

Getting out: Early release in England and Wales, 1960-1995
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Chapter. 3

An Idea Whose Time Had Come: Parole, Indeterminacy and the Personalisation of Punishment

In Part II we trace the emergence of parole onto the policy agenda in England and Wales between 1960-1968. Chapter 3 begins with an examination of the long-term historical trends in early release administration and how this gave rise to a reform agenda that was shaped by the prevailing optimism and confidence of the 1960s. It goes on to consider growing criminological support for indeterminate sentencing and the influence of the landmark Longford Committee Report *Crime: A Challenge to Us All* (Labour Party 1964a). Here it will argue that the initial policy scoping for a parole system in England and Wales was heavily influenced by the ‘rehabilitative ideal’ and a desire to give administrative expression to prevailing support for indeterminate and the personalisation of punishment. The chapter concludes with an overview of the intense policy discussion that gave rise to the parole framework articulated in *The Adult Offender White Paper* (Home Office 1965).

A Brief History of Early Release in England and Wales

It is one of the more reliable pieces of criminological knowledge that in contemporary western societies the vast majority of men and women sentenced to imprisonment will be released before the end of their sentence. Across time and place there have been no shortage of administrative mechanisms to realise this objective (see Padfield *et al* 2012b) but it is striking just how quickly ‘parole’ - a framework that integrated discretionary release, active supervision and threat of recall to prison - crystallised as the favoured option for reform in

England and Wales. Why should this be the case? Within the archival record (TNA: CAB 129/123; HO 383/219) and associated literature (Home Office 1989 p.7) there has been a tendency to describe the emergence of parole in the 1960s as ‘an idea whose time had come’. The prevalence of this explanation is intriguing, not least because it is notable by its absence from later periods of reform discussed in this book. At first sight, it may appear to offer little more than a teleological shorthand for a series of complex events that belie simple explanation, but on closer inspection, it hints at a number of more tantalising possibilities. That policy-makers and practitioners viewed parole in pragmatic terms as the ‘right’ technocratic response to the challenges they were facing. Or perhaps, that parole was the natural extension of an unfolding project to rehabilitate and integrate offenders back into society. To understand these claims, it is necessary to locate the emergence of parole within a wider social and historical context.

While it is tempting to scour the historical records in search of the aetiological ‘smoking gun’ that signalled the arrival of a modern system of parole in England and Wales, in reality, the historical antecedents of parole, remission and release on licence are far more diffuse (Home Office 1989 pp.3-13; Radzinowicz and Hood 1986 pp.465-596). As far back as the Seventeenth Century, the Privy Council had authorized the granting of reprieves and stays of execution to those convicted of serious crimes (Bottomley 1990 p.326). But it is arguably not until the advent of transportation and the power of the Crown to grant convicts of good character a ‘ticket of leave’ to travel freely within the colonies that a formalised administrative system of early release began to take shape in Great Britain (McConville 1981). As a manifestation of the prerogative of mercy, the ticket of leave system was inexorably linked to a fledgling interest in the art of government and the maintenance of order in the penal colonies (Bottomley 1990). Captain Philip Gidley King, the third Governor of the New South

Wales penal colony, is said to have laid the foundations for the ticket of leave system when in 1801 he granted the first 'annual certificates' that allowed convicts to move freely and work within the New South Wales territory (Macintyre 1999 p.43). In part, this was a pragmatic step to satisfy growing labour demands and relieve pressure on scarce resources, but it also reflected a growing awareness of the role hope and incentive played in maintaining social order in such remote corners of the Empire. Over time the ticket of leave system was codified and became a central feature of penal transportation, described by the Select Committee on Transportation 1837-8 in the following terms,

A convict, transported for seven years, obtains, at the end of four years; for fourteen years, at the end of six years; and for life, at the end of eight years, as a matter of course, unless his conduct has been very bad, a ticket of leave, which enables him, according to certain regulations, to work on his own account. This indulgence on the whole has a very useful effect, as it holds out hope to a convict if he behaves well, and is liable to be re-assumed in case of misconduct (Molesworth 1838: xvii).

Conditions in the penal colonies were often intolerable and many convicts suffered appalling hardship, but as the Carlisle Committee would note in their 1989 report *The Parole System in England and Wales*, the ticket of leave framework did at least provide a template, 'for some of the most innovative and influential penal projects of the day' (Home Office 1989 p.3). In the 1840s, the moderniser Captain Alexander Maconochie was widely lauded for transforming the fortunes of the notorious Norfolk Island penal colony by introducing a marks system that placed greater trust in convicts and rewarded good behaviour with better conditions and eventual release (Bottomley 1990 p.323; Home Office 1989 p.3). Equally significant was the work of Sir Walter Crofton, a future Director of the Irish Prison System, who developed 'a system of graded progression through a program of education and training' that would prove highly influential in the US penal code (Bottomley 1990 p.323). Growing scepticism about the deterrent effect of transportation and its negative impact upon

the fledgling colonies saw transportation fall into disuse in the mid-1850s and the practice was abolished following the arrival of the convict ship Hougoumont at the port of Fremantle, Western Australia on the 9 January 1868 (McConville 1989 p.381). With the abolition of transportation, the punishment of criminals could no longer be outsourced to the new world. In the late 1850s the government embarked upon a major prison building programme and moved to introduce a new sentence of penal servitude blending elements of imprisonment and hard labour (McConville 1989). By this time the underlying rationale for the ticket of leave system was firmly established within British penal practice (Shute 2003 p.379) and the idea was imported into the new regime with those sentenced to penal servitude becoming eligible for release on licence at the discretion of prison authorities (McConville 1989 p.403). This nascent system of release on licence was eventually placed on a statutory footing in 1863 following a critical report of the *Royal Commission on Transportation and Penal Servitude* (1863) which recommended the establishment of a formalised version of the ‘marks system’ first pioneered in Western Australia (see Radzinowicz and Hood 1986 p.501; Shute 2003 p.379). Two features of the regulatory structure established by the *Penal Servitude Act 1853* are worthy of note here. First, while the *Penal Servitude Act* established a system of release on licence, there was no accompanying provision for the active supervision of convicts while on release. The deficiencies of this arrangement were exposed in 1863 following an outbreak of lawlessness and violent robberies which were widely attributed in Parliament to a group of convicts recently released on licence (Hood 2002 p.5; Radzinowicz and Hood 1986 p.524). Second, penal servitude sat uneasily alongside a system of locally administered justice (Home Office 1989 p.4). While minor misdemeanours were typically served in local prisons under the control of Local Authorities, serious offenders sentenced to penal servitude were classed as ‘convicts’ and managed centrally by the Home Office (Home Office 1989 p.4). This dichotomy introduced a number of anomalies into British penal administration. While males

servicing sentences of penal servitude were eligible for release on licence of up to one quarter of their sentence, no formalised arrangements existed for those serving their sentences in local prisons. In practical terms, this meant that while early release was at least a theoretical possibility for some of the most serious convicts, local prisoners convicted of less serious offences, were expected to serve their sentence in its entirety (Home Office 1989 p.4). The Prison Act 1878 brought all prisons in England and Wales under the control of the Home Secretary with responsibility for administration and inspection delegated to a newly established Board of Prison Commissioners. However, the differential treatment of convicts and prisoners continued under these new governance arrangements, a situation widely condemned by the 1895 Gladstone Committee which recommended that eligibility for early release should be extended to ordinary prisoners (HMSO 1895 para.44). The Government accepted this recommendation, but rather than place all prisoners on the same legal footing *The Prison Act 1898* reinforced the bifurcation of punishment by introducing a distinct system of what became known as ‘remission’ for local prisoners. The Act empowered the Home Secretary to introduce Prison Rules setting out the treatment of those in custody and in 1907 the rules were settled to the effect that men and women held in local prisons could, ‘by special industry and good conduct’, earn remission of up to one-sixth of their sentence (FOI: HO 291/2138). This marked a step forward in the treatment of local prisoners but at an administrative level, the twin-track approach merely compounded the variable treatment of ‘convicts’ and ‘prisoners’. While convicts continued to be released on licence under police supervision and remained at risk of recall for the remainder of their sentence, local prisoners who earned remission time were released unconditionally (Home Office 1989 p.5). Of perhaps greater significance was the fact that remission was automatic. Owing to the difficulties prison administrators faced in undertaking real time assessments of prisoner conduct the marks system had fallen into disuse and was gradually replaced by a presumption

in favour of release (an excellent account of which can be found in TNA: HO 263/148). Disparities in the quantum of early release that could be earned by various categories of offender remained for much of the early Twentieth Century, a situation finally brought to an end in August 1940 when a pressing need for accommodation to house those detained under wartime regulations forced the Home Secretary to increase early release for prisoners and male convicts to one-third of their sentence (Home Office 1989 p.4). This framework was subsequently codified in 1949, shortly after the Criminal Justice Act 1948 had abolished the use of penal servitude, hard labour and flogging in England and Wales.

While brief, this abridged history provides an important backdrop to the events of the early 1960s. Many of the themes that we will explore in this book from the confused normative basis of early release, the interaction of parole and remission and the operational tension between early release as a right and a privilege were already firmly established within British penal policy and practice by the 1960s. It is also clear that many of the administrative components of an integrated early release system had been tested within British prisons. Administrators were aware of the logistical difficulty (and perceived unfairness) of placing discretion in the hands of prison authorities, the merits of unconditional release vis-à-vis release on licence with liability for recall had been scrutinised by several learned committees and the Home Office had been publicly criticised for its failure to provide adequate aftercare and supervision arrangements. This is critical to understanding the debates that surrounded the introduction of a modern system of parole in 1967. The events of the 1960s were not *sui generis* but an attempt to adapt long-standing questions about the management of incarcerated populations and operationalise a defensible system of early release to the particular concerns of the period. Moreover, this short history draws attention to one further, often neglected feature of the penal landscape in the early 1960s. Namely, that with the abolition of penal

servitude and convict licences, the Prison Department was left with an early release toolbox for adults that was manifestly unfit for purpose at a time when the effective rehabilitation of prisoners back into the community was a central policy objective of the penal system. A system of remission based upon automatic and unconditional release with no continuing liability for recall was about as far away from the spirit of the ‘rehabilitative ideal’ as it is possible to imagine and contrasted particularly unfavourably with the borstal system, widely regarded at this time as the ‘jewel in the crown’ of British penal policy, which provided for a comprehensive system of supervision for borstal trainees while on licence (Faulkner 2014 p.26; Hood 1965). One gets a sense of this ‘policy problem’ from the authors interview with a former Chief Probation Officer, invited to reflect upon the formative stages of his career in the 1960s,

But, I mean throughout the service I think this [parole] was seen as a really good useful, positive development. Because what we had before then was approved school after care, borstal after care and that’s another word you don’t hear any more, isn’t it, Borstal.

The young offender institutions. Borstal aftercare and then something called voluntary aftercare, right. Not taken up very much actually.

...

And it, was seen as a good thing but prisoners wouldn’t take it up, well you can understand it. It’s such an admission of inadequacy to say I’m being voluntarily helped by a probation officer. But here, that [parole] legitimised the whole process in a sense because they were released on parole and all prisoners would take advantage of that because you know it got them out. So it was very ... but we in probation took it ... I mean I think it’s fair to say that most probation officers would put those cases ... they put them as a top priority (Interview E: 15 September 2014).

Faced with these challenges policy-makers looked to cognate areas of criminal justice for inspiration, a process Mary Douglas has referred to as policy or intellectual bricolage (Douglas 1986 p.66). The Home Office was keen to learn lessons from the borstal system which continued to exert a strong, albeit faltering, influence over penal policy in England and

Wales (TNA: PCOM 9/665; PCOM 9/2248). The Prison Commissioners were merged into the Prison Department in 1963 bringing a great deal of institutional memory on the operation of both borstal and convict licences into the Home Office (Faulkner 2014; Windlesham 1993 p79). Many senior officials who had served their apprenticeships in the Prison Commission would go on to be closely involved in the creation of the modern parole system (for example Sir Philip Allen and Norman Storr who would reach the ranks of Permanent Secretary and Assistant Secretary respectively). The key point being that the reforming project ushered in by the Gladstone Committee (HMSO 1895) and the entirely justifiable decision to abolish penal servitude served to highlight the variable treatment of prisoners and convicts as well as adults and adolescents who were subject to the more developed licence arrangements of the Borstal system. In time, these administrative concerns would prompt a problem-solving process infused with the prevailing culture and values of the 1960s.

Criminal Justice in an Age of Optimism

At the 1964 general election, the Labour Party was returned to power after thirteen years of Conservative government. At one time, the outgoing Prime Minister Harold Macmillan had enjoyed high levels of public approval but by the early 1960s, the political landscape was shifting. The government had struggled to address a deteriorating economic situation, Britain's place in a changing world and the fallout from the 1963 Profumo affair that had rocked the political establishment and challenged the hierarchical nature of British society (Dutton 1997 pp.68-74). In contrast, Labour had enjoyed considerable success by positioning itself as the party of renewal, a narrative that resonated with the prevailing optimism of the times, the growing affluence of the British middle classes and a post-War desire to build a

better future (Labour Party 1964b; Seale 1995 p.230). This worldview came to infuse a number of public policy areas including criminal justice. As Morris has noted,

The public mood was again one of expectation, not so much for 'reform' in the traditional sense, but of new and exciting innovation. The Robbins Committee on Higher Education, which was to oversee the greatest period of university expansion that the country had ever known, had been appointed early in 1961. In the United States John F. Kennedy had been elected the youngest ever President and was seen as a symbol of hope and progress by young people in the West.... In various subtle ways the Labour Party under Wilson's leadership capitalized on many of these hopes and emotions and presented the possibility of a society in which the quality of life would continue to be enriched for everyone, this time by the conscious exploitation of the new technologies that were emerging in what was to become known as the 'post-industrial society' (1989 p.110).

In practice, there was considerable policy convergence between the two main political parties and Dutton has argued that *'Labour probably won in 1964 on the successful projection of an image rather than an alternative set of policies'* (Dutton 1997 p.75). Despite a 3.5% swing towards the Labour Party in October 1964, the first past the post electoral system yielded a slender parliamentary majority of just five and it was immediately evident that the government of Harold Wilson would have to return to the polls sooner rather than later to build a credible political mandate. Parliamentary realpolitik therefore had a significant impact upon the trajectory of public policy between 1964 and 1966. Unable to rely upon a significant parliamentary majority the Labour government was modest in its aims and limited in its impact. While there were some successes in relation to pensions and housing (McKie and Cook 1972 p.42) the rhetoric did not always match the reality, leading the historian Sir Robert James to describe the first Wilson government as a *'cautious, conservative, tentative government, deeply suspicious of truly radical departures'* (1972 p.81). Where the Wilson government did flex its muscles, it was often to help 'pump prime' a stuttering economy. In part, this reflected the economic paradox of post-war Britain. The 1960s were a time of prosperity that transformed the fortunes of many middle-class families who had 'never had it

so good', but it was also the case that the rising affluence and consumerism of British society took place against a backdrop of relative economic decline (Marsh *et al* 1999 p.43). Labour inherited a sizeable trade deficit from the Conservatives and the annual average GDP growth rate in Britain fluctuated around 3% between 1950-1973, far below the economic performance achieved in France (5.1%), Japan (9.7%) and Germany (6.0%) over a comparable period (Marsh *et al* 1999 p.45). Successive post-war governments struggled to close this gap without overheating the economy and risking the devaluation of sterling. At its core was a fundamental dilemma; attempts to accelerate growth resulted in higher imports, a balance of payments deficit and a crisis of confidence in sterling which necessitated 'stop-go' periods of austerity (Dutton 1997 p.78). In July 1961, the Chancellor of the Exchequer Selwyn Lloyd introduced a series of deflationary measures intended to cool down the British economy including tax increases, cuts to public expenditure and a public sector pay pause. This difficulty was compounded in 1963 when Charles De Gaulle vetoed Britain's application for membership of the EEC thereby undermining the governments' attempts to grow a trade surplus (Marsh *et al* 1999 p.106). Economic uncertainty had a cooling effect upon budgets across Whitehall. As Figure 3.1 below reveals government expenditure as a percentage of GDP went through cyclical periods of growth and contraction, which saw expenditure peak and trough throughout the 1960s, 1970s and 1980s.

Insert Figure 3.1 Government Spending as a Percentage of Gross Domestic Product, 1960-95 Source: Office for Budget Responsibility (2015)

This may seem somewhat removed from the everyday concerns of prisoners and penal administrators, but it had a huge impact upon Departmental planning throughout the period examined in this book (a theme we return to in more detail in Chapter 5). As Michael

Moriarty, a senior Home Office official noted in *Penal Policy-Making in England* (1977) the stop-go nature of government spending set the tone for negotiations between HM Treasury and the Home Office and the expenditure decisions, both capital and revenue, taken within the Department. Given the long lead-in times typically associated with building works and refurbishments, capital expenditure was particularly vulnerable to austerity measures and often scaled back during periods of fiscal retrenchment. In contrast, revenue costs were bound up with wages, redundancy and recruitment, issues that were politically sensitive and difficult to cut back in the short-term,

Within the budget for Home Office services, there are decisions regarding the allocation of resources between capital and current expenditure; between buildings, equipment of various kinds and staff (and, within staff, between grades or functions); and among the different services. Two particular characteristics of this kind of policy-making are the speed at which the decisions often have to be taken, and the limited room for manoeuvre. The basic time-scale is the annual preparation of estimates and the annual public expenditure survey (PES) in which public expenditure needs are forecast for the ensuing five-year period. In orderly times these procedures should afford adequate scope for the underlying policy issues to be worked through. In practice, the economic problems of recent years have frequently required the downward revision of estimates and forecasts at short notice. Room for manoeuvre is limited by the manpower-intensive character of penal services and indeed all Home Office services: what is seen as an overriding need to maintain existing staff levels, and where possible to make good deficiencies and leave some margin for growth to meet demand, means that suddenly-demanded cuts tend to fall largely on capital spending programmes and other non-staff items (Moriarty 1977 p.130).

As a result, penal administrators were stymied in terms of the quantum of resources that would be made available to the Home Office, as well as the consistency of future expenditure commitments needed to make long term strategic decisions about the administration of the penal system. Moreover, this occurred at a time when rising crime rates and sentencing practices were already putting increasing strain on the prison estate. Recorded crime had risen from 478,394 in 1945 to 1,133,882 in 1965, an increase of 137% in just 20 years. There was also some evidence to suggest that sentencing practices were hardening in light of a perceived

crime wave driven, in part, by the growing affluence of the middle classes, the proliferation of marketable goods like cars and inter-generational shifts in youth culture (Morris 1989 pp.93-103). This had a direct impact on the operation of the penal system. During the 1960s the prison population increased from a yearly average of 27,099 in 1960 to 39,028 in 1970, a rise of 44% in just under a decade (see Figure 1.5). Mirroring the sentencing behaviour of the courts this general trend was punctuated by periods of retrenchment and expansion. Between 1962-1964 the prison population decreased before rising significantly between 1964-1967 leading to a 'prison population boom' that had a significant influence upon the final shape of the *Criminal Justice Act 1967* (Morgan 1983). As the prison population increased prison governors were forced to make greater use of cell sharing. In 1965, a total of 5,337 prisoners were held in three-man cells with a further 148 accommodated two to a cell. By 1970, this figure had increased dramatically with 9,288 held three to a cell and 4,886 in two-man cells (see Figure 3.2).

Insert Figure 3.2

Number of Persons Held Either Two or Three to a Cell, 1965-1995

Source: Home Office Report on the Work of the Prison Department, 1965-1987. Home Office Report on the Work of the Prison Service, 1988-1991. HMPS Report on the work of the Prison Service, 1992-1996.

It can be difficult to build an objective picture of prison conditions in England and Wales, prior to the creation of Her Majesty's Chief Inspector of Prisons in 1981. The Gaol Act 1835 did empower the Home Secretary to establish a Prison Inspectorate, but the office lacked any real authority; the inspectorate consisted of only five full-time inspectors and they possessed limited powers of inspection over local prisons that were subject to little central government oversight. A Chief Inspector of Prisons was appointed in 1971 to bring greater consistency to prison inspection but without adequate resources to inspect the several hundred prisons in England and Wales it can be difficult to build a national picture from the available reports

(Shute 2013: p.501). Nonetheless, the available evidence does suggest that conditions in the prison estate were not conducive to the lofty goals espoused in the Prison Rules. Sir Lionel Fox famously described Britain's ageing Victorian prisons as '*monuments in stone to the ideas of a century ago*' (cited in LSE Archive and Special Collections: Morris T/6) and a dire picture of these penal artefacts was offered by the Prison Commissioners in a surprisingly candid commentary from their Report for the Year 1962,

Despite some increase in accommodation provided by the opening or development of new establishments, overcrowding has persisted in the local prisons and its attendant evils, so often described in previous reports, have again hampered efforts to establish a longer working week and modern training techniques. The staff, happily not now so thin on the ground as in recent years, has, as always, coped valiantly and cheerfully with the recurrent problems, and morale has remained high. The halcyon days between the wars, when no cell contained more than one prisoner, seem unreal now to those who remember them, but as the extensive building programme now in progress gathers pace there is hope they might one day return (Home Office 1962 p.12).

Against this backdrop it is reasonable to conclude that Home Office policy makers were predisposed to any policy innovations that were likely to encourage the rehabilitation of offenders, facilitate the integration of prisoners back into the community and in time help reduce the prison population.

A Recognisable Peak: The Coupling of Parole and Indeterminacy

Much penal policy debate in the early 1960s crystalized around the need for a clearer criminal justice pathway starting with the sentence of the court and extending out to a period of intensive treatment while in custody and effective aftercare to support the integration of offenders back into the community on release (TNA: HO 383/219; PCOM 9/665). In their Report *The After-Care and Supervision of Discharged Prisoners* (Home Office 1958) the

Advisory Council on the Treatment of Offenders recommended the introduction of compulsory after-care and supervision for long-term prisoners. This was based upon a longstanding belief that this cohort of offenders had a special need for '*guidance and help on release*' to reverse the ill effects of prison institutionalisation. This logic was widely accepted and provision for compulsory after-care was included in the *Criminal Justice Act 1961* but never activated owing to a lack of resources. Instead the focus of attention shifted back to voluntary aftercare arrangements and the Advisory Council for the Treatment of Offenders report *The Organisation of After-Care* (Home Office 1963b) broke new ground in calling for the reorganisation of probation and aftercare services in England and Wales (Newburn 2003a p.133). Moreover, the growing use of parole in America, Canada and Australia had not gone unnoticed by British policy-makers and the issue of aftercare remained stubbornly on the political agenda for much of the 1960s. On the 28th October 1963 the Chairman of the Howard League of Penal Reform, Kenneth Younger wrote to the Home Secretary Henry Brooke to draw his attention to demeaning prison conditions and called upon the Home Office to embrace '*an "open door" policy in the penal field. By this we mean the release on licence and under supervision of prisoners serving 12 months or over at a time which might be determined by the penal authorities but might, in suitable cases, be quite early*' (as cited in LSE Archive and Special Collections: Morris T/6). A short while later the *Murder (Abolition of Death Penalty) Act 1965* would help to focus attention on the treatment of prisoners serving long determinate sentences and mandatory life sentences. During the passage of the Bill Lord Dilhorne, a former Lord Chancellor and Lord Parker, the sitting Lord Chief Justice, moved an amendment to the Bill seeking to grant the Home Secretary new powers to release prisoners serving long determinate sentences once they had spent five years in custody (Hansard: HL Deb 05 August 1965 vol269 cc405-25). While these amendments never made it onto the statute book, the government did commit to a review of long-term determinate

sentence prisoners with a view to returning to Parliament with proposals in the not too distant future.

Each of these concerns must be considered contributory factors in the emergence of parole in England and Wales but what is particularly striking is the extent to which these considerations were located within a wider narrative bound up with prevailing justifications for punishment, particularly the therapeutic methods associated with the rehabilitative ideal. Since the late Nineteenth Century, the arc of penal policy had been towards the rehabilitation and treatment of the offender and this was reflected in the highly influential statement of purposes included in the Gladstone Committee report,

We think that the system should be made more elastic, more capable of being adapted to the special cases of individual prisoners; that prison discipline and treatment should be more effectually designed to maintain, stimulate or awaken the higher susceptibilities of prisoners to develop their moral instincts, to train them in 'orderly and industrial' [sic] habits, and whenever possible to turn them out of prison better men and women, both physically and morally, than when they came in... It may be true that some criminals are irreclaimable... but... the great majority of prisoners are ordinary men and women amenable, more or less, to all those influences which affect persons outside (HMSO 1895, para. 25).

Over time this rehabilitative focus had become increasingly modernist in its orientation and infused with the prevailing belief that science and technology could improve the delivery of public services (see for example Radzinowicz 1999; Home Office 1959). Perhaps the leading exponent of this view was the sociologist and parliamentarian, Baroness Barbara Wootton. In the nineteenth Clarke Hall lecture, *Contemporary Trends in Crime and its Treatment*, Baroness Wootton (1959) set out the case for a 'forward looking' approach to punishment in the following terms, *'the treatment of offenders thus enters the category of human actions which are at least potentially rational and scientific. By careful observation of past experience, empirical generalisations can be formulated which become themselves the basis*

for more successful future action (1959 p.19). Parole was attractive within this context because it gave administrative expression to high-level normative ideals that favoured indeterminate sentences and the personalisation of punishment. Put another way, one can see this as a mutually reinforcing methodology that linked high-level policy goals to administrative action; inmates differed in their response to ‘treatment’ and this necessitated individualized doses of incarceration. This personalisation of punishment required that a degree of indeterminacy was built into custodial sentences (both determinate and indeterminate) to allow for the early release of suitable candidates and extended periods of detention for those requiring more intensive ‘support’. What is more, an expertly administered system of release on licence, premised upon rigorous selection, had the potential to reinforce the reformatory value of prison and guard against executive abuse of absolute indeterminacy.

One can trace the development of this line of reasoning through a series of highly influential commentaries on crime and punishment in the early 1960s. In a radio broadcast on the 15 February 1962, and subsequently published by *The Listener* under the title *Indeterminate Prison Sentences*, Rupert Cross, then a Lecturer in Law at Oxford University, called for reform of prison sentences along the following lines; ‘*I want to suggest that every sentence of imprisonment for more than six months should be indeterminate. My suggestion is that...the Prison Commissioners (or some body of persons acting on their behalf) should have power to release the prisoner after a much shorter period if they consider the case to be a suitable one for an early release*’ (1962 p.289). Cross explicitly noted that the, ‘*individualization of punishment is the current demand*’ (1962 p.289) and questioned the ability of the sentencing judge to adequately predict a prisoner’s response to rehabilitation while in prison. Surely it was better, Cross argued, that the executive with access to real time information on a

prisoner's progress and prospects on release should be able to vary the sentence accordingly? Nigel Walker, then a Reader in Criminology at Oxford, expanded further upon this theme in a broadcast on the 28 June 1962. A lifelong supporter of indeterminate sentencing Walker was particularly critical of a sentencing regime he perceived as making it, '*as difficult as possible for methods of disposal to be reviewed and corrected in the light of the offenders reactions to his treatment*' (Walker 1962 p.1100). In its place Walker endorsed the creation of a 'Supervision and Custody Board' with the power to grant, '*earlier release under supervision to those who seem ready for it*' (1962 p.1100). Finally, in his article *Alternatives to Determinate Sentences* Eryl Hall Williams, then a Reader in Criminology at the LSE, traced the emergence of indeterminacy in British penal policy and reflected upon the sentencing reforms advocated by Walker and Cross (1964). Of particular note, Hall Williams questioned the practicability of the schemes outlined above and cast doubt on the track record of the Home Office in identifying the 'right moment' for release. Accordingly, Hall Williams favoured a rather more modest package of reform based upon the creation of a Sentence Review Board able to review and amend the original sentence of the court as new information came to light;

Under the system proposed, it would be open to the Home Secretary to apply to the Sentence Review Board for the review of the sentence of anyone detained in custody before two-thirds of the sentence had expired. The Review Board would be able to alter the sentence so as to permit earlier release. This might obviate the necessity to change the two-thirds rule [remission]. But the appropriateness of the rule should certainly be reviewed in any general reorganisation (1964 p.60).

In each of these contributions, one can detect a clear nervousness about the introduction of 'absolute indeterminacy' into British law and a desire to establish a flexible system of punishment consistent with the principles of individual liberty and the rule of law. Commentators differed on how best to achieve these objectives, but it is clear that by 1964

support for a limited system of indeterminate sentencing was gaining traction within penological circles. However, it was not until the work of the Longford Committee that these various policy prescriptions began to coalesce into a workable programme of reform with political impetus (Labour Party 1964a). The Study Group, chaired by Lord Longford, was one of several policy reviews established to prepare the Labour Party for government and enjoyed a broad term of reference, *'to advise the Labour Party on the recent increase in recorded crime, the present treatment of offenders, and the new measures, penal or social, required both to assist in the prevention of crime and to improve and modernise our penal practices'* (Labour Party 1964a p.1). Published on the 15 July 1964, their landmark report, *Crime: A Challenge to Us All* made sixty-six recommendations on issues as varied as the re-organisation of the Home Office, the demolition of Victorian prisons and transfer of responsibility for juvenile offenders to the Family Courts (Labour Party 1964a). Critically, the Committee would advocate the introduction of a system of parole for prisoners serving determinate sentences. The personal papers of the late Professor Terrance Morris, now held at the London School of Economics, offer a fascinating insight into the development of parole within the Longford Committee's deliberations (LSE Archive and Special Collections: Morris T/6; T/7). The records reveal that parole emerged relatively late in the Committee's proceedings. In March 1964, four months prior to publication, Dr Morris (as he then was) circulated a memorandum entitled *Ten Points* to the study group calling, amongst other things, for the introduction of parole as part of *'the progressive introduction of the indeterminate sentence, and the ultimate abolition of the determinate sentence'* (LSE Archive and Special Collections: Morris T/6). This was discussed at a meeting of the Committee on the 10th March 1964 prompting a wide-ranging debate on the political merits of indeterminate sentencing. It was agreed that Lord Gardiner would prepare a positioning piece on parole for further discussion by the Committee and a note entitled *A Parole System* was

drafted later that same month (LSE Archive and Special Collections: Morris T/6: RD.733/March 1964). For completeness, this note can be found in full below at Figure 3.3.

Insert Figure 3.3

Lord Gardiner's note 'A Parole System' to the Study Group on Crime Prevention and Penal Reform, March 1964

Source: LSE Archive and Special Collections: Morris T/6,

The language and rationale articulated by Lord Gardiner was adopted almost wholesale in the final report. In *Crime: A Challenge to Us All*, the Longford Committee argued that, '*[p]rison, in short, should always be the last resort*' (Labour Party Study Group 1964a p.47) and since its use should be consistent with the aims of rehabilitation, '*we doubt the value of keeping men in prison after they have learned their lesson; at this point the cost of continuing to keep them in prison is no longer justified*' (Labour Party Study Group 1964a p.43). Accordingly, the Committee encouraged a future Labour government to establish a Parole Board with the power to release suitable prisoners on licence before the end of their prison sentence;

Parliament has provided that borstal sentences shall not be for more than two years but that the Prison Department may release any Borstal trainee after he has served at least a quarter of this period. We recommend that the Home Secretary should appoint a Parole Board with two or more representatives of the judiciary upon it with similar powers in relation to any sentence of imprisonment (Labour Party Study Group 1964a p. 43).

The Report is significant for a number of reasons. One can see the genesis of what has often been described as the 'recognisable peak' argument (Hood and Shute 2002; Shute 2003), a rhetorical device deployed by policy makers throughout the passage of the Criminal Justice Bill 1966/1967 to justify a parole system premised upon individualised treatment. Moreover, many members of the Longford Committee would go on to hold senior positions within the Wilson Government following Labour's victory at the 1964 General Election. Lord Longford

served as the Lord Privy Seal, a position that enjoyed Cabinet rank. Gerald Gardiner was appointed Lord Chancellor in 1964; Sir Frederick Elwyn Jones would serve as Attorney General and latterly Lord Chancellor, while Alice Bacon joined the Home Office as Minister of State and sat on the Labour Party National Executive (Windlesham 1989 p.106).

A System of Parole Takes Shape: The Adult Offender White Paper

On the 1st July 1965 the Cabinet of the new Labour Government met to agree the legislative programme for the 1965/66 parliamentary session (TNA: CAB 134/2001). Amongst the beneficiaries of this planning meeting was Sir Frank Soskice. The Home Secretary was authorised to introduce a Criminal Justice Bill in the next parliamentary session giving legal effect to various initiatives inherited from the outgoing Conservative government (TNA: CAB 134/2001). This was quickly supplemented by a number of Labour initiatives developed while in opposition. Cabinet Office records indicate that on the 2 August 1965 Soskice wrote to the Cabinet Home Affairs Committee seeking approval to augment the Bill with measures to abolish preventative detention and introduce a system of parole for medium to long-term adult prisoners (TNA: CAB 134/1997; CAB 134/2001). The Home Secretary's memorandum explained his intentions in the following terms with more than a sprinkling of Longford Committee vernacular thrown in for good measure,

Experience has shown that many long term prisoners reach a peak in their training, at which they are likely to respond to generous treatment, but may go downhill if kept in prison for the full term of the sentence. I propose, therefore, to institute a parole system permitting early release, subject to conditions and to liability to recall to prison, for selected medium and long-term prisoners. Apart from the benefit to the public which should ensue from enabling these prisoners to lead a more useful life while on parole, the system should also result in some saving of money, prison staff and space (TNA: CAB 134/1997).

The paper trail emerging from the Home Affairs Committee provides a rich and fascinating insight into the chronology of policy development at this time. The Home Office had originally intended to introduce a rather modest Criminal Justice Bill in the 1965/66 parliamentary session without the publication of a White Paper (CAB 134-1997; TNA: CAB 134/2001). Parole was to be the centrepiece of this Bill but a decision on the introduction of parole was deferred until September 1965 while the Home Office consulted the Lord Chief Justice and Scotland Office. When the issue returned to the Home Affairs Committee on the 22 September 1965, Soskice was able to update the Committee and strengthen his case for reform. Consultation with the formative Royal Commission on the Penal System and senior judiciary was encouraging (TNA: CAB 134/2001). Moreover, a national conference with Prison Governors in August 1965 had indicated strong support for the initiative as a useful tool of discipline and control, *'every Governor I have consulted has emphasised that if he could hold out to prisoners in his charge the hope of an earlier release on parole, subject to licence, it would very greatly strengthen his hand in influencing them towards improved behaviour and in conducting his prison'* (TNA: CAB 134/2001). The Home Affairs Committee duly granted policy approval for the introduction of a system of release on licence, but by November 1965 it was clear that the Criminal Justice Bill had lost its place within the Parliamentary timetable and would be held over to a future session (TNA: CAB 134/1997). The political and economic context was simply not conducive to the wide-ranging legislative programme Labour had intended to implement while in opposition and criminal justice reform was a significant casualty of wider power dynamics. The Wilson government commanded a wafer-thin majority in the Commons and this precarious position sapped Labour's reforming zeal, stifled ambition and necessitated prioritisation. In particular, the early years of the Wilson government were dominated by efforts to avert the devaluation of sterling (Pimlott 1992). As the diaries of Crossman and others reveal this single issue

consumed more of the government's time and political capital than any other issues (Crossman 1976). Bugged down in the Commons and exposed on a variety of economic flanks, criminal justice reform was low down the list of government priorities. As the prospects of a Criminal Justice Bill dimmed the Home Office changed tack and sought permission first from the Cabinet Home Affairs Sub-Committee in November 1965 (TNA: CAB 134/1997) and then from Cabinet to publish a White Paper entitled the Adult Offender (TNA: CAB 128/39/83). In the minutes from Cabinet it was noted that,

The Home Secretary said that the Government might be liable to incur criticism from liberal opinion if they did not soon make a distinctive contribution to the reform of the penal system; and, since there was no immediate prospect of introducing a Criminal Justice Bill, it was proposed that a White Paper on the Adult Offender should be published as a counterpart to the White Paper on young offenders which had been published in August. The new White Paper should set the government's main proposals for legislation against the background of current thinking and action on penal problems. The central feature of these proposals was the introduction of a system of parole which would enable long-term prisoners whom there seemed to be some prospect of reclaiming to return to society after they had served a third of their sentences, but subject to recall to prison for a further third if they misbehaved (TNA: CAB 128/39/83).

The White Paper received full Cabinet approval on the 2nd December 1965 (TNA: CAB 128/39/83) and was published as *The Adult Offender* later that same month (Home Office 1965). The centrepiece of the government's plan was a commitment to introduce a system of parole for adult offenders. The Home Office described *The Adult Offender* as a publication 'for the purposes of discussion' (1965 p.3) and while the proposals for parole were generally well received the White Paper attracted some criticism for a conspicuous lack of detail. In a detailed response to the Home Office the Magistrates Association indicated that while they were broadly supportive of a system of parole, 'our chief criticism of the White Paper is that it is too vague' (TNA: PCOM 9/665) and called upon the government to provide more detail of how the scheme would work in practice. This probably reveals as much about the culture

and character of the Home Office at this time as it does about the pace of policy development. While some elements of the proposal were open for discussion, in reality, the administrative framework for a system of parole was almost fully formed by December 1965 (see TNA: PCOM 9/665; PCOM 9/2248; HO 383/219). We know this because on the 10th September 1965, Brian Cubbon, then Head of C1 Division in the Criminal Department, wrote to the Prison Department setting out a number of exploratory questions the Home Secretary would need clarity on in advance of any parliamentary statement on the White Paper (TNA: PCOM 9/665). This included the categories of offender who would be eligible for parole, the point within a sentence when parole would take place, the likely numbers on release and the anticipated quota of probation staff required to administer the system. In a detailed response dated 1 October 1965, Norman Storr, an Assistant Secretary in the Prison Department, set out the present state of thinking (TNA: PCOM 9/665). This paper trail is significant because it represents one of the earliest surviving records that describes the proposed system in detail, but also because it is extremely close in form and substance to the proposals that were eventually included in the draft Criminal Justice Bill published in December 1966. First, Mr Storr confirmed that all prisoners serving determinate sentences would be eligible for parole after serving 12 months or one third of their sentence, whichever was the longer. An early attempt to map the prisoner journey from the PED (parole eligibility dates) to EDR (earliest date of release) and LDR (latest day of release) is set out at Figure 3.4 below.

Insert Figure 3.4 Home Office Computation of Parole Release Eligibility Source: TNA: HO 391/433

Second, civil servants were keen to impress upon the Home Secretary that eligibility for parole would not be synonymous with release. In other words, parole would not be automatic and all release decisions would be at the discretion of the Home Secretary, '*selection for*

parole, as contrasted with eligibility, will be on the positive qualification of a prisoner and this qualification will be acquired by his own conduct and attitude during the custodial part of his imprisonment. The criterion for selection will be the likelihood of his not resorting to further crime if released on parole' (TNA: PCOM 9/665). More than any other issue the discretionary nature of parole was seen as central to retaining the support of the courts and general public who, it was assumed, would not look favourably upon the automatic release of thousands of prisoners each year. Third, prisoners would be released on licence under the supervision of a probation officer. Fourth, while on licence prisoners would be at risk of recall for the remainder of the sentence subject to remission. Fifth, while it was impossible to give precise statistics the Home Office Research Unit estimated that roughly 3,000 and 3,500 prisoners would immediately qualify for parole with approximately 400 expected receiving a positive release recommendation (TNA: PCOM 9/665).

To all intents and purposes, this memorandum set out the fundamental planks of the parole system that would be set out in the *Criminal Justice Act 1967*. Like many liberalising measures from this era, parole is commonly associated with the progressive reforms of Roy Jenkins (Allen 2004 p.78; Williams 1972). Here we have clear evidence that its origins lay firmly in the Home Office of Frank Soskice and his Permanent Secretary Sir Charles Cunningham, enthusiastically supported, it must be said, by members of the Longford Committee like Alice Bacon and Lord Longford who had by now risen to key positions in government. Indeed, given the detail expressed in these records, it is almost certain that the proposed scheme had been in gestation far longer, perhaps in preparation for a likely Labour government or as part of ongoing policy thinking within the Home Office. Certainly, the Home Office Research Unit had already made several scoping studies of the factors related to reconviction along with an unpublished study, *First and Second Prison Sentences with*

special reference to parole (TNA: HO 291/727) which appears to have been undertaken in the early 1960s.