

THE LABOUR PARTY AND THE PARLIAMENTARY CAMPAIGN TO ABOLISH THE MILITARY DEATH PENALTY, 1919–1930

JOHN McHUGH

Manchester Metropolitan University

ABSTRACT. *This is a study of a successful parliamentary campaign led throughout the 1920s by a small group of backbench Labour MPs aimed at abolishing the military death penalty for the offences of cowardice and desertion. It was sustained in the face of opposition from the military establishment, the Conservatives, and finally the House of Lords. The campaigners used the opportunity afforded by the requirement on government to pass, annually, an Army Bill, to challenge the military establishment's insistence that a capital penalty was essential to the maintenance of army discipline. Despite the unwillingness of the 1924 Labour government to confront the military on this issue, the reformers persevered, securing some minor, incremental reform before the coming of the second Labour government in 1929. The new government was prevailed upon by backbench pressure to authorize a free vote in the Commons which approved the abolition of the capital penalty for cowardice and desertion in the Army Act of 1930.*

I

During the First World War some 3,055 death sentences were awarded by military courts-martial on British and empire troops resulting in 327 executions for a variety of offences specified under the Army Act, most commonly those of cowardice and desertion.¹ Set alongside the scale of military losses suffered in the war, the number of soldiers executed is statistically insignificant, yet the tragic saga of military executions – the shootings at dawn – has resonated down to the present. The recent opening up of the detailed records of individual courts-martial cases to public scrutiny has provided the evidence for two recent studies which raise fresh doubts about the nature of the procedures involved in the courts-martial, especially the lack of any proper legal representation or safeguards for the accused.² One result was a public declaration by the incoming Labour government, in May 1997, of its willingness to review the cases of the executed soldiers.³

¹ The statistics cited here are from the proceedings of the army council, 1924. Public Record Office (PRO) WO/163/30, p. 175.

² See J. Putkowski and J. Sykes, *Shot at dawn* (London, 1993). Also Anthony Babington, *For the sake of example* (London 1985).

³ On 27 May 1997, the *Times* reported that Dr John Reid, the Labour armed services minister,

Labour's contemporary interest in this issue echoes an earlier campaign in the 1920s, spearheaded by backbench members of the Parliamentary Labour party (PLP), to reform the army's disciplinary code. The campaign, which sought to abolish the military death penalty for a range of offences, notably desertion and cowardice, was vigorously resisted by the military authorities and by the Conservative party, but ended successfully, in 1930, when parliament restricted the military death penalty to cases of mutiny and treachery. Yet this relatively rare example of Labour party success in shaping legislation in the interwar period scarcely registers in either general histories of the period or the specialist accounts of the Labour party.⁴

The campaign itself was crucially shaped by the annual constitutional requirement, that parliament pass an act to make lawful the existence of a standing army in peacetime. This act, the Army Act (1881), which replaced the Mutiny Act of 1689, provided members of parliament with the opportunity to determine the rules, procedures, and penalties by which discipline could be administered within the British army. This guarantee of an annual opportunity to debate the military death penalty may explain why parliamentary reformers felt no real need to mobilize the kind of extra-parliamentary pressure group agitation normally associated with attempts to draw issues to the attention of parliament.

Certainly there was no organized public agitation around the question – which limits the material usually available to the researcher. Furthermore, the Labour MPs who were at the forefront of the agitation, Ernest Thurtle, Jack Lawson, and Robert Morrison, as well as the Labour ministers most closely involved with the issue, Stephen Walsh, Clement Attlee, Tom Shaw, and Manny Shinwell, have left little information about the way the campaign developed beyond that to be found in the official records. Moreover, the campaign was not something which divided party members and did not figure widely in the debates of the Labour movement. It was raised on one occasion, and then only in passing, at a Labour party annual conference in the 1920s and hardly surfaces in the published deliberations of the more radical Independent Labour party (ILP) over the same period. There are no party publications on the issue and such contemporary coverage of the campaign to be found in Labour party journals and newspapers of the 1920s provide little more than general reportage and minimal commentary on the amendments moved by Labour parliamentarians to the annual Army Bill. Thus any attempt to reconstruct and explain the campaign is heavily dependent upon the parliamentary debates and the relatively scarce material to be gleaned from Labour party records.

had announced the government's intention to consider the case for granting a pardon to those executed for desertion, cowardice, etc., during the First World War.

⁴ References to the campaign for abolition of the military death penalty can be found in a brief postscript to Babington, *For the sake of example*, and in greater detail in William Moore, *The thin yellow line* (London, 1974).

On the eve of the outbreak of war in 1914, Andrew Bonar Law, leader of the opposition Conservative party, joined with other MPs in protesting against the humiliating spectacle of five British soldiers, technically guilty of desertion, being transported publicly across London in handcuffs and chains.⁵ Within six weeks the first British military execution for desertion took place in France⁶ and soon after Bonar Law found himself defending such executions as a leading member of the wartime coalition governments. The idea that military executions would become commonplace during the war could hardly have been anticipated by politicians shaped by a broadly liberal social and political culture. Flogging had been abolished in the British army in the 1880s and the use of military executions, even for serious breaches of discipline in time of war, was virtually unheard of.⁷

But while government ministers at the War Office were formally responsible to parliament for defence and military policy, effective control of army policy and administration was exercised by the army council. This small committee, comprising War Office ministers and elite professional soldiers serviced by a senior civil servant, was created in 1904. Political accountability and influence was provided by the secretary of state for war, who assumed the position of president of the army council, and his junior ministerial colleagues. The military element was made up of the chief of the general staff, the adjutant-general, the quartermaster-general, and the master-general of the ordnance. It was this body, especially its military element, which, aided in parliament by Conservatives, represented the most dedicated obstacle to army reform in the post-1918 period. However, experience of army life had so permeated British society by the end of the war that questions relating to military discipline and justice could no longer be restricted to the military hierarchy but were increasingly matters of public and parliamentary interest.

Reports of military executions in France were already in circulation when the under-secretary at the War Office, Harold Tennant, officially acknowledged the fact in a parliamentary answer in June 1915. However, he cited the public interest in refusing to divulge details as to the number of death sentences passed or executions carried out, an approach continued by ministers into the early 1920s.⁸ Criticism continued to surface in parliament from the radical pacifists to be found in the ranks of the Liberal and Labour parties. Thus Liberals, like Robert Outhwaite and Joseph King, who both subsequently joined the Labour party, took up the issue alongside members of the ILP, such as Philip Snowden.

In 1916 Philip Snowden failed to convince the government and parliament that men conscripted into the army should be exempt from the military death

⁵ Hansard, House of Commons Debates (fifth series), vol. 65, col. 1112.

⁶ See Putkowski and Sykes, *Shot at dawn*, p. 25.

⁷ See Babington, *For the sake of example*, pp. 2–4.

⁸ See Commons Debates, vol. 72, col. 272; also cols. 786, 1055, and 1935. Also vol. 92, col. 45; vol. 97, col. 401; vol. 99, col. 1636; and vol. 15, col. 1935, for refusals by ministers to supply statistics on executions.

penalty clauses in the Army Act, though he did extract a concession whereby conscientious objectors would not be executed for their refusal to serve.⁹ In December 1916 a Liberal member, Colonel Hayward, also failed to persuade the government to restrict the death penalty to those offences specified under civil law.¹⁰ The standard government response to such appeals was that capital punishment for desertion and cowardice was essential to ensure army discipline. Critics responded by raising individual cases, using anecdotal evidence supplied by relatives and soldiers, to illustrate the alleged iniquity of the policy. Thus, in October 1917, Snowden raised a case ‘where a mere boy overcome by nervousness was executed’ and urged government ministers to prevent the execution of ‘men who, being engaged in defending their country, should be immune from death penalties for alleged infractions of discipline’.¹¹

Joseph King attacked the courts-martial system, highlighting the lack of proper legal representation for the accused, the absence of a right to invoke the civil appeals procedure by soldiers under sentence of death, and the absence of any representation of rank-and-file soldiers on courts-martial.¹² It was also argued that some of those sentenced to death had previously been wounded or temporarily invalidated due to shell shock and that such men should be excluded from facing such a fate.¹³ Ministers countered that the system worked in the interests of soldiers who were protected by the fact that there were five stages beyond the initial court-martial before an execution was finally authorized. However, in 1918 the under-secretary at the War Office, James Macpherson, acknowledged ‘widespread anxiety in the country’ about the way courts-martial were conducted and promised parliament that he would ensure that commanding officers adhered to the proper procedures. But ministers continued to support the view of military commanders that the military death penalty was essential to the effectiveness of the army in the field.¹⁴ Yet within days of the armistice, in November 1918, the War Office notified army commanders that any future executions for desertion or cowardice would require ministerial approval, while Macpherson continued to reaffirm that the capital punishment provisions would be retained in the Army Act.¹⁵

However, the effective ending of military executions of British soldiers after the war’s end, coupled with the defeat of almost all ILPers and most radical Liberals at the 1918 general election, served to blunt criticism of the policy. Certainly the issue did not figure prominently in the agitation mounted by ex-servicemen’s organizations around the various grievances of their members in the immediate post-war years. These groups, the National Association of Discharged and Demobilized Soldiers, the National Federation of Discharged and Demobilized Soldiers and Sailors, and the Comrades of the Great War, which subsequently merged as the Royal British Legion in 1920, reflected a

⁹ See C. Cross, *Philip Snowden* (London, 1966), pp. 144–5.

¹⁰ Commons Debates, vol. 88, col. 1286.

¹¹ *Ibid.*, vol. 98, col. 1425.

¹² *Ibid.*, vol. 98, cols. 1425–7 and vol. 100, col. 68.

¹³ *Ibid.*, vol. 100, cols. 1499–500.

¹⁴ *Ibid.*, vol. 103, cols. 852–3.

¹⁵ *Ibid.*, vol. 110, col. 2869. See also PRO WO/5479.

range of political perspectives, but they shared a preoccupation with the issues of demobilization, army pensions and disability allowances, and the employment of former soldiers.¹⁶ Individual activists might express opinions about courts-martial and military executions but they did not excite much grass-roots interest.

II

It was in parliament that expressions of disquiet about the executions were occasionally heard and where the issues of courts-martial procedure and military disciplinary penalties were taken up, not by a Labourite or pacifist, but by the populist, jingo, and Independent member for South Hackney, Horatio Bottomley. In March 1919 Bottomley intervened in the debate on the army estimates to demand that the government set up an inquiry into the whole courts-martial procedure. He had been permitted to view the courts-martial records in a number of cases in which he had expressed an interest and this had strengthened him in the view that men had been sentenced to death and in one case, at least, executed for want of a fair, judicial procedure.¹⁷ While Bottomley was an economic and political adventurer, and soon to be imprisoned fraudster, his opinions carried political weight at this time. He was the proprietor of the populist patriotic newspaper, *John Bull*, which had acquired the status of the private soldier's bible during the war and, while less popular after the war, still enjoyed a wide readership amongst the patriotic working class. An advocate of the harshest measures against conscientious objectors and Germany, and self-styled friend of the common soldier, Bottomley's criticisms of the courts-martial process could not be dismissed as a form of left-wing, or pacifist, propaganda.¹⁸

Moreover, Bottomley was supported in the debate by two members, Major C. W. Crowther and Major Gerald Hurst, both of whom had been involved at senior levels in the application of military law during the war.¹⁹ Hurst's intervention was politically important given that he was a Conservative MP who had written a considered article on the case for a constructive reform of military law, including the need for courts-martial to be reformed and made more open to public scrutiny.²⁰ Without such reform Hurst feared that many would accept George Bernard Shaw's contention that military law is 'lynch law, administered by a trade union of officers'.²¹ The war minister, Winston Churchill, responded in the debate that while the courts-martial system was considered fair by soldiers and, 'on the whole in peace and war has commended itself to the general feeling of the Army', he would none the less initiate an

¹⁶ See G. Wootton, *The official history of the British Legion* (London, 1956).

¹⁷ Commons Debates, vol. 113, cols 102 and 128.

¹⁸ For an account of Bottomley's life see J. Symons, *Horatio Bottomley* (London, 1955).

¹⁹ See Commons Debates, vol. 113, cols. 110 and 116–20.

²⁰ See Major G. Hurst, 'The administration of military law', *Contemporary Review* (Mar. 1919), pp. 321–7.

²¹ *Ibid.*, p. 322.

inquiry to see in 'what way the courts-martial can be carried to a greater pitch of equity'.²²

The committee, formed in late March 1919 and chaired by Justice Darling, took evidence in April and reported in May. It split into a majority group, dominated by the senior military members, and a minority group comprising Bottomley, Major C. W. Lowther and the Labour MP, Stephen Walsh. While the committee accepted that the courts-martial procedure had generally worked well during the war there was disagreement within the committee on two crucial questions. The first concerned whether a condemned soldier should have a right of appeal to the court of criminal appeal; the second, whether there should be a reduction in the number of offences carrying a capital penalty. The majority argued that since 89 per cent of all death sentences ended in commutation a soldier was better protected than an ordinary condemned criminal and would not be assisted by a right of appeal through the civil process. They also asserted that a death penalty was necessary 'for the sake of example'. Overall the majority was confident that the existing position with regard to courts-martial was fair, enjoyed the confidence of the rank-and-file soldier, and required no reduction in the number of capital offences.²³

The minority group argued that 'no man on joining the army should forfeit the right of an appeal for his life to a competent judicial tribunal'.²⁴ Bottomley did not oppose a death penalty as an exceptional penalty but was strongly of the view that to deny a convicted soldier the right of appeal was to place him in a less privileged position than 'a cut throat or a highwayman'.²⁵ The minority also argued that the more than 250,000 courts-martial held during the war was excessive, and, specifically, 'that the death penalty should not be awardable for as many offences as at present'.²⁶ Yet when the Army and Air-Force Annual Bill came before parliament in 1920 it retained the existing range of capital offences without a right of civil appeal.

Bottomley's associate, Charles Palmer, Independent MP for the Wrekin and editor of *John Bull*, reacted by opposing its passage on the specific grounds that it did not include a right of civil appeal. Palmer accepted the necessity of the military death penalty to maintain discipline in the final resort but argued, unsuccessfully, that a right of civil appeal was essential to ensure popular support. Without this ingredient, he predicted, 'I can well imagine, if our Labour friends sit on the Treasury Bench, that they, understanding better... the real feelings of the lower classes... will be no party to maintaining an Army with the death penalty among its powers.'²⁷ A further attempt to include the right of civil appeal, moved by Major Lowther in the Commons in 1921,

²² Commons Debates, vol. 113, cols. 178–9.

²³ See report of the committee constituted by the army council to inquire into the law and rules of procedure regulating military courts-martial, Cmd 428 (1919), pp. 1–13. The committee sat for only twenty-two days and did not publish any evidence.

²⁴ *Ibid.*, p. 14.

²⁵ *John Bull*, 9 Apr. 1921.

²⁶ Report of the committee, Cmd 428, p. 14.

²⁷ Commons Debates, vol. 127, col. 1982.

received solid support from Labour members, including Stephen Walsh, but was again defeated.²⁸

Outside parliament the Labour party began to show only a relatively low-key interest in issues of military law. A party sub-committee, dealing with military policy, first involved itself with military discipline when considering a memorandum on courts-martial submitted by Clement Attlee in November 1921. Attlee's memorandum focused on the disciplinary procedure and made no specific reference to capital cases. Attlee argued from personal experience that military justice was very dependent on the composition of the court-martial, with verdicts and sentences turning on 'irrelevant matters such as the need for making an example', leading to 'the utmost disparity of sentence for similar offences'.²⁹ A subsequent attempt by the sub-committee's secretary, John Beckett, to involve Attlee and another member, Major Graham-Pole, in developing the memorandum further came to nothing. Indeed, the attendance by Labour parliamentarians at the sub-committee meetings was so bad that they were cancelled in April and May 1921 and Beckett resigned in apparent frustration at the failure of the Labour leadership to take military matters, other than pension issues, seriously.³⁰

Following Beckett's resignation the sub-committee was suspended for several months before reviving briefly under a new secretary, Captain A. W. Kendall. In December 1922 Kendall issued a memorandum which emphasized that the modern soldier was conscious of his status as a citizen and that considerable dissatisfaction existed within the army 'owing to the manner in which Military Justice is administered'.³¹ The memorandum produced no visible response from the Labour political hierarchy and the sub-committee itself seems to have simply faded away. Certainly Palmer's prediction, in 1920, that Labour would challenge the military death penalty in the future could scarcely be supported by reference to the interest of the party leadership in the subject at the time. However, one Labour MP and army veteran, John Lawson, speaking in the same debate as Palmer, argued strongly 'that the time has arrived – and that is the feeling in the country and in the ranks – when we ought to abolish the death sentence in the British Army'.³²

Lawson's opportunity to take the issue forward came with the breakup of the Lloyd George coalition government, and the consequent general election of 1922, which brought into the House of Commons a number of Labourites determined to confront the military establishment. The occasion for the first sustained confrontation was the annual Army Bill of 1923. On this occasion the Conservative war minister, Lord Derby, recognized that the bill would not pass

²⁸ See *John Bull*, 23 Apr. 1921.

²⁹ See the minutes of the standing army and navy sub-committee of the Labour party, 9 Nov. 1921, held in the Labour party archive in the National Museum of Labour History, Manchester.

³⁰ *Ibid.*, 20 Feb., 1922.

³¹ *Ibid.*, a copy of Kendall's memorandum, dated 5 Dec. 1922, in the minutes of the standing army committee.

³² Commons Debates, vol. 127, cols. 1991–4.

as a formality and attempted to counter the anticipated opposition from Labour by removing the notorious Field Punishment No. 1, popularly known as ‘crucifixion’, from the list of military punishments available under the Army Act. This was long a target for reformers, although it had been defended as vital to good military order by ministers the previous year.³³ By its removal Derby hoped he could smooth the passage of the bill through the Commons.³⁴

In fact the bill met sustained opposition from Labour backbenchers. Five members went so far as to move an amendment, the effect of which would have made the existence of the army illegal.³⁵ When this quixotic gesture was defeated Labour reformers and radical Liberal members concentrated on moving amendments to remove the military death penalty from the bill or, failing that, to introduce the right of a civil appeal. Lawson moved an amendment to abolish the military death penalty pointing out that while a civilian could not enter into a legally enforceable contract until he was aged twenty-one, an army recruit aged eighteen years had to accept a contract which could involve his execution. He observed: ‘War is barbarism, but there is nothing more barbaric than that a man should be tied up to a stake and have twelve rifles levelled at him and be shot to death by his fellow countrymen.’³⁶ In place of the death penalty Lawson moved that the offender should ‘be liable to be kept in penal servitude for life or any shorter period, not less than three years, or to such less punishment as in this Act mentioned’.³⁷ This formula became the standard position of the party on the appropriate penalty for desertion and cowardice. Major Paget for the Conservatives argued that there was no alternative to the death penalty if discipline at the front was to be maintained, a soldier ‘should have the fixed idea that in front was a chance of life, but that in going back there was nothing but death and disgrace’.³⁸ This was endorsed by the Conservative financial secretary to the War Office, Gwynne, who held that ‘a man who imperils the safety of His Majesty’s forces is deserving of death’.³⁹

Radical Liberals like Lieutenant-Commander Joseph Kenworthy and Captain Wedgwood Benn, who joined the Labour party in 1926 and 1927 respectively, supported the amendments. Wedgwood Benn observed that if 89 per cent of death sentences ended in commutation then the deterrent value of such a sentence was marginal and should be replaced by more moderate penalties which could be enforced. Benn also suggested that, in the cases where the death penalty was enforced, its use owed less to the gravity of individual offence or the application of justice to a particular soldier than to a desire to enforce discipline in any particular battalion by using firing squads as a deterrent.⁴⁰ In the event Lawson’s amendment was defeated as was another

³³ *Ibid.*, vol. 140, col. 886; vol. 152, cols. 2334–8. ³⁴ PRO Cabinet papers 169/23.

³⁵ See *Daily Herald*, 9 Apr. 1923. The five were George Lansbury, Jimmy Maxton, Rev. Campbell Stephen, David Kirkwood, and Ben Turner.

³⁶ Commons Debates, vol. 162, cols. 1561–2.

³⁷ *Ibid.*, vol. 162, col. 1558.

³⁸ *Ibid.*, vol. 162, col. 1568.

³⁹ *Ibid.*, vol. 162, col. 1569.

⁴⁰ *Ibid.*, vol. 162, cols. 1578–9.

moved by George Lansbury on the right of the condemned to access the civil appeals process.⁴¹

The fact that Labour members continued the debate on the bill from eleven o'clock on the night of 12 April until mid-day on the 13 April without any realistic prospect of success demonstrated the depth and breadth of feeling within the parliamentary party. While the party had not formally endorsed Lawson's amendment, senior party figures were present and some, like Jimmy Thomas, spoke in the debate against capital punishment. Future cabinet ministers, including Arthur Henderson, A. V. Alexander, Arthur Greenwood, and John Wheatley, voted for Lawson's amendment. The Labour vote included ILPers and trade union nominees, representatives of the party's left and right wings. Liberals also supported the amendment in substantial numbers.

At the Labour party conference of 1923 Ramsay MacDonald called attention to the party's performance in the debate declaring, 'if delegates had been present they would have cheered to have heard the speeches made from the Labour benches during that long and weary night'.⁴² However the conference chairman was unable to accede to a request that the abolition of the military death penalty in connection with desertion and cowardice become definitive party policy, notwithstanding the fact that conference passed a resolution in favour of the abolition of capital punishment in civil cases. Ernest Thurtle, a member of Labour's standing army sub-committee, intervened in the debate on capital punishment to criticize the resolution for not addressing the situation of the 'poor lad in Khaki'.⁴³ The son-in-law of the militant pacifist George Lansbury, Thurtle served in the war and was seriously wounded at the battle of Cambrai before standing for parliament, unsuccessfully, as an ex-serviceman's candidate for SW Bethnal Green in 1918. Thereafter he was in the National Federation of Discharged and Demobilized Soldiers, opposing its fusion into the British Legion, before securing election to parliament as a Labour member in 1923, where he led the campaign to reform the army law.

III

Following the 1923 general election, Ramsay MacDonald formed the first Labour government which, though in a parliamentary minority, raised the expectations of those seeking reform of the army death penalty. Certainly the choice of Stephen Walsh as the secretary of state for war might have encouraged reformers. He had signed the minority report of the Darling committee in 1919 and subsequently voted for a right of civil appeal. Furthermore, Walsh's junior ministerial colleagues, Clement Attlee and especially Jack Lawson, were known reformers. But Walsh's selection as war minister was more helpful to the military elite than the advocates of reform, for according to one observer Walsh

⁴¹ *Ibid.*, vol. 162, col. 1609.

⁴² Labour party annual conference report, 1923, p. 194.

⁴³ *Ibid.*, p. 250.

was 'entirely unable to conceal his reverence for generals'.⁴⁴ His Conservative predecessor at the War Office, Lord Derby, described him to General Rawlinson as an example of the solid, patriotic, and deferential working man who could be relied upon to 'work most harmoniously with the soliders'.⁴⁵ Given the cautious approach to government followed by MacDonald it was unlikely that Walsh would wish to confront the army establishment. In addition the draft Army Bill, effectively inherited from the outgoing Conservative government, was well advanced when Labour finally came to office. Walsh proposed to introduce it to parliament substantially unaltered on the grounds that, since the existing Army Act would expire on 30 April, any new bill would have to receive the Royal Assent before the Easter recess: 'I propose to circulate it to Parliament at once. There is nothing in it to which I need specially to call the attention of the Cabinet.'⁴⁶

The idea that a measure which did not address the concerns of the Labour abolitionists could pass the parliamentary party without a reaction was scarcely credible and its circulation in parliament inevitably prompted amendments from Thurtle, the leading ILPer, Jimmy Maxton, and others on the issues of capital offences and a civil right of appeal. In fact towards the end of March, Clement Attlee, Walsh's under-secretary, challenged the existing military death penalty.⁴⁷ In a long memorandum submitted to the army council Attlee advocated the substitution of penal servitude for the death sentence as the maximum penalty for the offences of desertion, cowardice, sleeping or being drunk or leaving a post, striking or using violence against an officer, and wilful disobedience. He argued that these were offences where miscarriages of justice were most likely to occur and where the penalty was exacted as a deterrent rather than on the merits of any particular case. He further doubted whether the accused would always be adequately defended or that courts-martial called in theatres of war were sufficiently competent to weigh evidence and reach proper judgements. Attlee further claimed that the existing capital penalties were inappropriate to the modern circumstances of war, which involved conscripted men, some of whom would be unfitted to its demands, and reminded the council that the present secretary of state had signed the minority report in 1919 which called for a reduction in offences carrying a possible death penalty.

Any possibility that Labour leaders would support Attlee's memorandum against the wishes of the military membership of the army council seemed improbable once the Leader of the Commons, J. R. Clynes, informed Walsh that 'any substantial modifications of the existing system of Death Penalties in the Act could not be otherwise than highly controversial, and might not

⁴⁴ R. Lyman, *The first Labour government* (New York, 1975), p. 106.

⁴⁵ M. Cowling, *The impact of Labour* (Cambridge, 1971), p. 371.

⁴⁶ PRO cabinet paper, 209/24.

⁴⁷ What follows derives from Attlee's submission in PRO WO 163/30, the proceedings of the army council, 1924, pp. 173–7.

improbably lead to a defeat of the Government'. On the basis of this analysis Clynes, acting with MacDonald's explicit approval, instructed Walsh not to put down any amendments to the bill, beyond the most minor, without prior discussion in cabinet or MacDonald's approval.⁴⁸ When the army council considered Attlee's memorandum on 1 April the chief of the general staff, Lord Cavan, described it as the 'gravest issue' of his time on the army council. He claimed to have only seen the memorandum the previous day and, noting that the army bill was due to go before parliament the following day, refused to discuss the content at such short notice. None the less Cavan made it clear that 'if it is still the intention of the Ministerial Members of the Army council to press this vital matter' he would comply but he wanted the cabinet to know his views.⁴⁹

When the cabinet met the following day it was faced with a dilemma. It was aware that a series of amendments to the military death penalty had been tabled by Labour members which were likely to attract support across its backbenches. Walsh reported the views of the military elite as well as alerting his colleagues to the political difficulties which would follow if any of the amendments were made to stand as part of the bill. He predicted clashes in parliament which would seriously delay the bill and provoke a potential constitutional crisis between the Commons and Lords. Walsh told the cabinet that although he had signed the minority report in 1919 he was quite willing to let the whole question stand over for further consideration.⁵⁰ After considerable discussion the cabinet determined that Walsh should inform parliament that, owing to the need to pass the Army Bill before the end of April and, lacking the necessary time to consider or introduce 'formidable and far reaching' proposals, the government 'have decided to ask the Army Council, along with representatives of the other fighting services to go into the whole question of the death penalty'.⁵¹

Walsh outlined the government's position to parliament and asked that the various reform amendments be withdrawn pending the result of the inquiry which would report in 1925, having determined 'what alteration can be made and what offences can be removed from the catalogue of those for which the death penalty is imposed'.⁵² But as the *Daily Herald* commented, members resolutely refused 'to go home without discussing the death penalty and other aspects of army punishment'.⁵³ For Thurtle the idea of referring such questions to a committee based on the army council was absolutely unacceptable: 'There could not be found a body less in touch with the people and the rank and file of the army than the Army Council'.⁵⁴ Another Labour member, J. E. Mills, argued that the Australian authorities, which alone of empire countries had refused to submit their troops to capital penalties during the war, 'ought at

⁴⁸ PRO WO 32/14497, letter from J. R. Clynes to S. Walsh, dated 28 Mar. 1924.

⁴⁹ PRO cabinet paper, 232/24. ⁵⁰ Ibid.

⁵¹ PRO CAB 23/47/363/24.

⁵² Commons Debates, vol. 171, cols. 2312–13.

⁵³ *Daily Herald*, 4 Apr. 1924.

⁵⁴ Commons Debates, vol. 171, col. 2317.

least to have their views expressed on this question'.⁵⁵ Thurtle argued that the whole question of the death penalty should be taken out of the hands of the military elite whose members never paid such a penalty for their military failings. He also asserted that it was unjust:

I submit it does lead to the killing of innocent men because they are men who in the demands the battlefield makes upon them, ... simply because of their physique and their nervous system cannot help failing, and to execute men of that sort – however you may camouflage it – is to kill innocent men.⁵⁶

The Bristol Labourite and avowed pacifist, Walter Ayles, who had served more than three years' imprisonment during the war for refusing any form of national service, pointed out that it was ordinary soldiers who were called upon to shoot their comrades, 'a degrading service which none of them desire to do', and argued that public opinion which was generally against capital punishment was 'even more so in cases of men in the army'.⁵⁷ The Liberal abolitionist, Lieutenant-Colonel Meyler, asserted that it was a matter for the Commons and not the army council to determine the future liabilities of soldiers and recalled Walsh had called for a reduction in the number of capital offences in 1919 while Lawson had moved the abolitionist amendment in 1923: 'This was what the present members of the Government were prepared to do when they came into office. How can they ask us to withdraw these amendments?'⁵⁸

Thurtle's amendment was defeated but the Labour government found itself in the embarrassing situation where only forty-eight Labourites, mostly on the government payroll, had obeyed the government whips and opposed Thurtle's amendment, while sixty-nine Labour backbenchers voted with Thurtle, along with sixty-seven Liberals. Thus the government carried the bill on the votes of Conservatives, relieved that Walsh had resisted his own backbenchers' attempts to carry a series of amendments 'which are absolutely subversive of Army discipline'.⁵⁹ Maxton's amendment to enshrine a right of civil appeal, which had been supported by the Labour front bench in 1923, was now defeated at the insistence of the government. Thomas Johnston, MP and editor of the Glasgow socialist newspaper, *Forward*, was disappointed by this change of official view: 'For the life of me I cannot see how the attitude towards a condemned man suddenly becomes wrong when we cross the floor of the House.'⁶⁰ But Clement Attlee argued that a civil appeal inevitably based on a judicial consideration of procedure would not achieve the objective he shared with Johnston, to 'let more off the death penalty'.⁶¹

By the time the inter-departmental committee, chaired initially by Lawson and comprising the second sea lord, the adjutant-general, and the air member

⁵⁵ Ibid., vol. 171, col. 2315.

⁵⁷ Ibid., vol. 171, col. 2343.

⁵⁹ Ibid., vol. 171, col. 2358.

⁶¹ Ibid., vol. 171, col. 2368.

⁵⁶ Ibid., vol. 171, cols. 2331–2.

⁵⁸ Ibid., vol. 171, col. 2316.

⁶⁰ Ibid., vol. 171, col. 2369.

for personnel, had taken evidence in private and compiled its findings in 1925, the Labour government and Lawson had been replaced by the Conservatives. The committee had taken evidence from three MPs, including Thurtle and Lansbury, eight senior officers of the rank of general, its equivalent, or above, but not from any ex-servicemen's organization.⁶² The result of the inquiry, embodied in the 1925 army bill, was to maintain the existing capital penalties in time of war, while abolishing the death penalty in peacetime for all military offences except mutiny and treachery, a purely notional reform since no soldier had been executed in peacetime for desertion, cowardice, or a related offence.

In February and March 1925, a Labour party sub-committee, dominated by Lawson, Attlee, and Thurtle, discussed the party's response to the proposed Army Bill of 1925 and recommended that the parliamentary party support amendments to the bill restricting the military death penalty in wartime only to the offence of treachery.⁶³ This was accepted by the parliamentary party at its meeting of 31 March and thereafter remained the party policy. It meant that when Thurtle moved the principal abolitionist amendment in April 1925 he did so with the full authority of the party: 'I am standing here, in the name of the Labour party, demanding the abolition of the death penalty as a simple act of justice.'⁶⁴ When a Conservative member, Captain Gee, questioned whether the whole Labour party was in favour of abolition, citing the example of the previous Labour government, George Lansbury declared: 'We have converted our leaders.'⁶⁵

In answer to the inter-departmental committee's contention that military law applied equally to officers and men Thurtle responded that 'while the law may be equal ... it is applied in a much more harsh and ruthless fashion to the other ranks than it is to the officers'.⁶⁶ Labourites contrasted the treatment of military commanders, whose failures left thousands dead and whose penalty was loss of command, with that experienced by young, often physically and emotionally inadequate, conscripts whose loss of nerve could result in death. Thurtle asserted: 'As far as I can gather, since Admiral Byng was executed, there has been no General or Admiral ... who has paid that penalty.'⁶⁷

But the core of his case was built around the information that during the war the Australian government had repeatedly refused permission for its armed forces to be subject to the army death penalty.⁶⁸ Thus, while twenty-five Canadian and five New Zealand soldiers had been executed for desertion and cowardice, no Australian had suffered such a penalty. Thurtle queried whether the plea of military necessity used to defend the military death penalty really meant that British soldiers, unlike their Australian comrades, could only be

⁶² See report of the inter-departmental committee on proposed disciplinary amendments of the Army and Air Forces Acts, Cmd 2376 (1924).

⁶³ See the minutes of the Labour party sub-committee on the Army Act 1925, 16 Feb., 10 Mar., and 12 Mar. 1925, and minutes of the Labour party national executive committee, 31 Mar. 1925, Labour party archive.

⁶⁵ *Daily Herald*, 2 Apr. 1925.

⁶⁷ *Ibid.*, vol. 171, col. 2326.

⁶⁴ Commons Debates, vol. 182, col. 1359.

⁶⁶ Commons Debates, vol. 182, cols. 1351–2.

⁶⁸ *Ibid.*, vol. 182, col. 1078.

relied upon to go forward under threat of execution.⁶⁹ The plea that military discipline required a death penalty in extreme circumstances led the Labour member Harry Snell to observe that flogging and field punishment No. 1 had been similarly defended yet they had gone and army discipline had survived.⁷⁰

Robert Morrison was likewise forthright in rejecting the deterrent argument, asserting that retention of the death penalty was based on vindictiveness and a desire to pacify ‘old retired admirals or generals at the head of the Army, who have threatened to resign if we abolish capital punishment’.⁷¹ In the event Thurtle’s amendment was lost by 322 votes to 138. The 128 Labour MPs who supported Thurtle included Attlee and Lawson, though not Walsh, from Labour’s War Office ministerial team of 1924. Walsh appears to have been present during the debate but did not vote. In April 1926 the Labour amendment moved by Thurtle was defeated by 269 votes to 125 and by 201 votes to 109, in 1928, when moved by Robert Morrison.

However, the Conservative government removed some offences previously punishable by death from the 1928 Army Act while retaining that option for the offences of mutiny, treachery, desertion, and cowardice – the offences which had resulted in the majority of executions during the war.⁷² The decision to remove ‘sleeping on post’ from the list of capital offences in the 1928 Army Act was significant since its retention as a capital offence had been recommended by the inter-departmental committee in 1925 as necessary to the maintenance of military discipline. The removal of such a ‘necessary’ measure was an encouragement to the abolitionists and produced a change in tactics whereby it was decided to seek incremental reform by focusing attention on the offence of cowardice, where it was believed Conservative resistance to reform was weaker, rather than seeking to link cowardice and desertion. But while minimizing Conservative support for the status quo, Robert Morrison’s amendment, to exclude cowardice from the list of capital offences in the 1929 Army Act, was defeated by 177 votes to 110.

IV

The general election of May 1929 transformed the position, for although Labour was returned as a minority government, with 288 seats against 260 Conservatives and 59 Liberals, a likely majority for reform now existed. In 1930 Labour’s financial secretary to the War Office, Manny Shinwell, informed the army council of the government’s view ‘that there are grounds for abolishing the death penalty for all except mutiny and treachery, on the ground that an act of cowardice, to which desertion, leaving a guard, etc., are closely related, may be the result of an impulse beyond the individual’s control and therefore not deserving of the supreme penalty’.⁷³ Yet when the

⁶⁹ *Ibid.*, vol. 182, col. 1358.

⁷⁰ *Ibid.*, vol. 182, col. 1367.

⁷¹ *Ibid.*, vol. 182, col. 1382.

⁷² For a detailed description of the precise changes in the act, see *Commons Debates*, vol. 216, col. 34.

⁷³ PRO WO 163/36, the proceedings of the army council, 1930, p. 76.

government published its Army Bill, in March 1930, the issues of desertion and cowardice had been separated. While the legislation proposed that cowardice be removed from the category of capital offences, desertion was to remain alongside mutiny and treachery.

According to Thurtle, Tom Shaw, secretary for war, told him that the decision to treat cowardice separately from desertion was because the military members of the army council opposed abolition in the case of desertion. In the circumstances Shaw determined to proceed immediately to remove cowardice from the list of capital offences and wait a year before moving on desertion.⁷⁴ Once the bill was published Thurtle gathered the signatures of forty Labour MPs required to summon a special meeting of the PLP to discuss the question of desertion. The meeting, held on 1 April, was chaired by Harry Snell, who noted that party policy was to confine the military death penalty to cases of treachery and mutiny. In the previous session of parliament the party had concentrated on abolishing the death penalty for cowardice and this formed the central reform of the Labour government's proposed army bill. This left the continuing death penalty for desertion as the only outstanding point in the party's policy, and the meeting resolved 'That a request be made that the question of the death penalty for desertion be left to a free vote of the House.'⁷⁵ The following day Snell reported that Ramsay MacDonald had agreed to this request, a decision described as wise by the *Spectator*, given the practical legal difficulty involved in distinguishing cowardice from desertion.⁷⁶ Shaw had already informed the army council that, since there was probably a majority in the Commons against the death penalty for desertion, a free vote might be necessary.⁷⁷

When Shaw brought the bill before the Commons, sitting in committee, he informed members that the military members of the army council believed strongly in a capital penalty for the offences of cowardice and desertion, though it was not an opinion he shared as far as the crime of cowardice was concerned. Thus Shaw proposed on behalf of the government that cowardice would no longer attract a capital penalty in time of war, though he emphasized that it was a matter for parliament to determine policy on the question.⁷⁸ A Conservative amendment to restore capital punishment for cowardice was defeated by 290 votes to 168, whereupon Thurtle moved, and Oliver Baldwin seconded, the amendment to abolish death for desertion, which was carried on a free vote by 221 votes to 137.

An analysis of the votes, passed amidst scenes of great excitement, show that some 196 Labourites supported Thurtle's amendment while approximately 100 Conservatives failed to support the death penalty on either vote. Shaw

⁷⁴ See E. Thurtle, *Times winged chariot* (London, 1945), p. 110.

⁷⁵ Report of the special meeting of the parliamentary Labour party, 1 Apr. 1930. Minutes of the PLP in Labour party archive.

⁷⁶ See *Spectator*, 5 Apr. 1930; also *Manchester Guardian*, 2 Apr. 1930.

⁷⁷ See PRO WO 163/36, pp. 1 and 4.

⁷⁸ See Commons Debates, vol. 237, cols. 1577–8.

subsequently asserted that the two votes ‘left absolutely no doubt in the minds of anyone... that the death penalty should be restricted to two broad offences, one treachery, the other mutiny’.⁷⁹ In the immediate aftermath Thurtle proclaimed: ‘The Labour Party’s policy has now been completely carried out... At last the Army Council has been overridden on this vital issue by the people.’⁸⁰ Yet when the bill reached the House of Lords, opposition to the reforms surfaced strongly.

Viscount Fitzalan moved to reinstate the capital clauses arguing they were ‘strongly desired... by noble Lords of the highest military rank and of the greatest military experience’ and recalled that ‘the late Stephen Walsh... was adamant in refusing... to allow any change in the death penalty’.⁸¹ Fitzalan was followed by Field Marshals Lord Plumer and Viscount Allenby, who asserted that draconian penalties were vital to preserve military order under fire. The reformist case was made by Lord Thomson, secretary of state for air, who argued that it was no longer possible to apply to a modern army of conscripts the kind of military penalties which might once have been appropriate to armies of mercenaries or near criminals. Thomson also advised the Lords not to disregard the fact that on a free vote only 135 MPs had voted to retain the capital penalty for desertion.⁸² The lord president of the council, Lord Parmoor, argued simply that cowardice and desertion ‘are not offences as should make a man liable to the death penalty’.⁸³

But the Lords supported Fitzalan’s amendment by 45 votes to 12, thereby challenging the authority of the Commons. Tom Shaw immediately announced the government’s intention to impose the whips on Labour MPs to defeat any attempt by the Lords to reinstate the capital penalties for desertion and cowardice.⁸⁴ Winston Churchill argued for a compromise whereby the Labour government would revert to its initial position, that cowardice be removed as a capital offence while desertion be reinstated.⁸⁵ Thurtle vigorously rejected such a notion and declared: ‘This is the duly elected representative House of the people, and, recently it came to a decision on a free vote in favour of the abolition of the death penalty for desertion.’⁸⁶ The Conservative amendment was easily defeated by 194 votes to 50 and the abolition of cowardice and desertion as capital offences was enshrined in the 1930 Army Act.

Thus the Army Act passed in 1930 marked the successful conclusion of a decade of determined campaigning in parliament by reformers, mostly drawn from Labour’s ranks, which had ‘forced the War Office to yield point after point’.⁸⁷ T. E. Lawrence had previously written to Thurtle: ‘I have run too far and too fast (but never fast enough to please me at the time) under fire, to throw a stone at the fearfulest creature. You see I might hit myself in the eye!’ Now

⁷⁹ *Ibid.*, vol. 237, col. 1918.

⁸⁰ *Daily Herald*, 5 Apr. 1930.

⁸¹ Hansard, House of Lords Debates (fifth series), vol. 77, cols. 125–6.

⁸² *Ibid.*, vol. 77, col. 138.

⁸³ *Ibid.*, vol. 77, col. 152.

⁸⁴ Commons Debates, vol. 237, cols. 3051–2.

⁸⁵ *Ibid.*, vol. 237, cols. 3052–3.

⁸⁶ *Ibid.*, vol. 237, col. 3055.

⁸⁷ *The Manchester Guardian*, 3 Apr. 1930.

he congratulated Thurtle on ‘a blessed victory. The old state of the law hurt me. It was such a damnable judgment upon our own flesh and blood... People who care about their countries don’t like to see them fouling themselves... It gave me, after yourself, perhaps the next purist joy in England.’⁸⁸ The *Daily Herald* commented in an editorial that the penal laws obtaining in the army were a survival ‘from a more barbarous age and their modification by the Commons was clearly demanded by an increasingly humane public opinion’.⁸⁹ In 1931 the Labour cabinet approved a decision by the secretaries of state for war and air that the issue should not be revisited.⁹⁰ Thereafter the Conservative-dominated governments of the 1930s did not try to reverse this new status quo.

The campaign to abolish the military death penalty represents a significant example of successful parliamentary pressure group politics. It began with Horatio Bottomley’s attempt to introduce a right of civil appeal for soldiers under sentence of death. However, it was only in the 1920s, with the advent of the Labour party as a substantial parliamentary force, that the agitation focused principally around the abolition of capital punishment for soldiers guilty of desertion, cowardice, and associated offences. The campaign was led, not by Labour pacifists, but by Thurtle, Lawson, and Morrison, who had fought in the war. Nor was it framed in a socialist context but rather can be seen as a continuation of a more traditional radical impulse evident in the late nineteenth-century campaign against flogging in the army. As such, though effectively led by Labourites in parliament, it drew consistent support from the diminishing number of Liberal MPs, some of whom entered the Labour party.

The relatively small number of backbench Labour MPs who initially took up the issue and promoted it annually in parliament during the 1920s embarrassed the Labour government of 1924 over its failure to adopt a reform position, and, in 1925, were responsible for making the abolition of the military death penalty for all military offences, except treachery and cowardice, official Labour party policy. When the second Labour government again prepared to temporize with the army establishment on the abolition of the death penalty for desertion it was backbench Labour pressure, organized by Ernest Thurtle, which induced the government to permit a free vote in the Commons. In so doing they succeeded in overcoming the powerful military interests organized within the service councils, especially the army council, the Conservative party, the House of Lords, as well as the timidity of their own leaders. At the time, the change they had brought about in military law seemed essentially symbolic but it ensured that no British soldier could be or was executed for desertion or cowardice in the Second World War.

⁸⁸ Thurtle, *Times winged chariot*, p. 107.

⁸⁹ *Daily Herald*, 17 Apr. 1930.

⁹⁰ See PRO cabinet paper, 70/31.