

The Decriminalisation of Suicide

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The Decriminalisation of Suicide

Abstract

This thesis examines the passage of the Act which decriminalised suicide in England and Wales in 1961. Although often listed with other reforms of the period under the label "permissive", empirical evidence reveals this to be a serious misreading of what the Suicide Act was actually designed to accomplish. This thesis argues that, far from the decriminalisation being a relinquishing of state control over a deviant behaviour, the Suicide Act - which was a *government*, not a Private Member's Bill - stands as an unusually explicit example of a transfer of responsibility for control of a deviant behaviour from criminal justice to medical jurisdiction in the interests of establishing more effective control. Further, the thesis argues that the passage was only possible because of a unique and short-lived conjunction of structure and agency. The long positivist trend towards re-defining deviancy as a medical, not a moral, matter was at its peak in the late 1950s, at a time when the upheavals of war and unprecedented affluence had created a climate conducive to social change. However these conditions, while necessary, were not sufficient to effect the passage of the Act. Suicide law reform was not a matter of popular concern and the profound moral and religious implications of suicide itself made it the kind of sensitive subject governments generally leave to private members. Drawing on cabinet and government papers now available, and on interviews with key participants in the passage of the Act, this thesis seeks to demonstrate that suicide would not have been decriminalised without the actions of three very specific human agents, and at the same time to show how these actions were shaped by, and their success dependent upon, structural elements that both constrained and guided them.

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Contents

Chapter 1: Introduction	1
Chapter 2: History of the law against self murder	21
Chapter 3: Moving toward decriminalisation	55
Chapter 4: The significance of the Mental Health Act	104
Chapter 5: Why did the Church not oppose it?	133
Chapter 6: The importance of agency	168
Chapter 7: The Parliamentary passage	203
Chapter 8: Conclusion	238

Appendices

Appendix A: The Suicide Act 1961	253
Appendix B: Extracts from minutes of Joint BMA/ Magistrates Committee	256
Appendix C: Referral letter to Criminal Law Revision Committee	270
Appendix D: Memo to Cabinet from Home Secretary	271
Appendix E: List of proposed legislation for Cabinet consideration	273
Appendix F: Memo, Home Secretary to Prime Minister	275
Appendix G: Memo, Cabinet Secretary to Prime Minister	276
Appendix H: Home Office Circular re Suicide Act	277
Appendix I: List of people interviewed	281
Bibliography	283

The Decriminalisation of Suicide

Chapter 1: Introduction

Suicide, considered a crime of high seriousness and great wickedness for well over a thousand years, was decriminalised by statute in England and Wales in 1961. The Suicide Act, which in contrasting clauses *decriminalised* suicide but *criminalised* its assistance, passed through Parliament in the spring and summer of 1961 virtually unnoticed. It has not been examined in any subsequent published work.

On the face of it, this lack of attention is extraordinary for a number of reasons: One is that *decriminalisation* is a very rare phenomenon. The Suicide Act was the first of only a very small handful of such measures in the 20th or any other century. Another reason is that the behaviour the Act formally deemed to be no longer a crime had not become morally acceptable; indeed it was roundly condemned in the very debates which decriminalised it. A third reason the absence of notice is curious is that Clause II of the Act dealt with, and formally criminalised for the first time, one of the most controversial issues of modern times: assisted suicide.

At a more technical level, but equally curious to students of law reform, is the fact that the Suicide Act was a *government* measure. Such 'issues of conscience' in Britain traditionally make their way into law by means of Private Members' Bills. Even more peculiar is the fact that this radical reform - radical insofar as it was a decriminalisation of a sensitive moral matter - was brought forward by a Conservative government, and passed by what political analysts reckon to be one of the most conservative (small 'c') Parliaments of the century.

Why and how this came to happen are the questions this thesis will attempt to answer.

The research draws upon, and seeks to contribute to, two interlinked contemporary debates. The first is the question of whether the social reform legislation passed in Britain in the late 1950s and '60s really was "permissive" as is generally assumed; and second, to the larger debate about how the criminal law is formed and changes.

As regards the first debate, although the Suicide Act has not been subject to any academic examination, it is generally mentioned in discussions of the mid-century measures which are labelled "permissive".¹ This label, usually taken to mean a loosening of state control over certain kinds of behaviour, has been attached to changes in the laws on prostitution (1959), censorship (1959 and 1964), betting and gaming (1961), capital punishment (1956 and 1965), abortion (1967), homosexuality (1968), and divorce (1969).

Certainly on the face of it, the Suicide Act looks like a loosening of control,² as Clause 1 straightforwardly decriminalises suicide, and by implication attempted suicide. Moreover, it was passed in 1961, right in the middle of the period in question. Clause 2, which created a new crime of aiding another's suicide, with a heavy maximum penalty (14 years), might have raised doubts about its "permissive" nature, but as already mentioned, the Act has never been examined in this way. (The Act is produced at appendix A)

People who accept the idea that the period and the legislation enacted during it were 'permissive' are split between those who believe it was overall a *good* thing, and those who believe it definitely was not. The first group characterise it using words like 'tolerant', 'humane', 'civilising', 'liberating' (Annan 1990, Levin 1979, Marwick 1982, Thompson 1991.) The second group use words like 'self indulgent', 'demoralising', 'irresponsible', 'degenerate' (Gummer 1971, Whitehouse 1971, Johnson 1983, Himmelfarb 1996). Nevertheless, both groups agree on the basic premise that the legislation represented an easing of official sanctions on some kinds of social

behaviour. However, a small group of academic writers have emerged who challenge this interpretation. They suggest that the true nature of the reforms was not to loosen control, but to restructure it in an attempt to make it more effective. Among the most influential proponents of this view are Stuart Hall (1980) and Tim Newburn (1992). Both Hall and Newburn focus on the legislative changes of the period that involved sexual behaviour but imply that their analysis is relevant to other statutes labelled 'permissive'. In Hall's case he specifically mentions the Suicide Act in a list of what he calls the "Butler reforms". Hall asks the question: "Was the legislation, in sum, a sort of restructuring of the moral sphere, which under the veneer of permissiveness and liberalisation, actually tightened the control by the state and the law over moral conduct - regulating and tuning it more finely? Or was the logic of its tendency a more contradictory one?" (Hall 1980: 7)

Hall concludes that, "There was, it seems, an identifiable strategy. Essentially this consisted of setting into practice a 'double taxonomy' in the field of moral regulation. In each domain there is an increased regulation by the state, a greater intervention in the field of moral conduct - sometimes making more refined distinctions and often taking a more punitive and repressive form than previously existing mechanisms of regulation and control. At the same time other areas of conduct are exempted from legal regulation - and, so to speak, from the gaze of morality..." (Hall 1980:17) This 'double taxonomy' as defined by Hall stands as a remarkably apt description of the Suicide Act, which exempted suicide from legal regulation, but made "aiding, abetting, counselling or procuring another's suicide" a new and very serious crime.

The source of this strategy, according to Hall, is to be found in the Wolfenden Report on homosexuality and prostitution which set out a "new principle for articulating the field of moral ideology" (Hall 1980:11). This principle, Hall says, was a clear separation of public and private spheres of personal behaviour; a sharp distinction between morality and illegality, between what was a 'sin' and what was a 'crime'. It

was the Wolfenden Report that made the much quoted statement that " Unless a deliberate attempt is to be made by society, acting through the agency of the law, to equate the sphere of crime with that of sin, there must remain a realm of private morality and immorality which is, in brief and crude terms, not the law's business." (Cmnd. 247 1956-57: para 61)

Newburn agrees about the importance of what he says has become known as the "Wolfenden strategy" (Newburn 1992:56), which he claims resulted in "redrawing the boundaries between state control and private morality" (ibid:179). What happened, according to Newburn, is that "the boundaries of what is considered to be private behaviour are extended and the areas of public behaviour are more minutely defined and subjected to increased surveillance" (ibid:161) The relevance of this analysis to this thesis becomes apparent once one realises that the practical effect of the decriminalisation was to re-define successful suicide as "private behaviour", outside the state's jurisdiction, but *attempted* suicide as "public behaviour", and a legitimate object of state intervention. This interpretation is examined in chapters 3 and 4.

Hall and Newburn both focus their attention specifically on the laws relating to sexual behaviour, but the evidence gathered for this thesis shows their interpretation does have important explanatory potential for aspects of the Suicide Act that are otherwise inexplicable. This evidence, in turn, makes a contribution to the debate about the true nature of the so-called "permissive" legislation.

The second contemporary debate with which this research is engaged is of much longer duration and wider range. Contributors to the ancient debate about how criminal laws emerge and change come bringing a host of sophisticated theoretical perspectives - philosophical, sociological, jurisprudential - which are ill served by the simplistic reductionism often imposed upon them. Nevertheless, despite that, some organising principle does have to be imposed if the theoretical perspectives are to be of

any practical use in understanding real life events. This thesis does this by following a path marked out by many more distinguished predecessors and groups the perspectives into two camps, titled respectively 'traditional' and 'revisionist'.

Traditional perspectives are the ones most widely represented in social history of all kinds, and in the orthodox approaches to social reform legislation. These perspectives use an evolutionary paradigm which sees human affairs as moving forward - however slowly and haltingly - from barbarism toward civilisation, influenced by immediate circumstances and affected from time to time by human agents. In this perspective social reform legislation simply reflects this on-going process; the law changes as the attitudes and mores of society change. Most of the traditional camp would accept that control concerns are among the motives for reform legislation; but then, most traditionalists consider social order a basic necessity, and its enhancement a legitimate objective.

Revisionists use quite a different paradigm. They view social reform legislation as tactical manoeuvring within an overarching strategy aimed at maintaining and enhancing social control, which they portray in a sinister light. Revisionists see reform legislation as a means of extending repressive power, part of the 'technology of subjection' inseparable from the modern 'disciplinary society'.³

If one is dealing only with theory, it may be possible to choose one and remain aloof, ignoring competing perspectives. But real life is more complicated, and any attempt to cram empirical data into the procrustean bed of a single theory usually does damage to the facts. In the case of this thesis, neither a traditional nor a revisionist perspective alone can adequately explain the empirical evidence about suicide law. The data as it emerged in the research, clearly required a more flexible approach, and this is what has been used. A satisfactory understanding of the law forbidding suicide can be gained by viewing the data through a traditional lens, but the picture goes completely out of

focus when this by itself is applied to the *decriminalisation*. A plausible explanation of what really happened to the law on suicide in 1961 is only possible by using both an evolutionary paradigm and the concepts supplied by revisionist theory. This explanation, and the data that supports it, constitute the body of this thesis. What follows here is a brief summary of how the theoretical perspectives informed the research and influenced its conclusions.

The traditional, orthodox approach to social history sees the "permissive" reforms of the 1950s and '60s as logical outcomes of certain long term trends which destabilised the class structure and undercut traditional moral authority. The resulting volatile mix was enriched by the increasing affluence of the 1950s and created a context ripe for revolutionary changes in social behaviour and the laws that regulate it. This context and the effect it had on the passage of the Suicide Act are examined in chapter 3.

The credibility of traditional perspectives in general and in particular their applicability to suicide law is enhanced by their links with classic sociological and jurisprudential thought. With Max Weber, for example, who said changes in law reflect its increasing rationality as, freed from the shackles of religious superstition, it is shaped into an instrument for realising human objects. At one level this interpretation works very well as an explanation of the law against suicide (see chapter 2), which began as a religious prohibition and ended in "rational" discussions about its ineffectiveness and unfairly random application (see chapters 3 and 7).

The empirical history of the law against suicide also has clear links with Emile Durkheim, who saw criminal law as the tangible manifestation of the "collective conscience", the presence of which marked the bounds of acceptable behaviour. Overstepping these boundaries, Durkheim said, evokes a savage and punitive response, but as the collective conscience changes, the boundaries, and thus the law, changes too. This seems to have been what happened, quite visibly, with suicide, as

for centuries the corpses of self-killers were savagely mutilated and ritually degraded, but the practice gradually faded as attitudes towards suicide changed, until only the restrictions on religious burial remained. Interestingly, Durkheim, who used suicide as the platform on which to build his "rules of sociological method", was himself quite clear about its out-of-bounds status. In Book 3, Chapter 2 of *Suicide* (1897) he argues that "society is injured" by suicide so "it must be forbidden" and "we cannot tolerate it under any circumstances" (Durkheim 1979:337).

The links with J.S. Mill are of particular importance to discussions of 1950s and '60s legislative changes. Not only does his "greatest good" utilitarianism offer a theoretical structure in which they could be interpreted, he also provided the principle that gave many advocates of the reforms a philosophical grounding. The Mill doctrine, familiar from countless repetitions, is that the only justification for state interference in personal liberty is to prevent harm to others.⁴ The use of this doctrine and its relationship to suicide has been exhaustively examined by Joel Feinberg in *Harm to Self* (1986), vol. 3 in his series on *The Moral Limits of the Criminal Law*.⁵

Traditional perspectives on social reform legislation also have affinities with classic jurisprudential formulations about common law. This is important to this thesis because when suicide was a crime, it was a crime at common law. These formulations (Blackstone 1765-9, Savigny 1831, Maine 1866, Dicey 1905) see law developing organically out of the customs and traditions of a particular society and changing as the society changes. Maine also pointed out (1866: chapter 2) that such law, once in place, inevitably lagged behind changes in the culture. His theory of how this lag was addressed aligns particularly well with the history of suicide law. In progressive societies, Maine said, three mechanisms are used: first, "legal fictions" are invented. These are ideas deliberately assumed to be true, regardless of their validity, in order to by-pass awkward and/or anachronistic laws. The letter of the law remains, but the way it functions changes. This describes the situation in regard to suicide, where from the

15th century people who killed themselves were usually deemed to have been insane, and so their corpse and family escaped the criminal penalties inflicted on self-murderers.(see chapter 2) Next, Maine says, comes "equity", which allows flexibility in the law in the interests of larger concepts of fairness and justice. This could be a description of the situation in the 20th century when the police were given wide ranging discretion over whether or not to prosecute attempted suicides, and courts increasingly softened the sanctions imposed on people convicted of this offence (see chapter 3). As for successful suicides, in 1928 coroners' courts were instructed to use the face-saving formula "while the balance of mind was disturbed" when bringing in a verdict of suicide, usually without any evidence on which to base such an assumption. (Atkinson 1978) Finally, Maine said, changes are formally enacted in legislation; which, of course, could be taken to refer to the Suicide Act of 1961.

A much more contemporary contribution to the jurisprudential debate about how law changes - and one which is immediately relevant to this thesis, has been made by Ronald Dworkin, formerly Professor of Jurisprudence at Oxford and Professor of Law at New York University. "Law is an interpretive concept" Dworkin says (1993:410), and has applied this idea in a series of books dealing with "life" issues - abortion, euthanasia and assisted suicide (*Law's Empire* 1991, *Life's Dominion* 1993, *Freedom's Law* 1996). His detailed examination of the furious conflicts about these "sanctity of life" issues in recent decades contrasts dramatically with the total absence of controversy - and indeed interest - that accompanied the Suicide Act. It was an early indication that there was something unusual about the passage of this Act.

Traditional evolutionary perspectives are what are used by most existing histories of particular pieces of 1950s and '60s legislation. Actually, there are relatively few of these, which is surprising in view of the journalistic and political attention they continue to receive (see Newburn, chapter 1). The ones there are - Hindell and Simms on abortion (1971), Dixon on betting and gaming (1991), Christoph on capital

punishment (1962), Stone on divorce (1990), Weeks on homosexuality (1981) - all record the same kind of pattern: an evolutionary process of persistent lobbying by advocates of change, the formation of pressure groups, discussions among the intelligentsia, more lobbying, government examination via committees of enquiry and Royal Commissions, more lobbying, and finally, the emergence of legislation, most often by means of a Private Members' Bill. None of this happened in regard to the Suicide Act, and the complete absence of the usual pattern was another indication that a traditional perspective was unlikely to fit the facts of this particular social reform.

There is, of course, a problem faced by all histories which use a traditional perspective and an evolutionary paradigm. Their Achilles' heel - as is endlessly pointed out by their critics - is the assumption that there is at any given time a consensus in society about what *is* acceptable social behaviour. Such an assumption, the critics say, cannot survive even a single clear-eyed look at the real world. They might cite the bitter controversy over "permissiveness" mentioned above as an appropriate example.

The absence of consensus, however, while it renders traditional explanations of the reform inadequate, does not make them useless. They continue to have important explanatory power in respect of many aspects of the law on suicide, as is indicated above and discussed more fully in chapters 2 and 3. The inadequacies of this approach become apparent, however, when an attempt is made to apply a traditional, evolutionary perspective to the actual decriminalisation. There are simply too many questions it cannot answer. Chief among these is why the decriminalisation happened at all, since there was no visible public feeling - or even interest - in the issue, no reform lobby promoting change, and no discernible political reason for initiating a potentially controversial "moral" reform. Traditional approaches can also not explain why the J.S. Mill style rhetoric about individual freedom, which was such a prominent feature of the high profile libertarian debates of the period⁶ was completely missing from discussion of the Suicide Act. Neither can a traditional approach adequately

explain why, although the focus of the legislation was the criminal status of *suicide*, the actual Parliamentary debate on the Bill was almost entirely about *attempted* suicide.

All these matters, and a number of others to do with the decriminalisation, are inexplicable when viewed through any of the traditionalist paradigms about social reform legislation. But quite plausible explanations emerge when a revisionist perspective is applied.

Revisionists take as their starting point the absence of consensus, considering it to be a self-evident fact of human existence. In its absence, anarchy and social breakdown are ever present possibilities, so social order, created and maintained by all means possible, is the *sine qua non* for society's survival. The roots of this position, of course, go back at least as far as Hobbes, who was in no doubt that absolute sovereign power was the only way to forestall chaos. Law, in the revisionist view, does not reflect a "collective conscience" (since there isn't one), nor does it evolve in response to society's changing needs. It is simply one of a number of mechanisms by which the state maintains order and controls deviant behaviour.⁷

In *Visions of Social Control* (1985), Stan Cohen describes the revisionist conception as involving "master patterns" laid down in the 19th century in which social control is a "spreading web of power" grounded in the knowledge and expertise of professionals in the social services. This perspective, applied to the "permissive" reforms of the 1950s and '60s, claims that "the original line of professional knowledge and power has never been broken" and moves such as "delegalisation" are "understandable merely as further twists in the long spiral which has symbiotically linked the control system with the behavioural sciences." (Cohen 1985:101)

The revisionist perspective, of course, has been much influenced by Foucault, whose examination - "archaeology" - of deviance control systems identified "medicalisation"

and especially psychiatry, as central to the social order project. In *Madness and Civilisation* (1961, English translation 1967) Foucault made the (then) radical proposal that the story of Pinel's great "liberation" of the insane in 19th century France could be read another way. In 1963 his *Birth of the Clinic* queried traditional views of medical humanism. And in 1975 in *Discipline and Punish*, Foucault explicitly set out the revisionist stance: "The reform of the criminal law," he said, "must now be read as a strategy for the rearrangement of the power to punish, according to modalities that render it more regular, more effective, more constant and more detailed in its effects." (Foucault 1977:80)

Many writers in the 1970s and '80s used and developed the idea that all the actions and institutions of the state are social control mechanisms (see Cohen & Scull, *Social Control and the State* 1983). In line with Foucault's images of ubiquitous, faceless power (and indeed with Hobbes' image of Leviathan), most of them invested the concept with an aura of sinister oppression.

An important subset of this social control literature is concerned with the concept of the "medicalisation of deviance". What it refers to, as Garland (1985) pointed out, was a logical outcome of 19th and 20th century determinism, since it is based on the idea that deviant behaviour is a pathology "caused" by factors that can be "treated" by professional intervention. "Use of the medical metaphor grew apace," Scull said, "for it legitimised both heightened official discretion and the emphasis on individual variability." (Scull 1983:149) Revisionist social control writers challenged the widely held assumption that putting deviance into the hands of the medical establishment was a humane and progressive move; something to be approved and encouraged. They argued that the "care" was only a disguise for control, and the compassionate rhetoric a cloak for coercion. Transferring deviants from courts to clinics, revisionists claimed, and re-defining "bad" as "mad", was actually done in order to enhance control, as it removed the irritating impediment of due process and authorised extensive intervention

in the name of treatment.⁸ Thomas Szaz supplied a specific example of how this model views the suicide issue. In a much quoted essay he said, "I consider the psychiatric stigmatisation of people as 'suicide risks' and their incarceration in psychiatric institutions a form of punishment, and a severe one at that... The physician uses the rhetoric of illness and treatment to justify his forcible intervention in the life of a fellow human being." (Szaz 1981:189)

There is by now a substantial body of theoretical work on these themes - i.e. how the modern state controls deviant behaviour and also on what is deemed the "medical model".⁹ There is, however, not very much empirical research into any actual legislation that formally implements the strategies described.¹⁰ It is in this area, then, that this thesis seeks to make a contribution, and engages directly with the ancient debate about the emergence and change of the criminal law. It is only right to admit, however, that the outcome which constitutes this contribution was unexpected. The original plan of the project, the hypothesis it set out to prove, was in fact disproved by the empirical evidence. The plan, which drew on standard histories of social reform and used an evolutionary paradigm, had been to show that the hitherto unexamined Suicide Act, seemingly so radical in its bald decriminalisation of behaviour long considered immoral and wicked, indicated a significant shift in the relationship between law and morality in the direction of individual freedom and personal sovereignty. To the initial disappointment of the researcher, the evidence would not support such an hypothesis.

While there was ample evidence (see chapters 2 and 3) that there had indeed been important changes in attitudes about morals and the law,¹¹ their relationship to the decriminalisation of suicide was tangential. The evidence directly concerning the passage of the Suicide Act suggested that it was not a decriminalisation at all, but instead an unexpected empirical example of revisionist theory. That is to say, it was not a relinquishing of state control over deviant behaviour - which is what

"decriminalisation" appears to mean. It was a straight transfer of responsibility for a deviant behaviour (in this case attempted suicide) from criminal justice to medical jurisdiction in the interests of more effective control. (see chapters 4 and 7).

It is the case that revisionist perspectives place far more emphasis on structure than they do on agency. Individuals are seen as acting out structurally defined roles with the outcomes not dependent on particular personalities. But the evidence about the reform of the suicide law shows that a very small handful of people - in fact just three - played a crucial role *as individuals* in the passage of the Suicide Act (see chapter 6). Structure may have informed and constrained their actions, but they chose to act, and it was the strategies and tactics they deployed which shaped the outcome.

All three individuals, in the way they advocated the decriminalisation of suicide, were reflecting but also employing the determinist paradigm which was intellectually fashionable in mid-century Britain (see chapter 3). It allowed them, when dealing with the suicide issue, to by-pass difficult questions about "right" and "wrong" actions, and also issues about the symbolic power of law to influence behaviour. They were not concerned with the "symbolic" meaning of the change in the law, and indeed went out of their way to emphasise that no challenge to the existing interpretation of suicide as morally wrong was intended. This interpretation was, to them, of no consequence compared to the practical issue of how the state could deal more effectively with the problem of attempted suicide. It is true they were concerned to re-define the problem - from "crime" to "mental illness", but the purpose of the redefinition was pragmatic, not symbolic: it was the mechanism by which the transfer could be effected.

The ultimate success of this approach, of course, was dependent on the skill and style of the protagonists. They may have felt conventional ideas of "right" and "wrong" behaviour were irrelevant to the issue, but many people did not, and were prepared to say so (see chapters 3, 5 and 7). However the strategy used to pass the Suicide Act

managed to avoid any direct challenge to this school of thought, while still effecting a major change in the way the state dealt with attempted suicide. The magnitude of this achievement would not be underestimated by others who have tried to change laws with a moral dimension.¹² The facts of the case suggest it is most unlikely to have happened if a particular personality had not at a particular time had a unique hold on the levers of power.

The history of the Suicide Act, then, argues for a revaluation of the role of human agency in human affairs. In doing this it joins what Quentin Skinner describes as a "cry from many different directions for the development of a hermeneutic approach" (1997:6). While it does not suggest that agents should be reinstated to the pre-eminent position they held in old style social histories, the story of the passage of the Suicide Act shows that individuals do make choices, even if in circumstances not of their own choosing, and those choices have real effects.

Methodology

The methodology used for this research has followed standard historical research practice in drawing on both primary and secondary sources.

Primary sources included records in the Public Record Office at Kew, the Butler papers at Trinity College Cambridge, Church of England archives in Bermondsey, the British Medical Association archives in Tavistock Square in London, Magistrate Association records at Fitzroy Square, London, Metropolitan Police records held at Buckingham Gate. and the contemporaneous media stored at Colindale. Parliamentary Official Records (Hansards), Government papers and Judicial Statistics used are in the British Library of Political and Economic Science at the LSE.

But however full the records and detailed the documents, it is hard to gain from these alone an accurate picture of a complex happening. Moreover, one of the prescriptions of modern social research is that any adequate account of social behaviour should include the subjective interpretations of the actors involved. So among the most important primary sources for this research have been the interviews conducted with people who were involved in some way, either directly in the Act itself or in the surrounding context which influenced its passage. (A full list of these people appears at Appendix I)

On the actual passage of the Bill through Parliament (chapter 7), the personal experiences drawn on include those of the Minister who actually put it through the Commons, the two top civil servants in the Home Office at the time, the Departmental Minister of State, and two former heads of the Home Office Research Unit. They also include the recollections of Roy (now Lord) Jenkins, the opposition M.P. and subsequent Home Secretary who was deeply involved in much of the reform legislation of the period. To these are added the quite different perspectives of Leo Abse, the backbench Labour M.P. who nearly destroyed the Bill, and four of the five surviving members of the Commons Committee.

The climate of opinion outside Parliament at the time was explored in an interview with Lord (Noel) Annan, who as Provost of Kings College Cambridge at the time and then Vice-Chancellor of the University of London, was a leading member of the intellectual establishment for over thirty years. His books about the period, *The Intellectual Aristocracy* (1956) and *Our Age: Portrait of a Generation* (1990), vividly convey the temper of the "thinking classes", which was an unsteady mix of positivism, romantic libertarianism and enthusiasm for change (see chapter 3). Attitudes specifically towards suicide in the 1950s and '60s were discussed with the Rev. Chad Varah, who founded the suicide-prevention charity The Samaritans in London in 1953. The curious question of why the Church did not object to the decriminalisation

(see chapter 5) was examined in an interview with the Rev. Professor G.R. Dunstan, who as secretary to the Church of England Board for Social Responsibility convened the committee that produced the highly influential booklet *Ought Suicide to be a Crime?* in 1959.

The three main protagonists of the decriminalisation of suicide - Rab Butler, Kenneth Robinson and Doris Odlum - are now all dead. But their importance to the Act was such (see chapter 6) that it was worth going to some lengths to gather personal memories of people who knew them. Butler was by far the most famous of the three, and various perspectives on his enigmatic personality were supplied by his widow, his official biographer, his Permanent Secretary and his junior Ministers at the Home Office at the time, his Parliamentary Private Secretary, and a number of present and former M.P.s and members of the establishment who knew him during his more than fifty years of public life. Butler also wrote his memoirs (*The Art of the Possible* 1971) and left copious papers and letters to Trinity College, Cambridge.

Kenneth Robinson and Doris Odlum, both crucial as the spurs to Butler's actions on suicide law, have left far more modest traces. Many of the M.P.s and former M.P.s spoken to in connection with this research remember Robinson well, as did Butler's biographer Anthony Howard. They all spoke about his keen interest in medical matters and his genuine reforming zeal. Leo Abse and Lord Jenkins clearly recalled Robinson's advocacy of suicide law reform and suggested possible motives for it. The writer and social reform campaigner Rose Hacker was a volunteer worker in Robinson's north London constituency and was a source of useful information about him and also about Doris Odlum.

The scant written records there are on the suicide law reform suggest that Dr. Odlum was the prime mover of the decriminalisation (see chapters 4 and 6), an idea that received endorsement from Chad Varah. However, as she was not a public figure in

the same way as Butler and Robinson, it was more difficult to uncover personal recollections of her. In pursuit of these, an advertisement was placed in The Magistrate magazine. The responses received confirmed the impression produced by the records of a doughty campaigner totally devoted to the "medicalisation of deviance". Although labelling theory had not at the time been academically articulated, Dr. Odum was in no doubt about the stigmatising effects of involvement with criminal justice agencies. She was determined that attempted suicides should be removed from their remit and placed wholly in the hands of the medical establishment. And this is, in effect, what the passage of the Suicide Act achieved.

Besides the Bill's actual passage, the extra-Parliamentary context, and the personalities of the active agents, it was also considered important to gain a personal perspective on the way the law against suicide was implemented in the years leading up to 1961, as this clearly was another factor important to the decriminalisation. It would be the *key* factor in a symbolic interactionist interpretation, as this perspective says "Deviation is defined by its situation, by its perpetrators and by its audience," and emphasises the role of "bailiffs, police, psychiatrists, magistrates and doctors in the negotiation of deviance." (Downes and Rock 1988: 176-79) So this aspect of the issue was discussed in interviews with five criminal justice professionals who were practising before 1961. Lord (Peter) Imbert, who went on to become Commissioner of the Metropolitan Police and Roy Thomas, who became a Chief Inspector and head of the Vice Squad in Lambeth, both began their careers as constables on the beat in London in the 1950s. Colette Maitland Warne and Doreen Yardley were Probation Officers serving the London courts at the same time; Jeanette Stockell was a casualty nurse at Charing Cross Hospital in the 1950s, and went on to become a Magistrate. All five had personal experience of prosecutions against people who had tried, unsuccessfully, to kill themselves.

In addition to the individual memories cited above, in regard to the general working of Parliament and the criminal justice system, the author of this thesis was able to draw upon over twenty years of personal experience working in both.

Plan of the thesis

This thesis sets out to examine the passage of the Suicide Act 1961, using the methodology and the theoretical tools described in this chapter. Chapter 2 examines how suicide came to be criminalised in the first place, and tracks the route of the ultimate decriminalisation, which winds back through centuries of change in the law to a 10th century canon passed by King Edgar. Chapter 3 looks at the 20th century structural factors which were necessary for the change to happen. Chapter 4 explains why the 1959 Mental Health Act was so vital a factor in the reform, and how it provided the mechanisms to effect a transfer of control. Chapter 5 is about the dog that did not bark - i.e. why the Church, originator and continued guardian of the concept of "sanctity of life" did not object to the decriminalisation. Chapter 6 argues for the importance of *agency* to this particular piece of social reform legislation and describes the actions of the three people who were crucial to its success. Chapter 7 sets out the actual passage and charts the extremely unusual route the Bill took to arrive on the Government's legislative agenda. Copies of the most significant documents from the Public Record Office are appended. The chapter suggests reasons why, once into the Lords and Commons, the Bill managed to elude the opposition such a measure would have been expected to encounter. Finally, Chapter 8 seeks to draw the threads together and directly address the question the thesis has examined: Why was suicide decriminalised in England and Wales in 1961? The answer to this, based on the evidence, shows why the Suicide Act, though unremarked and formerly unexamined, casts a long shadow forward.

Notes to Chapter 1

¹Weeks (1981) says that "From a political and juridical perspective the term ['permissive'] has been used to describe a particular legislative moment, producing a complex body of legislation passed in the decade after 1958, including reforms of the laws governing gambling, suicide, obscenity and censorship, Sunday entertainment, the abolition of capital punishment for murder, as well as liberalisation of various statutes governing sexual behaviour." (p.249). Hall (1980) has a similar list, divided into "two reforming periods". "The first period - the 'Butler reforms' - included the limitation of the death penalty (the Homicide Act 1957), the Street Offences Act 1959, the Suicide Act 1961, and legislation affecting licensing, betting and gambling ... The second - largely coincident with the tenure of Roy Jenkins - included the Murder (Abolition) Act 1965, the second Obscene Publications Act in 1964, the Sexual Offences Act 1967 (dealing with homosexuality), the Family Planning Act 1967, the Abortion Act 1967, legislation on divorce (1969), theatre censorship (1968) and the law governing Sunday entertainments." (p.1) Newburn (1992) devotes the whole of Chapter 1 of *Permission and Regulation* to a discussion of this term and its various meanings in contemporary debates.

²H.A.L. Hart in the preface to *Law, Liberty and Morality* (1963) referred to the Suicide Act and said, "It is the first Act of Parliament for a least a century to remove altogether the penalties of the criminal law from a practice both clearly condemned by conventional Christian morality and punishable by law." Nigel Walker in an article for *The Howard Journal* titled "Morality and the Criminal Law" (1964) said, "More encouraging still, for the first time in at least a century, a crime - attempted suicide - has been removed from the statute book, although only after many years of ecclesiastical and Parliamentary resistance."

³These phrases are from the introduction to Cohen & Scull *Social Control and the State* (1983), and represent concepts much used in revisionist writing; see for example Foucault 1967. 1969; Rothman 1971; Szasz 1974 & 1980; Castel 1982

⁴Mill's actual statement from *On Liberty* (1859) is as follows. It is quoted in full as it would appear to have immediate relevance to suicide so it is of interest that it was never used in discussions of decriminalisation, although much cited in connection with other reformist legislation. "The principle is, that the sole end for which mankind are warranted, individually or collectively, in interfering with the liberty of action of any of their number is self-protection. That the only purpose for which power can be rightfully exercised over any member of a civilised community, against his will, is to prevent harm to others. His own good, either physical or moral is not a sufficient warrant. He cannot rightfully be compelled to do or forbear because it will be better for him to do so, because it will make him happier, because, in the opinions of others, to do so would be wise or even right. These are good reasons for remonstrating with him, or reasoning with him, or persuading him, or entreating him, but not for compelling him, or visiting him with an evil in case he do otherwise. To justify that, the conduct from which it is desired to deter him must be calculated to produce evil to someone else. The only part of the conduct of anyone, for which he is amenable to society, is that which concerns others. In the part which merely concerns himself his independence is, of right, absolute. Over himself, over his own body and mind, the individual is sovereign." pp.11-12 Maurice Cranston, writing on Mill's essay in 1957 said it was "one of the most rational expositions of a liberal case that has ever been written" and that "Mill is coming to be better appreciated than he was a few years ago... There is more interest in him..." (*Listener* 10 January 1957 p.58) Noel Annan, writing about *On Liberty* in 1960 said, "A century old last year and I would say that no work of such importance in political thought has been published by an Englishman since." (*Listener* 28 January 1960 p.171)

⁵Feinberg carefully teases out and examines the implications of the "Mill doctrine" as it might be applied to suicide. For example, in discussing the "freedom maximisation" argument attributed to Mill he says, "A person's freedom is extinguished by his death, so all suicide and euthanasia would have to be banned for the sake of maintaining the future freedom of those who would prefer to die." (Feinberg 1986 p.77) He also takes apart the ideas (conflated in Mill) of *de jure* autonomy and *de facto* freedom and concludes "that there is a rationale for protective interference that gives decisive significance, after all, to respect for *de jure* autonomy." (p.99) Among other things the elaborate and

elegant arguments presented by Feinberg, stretching over four volumes, demonstrate there was much that could usefully have been said in the suicide debate which wasn't.

⁶Noel Annan in *Our Age* (1991) extensively details the intellectual debates of the 1950s that stressed individual liberty and minimal state interference in matters of morality. Journals at the time such as *Encounter*, *The Listener*, and *The Spectator* regularly carried articles with this theme. The famous Hart/Devlin debate on the enforcement of morals was actually coterminous with the passage of the Suicide Act.

⁷Contemporary revisionist historians sometimes write as if this was a modern insight; but it appears vividly in Mill's *On Liberty*: "Society can and does execute its own mandates: ... it practises a social tyranny more formidable than many kinds of political oppression, since, though not usually upheld by such extreme penalties, it leaves fewer means of escape, penetrating much more deeply into the details of life, and enslaving the soul itself ..." (p.5)

⁸Publications on this theme include: I.K. Zola *Medicine as an Instrument of Social Control* (1975); Ivan Illich *Limits to Medicine - Medical Nemesis* (1977); D. Rothman *Conscience and Convenience* (1980); A. Scull *Museums of Madness* (1979); and the Foucault works cited above.

⁹Examples include: C. Rosenberg & J. Golden *Framing Disease* (1992); E. Freidson *Profession of Medicine* (1970); D. Garland *Punishment and Welfare* (1985); R. Castel, R. Castel & A. Lovell *The Psychiatric Society* (1982); D. Ingleby *Mental Health and the Social Order* (1983); R. Smith *Trial by Medicine* (1981)

¹⁰Paul Rock, in his introduction to Paulus' *The Search for Pure Food* (1974) said, "There are numerous analytic traditions which touch upon legislation, but the detailed workings of the world of law have rarely received close scrutiny"; Tomasic in 1985 commented that "the sociology of legislation is still very much a neglected part of the sociology of law, despite its theoretical significance" and Lawrence Stone in *Road to Divorce* (1990) said that for his work to achieve its object, "it must add another component, namely the law, the neglect of which has been one of the worse deficiencies in historiography in all fields of enquiry over the last forty years." (p.10) One of the relatively few sociological studies of British legislation that does exist is David Dixon's *From Prohibition to Regulation* (1991). Dixon also comments on the scarcity of this kind of study and suggests it could be because sociological interest in law *making* (as opposed to law breaking) waited upon labelling and new deviancy theorists re-discovering Sutherland's insight that crime is the creation of the law.

¹¹Nigel Walker, writing in 1964, said, "I would be surprised if any country in any single decade has seen so much public discussion of the relationship between law and morality as England has in the last ten years ... in contemporary England every lay member of the legislature, and most intelligent men and women in the street, now have their view on this subject..." *Howard Journal* Vol. XI no. 3 1964

¹²The difficulty of transferring a deviant behaviour from criminal justice to medical jurisdiction is demonstrated by the situation in regard to drugs. Despite medical evidence about the nature of addiction, courts continue to regularly send addicts to prison for simple possession of proscribed drugs even in the absence of evidence of any other criminal behaviour. Evidence on this is set out in the Runciman Report on "Drugs and the Law", sponsored by the Police Foundation, 2000

Chapter 2: History of the law against self-murder

This thesis concerns the 1961 statute that changed the legal status of suicide in England and Wales, making it no longer a crime. But to understand how and why this happened it is necessary first to consider how suicide came to be deemed a crime in Western culture, since it is not, and never has been, an act universally condemned across cultures and over time.

The origin of the law against suicide in Europe can be quite specifically identified: it was St. Augustine's edict damning self-killing, promulgated in the 5th century A.D. in circumstances (outlined below) which gave it a political as well as religious flavour. Between then and 1961 the law in England passed through five distinct phases: 1) in the 7th century Augustine's damnation of self-killing was incorporated into canon law; 2) in the 10th century the secular state became involved by instituting forfeiture of a suicide's goods; 3) in the 17th/18th centuries Enlightenment rationalism proposed that suicide was neither a sin nor a crime; 4) in the 19th century *attempted* suicide became a crime, against a background of widespread change in the control of deviancy; and finally, 5) in the 19th and 20th centuries, enthusiasm for positivist/determinist explanations drained morality from discussions of deviance and created a context in which the medicalisation of suicide could take place. The effects - often contradictory and unexpected - of each of these phases are examined in this chapter.

It is important to stress at the outset the *contingency* of all the stages, including, and perhaps most especially, the original prohibition. They are contingent because suicide, seen for so long by so many as quintessentially wicked, is in fact a useful example of the problematic nature of deviance and of the relativity of norms.¹ At different times in different places suicide has been admired and tolerated as often as condemned. To give just some examples:

In Japan, self-killing ('junshi') has long been held to be an admirable demonstration of love and loyalty to a master. (*Encyclopaedia of Religion and Ethics* Vol. 12) It was in this century (1912) that General Nogi and his wife disembowelled themselves on the death of the Emperor Meiji, and "for this act they have been held up to the youth of Japan as shining examples."(Dublin & Bunzel 1933:168) Japanese kamikaze 'suicide' pilots in World War II were national heroes.²

In China suicide has traditionally been the only honourable course for generals following defeat (*Encyclopaedia of Religion and Ethics* Vol. 12). In India widows who did *not* voluntarily join their husbands on the funeral pyre were subject to verbal and occasionally physical abuse (Venkoba Rao 1975). The Hindu dharmasutras do not condemn suicide; indeed, Brahmins traditionally end their lives by deliberately destructive ascetic rituals (Dublin & Bunzel 1933). Modern day self-immolation by Buddhist monks in aid of various causes has attracted world wide attention, but rarely condemnation for the act itself.

In many cultures (Eskimo, Arab, American Indian, among others) the aged commit altruistic self-destruction ("senicide") to avoid burdening the community (de Beauvoir 1996).

In Norse mythology Odin (in Germany, Woden), was the father of the gods but also 'Lord of the Hanged'. He built Valhalla for those killed by violence, whether inflicted by themselves or others: warriors and suicides were welcomed, those who died a natural death were not(Alvarez 1990: 72-73).

Anthropologists in the late 19th and early 20th centuries, researching among the world's remaining primitive tribes, found "Not only is there a striking difference regarding the frequency of suicide or its total absence among primitive peoples, but in

addition attitudes and moral judgements vary greatly in different places. Sometimes it is taken as a matter of course and neither praise nor blame is attached to it. Elsewhere, it is highly censured; sometimes it is regarded as an honourable and courageous act."³

In western Europe attitudes to suicide have similarly varied over time. A vivid illustration of this is that although the Christian Church was the sole authority for the ban on self-murder for so long, there is no prohibition of it in the Bible, in either the old or new testaments. The reference to acts a modern mind would deem suicide (i.e. Saul, Samson, Judas) are presented in the scriptures with no condemnation of self killing or discussion of its ethical implications.⁴

The heritage from Greek and Roman culture in regard to suicide is ambiguous at best: Westermarck points out, "The Greek tragedians frequently give expression to the notion that suicide in certain cases is becoming to a noble mind" and also comments, "It seems that the Roman people, before the influence of Christianity made itself felt, regarded suicide with considerable moral indifference... Throughout the whole history of pagan Rome there was no statute declaring it to be a crime for an ordinary citizen to take his own life, though it was prohibited in the case of soldiers." (Westermarck 1926:255)

Greek Stoicism - extremely popular in Rome during the Empire and revived with enthusiasm in the 17th and 18th centuries - viewed an honourable death, even if self-inflicted, to be in all ways preferable to continuing a shamed life. Stoics believed suicide could be courageous - as was Cato's, who chose to die rather than submit to the tyranny of Caesar; or altruistic, as Themistocles', who swallowed poison to save his countrymen; or it could be a rational response to intolerable circumstances or unbearable pain (Rist 1969). Seneca's thoughts on this have echoed down the centuries: "... the journey on which we have all set out is one which does not have to be travelled to the very end.... life is never incomplete if it is an honourable one. At

whatever point you leave life, if you leave it in the right way, it is a whole. And there are many occasions on which a man should leave life not only bravely but for reasons which are not as pressing as they might be - the reasons which restrain us being not so pressing either" (*Seneca: Letters from a Stoic* 1969:12).

Alternatively, Pythagoras in the 6th century BC taught that to kill one's self is tantamount to a soldier deserting his post before receiving the commander's (God's) order to quit (Westermarck 1939:252). Plato expanded on this through Socrates in *Phaedo*: "I believe this much is true: that we men are in the care of the gods, one of their possessions... so if you look at it this way I suppose it is not unreasonable to say that we must not put an end to ourselves until God sends some necessary circumstances like the one we are facing now" (i.e. the Athenian Council's decree that Socrates must die) (Plato: *Phaedo* 1993:114). Cicero (106-43 BC) repeated this theme in *On Old Age*, commenting that "Pythagoras forbids us to desert life's sentry-post till God, our commander, has given the word" (Cicero 1971:242).

Aristotle voiced the idea, often repeated since, that suicide is the act of a coward: "...to kill oneself to escape from poverty or love or anything else that is distressing is not courageous but rather the mark of a coward" (Aristotle 1953:130). Aristotle is also generally credited as the source of the idea that suicide harms the state: A man who kills himself, Aristotle says in the *Nicomachean Ethics*, injures the state because "he is acting unjustly" and "It is for this reason that the state imposes a penalty, and a kind of dishonour is attached to a man who has taken his own life, on the ground that he is guilty of an offence against the state" (ibid.:200-201).

Early Christianity, before Augustine, did not condemn suicide, and indeed the promise of eternal happiness in heaven for true believers seemed to invite it. Certainly the passion for martyrdom that marked the first centuries of Christianity was encouraged by the logic of the faith and seemed to be endorsed by the Fathers of the Church:⁵ St. Cyprian, (200-258), who himself was martyred by Valerian, was eloquent about the

glories of martyrdom and its eternal reward. Tertullian (160-200) famously proclaimed that "the blood of the martyrs is the seed of the Church." Jerome (342-420), sometime secretary to the Pope and first translator of the bible into Latin, explicitly approved virgins' suicide to avoid rape and also endorsed religious penance harsh enough to lead to death.

Origin of the law against suicide

So Augustine's edict damning suicide, when it came in the 5th century, was contrary to the contemporary currents of his faith. Moreover, the circumstances in which he did it might plausibly be used by modern conflict theorists to support their thesis. It happened as follows:⁶ Augustine (354-430) had been created Bishop of Hippo in 396, and in common with other Bishops of the time was part of the civil authority, acting as a Magistrate in a busy court of summary justice. At the time, imperial Rome had made peace with orthodox Christianity, which is to say Augustine's brand of Catholicism, but was suppressing heretics very harshly. It was also only a single generation since the great persecution under Diocletian, when *any* kind of Christianity had been a capital crime, punishable by death. The vigorous enforcement of that law under Diocletian had had the effect of inflaming further the martyr-cult that was such a prominent part of the early Christian church.

In 5th century North Africa, Augustine and all the other representatives of authority were faced with civil disorder on a grand scale, exacerbated by heretic Christian sects such as the one called the Donatists. A terrorist wing of the Donatists, known as Circumcellions, was waging guerrilla war against the official Catholic church, seeing it as a tool of the hated Roman empire. The Circumcellions' creed called them to actively seek death through suicide or martyrdom. The line between these two was ill-defined, and Circumcellions were reported to regularly stop travellers on the highway, hand them a knife and say, "Kill me or I will kill you." Gibbon in *The Decline and Fall of the Roman Empire* says, apropos Augustine's area: "the distracted country was filled

with tumult and bloodshed; the armed troops of Circumcellions alternately pointed their rage against themselves or against their adversaries; and the calendar of martyrs received on both sides a considerable augmentation". Gibbon adds in a footnote: "The Donatists boasted of *thousands* of these voluntary martyrs" (Gibbon 1969 Vol. 3 p.332).

The *Encyclopaedia Britannica* describes the situation in political terms, saying that imperial Rome's attempts at repression "gained Donatism the support of strong elements in the native population whose grievances were social and economic rather than ecclesiastical." ⁷

It was in this context that Augustine of Hippo brought forth his explicit statement that suicide was a mortal sin. Glanville Williams says, "There seems to be little need to doubt that it was by way of reaction from these religious excesses that Augustine was led to condemn suicide in forthright terms and so to become the chief architect of the later Christian view" (Williams 1958:229). Augustine developed the concept of suicide as a crime in many of his influential letters as well as in his major work *De Civitate Dei*, (*The City of God*, 1984:26-39). In doing this he relied upon the 6th Commandment - "Thou shalt not kill" - and argued that this applied to oneself as well as others, and therefore the suicide was a murderer. This is the *biblical* authority on which the ecclesiastical canon law of the Church has rested ever since, but the application of it to suicide was a wholly Augustinian creation. Battin in *Ethical Issues in Suicide* says, "Although there is little reason to think that Augustine's position is authentically Christian, and although it clearly was a response to pressing practical circumstances, it nevertheless rapidly took hold and within an extremely short time had become universally accepted as fundamental Christian law" (Battin 1995:64).

It is almost impossible to overstate Augustine's influence on the theology of Western Christianity. Unlike the Eastern Church, where numerous different intellectual strands

were woven into doctrine, in the West Augustine's ideas totally dominated the early years of doctrinal development. His pronouncements became central tenets of the faith: original sin, salvation by God's grace alone, the delineation of the trinity - all were Augustinian concepts. It is not surprising, therefore, that his damnation of suicide carried such weight and was absorbed into the standard orthodoxy of the Church.

Shortly after Augustine's death, the Council of Arles in 452, using Augustine's words and ideas, condemned suicide as an act "inspired by diabolical possession", and in 563 the Council of Braga decreed that suicides had died in mortal sin and were thus denied religious burial rites. This was incorporated into English canon law at the Council of Hereford in 673 (St. John Stevas 1961). In line with Augustine's edict, suicides were officially damned and therefore would go straight to hell.

It was fear of this - the terrifying hell Christianity portrayed - which, according to some sources, inspired the intense horror with which suicide was viewed throughout Europe during the middle ages. In Dante's *Inferno* suicides were condemned to a lower circle of hell than murderers and rapists, their souls turned to poisonous thorns picked at through eternity by hideous harpies (Dante 1945 Canto XIII & XIV:53-62). Romilly Fedden (1938), one of the most quoted writers on the history of suicide, says that the Christian damnation of self-murder re-awakened primitive fears about 'sleepless souls' and vengeful ghosts, so that superstitious terror fuelled the savage response to suicide corpses. For centuries the bodies of people who had killed themselves were subjected to macabre rituals of mutilation and degradation, then buried profanely, usually at a cross roads in the dead of night with a stake through the heart to pin the evil spirit down.⁸

Imposition of forfeiture and its effect

Suicide law in England entered a new stage in the early middle ages, when the civil sanction of forfeiture was added to the ecclesiastical sanction of denial of religious rites. The precise starting date for this practice is unknown, but a canon under King Edgar in 967 is recorded as ordering:

"Let him who hath murdered himself, be fined in all his goods to his lord: let him find a place of burial neither in the church nor church yard; unless ill health and madness drove him to the perpetration" (O'Dea, quoted in Dublin & Bunzel 1938:245).

Henry de Bracton in his famous 13th century work on English law set out "the ancient judgements of the just because his ignorant and uneducated contemporaries were misrepresenting the law" (Pollock & Maitland 1898 Vol 1:183). This work - *De Legibus et Consuetudinibus Angliae* (126?) - confirmed that suicide was a crime at common law - a *felo de se*, so forfeiture rules applied:

"Just as a man may commit felony by slaying another so may he do so by slaying himself, the felony is said to be done to himself, as where one has been accused of some crime and been arrested [or outlawed] [as] for homicide or with the proceeds of theft, or apprehended in the course of some evil deed and crime, and kills himself in fear of the crime that hangs over him; he will have no heir, because the felony previously committed, the theft or homicide or the like, is thus convicted. But the goods of those who destroy themselves when they are not accused of a crime or taken in the course of a criminal act are not appropriated by the fisc, ...But if a man slays himself in weariness of life or because he is unwilling to endure further bodily pain [as when he drowns himself or throws himself from a height, or kills himself in some other way] he may have a successor, but his moveable goods are confiscated...if one lays

violent hands upon himself without justification, through anger and ill-will, as where wishing to injure another but unable to accomplish his intention he kills himself, he is to be punished and shall have no successor, because the felony he intended to commit against the other is proved and punished, for one who does not spare himself would hardly have spared others, had he the power" (Bracton 1968 Vol. 2:423).

Since forfeiture was traditionally a sanction used to punish felons, it has been suggested that the imposition of forfeiture led to suicide being considered a felony rather than the other way around. "The point, as it were, was argued backwards," according to St. John Stevas (1961:234). It is interesting to note in regard to this, that if forfeiture was important to the criminalisation of suicide, it was also important, in the very long term to its *decriminalisation*. This is because attempts to avoid forfeiture led to suicides being regularly declared insane (see below).

At about the same time suicide was being confirmed as a felony at common law, the religious prohibition against it was being given a powerful new impetus by Thomas Aquinas (1225-74) in *Summa Theologica*, his great (unfinished) attempt to reconcile Augustinian-inspired Christian doctrine with Aristotelian philosophy. On suicide, Aquinas endorsed Augustine's interpretation of the sixth commandment, and expanded the flat divine fiat by reasoning that "natural law" demands self-preservation and therefore forbids self-killing. He also repeated Aristotle's view that suicides breached their obligation to the community, and the neo-Platonist argument that life is a gift from God that men have no right to destroy.⁹ Aquinas' pronouncements - the 'Thomist' arguments - re-interpreted the religious prohibition in a way that still stands as the orthodox Christian position on suicide. These arguments were actually cited in the Parliamentary debate on the Suicide Bill (see chapter 7). Certainly at the time they were propounded and until at least the 16th century it was universally believed that divine law prohibited self-killing (MacDonald 1992:88). It was this clear theological

foundation on which the posthumous prosecutions against suicides were based; prosecutions which actually increased in number after the Reformation. "The absolute unlawfulness of suicide was stressed in sermons, devotional works, treatises and didactic literature by writers of every hue in the Protestant theological spectrum." (MacDonald and Murphy 1990:43). Martin Luther (1483-1546) considered suicide to be the "work of the devil".¹⁰ Thomas Cranmer (1489-1556), in his *Catechismus*, which were required to be read in all Anglican churches, firmly decreed that the self-murderer was cursed of God and damned for ever.¹¹ The popular *Mirror for Magistrates*, first published in 1559 and reprinted in 1574, '75, '78, '87 and 1609, condemned suicide as the unforgivable sin (Sprott 1961:14). When the famous Judge, Sir James Hales, drowned himself in 1554, the suggestion it was suicide caused a major scandal. At the subsequent enquiry as to whether his goods were forfeit, Judge Brown reiterated the Thomist arguments as to why suicide was a mortal sin and earthly crime (St. John Stevas 1961:235).

MacDonald and Murphy (1990), researching suicides in early modern England, found that prosecutions for *felo de se* soared in the 16th century. They link this to the Tudor policy of giving coroners who brought in verdicts of *felo de se* a share of the forfeited goods. MacDonald and Murphy also note the obvious incentive the system offered, especially to the families of prosperous suicides, to have the deceased declared not sane, as such a verdict nullified the forfeiture provisions. They speculate, admittedly on limited evidence, on the possibility that such families offered coroners a share of the *unforfeited* goods if they brought in a verdict of *non compos mentis*. Certainly coroners' juries after 1660 began to bring in more and more lunacy verdicts. Before this date barely 2% of inquests on suicides had this result, but in the 1660s the figure was 8.4%, in the early 1700s it was 42.5%; by the 1750s it was almost 80%, and by 1800 over 97% (MacDonald 1992:90). It is not unreasonable to suppose that resistance to forfeiture played a part in this change. The practical legal question of whether the insane verdicts were justified cannot be resolved, as the mental state of

the deceased was seldom investigated at the inquest. If medical evidence was called it was primarily to establish the actual cause of death (drowning, poison, etc.). (ibid.:95-96) What does emerge clearly from these statistics however, is that the pattern of officially deeming people who killed themselves to be insane became very well established over a very long time.

Suicide begins to be debated

The next important phase in the history of the suicide law was the intense debate about self killing which took place in the 17th and 18th centuries.¹² The intellectual ferment of these years left few received ideas unscathed, and it had a profound effect on attitudes toward suicide. Before the 17th century the orthodox religious view, as articulated by Aquinas, dominated all thinking about self-murder. By the beginning of the 19th century this religious view was still extant, but its total dominance was over and it was competing with a multiplicity of new views about the status - moral, legal and/or medical - about self-killing.

The verdicts from the coroners' courts cited above offer some empirical evidence of this change, since in the mid-1600s over 90% brought in the criminal verdict of *felo de se* on suicides, but by 1800 it was less than 3%. Another indication of the change was the steadily decreasing number of times suicide corpses were subjected to superstitious savagery. The last to be so treated was a man called Griffiths in 1823 whose body was dumped naked into a pit at the intersection of Grosvenor Place and the Kings Road in Chelsea.¹³ Immediately after this incident Parliament passed a statute forbidding the practice.¹⁴

The most persuasive evidence of the widespread and wide ranging nature of the debate, however, is the popularity of material - written, dramatised, sermonised - relating to it. In the 17th and 18th centuries three themes were of major intellectual significance, and all three had important effects on attitudes to suicide. The first was

the enthusiastic re-discovery of classical thinking, in particular Stoicism. Second was Enlightenment rationalism which claimed human reason to be a better guide to action than religious authoritarianism. Third was the Romantic wave that swept across Europe from the mid-1700s, and which made "sentimental suicides" (such as Goethe's *Young Werther* and Thomas Chatterton) objects of fashionable admiration.

The revival of interest in Stoicism became apparent as early as the 14th century when Chaucer, in the *Parson's Tale* ranked Seneca with St. Paul, Solomon and St. Augustine (Campbell 1969:236). The great Dutch humanist Erasmus (who lectured at Cambridge from 1511 to 1514) featured many of Seneca's proverbs and sayings in *Adagia* (1500) (ibid.:236). The French essayist Montaigne, extensively translated into English from 1603, wrote admiringly about classical suicides, notably in his essay *A custom of the Isle of Cea*, in which he claimed that "In our own city of Marseilles in former times" would-be suicides could argue their case before the Senate, and if successful would be granted hemlock from the civic stores (Montaigne 1991:392-407). One of Montaigne's most famous epigrams remains, "Life is slavery if freedom to die is wanting" (ibid.:393).

T.S. Eliott described the increasing popularity of Stoic ideas at this time in his two famous essays on the subject: "Seneca in Elizabethan Translation" and "Shakespeare and the Stoicism of Seneca" (both 1927). It is noteworthy that despite the then reigning religious condemnation of self murder, the suicides in Shakespeare's plays - Romeo, Juliet, Othello, Anthony, Cleopatra, Cassius, Brutus, Goneril - are none of them presented as iniquitous in themselves, but as plausible responses to circumstance. Only in Ophelia's suicide does madness play a part. Hamlet's lengthy disquisition on self murder (written sometime around 1600) is a reasoned balancing of pros and cons, and is a remarkable pre-figuring of the debates throughout the next 200 years.

The first straightforward challenge to the orthodox view of suicide as a mortal sin was written by John Donne in 1608, long before he became the celebrated Dean of St. Paul's. While still languishing in what he called the "swamps of south London" (Mitcham), Donne wrote *Bianthanatos*, recorded in texts as the first formal defence of suicide in English. In it Donne posed the then-shocking question of whether "self-homicide is not so naturally sin that it may never be otherwise."¹⁵

In a passage of what was tremendous daring for the time Donne echoed Socrates and Seneca, saying: "whensoever any affliction assails me, mee thinks I have the keyes of my prison in mine owne hand, and no remedy presents it selfe so soon to my heart, as mine own sword" (quoted in Sprott 1961:25). The voicing of such thoughts in the early 1600s could have fearful consequences, and Donne (whose brother had died in prison for a religious crime) suppressed the essay, requesting a friend to whom he sent it to "publish it not, but yet burn it not" (quoted in Alvarez 1990:177). His son finally published it in 1646, fifteen years after Donne's death.

Despite the suppression of *Biathanatos*, threats to the orthodoxy of suicide as mortal sin were palpable enough in the early 17th century to prompt the first explicit rebuttals to such heresy: *Life's Preservatives Against Self-Killing* was published in 1637 by the Anglican clergyman John Sym,¹⁶ and in 1653 Sir William Denny published a 12 canto poem giving "Christian advice against self-murder" (Sprott 1961:41-44). In 1700 John Adams, Provost of Kings College Cambridge, published an essay specifically to refute *Biathanatos* and added a political twist to the religious arguments:

"to allow self-murder would utterly destroy the force of human laws, because the greatest punishment that human laws can threaten is death. If men are taught to despise death they will not be obliged to do any Duty by the fear of this, much less by the fear of anything else, but would Rob, Ravish and Murder...

Moreover, giving people the right to commit suicide would subvert all civil authority... the private judgement of the individual would therefore take precedence over the interests of the State..." (Adams 1700:26)

Nevertheless, despite tirades against it, interest in Stoic thought on suicide continued to grow in the 18th century. A second edition of *Biathanatos* came out in 1700. L'Estrange's digest of Seneca's letters, published in 1678, went to 10 editions by 1711 (Drabble 1985:885). Jeremy Collier's translation of Marcus Aurelius' *Meditations*, published in 1701, was re-printed 58 times before 1800 (ibid.:618). Joseph Addison's celebrated play *Cato*, produced in 1713, portrayed the Roman republican as a political hero, and his suicide as a courageous blow struck for freedom against tyranny. From that point the debate on suicide escalated, to become, in S.E. Sprott's words "one of the storm centres of the intellectual climate" in the 18th century (Sprott 1961:94).

Certainly a remarkable number of famous Enlightenment names contributed to the attack on the orthodox view. Many echoed Stoic philosophies, others added the distinctive rationalist arguments of the time. Montesquieu, in *Persian Letters* (1721) renewed Seneca's defence of suicide: "Society is based on mutual advantage, but when I find it onerous what is to prevent me renouncing it? Life was given to me as a favour, so I may abandon it when it is one no longer; when the cause disappears, the effect should disappear also" (Montesquieu 1993:153). The *Persian Letters* ran to ten editions within a year of publication (Betts 1993:19).

In their 1976 introduction to Adam Smith's *The Theory of Moral Sentiments* (first published in 1759), Raphael and Macfie say, "Stoic philosophy is the primary influence on Smith's ethical thought... In his survey of the history of moral philosophy Stoicism is given far more space than any other 'system', ancient or modern" (Raphael and Macfie 1976:5). Smith's book has a lengthy discussion of suicide, in which he describes the Stoic view with certainly the appearance of approval:

"If your situation is upon the whole disagreeable...walk forth by all means. But walk forth without repining; without murmuring or complaining. Walk forth calm, contented, rejoicing, returning thanks to the Gods, who from their infinite bounty, have opened the safe and quiet harbour of death, at all times ready to receive us from the stormy ocean of human life; who have prepared this sacred, this inviolable, this great asylum, always open, always accessible; altogether beyond the reach of human rage and injustice; and large enough to contain both all who wish, and all those who do not wish to retire to it: an asylum which takes away from every man every pretence of complaining, or even of fancying that there can be any evil in human life, except such as he may suffer from his own folly and weakness" (Smith 1976:280).

Later Smith comments: "The propriety, upon some occasions, of voluntary death, though it was, perhaps, more insisted upon by the Stoics, than by any other sect of ancient philosophies, was, however, a doctrine common to them all, even to the peaceable and indolent Epicureans" (ibid.:281).

Probably the most famous 18th century revival of Stoic views on suicide is David Hume's essay *On Suicide*, which is grounded in the Enlightenment argument that individuals should be guided by their own reason, not by religious dictates:

"Suppose," Hume says, "that it is no longer in my power to promote the interests of society; suppose that I am a burthen to it; suppose that my life hinders some person from being much more useful to society. In such cases my resignation of life must not only be innocent but laudable... If it be no crime, both prudence and courage should engage us to rid ourselves at once of existence when it becomes a burden. Tis the only way that we can then be useful to society, by setting an example, which, if imitated would preserve to

everyone his chance for happiness in life and would effectually free him from all danger or misery" (Hume 1998:323).

Hume wrote *On Suicide* in the mid-1750s, and despite major shifts in public opinion in the years since John Donne, such thoughts were still dangerous, and initial public outrage caused either Hume or his publisher to take fright and withdraw the essay. It was not formally published until 1776, the year of Hume's death, and even then was brought out anonymously (Popkin 1980).

Other significant Enlightenment figures also began to focus attention on secular aspects of the suicide issue. Cesare Beccaria, in *Essay on Crimes and Punishments* (1764) said: "He who kills himself does a less injury to society, than he who quits his country for ever; for the other leaves his property behind him, but this carries with him at least a part of his substance" (Beccaria 1992:78). Beccaria also pointed out that punishing a suicide corpse was about as much use as "flogging a statue" (ibid.:77). Jeremy Bentham criticised the seizing of a suicide's goods,¹⁷ and Voltaire campaigned for an end to the brutal treatment of suicide corpses.¹⁸ However, at the same time protagonists on the other side of the debate were fiercely defending the orthodox view that suicide was a sin and a crime. John Locke (1632-1704), despite being a celebrated champion of human rights, nevertheless said, "man...has not the liberty to destroy himself... for men being all the workmanship of one omnipotent and infinitely wise Maker, they are His property [and] are made to last during His, not one another's pleasure" (Locke 1936: 119-20). Sir William Blackstone, Professor of Common Law at Oxford set out the formal 18th century legal position in his celebrated *Commentaries on the Laws of England* (1765-69):

"..the suicide is guilty of a double offence, one spiritual, in invading the prerogative of the Almighty and rushing into his immediate presence uncalled for; the other temporal, gainst the King, who hath an interest in the

preservation of all his subjects; the law has therefore ranked his among the highest crimes, making it a peculiar species of felony committed on one's self." (Blackstone Vol. 4:289)

The idea that there might be damaging temporal consequences of suicide which justified its secular criminalisation had been lent support by an incident in London that became a *cause célèbre* all over Europe. In 1732 a young married couple named Smith shot their toddler and hung themselves, leaving a philosophically argued note explaining that as they could not pay their debts and could see nothing ahead but misery for themselves and their child, their actions were entirely rational (Radzinowicz 1948). In tone it echoed a controversial pamphlet published shortly before in London by the Italian Count Alberto Radicati in which he argued that suicide is "at all Times a laudable Action, and at no Time blameable; natural and not contrary to *Nature*" (Quoted in Sprott 1961:106). Taken together with the "*Cato* cult" inspired by Addison's play, the effect of the Smiths' deaths "was to create an almost hysterical fear among conservatives that Radicati's ideas were infecting the lower orders of society, with murderous effects. As long as philosophical suicide was confined to the free thinking club (Alexander Pope implied) it was a matter for sarcasm; when it spread to artisans, it was a social emergency" (MacDonald and Murphy 1990:158).

Another incident, in 1755, illustrated the passion the subject aroused: a man called Barlow killed himself in prison after murdering his child. The prison authorities buried him quietly, but a mob dug up the body and reburied it at a crossroad, impaled with the superstitious stake. (Radzinowicz 1948:196)

Throughout the whole of the 18th century defenders of the orthodox view of suicide presented the arguments, theological and secular, why it was rightly deemed a mortal sin and legal crime. Among the churchmen who, in Sprott's words, "fired fusillades of sermons", was John Wesley, who wrote to the Prime Minister William Pitt in 1784 to

urge him to hang suicide corpses publicly in chains as a deterrent (Radzinowicz 1948:196). At the end of the century, in 1790, The Rev. Charles Moore published *A Full Enquiry into the Subject of Suicide* - 600 pages of rebuttal to the idea that suicide should not be a crime. "The conclusions were like a grand barrage of the artillery that had been fired against the rationalists for seventy years past" (Sprott 1961:152). Moore did believe that forfeiture should end, but was unequivocal about the utter wrongfulness of suicide itself, which, he said, offended both divine law and natural law.

Moore's treatise was influential at the time and for some decades into the 19th century, but far more important in the long term was the contribution made by Immanuel Kant to the question of suicide as sin and crime. According to his modern editor (1996), "Even today [Kant's] remains the premier moral theory" (Sullivan 1996:vii). Kant discussed the issue of self-killing both in the *Groundwork of the Metaphysics of Morals* (1785) and in the more complex *The Metaphysics of Morals* published in 1797. The First Article of the First Chapter in "The Doctrine of Virtue" is "On Killing Oneself", and Kant concludes,

"Killing oneself is a crime (murder). It can also be regarded as a violation of one's duty to other people (the duty of spouses to each other, of parents to their children, of a subject to his superior or to his fellow citizens, and finally even as a violation of duty to God, as one's abandoning the post assigned him in the world without having been called away from it)" (Kant 1996:176).

In other works Kant uses suicide to exemplify his principle of categorical moral imperatives; to illustrate the need to always treat human beings as ends, not means, and at one point adds a political dimension, saying: "Nothing more terrible [than suicide] can be imagined... For he who does not respect his life even in principle cannot be restrained from the most dreadful vices; he reck neither king nor torments" (Kant

Lectures on Ethics, quoted in Battin 1995:90). Kant's huge influence over all subsequent thought on ethics and morality is not disputed, and his densely phrased arguments, which link Enlightenment reason to both classical philosophy and theology, continued to play an important part in debates on suicide at the end of the 20th century.¹⁹

The third major theme of this period which significantly affected attitudes to suicide was the Romantic Movement which some historians (see Isaiah Berlin 1999) characterise as a violent reaction to the Enlightenment, as it gave priority to feeling over reason, spirituality over rationality, and mystery over scientific explanation. Romanticism added a new dimension to the suicide debate with its fashionable admiration of a certain kind of sentimental self-killing. The prototype was in Goethe's novel *Young Werther* (1774), in which Werther is a sensitive artist who kills himself for love. The "scandalous suicide" was said to be an important reason for the book's huge popular success, which was so great that Werther merchandise - tea-sets, perfumes and yellow breeches - was profitably marketed throughout Europe.²⁰

In England the prime example of Romantic suicide was the real, not fictional, Thomas Chatterton (1752-1770), who poisoned himself with arsenic at the age of 17, in despair at the lack of recognition of his literary talent. Wordsworth wrote a poem about Chatterton ("the marvellous Boy,/ the sleepless Soul that perished in his pride"), and Keats dedicated *Endymion* to him. In 1856 Henry Wallis painted "The Death of Chatterton", which today hangs in the Tate Gallery.²¹

Changes in the law: Attempted suicide becomes a crime

By the beginning of the 19th century, these different strands had all contributed to a major change in society's view of self-killing. The religious approach remained important, defended by the church and nominally subscribed to by church members, but it was no longer the sole force shaping responses to suicide. By the early 1800s

responses were as likely to be informed by classical Stoicism, Enlightenment rationalism and Romanticism as by theological doctrine.

The legal position, however, remained formally as it had been for centuries, and as Blackstone had set it out in the 1760s. The first change in the actual law concerning suicide came in 1823 when Parliament formally ended the practice of superstitious burial for the bodies of suicides. (see above) From this point coroners were forbidden by law to issue warrants for burial in the public highway; the bodies of suicides were to be interred in private ground or a church yard, but it had to be at night between 9 p.m. and midnight, with no Christian rites. In 1880 the Burial Law Amendment Act eased the restrictions on religious rites at burial services, and the night requirement was removed by the Interments (Felo de Se) Act 1882.

It was not these Acts, however, that constituted the next significant development of suicide law. This arrived with a change in the way the law was *applied*, rather than changes to the law itself. What happened was the law began to be used to arrest and prosecute *attempted* suicides. The long term relevance of this change to the decriminalisation lies in the fact that it had tangible, visible effects in the real world. With the abolition of ritual degradation of the body, and the formal ending of the forfeiture provisions for all crimes in 1870 (actual forfeiture for suicide had virtually ceased some time before),²² the common law against suicide itself had no practical effects. In these circumstances the law might have remained in existence, but with no subject against which to bring a prosecution it is reasonable to suppose it would have sunk into disuse, remaining only in the legal limbo where other relics of ancient common law linger. The reason this did not happen - and the reason why decriminalisation became a matter of practical importance - was because of the change whereby attempted suicides began to be arrested, prosecuted and punished under the common law of *felo de se*. [Assisting someone else's suicide under Victorian law was charged as abetting murder.²³]

Most histories that mention suicide law ascribe the criminalisation of attempted suicide to the case of *Regina v. Doody* in 1854 (Coxs Criminal Law Cases Vol. VI 1852-55 p.463). But this case, involving a man who tried to hang himself in the water closet of the George Inn in Wolverhampton, simply confirmed existing practice. Judicial statistics show that arrests for the offence of "attempted suicide" in the metropolitan police district began well before that date. In the 1840s a Middlesex Magistrate, Sir Peter Laurie, gained notoriety by waging a determined and punitive campaign against them.²⁴ The TIMES of 23 October 1841 reported him as saying, when passing sentence on an attempted suicide: "Suicide and attempts, or apparent attempts, to commit suicide very much increase, I regret to say. I know that a morbid humanity exists, and does much mischief, as regards the practice. I shall not encourage attempts of the kind, but shall punish them; and I sentence you to the treadmill for a month, as a rogue and vagabond. I shall look very narrowly at the cases of persons brought before me on such charges" (Quoted in Gates 1988:51).

The institution of prosecutions against attempted suicides is probably best understood in the context of the general project of maintaining social order in the rapidly changing circumstances of 19th century England. The creation of the modern police themselves is considered a part of this project (Radzinowicz 1956 and 1968, Reiner 1992). Olive Anderson contends that it was "the advent of the new police" in 1829 that "made it practicable routinely to treat suicide as an offence" (Anderson 1987:282) and goes on to suggest that the police did this simply as part of their remit to maintain public order: "the new severity towards suicidal behaviour was part of the effort to enforce seemliness, law and order in a teeming city" (ibid.:285). Revisionist historians would place it in the theoretical context of the "master patterns" of 19th century social control - surveillance, categorisation, regulation, discipline (Cohen and Scull 1983).

In the 1830s the metropolitan police arrested on average about 50 people a year for attempted suicide. As the model of the metropolitan police spread to the provinces so the numbers charged with this offence rose there as well, and by the 1870s an average of over 800 people a year in England and Wales were being arrested for attempted suicide. In the 1890s it was well over a thousand a year and by 1910-1913 over 2000.²⁵

The offence was initially triable on indictment only. Children who attempted suicide became triable summarily in 1879 and juveniles in 1899, but this change was not implemented for adults until 1925.²⁶ However, the judicial statistics indicate magistrates were reluctant to send people up to Quarter Sessions and Assizes on this charge. Although 587 men and women were arrested by the Metropolitan Police for attempted suicide in the 1830s, none of them was committed to the higher court for that offence (Anderson 1987:291). The magistrates usually dealt with them under other, summary-only charges, such as drunk and disorderly or the vagrancy laws, or they discharged them for want of evidence.²⁷ This continued to be the case throughout the 19th century, during which only a small percentage of the thousands arrested for attempted suicide were actually committed for trial. However, what was important about these arrests, in terms of the ultimate decriminalisation of suicide, was the practice begun in these years of magistrates remanding in custody anyone charged with attempted suicide for at least a week and sometimes two, usually with a request for a report by the prison chaplain and sometimes by the prison surgeon.²⁸ The debates which immediately preceded the decriminalisation of suicide a century later clearly suggest that it was the custody on remand, as so many more were affected by this than by imprisonment on conviction, that evoked compassionate concern and provided an incentive to change the law.

However, not all attempted suicides received lenient treatment.. E.H. Carr in *The Romantic Exiles* quotes a Russian exile on a news item from the TIMES of 1860:

"A man was hanged who had cut his throat, but who had been brought back to life. They hanged him for suicide. The doctor had warned them that it was impossible to hang him as the throat would burst open and he would breathe through the aperture. They did not listen to his advice and hanged their man. The wound in the neck immediately opened and the man came back to life again although he was hanged. It took time to convoke the aldermen to decide the question of what was to be done. At length aldermen assembled and bound up the neck below the wound *until he died*" (Carr, 1998:296).

Although capital punishment was extremely rare for attempted suicides, imprisonment on conviction was not. The small but judicially distinguished Royal Commission of 1878, charged with drafting a Criminal Code, proposed that the crime of attempted suicide should be made punishable by two years imprisonment with hard labour (Radzinowicz and Hood 1990:738). This Code was never enacted, but the recommendation gives an indication of the views of established authority at the time.

One of the four members of the Royal Commission was Sir James Fitzjames Stephen, who Radzinowicz credits with the actual drafting of the Codification Bill. In his later, massive *History of the Criminal Law of England* (1883) Stephen set out his view of the law on suicide:

" It would, I think, be a pity if Parliament were to enact any measure tending to alter the feeling with which [suicide] is and ought to be regarded. As an instance of popular feeling on the subject, I may mention a case I once tried at Norwich, in which a man - I think drunk at the time - tried to poison himself in a public house. When called on for his defence, he burst out with all the appearance of indignant innocence: 'I try to kill myself! I cannot answer for what I might do when drunk, but I was all through Central India with Sir Hugh

Rose in 1857, I was in so many general actions, and so many times under fire, and can anyone believe that if I knew what I was about I could go and do a dirty, cowardly act like that?' he was acquitted" (Stephen 1996:107).

Through the operation of the law then, rather than by any formal change, the 19th century saw attempted suicide become firmly embedded in the criminal law. However during this period, another change was occurring, one which was ultimately to prove to be the decisive factor in removing both suicide and attempted suicide from the criminal law.

The positivist/determinist paradigm

Nineteenth century positivism impacted on the suicide law in both its sociological and medical forms. Each school of thought saw self killing not as a voluntary act of will to be admired, pitied or condemned, but as something *caused*. To the sociologists, or "moral statisticians" as they were then called, the cause lay outside the individual, in society at large. To the medical men it lay in a malfunction or disease of the body. In either case, the person could not be held responsible. This meant that the morality - or not - of the act, which had been the central issue in regard to suicide for over two thousand years, was by-passed and held to be no longer relevant.

To come upon this 19th century interpretation after reading the 18th century debate, filled as it was with the passionate rhetoric of free will, human dignity and the rights of man, is to be vividly reminded of the enormity of the change in attitude. It is not surprising that such a seismic shift took a very long time to reach a point where it was sufficiently powerful to influence a change in the law. It is the contention of this thesis that it had reached such a point by the mid-20th century, and that this provides the structural explanation of why the law changed then. It is not suggested that the positivist/determinist paradigm had come to enjoy total hegemony; on the contrary, the existence of opposition to it was probably what motivated Butler to maintain such

a low profile for the Suicide Bill (see chapter 7). However, the paradigm was extremely influential, and was decisively so in regard to the decriminalisation of suicide. Interestingly, many of the 19th century roots of the positivist paradigm itself lay in studies of self-killing.

It was the remarkable regularity of the numbers and kinds of suicides, year on year, that supplied the early "moral statisticians" with the empirical evidence they wanted to demonstrate their contention that human behaviour was determined by external laws in the same way as was the physical world. The Belgian mathematician and social statistician Adolphe Quetelet is usually credited as the first person to draw these conclusions from statistical data. His *Sur l'Homme* (1835) was published in English in 1842 as *A Treatise on Man and the Development of His Faculties*. It put forward the radical proposal that human acts such as crime (and suicide), long presumed voluntary, were in fact determined (Hacking 1998:105-114). According to Giddens, Quetelet believed that "Suicide, in common with other moral phenomena, which would at first sight appear to be purely 'individual', is in fact governed by the laws of the social system" (Giddens 1970:xxxii).

This proposal gained some enthusiastic adherents in England. In 1857 Henry Buckle put it forward in the first volume of his *History of Civilisation in England*, a book which made him, according to Ian Hacking, "the lion of the London season" (Hacking 1998:123). In the introduction Buckle said,

"...in the ordinary march of society, an increasing perception of the regularity of nature destroys the doctrine of Chance and replaces it by that of Necessary Connection ... all the evidence we possess respecting it points to one great conclusion, and can leave no doubt on our minds that suicide is merely the product of the general condition of society, and that the individual felon only carries into effect what is a necessary consequence of preceding circumstances.

In a given state of society, a certain number of persons must put an end to their own life" (Buckle 1857 Vol. I: 9 & 26).

Enrico Morselli, an Italian working with English suicide statistics in the 1870s, came to the same conclusion: "By the statistical returns of suicide is disclosed then,...such a regularity as to surpass... the statistical laws of births, deaths, and marriages. This fact has helped to change radically the metaphysical idea of the human will, and in the hands of Quetelet, Wagner and Drobisch, has served as a formidable weapon to deny the reality of independent human actions, and to declare that the same laws exist in the moral as in the physical world" (Morselli 1882, quoted in Paperno 1997:23).

So by the time Durkheim wrote his famous *Suicide* in 1897, it was not the beginning, but in fact the culmination of nearly a century of European work with the official statistics on suicide. It was with this background that Durkheim "sought to explain differential suicide rates in terms of 'social causes', 'real, living, active forces', 'suicidogenic currents'" (Lukes 1973:190-191). For Durkheim, as for other late 19th century writers, an increase in suicide was symptom of sickness in the social body, considered to be "a reflection of the pathological state of societies which had lost their grounding in a firm moral order" (Giddens 1971 p.xxxi). Jack Douglas said, "There was general agreement among the moral statisticians that the moral state of society (or the moral organisation of society) was the primary cause of suicide rates" (Douglas 1967:16).

These were not ideas that remained quarantined in academic ivory towers. Morselli had contended that the morals of a society were the most important cause of suicide rates. This assertion, together with what was viewed as an alarming rise in numbers of self killings in the last quarter of the 19th century, fuelled a heated controversy which was reflected in the pages of popular periodicals: "Suicide" in *Blackwood's* June 1880; "Suicidal Mania" in *Contemporary Review* 1881; "Is Life Worth Living?" *Nineteenth*

Century September 1877, all drew attention to the phenomenon. In 1900 the Reverend Gurnhill wrote a book, *The Morals of Suicide* in which he echoed the Durkheimian view that the suicide rate was a pathological symptom of serious social ills. Gurnhill said, "[T]he causes which lead to suicide are many of them of a social character, that is, they take their rise in the unsatisfactory condition of those social problems, whether industrial, civil, or domestic, on the well-ordering of which the contentment, welfare, and happiness of the people so greatly depend" (Gurnhill 1900 quoted in Gates 1988:155).

Moral statisticians and early sociologists considered suicide a symptom of pathology in the body of society as a whole. A number of medical people believed it was a symptom of pathology or disease in the body of the individual suicide. In terms of the positivist/determinist paradigm itself this difference did not matter; both believed suicide was caused by factors outside the individual's control so issues of personal responsibility and morality were irrelevant. But if there are any "moral entrepreneurs" in the story of the *change* in the law on suicide, the title belongs not to sociologists, but to doctors, who first staked a claim to madness itself and then campaigned to have suicide defined as a symptom of it.

The association of self killing and insanity of course goes back a very long way. The 10th century canon under King Edgar, cited above, orders forfeiture of all a suicide's goods, "unless ill health and madness drove him to the perpetration."

Henry de Bracton's 13th century record of the law (see above), after confirming suicide as a felony goes on to say:

"But what shall we say of a madman bereft of reason? And of the deranged, the delirious and the mentally retarded? or if one labouring under a high fever drowns himself or kills himself? Quaere whether such a one commit felony *de*

se. It is submitted that he does not... since they are without sense and reason and can no more commit an *injuria* for a felony than a brute animal..." (Bracton 1968 Vol 2:423)

Coroners' juries had been making the connection between madness and suicide for centuries when they brought in verdicts of *non compos mentis*. Indeed, so common was this verdict that it moved Blackstone to complain that jurors behaved as if 'the very act of suicide is an evidence of insanity; as if every man who acts contrary to reason, had no reason at all.' (Blackstone Vol 4:189) Often, as MacDonald and Murphy contend, the finding was for the purpose of forfeiture-evasion, but there were bound to be some suicides for whom it was a matter of simple fact. Robert Burton in *The Anatomy of Melancholy* (1661), at a time when hostility to suicide was still very marked, said "In some cases those hard censures of such as offer violence to their own persons...are to be mitigated, as in such as are mad, beside themselves for the time, or found to have been long melancholy, and that in extremity" (Burton, 1927 Vol. 3:439).

In 1788 the English doctor William Rowley in *A Treatise on...Diseases...with Thoughts on Madness, Suicide etc.* said flatly, "Everyone who commits suicide is indubitably *non compos mentis* and therefore suicide should ever be considered an act of insanity."²⁹

But it was in the 19th century that a truly determined move was made by medical men to bring suicide and attempted suicide within their jurisdiction. The beginning can be located in the French campaign to "medicalise madness" dramatically described by Michael Foucault in *Madness and Civilisation: Birth of the Asylum*. One of the leading figures in the movement was Jean Esquirol, a pupil of Phillip Pinel. Ian Hacking says Esquirol had "lived during one of the great periods of imperial expansion of his profession. He was implying that doctors have the right to guard, treat, control and judge suicides. They are no longer in the domain of moralists and priests, of

Augustine and Aquinas. Self-murder has become, [Esquirol] writes, 'one of the most important subjects of clinical medicine'." (Hacking 1998:65) Esquirol's major work, *Des maladies mentales* advocating this view, was published in Paris in 1838.

Shortly afterward in London in 1840, Forbes Winslow, a fellow of the Royal College of Surgeons, published *The Anatomy of Suicide*, which served as a major text of the subject throughout the century.³⁰ Winslow also believed madness and suicide were medical matters and could be traced to physical causes. He pressed the point not only in his book, but in the *Journal of Psychological Medicine* which he edited from 1848 to 1863. Together with two well known coroners, Thomas Wakley and Edwin Lankester, Winslow advocated post mortems on the bodies of suicides in order to identify the organic cause that had made them kill themselves. Wakley announced in *The Lancet* in 1855 that he would "regularly publish tabulated information gleaned from his suicide inquests, so that the community could discover 'what are the physical conditions which lead to this catastrophe'" (quoted in Anderson 1987:121). Lankester, who wrote and lectured widely in addition to his duties as Westminster medical officer of health and coroner for Central Middlesex, promoted the idea that "suicidal tendencies were usually a manifestation of brain disease."³¹ Another coroner, William Wynn Westcott, wrote the second major 19th century English text on suicide in 1885, in which he called for an end to its criminalisation and emphasised the need for medical involvement in its prevention.³²

As the Victorian project of institutionalising deviants grew in the second half of the 19th century (Scull 1996), the concept of suicide as a manifestation of madness meant that attempted suicides were routinely certificated under the lunacy laws and placed in asylums. By the 1880s some 4000 people with suicidal propensities were being certified by doctors every year as in need of confinement. (Lunacy Commissioners' 44th Annual Report p.59, quoted in Anderson 1987:402) A General Practitioner named Adams, writing in the early part of the 20th century, said, "A recognised

suicidal tendency is often the principal reason, in the eyes of the public at least, for sending a patient to an asylum" (quoted in Anderson 1987:388).

A few voices were raised against the determinist tide: in 1885 T.O. Bonser published a pamphlet *The Right to Die* (London Free Thought) in which he argued for a legalisation of suicide in extreme cases (Gates 1988:132). The traditional religious arguments about suicide involving morality and choice were re-presented in 1907 in an influential book *The Theory of Good and Evil* edited by Hastings Rashdell. And in the legal world free will continued to be presumed as the necessary prerequisite for prosecution and punishment.

But determinist thinking was gaining ground, particularly in penal matters; David Garland has detailed its swelling influence at length (1985). In respect of suicide it was having an effect even on people with overtly religious motivations: the Salvation Army opened an Anti-Suicide Bureau in 1906 and reported that in a "typical case" the suicidal man "was first sent to a doctor" (Dublin and Bunzel 1933:323). Moreover, General Booth announced a plan to use the Bureau for sociological research: "Records will be kept of all cases that come to our notice", he wrote, "and they will be studied from a scientific point of view. We will try to find out to what this suicide mania is due, and we hope later to be able to deal with the cause in its incipient state. The sociology of the future will deal with causes, and not effects, and our study will help in this direction" (DAILY TELEGRAPH 5 January 1907).

Following Durkheim, there was a small but regularly appearing progression of sociological studies of suicide, which contributed to the growing consensus that it was "caused", not chosen. But it was the medical world that waged a steady campaign to re-define self killing as an exclusively medical matter. Evidence for this can be found in the number of articles in medical journals, growing as the century went on, which pressed the link between suicide and mental illness.³³

In addition, still within a medical context, the contribution of Freudian ideas to the determinist paradigm should not be ignored. His famous concept of a 'death wish' - a naturally occurring destructive instinct directed towards the self, first proposed in *Beyond the Pleasure Principle* (1922) - became absorbed into popular consciousness and inevitably affected ideas about self killing.³⁴ The importance of this and other aspects of Freudian determinism to mid-20th century thought was made visible in the huge, almost reverential celebration of his centenary in 1956 (see chapter 3).

So steady was the promotion of the idea that suicide was *caused*, and so unwavering its advocates, that by the 1950s, the conception of self killing as a symptom of a pathology - either of the individual or society - had assumed virtually the status of a cliché, and the scene was set for it to be formally removed from criminal justice jurisdiction.

Conclusion

The variety of attitudes to suicide across cultures and over time demonstrates that its status as a *crime* has always been problematic. Its criminal status in Western culture was originally defined by an Augustinian edict which seems to have been inspired as much by public order as by moral considerations. Nevertheless, the religious prohibition, bolstered by superstitious fears and the needs of the Royal treasury, meant that suicide came to be viewed with intense horror and revulsion throughout Europe for many centuries. However, from a vantage point beyond the 1961 decriminalisation, hindsight can discern during these centuries elements at work that prepared the ground for it. Four were of special significance: (1) The rule allowing a suicide's property to escape forfeiture if the self-killer was deemed *non compos mentis*; (2) The resurgence of classical ideas in the 17th and 18th centuries, which joined with rationalist Enlightenment thinking to make possible divergent views on the moral status of suicide; (3) The 19th century initiation of prosecution and punishment of

attempted suicide; and (4) The growing influence of the positivist paradigm as an explanation of human behaviour, with its implicit programme of the medicalisation of deviance. As the 19th century ended, these elements had created a context in which the decriminalisation of suicide was potentially possible, though not inevitable. The next chapter looks at structural changes engendered by the upheavals of the 20th century which further enhanced the prospects for change in the law on suicide.

Notes to Chapter 2

¹Jack Douglas in *The Social Meanings of Suicide* (1967) criticises the idea that suicide is, or has ever been, a unidimensional and unvarying form of behaviour. He points out that the definitions and meanings of suicide vary within a single society as well as between different cultures.

²This phenomenon and other aspects of Japanese attitudes to suicide are covered in 'Suicide Attempts of Japanese Youth and Durkheim's concept of *Anomie*' in Giddens, A. (ed.) *Sociology of Suicide* 1971

³This quotation is from Steinmetz, S.R. "Suicide among Primitive Peoples" in *American Anthropologist* 7, 1894. It is quoted in several sources; this one was taken from Dublin & Bunzel t p.139. Westermarck in *The Origin and Development of the Moral Ideas* 1926 pp.229-237, lists dozens of contrasting attitudes to suicide in various cultures around the world.

⁴The absence of biblical prohibition of suicide is referred to continuously in the literature, beginning with John Donne's *Biathanatos* in 1608 (first published 1648). St. John Stevas in *Life, Death and the Law* (1961), says (p.248): "In all, eight cases of suicide are mentioned [in the bible]: Judges, ix, 54 (Abimelech): To save disgrace of being killed by woman at a siege. Judges, xvi 30 (Samson): Destroyed the Philistines with him. Double effect? 1 Sam, xxxi 4 (Saul): Fell on his sword. 2 Sam, xvii, 23 (Ahithophel): Hanged himself because his counsel was rejected. Kings, xvi, 18 (Zimri): Burnt himself in his house. 2 Mac., xiv, 41 (Razis): Chose suicide rather than fall into enemy hands. Matt, xxvii, 5 (Judas): Hanged himself with a halter from despair. Acts, xvi, 27: Jailer of Paul attempted suicide fearing prisoners had escaped."

⁵Attitudes of the early Christian church to suicide, particularly in relation to martyrdom are discussed in Davies, J.G. *The Early Christian Church* 1965 and Chadwick, H. *The Early Church* 1967.

⁶Information about Augustine's position and the context in which he damned suicide are taken from Chadwick, H. *Augustine*, 1986; Chadwick, H. *The Early Church*, 1967; West, R. *St. Augustine*, 1933; O'Meara, J., Introduction to *The City of God*, 1984, and Gibbon, E., *The Decline and Fall of the Roman Empire* Vol. 3 & 4, 1969

⁷This kind of reading of the situation would appear to offer support to the interpretation described by Steven Box in *Power, Crime and Mystification*, where he says that "Numerous researchers (Chambliss 1964; Duster 1970; Graham 1976; Gunningham 1974; Hall 1952; Haskins 1960; Hay 1975; Hopkins 1978; McCaghy and Denisoff 1973; Platt 1969; and Thompson 1975) have produced evidence consistent with the view that criminal law categories are ideological reflections of the interests of particular powerful groups. As such criminal law categories are resources, tools, instruments, designed and then used to criminalise, demoralise, incapacitate, fracture and sometimes eliminate those problem populations perceived by the powerful to be potentially or actually threatening the existing distribution of power, wealth, and privilege. They constitute one, and only one way by which social control over subordinate, but 'resisting' populations is exercised. For once behaviour more typically engaged in by subordinate populations has been incorporated into criminal law, then legally sanctioned punishments can be 'justifiably' imposed." p.7

⁸MacDonald, M. & Murphy, T., *Sleepless Souls: Suicide in Early Modern England*, 1990, describes these rituals in detail. Westermarck (op. cit. p.255) says the cross roads burial and stake through the

body were to prevent the suicide's spirit from causing mischief. Durkheim runs through the savage burial rituals of Europe in Chapter 2, "The Legal Prohibition of Suicide" in the famous *Suicide*⁹ St. Thomas Aquinas, *Treatise on Law*, Question 94: Of the Natural Law, Second Article; from *Summa Theologica* Vol. 2 tns. by Father Laurence Shapcote, 1955

¹⁰Quoted in Battin, M.P., *Ethical Issues in Suicide* 1995, p.74, sourced as Martin Luther, *The Table Talk or Familiar Discourse of Martin Luther*, trs. by William Hazlitt 1848, p.254: "The saying attributed to Luther is 'It is very certain that, as to all persons who have hanged themselves, or killed themselves in any other way, 'tis the devil who has put the cord round their necks, or the knife to their throats.'"

¹¹Clebsch, W.A. *England's Earliest Protestants* 1964 and MacCulloch, D. *Thomas Cranmer* 1996

¹²This debate is the entire subject of Sprott, 1961., and is also set out in Minois, G., tns. by Cochrane, L., *History of Suicide: Voluntary Death in Western Culture*, 1999, Part III; H.R. Fedden (1938) deals with it at length in chapters V-VII.

¹³Many texts refer to this incident; the earliest source given is Ashton, J., *The Dawn of the Nineteenth Century in England* 1866, Vol. II p.283

¹⁴Geo 4, 1823 made it illegal for coroners to issue a warrant for burial of a *felo de se* in a public highway

¹⁵This was the sub-title Donne gave to *Biathanatos*. A modern edition was published in 1981, edited by Rudick, M. & Battin, M.P.

¹⁶Sym's work is discussed at length in Sprott (1961); MacDonald edited a modern edition of Sym's *Life's Preservatives Against Self-Killing* for Routledge in 1988

¹⁷Bentham, J., *The Principles of Morals and Legislation* 1948 p.191. Bentham also commented on the "perjury" of coroners' juries in bringing in verdicts of insanity on suicides, saying it was "the penance which prevented an outrage on humanity": *Principle of Penal Law*, p.479

¹⁸George Minois in *History of Suicide: Voluntary Death in Western Culture* 1999, discusses Voltaire's contribution. Glanville Williams (1958) said "It was chiefly under the influence of Montesquieu, Diderot and Voltaire that France took the lead in legalising suicide by a statute of 1790." p.239

¹⁹See esp. Battin 1995; Ronald Dworkin, *Life's Dominion* 1995 and *Law's Empire* 1991; Feinberg, J., *Harm to Self*, 1986

²⁰The "Werther phenomenon" and its effects on suicide is discussed in Anderson., *Suicide in Victorian and Edwardian England*, 1987; Paperno, *Suicide as a Cultural Institution in Dostoevsky's Russia*, 1997, and Alvarez, *The Savage God* 1971

²¹For a full account of the Chatterton phenomenon see Ackroyd, P., *Chatterton*, 1993

²²Forfeiture was ended by the Felony Act 1870; the gradual ending of its practical force on suicides is discussed in Gates, B. *Victorian Suicide* 1988

²³Stephen, Sir James, *A History of the Criminal Law of England* 1883, p.107. Stephen also reports (p.107) that the Royal Commission of 1878, charged with drafting a criminal code of law, wanted to make abetment of suicide a special offence, subject to penal servitude for life as the maximum punishment.

²⁴Both Gates (1988) and Anderson (1987) discuss Sir Peter Laurie, and say his campaign against attempted suicides made him the model for Charles Dickens' character Alderman Cute in *The Chimes*, 1854

²⁵The figures are taken from Anderson 1987 who presents tables at pages 286 and 288, of average annual attempted suicide arrest rates in the 19th and early 20th centuries, drawn from the Metropolitan Police Returns; Miscellaneous Statistics of the U.K. 1861-79; and the Judicial Statistics, Part I

²⁶Summary Jurisdiction Act 1879; Summary Jurisdiction Act 1899, Criminal Justice Act 1925

²⁷Anderson and Gates both draw this conclusion. Although the Judicial Statistics confirm that only a small number of attempted suicide charges were sent to the higher courts, it is not possible to tell which of the "drunk and disorderly" or "breach of the peace" convictions originally came in as attempted suicides. Ignatieff, in *A Just Measure of Pain* 1978 also comments on the "new severity towards petty crime" and says "Eighty-five percent of [the new police] arrests in the 1830s were for vagrancy, prostitution, drunkenness, disorderly behaviour and common assault..." p.185. The same point is made by Storch in *The Policeman as Domestic Missionary* 1976. McConville in *A History of English Prison Administration* (1981) also examines who was sent to prison in the 19th century.

²⁸Anderson 1987 p.295. That remands for medical reports was a long established practice is further supported by the wording of the formal advice given to magistrates in the next century about the *necessity* to do so. See chapter 3.

²⁹Rowley, Dr. William, *A Treatise on Female, Nervous, Hypochondriacal, Bilious, Convulsive Diseases...with Thoughts on Madness, Suicide, etc.* 1788, quoted in MacDonald 1990 p.95

³⁰Forbes Winslow's book, and its importance to 19th century attitudes to suicide is discussed in all the texts on this issue; see esp. Hacking, Anderson, Gates and Paperno. The actual book is Winslow, Forbes, *The Anatomy of Suicide*, Henry Renshaw, London 1840

³¹Anderson 1987 p.122. The coroners Thomas Wakley and Edwin Lankester are also discussed in MacDonald's work on *The Medicalisation of Suicide in England*, in Rosenberg and Golden *Framing Disease* 1992 p.88

³²Westcott, W.W., *Suicide: Its History, Literature, Jurisprudence, Causation and Prevention* 1885

³³Farberow and Shneidman in *Cry for Help* 1961, present an international bibliography on suicide from 1897 to 1957. It is sixty-one pages long, printed in 8 pt. type. They divide it into four categories: Psychology and General, Sociological, Medical-Legal and Philosophy-Religion, but say (p.327) "Medical and surgical procedures in the handling and treatment of suicidal cases continue to receive a major share of the space devoted to suicide, particularly in foreign medical journals." A sample of some of the titles gives the flavour: "Collective Suicide", *British Medical Journal (BMJ)* 1898; "Suicide and Sanity", *Lancet* 1907; "On Attempted Suicide", *Journal of Mental Science* 1913; "The Prevention of Suicide", *BMJ* 1918; "Certain Personality Problems in Relation to Mental Illness with Special Reference to Suicide and Homicide", *British Journal of Medical Psychology* 1929; "Suicide from the Medico-Legal Aspect", *BMJ* 1931; "The Psychology of Suicide", *BMJ* 1931; "Attempted Suicide: An Investigation", *Journal of Mental Science* 1937

³⁴In addition to Freud's introduction of the "death wish" concept, he provides another illuminating insight into the law against suicide in *Totem and Taboo* (1950, p.69), when he says, "For, after all, there is no need to prohibit something no one desires to do, and a thing that is forbidden with the greatest emphasis must be a thing that is desired."

Chapter 3 : Moving towards decriminalisation

By the 20th century, as chapter two makes clear, the law against suicide had already become fraught with ambiguity, and subject to the matrix of forces Weber said underlies all social change. In the years up to the 1961 reform these forces intensified, and to understand what happened it is necessary to consider what they were and how they affected the social context in which the change occurred. Hegel's claim that reform must spring from historically prepared soil is particularly apposite in respect of what happened to the suicide law.

The last chapter dealt with, among other things, the intellectual debates on suicide in the 18th century. These could be said to have 'historically prepared the soil' in much of Europe, as suicide laws were reformed in many continental countries in the late 18th and early 19th centuries.¹ But well over a century elapsed before change occurred in England. So the question must arise - why did it happen when it did? Why after so long a period, throughout which the law continued to be used, and in the absence of any intellectual debate remotely resembling that of the 18th century, did Parliament abruptly deem it not a crime?

This chapter begins the task of answering this question by examining the factors in the "matrix of forces" - the elements in the contemporaneous "social soil" - that impacted on the passage of the Suicide Act. In the interests of clarity, although it is artificially arbitrary, it will do this under three headings: 1) The nature of the time (what Hegel, Dicey and others have called the "spirit of the age"); 2) The operation of the law; and 3) The practical realities.

Nature of the time

In mid 20th century Britain for various reasons - the most obvious being relief at the lifting of wartime restrictions - people were sympathetic to the idea of loosening control. This climate of opinion had the effect of stifling potential, and muffling actual, resistance to the general idea of decriminalisation, which seemed somehow to chime with the temper of the times. Whether the specific decriminalisation of suicide would have been widely endorsed is not possible to know, as it never became the subject of public debate, nor was any opinion poll taken on the issue (Tyler 1990)². However, because of the general feeling that less control was probably a good thing, it can be argued that the climate of opinion was favourable to the change. In addition to this, there were at least two elements in the mid-century matrix that played a more active, possibly even an instigating, role: These were first, the determinist paradigms that dominated the intellectual landscape, and second, the continuing efforts of parts of the medical establishment to consolidate their jurisdiction over suicide (see chapter 2).

In considering the general climate of opinion and why it was favourable to change, the most significant explanatory factors are increased affluence and changed attitudes towards morality. As regards the increased affluence, it has become a cliché to talk about the material well-being of the 1950s, but the bare facts continue to be compelling: from 1951 to 1964 there was uninterrupted full employment, a 110% rise in average earnings, 30% rise in the average standard of living, and a 100% rise in the proportion of the population in owner-occupied housing (Pinto-Duschinsky 1970:55). The lives of ordinary people were changing in very tangible ways. According to David Thompson "The people as a whole enjoyed a higher standard of living, better housing, longer holidays and shorter working hours, more foreign travel, wider facilities for leisure and recreation, than the British people had ever enjoyed before" (Thompson 1981:281). Even writers on the left, like Richard Hoggart who in 1957 regretted what

he saw as the destructive impact of affluence on working class communities, conceded that the material comfort of their lives had greatly increased. Anthony Crosland, later a Labour cabinet minister, wrote in *Encounter* in 1961 that "now England was rich" it would have to turn to solving the world's inequalities (March 1961:56). A.J.P. Taylor in a 1960 *New Statesman* article titled "Look Back at the Fifties" said, "if the next ten years do anything like as well as the last they will do very well indeed." (2 January 1960:5). Eric Hobsbawm called them the "Golden Years", saying "In the course of the 1950s many people, especially in the increasingly prosperous 'developed' countries, became aware that times were indeed strikingly improved, especially if their memories reached back to the years before the Second World War" (Hobsbawm 1995:257).

The relevance of this to the Suicide Act is that life in England in the 1950s was changing fast, and it was changing for the *better*. The age old human suspicion of change was being seduced by washing machines, cars, televisions, refrigerators. Social critics like Bogdanor and Skidelsky (1970), Galbraith (1958) and Titmuss (1960) deplored what they called the "complacency", "inertia" and "irresponsibility" of the times, but modern political analysts would call it the "feel good factor", and it translated into the unusual situation of rapid social change without social disorder. The ever-present human fear that change will disintegrate into chaos was lulled by a wash of material prosperity, and in 1959 when the sitting government campaigned with the slogan "Life is Better Under the Conservatives" they increased their majority from 61 to 100 seats (Butler & Sloman 1980:209).

In circumstances such as these it was possible for the ruling classes to contemplate social change with exceptional equanimity. Moreover, they did not just contemplate it, they urged it forward. Noel Annan says that after the war, "Blueprints for a better world were all the rage" (Annan 1991:282). Christopher Booker wrote a book about the fifties called The Neophiliacs - "addicts of the new" - claiming that the fashionable

intellectual elite of the time were "explicitly eager for a revolution" (Booker 1969:98). In the years around 1961 "change" began to be advocated with increasing urgency: Booker quotes an Anthony Crosland "broadside" in *Encounter* in 1960 about "complacent, sluggish, stagnant Britain" (ibid.:149). Penguin brought out a "Special" titled "The Stagnant Society" (Shanks 1961). Britain was said to be suffocated by ancient traditions and archaic institutions; the word "stagflation" was coined to describe what was said to be "the English disease" (Horne 1989). Macmillan's famous 1960 "Winds of Change" speech, though delivered in reference to empire, was felt by many to have domestic relevance. Criticism of clinging to tradition came even from such an unlikely source as the monarchy: Prince Philip in February 1960 said "If anyone has a new idea in this country, there are twice as many people who advocate putting a man with a red flag in front of it" (Sampson 1962:37).

All this worked to create a climate where new ideas did not encounter the sustained resistance they might have faced at other times. Potential opposition certainly did exist, made up in part of the concern for social order which is the root of much resistance to change. Examples of latent opposition are set out below, and its presence was probably one of the reasons Butler adopted the strategy he did in order to pass the Suicide Act (see chapters 6 and 7). However, as the 1960s began, Enlightenment optimism was in vogue and intellectual fashion held that the world could be made better if only human reason was properly applied.

The second significant element in the climate of the period which made it conducive to change was the erosion of traditional moral authority and shifts in attitudes to morality itself. Traditional moral authority, in the shape of the established Church, had been in decline since the 19th century. This, too, had become something of a cliché, and intellectual periodicals of the 1950s such as *Encounter*, *Spectator*, *New Statesman*, *Listener*, ran many articles on the subject, often with titles like "Is Christianity Still Relevant?" (*Listener* 18 April 1957)

Writing in the *Listener* in June 1959, Alisdair Macintyre said, "The Church of England does not express the religion of England any more, simply because England no longer has a religion. I do not just mean by that that most people in this country no longer believe in the supernatural in any very explicit fashion. I mean that we lack any shared symbols through which our common fears and hopes could be expressed; and that we lack any shared moral convictions to which such symbols, if we had them, could give living expression"(26 June 1959:1054). This idea was expressed more briefly and bleakly in John Osborne's acclaimed 1957 play "The Entertainer", when Jean Rice says, "There is no God; we've only got ourselves. Somehow we've just got to make a go at it. We've only ourselves" (Osborne 1957:85). Some forty years on, in 1994, the academic sociologist Grace Davie, studying religion in post-war Britain, concluded that "a majority in the nation remained very largely indifferent to religious organisation of whatever kind" (Davie 1994:167).

As no census after 1851 queried religious affiliation, it is difficult to document these views definitively, but an indication is given in the falling church rolls. Membership of the Church of England dropped from 145 per 1000 population in 1931 to 89 in 1960, and declining numbers were recorded by all the other protestant denominations too, save only the Methodists, who showed a slight increase. The numbers of Roman Catholics rose slightly in the 1950s, but were still down from the figures in 1920. The Jewish community increased in size during this period, but was estimated to number only about 450,000 (Butler & Sloman 1980:467-473).

The Church of England retained a facade of social significance and moral authority, in part because of its established presence in the House of Lords. This helps explain why the booklet from the Church of England Board for Social Responsibility featured prominently in the Parliamentary debates on the Suicide Bill (see chapter 5). It had the

effect of defusing potential religious opposition by persuading legislators that the Church supported decriminalisation.

But in fact, the Church's role as authoritative arbiter on moral issues was by this time much diminished. This was clearly demonstrated in the 1956 Report of the Royal Commission on Marriage and Divorce (Cmnd 9676 1955-56), where the members split bitterly on the question of the law's reform, but were unanimous that it was entirely a secular matter. Religious views on marriage and divorce, which for so long had been a central Church concern, were not deemed relevant to government policy making. Further illustration of the Church's marginalisation on matters with a moral dimension came in the 1957 Wolfenden Report's explicit and much quoted distinction between sin (a matter for the church) and crime (a matter for the state). This is the doctrine that Hall (1980) and Newburn (1992) cite as the "Wolfenden strategy" which, they say, formed the basis for much of the reforming legislation of the time (see chapter 1)

Many social critics commenting on post-war Britain have reflected on the weakened authority of religion,³ which lessened the force of its moral taboos. Significant among these, of course, was the one against suicide. Running parallel to the decline in traditional moral authority, was a changed attitude to morality itself. There were several different strands to this, some of them conflicting, but the overall effect was to mute and deflect opposition to the decriminalisation. One important strand was an increased tolerance of human frailty and diversity, a product perhaps of the depression and war, which no adult over 30 in Britain had escaped. Peter Wildeblood, writing on "English Criminals" in 1957 said the general view of the time towards them was "'There but for the grace of God', 'Nous Sommes Tous des Assassins' and 'Knock on any door'" (*Encounter* 24 July 1957:27). Increased tolerance, mixed with compassion, can be discerned, for example, in the Legitimacy Act of 1959 seeking an end to the stigma of bastardy, in the First Offenders Act 1958, which restricted imprisonment of adults by summary courts, and in the moves in the '50s and '60s towards compensation

for victims of crime (Rock 1990). Compassion was certainly an element in the arguments made in support of Kenneth Robinson's 1961 private member's bill to legalise abortion (see especially Alice Jenkins *Law for the Rich* 1960).

It is relevant that Graham Greene's novels were so popular in the 1950s, as compassion was one of their central themes. A matter of special interest to this research is the way suicide is handled in Greene's *Heart of the Matter*, published in 1948: it is presented as something to be understood, not condemned. This is also the approach taken towards the suicide in Virginia Woolf's *Mrs. Dalloway*, published in 1925 and a classic by the 1950s, and in Arthur Miller's *Death of a Salesman*, written in 1949, and playing to critical acclaim in London in the 1950s. Terrence Rattigan's (1952) play *The Deep Blue Sea* dealt sympathetically with the stigma surrounding suicide and the suffering it so often entailed. . Compassion, not moral censure, was also the motivation for the Samaritans, according to their founder, Chad Varah, who began organising volunteers in London in 1953 to offer help to people in despair who were contemplating suicide (Varah 1973).

A particularly apposite example of compassion rather than censure toward suicide arose in October 1959, when the sitting M.P. for Harrow West, Sir Albert Newby Braithwaite, killed himself with an overdose of barbiturates in his flat in Westminster. According to the *Telegraph* (20 Oct. 1959) "a note left by Sir Albert clearly showed his intention of ending his own life," but to the headline "M.P. Took His Own Life" was added the excusing line: "Suffered Years of Ill-Health".

Although tolerance of deviance and diversity was hardly a universal characteristic of the 1950s - examples of its opposite appear below - it was given a significant stamp of approval when one of its most important advocates, Isaiah Berlin, was knighted in 1957. In his inaugural lecture as Chichele Professor of Social and Political Theory at Oxford (*Two Concepts of Liberty* 1958), Berlin described the nature of the pluralism

he felt freedom required: "One belief, more than any other, is responsible for the slaughter of individuals on the altars of the great historical ideals... this is the belief that somewhere... there is a final solution.... Indeed, the very desire for guarantees that our values are eternal and secure in some objective heaven is perhaps only a craving for the certainties of childhood or the absolute values of our primitive past... To demand [these things] is perhaps a deep and incurable metaphysical need; but to allow it to guide one's practice is a symptom of an equally deep, and far more dangerous, moral and political immaturity" (Berlin 1969:167 & 172).

Reviewing this and other lectures by Berlin in February 1959, Noel Annan said, "Pluralism...strikes at the heart of many religious, moral and aesthetic doctrines common today. We cannot measure people, or moral systems, or literature against a single standard, however subtly organised that standard may be. This I believe to be the true liberal's faith, and its concomitant virtue, tolerance, is born of compassion for the infinite variety of human character and the social situations or predicaments in which human beings find themselves" (*Listener* 19 Feb. 1959:324).

These attitudes, promoted by such powerful figures (Annan, for example, was Provost of Kings College London in 1959), contributed to an intellectual climate which subsequently found an unexpected spokesperson in the Bishop of Woolwich, whose best-selling book *Honest to God* (1963) announced that "Nothing of itself can always be labelled as 'wrong'" (Levin 1979:109).

Traditional moral attitudes came under attack from other quarters, including one from the logical positivists, who enjoyed a brief intellectual celebrity in the 1950s. Logical positivism was the school of moral philosophy which rejected *all* metaphysics, and thus defined morality and religion as meaningless. Their pronouncements, especially those of the Oxford philosopher A.J. Ayer, who appeared regularly on radio and television, provoked a lively exchange of views in the correspondence columns of the *Listener* on

the theme "Does Oxford Moral Philosophy Corrupt Youth?" (Anscombe 14 February 1957)

Another, and ultimately more long-lasting assault on metaphysics came from the nascent discipline of sociology, just beginning to gain academic credibility in the 1950s.⁴ Its commitment to fact-based, value-free empiricism deemed questions about "right" and "wrong" to be irrelevant in dealing with behaviour problems, which were more appropriately conceptualised using terms like "normative" and "anti-social". C. Wright Mills' *The Sociological Imagination*, published in 1959, made the claim that "The sociological imagination is becoming, I believe, the major cultural denominator of our cultural life and its signal feature" (Mills 1959:13).

Yet another attack on traditional morality in the fifties came from the resurgence of 19th century Romanticism, which re-invigorated the idea of the single individual as an autonomous moral agent; a larger-than-life figure living on the edge, with a total disregard for the norms of society. This was the quintessential D.H. Lawrence hero, and it is relevant that Lawrence's books were very popular in the fifties, even before the Lady Chatterley trial. Stuart Hampshire, reviewing a re-published edition of Lawrence's letters in 1956 said, "Lawrence's heroes and heroines, although living in contemporary England, realise in their moments of freedom that they feel no natural allegiance to any form of life that is conceivable in a competitive, rational society. When they free themselves from pretence, they find that their nature is in revolt, not only against the ideals of bourgeois society, but against modern society as such, whatever form it may take. They do not want to be social men at all" (*Encounter* December 1956:84).

Colin Wilson's best selling book *The Outsider* (1956) presented a pantheon of romantic rebels through the centuries, both fact and fiction. It was admiringly reviewed, notably in *Encounter*, which said it was "the most remarkable book upon which this reviewer

has ever had to pass judgement"(unsigned review, 7 June 1956:24). The 1950s literary phenomenon labelled "Angry Young Men", which included writers like Kingsley Amis, John Osborne and Alan Sillitoe, was based on rejection of and contempt for established norms of conventional society. Such rejection had the endorsement of some very influential figures, including Bertrand Russell, whose book *The Conquest of Happiness* was first published in 1930 and proved so popular that it was reprinted eleven times, and re-published in paperback in 1961. In it Russell says, "Ask yourself seriously whether the world is the better for the moral teaching traditionally given to the young. Consider how much of unadulterated superstition goes into the make-up of the conventionally virtuous man... Why is his subconscious morality thus divorced from reason? Because the ethic believed in by those who had charge of his infancy was silly; ... and because it contained within itself elements of morbidity derived from the spiritual sickness that troubled the dying Roman Empire. Our nominal morality has been formulated by priests and mentally enslaved women. It is time that men who have to take a normal part in the normal life of the world learned to rebel against this sickly nonsense" (Russell 1961:80-81).

It was in the 1950s that romantic/existentialist work of Albert Camus began to be widely read and intellectually acclaimed: Camus was awarded the Nobel Prize for literature in 1957. *The Outsider* was published in Britain in 1946, *The Rebel* in 1953, and *The Fall* in 1957. Significant to this thesis is his short work *The Myth of Sisyphus*, published in Britain in 1955, which begins, "There is but one truly serious philosophical problem and that is suicide. Judging whether life is or is not worth living amounts to answering the fundamental question of philosophy. All the rest... comes afterwards." (Camus 1975:11) *The Myth of Sisyphus* was one of the extremely rare works published in the 20th century which carried on the philosophical debates of the 18th century on suicide. Virtually all other writing on the subject was either sociological or medical, and of a firmly positivist nature. In his preface to the book Camus said, "For me *The Myth of Sisyphus* marks the beginning of an idea which I was to pursue in

The Rebel. It attempts to resolve the problem of suicide, as *The Rebel* attempts to resolve that of murder, in both cases without the aid of eternal values which, temporarily perhaps, are absent or distorted in contemporary Europe"(Camus1955:7). Camus then sets out the - to him unanswerable - case for the total absurdity of life and thus the total logicity of suicide, but concludes that one should carry on living anyway, thereby demonstrating courage and reasoning. "It is essential to die unreconciled," he says, "and not of one's own free will. Suicide is a repudiation" (ibid.:55).

Challenges to traditional authority in the 1950s also began to come from people long considered to be its most solid supporters. Frank Parkin charts in *Middle Class Radicalism* (1968) the rise of the Campaign for Nuclear Disarmament, which began in 1955, and at its peak saw an estimated 100,000 mainly middle class people in Trafalgar Square openly defying established authority. Parkin says, "the radicalism of the middle class is directed mainly to social reforms which are basically moral in content"(Parkin 1986:2).

So at the time of the Suicide Bill many different forces were at work which separately, and in different ways, had the effect of unsettling - destabilising - traditional attitudes toward morality. Tim Newburn in his analysis of law and morals in post-war Britain (1992) says, "The opening up of opportunities for debate on morals and values...problematised the supposed existence of a uniform morality... the very idea of a consensus of moral values was losing credence" (Newburn 1992:159).

All these forces could be said to have assisted the passage of the Suicide Act insofar as they created a climate in which the status quo could be challenged with more than usual hope of success. They worked to deflect and muffle opposing forces which in other circumstances - and without the strategy adopted by Butler (see chapters 6 and 7) - could have been expected to resist its passage. These opposing forces are set out

below in the section on "practical realities", but before that, consideration needs to be given to what was perhaps the most significant component of the intellectual climate of the time, the determinist paradigms.

Significance of positivism

It is being argued here that the material prosperity of the 1950s, together with the changing attitudes to morality created a climate which *allowed* the decriminalisation of suicide to take place. In addition to this there were the aspects of the period that can be said to have actively encouraged it. One of these was the intellectual dominance of positivism, with its determinist paradigms as explanations for human behaviour. These placed responsibility for deviance not on the individuals concerned, but on forces beyond their control - medical, psychological and/or social. Advocates of these models confidently predicted that professional skill and knowledge, of a sort never before available, would be able to re-shape deviance into conformity without the tiresome and controversial procedures of criminal justice (Garland 1985, Cohen 1985, Smart, 1992).

Determinist paradigms were the children of what Bryan Appleyard (1993) calls the "love affair with science" which had begun as far back as Francis Bacon and grown steadily through the centuries as its material and medical fruits became ever more apparent and obtainable. The 1956 Reith lectures were devoted entirely to this subject, and in them Sir Edward Appleton summed up a paean of praise by saying, "The spirit of science is indeed the spirit of hope" (*Listener* 13 September 1956).

Sigmund Freud, so significant an influence on the 1950s, was an arch determinist. His translator, James Strachey said, "Behind all of Freud's work ... we should posit his belief in the universal validity of the law of determinism ... [he] extended the belief uncompromisingly to the field of mental phenomena" (Strachey 1990:17). In one of his early lectures (1909) at Clark University in Massachusetts Freud cited as one of

two obstacles to the acceptance of psychoanalysis the fact that "people are unaccustomed to reckoning with a strict and universal application of determinism to mental life" (Freud 1962:63). However, by 1956, the celebrations of Freud's centenary offered ample illustration of how accustomed people had become to determinist interpretations. Freud's biographer, Ernest Jones, said, "It is hard to imagine a world without Freud, for he and his followers have shaped the thought and language of twentieth century man" (*Listener* 10 May 1956). Brian Farrell said, "We were much more ready fifty years ago to talk moralistically [about behaviour]... now we are inclined to talk diagnostically or clinically. It would be generally agreed that this change is due, in part, to the work of Sigmund Freud" (*Listener* 21 June 1956).

The power of the determinist paradigms stemmed from the idea that the methods of science, so successful in the physical world, could be equally successful in solving human problems. Durkheim is particularly important in the context of this research, and his insistence that suicide was a *social* phenomenon inspired a continuing tradition of research into the precise social factors that might be at work. One such study was referred to several times in debates surrounding the Suicide Bill. This was Peter Sainsbury's *Suicide in London: An Ecological Study* (1955). Sainsbury, who at the time was with the Institute of Psychiatry of the Maudsley Hospital, believed firmly that the application of empirical scientific methods would result in practical solutions to this human problem. "This approach to suicide," he said, "affords an objective body of fact regarding the social conditions that engender suicide or suicidal inclinations in a group, and thereby provide data on which a practical programme of mental hygiene might be based" (Sainsbury 1955:11).

It should be noted that not once in the Sainsbury study is the law on suicide mentioned, nor its effect on the individuals prosecuted for attempted suicide. But his reference to a "programme of mental hygiene" based on an "objective body of fact" demonstrates how neatly sociological empiricism could be meshed with medical methods in a project

to "normalise" deviance. The assumption, which was widely shared, was that morally neutral science could actually solve ancient human problems, and prejudicial moral judgements would be superseded by beneficial medical prescriptions. It is not often recalled now that one of the chief arguments in the 1950s for the decriminalisation of homosexuality was that it "was a disease that needed medical treatment rather than prison" (Annan 1991:172). Among the Wolfenden recommendations which have been largely forgotten were ones to lift the ban on oestrogen treatment for homosexuals in prison and "that research be instituted into the aetiology of homosexuality and the effects of various forms of treatment" (Cmnd 247 1956-57: Recommendations 17 & 18).

David Garland, among others, has charted the impact of this kind of determinist thinking on penal policy in the 20th century, and he describes how it successfully "deployed a new language of reform, correction and normalisation... In [this] language, the deviant was no longer represented as wicked or worthless - punishable because of the moral choices for which he was responsible. Instead, the deviant appears as *deficient* - mentally, morally or physically... The function of penalty is to restore him to an elusive normality by means of training and treatment" (Garland 1985:248).

The lead article in the *Spectator* of 23 June 1961 (at just the time the Suicide Bill was entering the House of Commons) enthusiastically endorsed this determinist approach to penal affairs: "The time has come," it said, "when we must begin to think more carefully about whether the traditional concept of "criminal responsibility" has any validity in the light of recent advances of knowledge about criminal minds and motives... The very notion of 'guilty' or 'not guilty' and the notion of 'guilty but insane' depend on the assumption that criminal responsibility exists. But does it? The Courts could perfectly well continue to do what they now do: ascertain whether an offence against the law has been committed. The only change would be that instead of awarding special punishment a court would turn over offenders to specialist boards set

up to decide what should be done with them... the length of his detachment from society depends on his progress, rather than on some arbitrary court sentence" (*Spectator* 23 June 1961:903-4).

Stan Cohen has pointed out that this "benign terminology...of helping, nurturing, healing" was just about to come under fierce attack in the 1960s as a "fraud" (Cohen 1985:121), but in the 1950s and into the early 1960s its influence was immense, and especially among people whose views were important to the passage of the Suicide Act. Barbara Wootton is an example: a noted sociologist and magistrate, she was made a Baroness by the Labour party in the first cohort of life peers appointed to the Lords in 1958. In September 1959 Baroness Wootton spoke on BBC radio about the future of the criminal justice system, and advocated replacing it all with panels of medical and psychiatric experts. "Everything except treatment," she said, "Guilt, responsibility and all the rest of it - would become irrelevant... such a system would be both humane *and* effective, which is more than can be said for what we have now" (*Listener* 24 September 1959:481). Wootton expressed these views at length in her book *Social Science and Social Pathology* published in May of 1959. Her publishers, George Allen & Unwin, sent a copy to the Home Secretary, Rab Butler, which was duly, if coolly, acknowledged by his private secretary, Mrs. M. Jefferies (Butler papers E11, file A, 11 May, 1959). Wootton was one of the speakers in the Lords' debate on the Suicide Bill, in which she echoed Durkheim, saying "Suicide is in some measure socially caused" (Hansard: Lords: 2 March 1961), but then went well beyond him in firmly advocating its decriminalisation. In her memoirs, *Crime & Penal Policy: Reflections on Fifty Years Experience* (1978), Wootton talks with satisfaction about how during this half century she witnessed the gradual shift in attitudes towards offenders, away from punishment toward treatment. She cites as an important milestone the concept of diminished responsibility, which had been incorporated in the 1957 Homicide Act, although only after much bitter debate.

Kenneth Robinson M.P. whose questions to Butler as Home Secretary were the immediate precipitating trigger for the change in the suicide law (see chapters 6 and 7), also favoured treatment not punishment, certainly for offenders who might be mentally disordered. He was a strong supporter of the Mental Health Act 1959, which proved to be so significant to the passage of the Suicide Act (see chapter 4). On the introduction of the Mental Health Bill to Parliament, Robinson wrote an article for the *New Statesman* in which he welcomed it as "a tribute both to the Royal Commission and to growing public enlightenment." He noted with approval the provision in the Mental Health Bill about mentally disturbed offenders: "The Courts are permitted," he said, "after hearing medical evidence, to order compulsory care and treatment without first convicting the offender" (10 January 1959:34).

Of special significance for the purposes of this thesis is the clear support given to the determinist "treatment" side of the penal argument by Rab Butler. Within two months of becoming Home Secretary, in March 1957, Butler took the occasion of an opposition supply day debate to outline plans for an important programme of penal reform. (Hansard: Commons: 13 March 1957) According to his biographer, Anthony Howard, this speech, "with its emphasis on the need for more research into the causes of crime, the provision of after-care services and the essential requirement for an entire new prison-building programme through which offenders could be treated according to their needs rather than their deserts - made a considerable impression" (Howard 1987:255). In the Butler papers at Trinity College Cambridge is a carefully saved letter from the former head of the Prison Commission, Lionel Fox, congratulating him on this speech (Butler papers G31 78(1)). Leon Radzinowicz's description of the speech's reception: "There seemed to be no end to congratulations so effusive as to become politically embarrassing" (Radzinowicz 1999:170) - shows that Butler's brand of penal determinism pleased at least some sections of the political elite.

Two years later Butler brought out a White Paper on penal reform (Cmnd 645 1959), which he himself viewed with considerable satisfaction. "I had managed," he says in his memoirs, "by the beginning of 1959 to publish a White Paper of comprehensive scope, *Penal Practice in a Changing Society*, on which all subsequent improvements have been based" (Butler 1971:200). Butler referred to the rationale of the paper in a speech to the National Association of Mental Health. He spoke about how he had seen the modern tendency to "explore farther into the dark recesses of the mind" in the work he was trying to do in penal reform. "I feel certain," he said, "that if we were able to apply the findings of modern research and science in deciding how to deal with offenders, and in the treatment of those placed under supervision or in detention, the world would be a very much happier place" (GUARDIAN 7 March 1958). Butler's enthusiasm for research had several tangible, and still extant outcomes: he created the Home Office Research Unit (HORU), and was a key figure in the founding of the Institute of Criminology at Cambridge. Both organisations were dedicated to finding the causes of crime and ways to cure it (Radzinowicz 1999 pp.172-191). John Croft, a former Head of HORU, confirmed in interview that it was born and spent its formative years in a climate where positivist determinism was the dominant mood, and where there was a widespread assumption that "the social sciences were going to make us happy" (Croft interview 11 July 1996).

Throughout the Parliamentary debates on the Suicide Bill, the treatment paradigm was universally endorsed (see chapters 4 and 7), at least for this particular kind of deviance. From the Minister's comment that "We are changing the method of treatment for these unfortunate people", (Hansard: Commons: 28 July 1961) to Leo Abse's diatribe about the need for more public spending on mental health to cope with attempted suicides (Hansard: Commons 19 July 1961), to Viscount Kilmuir's statement that the objective of state intervention in attempted suicide was "primarily medical or therapeutic" (Hansard: Lords: 2 March 1961), to David Weitzman's assertion that "Obviously, the person who commits or attempts suicide...requires treatment of some

kind" (Hansard: Commons: 19 July 1961), not a single speaker dissented from the idea that the appropriate response to attempted suicide was treatment. The only slight conflict arose over the question as to whether the treatment should be compulsory (see chapter 4).

There are two ways in which these determinist paradigms in the 1950s are important to an understanding of the passage of the Suicide Act. One is the way in which this approach to human behaviour removes responsibility from the actual perpetrator of an offence. Since the concept of criminality is contingent on the existence of moral choice, eliminating personal culpability annuls the rationale for criminalising anything. The other is the way in which these attitudes re-confirmed state responsibility for the control of deviance, but in the guise of "treatment" rather than penal sanctions. Together these help to explain why the decriminalisation was so readily accepted -- suicide and attempted suicide were defined as manifestations of mental illness, so criminality could no longer be ascribed, and the decriminalisation was firmly coupled with provisions for the treatment of attempted suicides so state control was re-affirmed.

Beyond the favourable climate of opinion, and the influence of the determinist paradigms, the most overtly active element in the social context surrounding suicide law reform was the section of the medical establishment which had been trying since the 19th century to bring this form of deviance totally within their jurisdiction. Despite Durkheim's and other sociologists' espousal of 'social causes' for suicide, in the end it was the medical model of 'mental illness' that prevailed. This is perhaps not surprising since for several centuries coroners had been officially labelling most suicides insane (see chapter 2).

According to Stan Cohen, "The professionalization of deviancy control...is a story of continual expansion and diversification," (Cohen 1985:161) with the implicit or even

explicit aim to "increase their monopolistic reach" (ibid:164). While there was never a co-ordinated campaign among doctors (or indeed any other group) to change the law on suicide, individual doctors since at least 1788 (see chapter 2) had been writing and speaking on the theme that suicide and attempted suicide were *prima facie* evidence of mental illness and should be put wholly in the hands of the medical establishment. Whether this constituted a form of deliberate empire building along the lines described by Cohen, or moral entrepreneurship as formulated by Becker (1963) and Gusfield (1963) and specifically related to doctors by Scull ("Medical Men as Moral Entrepreneurs" 1975), is a matter for debate. What is true is that a certain section of the medical establishment, in the 20th century primarily psychiatrists, pressed the theme continuously, with determination and professional conviction.⁶ Moreover, it was in a medical forum that the first explicit step was taken that can be said to have led directly to the reform of the law. It is academically serendipitous that this forum was one where the principal contestants for jurisdiction over suicide and attempted suicide actually met face to face.

The step came as a proposal in 1947, in the third report of the British Medical Association/Magistrates Joint Committee which advocated amending the law "so that attempted suicide ... would not be dealt with as an illegal offence", but would instead be subject to court orders for medical treatment (see chapter 4).

In the years between this 1947 Report and the passing of the Act in 1961, medical and psychiatric periodicals regularly carried articles on suicide and attempted suicide.⁷ These articles were in the main not explicitly directed at changing the law, but made the point - indeed assumed it to be self-evident - that attempts at self-killing were a medical matter. No other discipline took a comparable interest in the subject. The disciplines which had participated in the 18th century debate - politics, theology, ethics - were not concerned in the actual change when it finally came. One exception was the series of lectures by the Cambridge Professor Glanville Williams, delivered in the

United States in 1956 and later published as *The Sanctity of Life and the Criminal Law* (1958). In these Williams considered suicide along with contraception, artificial insemination, abortion, and euthanasia. His approach was a scholarly review of the long history of Western attitudes to suicide, and when at the end he offered his own view, he did not advocate a complete end to criminal justice involvement: "Theoretically," Williams said, "the law should allow some right of interposition to prevent a suicide..." (Williams 1958:261). He goes on to suggest a magistrate's order for a short detention period for anyone attempting suicide, with the hearing to be in private.

As for sociology, where the tradition of studying suicide as a social phenomenon had begun in the 19th century (see chapter 2), according to Giddens "very few significant sociological studies of suicide have appeared in Britain since the turn of the century ... In Britain, most work on suicide has come from medical or psychiatric researchers" (Giddens 1971:xiv). Some of what research there was, however, was actually referred to in the Parliamentary debates on the Suicide Bill,⁸ and it undoubtedly contributed to a general climate receptive to reform.

One particularly prominent psychiatrist, Professor Eric Stengel, publicly urged decriminalisation as a way of achieving more effective medical treatment. Stengel was President of the Psychiatric Section of the Royal Society of Medicine, and had been conducting research into attempted suicide since the early 1950s. In an address to the Howard League in 1956 he said: "The fear that a suicide attempt may lead to prosecution tends to make some people lie to the doctor about it and maintain that it was an accident, thus making psychiatric treatment impossible and a repetition more likely..." (Howard Journal 31 May 1956). At the invitation of Dr. Doris Odum, Professor Stengel came and spoke to the BMA/Magistrates Joint Committee in January 1958 (see chapter 4). The Committee records report: "He told of cases in England where persons who had attempted suicide were brought to hospital and police

officers waited to take a statement from them even though the case was not subsequently brought to court. This was very unsatisfactory from the point of view of treatment of the patient and also unsatisfactory in that it only happened where cases were known to the police" (Minutes of Joint BMA/Magistrates Committee 22 Jan. 1958).

Professor Stengel and his work were raised by Kenneth Robinson M.P. in the Committee stage of the Suicide Bill. "The man who has done the most research in this country," Robinson said, "is Professor Stengel of Sheffield University, who for a long time has campaigned for the reform embodied in the Bill. Professor Stengel has produced the most satisfying definition of attempted suicide: I read it in one of his books. He describes the suicide as an act of violence against society and at the same time an appeal to society for help. That is precisely what it is, and it is a tragedy that in the past society in this country has tended to react to the violence and largely to ignore the plea for help" (Official Report Standing Committee E 25 July 1961).

Viscount Kilmuir referred obliquely to Stengel's work in the actual introduction of the Bill into the House of Lords, saying, "it is even more true that most cases of attempted suicide flow from some sort of mental stress or imbalance. Recent research suggests, for example, that those who attempt suicide are often making an appeal for help" (Hansard: Lords: 2 March 1961). Professor Stengel was also cited in the brief correspondence in the *Times* following Kenneth Robinson's first raising of possible reform of the suicide law in February 1958. Glanville Williams wrote: "Dr. Stengel has shown how police intervention in cases of attempted suicide hinder the efforts of medical men to treat their patient" (TIMES 11 February 1958).

Another doctor, Phyllis Epps, during this period did one of the extremely rare studies of people in prison charged with attempted suicide. Between 1954 and 1956 Dr. Epps interviewed a consecutive series of 100 women admitted to Holloway Prison Hospital

on charges of attempted suicide. After an exhaustive analysis of their characteristics, Dr. Epps' diagnosis was that "Of the 100 women, 49 were classed as neurotic, 19 as psychotic, 16 as psychopathic, 11 as epileptic and 5 as borderline or mental defectives" (*Proceedings of the Royal Society of Medicine*, 14 January 1958:298). Her overall conclusion, was "The growth of psychiatric services in this country over recent years defeats the argument that prison should be used as a place of safety for the potential suicide. Though suicide may generally be regarded as an undesirable or even as an anti-social act, we in this country are in the minority in regarding it as a criminal act. Moreover, we are illogical in that those who fail in the attempt are treated as criminal, while those who succeed are usually found at the coroner's inquest to have been unbalanced in mind" (ibid.:300). Dr. Hermann Mannheim of the LSE gave Dr. Epps' study wider publicity by mentioning it in a letter to the *TIMES* and on the basis of her data asked "If criminal proceedings are not needed on medical grounds, what else can be said in their favour?" (*TIMES* 25 Feb. 1958)

The psychiatrist Doris Odum is the doctor who probably deserves the most credit for moving attempted suicides completely out of criminal and into medical jurisdiction. Her campaign to change the law lasted some seven years and was waged in a number of different forums (see chapter 6). Not all doctors, by any means, agreed that attempted suicide should not be a crime, and the views of those opposed are considered below in the discussion of the potential resistance to the decriminalisation.

The above factors taken together - increased affluence, changed attitudes towards morality, and the determinist paradigms (particularly medical) of the 1950s, created an environment that was favourable to a change in the suicide law. There were other structural factors that contributed to a propitious climate, in particular the way the law had been implemented by practitioners, and the practical realities impinging on politicians of the day. These factors are considered next.

Operation of the Law

The issue of whether and how Judges make law has been debated for years. Equally interesting, although less examined, is the interactionist phenomenon whereby lower profile practitioners in the criminal justice process - police, magistrates, coroners - can, by their practice, re-shape attitudes to law and so in the long run influence the shape of the law itself. According to Downes and Rock "Deviance is identified, answered and formed by those who deal with rule-breakers" (1988:178). The police, who are the gate-keepers to the criminal justice process, have substantial discretion as to what laws to enforce and against whom (Reiner 1997). Up to the first examination of police practice by the Royal Commission in 1960, this discretion was exercised with virtually total autonomy, certainly in respect of low level public order offences. "This was particularly true", Reiner says, "of decisions not to invoke the law" (ibid.:1009). Magistrates are another influential group of lower level criminal justice practitioners. They comment implicitly by their sentences - as Judges do - on the importance of breaches of the law and thus on the significance and status of the law itself. Other participants in the criminal justice process, such as doctors, coroners, and probation officers, also influence by their practice how a law is regarded. Changes in administrative arrangements surrounding a particular law - such as the Criminal Justice Act 1925 which allowed attempted suicides to be tried summarily - can also impact on attitudes. It is argued here that the overall effect of these factors on the suicide law was to slowly erode the belief that self-killing was a crime of the sort appropriate for police and court attention, and endorse by practice the idea that attempted suicides were "sick" and in need of "treatment".

Police

From the time of their inception in 1830, the Metropolitan police had been prosecuting attempted suicides as part of their remit to enforce order in the streets (see chapter 2), but used the broad discretion inherent in police powers to choose the targets of enforcement. In the 20th century the use of this discretion is clearly visible in the large

discrepancy between attempted suicides "known to the police" and those "proceeded against". (Until the creation of the Crown Prosecution Service in 1986, of course, the decision whether or not to prosecute an offence such as attempted suicide lay entirely with the police.) The discrepancy between "known" and "proceeded against" ran at a roughly steady rate of nine or ten to one from the beginning of the century right up to the decriminalisation in 1961, although the numbers "known" increased from an annual average of about 2000 in the early years with just over 200 proceeded against, to 4980 in 1959, with 511 prosecuted (Judicial Statistics England and Wales 1900-1961).

Guidance as to how the police were to use their discretion in respect of attempted suicides was issued first to the Metropolitan Police in 1916, in a revision to General Orders which stands as an interesting, quite explicit example both of Black's "differential mobilisation of the law" (Black 1976:38) and of "institutionalised discrimination" as described by Reiner: "where the consequences of universalistically framed enforcement policies or procedures work out in practice as discriminatory because of the structural bias of an unequal society" (Reiner 1992:158). The revision to General Orders said:

"A person brought to the Station as having attempted suicide and fit to be detained thereat, is not to be charged forthwith, but immediate enquiries are to be made to ascertain what was the motive for the attempt and whether there are friends or relations willing and able to take charge of, and be responsible for, the offender. If such persons are available, and there are no special circumstances such as the commission of another crime, a previous attempt to commit suicide, definite indications of insanity, threats to renew the act, habitual excessive drinking, etc., the offence is not to be charged but handed over to the care of the friends or relations, a report being then submitted for Commissioner's consideration as to application for process." (Crime, G.O. 28 August 1916: 286)

A similar instruction was circulated by the Home Office to provincial police forces in 1921 (St. John-Stevas 1961:241). Since data at that time was recorded only on the numbers, not the nature, of attempted suicides, it is not possible to empirically demonstrate the consequences of this General Order. However, as the clear instruction was to proceed only against those with no family or friends willing to take responsibility, the outcome would inevitably be "differential mobilisation" of this law. It is rare to have an overt official instruction that illustrates theory, but this would appear to be a clear example of Black's description of how the law behaves: "A crime by an unemployed man is more serious than a crime by an employed man. It is still more serious if an unemployed offender has no family, and yet more so if he is a transient, unknown in the community. It is even less serious, however, if an employed offender has a good work record, a large family, and is known for his service to the community. In every way, a marginal man is more vulnerable to law; by comparison, an integrated man has an immunity" (Black 1976:51).

Lord (Peter) Imbert, former Commissioner of the Metropolitan Police, and Roy Thomas, retired Chief Inspector with the Met, started their careers on the beat in London in the 1950s, when suicide and attempted suicide were still criminal offences. They both confirmed in interview that the presumption was against prosecution of attempted suicides. It had to be reported - "unless it was possible for the beat policeman to turn a blind eye - which he did if he could" (Thomas interview 5 April 1997) but the decision whether or not to prosecute was taken at Inspector level and in the "vast majority of cases it was decided a prosecution was not warranted" (Imbert interview 14 February 1997).

Chad Varah, founder of the Samaritans, says in his autobiography that "in the metropolitan area the police took a very humane view of suicidal acts which did not prove fatal, and hardly ever engaged in a prosecution which led the person to

imprisonment, except in a few cases where they thought it necessary for the protection of the person concerned and the avoidance of a public nuisance - as for instance in the case of a man who regularly swallowed an unbelievable assortment of cutlery and took up a lot of hospital and operating-theatre time. The normal police procedure...if they thought the person was still a danger to himself or herself, was to urge the person to see their doctor with a view to psychiatric treatment, or, latterly, to come to The Samaritans. Only when the person proved recalcitrant would they prosecute, not in order to get the person sent to prison, but so that they might be inclined to accept as an alternative being put on probation with a condition that they received psychiatric help" (Varah 1992:191).⁹

Police practice towards attempted suicides was explicitly called in support of the Suicide Bill by the Lord Chancellor in the Lords debate: "For many years now," he said, the practice of the police has been to institute criminal proceedings only where there are no relatives or friends willing to give help and accept responsibility, or where the person making the attempt has refused to accept help from those around him" (Hansard: Lords: 2 March 1961) This is despite the fact that the Metropolitan Police Guide continued throughout all these year to state unequivocally that "Suicide is a felony at common law" and "an attempt to commit suicide is an attempt to commit a felony , and therefore punishable with hard labour under the Hard Labour Act 1822" (Baker: Metropolitan Police Guide, successive editions:501)¹⁰

This deliberate non-enforcement of the law in so many cases over so many years reflected, and was also likely to have influenced, public opinion about the criminality of attempted suicide. It would have contributed to the view of many who, in the words of the Lord Chancellor, believed "it has none of the characteristics of criminal conduct. On the contrary, it is often a sign that medical and social help is wanted" (Hansard: Lords: 2 March 1961)

According to some sources, doctors colluded in the non-enforcement of the law against attempted suicide. Glanville Williams said, "One reason why so many suicidal attempts fail to reach the ears of the English police is that it is against medical ethics for a physician to report them" (Williams 1958:244). However, Mrs. Jeanette Stockell, who was a casualty nurse at Charing Cross Hospital in London in the 1950s, says they were legally obliged to inform the police whenever an attempted suicide was brought in, and the doctors did so on a regular basis. Mrs. Stockell also said she and most of her fellow nurses "worried about this... it did not seem *appropriate* for the police to be involved" (Stockell interview 15 May 1999).

Courts

The response of the Courts to attempted suicide also contributed to erosion of the concept of it as a criminal act. Before 1925 attempted suicide was prosecuted at Assize and Quarter Sessions, at a rate of two to three hundred a year between 1900 and 1914, falling to an annual average of under one hundred between 1915 and 1924 (Judicial Statistics England and Wales, 1900-1925). The 1925 Criminal Justice Act brought adult attempted suicide within summary jurisdiction, which was implicitly a "down-grading" in the sense it was no longer considered so serious as to be indictable only. Interestingly, the immediate effect was to increase the number of prosecutions. Whereas the annual average had been below 100 prosecutions at Assize and Quarter Sessions in the years 1915 to 1924, in 1926, 376 people were prosecuted for attempted suicide in Magistrates' Courts. In 1927 it was 646; 1928, 660; 1929, 717, and continued to run at roughly these kind of numbers up until the passage of the Suicide Act in 1961. Initially a residue of some twenty to thirty a year continued to be prosecuted at Assize and Quarter Sessions, but this tapered down to an average of under ten by the end. Virtually everyone prosecuted was convicted (all figures from Judicial Statistics England and Wales 1926-1961).

The increased prosecutions after 1925 might be explained as a reflection of police views that attempted suicide was a minor public order offence, committed usually in circumstances not warranting the panoply of a trial before a Circuit Judge, but appropriate for the limited sanctions and more immediate attention of the Magistrates' Courts. It could also have reflected an increasing tendency to view attempted suicides as in need of "treatment", and a prosecution at summary level the quickest way to achieve it. Magistrates' were virtually obliged to take a "medical" view of attempted suicides, at least in the first instance, as was made clear in an instruction about how to handle this matter in *The Magistrate* of Sept.-October 1946:

On attempted suicide:

"There should always be a remand in custody for a report by the prison doctor as to the prisoner's mental health and the clerk or the probation officer should communicate to the prison doctor any known or observed facts which are likely to assist him in making his report.

If on the adjourned hearing the prison doctor reports that the prisoner is of unsound mind, the police will usually offer no evidence and ask that the prisoner be discharged so that they can take him away to be dealt with under the Lunacy Acts.

If the doctor reports that he is mentally sound, and there appears to be no reason to anticipate a renewal of the attempt, the Justices may well take the view that they may deal with the case summarily if the accused consents... The observations of the police should be invited before this decision is taken. If there have been previous attempts, the Justices should in no circumstances deal with the case themselves... Although there is power to impose a penalty of imprisonment up to six months and/or a fine of not exceeding £100 punishment is seldom imposed. for what punishment is appropriate? The usual course is to ask the probation officer to make the fullest enquiries, to get in touch with relatives and friends if none are already forthcoming and endeavour to make

the best possible arrangements for the prisoner to be looked after and cared for. A supervision order is sometimes called for, but in any case recourse is usually had to one of the courses open to the court under the Probation of Offenders Act.

As already intimated, if there is any reason to fear a renewed attempt, or if they are not satisfied that there is no reason to fear it, the Justices should not take the responsibility of dealing with the case themselves. The defendant should in that case be committed for trial" (unsigned instruction in *The Magistrate* September-October 1946:214)

The continuing trend away from 'punishment' towards 'treatment' of offenders had been given significant impetus by the Criminal Justice Act 1948. The "Explanatory Handbook" about this Act, written "for Magistrates, Practitioners and Probation Officers by two impressively titled authors made the treatment bias of the Act clear and endorsed it with enthusiasm:

"The Criminal Justice Act 1948 is a measure of outstanding importance. Bold in conception, elaborate and logical in design, and comprehensive in its scope, it marks the beginning of a new and more enlightened epoch in the approach to the problem of crime and, what perhaps is still more important, the treatment of offenders... Through the ages, society's demand in regard to the wrongdoer has been "Punish him." With what severity this demand was satisfied is on record. Today the direction is "Reform him." And that is the underlying, governing principle of this Act... Magistrates will need to make themselves intimately acquainted with the intention of the legislature in providing a variety of forms of treatment, with the precise nature of them, and with all those facts about the offender necessary to arrive at a proper conclusion with regard to him" (by His Honour Judge Tudor Rees D.L., J.P. (Chairman of the Surrey

Quarter Sessions, Chairman of the Epsom Petty Sessions) and E. Graham M.A. (Oxon.) of the Inner Temple, Barrister-at-Law, Deputy Clerk of the Peace for the County of Surrey)

One of the measures of this 1948 Act was to formally allow a convicted offender to be placed under the supervision of a probation officer. Previously the rather anomalous wording of the 1907 Probation of Offenders Act had allowed Magistrates to do this "without proceeding to conviction" (Bochel 1976, Newburn 1995, Mair 1997), which renders the statistics on disposals of attempted suicides pre-1950 at times difficult to interpret. However, after the 1948 Act, probation rapidly became the most used disposal for this offence. In the years 1952 to 1956 inclusive 63% of the people convicted of attempted suicide (1,842) were given a probation order. 6.7% (194) were given sentences of imprisonment. The second most favoured disposal was conditional or absolute discharge, or bind-over - 28% (819) (Hansard: Commons: 13 Feb. 1958). Two retired Probation Officers interviewed for this paper both recalled that in the 1950s, whatever the final outcome, attempted suicides were virtually always remanded in custody for medical and psychiatric reports. One was critical of the practice: "The prison medical reports were fairly useless," she said, "basically they said 'not mad - punish any way you think'. I think the remands themselves were punitive - a 'taste of prison' even if custody was not the sentence" (Yardley interview 3 April 1997).

Despite the enthusiasm for 'treatment' at all levels of criminal justice, punitive approaches had not been entirely discarded. An illustration was the case in 1955 when one Edward French pleaded guilty to attempted suicide and was sentenced to two years imprisonment by the Recorder, E. Ryder Richardson QC. In passing sentence, Richardson said, "May I be allowed to put the problem as it presents itself to me? Self-murder is one of the most serious crimes on our calendar. An attempt thereat, therefore, is a very serious crime indeed. I was minded to regard this as a frivolous

attempt and I should have treated it as such notwithstanding, but by your evidence you have proved to my satisfaction it was a serious, sane attempt on the part of this man to take his life. How can I take that lightly?" (quoted in Appeal Court judgement, Criminal Appeal Reports 1955 Vol. 39 (1956))

But when the case went to appeal Lord Chief Justice Goddard delivered an opinion that indicated that he believed the Recorder was seriously out of step with contemporary judicial opinion:

"I am not surprised [the appellant] desires to appeal against that sentence, because I have never heard of a sentence of two years imprisonment for attempted suicide.

The circumstances of the case are that the appellant, who is obviously a man of somewhat unstable disposition, stole a spare wheel and tyre from a van, and he was trundling it away when a constable, who had seen him do it, arrested him. That night he smashed his cell window and cut his neck on both sides with the glass and then called the gaoler. There seems to have been some doubt whether it really was a serious attempt or not, but the doctor thought it might be a genuine attempt at suicide and not a mere piece of exhibitionism. However that may be, as the appellant was a man of 36 years with 41 convictions for different offences, the majority of them various forms of drunkenness, the magistrates very properly committed him for sentence to the Recorder...

It would not be right for this court to say that a court should treat attempted suicide as a trivial thing. One knows quite well that unbalanced people do attempt suicide, but this is the first time I have ever heard suicide described as one of the most serious crimes known to the law and therefore attempted suicide as a very serious offence... No doubt attempted suicide has always been regarded as an offence, but to say that it is to be regarded as a very serious

crime indeed shows an entire lack of proportion. It is not a very serious crime in point of law. Whether it is regarded as a sin or not is not a matter for the court. In such cases a short sentence is often given to protect the man against himself. A very great change has come about in this matter since I was first called to the Bar. I remember that, when I was a young man going the Western Circuit, prosecutions for attempted suicide were very common at quarter sessions. Now they are rare, and magistrates generally deal with the matter. At any rate, it is absurd to say that a sentence of two years imprisonment ought to be passed.

...

We cannot possibly allow that to stand... we substitute a sentence of one month to be served concurrently with the other sentence, which means that the total sentence falls from four years to two years" (ibid.).

Coroners

Coroners were another professional group who by their practice influenced thinking about the criminality of suicide. Macdonald and Murphy, examining what they say was a profound change in attitudes towards self-killing in the 16th and 17th centuries, claim that the focal point of the change was the coroner's jury. "Coroners' juries," they say, "palliated the law of suicide in two ways - by colluding with families to frustrate the rights of the crown and lesser lords, and by excusing increasing numbers of suicides as persons *non compos mentis* - a demonstration of a change of belief to the idea that self-destruction was in itself an act of insanity, an end more to be pitied than scorned" (Macdonald & Murphy 1990:114). This may indeed have been the case, but if so, it was insufficient to effect a change in the law, which remained in place for several more centuries. What it did do was to establish an assumed, albeit unexamined, connection between suicide and mental illness that remained in place, so that when decriminalisation was finally mooted, its acceptance was assisted by linking it clearly to mental health measures, and presenting it as an obvious and logical move.

In respect of coroners' practice, an administrative step was taken in 1936 that both reflected and contributed to the draining away of criminality from the act of suicide. In considering verdicts available to coroners' courts, a government committee recommended that the verdict "felo de se" (felony against oneself) no longer be available in cases of self-killing, but should be replaced by a non-committal statement that the deceased died by his own hand (Cmd 5070 paras 82-83). Although recommended in 1936, this change did not formally appear in the official coroners rules until 1953, which held that the standard form of the verdict should be that the deceased "killed himself", but permitted the (optional) addition of the words "whilst the balance of mind was disturbed" (Coroners Rules 1953, Third Schedule, Form 18, Note 5).

Atkinson, in his study of the often arbitrary way in which coroners impute suicide, commented on "the familiar rider often added to suicide verdicts by coroners" about "death while the balance of the mind was disturbed" and claims "it adds nothing, as far as the law is concerned to the verdict" (Atkinson 1978:91). "The attraction of the phraseology for coroners," Atkinson suggests, "seems to be that it is distinct from a direct legal pronouncement of insanity or ascription of mental illness. Thus it may be used to lessen any possible imputation of responsibility for what happened on the part of significant others of the deceased, without simultaneously branding the deceased as mad (to which the significant others might object with equal force). Coroners appear to vary in their use of it... One coroner, who was exclusively trained in law, told me that he never used it precisely because it is legally unnecessary" (ibid.:205).

The Hon. Secretary of the Coroners' Society of England and Wales, Robert Milne, who was a practicing Coroner in London, contributed an opinion to the 1959 Church of England pamphlet on suicide (see chapter 5). In his view, "The rider 'whilst the balance of his mind was disturbed' has, clearly, no significance at criminal law." He was in favour of discarding it altogether since "While the impact of a suicide verdict is

softened to some relations and friends of the deceased by the inclusion of the rider, very nearly as many are affronted by the suggestion of insanity in their family or circle of friends." Mr. Milne advocated inclusion of "surrounding causes" in cases of self-killing, such as "while suffering from a depressive state" which would serve "a useful purpose in elucidating or clarifying the actions of these unfortunate and unhappy people who take their own lives" (*Ought Suicide to be a Crime* 1959:39).

In the case of the M.P. who killed himself in October of 1959, the coroner was reported to have recorded that Sir Albert Newby-Braithwaite "died from barbitaric poisoning self-administered" but further that "the drug was taken while Sir Albert was suffering from a very serious kidney infection which must have had a very serious effect on the state of his emotions" (TELEGRAPH 24 October 1959) However, not everyone was gently dealt with by coroners' courts. A few days after the Newby-Braithwaite report the TIMES carried a story headlined: "Attempt to Cover Up Wife's Suicide: Minister 'couldn't bear' publicity" The article read: "A Presbyterian minister did not tell a Coroner's officer that he had put his wife's body into bed after finding her in the gas-filled kitchen of their home because "I couldn't bear the public to know that she had gone this way" he said at an inquest at Southwark, SE yesterday. A verdict was recorded that Mrs. Winifred Alice Thorburn, aged 65, wife of the Rev. Ernest Thorburn, killed herself. The SE Coroner, Dr. A. Gordon Davies, commented, "An attempt was made to cover up the suicide. I can sympathize with Mr. Thorburn in his position and his desire to shield his wife from this stigma, but what in fact he served to do was to bring a deal more publicity on the incident than had the case been properly reported and the full story told" (TIMES 27 Oct. 1959).

These two verdicts can be seen as illustrating the "pity not scorn" approach towards suicides that Macdonald and Murphy first identified some 400 years earlier. While this attitude certainly contributed to a climate conducive to decriminalisation, it did not have sufficient motive force by itself to change the law. A conjunction of several other

factors was necessary to achieve this, and among these were the practical realities impinging on the political scene in the late 1950s.

Practical Realities

Two practical realities impinged upon the passage of the Suicide Act, which at first sight appear to pull in opposite directions - one encouraging the reform, the other resisting it. The first was the rising rate of crime,¹¹ which was causing difficulties for the Home Office both in terms of politically uncomfortable statistics and pressure on an ageing prison establishment. The second was the large conservative (small "c") constituency, well represented in Parliament, which viewed all proposals to loosen social control as dangerous threats to social order.

The first reality - rising crime and crowded prisons - encouraged a pragmatic view of decriminalisation as a quick, painless, costless way to lower recorded crime rates and at least slightly ease the prison problem, especially in the hard pressed remand sector. Indeed, Leo Abse publically accused the Government of having such a motive. "So we find on this occasion," he said in the Second Reading debate on the Suicide Bill, "the Government are conquering crime by causing self-murder to be no longer included in criminal statistics" (Hansard: Commons: 19 July 1961).

The second reality - continued concern about social order - could certainly have inspired resistance on social control grounds to a straightforward decriminalisation. This thesis is arguing that the reasons it did not were first, that Butler's low-profile strategy kept most of the conservative constituency from even noticing it was happening, and second, those who did notice were mollified by the prospect of *tighter* control over attempted suicides being available through the provisions of the Mental Health Act.

Both the realities - pragmatic pressures and social order anxieties - were clearly displayed in the 1960 Interim Report of the Royal Commission on Police:

"The background to this decision [to issue an interim report] was a climate of public opinion which for some years has been disturbed by the recognition of mounting crime in an increasingly prosperous society. The facts speak for themselves. During the decade 1949-59, the national wealth has risen by over a quarter and average earnings have gone up in real value by 35 percent. In the same period crimes reported to the police have increased by 45 percent and there are two and a half times as many reported crimes of violence as there were ten years ago. This is a distressing accompaniment to the benefits of the welfare state, the virtual elimination from our society of poverty and widespread unemployment, the increased leisure now enjoyed by all classes and the educational opportunities open to all. Research into the causes of crime is a fundamental issue of our time; and hand in hand with research goes an unprecedented programme of penal reform and experiment presented to Parliament by Your Majesty's Secretary of State for the Home Department in February 1959.

But the fruits of research and the harvest of penal reform necessarily lie some way ahead; and the demand is for action now to check the grave increase in crime...

The maintenance of law and order ranks with national defence as a primary task of government. It is an essential condition of a nation's survival and happiness. We do not think that anyone acquainted with the facts can be satisfied with the state of law and order in Great Britain in 1960. The criminal statistics give a broad indication of social malaise, of failure by society to curb irresponsibility and deal effectively with growing lawlessness" (Cmnd 1222 1960-61 Chapter II:4)

The Metropolitan Police Commissioner's Report for 1960 also focused on rising crime and disorder in the streets:

"For the first time on record the total number of indictable and non-indictable criminal offences exceeded 200,000 or an average of 550 crimes a day... the highest number of offences ever recorded - 97.7% higher than in 1938. Offences against the person increased from 4,100 in 1959 to nearly 4,700 in 1960."

....

"Although fewer incidents of hooliganism were reported during the year, this continues to be a problem. Deficiency in patrol strength allows groups of mischief makers to congregate in a manner which would not have been tolerated before the war and which causes much resentment on the part of law abiding citizens... in several incidents more than the ordinary amount of violence was displayed" (Cmnd 1440 1960: 9-10)

The 1960 Report of the Commissioner of Prisons set out the stark consequences for the prison service of the rise in crime, and made a particular point of the remand population:

"During 1960 the total population of prisons and borstals, which had shown a marked decline during the first quarter of 1959, began to increase once again; this increase continued throughout the year and during the first half of 1961, by which time it had reached a new peak of over 28,500.... Throughout the year the number of untried prisoners remained very high, the general daily level being about 1,400...

Between mid-1956 and mid-1961, the total population of prisons and borstals has risen from about 20,500 to over 28,500. The unrelenting pressure on a system which was already overloaded has made great demands on prison staffs,

particularly in the local prisons which bear the brunt of increased receptions and overcrowding" (Cmmd 1467 1960:1 & 4)

Ministers were certainly aware of the urgent political problem these figures presented. In an interesting juxtaposition on the same the day that Kenneth Robinson put his first Parliamentary Question about suicide law reform, Butler also had to answer a question about concern over the increase in crimes of violence. He said that "research was being undertaken" (Hansard: Commons: 6 February 1958). Also on that day David Renton M.P., at that time junior Minister at the Home Office replied to a question about overcrowding in prisons. He told the House that the "Prison Commissioners are inspecting a number of defence and other Government establishments likely to become redundant in the hope of finding premises suitable for conversion into open prisons" (ibid.).

The 1959 White Paper "Penal Practice in a Changing Society" (Cmmd 645 1959), which Butler personally oversaw, and of which he was extremely proud, was candid in acknowledging the problems and indicated the ways answers were being sought. It began by saying, "It is a disquieting feature of our society that crime has increased and is still increasing," and later, "The increase in crime during the last two or three years has led to severe overcrowding in prisons and has strained the resources of other agencies ... The growth of crime has added greatly to the work of the criminal courts... the number of cases for trial doubled between 1938 and 1956. This increase has brought problems of jurisdiction and organisation which need to be examined. It has also brought a corresponding increase in the number of persons who remain in custody for a considerable period before being brought to trial." And after announcing the creation of the Home Office Research Unit, and funding for the Institute of Criminology at Cambridge, the paper continued: "It is hoped and believed that knowledge of crime and criminals will increase to the point at which measures can be

taken to bring about a real reduction in the amount of crime and still more effective treatment can be given to each offender" (Cmnd. 645 1959: Introduction).

One of the most significant points in the White Paper, as regards reform of the suicide law, was Butler's commitment to "deal with that part of the prison population which could be and should be avoided by adequate alternatives" (Radzinowicz 1999:170) Attempted suicides in the remand population - brought to his attention by Kenneth Robinson's Parliamentary Questions - clearly could be counted in this group.

Sir Charles Cunningham, Permanent Secretary at the Home Office from 1957 to 1966, confirmed in interview the deep concern of Ministers and Home Office officials at this time about rising crime and the inadequate prison establishment. He pointed out that no new prisons had been built since the 19th century, and virtually no money had been spent on existing ones. There was pressure for immediate answers to the problem of prison places (Cunningham interview 30 September 1996) However, as succeeding decades have amply demonstrated, pragmatic moves by the Home Office to try to keep offenders out of prison (diversion, community service orders, early release) have at every point run into opposition from people who see such policies as soft on crime.¹² These people believe that if someone is convicted of a crime sanctions should be swift and robust. Despite a tendency among some historians to see in the late 1950s and early '60s early signs of "permissiveness", the truth is that the conservative constituency at that time, particularly in respect of crime and social order, was large and vocal. Some illustrations chosen from a very big selection appear below. It is a matter of special interest to this thesis to note that the opposition to decriminalisation that could plausibly have been expected from this constituency did not materialise in any tangible form. In what his widow says was one of Rab Butler's favourite phrases, they were "the dogs that did not bark." (Mollie Butler interview 24 October 1996). It is one of the contentions of this thesis that Butler quite deliberately took steps to achieve this (see chapters 6 and 7).

In looking for examples of potential opposition to decriminalisation - the dogs that did not bark - one could start with Butler's own Minister of State, David Renton M.P., now Lord Renton, who said that he opposed decriminalisation of suicide at the time, and (in 1996) still did. Indeed, in his view the penalties for attempted suicide should have been made harsher. He based this view, he said, on his father's experience as a doctor. "They [attempted suicides] were a terrible nuisance to him," Renton said, "they needed to be deterred" (Renton interview 8 May 1996). He did not, however, say so publicly when the Act was being passed.

It is clear that at least some other doctors shared this view. In a letter to the Times following the report of the Criminal Law Revision Committee in October 1960 (see chapter 6), Dr. Seymour Spencer of Exeter wrote.

"...you question the soundness of the major premise underlying the report of the Criminal Law Revision Committee. Dealing from day to day with attempted suicides, I think you are right.

Cases of attempted suicide fall into two broad groups of the mentally ill and the irresponsibly unstable. The first four cases referred to me at a general hospital were in the latter group: irresponsible young women overdosing themselves because life chanced not to be going their way; not even deeply concerned to harm themselves but so standardless regarding their responsible self-preservation that they casually gestured self-destruction. Two others blackmailed with suicide threats for the abortion of unwanted pregnancies.

Medical confidence precluded reports to the police which might have led those patients to receive the probationary guidance and elementary moral instruction they lacked; but one could at least warn them that their behaviour being contrary to the canons of society its repetition might place them in legal jeopardy.

What sanction can we assert before these people, adult in years, children in behaviour, if society formally underwrites their standardless irresponsibility? Is there no public concern for the difficulty under which doctors like myself will work once, in the midst of the present post-Christian indifference towards the stewardship of our lives, and those of our unborn children, this last legal sanction is removed from us?" (TIMES 28 October 1960)

So the medical establishment was not unanimous in supporting decriminalisation of suicide, and it is interesting that the Church of England booklet on the legal status of suicide (see chapter 5) quoted Peter Green (author of *The Problem of Right Conduct*) as saying "I ought to add that though I have discussed the question with many physicians and surgeons, I have not yet found one who would approve the suggested permission. The usual answer I have received has been that the medical profession would oppose any change in existing law and custom in this matter, and that the doctor's business is to prolong life to the uttermost." (*Ought Suicide to be a Crime?* 1959:49)

The robust nature of the social order constituency was very much on display in the debates on capital punishment which took place regularly throughout the 1950s in Parliament and especially at Conservative party conferences. Advocates of harsh sanctions to control deviance were highly visible in these and the equally regular debates on corporal punishment. At exactly the time that Kenneth Robinson M.P. first suggested removing all criminal sanctions from suicide and attempted suicide, in the winter of 1958, a number of Members of Parliament signed an Early Day Motion seeking to enable courts to inflict corporal punishment for crimes of violence (GUARDIAN 28 February 1958). Butler as Home Secretary repeatedly had to fend off what came to be known as the "hanging and flogging" section of the Conservative party, and suffered vociferous attacks at party conferences on the issue of criminal sanctions (Butler 1971, Radzinowicz 1999). His Criminal Justice Bill, which went through Parliament coterminously with the Suicide Bill was nearly scuppered in the

Lords by peers who wished to add an amendment re-introducing flogging as a criminal sanction (Howard 1987:283). Butler's refusal to give in to them is cited by his supporters as a crucial reason for his failure to become Prime Minister.¹³ His PPS during these years (1960-62), Paul Channon M.P. (now Lord Channon) confirmed this in interview and said that at that time, "The overwhelming bulk of the party was against *all* reform" (Channon interview 14 November 1996).

The need for strict sanctions to deter deviance had many highly placed advocates outside Parliament as well. The Lord Chief Justice, Lord Parker, advised the Magistrates Association in October 1959, "Do not be afraid to give severe deterrent sentences", and when he then said "I am in favour of a short sentence of corporal punishment; I am a believer in corporal punishment", the GUARDIAN reported that it was "greeted with applause" (23 October 1959). Lord Parker, according to Anthony Sampson in the first *Anatomy of Britain* "strongly advocated flogging", and moreover, "He passed the record sentence of 42 years on George Blake for spying. And when the flood of appeals came up to him, he and his colleagues later began actually *increasing* the sentences" (Sampson 1962:154-55).

In October 1960 Cardinal William Godfrey, Roman Catholic Archbishop of Westminster told the annual meeting of The Public Morality Council:

"We read of drug addictions, sexual delinquency, drunkenness, violent assaults, even by young people, and thefts on a large scale. These are widespread, and the causes must be of a general kind... Older people would have been long aware of the progressive slackening of restraints, the setting aside of precious conventions as outdated, the watering down or negation of religious beliefs that had kept society stable through the ages" (GUARDIAN 27 October).

The TIMES quoted another section of this speech:

"The method of these propagandists of evil follows a familiar pattern. First eliminate the idea of sin and make a person his own law maker in moral issues. Convince him of this and you eliminate any idea of guilt. This also destroys the idea of responsibility for crime. Then the word 'treatment' takes the place of 'punishment' and the criminal glories in the possession of some so-called mental aberration which destroys in him all sense of responsibility.. Punishment is not merely a deterrent: it is meant to redress an order of broken relations between a man and his god" (TIMES 27 October 1960).

The Cardinal's Church of England counterpart, the Archbishop of Canterbury, who was repeatedly (and erroneously, see chapter 5) cited as the initiator of the committee which recommended decriminalisation of suicide, called in November 1959 for the *re*criminalisation of adultery (Mercer 1995:835).

Parliamentary debates on a number of other measures during this period clearly reveal the presence of a conservative constituency much concerned with social control and public order. As suicide had been linked with social breakdown since the mid-19th century, explicitly by such influential figures as Durkheim, Morselli and Mazarek, this constituency might have been expected to oppose decriminalisation. Examples of concurrent issues where social control concerns were ascendent include the 1959 Street Offences Bill, which is often cited as a piece of permissive legislation, but which in fact was entirely aimed at clearing prostitution off the streets. It was based on the *other* half of the Wolfenden Report, and the actual title reads: "An Act to make, as respects England and Wales, further provision against loitering or soliciting in public places for the purpose of prostitution and for the punishment of those guilty of certain offences in connection with refreshment houses and those who live on the earnings of or control prostitutes" (Halsbury's Statutes of England and Wales 1994). Butler himself said the measure was motivated by social order concerns: "The Act

substantially increased the penalties for soliciting, with imprisonment as a possible penalty for repeated offences, and increased the maximum prison sentence for those convicted of living on the immoral earnings of prostitution. I was moved to take such action by the condition of the streets around Mayfair and Piccadilly which were literally crowded out with girls touting for clients" (Butler 1971:203-4).

The Obscene Publications Act 1959 is another example. This too is often cited as permissive legislation, but was not viewed as such by the people who proposed it. The Select Committee on the issue, whose membership included Roy Jenkins, the subsequent sponsor of the Private Member's Bill, said in their 1958 Report:

"While appreciating the desirability of removing uncertainty in the law we are also concerned that any amendment of the law relating to obscene publications is liable to be controversial. To attempt to do too much might well give rise to fears that the law would be unduly relaxed in ways that were unintended and unforeseen; these fears might well jeopardise the enactment of even a modest measure of necessary improvement if it were associated with other more radical provisions. We have therefore tried to draw up our recommendations to remove any such apprehensions... In the course of our enquiries, we have been impressed with the existence of a considerable and lucrative trade in pornography, its suppression has proved a constant problem under existing statutory powers... The suppression of this trade would, in our opinion, be facilitated, and the task of the police made easier, if the law were amended so as to give additional power to the courts and wider powers of investigation to the police" (Cmd 599 1957-58:iv).

Concern about public morality and social control was visible in the often acrimonious debates over reform of the licensing and betting and gaming laws (Dixon 1991). It was certainly visible in the bitter resistance to the idea of legalising abortion and homosexuality. Leo Abse, the Labour M.P. who attempted to introduce a Private

Member's Bill to legalise homosexuality in 1960, said, "The 1959-64 Parliament was overwhelmingly opposed to the recommendations of the Wolfenden Report urging that homosexual acts in private between adults should no longer be criminal offences" (Abse 1973 p.145). The Bill was defeated by a majority of 114 in a vote of 213 to 99 (Howard 1987 p.280). Kenneth Robinson M.P. brought forward a private members bill on abortion in February 1961, at about the same time as the Suicide Bill was introduced to Parliament. The TIMES, interestingly, saw a connection and reported the two Bills in the same article. (3 February 1961) Robinson's 'Termination of Pregnancy' Bill was not even allowed to reach a vote, but was talked out by a group of Roman Catholic M.P.s (Hindell & Simms 1971).

The suggestion that tolerance of the sort advocated by Isaiah Berlin and Noel Annan in the 1950s was widespread is countered by historians of homosexual law reform who claim that the campaign against homosexuality was intensified in the 1950s, under the specific direction of David Maxwell-Fyfe when he was Home Secretary (1951-54) and Theobald Mathew, the long serving Director of Public Prosecutions. (Annan 1991, Driberg 1977, Weeks 1989). Colin Spencer claimed that "between 1945 and 1955 the number of annual prosecutions for homosexual behaviour rose from under 800 to just over 2,500, of whom 1000 were given custodial sentences" (Spencer 1955:360). Maxwell-Fyfe became Lord Chancellor in 1954 and as Viscount Kilmuir was the person who actually introduced the Suicide Bill to Parliament. Mathew remained DPP throughout the period and was a member of the Criminal Law Revision Committee Butler appointed to consider change in the law on suicide.

Patrick Devlin's famous speech on "Morals and the Criminal Law" to the British Academy in March 1959 forcefully articulated the principle that the state does have a responsibility to enforce moral behaviour, in the same way as it has a responsibility to safeguard anything else that is essential to its existence (Devlin 1965). This position attracted public support as well as criticism during the ensuing famous "Hart-Devlin

debate", and was judicially confirmed shortly afterwards in the case of *Shaw v. DPP*. This case concerned the appeal against conviction of the man who published the *Ladies Directory* of prostitutes to assist punters who were having difficulty finding them after the Street Offences Act. Viscount Simonds delivered the verdict, which turned on the issue of whether there was an offence known to the common law of 'conspiracy to corrupt public morals', on 4 May, 1961. At that point the Suicide Bill was actually in Parliament, in transit from the House of Lords to the House of Commons. Simonds said: "I entertain no doubt that there remains in the courts of law a residual power to enforce the supreme and fundamental purpose of the law, to conserve not only the safety and order but also the moral welfare of the State, and that it is their duty to guard it against attacks which may be the more insidious because they are novel and unprepared for" (*Shaw v. DPP* [1961] 2 WLR 897, quoted in Griffith 1997: 260-61).

Professor Hart, who is characterised as the spokesman for the "permissive" side of the law and morality debate at the time, commented critically in his book *Law, Liberty and Morality* (1963) about what he saw as a "revival of what might be termed *legal moralism*... provoked ...perhaps [by] the idea that a general stiffening of the sanctions attached to any form of immorality may be one way to meet the general increase in crime by which we are all vastly disturbed. But whatever its cause, this movement of judicial opinion has gone far" (Hart 1963:6-7). It should be noted that Hart specifically attached his arguments about individual liberty in this debate to matters of sexual morality; on the issue of preventing an individual harming himself Hart supported legal intervention.¹³

There are in fact a plethora of examples of attitudes and positions at the time that could have developed into opposition to decriminalisation of suicide. The noted Oxford Professor A.L. Goodhart, for instance, writing in *English Law and the Moral Law* (1955), said: "...there is not a single branch of English law which does not, to a

considerable degree, find both its origin and its strength in the moral convictions of the English people. Law which is divorced from those convictions tends to wither and become ineffective, for it will have lost one of the primary grounds on which the recognition of its obligation is based" (Goodhart 1955:ix). The influential novelist Angus Wilson, writing in *Encounter* 1956 considered the matter of suicide as a criminal offence and concluded "It is fortunate that this theological veto [on suicide] should be so firmly entrenched in our criminal law because in a world where despair lies so close to the crust, [suicide] is an act that comes too near to home" (*Encounter* December 1956:82). Wittgenstein, who was something of an intellectual cult in the 1950s, was quoted as saying: "If suicide is allowed then everything is allowed. If anything is not allowed then suicide is not allowed... for suicide is, so to speak, the elementary sin" (Shields 1993:66) .

These examples of potential resistance - on a variety of grounds - to the idea of decriminalising suicide could be multiplied. If the issue had been opened up to public discussion it is certainly possible that this potential resistance would have become actual. Moreover, the measure might have triggered the same kind of response from the general public as did the proposal to decriminalise blasphemy when it was raised in 1981. That proposal "produced about 1000 letters and petitions with some 20,000 signatures in favour of retaining the offence. This was numerically, a vastly greater response than that in favour of abolition" (Zander 1994:416). Evidence gathered for this thesis indicates that Butler was well aware of the possibility of resistance to the decriminalisation of suicide, and that this is why he kept its profile low to the point of invisibility (see chapter 7). However, a low profile alone would not have been sufficient to pass the Bill, given the attitudes clearly on display in the Parliamentary debates about it. It is the contention of this thesis that something else was needed, and that something was supplied by the Mental Health Act, which is the subject of the next chapter.

Conclusion

In the 20th century the pre-existing structural trends tending toward change in the law on suicide accelerated and were joined by others. Affluence and educational opportunity broadened horizons and encouraged enthusiasm for change; secularisation, class mobility and the upheavals of war weakened traditional moral authority. Positivists became more insistent in their claim that morality was anyway irrelevant to the issue of attempted suicide, which required treatment, not punishment, and the agencies of criminal justice, by their operational practice, came more and more to implicitly endorse this positivist position. These factors, which gave some people a taste for change, made others fearful about social breakdown. These fears were exacerbated by rising rates of crime in the 1950s and by increasingly visible disorder in the streets. The fear was manifest in vociferous opposition to most of the social reforms proposed at the time, so its absence from the debates on the decriminalisation of suicide is extremely odd. Why the change was not opposed is best explained by the arguments set out in the next three chapters.

Notes to Chapter 3

¹According to Williams (1958 p.239) "It was chiefly under the influence of Montesquieu, Diderot and Voltaire that France took the lead in legalising suicide by a statute of 1790" and most other European countries followed in the 19th century

²Opinion polls have been regularly taken on the question of euthanasia and mercy killings, but not on the criminal status of suicide itself or attempted suicide. The Voluntary Euthanasia Society claims that "The number of people supporting voluntary euthanasia has risen dramatically over the years" (*The Last Right* p.6) They say that a poll by Mass Observation in Britain in 1969 showed 51% of the population in favour of active voluntary euthanasia, and the most recent survey in 1993 showed 79% in favour, with 42% agreeing "strongly". (*Your Ultimate Choice* p.103-4. Souvenir Press for the Voluntary Euthanasia Society 1992)

³The weakening of traditional religion's moral authority is a constant theme in writings about post-war Britain. See especially: MacIntyre, A. *Secularisation and Moral Change* 1967; Mitchell, B. *Law, Morality & Religion in a Secular Society*; Gilbert, A.D. *The Making of Post-Christian Britain* 1980; Habgood, J. *Church and Nation in a Secular Age* 1983

⁴Annan said of the 1950s, "Not that anyone would have dreamed of pursuing sociology at Oxford or Cambridge" (1991 p. 346), but described the change as coming shortly when: "Ministers discovered that these outsiders...could help them" (p.347). C.Wright Mills in *The Sociological Imagination* (1959) said, "In England, sociology as an academic discipline is still somewhat marginal" (p.19).

⁵A particularly forthright plea to change the law in the *Lancet* was quoted by Kenneth Robinson in the Committee Stage of the Suicide Bill: "It seems clear that this outdated law is as inconsistent and inequitable in its application as it is damaging in its effect. Its virtues are hard to discover. Its vices

are blatant. The sooner it is done away with the better." Hansard, Standing Committee E, 25 July 1961, col. 2)

⁶Examples include *British Journal of Medical Psychology* 1947; *British Medical Journal* 1952, 1956; *Lancet* 1951, 1952, 1955, 1961; *Journal of Forensic Medicine* 1954; *Medical Practitioner* 1955; *Bulletin of the British Psychiatric Society* 1957; *Psychiatry* 1957; *Neuropsychiatry* 1951; *Psychiatric Quarterly* 1950, 1951, 1953, 1956.

⁷The work of Professor E. Stengel was both implicitly and explicitly referred to in the Parliamentary debates on the Suicide Bill. Implicitly when Viscount Kilmuir said "Recent research suggests...that those who attempt suicide are often making an appeal for help" (Hansard - Lords 2 March 1961 col. 247, and explicitly when Kenneth Robinson in Committee said "The man who has done most research in this country is Professor Stengel of Sheffield University, who for a long time has campaigned for the reform embodied in the Bill. (House of Commons Official Report, Standing Committee E, 25 July 1961, col. 5. Leo Abse referred to Durkheim (Hansard 19 July 1961 col. 1410 and to various social surveys on suicides in Wales (col. 1413-14). Baroness Wootton referred to the Sainsbury study, saying that London boroughs with high suicide rates were ones of social disorganisation and lack of cohesion and to a study that showed "rates [of suicide] at Oxford and Cambridge were enormously higher among undergraduates than it is for the same age group" (Lords 2 March 1961)

⁸File MEPO 10121 at the Police Record Office, Wellington House, Buckingham Gate has an exchange of letters about the Samaritans in the spring of 1962. It begins with the Commissioner of the Met, A. Townsend, writing to J. Goyder, Assistant Commissioner at the City of London Police to ask if he knows anything about the Samaritans. Goyder replies that he in fact does, having called for a report about them in the spring of 1960 after having seen a television show about them. The reply from Goyder to Townsend is dated 2 May 1962 and says as far as he knows the Samaritans are all right. On 10 May 1962 Townsend wrote to Chad Varah saying, "Although it is no longer a crime to attempt to commit suicide, you will appreciate that the police of the Force are still frequently called upon in these cases, and it is part of their duty to do all they can to ensure that the person who has made the attempt is placed in the care of someone who will look after him (or her) and give help and advice." Chad Varah replied (letter dated only "May, 1962): "I was very pleased to receive your enquiry as we are most anxious that the Met Police should act in the same way as the City of London Police by referring to the Samaritans any potential or attempted suicide who can be persuaded to agree ... We are currently dealing with 3000 new cases a year of which at least 40% are suicide risks."

⁹Andrew Brown, Deputy Records' Officer at Wellington House said (24 March 1997) that the General Orders are now defunct; they were not revised very often, and when changes in the law took place a Police Order went out and local forces were expected to cross out and write in the changes in their printed copies. In File MEPO 10121 there were examples of this in regard to the Street Offences Act 1956 and the Suicide Act 1961.

¹⁰The number of people tried at the higher courts had risen from 8,384 in 1930 to 30,591 in 1960, and in the magistrates courts from 43,464 in 1930 to 84,523 in 1960 (Butler & Sloman 1980 pp. 289-90)

¹¹Government policies, both Conservative and Labour, from the 1970s on have been aimed at trying to change the perception of community sentences. The White and Green papers (Cm 965 and CM 966 1990) were explicit on the subject. The current Home Secretary, Jack Straw, has made numerous speeches urging more rigour on the Probation Service. See Mair 1997, Newburn 1995

¹²Butler himself gives this as a reason in *The Art of the Possible*, and it was cited repeatedly in interview by his widow, Molly Butler. It was also cited by Howard in the official biography (1987), and in interview by a subsequent Home Secretary, Kenneth Baker.

¹³In the course of the Hart-Devlin debate Hart said that many of the examples Devlin cited were not interference in private behaviour but justifiable paternalism, so state action was appropriate. Simon Lee explores this aspect of Hart's thinking in *Law and Morals* 1986.

Chapter 4: The Significance of the Mental Health Act

The Mental Health Act 1959 was an important and far reaching piece of legislation. Its significance goes well beyond what will be covered here and has been considered in a number of works, in particular a two volume study by Larry Gostin of MIND published in 1975 and 1976. In respect of the Suicide Act, this thesis argues that the Mental Health Act was crucial to its passage: that if this 1959 reform of the law on mental illness had not taken place the decriminalisation of suicide would not have been proposed - certainly not by a *Conservative* government - and would not have been passed by the "deeply reactionary" 1959-64 Parliament.

This argument rests on two key aspects of the Mental Health Act: first, that the Royal Commission¹ which preceded it, and the lengthy debate that accompanied it, managed to achieve working agreement across political parties that, whatever the circumstances, the appropriate response to mental disorder should be medical treatment, not criminal sanction. Thus the key point was enshrined in statute: if a criminal offence could be ascribed to mental illness it should not attract punishment, and the offender should be removed from judicial to medical jurisdiction. Following this, it only remained for suicide and attempted suicide to be defined as in themselves *prima facie* evidence of mental illness and they would automatically be removed from criminal justice jurisdiction. After this, the statutory decriminalisation could be presented as simply eliminating a redundant involvement of the criminal courts.

The second aspect of the Mental Health Act that was of critical importance to the Suicide Act were the provisions giving power to the police to remove someone suspected of mental disorder to 'a place of safety' (section 136), and power to doctors to detain that person (sections 25-29). The clear statement of these powers (see

below) in the statute provided the necessary assurance that decriminalisation of suicide would not result in a loss of official control over attempts at this kind of deviance. Indeed one of the points made by its advocates in favour of the Suicide Bill was that attempted suicides who currently slipped through holes in the criminal justice net would be more likely to be caught if the behaviour was brought wholly within the medical remit.

Evidence to support the argument that these aspects of the Mental Health Act were crucial to the passage of the Suicide Act comes in the number of times, and the way in which, they were mentioned in the debate about decriminalisation, both inside and outside Parliament. This evidence is presented in this chapter. In all the comments the assumption is made that attempted suicides were ill and in need of treatment, and this assumption was not challenged. The only point of contention came from people who wanted the treatment to be made compulsory, and their concerns were met by reference to police and medical powers over the mentally disordered that had been established in statute by the Act.

The Mental Health Act became law on 29 July 1959, "An Act to repeal the Lunacy and Mental Treatment Acts 1890 to 1930 and the Mental Deficiency Acts 1913 to 1938, and to make fresh provision with respect to the treatment and care of mentally disordered persons and with respect to their property and affairs; and for purposes connected with the matters aforesaid." (Law Reports: Statutes 1959) It was very specific about who was ultimately responsible for these matters: Section 147 (1) on definitions says firmly, " 'Minister' means the Minister of Health." The role of the police and courts was limited to identifying (under the guidance of doctors) mental illness when it appeared within their remit, and then handing the sufferer over to the medical authorities. "The Minister," says section 97(1), shall provide such institutions as appear to him to be necessary for persons subject to detention under this Act, being persons who in the opinion of the Minister require treatment under conditions of

special security on account of their dangerous, violent or criminal propensities." The Health Minister, Derek Walker Smith M.P., in presenting the Bill to Parliament pointed out that "Security precautions will continue ... But the fact that the Minister of Health is responsible underlines the fact that these places are primarily hospitals where we shall continue to treat the patients..." (Hansard: Commons: 26 January 1959)

There was the difficulty of someone who might not wish to be treated - a problem that exercised Magistrates and Parliamentarians (see below), and the police. In the file labelled MEPO 2 10121 at the Metropolitan Police record office on Buckingham Gate there is a note, hand-written on an actual copy of the House of Lords Hansard for 9 March 1961 (the date of the Committee Stage of the Suicide Bill, see chapter 7). The note is from "A.C.A." (identified by Andrew Brown, Deputy Records Officer as "Assistant Commissioner A Dept), and says, "How are we to deal with cases if the attempter refuses help? I mentioned this to Sir Charles Cunningham as being the only point in which we were interested." There is no record of an answer to A.C.A., but this kind of query in other places was regularly met by reference to the Mental Health Act, in particular section 136:

"Mentally disordered persons found in public places:

- (1) If a constable finds in a place to which the public have access a person who appears to him to be suffering from mental disorder and to be in immediate need of care or control, the constable may, if he thinks it necessary to do so in the interests of that person or for the protection of other persons, remove that person to a place of safety within the meaning of the last foregoing section ...
- (2) A person removed to a place of safety under this section may be detained there for the purpose of enabling him to be examined by a medical practitioner and to be interviewed by a mental welfare officer and of making any necessary arrangements for his treatment or care."

If these professionals decided there was evidence of mental disorder² the Act gave them powers of compulsory detention: "Section 25(2) An application for admission for observation may be made in respect of a patient on the grounds - (a) that he is suffering from mental disorder of a nature or degree which warrants the detention of the patient in a hospital (with or without medical treatment) for at least a limited period; and (b) that he ought to be so detained in the interests of his own health or safety or with a view to the protection of other persons." The original detention was to be for "observation" and was limited to 28 days, but the person could thereafter be further detained - indefinitely - for treatment if the doctors deemed it necessary.³

Insight into what the treatment might involve was supplied by Dr. Edith Summerskill M.P., who replied to the Second Reading of the Mental Health Bill on behalf of the Labour opposition. She gave an enthusiastic welcome to the Bill, and listed some of the new treatments - "group and individual psycho-therapy, electro-therapy, modified insulin, occupational training and so on...[which] have made a valuable contribution to the cure and rehabilitation of those suffering from mental illness" (Hansard: Commons 26 January 1959). Dr. Doris Odhum, who played such an important role in the passage of the Suicide Act (see chapter 6), was said in her TIMES obituary (18 October 1985) to have been "one of the pioneers in the use of electroconvulsive therapy (ECT)."

Of particular importance in respect of attempted suicide, were sections 60, 65 and 67 of the Mental Health Act. Section 60(1) allowed Magistrates, following a conviction, and if two doctors certified mental disorder, to pass a hospital order and have the offender put immediately into compulsory care. Perhaps more significantly, Section 60(2) allowed them to do so *without* a conviction, if "the court is satisfied that the accused did the act."⁴ These powers were also available to the Assize and Quarter Session courts with the added power to pass a compulsory hospital order that restricted discharge, either "without limit of time or during such period as may be specified in the order."

The debates on the Mental Health Bill in Parliament were suffused with the optimism that Enlightenment positivism inspires. This is the belief that with rational, scientific *effort*, things will improve. It was on display right at the start of the 2nd Reading of the Bill on 26 January 1959 when Derek Walker Smith said, "It is really the advance in methods of research and treatment that divides us so decisively from the past... scientific research and medical treatment are, by and large, a modern plant of an intensely vigorous and rapid growth..." (Hansard: Commons: 26 January 1959). He then went on to give the clearest possible demonstration of faith in this vision: large amounts of money devoted to it.

"In recent years," Walker Smith said, "the mental health services of the local authorities have been steadily expanding, as is evidenced by the progressive increase in their new expenditures on them. In 1954-55 the net expenditure was £2,292,000. In 1955-56 it was £2,627,000, an increase of £335,000. In 1956-57 it was £3,127,000, an increase of £500,000. In '57-'58 it was £3,647,000, a further increase of £520,000, and this year, '58-'59 it is estimated that the figure will be £4,100,000., a further increase of £453,000. ... The estimated expenditure on the service exceeds the estimated expenditure of the current year by over £900,000 for next year, '59-'60, and by over £1 3/4 million the year after that. These figures allow for an annual rate of development in each of the next two years at roughly two-and-a-half times the rate of real increase which has obtained in recent years" (Hansard: Commons: 26 January 1959).

This detailed illustration of how much the medical empire was expanding was greeted warmly by participants in the Parliamentary debate. The problematic effects of it on civil liberties did not concern them, and did not impede passage of the Bill. The high profile libertarian debate taking place at exactly the same time remained focused on issues of sexuality and censorship. However the effect on civil liberty did begin to

cause concern in the years that followed, especially the effects of the compulsory detention and treatment provisions. Gostin (1985) defined it as the "welfarism vs. legalism" debate, and Jill Peay explained that "the danger is that once deference to psychiatric notions is permitted, welfarism need no longer be tempered by legalism and outcomes which challenge notions of justice can arise. Hence psychiatry's role in managing and controlling offenders efficiently may even legitimise forms or length of confinement which could not be justified in purely legal-punitive terms" (Peay 1997:680).

Concern about the compulsory detention provisions of the Mental Health Act did grow in the 1960s and '70s, inspired in part by a campaign waged by MIND (the name adopted by the former National Association for Mental Health). By 1976 the well known psychiatrist Anthony Clare publicly stated, "There is no denying that the compulsory admission provisions of the 1959 Mental Health Act are abused" (Clare 1976:364). But at the time of its passage no one objected to allowing the police to remove mentally disordered people from public places and very few were concerned about giving doctors virtually unfettered power to compulsorily detain them. There was widespread agreement that professional discretion, in Larry Gostin's words, should be "unencumbered by a panoply of bureaucracy and procedures" (Gostin 1985:v). In this the debate was following lines laid down by the Royal Commission (also known as the Percy Commission) which had been unequivocal in advocating that mental disorder should be removed from criminal justice jurisdiction and put wholly in the control of the medical establishment.

Dr. A.D.D. Broughton M.P. was one of the very few people in Parliament who queried the sweeping powers granted to doctors by the Mental Health Act. Speaking at 2nd Reading as "the only practising psychiatrist in the House," he said, "I should like the justices of the people to be included for the reason that a medical man is only qualified

to give a medical certificate when a patient is compulsorily detained, that person is losing important civil rights. I do not think a medical man is qualified to rob a person of his or her civil rights. I therefore think that responsibility would be better left with justices of the peace" (Hansard: Commons: 26 January 1959).

Dr. Broughton's point was not accepted, and not only were justices of the peace removed from any involvement in compulsory detention of the mentally disordered, the Mental Health Act relieved them of their long held responsibility to certify the institutions where the detention took place. Kenneth Robinson M.P., an important figure in the reform of the mental health law as well as the suicide law, was particularly pleased at the exclusion of J.P.s. Writing in the *New Statesman* in January 1959 about the Mental Health Bill, he said approvingly, "The decision to detain an unwilling patient will be a purely medical decision... The efforts of a small medical rearguard to retain the magistrate in the picture have been scotched."

Although only minimal concern was expressed at the time about possible threats to civil liberties inherent in the Mental Health Bill, a great deal of concern was expressed about the threats it posed to social order; in particular the provisions for care in the community.(Part II "Local Authority Services") A representative example comes from the National Council of Women (NCW), who passed a resolution at their 1957 Annual Conference saying the NCW "deprecates the proposal that certain cases who may be anti-social in behaviour or who may unexpectedly become aggressive, should be cared for in the community instead of in institutions or colonies" (NCW 1958 Annual Report:7). At the 1957 Conference of the National Association for Mental Health, the representative from the NCW, Mrs. Frankenburg J.P. "spoke on the danger to the public of mental defectives being at large on discharge from hospital". The NCW record of this says, "Her remarks were very well received and were reported in the Press" (ibid.:34).

Mrs. Frankenburg's remarks, and their reception, demonstrate why both aspects of the Mental Health Act cited above were so important to the Suicide Act. When attempted suicides were successfully defined as mentally ill, which the advocates of decriminalisation worked so hard to do, they inevitably became subject to the kind of fears expressed by the NCW, so the removal of the mentally ill from judicial to medical jurisdiction had to be coupled with measures offering reassurance that such a move would not jeopardise public order and social control. These measures duly appeared in the clauses referred to above. They played a central role in the subsequent passage of the Suicide Act, as the extracts from the debate set out below demonstrate.

Just as civil liberty concerns did not obstruct passage of the Mental Health Act, neither did they hinder the Suicide Act. The relatively brief Parliamentary debate on decriminalising suicide never considered the possibility that attempted suicides were *not* mentally ill. Schopenhaur's point was never raised that "it is quite obvious that there is nothing in the world to which every man has a more unassailable title than to his own life and person." (Schopenhauer, "On Suicide", quoted in Battin 1995:181) Nor was Thomas Szaz's notion that "the medical profession's stance toward suicide is like the Communists' toward emigration" - i.e. intolerable efforts to curtail human freedom. (Szaz 1980:196) Nor did anyone in the Suicide Bill debate query the assumption established in the Mental Health Act that if someone was mentally ill (or appeared to be) that it automatically licensed professional intervention and coercion. It was not until much later that Thomas Szaz, himself a psychiatrist, wrote his attacking essay "The Ethics of Suicide" in which he said "the physician uses the rhetoric of illness and treatment to justify his forcible intervention in the life of a fellow human being" (Szaz 1980:189).

What debate there was about the decriminalisation of suicide - which was not very much - clearly shows that it was on precisely this basis - i.e. people who try to kill themselves are *ipso facto* mentally ill and need treatment - that the proposal was

made, and only on this basis that it was accepted. The arguments and statements of the participants in the debate can support no other interpretation. It is why this thesis argues that the Suicide Act, which on the face of it was a straightforward decriminalisation, was in fact a transfer of control from criminal justice to medical jurisdiction. Although the Suicide Act itself (see Appendix A) made no reference to medical involvement, the debates that surrounded it certainly did, and in particular to provisions of the recently enacted Mental Health Act. Its supporters clearly saw it *not* as abandoning control of a deviant behaviour, but as transferring it away from the "punitive" practices of criminal justice to the "humane treatment" practices of the medical establishment. The idea that the state might withdraw attempts at control altogether simply did not arise. Extracts from the debate that preceded and surrounded the decriminalisation of suicide are presented below in support of this argument. The nature of the people involved in the debate as well as what was said is, of course, inextricably linked to the outcome, and this factor - the importance of "agency" is considered in chapter 6.

As mentioned in chapter 3, it is fortuitous that the genesis of the actual law that decriminalised suicide was in a small committee where representatives of the judicial and medical establishments came face to face, and where the minutes, preserved in the BMA archives, record not only the attitudes which informed the transfer, but also reflect a territorial struggle between judicial and medical establishments for control of the 'body' of the offender.

The BMA/Magistrates Joint Committee debate on this issue is also discussed in chapter 6 and set out fully in Appendix B. Extracts from this record are presented here to show that members of this committee believed suicide and attempted suicide were serious social problems, properly the object of state intervention and control, but were persuaded that the state's powers should be exercised through the medical establishment (which had been nationalised in 1948), and not through criminal justice

agencies. This assumption was shared by nearly everyone whose words are recorded in the debate on decriminalisation. The only resistance came from those who like Dr. Broughton (see above) and Seymour Collins (see below) wanted to *share* the control between criminal justice and medical agencies. As regards the government's view of the matter, it is revealing that when members of the Joint BMA/Magistrates Committee were summoned to the Home Office in March 1959 to discuss suicide law with the Deputy Permanent Secretary Francis Graham-Harrison, the only other people present were two officials from the Department of Health.

The joint BMA/Magistrates committee was set up after the second world war to "consider matters of common interest." Their third report, in 1947, was titled "Attempted Suicide and the Law," and stated: "There is a strong case for amendment of the law so that attempted suicide (excluding suicide pacts or incitement of another person to commit suicide) would not be dealt with as an illegal offence." Interestingly, in the perspective of a conflict over jurisdiction, this report made clear that this statement reflected the views of the medical members only, and explained that the Magistrate members "had participated fully in the discussion, but, though they were not in disagreement with the conclusion reached, it was agreed that the report should be concerned only with the problem from the medical aspect." (All information concerned with the Joint Committee comes from the BMA archives, file B/27/3/2. The items do not have individual archival numbers)

The Report went on to make clear clear that the purpose of any change should be to improve/increase treatment possibilities:

"... adults 'in need of care and protection' would be brought before the magistrates courts to whom the necessary psychiatric advice should be available, so that consideration could be given to the best treatment for their rehabilitation. A further suggestion was made that powers be granted to magistrates to extend the present 28 day limit under an observation order." (quoted on agenda for Joint Committee meeting of 30 September 1955)

Not a great deal happened in regard to suicide law following the 1947 report until 1955, when Dr. Doris Odlum, as the then Chair of the BMA/Magistrates committee, resurrected the issue and asked the then current committee to endorse its predecessors' report. However, even this seemingly unexceptional proposal encountered resistance. The minutes of the first discussion record: "Some were of the opinion that it was advantageous for attempted suicide to be regarded as an offence because cases were brought to the notice of the authorities who could decide on appropriate action..."

This view of the situation was shared by quite a few people at the beginning of Dr. Odlum's effort to change the law, most importantly by the Magistrates Association (see below). It was the position Rev. Chad Varah of the Samaritans said he held until "Doris Odlum convinced me it was wrong." (Varah interview 7 April 1999) The wish to retain some criminal justice involvement with attempted suicides was very hard to dislodge. In September 1960 *The Economist* ran an article speculating on a possible change in the law on suicide and said, "One can grant that the criminal law is a present means of obtaining treatment, but it is hardly a necessary one. Those suffering from mental illness can be given treatment voluntarily, or if necessary compulsorily, without recourse to the courts ... The only gap left by the abolition of the criminal offence would be a tiny suicidal minority, uncertifiable but unwilling to accept treatment. They could be dealt with by giving the courts power to make temporary orders, similar to the care and protection orders made by juvenile courts, so that rehabilitary treatment could begin." (*Economist* 3 September 1960:871)

In any case, enough members of the Joint Committee initially wanted to retain criminal justice involvement to prevent their accepting Dr. Odlum's proposal to endorse the 1947 recommendation. As they could not agree among themselves on the issue, they decided to canvass opinion in their respective Associations. It turned out that the Magistrates' Association was firmly *against* any change in the law on suicide. Their

representative on the Joint Committee, Mrs. MacAdam J.P., reported in November 1956:

"the Legal Committee of the Magistrates' Association had considered the present position regarding cases of attempted suicide and had reported to the Council of the Magistrates Association that, in their view, there was no necessity for a change in the law. They believed that cases were being dealt with satisfactorily, and had asked to be informed of any evidence showing that the discretion whether or not to bring a person before the courts was not being used wisely."

This view had been clearly stated in the Annual Report of the Magistrates Association in October 1956:

"The [Legal] Committee has considered whether there is need for some alteration in the law relating to attempted suicide, and in particular whether it should remain a criminal offence.

In view of the general practice of only bringing a case of attempted suicide in exceptional circumstances, the Committee is not in favour of the law being amended, but considers that attempted suicide should continue to be a criminal offence so that where necessary the person concerned can be safeguarded and helped." (Magistrates' Association 36th Annual Report, October 1956:23)

Some two and a half years later the BMA/Magistrates Joint Committee did agree to recommend a change in the law in order to facilitate treatment of attempted suicides, but the proposal to remove this behaviour completely from the criminal courts had been strongly resisted. A magistrate member of the Committee, Seymour Collins J.P., fought especially hard to maintain at least partial judicial jurisdiction. Throughout the four years the committee debated the issue Collins was distinctly unenthusiastic about proposals to decriminalise, insisting on the need to retain police and court powers of intervention. In the face of the medical members' opposition to this,

Collins took the unusual step, in April 1957, of circulating a personal statement to all members of the committee:

"With regard to the proposed Statement on Attempted Suicide I am rather reserved and very sceptical about the wisdom of all the recommendations.

The police officer's powers of arrest where there had merely been a breach of the peace merely continues if some action on his part becomes necessary to prevent in the immediate future a further breach of the peace. I am very doubtful whether, apart from his power of arrest for the common law offence of attempted suicide a policeman could intervene even if he saw a man in the street eating large quantities of aspirin and obviously trying to do away with himself and a fortiori he would have no powers whatsoever if this or any of the other recognised methods of terminating life were being exercised on himself by a man in a private dwelling. In any event I doubt whether attempted suicide is at the present time any breach of the peace.

I am in full agreement with the view that attempted suicide cases usually require some treatment or supervision and I am never very happy about the idea of patients being regarded as voluntary patients in a mental hospital when they have been sent there under Section 4 of the Criminal Justice Act 1948 as a condition of residence for a period not exceeding 12 months which can only be enforced as a breach of a probation order. It seems to me that these provisions and their enforcement are so roundabout that they exceed the British genius for compromise.

All I hope is that the Joint Committee will not tie themselves down to recommendations which will leave the police powerless and I venture to suggest that in the comparatively rare cases which come before the Courts the present system works pretty well. There still is little to choose between the

stigma of having been before the Court and having been in a mental hospital in the eyes of most families and where the only chance of psychiatric treatment is through the medium of a Court I feel the present system has much to recommend it."

But some members of the Joint Committee were firm in their belief that attempted suicide should be removed entirely from criminal justice jurisdiction. At the meeting when the Collins' statement was discussed they managed to defer further discussion, and for a particular purpose. The April 1957 minutes record agreement on the following:

"That consideration of the draft statement on attempted suicide be deferred until the Committee has had an opportunity of studying the Report of the Royal Commission on Mental Illness and Mental Deficiency, expected to be published in May."

It should be noted that the Joint Committee would have had privileged access to what the Report was likely to say as Lady Hester Adrian J.P. was a member both of it and of the Royal Commission.⁵

A seven page summary of the recommendations of the Royal Commission on the Law Relating to Mental Illness and Mental Deficiency was duly circulated to members of the Committee. At the next meeting in July 1957 a resolution was passed recommending the police should continue to be involved, not to prosecute, but to compel treatment:

"In view of the fact that suicide is at present a felony, the police have power to intervene where a person is found attempting suicide, and it is desirable for power of this kind to be retained in certain circumstances. It is suggested that suitable alternative legislation could provide for police intervention in cases of

attempted suicide and give power for such cases to be brought to a hospital for observation and treatment if necessary."

Dr. Odlum then invited Professor E. Stengel, President of the Psychiatric Section of the Royal Society of Medicine, who had been involved in research on suicide and attempted suicide, to address the Joint Committee's next meeting. Professor Stengel had long advocated a change in the law on suicide, and the minutes of this meeting (22 January 1958) record that he "reminded the Committee that the Report of the Royal Commission on Mental Health expressed the view that the less the judiciary had to do with the treatment of patients the better and he thought that this principle should be applied in relation to attempted suicide."

The minutes of the meeting with Professor Stengel include this note:

"Mr. Seymour Collins felt there was a necessity for some power to be given to the police to intervene where a person was found attempting suicide. If the present law was amended so that attempted suicide was not regarded as an offence the police would have no power to intervene and to take a person to hospital and would be liable to action for unlawful arrest if they so acted."

The committee's response to Collins' concern was minuted as:

"It was thought there would be no difficulty in making suitable arrangements to cover that point; it was essential that the police or any other person discovering an attempted suicide should take action to save the person and take him to hospital or a medical practitioner."

The minutes continue:

"It was the general feeling of the Committee that the present law was obsolete and should therefore be amended to ensure that all persons attempting suicide received appropriate care. It was suggested that as a first step towards obtaining amendment of the law the matter should be raised in connection with

new legislation arising out of the Report of the Royal Commission on the Law Relating to Mental Illness and Mental Deficiency.

The Committee then Resolved:

"That the Committee on the Report of the Royal Commission on the Law Relating to Mental Illness and Mental Deficiency be informed of this Committee's views on the subject of attempted suicide, and be asked to support them and to propose the inclusion of a special clause relating to attempted suicide in any new legislation concerning mental health."

The significance of the Royal Commission and of the Mental Health Act to the Suicide Bill is apparent not only from the number of times they were referred to in the various debates, but also in the manner of the references. In the BMA/Magistrates Joint Committee it was only the existence of the Act that finally overcame the determination to preserve at least some criminal justice powers over attempted suicide. This happened in March 1959, at the point when representatives of the Committee had been invited to the Home Office to discuss the suicide law (see chapter 7). In advance of going to the Home Office, the representatives held a preliminary meeting on 12 March in order to finalise their submission. Some months previously, at a meeting when Seymour Collins was not present, it had been agreed to recommend that courts be removed completely from any involvement with attempted suicides. At the preliminary meeting in March Seymour Collins attempted to reverse this by adding a recommendation to give courts power to impose care and protection provisions on attempted suicides. This was resisted, and the minutes record:

"There was some objection to the proposal on the grounds that it would mean that the person had to be brought before a court. It was also felt that, whilst such a procedure might be useful in a few cases, the proposals in the present Mental Health Bill were such that if accepted, they would provide for action, where necessary, in many cases of attempted suicide and it would be

unnecessary to bring in additional legislation to cover a very small number of instances of attempted suicide."

The meeting then did agree a series of proposals to be presented to Home Office officials as the formal view of the British Medical Association/Magistrates Association Joint Committee. These proposals were the product of a remarkably small number of people: there were only five present at the meeting, including Lady Adrian and Dr. Odlum. The recommendations are worth recording in full because they reveal so clearly the intention to *transfer, not remove*, control over attempted suicide, and the importance of the Mental Health Act to this objective:

- "a) Attempted suicide *per se* should not be a criminal offence
- b) Clause 133 of Mental Health Act could be applied if attempted suicide is in a public place, to enable the person to be removed to a place of safety.⁶
- c) If the attempted suicide is not in a public place, the police should have power to take that person to a place of safety on the presumption they are in need of treatment.
- d) The small proportion of attempted suicides who create a public disturbance could be charged with breach of the peace.⁷
- e) Following discharge from hospital, it is suggested that after care and follow up be undertaken by a social worker, not a probation officer.
- f) It is not possible to protect people against themselves completely, but if they are kept in a place of safety and have the opportunity of care and treatment, they are less likely to make a second attempt at suicide than if they have been imprisoned.
- g) A change in the law would not make it more difficult for a person to receive treatment.
- h) The recommendations do not refer to suicide pacts." ⁸

The minutes of the meeting that took place at the Home Office on 13 March 1959 provide explicit evidence of how important the Mental Health Act was to the change in the law on suicide:

"It was pointed out that when the Joint Committee of the B.M.A. and the Magistrates' Association had recommended provision for bringing in a charge of breach of the peace it was intended to cover those cases where the attempted suicide had caused a disturbance to the public. It was now realised that if the Mental Health Bill at present before Parliament was passed, the provisions contained therein would cover most of the cases of attempted suicide in which it was considered necessary to remove the victim."

The provisions of the Mental Health Act had an important influence on the debate in the Church of England committee which considered suicide law (see chapter 5), just as it had had on the Joint BMA/Magistrates Committee. In the "legal" section of the booklet this Church of England committee produced, titled *Ought Suicide to be a Crime?*, it says: "The case for abolishing the crime of attempted suicide will be greatly strengthened if the Mental Health Bill becomes law." The writer points out that under the proposed Mental Health Act "courts can make a 'hospital' or 'guardianship' order if satisfied the defendant is mentally ill" and that this order "may be made without recording a conviction". The writer then canvasses the problem of people whose suicide attempts cause danger to others - such as by throwing themselves under a bus - and suggests a possible extension of public nuisance laws to cover this. However he notes that this may not be necessary as under "Section 136 of the Mental Health Act police can remove to a place of safety someone in a place to which public have access if it seems he is suffering from mental disorder and needs care and control."

The applicability to suicide law of new provisions in mental health law was also raised in the brief exchange of letters in the TIMES that accompanied Kenneth Robinson's first raising of the suicide law issue in Parliament in February 1958. Herman

Mannheim of the LSE, who had been a member of the Joint BMA/Magistrates Committee, wrote supporting an end to criminal sanctions on attempted suicides and suggested that "some other machinery might possibly be worked out in consultation with the NHS, other social services and the police, and some of the recommendations of the Royal Commission on Mental Illness and Mental Deficiency might also be relevant" (TIMES 25 February 1958). Professor Mannheim also referred to the issue in a public lecture given at the LSE in the spring of 1958: "Would public opinion have been offended," he asked, referring to people prosecuted for attempted suicide, "if these people had been looked after by specially trained social workers and mental hospitals without the stigma and expense of prosecution and court procedure?" (Mannheim 1959:279)

On one of the three occasions when the TIMES commented about decriminalising suicide,⁹ it too remarked on the helpfulness of the Mental Health Act. An editorial in October 1960 commented:

"Medical treatment is obviously more appropriate than punishment and the Mental Health Act went some way towards supplying the main need by providing that a constable can remove to hospital any person suffering from mental disorder and in immediate need of care or control "if he thinks it necessary to do so in the interests of that person or for the protection of other persons" (TIMES 21 October 1960).

In Parliament, links between the Suicide Act and mental health law reform are discernable even before Kenneth Robinson put his first question about amending the suicide law. The Percy Commission which preceded and informed the Mental Health Act reported in May 1957. In July Parliament debated the Report, for the most part with lavish expressions of welcome and admiration. In this debate, most unusually as he was Home Secretary and it was a Health matter, Butler gave the closing speech. The Health Secretary, Dennis Vosper M.P., was ill at the time, and Butler explained

(Hansard: Commons: 8 July 1957), "I am rising solely because the Government thought this a matter of sufficient importance for a member of the Cabinet to intervene..." He went on to point out that, "It so happens that I am, and have been for some years, the President of the National Association for Mental Health. It is therefore not altogether unsuitable that I should take part in the debate." The significant point in this speech in terms of the as-yet-to-be-raised suicide reform came toward the end when Butler said, "I simply undertake, from the point of view of administration at the Home Office, to do what I can to carry out the spirit of the Commission's Report." Since one of the key points in the Report was the removal of all judicial involvement with mental illness, Butler's commitment to it was clearly relevant to the subsequent suicide issue.

Kenneth Robinson, who was the first to raise the issue of the suicide law in Parliament, was an enthusiastic supporter of mental health law reform and spoke many times in debates on the Royal Commission Report and on the MHA, regularly advocating that mentally disordered offenders be removed from criminal jurisdiction and put in the hands of doctors.

A month after Robinson's first question about suicide law reform (see chapter 7), Butler announced to the House of Commons that the Government would be bringing forward legislation to reform the law on mental illness in line with recommendations of the Percy Commission. In the two years that followed, Kenneth Robinson's Parliamentary Questions to Butler about the suicide law, and Butler's responses, show that assured provision for treatment of attempted suicides was the crux of the matter as far as Butler was concerned. This was made explicit in the following exchange at Question Time in May 1958 (Hansard: Commons: 23 May 1958): Robinson asked what further consideration the Home Secretary had given to the legal aspect of suicide and attempted suicide? Butler replied: I am pursuing my study of this problem, which

has practical aspects of no less importance than its legal aspects. I am not yet ready to reach a conclusion upon it.."

Robinson followed up with a further question: "Is the Rt. Hon. Gentleman aware that, since the last Question I put to him on this subject, a joint committee, set up by the BMA and the Magistrates Association to examine this subject, has reported in favour of a change in the law in the direction which I am suggesting and that this report is unanimously accepted by the Council of the Magistrates Association? In view of this weighty opinion, will not the Home Secretary make an early decision in this matter?"

Butler responded that he was aware of the report, but "I am also aware of various other considerations. I think this is a very difficult subject." He then pointed out how few prosecutions there were for attempted suicide, and that most of them resulted in probation. "I have also considered," he said, "that in a minority of cases without the power we have now we might not be able to achieve the desired results, so that, on the facts, it is a very difficult question to decide."

Robinson pursued the point of ensuring control: "Other provisions of the law," he said, "in regard to breach of the peace and mental health are quite sufficient to deal with the cases he has in mind." Butler then ended the exchange with a clear indication of the connection between change in the suicide law and mental health law reform: "The Government's approach to mental health is at present actual [sic], and does bring all this subject to the fore. It is against that background that I am examining it."

Parliamentary Questions from Robinson in the months that followed elicited further confirmation of the linkage: July 1958: Robinson - "Has the Home Secretary reached a conclusion on the desirability of amending the law relating to suicide and attempted suicide?" Butler: "No Sir. My study of this question suggests that in its practical aspects the problem is largely one of ensuring that those who need care or treatment to

prevent them from endangering themselves or others in fact receive it. In general where this can be done without the intervention of the courts proceedings are not taken, but there is a residue of cases in which the person concerned cannot be given, or will not accept, care or treatment without the intervention of the courts. I shall continue to study this aspect of the matter and I am in consultation with my Rt. Hon. Friend the Minister of Health about it" (Hansard: Commons: 24 July 1958).

February 1959: Robinson: "What further progress in discussion with regard to the law relating to suicide?" Butler: "I am pursuing, in consultation with my Rt. Hon. Friend, the Minister of Health, my study of the question how, if attempted suicide ceased to be a criminal offence, we could ensure that people who attempted to kill themselves and were in need of mental treatment would in fact receive it... A meeting will take place shortly between officers of my Department and representatives of the Joint Committee of BMA and the Magistrates Association which has considered the subject" (Hansard: Commons: 26 February 1959).

The existence of the Mental Health Act was, perhaps crucially, invoked in a memo from the Cabinet Secretary to the Prime Minister, Harold Macmillan on 24 October 1960, briefing him on the sudden appearance of the Suicide Bill on the Cabinet agenda (see chapter 7). The full text of this memo appears at Appendix D, but it is relevant to note here the comment in paragraph 2: "The Mental Health Act of last session makes it possible to detain for 28 days' observation a person who appears to be suffering from mental disorder and ought to be detained for his own health or safety" (PRO: CAB 21/4471).

The full significance of the Mental Health Act, and in particular the clauses licensing coercion, became apparent when the Suicide Bill actually entered Parliament. It was presented as the actual, tangible device which would ensure that the proposed transfer would not mean a loss of control. At the introduction of the Bill in the Lords, in

March 1961, Viscount Kilmuir, announcing the Home Secretary's intention that "attempts to commit suicide should cease to be an offence against the criminal law", said:

"The only problem has been the practical one of whether alternative and more appropriate methods are available for providing help where it is needed or has been rejected. I think I can assure your Lordships that this will be the case. Arrangements have been made by my Rt. Hon. Friend the Minister of Health to ensure that persons who are brought to hospital having attempted suicide are examined by a psychiatrist who can consider whether treatment or supervision is needed. Under the provisions of Part IV of the Mental Health Act 1959, it is possible to detain for 28 days observation a person who appears to be suffering from mental disorder and who ought to be detained for his own health or safety. This short period of compulsory detention can be initiated either by the application of the nearest relative or by that of a mental welfare officer. In these circumstances it has been thought possible and right to introduce this reform of the law, which is effected by Clause I of the [Suicide] Bill" (Hansard:Lords: 2 March 1961).

Lord Denning in the same debate said:

"I have had cases of attempted suicide before me, and what one always did was to bind them over and arrange for medical treatment. But now, since the Mental Health Act 1959, it is unnecessary for any action to be taken in the courts" (ibid.).

In the Commons, the Government Minister introducing the Bill (Charles Fletcher-Cooke M.P.) gave the same assurances as had been made in the Lords:

"Arrangements are being made by my right hon. Friend the Minister of Health to ensure that persons who are brought to hospital having attempted suicide are

examined so that need for treatment or supervision can be assessed. Under the provisions of Part IV of the Mental Health Act, 1959, it is possible, subject to appropriate safeguards, to detain for 28 days observation a person who appears to be suffering from mental disorder and who ought to be detained for his own health or safety or for the protection of others" (Hansard:Commons: 14 July 1961).

Despite these assurances, there still remained anxiety that some attempted suicides might slip through the social control net. Eric Fletcher M.P. said:

"[T]he machinery of the criminal law...has in recent years been used not to secure a prison sentence but to ensure that the unfortunate sufferer obtains the treatment required. There is a fear in some quarters that if we remove the existing responsibilities and duties of the police in this regard some of those who in the past have attempted suicide and who because of police intervention have had the appropriate treatment, will not get it... The Minister referred to the Mental Health Act and indicated the provisions which there exist for persons to be detained for a period of twenty-eight days. I appreciate that that will cover those cases of attempted suicide where people find themselves in hospital. But what about those who do not? What about those who at present go to a doctor after they have taken an overdose of barbiturates, or whatever it may be, which is not sufficient to kill them, and they are cured? What is the machinery to ensure that those people get appropriate treatment in the future?" (ibid.)

This concern was directly addressed by Kenneth Robinson in the Standing Committee debate on the Bill, and again relied on the Mental Health Act provisions:

"This is not nearly as serious a problem as my hon. Friend and others have suggested. I think that we all agree that psychiatric treatment is what most of these unfortunate people need. I am assured that it has a far better chance of

success in these circumstances if it is voluntarily accepted. I am also assured that, as long as these cases of attempted suicide are brought to the notice of the psychiatrist, there is seldom much difficulty about persuading them to accept psychiatric treatment.

Of course there will be some who will resist, but most of those will be suffering from some kind of mental disorder and in many cases it will be a mental disorder of a type or degree which would justify compulsory treatment under Section 26, or compulsory observation in a mental hospital under Section 25, of the Mental Health Act, 1959" (Official Report Standing Committee E, Suicide Bill, 25 July 1961).

The anxiety about untreated cases of attempted suicide and the possibility of amending the Bill to include provisions for their compulsory treatment was raised in both Lords' and Commons' debates. Leo Abse M.P. said:

"Concern has already been expressed in another place that although the workings of the Mental Health Act will ensure that an attempted suicide who is certifiable will enter a mental hospital, although one in respect of whom a relative may take action will enter for treatment, there exists a gap - in my view a wide gap - left by the abolition of the criminal offence. This will be the suicidal minority who are not certifiable but who are unwilling to accept treatment; a not unusual state among potential suicides. The point has not been met despite what has been said elsewhere. I would urge that powers be given to the courts to make temporary guardianship orders so that rehabilitation treatment could be given." If the Government were not agreeable to this, Abse went on, then other laws, such as the National Assistance Act or the Public Health Act, could be used, both of which allowed people to "be brought before the court and a suitable order made", and this would "deal with this residue who otherwise would not be dealt with at all" (Hansard: Commons: 19 July 1961).

B.T. Parkin M.P. agreed:

"I hope that [the Home Secretary's] influence will be exercised in the direction of widening the positive welfare activities of the Home Office along the lines suggested by my hon Friend the Member for Pontypool [Leo Abse]... The Home Secretary...is still the senior Minister responsible for the welfare of Her Majesty's subjects, not just for locking them up and punishing them. I hope to see the Home Office developing more in that direction. I hope to see it using the police more as agents of the Welfare State. They should be *primus inter pares* among the agents of the Welfare State and should have access to the agents of other Departments" (ibid.).

But the government managed to resist pressure to add compulsory treatment provisions to the Suicide Bill, mainly by continuing to cite powers available in the Mental Health Act which could be used to deal coercively with attempted suicides. In the final Third Reading in the Commons, after the Bill emerged unamended from its Committee Stage, the Minister, Fletcher-Cooke, announced his belief that it was "universally welcomed" and in case there was any doubt, went on to unambiguously re-state the true nature of the Bill:

"Because we have taken the view, as Parliament and the Government have taken, that the treatment of people who attempt suicide should no longer be through the criminal courts, it in no way lessens, nor should it lessen, the respect for the sanctity of human life which we all have. It must not be thought that *because we are changing the method of treatment for those unfortunate people* we seek to depreciate the gravity of the action of anyone who tries to commit suicide" [emphasis added] (Hansard:Commons: 28 July 1961)

This statement, and indeed the entire debate on the change in the suicide law, both inside and outside Parliament, makes clear that no one involved had any wish or intention that the state should relinquish control of this deviant behaviour. They

wanted the control - the "treatment" - to be exercised in a different way by a different group of people. As final confirmation of this, the Suicide Bill passed its Third Reading on 28 July 1961 and received the Royal Assent on 3 August. On 1 August, 1961 Eric Fletcher M.P. put down a Question to the Minister of Health, Enoch Powell: "Mr. Fletcher asked the Minister of Health what steps he proposed to take to ensure that all cases of attempted suicide coming to the notice of any hospital or general practitioner obtained psychiatric or other suitable treatment."

Mr. Powell replied: "I shall shortly be asking hospitals, local health authorities, and general practitioners to do all they can to ensure that everyone coming to their notice as having attempted suicide receives appropriate care and treatment" (Hansard: Commons 1 August 1961). Kenneth Robinson then asked Mr. Powell: "Will the Minister take special care about hospitals in view of the fact that in the past at least one famous London teaching hospital was in the habit of treating the physical symptoms of an attempted suicide and discharging the patient without referring him to the psychiatric department of the hospital?" Mr. Powell: "That is a point on which I am placing particular emphasis in the circular which I intend to issue" (ibid.).

As is clear from the above extracts, a sizeable number of people wanted attempted suicides to be subject to compulsory treatment as a matter of law. The Suicide Act did not, in fact, do this, but an interesting footnote to the debate is that some people professionally involved in mental health thought that it *did*. Philip Bean, Senior Lecturer in Social Administration at the University of Nottingham, wrote in 1985 that "persons who have attempted suicide... under the provisions of the Suicide Act 1961 are no longer regarded as criminal but are instead close to being regarded as insane, because the Act requires them to see a psychiatrist before they can be discharged from hospital." (Bean 1985:299)

Conclusion

The Mental Health Act 1959 was crucially important to the passage of the Suicide Act. Philosophically it codified the concept that if medical disorder was identified as a factor in criminal behaviour the offender was automatically transferred from criminal justice to medical jurisdiction. Practically, it gave power to police to remove and doctors to detain anyone who seemed to be suffering mental health problems. This meant that if attempted suicide was agreed to be of and by itself evidence of mental disorder then it was *de facto* decriminalised by the Mental Health Act, and the Suicide Act was only removing the redundant involvement of criminal justice. This was a triumph for the positivist position and a clear gain for advocates of the medicalisation of deviance. However, there still remained a formidable traditional defender of the idea that individuals do make choices and carry moral responsibility for the consequences. This was the Church, who as prime mover of the *criminalisation* of suicide, could have been expected to object to its *decriminalisation*. How this logically likely opposition was deflected is the subject of the next chapter.

Notes to Chapter 4

¹Royal Commission on the Law Relating to Mental Illness and Mental Deficiency, Feb. 1954 - May 1957, Chaired by Lord Percy of Newcastle, 11 Members, Cmnd 169

²Exactly what constitutes mental disorder was problematic at the time and continues to be forty years on. It is interesting that Butler had to deal with the problem many years later as Chair of the Committee on Mentally Abnormal Officers 1972-73, Cmnd 6244. In 1998 the government appointed another Committee to enquire into the matter again.

³The Mental Health Act included provisions for people compulsorily detained to apply to a Tribunal for release, but the actual operation of this came under increasing criticism in the years that followed. See Gostin 1975 and 1977; Clare 1980

⁴In the personal experience of the writer, this power of magistrates courts to make hospital orders without convicting continues to cause difficulty as it is unclear what exactly is needed for the court to be "satisfied that the accused did the act".

⁵Lady Adrian's husband, Lord Adrian, was the Master of Trinity College Cambridge, which was Butler's old college. Butler took over the post of Master from Adrian in 1965.

⁶Although the recommendations said "*Mental Health Act*" it was in fact at the time - March 1959 - a Bill. Some changes were made in the course of its progress through Parliament, and this matter became Clause 136 in the Act.

⁷The idea of maintaining residual criminal justice sanctions over attempted suicides by bringing charges of breach of the peace against them had been examined by the Home Office. In the meeting

with the Joint Committee on 13 March 1959, the Deputy Permanent Secretary, Francis Graham Harrison, was recorded as saying that consideration had been given to the recommendation that those cases of attempted suicide which it was necessary to bring before a court could be dealt with as a breach of the peace. Enquiries had been made about the position in Scotland where this procedure was already followed. It appeared that it was not altogether satisfactory because in some areas a charge of breach of the peace was made in nearly every case, with the result that of the cases known to the police a higher proportion was brought before the courts than happened at the present time in England and Wales. (See Appendix B)

⁸This recommendation referred back to the difficult debates over the Homicide Bill about how to treat survivors of a suicide pact. After much controversy this was resolved in S.4 (1) of the Homicide Act 1957: "It shall be manslaughter and shall not be murder for a person acting in pursuance of a suicide pact between him and another to kill the other or to be a party to the other being killed by a third party."

⁹The other two occasions were a brief secondary leader on 26 Feb. 1958 after Kenneth Robinson's first PQ (see chapter 5), and another short comment on 3 March 1961, the day after the 2nd Reading in the Lords (see chapter 8).

Chapter 5: Why did the Church not oppose it?

In October 1959 the Church of England Information Office published a booklet entitled "Ought Suicide to be a Crime?" recommending that it should not. This booklet was extremely important to the subsequent passage of the Suicide Act, as evidenced by - among other things - the way it was referred to in the Parliamentary debates on the Bill, and the fact that a copy is appended in the government files on the Act in the Public Record Office.

The importance rested partly on the fact that the Church was responsible for the criminalisation of suicide in the first place, and the ancient taboo on self-killing was essentially a religious, or at least a superstitious, prohibition. Therefore the most important opposition to *decriminalisation* could have been expected to come from this quarter. The Church's firm opposition at the time to abortion and to loosening of controls on obscenity, blasphemy and divorce suggest on the face of it that the Church would have been likely to oppose this measure too. The simple fact that it did *not* oppose it was important. The publication of a booklet under its imprint that actually *recommended* it was highly significant.

Although the moral authority of the Church was greatly weakened by the 1950s, it still retained a facade of social significance. Moreover, it continued to have disproportionate influence in the corridors of power, with its Bishops as permanent members of the House of Lords, and a number of vocal supporters in the House of Commons, three of whom were members of the Committee on the Suicide Bill.¹

Rab Butler had experienced Church resistance to reform legislation when, as Education Minister, he put through the 1944 Education Act. According to Michael Barber in "The Making of the 1944 Education Act" (1994) Butler had to engage in "tortuous negotiations" with the churches to achieve passage of the Education Act and "gave more time and attention to the Churches than to any other interested parties" (Barber 1994:54). With this as background, it is interesting to note that the Secretary to the Church committee on suicide and the law, Rev. G.R. Dunstan, said in interview that he sent advance copies of the suicide booklet both to the Home Office and to the Lord Chancellor, because he knew "it was important for legislators to know the Church would not oppose legislation" on this subject. (Dunstan interview 11 Nov. 1996) Butler acknowledged he had seen it in response to a Parliamentary Question from Kenneth Robinson shortly after it was published (Hansard: Commons: 5 Nov. 1959).

The booklet's major effect was to preempt and forestall what could have been damaging opposition, and it succeeded in doing this despite some muttering in the ranks. The Bishop of Carlisle, for instance, during the Second Reading debate in the Lords said, "I hope it will not be regarded as an impertinence if I say I am not even satisfied with this report produced by a Committee of my own Church, because I feel that there is not strong enough witness borne in it to what I call the sacredness of every human life" (Hansard: Lords: 2 March 1961). As the record detailed below shows, the Archbishop of Canterbury also had reservations about the booklet's recommendations and made clear in the introduction that they were *not* the views of the Church but merely of the four members of the committee.

This chapter details the history of the booklet. It does so because the history offers evidence that supports one of the main arguments of this thesis, which is, that suicide and its relationship to law and morality was still a profoundly controversial issue, and if this age-old controversy had been allowed to surface in debates on the Suicide Bill it is most unlikely it would have been passed. The history is also useful in illustrating the

impact of the 1957 Wolfenden Report's clear distinction between sin and crime. This concept naturally resonated most with people and institutions who concerned themselves with ideas about sin and morality, and its effect is very apparent in the Church of England committee's discussions on suicide.

The Church of England committee was the only (recorded) 20th century place where a discussion of decriminalising suicide involved the ancient debate about law and morality; that is, whether what is a *sin* is necessarily a *crime*. As in most debates on this issue positions on the committee were polarised and held with tenacity.² No agreement was reached, and no agreement seemed possible. The appearance of unanimity given by the final booklet, which was widely interpreted as a Church endorsement of decriminalisation, was achieved only when the committee shifted focus from suicide itself to the practical problem of the prosecution of attempted suicides. Here, as in all the other fora where the issue was discussed at all, the provisions of the Mental Health Act were important to the achievement of agreement. It is very significant that although the title of the booklet was *Ought Suicide to be a Crime?* the first words of the first recommendation were "*Attempted* suicide should cease to be a crime..." [emphasis added] It then went on to recommend in a far less decisive manner that "consideration be given to placing the law with regard to the liability of secondary parties to suicide on a more realistic basis by abolishing the felony of suicide and creating a new offence of aiding, abetting or instigating suicide of another." (a full list of the recommendations appears below)

There is another important point the history of this booklet illustrates, which is that the claim of powerful institutional support for decriminalisation, so crucial to the passage of the Suicide Act, often rested on very insecure foundations. The advocates of a change in suicide law made confident assertions on a number of occasions that the Church, the judiciary, and the medical establishment were all solidly in favour of reform. Evidence in this chapter casts serious doubt on this claim in respect of the

Church. (Chapters 3, 5 and 7 look at the case for the other two) To take one example: the Archbishop of Canterbury, though presented in newspaper reports as the initiator and supporter of the project, not only did not initiate it, he took no interest in it until its outcome became apparent, whereupon he attempted to stop publication of the recommendations. Moreover, the very small committee (four members and the secretary) never made any attempt to discover the views of church members other than themselves. There are a number of indications that if they had they would have uncovered substantial resistance to decriminalisation. Without the publication of their authoritative sounding booklet this resistance might have become vocal and opposed the Suicide Bill.

The account which follows here of the booklet's history is based on material in the Church of England archives in Bermondsey (file labelled "Ought Suicide to be a Crime?"- no archival numbers on documents), the Hansard records of Parliamentary debates, Cabinet papers in the Public Record Office, contemporary newspaper reports, interviews with members of the Commons committee on the Suicide Bill, and on an interview with Rev. Prof. Gordon Reginald Dunstan, who was Secretary to the Church of England's Council for Moral Welfare at the time, and secretary to the small committee which produced the booklet. Rev. Dunstan went on to become (among other things) Professor of Moral and Social Theology at Kings College London and Chaplain to the Queen.³ Rev. Dunstan set up the committee that considered suicide law, served as its secretary, and was mid-wife to the delayed birth of the booklet itself. Fortunately for historical research, much interaction which today would take place on the telephone (or e-mail) was at that time still conducted through short letters. Many of these are preserved in the file simply titled "Ought Suicide to be a Crime?" in the Church of England archives. The ones most relevant to this thesis are set out in this chapter.

History of "Ought Suicide to be a Crime?"

Here are the details of how the booklet came to be published:

On the 20th of March 1958 Rev. Dunstan wrote to the then Archbishop of Canterbury, Geoffrey Fisher as follows:

"At the meeting of the Board for Social Responsibility last evening, we had a short discussion on attempted suicide. It seemed to us possible that the strong interest being shown in the House of Commons, in correspondence in 'The Times' and in recent publications, might result in the setting up of a Departmental committee... we should be ready with some evidence... and we decided to ask a small group to look at the question of should attempted suicide remain a crime and prepare a short paper.⁴

It occurs to me first to ask whether your Grace has already asked another body to do this?"

In the light of later developments three things are important to note about this letter. First, despite subsequent public presentation that the working group and report were requested by the Archbishop, it is clear that they were in fact initiated by Rev. Dunstan on behalf of the Board for Social Responsibility. In the forward to the final, published, booklet the Archbishop says: "I asked the Church Assembly Board for Social Responsibility in March 1958, to examine the question on my behalf", and throughout the (admittedly limited) media reporting of the booklet when published, it was presented as "the Archbishop convened a group." This gave the matter a significantly higher status than an ordinary Church working group would have had.

The second point to note about the letter is that Rev. Dunstan did not ask the Archbishop's permission, or even his blessing for the project. He simply reported that

the Board intended to examine the question and queried whether the Archbishop had asked anyone else to do so.

The third point is that Rev. Dunstan's letter clearly says the Board for Social Responsibility discussed *attempted* suicide, not suicide, and decided to "ask a small group to look at the question of should *attempted* suicide remain a crime."

In terms of trying to discover the exact springs and sources of action, it is useful to consider Rev. Dunstan's comment about "the strong interest being shown in the House of Commons, in correspondence in 'The Times' and in recent publications". It was on 6 February 1958, just eight weeks before Rev. Dunstan's letter to the Archbishop, that Kenneth Robinson M.P. had put down his first Parliamentary Question on suicide law. Before this there had been no Parliamentary discussion, nor any public debate about the subject. Following Robinson's Question there was a total of six letters to the TIMES on the matter. Of these, one was about life insurance payments following suicide and one was from a coroner who was against decriminalisation (both on 20 February 1958). Of the remaining four, one was from Robinson himself (24 February, replying to the coroner), two were from the Cambridge Professor Glanville Williams, whose book on *The Sanctity of Life and the Criminal Law* was about to be published (February 11 and 26), and one (25 February 1958) was from Professor Herman Mannheim of the LSE, who had served on the Joint BMA/Magistrates Committee (see chapter 4). In a brief secondary editorial on the subject on 26 February the TIMES said "the general public has not thought about this question and probably has no opinion." After his Parliamentary Question, Kenneth Robinson had tabled an Early Day Motion about suicide law reform on 27 February (see chapters 6 and 7), and this Early Day Motion had been reported in the MANCHESTER GUARDIAN and the TIMES. Robinson had also written an article on "Suicide and the Law" in the *Spectator* in March. Among the points made in this article in support of reform Robinson said, "Now that it has been raised in the press and in Parliament... The

Churches have raised no objection. The general feeling seems to be that it is time England caught up with the rest of the civilised world" (14 March 1958:317). Given the brief period of time since his original Parliamentary Question, and the limited public exposure of the issue, it is at least possible that the absence of Church objection stemmed from simple lack of awareness that decriminalisation of suicide had appeared on the political agenda.

Robinson's *Spectator* article appeared in the week of the meeting of the Board for Social Responsibility which had "the short discussion on attempted suicide". In interview Rev. Dunstan said he could not remember exactly what had triggered this discussion. He did confirm that as far as he could tell at the time, there was no public debate on the question of attempted suicide as a crime, and he and the Board made no attempt to ascertain public opinion on the issue. "It never occurred to me to do that", he said. "My job was to look around and spot issues coming that the Bishops might have to speak about in the House of Lords." When asked what public opinion was at the time on the suicide issue Rev. Dunstan replied, "I don't think I stopped to enquire... It was not a subject on which one would want to excite feeling; the less controversy the better, we thought." (Dunstan interview 11 Nov. 1996)

On 22 March 1958 the Archbishop replied as follows:

"My dear Dunstan,

I have not asked anybody to work on this question of whether attempted suicide should remain a crime. As you say, it is almost certain to come up and an authoritative report ought to be available. I shall be very glad if you will set somebody to work.

I shall be interested to know what the answer is. Looking at it casually, now that we are getting the distinction between crime and sin on to a reasonable basis, I can myself see no grounds on which it is possible to go on treating attempted suicide as a crime. It hardly seems justifiable for the protection of

the community, and seems to be very definitely more a piece of private morality than, for example, adultery, which is not a crime."

Yours sincerely, Geoffrey Cantaur

It is worth noting here the Archbishop's explicit reference to the Wolfenden formulation about sin and crime. The sharp distinction between them would have been of particular interest to this Archbishop, Geoffrey Fisher, who concerned himself with matters of this sort. According to the Dictionary of National Biography, "One of the first tasks to which he set his mind was the revision of the canon law of the Church... he once described it as 'the most absorbing and all-embracing' topic of his life.'" Correspondence in the Church files indicates that it was the canon law aspect of the suicide issue - i.e., whether self-killers could be buried in consecrated ground - which ultimately concerned the Archbishop far more than the question of its secular criminality. However, neither appeared to concern him overmuch, as the following spring, when the Chairman of the committee wrote to him about the almost-completed booklet, he replied (on 2 March 1959):

"My dear Christie,

I had forgotten all about this matter of attempted suicide and the law, and am the more grateful to you and your colleagues for having given your minds to this small but not unimportant problem. I am sure it is right to put out such a considered report as this for Church people to have available. And of course I fully approve so far as I am able to judge it, of the statement of the case by lawyer, psychiatrist and theologian... "

The letter goes on at length about the burial issue, and says he wishes to delay any further movement on the booklet in order to obtain the opinion of the Archbishop of York on the burial question.

But to return to the outset of the project, in March 1958: Rev. Dunstan began by attempting to recruit a working party. He first asked Canon T.R. Milford, who regretted as he was too busy. Then on 15 April 1958 he wrote to Canon V.A. Demant of Christ Church College, Oxford, asking if he "would consent to be part of a group that might consist of you, and one other theologian, a Q.C. and perhaps someone with a knowledge of forensic psychiatry..."

Canon Demant replied on 22 April agreeing in principle to serve on the working group and indicating he was strongly *against* "removing suicide from the list of crimes". "I presume," he said, "the other members of the Group will agree."

Rev. Dunstan sent an immediate, tactfully worded but slightly anxious letter saying the "Board had been concerned that the group should approach the question with an open mind..." To which, on 26 April, Canon Demant responded:

"I misunderstood your proposal, and, as you gave no hint to the contrary, I assumed that it was to prepare a statement giving reasoned grounds why the Church opposes such a change in the law, having examined the strongest case in favour of it. ... You are quite right that I had better say 'no'..."

A hiatus followed, during which Rev. Dunstan had some difficulty finding suitable people to serve. In the summer he enlisted Sir (as he was then) John Wolfenden, recently appointed as Chairman of the Board for Social Responsibility, to ask John Christie, Principle of Jesus College Oxford, to chair the suicide committee.⁵ Christie accepted. Wolfenden at that time was of course prominent - some would say notorious - in matters of law and morality, following the publication of his Report the year before.

On 1 July 1958, Wolfenden wrote to Rev. Dunstan from the University of Reading, where he was Vice Chancellor:

"Christie has now said positively that he will do this... I confess that I have very few names in my mind - but I expect that you have, and I dare say he will have one or two suggestions of his own."

On 15 July Christie himself wrote to Dunstan:

"I had a long talk yesterday with Goodhart, the Master of Univ, and he gave me a clear idea of the legal view of the matter.⁶ In fact he hardly seems to recognise an ethical question at all. He gave me one or two names and I am trying Rupert Cross of Magdalen, an able man who knows much about the criminal law... There is much to be said for having a woman on our Committee."

The point about a woman on the committee had arisen when Dunstan approached Dr. T.C.N. Gibbens at the Maudsley Hospital about possible membership. Dr. Gibbens refused, but suggested Dr. Doris Odium, consulting psychiatrist for psychological medicine at the Elizabeth Garret Anderson Hospital. Dr. Odium's many activities, and in particular her special significance to the Suicide Act, are discussed in chapters 4 and 6. At this point it should simply be noted that even a cursory investigation would have revealed she had settled views on the matter of suicide as a crime, which did not match Rev. Dunstan's stated criterion that "the group should approach the question with an open mind..." Nevertheless, on 17 July 1958, John Christie wrote to Dunstan:

"About the possible psychiatrist for our committee, I have drawn a blank in Oxford so far and it strikes me that the lady you mention, Dr. Odium, might be a good person... It is rather a shot in the dark, but I think it would be good to have a woman member and I could not fix anything up for a long time if I had no answer before I go away..."⁷

So on 25 July Dunstan wrote to Dr. Odum inviting her to join the proposed working group on suicide and the law:

"It would", he wrote, "produce a memorandum which might or might not be published... the purpose is to have some preparatory thinking done...the wider purpose, no doubt, would be to educate the public mind in this important field of thought."

Dr. Odum accepted by return of post, on 26 July 1958.

Christie's approach to Rupert Cross, Fellow and Tutor in Law of Magdalen College Oxford, was successful, and Canon I.T. Ramsey, Professor of the Philosophy of the Christian Religion at Oxford, also accepted. All four members of the committee, including Dr. Odum, were Oxford graduates.

The first meeting was held on 2 October 1958, some six and a half months after the idea had been mooted. The minutes, taken by Rev. Dunstan, show it was decided that three members of the group would each write a section from the standpoint of their own discipline: law; theology, and psychiatry. The Chairman would write an introduction. There would be a concluding section with recommendations, on which they should all concur. Following the meeting, Dr. Odum circulated to the group an article she had written, which made her views on the matter crystal clear. The concluding paragraph read:

"It would appear that the only possible reason for continuing to regard either suicide or attempted suicide as a criminal offence would be the concept that suicide is a form of murder and therefore should be punished from a retributive point of view or as a possible deterrent. It has already been pointed out that there is no evidence that it does in fact act as a deterrent. The concept of

purely retributive punishment is no longer acceptable to the majority of the community who take a more humane and constructive attitude" (*Proceedings of the Royal Society of Medicine*: 14 Jan. 1958:298).

It seems apparent that Dr. Odlum based her assertion that "the majority of the community" found retributive punishment "no longer acceptable" on the same foundation as most people at the time seemed to base assertions about public opinion; which is to say on their own opinion and that of like-minded colleagues. Opinion polls, as a way to ascertain what the public actually were thinking, were not accorded much credence.⁸ If they had been, then comments about retributive punishment could hardly have ignored the consistent large majorities in favour of capital punishment. Kenneth Robinson's assertion in his *Spectator* article (see above) about "The general feeling...." in regard to suicide law appears to have been made on the same basis, since no opinion polls at all had been taken about the criminal status of suicide and attempted suicide. This fact should also be borne in mind when considering the confident assertion in the introduction to the Church of England booklet that "In its attitude to this subject [reform of suicide law], as to some others, public opinion has outstripped the Law."

The Committee Disagrees

The file in the Church archives shows that the deliberations of the committee did not proceed smoothly. The difficulties seem to have been grounded in the classic conflict between positivism's exculpatory approach to deviant behaviour and traditional concepts of morality and personal responsibility. When the following June, 1959, the Chairman, John Christie, sent a final draft to the Archbishop he appended a note:

(18 June 1959)

"I must apologise for the delay which has been largely due to the efforts by the Committee to meet the difficulties raised by one member of our group... not

unlike those put forward by yourself and the Archbishop of York about a possible alternative Service for a certain class of suicide. We have spent many hours discussing this question..."

A fortnight earlier, on 29 May 1959, Christie had written to Dunstan:

"Ramsey and Cross and I met yesterday and I hope that our meeting served to narrow the gap between Dr. Odium and the rest of us..."

A week before, on 22 May, in another letter to Dunstan about Dr. Odium, Christie had been explicit about the divide in the Committee:

"I wonder," Christie asked in his letter, "whether the real trouble is that she does not emotionally believe in what we should call responsibility or guilt at all."

The precise stumbling block concerned the concept, which appeared in the "Moral and Religious Assessment" section of the booklet [not formally accredited, but almost certainly the work of the theologian on the committee, Canon Ramsey] that suicides could be differentiated, and categorised, because, in this view, some *were* "guilty".

"It would seem" [the theology section of the booklet says] "as if there are not many suicides which can nowadays be regarded as wholly voluntary and deliberate. Even so...the number is sufficient not to remove suicide altogether from the sphere of morality... indeed there are distinctly moral issues and problems raised in all cases of suicide..."

"It seems difficult, if not impossible, for a Christian to welcome any dichotomy between law and morality, let alone between both and religion. The Christian must continue to see in law an embodiment of his religion and moral insights, insights which are there translated into rules for the ordering and well-being of a community... If a law on principle excludes certain behaviour from its

provisions, such behaviour becomes inevitably in the popular mind 'permissive'.
It assumes a certain respectability"

This section goes on to define four different kinds of suicide, three of them carrying "no fault", but the fourth "voluntary and selfish", and therefore culpable. This fourth category of suicide was to be subject, not to the criminal law, but to an alternative burial service, to mark its moral guilt. It had been suggested, when the group began its deliberations, that actual criminality might be retained for this category of suicide, a proposal which had prompted Dr. Odium to write to Dunstan on 9 January 1959:

"I personally should strongly deprecate retaining suicide as a felony and would regard it as contrary to the policy of the BMA and the Magistrates Association."

This tactic of referring to heavyweight professional battalions supposedly standing in support was regularly used in advocating decriminalisation by both Dr. Odium and Kenneth Robinson. Butler used it as well in proposing the Suicide Bill to the Prime Minister and to the Cabinet (see chapter 7). Indeed by that time (October 1960) the Church committee's booklet had been published, so Butler cited the Church of England as a supporter along with Doctors, Magistrates, and his own exceedingly heavyweight Criminal Law Revision Committee (see chapter 7). During the Parliamentary debates on the Bill all of these groups were at various times claimed to be in favour of decriminalisation.

The records of the Church of England committee show that the divide between positivist rejection of guilt and classicist stress on personal responsibility was never bridged. It was by-passed by focusing instead on pragmatic issues connected with the criminal prosecution of attempted suicides. A list of these appears in the "legal" section of the booklet:

"- punishment of attempted suicide was not likely to deter others:

- punishment will not prevent offender making a fresh attempt as soon as free to do so; - press reports of attempts can only be harmful to the accused and painful to his relatives;
- the fact a criminal prosecution may ensue will discourage relations from getting medical treatment for the attempted suicide;
- conviction of attempted suicide might preclude some types of employment for the rest of life;
- prosecution may impede recovery from any illness that might have been caused;
- although the police proceed in only about 10% of cases known to them, there are more cases where inquiries take place, and these may do harm. "

This list of strictly practical, morally neutral, reasons for ending prosecutions of attempted suicide appeared in the 'legal' section of the booklet. The writer was most certainly Rupert Cross, Fellow and Tutor in Law at Magdalen College, Oxford, and he followed the list by directly addressing the anxiety about social order always aroused by proposals to decriminalise. "The case for abolishing the crime of attempted suicide," he said, "will be greatly strengthened if the Mental Health Bill becomes law." He explained this by pointing to the provision in the Bill, (which at the time he wrote, in the spring of 1959, was still before Parliament) that "courts can make a 'hospital' or 'guardianship' order if satisfied the defendant is mentally ill" and can do it "without recording a conviction". Moreover, in terms of dealing with attempted suicides who create public disorder, the writer goes on to point out that under "Section 136 of the Mental Health Act police can remove to a place of safety someone in a place to which public have access if it seems he is suffering from mental disorder and needs care and control."

The position taken by the booklet in respect of suicide itself, as opposed to attempted suicide, was more ambivalent. The Introduction started from a positivist stance:

"It does not need much imagination to realise that a high national suicide rate is a sure indication that the community is failing to adjust itself to the demands of life...

For centuries, at least in Christian countries, the suicide was regarded primarily as a criminal; he was a species of murderer... in the present century we have come to feel that the would-be suicide stood more in need of medical or spiritual help than of conviction in a law court."

But then ended with something of a classicist *cri de coeur*:

" ... and yet suicide is an act which surely demands some kind of moral judgement from us; we cannot treat it merely as a mental aberration... "

This rather ambivalent view was never abandoned by the majority of the committee members, and it is found clearly reflected in the third recommendation: "That there should be an alternative Burial Service available for certain cases of suicide."⁹

It was this recommendation, grounded in the idea that some suicides *are* guilty of a moral offence and should be sanctioned, that had been the cause of contention between Dr. Odum and the rest of the committee. The fact the others refused to give it up caused Dr. Odum great anguish. On 12 May 1959, following one of the obviously fraught discussions, she wrote to Dunstan:

"I was so deeply distressed that I have hardly slept all night."

Meanwhile, the Archbishop, having been reminded of the project by Christie on 2 March, (see above) seemed to be having second thoughts. The Church archives contain a note from Dunstan dated 16 March 1959 saying circulation of the report on suicide to members of the Board for Social Responsibility had been delayed because "the Archbishop wanted the committee to discuss the recommendations again."

In the end the Committee did reach an accommodation, and the final draft went to the Archbishop in mid-June. On 7 July Dunstan wrote to the Archbishop saying publication would go ahead "as soon as the printing strike permits", and noting that the Board was very keen that responsibility for the recommendations be clearly defined as those of the committee members *only*.

Then on 14 July the Archbishop himself wrote from Lambeth Palace to E.G. Wedell, secretary to the Board for Social Responsibility:

(14 July 1959)

Dear Wedell,

First, about the Report on Suicide, I have written to Dunstan, having had a word with John Scott [*Chief Secretary to the General Synod*]. There are reasons it would be very unsuitable to publish this Report just at present. I am therefore withdrawing it from circulation. I shall get it printed myself and produce it for the Bishops' Meeting in October: they can then read it, and after that we will decide what should be done with it."

On 7 August Michael Adai, Chaplain to the Archbishop at Lambeth Palace, wrote to Dunstan to say the Archbishop "agrees the document should be published as an Archbishop's document". There was "no reason why it should be published as a Board Document". Adai ended, "I apologise for the long delay which Lambeth has caused in the publication of this document."

This letter is the last item in the Church archive file, save a copy of the booklet itself, which was published in October 1959 under the imprint of The Church Information Office. Rev. Dunstan was unable to recall the precise reasons for the delay. He said: "I'm speculating here, but John Scott might have been worried it would cause controversy, possibly embarrass the Church..." (Dunstan interview 11 Nov. 1996) He

was also unable to recall how the concerns had been overcome, and how the booklet came to be openly published by the Church Information Office. Rev. Dunstan agreed that this imprint contributed to an impression that the report was an official Church of England document. This would appear to be the view Rev. Dunstan himself took of the document at the time, since he sent it to the Home Secretary and the Lord Chancellor to let them "know the Church would not oppose legislation on the subject."

The Committee Recommendations

The formal recommendations of the working group, as presented in the booklet were as follows:

- "1. Attempted suicide should cease to be a crime and that consideration be given to placing the law with regard to the liability of secondary parties to suicide on a more realistic basis by abolishing the felony of suicide and creating a new offence of aiding, abetting or instigating suicide of another.
2. Coroners verdicts should contain reference to 'other significant conditions' contributing to death of a suicide.
3. That there should be an alternative Burial Service in certain cases of suicide.
4. That the needs of those tempted to commit suicide and of those who actually attempt it be specially commended to the pastoral concern of the clergy and that the clergy be offered more help in understanding this part of their pastoral duty."

The forward to the booklet was signed by the Archbishop and presented an awesome array of credentials for the committee members:

"In view of growing opinion among doctors, magistrates, Members of Parliament and others, that criminal proceedings were inappropriate against those who attempt unsuccessfully to commit suicide, I asked the Church Assembly Board for Social Responsibility in March 1958 to examine the question on my behalf. On the Board's invitation, the Principal of Jesus

College, Oxford, Mr. J.T. Christie, convened and presided over a small Committee, consisting of Mr. Rupert Cross, Fellow and Tutor in Law of Magdalen College, Oxford; Dr. Doris Odum, psychiatrist and magistrate, and the Rev. Canon I.T. Ramsey, Nolloth Professor of the Philosophy of the Christian Religion in the University of Oxford, with the Rev. G.R. Dunstan of the Moral Welfare Council, as secretary. Subsequent enquiries reached me concerning the dependence on Coroners' verdicts of the use of the Prayer Book Service for the burial of suicides, and this matter also I referred to the Committee.

...

The authority attaching to the Recommendations is that of its signatories only, but I am sure that the report will be very valuable as a basis for discussion."

In considering how powerful images of consensus are created, it is useful to note the first sentence of this forward; asserting as it does, a "growing" body of professional opinion in favour of reform. The truth was that Kenneth Robinson was the only M.P. to have raised the issue in Parliament. Although he had put down an Early Day Motion and gained 150 signatures (out of a House of 630 M.P.s), there had been no debate on it. Three other MPs (Gordon Walker, Sir F. Medlicott and Charles Royle) had each, on different occasions, asked a supplementary question following one of Kenneth Robinson's Questions to the Home Secretary, but that was the sum total of Parliamentary exposure on the issue. Dr. Odum in the psychiatric section of the Church of England booklet implied total professional support for decriminalising suicide and attempted suicide. However, the minutes of her own BMA committee and the Magistrate Association records (see chapter 4) show clearly that such a wholesale consensus did not, in fact, exist.

Considering that the booklet was assumed in Parliamentary debates on the Bill (see below) to be the official view of the Church, it is important to note that it was not even

proposed that the Church itself consider the question until the beginning of 1961, when the Archbishop put a proposal on the Agenda of the Convocation of Canterbury that a committee should be appointed to consider the booklet (TIMES 19 Jan. 1961). The Convocation agreed to the proposal, but no record of this committee's findings was ever made public, and in any case consideration was overtaken by the actual statutory decriminalisation the following summer. Besides noting the agreement to appoint a committee, the TIMES report gave the Archbishop's account of how the issue had come to be considered in the first place. It is noteworthy in this account that he no longer claimed credit for convening the group.

"[Dr. Fisher said he]... had received a letter from a distinguished coroner who wanted to know the attitude of the Church in relation to burial of suicides... the coroner became horrified to learn that the clergy often settled how to bury a suicide by the fact whether or not the words 'while of unsound mind' were added to the verdicts. The coroner said that was monstrous. "I gather", said Dr. Fisher, that there is no legal significance about putting in the words 'when of unsound mind'. It is merely that the coroner thinks it is a nice thing to do in a particular case. That so alarmed me that I got in touch with the Council of Moral Welfare and then found that there are other problems connected with suicide, particularly on the possibility before very long as to whether attempted suicide should be a crime.

"The Council got together a small group of people in Oxford to give their minds to the question and produced this report. I put down the motion [on the Convocation agenda] not to provoke debate but to suggest that there should be a joint committee to consider this report and then to tell what, if anything, Convocation ought to do in this matter" (TIMES 19 January 1961).

This proposal, in January 1961, to set up a Church committee to "consider" the report, and "what, if anything, Convocation ought to do..." came some fifteen months

after the booklet appeared in October 1959, and less than a month before the first reading of the Suicide Bill in the Lords on 14 February 1961.

When the booklet actually had been published, on 19 October 1959, it had received scant coverage in the media, possibly because the newly elected House of Commons convened on 20 October and held a controversial election for Speaker. Nevertheless, what coverage there was gave the distinct impression that the Church itself favoured decriminalisation. The following examples illustrate the point:

MANCHESTER GUARDIAN (20 October 1959):

CHANGE IN LAW ON SUICIDE URGED

Attempt to take own life "no longer a crime": Church report view

Attempted suicide should cease to be a crime says a Church of England committee whose recommendations are published today.... The recommendations are contained in a 56-page booklet "Ought Suicide to be a Crime", the work of a committee of five set up last year at the instigation of the Archbishop of Canterbury, Dr. Geoffrey Fisher, to study the question.

In an editorial the same day headed "The Law on Suicide" the GUARDIAN said,

"...a distinguished committee of churchmen, meeting on behalf of the Archbishop of Canterbury has come to the conclusion that the State's view should be changed."

The TIMES (20 October 1959)

CHURCH COMMITTEE URGE CHANGE IN SUICIDE LAW

Attempted suicide should cease to be a crime, says a Church of England Committee whose recommendations are made in a report published yesterday. The committee believes that consideration should be given to abolishing the felony of suicide and creating a new offence of 'aiding, abetting or instigating the suicide of another'.

The TELEGRAPH (20 October 1959)

SUICIDE SHOULD NOT BE A CRIME, SAYS CHURCH Capt. Oates Cited As case of 'Self-Sacrifice'

The SUNDAY TIMES (25 October 1959) in the comment column "A View of the Week":

SUICIDE AND THE LAW

It is a sound principle of jurisprudence that what is contrary to public conscience should not claim the sanction of the law. This principle is fully served in the recommendation by a Church of England Committee that attempted suicide should cease to be a crime, and suicide a felony, subject to the creation of a new offence of aiding, abetting or instigating it.

Later in the month (31 October) The *British Medical Journal* said:

The Church has now added its voice to the many others that have criticised the law making attempted suicide a criminal offence in England and Wales. Last year at the instigation of the Archbishop of Canterbury, a committee was set up to examine the question... its first recommendation is that "attempted suicide should cease to be a crime."

Some time later, the *Howard Journal* (Vol. X, No. 3, 26 July 1960:245) mentioned the booklet in a composite book review section titled "Social Problem", and commented, "It puts the salient arguments briefly and clearly, and comes down wholeheartedly on the side of those who want to see suicide removed from the criminal law... Altogether, this is a sane and valuable little book."

The modest amount of media coverage did for the most part refer to the "committee's" recommendations, but still managed to convey the impression that it was an official Church view. Certainly this was how it was used by Butler in his note to the Prime Minister, Harold Macmillan, on 18 October 1960, about the proposed Suicide Bill: "It is not likely to be controversial" he wrote, "- the Church Assembly Board for Social Responsibility has published a Report which is broadly in line with what we propose." (see chapter 7)

This was also how it appeared to be perceived by Parliamentarians who referred to it in debates on the Bill, starting at the outset with the introduction of the Suicide Bill by Viscount Kilmuir in the Lords:

" This view [to decriminalise suicide] is supported by the considered opinion of those most closely concerned with this problem, from the aspects of ethics and religion, medicine and the administration of justice. No doubt many of your Lordships have already read the booklet on the subject issued by the Church Assembly Board for Social Responsibility in which the view is put forward that suicide and attempted suicide should cease to be crimes." (Hansard: Lords: 2 March 1961)

Lord Silkin, as the Labour shadow Chancellor, responded by broadly welcoming this "most humane measure". He then expanded the supposed endorsement to more than the Anglicans:

" It may be that this change in outlook has been influenced by the very fine pamphlet which has been issued by the Churches and which I have had the pleasure of reading. [emphasis added] (ibid.)

Eric Fletcher, M.P. for Islington, East, in the 2nd Reading Commons debate said:

"I entirely agree that the time has come when the law should be changed, and I am very glad to find that the same view is taken in the booklet, which no doubt hon. Members have read, recently issued by the Church Assembly Board for Social Responsibility." (Hansard: Commons: 14 July 1961)

The Minister, Charles Fletcher-Cooke M.P., mentioned the booklet during the Committee stage of the Bill, in the context of the maximum sentence for aiding and abetting. [Although he misquoted their recommendations, saying: "The maximum penalty of life imprisonment was recommended by the Royal Commission on Capital Punishment in 1953 and by the Church Assembly Board for Social Responsibility in its pamphlet entitled "Ought Suicide to be a Crime?" - which was not, in fact, one of the booklet's recommendations. (Official Report Standing Committee E, Suicide Bill: 25 July 1961)]

One of the members of the Commons committee, interviewed in the course of this research, was William van Straubenzee, M.P. for Wokingham (1959-87), and active in Church of England affairs for many years. In interview he indicated he himself had had some reservations about the booklet's recommendations at the time, although not sufficient to oppose them. Sir William (as he now is) said his reservations were based on his belief then, and now, that the law does have a role in areas of personal morality, and that "many people then used to believe if something was immoral it *should* be illegal." However, on the suicide matter, he said, "The Church felt it had a responsibility to take a stand... and the greater weight was for decriminalisation. But

the issue was not about *condoning* it ..." Sir William said the view of the Church mattered very much in the 'fifties and 'sixties on issues involving law and morality, and on the suicide matter the booklet would have been taken to be the Church's view. (Van Straubenzee interview 31 Oct. 1996)

Eric Fletcher, Labour M.P. for Islington East was another member of the Commons Committee who was also a Member of the Church Assembly. His speech in the 2nd Reading debate contained several religious references, and at least implicitly indicated that he, too, had some reservations about the Bill:

"In this country, no doubt for reasons based on Christian theology, suicide has been regarded as the most heinous of felonies - the felony of self-murder. It has been said that no man has a right to destroy his own life, because life is a gift from God, to be preserved with a sense of responsibility.

"Suicide, like murder, is a violation of the Sixth Commandment, and in some ways it is more grievous than murder because it precludes the opportunity for repentance. Those are the reasons which have justified the law of the land for so many centuries past.

...

"It is sometimes said, of course, that punishment for attempted suicide is no deterrent, but there are cases on record which show that those who have determined to take their own life and who have made an unsuccessful attempt have, in fact, been deterred from renewing their attempts, not by the possibility of punishment, but by a realisation of the gravity of the act which they have contemplated and the fact that suicide or attempted suicide is generally condemned by public opinion" (Hansard: Commons: 14 July 1961).

Shortly after this, John Hobson, M.P. for Warwick and Leamington, said,

"I add my support to the Bill while agreeing with the hon. Member for Islington, East (Mr. Fletcher) that it should be generally and publicly realised that suicide nevertheless remains a mortal sin" (ibid.).

These comments spurred the Minister to say in closing the 2nd Reading:

"I think [the Bill] has had a general welcome, subject to the fears of the hon. Member for Islington, East (Mr. Fletcher) and those of the hon. Member for Paddington, North that the Bill itself might somehow give potential suicides the impression that what they were proposing to do was no longer regarded as wrong. I should like to state as solemnly as I can that that is certainly not the view of the Government, that we wish to give no encouragement whatever to suicide, that a great many people, probably the majority of the people of the country, have regarded it, now regard it and will continue to regard it as a mortal sin, and that, in the words of the hon Member for Paddington, North, there is a duty, as there certainly is, to stick it out" (Hansard: Commons: 19 July 1961).

All this puts a distinct question mark over whether the influential recommendation for decriminalisation in *Ought Suicide to be a Crime?* did represent the view of a majority of members of the Church of England, or even a majority of the Church establishment. The best that can be said is that no coherent attempt was made to find out whether it did. There is certainly evidence of the existence of dissent within the Church hierarchy. Rev. Demant, for example, in his letter to Dunstan, came down firmly against decriminalising suicide, and was fully prepared to co-operate in producing a report setting out why the Church was officially against it. The theological section of the booklet itself, although it makes reference to the Wolfenden formulation, sounds very dubious about applying it to suicide: "To speak of a dichotomy between sin and crime." it says, "has become commonplace, and...has been greatly popularised... Little by little we have become more merciful - some might say more lax - towards

grievous and notorious sins... [nevertheless] if the law wishes to embody and preserve any basic significance for human life, it must surely take some kind of note of suicide, though it might be enough to have second party liability..." Then, after advocating that culpability and Church sanctions be retained for "selfish and voluntary" suicides, the section cites in detail the six traditional reasons why Christians should view any suicide as a sin:

- "1. Life is a gift from God to be preserved... suicide is a denial of due 'self-love' (Mark Xii 31) and self-murder is against the 6th Commandment.
2. Life is a moral probation; suffering is a necessary discipline. A Christian should unite his sufferings with those of Christ and prove in them the power of God.
3. God alone should prescribe the end of a man's life.
4. Suicide is to fail in one's duty to society; for it deprives society of one of its members.
5. Because death is the 'wages of sin', it is something we ought not deliberately of our own accord to bring about.
6. Suicide is the most grievous of all sins because it precludes repentance."

The introduction to the booklet, written by the Chairman, Christie, set out the dilemma the committee faced in dealing with the morality of suicide and its relation to the law:

"Nevertheless, if we wholly exclude suicide from the operation of the Law, are we in danger of giving countenance to the view that self-destruction, attempted or successful, is not morally wrong at all, but rather a 'case' for the psychologist or the doctor? Such a view would not do justice to the deep feeling which a great number of responsible people still have, that there is something fundamentally wrong - many would say wicked - in the act of

suicide. To them it is cowardly and selfish, like running away in battle, an action treated with the utmost rigour in time of war. Such condemnation - or at least deep disapproval - of suicide still finds expression today."

As further indications of the existence of dissent in the Church one should note the resistance of the Board for Social Responsibility to publishing the recommendations under its imprimatur, and the clear statement of the Archbishop in the foreword that they represented the views of the four signatories *only*. One might also note the Archbishop's retreat from claiming credit for convening the working group, as recorded in the TIMES report in January 1961. There is also the expressed dissent of the Bishop of Carlisle in the Lords debate, and the religious concerns voiced in the Commons debate.

Taken together, there is sufficient indication of the existence of opposition within the Church to decriminalising suicide, to suggest that if the debate had not been preempted by the publication of the booklet and the illusion of a carefully considered *Church* position it presented, that the Bill could have run into trouble on religious grounds.

In analysing how this illusion was created despite the existence of dissent, there certainly are no grounds to allege a deliberate conspiracy. However, equally, there was no attempt made to encourage debate. Quite the opposite: as Rev. Dunstan said, "It was not a subject on which one would want to excite feeling..."

In terms of preempting controversy on the suicide issue, the Archbishop of Canterbury's name on the foreword to the report, was bound to give its recommendation to decriminalise an aura of authority. This aura was further enhanced by the academic and professional credentials of the members of the committee. Even in the less deferential, more democratic climate of the end of the century such

credentials carry weight; in mid-century they were virtually unchallengeable. On a matter of theology who would wish to take on not only the supreme head of the Church of England, but the Nolloth Professor of the Philosophy of the Christian Religion at Oxford? Probably the most important factor in the creation of the illusion that decriminalisation was the official view of the Church was that none of the public references implying that it was were ever challenged, so each repetition of the claim was made with increased confidence.

The lack of opposition from the Church of England to the Suicide Bill was matched by silence from all other faiths, including the Roman Catholics. This fact (an example of "the dogs that did not bark") was certainly important to the passage. Religious opposition from a range of faiths was a major factor in the other "sanctity of life" issue of the time - abortion law reform, and in virtually all the other issues with a moral dimension (homosexuality, censorship, prostitution, divorce). In terms of the general membership of the various faiths, the argument here is that because of the very minimal exposure, most people were not aware of the proposed decriminalisation. The huge and bitterly divisive debates in subsequent years over euthanasia and assisted suicide suggest that greater awareness of the Suicide Bill may very well have triggered religious opposition, probably along the lines of division that split the Church of England committee.

It was perhaps her experience at the first meeting of this committee, and thus realisation of the strength of religious feeling on the issue, that led Dr. Odlum in November 1958 to write to both the Roman Catholic Church and the Free Church Federal Council to try and preempt possible opposition to decriminalising suicide.¹⁰ Dr. Odlum's letters used the Wolfenden distinction and also stressed the kind of pragmatic arguments about attempted suicide that seem to have persuaded her fellow Church of England committee members to recommend decriminalisation (see above).

The answers show the recipients did not accept these arguments, but they did not actively oppose them either, which turned out to be all that was required.

Whether the spur was experience at the Church of England committee or not, Dr. Odum wrote her letters from the more authoritative platform of Chairman of the BMA/Magistrates Joint Committee. On 29 November 1958 she wrote to the Roman Catholic Lord Archbishop of Westminster (Cardinal Godfrey) and to the General Secretary of the Free Church Federal Council, enclosing copies of the statement the BMA/Magistrates Joint Committee had finally hammered out the preceding summer (see Appendix B)

To Cardinal Godfrey, following an introductory paragraph, she put the following question:

"It would be of great help to the Committee, of which I am chairman, and to many of our Catholic members, to know whether the proposal would be in accord with the teaching of the Roman Catholic Church and whether it would be allowable for individual Catholics to support it.

I feel that I should assure Your Grace that there is no suggestion that suicide should not continue to be regarded as a sin. Our only object is to remove it from the purview of the criminal law. As you will see from the attached report the present law creates great hardship for the person who has attempted suicide and for his relatives. In some cases it actually impedes measures of treatment and rehabilitation for the individual who has shown himself to be in such a grave state of mental distress.

It appears that there is a possibility that the Home Secretary may set up a committee of enquiry with a view to changing the law so that the matter is of

some urgency. It would be of the greatest assistance to have Your Grace's opinion on this important issue."

On 5 December the Archbishop's Private Secretary replied. The masterly ambiguity of this response should be viewed in the light of Dr. Odum's subsequent claim that none of the Churches objected to a change in the law:

"His Grace the Archbishop of Westminster has asked me thank you for your letter of 29 November.

With regard to suicide, the same principles apply as those set out by His Grace in the Statement of 2nd December, 1957 on the Wolfenden Report. I believe you have seen a copy.

Briefly, the Church regards a fully responsible person who attempts suicide as committing a grievous sin. And whilst the Church recognises the distinction between sin and crime, it also recognises the right of the State to make a sinful act a criminal act, if the prevalence of the sinful act is contrary to the well-being of the State. Similarly, if the State considers that by removing the stigma of criminal offence from a sinful act, it is giving the impression that it condones the sin, then it has the right to retain the existent legislation.

I hope that this statement of the principles involved will be of help to your Committee."

Dr. Odum wrote substantially the same letter to the Free Church Federal Council, but they were even less ready to commit themselves on the issue and passed responsibility for comment to their Women's Section, who in turn relied on a decision made by yet another body:

*From the General Secretary of the Free Church Federal Council to the Chairman
(Dr. Odium) 12.12.58*

"You will be interested to know that our Executive Committee, at their meeting on Thursday 11th December, gave careful consideration to the problem of attempted suicide. There was an interesting and sympathetic discussion, but the Executive did not feel that they were in a position to give the matter the detailed and expert consideration which would justify them in making any definite pronouncement. Our Women's Section, however, has been able to give the matter more detailed consideration and gave their support to the Resolution* passed by the National Council of Women, on which they are represented.

I am sorry not to be able to be more helpful, but you at least have the satisfaction of knowing that the matter has been brought to our sympathetic attention.

*this resolution is as follows:

'The National Council of Women in conference assembled is of the opinion that suicide and attempted suicide should no longer be considered crimes and urges H.M. Government to legislate accordingly."

This Resolution, quoted in the Free Church Federal Council letter, was indeed passed by the annual conference of the National Council of Women, meeting that year, 1958, in Royal Leamington Spa between October 21 and 23 (NCW Annual Report for 1958: 405). The archives of the National Council of Women are now stored at the Greater London Record Office. A careful reading of these has revealed that there was no recorded discussion of the law on suicide or attempted suicide at any meeting of the Committee of Management, or any meeting of the Sectional Committees in 1957, '58, '59, '60 or '61, although most of the major issues of the day were discussed, including,

most extensively, the Wolfenden Report, the Street Offences Act, and the Royal Commission Report on Mental Illness and Mental Deficiency, all of which were subjects of Resolutions at Annual Conferences. There is no indication of where the 1958 Resolution on the suicide law came from. However, the records do show that Dr. Doris Odlum joined the Headquarters Branch of the National Council of Women in March of 1958, was co-opted onto their Sectional Committee on Public Health the same month, and gave an Address to this Committee in June.

Not very long after the exchange of letters between Dr. Odlum, the Free Church Council, and the Archbishop's private secretary, Kenneth Robinson made the following sweeping statement in the House of Commons on the subject of suicide law reform:

"Is [the Home Secretary] aware that the joint report of the British Medical Association and the Magistrates Association has now been considered by the Church of England, the Roman Catholic Church and the Non-conformists, and that none of these bodies has raised objections?" (Hansard: Commons: 26 February 1959)

Conclusion

It is always difficult to prove a negative, and so it is not possible to definitively answer the question 'Why did the Church not oppose decriminalisation?' One answer, rendered plausible by the very meagre media coverage of it, is that most church people did not know it was happening, and would have opposed it if they did.¹¹ Nevertheless, the history of the Church of England booklet shows that among church people who did know, both the Wolfenden formula of separating sin and crime, and the practical issues surrounding prosecution of attempted suicide were important considerations. It is clear that the aura of compassion that attached to the idea of "treatment" rather than punishment for attempted suicide appealed to religiously oriented speakers in the Parliamentary debate. But at the same time they were very concerned to emphasise the

immorality of the act of suicide. There is sufficient evidence in these debates of religiously based unease about decriminalising a deeply sinful act to suggest that without the seemingly authoritative support of the Church of England booklet, coupled with silence from the other faiths, that the decriminalisation could have run into trouble. Much of the credit for avoiding this, and indeed the many obstacles that lay in the path of the Suicide Act, belongs to the three human agents whose individual contributions are examined in the next chapter.

Notes to Chapter 5

¹The three were: William Van Straubenzee, M.P. for Wokingham (Conservative), who was a member of the Church Assembly House of Laity for five years, of the General Synod for ten, and from 1962 lived in a flat in Lambeth Palace; Peter Kirk, M.P. for Gravesend (Conservative), who was the son of the Bishop of Oxford, and Eric Fletcher, M.P. for Islington East, who had been a member of the Commission on Church and State (1951), a member of the Church Assembly, and later became Chairman of the Advisory Board on redundant churches.

²Charles Berg, a psychiatrist, who wrote an account of the discussions of the Wolfenden Committee on homosexuality said in respect of the law and morality issue: "It took a great deal of controversial discussion regarding the differentiation between 'private sin' and 'the business of the law' to pass this recommendation - and one member of the committee, Mr. Adair, took great pains to disassociate himself from it, writing 6 closely printed pages to justify his disagreement." (Berg 1959:12-13)

³In 1996 Rev. Dunstan, at the age of 79, published a book commissioned by the British Council of Medicine, titled *Euthanasia*; a collection of essays by professionals generally arguing against any change in the law on this issue.

⁴The expectation that the Church might be asked for an opinion was perhaps based on the number of times in recent years governments had conducted major enquiries into matters where the Church had an interest: betting and gaming (1949-51), capital punishment (1949-53, marriage and divorce 1951-55, mental illness 1954-57, homosexuality and prostitution (1954-57)

⁵Rev. Dunstan said in interview that the members did refer to it as "the suicide committee", which caused some merriment among them when outsiders looked startled.

⁶Professor Goodhart was the author of *English Law and the Moral Law* 1955, a passage from which is quoted in chapter 3 as an example of the continuing influence of conservative ideas about law and morality. He was also - in the English tradition of densely interlocking elites - a member of the Royal Commission on the Police 1960-62

⁷According to the Dictionary of National Biography, John Christie had suffered ill health for many years and a note in the Church file says at this time was going into hospital for an operation.

⁸The British Institute of Public Opinion Surveys, part of the Gallup organisation, was founded in 1937, but its findings were published only in the NEWS CHRONICLE and in 1960 the CHRONICLE folded. National Opinion Polls (NOP) was established in 1957 as an affiliate of Associated Newspapers Limited, and its findings were exclusive to the DAILY MAIL (Tyler 1990). According to Robert Worcester in *Political Opinion Polling in Great Britain* (1983), people in the 1950s were still very suspicious of polls (p.64), and that "The Tories' advertising agency, CPV, employed research techniques in the 1959 election, but these were largely ignored by Conservative party leaders." (p.68). On the Labour side, Worcester says Nye Bevan was "an intractable opponent of opinion polls". (p.69) Herman Mannheim, speaking at the LSE in 1958 said, "One of the shortcomings which the Report of the Royal Commission on Capital Punishment, though otherwise much more substantial than the Wolfenden Report, shares with the latter is the tendency to take refuge behind what it proclaims to be

public opinion, without making any attempt to find out what the state of public opinion really was on the various points at issue." (Mannheim 1959 p.277)

⁹This remains the case at the end of the millennium. According to *English Canon Law* 3rd Edition, (Briden & Hanson 1992): "In general, the minister of the parish where burial may be claimed is bound to conduct the funeral and to conduct it in accordance with the service in the Prayer Book or other authorised service, whether or not the deceased was a member of the Church of England. There are, however, three exceptions to this rule. The burial service is not to be said over the bodies of those who die unbaptized, or who have laid violent hands upon themselves or who die excommunicate. (*Rubric at the beginning of the Burial Service; and Canon B38*) The expression *who have laid violent hands upon themselves* has in practice been interpreted charitably to refer only to those who have deliberately committed suicide in circumstances which amounted to *felony-de-se* before the passing of the Suicide Act, 1961. This Act, whereby it is no longer a crime to commit suicide, is silent on the subject of the burial of the bodies of those who have committed suicide, and it is, therefore, suggested that the rubric and Canon B38 are applicable in these circumstances." (p.82)

¹⁰Copies of these letters are in the BMA archives on Tavistock Square, in the file with the minutes of the Joint Committee of the BMA and Magistrates' Association. They are not individually identified with archive numbers.

¹¹With respect to the matter of whether anyone noticed the Suicide Act, Nigel Walker wrote in 1964: "The abolition of the crime of attempted suicide in 1961 gave me an opportunity of applying a test of sorts in a small survey which I carried out with the help of undergraduate interviewers in the summer of 1962. Four hundred men and women (but not children) in various parts of Britain were asked for their views on homosexuality and attempted suicide, and were also asked whether such acts were against the law or not. 75% did not know that attempted suicide was no longer against the law, 16% did know, and 9% were not sure." ("Morality and the Criminal Law", *The Howard Journal* Vol. XI No. 3, 1964)

Chapter 6: The Importance of Agency

Chapters two and three considered the decriminalisation of suicide from the standpoint of structure. This chapter considers the role of agency. This is because however propitious the intellectual climate and pressing the practicalities, it is most unlikely the law would have changed without the actions of three individuals: the Home Secretary Rab Butler, the Labour M.P. Kenneth Robinson, and the psychiatrist and magistrate Dr. Doris Odlum.

It is the case that any effort on the part of these three (or anyone else) would have been futile - or more likely never made - without the slow accretion of change in attitudes to religion, morality, crime, mental illness and suicide, that are detailed in other chapters in this thesis. But these changes merely created a favourable context. The statutory reform - the tangible Parliamentary legislation - required human agents who were skilful enough and who occupied positions of sufficient influence to effect an actual change in the law.

These three quite different people did not work 'together' in the usual sense of the word, but their individual actions were in the end more effective than many other more co-ordinated attempts to change laws. Their success was certainly due in part to the fact (as their words and writings make plain) that all three were operating on the same basic premise, the one that hindsight shows was crucial to achieving the decriminalisation. This was the assumption that the proposed change had nothing whatever to do with the moral status of suicide and everything to do with the compassionate, effective treatment of attempted suicide. It is a measure of the skill

and influence of these three that they were able to persuade key professional and political constituencies that this assumption was valid.

This chapter considers the contributions made by these three people. They can be summed up in headline form as follows: Dr. Odum was extraordinarily effective in convincing significant individuals and professional groups that the law should be changed. Kenneth Robinson (very probably as a result of Dr. Odum's activities) put the matter on the Parliamentary agenda, and pursued it in a manner that made his advocacy politically effective. Rab Butler, from his uniquely commanding position as Home Secretary, Leader of the House of Commons, and Chairman of the Conservative Party, orchestrated the actual passage of the Bill.

Rab Butler

Butler, though chronologically the last of the three to become involved in changing the suicide law, was the most important in terms of the actual legislation. On the evidence available, it could be said that once persuaded the suicide law should be changed - and Kenneth Robinson and Dr. Odum deserve the credit for this - Butler put the Bill through almost single handedly. Chapter 7 gives the details of how this was accomplished: how Butler completely by-passed the traditional, long-settled route for Government legislation and inserted the Suicide Bill into an already crowded Government legislative agenda at the last minute, without discussion or preamble and certainly without any of the long gestation (pressure groups, committees of enquiry, royal commissions, white papers) that usually precedes social reform legislation. Butler never spoke in the actual Parliamentary debates on the Bill, but Public Record Office papers show his close involvement in the lead speeches of the Ministers who did. And although he is invisible in the written records once the Bill entered Parliament, there is the curious fact that when this short and modest measure nearly

founded at the final hurdle, some powerful but unidentified hand reached out and saved it.

Butler himself makes no mention of the reform of the suicide law in his memoirs, nor is it referred to in Anthony Howard's biography of him, nor is it mentioned in the autobiography of Viscount Kilmuir who introduced it to Parliament,¹ nor in any of the other memoirs of the period with the single exception of Leo Abse's, where the focus is on Abse's own small and nearly disastrous contribution. Therefore the reasons for Butler's actions in respect of this reform, and in particular why he adopted the secretive strategy he did, have to be inferred from what is known about his background, personality, and behaviour on similar issues. A substantial amount is known about these matters, and four aspects can be highlighted as of special relevance in understanding his actions on the suicide law:

- 1) Long experience at the highest levels of political power
- 2) Intimate knowledge of the House of Commons and of the Conservative party.
- 3) Attitude toward social reform.
- 4) Temperament and personality, and the probable influence of certain life events.

1) *Butler's experience and position*

Butler first became a Government minister before the second world war.² By 1960 he had been Minister of Education, Chancellor of the Exchequer, Lord Privy Seal and Home Secretary. On several occasions when Eden and Churchill were ill he had been acting Head of Government, and on Macmillan's frequent trips abroad he regularly became acting Prime Minister (Butler 1971:196). In 1959-61, in a rare concentration of political power, he was not only Home Secretary, but Leader of the Commons and Chairman of the Conservative Party. Over these many years in all these various posts, Butler had gained a reputation for keen intelligence and great political astuteness. His junior Minister at the time of the Suicide Bill, Charles Fletcher-Cooke M.P., described him as "an immensely skilful politician" (Fletcher-Cooke interview 6 March 1996); his

biographer Anthony Howard said, "No one was better at working the machinery of Government" (Howard interview 10 Jan. 1997). His PPS at the time, Paul Channon, said he was "thought to be the greatest Leader of the House of his day - or since" (Channon interview 14 Nov. 1996); his Permanent Secretary, Sir Charles Cunningham said he was "extremely intelligent and able - the Department was devoted to him" (Cunningham interview 30 Sept. 1996), and Roy (now Lord) Jenkins spoke of his "great Whitehall prestige" (Jenkins interview 6 Nov. 1996). During these years Butler had also acquired a reputation for being inscrutable, devious, conspiratorial and a consummate political operator³. 'I never numbered candour among his virtues' said Viscount Hailsham (Hailsham 1990:219); Viscount Kilmuir described him as an "enigmatic figure... always looking like a 17th century Cardinal who had incomprehensibly mislaid his robes (Kilmuir 1964:191) and Enoch Powell, who was the Minister of Health in 1960-63, while praising Butler's ability and intellect said, "No one will ever ... fall into the error of calling him 'immensely loyal' (DAILY TELEGRAPH 12 July 1971).

At the time of the Suicide Bill, 1960-61, Butler had been in Parliament for more than thirty years (he entered in 1929), and a Minister for nearly a decade and a half. Few other politicians had his in-depth knowledge of how Parliament worked, of the routes by which legislation emerged and how, if one were sufficiently knowledgeable and well placed these routes might be circumvented. The only person with the power to block or override Butler was the Prime Minister himself, and Macmillan at that time was fully focused on foreign affairs. Alistair Horne, Macmillan's official biographer (1989) says, "Throughout the copious Macmillan diaries, with all their multifold interests, there is so conspicuously little reference to social reforms - urgently as many were needed - that one is entitled to reckon that they assumed a relatively low position in Macmillan's list of priorities. He could say, with equanimity, 'I left that side all to Rab and Henry Brooke.'" (Horne 1989:81) Butler confirms this in his own book, and offers the following incident to make the point:

"It occurred in the summer of 1959 when a group of leading Ministers and party officials were gathered together in the Prime Minister's room at the House of Commons to consider a preliminary draft of our election manifesto. We had reached the passage which stated, in unexciting but I thought unexceptionable language, certain of my legislative aims for the next Parliament. 'We shall revise some of our social laws, for example those relating to betting and gaming and to clubs and licensing, which at present full of anomalies and lead to abuse and even corruption.' The Prime Minister picked up the document, held it out two feet from his face, hooded his eyes and said very slowly, 'I don't know about that. We already have the Toby Belch vote. We must not antagonise the Malvolio vote.' There were dutiful chuckles round the table. Then the Chief Whip, Ted Heath, ever businesslike and forceful, intervened by pointing out that we had committed ourselves to such reforms. 'Well,' said Macmillan resignedly, 'this is your province, Rab. I suppose you think it's all right.' I indicated that I did, and without further discussion we passed on to less contentious matters." (Butler 1971:197-198)

All this suggests that Butler was uniquely well positioned, in terms of his skills, his political offices, and the laissez-faire approach of the Prime Minister, to be able to place a law onto the statute books via an unorthodox route. When this was put in interview to Paul Channon, who admired Butler very much, he said, "You are in danger of over estimating Rab's tactics. He would have had to go through QL [Queen's Legislation Committee] and Future Legislation [Committee] and the Cabinet." But the papers in the Public Record Office show quite clearly that Butler did *not*, in fact, put the Suicide Bill to either QL or Future Legislation, and the presentation to Cabinet when it happened (see chapter 7) serves as an excellent example of what Channon himself, and another admirer, Chris Patten, call Butler's 'cunning'. (Patten 1995:105) When the same suggestion was put to others who knew and worked with him - that is, that Butler might have used his skills to circumvent usual procedures in

order to decriminalise suicide - there was widespread agreement that it would have been in character. Roy Jenkins said it would be very much his style (Jenkins interview 6 Nov. 1996); Kenneth Baker said he thought Butler actually preferred to do things by stealth. (Baker interview 26 Oct. 1996) In a memoir of her husband published in 1987 Mollie Butler said, "Rab's political views could be summed up by the words 'consensus', 'continuity' and in a time of crisis 'coalition', but never 'confrontation' if it could be avoided." (Mollie Butler 1987:60)

2) Intimate knowledge of the House and the Conservative Party

In considering why Butler adopted an unorthodox route for the Suicide Bill - especially in the light of his long previous adherence to traditional processes and consensus policies - it is helpful to look at the character of the 1959-64 House of Commons. In 1959 the Conservatives had been returned to Government with an increased majority: they had 365 seats to Labour's 258 and the Liberals' 6. Thus the opposition posed no threat to Government plans, but some of their own backbenchers did. The nature of the '59-'64 Conservative Parliamentary party, according to Paul Channon and Bernard Levin (1979), among others, was "profoundly reactionary". It was particularly exercised by issues of crime and social order, a fact vividly demonstrated at the first Home Office Question Time of the new Parliament, on 5 November 1959 when Butler was "subjected to a sustained assault" from Conservative members on the issue of flogging of offenders. (Howard 1987:272) The bitterness of the attack arose partly from a long held suspicion in parts of the Conservative party that Butler was "soft on crime" - an allegation raised not only in respect of flogging, but also in regard to Butler's cherished proposals for penal reform (see chapter 3). These had been greeted with a "chorus of approval by liberals" and much less enthusiasm by his own party. (Howard 1987:267) His own Minister of State at the time, David (now Lord) Renton, when interviewed, said "Rab was always very wet. *Terribly* wet." (Renton interview 8 May 1996) Butler was aware of these doubts and misgivings in his own party, and spoke in his memoirs of having a reputation for "pink socialism". (Butler

1971:28-29) In contemplating reform of the suicide law it might have occurred to him that a straight proposal to *decriminalise* something, especially if it came from him, might meet immediate, almost automatic, resistance. Sir William van Straubenzee, a backbench Conservative M.P. at the time, said in reference to Butler, "We didn't trust him an inch." (Van Straubenzee interview 31 Oct. 1996) It can be seen as something of a vindication of Butler's strategy that van Straubenzee was a member of the Committee that considered - and passed unamended - the Suicide Bill.

Besides being very conservative, with a small as well as capital 'c', the 1959-64 Parliament was extremely partisan. It should be noted that the word 'Butskellism', was coined as a term of abuse (Boyd 1995:5) directed at what was seen as Butler's left-leaning tendencies. Thus the fact that the original proposal to decriminalise suicide had arisen on the Labour side was important. Kenneth Robinson, even though personally well-regarded, was a Labour M.P. Moreover he had been joined in advocating suicide law reform by a much more controversial Labour M.P., Leo Abse, who had entered parliament in the '59 election, and immediately joined Robinson in promoting social reform legislation. Although decriminalising suicide did not appear in the 1959 Labour manifesto, it had been mentioned in Roy Jenkins' booklet "The Labour Case" published to coincide with the election. (Jenkins 1959:137) It had also been mentioned in passing in a Fabian Society pamphlet "Speed-up Law Reform" published in 1958. (Pollard 1958:60) Butler would have known that as far as most Conservatives were concerned, this "left" provenance would have condemned out of hand a measure which in addition had an air of permissiveness about it. Leo Abse claims in his book *Private Member* (1973) that there was much resistance to decriminalising suicide in the House, and analyses it as: "some people would take the view that what in law is permissible is free from objection; and belief in the sanctity of life, and the duty of the State to uphold its responsibility to seek to preserve the life of every person, necessitated no weakening in our criminal law." (Abse 1973: 90) Butler would have been aware of this body of opinion in the House. Nico Henderson,

drawing on his experience in Butler's Private Office, wrote that he "had acute political antennae" and was "very much alive to anything that might cause difficulties." (Henderson 1984:73) Sir Francis Boyd said, "He is a man who knows, almost by instinct, exactly what is going on." (Boyd 1995:14) In his own memoirs, Butler said,

"... I used to go into the Smoking Room practically every evening to smell out rats - incipient causes of trouble that might blow up on the floor of the House at a few hours' notice and, if badly handled, could affect the standing and reputation of the whole government. If any appeared, or even if there were the smell of one, however faint, I would ring the Permanent Secretary at once and arrange a talk then or next morning. Thus, to use a celebrated Irish mixed metaphor, the rats were nipped in the bud, and for five years we successfully anticipated or avoided serious trouble." (Butler 1971:199)

In the light of this, there seems little doubt Butler would have been aware of several sources of potential resistance to decriminalising suicide. It suggests why throughout the entire time the issue was before Parliament he kept its profile as low as possible.

Wary as he was of Conservative hostility toward any measure perceived to be 'liberal', Butler would also have been sensible of another aspect of his party that could actually work to assist passage of the Suicide Bill. This was its still-deferential attitudes about class and towards traditional repositories of authority, such as the Church of England, Oxbridge academics, and the senior judiciary. According to Paul Channon, Bernard Levin (1979), and Anthony Sampson (1962), among others, the Tory party at Westminster '59 to '64 contained a number of old fashioned "knights of the shire", who saw a stint in Parliament as a public duty, and loyalty to the party as an article of faith. Butler benefited from these attitudes, not only as a very senior Minister of unparalleled experience, and as Chairman of the Party, but also as someone who by class and wealth automatically commanded the respect of this group.

On his father's side Butler's ancestors had been distinguished for generations, usually as academics, but there was an M.P. in the family as early as 1368. Butler's father was offered a Cambridge fellowship but went into the Indian Civil Service instead, where his brother-in-law was Private Secretary to the Viceroy. Francis Boyd compared the Butlers to the Cecils and the Churchills: "These three families have established quite different traditions from each other, but they have made a mark on public affairs for at least two centuries and have left a record distinguished enough to be a spur to successive generations" (Boyd 1995:12) .

Butler himself gained a first at Cambridge and initially contemplated an academic life. Throughout his career he was always considered extremely clever; with what people called a "Rolls-Royce mind" (Howard 1987:368). By his marriage to Sydney Courtauld he not only became immensely rich (she was the only child of Samuel Courtauld), but gained political security as well, since the sitting M.P. for Saffron Waldon, an area of major Courtauld employment, promptly relinquished his seat so Butler could have it. Butler's father-in-law gave him Stansted Hall, a country estate in Essex, and also Gatcombe Park in Gloucestershire, "which Butler eventually sold to the royal family as a residence for Princess Anne" (Jenkins 1995:29). All this stands in contrast to the circumstances of an ordinary M.P. in the 1959-64 Parliament, who received only £1000 a year in salary, with an additional £750 for expenses. There was no secretarial allowance, no free postage, and Paul Channon, who entered the Commons in 1959, remembers queuing in the lobby to use the public telephone as Members did not have their own. Anthony Sampson, writing the first *Anatomy of Britain* at just this time said, "Parliament no longer attracts the very ablest men- with the intellectual calibre of Butler or Maudling, (both from the diminished private income class)" (Sampson 1962:58). In this context it is not surprising that the Conservative Parliamentary party, even while suspecting Butler's liberal tendencies, accorded him both deference and respect.

The party viewed distinguished legal figures the same way, especially the sort assembled on the Criminal Law Revision Committee (CLRC) (see chapter 7) that was said to have recommended decriminalisation. In 1959 Butler referred suicide law to this prestigious Committee - *not* to consider whether suicide should be decriminalised, but to consider what should be done about aiding and abetting it when it *was* decriminalised. Despite this truncated brief, Butler did not scruple to represent the CLRC's subsequent report as endorsing decriminalisation, and this allowed him to claim prestigious judicial support. This claim had as little empirical grounding as did the claim that the churches and the whole medical establishment favoured decriminalisation (see chapters 4 and 5). Nevertheless, the claims would have been deeply impressive to rank and file Conservatives.

3) Butler's attitude to social reform

In trying to discover why Butler would have undertaken to decriminalise suicide, risking the controversy he was always keen to avoid, at a time when his political life and the Government's legislative agenda were both seriously overburdened, and, moreover, when there was no ground swell of public opinion at all urging this reform, one should start by looking at his attitude to reform in general. Butler's own memoirs, and the recollections of people who knew him, identify social reform as his major political interest. The radically reforming Education Act of 1944 was, according to Anthony Howard, "the single memorial of which Rab would always remain proudest." (Howard 1987:139) Butler himself calls it his "greatest achievement" and in his autobiography refers to it as informing later actions, saying in particular, "I was able to bring into the work of the Home Office the same spirit of reform and zeal for progress as had called into being the Education Act of 1944"(Butler 1971:199). The Education Act had given Butler experience in shepherding controversial social reform onto the statute books; put through as it was in the teeth of fierce opposition from the churches, and disinterest tinged with hostility from the Prime Minister Winston

Churchill (Barber 1994). So he knew how difficult it could be to pass such legislation, and it would have been in character for him to take steps to bypass trouble on the Suicide Bill if at all possible.

After the war while in opposition from 1945 to '51, Butler had been head of the Conservative Research Department, and was responsible for the complete intellectual reform of the Party; without which, according to Chris Patten, a later Conservative party chairman, the modern Tory party would not exist (Patten 1995). In thinking up and carrying through his various reforms, Anthony Howard said that Butler "cared not at all about public opinion", (Howard interview 10 Jan. 1997) and it is true that as Home Secretary he steadfastly defied a continuing public outcry for the restitution of corporal punishment. According to his Permanent Secretary, Sir Charles Cunningham, Butler was conscious of public opinion as a possible obstacle to the achievement of his goals, but believed it could be "influenced and educated, and he did this in his speeches, which were marvellous" (Cunningham interview 30 September 1996). Butler himself confirmed his view of public opinion as an irritant that could be overcome in a letter to Sir Eric Edwards MC TD on 10 July 1959:

"I understand that you are having trouble with a Conservative Association at Walton on the subject of corporal punishment and the hanging of murderers... I really think it would be rather a pity if these people were taken too seriously... Perhaps it could all be explained to them very simply because their emotion comes partly from the idea that no other people but themselves have any firmness or courage and this just simply is not true. Politics is in fact the art of the possible." (File E11, Miscellaneous correspondence, Butler papers)

Another demonstration of Butler's willingness to support reforms he personally approved regardless of popularity or political pedigree was his support of Roy Jenkins' Private Member's Bill to loosen literary censorship. In an article in *Encounter* (October 1959) recording his struggles with this Bill, Jenkins paid tribute to Butler's

help, and when it finally became law, wrote to Butler personally saying his own efforts "would have been unavailing had you not been basically sympathetic." (Howard 1987:266) Lord Jenkins re-confirmed this in interview, saying that it was Butler who arranged for the necessary Parliamentary time, without which the Bill would have failed.

It seems clear that, in Howard's words, Butler "liked to see himself as a reformer" (Howard interview 10 January 1997). In his memoirs, *The Art of the Possible*, Butler comments with some complacency, that "there were periods when I was obliged to stand out as a champion of progress against substantial sections both in parliament and in the country" (1971:28).

At the time of the change in suicide law Butler's reformist temper was focused on penal affairs, and in regard to these, Radzinowicz says, "Mr. Butler decided to become a truly reforming Home Secretary" (Radzinowicz 1999:169). Howard's comment is that when Butler first became Home Secretary in 1957 "he spotted prisons and penal reform as places where a new broom was required" (Howard 1987:255). It is in looking at how Butler wielded this 'new broom' that an answer begins to emerge as to why he would have concerned himself with the small, relatively unimportant, reform of the suicide law.

The determinist basis of his penal reforms was clear from the outset (see chapter 3): research and scientific knowledge were going to identify the causes of crime and supply ways to treat them.⁴ Mary Tuck, a former head of the Home Office Research Unit that Butler created to do this, said, "The origin [of the unit] was 'let's find out what works'. The idea was to tailor the medical model to make it work better" (Tuck interview 24 May 1996). So Butler was entirely sympathetic to the idea of *treating*, not punishing, offenders in general. Given his long involvement with mental health issues (see below) he would have been particularly receptive to the idea that mentally

ill offenders should receive medical treatment, not punishment. This, of course, was the thrust of Dr. Odum's and Kenneth Robinson's case on attempted suicides. Chapter 4 records Butler's Parliamentary endorsement in 1957 of the Percy Commission's recommendation to remove all judicial involvement with mental illness, including any related to offending. Butler had a life long commitment to this idea, as is evidenced by his chairmanship some years later of the Committee on Mentally Abnormal Offenders (1975) which firmly favoured the policy of "placing the patient in the hands of the doctors, foregoing [*sic*] any question of punishment and relinquishing from then onwards its own controls over them". (Cmnd 6244 1975, quoted in Peay 1997:661)

This, then, is the background, the general framework, within which Butler would have considered the question of the law on suicide, when it was raised by Kenneth Robinson during Parliamentary Questions to the Home Secretary. There is no indication that before that time Butler had ever thought about the matter, and his answer on the first occasion was that he was "not satisfied that any change in the law is desirable" (see chapter 7). Kenneth Robinson then immediately asked the Home Secretary in a written question to give the average sentences of those imprisoned during the latest five year period after conviction for attempted suicide. Supplying the answer, which was printed on 13 February 1958, had the effect of bringing to Butler's attention the - probably unexpected - fact that a substantial number of people were being put in prison, either on remand or sentence, as a result of having tried to kill themselves.⁵ The answer also revealed the very large discrepancy between numbers of attempted suicides known to the police and numbers prosecuted. In the determinist paradigm to which Butler subscribed, these unprosecuted were not beneficiaries of benign libertarianism, but unfortunate victims of inadequate treatment programmes.

The subsequent exchanges of Parliamentary questions and answers between Butler and Robinson over the ensuing two years show Butler to have focused completely on

the issue of the prosecution of attempted suicides; the issue of *suicide* itself does not arise. Moreover, the exchange shows clearly that what was at stake in regard to attempted suicides was how this deviant behaviour was to be controlled if it was decriminalised. This was made particularly clear in his answer in November 1958, quoted in chapter 4: "Before a change in the law is proposed, it is necessary to ensure that persons who attempt suicide and need care but cannot be given it, or will not accept it, unless they are brought before the courts, can be looked after by other means. I am still studying this difficult problem and I am sorry that I cannot at this stage give an undertaking as to when it will be possible to introduce legislation" (Hansard: Commons: 6 Nov. 1958).

So the idea of reform in general appealed to Butler, and this particular one corresponded precisely to his programme of positivist penal reform aimed at treating, not punishing offenders. In addition, it would not have escaped a practical and effective administrator, which Butler undoubtedly was, that decriminalising suicide would remove many hundreds of people from the hard-pressed remand sector of the prison system.

4) Temperament, personality, and life events

'Complicated', 'baffling', 'enigmatic' are words regularly used by people speaking and writing about Rab Butler. Despite this there is widespread agreement about the salient characteristics of his political personality: a paternalist/elitist approach to government, a keen intelligence coupled with a sharp political 'nose', and a deep aversion to controversy. All these traits are clearly visible in his handling of the suicide issue. From the start his actions indicate awareness of potential controversy insofar as he kept the profile of the issue very low. Butler's record shows he preferred the traditional method of bringing forward legislation: the plodding route of wide consultation, distinguished committees of enquiry, Royal Commissions, all slowly evolving into legislation with as much consensus as possible. But this preference could

be overridden by his abhorrence of conflict, something his widow Mollie Butler, confirmed in interview: "If there was controversy," she said, "he would let a thing drop" (Mollie Butler interview 24 Oct. 1996).

As late as the 2nd Reading of the Suicide Bill in the House of Commons, after it had sailed smoothly through the House of Lords, Butler indicated to the Minister about to move it that if there was trouble he would drop it (Fletcher-Cooke interview 6 March 1996). But that was not necessary. Butler had taken steps - successfully as it turned out - to minimise the possibility of conflict. Using his well-attested intellect and tactical skills, he had cocooned the measure in an aura of scientific compassion - "a better way to treat these unfortunate people" (see chapter 7) - that nevertheless radiated assurance about continued social control. He was able to deploy what looked like endorsements from a remarkably wide range of political and professional opinion, and was cavalier in making them appear firmer than they were. But mostly he kept the matter very quiet, not subjecting it to the usual Future Legislation committee and to Cabinet scrutiny, but slipping it in as a non-controversial footnote to a Cabinet meeting distracted by controversy over betting and gaming and NHS charges (see chapter 7). He brought it into Parliament via the Lords, whose activities received far less attention than the Commons.⁶ When it did reach the Commons, he never appeared himself in connection with it, but put it in the hands of his brand new, very junior Under Secretary, with the advice, "let's go on with this in a minor key" (Fletcher-Cooke interview 6 March 1996).

The entire episode reflects a certain attitude towards government and law making. Richard Crossman argued in an article in the *New Statesman* (3 April 1954), that Butler was "a good Platonist really concerned with an effort to perpetuate a society controlled by an elite and within a firm framework of authority." A 'good Platonist', of course, is a thorough-going elitist, unconcerned with what people *want*, but with what is good for them. Between his first response to Kenneth Robinson that "there is no

evidence in my possession that the alteration of the basic concept would be universally acceptable to public opinion" and his actual putting forward of the Suicide Bill, there is no record that Butler made any attempt to discover what public opinion was on the issue. In any case, it is unlikely he would have cared what it was, except insofar as it would have caused controversy, which was distasteful to him, and created difficulties for the Bill. It is interesting that he does seem to have believed that both controversy and difficulty were likely. In the light of this, even though the reform of suicide law would have been attractive to him for reasons set out above, these reasons were not compelling, and they do not provide a sufficient explanation for the amount of tactical skill and effort he expended on it. His actions suggest a possible deeper, more personal concern about people who try to kill themselves.

It is not possible to be definitive about this, as the "enigmatic" nature so remarked upon effectively concealed personal motivation, but it is possible to cite certain events in Butler's life that might have contributed to a particular sympathy for the suicidal and despairing. For instance, while he was at Cambridge, he suffered not one, but two complete nervous breakdowns. "I never got to the bottom of those breakdowns," Anthony Howard said, "but they were very serious - he had to be put in the hands of specialists" (Howard interview 10 January 1997). It is a matter of record that Butler took a life long interest in issues of mental health, and served as President of the National Association of Mental Health (later MIND) for many years. He had a crippled right hand and arm, the result of a childhood accident, and although Mollie Butler said she believed he "never thought of it", (Mollie Butler interview 24 October 1996) it could not have been an asset in a profession that puts a high premium on hand shaking. Butler also had personal experience with suicide and suffering: because his parents were in India, he spent holidays during his school years with an aunt and uncle in London's Ovington Square, and became, according to Howard, very fond of them. In February 1928 the aunt committed suicide by throwing herself under an underground train at Victoria station. ⁷

In the early 1950s Butler's first wife, Sydney, suffered a long, slow, agonising death from cancer of the jaw. Later, in 1959, an American magazine reporter wrote a profile of Butler containing the sentence: "There can be little doubt that it was the contentment and security of his marriage which enabled him to develop the compassionate outlook which arises from great personal happiness." She sent it to Butler, and he personally amended it to read "...the contentment and security of his marriage *and the pain involved in its ending* which enabled him to develop the compassionate outlook which arises from great personal experience."⁸

The effect of these events on Butler's attitude toward suicide law reform can, of course, only be guessed. Anthony Howard, who examined the whole of Butler's life in order to write the official biography, said, "Rab was *not* a compassionate man. He treated people very badly" (Howard interview 10 Jan. 1997). Ascribing motive is, in any case, a risky business. What is known is that Butler had an appetite for reform, fuelled by his self-image as a 'champion of progress'. He had complete confidence in the correctness of his own decisions and was unperturbed by dissenting views. He was embarked on a determinist programme of penal reform into which the change in suicide law fitted very neatly. Whether his actions were further inspired by personal compassion is probably immaterial; what matters historically is that Butler's actions had a direct and powerful effect on the passage of the Suicide Act. However, the records strongly indicate he would not have done it without the impetus supplied by two other people.

Kenneth Robinson

Kenneth Robinson M.P. put his first Parliamentary Question about suicide law to Rab Butler on 6 February 1958. He followed it with nine oral and four written questions on the subject over the next two and a half years. This may seem a good many, but the number has to be seen in the context of literally dozens and dozens of questions

Robinson put to government ministers on health and social affairs during these years. His keenness for social reform, especially any with a medical dimension, was the defining theme of his political career. Unfortunately Robinson died in 1996, just before it was possible to interview him, and so his reasons for this have to be a matter for informed conjecture. According to people who knew him, and his obituary in the *TIMES* (20 Feb. 1996) it was because he had wanted to follow his GP father into medicine and become a doctor himself. But when his father's early death cut short his son's education, Robinson became an insurance broker at Lloyd's instead. He entered Parliament in a by-election in 1949 as the Labour M.P. for St. Pancras North. From the start he took a keen interest in medical matters and in social reform, speaking in virtually all the relevant debates and pressing ministers relentlessly with Parliamentary Questions. In the marathon debate on the Mental Health Bill Robinson was a persistent advocate for the Percy Commission's recommendation that mental illness be removed from judicial and criminal jurisdiction. In 1958 he became a Vice President of the National Association for Mental Health (Butler was the President).

The author and social activist Rose Hacker worked with Robinson on a National Association of Mental Health sub-committee appointed to study the Government's proposed legislation. In an interview she said, "He went through it with a fine tooth comb. He really *cared* about improving the treatment of the mentally ill" (Hacker interview 1 Oct. 1997). When the Mental Health Bill was published, Robinson wrote an enthusiastic article in the *New Statesman* (10 Jan. 1959) commending it. "The Bill", he wrote, "is a tribute both to the Royal Commission and to growing public enlightenment. The Courts are permitted, after hearing medical evidence, to order compulsory care and treatment without first convicting the offender (One detects Mr. Butler's hand here)."

So Robinson would have been temperamentally disposed to take up the matter of moving attempted suicides from criminal justice to medical jurisdiction. Rose Hacker

said he did know Doris Odlum, and there is circumstantial evidence of their liaison on this issue in the questions Robinson put to Butler, particularly his several references to the BMA/Magistrates Joint Committee, and the interesting claim about the churches (see chapter 5). There is also the minute of the Joint Committee for 27 March 1958, which Dr. Odlum chaired, which reads:

"Resolved: 1) That copies of the statement be circulated to interested persons, including Mr. Kenneth Robinson M.P., who had asked questions on the subject in the H of C."

Robinson raised his first question about suicide law reform in February 1958. He followed it up with the written Parliamentary Question (PQ) to Butler on 13 March referred to earlier. This written question caused the facts about the prosecution of attempted suicides to be publicly displayed in the Parliamentary report. It is probable that before this it was not widely known that people were being sent to prison for trying to kill themselves.

Robinson then set down an Early Day Motion saying:

"That this House is of the opinion that the present law of England relating to suicide has no deterrent effect, is capricious in its incidence, and can no longer be regarded as reflecting the attitude of society; and considers that suicide and attempted suicide should be removed from the category of criminal offences."
(TIMES 28 February 1958)

Early Day Motions (EDMs) are a Parliamentary mechanism used by backbench M.P.s to raise issues and gain publicity. Other M.P.s sign them to demonstrate support for the proposal. EDMs are not part of the legislative process save in the marginal sense of bringing issues to public attention. Robinson had begun his Parliamentary career in the Whip's office, and this would have given him skills useful in marshalling support for

his proposal, and in the end it attracted 150 signatures. This was only a minority of the 630 Members in the House, but it was not an insignificant number, and more importantly for the ultimate success of the idea, the signers came from both sides of the House (TIMES 5 March 1958).

In addition to the PQs and the EDM, Robinson wrote an article for the *Spectator* (14 March 1958) entitled "Suicide and the Law", setting out the case for changing the law. It focused, as did all the debates on this reform, on the issue of attempted suicides and their need for treatment. "It was the potential criminal stigma, and even possible imprisonment," Robinson argued, that "leads people to pretend to their doctor that the suicide attempt was an accident, thus making medical treatment almost impossible." He went on to say, "Those who commit or try to commit suicide are mainly persons who have broken down under sudden emotional stress, who are suffering from an acute depression-state or in whom prolonged strain has destroyed the will to live. Almost all can be classified as mentally sick. When a man is driven to the lengths of trying to take his life, and fails, what good can it do to anyone to keep him in custody awaiting trial, to bring him before the courts and perhaps send him to prison for three or six months?"

The tone of Robinson's Parliamentary Questions on the suicide issues was important. They were never either aggressive or partisan, but always courteously phrased even when a note of exasperation crept in at the length of time being taken to achieve change. Having set the stage with his initial oral and written questions, and having received (in May and July of 1958) an implied acceptance of the general principle of reform, he simply kept pressing for progress. An important tactic was to cite the "weighty opinion" he claimed favoured the change, and refer to churches, doctors, magistrates, senior judiciary, whenever possible. It needs to be noted, of course, that while they may look substantial when aggregated, the questions and answers on suicide law occupied only a minuscule portion of Parliamentary time, and with the exception

of the first one, received no newspaper coverage at all. Butler's answers on this issue were sandwiched between far more contentious matters to do with the police, road accidents, sex offences, immigration, cruelty to animals, air guns, prison overcrowding, and all the myriad alarms and excursions that surface at Home Office question time. At no time did the question of suicide law reform appear either important or even very interesting. It is perfectly possible that almost no one noticed it.

Robinson's personality and style would have been a contributory factor in the calm, low profile manner in which this reform of the law proceeded. The former Conservative M.P. Sir William van Straubenzee remembers that Robinson "was very widely liked. An exceptionally nice man". (Van Straubenzee interview 31 Oct. 1996) His former Labour colleague Leo Abse said "a good man with a worthy record" (Abse 1973:92). Noel Annan called him "a most delightful man. Civilised. The best kind of politician" (Annan interview 15 March 1997). Anthony Howard said, "he was "the nicest man I knew in politics. Absolutely on the side of light. Outstandingly nice; on every liberal issue he was ahead of his party." But Howard added that Robinson was "an ineffective politician... considered an oddball and a loner. After all," Howard explained, "miners from Durham thought someone who was going to legalise homosexuality was an agent of the devil" (Howard interview 10 Jan. 1997). This refers to the fact that at the same time as he was championing reform of the mental health and suicide laws, Robinson was pressing for implementation of the Wolfenden Report recommendations on legalising homosexuality, and promoting a Private Member's Bill to allow abortion. This may bear upon Butler's less than enthusiastic response when Robinson enquired in a Parliamentary Question in July 1958, whether a Private Member's Bill on the suicide law would be supported by the Government (see chapter 7).

Robinson was also considered by some contemporaries to be politically naive. Abse comments that Robinson was "perplexed and angry with me" at talking out the Suicide

Bill on its second reading. Abse said that Robinson really believed it meant the Bill would fall, but "I knew", Abse said in an interview, "that the Whips would bring it back" (Abse interview 21 Nov. 1996).

When the Bill finally reached the floor of the House of Commons in the summer of 1961, Robinson welcomed it "wholeheartedly", but in a self-denying speech lasting by his own reckoning only one-and-a-half minutes" (Official Record, Standing Committee E 25 July 1961). This was in anticipation that the Second Reading would go through on the day - a hope frustrated by Leo Abse (see chapter 7). However, in the Committee on the Bill Robinson expanded on the basic premise that "we all agree that psychiatric treatment is what most of these unfortunate people need" (ibid.). While opposing proposals to maintain the criminality of attempted suicide so that courts could order such treatment, he nevertheless cited the provisions in the Mental Health Act that could be used if necessary (see chapter 4) and pressed the minister to ensure that hospitals always referred attempted suicides to a psychiatrist. Fletcher-Cooke responded,

"The only point to which I should reply in the hon. Member's speech, very briefly, is his request that my right hon. Friend the Minister of Health should see that the hospital arrangements for giving the opportunity for psychiatric treatment are put into force as soon as possible, and that there should not be automatic discharge of attempted suicides after the treatment of their physical wounds and symptoms. I will certainly bring what he has said to the attention of my right hon. Friend and will follow the matter up" (ibid.).

On the 3rd Reading of the Bill, as it safely approached its final Parliamentary moments, the Minister, Fletcher-Cooke, referred to Kenneth Robinsons' "pertinacity" which "persuaded the Government." Robinson, who had the very last word in the debate, did not stop to bask in the tribute, but used the occasion to urge reform of the

homosexual and abortion laws. This advocacy, according to Hansard, was greeted with "noise" (Hansard:Commons: 28 July 1958).

The TIMES obituary on Kenneth Robinson, 20 February 1996, said: "To him the credit also belongs for seeing to it, by his work behind the scenes with the Mental Health Act of 1959, that suicide was no longer regarded as a Common Law crime." While it is perhaps excessive to grant him *all* the credit, there is no doubt he played a very important part. Had he not raised the issue, it is not apparent that anyone else in Parliament at that time would have done so. When Roy Jenkins was asked where the idea had come for mentioning suicide law reform in his 1959 pre-election book *The Labour Case* he said, "It would have been from Kenneth Robinson", and went on to say, "I would have supported him in that as he supported me in so many things. He was a very good friend of mine" (Jenkins interview 6 Nov. 1996). Nevertheless, it did not appear in the Labour Manifesto for the 1959 election, and in any case Labour was decisively defeated. No other M.P. on either side raised the issue at any time. Had Robinson not pursued it so doggedly both before and after the election there is no reason to think Butler would have taken the action he did.

Dr. Doris Odlum

Dr. Doris Odlum, a consultant psychiatrist, was the third individual whose personal actions played a key part in the passing of the Suicide Act. In what was either an astonishing accident or an even more amazing strategic design, Dr. Odlum's name appears in five of the six places outside Parliament where events occurred that were important to the Suicide Act: the BMA/Magistrates' Association Joint Committee, the Church of England committee, the National Association of Mental Health, the National Council of Women, and the Home Office. (The sixth was the Criminal Law Revision Committee). It is not impossible that it was by design. According to Chad Varah, founder and head of the Samaritans, Dr. Odlum "was *the* figure in terms of the

suicide reform. It was totally her crusade - she persuaded people to go along with her" (Varah interview 7 April 1999)

Born in 1890, Dr. Odium qualified in 1929 and by the 1950s was a distinguished figure in the medical world: Senior Physician for Psychological Medicine at the Elizabeth Garrett Anderson Hospital, President of the British Medical Women's Federation, Foundation Fellow of the Royal Society of Psychiatry, President of the European League for Mental Hygiene, Vice President of the International Medical Women's Association, and - of particular relevance to this research - a Vice President of the National Association of Mental Health where Kenneth Robinson was also a Vice President and Rab Butler was President. Rose Hacker remembers Doris Odium as "a fat, jolly woman. Very down to earth; very keen on mental health and improving the mental hospitals" (Hacker interview 1 Oct. 1997). Chad Varah remembers her as a "white haired, dumpy little figure ... but determined. Wonderful speaker. Rowed for Lady Margaret" [the Oxford College] (Varah interview 7 April 1999). A Samaritan who knew her at her home in Bournemouth said, "A phenomenal lady - formidable. One of the icons of my life. Tremendously confident - charmed people... When she went for something she got it" (Simestra interview 15 May 1999).

Dr. Odium's most important platform in terms of the change in the suicide law was her chairmanship of the BMA/Magistrates Joint Committee (see chapter 4 and Appendix B). She was elected to this post on 10 October 1952, and remained the Chair, despite several minuted attempts to escape, from then until the Joint Committee's suspension in 1961. During this period she attended every single recorded meeting save one. Committee members came and went, including such co-optees as Dr. Herman Mannheim, Reader in Criminology from the LSE, who was a member from 1952 to 1955. None of them had a tenure even approaching the length of Dr. Odium's, and attendance at the twice- or thrice- yearly meetings was patchy, with many having no

more than five people present. So it is not unreasonable to suggest that hers was the dominant influence on the affairs of the committee.

Certainly the Joint Committee's involvement with suicide law appears from the minutes of their meetings, to have been initiated and driven forward almost entirely by Dr. Odum, and her role in the passage of the Suicide Act is examined here in the context of the activity of the Joint Committee. The guiding brief for this committee was:

"To provide a channel for co-operation between the BMA and the Magistrates' Association; to consider all matters of common interest, with special reference to observations, prevention and treatment in relation to the medical aspects of legal offence; and to make recommendations for the improvement and extension of existing arrangements and for facilitating new legislation."

In July of 1955 they had just completed a massive report on the law in regard to cruelty to, and neglect of, children and were casting about for another subject on which to focus their attention. The minutes for 22 July 1955 record, "No subject calling for consideration by the Committee came immediately to mind and members agreed to give thought to the matter."

At the next meeting on 14 October 1955 item 5 on the agenda was to:

"Consider:

- 1) **Report from the Chairman** of a recent case in which a woman was sentenced to 15 days imprisonment on a charge of attempted suicide.
(emphasis added)
- 2) Question whether the previous stated policy of the Committee on this subject should be reviewed.

The "previous stated policy" is quoted in chapter 4 - it was the 1947 recommendation that the law be amended "so that attempted suicide...would not be dealt with as an illegal offence" .

From this point on the minutes paint a picture of dogged determination on the part of Dr. Odum to get the Joint Committee to use their influence to end the criminal prosecution of attempted suicide. This aim was pursued with unflagging energy despite disinterest shading into recalcitrance among other committee members (see Appendix B). The core of the resistance was on the grounds that, in the words of the Magistrates Association, "attempted suicide should continue to be a criminal offence so that where necessary the person concerned can be safeguarded and helped" (Magistrates Association 36th Annual Report October 1956:23). This was the premise on which most people who initially opposed decriminalisation said their reservations were based. Chad Varah describes his own position, and how Dr. Odum overcame it:

"She approached me. She wanted my support in getting attempted suicide decriminalised. She thought if I was against it she would not succeed. At the beginning I was doubtful about the wisdom of it. My experience with recovered attempted suicides in the City was that the then system served them well. Someone who had attempted suicide and not died could be brought before a court and be made to consider various forms of help. The magistrate would say, 'You need psychiatric help. I require you to present yourself to hospital and if you refuse I will send you to prison, and I think it would not be good for you, but I do have the power to do it.' That is what happened throughout the Met area. Doris said, 'If only the rest of England was like that. You would not believe what goes on - the stupid magistrates want to punish attempted suicides. You in London have no problem, but for that to happen everywhere it needs to be decriminalised.' So I did give her my support and wrote to various people at her request and confirmed it when people asked me if I supported her" (Varah interview 7 April 1997).

The minutes of the Joint Committee show that Dr. Odum did manage, early on, to achieve agreement on the definition of attempted suicides as mentally ill and in need of treatment. However, as in other venues where the issue was discussed, the stumbling

block to gaining agreement on decriminalisation was how to ensure the treatment was administered. As set out in chapter 4, whenever decriminalisation was mooted, in various draft resolutions from the Joint Committee, it was coupled with proposals for "suitable alternative legislation [which] could provide for police intervention in cases of attempted suicide and give power for such cases to be brought to a hospital for observation and treatment if necessary" (see Appendix B).

Dr. Odlum worked very hard to shift opinion on the Joint Committee on this issue. A seven page summary of the Report of the Royal Commission on Mental Illness and Mental Deficiency (The Percy Commission) was circulated to all members following its publication in May of 1957. The clauses that addressed the anxiety about attempted suicides escaping treatment were pointed out. When opposition persisted Dr. Odlum invited Professor E. Stengel, the President of the Psychiatric Section of the Royal Society of Medicine, to come and speak to the Committee on the issue.

The same month of Professor Stengel's talk to the Joint Committee, the article by Dr. Odlum urging that both suicide and attempted suicide should no longer be criminal offences was published in the *Proceedings of the Royal Society of Medicine*. A copy of it was circulated to all the members of the Joint Committee.

The most significant moment for the Joint Committee, in terms of influencing the Suicide Act was undoubtedly the meeting at the Home Office to which they were summoned in the spring of 1959 (see chapters 4 and 7). The Joint Committee minutes of 22 January 1959 record receipt of the invitation "for representatives of the Committee to attend the Home Office on Friday, 13 March, 1959, to discuss with officers of the Department the problem of attempted suicide." It should be noted that here, again, the focus was entirely on "the problem of *attempted* suicide", not on suicide. The minutes show it was the Chair who selected ("invited") the members who were to attend. In the end just three (Lady Adrian, Dr. Bodman, and Mrs.

MacAdam), went to the meeting with Dr. Odum and the Assistant Secretary to the Committee, J.D.J. Havard. The only Home Office attendee was Francis Graham Harrison, but his rank - Deputy Permanent Secretary - indicates the Department considered the matter to be important. He was outnumbered by two representatives from the Ministry of Health, Dr. W.S. Maclay and Mr. P. Benner.

The significance of the Health Ministry representation was made plain by Graham Harrison who "opened the discussing by saying that the question of a change in the law relating to attempted suicide had been under discussion in the Home Office and that the conclusion had been reached that it was undesirable to retain attempted suicide as a criminal offence as it was mainly a social and medical problem" (Minute of 13 March 1959 meeting taken by J.D.J. Havard, in file of Joint Committee at the BMA archives).

This announcement must have been deeply gratifying to Dr. Odum as it was exactly what she had been urging since 1955. However, at that point, March of 1959, the law remained unchanged; none of the usual machinery for changing the law had been engaged; and a general election was imminent. There was therefore the possibility that however undesirable the current Home Office occupants thought it, attempted suicide might well remain a criminal offence.

Against this background, on 16 April Kenneth Robinson put down a Parliamentary Question to the Home Secretary asking about the meeting between Home Office Officials and members of the BMA/Magistrates Committee. Butler replied:

"A helpful meeting between officials of my Department and of the Ministry of Health and representatives of the Joint Committee... took place last month. The meeting explored the crucial problem of ensuring that persons who attempt suicide receive treatment of their condition. The existing law does ensure this although I recognise that it has unsatisfactory features and before we change it

I want to be satisfied that there are workable alternatives" (Hansard: Commons: 16 April 1959).

This reply displeased the members of the Joint Committee. The minutes of their next meeting on 21 May when - unusually - eleven members were present, recorded the disapproval and agreed to let the Home Secretary know about it:

"The Committee was disturbed that the statement to the House of Commons did not appear to be in accordance with the trend of the discussion at the Home Office in that the Secretary of State for Home Affairs had said that the existing law ensured that persons who attempt to commit suicide received treatment. The Committee thought it was clear that this was not generally so at present. RESOLVED: That a letter be addressed to the Home Office seeking clarification of the above points."

This minute shows that the concern was very much not to allow the statement that the existing law ensured treatment to go unchallenged. Since a majority of the members at this meeting had not been involved in the previous discussions about changing the suicide law, the displeasure is likely to have been expressed in the main by Dr. Odium, whose entire concern had been to publicise the unsatisfactory nature of the existing law.

The letter telling the Home Secretary of the Joint Committee's disapproval was duly sent, and an emollient reply came back from the Home Office dated 22 June, giving their version of the discussion in March:

"Mr. Graham-Harrison explained that the provisional view of the Home Office on this subject was that attempted suicide was primarily a medical and social problem which ought so far as possible to be dealt with outside the criminal law. The Home Secretary was, however, anxious to ensure that the

arrangements for getting people who had attempted suicide into the hands of appropriate medical and social agencies could operate adequately. He would be glad therefore to have the benefit of the views of the members of the Joint Committee of the BMA and the Magistrates Association who had studied this problem in some detail" (letter dated 22 June 1959 in Joint Committee file in BMA archives).

However, "Members [of the Committee] were not satisfied", according to minutes of 24 September, "with the explanation given of the reply by the Home Secretary to the PQ on 16 April and could not agree that the existing law ensured that persons who attempted suicide received treatment...

RESOLVED: 1) Home Secretary to be informed of disquiet of Committee 2) After the coming General Election a further approach be made to the Home Secretary to ascertain the action proposed in regard to amending the legislation on attempted suicide."

At the next meeting on 18 November, after the election, the Committee received copies of the Hansard of 5 November in which Butler had responded to yet another Kenneth Robinson question about the law on attempted suicide, with an explicit commitment to reform, albeit in perhaps deliberately opaque language: "As the Hon Member knows, I have stated that I understand his point of view on this matter" (Hansard 5 November 1959).

The Committee then "discussed the various ways in which persons who attempted suicide might best be dealt with and it was generally agreed that it was desirable to avoid the stigma which, at present, attached itself to such cases under existing arrangements." Seymour Collins, who continued to resist the removal of all court power, suggested that attempted suicides seemed to do well on Probation - why not let Magistrates Courts put them on probation as a 'civil' action?

The Committee then-

"RESOLVED: That the Home Office be informed that the Committee is of the opinion that provision should be made in any amending legislation on attempted suicide for machinery whereby the courts could deal with cases in their civil capacity where there is no alternative method of safeguarding the would-be suicide or the community."

So Dr. Odlum had achieved her long sought goal of having the Joint Committee agree that attempted suicide should be removed from the *criminal* courts, although their determination to maintain some judicial involvement, even if only civil, proved ineradicable.

Following this no further action by the Joint Committee on this issue is recorded. At their meeting a year later on 3 November 1960 they "welcomed" the report of the Criminal Law Revision Committee (see Chapter 7), and on 21 March 1961 they "received" a report of the Suicide Bill, which had its second reading on 2 March, but by then the Joint Committee had moved on to discussions on the rehabilitation of alcoholics.

It is clear that Dr. Odlum used her position as Chair of the Joint Committee as a base from which to canvass more widely for support to change the law on suicide, but always on an individual basis; she never attempted to set up any kind of campaigning or lobbying organisation. The Joint Committee minutes for the meeting of 5 November 1958 record, "The Chair reported she had brought the matter [of a change in the law on suicide] to the attention of a number of bodies, including the National Association for Mental Health, which supported the view of the Committee..."

These minutes go on to report, "It appeared to the Committee that no further action was called for immediately..." However, despite this, a few weeks later, at the end of November, Dr. Odum wrote to the Roman Catholic Archbishop, Cardinal Godfrey and to the General Secretary of the Free Church Federal Council seeking endorsement - or at least abstention from censure - of the proposal to reform the suicide law (see chapter 5). To both she offered the assurance that "there is no suggestion that suicide should not continue to be regarded as a sin. Our only object is to remove it from the purview of the criminal law," and included with the letter a report suggesting that criminality "actually impedes measures of treatment and rehabilitation".

The answers she received to these letters seem to have been the basis of the claim in Parliament that the churches had no objection to the reform. The answer Dr. Odum received to her letter to the Free Church Federation (see chapter 5) in fact refused to respond to her request for support for decriminalisation, and referred her to their Women's Section who "gave their support to the Resolution passed by the National Council of Women". With a peculiar circularity, this NCW resolution seems to have had at least something - if not everything - to do with Dr. Odum (see chapter 5).

Coincident with her work on the Joint Committee, in the summer of 1958, Dr. Odum received the invitation to join the Church of England Committee considering the law on suicide (see chapter 5). The proposal to ask her came only after several failed attempts to fill the 'psychiatric slot' and was greeted without excessive enthusiasm by the Chairman, John Christie, Principle of Jesus College Oxford. "It is rather a shot in the dark..." Christie said, "but I think it would be good to have a woman member."

There is no indication in the records that anyone involved with the C of E committee knew of Dr. Odum's committed stance in regard to suicide law reform (see chapter 5). This would accord with Chad Varah's comment that she wanted to keep the issue very low profile because she suspected if the general public knew of it there would be an

outcry against decriminalisation. Varah remembers her saying, "Look how they are about capital punishment" (Varah interview 7 April 1999).

As described in chapter 5, Dr. Odlum found herself at odds with the other members of the Church of England committee over the issue of the moral (and by implication criminal) culpability of some kinds of suicide. After months of wrangling the chairman of this committee, John Christie, made his exasperated comment that he wondered "whether the real trouble is that she does not emotionally believe in what we should call responsibility or guilt at all." It is in fact highly probable that she did not; that her position on attempted suicide was that it was a medical matter having nothing at all to do with responsibility or guilt.

In considering Dr. Odlum's remarkable capacity to appear in a variety of different places, it should be noted that in the file on the booklet in the Church of England archives in Bermondsey there is a note to the effect that the British Medical Women's Federation in 1957 called for a change in the law on attempted suicide. Dr. Odlum was the immediate past President of the British Medical Women's Federation.

In all the places she appeared, Dr. Odlum remained consistently focused on the practical objective of removing attempted suicides from criminal justice jurisdiction. She had no wish to challenge cultural values about self killing in general, and this was made explicit in her letter to the Roman Catholic Archbishop where she said: "I feel I should assure Your Grace that there is no suggestion that suicide should not continue to be regarded as a sin. Our only object is to remove it from the purview of the criminal law" (see chapter 5). It is also apparent in her ultimate acquiescence (not without complaint) in the Church of England booklet recommendation for an alternative burial service for suicides who were "morally guilty". Dr. Odlum did not want to make a judgement of any kind about self killing. Moral judgements in these

matters were to her not relevant to the issue of how the state should best deal with the people who tried to kill themselves and failed.

In this way Dr. Odlum defined limits for the debate on the decriminalisation of suicide which were never breached. Once the difficult Church of England committee was negotiated and its booklet recommending decriminalisation of attempted suicide was safely published, matters to do with morality, free will, and rational choice never again surfaced in the debate. The question was entirely one of ensuring the appropriate state agency took charge of this kind of deviant behaviour. Not really because the existing situation was unkind or cruel, but because it was *ineffective*. "A better way to treat these unfortunate people" - the Government's phrase in describing the reform - was exactly how Dr. Odlum had conceived the solution to the problem, and this was the basis on which the Suicide Bill was passed.

Conclusion

There is an ongoing debate about the relative weight to be given to structure and agency in explaining social change (Althusser 1971, Giddens 1979, James 1997), although "most of those who have participated have continued to insist that both categories remain indispensable" (Skinner 1997:18). The evidence from empirical case studies of social reform legislation, including this one, supports the idea that both are necessary but neither by itself sufficient. Perhaps because statute law is so obviously a human construct, the role of human agency in making it is especially clear, and a fully causal explanation less than satisfactory. In the case of the Suicide Act, the presence of powerful factors seemingly ranged against its passage throws into sharp relief the importance of the actions of its advocates. This chapter has described the three most significant of these, and in particular how Kenneth Robinson and Doris Odlum put the issue on the political agenda. The next chapter sets out in detail how the most influential agent - Rab Butler - actually put the measure through Parliament.

Notes to Chapter 6

¹The reason for the curious lack of mention of the Suicide Act in the memoirs of the main protagonists can only be conjectured. One possibility is that the complete lack of controversy meant that once passed it was genuinely forgotten. Another is that Butler's determination to forestall controversy on the issue extended even to the writing of his memoirs.

²Butler was made Under Secretary of State for India in 1932, moved to the Foreign Office in 1938, and to Education in 1941. From 1944 to 1945 he was Minister for education. Following the Conservatives return of office in 1951 he became Chancellor of the Exchequer; 1955 Lord Privy Seal and Leader of the house of Commons; 1957 Home Secretary; 1963 Foreign Secretary; 1965 he was made a life Peer

³This aspect of Butler's personality was mentioned by virtually everyone who had worked with him or knew him. It also features regularly in comments about him in memoirs and biographies. The TIMES obituary (10 March 1982) referred to his "public ambiguity of expression". At the service of Thanksgiving for his life in Westminster Abbey 5 April 1982, the Rev. H.A. Williams spoke of his "immense subtlety of mind and manoeuvre" and how "he accepted the stark realism of Christ's command: 'Be ye therefore as wise as serpents.'" (Address reprinted in *A Rabanthology* edited by Mollie Butler 1995)

⁴Radzinowicz was delighted with the project and describes it: "The programme consisted of two thrusts: penal reform and criminological research. Its significance consisted in the fact that, for the first time, their interdependence was laid bare." (1999 p.169) He goes on to say, apropos of penal reform, but with applicability to the suicide law: "That in such unfavourable circumstances a reforming zeal should still be endorsed, and for that matter by a Conservative administration, was very unusual indeed. Nor should it be forgotten that it would not have happened but for Mr. Butler. I do not like to indulge in gratuitous generalisations, yet I firmly believe that it would have been found virtually impossible to seek out another prominent political figure of the ruling party who at that time would have evinced the desire and the courage to be the captain of such a hazardous enterprise." (p.169)

⁵Butler's written answer of 13 February 1958 to Kenneth Robinson's PQ about the sentences on people convicted of attempted suicide showed the following table of disposals from 1952-1956:

<u>Sentence or Order</u>	<u>Number</u>	<u>Percentage</u>
Imprisonment		
Up to one month	31	1.1
Over one month, up to three months	76	2.6
Over three months, up to six months	84	2.9
Over six months	3	0.1
Probation order	1,842	63.0
Conditional or Absolute Discharge, Bind-Over	819	28.0
Fine	21	0.7
Otherwise disposed of	46	1.6
TOTAL	2,922	100.0

⁶Anthony Sampson described the House of Lords in 1961: "There is an aura of contented old age - older than the oldest men's club. The rooms are full of half-remembered faces of famous men, or politicians who had dropped suddenly out of public life twenty years ago, who - how shall one put it - one had forgotten were still around... Sitting on the red-leather sofas, facing each other, leaning back, whispering, putting their feet up, fumbling with papers, making notes, putting a deaf-aid (supplied by the attendant) to their ear, or simply sleeping, are the peers... More often there is only a handful of peers in the room and a pleasant somnolence descends while one of them is speaking." (Sampson 1962 pp.22-23)

⁷This information appears in the official Howard biography (p.44); in interview Howard said he had gained it from Butler's sister Iris Portal.

⁸The exchange of letters is in the E11 Miscellaneous correspondence file in the Butler papers. The reporter was a Barbara Vereker who sent her article dated 29 July 1959. Butler's response is dated 19 August 1959.

Chapter 7: The Parliamentary Passage

The Suicide Bill was a government measure that became law in the summer of 1961. On its final 3rd Reading in the House of Commons on 28 July, one of the very few speakers, Eric Fletcher M.P., made a revealing comment: "Although this is an important bill," he said, "which makes a significant change in the law, it appears to have passed through Parliament practically unnoticed" (Hansard: Commons: 28 July 1961).

Detailed study of the Act's passage supports this observation, and shows that its most salient feature was an excessively low profile. For a start, it did not arrive on the government's legislative agenda through the approved channels (see below): it did not appear on any departmental list; it was not discussed, or even mentioned, in the Future Legislation Committee, and it was not considered at the formal Cabinet meeting that agreed bills for the coming session. When it did arrive in Parliament, it came in via the House of Lords, traditionally the starting point for worthy but dull, non-contentious matters, whose sessions receive scant attention compared to the Commons. Once into the Commons it was handled by a very junior minister only just appointed to the Home Office, and its 2nd and 3rd Readings were scheduled on Fridays, when attendance was normally extremely thin. Moreover (a factor probably fortuitous), nearly all its appearances coincided with hugely newsworthy other events. The result was, as Mr. Fletcher said, that the entire passage was "practically unnoticed". Examining the data, it is hard to escape the impression that this is exactly what Rab Butler wanted.

This chapter looks at the actual passage of the Act, using documents in the Public Record Office, the Butler papers, Parliamentary Hansards, and interviews with people who were present.

The first point to be considered is why the Suicide Bill was a government measure at all. Reform of this kind - non-political issues involving 'matters of conscience' - is typically enacted through Private Members' Bills. Not only is it difficult, and possibly damaging, for a government to try and force - "whip" - its M.P.s to vote a certain way on a "matter of conscience", it is often hard to gain agreement even among Ministers on such issues. Roy (now Lord) Jenkins, the Labour Home Secretary in 1965-67 when much reforming legislation was passed, said he regretted that the criminal law reforms of his years had had to be by way of Private Member's Bills. This was necessary, he said, because although he personally supported the reforms he would "never have been able to get them through the Cabinet" (Jenkins interview 6 November 1996).

When his party was in opposition, before 1964, Roy Jenkins had changed the law on censorship by piloting the controversial Obscene Publications Act through Parliament as a Private Members Bill. It became law in July 1959. In the October 1959 issue of *Encounter* Jenkins reported on his "five year struggle to get this Act on the Statute Book" ("Obscenity, Censorship & the Law: The Story of a Bill"). In this he asked, "What conclusions can be drawn" about reform legislation? Among his answers was the view that "Libertarian reform...is undoubtedly a long and wearisome job for a private member. A determinedly liberal Home Secretary could do it much more quickly and much more surely" (*Encounter* October 1959:62).

This is a conclusion that would be drawn by anyone knowledgeable in the ways of Parliament. In the twenty-five years from 1950 to 1975, it has been calculated that only 26 percent of all the Private Members' bills introduced became law, compared

with 93 per cent of government bills (Zander 1994:71). Jenkins also listed in his article the requirements he believed necessary for a Private Member's Bill to succeed. These included: "some well organised and determined allies both inside and outside the House of Commons, and ... an articulate and impressive body of extra-parliamentary support." Neither of these were present, nor were they likely to emerge, on behalf of decriminalising suicide at the time Kenneth Robinson brought the issue to Butler's attention. If Butler wanted the reform to happen, and there are reasons to suppose he did (see chapter 6), he might well have determined it would be quicker and more effective if he, as Home Secretary, did it himself. In any case, the fact is that the Suicide Act was a government measure, although it did not follow the track usually taken to become one. In order to demonstrate the oddity of the path it did take, it is necessary to chart the usual route.

Michael Zander in *The Law Making Process* (1994) says, "Very little has been written about the process of preparing legislation from Whitehall's perspective" (p.4). He then quotes at length from a lecture on the subject given by Sir Granville Ram in 1951, when Sir Granville was First Parliamentary Counsel. Zander, writing in 1994, indicates this account continues to be an authoritative source, and, of course, with reference to this research, Sir Granville describes the process at a time near to the passage of the Suicide Act (Zander 1994:10-13). Moreover, his account tallies with the information gained in interviews with people who were, and are, actual participants in the process. In particular it tallies with the comments of Lord Renton, who as David Renton M.P. was a member of the Future Legislation Committee (see below) in 1959-61, chaired the Committee on the Preparation of Legislation (1973-75) and at the time this thesis was written was President of the Statute Law Society (Renton interview 8 May 1996). It also tallies with the recollections of Sir Charles Cunningham, who was Permanent Secretary to the Home Office from 1957 to 1966 (Cunningham interview 30 September 1996).

The "official", and usual, way government bills proceed is as follows:

At the opening of each new session of Parliament, at the end of October or early November, the Cabinet Office asks all government departments to submit lists of bills they wish to have enacted, to be introduced not in the current session, but in the *next* Parliamentary session twelve months hence.

The lists are collected and given to a Cabinet Committee known as the Future Legislation Committee (FLC). Membership of the FLC includes the Leaders of the Commons and the Lords, the Chief Whip and several senior Ministers. After the Christmas break, in the early months of the new year, the FLC examines all the proposals in detail and decides which ones are to be put forward for the laborious and expensive process of Parliamentary drafting. David Renton's membership of the FLC coincided in part with his time as a Minister at the Home Office (1958 - 1962). He recalled that he "loved" the work of the Committee. "We pulled everything apart," he said, "went through all the bills with a fine-tooth comb" (Renton interview 8 May 1996).

A provisional list of possible government bills is agreed and circulated to Ministers in the various government departments. At this point a power struggle takes place, according to people who have taken part, in which Ministers battle to have their bills included if they have been left out, or given a higher priority if they are low on the list. Senior Ministers often actually appear in front of the FLC to argue their case, as there is never sufficient legislative space to include all the bills believed to be important.

The list that results from this struggle is then submitted to the Cabinet, usually in early June. Following Cabinet discussion, the - sometimes amended - list goes back to the FLC which then implements the final laborious process of formal drafting of the chosen

bills by Parliamentary Counsel. After the summer recess, FLC presents the Cabinet with the programme of government bills to be introduced in the coming session.

This is the usual process. It is not what happened with the Suicide bill. Reform of the law on suicide made its first appearance in the legislative arena on 6 February 1958, when Kenneth Robinson, put an oral question about it to the Home Secretary, Rab Butler. Previous to this the only reference to suicide law in Parliament had been in respect of suicide *pacts* during debates on the Homicide Act 1957. Outside Parliament the only recorded interest in the issue appeared in the BMA/Magistrates Joint Committee, whose deliberations were private (see chapters 4 and 6), and in the work of Professor E. Stengel of Sheffield University, who had been researching suicide and attempted suicide for some years. These small instances could not be said to meet the Jenkins' criterion of "an articulate and impressive body of extra-parliamentary support."

The question Robinson put was: "Would the Home Secretary introduce legislation to amend the law relating to suicide?" (This exchange is from Hansard:Commons:6 Feb. 1958)

"I am not satisfied," Butler answered, "that any change in the law is desirable."

Robinson pressed him with a supplementary question, and Butler responded: "There is no evidence in my possession that the alteration of the basic concept would be universally acceptable to public opinion."

This answer is interesting in the light of Butler's subsequent actions because there was never any *evidence* throughout the passage of the bill - nor any attempt to gain any - that the concept would be universally acceptable to public opinion. What did emerge during the next three years were indications that a small, but not necessarily representative, section of the Establishment were willing to accept a change in the law on suicide (see chapters 4,5 and 6).

Robinson followed his oral question with the written one on 13 March (see chapter 4) and his Early Day Motion advocating that suicide and attempted suicide be decriminalised (see chapter 6). He put another oral question on the subject to Butler on 22 May 1958 and elicited an answer that demonstrated the connection - in Butler's mind - between suicide law and mental health legislation. Robinson's question was "Does not the rt. hon. Gentleman agree that other provisions of the law in regard to breach of the peace and mental health are quite sufficient to deal with the cases he has in mind?" (Hansard: Commons: 22 May 1958). To which Butler replied: "The Government's approach to mental health, as the House knows, is at present actual [sic], and does bring all this subject to the fore. It is against that background that I am examining it."

There was no further recorded movement on the issue until the beginning of the following year when in January 1959, Doris Odlum's Joint BMA/Magistrates Committee was invited to come to a meeting at the Home Office in March to discuss the law relating to attempted suicide (see chapter 4). The Committee minutes record receipt of this invitation in January, and Butler confirmed it in answer to another Robinson Parliamentary Question on 26 February. The minutes of this meeting (see Appendix B) show quite clearly that by March of 1959 the decision had already been made that attempted suicide - and thus suicide itself - should be decriminalised. However a number of steps needed to be taken before the objective could be realised.

Criminal Law Revision Committee

One of the most important of these steps involved the Criminal Law Revision Committee (CLRC), which was set up by Butler on 2 February 1959. Until this point, despite years of legal lobbying, there had been no formal, continuing body charged with reviewing the criminal law and recommending reform. The Lord Chancellor had for some years had his own Law Reform Committee to review the civil law, but Butler's Committee was the first with a remit to review the criminal law.

(Zander 1994; and Cmnd 2573 1965 on proposals for a Law Commission) The fifteen legally distinguished members,¹ presumably chosen by Butler (he makes no mention of it in his autobiography, nor does Howard in his biography of Butler), represented a remarkably wide range of opinion. There was, for example, the Director of Public Prosecutions Sir Theobald Mathew, a Roman Catholic said by Noel Annan to be "one of the most reactionary men ever to hold that office" (Annan interview 15 March 1997). Mathew brought the charge of obscenity against *Lady Chatterley's Lover* in October 1961. Mervyn Griffith Jones, another member of the CLRC, was chief prosecution counsel on the case. It was Griffith Jones who put to the jury the famous question as to whether *Lady Chatterley* was "the kind of book you would even wish your wife or your servants to read?" (TIMES 21 October 1960) However, membership of the CLRC also included Glanville Williams, Professor of Law at Cambridge, and a noted campaigner for libertarian reform (he became life President of the Abortion Law Reform Association in 1962 and was a Vice President of the Voluntary Euthanasia Society). Williams book *The Sanctity of Life and the Criminal Law* had been published not long before his appointment to the CLRC in February 1959. He had also written one of the two letters to the TIMES in February 1958 supporting Kenneth Robinson's proposal to decriminalise suicide (see chapter 3).

The remit of the CLRC was extremely limited. The members, who in addition to the above included two Lord Justices, two High Court Judges, a QC and a Brigadier, were expected to serve voluntarily, meet only occasionally, and confine their deliberations to matters referred to them by the Home Secretary. While an important precedent, this Committee was not an actual precursor of the Law Commission, which the Labour government set up by statute in 1965. The Law Commission is empowered to review the criminal law on its own initiative, and has an independent existence guaranteed by statute (Law Commissions Act 1965).

The importance of Butler's Criminal Law Revision Committee to this research is the fact that the second matter Butler referred to them was a subsidiary aspect of the suicide law issue. (The referral letter is reproduced at Appendix C) Their subsequent report was tactically deployed by him to help gain acceptance for the Suicide Bill. The referral was in the autumn of 1959, but in advance of that an event of rather larger importance took place: a general election. The suicide issue did not appear in any of the three party manifestos for the 1959 election. Indeed the only place in any election literature where mention of it is found is in the Penguin Special *The Case for Labour* (1959) by Roy Jenkins M.P., then an opposition spokesman on Home Affairs. At the end of *The Case* Jenkins presented an agenda for an in-coming Labour Home Secretary and "reform of the suicide law" appeared as one item on the list. In interview Jenkins credited Kenneth Robinson with pressing him to include this (see chapter 6), but he also said there was no ground swell of feeling on the issue, and it did not subsequently appear in the Labour manifesto (Jenkins interview 6 November 1996).

On the 18th September 1959 Parliament was dissolved, and the election took place on 8 October. The result was an overwhelming Conservative win. The Tories received 49.6% of the vote and 365 seats to Labour's 258 and the Liberals' 6 (Butler and Rose 1960). The BBC Parliamentary correspondent, Roland Fox, commented, "The majority means that the electorate have given the Conservatives a decisive mandate to continue their administration for another five years." Such a prominent member of the administration as Butler must have seen the result as an endorsement of his own Ministerial performance and confirmation that he could pursue his programme as planned.

The new Parliament assembled on the 20th of October 1959, the day after publication of the Church of England booklet "Ought Suicide to be a Crime?" (see chapter 5). It would have been surprising if Butler had paid much attention to either the booklet or

indeed to the opening of Parliament, as on 21 October he was married for the second time. His first wife, Sydney Courtauld, had died a lingering and painful death from cancer in 1954. This second marriage was to a Courtauld cousin, Molly, whose own husband had also suffered a long agonising illness that only ended in death in March of 1959. The Butlers spent a five day honeymoon in Rome, and returned as the new Parliament was getting underway (Butler 1971, Howard 1987). It is difficult to conceive how Butler sustained the burden of work he carried at this period. He was Home Secretary, Leader of the House of Commons, and after the '59 election was made Chairman of the Conservative Party as well. His biographer, Anthony Howard, says, "Rab's workload was certainly exceptionally heavy: in addition to trying to run possibly the most mine-strewn of all Departments of State, he was responsible for the Government's entire legislative programme - on top of which ... he was now expected to give at least two mornings a week to the task of keeping the Party outside Parliament happy" (Howard 1987:274).

Yet despite this, only days after returning from his honeymoon and less than a month after the election, on 4 November 1959, he referred part of the suicide issue to his new Criminal Law Revision Committee. Appendix C shows this referral letter, from Butler's Permanent Secretary Sir Charles Cunningham to the Chairman of the CLRC, Lord Justice Sellers. The letter makes clear that the terms of this reference to the CLRC were strictly limited. They were *not* asked to consider the substantive issue of the actual de-criminalisation of suicide and attempted suicide; that matter was firmly reserved for the Home Secretary to decide. The Committee were only asked to consider what amendments in the criminal law might be required, consequential to decriminalisation, in order to retain the criminality of assisting a suicide. Given the intellectually prestigious nature of the CLRC members it is not unreasonable to wonder why Butler did not refer the substantive issue to them. And if not the substantive issue, why bother to refer the subsidiary matter?

A possible answer to the first question is suggested by the minutes of the CLRC, which are now available in the Public Record office (LCO 2/7040). These point to the possibility that had the CLRC been asked to consider *whether* suicide should be decriminalised, they might not have been able to agree. Given the diametrically opposed views of some of the members, such disagreement seems highly likely. It is possible that Butler, who after all had appointed the CLRC members, anticipated such an outcome, and wished to forestall it. But then, why refer the subsidiary issue?

A possible answer to this second question is suggested by Butler's subsequent use of the CLRC report, which he represented to the Prime Minister and the Lord Chancellor as if the CLRC *had* considered the substantive issue and *had* recommended decriminalisation. Appendix F shows his letter to the Prime Minister in which he refers to the "4 judges and other notables" giving "weighty backing" to the Suicide Bill.

It is also the case that there was a tricky legal point involved in the subsidiary issue; one which was spotted by Lord Denning in the Lords' debate on the Suicide Bill.² This was the anomaly involved in making it a crime to aid and abet something which was itself *not* a crime. Butler may have thought to scotch possible legal quibbling on this point by giving it a prestigious provenance.

The referral to the CLRC took place on 4 November. The next day, 5 November, was the day the new Parliament put its first Questions to the Home Secretary. During these, Kenneth Robinson asked Butler "if he will introduce, during the present Session, legislation to amend the law relating to suicide and attempted suicide" (Hansard: Commons: 5 Nov. 1960). Butler's answer was oblique, but positive: "As the hon. Member knows, I have stated that I understand his point of view on this matter..." But went on to say, "We should however get the views of the Criminal Law Revision Committee before taking the matter further" (*ibid.*).

At this same first Question time, Butler was subjected to a sustained attack from his own Conservative backbenchers on the issues of discipline, crime, and capital punishment (Hansard 5 November 1959). According to the *GUARDIAN* the next day, 6 Nov., the "flogging lobby would not be content to play it mild". The episode could have left the Home Secretary in no doubt about his Parliamentary party's views on libertarian reform. It was during this same month, November 1959, as per the standard procedure, that planning began for legislation in the *next* Parliamentary session. Butler, as Leader of the House, was Chairman of the Future Legislation Committee. The first draft list of suggested Bills for the 1960-61 session is available at the Public Record Office, and is dated November 1959 (CAB 21 4472). There is no mention of anything to do with suicide or with criminal law reform.

The legislative proposals followed their usual route to the FLC, which examined them through the winter months. Lord Renton and Sir Charles Cunningham confirmed in interview that to the best of their recollection the usual procedure was followed.

The provisional list of Bills, as agreed by the FLC, was presented to the Cabinet in June of 1960. The file in the Public Record Office has, along with this list, copies of memos from Michael Reed, secretary to the FLC, and from Sir Norman Brook, the Cabinet Secretary. Both memos said:

"Even these lists, which have already been drastically pruned, will, on the Chief Whip's estimate, take up considerably more Parliamentary time than will be available." (CAB 21 4471)

The list was circulated to Cabinet Ministers on 9 June 1960, together with a covering memorandum from the Home Secretary. Copies of the lists, together with Butler's covering memo appear at Appendices D and E.. As can be seen by Butler's covering memo, the Bills are divided into categories in descending order of priority:

"A.1 Essential Bills, which depend on some inescapable time-table.

A.2 Contingent Bills, the need for which depends on some factor at present unknown

B.1 Main programme Bills

B.2 Other programme Bills

C. Other Bills, for which it is unlikely that time can be found

P. Bills for handing to Private Members successful in the ballot."

Then the Home Secretary repeated the warning from Michael Reed and Norman Brook:

"The 'programme' Bills in lists B.1 and B.2 together constitute a programme much heavier than we can comfortably - perhaps even possibly - undertake...."

[and went on to recommend that the Cabinet agree -

"That no Bills should at this stage be added to lists B.1 and B.2 except on the basis that particular, identified Bills are relegated to a later Session to make room for them.

Then, rather nearer the time, we can consider what further reductions must be made."

As can be seen from the lists (Appendix E), suicide does not appear on any of the lists of proposed Government Bills; not even on the "unlikely" C. list. It does appear, however, mid-way down the 23-item P. list of Bills "for handing to private members successful in the ballot." "The ballot" refers to the procedure in which backbench M.P.s draw, lottery-fashion, for chances to introduce a Private Member's Bill. It is a fact of Parliamentary time-tabling that only the first three or possibly four places in the ballot stand much chance of having their bills become law. The few M.P.s who win these places are courted by great numbers of organisations who wish to see particular laws enacted. The organisations are ready with professionally drafted bills, and offer

substantial back-up and support to any Member prepared to take them forward. Low level government measures such as appeared on the 1960 P list - (Agriculture (Miscellaneous), Home Safety Propaganda and the Citing of Crematoria share the list with Suicide) - would have to compete for private members' favour against far more popular and publicity-worthy issues.³

Kenneth Robinson had broached the possibility of a Private Member's Bill on suicide law back in July of 1958, in an oral question to Butler. "If the government are not prepared to take the initiative in this introduction," Robinson said, "can he say what would be their attitude towards the initiative being taken by a private Member?" (Hansard 24 July 1958) Butler's answer at that time seemed designed to offer sufficient hope of government action to forestall such a move: "I cannot state what my attitude would be towards the initiative of a private Member," he said, "until I know the nature of that introduction. I do not know whether the hon. Member is aware that the Joint Committee of the BMA and the Magistrates Association has commended the law and practice in Scotland in this matter. The reason I am not going any further in answer to the hon. Gentleman is that we are at present carefully considering that with a view to seeing what we might do about it" (ibid.).

This answer, given back in the summer of 1958, clearly showed that Butler was sympathetic to the idea of suicide law reform, and there is evidence that around this time his officials did investigate the situation in Scotland. The minute of the meeting between Home Office officials and members of the BMA/Magistrates Association Joint Committee on 13 March 1959 (see chapters 4 and 6) records the Deputy Permanent Secretary, Francis Graham Harrison, saying that consideration had been given to the position in Scotland, where "cases of attempted suicide could be dealt with as a breach of the peace" but "it appeared that it was not altogether satisfactory because in some areas a charge of breach of the peace was made in nearly every case, with the result

that of the cases known to the police a higher proportion was brought before the courts than happened at the present time in England and Wales."

So Butler had been quietly exploring the issue of suicide law reform for some time; and, of course, he had submitted the subsidiary matter about assisting suicide to his Criminal Law Revision Committee in the autumn of 1959. Nevertheless, in June of 1960, such a reform did not appear on any of the lists of government bills proposed to Cabinet, not even on the low level "C" list. It did *appear* - so that technically it might be said to have been "approved" - but it was buried way down in the middle of the little-regarded list of "possible Private Members' bills", and titled simply "Suicide". Then, quite suddenly in October 1960, this obscure measure leapt without preamble from its lowly place to nearly the top of the government's legislative programme, into a schedule which was already seriously overcrowded.

This seems to have happened in the space of nine days in October. The sequence of events as recorded in documents in the Public Record Office, was as follows: (CAB 128/34)

On the 17th of October 1960 a letter went from the Home Secretary's Private Office to the Lord Chancellor, which said:

"The Home Secretary recommends that legislation be introduced early next session along the lines of the report of the Criminal Law Revision Committee."

The report of the Criminal Law Revision Committee on "Suicide" was not formally published until the 20th of October, but Butler would naturally have seen it in advance. The CLRC had kept strictly to their remit and offered advice only on the question of the continued criminality of assisting suicide, not on the matter of decriminalising suicide itself. The report said:

"We have not concerned ourselves with the main question of policy, whether suicide and attempted suicide should cease to be offences. The terms of reference require us to assume that they should do so..." (Cmnd. 1187 1959-60)

The report then went on to recommend what became the actual Clause 2 of the Bill, concerning criminal liability for complicity in another's suicide. For reasons not made clear in the papers, the CLRC had actually commissioned Parliamentary drafting of this clause - a most unusual move, as this expensive step had ordinarily to be sanctioned by the Chairman of the FLC. Of course the Chairman of the FLC was Rab Butler.

The letter to the Lord Chancellor announcing Butler's intention to introduce the Bill, was sent on 17 October. On the same day the Cabinet Home Affairs Committee met, which Butler chaired. On 18 October he sent a letter to the Prime Minister, Harold Macmillan. A copy of this letter appears at Appendix F. Its contents, and the hand-written additions are of particular interest. The letter reads:

"PRIME MINISTER

You will have seen from the minutes of the Home Affairs Committee meeting yesterday ... that the Committee agreed that the Government should introduce a Bill early in the new Session on lines recommended by the Criminal Law Revision Committee to provide that suicide and attempted suicide shall cease to be offences and that complicity in another person's suicide or attempted suicide shall be punishable by a maximum of fourteen years' imprisonment. The Committee also agreed that I should take an early opportunity of announcing our intentions.

It is proposed that the [*"Bill"* is crossed out here and *"Report"* written in] should be published on 20th October. It is not likely to be controversial - the

Church Assembly Board for Social Responsibility has published a Report which is broadly in line with what we propose.

Then in the handwriting of the signatory, "RAB", the letter goes on:

The above Criminal Law Revision Cmtee [sic] has no less than 4 Judges and other notables, so the backing is weighty. "

The manner in which this letter represents the Criminal Law Revision Committee and their report is of particular interest, as is the reference to the Church Assembly Board for Social Responsibility. The aim was clearly to create an impression of solid support from the higher reaches of Law and Church.

Of possibly even greater interest is the hand-written note in the right hand corner, which is from the Prime Minister, "HM". There can be no doubt of this, as in the Public Record Office file this hand-written note is typed out on an attached page and identified as being written by the Prime Minister, in a letter dated 19 October 1960, signed A.J. Phelps from Admiralty House, Whitehall to A.W. Glanville at the Home Office.

The note says:

"There will be alot of talk about this, but I suppose it had better go on. Ought Cabinet to know? HM" ⁴

On the 20th of October the report of the Criminal Law Revision Committee was formally published. There was a little press coverage, but not much, perhaps because on this same day the trial of *Lady Chatterley's Lover* opened, in a prosecution brought by the DPP, Theobald Mathew. The prosecution was under the new (1959) law on censorship, which had been enacted through Roy Jenkins' Private Member's bill. Press and political interest was intense as the outcome would define how the new law was actually to be used.

Also on the 20th of October the Cabinet Secretary, Sir Norman Brook wrote a memo to the Prime Minister about the proposed bill on suicide. This memo is reproduced at Appendix G: a model of the cool succinct style that would be expected of the country's top civil servant. It makes clear the issue is not *suicide*, but *attempts* at suicide, and that the measure is intended as a transfer, not an abdication, of responsibility: "it seems to be the general opinion," Sir Norman says, "that these people would be better dealt with outside the criminal law - as the majority already are". He then supplies the standard answer to the social control issue: "The Mental Health Act of last session makes it possible to detain for 28 days' observation a person who appears to be suffering from mental disorder and ought to be detained for his own health or safety."

On 25 October the Cabinet met. Item four out of five on the agenda was the Suicide Bill, immediately after a very controversial item on increasing National Health Service charges. The minutes of this Cabinet show a long and heated discussion of the NHS matter, which ended without a decision. Butler then introduced the suicide item with the comment that the proposed measure "has widespread support" (CAB 128/34).

From Butler's letter to the Prime Minister, and from his replies to Kenneth Robinson's Parliamentary Questions over the preceding two years, it can be inferred that Butler based this claim of "widespread support" on the BMA/Magistrates Joint Committee recommendations and the Church of England booklet, both of which offered evidence of, at best, only narrow, not "widespread" support (see chapters 4, 5 and 6). If pressed Butler would doubtless have added that the CLRC supported the bill, as he had claimed in his letter to the Prime Minister, although the CLRC had never actually considered the main issue. By this reckoning it could be made to seem as if the medical establishment, the Church of England, and the judiciary, were all solidly in favour of the proposal to decriminalise suicide. This is certainly the impression conveyed by Ministers when the bill entered Parliament.

The Cabinet minutes for 25 October record that the Home Secretary's submission on a suicide bill was "noted with approval". There was no discussion.

On 15 February 1961 the Suicide Bill was published and placed in the House of Lords; the move known as "1st Reading". Not a single change was made to the Bill in its passage through Parliament, and the final Act (see appendix A) was the same as this Bill at 1st Reading.

On the 28th of February the Home Office sent the complete speech for the 2nd Reading of the Bill to the Lord Chancellor, Viscount Kilmuir, which he delivered virtually word for word to the House of Lords on 2 March 1961. Viscount Kilmuir was the former M.P. David Maxwell-Fyfe, who as Home Secretary from 1951-54, had supported Theobald Mathew's fierce prosecution of homosexuals,⁵ and refused to allow the royal prerogative to save Bentley despite a huge public outcry urging mercy. His reputation was not of a reformer, and moreover, according to Heuston in *Lives of the Lord Chancellors*, "The abiding impression is that of a Judge who was simply uninterested in the development of legal concepts by analytical reasoning. This is not unusual amongst trial judges, but it is not only unusual but also inappropriate in a Lord Chancellor."

However, Viscount Kilmuir was also one of Rab Butler's oldest political friends. In his autobiography Butler says of him, "He had been with me all my political life and had helped me to reform the Conservative party" (Butler 1971:234). It is reasonable to assume that if Butler had asked Kilmuir to introduce the Suicide Bill in the Lords, he would have agreed without demur. Moreover, Kilmuir had been present at the Cabinet meeting on 25 October, and heard the assertion of "widespread support". It certainly added to the aura of authority surrounding the Bill that it was introduced to Parliament by the Lord Chancellor, who was not only head of the entire judicial hierarchy, but also Leader of the House of Lords.

In the Lord Chancellor's file on the Suicide Bill at the Public Record Office is a copy of the speech introducing it. It is on Home Office, not Lord Chancellor, paper, and is carefully underlined throughout. Paul Channon, in interview, recalled that Kilmuir was notorious among his colleagues for his painstaking underlining of all the myriad papers that passed through his hands. The copy of the speech in the Public Record Office file matches exactly the Hansard record of the speech Kilmuir gave.

Kilmuir began at 4.04 p.m. by stating the provenance of the measure, and setting it in a context difficult to dispute: "My rt. hon. friend the Home Secretary," he said, "has been much concerned to bring our criminal law up to date. This Bill is part of that programme of reform" (These extracts are from Hansard: Lords: 2 March 1961).

He went on to point out the futility of the present law, in terms of deterring actual suicides, and the additional pain and distress criminality inflicted on the friends and families of suicides. Moving swiftly to the matter of attempted suicides, he cited Professor Stengel's point that they "are often making an appeal for help..." and went on to say that "the only justification for retaining the offence has been that it has provided a means of bringing before the courts and perhaps helping, those who have made suicidal attempts." He then put forward the central rationale of the proposed change, i.e.- to move attempted suicide from criminal justice to medical jurisdiction: "Nor is it right to make use of criminal proceedings when the object is primarily medical or therapeutic... The only problem has been the practical one of whether alternative and more appropriate methods are available for providing help where it is needed or has been rejected. I think I can assure your Lordships that this will be the case. Arrangements have been made by my rt. hon. Friend the Minister of Health to ensure that persons who are brought to hospital having attempted suicide are examined by a physician who can consider whether treatment or supervision is needed. Under the provisions of Part IV of the Mental Health Act 1959, it is possible to detain for 28

days' observation a person who appears to be suffering from mental disorder and who ought to be detained for his own health or safety."

Twice in the short speech Kilmuir referred to the support of "religious opinion, the medical profession and magistrates" for the Bill. In presenting Clause II, which created an entirely new crime (and one without precedent) of "aiding, abetting, counselling or procuring the suicide of another or an attempt by another to commit suicide", he cited the Criminal Law Revision Committee. "Their Report," he said, was published as a White Paper in October last and it is upon that Report that the present Bill is based."

The debate that followed did not last long. Five people spoke; none of them opposed the Bill: Lord Silkin, Baroness Summerskill, and Baroness Wootton were Labour Peers; Silkin was the Shadow Lord Chancellor and Summerskill a shadow Minister of Health. No Conservative Peer spoke, other than Kilmuir. Lord Denning, a Law Lord, and the Bishop of Carlisle were the other two speakers. Baroness (Barbara) Wootton's speech was notable for its explicit reference both to the "Wolfenden strategy" (see chapter 3) - "in a more sophisticated age," she said, "we are more disposed to discriminate between crime and sins", and to the determinist paradigm - "we must appreciate that suicide is in some measure socially caused".

The Bishop of Carlisle diffidently raised the age old question of suicide and natural law: "I know it is a difficult subject," he said, "and I have only an amateurish knowledge of natural law, but I cannot help but think that natural law would determine the taking of one's life as unlawful." However this issue, which had fuelled so much controversy over so many centuries, was at this juncture completely ignored. The Bishop did not pursue it, and neither did he oppose the Bill, because, he said, he believed it was "motivated by compassion." Nevertheless, he argued, "compassion is not enough. Society has a basic duty to protect life, and many of our laws are

designed for that one purpose ...society must take account of suicide in terms of law as well as in terms of compassion - compassion and law."

In responding to this point, Kilmuir said that it "has given us the greatest difficulty" but contended that the Bishop's concerns were met by Section 25 of the Mental Health Act.

The Bishop, having dropped the issue of natural law, then pursued the matter of social control, suggesting there might be a new summary-only offence of 'attempting suicide' for people who resisted medical help. Kilmuir said it had been considered but rejected. He then was unequivocal about the reason the measure was before Parliament at all: "The principle object of the Bill," he said, "is to remove from attempted suicides the stigma which attaches to their being subject to criminal proceedings." None of these matters detained their Lordships for very long; the 2nd Reading debate was over before 6 PM, having lasted less than two hours.

The Committee Stage on 9 March was taken, as is usual in the Lords, by the whole House (Extracts are from Hansard: Lords: 9 March 1961). Lord Silkin again raised the problem of attempted suicides who refused help: "Suicide is no longer a crime," he said, "but it is still a social problem ... I do not think we ought to be content to rest on the fact that it is no longer to be an offence. It is our duty to help these unfortunate people..." Silkin wanted something in the Bill that would ensure that every person who attempted suicide was seen by a professional of some sort: "One would like to have some means by which such a person can really be helped, even against his own wishes."

The Lord Chancellor's reply to Silkin revealed that the Home Office, presumably with Butler's involvement, had considered the civil liberty implications of compulsory treatment following an attempted suicide. Most of them would receive treatment,

Kilmuir said, "either voluntary or under the Mental Health Act." But, he admitted, "a small number will not. The Home Office and I have considered [making treatment compulsory] but believe it would be open to serious objection... some are not mentally ill ..." This is the only point in the Parliamentary debate, both Lords and Commons, when the government allowed that some people who attempted to take their own lives might not be mentally ill.

Clause II of the Bill caused some debate at the Committee stage in the Lords, as it did in the Commons. What actions would actually constitute the new offence of "aiding, abetting, counselling or procuring suicide or attempted suicide of another", and how harshly should it be punished? Silkin wanted to reduce the maximum penalty from fourteen to seven years. The Lord Chancellor refused, citing the Draft Criminal Code of 1879 which had recommended this offence be made statutory and punishable by life imprisonment. Moreover, Kilmuir pointed out, the more recent report of the Royal Commission on Capital Punishment (Cmd. 8932 1952-53) had also recommended life imprisonment for this offence.

The Committee stage, Report (16 March) and 3rd Reading (21 March) were all completed without difficulty and the Bill emerged from the Lords unchanged. There had been some concern at Report and 3rd Reading, and a small flurry of letters to the TIMES (March 10 and 14), about insurance companies refusing to honour the life policies of suicides, but this was overcome without any amendment to the Bill. Having completed its progress through the Lords, the Bill was then sent to the House of Commons, where it did not surface until July. There was no public discussion at all during this interim period on the issue of suicide law reform, but then, there was much else to claim the world's attention: the Soviet Union put a man into space in April. Also that spring there was the Cuban Bay of Pigs crisis; tension was rising in the Middle East and in Germany - (British troops were sent to Kuwait in July and the Berlin wall went up in August). George Blake was convicted of spying and sentenced

to 42 years. South Africa declared itself a republic, and Rudolf Nureyev dramatically defected at Le Bourget airport. The House of Commons was diverted throughout the spring and summer of 1961 by the continuing saga of whether Viscount Stansgate (Anthony Wedgwood-Benn) could - as a Peer - take the Commons' seat to which he had been elected.

Meanwhile, in the Home Office, far from any public scrutiny or even interest, two significant exchanges took place concerning reform of the law on suicide. The following report of them is based on interviews with the participants. In June David (now Lord) Renton, who had been Parliamentary Under Secretary of State in the Home Office since 1958, was offered a promotion by Butler to the position of Minister of State. In the interview in which this promotion was offered, Lord Renton recalled that Butler talked about the tremendous amount of work on hand and the quantity of legislation to be moved on. He mentioned, rather in passing, the Suicide Bill, and asked Renton what he thought of it. Until that moment Renton had not been aware of any discussion about this Bill at all, indeed he believes he was unaware of the existence of the Bill.

In response to Butler's question Renton said he was *against* the decriminalisation of suicide. He believed then (and continues to believe) that suicide and attempted suicide should be against the law. His recommendation for reform would have been to have them codified as crimes in *statute* law rather than simply in common law. Having given the Home Secretary his views, Renton heard no more about the matter. (Renton interview 8 May 1996)

Also in June Charles Fletcher-Cooke M.P. arrived in the Home Office as the new Parliamentary Under Secretary of State. He had been in the House since 1951, a lawyer by trade, and this was his first Ministerial post. Shortly after he arrived:

"Rab came to me and said, 'Here's a small bill I would be grateful if you would carry through.'

I said I would be glad to, and then Rab said, 'You will not find it as easy as you think...'

I said, 'Do you mean the people in Torquay and the Bishops?' Rab said, 'You will find a great hornet's nest about the sacredness of human life.'

Sir Charles described the context in which this exchange took place:

"...there was all this funk - and it was *funk* - by the Cabinet... this is why I was given the job. If things had gone wrong and just a junior Minister was doing the Bill they could abandon it.

Rab had this letter from Macmillan... Macmillan wrote saying 'Don't pursue this Bill'. It was a ridiculous letter really, all about aristocrats pulling his leg about how were they going to fill the family mausoleum. Rab showed me the letter. I saw it. Rab said, 'I'm not going to answer this... let's go on with it in a minor key and see how we go.' (Fletcher-Cooke interview 6 March 1996)

On 14 July the Suicide Bill had its 2nd Reading in the House of Commons. It was a Friday, and the Suicide debate began at 3.27 p.m. In those days the House always adjourned at 4 PM sharp on Fridays. Fridays in Parliament were rarely considered newsworthy by the media, and on 14 July 1961 attention was very much elsewhere as it was the day when the astronaut Yuri Gagarin lunched with the Queen and paraded through London. Huge crowds thronged the streets and the press conference was attended by nearly 1000 journalists.

The recollections of Sir Charles Fletcher-Cooke and Lord Renton confirm Butler's continued involvement in and supervision of the progress of the Suicide Bill. But there is no documentary evidence of his involvement after the Cabinet papers in October

other than a hand-written note in the Butler papers at Trinity College Cambridge from Joan Vickers M.P. dated 7 July 1961. Joan Vickers was a Conservative M.P. whose name appears regularly in records of debates on social issues. Her note to Butler asked if the Suicide Bill could come on "next Friday", and added, "I think we could get the debate on this very important bill over in one hour ... " (Butler papers: E15/416)

The Bill did come on for its 2nd Reading the following Friday, 14 July, introduced with a very short opening speech by the new junior Minister, Charles Fletcher-Cooke. It was his first time at the dispatch box, and he remembers it was a very thin House. The speech was crisp and lucid, as might be expected from a QC, and kept strictly to the brief established by Kilmuir in the Lords (Extracts are from Hansard: Commons 14 July 1961). "The Bill," Fletcher-Cooke said, "represents a further stage in our endeavour to bring the provisions of the criminal law into conformity with the needs and outlook of the present day. Its purpose is simple. It is to provide that it shall no longer be a criminal act and subject to the machinery and sanctions of the criminal law to commit suicide, or to attempt to commit suicide." Although he spoke for a bare eight minutes, the Minister managed to outline the Bill, explain the background, cover the issue of treatment by reference to the Mental Health Act, and credit Clause 2 to the Criminal Law Revision Committee. At the end, Fletcher-Cooke pointed out that "I have been short, and I feel - so far as it is suitable for me to say so - that other hon. Members may be equally short, because this is a matter which we all want to see on the Statute Book, and if we all want to achieve that aim, cannot we co-operate to that end?"

Five of the following six speakers did co-operate; most spoke for under three minutes. All supported the Bill, but their support was clearly linked to the commitment that control would continue despite being re-labelled 'treatment' and made the responsibility of doctors and not the police.

Eric Fletcher (Lab., Islington East) made the most religiously oriented speech of the whole Parliamentary debate, and pointed out the importance of what was being done: "... we are being invited," he said, "to make a change in what has been the law of England ... for nearly 1,000 years; indeed, since the time of King Edgar ... suicide has been regarded as the most heinous of felonies - the felony of self-murder. It has been said that no man has a right to destroy his own life, because life is a gift from God, to be preserved with a sense of responsibility. Suicide, like murder, is a violation of the Sixth Commandment, and in some ways it is more grievous than murder because it precludes the opportunity for repentance." Nevertheless, Eric Fletcher, in common with others who had reservations, had been persuaded that "The real basis of the Measure is that in the humane outlook of today it is recognised that those who attempt suicide unsuccessfully are in need of compassion and assistance, and not punishment", and so he did "entirely agree that the time has come when the law should be changed." He did, however, "wish to add ... two important qualifications to my support of the Bill." These qualifications, which were echoed in various forms by other speakers, demonstrate that without the repeated assurance that the State would continue to be responsible for dealing with attempted suicides - albeit under a different department - the Suicide Bill could have encountered serious resistance.

"The first [qualification]," Fletcher said, "is this. Suicide today is unlawful, forbidden and regarded as wrong. When this Bill becomes an Act suicide will cease to be unlawful. In some quarters there is felt to be a danger that some people will take the view that what is law is permissible and free from objection. It would be most unfortunate if that idea obtained currency as a result of what we are proposing in this Measure. It cannot be too clearly emphasised that nothing in the Bill is intended to undermine the sanctity of human life or the general view of society that suicide, even though when this Bill is passed it will be legally permissible, is regarded by the majority of people as a dreadful offence against nature.

"... The second qualification I wish to make - in some ways it is the more important - is this ... There is a fear in some quarters that if we remove the existing responsibilities and duties of the police in this regard some of those who in the past have attempted suicide and who because of police intervention have had the appropriate treatment, will not get it ... What is the machinery to ensure that those people get appropriate treatment in the future?" As was the case at every point when this concern was raised, it was answered by reference to the powers made available by the Mental Health Act to ensure attempted suicides received treatment.

John Hobson QC (Conservative, Warwick & Leamington), a Recorder and Chairman of the Rutland Quarter Sessions, supported the Bill on the grounds that the differential enforcement of the law as it stood brought the law itself into disrepute. But he wanted it "generally and publicly realised that suicide nevertheless remains a mortal sin."

Kenneth Robinson, in a modest speech lasting less than two minutes, did refer to his own role, and also managed to imply a large and prestigious support structure: "It is two-and-a-half years since I first pressed this reform on the Home Secretary. On that occasion he was extremely resistant to my persuasion. He thought that reform of this kind was not generally required and that it would lead to controversy. I set about persuading him that there was a general desire for such a reform. I was powerfully assisted by a number of committees of the Church, the medical profession and magistrates ..."

Peter Kirk (Conservative, Gravesend) welcomed the Bill but with some concerns (which he said he would expand on in Committee) about the new offence in Clause 2, and about suicide pacts. He spoke for only two minutes, and at 3.58 H. Hynd (Labour, Accrington) rose and spoke for only one. It looked as if the Bill would sail through its second reading in under 35 minutes. But then, at 3.59 Leo Abse, Labour MP for

Pontypool, rose, and began to speak, and was in mid-sentence when the hour struck. The Hansard reads: *It being Four o'clock, the debate stood adjourned.*

The position of the Bill was therefore, that in the closing weeks of a long Parliament, with the summer recess looming and much legislation still to be processed, a further time slot on the floor of the House would have to be found to complete the 2nd Reading, not to mention Committee stage and 3rd Reading. The Prime Minister's note shows he was not enthusiastic about the measure, and there was no committed lobby supporting it, as was later to be the case with reform measures such as the abolition of capital punishment and abortion. In these circumstances it was a distinct possibility the Bill would lapse, having been "talked out".

Leo Abse was in favour of reforming the law on suicide. Before becoming an M.P. he had been a solicitor in Wales and had actually defended a number of people charged with attempted suicide. Why, then, did he imperil the passage of the Bill by blocking the 2nd Reading vote on 14 July?

When this question was put to him he said, "To be candid, I cannot really remember now *why* I did it... I do remember Kenneth Robinson was very upset, but I knew they would bring it back..." (Abse interview 21 Nov. 1996)

How did he know? It was, after all, a matter for the Conservative whips, and he was a Labour M.P. "I just knew," Abse replied. "The Whips were under orders."

In his book *Private Member*, Abse records the incident more fully:

"Kenneth Robinson, understandably anxious to see the Bill through, was ready to collude with the government and was perplexed and angry with me when he realised that on the fateful Friday afternoon I was bent upon taking the risk of talking the Bill out, calling the government's bluff, and so, if successful gaining

a full-scale debate to complete the Bill. I did not then seek to explain to him what he would have regarded as an absurdly Olympian view that I would rather lose the Bill than corroborate in the morbid stealth of the government" (Abse 1973:91).

But the Bill was not lost. A time slot was found, not on the Monday or Tuesday following, but on Wednesday 19 July at 11.54 p.m., just before midnight, the Bill returned to the floor of the House and Abse continued his speech. He spoke for 23 minutes, in support of the reform, but used the opportunity to make wide ranging criticisms of government policies on child care, psychiatric social workers, geriatric services, old age pensions, and the funding of the University of Wales. He particularly urged an amendment to curtail newspaper reports of suicides and inquests on suicides, claiming they encouraged imitation. Two other Labour M.P.s spoke, David Weitzman QC (Stoke Newington & Hackney North) and B.T. Parkin (Paddington North). Both supported the Bill, but endorsed Abse's criticisms of the government. Parkin made the interesting point that people who voted for Clause 1 (to decriminalise suicide) could be held guilty of the new crime created in Clause 2 of aiding and abetting another's suicide "unless compensating improvements are made in our welfare services to counteract the impression that the Bill could give." (Hansard: Commons: 19 July 1961)

Fletcher-Cooke, winding up, re-stated the government's continuing commitment to control, using a concept which he said had been "echoed by other speakers tonight, that it is not enough simply to say that suicide and attempted suicide shall no longer be a crime, we agree that not only must we have, as it were, the negative provisions which the Bill provides, but that there is a responsibility upon society and upon the State to see that the provision is made to help those people, to prevent them committing suicide if we can and to prevent them repeating attempts at suicide, and, at any rate, to see that they get such treatment as they should have." He went on to make clear who was

going to be responsible for this: "My hon. Friend the Parliamentary Secretary to the Ministry of Health, upon whom the prime responsibility rests in spite of what was said about the Home Office, has listened to this debate and, I am sure, will have paid a great deal of attention to it. What has troubled a great many hon. Members, I think, including the hon. Member for Paddington North (Mr. Parkin), is this question of the gap that there may be as a result of this legislation - namely that there may be a number of people attempting suicide who, in future, will not appear to be reached in the sense that the police, who in the past used to look after them, will no longer do so, or, at least, will not do so in the same way because attempted suicide will be no offence in the future." (ibid.)

Fletcher-Cooke went on to try and soothe these fears about a possible threat to social order: "There is another way in which the gap is somewhat narrowed," he said, "because where the nature of the attempt has an element of nuisance," he said, "and entails the possibility of injury or danger to others, as, for example, where the person making the attempt has to be rescued at the risk of another's life, it may be possible to bring the person before the justices, either under their inherent powers or under the Act of 1361, to bind him over to keep the peace. In that case the normal provisions would apply" (ibid.).

The Question was put at 12.47 a.m., and agreed without a division. Since there was no division there is no record of how many M.P.s were in attendance. Given the hour and the lack of controversy surrounding the measure, there were unlikely to have been many.

The Bill had its Committee stage on Tuesday, 25 July with Dr. Horace King (Labour MP for Itchen who became Speaker of the House in 1965) in the Chair. Twenty members were appointed to the Committee, fifteen attended, and seven spoke (including the Minister, Fletcher-Cooke). The Committee began its deliberations at

10:30 am, rose at 11:50 am and reported the Bill without amendment. (The following extracts from Official Report: Standing Committee E: 25 July 1961) During the deliberations, only one speech was made on Clause 1, the part of the Bill which decriminalised suicide. Appropriately, it was by Kenneth Robinson, who ran through suicide statistics in general and put on record the facts about the prosecution of attempted suicide which clearly motivated his own advocacy of the measure, and which had served to persuade Butler of the necessity for change. "Of those cases of suicide attempts known to the police," Robinson said, "about one in ten have been brought to the courts, making about 600 charges a year. Most of those were discharged or put on probation, but an average of about 40 per annum have been sent to prison for attempted suicide. The average length of sentence is rather more than three months, and in some cases it has been six months or even longer." He then went on to re-emphasise the central feature of the measure: "I think that we all agree that psychiatric treatment is what most of these unfortunate people need ... Of course there will be some who will resist, but most of those will be suffering from some kind of mental disorder and in many cases it will be a mental disorder of a type or degree which would justify compulsory treatment under Section 26, or compulsory observation in a mental hospital under Section 25, of the Mental Health Act, 1959." (Official Report Standing Committee E 25 July 1961)

Robinson rejected the proposal made by some participants in the debate for machinery to be put in place to enforce treatment. "There is a limit," he said, "to the amount of compulsion which society can impose on individuals in a matter as personal and as intimate as the desire to take one's own life." But he did want to ensure treatment wherever possible: "I should like to know," he said, about the arrangements which the Minister of Health contemplates. Exactly how does he propose to do this? It is very important that it should be done ... " The Minister responded that he would bring Robinson's remarks to the attention of the Minister for Health. David Weitzman then made a brief comment that he had "personal experience of a case of attempted suicide

within the last month or so" and commended the psychiatric treatment the person was given.

That was the full extent of the Committee consideration of the decriminalisation of suicide. The remainder of the hour and twenty minutes was taken up primarily with discussion as to whether the word "counselling" should be left out of Clause 2, so that the new crime being created would only occur if someone "aids, abets and procures" another's suicide or attempted suicide. Baroness Wootton had attempted a similar amendment at Committee stage in the Lords, but had been persuaded by the Lord Chancellor to drop it.

The response Fletcher-Cooke made to the proposal in the Commons Committee, and the debate that ensued, was revealing. It showed that while there was general agreement about transferring attempted suicide from judicial to medical jurisdiction, and notwithstanding the lack of debate on Clause 1, feelings about decriminalising suicide itself were in fact ambivalent. Fletcher-Cooke said, "We must look at the Amendment [to remove the word 'counsels'] in the light of the warnings given on Second Reading that self-destruction must still be regarded as a very grave matter and that the Bill must not be taken in any way as countenancing self-destruction. If we regard the Amendment against that background, the importance of seeing that people who are minded to destroy themselves are not encouraged to do so becomes very evident. I have to resist the Amendment partly on those grounds ... Counsel, in the sense of advice, can be extremely potent, and it would be most dangerous to omit this word."

Eric Fletcher agreed, saying that if the Amendment was carried, "We should then lay down the law that it was quite right and proper, and not subject to any criticism, to go about counselling persons to commit suicide ... I do not think it right to leave the law in such a state that it could be said hereafter that a person is able to give that advice ...

Although we all want to put an end to the present state of the law, ... on the other hand we do not want to do anything to reduce the sanctity of human life or the responsibility of the State to see that a person neither aids, abets, advises nor procures the suicide of another."

Kenneth Robinson, who had proposed it, then withdrew the amendment, but proposed another - to lower the maximum penalty for the new offence from fourteen to seven years. This too was resisted by the Minister, who said, "There is no reason to think that a high maximum penalty will result in the courts awarding excessive punishment in certain cases. In 1959 there were over 500 cases in which proceedings were taken for attempted suicide under the old law, under which there is no maximum penalty, and in no case did the court award a sentence in excess of six months imprisonment. Therefore I do not think that there is a danger that courts will award heavier sentences when the crime is of a lesser value than it has been in the past." Robinson then withdrew this amendment too. After a brief further discussion on the implications of the new offence on suicide pacts, and whether it should be officially a "felony" or a "misdemeanour" (it was confirmed as a "misdemeanour"), Clause 2 was agreed, and the entire Bill was reported without Amendment.

Five members of the House Committee on the Suicide Bill were still alive at the time of this research, four of them were interviewed for this research.⁶ Their memories of the issue were exceedingly faint, but there was agreement that no controversy attended the discussion, nor any opposition to the substantive measure. No media coverage of the Committee proceedings has been discovered. Reporting of Parliamentary affairs at the time was dominated by a mini-budget announced on 25 July which put 4p on cigarettes and 3p on a gallon of petrol.

The 3rd Reading of the Suicide Bill took place on 28 July, another Friday. As the Committee had proposed no amendments, and the Bill was unchanged from its 2nd

reading, this final stage was very short, almost perfunctory. Fletcher-Cooke again stated the core of the reform: "Because we have taken the view, as Parliament and the Government have taken, that the treatment of people who attempt suicide should no longer be through the criminal courts, it in no way lessens the respect for the sanctity of human life which we all have. It must not be thought that because we are changing the method of treatment for these unfortunate people that we seek to depreciate the gravity of the action of anyone who tries to commit suicide" (Hansard: Commons: 28 July 1961). Kenneth Robinson had the last word, at 1.17 PM and the Bill then passed without a division. As there was no vote, it is not possible to tell how many Members participated in this final stage of the decriminalisation. Again, the attention of Parliamentary reporters was elsewhere. 28 July was the day the High Court quashed Viscount Stansgate's (Anthony Wedgwood Benn) election victory and appointed his defeated opponent as M.P. in his place. The Royal Assent to the Bill was given at 6.31 PM on 3 August, 1961. Immediately a Circular (see Appendix H) went out from the Home Office to all Chief Constables signed by Francis Graham-Harrison, Deputy Permanent Secretary, alerting them to the fact that "it follows from this [the passage of the Act] that it will no longer be an offence to attempt to commit suicide."

Conclusion

The most prominent feature of the Suicide Act was its lack of prominence - a factor that undoubtedly assisted its passage. Parliamentary exposure of the issue preceding its sudden appearance as a Government sponsored bill was limited to brief exchanges between the Labour M.P. Kenneth Robinson and the Home Secretary Rab Butler at Parliamentary Question Time and to Robinson's Early Day Motion in March 1958. As introducer of the issue to Parliament, Robinson's style was crucial to its acceptance. The persistent, low-key, non-partisan nature of his Questions ultimately persuaded Butler to take action, but at the same time avoided rousing backbenchers on Butler's side who were always deeply suspicious of liberal moves coming from the left. Once

persuaded, Butler took action that stands as a remarkable demonstration of political skill wielded by a consummate operator unconstrained by scruple. He used the powerful positivist paradigm prevailing at the time and focused Parliament's attention firmly on the *treatment of attempted* suicide. He refused to engage with the profoundly difficult issue of suicide itself, allowing its moral status as a sin to remain unchallenged as long as it could be officially deemed not a crime. The success of the strategy is visible throughout the Parliamentary debate, where the only threat to decriminalisation arose from its being *too* successful - i.e. when pressure mounted to make treatment of attempted suicide compulsory through a court order following criminal conviction. This threat was overcome, as was the very real danger at the end that the Bill would fall through lack of Parliamentary time. At these points, and throughout the passage, although Butler was publicly invisible, his presence is palpable in the unmistakable signs of a politically sophisticated guiding hand. Without this, there is good reason to think suicide would have continued to be a crime.

Notes to Chapter 7

¹Members of the Criminal Law Revision Committee: LJ Sellers MC Chair, LJ Donovan, Hon Justice Edmund Davies, Hon Justice Marshall, Prof D.R. Seaborne Davies, Mervyn Griffith-Jones MC, Sir Anthony Hawke, Mr. J.K.T. Jones CBE, F.H. Lawton QC, Sir Theobald Mathew KBE MC, Frank Milton, A.C. Prothero, James Whiteside OBE, Dr. Glanville L.I. Williams, Brig. A.C.C. Willway CB CBE, Sec: G.V. Hart, Assistant Sec: P.N.S. Farrell

²Hansard: Lords: 2 March 1961; Lord Denning pointed out the illogicality of making it a crime to aid and abet something that is not a crime and suggested: "It might be as well to say that suicide is still unlawful, although it is not a crime, and therefore you can aid and abet it. It is the only way out of the illogical difficulty."

³Private Members Bills are discussed in Lord Jenkins' autobiography (1991) and in Leo Abse's (1973); the procedure is covered in the annual issues of Dod's Parliamentary Companion, published since 1832.

⁴The Prime Minister's question "Ought Cabinet to know?" raises the interesting possibility that he might have considered *not* letting them know. Anthony Sampson in the 1962 *Anatomy of Britain* quotes "one leading Tory" as saying, "The Tory party is run by about five people, and they all treat their fellows with disdain: they're mostly Etonians, and Eton is good for disdain." (Sampson 1962:89)

⁵Richard Davenport-Hines in *Sex, Death and Punishment* (1990) says Kilmuir "refused to sit at Cabinet meetings where 'the filthy subject' [of homosexuality] was discussed." (p.323)

⁶William (Sir) van Straubenzee, Christopher (Lord) Mayhew, William (Lord) Deedes, and Charles (Sir) Fletcher-Cooke

Chapter 8: Conclusion

This thesis asks the question, Why was suicide decriminalised in England and Wales in 1961? Because the Suicide Act often features in lists of other reforms of the period, the research began by assuming the familiar trajectory of most social reform legislation, which is: a group of people determined on change begin working to make it happen; books and articles appear, test cases go to court, learned arguments are deployed, and all are wrapped in rhetoric about "progress", "humanity" and "steps to a more civilised society". After a long time the issue may achieve a place on the political agenda, become the subject of a Committee of Enquiry and/or Royal Commission, and may finally become law, nearly always - if there is a moral dimension - by means of a Private Member's Bill.¹ In most histories of this kind of legislation, this agency-oriented interpretation is allied to a greater or lesser extent to structural considerations. In the period in question the structural elements are well rehearsed: the upheavals of war leading to class mobility, weakened authority structures, relativism in matters of morality, which, when joined by the unprecedented affluence of the 1950s created a climate conducive to social change. Since the decriminalisation of suicide shared the same time frame as the other, more high profile reforms, it was originally assumed to have followed the same path to the statute book. However it soon became clear that the facts of the passage of the Suicide Act would not fit into this familiar social reform pattern: there was no group pressing for this change, there was no public debate, there was no Committee of Enquiry or Royal Commission, there were no issues causing immediate concern - such as a sudden rise in suicides, and moreover, the Suicide Act was a *Government-sponsored Bill*.

As these facts emerged they had the effect of transforming the research question from a frame in which to organise material, into a genuinely puzzling question: Why *was*

suicide decriminalised in 1961? As the research got properly underway this question became even more puzzling, because evidence from Cabinet papers in the Public Record Office and interviews with surviving participants were painting a picture that stretched credulity: it looked as if the Home Secretary Rab Butler had engineered the passage of the Suicide Act virtually single-handed, in a manner that forestalled opposition and rendered the Bill practically invisible. In terms of the actual, technical passage of the Bill through Parliament, this is indeed what happened, as the data in chapters 6 and 7 makes clear. But the empirical evidence also shows that Butler's moves were precipitated by two other agents, Kenneth Robinson M.P. and Dr. Doris Odlum, and more importantly, that none of their actions would have been successful without certain long term structural trends that created the necessary - though not sufficient - conditions for the decriminalisation to take place.

Three long term structural trends were crucial to the passage of the Suicide Act. The first was the growing separation of church and state, a process begun long before, which by the mid twentieth century had reached a point where it was possible for people to conceive a difference between "sin" and "crime"; something which was not conceptually possible - literally "inconceivable"- formerly when the two words were completely interchangeable. This conceptual separation, articulated by the Wolfenden Committee in 1957 and endorsed by no less a figure than the Archbishop of Canterbury in 1959, made it possible in turn for people to conceive of "crime" as a human construct, something different from "sin", which was divinely ordained. This made crime, a human construction, subject to human definition, and if necessary (or expedient), subject to *redefinition*. This was a key factor in the circumstances surrounding passage of the Suicide Act. It allowed suicide itself to be defined as a "sin", and thus a matter for divine, not earthly, authority. And it allowed attempted suicide to be *re-defined* from "crime" to "mental illness", thus putting it under medical, not criminal justice, authority.

The second long term trend that contributed to the decriminalisation of suicide was the positivist tradition, which had been seeking for so long to medicalise deviance, that is, to persuade people that deviant behaviour was not chosen, it was *caused* - the product of a pathology. Therefore deviancy was not a moral matter, it was a medical matter, and concepts of guilt and moral culpability were not just irrelevant, they were actually obstacles in the path of rational scientific solutions to the problem. This set the scene for the arguments that attempted suicide was in and by itself evidence of mental illness, so the response should be *treatment*, not punishment.

The third structural factor was the established tendency of modern states to disperse control and maintain order through a variety of different agencies and techniques.² Max Weber forecast that discretionary regulation would gradually replace the rule of law; a concept Dixon applied to his analysis of betting and gaming (1991), and McHugh to prostitution (1980). Foucault of course famously described the dispersal of discipline and power through *all* aspects of the body politic, and in particular the capacity and use of medicine as an instrument of social control. This was the role quite explicitly given to medicine by the passage of the mental health legislation in 1959, which gave statutory powers to police and doctors to detain and coercively treat anyone deemed mentally ill. This created the mechanism whereby attempted suicides could be transferred from criminal justice to medical jurisdiction without loss of control, and thus made it possible to pass the Suicide Act.

These structural trends created a context which, when allied with others discussed in chapter 3, made the passage of the Suicide Act possible. But it was by no means inevitable. The presence of these trends did not preclude the existence of other, often opposing ones. Religion, for example, may have been in retreat before secularisation, but it had not been routed. Its continuing power to obstruct or at least limit legislative changes it opposed is plainly visible in the debates on censorship, abortion, Sunday trading, and gambling, among others. Also, the exculpatory positivist approach to

deviancy was not accepted by mainstream criminal justice practitioners, who for the most part continued to operate using concepts of free will and moral choice, which held individuals responsible for their actions.

Equally important, in terms of structural factors working against decriminalisation, was the ever present concern for order, which sociologists since Durkheim and political philosophers since Hobbes have put forward as the main motive force of law. Even in the more tolerant atmosphere of late modernity, this concern is still manifest in the references to "opening the floodgate", "thin end of the wedge", "slippery slope" and "sending the wrong message" which feature in all debates about loosening control. In the celebrated Hart/Devlin debate on law and morality, which was actually coterminous with the passage of the Suicide Act, Hart is considered to have been an advocate of loosened legal control. Yet in discussing how individuals in a modern state make choices he said, "Laws function in their lives ... as accepted legal standards of behaviour. That is, they not only do with tolerable regularity what the law requires of them, but they look upon it as a legal standard of conduct...." (Hart, 1961:134) This idea, that people believe that what the law allows is all right to do, inspires concern about what "message" might be sent if something is decriminalised. It is a concern that surfaced several times in the debate about the Suicide Bill, coupled with anxiety about its consequences for social order.

So, although there were important structural forces tending towards the decriminalisation of suicide, there were equally important ones resisting it. In such situations inertia can usually maintain the status quo: As Roshier and Teff remarked, "It is easier to persuade Governments to do nothing than to convince them of the need to introduce new laws." (1980: 43). Therefore it is at this point that the intervention of human agency was critical to the passage of the Act.

The three agents of the decriminalisation were not confederates; indeed they knew each other only in the formal world of public affairs. The only place where it can be shown that they actually met together is - appropriately - the National Association of Mental Health, where Rab Butler was President and Doris Odlum and Kenneth Robinson were Vice Presidents. This venue is appropriate because the primary mechanism, both conceptually and practically, by means of which the decriminalisation was accomplished was the 1959 Mental Health Act. Whether suicide would have been decriminalised without the existence of this Act is a moot point, but on the evidence available it looks unlikely. *Conceptually*, the Mental Health Act had put in place official agreement that if a criminal offence was attributable to mental illness, the offender was automatically removed from criminal justice to medical jurisdiction. This preempted potential resistance to decriminalisation from the mainstream criminal justice constituency. *Practically*, the Mental Health Act gave coercive power to police and doctors to control and contain attempted suicides, which directly addressed the anxieties of the social order constituency. Finally, the overtones of care and compassion that accompanied the repeated mention of "treatment" these deviants would receive, disarmed potential religious opposition. With the most likely sources of resistance thus neutralised, the way was open for decriminalisation of suicide to be presented as a logical footnote to the widely acclaimed Act that had so comprehensively changed the approach to mental health. The number of times the Mental Health Act was mentioned in the course of the passage of the Suicide Act demonstrates that this indeed was the assumption generally made.

Given the terms of the Mental Health Act, the protagonists of the decriminalisation of suicide then had only to gain official acceptance that attempted suicide was *prima facie* proof of mental illness, and their purpose was virtually accomplished. The actual passage of the Suicide Act could then be depicted as a mere formality, a tidying-up of a loose end. It is unlikely, however, that this interpretation of the decriminalisation would have survived an open public debate, which is probably why Butler used his

considerable political skills to prevent one. In considering how he did this one cannot but be struck by the breathtaking lack of scruple displayed. From a position of unique power and privilege Butler deliberately by-passed the procedures developed to ensure democratic scrutiny of proposed laws. He manipulated the mechanisms of government at his disposal and he was economical with the truth to his colleagues and to the Prime Minister. Achieving the outcome he desired appeared to be his sole consideration. What the desired outcome was, as is made clear by Butler's answers to Robinson's Parliamentary Questions, was not to decriminalise suicide and attempted suicide in the sense of simply removing state control; it was to change the agency responsible for dealing with this form of deviancy in the interests of more efficient and effective control.

The summary answer, then, to the basic question of this thesis is: suicide was decriminalised in England and Wales in 1961 *because*: A person with very special political skills, who held the principal office of state charged with maintaining order and dealing with deviancy, became persuaded that a particular form of deviancy - attempted suicide - would be better dealt with by medical, not criminal justice, agencies. He took both conscious and unconscious advantage of certain necessary, but not sufficient, structural trends, and very conscious advantage of the recently passed Mental Health Act, to statutorily effect a transfer of responsibility between the two agencies with the minimum of fuss and disturbance.

The Larger Debates

For a law concerning an issue of profound significance to reach the statute book in such a way is very unusual. This thesis argues that it happened only because of a particular conjunction of structure and agency at a time when a deferential Parliament and unsceptical media gave government ministers a remarkably free rein. Such a conjunction of circumstances is rare and unlikely to recur, so this record of the passage of the Suicide Act can stand as a curious case history. However, because there are so

few theoretically oriented studies of the Parliamentary passage of social reform legislation, the empirical evidence collected here can also make a contribution to at least two on-going theoretical debates: (1) the question of the true nature of the so-called "permissive" social reforms of the 1950s and '60s, and (2) the larger debate about the emergence and change of the criminal law. Moreover, because the issue of suicide law remains controversial, the story of its decriminalisation can also make a contribution to the contemporary, passionately argued question of whether to legalise *assisted* suicide.

"Permissive" legislation?

As regards the first debate, about the true nature of mid-century social reform, the evidence about the Suicide Act supports arguments advanced by Stuart Hall (1980), Greenwood and Young (1980) and by Tim Newburn (1992), that what has been commonly called "permissive" legislation was in fact a highly complex phenomenon that reflected attempts to re-structure control in areas where conventional morality was losing its ability to influence behaviour. The widespread acceptance of the concept articulated by the Wolfenden Committee that there was a clear distinction between "sin" and "crime" had revealed the diminished power of traditional morality to either control behaviour directly or to effectively buttress the criminal law. In these circumstances the choice was to try to re-invigorate traditional morality in sensitive areas involving life, death and sexuality; abandon attempts at control altogether; or attempt to find alternative mechanisms of exercising control. The authors cited above, who have examined changes in the law on abortion, prostitution, and homosexuality, suggest that the changes were attempts to impose alternative mechanisms.

With regard to homosexuality, Newburn, quoting Bland, points out: "Wolfenden's recommendations on homosexuality, while they opened up a privatised space in which adult male homosexuals could now operate without the threat of criminal sanction, in no sense advocated the abandonment of 'control' from that space... the Report...

explicitly marked out a 'course for treatment' for the homosexual which is distinct from that of the criminal model - henceforward medicine, therapy, psychiatry and social research are to form alternative strategies for the exercise of power." (1992:180)

With regard to prostitution, the debate accompanying the Street Offences Act of 1959 made clear that while prostitution would continue to be legal, it was to take place entirely out of sight. The objective of the Act was to remove the nuisance of prostitutes soliciting on public streets,³ and towards that end fines for soliciting were substantially increased, and so was the maximum prison sentence for a third offence. The arguments in favour of abortion law reform made much of the widespread evil of back street abortions, which they said would be controlled if terminations of pregnancy were brought within the remit of the official medical establishment. (Hindell & Simms 1971) In any case, it was argued, the revolution in contraception heralded by the Pill would mean that unwanted pregnancies would soon virtually disappear. The Select Committee Report that preceded the Obscene Publications Act easing censorship argued that the proposed changes would facilitate the suppression of the growing trade in pornography.⁴ Advocates of divorce law reform said its purpose was to clear out the backlog of "dead" marriages, after which - given the availability of marital counselling - family life would be strengthened and divorce would actually decrease.⁵ As the preceding chapters of this thesis set out, the arguments in support of the Suicide Bill, which repeatedly referred to the need to "treat" attempted suicides and invoked the compulsory detention provisions of the Mental Health Act, also conform to this pattern of seeking to re-structure control of deviancy.

So, the history of the Suicide Act adds weight to claims that mid-century changes to laws about personal behaviour cannot be credibly lumped together under the label "permissive", with the simplistic implication that deviant behaviour formerly forbidden was thenceforth to be allowed. Although many believed then (and now) that this is what happened,⁶ an examination of the evidence shows that most of the advocates of

change were themselves committed to controlling and reducing deviant behaviour by supposedly more effective, *scientific* means. Optimistic faith in the power of science to solve social ills was a defining characteristic of the age, and advocates of social reform legislation genuinely believed that drugs and psychotherapy would successfully deal with social problems as diverse as crime, homosexuality, attempted suicide, marriage breakdown and unwanted pregnancy. So the "permissive" label is not helpful in the attempt to understand what really informed, motivated and precipitated the social reforms of the 1950s and '60s. Such understanding is worth pursuing not only for its straightforward epistemological value, but also because the issues involved remain live and continue to be the targets of legislative initiatives. In particular the contemporary debates about further extending medical jurisdiction in areas of drug abuse, sex offending and euthanasia could benefit from the insights offered by previous studies of the medicalisation of deviance.

Emergence and change in the criminal law

Issues about emergence and change in the criminal law are inextricably linked to larger debates about whether the processes of social change can be explained by an overarching unitary theory and understood in terms of general laws, or whether change is a more complex phenomenon, arising from the interaction of a multitude of factors, many of them specific to the time, place and historical circumstances in which they happen, and contingent upon individual human action. The evidence in respect of the Suicide Act offers more support for the latter than the former view.

It is *possible* to impose a unitary consensus-style interpretation on the facts of suicide law - a model of the sort favoured by Maine, Durkheim, Weber, and indeed the majority of historians of social reform legislation. Such a model would point to the undeniable evidence of changing attitudes toward suicide over centuries and would claim a rational consensus had emerged that medical treatment was more appropriate than penal sanctions. But such a claim would have to ignore or discount many

awkward facts, such as a clear absence of consensus both about the moral status of suicide and the responsibility of the law in matters to do with morality. The evolutionary model would also be unable to explain why, if there was widespread agreement on the issue, Butler went to such lengths to shield the proposed decriminalisation from public and Parliamentary scrutiny. Moreover, this kind of model, in attempting to describe the decriminalisation in terms of a calm, enlightened rationality, cannot explain the intensely controversial contemporary debate over assisted suicide; a debate which is being conducted primarily in terms of metaphysics and religion and regularly invokes concepts about the "sanctity of life" (Dworkin 1995).

It is also *possible* to impose a 'conflict' interpretation on the facts of suicide law. Augustine's edict, which made suicide a mortal sin at a time when - if presented as martyrdom - it was admired and even venerated by his fellow Christians, seems to fit the Austinian model of law as an arbitrary imposition by a sovereign power for its own ends. Glanville-Williams' (1958) claim that suicide only became a secular crime because under forfeiture rules the Crown could then seize the deceased's goods, would fit a ruling class/conflict model of law. So too would the circumstances in which attempted suicide came to be prosecuted and punished. The fact that both these changes impacted disproportionately on the lower classes gives further credibility to a conflict model. However, conflict models by their nature are more suited to explaining laws that criminalise behaviour, not the far less frequent ones that *decriminalise* it. And although the history of the Suicide Act shows its promoters were seeking to re-structure, not remove, control, nevertheless, the Act itself did unequivocally remove criminal status and thus formal state control of a deviant behaviour.

So this research into the decriminalisation of suicide shows that a unitary theoretical interpretation - whichever one is proposed - is not a satisfactory way to explain changes in the law on suicide. It shows instead that a great many different elements

were involved, some of them attributable to causal forces and explicable in terms of general laws, but some of them local and contingent on particular events and individual human actions. What the evidence makes clear is that the outcome was not inevitable; that what happened did not *have* to happen, and in doing this it addresses what Isaiah Berlin called "the crucial practical issue" of "where the frontier between freedom and causal laws is to be determined" (1969:74). Case studies that examine the actual passage of legislation can add to knowledge about this "crucial issue" as well as to the store of knowledge about the origin and development of criminal law. At the moment the number of these studies is extremely small, although the number of recently passed Acts of social significance is very large. Untangling the constituent elements and making visible the multi-faceted reality of these Acts is an important task, and one worthy of more academic attention than it has as yet received.

The question of assisted suicide

The contemporary debate to which this case history of the Suicide Act can contribute is the one about the legal status of assisted suicide, which is at present a matter of profound controversy throughout the developed world. The U.S. Supreme Court in June 1997 refused to uphold a ruling by lower courts that assisted suicide was a fundamental constitutional right.⁷ In October 1999 the U.S. Congress took steps to overturn an Oregon state law legalising doctor-assisted suicide.⁸ In 1996 the Northern Territory of Australia passed a law legalising assisted suicide, but the Australian Federal Parliament overturned it in March 1997.⁹ In Holland, assisted suicide has been *de facto* decriminalised for many years, and in 1999 the Dutch government presented a Bill to Parliament to formally legalise it.¹⁰ In the United Kingdom the issue of euthanasia and doctor-assisted suicide has been before the courts in several high profile cases in the 1990s¹¹, and in June 1999 the British Medical Association published guidelines to doctors effectively dispensing with the need for court orders before food and water were removed from patients in a "persistent

vegetative state". This move was immediately opposed by a group of doctors calling themselves the Medical Ethics Alliance.¹²

The deep and passionate controversy these measures have aroused makes plain that suicide is an issue of great importance to many people. But because the debate on the Suicide Bill was kept so narrowly focused on attempted suicide, and its promoters rigidly defined the act as *prima facie* evidence of an unsound mind, the profound issues that actually are involved in suicide remained undiscussed and unresolved. Only a few years after the Suicide Act was passed, Arthur Koestler¹³ in *Ghost in the Machine* launched a sharp attack on the way this kind of determinist thinking avoided difficult issues. "Regardless of the verbal acrobatics of the Behaviourists and their allies," Koestler wrote, "the fundamental problem of mind and matter, of free will vs. determinism, are still very much with us and have acquired a new urgency - not as a subject of philosophical debate, but because of their direct bearing on political ethics, and private morals, on criminal justice, psychiatry and our whole outlook on life." (1967:202)

These fundamental problems, as well as all the fraught issues of personal autonomy, public order, and the enforcement of morals, were not touched on at all during the passage of the Suicide Bill. Although it formally decriminalised the act of self-killing, the Parliamentary debates dealt only marginally with the difficult issue of suicide itself, and then only to confirm its status as utterly, irredeemably wrong. However, according to the advocates of assisted suicide,¹⁴ the logic of the law that was passed then is inescapable: that is, it is not possible to continue to criminalise the assistance of an act that is not itself a crime. This means, the advocates say, that since suicide has been decriminalised, assisted suicide must be decriminalised as well.

These wider implications of the Suicide Act, unexamined at its passage, were dramatically spelled out a decade afterwards in Brian Clark's acclaimed play *Whose*

Life is it Anyway? This was first produced for television in 1972, and became a successful stage play in 1978 with Tom Conti in the lead role. In 1982 it was made into a film, and in the 1990s became a set text for GCSE students.¹⁵ In the play Ken Harrison, a talented and intelligent young sculptor is completely paralysed in a road accident. He can think and speak but do nothing else. After months of serious thought, lying in hospital and dependent in every intimate respect, he decides he does not wish to continue such a life and asks for the support systems to be withdrawn. The doctor in charge of the hospital, convinced of his duty to preserve life, refuses. Harrison then insists that he be discharged and so Dr. Emerson invokes Section 26 of the Mental Health Act to compulsorily detain and treat him. Another doctor objects, saying, "But surely a wish to die is not *necessarily* a symptom of insanity? A man might want to die for perfectly sane reasons." But Dr. Emerson rejects this, and so Harrison has a writ served demanding to be released under the Habeas Corpus rule forbidding unlawful detention. The ensuing hearing before a judge, held in Harrison's hospital room, allows an intensely dramatic examination of the central issue involved: Is a person who chooses to die necessarily insane? At the end of the hearing the Judge announces, "I am satisfied that Mr. Harrison is a brave and cool man who is in complete control of his faculties and I shall therefore make an order for him to be set free." According to the author, Brian Clark, he has watched the film of his play on public tours in countries around the world and "a great cheer always goes up when the judge gives the hero permission to choose to die." (Davies 1997:48)

The advocates of decriminalising assisted suicide may or may not be right about the inescapable logic of the Suicide Act, but the facts of its passage offer insights into why decriminalisation is itself such a rare phenomenon. Moreover, they show that even a seemingly overt manifestation of it may be other than it seems. For students of the criminal law it is a reminder of the enduring tension between the individual's desire for autonomy and the political authority's need to maintain order; between what can be tolerated as "private" behaviour and what is perceived as impinging on the public

domain and thus requiring regulation. Research in the still-small discipline of the sociology of law (to which this study belongs) indicates that the balance between these competing demands shifts in response to larger changes in political and economic conditions, but only very occasionally does the balance - in its visible manifestation in criminal law - shift so as to reduce overall the public and increase the private spheres. The areas where Authority extends its controlling reach may change - proscriptions on sex discrimination replace proscriptions on sexual preference; clinical judgements are substituted for court decisions - but abandonment of control altogether is extremely rare. As the potential for control expands beyond anything previously imagined, the need for research into its true nature and extent becomes more urgent. The question of how and why some human acts and not others become its targets remains inadequately understood. Since control comes in a variety of shifting guises and is often covert - an unexamined fist inside a glove of benevolent intent - the task of uncovering and examining it is an ever-present challenge. It is one to which the academic community is particularly well suited to respond, and its significance makes it of great importance that they do.

Notes to the Conclusion:

¹This was the path followed by reforms to the laws on censorship, abortion, homosexuality and divorce.

²Shifting conceptions of order make the nature and extent of this tendency a matter of continuing debate; see Reiner 1999

³See Butler's comments on this, quoted in chapter 3

⁴See excerpt from Select Committee Report, chapter 3

⁵See Leo Abse *Private Member* 1973, pp. 159-88 for attitudes of divorce reform advocates

⁶It is true that after the passage of most of the legislation in question the incidence and/or the visibility of abortion, divorce and homosexuality markedly increased. Social Trends 29, 1999 shows the abortion rate rising from just over 2 per 1000 women in 1968 to 13 per 1000 in 1997. Norman Stone in *Road to Divorce* (1990) says "In the twenty seven years between 1960 and 1987 the number of divorces per annum in England and Wales has multiplied sixfold... the rate of divorce per annum per 1000 married couples has also risen sixfold, from 2.0 to 12.6" (Stone 1990:409) The role played in the increase by the Acts themselves - as opposed to the influence of changed social mores - may be debatable, but there is a widespread belief that the easing of legal restrictions was itself an important factor in changing social norms. Hence the continued and rarely-challenged use of the label "permissive" (see Newburn 1992, chapter 1) In the case of suicide, the numbers actually dropped in the years following the Suicide Act, but this was widely attributed to the introduction of North Sea gas which removed one of the most popular methods of self-killing, which was to use the household gas,

either the oven or the lounge fire. (see Atkinson 1978). By the 1980s the number of suicides officially recorded as such had returned to a level of between 3-4000 per year.

⁷The Supreme Court ruled (June 1997) that there was no Constitutional protection for "the right to die", which is to say that the Constitution does not provide a *right* to assisted suicide, but this left the states free to pursue "the earnest and profound debate about the morality, legality and practicality" of the issue. (*International Herald Tribune* 29 Oct. 1997)

⁸The Oregon law, titled "Death with Dignity" was passed in 1994 and confirmed by referendum in 1997. The "Pain Relief Promotion Act" was passed by the House of Representatives by 271 to 156 in October 1999; Senate leaders said they were certain of a majority for the passage in the Senate. (*International Herald Tribune* 29 Oct. 1999). However, the Act remained unpassed by the spring of 2000.

⁹*Financial Times* 25 March 1997

¹⁰*Sunday Telegraph* 14 November 1999

¹¹Notable: the decision that life support could be removed from the Hillsborough victim Tony Bland, confirmed by the House of Lords in 1993; the case brought by Annie Lindsell, suffering from motor neurone disease, in October 1997, that her doctor should be allowed to help her die.

¹²*Times* 12 August 1999

¹³It should be noted that Koestler wrote the introduction to the Voluntary Euthanasia Society booklet *Guide to Self-deliverance*, and he himself committed suicide with an overdose of barbiturates in 1983 at the age of 77. He left a note ensuring there would be no doubt that the self-killing was deliberate.

¹⁴The literature of The Voluntary Euthanasia Society of England and Wales makes this point, as did Sidney Rosoff, former Chairman of the U.S. Society for the Right to Die and President of the Hemlock Society USA, in an interview in September 1999.

¹⁵*Whose Life is it Anyway?* published by Heinemann Educational 1989 with introduction by Ray Speakman, includes questions, "explorations" and suggested essay questions to examine the larger issues posed by the law as it stands on suicide and assisted suicide.

Appendix A

Suicide Act 1961

An Act to amend the law of England and Wales relating to suicide, and for purposes connected therewith.

[3rd August 1961]

Be it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:

1. The rule of law whereby it is a crime for a person to commit suicide is hereby abrogated.
2. - (1) A person who aids, abets, counsels or procures the suicide of another, or an attempt by another to commit suicide shall be liable on conviction on indictment to imprisonment for a term not exceeding fourteen years.
- (2) If on the trial of an indictment for murder or manslaughter it is proved that the accused aided, betted, counselled or procured the suicide of the person in question, the jury may find him guilty of that offence.
- (3) The enactments mentioned in the first column of the First Schedule to this Act shall have effect subject to the amendments provided for in the second column (which preserve in relation to offences under this section the previous operation of those enactments in relation to murder or manslaughter).
- (4) An indictment for an offence under this section shall not be triable by a court of quarter sessions; and (subject to section thirteen and forty of the Children and Young Persons Act 1933, as applied by subsection (3) above) no proceedings shall be instituted for an offence under this section except by or with the consent of the Director of Public Prosecutions.
3. - (1) This Act may be cited as the Suicide Act 1961
- (2) The enactments mentioned in the Second Schedule to this Act are hereby repealed to the extent specified in the third column of the Schedule.
- (3) This Act shall extend to England and Wales only, except as regards the amendments made by Part II of the First Schedule and except that the Interments (felo de se) Act, 1882, shall be repealed also for the Channel Islands.

SCHEDULES
FIRST SCHEDULE
Adaptation of Enactments Relating to
Murder or Manslaughter
PART I

Amendments Limited to England and Wales

Enactment and subject matter

The Coroners (Amendment) Act 1926
Section twenty (Effect on coroners' duties of prosecution for murder, etc.)

Amendment

The references to murder, manslaughter or infanticide shall apply also to aiding, abetting, counselling or procuring suicide.

The Children and Young Persons Act 1933
First Schedule (Offences to which
special provisions of the Act apply).
to

The reference to the murder or manslaughter of
a child or young person shall apply also

aiding, abetting, counselling or procuring
the suicide of a child or young person.

PART II
Amendments Not Limited to England and Wales

The Extradition Act 1870-
First Schedule (list of extradition crimes).

The list of crimes shall include aiding,
abetting, counselling or procuring suicide.

The Visiting forces Act, 1952-
Section seven (Effect on coroners' duties
in England, Wales and Northern Ireland
of certain proceedings for homicide.)

The definition of "homicide" in subsection (6)
shall have effect as if after the references to
murder, manslaughter and infanticide there were
inserted a reference to aiding, abetting,
counselling or procuring suicide.

Paragraph 1 of the Schedule (Offences not triable
by courts of England, Wales or Northern
Ireland in the cases provided for by section
three of the Act).

In sub-paragraph (a) (which provides that
murder and certain other offences are to be com-
prised in the expression "Offences against the
person") after the word "assault" there shall be
inserted the words "and any offence of aiding,
abetting, counselling or procuring suicide or an
attempt to commit suicide".

The Army Act, 1955-
Subsections (4) and (5) of section
seventy (Exclusion of court-martial
jurisdiction over certain offences
committed in the United Kingdom).

At the end of subsection (4) there shall be added
the words-
"In this and the following subsection the
references to murder shall apply also to aiding,
abetting, counselling or procuring suicide."

The Air Force Act, 1955-
Subsections (4) and (5) of section
seventy (Exclusion of court-martial
jurisdiction over certain offences
committed in the United Kingdom).

At the end of subsection (4) there shall be added
the words-
"In this and the following subsection the
references to murder shall apply also to aiding,
abetting, counselling or procuring suicide."

The Naval Discipline Act, 1957-
Subsections (4) and (5) of section forty-
eight (Exclusion of court-martial
jurisdiction over certain offences
committed in the United Kingdom).

At the end of subsection (4) there shall be added
the words-
"In this and the following subsection the
references to murder shall apply also to aiding,
abetting, counselling or procuring suicide."

SECOND SCHEDULE
REPEALS

Session and Chapter	Short Title	Extent of Repeal
33 & 34 Vict. c.23	The Forfeiture Act 1870	In section one, the words "of felo de se"
45 & 46 Vict. c. 19	The Interments (felo de se) Act 1882	The whole Act
15 & 16 Geo.6 and 1 Eliz. 2 c.55	The Magistrates' Courts Act, 1952	Paragraph 15 of the First Schedule (except as respects proceedings commenced before the commencement of this Act)
5 & 6 Eliz. 2 c. 11	The Homicide Act, 1957	In section four, in subsection (1) and in subsection (2), the words "killing himself or"

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## **Appendix B**

### **Joint Committee of the British Medical Association and Magistrates' Association:** **Record of their involvement with the Suicide Act**

The part played in the passage of the Suicide Act by the Joint Committee of the BMA/Magistrates' Association was very important. Aspects of it appear in the body of the thesis in chapters 4, 5 and 6, but because the data exists only in the minutes of the Joint Committee, and these are only available in the BMA Archives in London, a detailed account of the Joint Committee's involvement with the reform of the suicide law is included here in the interests of clarity and historical record. The archival reference is simply to Minutes of Joint Committee of the BMA and Magistrates Association 1952-1961; BMA Archives, BMA House, Tavistock Square, London WC1H 9JP; Archivist: Emily Naish.

The points of particular relevance to this thesis which arise from this record are: the visible resistance from representatives of the criminal justice establishment to the take-over of this matter by the medical establishment, and the crucial importance of the Mental Health Act to the Joint Committee's ultimate agreement to recommend decriminalisation. Other points to note are the dominance of the Chair, Doris Odlum, in the initiation and pursuit of the issue; the evidence that links the Joint Committee to Kenneth Robinson M.P., and finally, the contrast between the extremely small number of people involved and the impact they appeared to have on the passage of the Act.

The Joint Committee of the British Medical Association and the Magistrates Association originated shortly after the end of World War II, in 1946. Its genesis seems to have been related at least partly to proximity - the Magistrates' Association at that time had its offices in BMA House on Tavistock Square in London. It is interesting to note that the Joint Committee was suspended in 1961 at exactly the time when the Magistrates' Association moved to its present premises on Fitzroy Square.

The Committee's Terms of Reference were clearly set out, and repeated each year at the time of the re-election of the chair:

"To provide a channel for co-operation between the BMA and the Magistrates' Association; to consider all matters of common interest, with special reference to observations, prevention and treatment in relation to the medical aspects of

legal offence; and to make recommendations for the improvement and extension of existing arrangements and for facilitating new legislation."

The Committee's membership was also formally prescribed: 6 members to be nominated by the BMA, 6 by the Magistrates Association, with power to co-opt not more than 4 additional members. Observers could be invited from appropriate Government Departments to attend Committee meetings.

The third report of the Committee, in 1947, was on "Attempted Suicide and the Law". It said: "There is a strong case for amendment of the law so that attempted suicide (excluding suicide pacts or incitement of another person to commit suicide) would not be dealt with as an illegal offence." It was made clear at the time that this reflected the views of the medical members only, with the explanation that the Magistrate members "had participated fully in the discussion, but, though they were not in disagreement with the conclusion reached, it was agreed that the report should be concerned only with the problem from the medical aspect."

Right from the start, at this very early stage, the proposal to de-criminalise attempted suicide was coupled with proposals for its regulation in another sphere:

"If the law is to be concerned at all one suggestion received by the Committee is that it should be altered in such a way as to remove from the Courts the problem of criminality in this matter and to extend to adults a principle similar to that in the Children and Young Person's Act 1933. Then adults 'in need of care and protection' would be brought before the magistrates courts to whom the necessary psychiatric advice should be available, so that consideration could be given to the best treatment for their rehabilitation. A further suggestion was made that powers be granted to magistrates to extend the present 28 day limit under an observation order."

Nothing further happened to or about this proposal for eight years, until in the middle of 1955 Doris Odlum resurrected it. Dr. Doris Maude Odlum, born in 1890, was a consultant psychiatrist and Senior Physician for Psychological Medicine at the Elizabeth Garrett Anderson Hospital in London. On 10 October 1952, she was elected to the Chair of the Joint BMA-Magistrates Committee. She remained the Chair - despite several minuted attempts to relinquish the post - from then until the Committee's suspension in 1961, attending every single recorded meeting save one. Committee members came and went, including such co-optees as Dr. Herman Mannheim, Reader in Criminology from the LSE, who was a member from 1952 to 1955. None of them had a tenure even approaching the length of Dr. Odlum's, and

attendance at the twice- or thrice-yearly meetings was patchy; with many having no more than five people present.

From 1952 to 1955 the Committee was engaged in preparing an enormous report on the law in regard to cruelty to, and neglect of children. This was completed by July 1955, and the minutes of the meeting on 22 July (at which only five members were present) state:

"Considered: Future Work of the Committee. No subject calling for consideration by the Committee came immediately to mind and members agreed to give thought to the matter."

The agenda for the next meeting, which took place on 14 October 1955 contained the following at Item 5:

"Consider:

- 1) Report from the Chairman of a recent case in which a woman was sentenced to 15 days imprisonment on a charge of attempted suicide.
- 2) Question whether the previous stated policy of the Committee on this subject should be reviewed.

The minutes of the 14 October meeting (where again only five were present) record that the Chairman pointed out that "in its statement on attempted suicide (1947), the Committee suggested that attempted suicide should no longer be a criminal offence, but because of the assurance that the law was only used as a means of helping patients by giving police some power to see that they were put into good hands and that no case of imprisonment had occurred for a great many years, the suggestion was not pressed."

The minutes further record: "After some discussion the Chairman suggested that consideration should be given particularly to the question of whether attempted suicide should continue to be regarded as an offence, and it was agreed that before the next meeting of the Committee each member should receive a copy of the Committee's Report published in 1947."

It should be noted that the Committee did not at this point agree to make any effort to change the law in regard to suicide and attempted suicide, and in fact, a proposal to make this a Committee objective was never formally put. It seems to have been simply the inertia of committee proceedings, coupled with the evident interest of the Chair, which kept the matter re-appearing on Committee agendas.

On 2 February 1956 the Committee met again (with only five present). The 1947 Report had been circulated and was discussed. The minutes record:

"Some were of the opinion that it was advantageous for attempted suicide to be regarded as an offence because cases were brought to the notice of the authorities who could decide on appropriate action...

On the other hand, the Chairman pointed out that during the last year there had been a number of cases of imprisonment for attempted suicide which seemed to be a highly undesirable course of action. She was supported in her view. It was realised that in many cases, however, appropriate action was taken as a result of police investigation... In general the Committee endorsed the views previously expressed in its statement issued in 1947. Dr. Carroll suggested that the most likely way of achieving an amendment to the law would be through a Member of Parliament introducing a Private Members Bill on the subject. It was realised, however, that before such a step could be taken it would be advisable to obtain the views of the medical profession.

Resolved: That it be Recommended to the Council of the B.M.A. that through the Divisions and Boards of the Association the question be put to the profession whether or not attempted suicide should continue to be regarded as a criminal offence.

The representatives of the Magistrates Association were also agreeable to bringing the question before their association."

The matter of possible future work for the Committee was also discussed at this, February 1956 meeting. Alcoholism and Medical Reports to Courts were suggested as possibilities. No proposal was made that the attempted suicide issue should be an object of work for the Committee.

The next meeting was on 19 July 1956, at which the Committee received a report of a Resolution that had been passed by the Representative Body of the British Medical Association on 9 July. The Resolution was:

"(i) That this Meeting notes with concern the fact that in recent years a considerable number of people have been imprisoned for attempting suicide. It supports the statement of the Joint Committee of the B.M.A. and the Magistrates' Association in their report on Attempted Suicide and the Law (1947) that "There is a strong case for amendment of the law so that attempted suicide (excluding suicide pacts or incitement of another person to commit suicide) would not be dealt with as an illegal offence", and expresses its satisfaction that the Committee is giving further consideration to the matter.

(ii) That as a matter of urgency Council should consider the need for further discussion with the Magistrates' Association of the treatment of attempted suicide, particularly as the majority of these cases are in need of psychiatric treatment."

The records do not show the source of this Resolution. However, its wording, and in particular the references to the Joint Committee, together with the fact that there are no records of any other section of the BMA involving itself with this issue, suggest Dr. Odum.

At the 19 July meeting (five attending), faced with this Resolution from its parent body, the Committee

"discussed the best way of reviewing the question of attempted suicide and of bringing to notice any unsatisfactory provisions in the present law. It was agreed that information should be sought on the present methods of dealing with attempted suicide, and that if this information showed that the views expressed in the Committee's 1947 report on the subject calling for amendment of the law were still valid, an appropriate memorandum should be addressed to the Secretary of State for the Home Office.

The next meeting, on 16 November 1956, received statistics for the years 1946-55 showing the number of cases of attempted suicide known to the police, the numbers brought before the courts, and the results of the proceedings. They also considered reports from 22 consultants as to the various practices followed in regard to attempted suicides, and noted that no clear pattern emerged.

More startlingly, the November meeting received a report from Mrs. MacAdam J.P. that

"the Legal Committee of the Magistrates' Association had considered the present position regarding cases of attempted suicide and had reported to the Council of the Magistrates Association that, in their view, there was no necessity for a change in the law. They believed that cases were being dealt with satisfactorily, and had asked to be informed of any evidence showing that the discretion whether or not to bring a person before the courts was not being used wisely.

It was made clear, however, that this was not the view of all members of the Magistrates' Association some of whom upheld the recommendation contained in the Committee's 1947 report...

The experience of members of the Committee, and the information received from hospital staffs in various parts of the country, indicated that on the whole,

persons who had attempted suicide were being dealt with satisfactorily and a very small percentage were brought before the courts...

The view was expressed that a concurrent term of imprisonment on a charge of attempted suicide following another charge would act as a deterrent against further attempts and against attempts at suicide by other persons. All members of the Committee would not, however, share this view. After discussion it was agreed that the present position was not sufficiently altered from that in 1947 to warrant further enquiries, but it was suggested that attention should again be drawn to the Committee's 1947 report on the subject, together with statistics for recent years and the additional information obtained regarding insurance policies involving persons who have attempted suicide.

**RESOLVED:** That a statement incorporating the above points be submitted for publication in the British Medical Journal and The Magistrate."

[The refusal of the Magistrates Association to support a proposal to change the law on attempted suicide is also recorded in the 36th Annual Report of the Magistrates Association, October 1956:

"The [Legal] Committee has considered whether there is need for some alteration in the law relating to attempted suicide, and in particular whether it should remain a criminal offence.

In view of the general practice of only bringing a case of attempted suicide in exceptional circumstances, the Committee is not in favour of the law being amended, but considers that attempted suicide should continue to be a criminal offence so that where necessary the person concerned can be safeguarded and helped." ]

Regardless of the Magistrates Association's clear position against a change in the law, the Joint Committee under Dr. Odum pressed on, and at the meeting on 25 April 1957, following the resolution of 16 November 1956, a draft of the statement to be sent to the British Medical Journal and The Magistrate on attempted suicide was considered. Mr. Seymour Collins J.P., who is shown in previous minutes as being unenthusiastic about proposals to decriminalise, had submitted a statement in advance of the meeting, which had been circulated. It read:

"With regard to the proposed Statement on Attempted Suicide I am rather reserved and very sceptical about the wisdom of all the recommendations.

The police officer's powers of arrest where there had merely been a breach of the peace merely continues if some action on his part becomes necessary to prevent in the immediate future a further breach of the peace. I am very doubtful whether, apart from his power of arrest for the common law offence of attempted suicide a policeman could intervene even if he saw a man in the street eating large quantities of aspirin and obviously trying to do away with

himself and a fortiori he would have no powers whatsoever if this or any of the other recognised methods of terminating life were being exercised on himself by a man in a private dwelling. In any event I doubt whether attempted suicide is at the present time any breach of the peace.

...

I am in full agreement with the view that attempted suicide cases usually require some treatment or supervision and I am never very happy about the idea of patients being regarded as voluntary patients in a mental hospital when they have been sent there under Section 4 of the Criminal Justice Act 1948 as a condition of residence for a period not exceeding 12 months which can only be enforced as a breach of a probation order. It seems to me that these provisions and their enforcement are so roundabout that they exceed the British genius for compromise.

All I hope is that the Joint Committee will not tie themselves down to recommendations which will leave the police powerless and I venture to suggest that in the comparatively rare cases which come before the Courts the present system works pretty well. There still is little to choose between the stigma of having been before the Court and having been in a mental hospital in the eyes of most families and where the only chance of psychiatric treatment is through the medium of a Court I feel the present system has much to recommend it..."

Having received these comments from Mr. Collins, the Committee felt unable to deal with the proposed formal statement and so -

"RESOLVED: That consideration of the draft statement on attempted suicide be deferred until the Committee has had an opportunity of studying the Report of the Royal Commission on Mental Illness and Mental Deficiency, expected to be published in May."

The Committee minutes for 1957-58 show that the draft statement went through five separate revisions before it was finally approved. The final approved version makes the clear recommendation that attempted suicides should no longer be brought before the courts, unless "the incident takes place in public and/or in circumstances which cause annoyance and alarm". However to reach agreement even on this rather grudging recommendation, many different ways of maintaining control over attempted suicides had been canvassed. Take, for example, the draft of the statement considered at the meeting of 25 July 1957:

"In view of the fact that suicide is at present a felony, the police have power to intervene where a person is found attempting suicide, and it is desirable for power of this kind to be retained in certain circumstances. It is suggested that suitable alternative legislation could provide for police intervention in cases of attempted suicide and give power for such cases to be brought to a hospital for observation and treatment if necessary."

After Mr. Collins statement in April, a summary of the recommendations of the Royal Commission on Mental Illness - seven pages long - was duly circulated, and Dr. Odum invited Professor E. Stengel of Sheffield University, President of the Psychiatric Section of the Royal Society of Medicine, to come and address the January 22, 1958 meeting. Any question about Professor Stengel's position on the suicide issue was resolved in advance by circulating a copy of an address he had recently given to the Howard League: "Reactions of Society to Attempted Suicide" (reprinted in the Howard Journal 199 1956), in which he said: "The fear that a suicide attempt may lead to prosecution tends to make some people lie to the doctor about it and maintain that it was an accident, thus making psychiatric treatment impossible and a repetition more likely..." His address to the Joint Committee on 22 January 1958 was minuted as follows:

"Professor Stengel said that during his thirty years as a psychiatrist he had practised in countries where legislation concerning attempted suicide was different from that in England. It was not a legal offence in any of these countries. He told of cases in England where persons who had attempted suicide were brought to hospital and police officers waited to take a statement from them even though the case was not subsequently brought to court. This was very unsatisfactory from the point of view of treatment of the patient and also unsatisfactory in that it only happened where cases were known to the police. In other instances the law was ignored and it was undesirable to have a law that was capriciously applied.

Professor Stengel had practised in Scotland where attempted suicide was not per se a legal offence and had recently discussed the question with Scottish colleagues. They found no difficulty in dealing with such cases and if there seemed a real danger of a person repeating an attempt at suicide they were dealt with like other patients in need of psychiatric care and treatment.

With regard to the future of persons who had attempted suicide, Professor Stengel had followed up several groups of persons who had made attempts 5 or 10 years previously. He found that only a very small minority had committed suicide during that period; and no advantage appeared to be gained in those cases where the police had intervened.

Professor Stengel reminded the Committee that the Report of the Royal Commission on Mental Health expressed the view that the less the judiciary had to do with the treatment of patients the better and he thought that this principle should be applied in relation to attempted suicide.

Mr. Seymour Collins felt there was a necessity for some power to be given to the police to intervene where a person was found attempting suicide. If the present law was amended so that attempted suicide was not regarded as an



offence the police would have no power to intervene and to take a person to hospital and would be liable to action for unlawful arrest if they so acted.

It was thought that there would be no difficulty in making suitable arrangements to cover that point; it was essential that the police or any other person discovering an attempted suicide should take action to save the person and take him to hospital or a medical practitioner.

In reply to questions whether a person had a right to take his life and whether a person who had attempted suicide would resist being saved, Professor Stengel was of the opinion that a person had a right to take his life but he was sure that persons making an unsuccessful attempt at suicide wanted to be saved."

Following this report of Professor Stengel's talk the minutes record:

"It was the general feeling of the Committee that the present law was obsolete and should therefore be amended to ensure that all persons attempting suicide received appropriate care. It was suggested that as a first step towards obtaining amendment of the law the matter should be raised in connection with new legislation arising out of the Report of the Royal Commission on the Law Relating to Mental Illness and Mental Deficiency.

RESOLVED: (i) That the draft statement on attempted suicide be accepted in principle; that a paragraph be added proposing that with amendment of the law the police should have power to intervene in the interest of the person's safety where an individual is found attempting suicide; and that the statement be submitted to the Committee at its next meeting for final approval.

(ii) That the Committee on the Report of the Royal Commission on the Law Relating to Mental Illness and Mental Deficiency be informed of this Committee's views on the subject of attempted suicide, and be asked to support them and to propose the inclusion of a special clause relating to attempted suicide in any new legislation concerning mental health."

A special sub-committee was then formed to progress the statement, and this sub-committee met on 4 March 1958. Lady Adrian J.P. was in the Chair, with Dr. Odium and two others present, not including Seymour Collins. Lady Adrian, a Magistrate member of the Joint Committee, had been a member of the Royal Commission on the Law Relating to Mental Illness and Mental Deficiency, and was the Chair of the Cambridge Mental Welfare Association. The 4 March minutes record that Kenneth Robinson's Parliamentary Question of 13 February about the suicide law was discussed, and a further revision of the proposed statement to the journals took place. In the absence of Seymour Collins, the meeting removed the recommendation to

preserve police powers to intervene in attempted suicides, and proposed an extension of facilities for psychiatric treatment and after care.

These revisions did not find favour with Mr. Collins, who at the next meeting of the full Committee on 27 March tried to re-insert a recommendation that attempted suicides be put on probation by magistrates, and/or give police the power to have them detained in hospital. Dr. Odium in the Chair, resisted him, and for the most part prevailed. Recommendation 2 of the statement as finally issued read:

"So far as possible, no case of attempted suicide should be brought before any court on any form of charge except, for example, where the incident takes place in public, and/or in circumstances which cause annoyance and alarm."

The meeting of 27 March 1958 RESOLVED:

"That copies of the statement be circulated to interested persons, including Mr. Kenneth Robinson M.P., who had asked a question on the subject in the House of Commons."

On 22 May 1958, Kenneth Robinson duly brought it to the attention of the Home Secretary by means of a P.Q.

"Is the right hon. Gentleman aware that, since the last Question I put to him on this subject, a joint committee, set up by the British Medical Association and the Magistrates' Association to examine this subject, has reported in favour of a change in the law in the direction which I am suggesting, and that this report is unanimously accepted by the Council of the Magistrates Association? In view of this weighty opinion, will not the Home Secretary make an early decision in this matter?"

Some six weeks later, in July 1958, Rev. Dunstan invited Dr. Odium to join the Church working group considering the law on suicide. (see chapter 5) She accepted with alacrity, and attended the first meeting of that group on 2 October. On 5 November 1958 the B.M.A./Magistrates Joint Committee met again and it is minuted that "The Chair reported she had brought the matter [of a change in the law on suicide] to the attention of a number of bodies, including the National Association for Mental Health, which supported the view of the Committee....

It appeared to the Committee that no further action was called for immediately..."

Despite this view of the Committee that no further action was called for, Dr. Odium proceeded to write to the Lord Archbishop of Westminster (Cardinal Godfrey) on 29 November, 1958, and to the General Secretary of the Free Church Federal Council,

sending them copies of the statement the Committee had approved. The letters and the replies to them are produced in chapter 5.

Early in 1959 the BMA/MA Joint Committee received an invitation "for representatives of the Committee to attend the Home Office on Friday, 13 March, 1959, to discuss with officers of the Department the problem of attempted suicide." The Chair invited Lady Adrian, Dr. Bodman, Mr. Seymour Collins and Mrs. MacAdam to join her at this meeting. A meeting of this group to prepare was planned for 6 February, but had to be postponed until 12 March, barely 24 hours before the scheduled meeting at the Home Office on Friday the 13th.

A note was circulated with the agenda for 12 March, "as a basis for discussion on representations to be made to the Home Office." On the proposal that attempted suicide should no longer be chargeable as a criminal offence it said:

"It would not...be practicable to do this unless legislation is forthcoming at the same time to provide that cases of attempted suicide shall be protected against subsequent attempts while any disorder of the mind continues. In practice, nearly every case of attempted suicide is, subject to police intervention, seen by his own medical attendant, who is able to make the necessary arrangements for the subsequent management of the case. But it is important that in other cases legislation should be forthcoming so that the person is removed immediately to a place of safety. It will be necessary that the police shall be empowered to enter premises and to make the necessary arrangements, upon receipt of information which gives them a reasonable cause to believe that a person has made a serious attempt upon his own life."

At the preliminary meeting on the 12th, Seymour Collins again attempted to gain agreement that courts should have the power to impose care and protection provisions on attempted suicides. It was resisted, and the minutes record:

"There was some objection to the proposal on the grounds that it would mean that the person had to be brought before a court. It was also felt that, whilst such a procedure might be useful in a few cases, the proposals in the present Mental Health Bill were such that if accepted, they would provide for action, where necessary, in many cases of attempted suicide and it would be unnecessary to ring in additional legislation to cover a very small number of instances of attempted suicide."

The following points were agreed by the group, to be presented to Home Office officials:

"a) Attempted suicide *per se* should not be a criminal offence

- b) Clause 133 of Mental Health Act could be applied if attempted suicide is in a public place, to enable the person to be removed to a place of safety.
- c) If the attempts suicide is not in a public place, the police should have power to take that person to a place of safety on the presumption they are in need of treatment.
- d) The small proportion of attempted suicide who create a public disturbance could be charges with breach of the peach.
- e) Following discharge from hospital, it is suggested that after care and follow up be undertaken by a social worker, not a probation officer
- f) It is not possible to protect people against themselves completely, but if they are kept in a place of safety and have the opportunity of care and treatment, they are less likely to make a second attempt at suicide than if they have been imprisoned
- g) A change in the law would not make it more difficult for a person to receive treatment.
- h) The recommendations do not refer to suicide pacts."

The 12 of March minutes also record:

"The Chairman stated that she had written personally to enquire the view of the Churches on a possible amendment in the law re attempted suicide and she was pleased to report that there appeared to be no opposition to the proposal."

The meeting at the Home Office on 13 March was, in the end, attended by Dr. Odum, Lady Adrian, Dr. Bodman, Mrs. MacAdam, and the Assistant Secretary to the Committee, J.D.J. Havard. Seymour Collins was not there. The only Home Office attendee was Francis Graham Harrison, but his rank - Deputy Permanent Secretary - indicates the Department considered the matter to be important. It is significant - given the theory of a transference of control - that two people from the Ministry of Health, Dr. W.S. Maclay and Mr. P. Benner, were also present.

Minutes of the meeting taken by Dr. Havard show that the decision to de-criminalise had already been taken, but only because of the existence of the Mental Health Bill:

"Mr. Graham Harrison opened the discussion by saying that the question of a change in the law relating to attempted suicide had been under discussion in the Home Office and that the conclusion had been reached that it was undesirable to retain attempted suicide as a criminal offence as it was mainly a social and medical problem.

Consideration had been given to the recommendation that those cases of attempted suicide which it was necessary to bring before a court could be dealt with as a breach of the peace. Enquiries had been made about the position in Scotland where this procedure was already followed. It appeared that it was not altogether satisfactory because in some areas a charge of breach of the peace was made in nearly every case, with the result that of the cases known to

the police a higher proportion was brought before the courts than happened at the present time in England and Wales.

It was pointed out that when the Joint Committee of the B.M.A. and the Magistrates' Association had recommended provision for bringing in a charge of breach of the peace it was intended to cover those cases where the attempted suicide had caused a disturbance to the public. It was now realised that if the Mental Health Bill at present before Parliament was passed, the provisions contained therein would cover most of the cases of attempted suicide in which it was considered necessary to remove the victim.

Word of the meeting at the Home Office with members of the BMA/Magistrates Committee reached Kenneth Robinson and on 16 April he put down another PQ to the Home Secretary asking about it. Butler replied:

"A helpful meeting between officials of my Department and of the Ministry of Health and representatives of the Joint Committee... took place last month. The meeting explored the crucial problem of ensuring that persons who attempt suicide receive treatment of their condition. The existing law does ensure this although I recognise that it has unsatisfactory features and before we change it I want to be satisfied that there are workable alternatives." (Hansard 16 April 1959)

Unfortunately this reply displeased members of the Committee, who at their next meeting on

21 May - when, unusually eleven members were present - recorded disapproval:

"The Committee was disturbed that the statement to the House of Commons did not appear to be in accordance with the trend of the discussion at the Home Office in that the Secretary of State for Home Affairs had said that the existing law ensured that persons who attempt to commit suicide received treatment. The Committee thought it was clear that this was not generally so at present. RESOLVED: That a letter be addressed to the Home Office seeking clarification of the above points.

The letter duly went, and an emollient reply came back from the Home Office dated 22 June, saying the Home Office minute of the discussion recorded:

"Mr. Graham-Harrison explained that the provisional view of the Home Office on this subject was that attempted suicide was primarily a medical and social problem which ought so far as possible to be dealt with outside the criminal law. The Home Secretary was, however, anxious to ensure that the arrangements for getting people who had attempted suicide into the hands of appropriate medical and social agencies could operate adequately. He would be glad therefore to have the benefit of the views of the members of the Joint Committee of the BMA and the Magistrates Association who had studied this problem in some detail."

However, "Members [of the Committee] were not satisfied", according to minutes of 24 September, "with the explanation given of the reply by the Home Secretary to the PQ on 16 April and could not agree that the existing law ensured that persons who attempted suicide received treatment...

**RESOLVED:** 1) Home Secretary to be informed of disquiet of Committee 2) After the coming General Election a further approach be made to the Home Secretary to ascertain the action proposed in regard to amending the legislation on attempted suicide."

At the meeting on 18 November 1959 the Committee received copies of the Hansard of 5 November in which Butler had responded to yet another Kenneth Robinson question about the law on attempted suicide, and confirmed a coming change - albeit in the obfuscating language of Government Ministers: "As the Hon Member knows, I have stated that I understand his point of view on this matter." (Hansard 5 November 1959)

The Committee "discussed the various ways in which persons who attempted suicide might best be dealt with and it was generally agreed that it was desirable to avoid the stigma which, at present, attached itself to such cases under existing arrangements." Seymour Collins, who continued to resist the removal of all court power, suggested that attempted suicides seemed to do well on Probation - why not let Magistrates Courts put them on probation as a 'civil' action?

The Committee then-

**"RESOLVED:** That the Home Office be informed that the Committee is of the opinion that provision should be made in any amending legislation on attempted suicide for machinery whereby the courts could deal with cases in their civil capacity where there is no alternative method of safeguarding the would-be suicide or the community."

Following this no further action by the Committee on this issue is recorded. At their meeting on 3 November 1960 they "welcomed" the report of the Criminal Law Revision Committee (see Chapter 7), and on 21 March 1961 they "received" a report of the Suicide Bill, which had its second reading on 2 March, but by then the Committee had moved on to discussions on the rehabilitation of alcoholics.

2002/7040

*Letter referring suicide issue to Criminal Law Revision Committee*

### LETTER CONTAINING TERMS OF REFERENCE

7



*Printed for the Cabinet. June 1960**Appendix D: Memo from Butler to Cabinet concerning  
Legislative programme for 1960-61 Parliamentary session*TOP SECRET

Copy No. 54

C. (60) 93

9th June, 1960

CABINET**LEGISLATIVE PROGRAMME: 1960-61 AND LATER SESSIONS****MEMORANDUM BY THE SECRETARY OF STATE FOR THE HOME DEPARTMENT**

The Future Legislation Committee are now ready to submit to the Cabinet a provisional programme of Bills for next Session, together with a conspectus of the major legislation we think should be undertaken in the two following Sessions.

**The Forward Plan**

2. We have drawn up this forward plan, the main features of which are set out in Annex A, in order to put the next Session in perspective and to secure for the greater part of the Parliament a programme which will be politically coherent and, from the point of view of drafting and the business of the House, reasonably manageable. In addition to a number of major Bills on various subjects, the pattern has certain recognisable themes running right through it—social or moral reform, improvement of our financial institutions and commercial practice, a progressive attack on the problems of transport and a steady improvement, on a wide front, of the criminal and civil law and its administration. Reorganisation of the nationalised industries, not all all of which require legislation, will probably be proceeding. And constitutional and other development in the Commonwealth and the Colonies will be a recurrent subject of legislation as and when the occasion arises. The pattern of Scottish legislation will, as appropriate, be adjusted to accord with decisions on the English Bills.

3. The picture sketched in Annex A is not, and does not aim at being, complete. But if the Cabinet felt able to give it general approval, as a solid (if rather unexciting) legislative achievement at which to aim in our present term of office, the necessary planning and preparation could proceed.

**Detailed Programme for 1960-61**

4. For the next Session we must go, without delay, into much more detail. After discussion with all Ministers concerned, the Committee have allocated the material put forward into the following categories:

- A.1.—Essential Bills, which depend on some inescapable time-table.
- A.2.—Contingent Bills, the need for which depends on some factor at present unknown.
- B.1.—Main programme Bills.
- B.2.—Other programme Bills.
- C.—Other Bills, for which it is unlikely that time can be found.
- P.—Bills for handing to Private Members successful in the ballot.

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271



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5. The unavoidable and possibly unavoidable Bills in lists A.1 and A.2 call for little comment except that, while some of the latter may prove not to be required until a later Session, there may be others not in the list which, though on present information unlikely, we may later find that we have to include.

6. The "programme" Bills in lists B.1 and B.2 together constitute a programme much heavier than we can comfortably—perhaps even possibly—undertake. Some of them—for example, Housing Subsidies, Rating and Valuation, and Overseas Resources Development—are expressions of important political decisions which have yet to be considered by the Cabinet and which it may be decided to defer to a later Session. But to many of them we are already committed and the Committee recommend the Cabinet to agree—

- (a) That for all the Bills in lists B.1 and B.2 the Ministers concerned should be invited to seek the necessary policy decisions as soon as possible.
- (b) That progress should be made with the drafting of all these Bills. (I should mention that substantial progress has already been made.)
- (c) That no Bills should at this stage be added to lists B.1 and B.2 except on the basis that particular, identified Bills are relegated to a later Session to make room for them.

Then, rather nearer the time, we can consider what further reductions must be made.

7. In conclusion I should like to draw the Cabinet's attention to List P, the Bills which the Committee consider might be prepared for handing to Private Members successful in the ballot. This arrangement has the double advantage of increasing the amount of legislation desired by the Government without adding to the pressure on Government time and of obstructing at least some of the unwelcome legislation devised by Private Members for themselves.

R. A. B.

*Home Office, S.W. 1,  
8th June, 1960.*

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272

## Appendix E:

*Bills proposed to Cabinet for 1960-61 Parliamentary session*

## SESSION 1960-61

## List A.1--Essential Bills

Air Force }  
 Army }  
 Finance  
 Expiring Laws

## List A.2--Contingent Bills

Fisheries  
 Eurocontrol  
 Sierra Leone  
 West Indies  
 British Cameroons  
 Ceylon  
 Southern Rhodesia  
 European Communities (Privileges)  
 Nuclear Tests  
 Foreign Compensation  
 Overseas Loans

## List B.1--Main Programme Bills

Covent Garden (Hybrid)  
 Land Drainage  
 Trustee Investment and Colonial Stock  
 Criminal Justice  
 Licensing  
 Housing  
 Rating and Valuation  
 National Insurance  
 Status of Post Office  
 Succession (Scotland)  
 Criminal Justice (Scotland)  
 Transport (Railways)  
 Road Safety

## List B.2--Other Programme Bills

Overseas Resources Development  
 Commonwealth Ministers' Immunities  
 Scholarships, &c.  
 Public Health (Miscellaneous Provisions)  
 Supreme Court of Judicature  
 Electricity (Isotopes)  
 Agricultural Research Council Superannuation  
 Sheriffs Pensions (Scotland)  
 Trusts (Scotland)  
 Preservation of Countryside (Scotland)  
 Weights and Measures  
 Trunk Roads (Land)  
 The "Queens"  
 Protection of Depositors  
 Reserve Forces  
 Hyde Park Garage (Hybrid)  
 Parliamentary Secretaries  
 National Health Service (Financial Structure or Contribution)

TOP SECRET



## List C—Other Bills

Naval Enlistment  
 Aerodromes  
 Perim and Kuria Muria  
 Public Libraries  
 Overseas Education  
 School Leaving Dates  
 Continental Shelf  
 Research Hospital  
 Radiological Protection Service  
 Registration (Fees)  
 International Headquarters  
 Northern Ireland (Miscellaneous)  
 Water  
 Employment and Training  
 Judicial Officers' Pensions  
 National Insurance (Amendment) I  
 Convention on High Seas  
 Nuclear Risks  
 Licensing (Scotland)  
 Patents (Amendment)  
 Bankruptcy, &c. (Fees)  
 Anti-Trust Activities  
 "Savannah"  
 Merchant Shipping (Safety)  
 British Museum  
 Financial Institutions  
 Decimal Currency  
 Corn Rents  
 Crown Estate  
 Land Powers (Defence)

## List P—Private Members' Bills

Agriculture (Miscellaneous)  
 Forestry  
 Carriage by Air  
 Services for Old People  
 Nursing  
 Local Health and Welfare Committee  
 Grafting of Human Tissues  
 Social Workers  
 Fluoridation  
 Levy on Betting (Peppiatt)  
 Suicide  
 Summer Time  
 Employment Agencies  
 Oaths  
 Home Safety Propaganda  
 Old Metal Dealers  
 Trade Effluents  
 Siting of Crematoria  
 Local Authorities (Publicity) (Scotland)  
 Litter Bins (Scotland)  
 Divorce (Scotland)  
 Local Authorities (Contributions to Charities) (Scotland)  
 Hall-marking

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274

Reference:-

CA3 129/101

PUBLIC RECORD OFFICE

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PRIME MINISTER

You will have seen from the minutes of the Home Affairs Committee meeting yesterday (HA/60) 20th meeting, minute 8) that the Committee agreed that the Government should introduce a Bill early in the new Session on lines recommended by the Criminal Law Revision Committee to provide that suicide and attempted suicide shall cease to be offences and that complicity in another person's suicide or attempted suicide shall be punishable by a maximum of fourteen years' imprisonment. The Committee also agreed that I should take an early opportunity of announcing our intentions.

It is proposed that the <sup>Report</sup> Bill should be published on 20th October. It is not likely to be controversial - the Church Assembly Board for Social Responsibility has published a Report which is broadly in line with what we propose.

The above Criminal Law Revision Committee has as less than 4 Judges & over 2000, so the backing is bright.  
2. as you report I am issuing a short paper on licensing for the Cabinet next week  
18th October, 1960  
REB  
There isn't a lot of talk who this is for I suppose it has been for the Cabinet for some time? 11m



Appendix G

Memorandum from Cabinet Secretary  
(Norman Brook) to Prime Minister  
(Harold Macmillan) about the  
proposed Suicide Bill



PRIME MINISTER

SUICIDE

The Home Secretary will wish to report orally to the Cabinet on the content of his proposed Bill on Suicide. This might conveniently follow the item on his Licensing Bill. The Suicide Bill does two things: it provides that suicide and attempted suicide shall no longer be criminal offences; and it creates a new offence - aiding and abetting someone else to commit or attempt to commit suicide - with a maximum penalty of 14 years' imprisonment.

2. There seems to be a fairly wide consensus of informed opinion that attempted suicide should no longer be a criminal offence. There are thought to be up to 30,000 cases a year, of which only about 5,000 come to the notice of the police. In a recent year about 600 were prosecuted and found guilty of attempted suicide and more than half of these were sent to prison. But it seems to be the general opinion, both in the medical profession and in the courts, that these people would be better dealt with outside the criminal law - as the majority already are. The Mental Health Act of last session makes it possible to detain for 28 days' observation a person who appears to be suffering from mental disorder and ought to be detained for his own health or safety.

3. The proposal to make the change is not derived from the Criminal Law Revision Committee, whose report has just been published. It was made by the Home Affairs Committee on the proposal of the Home Secretary, and the Criminal Law Revision Committee were simply asked what consequential changes in the law would be required. The new offence of aiding and abetting comes from them.

4. The original idea was that this should be a Private Member's Bill in the coming session, but this was later felt to be hardly appropriate and the Bill became included in the Government's programme. The Home Secretary is considering introduction in the House of Lords.

24TH OCTOBER, 1960

NORMAN BROOK

HOME OFFICE

Whitehall, LONDON S.W.1

Telegrams: Monebis Parl London

Telephone: WHITEHALL 8100, ext.

Please address any reply to

THE SECRETARY

OF

H.O. 135/1961

3rd August, 1961.

and

C.2.

Yours faithfully

Sir,

HOME OFFICE CIRCULAR NO. 135 /1961

Suicide Act, 1961

1. I am directed by the Secretary of State to refer to the Suicide Act, 1961, which received the Royal Assent and came into operation on 3rd August, 1961.
2. The principal change in the law made by the Act is effected by section 1, which abrogates the rule of law whereby it is a crime for a person to commit suicide. It follows from this that it will no longer be an offence to attempt to commit suicide.
3. It has long been the practice of the police, in accordance with the advice contained in paragraph 32 of section XX of the Home Office Consolidated Circular of May, 1958, on Crime and Kindred Matters, not to prosecute a person who has attempted to commit suicide if he is found to have relatives or friends who are willing and ready to take care of him and to accept responsibility, and if there appear to be no other special reasons to justify bringing him before a court. It will not in future be open to the police to prosecute for an attempt to commit suicide in order to ensure that the person concerned is placed under restraint or receives any necessary treatment. The Secretary of State is sure that the police will nevertheless wish to continue to give whatever help they can in any case of attempted suicide which comes to their notice.

The Chief Constable.

/4.

*Appendix H:*

*Home Office Circular to Police re Suicide Act*



4. In very many cases relatives or friends of the person concerned will be able to give the help and advice needed. In other cases the nature of the attempt will make it necessary for him to be admitted to hospital for medical treatment, and arrangements are being made whereby in all such cases psychiatric investigation will be carried out so that the need for treatment or supervision can be assessed. Where relatives or friends are not available to give him help and hospital treatment is not necessary, the best course may be, with his consent, to ask his doctor to attend him. If he is reluctant to see his doctor he should be advised that this is desirable in his own interests. In appropriate cases the powers contained in Part IV of the Mental Health Act, 1959, will be exercised to provide for his compulsory detention in hospital; application for admission to hospital under these provisions has to be made by the nearest relative or by a mental welfare officer and must be founded on two medical recommendations, though in an emergency one recommendation will suffice initially.

5. There may remain a few cases in which a person who has attempted suicide will not need hospital treatment for his injuries, will reject help and will not be found to be suffering from a mental disorder which would justify the use of compulsory powers. There will generally be no means of ensuring that such a person is supervised or placed under any form of restraint. Where, however, the nature of the attempt has an element of nuisance and entails the possibility of injury to others - as, for example, where the person making the attempt has to be rescued at the risk of another's life - it may be possible to bring him before the Justices, so that they may bind him over and order him to find sureties to keep the peace or to be of good behaviour.

/6.

*Appendix H continued*

Home Office Circular to Police re Suicide Act

6. Subsection (1) of section 2 of the Act provides that it shall be an offence for any person to aid, abet, counsel or procure the suicide of another or an attempt by another to commit suicide. The offence will be triable on indictment and will carry a maximum penalty of fourteen years' imprisonment. The creation of this offence preserves the existing law substantially unchanged in relation to accessories to suicide or attempted suicide.

7. Subsection (2) of section 2 enables the jury to find a person guilty of the new offence if on the trial of an indictment for murder or manslaughter the evidence shows that such a finding would be appropriate.

8. Subsection (3) of section 2 provides for the adaptation of certain enactments, set out in the First Schedule, which make various provisions in respect of such matters as inquests, extradition, visiting forces and courts-martial, extending their application to cover the new offence.

9. Subsection (4) of section 2 deals with the procedure in respect of prosecutions for the new offence. Its effect is as follows:-

- (i) Trial by Quarter Sessions is excluded. The offence will not, however, rank as homicide and summary trial for children and young persons, in accordance with the provisions of sections 20 and 21 of the Magistrates' Courts Act, 1952, will therefore not be excluded.
- (ii) Proceedings may be instituted only by or with the consent of the Director of Public Prosecutions. Where, however, the victim is a child or young

/person

*Appendix H continued*

Home Office Circular to Police re Suicide Act



person it will be possible before the Director has been consulted to exercise the powers conferred by sections 13 and 40 of the Children and Young Persons Act, 1933, to arrest the offender and to remove the victim to a place of safety.

10. Subsection (2) of section 3 provides for the repeal of the enactments listed in the Second Schedule to the extent specified. Your attention is drawn particularly to the repeal of the words "killing himself or" in subsections (1) and (2) of section 4 of the Homicide Act, 1957. That section provides that it shall be manslaughter for a person acting in pursuance of a suicide pact between him and another to kill the other or be a party to the other killing himself or being killed by a third person. Cases in which the deceased dies by his own hand will now be covered by the new offence created in section 2 of the Suicide Act, and the repeal of the words in the Homicide Act has the effect that the offence of manslaughter will not be committed in these circumstances.

I am, Sir,  
Your obedient Servant,

Francis Graham-Harrison

CRI. 775/4/1

*Appendix H continued*

Home Office Circular to Police re Suicide Act

## **Appendix I**

### **List of people interviewed** (in alphabetical order)

**Leo Abse:** Former M.P., long time campaigner for reform of the law on social issues (divorce, homosexuality, capital punishment); speaker in House debates on Suicide Bill.

**Lord (Noel) Annan:** Provost of Kings College Cambridge 1956-66; Vice-Chancellor University of London 1978-81; author of *The Intellectual Aristocracy* (1956) and *Our Age, Portrait of a Generation* 1990

**Lord (Kenneth) Baker:** Former M.P.; Government Minister 1981-92 (Cabinet 1985-92)

**Lady (Mollie) Butler:** Widow of Lord Butler (RAB Butler)

**Lord (Paul) Channon:** Former M.P.; Government Minister 1979-89 (Cabinet 1986-89); Parliamentary Private Secretary to RAB Butler as Home Secretary 1960-62

**John Croft:** Former Head of Home Office Research Unit

**Sir Charles Cunningham:** Permanent Under Secretary of State, Home Office, 1957-66

**Lord (William) Deedes:** Former M.P., member of the House Committee on the Suicide Bill; Parliamentary Under Secretary, Home Office 1955-57

**Rev. Prof. G.R.Dunstan:** Secretary to Church of England Board for Social Responsibility 1955-63; Convened committee to consider suicide law; Professor of Moral and Social Theology Kings College London 1967-82; Vice President Institute of Medical Ethics 1985-;

**Sir Charles Fletcher-Cooke QC:** Former M.P.; Joint Parliamentary Under Secretary of State Home Office 1961-63; the Minister who put the Suicide Bill through the House of Commons

**Francis Graham-Harrison:** Assistant Under Secretary of State, Home Office 1957-63

**Rose Hacker:** Social activist; political volunteer for Kenneth Robinson M.P. in his north London constituency (St. Pancras North); knew Dr. Doris Odum

**Anthony Howard:** Official biographer of RAB Butler; at the time of the Suicide Bill he was on the editorial staff of MANCHESTER GUARDIAN (1959-61) and then political correspondent of *The New Statesman* (1961-64)

**Lord (Peter) Imbert:** started as policeman on the beat in London in 1954, ultimately became Commissioner of the Metropolitan Police 1987-93

**Lord (Roy) Jenkins:** Former M.P., Government Minister 1964-70, 1974-76 (Cabinet 1965-70, 1974-76)

**Sir Ivan Lawrence QC:** Former M.P.; Chairman Commons Home Affairs Committee 1992-97

**Lord (Christopher) Mayhew:** Former M.P., member of the House Committee on the Suicide Bill

**Colette Maitland-Warne:** Probation Officer in Yorkshire and London in 1950s and 1960s

**Lord (John) Moore:** Former M.P., Government Minister 1979-89 (Cabinet 1986-89)

**Lord (David) Renton:** Former M.P., Joint Parliamentary Under Secretary of State Home Office 1958-61; Minister of State Home Office 1961-62; President, Statute Law Society 1980-

**Sidney Rosoff:** Former Chairman of the U.S. Society for the Right to Die, and President of the Hemlock Society U.S.A.

**Margaret Simestra:** Samaritan in Bournemouth who knew Dr. Doris Odlum

**Jeanette Stockell:** Former casualty nurse at Charing Cross Hospital in 1950s

**Roy Thomas:** Started as policeman on the beat in London in 1956, ultimately became Chief Inspector with the Metropolitan Police and head of the Vice Squad in Lambeth in 1980s

**Mary Tuck:** Former Head of Home Office Research Unit

**Sir William van Straubenzee:** Former M.P., member of the House Committee on the Suicide Bill

**Rev. Chad Varah:** Founder of the Samaritans, the voluntary organisation to befriend the suicidal and despairing; long term friend of Dr. Doris Odlum

**Doreen Yardley:** Probation Officer in London's East End in 1950s and 1960s

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