

IV

Domestic Politics

For the most part, Maxwell Fyfe acquitted himself well as Home Secretary. To nobody's surprise, he was a regular speaker in the House of Commons and was heavily involved in Cabinet committee work.¹ In the commons he was responsible for ensuring that a variety of sometimes tedious, sometimes sensitive, and often quite complicated issues—notably the problems arising from the East coast floods at the end of January 1953, the reversal of the predecessor government's decision that pubs in new towns be State-owned and -operated, the Queen's coronation that June, and the introduction of commercial television—did not turn into political disasters. Controversies over law and order he invariably, and understandably, handled with considerable confidence. In November 1952, a private member's bill was introduced into the commons proposing the reintroduction of corporal punishment (MPs were allowed a free vote). The bill's supporters argued that since the enactment of section 2 of the Criminal Justice Act 1948, which outlawed corporal punishment for all criminal offences apart from those committed in prisons, there had been a significant increase in violent crime. Maxwell Fyfe demonstrated that, since 1948, there had in fact been a reduction in the incidence of some of

¹ See A Seldon, *Churchill's Indian Summer: The Conservative Government, 1951–55* (London, Hodder & Stoughton, 1981) 91; DJ Dutton, 'Fyfe, David Patrick Maxwell', *ODNB* (www.oxforddnb.com).

the crimes that had previously been punishable by flogging. Less than four and a half years had passed since the law abolishing corporal punishment had come into operation, he observed; it might be 'premature to reverse [its] provisions' before 'there has been more time to assess the effects of the whole scheme introduced ... for dealing with different categories of offenders'.² More worryingly, he argued, it was far from clear where the law would end up if there were a reversal. If passed, the bill would make any violent misdemeanour subject to corporal punishment, no matter what the misdemeanour might be: 'the subject is simply not susceptible of over-simplified treatment', he insisted, for

it would not be possible to carry out the intention of those who have introduced the Bill by any general provision on the lines ... proposed.... If we were going to legislate on this problem, I think that it would be necessary to specify the particular offences for which corporal punishment could be awarded and that it would be necessary to consider very carefully what these offences would be.³

The bill was defeated by 159 votes to 63.

A. HOMOSEXUAL OFFENCES

That Maxwell Fyfe handled law and order issues confidently does not mean, however, that he always handled them well. As Home Secretary, he adopted positions on the imprisonment of homosexual offenders and on the use and the retention of the death penalty which were unequivocal but controversial. In the early-1950s, homosexual acts were criminal offences. The popular press was wont to run

² HC Deb 13 Feb 1953, vol 511, col 787.

³ *ibid*, col 789.

sensationalist stories about prosecutions—John Gielgud’s and Alan Turing’s cases are the ones best remembered today—and, indeed, about homosexuality generally. The sensationalism was partly grounded in concerns about homosexuals in government and civil service being an especial risk to the national interest because susceptible to blackmail—concerns likely attributable to the defections of Donald Maclean and Guy Burgess to the USSR in 1951, but possibly also intensified by the early-1950s US ‘Lavender Scare’ campaign for the removal of homosexuals from federal government.⁴ It was also based on the belief that the laws prohibiting homosexual acts were either insufficiently strict or not being enforced properly.

In November 1953, in a speech to the Coningsby Club (a Conservative society for Oxbridge graduates), Maxwell Fyfe insisted that the latter view was inaccurate: statistics showed ‘a serious increase—between four-fold and five-fold’—in prosecutions for homosexual acts in the years following the Second World War.⁵ The following month, when asked in the commons if it was true that senior police officials had complained of lacking adequate legal powers to deal with homosexual offences, he batted the question away: there had been no complaints from the police, and there was ‘no reason to think that the[] penalties are inadequate’.⁶ As Home Secretary he had, he continued, ‘the duty to protect the people, especially

⁴ See J Weeks, *Coming Out: Homosexual Politics in Britain from the Nineteenth Century to the Present* (London, Quartet, 1977) 159–60.

⁵ ‘Notes for the Secretary of State’s Speech at the Coningsby Club, 19th November, 1953’, National Archives, HO 45/24955, C576195. (The file contains two versions of the speech—a draft dated 17 November and a corrected version. Quotations are from the corrected version.)

⁶ HC Deb 3 Dec 1953, vol 521, col 1296; also ‘Notes for the Secretary of State’s Speech at the Coningsby Club’, *ibid* (‘It is sometimes suggested that the existing law does not provide the courts with adequate

the youth, of this country”⁷ (a *Daily Mail* headline the following morning).⁸ This meant pursuing prosecutions for homosexual acts vigorously: ‘even if imprisonment fails to secure any improvement in the homosexual’s character and behaviour’, he maintained, ‘it serves to protect the public by the segregation of the offender’.⁹ When asked around this time by an American interviewer whether the British should outlaw the Communist Party, his wry answer was that not only would one expect a system committed to ‘even-handed justice’ to allow Communists the same freedoms as all other citizens, but that tolerance is the better legal response to some forms of behaviour deemed offensive and potentially dangerous, because otherwise the behaviour is likely to be driven underground.¹⁰ This reasoning had not made its way into his parliamentary observations on homosexuals—from whom, he was adamant, the public needed protecting,

because ... in general [they] are exhibitionists and proselytisers and are a danger to others, especially the young, and so

powers for dealing with these offences, but I do not think that this suggestion can be sustained. For the most serious offences of this kind, the maximum penalty is life imprisonment, for attempts to commit such offences ten years, while for acts of gross indecency, and for importuning, it is two years’ imprisonment’).

⁷ HC Deb 3 Dec 1953, vol 521, col 1299.

⁸ R Camp, ‘Fyfe: My Duty to Guard Youth: “Vice will be Punished so Long as I Hold Office”’, *The Daily Mail* 4 Dec 1953, p 5.

⁹ ‘Notes for the Secretary of State’s Speech at the Coningsby Club’ (n 5) (handwritten addition to the corrected version).

¹⁰ ‘Interview with Sir David Maxwell Fyfe, England’s Home Secretary: How Britain Handles Communists’, *US News & World Report* 15 Oct 1954, pp 86–90 at 87. See also ‘Liberty in A Cold War’ [report of address by Maxwell Fyfe to US press correspondents in London], *Washington Post* 15 Feb 1953, B4 (‘The object of our way of life ... is essentially practicing our traditions of tolerance’).

long as I hold the office of Home Secretary I shall give no countenance to the view that they should not be prevented from being such a danger.¹¹

This statement is hardly Maxwell Fyfe's finest hour. He did not, however, let his personal opinion cloud his political judgement. In February 1954, in a memorandum to the Cabinet, he reiterated his view that there was no need to alter the law relating to homosexuality¹² (to one Tory backbencher who maintained that there was such a need, he is said to have responded that he had no intention of 'going down in history as the man who made sodomy legal').¹³ But he also conceded that there had 'been a serious increase in homosexual offences', and that there existed 'a considerable body of opinion which regards the existing law as antiquated and out of harmony with modern knowledge and ideas, and ... represents that unnatural relations between consenting adults ... should no longer be criminal in this country'.¹⁴ Ordering an independent inquiry into the state of the law relating to the treatment of homosexuals could, he noted, prove 'embarrassing' if it resulted in legal reform recommendations.¹⁵ 'On the other

¹¹ HC Deb 3 Dec 1953, vol 521, col 1298.

¹² D Maxwell Fyfe, 'Sexual Offences: Memorandum by the Secretary of State for the Home Department and Minister for Welsh Affairs', C (54) 60 (Secret), 17 Feb 1954 [signed 16 Feb], National Archives, CAB 129/66 ('I do not myself believe that there is any case for altering the law relating to homosexuality').

¹³ See R Rhodes James, *Robert Boothby: A Portrait of Churchill's Ally* (London, Viking, 1991) 369–70; K Gleeson, 'Discipline, Punishment and the Homosexual in Law' (2007) 28 *Liverpool Law Review* 327, 330–31; D Kynaston, *Family Britain 1951–57* (London, Bloomsbury, 2009) 370.

¹⁴ 'Sexual Offences: Memorandum by the Secretary of State' (n 12) 2. See also anon, 'Case for Inquiry on Homosexuality Law', *The Observer* 21 Feb 1954, p 4.

¹⁵ 'Sexual Offences: Memorandum by the Secretary of State' (n 12) 3.

hand', he continued, the government would very likely face 'strong criticism' if an inquiry was not set up (especially since there was likely to be an inquiry into the state of the law relating to prostitution), and 'a dispassionate survey by a competent and unprejudiced body might be of value in educating public opinion, which at present is ill-informed and apt to be misled by sensational articles in the press'.¹⁶ On balance, he concluded, there should be an independent inquiry.

When the Cabinet met the next week, it deferred deciding on the matter.¹⁷ The following month it did the same again, and invited Maxwell Fyfe 'to submit a memorandum summarizing the arguments for and against legislation designed to restrict publication of the prosecutions for homosexual offences'.¹⁸ Maxwell Fyfe's memorandum, written at the end of March, advised against introducing legislation to restrict the press, but also reiterated that the government might be foolish to undertake any sort of reform in this area if there were no inquiry first. Were there to be legislation without an inquiry,

it would be said that the Government had not merely declined to hold an inquiry, in spite of the great and unexplained increase in such offences and of the fact that the existing law was regarded as unsatisfactory by many responsible people, but were endeavouring to suppress the publication of evidence which showed the need for an inquiry.¹⁹

¹⁶ *ibid.*

¹⁷ Cabinet minutes, CC (54) 11th Conclusions, 14 Feb 1954, National Archives, CAB 128/27.

¹⁸ Cabinet minutes CC (54) 20th Conclusions, 17 March 1954, National Archives, CAB 128/27.

¹⁹ D Maxwell Fyfe, 'Restrictions on the Reporting of Proceedings for Homosexual Offences', C (54) 121 (Secret), 1 April 1954 [signed 31 March], National Archives, CAB 129/67.

On 28 March, *The Sunday Times* had published a leader—prompted by what the editors considered unfair convictions in the Montagu-Wildeblood indecency trial—which concluded that ‘[t]he case for a reform of the law as to acts committed in private between adults’ was now ‘very strong’ and that the ‘[t]he case for authoritative inquiry’ was ‘overwhelming’.²⁰ The minutes of the Cabinet meeting of 15 April report that Maxwell Fyfe ‘felt obliged to press his earlier proposal for the holding of an independent enquiry into the law relating to ... homosexual offences’.²¹ This time, the entreaty was not to no avail: ‘[t]he Cabinet ... [a]greed that a Departmental Committee should be appointed’.²² That Committee—the Wolfenden Committee—was appointed by Maxwell Fyfe in August 1954. In September 1957, it recommended that homosexual practices between consenting adults in private should no longer be a crime.²³ The recommendation eventually became law under section 1 of the Sexual Offences Act 1967.

²⁰ ‘Law and Hypocrisy’, *The Sunday Times* 28 March 1954, p 6. See M Kirby, ‘Remembering Wolfenden’ (2007) 66 *Meanjin* 127, 127 (‘[E]stablishment of the [Wolfenden] committee was probably the direct result of an article, “Law and hypocrisy”, published in *The Sunday Times* in March 1954’). (On the path from Wolfenden to Kirby’s own work in the mid-1960s (for the Australian Council for Civil Liberties) on the reform of New South Wales’s laws relating to homosexual acts, see D Dellora, *Michael Kirby: Law, Love & Life* (Melbourne, Penguin, 2012) 102–05.)

²¹ Cabinet minutes, CC 29 (54) 29th Conclusions, 15 April 1954, National Archives, CAB 128/27.

²² *ibid.* By this time Harold Macmillan, then the Minister of Housing and Local Government, had apparently joined with Maxwell Fyfe in making the case for an inquiry: see JD Bengry, *The Pink Pound: Commerce and Homosexuality in Britain, 1900–1967* (PhD dissertation, University of California at Santa Barbara, Department of History, 2010) 157.

²³ *Report of the Committee on Homosexual Offences and Prostitution* (Cmnd 247, 1957) para 62.

Maxwell Fyfe has often been depicted as a homophobic Home Secretary who would have preferred the law to stay as it was.²⁴ To seek to challenge this depiction would be to set out on a fool's mission.²⁵ Yet the canvass accommodates at least a little bit of shading. He turned out, in short, to be a facilitator of legal reform *malgré lui*. From the spring 1954 Cabinet minutes and memoranda there emerges a Home Secretary who—no doubt guided by his instincts as to what would be the least politically fractious way forward—played a significant role in clearing the path towards legal change, and who, had he not distinguished his personal views from political choice, might have ensured that the reform process took longer and proceeded less smoothly than it did.²⁶

²⁴ See eg A Grey, *Quest for Justice: Towards Homosexual Emancipation* (London, Sinclair-Stevenson, 1992) 22; Weeks, *Coming Out* (n 4) 239–40; J Campbell, *Roy Jenkins: A Well-Rounded Life* (London, Cape, 2014) 182 ('[T]he most illiberal Home Secretary since the 1920s').

²⁵ Not the least because the report of the Wolfenden Committee altered his views not a jot: '[t]he most far-reaching and widely discussed of the Committee's proposals is, of course, that homosexual behaviour in private between consenting adults should no longer be a criminal offence.... Her Majesty's Government do not think that the general sense of the community is with the Committee in this recommendation.... [F]or the State to remove the sanctions of the criminal law from homosexual behaviour, even between consenting adults in private, ... would be tantamount to suggesting that there is nothing socially harmful in such behaviour and would inevitably have as its consequence that young people would be encouraged to indulge in it, and that society would be corrupted. I believe that this is not an argument which can be lightly dismissed'. HL Deb 4 Dec 1957, vol 206, cols 772–73 (Lord Kilmuir).

²⁶ Maxwell Fyfe has been branded a colonialist as well as homophobic: see eg C Waters, "'Dark Strangers" in our Midst: Discourses of Race and Nation in Britain, 1947–63' (1997) 36 *Journal of British Studies* 207, 215. That colonialism should be used as a term of abuse Maxwell Fyfe found 'difficult to understand' (*The Commonwealth*

B. CAPITAL PUNISHMENT

Were Maxwell Fyfe alive today, he would in all likelihood be very surprised that his part in the prelude to Wolfenden should be considered noteworthy. Compared with some of his other initiatives and accomplishments as Home Secretary, the episode would have been, for him, routine political fare. But the second notable imbroglio from his years as Home Secretary, the controversy occasioned by his attitude towards the death penalty and the use of the royal prerogative, was one of the tougher challenges in his political career.

Statesman in International Politics (Toronto, University of Toronto Press, 1958) 21); so far as he was concerned, colonialists are essentially people who do the right thing by their dependents (see *ibid* 9). There was certainly built into this belief the idea that the British, with their 'special heritage' (*ibid*), are somehow set apart from other citizens within the Empire. He was in no doubt, furthermore, that people from the Dominions should not have an automatic right to British citizenship (see HC Deb 13 July 1948, vol 453, col 1027) and that it would be economically and logistically unwise not to restrict migration to the UK from the Commonwealth (see HL Deb 19 March 1962, vol 238, cols 421–26). In the late-1940s, he spoke publicly of how he was 'proud' that the country 'impose[d] no colour bar restrictions' (HC Deb 7 July 1948, vol 453, col 403). But in Cabinet in February 1954, he advocated a reversal of this policy (Cabinet notebooks CC (54) 7, 3 Feb 1954, National Archives, CAB 195/11/90, agendum 4; see also Kynaston, *Family Britain* (n 13) 367). Two years later, he presented to Cabinet a report noting the rapid rise in non-white immigration between 1953 and 1955 and recommending legislation restricting migration to Britain from the entire Commonwealth: 'Colonial Immigrants: Report of the Committee of Ministers', CP (56) 145, 22 June 1956, National Archives, CAB 129/81/45. (Cabinet declined to implement the report, primarily because implementation would have restricted white as well as non-white migration from Commonwealth countries: Cabinet minutes CM (56) 48th Conclusions, 11 July 1956, National Archives, CAB 128/30/272, pt II, agendum 10.)

In 1948, Maxwell Fyfe stated in the commons that the case for retaining the death penalty simply

comes down to ... the question whether or not it is a deterrent.... For the first five or ten working years of my life, I came into contact at short intervals with the criminal population of Lancashire.... I believe, as strongly as I can hold a belief, that with the ordinary run of these fellows, the thing that keeps them from giving an old lady a crack over the head, or prevents them from using violence when it is difficult to get away, is the fear that if they go too far then 'the 8 o'clock walk' may well await them.²⁷

Worries about irreversibility held no sway with him: there is, he insisted, 'no practical possibility' of an innocent person being put to death.²⁸

The following year, a man named Walter Graham Rowland was sentenced to death for murdering a woman with a hammer. Around the time of sentencing, another man, David Ware, confessed to the same murder. But Ware subsequently retracted his confession, and Rowland was hanged. In 1951, Ware was imprisoned for attempting to murder another woman by the same method. Rowland had always protested his innocence. Might there have been a miscarriage of justice? Maxwell Fyfe, now Home Secretary, thought not.²⁹ He did concede, however, that the question of whether evidence in Rowland's favour had been withheld at the time was worth looking into, and he said that he would do so.³⁰ When questioned again, the

²⁷ HC Deb 14 April 1948, vol 449, cols 1080–81. See also HL Deb 9 July 1956, vol 198, cols 579–80 (Lord Kilmuir) ('It is the murders which have not been committed that matter.... I believe that the death penalty is a uniquely effective deterrent').

²⁸ HC Deb 14 April 1948, vol 449, col 1077.

²⁹ HC Deb 6 Dec 1951, vol 494, col 2553.

³⁰ *ibid*, col 2554.

following March, about ‘what steps he propose[d] to take, in view of grave doubts that have arisen in recent cases, to ensure that innocent men are not hanged’,³¹ he supplied a terse written reply, reiterating what he had said in 1948: ‘I cannot accept the suggestion that innocent men are hanged in this country and I know of no foundation for any doubts which are alleged to exist’.³²

This response was even less convincing in 1952 than it had been in 1948. In December 1949, Beryl Evans and her one year-old daughter were found strangled in a house in west London. The husband and father, Timothy Evans, was charged with murder, primarily on the basis of his own statements and the testimony of the family’s neighbour, John Christie. Evans at first confessed to the murders but then recanted and alleged that Christie was the murderer. Christie was a witness for the prosecution. The jury found Christie, who had a criminal record but who had also served in the army and the police force, to be the more credible of the two. Evans was hanged in March 1950. Three years later, the body of Christie’s wife and three other bodies were found strangled at Christie’s home (two skeletons were later found buried in the garden). Christie unsuccessfully pled insanity, and was sentenced to death in June 1953. In the course of the trial, he testified to murdering Beryl Evans. Maxwell Fyfe appointed John Henderson QC to conduct an inquiry into, and produce an official report on, Timothy Evans’s execution. The inquiry was held in secret and completed in just five days, and the report—published within a fortnight of the inquiry having been announced—concluded that

³¹ HC Deb 13 March 1952, vol 497, col 146W (Mr Sydney Silverman).

³² *ibid.*, col 146W.

Timothy Evans's guilt was beyond doubt and that Christie's confession to the murder of Beryl Evans was a lie.³³

Timothy Evans received a posthumous pardon in 1966. But in 1953, Maxwell Fyfe stood steadfastly by Henderson's report. He refused to place in the commons library a transcript of the evidence Henderson had gathered,³⁴ and was unsympathetic to requests that a fresh (and, this time, public) inquiry into Evans's case be set up.³⁵ Here was a Home Secretary who was insistent that innocent citizens could never be executed, and who had hurriedly set up and who defended to the hilt a private, hastily conducted inquiry which concluded 'that everything about the Evans case had been perfectly in order, that it was Evans who had lied and Christie, a convicted multi-murderer, who had told the truth'.³⁶ Aneurin Bevan—an archetypal Tory-baiter—denounced the Home Secretary for being

more concerned with defending the reputation of the member of the legal profession whom he appointed to conduct the inquiry than to defend the integrity of British justice, and far more concerned about that than he [wa]s to satisfy public opinion that justice has been done.³⁷

Maxwell Fyfe's resistance to the reintroduction of corporal punishment had bolstered his political reputation. His handling of concerns about capital punishment seemed to be diminishing it.

³³ See BP Block and J Hostettler, *Hanging in the Balance: A History of the Abolition of Capital Punishment in Britain* (Sheffield-on-Loddon, Waterside Press, 1997) 146–47.

³⁴ HC Deb 16 July 1953, vol 517, cols 2225–26.

³⁵ HC Deb 29 July 1953, vol 518, col 1479.

³⁶ Block and Hostettler, *Hanging in the Balance* (n 33) 148.

³⁷ HC Deb 29 July 1953, vol 518, cols 1483–84. See also HLA Hart, *Punishment and Responsibility: Essays in the Philosophy of Law* (Oxford, Clarendon Press, 1968) 89, 252–53.

Worse was to come. In November 1952, sixteen-year-old Christopher Craig murdered a police officer when he and his accomplice, nineteen-year-old Derek Bentley, were trying to flee the scene of a crime. Bentley had been apprehended, but Craig, who had a gun, was refusing to give himself up. Craig shot and wounded one of the officers—allegedly after Bentley shouted, ‘let him have it, Chris’—and when other officers then pursued Craig he fired further shots, one of which hit and instantly killed PC Sydney Miles. Craig and Bentley were simultaneously tried for murder, the prosecution’s case being that Craig willfully and deliberately took the life of PC Miles and that Bentley incited Craig to begin shooting and so was equally responsible in law. Craig was convicted of murder but, because he was only sixteen, was not sentenced to death. Bentley—who had shown no violence to any of the officers on the scene, who said that he did not know Craig had a gun and that he had uttered nothing before the shots resulting in PC Miles’s death were fired, and whose IQ score put him in the bottom 1 per cent of the population—was found guilty of murder by joint venture and sentenced to death. The jury added a recommendation for mercy.

The decision as regards mercy was for the Home Secretary rather than the judge. Maxwell Fyfe saw no reason to grant a reprieve, and Bentley was executed in January 1953.³⁸ The decision was extremely (though not universally³⁹) unpopular, and Maxwell Fyfe was

³⁸ He was given a royal pardon 40 years later. His conviction was quashed as unsafe by the Court of Appeal in 2001: *Bentley (Deceased)* [2001] 1 Cr App R 307.

³⁹ See Kynaston (n 13) 261–62.

subjected to intense political and public scorn.⁴⁰ ‘In the streets there were demonstrations, and the police guard on the Maxwell Fyfe flat in Gray’s Inn had to be doubled’, Heuston recounts.

Two hundred MPs, including ten ex-Ministers, signed a motion asking the Home Secretary to reconsider his decision. Maxwell Fyfe decided to give no public reason for the decision, and it was his alone, to allow the law to take its course. White-faced and silent, he was a grim sight on the front bench.⁴¹

A politician, Maxwell Fyfe observed in his memoirs, must have

conviction and courage ..., and when he has come to a decision ... he must be prepared for the unpleasant consequences ... and ... must hold his ground.... He must be prepared to face not only the jibes and attacks of his opponents, but also the embarrassment and unhappiness of his friends; ... and he must do all this in cold blood, and live through it for weeks, months, perhaps years.⁴²

This was possibly an oblique description of what he experienced. But why had he put himself in that position? For Maxwell Fyfe, the decision was not so much against Bentley as for a policeman who had served on the force for

⁴⁰ See Maxwell Fyfe’s own matter-of-fact account at Lord Kilmuir, *Political Adventure: The Memoirs of the Earl of Kilmuir* (London, Weidenfeld & Nicolson, 1964) 206–10.

⁴¹ RFV Heuston, *Lives of the Lord Chancellors 1940–1970* (Oxford, Clarendon Press, 1987) 168–69.

⁴² Kilmuir, *Political Adventure* (n 40) 6–7. Similarly for the lawyer: ‘he must be courageous. Arguing for an unpopular cause is never easy, and may be dangerous; but if there is nobody to undertake it there can be no true liberty’. Lord Kilmuir, ‘The Service of the Law’ (1958) 7 *University of Chicago Law School Record* 8, 9.

22 years, and for his widow and two children.⁴³ In later years, Maxwell Fyfe's own widow would try to cast more light on the matter:

His reasoning, as I remember it, was that, if a young man of Bentley's age got off because he went out on that kind of enterprise with an even younger man who did not hang, it would happen again. It would be an encouragement to similar exploits.... He felt strongly that you had to protect the police, if you did not want to arm them and he *very* much did not want to arm them! He felt all young men would take out someone slightly younger on a felonious enterprise armed with a gun, it would be a marvelous escape-hole for the guilty.⁴⁴

It is difficult to imagine that Maxwell Fyfe really did allow Bentley's sentence to stand because he feared that, were he to commute it, strategically minded would-be murderers would henceforth protect themselves against the death penalty by ensuring that armed minors accompanied them on their homicidal ventures. But then the supposition is hardly less fanciful than Maxwell Fyfe's own unequivocal insistence that imposing the death penalty on innocent people is a practical impossibility. There is certainly no doubt that he wanted the police properly protected, and that he considered a strict rule imposing the death penalty on anyone found guilty of murdering a police officer to be an important part of that protection.⁴⁵

⁴³ Kilmuir, *Political Adventure* (n 40) 207–08.

⁴⁴ Lady de la Warr, interview with Fenton Bresler, 21 Nov 1973, quoted in F Bresler, *Lord Goddard: A Biography of Rayner Goddard, Lord Chief Justice of England* (London, Harrap, 1977) 257.

⁴⁵ See also HL Deb 20 July 1965, vol 268, col 643 (Lord Kilmuir) ('From the number of criminals that I have known, seen, tried and whose cases I have considered, which means a very large number,

It seems reasonable to presume, furthermore, that doing right by the police would, for Maxwell Fyfe, have meant more than just protecting them. He was a great lover of ceremony and respecter of authority; his memoirs contain many a tribute to royalty, to country and to the pillars of the Conservative establishment (particularly to Winston Churchill). It is difficult to imagine him reaching a decision which police officers and Conservatives strong on law and order might have interpreted as apostasy. But presumption—speculation—is all this is. About Maxwell Fyfe's motivations in deciding to refuse clemency to Bentley we cannot really be sure.

I believe that hanging, the threat of the rope, is a deterrent to the professional criminal against arming himself with a revolver or an automatic and being prepared to kill the policeman whose duty it is to arrest him, who he knows is unarmed. Of course, as has been said, to arm the police would be a deterrent, but it would completely alter the nature of the police force'). Kilmuir was opposing the Murder (Abolition of the Death Penalty) Bill, which received Royal assent in November 1965, subject to repeal if not renewed within five years (the legislation was renewed in 1969).