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CABINET

SEXUAL OFFENCES

MEMORANDUM BY THE SECRETARY OF STATE FOR THE HOME DEPARTMENT AND
MINISTER FOR WELSH AFFAIRS

Introduction

1. The prevalence of sexual crime and the activities of prostitutes soliciting in the streets of London have attracted much attention and there have been demands in Parliament, in the press and from leaders of the Churches for more effective measures to check these evils and, more recently, for the appointment of a Royal Commission to enquire into certain aspects of this problem and to review the existing law.

I have thought it right to raise with my colleagues the question whether such a commission should be appointed.

Prostitution

2. The number of convictions for soliciting and kindred offences in England and Wales rose from 3,192 in 1938 to 10,291 in 1952. Most of these cases occur in London, where the number rose from 2,966 to 9,756. Opinions differ as to how far these figures reflect a real increase in the volume of prostitution or how far they may be due to more persistent and aggressive solicitation on the part of prostitutes, which is met by increased activity on the part of the police. But there can be no dispute that conditions in the streets in certain parts of London are now deplorable. They are probably without parallel in the capital cities of other civilised countries.

3. The existing law dealing with solicitation is undeniably ineffective. In London section 54 of the Metropolitan Police Act, 1839, provides that "every common prostitute or nightwalker loitering or being in any thoroughfare or public place for the purpose of prostitution or solicitation to the annoyance of the inhabitants or passengers" shall be guilty of an offence and liable to a fine of 40s. A similar provision is in force in certain urban districts outside the metropolis under section 28 of the Town Police Clauses Act, 1847, which provides that "every common prostitute or nightwalker loitering and importuning passengers for the purpose of prostitution" shall be guilty of an offence and liable to a fine of 40s. or to 14 days' imprisonment. In practice few sentences of imprisonment are imposed in the provinces (there were 105 such sentences in 1952). The fine of 40s. is useless as a deterrent and is regarded as a disguised and not very onerous form of taxation.

4. The existing law has frequently been criticised, especially by the women's organisations, on other grounds. Although the law in London requires proof that the solicitation should have been to the annoyance of the inhabitants or passengers, the evidence of such annoyance accepted by the courts is perfunctory and amounts to little more than a legal fiction. The person solicited almost always declines to give evidence, and the court usually convicts on the uncorroborated evidence of the arresting police officer, who says that the person accosted appeared to be annoyed. On the other hand, if evidence other than police evidence were necessary,

it would be virtually impossible to obtain convictions. Most of the women plead guilty, but would probably not do so if the penalty were greater. The procedure provides particular temptations to the police to embellish evidence of annoyance.

5. The problem was considered in 1928 by the Street Offences Committee, of which Lord Macmillan (then Mr. Hugh Macmillan, K.C.) was Chairman, but their recommendations were not thought to provide a practicable solution.

6. A possible course would be to amend the law to provide that soliciting or importuning for the purpose of prostitution, without proof of annoyance, should be an offence, and at the same time to provide for increased penalties, including progressive penalties for second or subsequent offences, and a power of imprisonment without the option of a fine in the case of repeated offences. Objections made against this proposal are that it would increase the danger of women being exploited by persons in a financial position to pay larger fines; and that, if it were successful in forcing the prostitutes off the streets, the traffic would be driven underground and create more serious abuses, including the growth of a "call girl" system. The enquiries which I have recently made in the United States lead me to doubt whether these objections are well founded, and a "call girl" system has at least this advantage over the existing situation, that it removes a public scandal from the streets and at the same time exposes young men to less easy and obvious temptation. Such an amendment of the law would, however, be highly controversial and would be strongly opposed by the women's organisations. I believe, therefore, that legislation on these lines could not be introduced without the support of a strong independent commission or committee.

7. There is another defect in the law which presents a serious problem. It is at present impossible to take effective action against persons who let single flats, often at exorbitant rents, to women for the purpose of habitual prostitution. It would be difficult to devise an effective amendment of the law which would not be wide enough to expose respectable women living alone to unjustifiable interference by their landlords or the police. This is a problem which, if a commission or committee were appointed, deserves careful examination.

Homosexual Offences

8. There has been a serious increase in offences of this kind. The number of unnatural offences of the gravest kind (sodomy and bestiality) known to the police in England and Wales rose from 134 in 1938 to 670 in 1952; the number of attempts to commit unnatural offences (a category which includes not only attempts to commit sodomy and bestiality, but also indecent assaults on male persons and a small number of cases of importuning dealt with on indictment) rose from 822 to 3,087; and the number of offences of gross indecency rose from 320 to 1,686. Corresponding figures for offences of importuning by male persons are not available, but in 1952, proceedings were taken in the Metropolitan police district in 373 cases. The increase in the number of indictable offences, which is between four-fold and five-fold over pre-war figures, may not correspond exactly to the actual increase in the prevalence of such offences, but, especially having regard to the fact that many offences of this kind never come to the knowledge of the police, it is clear that there has been a substantial increase.

9. Experience shows that only a minority of homosexual offenders are likely to benefit by psychiatric treatment. So far as such treatment is useful, it can be, as it is now, provided in prison, although there may be some scope for development here, particularly when it is possible to open the new institution for mentally abnormal offenders.

10. There is a considerable body of opinion which regards the existing law as antiquated and out of harmony with modern knowledge and ideas, and, in particular, represents that unnatural relations between consenting adults, which are not criminal except in Great Britain and the United States, should no longer be criminal in this country, and that the criminal law, in dealing with unnatural, and with normal, sexual relations, should confine itself to the protection of the young and the preservation of public order and decency.

Conclusion

11. I do not myself believe that there is any case for altering the law relating to homosexuality and I think that the most profitable line of development is to

improve, so far as finances permit, the facilities for the treatment of homosexuals sentenced by the courts; but there is a sufficient body of opinion in the country in favour of setting in train some inquiry into homosexual offences to warrant my bringing the question before my colleagues.

The setting up of a Royal Commission or other form of inquiry might lead to a belief that the Government thought that the law ought to be changed, and would later expose us to the danger of receiving embarrassing recommendations for altering the law. It might also prove to be more than ordinarily difficult to find suitable members.

On the other hand, if an inquiry were set up into problems of prostitution (and as explained above I think that such an inquiry would be valuable) there would be strong criticism if no comparable investigation were made into homosexual offences. It could also be argued that such an investigation might throw light on why there has been such a large increase in this class of crime; 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.

12. I think that the balance of advantage is in favour of appointing a Royal Commission to inquire into both the problems discussed in this memorandum, but this course is not without its dangers.

D. M. F.

*Home Office, S.W. 1.
16th February, 1954.*