permissive reforms deliberately went beyond Butler's achievements at the Home Office, thus creating a more radical programme than what was already in place when his book was published. Some of the liberalising reforms desired by Jenkins, notably concerning licensing and suicide, were enacted after the publication of *The Labour Case* whilst Butler was at the Home Office.³⁷⁷ Jenkins consciously placed the extension of this programme within the framework of Butler's reforms up to 1959. The liberalisation at the Home Office during Butler's tenure as Home Secretary, therefore, provided the liberalising environment for the development of abolitionism within the broadly accepted civilising programme.

The liberalisation of penal policy was an aspect of the wider determination of MPs to civilise society through a programme of legislation. This chapter has examined the place of capital punishment within the liberalising programmes constructed by Roy Jenkins and Anthony Crosland. The successful realisation of Jenkins' programme and many parts of Crosland's demonstrated their widespread appeal amongst politicians. This thesis' chapter identifying the retentionists and abolitionists examined the strong correlation between the MPs who voted for abolition and those who supported the legalisation of homosexuality and abortion. The politicians' belief that legal and cultural liberalisation was required, including the abolition of capital punishment, provided a framework in which these reforms could succeed. Although the abolitionist case was based primarily on the merits of removing the death penalty separate from its place within a necessary programme of reform, this widely recognised programme was the most important conceptual framework for abolition. It was of great value, therefore, to the abolitionists' success.

The Royal Commission's report was one of the most important developments in the capital punishment debates because of its conclusion on deterrence, which provided support for the abolitionists' case. The Royal Commission's report provided further evidence from foreign countries that helped the abolitionists' case to succeed. It found that no country that had abolished the death penalty had experienced subsequently a significant increase in the

³⁷⁷ Jenkins, *The Labour Case*, 137; Jarvis, *Conservative Governments*, 76-9; 93-6.

incidences of murder or violent crime.³⁷⁸ Ultimately, the Royal Commission's report, the examples from foreign abolitionist countries and the experience of the Homicide Act provided the abolitionists with evidence to support their causalist arguments. The retentionists lacked such evidence. As the abolitionists' and retentionists' moral arguments could not disprove or outweigh each other and Britain's legal and political discourse was becoming increasingly secularised, the causalist issue of deterrence became the dominant theme within the arguments on abolition. The evidence available supported the abolitionists' case, thus securing their victory within the arguments on both deterrence and the wider abolition question.

Like the publication of the Royal Commission's report, the Homicide Act was another development that aided the abolitionists' case. As a result of the gradation of murders, the abolitionists were able to portray capital punishment as being illogical and impractical in its application. There was a widespread perception that the law had to be changed again. As Parliament had begun to liberalise the use of the death penalty, and with abolitionism becoming entrenched within the House of Commons, further reform of the law of murder was always likely to result in abolition. This was recognised by Douglas-Home and Brooke during their meeting in September 1964, quoted earlier.³⁷⁹

The final reason for the abolitionists' success was the negligible influence of public opinion during the capital punishment debates. This thesis' chapter on public opinion examined this issue in detail. Politicians' negation of the various representations of public opinion, in particular that represented through the polls that consistently supported retention, removed a significant obstacle to the abolitionists' case, as they did not feel it necessary to justify their actions despite their lack of popular support. The abolitionists' division of opinion into informed and uninformed groups was a useful device for counteracting the retentionists' uses of opinion polls in the capital punishment debates. All forms of public opinion, though, including the opinions of experts, failed to find much influence over politicians' judgements. It was the increasing prominence of abolitionism amongst MPs, therefore, that led to capital punishment being abolished rather

³⁷⁸ *Royal Commission on Capital Punishment*, 21.

³⁷⁹ TNA:PRO, PREM 11/4690, Note for the record on Brooke's conversation about abolition with the Prime Minister, 22 Sep. 1964.

than any pressure or influence from non-parliamentary individuals, organisations or the public.

The abolitionist case was based primarily on moralist beliefs but was fought successfully in Parliament using causalist arguments that were supported by evidence. It was largely framed around the concept of civilisation and was linked to the wider desire to liberalise British society. Its success was the result of a number of factors, but the abolitionists' enduring victory was born out of the entrenched abolitionism that developed within the House of Commons after the 1955 general election, at which moment a number of younger abolitionist Conservatives entered the House. It was in the Commons that the abolitionists' case was won.

Chapter Four: The retentionist case

At the beginning of the debate on the government's motion to retain the death penalty but modify its application, Gwilym Lloyd-George, a former abolitionist who was Home Secretary within a retentionist Conservative government between October 1954 and January 1957, reminded MPs that the supporters of capital punishment had beliefs that were held as earnestly as those of the abolitionists:

There are those who believe that it is wrong to take life in any circumstance, either in war or in peace. That is a view that I respect, and for those who hold it the way is clear. For the rest of us it is not so clear, for we must wrestle with arguments on one side and another. I hope that those who take their stand on moral absolutes will believe that we are no less conscientious in our approach to the problem than they.³⁸⁰

The debate on 16 February 1956 provided many of the finest examples of the various arguments for and against capital punishment that were raised in Parliament. It was the first debate on capital punishment after the influx of younger Conservative MPs at the 1955 general election, which has been recognised in this thesis as the moment that abolitionism became entrenched in the Commons. Prior to this election, the Commons had voted against an abolitionist amendment to the motion recognising the Royal Commission's report.³⁸¹ Yet, during a cabinet meeting three months before the debate in February 1956, the Conservative government acknowledged that the Commons was unlikely to reject abolition again.³⁸² The abolitionists were victorious in 1956 despite there being a Conservative majority in the Commons and a retentionist government tabling the motion. Since then, the Commons has always voted for abolition whenever the issue was debated.³⁸³ The retentionists' defeat was caused

³⁸⁰ HC Deb 16 Feb. 1956 vol. 548 cc. 2536-7.

³⁸¹ HC Deb 10 Feb. 1955 vol. 536 cc. 2064-183.

³⁸² TNA:PRO, CAB/128/29, C.M. (55) 42, 22 Nov. 1955.

³⁸³ Twitchell, "Abolition of the Death Penalty," 337; HC Deb 11 Dec. 1974 vol. 883 cc. 518-640; HC Deb 11 May 1982 vol. 23 cc. 608-86. Twitchell lists the abolition debates after 1969, although he omits the debates in 1974 and 1982 and claims erroneously that there were two debates in 1987.

in part by the demographic shift amongst Conservative MPs after the 1955 general election.³⁸⁴ After this election there was a sufficient number of Conservative MPs, many of whom were young, who voted consistently with the vast majority of Labour MPs to provide an abolitionist victory in every capital punishment debate, regardless of the party in government. However, it is important to look beyond the abolitionists to examine the retentionists' case in order to understand why capital punishment was abolished. This has been largely neglected within the historiography. As Lloyd George stated, like the abolitionists their opinions were based upon a moral framework. Furthermore, a few adhered to a causalist belief that the death penalty was a unique deterrent to murder.

This chapter addresses the gap in the historiography by examining the retentionists' arguments, their reasons for wanting to retain capital punishment, whether they can be viewed as social authoritarians and why they failed. The retentionists' case in Parliament was unable to overcome the abolitionists' argument on deterrence, which was supported by evidence. This was the principal factor behind the defeat of their arguments in the parliamentary debates. Their beliefs that the death penalty should be retained, though, were rooted more deeply in a morality that capital punishment was either the desirable penalty for murderers or the justifiable sanction that was necessary to protect the public. It is difficult to quantify how many retentionists adhered to either belief, in part because their arguments would not have been aided by stating publically that they wanted murderers to die. Thus, few politicians made such statements.

How did the retentionists argue their case?

The retentionists' arguments can be divided into moralist and causalist categories, as outlined by Davies.³⁸⁵ Davies is correct in stating that causalism, as embodied by the issue of deterrence, became the principal factor during the parliamentary debates, especially after the publication of the Royal Commission's report in 1953. This provided evidence for the abolitionists' argument that the retentionists could not counter. However, moral arguments were also a feature of the debates throughout this period. This section examines the retentionists'

³⁸⁴ D.E. Butler, *The British General Election of 1955* (London: Frank Cass and Company Limited, 1969), 39-40.

³⁸⁵ Davies, *Permissive Britain*, 28.

moralist and causalist arguments before considering their uses and interpretations of civilisation. Whereas the abolitionists had strong arguments based upon deterrence, there was no aspect of the retentionists' arguments that was uniquely convincing or irrefutable. They had to engage with the arguments on deterrence but relied on their moral justifications, as they could not provide evidence to counter-balance that which supported the abolitionists' causalist arguments.

Christie Davies explains that morality became less important during the debates on what he perceives to be the key permissive reforms in post-war Britain.³⁸⁶ It is true that deterrence became the principal issue during the capital punishment debates, especially after the publication of the Royal Commission's report. However, secularisation was by no means complete and morality remained a common feature of retentionists' arguments throughout this period. During the House of Lords debate on the abolition amendment to the Criminal Justice Bill, the Archbishop of Canterbury, Geoffrey Fisher, argued that Anglican morality supported the state's right to execute murderers. His speech demonstrated moral support for capital punishment:

the Church...recognises the full right of the civil magistrates, on certain conditions, to take away life whether in the case of a just war, or for heinous and grievous offences...Murder is such an outrage upon society, so heinous a breach of social living and so ultimate in its effect upon the victim, that its penalty shall be death. It is not that each murderer is treated thus so as to act as a deterrent to other possible murderers. It is the proclamation of a law by which every man, if he becomes a murderer, shall be judged, and to which he shall know himself to be liable; it is the public recognition that murder is, in one sense, the worst, and certainly the most irreversible, of crimes.³⁸⁷

Earlier in his speech, Fisher claimed to look beyond the simplistic 'eye for an eye' argument, which he suggested was a case for restraint in punishment rather than vengeance, and instead argued that the state had a right and sometimes a duty to take life. He claimed that the Church should support the state and be concerned with the spiritual redemption and reformation of the condemned person in order

³⁸⁶ Davies, *Permissive Britain*, 28.

³⁸⁷ HL Deb 01 Jun. 1948 vol. 156 cc. 42-4.

to convert him before he dies. James Stuart stated during a cabinet meeting in July 1956 that he had met with Fisher, who was firmly of the view that capital punishment was a necessary deterrent.³⁸⁸ This moral and causalist justification for capital punishment was provided by Britain's senior cleric and could be expected to have had a particularly powerful impact upon the debate. Viscount Stansgate expressed his appreciation for the Archbishop's contribution during the same debate, although he adopted an opposing view on capital punishment.³⁸⁹ Fisher was able to find Biblical support for capital punishment, although the abolitionists too could draw upon Christian doctrine to counteract these claims, as was demonstrated in this debate by Lord Rochester:

I was at a loss to understand why the most reverend Primate should pray in aid of his argument Exodus, Leviticus, and Deuteronomy in the Old Testament—"An eye for an eye and a tooth for a tooth"—and should omit all reference to the words of Jesus Christ himself... that ye love your enemies and bless them that curse you.³⁹⁰

The abolitionist uses of morality and Christian doctrine were examined in this thesis' chapter on their case. However, this quote demonstrates that Christian morality offered no uniquely effective justification or evidence for the retentionists' position. The abolitionists always had a counter-point to refute their arguments on morality. It was difficult for an argument to be won using a moralist proposition that conflicted with the morality of others. Nevertheless, such morality was a feature of the retentionists' arguments throughout the abolition debates.

Fisher's argument was centred upon Anglican morality supporting the actions of the state in maintaining law and order. Other politicians also used Christian morality to justify state action. On 16 February 1956 R.A. Butler, who was at this time the Lord Privy Seal, referred to Christian morality as he concluded the debate on the government's motion to retain the death penalty but modify its application. He completed his closing statement by saying:

The Government have a very serious responsibility. They have a responsibility for the sanctity of human personal life, and that is

³⁸⁸ TNA:PRO, CAB/195/15, C.M. 51 (56), 20 Jul. 1956.

³⁸⁹ HL Deb 01 Jun. 1948 vol. 156 c. 57.

³⁹⁰ HL Deb 02 Jun. 1948 vol. 156 cc. 153-4.

where the Christian ethic comes in. They also have a responsibility for society. I am not going to quote the Christian ethic in support of the Government's case. 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, without waiting for the amendments the Government suggests, to abolish the penalty of death for murder.³⁹¹

Butler's refusal to state the 'Christian ethic' that justified this position implied that the MPs in the House knew, or were expected to know, the ethic to which he was referring. Furthermore, in closing his long speech to the House with this religious argument, Butler demonstrated that Christian morality was an important and persuasive factor in the justification of issues of both law and order and individual conscience, at least in the opinion of the government. As this was his final point, Butler would have been confident that it would have a significant impact upon MPs before they divided, which he hoped would persuade them to support the government's motion. This indicates that Christian morality was recognised as still being influential within parliamentary debates. Legal and political secularisation was certainly not total at this time.

By 1965, the abolitionists were using Christian morality more frequently than were the retentionists, in part because the culture in both Houses of Parliament had become favourable to abolition. Within this context, Lord Ailwyn sought to demonstrate that Christian doctrine justified retention. Unlike the Archbishop of Canterbury in 1948, Ailwyn cited support for capital punishment from the New rather than Old Testament, thus addressing Lord Rochester's objection, and those of other abolitionists, that the retentionists only employed Old Testament, old-fashioned doctrinal evidence:³⁹²

I will give one example from the New Testament. This is a well-known passage which I seldom hear quoted and which has always seemed to me to transcend all other Bible passages in this

³⁹¹ HC Deb 16 Feb. 1956 vol. 548 c. 2646.

³⁹² Examples of this abolitionist view of Old Testament morality as being outdated can be found in the Lords debate in which Lord Rochester spoke, which was quoted previously in this chapter. This argument was made by the Bishop of Chichester, Lord Douglas of Kirtleside and the Earl of Darnley: HL Deb 02 Jun. 1948 vol. 156 cc. 124-5; 141-2; 160-1.

connection, and, moreover, to be incapable of misunderstanding. In three out of the four Gospels it is recorded that Our Lord himself, in pronouncing his detestation of those who offended little children, used the words “It were better for him that a millstone were hanged about his neck and that he be cast into the depths of the sea.” Will any abolitionist dare to refute such unequivocal words from the lips of the Founder of the Christian religion? The Man without sin, the Man destined to become the victim of the greatest single crime in the history of the world? Remembering that crimes—bestial crimes—against young children are among the most prevalent at the present time, your Lordships may think that that quotation from three separate contemporary witnesses is at least significant, and might be taken as a fairly strong justification of the views of retentionists.³⁹³

Ailwyn’s conclusion that this quote from three of the gospels did ‘transcend all other Bible passages in this connection’ was dubious considering that many of the passages from the Gospels that were quoted during these debates opposed his argument. He offered no compelling justification to support his conclusion on this point. Ailwyn used Biblical doctrine to justify the morality of taking a criminal’s life. This was at odds, though, with the dominant interpretation of Christian morality within these debates. It did little to persuade politicians who were not firm supporters of capital punishment to oppose abolition.

The moral arguments within these debates were not based solely on Christian doctrine, although, as Quintin Hogg argued, this morality was influential within Conservatism, a principle to which the majority of retentionists subscribed.³⁹⁴ Gwilym Lloyd George, in introducing the government’s motion to retain the death penalty but modify its application, demonstrated a non-religious moral argument:

In taking life, the State performs its most solemn function; solemn not only because taking life must always be a terrible thing, and not least when it is done deliberately under the law, and with all the solemnity that the law confers; but solemn also because, in

³⁹³ HL Deb 19 Jul. 1965 vol. 268 c. 487.

³⁹⁴ Hogg, *The Case for Conservatism*, 18-23; Hogg, *The Conservative Case*, 21-7.

executing the capital sentence, the State pronounces the moral judgment of society on murder. In what circumstance, if any, society is justified in exacting the extreme and irrevocable penalty is a problem which rightly exercises the minds and consciences of civilised and responsible people everywhere. It is something which exercises the conscience of everyone of us.³⁹⁵

The basis of Lloyd George's concept of 'the moral judgement of society' could have been rooted in Christian doctrine. However, if this was his meaning then the association was implied rather than explicit. Lloyd George continued this point: 'I hope that those [abolitionists] who take their stand on moral absolutes will believe that we are no less conscientious in our approach to the problem than they.'³⁹⁶ Lloyd George used a notion of moralism that was unassigned to a specific source, such as Christianity, to add weight and humanity to the desire to retain the death penalty. This unidentified morality was an attempt to place a concept of society's judgement in support of retention. In this respect it was similar to the abolitionists' uses of civilisation, though this had a better-defined conceptual framework than did Lloyd George's 'moral judgement of society'.

The sanctity of life was a common theme within the arguments of both the retentionists and abolitionists. Both claimed that they were preserving and improving the sanctity of life within Britain by either retaining or abolishing capital punishment. During the capital punishment debate of 16 February 1956, Sir Knox Cunningham founded part of his retentionist argument on this issue:

The State and we in this House owe a duty to innocent people, old and young, who go about their jobs in the world peacefully. There is too much of violent crime today. Innocent people are being killed because the criminal believes that his right is might; he has no regard for the sanctity of human life, and I believe we must see that the Queen's peace is kept and that right and law are the rule in this land.³⁹⁷

Cunningham's argument concerning the sanctity of life was twofold. He suggested that capital punishment was necessary to preserve the sanctity of life and that

³⁹⁵ HC Deb 16 Feb. 1956 vol. 548 c. 2536.

³⁹⁶ HC Deb 16 Feb. 1956 vol. 548 c. 2537.

³⁹⁷ HC Deb 16 Feb. 1956 vol. 548 c. 2599.

those who had ‘no regard’ for it should be removed from society. This argument portrayed capital punishment as a tool to protect society’s morality in terms of its respect for the sanctity of life. This moral judgement relied upon an acceptance of the perceived deterrent effect of the death penalty, which would maintain the ‘Queen’s peace’. Arguments such as this were necessary for the retentionists to attempt to refute the abolitionists’ claims concerning the sanctity of life. As with many issues of morality, though, the abolitionists could produce a counter-argument that was no less justifiable than that of the retentionists. The retentionists’ uses of the sanctity of life offered no uniquely persuasive argument in favour of the death penalty.

A few retentionists argued a more extreme moral position that capital punishment was the desirable penalty for murder. A.M. Kraft, a retentionist contributor to the Labour periodical *Socialist Commentary*, stated that murderers should be put to death even if the penalty was proven to have no unique deterrent value:

We should insist upon capital punishment even if it were proved by the abolitionists that such punishment was quite inadequate to safeguard human life...The categorical demand for the death penalty in the case of murder has an ethical root. Just as justice demands that a man ought not to inflict upon another an evil which he himself would not be prepared to suffer, a man who has committed murder ought to accept for himself a like measure of evil as, in defiance of the law, he has inflicted upon a fellow citizen.³⁹⁸

Kraft was unusual in arguing that deterrence should be disregarded as a factor in the capital punishment debates. However, he was not alone in advancing this argument. During the debate on the second reading of the Death Penalty (Abolition) Bill in the Lords, Viscount Kilmuir, the Conservative Lord Chancellor and former Home Secretary, drew upon the arguments of other retentionists before arriving at his own argument:

[Quoting Lord Justice Denning] “The ultimate justification of any punishment is not that it is a deterrent, but that it is an emphatic

³⁹⁸ A.M. Kraft, “Should Capital Punishment be Abolished?,” *Socialist Commentary* 12, no. 7 (Apr. 1948): 156-8.

denunciation by the community of a crime: and from this point of view, there are murders which, in the present state of public opinion, demand the most emphatic denunciation of all—namely, the death penalty.”...That is an important start. I myself would go further. I believe that the “emphatic denunciation” of a crime does more than mark the State’s disapproval. It causes individuals, and, indeed, the whole people, to regard that crime with detestation.³⁹⁹

Kilmuir’s moral justification for the death penalty was concerned more with encouraging society’s revulsion towards murder rather than ensuring that the murderer received the retributive penalty, as was the case with Kraft’s argument. Both men separated their arguments from deterrence to focus upon other moral reasons for the desirability of capital punishment. As mentioned earlier, Kraft acknowledged that the retentionists could not win an argument based upon deterrence. It was necessary for the retentionists to have arguments based upon other issues, therefore, in their attempt to succeed within the capital punishment debates. Few retentionist politicians mimicked Kraft and Kilmuir in arguing publically that capital punishment was desirable. Another who did, Brigadier Terence Clarke, is examined in the next section of this chapter. Such an argument found little support within the broadly abolitionist House of Commons. The more common moral argument used by the retentionists was that capital punishment was a justifiable necessity. This would have been a more appealing argument for those politicians who disliked capital punishment but who might have been willing to accept that the death penalty was an unpleasant necessity.⁴⁰⁰ Unfortunately for the retentionists, such moral arguments did little to convince their opponents to change their minds on capital punishment. These arguments did not greatly assist the retentionists’ case.

Unlike the abolitionists, many of the leading retentionists within Parliament were in the House of Lords. Prior to the Life Peerages Act, the vast majority of the Lords held more traditional, conservative values. It was after the passage of this Act that there was a gradual influx of peers who were affiliated

³⁹⁹ HL Deb 09 Jul. 1956 vol. 198 c. 576.

⁴⁰⁰ In April 1948 Sir Ronald Ross argued in this manner, describing capital punishment as ‘a revolting system’ that he would be happy to be rid of if this were possible. He tempered these sentiments, though, by claiming that this was not possible: HC Deb 14 Apr. 1948 vol. 449 cc. 1055-6.

with the Labour Party and were predominantly abolitionists.⁴⁰¹ William Jowitt, the Lord Chancellor during Attlee's premiership, was a retentionist leader despite being a member of the Labour Party. Jowitt was previously a member of the Liberal Party who joined Labour shortly after the 1929 general election, after which he was appointed Attorney General.⁴⁰² Deterrence was at the centre of his retentionist argument. He introduced the second reading of the Criminal Justice Bill in the Lords as the representative of the government and thus was obliged to vote in favour of it. He did not feel comfortable, though, with supporting the Bill because of his retentionism. He voiced his displeasure with the abolition amendment during his speech in the Lords:

Of course, a hanging is a grim and horrible business. And so, my Lords, is murder. I feel that there is only one possible justification for retaining capital punishment—namely, that one believes that capital punishment acts as a deterrent, and therefore cuts down the number of murders which otherwise would be committed. It is because I believe that that I am opposed to the abolition of capital punishment. I cannot prove it. In the nature of things, no one can ever prove it. It must be a matter of impression and of one's own personal opinion.⁴⁰³

Jowitt's portrayal of the deterrent effect of capital punishment was common amongst many of the retentionists who took part in the post-war abolition debates. Yet, Jowitt acknowledged that the retentionists were unable to prove the deterrent effect of capital punishment. This became increasingly problematic for the retentionists, who would never overcome this issue. Indeed, in 1948 A.M. Kraft admitted that the abolitionists had won the argument concerning deterrence, even though they did not have yet the supporting evidence from the Royal Commission's report.⁴⁰⁴ This was the most important reason for the defeat of the retentionist arguments in Parliament.

⁴⁰¹ Morgan, *The House of Lords and the Labour Government*, 23-5.

⁴⁰² Oxford Dictionary of National Biography, "Jowitt, William Allen," <http://www.oxforddnb.com/view/article/34246?docPos=1>, [accessed 8 Nov. 2013].

⁴⁰³ HL Deb 27 Apr. 1948 vol. 155 cc. 396-7.

⁴⁰⁴ Kraft, "Should Capital Punishment be Abolished?," 156-8.

The Royal Commission's report provided the retentionists with no evidence to support their arguments on deterrence. The report has been recognised by politicians and academics as being of particular importance to the understanding of the complexities within the application of capital punishment, as is mentioned in this thesis' chapter on public opinion. The retentionists could not ignore the report. They had to persuade other politicians that they had misunderstood it in finding that it supported the abolitionists' case. Gwilym Lloyd George attempted this in February 1956:

The Commission did not say that capital punishment was not a uniquely effective deterrent. Indeed, in some respects the Commission thought it was. What the Commission said was simply that the figures provided "no reliable evidence one way or the other."...It [the impracticality of statistics within arguments for abolition] is of the greatest importance in relation to the argument that because in a number of countries where the death penalty has been abolished there has not been an increase in murder, the death penalty, therefore, makes no difference. There is no statistical foundation whatever for that contention...The abolitionist case, as I understand it, is that since the death penalty cannot be proved by statistics to be a uniquely effective deterrent therefore it is not a uniquely effective deterrent. Personally, I do not believe that what cannot be proved by statistics cannot be true.⁴⁰⁵

Lloyd George tailored his argument around the critique of the abolitionists' use of deterrence in an attempt to refute their claim of having evidence that supported their argument. This quote, taken from Lloyd George's speech opening the debate on the government's motion on 16 February 1956, set the tone for the arguments on deterrence within the subsequent abolition debates. The retentionists claimed that capital punishment was a unique and necessary deterrent but could not find evidence to support this assertion. Though they decried the abolitionists' claims of evidence as being spurious, they could not disprove them. The publication of the Royal Commission's report made the retentionists' argument on deterrence less convincing. The general perception

⁴⁰⁵ HC Deb 16 Feb. 1956 vol. 548 cc. 2539-2540.

within the Commons was that it was they rather than the abolitionists who were required to prove their argument on deterrence in the light of the evidence that emerged from the Royal Commission's report.

Occasionally, the retentionists attempted to use the context provided by the rising crime rate after the Second World War to justify their argument that capital punishment was a necessary deterrent. Moss Turner-Samuels argued thus during the Commons's debate on the abolition amendment to the Criminal Justice Bill:

In those circumstances [judges believing that they have to pass down more severe sentences in response to the increasingly frequent incidents of criminals using firearms], and having regard to the unsettled state of the country, which, everyone admits, is leading to serious crime - and this is largely due to the effect of the war; everyone realises that respect for life and property has become very much less since the war - we must take all this into account when we are being asked to lessen and weaken the sanctions of criminal punishment. The Home Office, at this moment, are opposing the abolition of capital punishment because of these very reasons...In the light of the increase in crime in the country, to say that that grave factor is not a decisive matter to be taken into consideration is surely a statement bordering on irresponsibility.⁴⁰⁶

Turner-Samuels' argument did not attempt to prove that capital punishment was a deterrent. Instead, he relied on the notion that MPs might accept that the post-war social dislocation had created a situation in which it was inappropriate to abolish the death penalty. This was a common retentionist argument, which was replicated for the rising crime rate in the 1950s and 1960s. Turner-Samuels hoped to supersede abolitionist arguments on deterrence by drawing upon the doubt that was connected to this issue. He used this doubt and the rising crime rate to argue that capital punishment should not be abolished at that time. The majority of MPs, though, were not convinced by his attempt to delay their judgement on the issue.

⁴⁰⁶ HC Deb 14 Apr. 1948 vol. 449 cc. 1045-6.

Retentionist MPs failed to convince many abolitionists to believe their interpretation of deterrence prior to the publication of the Royal Commission's report, as most politicians based their judgements on abolition upon their own morality. The retentionists' arguments, though, were no less convincing than the abolitionists' before the publication of the report. The emerging evidence that supported the abolitionists' case, both from foreign abolitionist countries and from the Royal Commission's report, meant that the retentionists became even less able to present a sufficiently persuasive argument based upon deterrence.

As with the abolitionists, there were a number of retentionists who drew upon the concept of civilisation in support of their arguments. The general premise for these arguments was similar to those connected to the sanctity of life: that capital punishment was necessary to preserve or improve the status of Britain's civilisation. Unlike the abolitionists' uses of civilisation, though, it was not associated with liberalisation. One retentionist to use such an argument was Lord Teviot:

We look about the world today and what do we see? We see the rule of law, as always understood by civilised nations, being usurped by the rule of murder. We all know the meaning of the word "liquidation." There seems to me to be no question whatever that the weakening on penalties of this sort is just pandering to those in the world who carry on their vicious persecution of people and rule by fear.⁴⁰⁷

Teviot viewed the rising murder rate of the late 1940s as threatening Britain's civilisation by diminishing the rule of law. He argued that abolishing capital punishment would enable this trend to continue. His was one of a number of retentionist arguments that were founded upon the same theme. However, the retentionists did not use civilisation as frequently within the parliamentary debates as did the abolitionists. This was in part because the retentionists lacked a conceptual framework that was comparable to the abolitionists' to support and justify their arguments. Prominent abolitionists, notably Roy Jenkins and Anthony Crosland, placed abolition within a wider framework of liberalisation that would

⁴⁰⁷ HL Deb 27 Apr. 1948 vol. 155 c. 434.

create a more civilised society.⁴⁰⁸ These programmes supported the abolitionists' uses of civilisation within their arguments and were adhered to by a large number of MPs who voted both for abolition and for other liberalising reforms. There were no similar published programmes to support the retentionists' understanding of civilisation. This severely restricted the persuasiveness of their interpretations of civilisation within the capital punishment debates, which was demonstrated through the abolitionists' more frequent use of the concept.

In general, the retentionists attempted to frame their arguments around the notion that they were sensitive to the unpleasant nature of capital punishment but felt that it was a necessary deterrent against murder. They could not afford to be portrayed as being out of touch with the liberalising political culture, which included penal policy. A good example of this was Hogg's *The Case for Conservatism* and the later edition *The Conservative Case*, quoted in this thesis' chapter identifying the retentionists and abolitionists, wherein the boy who stole apples was punished with the birch in 1947 and with the slipper in 1959.⁴⁰⁹ This was indicative of the retentionists' need, and indeed the need of all politicians, to present their arguments in the manner that was most persuasive to their audience. Hogg outlined identical arguments in both editions, but diminished the penalty for the apple-stealing boy to reflect contemporary attitudes.

As with Hogg, many retentionists had to present their arguments carefully in order to appeal to an audience that, in the House of Commons at least, was not sympathetic to their cause. This meant that few retentionists argued that capital punishment was desirable, instead claiming that it was justifiable and necessary. However, they were unable to formulate any argument that succeeded in convincing a sufficient number of abolitionists or abstaining MPs to change their opinions on the issue. The retentionists' arguments were hampered by a lack of evidence to refute the abolitionists' evidence. This, along with the abolitionism of a significant minority of younger Conservative MPs and the arrival of new abolitionist peers in the House of Lords, meant that the parliamentary culture during this period became less conducive for the retentionists to present a convincing argument.

⁴⁰⁸ Crosland, *The Conservative Enemy*, 131; Crosland, *The Future of Socialism*, 521-2; Jenkins, *The Labour Case*, 135-7.

⁴⁰⁹ Hogg, *The Case for Conservatism*, 22; Hogg, *The Conservative Case*, 26.

Why did the retentionists believe that capital punishment should be retained?

As with their arguments, the morality that drove the retentionists' belief can be divided into two categories. The first group were those who believed that the death penalty was the desirable punishment for murder. They rarely expressed these views within the parliamentary debates due to the liberalising, abolitionist mentality that became increasingly entrenched within the House of Commons during this period. The committed retentionism of many politicians after both the publication of the Royal Commission's report and the notable executions indicates that their beliefs were based more upon a desire for the retributive function of capital punishment than they exhibited within their arguments. The second group had more sympathy with abolition, exhibiting disgust towards the death penalty. They supported retention, though, because they believed that capital punishment was a necessary deterrent to murder. Their disgust towards executions was not strong enough to counter balance a moderate belief or even an uncertainty in the deterrent effect of capital punishment. This retentionist belief was demonstrated predominantly by those MPs who changed their votes from retention to abolition at various stages during this period and by those who, though firm retentionists, spoke openly of the conflict that they felt on this issue. It should be noted, though, that some politicians who claimed to find capital punishment disgusting but necessary may have done so in order to make their arguments more persuasive. It is not possible for a historian to weight accurately the extent to which statements made in Parliament were accurate depictions of politicians' beliefs, as some statements would have been tailored to be persuasive rather than genuine outlines of the causes of one's opinions.

Both the support for the retribution offered by the death penalty and the recognition of the necessity of capital punishment were linked to aspects of traditional Conservative and Anglican morality. This section also examines the retentionists' opposition to abolition with reference to the belief in the sanctity of life, the rising crime rates and the wider liberalisation of the post-war decades.

The retentionists who sympathised with abolition but opposed it for causalist reasons included members of Attlee's government and a large minority of Labour backbenchers during the debates on the Criminal Justice Bill in 1947 and 1948. Many of these politicians only voted for retention at this time and

supported abolition in the subsequent debates. For this government, there was the additional causalist fear of appearing soft on crime, which could have had an impact on their electoral performance. As was mentioned in this thesis' chapter on public opinion, any potential electoral impact was a largely unknown factor at this time due to the infancy of psephology as a scientific discipline.

One of the few retentionist politicians to express publically a view that the death penalty was the desirable punishment for murder was Brigadier Terence Clarke. During the second reading of the Murder (Abolition of Death Penalty) Bill in December 1964, Clarke tabled a wrecking amendment:

I beg to move, to leave out "now and at the end of the Question to add" upon this day six months". I understand that this is the parliamentary way of saying, "Tear the Bill up and let us hear no more of it". That is what I should like to do...If murderers want to commit suicide, I would not stop them. It would save a lot of bother later on...I am certain that the death penalty is a deterrent. I believe the hon. Member for Nelson and Colne admitted that it was, and certainly the former Home Secretary, my right hon. Friend the Member for Hampstead (Mr. Brooke), said that it was. I was not quite sure what the new Home Secretary said. He seemed to be almost as weak with the criminal as the two Home Secretaries who preceded him [R.A. Butler and Henry Brooke, the Conservative Home Secretaries who oversaw penal reforms including the compromise Homicide Act]. I do not know what happens to people when they become Home Secretaries. They get so wet that they ought to be hung up. This is a deterrent. A murderer should most certainly hang. If there is a matter of doubt in anyone's mind, I have no doubt whatever...I am perfectly happy if a mistake has been made, or if in the next five or ten years a mistake is made if it means that we save the life of one child, as I believe retaining the death penalty would do⁴¹⁰

The deterrence aspect of Clarke's belief within this quote is examined later in this section. Clarke expressed his moral support for capital punishment by placing the

⁴¹⁰ HC Deb 21 Dec. 1964 vol. 704 cc. 944-6.

life of a child, which was portrayed as the absolute innocent victim, above that of a person who is executed mistakenly. This rather extreme example was rooted in the belief that capital punishment was the desirable penalty for murderers and that it was essential for preserving order within society. He demonstrated this desire further by claiming that he would not stop a murderer from committing suicide. Clarke's belief that a murderer should die was expressed clearly in this speech, along with his assertion that capital punishment was a unique deterrent to murder.

Clarke's belief was a product of a traditional theory of punishment that was based upon deterrence and retribution, which was out of keeping with the liberalising ethos that became prominent in penal policy and wider social liberalisation. Clarke distanced himself from the abolitionists' use of evidence and expert opinion, stating disparagingly: 'I know that lawyers and statistics can prove practically anything', a quote that drew groans from other MPs.⁴¹¹ This approach to capital punishment adhered to what David Garland has termed the 'traditional' way of thinking about crime, where 'experience and ideology' were more important than 'systemic empirical enquiry'.⁴¹² For Clarke, the experience came in part from his military service, from which he drew two supporting examples, and the ideology from his Conservative background, which Jarvis has termed as 'representing tradition'.⁴¹³ Clarke's speech, however, was markedly out of touch with the tone of the debate. He accused those who supported either abolition or a reduction in the application of capital punishment as being 'weak' and 'wet'.⁴¹⁴ These were familiar accusations linked to emotionalism, a theme which was used by both retentionists and abolitionists to attack the beliefs and arguments of their opponents.⁴¹⁵ Clarke's speech was extreme, but its ridiculing

⁴¹¹ HC Deb 21 Dec. 1964 vol. 704 c. 947.

⁴¹² David Garland, "Of Crimes and Criminals: The Development of Criminology in Britain," in *The Oxford Handbook of Criminology*, eds. Mike Maguire, Rod Morgan and Robert Reiner (Oxford: Oxford University Press, 1997), 23.

⁴¹³ HC Deb 21 Dec. 1964 vol. 704 c. 944; 949; Jarvis, *Conservative Governments*, 20.

⁴¹⁴ HC Deb 21 Dec. 1964 vol. 704 c. 946.

⁴¹⁵ Claire Langhamer explains that emotion was both employed and criticised by retentionists and abolitionists during the capital punishment debates, while Kevin Manton notes that Attlee's Labour government was particularly concerned about appearing to be sentimental, which was a euphemism for being soft on crime: Langhamer, "The Live Dynamic," 429-32; Manton, "Labour Governments and Capital Punishment," 30.

by other MPs was indicative of the fact that the retentionists' moral and causalist beliefs were held only by a minority of MPs in a House dominated by abolitionists.

Clarke was more vociferous than most retentionist politicians in his defence of both the desirability of and justification for the death penalty. His stern support for capital punishment was out of keeping with the entrenched abolitionism within the Commons in the 1960s. Because of this, his aggressive rejection of abolition can be presumed to represent his belief that capital punishment was the desirable penalty for murderers, as such an argument could not have been expected to be successful at persuading abolitionists to support retention. No politician would have used this as a persuasive tool if their attitude towards capital punishment was more liberal than the stated position. However, the number of committed retentionists throughout this period indicates that many politicians would have agreed with Clarke, but displayed more political awareness in not expressing their views in such stark terms. Clarke's misjudgement of the tone of the debate was evident by the groans and laughter that greeted a number of his statements. He was dismayed by these reactions: 'I do not know why hon. Gentlemen think this is funny. I am desperately serious.'⁴¹⁶ Clarke was not unique in believing that capital punishment was desirable. It was unwise of him, though, to raise it in this manner within the House of Commons, which by this time was firmly abolitionist and was supported in this belief by the government.

Those retentionists who maintained their position after the publication of the Royal Commission's report can be presumed to have continued to vote for retention largely because of a moral belief that it was the deserved penalty for murder. If most had voted for retention because they believed capital punishment to be an unwanted but necessary deterrent to murder, then one would expect to find far fewer retentionists after 1953 than before, as after this year the available evidence suggested that the death penalty could not be proved to be a unique deterrent. Yet, the proportion of retentionists in the Commons divisions in 1948 was almost identical to that in 1956, as is mentioned in this thesis' chapter on public opinion. Furthermore, the only retentionist success in the Commons was in 1955 during the motion to recognise the Royal Commission's report. Indeed, 83

⁴¹⁶ HC Deb 21 Dec. 1964 vol. 704 c. 949.

per cent of the total number of committed retentionists who took part in at least one capital punishment debate between 1947 and 1969 voted for retention after the Royal Commission's report was published in 1953. It is apparent, therefore, that many of the committed retentionists were not supporting the death penalty reluctantly because of the perception that it was a unique deterrent. It is probable that most wanted murderers to be executed.

Many politicians' retentionism, though, was based upon their belief that it was justifiable to take the life of a murderer in order to preserve law and order, even though some of these politicians disliked the death penalty. In this respect, their moral feelings on the death penalty were outweighed by their interpretation of the causalist issue of deterrence. The causalist aspect of this belief placed capital punishment as a necessary sanction against murder. The moral aspect placed it as being justifiable for this reason. Archbishop Fisher demonstrated this belief in his contributions to the parliamentary debates on capital punishment and in his witness statement to the Royal Commission in 1950. His statement contained three main points: that the state could legitimately take life in murder cases to protect lives and order within society, that it was dangerous to consider abolition during the on-going post-war crime wave and that the public generally agreed with this view.⁴¹⁷ His final point is not considered within this section, as this thesis' chapter on public opinion has already explained that the electorate's views did not influence greatly the judgements of politicians. Many politicians connected the post-war crime wave to the social dislocation that followed the end of the Second World War. This belief that the time was not right for abolition can be translated to many of the retentionists throughout this period who felt that the death penalty was necessary to protect society. Fisher was of the opinion that capital punishment was not desirable, but his belief that it was a uniquely effective punishment meant that he supported retention. This belief was demonstrated by his view that capital punishment needed to be limited to fewer murders to ensure that very few convicts were sentenced to death only to receive a reprieve at a later date.⁴¹⁸ This

⁴¹⁷ *Minutes of Evidence taken before the Royal Commission on Capital Punishment* (14), (London: HMSO, 3 Feb. 1950); Lambeth Palace Library, London, Papers of Archbishop Fisher (Fisher Papers), Fisher 69, ff. 38-42, Memorandum from the questioning of Fisher by the Royal Commission on Capital Punishment, undated.

⁴¹⁸ Fisher Papers, Fisher 167 ff. 225-35, Draft Speech to the House of Lords on Death Penalty (Abolition) Bill, 10 Jul. 1956.

was a slight change of opinion from his speech in 1948, quoted earlier, in which he appeared to view capital punishment as a more desirable punishment than he did in the 1950s.⁴¹⁹ This perhaps indicates that he presented his retentionism in a manner that he believed would be most appealing to his audience. Nevertheless, in the 1950s Fisher appeared to distance his retentionism from a view that it was the desirable punishment for murder.

The belief that capital punishment was an undesirable yet necessary penalty was often linked to the rising crime rates in the 1940s and in the 1950s and 1960s. In the late 1940s and early 1950s the crime rate rose steadily from 2,967 offences against the person in 1947 to 3,707 in 1951. There was a more pronounced rise from the mid-1950s into the 1960s. Offences against the person rose from 4,238 in 1956 to 6,025 in 1961. The incidents of this type of crime remained above 5,000 throughout the 1960s.⁴²⁰ This second rise was associated in particular with increasing affluence and the degradation of the traditional Christian, Anglican morality. Jarvis explains that the perceived decline of Christian morality was seen by many Conservatives to be the primary reason for the crime wave.⁴²¹ For many retentionists these increases in the incidents of crimes against the person were an important reason for retaining the death penalty. They believed that capital punishment would reduce the crime rate.⁴²²

Viscount Kilmuir argued that capital punishment would maintain law and order within society during a cabinet meeting in February 1955. He stated that he was 'fully convinced that the death penalty acted as a powerful deterrent and that its removal would prejudice the maintenance of the Queen's peace'.⁴²³ Jarvis argues that this theory was solidified for many Conservatives during the crime wave of the 1950s and 1960s, with many Party delegates demanding the restoration of capital punishment for all murders at the Party conferences after the Homicide Act limited the application of the death penalty.⁴²⁴ Indeed Butler, in a government memorandum written in 1961, noted that the rising crime rate had

⁴¹⁹ HL Deb 01 Jun. 1948 vol. 156 cc. 42-4.

⁴²⁰ These statistics are for those offences that were heard at assizes and quarter sessions: *Criminal Statistics England and Wales* (London: HMSO, 1945-1969).

⁴²¹ Jarvis, *Conservative Governments*, 24-5.

⁴²² Jarvis, *Conservative Governments*, 50.

⁴²³ TNA:PRO, CAB/128/28, CC (55) 10, 9 Feb. 1955.

⁴²⁴ Jarvis, *Conservative Governments*, 50-5.

led to a number of Conservatives demanding the reintroduction of capital punishment for all murders.⁴²⁵ This belief in the deterrent effect of capital punishment was demonstrated also in Archbishop Fisher's statement to the Royal Commission, which he made near the end the first post-war crime wave.⁴²⁶ This was a common reason given by retentionists for not supporting abolition. It is difficult to ascertain how many of the retentionists in Parliament believed that abolition was possible in the future but not appropriate whilst the crime rate was rising. Butler and Macmillan appeared to accept that abolition was likely, though not inevitable, during their meeting with the NCACP in 1962.⁴²⁷ Some may have used the crime rate as a tool in debates to defeat other aspects of the abolitionists' case that they could not refute, notably deterrence. Nonetheless, the reactions to the rising crime rate demonstrate that a number of retentionists viewed capital punishment as a uniquely effective deterrent, as they believed that it was necessary to reduce the incidents of crime.

During the Lords' Committee on the Criminal Justice Bill in June 1948, Lord Llewellyn moved that the amendment for abolition be removed from the Bill. As with Jowitt, quoted earlier in this chapter, he too placed deterrence at the heart of his retentionist belief:

First of all, I believe it to be a deterrent. If it is not a deterrent, why do we keep it on our Statute Law for treason? Why did we take part in the Nuremberg Trials, if we did not think that by convicting international criminals, as we all believed Goering, Ribbentrop and the others to be, we were deterring other people from taking similar actions?⁴²⁸

Llewellyn introduced the context provided by the trials of the Nazi war criminals as evidence that the British state had recently viewed capital punishment as a necessary deterrent, though it is probable that for many people these executions were retributive. This was not evidence that proved the unique deterrent effect of capital punishment. However, it demonstrated that the British state was active in

⁴²⁵ TNA:PRO, CAB/129/104, C. (61) 20, 8 Feb. 1961.

⁴²⁶ *Minutes of Evidence taken before the Royal Commission on Capital Punishment* (14), (3 Feb. 1950).

⁴²⁷ TNA:PRO, PREM 11/3686, Notes on the Memorial from the NCACP to the Prime Minister and Home Secretary, 5 July 1962; Gardiner Papers, Add MS 56460, Minutes of the National Campaign for the Abolition of Capital Punishment, 13 Sep. 1962.

⁴²⁸ HL Deb 01 Jun. 1948 vol. 156 c. 22.

seeking the death penalty for the worst criminals, including the strongly abolitionist Attorney General, Sir Hartley Shawcross, who served as Britain's Chief Prosecutor at Nuremberg.⁴²⁹

Quintin Hogg believed that it was wrong to protect the lives of murderers following both the deaths of countless soldiers and civilians and the British involvement in the executions of Nazi war criminals:

We have just concluded a great world war, in which we took millions of human lives quite deliberately in order to protect things which we thought more valuable... We have just been hanging our defeated enemies after the trials at Nuremberg... I am asking the House to try to give itself some kind of consistency of moral purpose here.⁴³⁰

As Langhamer explains, the executions of the Nazi war criminals had led to the British public becoming more accustomed to capital punishment, thus adding to the argument associated with the rising crime rate that the late 1940s was an improper moment to abolish the death penalty.⁴³¹ The increased prominence of killing in societies throughout Europe convinced a number of retentionists that the measures to improve the sanctity of life should not begin with murderers.

A career in the military appears to have influenced the retentionist beliefs of many MPs. Seventy per cent of MPs who had careers in the military were committed retentionists. This demonstrates that the experiences of war did encourage politicians to support retention, although 84 per cent of the MPs with military careers were Conservatives and, therefore, likely to have been inclined to support retention in any case. Retentionism, though, was not supported universally by those with military experience. Having been a peer for 18 years previously, the Earl of Harewood delivered his maiden speech to the House of Lords during the debate on the second reading of the Murder (Abolition of Death Penalty) Bill. He used his experience of war, and in particular of being a prisoner of war, to explain why he supported abolition.⁴³²

⁴²⁹ Oxford Dictionary of National Biography, "Shawcross, Hartley William," <http://www.oxforddnb.com/view/article/92268?docPos=1>, [accessed 17 Sep. 2013].

⁴³⁰ HC Deb 14 Apr. 1948 vol. 449 c. 1017.

⁴³¹ Langhamer, "The Live Dynamic," 422.

⁴³² HL Deb 20 Jul. 1965 vol. 268 cc. 593-7.

Sir Patrick Spens' experiences of war and of judicial and colonial service informed his belief that death was a deterrent. During the debate on the government's retentionist motion in February 1956, Spens explained his belief:

What I have to say to the House is partly, but not very greatly, founded on my experience as a judge in India...It is partly from that experience that I, myself, am convinced that the death penalty is a deterrent in certain cases...but every one of us knows— knows inside himself—whether violent death is a deterrent to us and whether it will deter us from doing certain things. Masses of hon. Members in this House have served in the Armed Forces. I do not believe a single one if he says that he has never been deterred by bullets or bombs. Of course we have been deterred by bullets and bombs. I am not ashamed to confess that I have been gravely deterred, almost to the length of turning my back and not going forward when I ought to be going forward⁴³³

Spens' use of personal experience as a reason for his belief was not uncommon. This was demonstrated by Terence Clarke, as examined earlier. It is difficult to ascertain how far the general experience of war influenced individual MPs' emotional reactions to capital punishment. For some it would have increased their repugnance towards any form of killing. For others, such as Spens, it convinced them that death was a unique deterrent. Yet more, such as Hogg, felt that the lives of murderers should not be preserved when so many others had recently lost their lives in war. It is not possible to distinguish a general reaction towards the death penalty that was based upon experiences of war or colonial service. Nevertheless, these experiences were influential factors behind the retentionism of a number of MPs.

The majority of Labour ministers in the late 1940s were retentionists, although, as this thesis' previous chapter explained, this was largely due to their concerns regarding deterrence and the Party's future electoral performances. The majority of these Labour retentionists were politicians who supported the death penalty for causalist reasons, which outweighed their dislike of capital punishment. Kevin Manton identifies that a number of the senior Labour

⁴³³ HC Deb 16 Feb. 1956 vol. 548 cc. 2565-7.

politicians were concerned about being portrayed as sentimental, a synonym for soft on crime. He argues convincingly that their support for capital punishment came from a desire to appear to be tough on crime.⁴³⁴ Although Manton does undervalue the strength of abolitionism within the Labour Party, as is mentioned in this thesis' chapter on the abolitionist case, he is correct to identify and explore the retentionist nature of much of the Labour leadership in the 1940s, notably Herbert Morrison, although he too voted for abolition in 1956.⁴³⁵ Indeed, the fact that five of the nine cabinet ministers who voted for retention in April 1948 voted for abolition in 1956 indicates that their defence of the death penalty during the passage of the Criminal Justice Act was not based upon a belief that capital punishment was desirable.

For many of the retentionists in this Labour government, the decision to oppose abolition can be seen as the outcome of both the post-war crime wave and political expediency. James Chuter Ede, the Home Secretary under Attlee, saw the social dislocation as a method to defeat any abolitionist amendment to the Criminal Justice Bill. In the final paragraph of a three-page memorandum for the cabinet on the difficulty with avoiding abolition, he mentioned that an argument based upon the notion that the time was not right for reform might succeed.⁴³⁶ For Ede, who was an abolitionist forced to adopt a retentionist position while in government, the crime rate was a persuasive tool to justify the continuance of the death penalty rather than a reason in itself to believe that capital punishment should be retained. Given his abolitionism, it is unsurprising that he struggled to present a firm belief in favour of retention. He viewed the crime rate purely as a political device rather than as a reason for wanting the death penalty to be retained, which would have been the reaction of many retentionists. In a meeting on 18 November 1947, the cabinet voted by ten to five in favour of the time not being opportune for the reform. Ede stated that he would vote for abolition in the debate if he were a private member and that in voting for the government line he was acting against his conscience. For Ede, it was the responsibility of representing the government that led to him voting for retention. Other

⁴³⁴ Manton, "Labour Governments and Capital Punishment," 17.

⁴³⁵ Manton, "Labour Governments and Capital Punishment," 20-4; HC Deb 16 Feb. 1956 vol. 548 cc. 2536-655.

⁴³⁶ TNA:PRO, CAB/129/19, C.P. (47) 200, 8 Jul. 1947.

abolitionist ministers present at this meeting wanted to vote in accordance with their consciences, notably Stafford Cripps and Aneurin Bevan, although they compromised by abstaining from the division.⁴³⁷ For a number of abolitionists in the Labour cabinet, party pressure rather than retentionist sympathies led them to vote for the death penalty.

During the Commons debate on capital punishment on 16 February 1956, Sir Knox Cunningham stated that 'I am in favour of its retention, and I have come to this conclusion because I believe in the sanctity of human life.'⁴³⁸ Cunningham, like Terence Clarke, believed in the deterrent effect of the death penalty and presumed, therefore, that by executing a number of murderers each year the total number of lives taken, or at least lives taken illegally, within the country would be lower than if capital punishment were abolished. He believed, therefore, that the sanctity of life within the country would be preserved by maintaining the death penalty, thus meaning that capital punishment was morally justifiable.

Many retentionists, notably Clarke, argued that capital punishment was necessary to preserve the sanctity of life within society because they believed that fewer innocent people would die. Other retentionists believed that a long term of imprisonment showed less regard for the sanctity of life than the death penalty. Moss Turner-Samuels, who was one of the few committed Labour retentionists, explained his position:

Everyone agrees that imprisonment for longer than 12 years destroys physical life. I say to the House that if we are to get rid of capital punishment we have no right to substitute for it a slower and more refined form of the death penalty. If punishment in prison is made to extend beyond 12 years it destroys physical life, and if we did that we should be doing something which, I submit, this House ought not to countenance.⁴³⁹

A number of retentionists throughout this period echoed these points. However, although some retentionists did argue in these ways, the majority of MPs did not conform to the idea that state executions protected the sanctity of life. Indeed,

⁴³⁷ TNA:PRO, CAB/195/5, C.M. 89 (47), 18 Nov. 1947.

⁴³⁸ HC Deb 16 Feb. 1956 vol. 548 c. 2599.

⁴³⁹ HC Deb 14 Apr. 1948 vol. 449 c. 1046.

many argued that by hanging criminals the state was reducing this sanctity, as they believed that executions normalised the taking of life, as was argued by John Hynd, quoted in the previous chapter of this thesis.⁴⁴⁰

The concept of the sanctity of life was a more developed aspect of the abolitionists' beliefs than it was of the retentionists'. The retentionists' notion that one must take life to preserve its sanctity was slightly more convoluted than the abolitionists' belief that by not taking life one diminished the culture in which unnatural death could become normalised within society. The abolitionists' position was supported by evidence that suggested that capital punishment did not offer a unique deterrent to murder. Furthermore, the sanctity of life linked abolition to other causes, notably the CND and, for a small number of politicians, the opposition to the legalisation of abortion. The abolitionists had a greater conceptual framework than the retentionists to support their beliefs and liberalising programme based upon the sanctity of life. The sanctity of life was a factor behind the beliefs of a number of retentionists who viewed capital punishment as morally justifiable. Yet, it was not the interpretation of the sanctity of life that was common amongst most politicians.

As with the examination of the abolitionists in the previous chapter of this thesis, a study of the committed retentionists' votes on the Medical Termination of Pregnancy Bill and the Sexual Offences Bill can indicate how far the retentionists' support for capital punishment was based upon either their belief in the sanctity of life or their opposition to wider liberal reformism. Although a belief in the sanctity of life would not necessitate opposition to the legalisation of abortion, the previous chapter noted that this concept did cause a number of politicians to support abolition and oppose abortion. Eleven committed retentionists voted against the legalisation of abortion, whereas 31 supported it. This suggests that the need to protect the sanctity of life was not an especially common characteristic of the retentionists' beliefs. Furthermore, their opposition to liberalisation was more evident. This inference is supported by the fact that 18 committed retentionists supported the legalisation of homosexuality, whereas 76 opposed it. It appears, therefore, that a common background for the retentionists' beliefs was that they opposed the relaxation of state control. This is explored

⁴⁴⁰ HC Deb 21 Dec. 1964 vol. 704 c. 976.

further in the next section of this chapter. Whether they approved of the retributive function of capital punishment or felt that it was a necessary sanction against murder, their beliefs were manifestations of the more old fashioned theories of punishment that were based upon deterrence and retribution.

The belief in the justification of the death penalty was rooted in Conservative morality and supported by elements of Anglican morality. This is no surprise considering that 91 per cent of the committed retentionists were members of the Conservative Party. The traditional Conservatives were largely consistent in their support for capital punishment. Philip Norton and Arthur Aughey, writing in 1981, defined Conservatism as:

...an acceptance of the social and political institutions that exist at any one time, an acceptance which though not rationalist is not unreasoned...It is a measure of how things are, the conveniences, but also the inconveniences, of a style of living. As the recognition of imperfection as an ineradicable fact of the human condition Conservatism means a limited conception of the changes that may be achieved by political activity.⁴⁴¹

This interpretation of Conservatism, in particular the reluctance to instigate dramatic change through political activity, can be attributed to the traditional Conservatives in the two decades after the Second World War. Most of them defended the institution of capital punishment, as they did with their on-going support for the continued criminalisation of sinful acts, as supported by Christian doctrine. Indeed, 70 per cent of the MPs to vote against the second reading of the Sexual Offences Bill in 1966 were committed retentionists. Only 11 per cent were committed abolitionists (see Figure 7.1, Appendix).⁴⁴² This link with social authoritarianism is examined in the next section of this chapter. However, it indicates that there was a traditional Conservative mentality common to a large number of retentionists.

Quintin Hogg established a firm Christian background for his interpretation of Conservatism in *The Conservative Case*. He placed an emphasis on the centrality of Christian doctrine for the governance of state and society.

⁴⁴¹ Philip Norton and Arthur Aughey, *Conservatives and Conservatism* (London: Maurice Temple Smith Ltd., 1981), 19.

⁴⁴² HC Deb 11 Feb. 1966 vol. 724 cc. 782-874

Although he focused on the economy rather than social or penal issues, the philosophical framework that he described can be applied across many aspects of British life. Hogg explained that it was important for society to remain governed by both the law of God and the state:

The policy of that [celestial] Cabinet is well known. It is to tell human creatures of certain rules which they ought to follow – truthfulness, kindness, chastity, respect for parents, and, above all, worship of God, and to leave them more or less free to follow them or not. Our ancestors learned and taught that a disregard of these rules brought calamity upon our heads... The plain fact about war, poverty, persecution, and most disease, is that they are caused by a deliberate disregard of the natural law – which in its simplest and most universal form teaches man to love his neighbour as himself. This view is in my judgement inseparable from the religious view of life.

Hogg states briefly at the end of his chapter on religion in society that these views were his own, that they did not represent all Conservatives and that such views were not restricted exclusively to Conservatives. Rather, he saw them as ‘an essential part of Conservatism’.⁴⁴³ Jarvis explains that Christianity was of central importance to the Conservatives’ ‘moral framework’, and in doing so supports Hogg’s interpretation of this relationship between Christianity and Conservatism.⁴⁴⁴

Through his analysis of the 1964 Commons debate on the second reading of the Murder (Abolition of Death Penalty) Bill, Peter Richards has identified that, of all identified religious groups within the House of Commons, the Anglicans had by far the highest proportion of retentionists amongst their number. Almost half, 42.6 per cent, of the Anglicans within the House voted against the Bill. The religious group with the second highest percentage of

⁴⁴³ Hogg, *The Conservative Case*, 26-7. Interestingly, this section in the 1947 edition was almost identical. The difference was that unemployment was included at the top of the list of ailments caused by a disregard of the natural law. Its inclusion in only the former edition was perhaps a symptom of a party in opposition. Having been in government for eight years by the time that the second edition was published, such an acknowledgement of unemployment in an election year would have been unwise.

⁴⁴⁴ Jarvis, *Conservative Governments*, 24.

retentionists was the Roman Catholics, of whom 11.5 per cent opposed the Bill.⁴⁴⁵ Laurence Kotler-Berkowitz has identified that the Conservatives represented the majority of the Anglican community.⁴⁴⁶ Anglicanism was one of the common characteristics of both Conservatism and retentionism. Senior groups within the Church of England were slower than other Christian groups in declaring themselves to be in favour of abolition, although this can be attributed partly to the established nature of this Church. The Lower and Upper Convocations of Canterbury passed motions in favour of abolition in 1961 and 1962 respectively, after many of the Free Churches had already declared their support for this reform. These Free Churches were more prominent within the Labour Party.⁴⁴⁷ The later increase in support for abolition from the Church of England was demonstrated in the two memorials circulated by the NCACP. In 1956, 13 Bishops signed the memorial in support of abolition. Thirty-nine Bishops signed the 1962 memorial.⁴⁴⁸ Harry Potter notes that of the 29 diocesan bishops in the Province of Canterbury in 1962, 21 had been appointed since 1956.⁴⁴⁹ This arrival of younger abolitionist bishops mirrored the demographic change within the Conservative Party that took place at the same time. This late shift towards abolition from the leaders of the Church of England, coincident with the substantial appointment of new bishops, demonstrated that the more traditional elements of its leadership were more inclined to support capital punishment than were those from other Churches within Britain. It is reasonable to assume, therefore, that through the recognised link between Anglicanism and the Conservative Party, the retentionism of the established Church that was prevalent until the latter years of the abolition process was a reflection of and an influence upon the beliefs of a number of the retentionists.

Morality was the primary reason for the retentionists' beliefs. Many believed that murderers deserved to die, as demonstrated through their continued opposition to abolition, though few expressed such views in as bold a manner as Terence Clarke. Other retentionists believed that capital punishment was

⁴⁴⁵ Richards, *Parliament and Conscience*, 183.

⁴⁴⁶ Kotler-Berkowitz, "Religion and Voting Behaviour," 527-8.

⁴⁴⁷ Potter, *Hanging in Judgement*, 194-8; Catterall, "Morality and Politics," 667-79.

⁴⁴⁸ Ramsey Papers, Ramsey 16 f. 156, Letter from Gerald Gardiner and Victor Gollancz to Archbishop Ramsey, 5 Jul. 1962.

⁴⁴⁹ Potter, *Hanging in Judgement*, 193.

necessary and therefore morally justifiable, even where they disliked executions. Anglican and Conservative morality and a belief in the sanctity of life were influential for many politicians' retentionism. Other factors, though, were important in shaping the retentionism of others, notably the high crime rate and, for Attlee's Labour government, the need to adopt a tough position on crime. Finally, this section has inferred, through studying the retentionists' votes during the second readings of the Bills to legalise homosexuality and abortion, that a wider opposition to liberalisation was a significant background for many politicians' retentionism. This link between retentionism and social authoritarianism requires further investigation.

Were the retentionists social authoritarians?

The place of abolition within the corpus of liberalising legislation was established in the previous chapter of this thesis. Although abolition was not a permissive reform, despite being portrayed as such by some historians, it was liberalising due to its role in relaxing Britain's penal policy. The previous chapter explained that the abolitionists were social liberals but that they were not permissives, although a significant proportion of them also supported the permissive reforms. In the same vein, it is necessary to consider whether retentionists were social authoritarians and anti-permissives and examine whether there were any links between the retentionists and those who adopted socially authoritarian positions on other issues. In doing so, it is possible to ascertain whether the retentionists opposed abolition in part because of their broader opposition to social liberalisation.

Through their opposition to the liberalisation of penal policy in the form of abolition, the retentionists can be categorised as social authoritarians. They favoured the maintenance of the strict punishment for murder through the belief that the death penalty was either the deserved or necessary sanction against this crime. As such, they believed that society required strong social control through the retention of this penalty. As with the abolitionists, their links to the issues surrounding the permissive society require greater investigation. The opposition to liberalisation, though, became increasingly difficult to justify within the climate of political and legal secularisation, as was demonstrated by the Hart/Devlin

debate and the raft of permissive legislation in the late 1950s and 1960s, all of which contributed to this liberalisation.

The abolitionists could not be considered to be permissives because very few, if any, of their number would have believed that capital punishment was a unique deterrent to murder. Many retentionists, though, did believe in its unique deterrent effect and feared that an element of social control would be lost through abolition, thus causing an increase in the murder rate. Opposing this reform in order not to encourage further murders was, therefore, loosely anti-permissive.

Archbishop Fisher adopted an anti-permissive position when arguing that the death penalty was necessary for the 'public recognition' of murder as an especially heinous crime.⁴⁵⁰ Society's revulsion at incidents of murder was important for many retentionists, as they believed that it deterred homicide. Furthermore, if the state's apparatus, in the form of the death penalty, maintained society's revulsion towards murder then it would be a necessary device for social control. His argument, therefore, suggested that capital punishment was a necessary deterrent to murder. It can be inferred from this that he believed that abolition would reduce the level of repugnance felt towards murder within society and, as a result, would encourage further murders to be committed. This was an anti-permissive argument.

However, as this chapter has already explained, although many retentionists adhered to this view, the majority desired the death penalty for the retributive punishment of death for murder. This was demonstrated by the fact that 83 per cent of the total number of committed retentionists throughout this period voted for retention after the publication of the Royal Commission's report, indicating that the evidence against the unique deterrent effect of capital punishment did not deter most retentionists from supporting the death penalty. They valued the element of vengeance that was provided by the death penalty. As such, some, but not most, of the retentionists can be considered to be anti-permissives, as deterrence was not the determining factor for the retentionist beliefs of the majority. They were all social authoritarians, though, because of their opposition to the relaxation of penal policy.

⁴⁵⁰ HL Deb 01 Jun. 1948 vol. 156 cc. 42-4.

It is possible to assess the links between the retentionists and those who adopted socially authoritarian positions on other matters by returning to the evaluation of the votes cast by retentionists during the second readings of the Sexual Offences Bill and Medical Termination of Pregnancy Bill, both in 1966. The Sexual Offences Bill passed its second reading by 164 votes to 107.⁴⁵¹ Of the 107 MPs that opposed the Bill, 76 were committed retentionists, nine had predominantly supported retention and four had voted roughly equally for and against hanging. Only 12 of the 107 were committed abolitionists, with four other abolitionists voting for retention once. Furthermore, of the 85 MPs opposing this Bill who always or mostly voted for retention, only four were from the Labour Party and two from the Ulster Unionists. Seventy-nine of the 107 MPs who voted against the legalisation of homosexual acts were retentionist Conservatives. Only 29 MPs opposed the Medical Termination of Pregnancy Bill at its second reading, with 223 supporting it.⁴⁵² Of those 29 MPs, roughly half were retentionists and half abolitionists. It is interesting, though, that every Labour MP who voted against this Bill was an abolitionist whereas only one Conservative MP had voted exclusively for abolition. Another two Conservatives voted for abolition on most occasions, while the rest were retentionists. Many of the opponents of the Sexual Offences Bill were retentionist Conservatives. There was a clear party divide between the retentionists who voted against the Medical Termination of Pregnancy Bill, who were all Conservatives bar one Liberal, and the abolitionists, who were almost all Labour MPs. This pattern indicates that there were ideological frameworks associated with the two main political parties that influenced the voting behaviour of MPs on issues of moral conscience. This resulted in most retentionists adopting socially authoritarian positions towards permissive reforms when they took part in such debates.

As mentioned in the previous chapter, the Right Progressive members of the Conservative Party have been portrayed as liberalisers. Yet, they were not all abolitionists, as demonstrated by Butler. Some conformed to their Party's traditional retentionist stance. It would be wrong to expect that all Right Progressives were dramatically out of line from the Conservative Party's prevailing sentiments towards issues such as capital punishment, as they were part

⁴⁵¹ HC Deb 11 Feb. 1966 vol. 724 cc. 782-874.

⁴⁵² HC Deb 22 Jul. 1966 vol. 732 cc. 1067-165.

of the same organisation despite being seemingly more sympathetic to the liberalising movements in criminology and penal policy.

Jarvis and Hall have described R.A. Butler, who is used in this thesis as an indicator of Right Progressive thought, as one of the principal liberalisers within the Conservative Party in the post-war decades.⁴⁵³ As such, he is an interesting man to focus upon for the strength of his convictions as a retentionist. His views on capital punishment were somewhat ambiguous. Butler had to defend and enable a compromise between those Conservatives who supported abolition and those who did not. The compromise Homicide Bill did not need to appeal to the Labour MPs, as the Conservative majority after the 1955 general election was sufficient for the legislation to pass through Parliament with the use of the whips.⁴⁵⁴ During a cabinet meeting, Duncan Sandys stated that the government must expect to lose all Labour support when introducing the Homicide Bill.⁴⁵⁵ Butler had always voted for retention during previous debates on the death penalty, but it is unclear whether his views changed to support degrees of murder or whether he was simply following the party line.

Butler dedicated a few pages of his memoir, *The Art of the Possible*, to his time at the Home Office. This was published after capital punishment was abolished for murder. He dedicated roughly a page to prison reform and corporal punishment and another page to capital punishment. His discussion of the death penalty was focused on the ‘hideous responsibility’ that he faced when reaching a decision on appeals for mercy. He outlined at the start of his section on capital punishment that he felt that the death penalty should be retained in order to protect law enforcement officers. The rest of the narrative, however, was directed towards a portrayal of him as a supporter of reform. He mentioned how he ordered the removal of a ‘grisly text’, placed in the Home Secretary’s office by his predecessor John Simon, which was intended to remind ‘himself and his successors of their duty when considering a capital sentence.’ He continued by outlining the difficulty he faced when deciding whether to make a recommendation for mercy: ‘Each decision meant shutting myself up for two

⁴⁵³ Jarvis, *Conservative Governments*, 20; Hall, “Reformism and the Legislation of Consent,” 1.

⁴⁵⁴ The Conservative government gradually came to the conclusion that it should apply whips to its supporters in advance of the debates on the Homicide Bill: TNA:PRO, CAB/195/15, C.M. 67 (56), 26 Sep. 1956; C.M. 69 (56), 8 Oct. 1956.

⁴⁵⁵ TNA:PRO, CAB/195/15, C.M. 53 (56), 26 Jul. 1956.

days or more, with only the Office, the Judiciary, and occasionally my old friend David [Viscount] Kilmuir, the Lord Chancellor, to counsel me.’ He then mentioned a couple of cases where he did recommend mercy before concluding that capital punishment could not continue and that later Home Secretaries were ‘well relieved of the terrible power to decide between life and death.’⁴⁵⁶ In this short account of his role concerning the death penalty, Butler briefly established his position as a retentionist before attempting to distance himself from the label by showing that he did all he could to avoid hanging murderers.

Butler did not mention any case in which he refused to recommend mercy. Gerald Gardiner’s papers from the NCACP, though, indicate that Butler frequently rejected reprieves. The NCACP often petitioned him to reprieve murderers. Butler’s response was usually a refusal.⁴⁵⁷ This is not evidence that Butler was comfortable with the death penalty. Indeed, Gardiner wrote in a letter to Doris Gundry, a member of the Women’s International League, that Butler’s successor as Home Secretary, Henry Brooke, ‘is less sympathetic to our view than Mr Butler was.’⁴⁵⁸ Rather, it is interesting that Butler was keen to draw upon the more liberal aspects of his work on capital cases, whilst retaining a broadly Conservative belief that the safety of police and prison officers was of paramount importance. This was the stance taken by the Party when they objected to the Labour government’s successful attempt to make permanent the Murder (Abolition of Death Penalty) Act in December 1969, two years before Butler’s memoir was published.

Butler’s narrative did not portray his role accurately, as he was a committed retentionist, despite Dominic Sandbrook’s claim to the opposite effect. Sandbrook uses the same passage from *The Art of the Possible* that is referred to above to arrive at the incorrect conclusion that Butler became an abolitionist.⁴⁵⁹ Butler stated that future Home Secretaries were lucky to be free of the burden of deciding whether or not to recommend mercy, but this does not translate to support for abolition. Butler’s committed retentionism and stated desire at Party

⁴⁵⁶ Butler, *The Art of the Possible*, 201-2.

⁴⁵⁷ Gardiner Papers, Add MS 56459 A, Various letters from Butler to the NCACP, 1961.

⁴⁵⁸ Gardiner Papers, Add MS 56459 B, Letter from Gardiner to Doris Gundry, 22 Oct. 1962.

⁴⁵⁹ Dominic Sandbrook, *White Heat: a History of Britain in the Swinging Sixties* (London: Little, Brown Group, 2006), 320.

conferences, albeit to staunchly retentionist audiences, for capital punishment to be extended to more murders, highlights that he did not support abolition. Rather, his memoir demonstrated his desire to be more closely associated with abolition after it had become permanent in Britain than was the case while he was an MP, perhaps because abolitionism had become an established expression of progressiveness and civilisation within Parliament. Butler's reputation as a liberaliser would be tarnished somewhat if he appeared to be vehemently opposed to the liberalism of the majority of politicians on this matter.

Butler was no abolitionist and, despite his portrayal by Hall and Jarvis, was no keen reformer of the death penalty. He demonstrated this in his speech at the Conservative Party's annual conference in 1958, where he stated his desire for murderers who killed their victims by poisoning and other methods to suffer the death penalty.⁴⁶⁰ The murders to which he referred were no longer capital offences under the Homicide Act. It has not been possible within the research for this thesis to judge how far other Right Progressives embraced the compromise Homicide Act, as it is difficult to identify them within their Party. Some might have embraced the limited application of the death penalty that fitted the new requirements of post-war Britain. Others, like Butler, could have wanted to retain capital punishment in its previous state, with perhaps more minor amendments, but voted for compromise to keep capital punishment in some form rather than suffer abolition. This latter view was shared with some of the traditional Conservatives.

Retentionism was a socially authoritarian position because of its opposition to the liberalisation of penal policy and the belief that the strict social control provided by the death penalty should remain. The retentionists were not automatically anti-permissives, although a number of them were because of their fear that abolition would encourage more people to commit murder. These retentionists should only be labelled loosely as anti-permissives, as this fear did not demonstrate the same anti-permissiveness as those who opposed the legalisation of homosexuality and abortion, which actively permitted new behaviour. A large number of those who opposed abolition were opponents of the permissive reforms, although anti-permissiveness was not a reason for most

⁴⁶⁰ Trinity College Library, Cambridge, The Papers of Lord Butler, RAB K31, Speech to the Conservative Party Conference, Oct. 1958.

retentionists' opposition to abolition. Their opposition to liberalisation, though, placed them at odds with the dominant political culture.

Why did the retentionists fail?

This chapter has examined the nature of and reasons for the retentionists' arguments and beliefs. This final section brings together the analysis within this chapter to explain why the retentionists failed to retain capital punishment for murder. This thesis' chapter on public opinion established that the electorate's will did not influence the decisions of MPs in any significant way during the capital punishment debates. The support from the electorate did not enable the retentionists to avoid defeat in Parliament. There were other reasons for the retentionists' failure, notably the Royal Commission's conclusion on deterrence, the liberalising moment within the Commons in the latter half of this period that was associated with Labour MPs and younger Conservatives, and the unpopularity of the Homicide Act.

The Royal Commission's report was perceived to support the abolitionists' case rather than the retentionists', as it concluded that the unique deterrent effect of the death penalty could not be proved.⁴⁶¹ The debate on the Conservative government's retentionist motion in February 1956 featured both retentionists and abolitionists claiming that, following the publication of the report, the burden of proof was on their opponents to justify their case. Gwilym Lloyd George, in the opening speech of this debate, attempted to place this burden upon the abolitionists: 'Personally, I do not believe that what cannot be proved by statistics cannot be true'.⁴⁶² Although Lloyd George did not state explicitly that the abolitionists rather than the retentionists had to prove their position on deterrence, George Rogers and Sydney Silverman inferred this message from his argument.⁴⁶³ Silverman was explicit in his response to the Home Secretary:

The onus [of proving the deterrent effect of capital punishment] surely is not on those who wish to abolish the death penalty. The

⁴⁶¹ *Royal Commission on Capital Punishment*, 274.

⁴⁶² HC Deb 16 Feb. 1956 vol. 548 c. 2540.

⁴⁶³ For Rogers' recognition of the Home Secretary's attempt to place the burden of proof upon the abolitionists, see: HC Deb 16 Feb. 1956 vol. 548 c. 2593.

onus is on those who wish to retain it. Every jury is told, “Do not convict this man if you have a reasonable doubt of his guilt.” We are entitled to say to the House of Commons, “Do not retain the death penalty if you have a reasonable doubt of its effectiveness.”⁴⁶⁴

Lloyd George’s failure to convince the majority of MPs to agree with his argument was symptomatic of the insurmountable problem for the retentionists that resulted from the support that the abolitionists derived from the Royal Commission’s report. With both sides demanding that the other prove their argument, further evidence was required to justify each position. Lloyd George and the retentionists’ failure in the parliamentary debates resulted from the lack of evidence to support their case. The abolitionists, on the other hand, had further evidence from foreign countries that had removed the death penalty without experiencing a significant rise in the murder rate. Although Lloyd George and other retentionists disputed the relevance of this evidence for Britain, they did not have any counter-evidence to justify their argument.⁴⁶⁵ However, this failure merely compounded the retentionists’ defeat, which was secured by their opposition to a reform that was part of the Commons’ liberalising ethos. This ethos was supported by the vast majority of Labour MPs and a sufficient number of younger Conservatives to enable abolitionism to become entrenched within the Commons.

Hall and Jarvis have placed capital punishment at the heart of the liberalising reforms of the 1950s and 1960s. Capital punishment is the first of the reforms listed by Hall, even though it does not receive the analytical attention that he afforded to the others. It is possible that this was the result of the awkward relationship between abolition and the permissive reforms. Jarvis, in dedicating a chapter to capital and corporal punishment, placed the same importance on these reforms as he did on those for drinking, gambling, obscenity and pirate radio.⁴⁶⁶ The retentionists can be considered to have been social authoritarians, but only some can be labelled anti-permissives on this issue. This latter group opposed abolition because they believed that the reform would encourage more people to commit murder. The correlation between the opponents of abolition

⁴⁶⁴ HC Deb 16 Feb. 1956 vol. 548 c. 2634.

⁴⁶⁵ HC Deb 16 Feb. 1956 vol. 548 c. 2538.

⁴⁶⁶ Jarvis, *Conservative Governments*, 1-2.

and the opponents of the legalisation of homosexuality demonstrates that there was a prevailing socially authoritarian morality amongst many retentionists, which disapproved of the widespread relaxation of social control. This attitude was out of touch with the dominant feeling of the House of Commons. The legal and political secularisation during this period, which helped the development of liberalisation, diminished the influence of traditional Anglican morality within political arguments and beliefs. This hampered the retentionists' case, as they had derived an element of support from Anglicanism and from senior Anglican leaders, although the Church of England's leadership became more strongly abolitionist in the early 1960s.

By the early 1960s, the liberalising culture had extended to the Church of England. The abolitionist Michael Ramsey replaced the retentionist Geoffrey Fisher as Archbishop of Canterbury in 1961 and by 1962 the Upper and Lower Convocations of Canterbury had endorsed abolition.⁴⁶⁷ Ramsey supported and encouraged the reduction of the Church of England's influence within politics and political decision-making.⁴⁶⁸ Although Church leaders did not greatly influence politicians' judgements, as noted in this thesis' chapter on public opinion, this shift in support from the leaders of the Church of England demonstrated that there was an increasing recognition that this liberalising ethos was present within the established Church. Many other churches had already publically supported the removal of capital punishment.⁴⁶⁹ It should be remembered, though, that secularisation was primarily a legal and political phenomenon rather than a determined societal shift away from the Church.⁴⁷⁰ The increased separation of Church and state was an important factor behind the retentionists' failure, as their arguments and beliefs based upon Anglican morality had reduced in value within the abolition debates. In opposing

⁴⁶⁷ Potter, *Hanging in Judgement*, 194-8.

⁴⁶⁸ Grimley, "Law, Morality and Secularisation," 731.

⁴⁶⁹ The British Council of Churches' Department for Social Responsibility had recommended supporting abolition in 1956, although there was disagreement amongst the Council members about whether they should adopt this recommendation. The recommendation was withdrawn having achieved its target of generating discussion on the matter. In another meeting in April 1962, the Council noted that a number of church organisations had passed resolutions for abolition, including the Methodist Conference, the Free Church Federal Congress, the Society of Friends and the Convocation of Canterbury: Church of England Records Centre, London, BCC/2/1/1/2, British Council of Churches Council Minutes, 24-5 Apr. 1956; 3-5 Apr. 1962.

⁴⁷⁰ Grimley, "Law, Morality and Secularisation," 739-40.

abolition, the retentionists placed themselves at odds with the liberalising ethos of the Labour MPs and a number of the younger Conservatives, which became dominant within Parliament and was increasingly difficult to contest using Christian doctrine. The fact that their religious arguments and beliefs might have found greater support amongst the general public did not matter, as the electorate was disenfranchised from the capital punishment debates.

The final reason for the retentionists' failure was the unpopularity of the Homicide Act. The Conservative government feared that, unless they proposed legislation to reform the use of the death penalty, the abolitionists within their Party would vote again in accordance with their consciences, as they had in February and March 1956, and would succeed in removing the death penalty. Lloyd George expressed this fear in a cabinet meeting in September 1956, saying that the alternative to the government's bill was 'Silverman'. It is indicative of Sydney Silverman's central role in the campaign to remove capital punishment that his name became synonymous not only with his Death Penalty (Abolition) Bill but also with abolition itself.⁴⁷¹ The continuation of the death penalty after 1957, therefore, relied upon the success of the Homicide Act. Unfortunately for the retentionists it was universally unpopular. Even the Conservative government that tabled the Homicide Bill felt that it was a bad idea. Lloyd George wrote in May 1956: 'Contrary though this may be to our wishes, I think it [abolition] would be better than a Bill incorporating the principle of degrees of murder'.⁴⁷² The Conservative government that was formed after the 1959 general election accepted that any further alteration to the law of murder would involve either restoring capital punishment for all murders or total abolition. They acknowledged that the latter was more likely. In 1962, a memorandum for Henry Brooke, the new Home Secretary, from an unknown author within the government or civil service outlined that the government recognised that these were the alternatives to the Homicide Act. In order to restore capital punishment fully the government felt that it would have to prove the deterrent effect of the death penalty, but recognised that there were no statistics to support such an

⁴⁷¹ TNA:PRO, CAB/195/15, C.M. 67 (56), 26 Sep. 1956.

⁴⁷² TNA:PRO, HO 291/100, Note by Gwilym Lloyd George on Capital Punishment, 9 May 1956.

argument.⁴⁷³ Two years later Brooke told the Prime Minister, Alec Douglas-Home: ‘The Homicide Act is unworkable in its present form and the next Home Secretary, of whatever party, will have to end the death penalty.’ The Prime Minister’s response was that it ‘will probably take care of itself’.⁴⁷⁴ This was an admission of defeat from the retentionist Conservative government. Many others outside the government agreed that the Homicide Act was a failure, including Baroness Wootton: ‘I think that it will be common ground among many that the compromise has not worked.’⁴⁷⁵ The perceived failure of the Homicide Act necessitated further legislation on capital punishment.

The abolitionism of a minority of younger Conservative MPs that diluted the traditional retentionism of their Party caused both abolitionism to become entrenched within the Commons and, as a result, the retentionists’ failure. This failure was prolonged until 1965 because of the entrenched retentionism of the House of Lords prior to the passage of the Life Peerages Act and the refusal of the retentionist governments to use the Parliament Act to force abolition onto the statute book after the Commons had voted in favour of the reform. The author of the memorandum for Brooke in 1962 was perceptive in recognising, though, that reform to the law on murder would be required and that that reform would be abolition. With a firmly abolitionist House of Commons, an increasingly abolitionist House of Lords and, from 1964, an abolitionist government, the retentionists had little hope of success, especially after the Homicide Act had failed to satiate the abolitionists’ demands for reform. Within a year of Brooke’s meeting with Home, capital punishment was abolished for murder.

⁴⁷³ TNA:PRO, HO 291/1017, Memorandum on Capital Punishment for the new Home Secretary, 4 Sep. 1962.

⁴⁷⁴ TNA:PRO, PREM 11/4690, Note for the Record, 22 Sep. 1964.

⁴⁷⁵ HL Deb 19 Jul. 1965 vol. 268 c. 460.

Conclusion

This thesis has examined why capital punishment was abolished in Great Britain despite the consistent opposition to the reform from the majority of the public. It has placed abolition within the context of the legal liberalisation of the 1950s and 1960s and is based upon an analysis of the role of public opinion within the parliamentary debates and an assessment of politicians' arguments and beliefs. This analysis has led to the conclusion that capital punishment was abolished because the majority of Labour politicians, and a significant minority of Conservatives who were born after 1920, believed that it was a reform necessary to civilise Britain after the end of the Second World War. The belief that executions were barbaric and repugnant was a feature of the non-conformist, radical Labour morality and became prevalent within the Commons' increasingly secularised, liberalising and civilising ethos, which was a greater influence amongst a number of younger Conservatives than were their Party's orthodoxies on penal policy. On a conceptual level, capital punishment did not accord with the vision of a civilised Britain that was most common amongst politicians, as outlined by Jenkins and Crosland. The support for abolition from the younger Conservatives enabled an opposition to capital punishment to become entrenched within the House of Commons, regardless of the party in government. This abolitionism persists in the Commons to this day.

The retentionists' beliefs can be identified broadly with either the sense that it was the desirable penalty for murderers, placing retribution above rehabilitation as the purpose of punishment, or with the belief that, though undesirable, it was necessary to maintain law and order in society. Their beliefs, though, found little support within the Labour Party and diminishing support amongst the younger Conservatives who adhered to the dominant liberalising ethos within the Commons. This ethos was in part a product of the secularisation of the law and the declining influence of traditional Anglican morality.

The Royal Commission's conclusion that capital punishment could not be proved to have a unique deterrent effect against murder was the most significant factor behind the success of the abolitionists' arguments within the parliamentary debates, as unlike for issues of morality the retentionists had no equally convincing responses or evidence to support their arguments. Within a

context of legal and political secularisation, the influence of morality within the political discourse on capital punishment diminished somewhat. The causalist issue of deterrence became increasingly important for this reason, thus meaning that the retentionists' lack of evidence damaged their arguments. Deterrence was not a determining factor, though, behind the beliefs of most abolitionists and retentionists.

Public opinion did not have a significant influence on the decisions of politicians, who continued to work within the Burkean principle that democratically elected representatives owed the electorate their judgement. Politicians expected that the electorate would consent to this interpretation of the parliamentary system, and made little attempt to engage with the public on a national scale or to explain why they were neglecting their opinions.

This thesis has implications for the understanding of both Britain's abolition process and the social reforms under Butler's and Jenkins' tenures at the Home Office. To start with the abolition process, this thesis has demonstrated that the majority of politicians adopted the abolitionist interpretation that there were two groups that existed within the public: informed and uninformed. No expression of public opinion, though, impacted upon the formation of policy for this issue of conscience. This is an extension of Laura Beers' conclusion, which concerns the lack of influence of public opinion over party policy, into a subject for which politicians tended to be afforded a free vote.⁴⁷⁶ This thesis' addition to the historiography of public opinion is original in its application of Beers' theory onto an issue of conscience and in the variety of sources that it uses from this period to examine public opinion.

The abolitionist beliefs of the vast majority of Labour MPs are well established within the historiography of capital punishment. To date, though, there is no study that appreciates the nuances within the abolitionists' demographic, with the exception of Kevin Manton's article on the retentionist Labour elite. The crucial development for the success of abolition was the increase in support for this reform from a significant minority of younger Conservatives. The impact of this change took effect after the 1955 general election. Since then, the House of Commons has voted for abolition on every

⁴⁷⁶ Beers, "Whose Opinion?" 205.

occasion the matter was debated, regardless of which party was in government. Furthermore, the Lords became more supportive of abolition following the passage of the Life Peerages Act, after which there was a gradual increase in the number of Labour peers, most of whom were inclined to vote for reform. These demographic shifts within both Houses of Parliament created an environment in which it was conducive for abolition to occur.

No historian has analysed closely politicians' arguments and beliefs on capital punishment. This thesis' examination of the content of their arguments, its explanation for their successes and failures and its hypotheses for the reasons that directed their votes are original additions to the historiography. The demographic change within Parliament occurred during a period of increased legal and political secularisation, resulting in a reduction of the influence of religious morality, and in particular traditional Anglican morality, within the debates. This was a significant factor behind the retentionists' defeat in the parliamentary debates. This thesis has provided the first examination of the impact of the changes in the demography and discourse in Parliament on the capital punishment debates. The further examination of the demography of the retentionists and abolitionists within this thesis' chapter identifying these groups has demonstrated that the strong party identity of Labour abolitionists and Conservative retentionists, which has been recognised by other historians, applies only for those born before the 1920s, as retentionism became less common amongst the younger Conservatives.

There were remarkably strong links with some groups that were traditionally associated with certain parties. Notably, all of the politicians who were listed by the CND as being members of or sympathetic to their cause were committed abolitionists. These and other links have been identified through the database of MPs' votes, which has informed much of the analysis within this thesis. The database has exposed the backgrounds that were common to the retentionist and abolitionist politicians. This research has identified a number of the reasons behind politicians' beliefs on capital punishment, which is one of this thesis' most significant additions to the historiography. It has identified that party identity and the Commons' liberalising ethos helped to shape politicians' beliefs on this issue of conscience. The abolitionists' and retentionists' occupational and organisational backgrounds largely adhered to the established party divide.

Furthermore, the database has enabled events outside Parliament to be assessed in terms of their influence on the outcome of the debates. The notable example of this is the politicians' negation of public opinion when deciding how to vote on capital punishment, including after notable murders and executions, as there was little change in the proportions of abolitionists to retentionists between the debates in 1948 and 1956 and between those in 1964 and 1969. This database will become an invaluable tool for any future historical investigation into abolition.

This thesis' chapters on the retentionists' and abolitionists' cases examined the reasons for politicians' beliefs that capital punishment should be retained or abolished. A number of abolitionists believed that society and the British state required liberalisation, which included abolition, and a number of retentionists believed that it needed protection within the context of rising crime rates. There were other fundamental reasons, though, for their beliefs. Morality was the key component of the beliefs of both the retentionists and abolitionists. Most abolitionists had a strong moral objection to the state taking life, as was demonstrated beyond the abolition campaign through the involvement of many of their number within the CND. The moralist support for the death penalty had two guises. Many retentionists believed that it was the desirable punishment for murder, thus abiding by the old fashioned theories of punishment. Others believed that capital punishment was morally justifiable as it was the necessary deterrent to murder. Both the retentionists and abolitionists believed that they were protecting or improving the sanctity of life within Britain, although as with civilisation it was the abolitionists who had the more sophisticated conceptual framework to support this. It has been difficult to ascertain the beliefs of individual politicians, as very few records exist in private papers or memoirs to explain the reasons for their opinions on capital punishment. Instead, these conclusions have been taken from the collective identification of the retentionists and abolitionists and from the broader ideologies and beliefs that were present within dominant parties, groups and vocal proponents from each side. This is the greatest precision that can be achieved in the analysis of their beliefs without engaging in the impractical task of accessing the formative causes of the opinions of every individual politician.

The recognition of the demographic change within Parliament, which included the younger Conservatives' generation who were more influenced by the emerging liberalising ethos within the Commons than were their older Party colleagues, is a component of this thesis' implication for the understanding of the socially liberal reforms of this period and the place of abolition amongst them. The generation of politicians that abolished the death penalty were also at the heart of many of the liberalising reforms of the late 1950s and 1960s. Abolition was part of the liberalising reforms of the 1950s and 1960s through its relaxation of penal policy. It was not a permissive reform, though, as some historians have suggested. This thesis has provided the first qualification of this label with regard to the death penalty, which has hitherto been attached unquestioningly to abolition. One must not overlook, though, Roy Jenkins' and others' uses of the concept of civilisation to link abolition to the permissive reforms. The abolition of capital punishment was part of the broad wave of liberalising reformism that swept through Parliament in the two decades after the end of the Second World War.

There was a strong correlation between the abolitionists and the supporters of the permissive reforms. Similarly, a high proportion of the opponents of these reforms were retentionists, although this correlation was not as strong. The abolitionists and most of the retentionists should not be portrayed as permissives or anti-permissives respectively, though, purely on the basis of their stance on abolition. The exception was those retentionists who opposed abolition principally because they believed that capital punishment was a necessary deterrent to murder. They can be portrayed loosely as anti-permissives, as they supported the maintenance of state control over society to prevent an increase in murder and violent crime. This does not account for the majority of retentionists, though. Furthermore, no abolitionist suggested that capital punishment should be abolished even if it would cause an increase in the number of murders committed. Those abolitionists who were willing to support retention because of the death penalty's uniquely effective deterrent against murder were satisfied by the examples from foreign abolitionist countries and by the Royal Commission's report that any uniqueness of the penalty was too negligible to be proven. However, the abolitionists can be labelled as social liberals and the

retentionists as social authoritarians because of their stances towards this issue of liberalisation.

This thesis' identification of the abolitionists and retentionists, its examination of their arguments and beliefs and its explanation for their negation of public opinion are all original additions to the historiography that are essential for understanding why capital punishment was abolished in Britain. The research for this thesis, in particular the database of MPs' votes and backgrounds, are resources that will be useful for any future study into the death penalty in Britain. However, the impact of this thesis, and of the capital punishment debates, extends beyond the history of abolition. Outlined below are three aspects of history and politics within which this thesis' research can claim an impact.

The first is its impact on the 'culture wars' of the 1960s and beyond. It is apparent that the liberals were prevailing in the 1960s, creating what has been termed a permissive society. Norman Tebbit's 1985 Disraeli Lecture, referenced in this thesis' introduction, demonstrates that the liberals won by blaming their social reforms for the perceived ills of the day.⁴⁷⁷ Abolition was a prominent reform within this liberalisation. The restoration of capital punishment was debated in the Commons in 1973, 1974, 1975, 1979, 1982, 1983, 1987, 1988, 1990 and 1994.⁴⁷⁸ All of these bills were defeated by a large majority, similar to those during the debates in the 1960s. The numerous unsuccessful attempts in the Commons to restore the death penalty demonstrate both that abolition continued to attract attention from those who opposed this liberalisation and that those opponents were incapable of overcoming the entrenched abolitionism of the House. This thesis provides evidence that, even for an issue that had a different character to the raft of permissive legislation of the 1950s and 1960s, the liberalising ethos prevailed. It is further support for the enduring liberal victory in the culture wars.

Margaret Thatcher's stance on capital punishment can be better understood by this thesis' conclusions. Thatcher's record on capital punishment is evidence of the fact that the political culture in Parliament had shifted

⁴⁷⁷ *The Times*, 14 Nov. 1985.

⁴⁷⁸ Twitchell, "Abolition of the Death Penalty," 337; HC Deb 11 Dec. 1974 vol. 883 cc. 518-640; HC Deb 11 May 1982 vol. 23 cc. 608-86. Twitchell fails to include the debates in 1974 and 1982 within his list and claims erroneously that there were two debates in 1987.

determinedly towards liberalisation. Thatcher ensured that there was no ambiguity over her desire for the death penalty to be restored. However, she never used any of the political machinery at her disposal, such as the whips, to force the restoration of capital punishment into law.⁴⁷⁹ Thatcher had no intention of acting to restore the death penalty, as she demonstrated in her memoir when explaining that she never appointed a Home Secretary who agreed with her on her principal moral beliefs. This claim followed her discussion of capital punishment, making it apparent that she was referring to the death penalty in particular.⁴⁸⁰ Furthermore, when the tellers returned an abolitionist victory following the division on the 1983 Bill to restore the death penalty, James Prior and Douglas Hurd have recorded that Thatcher seemed relieved that the death penalty would not return so that she did not have to deal with the practicalities of its application. It appears that Thatcher may not have had much intention of actually restoring the death penalty. It was a useful populist device to gain the backing of her grassroots supporters who clamoured for the death penalty at the party conferences. The Commons was firmly abolitionist by the 1980s, as was much of Thatcher's own front bench.⁴⁸¹ Whether or not Thatcher had sufficient conviction in her belief to actually want to see the death penalty restored, as opposed to merely vocalising this opinion to improve her support from the Party faithful, the culture within both Parliament and her own party would not have permitted a retentionist victory. This thesis' examination of abolition explains why this culture existed in Parliament, which precluded Thatcher from abolishing the death penalty.

The extent to which abolitionism had become entrenched within the Commons is highlighted by the failure of the restoration bills during the on-going sectarian violence and homicide in Northern Ireland and occasionally in the rest of the United Kingdom. The death penalty remained in place in Northern Ireland until 1973, although it was not used after 1961, and the sharp increase in deadly violence refocused the subsequent debates upon terrorism. Terrorism was cited frequently in all of the debates after 1973, with the exception of the Bill in 1994 when it was mentioned only a handful of times. Furthermore, it is no

⁴⁷⁹ Vinen, *Thatcher's Britain*, 99-100.

⁴⁸⁰ Margaret Thatcher, *The Downing Street Years* (London: HarperCollins Publishers, 1993), 307-8.

⁴⁸¹ Vinen, *Thatcher's Britain*, 99-100; 280.

coincidence that the final parliamentary debate to restore capital punishment occurred in 1994, as the violence in Northern Ireland continued to subside from this year onwards amid a number of ceasefires.⁴⁸²

The Northern Ireland (Emergency Provisions) Act 1973 abolished capital punishment in the province. During the Bill's second reading William Whitelaw, the Secretary of State for Northern Ireland, and other politicians were clear that capital punishment in Northern Ireland was a separate issue from capital punishment in Britain.⁴⁸³ The retentionist Iain Paisley disagreed. He felt that the Commons' entrenched abolitionism would not be overcome to consider the peculiarities of the context in Northern Ireland:

The House has on various occasions expressed itself on the issue of capital punishment, and the overwhelming vote has been for its abolition. Therefore, I do not think that any speeches today by those who feel that in the present situation in Northern Ireland the death penalty should be retained will carry weight.⁴⁸⁴

One can understand Paisley's argument, which appears to have been proved correct as the abolitionists won the debate by 253 votes to 94.⁴⁸⁵ This is not too dissimilar from the abolitionist victory in the Commons in December 1969, which was by 343 votes to 185. Indeed, 209 of the MPs who voted during the Northern Ireland debate had voted during the December 1969 debate. Of these, only three MPs who had voted to make abolition permanent in Britain supported retention for Northern Ireland. Sixteen who had opposed the December 1969 motion supported abolition for Northern Ireland.⁴⁸⁶ This indicates that the increasingly numerous acts of domestic terror did little to persuade the abolitionists within the Commons to support retention. This is further evidence, therefore, that abolitionism had become entrenched within the Commons. Abolitionism became entrenched during the period studied for this thesis. Even a high number of

⁴⁸² For a general chronology of the Northern Ireland conflict see: Marie-Therese Fay, Mike Morrissey and Marie Smith, *Northern Ireland's Troubles: the Human Costs* (London: Pluto Press, 1999), 11-65.

⁴⁸³ HC Deb 14 May 1973 vol. 856 cc. 1028-9.

⁴⁸⁴ HC Deb 14 May 1973 vol. 856 c. 1052.

⁴⁸⁵ HC Deb 14 May 1973 vol. 856 c. 1142.

⁴⁸⁶ HC Deb 16 Dec. 1969 vol. 793 c. 1294.

incidents of murder and terrorism could not provide a reason to convince MPs to vote against their abolitionist morality.

The third area in which this thesis' research could have an impact is within the contemporary abolition debates in the USA. The British abolition process has already had some influence in Canada, New Zealand and the USA. Following the Parliament of Canada's capital punishment debates in 1966 and 1967, which resulted in the death penalty being retained, the Canadian government published two volumes detailing the information relevant to the issue. Included within this were comprehensive descriptions of both Canada's recent capital punishment debates and the 1964 and 1965 debates from the British Parliament.⁴⁸⁷ Pauline Engel suggests that the restoration of capital punishment in New Zealand in 1950 was in part influenced by the failed abolition amendment to the Criminal Justice Bill in Britain. Engel cited the executions of Evans, Bentley and Ellis and the report of the Royal Commission as having a particular influence within the capital punishment debates in New Zealand. She claimed that the Homicide Act in Britain was sufficient evidence to prove that murders should not be divided into capital and non-capital offences.⁴⁸⁸ Finally, in the USA the Royal Commission's report was cited within the Supreme Court Justices' decision on *Furman v. Georgia*, which declared that capital punishment was unconstitutional. Mr Justice Marshall, in his concurring opinion on the case, cited the report ten times.⁴⁸⁹

These examples demonstrate that the influence of Britain's capital punishment debates extended beyond its borders into a number of its former colonies, in particular the white settler dominions. This influence could continue into the contemporary abolition debates within many states in the USA. Britain provides an example for how abolition can occur when the electorate opposes the reform. The fact that after abolition Britain did not experience an immediate increase in the murder rate, that there were not a large number of police officers killed and that it appears that no politicians lost their seats as a result of abolition

⁴⁸⁷ David Chandler, *Capital Punishment in Canada* (Toronto: McClelland and Stewart Limited, 1976), 20-1.

⁴⁸⁸ Engel, *The Abolition of Capital Punishment in New Zealand*, 1-7; 32; 62-3; 112.

⁴⁸⁹ "Furman v. Georgia: Marshall, J., Concurring Opinion," 29 Jun. 1972, http://www.law.cornell.edu/supct/html/historics/USSC_CR_0408_0238_ZC4.html, [accessed 13 Jan. 2012].

might encourage some American politicians who are sympathetic to the reform to support the abolition of capital punishment.⁴⁹⁰ There is already a slow trend towards abolition within a few of the states.⁴⁹¹ The different political culture in the USA, though, might hinder any potential impact of the British example on these abolition debates. Issues of conscience and religious morality, such as abortion, are more heavily politicised in the USA than in Britain.⁴⁹² Nevertheless, this thesis might provide some inspiration to and example for those abolitionists in the USA who want to abolish capital punishment despite facing opposition to this reform from the electorate.

There is scope for further research extending beyond the remit of this thesis, including in the three areas outlined above. The analysis within this thesis could be extended to include constituency and regional newspaper sources and the private papers of a larger number of politicians, including those of Roy Jenkins which are currently closed to the public for cataloguing. The opinions and actions of different religious denominations, and of smaller groups therein, also warrant further investigation. The time available for this thesis was insufficient to engage in this research. Furthermore, this examination of capital punishment within Britain could be extended to include the debates either side of this period and the abolition process for Northern Ireland. They have not been included within this thesis, as the context for these debates was markedly different to that which existed for the debates between 1947 and 1969.

The abolition of capital punishment in Britain culminated from the determination of Labour MPs and a significant minority of Conservatives born after 1920 to remove the death penalty as part of a broader programme of reforms that were intended to civilise and liberalise Britain. Their progress was unfettered by the electorate's opposition to this reform. Despite the retentionists' protestations and the disapproval of the majority of the electorate, most politicians

⁴⁹⁰ *Criminal Statistics England and Wales 1970: Statistics relating to Crime and Criminal Proceedings for the year 1970*, Cmnd. 4708 (London: HMSO, 1971).

⁴⁹¹ *The Times*, 24 Nov. 2011.

⁴⁹² Vinen, *Thatcher's Britain*, 278.

were satisfied that by Christmas 1969 they had finally removed the barbarous penalty that no community had a right to exact.⁴⁹³

⁴⁹³ TNA:PRO, Confidential memorandum by the Secretary of State for the Home Department and the Secretary of State for Scotland on the Permanent Abolition of Capital Punishment for Murder, CAB/129/141, C(69) 48, 6 May 1969.

Appendix: Figures

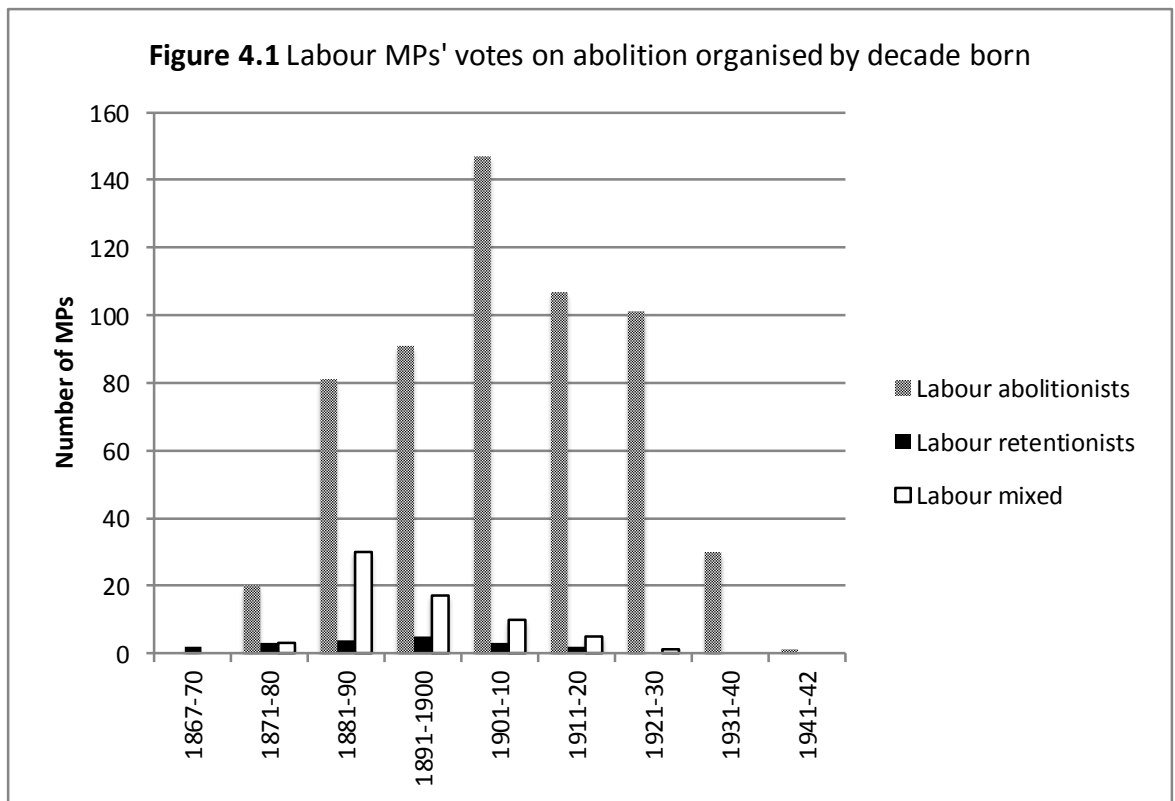
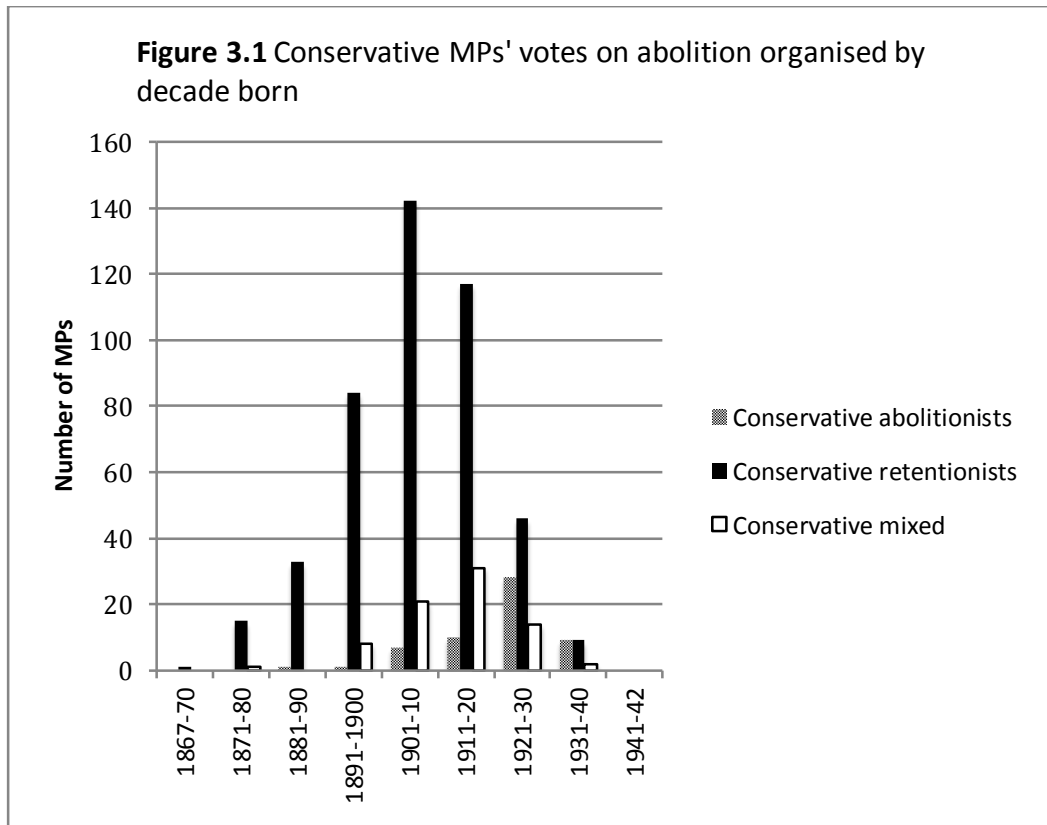


Figure 5.1 MPs' votes on abolition organised by party affiliation and stance on abolition

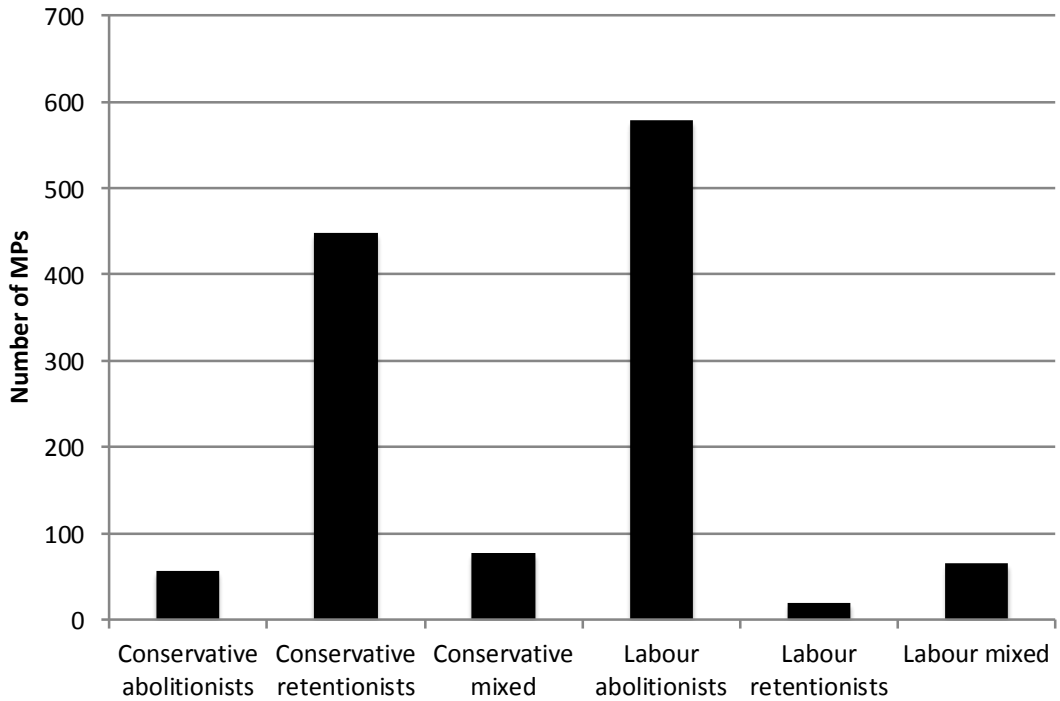


Figure 6.1 MPs' votes on abolition organised by occupation

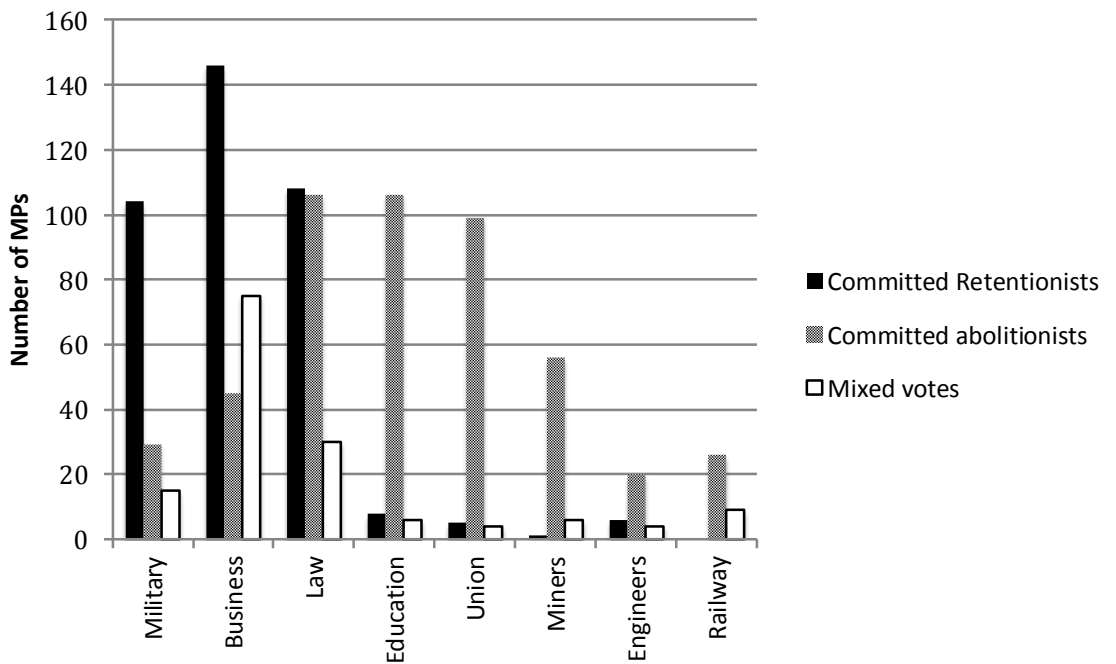


Figure 7.1 Number of MPs who voted against the second reading of the *Sexual Offences Bill* organised by their votes on abolition

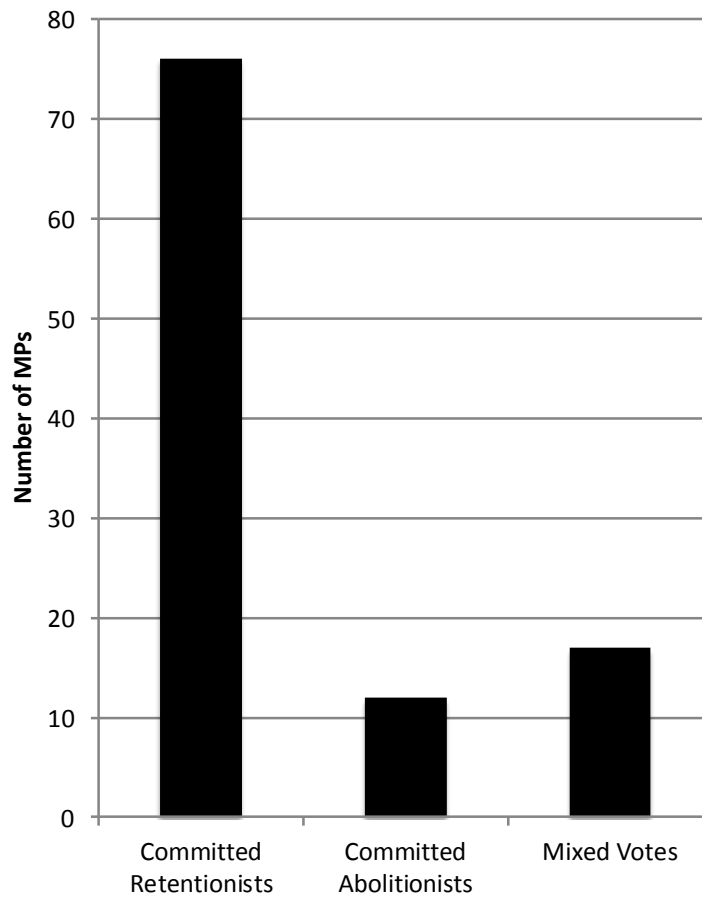


Figure 8.1 Number of MPs who voted against the second reading of the *Medical Termination of Pregnancy Bill* organised by their votes on abolition

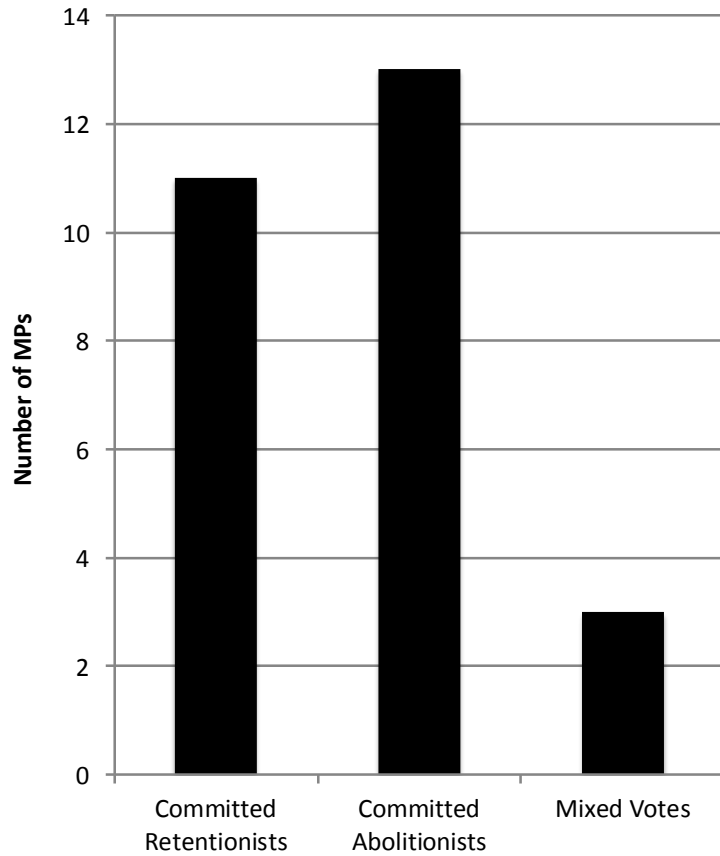


Figure 9.1 Number of MPs who voted for the second reading of the *Sexual Offences Bill* organised by their votes on abolition

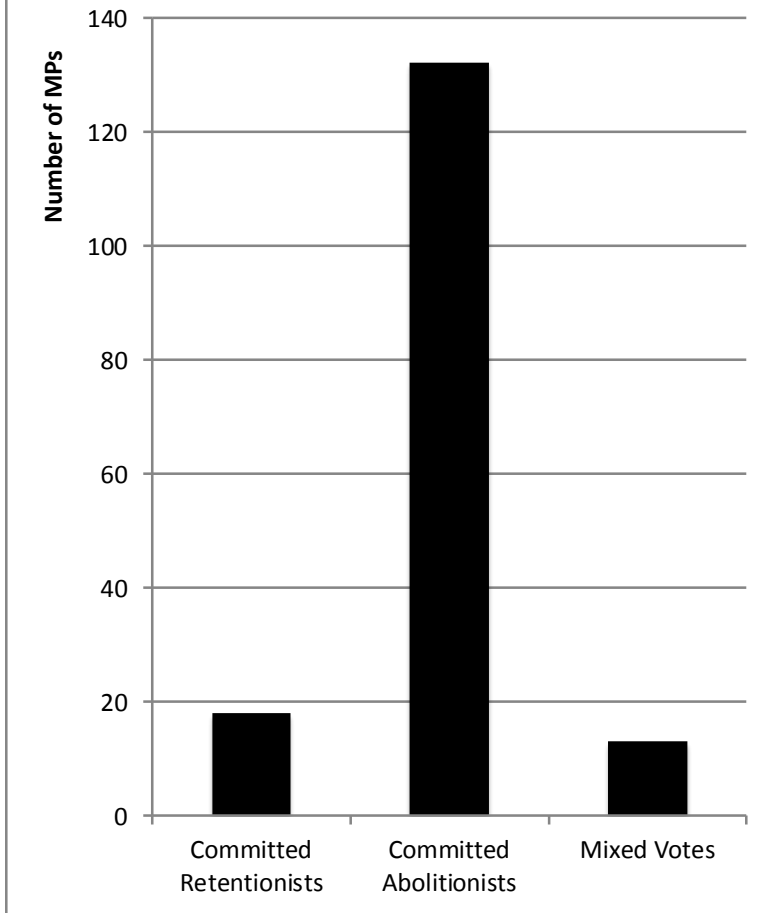
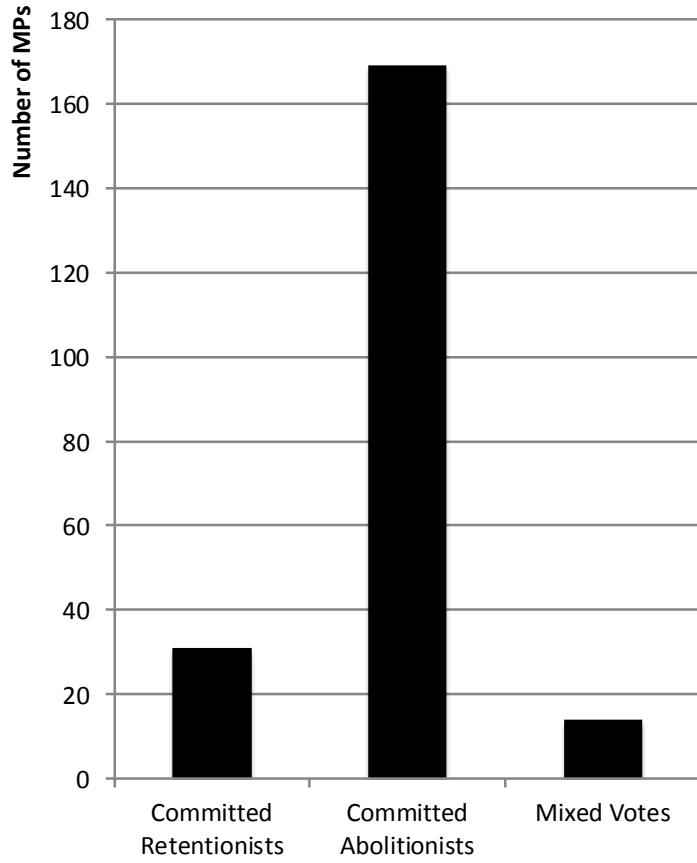


Figure 10.1 Number of MPs who voted for the second reading of the *Medical Termination of Pregnancy Bill* organised by their votes on abolition



List of abbreviations

CND	Campaign for Nuclear Disarmament
ITN	Independent Television News
M-O	Mass-Observation
NCACP	National Campaign for the Abolition of Capital Punishment
NCADP	National Council for the Abolition of the Death Penalty
NOP	National Opinion Poll
SRCP	Society for the Restoration of Capital Punishment
TNA:PRO	The National Archives
TUC	Trades Union Congress

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Surrey History Centre, Woking

Papers of James Chuter Ede

The National Archives, Kew

Cabinet Office

Colonial Office

Commonwealth Office

Dominions Office

Foreign Office

Foreign and Commonwealth Office

Home Office

Law Officers Department

Lord Chancellor's Department

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