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EXTRACT

The thesis has as its primary objective an analysis of rent legislation in the United Kingdom between 1915 and 1972. The historical formation and meaning of the Housing Finance Act (1972) is examined in some detail. The methodology of the whole is largely determined by the 'Marxist' interpretation of social development. This standpoint is best able to distinguish the various academic and professional falsifications of reality in the housing rent process- large areas within the sociology of law, neo-classical economics and the relationship between State and the fractions of capital.

It is misleading to compartmentalise elements of social structures, and as such historical analysis of rent legislation immediately requires analysis of more basic elements in capitalist society. It is found that authoritative definitions of reality, particularly as embodied in the legal apparatus, have their origin in power structures. The extraction of rent and the legislation by which it is determined are therefore the result of discrepancies in power structures. The historical material in the thesis demonstrates that modifications in the rent bargain have been brought about in response to the changing needs of capitalism. Finally, analysis is made of the relevant agents of social control in this area: rent tribunals, rent assessment committees and private 'welfare' institutions.

P.BEIRNE

HOUSING RENT AND HOUSING LAW IN A CAPITALIST SOCIETY:
HOUSING, HOUSING FINANCE AND THE HOUSING FINANCE ACT.

Ph.D. Thesis, 1974

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INTRODUCTION

In March 1971 the Francis Committee Report on the Rent Acts was published, and the next year many of the recommendations of this committee were duly incorporated into the Housing Finance Act (1972). The saga was accompanied by the verbal trimmings, at least, of class warfare. Both the mass media and academics interested in housing and rent suddenly appeared to realise that rent legislation has been with us in the United Kingdom since 1915. The implications of this insight were not understood, and little or no sociological imagination has been invested in research in this area. Further, the vast majority of research into the nature of law has traditionally been concerned with the criminal law and its enforcement. An explanation of this neglect and the dominant position of the sociologist as 'social worker' is offered in Chapter I.

This paper is not concerned with the sociology of law. Nor is it concerned with the sociology of housing rent. Bourgeois sociologists have too often attempted to compartmentalise elements of social structures with the result that social life and social events appear as existences independent of their historical formation. Renner has said that "...in a state of rest legal and economic institutions, though not identical, are but two aspects of the same thing, inextricably interwoven." (Renner, K. (1948) 58) We can no more study the laws of gravity from a stone in a state of rest than we can learn the

art of cooking from the cook who was pricked by the Sleeping Beauty's spindle. An understanding of the Housing Finance Act therefore requires more than the vacuous collection of hypotheses: it requires that our 'observations' are grounded within the framework of an historicist theory. This author unreservedly believes that 'law in its social context' can only be understood in a capitalist society by analysing its relationship with the economic base of capital accumulation. With Engels "...anyone who proposes the taking of economic steps to abolish rent surely ought to know a little more about house rent than that it represents the tribute which the tenant pays to the perpetual title of capital." (Engels, F. 1970, 80). In societies where the institution of rent exists examination of the status of rent legislation necessarily entails examination of the status of rent, housing and law on the basis that they are both historically and conceptually interwoven. Examination of the one immediately presupposes examination of the other.

Chapter I attempts to discover the micro processes which lead to authoritative definitions of situations. Against this background the adequacy of various authors in the field of 'the sociology of law' is evaluated: Durkheim, Weber, Marx and the school of sociological jurisprudence. An important distinction is made between sociological and juristic interpretations of reality, and analysis is made of the ideological component of those sociological versions of reality which are accepted as authoritative by jurists and the legal system. In this fashion we can begin to see the battle for

definitions which always precedes legislation. Linking micro and macro power situations through the concept of defining the situation it is found that a 'Marxist' methodology is best able to describe our observations on the role of law: no other approach has realised the importance and extent of power relations in capitalist society.

Chapter 2 begins with a 'theoretical' analysis of rent, and more specifically of housing rent. This provides the necessary platform for understanding the housing rent process, and the legislation by which it is formally governed, from the early, pioneering days of the mid-Victorian era up to the Rent Act (1968). Bourgeois and neo-classical apologetics for housing rent are exposed as falsifications of reality; the evidence submitted to the various rent restriction committees prior to legislation is weighed up from a similar standpoint. Chapter 3 is a continuation of this historical analysis, but is solely concerned with the Housing Finance Act (1972). Chapter 4 is concerned with the relationship of various fractions of capital- company landlords, insurance companies, banks and pension funds- to the rent payment. Although this might well be labelled an exercise in muckraking, the critic must remember that much of my material reveals that the process of housing rent in capitalist society is a dirty business anyway. It is given symbolic solemnity only by the legal system.

Chapter 5 is (an only too brief) analysis of the role of the various agencies responsible for 'solving' problems in the housing

rent process and generally determining the level of the rent bargain: state agencies such as rent tribunals, and private welfare agencies such as Shelter. Both types of body have the dual functions of legitimation of the existing social order on the one hand, and the amelioration of the worst conditions produced by capitalist society on the other. Much of the material which I gathered in North Yorkshire, Newcastle and London (some 71 rent tribunal hearings and several conversations with Rent Officers) was not found to be relevant to the general tenor of this thesis and so was not included. An interactionist approach to these agencies would not offer much explanation of events within them: put simply, since rules are rigidly adhered to there is little room for negotiation, and differential interpretations are ignored.

There are no conclusions offered at the end of the paper: this would not only be pretentious but would also (and much more importantly) miss the point that prescriptions for action ought to be directed at those institutions which themselves cause 'housing rent problems'. Elimination of these problems requires elimination of the capitalist base, and it is artificial to distinguish between the cause of housing rent problems and other problems generated by capitalism.

Finally, I would like to thank the joint supervisors of this thesis-- Stan Cohen, Dave Byrne and Bob Roshier. All three helped me through many academic and other crises.

I SOCIAL SCIENCE INFORMATION, LEGAL PHILOSOPHY AND

THE ROLE OF LAW

'Prisons are built with stones of law,
Brothels with bricks of religion.'

Philosophers from Plato to Hegel have concerned themselves with the nature of law in its social context, but it is only recently that there has been a mutual demand for a rapport between the respective areas and methods of vision embraced by the jurist and by that particular brand of social philosopher, the sociologist. Sociological perspectives in this area have largely been governed by prior theoretical positions to the problem of order. Different positions cluster around particular patterns of response to this central concern, and the responses themselves have determined the premises of diverse shades of macrosociological theory- Durkheimian mechanical and organic solidarity; the status and contract dichotomy of Henry Maine; Weberian ideal-typical progressive rationalisation; normative functionalism; and dialectical materialism. According to the colouring of the premises law has been understood as a cohesive force which safeguards widely-held social values, as an impartial mechanism for resolving competing interests, as a barometer of social change and as a weapon in the armoury of the ruling class.

The student of either law or sociology who reaches the

borderline area of his respective field will have some idea of the intellectual chaos which exists in the multiplicity of approaches to law, and will with some truth conclude that any attempt to offer explanations of the role of law in its socio-political context is doomed to failure. Historically, the study of law has encompassed a wide range of disciplines, and it is therefore not surprising that the present stock of theory should bear little resemblance to a systematic collection of knowledge. Even in a bibliographical work by the authoritative Chambliss and Seidman no references are made to Durkheim, Weber or Marx. ^I This academic sectarianism is perpetuated by the arbitrary classification of authors and perspectives in different ideological boxes; there appear to be some twenty five of these, of which mechanical sociological jurisprudence and logical legal normativism are in form the most esoteric. Faced with this embarrassment of riches Roscoe Pound was driven to declare (albeit in a very different context) "Indeed there is a real task of unification within the science of law." ² In turn Pound has been hailed as a student of sociological jurisprudence, sociology of law and systematic sociology

1. W.J.Chambliss & R.B.Seidman, Sociology of the Law, The Glendessary Press, 1970.
2. H.Cairns, Law and the Social Sciences, New York, 1969, from the preface by Pound at p.xiii.

of law by one critic alone; ³ and as a student of social control elsewhere. ⁴ Again, Weber has been classified under comparative history of law, legal sociology, ⁵ and sociology of law. ⁶ An explanation of the poor understanding of the epistemological status of law has yet to emerge, but this will be developed later.

We must now attempt to answer the recurrent question of the exact nature of law. It may be argued that the essence of theory construction is a critique of existing theory; as such the creation of a valid perspective towards 'law' and 'legal mechanisms' requires more than the vacuous collection of related hypotheses. It also requires an examination of the concepts of the human actor, society and law in the context of politically organised society. There must obviously be a competent theoretical position within and underpinning one's research; if not, then 'data' and 'facts' will take on new

3. G.Gurvitch, Sociology of Law, London: K.Paul, French, Trubner and Co., 1947, pp.124-30.
4. Davis et al, Society and the Law, New York: The Free Press of Glencoe, 1962, p.23.
5. Gurvitch (1947) op.cit., p.31; and also Davis et al (1962) op.cit. p.23.
6. J.Freund, The Sociology of Max Weber, Allen Lane, The Penguin Press, 1970, pp.245-66.

meaning when new and perhaps better perspectives are brought to bear on the target area. With regard to theory, the society which is being investigated cannot be conceived to be socially organised without reference to the experience of its members. The concept of the definition of the situation is one way of depicting these experiences, and must therefore be the starting point for our analysis of the emergence, perseverance and destruction of law. Crucial to an understanding of social interaction is the way in which actors define a given situation, for on the basis of their definitions they will orientate their behaviour accordingly.

Berger and Luckmann have discussed the position where two actors from entirely different social worlds, from worlds produced in historical segregation from each other, are suddenly projected into a situation of potential interaction.⁷ Initial interaction will occur although there are no institutional meanings or definitions attached to their situation. Each watches the other perform, each attributes motives to the other's action, and on seeing and recognising recurrence of actions both then typify the other's actions as recurrent. Soon these typifications will be expressed in specific patterns of conduct, and the actors will begin to

7. P. Berger and T. Luckmann, The Social Construction of Reality, Allen Lane, 1967. As should be immediately obvious part of this section has been influenced by P. McHugh, Defining the Situation, New York: Bobbs-Merrill, 1968.

act out roles vis-à-vis each other. This reciprocal typification cannot yet be institutionalised, but after the initial stage each of the actors is able to predict those of the other more successfully. A certain routinisation of conduct therefore occurs on the basis of shared meanings and expectancies, and an embryonic institutionalised order is now present. Parsons has argued that the distinction between the normative and the non-normative elements of action systems is an empirical distinction on the same methodological level as many others in all sciences.⁸ The logical starting point for analysis of the role of normative elements in social interaction is the fact of experience that men not only respond to stimuli but in some sense try to conform their action to patterns which are deemed desirable by the actor and by other members of the collectivity. This statement of factual definition, like all statements of fact, involves a conceptual scheme. The most fundamental component of Parsons' theory of action is the means-end schema, and he argues that the theory of action is an elaboration and refinement of that basic conceptual scheme. A normative orientation is crucial to the theory of action in the same sense that 'space is fundamental to that of classical mechanics'; in terms of the given conceptual scheme there is no such thing as motion except as change of location in

8. T.Parsons, The Structure of Social Action, The Free Press, New York, 1968, vol.I p.76.

space.

Parsons has therefore defined for us a conceptual scheme whereby normative rules can be followed, but he has delineated neither the social origins of the rules nor the manner in which they are followed in 'real life' situations. The knowledge of a man who acts and thinks within the world of his daily life is incoherent, only partially clear and not at all free from contradiction. Schutz might add,⁹

" The system of knowledge thus acquired... takes on for the members of the in-group the appearance of a sufficient coherence, clarity and consistency to give anybody a reasonable chance of understanding and being understood. Any member born or reared within the group accepts the ready-made standardised scheme of the cultural pattern handed down to him...as an unquestioned and unquestionable guide in all the situations which normally occur within the social world...Thus it is the function of the cultural pattern to eliminate troublesome inquiries by offering ready-made directions for use, to replace truth hard to obtain by comfortable truisms, and to substitute the self-explanatory for the questionable."

In other words a Parsonian approach accepts the problematic as self-evidently true. We must now examine the type of action

9. A.Schutz, 'The Stranger: an essay in social psychology', from Studies in Social Theory, A.Broderson (ed.), Collected Papers II, The Hague, 1964, pp.91-105.

which occurs when an outsider or stranger arrives new to a social situation; the mechanisms for handling potentially 'difficult' social situations at this micro level will of course provide us with some clue as to how such situations are controlled or managed at the macro level. Schutz has noted that the same objects or events can have different meanings for different actors, and that the degree of difference will produce comparable differences in behaviour or, to use his term, 'multiple realities'.¹⁰ The Martian would be unable to attach any significant meaning to the situation of eleven human beings having social intercourse on a smooth, green-coloured texture, with one of these beings projecting a hard circular object at another who attempts to divert it with an upright stick. To the Englishman this would immediately be recognisable as a game of cricket. As Schutz again says,¹¹

" The discovery that things in new surroundings look quite different from what he expected them to be at home is frequently the first shock to the stranger's confidence in the validity of his habitual 'thinking as usual'...It cannot be used as a scheme of orientation within the new social surroundings...He has, first of all, to use the term of W.I.Thomas, to define

10. A.Schutz, On Multiple Realities, Collected Papers I, The Hague: Martinus Nijhoff, 1962, pp.207-59.

11. A.Schutz, 'The Stranger...', 1964, op.cit.

the situation...The stranger is called ungrateful, since he refuses to acknowledge that the cultural pattern offered to him grants him shelter and protection. But these people do not understand that the stranger in the state of transition does not consider this pattern as a protecting shelter at all but as a labyrinth in which he has lost all sense of his bearings."

Various mechanisms control the arrival of a stranger and 'integrate' him into his new setting. Berger and Luckmann show how, reverting to the position of the two actors who have been historically segregated, an expanding institutional order develops a corresponding canopy of legitimations, and that these legitimations are learned by the new generation during the same process which socialises them into the ways of the institutional order. The concept of socialisation is central to the functionalist notion of integration via authoritative norms. But, and this is the important point, Parsons (and consensus theorists in general) cannot cope with the situation where two actors define a shared situation differently and both actors refuse to accept the definition of the other. In part the strength of the refusal- but not the success- will depend on emergence, relativity and background expectancies. ^{I2} Goffmann helps us

I2. See P.McHugh (1968) op.cit. pp.23-45; and A.Cicourel, The Social Organisation of Juvenile Justice, John Wiley, New York, 1968, pp.143,260,329. This idea is similar to Mannheim's thesis that patterned definitions depend upon relating previous interpretations to present circumstances, K.Mannheim, Essays on the Sociology of Knowledge, New York, OUP, 1952,pp.53-63.

to answer this problem by tracing the mechanisms which actors use to avoid bumping into each other in the street. ^{I3} One method would be the convention that male pedestrians should take the road-side of the pavement when passing females. We learn that ^{I4}

" By the term 'externalisation', or 'body gloss', I refer to the process whereby an individual pointedly uses over-all body gesture to make otherwise unavailable facts about the situation gleanable... By providing this gestural prefigurement ('intention display') and committing himself to what it foretells, the individual makes himself into something that others can read and predict from; by employing this device at proper strategic junctures- ones where his indicated course will be perceived as a promise or warning but not as a challenge- he becomes something to which they can adapt without loss of self-respect."

Unhappily not all face-to-face relations avoid the stage of confrontation. Although at the micro level rules and customs exist for negotiating continuous movement on pavements, although different definitions of a situation may be 'reconciled' by socialisation, and although different and conflicting meanings may finally be fused into one by 'consensus', nevertheless many

I3. E.Goffmann, Relations in Public, Allen Lane, 1971, pp.3-27.

I4. *ibid.* p.II.

events occur where the actors do not have equal access to the adjudicating or bargaining processes or apparatus. Thus, I cannot live in Buckingham Palace because it is for the exclusive use of the Windsor family, and if I decide to become a redistributor of property then I will be punished under the Theft Act (1968). Where two actors define a situation differently then the definition of one may prevail as authoritative because he holds a relatively stronger power position. This advantageous position may be based on diverse attributes: physical, social, monetary, political etc. The victor's definition of the situation will be given authoritative status because he has greater power than the other actor along some dimension.

It is outside the scope of this work to deal in detail with the way in which power, wealth and prestige become crystallised in social structures, but the clue at the micro level, as has been shown, is the ability to define norms and patterns of conduct as authoritative vis-à-vis alternative realities. Norms are imperatives which prescribe patterns of conduct, and it is at once necessary to differentiate the various forms which norms may take. Every norm is of course directed towards some role-encumbent. Some norms may be directed towards particular encumbents, such as the specific rules governing the conduct of students in examinations. These rules will themselves vary between different educational institutions. Some norms may have only informal sanctions attached to their infraction. The breaker of the schoolboy code known as 'squealing' will be sent to Coventry by his peers. Some norms may only be customary

and have no sanctions imposed for infraction. For example, it is a custom that to walk under a ladder will produce 'bad luck', but the person who does so will not be penalised for doing so, except perhaps by bad luck. The American experiment with the national prohibition of the sale of alcohol between 1920 and 1933 exemplifies the case where a cultural norm with virtually no counterpart in social behaviour may nevertheless be defined as authoritative.¹⁵ If detected, infraction here would result either in a fine or else in imprisonment. We have moved from an examination of the causes of social control full circle to the consequences of breaking the rules of the controllers. Both are based on power discrepancies. Crucial therefore to an understanding of legal norms, legal institutions and legal processes, is the concept of defining the situation. This is the conceptual link between political domination and definitions of norms as authoritative. We are now in a position to evaluate the various perspectives on the emergence and functions of law in a politically organised society.

The Sociological Tradition: Durkheim and Weber.

The guiding light of Durkheim's general work seems to have been the demonstration that social evolution follows the transition from mechanical to organic solidarity. In 1893

15. For the relevant distinction between social and cultural norms see A. Turk, Criminality and the Legal Order, Rand McNally & Co., 1969, pp.34-40.

he thought that ^{I6}

"...social solidarity is a completely moral phenomenon which, taken by itself, does not lend itself to exact observation, nor indeed measurement. To proceed to this classification and this comparison, we must substitute for this internal fact which escapes us an external index which symbolises it and study the former in the light of the latter. This visible symbol is law."

Durkheim argued that since law reproduces the principal forms of social solidarity we have only to classify the different types of law to find the different types of social solidarity which correspond to it. This conceptual link turns out to be an important insight, and was to be resurrected by the social interactionist school in the 1960's. He argued that an act is criminal when it offends strong and defined states of the collective conscience. This is a poor attempt, for not only does Durkheim change his conception of the collective conscience several times in the *Division of Labour*, but also if by collective conscience he means some kind of widely-held value system then his argument fails to distinguish the emergent bases of the criminal norm. It seems obvious that a crime only offends the dominant and authoritative criminal law norm: it is quite another question to ask whether that norm has 'majority' support.

I6. E. Durkheim, The Division of Labour in Society, The Free Press, New York, 1964, p.64.

Although most of Durkheim's attention was directed to criminal law and its infraction, as is the case with the vast majority of contemporary sociological work, his work was intended to serve as a theoretical guideline for a more general sociology of law. For Durkheim the distinguishing feature of law in organic solidary societies is that it is not expiatory, but that it consists of a 'simple return in state'. He differentiated between real and personal rights; the right to property is the first type, the right of credit the latter. A glance at the 'revolutionary' real property legislation in Britain in 1925 shows the opposite is the case: it was in some ways an amalgamation of real and personal property in law. The parallel development of contract and the State, necessarily a product of the progressive dominance of organic solidarity, leads Durkheim to detect the realisation of equality, liberty and justice in law. Had Durkheim studied the revolutionary legal system instituted in his country in 1789 he would perhaps have noted that the tricolore motif was a symbol of the victorious bourgeoisie. His hypothetical link between organic solidarity and restitutive law is highly tenuous, and from the mouth of Lord Denning we hear, ¹⁷

"The punishment inflicted for grave crimes should adequately reflect the revulsion felt by the great majority of citizens. It is a mistake to consider the objects of punishment as being deterrent or preventative and nothing else...The ultimate justification of any punishment is not that it is a deterrent, but that it is the emphatic denunciation by the community of a crime..."

17. Denning, L.J. R.C.C.P., 1953, Cmd.8932 H.M.S.O. p.18; see also an even more forceful statement by Stephen, L.J. 2 H.C.L. 81-82.

Despite his oversimplifications Durkheim left at least a partial legacy for a sociology of law. He argued correctly that the growth of administrative law is a function of the transformation of mechanical to organic solidarity. This idea runs parallel with certain other arguments, notably those of Max Weber and Henry Maine. Further, and following from the earlier question of the relation between forms of sociality and their corresponding types of law, he pointed to the relativity of law, ¹⁸

"Imagine a society of saints, a perfect cloister of exemplary individuals. Crimes, properly so called, will there be unknown; but faults which appear venial to the layman will create there the same scandal that the ordinary offence does in ordinary consciousness...If, then, this society has the power to judge and punish, it will define these acts as criminal and treat them as such."

There are various parallels between Durkheim's work and that of Max Weber, for both were caught in the intellectual ascendancy of evolutionism. Weber's monumental work in this field covered a great variety of problems and does not easily lend itself to summary. The focus of his sociology of law, and the link between it and his other studies is the demonstration that the distinguishing feature of modern western capitalism is increasing rationalisation. This theme is not unlike the

18. E. Durkheim, The Rules of Sociological Method, New York: The Free Press of Glencoe, 1938, pp.68-9.

position taken by the Parsonian Bremediar.¹⁹ To grasp the richness and complexity of Weber's contribution to this field it is necessary to appreciate the era in which he was writing, his aims and his method: general knowledge of this must be assumed in this piece. Weber argued that the formal qualities of the law emerge²⁰

"...arising in primitive legal procedure from a combination of magically conditioned formalism and irrationally conditioned by revelation, they proceed to increasingly specialised juridical and logical rationality and systematisation, passing through a stage of theocratically or patrimonially conditioned substantive and informal expediency. Finally, they assume, at least from an external viewpoint, an increasingly logical and deductive rigour and develop an increasingly rational technique in procedure."

'Verstehen' clearly shines through this passage, but Weber is guilty of a serious error here. From the point of view of the controllers of the legal process, the law, and particularly the common law system of cases, do approximate to a "logical and deductive rigour"; but a social analysis of law must proceed from

19. eg. 'Law as an Integrative Mechanism', in William M. Evan (ed) Law and Society, The Free Press of Glencoe, 1962, pp.73-88.

20. M.Rheinstein & E.Shils, Max Weber on Law in Economy and Society, Harvard University Press, 1966, pp.303-4.

and include an understanding of the worth of legal processes to participants and to society at large. If this is not appreciated then there can be no comprehension of how a particular definition of 'right' is translated from one of competing definitions to the one which commands orthodoxy. Law begins with a concrete occurrence, an historical event in relationships between classes or parties within power structures: landlord and tenant, squatter and repossessor, debtor and creditor. Legal processes determine the outcome of right. But what Weber refers to as 'deductive rigour' is nothing less than the logical maintenance of the status quo. The 'conclusion' follows logically from the premises; but the premises of the contest were themselves constructed within a conflict situation. The result is that law merely follows and reflects social structures, and therefore adopts a defensive role. 21

Several hundred pages in Economy and Society separate Weber's discussion of the nature of the sociology of law and the nature of power and legitimacy, and this division itself reflects the major theoretical fallacy in Weber's argument. It is just from

21. Weber has been (rightly) castigated for ignoring structural inequalities, but in one area- contractual freedom- he highlights the results of inequality: Rheinstein & Shils (1966) op.cit. pp.669-730. Weber argues that 'legal empowerment rules' do no more than create the framework for valid agreements which, under conditions of formal freedom, are officially available to all. Actually they "are available only to the owners of property and thus in effect support their very autonomy and power positions." (p.730)

a fusion of notion of power and law that analysis of the role of law in political society can flow. Weber defines power as "the probability that one actor within a social relationship will be in a position to carry out his own will despite resistance, regardless of the basis on which this probability rests".²² Weber argues there are two types of power- legitimacy and domination; he defines domination as "the probability that a command with a specific context will be obeyed by a given group of persons". Further, there are three types of legitimacy- rational, traditional and charismatic. From this he argues that legal (i.e.rational) authority may be based on the most diverse motives of compliance, from simple habituation to the most purely rational calculation of advantage. Thus, every form of legal authority implies a minimum of voluntary compliance, or an interest in obedience. This is problematic, for if authority rests and depends on voluntary obedience, then ipso facto there would be no need for an apparatus of coercion or of explicitly formulated positive and negative inducements. Since this is quite clearly not the case (and as Weber says "the term 'guaranteed law' shall be understood to mean that there exists a coercive apparatus"²³), then his definition of legal authority is in practice indistinguishable from legal domination. This is reinforced by Weber's remarks on the limits of contractual freedom between an employer and employee in the market. Blau

22. Economy and Society (1966) op.cit. p.53

23. ibid. p.313.

says that Weber ignores this paradox because his focus of interest on types of legitimacy leads him to take the existence of legitimate authority for granted and never systematically to examine the structural conditions under which it emerges out of other forms of power.²⁴ In other words notions of legitimacy and authority cannot be divorced from their bases in power structures.

In evolutionary affinity with both Durkheim and Marx there is implicit in Weber's general approach the feeling that modern legal authority had developed through various stages and processes. In brief it has developed from the traditional and charismatic types. This cannot be called either an original or a breathtaking conception; what is important, however, is a careful examination of the structures within which these stages evolve. Unless such an examination occurs then we will be left with nothing but tautological answers. In response to his own question therefore "How do new legal rules arise?" he is forced to reply "...by way of legislation".²⁵ New legal norms arise, according to Weber, when there is a new line of conduct which then results either in a change in the meaning of consensual

24. Peter M. Blau, 'Critical Remarks on Weber's Theory of Authority', in D. Wrong ed. Max Weber, Prentice-Hall, 1970, pp. 147-68.

25. Economy and Society, op.cit. p. 753.

understandings of existing law, or (tautologically) in the creation of new rules of law. Although his sociology of law seems to have suffered from his method of accepting the elaboration of coherent systems of legal norms which are suspended in mid-air, nevertheless Weber later seems certain of the manner in which new legal rules actually emerge..."from those individuals who are interested in some concrete action...", "juridical precedent" and "from above". Instead of proceeding to analyse the structural setting in which the "development of the law from above..." emerges, he disappointingly says ²⁶

" What is now of interest are the ways in which these new modes of inventing, finding or creating law affect its formal characteristics."

Sociological Jurisprudence and Legal Realism

The closest intellectual fusion between the sociological and juristic perspectives has been found in sociological jurisprudence, of whom the founding father was Roscoe Pound (1870-1965). As we shall see later, the sociological half of this marriage has its basis in a fundamentally conservative view of the world. In his early work Pound was undoubtedly influenced by the pragmatic

26. *ibid.* p.761. Since I have outlined the critique of Weber with rather a lack of depth, see Appendix I for further analysis.

philosophy of William James who had said in 1943²⁷,

"In seeking for a universal principle we are inevitably carried onward to the most universal principle- that the essence of good is simply to satisfy demand."

Later, however, a more idealistic element is discernible in Pound's thought, possibly due to the influence of the French theorist Hauriou.²⁸ Pound's approach was governed by four questions: sociological problems connected with his theory of interests; philosophical problems connected with the pragmatism/idealist debate; a concern with the transformation of Anglo-Saxon law as it adjusted to the demands of rapid industrialisation in the nineteenth and twentieth centuries; and the juridical process in the American courts. It is evident that in what was basically a functionalist approach, Pound attempted to incorporate what passed as a 'sociology' of law into the generalised legal philosophy which supported the political status quo (i.e. modern capitalism), in contemporary western society. For Pound all thought on law was as a means for improving existing

27. W. James, Essays on Faith and Morals, New York, 1943, p.201.

28. eg. R. Pound, 'The Ideal Element in American Judicial Decisions', Harvard Law Review, 1932, vol.45. For an exposition of Pound's idealism see M. Aronson, 'Roscoe Pound and the Resurgence of Juristic Idealism', Journal of Social Philosophy, 1940, vol.16, No.1, pp.47-83. See also Pound's comments on Hauriou in his Social Control through Law, Archon Books, pp.9-10.

judicial procedure.²⁹ The function of law in this context was always seen as a mechanism for balancing competing interests. There seems little value in digressing into the niceties of this line since the premises are grossly inadequate for analysing the role of law in a politically organised society. Pound and his ilk failed to realise, consciously or otherwise, that sociological jurisprudence, a hybrid progeny, was but a variation of the Austinian analytical jurisprudence from which they sought to escape. Pound, the social engineer, viewed law essentially as a set of neutral rules:³⁰

" But the legal order goes on...because it performs well its task of reconciling and harmonising conflicting and overlapping human demands and so maintain a civilised order."

However, what Pound did not observe was that these 'neutral' sets of rules were themselves the product of conflicting human demands. Even in such an elementary position as a game of chess, in which the rules of the game are fixed, then firstly these rules themselves were originally formulated by someone (they could have been formulated differently by someone else) and second, the person who wins does so because he may have a better knowledge of the rules, better strategy, or more 'psychological'

29. "...the end of juristic study is to make effort more effective in achieving the purpose of law." R.Pound, Outline of Jurisprudence, Harvard University Press, 1943, p.34.

30. R.Pound, Social Control through Law (1968) op.cit. p.53.

power than his opponent. No rule which formally applies impartially to all members of a society can in practice be 'fair' so long as it operates in a context of inequality. And yet this legal fiction is the dominant approach favoured by jurists. Failure to distinguish between 'neutral' legal rules and the context of structural inequality from which they emerge necessarily leads to a real confusion between morality and justice, between reason and arbitrary will, and between 'law in the books' and 'law in action'. The legal realist offshoot of sociological jurisprudence suffers from the same intellectual poverty. 3I

Marxist Trends

There is as yet no fully developed Marxist sociology of law, but there are at least enough passages within Marxist theory to extract the basis of a working perspective. The 'founders' of Marxism took as their initial point of departure that the decisive factor in the objectively-determined evolution of society was the development of the productive forces. Corresponding to these forces are the relations of production which form the structure of society, the method of production on which material life is based conditioning

3I. For the legal realists, as with Pound, law was held to be an impartial arbiter of conflict; the sociological affinity with normative functionalism is clear. The school was initially led by Cardozo and Holmes, and then latterly by Llewellyn, Thurman Arnold, Jerome Frank and Charles Clark. Both schools still find a flourishing refuge in the USA; their British equivalent is the 'socio-legal studies' perspective. In both there is the usual natural-law based assumption of a common value system: See Appendix 2 .

the social, political and intellectual processes of life in general. The legal superstructure, like the political superstructure, has its foundation in the economic base. This was Marx and Engels' initial point of departure, and for three reasons. Marx himself later modified his views on the relation between law and society, and after the Economic and Philosophic Manuscripts of 1844 law ceased to be a major element in his work. ³²

Second, in the last quarter of the nineteenth century Engels similarly changed the emphasis of his economic determinism. Finally, Marxism is a living body of thought, and subsequent additions have been made to it.

In 1842 Marx had an almost Kantian natural rights conception of law ³³,

"Laws are as little repressive measures directed against freedom as the law of gravity is a repressive directed against movement...Laws are rather positive, bright and general norms in which freedom has attained to an existence that is impersonal, theoretical and independent of the arbitrariness of individuals. A people's statute book is its Bible of freedom."

32. See, for example, K.Marx & F.Engels, Selected Works, Moscow, 1952, Vol.I p.322.

33. 'Proceedings of the Rhenish Parliament', translated by D.McLellan in Karl Marx; Early Texts, B.Blackwell, 1971, pp.35-6.

Although we shall see that there are certain historical moments when part of a statute book may uphold the formal rights of an oppressed class, this passage from Marx stems from a failure to differentiate between the social meaning of a law and the meaning attributed to it by those able to propagate authoritative versions of its meaning; as such this passage is clearly out of character with the general Marxist perspective. The example of the Magna Carta of 1215 illustrates this important distinction. Since his ascent to the throne of England in 1199 King John gradually attempted to destroy the feudal rights won by the baronial class in the reigns of Henry I and Henry II. This took the form of increasing customary feudal obligations and decreasing feudal rights and privileges. The church, the barons and the new mercantile capitalist class were all clear losers in this struggle. The final crisis of the reign began in 1213 when John sought to revive the war with France. The barons formally renounced their allegiance to John, and a showdown took place at Runnymede on June 15th 1215. In the next few days a 'charter of rights' called Magna Carta was drawn up and sealed by John.

Especially since the seventeenth century, with the instrumentality of lawyers such as Edward Coke and John Selden, the historical role of Magna Carta has been consciously distorted. Magna Carta has been highly praised by lawyers, and Coke declared ³⁴,

34. E.Coke, 56 Edw. 3

" As the goldfiner will not out of the dust, threads, or sheds of gold, lett passe the least crum, in respect of the excellency of the metall: so ought not the learned reader lett passe any syllable of this law, in respect of the excellency of the matter."

We are thus invited to join in the academic consensus which compares Magna Carta with the most precious of metals. Roscoe Pound thought that "the Magna Carta guaranteed freedom throughout the English speaking world."³⁵ Formally, of course, one of the principle effects of Magna Carta was to 'grant to all free men of our kingdom for us and our heirs forever all the liberties written below'; but the reality was completely different. The main role of Magna Carta was as a control device to restore decaying feudal relationships. In this sense it was an ultimately conservative document. Nearly all the rights listed in the document's sixty three chapters relate to property relationships within the structure of feudalism. Therefore, the 'rights' referred to in Magna Carta were more correctly the legal authority of one person in the hierarchical power system to extract certain feudal obligations from those below him. The general argument which holds that because a law formally applies equally to all members of a society therefore it is a fair law merely entails that the millionaire and the pauper both have the legal freedom to live in poverty. Given the rigid structural inequality which pervaded feudal society, s.39 of

35. R.Pound, Social Control through Law, (1942) op.cit. p.102.

Magna Carta, which related to the freedom of the individual, falls into a better perspective. ³⁶

The Marxist position on the relation between law and morality was vividly brought to light in the 1844 Communist Manifesto : ³⁷

" But don't wrangle with us so long as you apply to our intended abolition of bourgeois property, the standard of your bourgeois notions of freedom, culture, law etc. Your very ideas are but the outgrowth of the conditions of your bourgeois production and bourgeois property, just as your jurisprudence is but the will of your class made unto a law for all, a will, whose essential character and direction are determined by the economical conditions of existence of your class."

36. The influence of s.39 of Magna Carta, and the later Habeas Corpus Act of 1679 extended not unexpectedly to American versions of individual liberty. Thus, in 1819 Justice Johnson said "As to the words from Magna Carta...after volumes spoken and written with a view to their exposition, the good sense of mankind has at length settled down to this: that they were intended to secure the individual from the arbitrary exercise of the powers of government, unrestrained by the established principles of private rights and distributive justice", from *Bank of Columbia v. Okely*, 4 Wheat.235, 244 (1819). Interestingly, a French observer had written in 1784: "...and from that moment (1215) the English would have been a free people, if there were not an immense distance between the making of laws, and the observing of them"; J.L. de Lolme, The Constitution of England, London, 1784.

37. Selected Works, Lawrence & Wishart, 1970, p.49 and pp.51-2.

In this illuminating statement Marx has shown us why there is an effective barrier between sociological analyses of the role of law in class society and juristic views of the world. The latter, as we shall develop further, is necessarily linked with and part of bourgeois ideology. The unifying feature of pure and analytical jurisprudence is an obsessive concern with the maintenance of the political status quo. It could not be otherwise. It is not a mere accident of history that most scholars of jurisprudence have also been lawyers by profession. Machiavelli's El Prince was a defence of the despotic methods of government of the ailing Florentine city-state, Hobbes' Leviathan was a polemic defence of Stuart monarchical absolutism, von Savigny vigorously supported the German militarist state of the mid-nineteenth century, and Austinian analytical jurisprudence embodied the Protestant work ethic of the English industrial bourgeoisie. In other words, in capitalist society the morality or ethical system accepted and defined as 'good' stems from and is conditioned by capitalist morality. We shall use this perspective later to analyse the role of the legal profession. To borrow again from Marx ³⁸,

" With the change in the economic foundation the entire immense superstructure is more or less rapidly transformed. In considering such transformations a distinction should always be made between the material transformation of the economic conditions of production, which can be determined with the precision of natural science, and the legal, aesthetic or philosophic- in short, ideological forms in which men become conscious of this conflict and fight it out."

38. *ibid.* from 'Preface to the Critique of the Political Economy', 1859, p.182.

The legal umbrella is thus part of the wider canopy of social control mechanisms available to the bourgeois class as a whole. Engels was at this time in complete agreement with Marx as to the essentially class-dominated character of laws and the legal process. He shows how the English Reform Act of 1832 and the Repeal of the Corn Laws in 1844 gave the emergent industrial bourgeoisie the political supremacy which they so desperately needed for the smooth accumulation of surplus value. Engels devoted some considerable time to a consideration of the Code Civil promulgated by Napoleon Bonaparte between 1804 and 1810: inspired by Roman law the Code formalised and institutionalised the property relations inherent in the existing production relations.³⁹ By giving order to property and contractual relations the Code enables us to see the contradictions within capitalist society, for example between the fiction of community and the reality of selfishness, between the man and the citizen, and between the private and public sectors of social life. In a letter to Bloch, written in 1890, Engels asserted that he had never held the economic base to be the single determining element.⁴⁰ He argued that although the relations of production are the ultimately determining agent in the materialist conception of history, nevertheless the various components of the superstructure, such as constitutions, also exercise their influence on the outcomes of the contradictions within capitalist society. This letter

39. *ibid.* from 'Socialism; Utopian and Scientific', pp.387-88.

40. *ibid.* from 'Engels to J.Bloch', p.682

dismisses the usual criticism (eg.R.Pound, 1942, 97) that Marxist analysis naively ignores the role that law can play in modifying social structures.

The final major element in the Marxist philosophy of law is the prophecy of the disappearance of law in communist society. In The Part Played by Labour in Transition from Ape to Man, written in 1877, Engels declares ⁴¹:

"By the combined functioning of hands, speech organs...men became capable of executing more and more complicated operations...Agriculture was added to hunting and cattle raising... Along with trade and industry, art and science finally appeared. Tribes developed into nations and states. Law and politics arose..."

and in Anti-Duhring Engels was to argue that not until the complete victory of communism and the establishment of a classless society will law and state as instruments of oppression disappear and be replaced by a 'mere administration of things'. The human cycle, in legal terms at least, had gone full cycle.

Like Marx and Engels, Lenin held that political institutions formed the superstructure, and most of his post-1917 work, as in The Next Tasks of the Soviet Government was concerned with the social engineering function of law. Two things were needed urgently: the security of the red soviets in the immediate post-1917 struggle with the White Russians and their European allies, and the reconstruction of the Soviet Union after the disastrous intervention in the 1914 war. Earlier, in the German Ideology, Marx had amplified the question

41. *ibid.* pp.359-60.

of the relation between class will and its embodiment in legislation. He argued that the decisions by which legal norms are instituted are made by the state as an organ of the ruling class. Lenin held that law is a system of norms which is the product of the work of those state organs whose function it is to create the norms. Civil servants perform not their personal will, but that of the ruling class.⁴² In exactly the same way, in the main body of this paper, we shall argue that the national and local states, via their control of the legal and budgetary mechanisms, are the manipulated organs of industrial and finance capital.

We can now see that the Marxist approach to the study of law fits our earlier model of defining the situation in a politically organised society. Since laws are formally enacted by Parliament, and processed by lawyers, it is necessary to bring out the relationship between Parliamentary definitions of the situation and their incorporation in law.

Social Science Information and Legal Philosophy

The public decision-making process has not been averse to incorporating sociological definitions into legal-authoritative definitions. Evidence for the increasing bias towards sociological definitions is found in the composition of the Home Office Research

42. V.I.Lenin, Complete Works, vol.24, pp.36-37.

and in the membership of several important Royal Commissions and Committee Reports. The Robbins Reports on higher education ⁴³, the Milner Holland Report on housing in the Greater London area ⁴⁴, the Donovan Commission on industrial relations ⁴⁵, and the Payne Committee on the treatment of debtors ⁴⁶ are the most striking testimonies to the influence of academic sociologists and social administrators on the process of formulating new legal rules. This seems to be part of a wider transformation in the species of evidence accepted as credible in industrialised societies as a whole, a changeover first discerned by Max Weber and which he described as the progressive rationalisation of legal systems: in short an increasing reliance is placed on professional pronouncements. We can see this trend in Britain in the influence on the 1964 Labour cabinet of the technocrat Zolly Zuckerman, the son-in-law of Lord Reading and an expert on the social life of monkeys. At the other end of the status spectrum there are groups such as Child Poverty Action who are increasingly able to bring professional

43. September 1963, H.M.S.O. Cmd.2154.

44. Report of the Committee on Housing in Greater London, March 1965, H.M.S.O. Cmd.2605.

45. Donovan Commission Report, 1968, H.M.S.O. Cmd.3623.

46. Report of the Committee on the Enforcement of Judgement Debts, H.M.S.O. 1969, Cmd.3909.

and sociological knowledge to the legislative process. Given the ideological position of much of contemporary sociology of law (and 'social problem' theories generally) one can predict with near certainty the likely nature and consequences of this new type of 'information'. A similar movement is in evidence on the other side of the Atlantic, from the think-tank Herman Kahn who is publicly famous for his theories on thermonuclear warfare, to Dr. Henry Kissinger the special adviser to Richard Nixon and author of innumerable honourable ceasefires. The Task Force Report, an inquiry in 1967 into deficiencies in the American legal system in the context of mounting violence, was staffed by some of the most eminent of American sociologists. 47

The common feature underlying the new style composition of these bodies is their fundamental concern with some cluster of social events which have been defined as 'problematic'. Their method of solution has increasingly favoured the use of sociological 'data'...in the light of the preceding analysis the epistemological nature of this data is of crucial importance for correct solutions. Since the limits within which established power structures are willing to define new data as credible are usually narrow, it follows that there is an inevitably large divide between the type of information offered by a sociologist acting in his capacity as a student of socio-political structures and that of a sociologist who is both inclined and 'able' enough to exert an influence on the knowledge-gathering process which precedes new legislation. The questions

47. Task Force Report: The Courts, The President's Commission on Law Enforcement and the Administration of Justice. Washington D.C. : U.S. Government Printing Office, 1967.

asked by sociologists of law may not be conducive to responsive answers from those actively engaged in the judicial and legislative arenas. This trend is not qualitatively new, for it really began with the National Association for the Promotion of Social Science in 1857. This august body was an academic co-operative for sociologists and lawyers, and its genre was continued at the beginning of the twentieth century by social reformers such as Booth, Goring and Rowntree. Although the empiricist tradition of Malinowski and Radcliffe-Brown has led to a small but significant school of legal anthropology in the United States, and to a lesser extent in Britain, the study of law in its social context has only rarely been pursued as a discipline sui generis.⁴⁸ Isolated pockets of initiative have recently blossomed in the Centre for Socio-Legal Studies at Nuffield, and at the several universities now offering a sociology of law course on the undergraduate syllabus. Further, 1971 witnessed the emergence of a British Sociological Association law studies group, and 1974 will herald the first edition of the British Journal of Law and Society.

Both practising lawyers and legal philosophers have not been unwilling in their desire to create a dialogue with the social science view of the world, and in 1958 H.L.A.Hart introduced his

48. See B.Malinowski, Crime and Custom in Savage Society, New York: Harcourt, Brace & Co. 1932; A.R.Radcliffe-Brown, Structure and Function in Primitive Society, Glencoe, Illinois: The Free Press, 1952.

now well-known The Concept of Law as an essay in 'descriptive sociology'.⁴⁹ In 1971 Lord Hailsham, whilst advocating the "cross-fertilisation at every point between the serious student of civics and the academic and professional lawyer", declared law to be "the bony structure of sociology...without which social studies will become the flabby and irresponsible thing that, in the universities, sociology too often is."⁵⁰ It is perhaps symptomatic of the likely nature of this bony synthesis that in a much-quoted work whose aim was "to satisfy the persistent demand for co-ordination of jurisprudence with the social sciences"⁵¹, and hailed by Roscoe Pound as "a service to the science of law"⁵², we are informed that the most useful and important sociologists who turned their attention to theories of law before 1900 were Montesquieu, Comte, Spencer and Ward. One wonders why the forward line of Marx, Weber and Durkheim have been relegated to the touchlines.

Historically, two reasons emerge for the neglect of the study of law in its social context. First, a barrier of semantic difficulties and misunderstandings has been erected between the two disciplines; legal scholars are often baffled by the verbosity of

49. H.L.A.Hart, The Concept of Law, Clarendon Law Series, Oxford, 1961; 'The Aims of the Criminal Law', in Law and Contemporary Problems, 1958, 401.

50. New Law Journal, May 1971, p.416.

51. H.Cairns, Law and the Social Sciences, New York, Kelley, 1935, pp.130-1.

52. R.Pound, Social Control through Law (1942) op.cit. p.45

sociology, and sociologists are daunted by the technical and procedural complexities of the substantive content of law. Obviously, all disciplines have a language peculiar to the needs of their respective problems: but this does not solve the matter. Discussing sociologists' views of law Llewellyn once wrote ⁵³:

"And all along I have been meeting discussions about 'law' in a context of 'social control' of unspecified somebodies to unspecified ends by means which are indeed somewhat loosely indicated."

In turn Llewellyn was denounced for "threatening to wipe out the reality of law." ⁵⁴ The second major cause of neglect is the almost exclusive attention paid to the study of the criminal law by sociologists. Contemporary attention, especially amongst the 'radical' deviancy theorists has part of its origin in the realisation that the traditional distinction between social problems and the political system is becoming obsolete; behaviour which in the past was perceived and defined as social deviance is now assuming well-defined ideological and organisational contours. ⁵⁵ This merger is seen most recently in the context of internment and the Emergency

53. K.N.Llewellyn, 'Law and the Social Sciences- Especially Sociology', American Sociological Review, pp.451-62, 14 at p.452.

54. G.Gurvitch (1947) op.cit. p.139.

55. I.Horowitz, M.Liebowitz, 'Social Deviance and Political Marginality', Social Problems, vol.15, No.3, Winter 1968, p.28. (and see the Appendix). "The result is expected to be an increase in the use of violence as a political tactic and the development of a revolutionary potential among the expanding ranks of the deviant sub-groups."

Powers Act, underground publications and the laws relating to obscenity, the 'youth rebellion' and cries for Law and Order, working class militancy and the Industrial Relations Act, political 'extremism' and the increasing use and extension of the law of conspiracy, and the 1974 all-Party declaration that anyone who does not support the 'moderates' is ipso facto an extremist.

Pertinent illustrations in the United States are the growing confrontation between the State and its enforcement machinery on the one hand, and militants allied to black power, Students for a Democratic Society, hijackers and Weathermen on the other. Societies with at least formally different ideological superstructures are manifesting similar trends, evidenced by the suppression of minority religious groups and dissident intellectuals in the Soviet Union. (This is in no way intended to imply an acceptance of the 'convergence' thesis.)

It seems true, therefore, that there can only be a fusion of vision and aim between the sociologist and the jurist when their views of the world are more proximate. Given the Marxist position on bourgeois jurisprudence, this can only occur when class interests have been abolished. The liberal will immediately take offence with this conclusion, but its truth is easily demonstrated: simply, lawyers and jurists inhabit a very different social and cultural milieu to the working class. Highly educated and with a world view determined largely by the bourgeois work ethic lawyers have clear ties (both personal and structural-functional) with the finance and industrial capitalist class who employ them. 292 of the 359 judges in the 1968 Law List had been to public school, and 70% to Oxbridge. Of the ten Law

Lords in 1968 one was an ex-Unionist M.P., three were (defeated) Tory M.P.s, the youngest was aged 60 and the oldest 81. One of the most famous 'hard-line' judges, Sir Frederick Lawton, was a Fascist candidate in the Hammersmith election of 1936. Judges appear to unite three key points in a capitalist society: the courts, the state machine (especially so with the formation of the National Industrial Relations Court) and finance and industrial capital.

We would expect the legal profession to accept as credible those sociological interpretations of reality which best approximate the dominant ideology. This is certainly the case. For example, within the sociology of crime and deviance there exists a fundamental division between those sociologists who accept the established and 'authoritative' definition of what counts as a social problem, and who on the basis of this acceptance produce statistical correlations and causal models as explanatory guides for the treatment and correction of offenders; and those who inquire into the nature of deviance itself and the relation between class interest and class will. In the area of criminal law textbooks one has only to glance at the footnotes and references in Smith and Hogan⁵⁶ or Cross and Jones⁵⁷ to appreciate the orthodoxy and official credibility of the first perspective; this extends to correspondence colleges offering

56. J.C. Smith and B.Hogan, Criminal Law, Butterworths, 1969; especially the footnotes at pp.1-45.

57. R.Cross and P.Jones, Introduction to Criminal Law, Butterworths, 1968, at pp.21,44,45,47,353. Compare also Lord Devlin, The Enforcement of Morals, Oxford University Press, 1965; and N.Walker, Sentencing in a Rational Society, 1969; see also Lord Atkin's homage to positivism in Proprietary Trade Association v. A-G for Canada (1931), A.C.310.

postal tuition for the Bar examinations. It is little wonder, therefore, that the General Council of the Bar of England and Wales proclaims to intending students "Throughout your career you will have the satisfaction of being a member of an ancient and respected profession, serving the law of England and the civilised human values that it protects." ⁵⁸ In another vein ⁵⁹

"...the Tories will continue trying to legislate class struggle out of existence. From now on the fight for better wages, better conditions, and control is by definition illegal...Our fight is against the law, and to do that we must learn underground methods."

Roger Hood and Nigel Walker, both members of the Cambridge Institute of Criminology, epitomise the conclusion that it is only positivist thought which is defined as learned. The Criminal Justice Act (1967), the Criminal Law Act (1967), and the Children and Young Persons Act (1969) were all effected through the influence of positivist thought on the Law Revision Committee.

Thus far our argument may be summarised as follows. Although there is no systematically developed Marxist sociology of law per se (and indeed it would be wrong to isolate any one of the super-structural elements into an inclusive theoretical set) nevertheless the Marxist critique of capitalist society appears to be the only adequate theory of power, definitions of situations and production

58. A Career at the Bar, Passmore & Sons, London, 1970.

59. Anonymous, Black Book, A Pig Publications pamphlet, 1971.

relations. The search for an adequate perspective on the role and genesis of law can only start from the position that law and legal processes do not occur randomly, but rather that they are inextricably linked with and flow from political structures. None of the other perspectives even begin to equate the emergence of law with a context of competing definitions. As such, this author views the legal system as a mechanism which serves the dual function of maintaining and increasing the extraction of surplus value from the working class. As we shall see, this is the only perspective which can adequately explain the role of rent and housing legislation in a capitalist society: i.e. the legislation cannot be seen in isolation from other, more basic elements. But capitalism is an international economic system and so we would (correctly) expect this role to be made manifest in the economic relations between nation states. An apt illustration of this point is the vast concentration of private capital in multinational enterprises afforded by U.S. legislation: Trading with the Enemy Act, the 1962 Hickenlooper amendment and anti-Trust laws. Jurisprudence, or the rationale of bourgeois ideology and production relations, is seen to serve very different interests to those who are typically most subject to law. The law surrounding property and capital accumulation will therefore relate directly to the history of capitalist society. ⁶⁰ Tamper with this, and you reduce the economic system

60. For example, see the Slaughterhouse Cases (1872) in the United States Supreme Court, where the court ruled that property must not be defined by the labour which produced it, but by he who possesses it.

of private capitalism to the confused medley of qualified statements which serves "the champions of private economics when they compile their principles, guides and textbooks for business men and students."⁶¹ From this argument it follows that a valid setting of law in its socio-political context must ask four questions:

1. Whose interests are embodied in legislation?
2. How are legal rules enforced and to whom are they in practice directed?
3. What is the nature of the particular relation between a law and the capitalist base?
4. What is the perception of and reaction to a law by the members of a politically organised society?

The first question immediately raises the existence of a hierarchical power and authority structure by which some members have a more than equal access to the legislative apparatus. For example, a roll-call (or role-call, so little is the difference) of the various Committees dealing with the restriction of rent between 1915⁶² and 1971 reveals a composition profuse with Lords, Ladies, Barons, Marchionesses, property owners, justices of the peace, war heroes and aldermen. It is also pertinent that the administrative bodies created to 'resolve' conflict between landlords and tenants are staffed mainly by lawyers and valuers- people with a necessarily professional and business view of the world. Were the social background and property interests of the (then) minister of the Environment important in the formulation of the Housing Finance Act (1972) ?

61. K. Renner, The Institutions of Private Law and their Social Functions, Routledge & Kegan Paul, 1949, p.51.

The second of the four major questions raises the attendant problem of whether Dicey's principle of the Rule of Law is meaningful in the context of a society characterised by large inequalities of power and property, and whether the differential access to the financial means of waging legal warfare undermines the principle of equality before the law. Why is it that fines for income tax avoidance are so few and far between, and that fines for unlawful eviction and harassment average a paltry £20? ⁶² One piece of research has uncovered the predominantly upper class backgrounds of high court judges ⁶³, whilst another has discovered that only 15% of magistrates were wage earners ⁶⁴, and that 71% were either members of the employing class, professional men or non-employed. A far cry indeed from a society where citizens are able to identify with the membership of local tribunals and courts. ⁶⁵

The third stage of analysis stems from the observation that law in capitalist society contributes either to the cementing of bourgeois hegemony, or to the maintenance of the process of capital accumulation and the extraction of surplus value from the labour power of the working class. It would be naive to

62. Between 1965 and March 1970 in London there were 349 convictions for unlawful eviction with an average fine of £19.46.

63. P.A.Abrams, Sunday Times, August 18th, 1963.

64. R.Hood, Sentencing in a Magistrate's Court, Stevens & Sons, 1962, at p.6.

65. 'Cuban Popular Tribunals', Columbia Law Review, Vol.69, 1969.

argue that all laws flow from the whims of legislative elites, or that they are always directly linked to capital. Although neutrality is of course a highly subjective concept, it can be said that at least some legislation appears neutral to the majority of those who are controlled by it: obvious illustrations of this simplistic statement are large sections of the Offences against the Person Act (1861), the Protection of Animals Act (1911) and the Road Traffic Act (1960). These laws appear to be necessary in all modern industrialised societies whatever the relations around their economic base. This is not of course to say that their format is not determined by battles for definitions within legislative elites. However, and more importantly, since they are directly concerned with power and ownership much of the field within contract, tort, company, constitutional, administrative and equity legislation will be closely allied to each stage of capitalist development. The law of contract is a good example. Since Slade's Case of 1602 contract law has been inextricably linked to the development of British industrial capitalism. Lord Devlin, in discussing the relation between morals and the law of contract, has argued in juristic terms such as caveat emptor, contracts uberrimae fidei, equality between the parties, illegality and duress. A sociological account would tell a very different story. The modern employment relationship differs from serfdom only in that it is based on contract and not on inheritance. It is part of the process of bourgeois mystification that lawyers are still able to talk in terms of 'equality between the parties to a contract', when it is manifestly obvious that contracts relating to wages,

prices and conditions of employment are based on and have their origins in a position of fundamental inequality between the 'bargaining' parties. It is precisely this 'free' contract which provides the capitalist with the strictly legal right to the use-value of the commodity produced by the worker: it is precisely regulated, material inequality which necessitates contract. Again, in 1972 at the Tory conference in Blackpool the Home Secretary referred to the Industrial Relations Act (1971) as an instrument for consolidating workers' right to strike; but no mention was made of the Act's other functions—the institutionalisation of the employer/employee relationship for example, for under s.96 of the Act it is 'unfair' industrial practice to organise a strike in breach of a legally-binding collective agreement. Were bourgeois lawyers to apply their law honestly they would recall that undue influence also vitiates a contract as in *Williams v. Bayley* (1866) where "...one party in fact exerted influence over the other and thus procured a contract that would otherwise not have been made."⁶⁶ But one does not expect the courts to recognise in public that material and political influence amount to undue influence. In this general area jurists should pay more attention to the common law maxim that the law will not concern itself with motive for breach of contract. Weber himself has said⁶⁷:

66. L.R. I H.L. 200; quoted from Cheshire and Fifoot, The Law of Contract, Butterworths, London, 1969, p.264.

67. M.Weber, Economy and Society, Bedminster Press, New York, 1968, vol.2, pp.729-30.

"The great variety of permitted contractual schemata and the formal empowerment to set the content of contracts in accordance with one's desires and independently of all official patterns, in and of itself by no means makes sure that these formal possibilities will in fact be available to everyone. Such availability is prevented above all by the difference in the distribution of property guaranteed by law."

This in turn raises the question of how 'open-ended' is a law, and why. The common law offence of a breach of the peace escapes definition⁶⁸, and the majority of the relevant offences against public order and public morals seem designed to invest the police with the maximum scope to pick and choose the defendant's crime, as often happens.⁶⁹ For example, it is an offence if "any person who is in any public place or at any public meeting (a) uses threatening, abusing or insulting words or behaviour or (b) distributes or displays any writing, sign or visible representation which is threatening, abusive or insulting, with intent to provoke a breach of the peace or whereby a breach of the peace is likely to be occasioned."⁷⁰ The least threatening aspect of this confused terminology is its insult to the intelligence.

68. See *Wise v. Dunning* (1902) 1 K.B. 167. For the elasticity of the offence of obstruction see *Bastable v. Littel* (1907) 1 K.B. 59.

69. H. Street, Freedom, the Individual and the Law, Pelican, 1972, chapter 2.

70. Public Order Act (1936) s.5 as amended by the Race Relations Act (1965) s.7.

This poses the question of why statutes are phrased in particular ways, and why they do or do not change. Karl Renner's brilliant argument focused on law which continued unchanged in relation to changing economic conditions. Chambliss has given a sociological account of the emergence of the vagrancy laws in England and Wales by relating changes in the wording of vagrancy legislation to changing social conditions in the medieval period.⁷¹ The Carrier's case of 1473 and the embryonic law of theft supply another illustration of this method. A carrier had been hired to take certain bales to Southampton, and instead of delivering the goods he took them elsewhere, broke open the bales and took their contents. Brian, L.C.J. held that since the bales were already in the carrier's possession "therefore it cannot be felony nor trespass". The solution to this legal cul-de-sac was that once the bales had been opened the contract became void and the consignor was reinvested with possession; taking the contents of the bales was therefore a trespass, and the law of theft was duly enlarged. However, it was likely that the bales contained wool, and the king, who was heavily in debt to the Hanseatic merchants, therefore brought pressure to bear on an already subservient judiciary for a speedy solution and conviction. Since the parliamentary sessions of the time were held so infrequently, the only alternative to further legal debate was an extension of the circumstances which were

71. W.Chambliss, 'A Sociological Analysis of the Law of Vagrancy', Social Problems, vol.I2, summer 1964, pp.67-77.

officially defined as **theft**. There are numerous examples of cases where sociological histories could be useful in accounting for changes in the law or (and often equally important) the maintenance of existing law: the importance of the device of entails to the English pre-industrial landed aristocracy; the series of cases in negligence which began with *Donoghue v. Stevenson* (1932), expand with *Hedley Byrne & Co. v. Heller* (1964) and at present culminate with *Dutton v. Bognor Regis Urban District Council* (1972); perhaps the anti-pollution lobby began as long ago as *Rylands v. Fletcher* (1866).

The fourth and final major question is concerned with the perception and reaction to legal rules by those who usually bear the brunt of their aim. The symbolic character and normative content of legislation will differ between and within social classes . In any attempt to examine the basis of a law- whether it has minority or majority acceptance- it is necessary to examine it within the context of the different belief systems of those who make, uphold, oppose or disobey the law. A logical extension of this facet of inquiry is whether law enforcement agencies can themselves generate rule-breaking, as happened with drug-users in Notting Hill Gate in the mid-1960's.⁷²

Most research in Britain into the nature and workings of law falls firmly within the category of socio-legal studies, and not sociology of law. The socio-legal observer, like his

72. J.Young, in S.Cohen (ed) Images of Deviance, Pelican, 1971, pp.27-97.

counterpart the legal philosopher, seeks to justify the central premises of a legal system by searching for changes in method and procedure; and no doubt this will often result in short-term benefit in individual cases of hardship. But a merely empirical theory of law is like the wooden head in Phædra's fable- it may be beautiful, a pity only that it has no brains. Perhaps by learning from the methodology of a more historical approach the jurist will discover that the frequently cited antagonism between the common law system and the codified system of much of Europe is a simple myth; there may be oppositional methods of procedure but not in the basis on which law is constructed in capitalist societies.

When primitive societies eventually produce social classes arising from an economic surplus which is appropriated privately, one class is able to protect its wealth by subjecting all others to its will. The purpose of state and law is to regulate this inequality and to suppress the resultant conflict; law thus presupposes conflict. Legal norms determine how conflict is to be resolved and their content will usually be related to the specific form of contradictions in capitalist societies. In this context the difference between theoretical approaches to law lies in different attitudes towards the role of the state, its emergence, and the tactical struggles needed to overthrow it. We must therefore question the basis of the commandments enshrined within law.

2 THE HOUSING QUESTION 1900-1970: THE LEGAL RELATIONS OF CAPITALISM

" The power of the rich is most deeply rooted in the nature of property itself, in the structure of property as an institution, and in its relationship to social systems. " Alvin W.Gouldner ^I

All legal problems, and all changes in the purpose and content of legal norms arise within and contribute to the maintenance of a set of social institutions. What follows is an attempt to understand the relationship between legal norms and one of the necessities of life- shelter, and the way in which "one part of society...exacts tribute from another for permission to inhabit the earth." ²The legal distinction between real and personal property is not particularly important for present purposes. Property as a whole consists not only of ownership of material objects, but also claims for intangibles such as repayment loans, mortgages and shares in a limited company. Their common characteristic is the right or power of disposal. Viscount Simonds once said that property is an aggregate constituted of rights. ³ If property is right, or the power of disposal, then we can immediately see the difference between private and communal property. Further, since ownership is inconse-

I. A.W.Gouldner, The Coming Crisis of Western Sociology, Heinemann, London, 1970, p.304.

2. K.Marx, Das Capital, Vol.III, Lawrence & Wishart, London, 1970, pp.773-74.

3. O.D.Cars Ltd. v. Belfast Corporation (1960) 2 W.L.R. at p.154.

quential without the coercive power to constrain others from using the good, there are therefore gradations of property ownership. If we are to examine a good owned by the state we must look to its legal title and the enforcement machinery surrounding its ownership. This theoretical insight will provide us with some important observations on the status of one such state-owned good, namely council housing.

Most thinking by academic economists, sociologists and social administrators on 'rent' and the 'housing problem' in general has been carried out within a rigid set of intellectual parameters which at one and the same time denigrate theory and yet raise empiricism to a pedestal. It must be stressed that it is completely artificial to discuss either rent, housing or law in isolation from one another. In capitalist society there is an interdependence between rent and housing on the one hand, and the legal apparatus which determine their ownership, financing, distribution and control on the other. Not since Engels' three essays of 1873-74 has any competent work attempted to link bad housing conditions, extortionate rents and patterns of land and house tenure with the internal dynamics of capitalist society.⁴ All forms of social quackery have been offered as solutions to the housing problem, from a cry for rent regulation to the simple alternative of increased home ownership. As Engels himself saw

4. F.Engels, 'The Housing Question' in Marx/Engels Selected Works, Foreign Languages Publishing House, Moscow, 1962, Vol.I, pp.546-635. This was later reprinted by Progress Publishers, Moscow, 1970.

one hundred years ago, no doubt part of the reason why so much debate is currently being given to increased rents and housing shortages is that the (now officially-defined) housing problem is not confined solely to the working class. Death duties and rising mortgage interest rates are beginning to take their toll of moneyed tolerance.

Della Nevitt argues that in order to understand British housing 'fully' it is necessary to study the British land-tenure system, the public health laws which control their structure, the housing laws which control their occupation and the town planning laws which control their location.⁵ Further, "the laws controlling rent and regulating the relationship between landlords and tenants add to the problems of students of housing and have led many people to believe that the only lasting solution to the housing problem is the municipalisation of all rented property." One of the most recent and authoritative publications in this field has delineated necessary knowledge as comprising the examination of the processes of economic and social change, the management of the economy, the planning of investment, the design of houses, the technology and resources of the building industry, and the administrative structure and traditions of the central and local authorities responsible for formulating housing policies and

5. A.A.Nevitt, Housing, Taxation and Subsidies, London, Thomas Nelson and Sons, 1966, the quote from the introduction.

putting them into practice.⁶ An American author has said that the identifiable features of the slum housing problem are "poverty, run-down housing, lower class people, dirt, a concentration of people with low educational achievements, low skill and cultural limitations."⁷ One wonders what such descriptive work is intended to achieve.

Perhaps more than any other relatively permanent good, housing actually is composed of a complicated network of components. But academics and politicians have consistently been unable to offer final solutions to what they define as the housing problem because they have refused to recognise that these 'components' have a base connecting link in the dynamics of a society where commodity production follows patterns of profit. The parameters of this profit are largely determined by the intensity of the class struggle in specific situations. Housing experts have either conveniently ignored or else misunderstood Engels' three most telling points (each of which will be treated in greater depth later). First, the donation to the working class of house ownership merely entails that each worker is even more completely chained to his local capitalist. Under the feudal system this took the form of socage and military tenure; today it is seen in industrial employment where workers are spatially tied by mortgages, low rent houses or company accommodation. Second, the mass

6. D.V. Donnison, The Government of Housing, Pelican, 1967.

7. D. Hunter, The Slums: Challenge and Response, Free Press, 1964, Chapter 2.

of unpaid labour taken from the working class would remain exactly the same even if houseowners were to be deprived tomorrow of the possibility of receiving ground rent and interest. Third, if investment in houses and house construction were to be made relatively unattractive to the bourgeoisie, then the potential investment would simply be diverted to other, more profitable areas.⁸ In other words, if investment in one sector of a capitalist economy appears unattractive to the capitalist entrepreneur, then the redirection of investment will ensure that there is no reduction in the level of surplus value extracted from the working class in the process of new production. Liberal theorists have been content merely to describe the consequences of rules framed in the interests of the dominant economic forces. Donnison has said⁹,

" In effect, Engels treats housing as a peg upon which to hang his indictments of capitalism and reformist socialism."

What follows is an extension of Engels' rudimentary (but

8. A relevant illustration of this trend is found in the Report of the Committee on Housing in Greater London, H.M.S.O. Cmd.2605, 1965--
 " In the post-war period the tendency for companies to move out of residential property and into commercial property has been greatly accelerated by the continued existence of rent controls and the political controversy which has surrounded housing." (p.37)
9. Donnison (1967) op.cit. p.121

basically correct) framework. An analysis will be made of the relationship between and the respective effects of legislation, finance and power structures on the British housing situation; this will then lead into a more detailed discussion of the Housing Finance Act (1972).

The Background

The variety of meanings attached to the institutions of property, rent and housing are the outcome of centuries of English social history, and we should expect to find the reflections of the relevant power struggles for authoritative definitions embodied in the legal system and its changing content. It was only after 1066, and increasingly so with the transformation of legal thought generated in the reign of Henry II in the twelfth century, that a rigid manorial system became the dominant social structure throughout England. The history of the large estates, and also of the peasant holdings, has largely been one of the transition from a social system based on service to a system of land and house rent. In early feudal society the rent bargain was essentially of a use-value nature. The land was held in a descending hierarchy of tenancy from the monarch to the villeins. The rent bargain at this time was two-fold: the first part was obtained in the form of government taxation, the second by the performance of a military or social service for the tenant's

immediate superior in the chain of command.¹⁰ Gradually the governmental element was translated from use-values to exchange-values with the introduction of money, and before the end of the thirteenth century the separation of the manorial classes was mainly the distinction drawn between service and money rent. Modern English land law is more feudalistic than any other major system of law: Renner's (1948) assertion that law remains unchanged in spite of the changed nature of property in a capitalist society would partly explain that Edward I's sweeping legislative changes incorporated many of the old feudal customs and imperatives.¹¹

By the time of Henry VIII strict legal obstacles hindered investment in land, and a strong attack on them was mounted by certain abbots who had gleaned news of the king's intentions to confiscate their lands and had therefore quickly granted long leases of monastic farms in return for high premiums.¹² By 1558

10. The concepts of use and exchange values are discussed more fully for this period by John R. Commons in Legal Foundations of Capitalism, Madison, 1957, chapter VI.
11. K. Renner op.cit. and see Appendix.
12. S. Dowell, History of Taxation and Taxes in England, Longmans, Green, 1888, pp.136-40.

the sale of long leases had become sufficiently common to receive parliamentary attention, and an Act was passed in the same year to prevent bishops, other members of the clergy and the owners of settled estates from granting leases which exceeded twenty-one years. This Act was the earliest legislative attempt to control the level of rents in that it prevented any reductions in rents; the justification put forward for this was that lease premiums will be low when rents are high. The agricultural-based British economy up to the mid-seventeenth century entailed that property and sovereignty were one: both ensured dominium over things and persons. Blackstone held property to be " the sole and despotic dominion which one man claims over the external things of the world, in total exclusion of the right of any other individual in the universe." ^{I3} With the emergence of a money economy in the sixteenth century, the growth of the law of private property and the personal liberty of freemen, the 1660 landlord-controlled Parliament abolished arbitrary commodity rents and commuted them into money. The result was that real property could be bought and sold in the expectation of its money values. As Commons says ^{I4},

" Dominion was transferred from the will of the sovereign to the will of the tenant, by the simple device of making fixed and certain, in terms of money, instead of arbitrary in terms of commodities and services, the rents owed by the tenant to the monarch."

I3. 2 Bla. Com. 2

I4. J.R.Commons (1957) op.cit. p.220.

But the class ownership of real property was perpetuated by the system of strict settlements and periodic re-settlements. Although modern legal commentators have condemned this practice as detrimental to trade ¹⁵, nevertheless it was of course most harmful to the rent payers and the dispossessed.

By now the stage was firmly set for future property speculation and the concomitant public concern with the regulation of rent levels. British society at this time differed in one vital respect from European societies; on the continent the landlord and emergent bourgeois classes were locked in mortal combat, as witnessed in France by the triumph of bourgeois interests over the old aristocracy and their expression in the Code Civil. In Britain, however, there was an almost complete continuity between pre- and post-1689 institutions. The essential compromisory nature of the 1689 'revolution' is nowhere more evident than in the area of land ownership. The conflict which did exist was not inter- but intra-class; the victory of the mercantile capitalist class transformed the capitalist class as a whole to a new type of production. Wealthy landowners such as Pym and Hampden participated vigorously in imperialist expansion, whilst successful mercantile capitalists invested in landed estates. The continuity of real property law and judicial precedent ensured the relative stability of the social structure. There

15. For example E.H.Burn, Cheshire's Modern Law of Real Property, London, Butterworths, 1972, pp.74-75.

was therefore no fundamental cleavage between the landed aristocracy and the emergent bourgeoisie; or, " there was...a permanent partial interpenetration of the 'moneyed' and 'landed' interests." ¹⁶ For the next one hundred years the landed aristocracy was able to rationalise agriculture along capitalist lines by perfecting the triangular relationship of capitalist landlord, tenant farmer and landless agricultural worker. For the first time since the middle ages the ethos accompanying land ownership had been profoundly changed: the capitalist mode of production, in the interests of industrial capital, removed all earlier ties with feudal dominium and servitude. Land ownership and the ability to command ground rent was now seen as a primary source of investment. The predominantly commercial rather than feudal meaning of land was emphasised by the Napoleonic wars, enclosures and the rising price of wheat.

Of course bourgeois economic theory had (and still has) a theoretical rationale which sought to establish that rent had its basis in utility maximisation. To take three recent examples ¹⁷,

" Under a cash tenancy system of land tenure contract rent is the price paid for the use of agricultural land and permanent equipment

- I6. P.Anderson, 'Origins of the Present Crisis', in Towards Socialism, 1965, p.16. The fusion of interest was clearly seen in the Corn Laws of 1815 by which landlords artificially raised the price of bread and a whole range of industrial produce as a consequence.
- I7. J.T.Ward, Farm Rents and Tenure, Estates Gazette publication, 1959, p.1.

which go to make up a farm, in the same way that wages are paid for the use of labour and interest the price paid for the use of capital. All are part of the price system, which in a society based on free enterprise, is the mechanism by which the productive resources of a community are allocated, in accordance with the preference of consumers, amongst the many uses competing for them."

" Profitability is a good preliminary criterion of consumers' requirements because it reflects their willingness to pay. Therefore, in a market, houses are maximised when their value to consumers is maximised; that is when relative rents and prices reflect the highest subjective values that could be placed on the housing stock."

I8

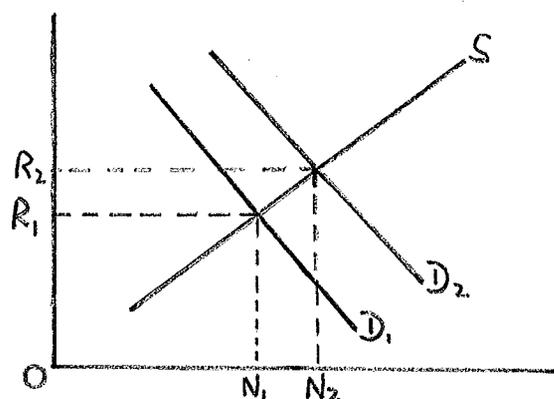
" It is quite understandable that politicians should have avoided the subject (the economics of rent restriction), for the emotions it arouses are too deep and too widespread to allow it to be discussed in public with both frankness and safety."

I9

- I8. M.Gray, The Cost of Council Housing, The Institute of Economic Affairs, 1968, p.36; see also R.G.Lipsey, An Introduction to Positive Economics, Weidenfeld & Nicolson, 1971, pp.350-51.
- I9. F.W.Paish, 'The Economics of Rent Restriction', Lloyds Bank Review, April 1950.

The core of the neo-classical argument is that rent has the maximisation of consumer utility and preference as its basis; rent represents an information mechanism which functions properly in perfect competition (*laissez-faire*) through the equation of supply and demand. Demand is a function of the price of the good in question, the prices of complements and substitutes, tastes, household income, size of the population and the distribution of income. In Fig.I below equilibrium rent is at OR_1 . Now suppose that there is an increase in demand for houses to rent at every price level; there is an automatic adjustment to the new equilibrium levels of OR_2 and ON_2 units. From this bourgeois economic theory concludes that the price system guarantees maximum satisfaction. The more inelastic the supply of land and houses the greater will equilibrium price be after an upward shift in demand.²⁰ However,

FIG.I RENT: SUPPLY AND DEMAND



20. R.Muth in 'Urban Residential land and housing markets' in H.Perloff and L.Wingo (eds), Issues in Urban Economics, Johns Hopkins Press, 1968, argues that the supply of urban land is moderately elastic and approximates the negative of the agricultural demand elasticity for land. This cannot be accepted: in increase in demand in these conditions could not produce the the high rents and sale prices found in the 1960's and 1970's.

there is no attempt to apply this model to historical reality- it could not anyway stand up to such a test. The model is quite clearly a distortion of the nature of economic relations: it ignores the role of power in determining the sources and distribution of effective demand. Further, it ignores the canopy of legal control and structural inequality which of necessity is the dominant feature of a free market economy. With a greater degree of precision it can be said that the level of rent at any moment is a function not simply of supply and demand equations, but much more of the relative strength of those who receive and those who pay rent; this is a question of political economy. The Marxist account of housing rent can however be substantiated, and it is to this that we now turn. The general Marxist conception of rent is that ²¹

" Rent, Interest and Industrial Profit are only different names for different parts of the surplus value of the commodity, or the unpaid labour enclosed in it and they are equally derived from this source and this source alone."

With its emphasis on the apparent fairness of the price system in the perfectly competitive model, bourgeois economic theory 'forgets' that capitalism is primarily a system of exploitation. Marx distinguished three forms of ground rent: differential, absolute and monopoly. Differential rents arise

21. K.Marx, Das Capital, Vol.III Lawrence & Wishart, 1969, p.619.

" out of the difference between the individual production price of a particular capital and the general production price of the total capital invested in the sphere of production concerned." ²²

In a capitalist economy the landlord class will be able to demand a higher rent from farmers for more fertile land; differential rent is therefore a consequence of differential fertility or location. Although this type of rent will not affect the market price of the commodity, and will tend to equalise the profits of different pieces of land, it is nevertheless an unearned surplus for the landlord. Monopoly rent arises because a producer is able to charge a monopoly price for his product, and this price is determined "only by the purchasers' eagerness to buy and ability to pay, independent of the price determined by the general price of production, as well as by the value of the products." ²³ The monopoly price will therefore yield a surplus profit above the average profit calculated for the capitalist class as a whole. The opportunity to charge a monopoly price creates the opportunity for a landlord to charge a monopoly rent, and for the landlord actually

22. *ibid.* p.646.

23. *ibid.* but Progress Publishers, Moscow, 1971, p.775. Ideas for this section have been influenced by two main sources: D.Byrne and P.Beirne, 'Towards a Political Economy of Housing Rent', Political Economy Group, University of Durham, 1971; and various discussions and papers given at the housing section of the Conference of Socialist Economists 1973-74.

to acquire the surplus profit as a monopoly rent landownership must necessarily be restricted, or the supply of land must be fixed, or (as with wine of a rare vintage) the monopoly must flow from the attributes of physical location. Marx rightly argues that the best way to understand the abnormally high rents for building sites in large cities is in the context of monopoly prices which these sites actually yield.²⁴ Absolute rents arise when there exist barriers to the flow of capital into land; the low organic composition of capital in agriculture ensures that extraordinary surplus value is extracted. A capital of a certain size in agriculture produces more surplus value, or commands more labour power than a capital of the same size of average social composition. Marx demonstrates that such a barrier may be the landlord vis-à-vis the capitalist. Absolute rent will exist in urban situations when a class is consciously and permanently able to raise the price of a commodity above its price of production.

Planning controls seem to offer another example of barriers to the flow of capital into land; in green belt areas ground landlords will be able to extract absolute ground rents if there is a demand for houses or offices in his portion of the globe. However, whichever type of ground rent is actually extracted by a landlord can only be revealed by analysis of

24. *ibid.* p.773; see also D.Harvey, Social Justice and the City, Arnold, London, 1973, p.179. For a good critique of Harvey see Irene Bruegel's discussion paper at the CSE March 1974, held at the University of Warwick.

particular situations. It is quite likely that two of the three forms may be coexistent, as for example would be the case of a rare wine produced in a green belt area. All three forms of rent are means by which already-produced surplus value is shared out among different fractions of capital. As we shall argue later from historical material, the local and national state are the ideational creations of the capitalist class and have the function of avoiding conflict situations.

We must now examine the status of ground and housing rent in a capitalist economy. Land and houses are not logically in the same category because land has no value: no labour was required to produce it. Houses however do have value because they are built with construction materials by labour power. The unique feature of ground rent therefore is that a price is paid for a use-value where no value exists. Housing rent may be divided into four components: ground rent, construction costs (including wages), interest on money loans and the 'return on investment' taken by the housing landlord. The first two elements are now quite straightforward. Interest loans arise because capitalists or house purchasers need to borrow money to finance their operations. The price of this borrowing is the current rate of interest. Ground rent and interest are of course identical if the capitalist does not own the land on which he sets up his enterprise and has to pay rent to the landlord for the use or 'borrowing' of the land. The capitalist appropriation of surplus value extends via interest to owner occupiers (repayments on mortgages), private landlords (who will only continue to rent out their land or houses if the opportunity cost equals the rate of return in the best alternative enterprise) and state landlords (local

authorities must pay interest on loans from finance capitalists to cover their housing operations). Housing rent therefore represents a portion of already-produced surplus value extracted by housing landlords from tenants.

There is little practical or historical difference between the bases of absolute ground rent and a housing landlord's rent in Britain. Thus, the increase in the housing stock has never exceeded 3.6% in any one of the years 1911-61; the average for these fifty years was 1.3%.²⁵ In consequence both houses and land appear to be rigidly fixed in their supply.

From the perspective of tenants there exists a more fundamental reason to treat ground rent and housing rent as in practice identical. Consumers will of necessity have an inelastic demand for some commodities: food, shelter and the land on which to shelter. If they cannot pay for one of these they will die. Harvey says²⁶,

The phenomenon of class monopoly is very important in explaining urban structure and it therefore requires elucidation.

There is a class of housing consumers who have no credit rating and who have no choice but to rent where they can. A class of landlords emerges to provide for the needs of these consumers, but since the consumers have no choice the landlords, as a class, have monopoly."

25. L.Needleham, The Economics of Housing, London, Staples Press, 1965, p.149.

26. D.Harvey (1973) op.cit. p.172.

" The distinction between monopoly and absolute rent can perhaps be rescued by regarding the former as operating at the individual level (a particular owner has something which someone particularly wants or needs) and the latter as something which arises out of the general conditions of production in some sector. It is a class monopoly phenomenon which affects the condition of all agricultural landowners, all owners of low income housing etc. " 27

In The Housing Question Engels argues that the landlord/tenant relationship is not a transaction between worker and capitalist because the prospective tenant appears as a man with money.²⁸ It is a transfer of already existing surplus value. The rent relationship is therefore quite an ordinary commodity transaction; housing is a commodity like any other and is sold in a market without any necessarily expropriatory characteristics. Engels however argues in the same essay that a worker's house can become capital if, having bought it, he then rents it to a third person; the worker will

27. *ibid.* p.182.

28. F.Engels (1962) *op.cit.* p.586. To draw on an argument from a different source: " Providing rented accommodation is just as much a business transaction as selling television sets. It would be absurd if suppliers of television sets were compelled by law to sell them to the public at well below the price which would give them a profit. Yet this is exactly the position of the owners of rent controlled property. It is unique in our society that one section of the community should be legally bound to do business at a loss." 'Rents: Fixed or Fair', National Association of Property Owners publication, 1969.

expropriate a part of the labour product of the third person in the form of rent.²⁹ One statement must be wrong. Engels is correct when he asserts that there is no generation of new value between landlord and tenant; he is also equally correct when he implies that in some sense value is extracted from the tenant by the landlord and this, being appropriation of the labour product of others, in part is appropriation of surplus value. The solution is that in some commodity transactions surplus value is created, whilst in others existing value is merely transferred. Thus, in our fourfold components of housing rent above, rent above costs now represents a true absolute rent.³⁰ In sum therefore, housing is in practice equivalent to land, and landlords in the exercise of a class monopoly over this commodity stock are able to extract (what is usually) an absolute rent.

If we can regard the level of wages as a function of the relative power of combatants in a class struggle- proletariat and bourgeoisie in the labour market- then we can similarly see the level of rent as a function of relative power in the conflict between the same classes in the market for a necessary commodity which is in fixed supply.

29. *ibid.* p.586.

30. Compare with Needleman (1965) *op.cit.* "A full-cost rent is one which covers maintenance, interest charges and the repayment of the loan used by the landlord to purchase the dwelling." at p.158.

As Marx argues 31

" But as to profits, there exists no law which determines their minimum. We cannot say what is the ultimate limit of their decrease...the matter resolves itself into a question of the respective power of the combatants."

We now have the theoretical apparatus to integrate the historical role of law in a capitalist society with the existence of ground and housing rent. At this stage our prediction, simply, is that legislation will be designed by (or with the active acquiescence of) the landlord and capitalist classes to maintain this relationship. In the process of production the place and mechanisms of class conflict are easily established. This is not so obviously the case if we are dealing with the determination of rent levels. Historically, there have been particular situations and mechanisms which have mediated this conflict: the 'social market economy' style process of rent control which has essentially been one of regulating the activities of the private landlord through a process of legal definitions of maximum rent levels, and the 'welfare state' or 'communist' approach of the direct state provision of housing.

31. K.Marx, 'Wages, Price and Profit' in Marx/Engels: Selected Works, Vol.I, Lawrence & Wishart, 1962. See also the brief analysis of the Irish situation in D.Byrne & P.Beirne (1973) op.cit. Indeed, the historical importance of power is even now beginning to be examined by liberal economists, eg.K.Rothschild, (ed) Power & Economics, Penguin, 1971.

Against this theoretical background analysis of British housing and rent (and the important legal relationship) may be divided into three distinct time periods: pre-1914, 1914-71 and post-1972. These periods reflect changes in legal definitions which were themselves sparked off by particular power struggles. Further, analysis can proceed along four crucial dimensions: the financing of houses, method of construction, legal meanings and definitions, and the quality of the rent payment. Given that there are three types of household tenure (privately-rented, owner occupier and municipal) we see that there are thirty six areas of investigation. Whilst it is realised that this division is in part artificial, and certainly cumbersome, it does have heuristic value. It enables us to see with clarity the relation between household tenure and the capitalist base in a particular period. However, since the three forms of tenure are historically inter-related it is unrealistic to look at them in isolation. Nevertheless, the division must be kept in mind.

Housing 1850-1914: Laissez-Faire

The defining characteristic of this period is the preponderance of the private landlord. We have already seen that the main cause of this was the change that occurred in the social meaning of land and housing from the feudal to the purely commercial. Even as late as 1900 the 7,600,000 dwelling units in the national housing stock comprised 1.5 million owner occupied,

100,000 local authority and new town developments and six million privately-rented. State intervention in the housing market of Britain began slowly, almost apologetically in the middle of the nineteenth century, and was officially concerned with problems of health. An Act of 1842 was intended to "remove or prevent dangers to health and life arising from insanitary conditions in and around houses." But it was the town of Liverpool which paved the way for national legislation. Two local Acts were secured by the Liverpool Corporation, the first of which, the Liverpool Building Act (1842) gave the corporation the power to prevent the construction of the small, congested houses known as 'courts'. The Public Health Act (1848) soon followed. Under the Nuisances Removal Act (1855) s.2 local authorities could enter any private building if they suspected the existence of a nuisance, and force the owner to redress the defect at his own expense. Britain's embryonic housing policy was therefore part of the wider concern for health and hygiene; this ill-health had largely been caused by the enormous increase in the urban industrial proletariat who flocked to the new cities in search of higher wages. In this way Leeds grew from a population of 53,000 in 1801 to 125,000 in 1831 and 170,000 in 1851, whilst Manchester expanded from 90,000 to 400,000 in the same fifty years. The population of England and Wales increased rapidly from 9 million in 1801 to 32 million in 1901.

There is abundant evidence to suggest that the quest for housing reform was pursued less out of philanthropic and more from

the self-interest of the capitalist class. In promoting his Housing Bill in 1919 Dr. Addison was to declare in parliamentary debate that the motive behind the Bill was based on facts about the ill-effects of inadequate and defective housing; there was for example a high correlation between overcrowding and tuberculosis. Further ³²

" If some instrument could be invented, for instance, which should measure the effect of systematic overcrowding in producing industrial unrest, its revelations would appal even the most thoughtless of the more fortunate classes... great companies in this country are beginning to see that it pays them to provide good housing for their employees, quite apart from the return on capital expended which is provided by the actual rents."

The function of the contemporary legislation was quite clearly to create the conditions favourable to capital accumulation and the reproduction of labour power. The major concern was the loss

32. The Times, April 8th 1919, on the second reading of Addison's Housing Bill. An example of the 'orthodox' interpretation of this period is afforded by P. Townsend: "Subsidised council housing developed in Britain to enable working class families to occupy homes of better standard than otherwise they could. They paid a lower rent than that which would normally be necessary to secure a home of the same standard on the private market, because housing was felt to be a necessity of life which should be distributed more equally than were certain other resources." 'Everyone his own home', RIBA, January 1973, pp.30-42

in profits occasioned by capitalist industry. If the extraction of surplus value from the working class was to continue at its high level then modifications had to be made to the laissez-faire order of the time. The only alternatives were industrial unrest or falling profits, and both were equally unacceptable to the capitalist. The expansion of industrial capitalism was not of course confined to Britain, and similar housing problems were experienced from Paris to Vienna. Local authority powers of inspection were enlarged by the Torrens Act of 1868; the Medical Officer of Health could now inspect dwellings on his own initiative. Where necessary, houses had to be repaired by the landlord, or else demolished. However, partly due to 'public' indifference and partly due to the financial and administrative incompetence of local authorities, the Torrens Act almost immediately fell into disuse. A Sheffield investigator put the blame for this squarely on the shoulders of the landowners, the finance capitalists (who offered loans at exorbitant rates of interest) and the petty building inspectors who "could only command a few hundred pounds."³³ The inbred antagonism towards centralised planning did not help the health movement, obviously so in the context of a society dominated by the ideology of laissez-faire. A columnist with the Daily News described the situation in South

33. G.C.Holland, The Vital Statistics of Sheffield, 1843, pp.56-58; and see also E.P.Thompson, The Making of the English Working Class, Pelican, 1968, pp.352-56.

Wales in 1872: 34

" I walked about for hours in Dowlais to find shabby little streets of dingy, unwholesome-looking little houses following each other with inevitable sameness. I thought that surely I must come upon some square or open space that might be regarded as the centre of the place...But I met with no success. Irish-row, the squalid, merges into Well-street, only a shade less squalid. Well-street drifts imperceptibly into dirty Brecon-street, and the shabby vista of Brecon-street is closed in by a dead wall over which rise flam-crowned chimneys. Grimness is everywhere- on the faces of men, women and children- on the window-panes, on nominally washed rags which are hung out to dry, on the clammy seat in the public house in which I rest myself, where a grimy woman hands me a grimy pint pot across a grimy counter...The sulphur smoke robs the children of all infantile delicacy of complexion... By far the larger proportion of houses and cottages are in the hands of private owners, whose only concern is to get as good a return as possible at as little outlay as possible."

Large-scale outbreaks of famine-fever, small pox and scarlet fever were reported between 1865 and 1872 in Dowlais.

34. 'Among the miners', The Daily News, October 12th 1872, in Dowlais, South Wales.

The Cross Act and the Public Health Act (1875) extended the powers of compulsory purchase of local councils. That this was an already politically sensitive area can be surmised by a statement from Sir J.P. Dickson-Poynder (Chairman of the London County Council's Housing of the Working Classes Committee) to the effect that public discussion of the housing problem "provokes the vexed question of the relation between rent and wages, which easily slides into that of capital and labour".³⁵

Although this period saw the introduction of housing and town planning standards, the effects appeared to be generally insignificant. 1890 was an active year and the new Housing of the Working Classes Act and the Public Health Amendment Act were put onto the statute book. The former consolidated the powers which local authorities had accumulated since 1851; Part III of the latter enabled the authorities to build 'working class houses' whenever they thought this to be necessary. So infrequently was the Act of 1890 invoked by local authorities that by 1914 only 20,000 houses had been built under its aegis, or less than one thousand per year. Again, the Acquisition of Small Dwellings Act was similarly ignored, and not many houses were bought with local authority loans prior to 1914; this Act had been passed in 1899 and councils were for the first time entitled to enter the market as mortgagees advancing house purchase loans to ratepayers. It is of more than passing interest that local authorities used £780,000 on the 'housing of the working classes' in the year

35. The Times, 26th November 1883.

1901-2 (the total for England and Wales) but also spent £2.5 million on lunatics and lunatic asylums, and £5,530,000 on the police force and the construction of police stations. Further, in the period 1801-80 the wages of male factory workers and labourers rose from £16 p.a. to £36 p.a. (i.e. 125%) but rents had risen between 1798 and 1880 by 407%.³⁶

The Housing of the Working Classes Act (1903) enabled the local authorities to interfere directly with the landlord/tenant relationship: it was now illegal for a landlord to let an unfit house. Despite municipal inactivity until 1914 legal precedents had been set in the public recognition that private enterprise could not adequately supply the national housing needs. It has been suggested that the urgency of the demand for further improvement derived partly from the discovery of how high was the proportion of physically unfit persons when the prospective recruits for the South Africa war were examined.³⁷ It does seem surprising that with the large number of associations concerned with the public health and housing reform movement which were formed in 1900 only two pieces of legislation were produced: the Advertisements Regulation Act (1907) and the Housing, Town Planning &c Act (1909) and 'a master of the obstructive art'. Much of the official blame was placed at the door of John Burns, the president of the Local Government Board from 1905 to 1914 under Campbell-Bannerman and

36. These figures were computed from Augustus D. Webb, The New Dictionary of Statistics, G. Routledge & Sons, 1911, pp. 375 and 580.

37. W. Ashworth, The Genesis of Modern British Town Planning, Macmillan, 1954.

Asquith. Despite the arguments of men such as Purdom, Edwards and Patrick Geddes the Act of 1909 enabled local authorities to enter into the planning field, but they were not required to do so. As a result fewer than 10,000 acres were brought under planning control between 1909 and 1919.

At the outbreak of war in 1914 there were approximately six million private rented dwelling units, 100,000 which were rented from local authorities and 1.5 million owner-occupied. (See Appendix). The dominant feature in the British housing situation therefore was still the private landlord. Donnison says of this era ³⁸

" The owners of land, the lenders of money, the builders of houses and tenants who needed a home were brought together by 'landlords' who borrowed the money required to initiate and sustain the whole operation, commissioned the building of houses, managed the property and collected the rents- or formed the essential intermediary linking others who did these things... his main contributions were to bring the parties to the transaction together, to bear most of the risks involved, and hence to make most of the profits or losses."

The private landlord was soon to be rapidly overtaken by the local authorities and owner occupation, and this has led some commentators to argue that "therefore the structure of property

38. D.V.Donnison (1967) op.cit. p.227.

ownership has changed at the same time as the method of financing housing." ³⁹ As will be argued later, this is a complete misreading of the situation. Neither the function of property nor its method of financing has (or even can, given the capitalist dynamic) altered. At this juncture it must be stressed that rents at this time were ordinary market rents which, given inequalities in both ownership and need, were determined by the forces of supply and demand. However since the supply of houses was fairly inelastic, and ownership restricted, rents were therefore partial monopoly rents. This is supported by a Ministry of Reconstruction Report of 1919. ⁴⁰ Marion Bowlby pointed out: ⁴¹

" The rents of 1914 were ordinary market rents. It is not usually claimed that they were necessarily fair rents in any ethical sense of the term. They are merely the rents resulting from the interaction of supply and demand. They have no necessary relation to the original costs of production of individual houses; indeed, these are quite often unknown. They have a rather loose connection with the cost of providing new houses of similar types, for if market rents

39. J.Greve, 'The Housing Problem', Fabian Research Series, 224, November 1961, p.3.

40. Committee on the Increase of Rent and Mortgage Interest (War Restrictions) Acts. H.M.S.O. London. Cd.9235, 1919, p.4.

41. M.Bowlby, Housing and the State, Allen & Unwin, 1947, p.206.

exceed the annual yield which would make investment in building new houses to let profitable, new houses will be built, other things being equal. Other things are, however, often not equal because owing to the absence of accessible unbuilt sites at suitable prices in and around big towns, these prospects may be for all practical purposes unrealisable. Some of the rents at least in 1914 can only be classified as semi-monopoly rents just because of the absence of completing new supplies of houses. They were, it is true, more or less free from the particular element of profit stigmatised as due to war "profiteering": but they were by no means necessarily free of other elements of profit stigmatised by moralists as unfair."

Due to the massive mobilisation of the army for the imperialist war of 1914, domestic building work came to a virtual standstill. The private construction of working class homes was no longer a sufficiently profitable enterprise as the cost of building materials and the rate of interest to finance the construction had both risen steeply. (It must be remembered that at this early stage there were no council-owned construction organisations.) Simultaneously there was a heavy influx of workers in the munitions' industries to the large urban areas such as London, Birmingham and Glasgow. Towards the end of 1915 this caused an unusually high demand for housing in these centres. The situation thus created lent itself to "the raising of rents and ultimately to the exaction of scarcity or monopoly

rents" in the wording of the 1919 Report. It also was to cause a major turning point in the history of British housing.

In October 1915 the Times reported that "eight hundred women and children of the respectable working class type (!) had demonstrated against rising rents in Glasgow, and that a movement was being organised to withhold the threepenny and sixpenny per week increases." Similar actions occurred in Northampton, Birmingham, parts of London, and in Birkenhead where two thousand women marched behind the slogan "Father is fighting in Flanders, We are fighting the landlords here." Lloyd George, the Minister of Munitions, could not afford to have the armaments supply impaired at such a time of international crisis, and so a departmental committee was appointed.

Whilst the government was taking action to forestall industrial unrest a Glasgow landlord shortsightedly served summonses on eighteen of his tenants for non-payment of rent: this provoked walkouts in six large Clyde shipyards. Industrial action was used for the first (and nearly the last) time in support of working class dissatisfaction with housing conditions. 42

42. This provides an interesting case of the disappearance of documentation of earlier working class hostility towards landlords. In The Housing Question (1970) op.cit. p.52 Engels cites the case of 2,000 miners who tried to have their names enrolled on the list of parliamentary voters. On October 14th 1872 the court in Morpeth declared that since their employer also owned their houses they were therefore servants and not entitled to vote. Apparently the miners then went on a rent strike; supportive strikes followed in south Yorkshire. However, the court of Morpeth has 'misplaced' the record of this case. The copy of the Daily News in which the story first appeared, is missing from the British Museum.

Although Lord Hunter and Professor Scott reported that there had only been a few rent increases in the Clyde district prior to November 1915, this flatly contradicts the official Ministry report (of which Hunter was the chairman) that rents had risen on average by 6%, and in some cases were reported to be as 15-25%.⁴³ The 1915 committee argued that although in principle rent control was undesirable, nevertheless a limited form was necessary in the exceptional circumstances of the time; this produced the Increase of Rent and Mortgage Interest (War Restrictions) Act (1915). Within certain limits of rateable value the owner of a house could not now eject a tenant or raise his rent, except by the amount of any increase in rates or any expenditure incurred on improvements and structural alterations; the rights of mortgagees were similarly restricted. Rent control is simple enough in form; it is the legislative limitation of the amount which the landlord can extract from the tenant in the form of rent, which limitation essentially prevents the landlord from extracting a rent based on the scarcity of housing supply. It is thus a gain for tenants. It must be stressed that the official view was that this measure was intended to be temporary, and was expressed to continue in force until six months after the end of the war.⁴⁴

43. Part of this evidence was submitted by Dan Rider, the secretary of the War Rents League.

44. The Act of 1915 was amended by the Courts (Emergency Powers) Act (1917) ss.4,5,7 and by the Increase of Rent &c (Amendment) Act (1918). These statutes were valid until Lady Day 1921.

The conclusions to be drawn from this opening gambit in the overt housing struggle are mainly tactical ones: the working class can gain favourable legislation by the application of industrial legislation. Statutory limitation of rent levels at something below their free market level can only be interpreted as the resolution of rent levels in a power conflict. Although the working class had at last been able to put part of their definitions into the official, legal norm, it must be realised that 1915 was a unique and exceptional moment in British history. The Act of 1915 was the watershed in the career of the private landlord and the small speculator. The working class had to adequately housed if profit and capital accumulation in industry was to be maintained.

The effect of the two amendments to the Act of 1915 had been to allow rent or mortgage interest paid in excess of standard rates to be recovered, to prevent such excesses being entered into rent books as arrears, to provide that the prohibition against the acceptance of premiums for the renewal of tenancies should not apply to a lease for a term of 21 years or more, and to make it clear that in the case of a house let at a rent less than two-thirds of the rateable value then the Act did not apply. The Hunter Report was published on the last day of 1918, and in evidence Harold Griffin of the Property Owners' Protection Association pleaded that rents must rise by at least 20% to cover additional outgoings such as repairs, insurance, management costs

and minor structural alterations. ⁴⁵ To return to the pre-war level of profit Griffin argued that "a rise in rents of 15% must be permitted."

Apparently most of the tenants' representatives thought that a 1% increase in mortgage interest and a 33% increase in rent should be awarded to good landlords, but that no increase at all should be given to landlords who failed to keep their houses in a good state of repair. Some tenants were more foresighted in their demands, notably Sidney Webb and Andrew M'Bride of the Glasgow Labour Party Housing Association, and they argued that far better housing should be provided for all, and that although rents as a whole should not rise some landlords or individuals with fixed incomes should be compensated for the fall in real rental income. The committee concluded that rent restriction could not as then be removed, but that it was to remain in force until "economic conditions return to normality". A well-put phrase. Further, over a period of eighteen months house owners could raise their rents by 25% exclusive of rates. Soon, 98% of all houses were to be subject to rent control. In one minority report it was thought that a large increase in rents and subsidies for new repairs, provided by the

45. Ministry of Reconstruction Report, H.M.S.O. London, 1919, Cd.9235. Its 'distinguished' membership included Lord Hunter, W.J.Board O.B.E., C.Duncan M.P., Edwin Evans L.C.C., E.M.Gibbs F.R.I.B.A., E.C.P.Lascelles, W.A.Lindsay M.P., His Honour Judge Mellor K.C. C.B.E., W.B.Neville, Dan Rider and B.S.Rowntree.

state, was necessary if "private enterprise is to be enabled to renew its great services to the state in housing the people." 46

Academic and official consensus would have us believe that private enterprise has been beneficial to the working class (we shall examine the merits of this claim in a later chapter) but it is difficult to determine the exact basis of a view which still commands a great measure of official credibility.

In a second minority report Dan Rider and William Neville said that an increase in rents would provide an additional and completely unjustified extra income of £15 per annum for owners and mortgagees. Interestingly, they argued that they were 'conclusively convinced' that the real cause of comparatively high rents in London was to be found in the fact that the London owner was not satisfied unless he was receiving 2-3% per annum above the rate of profit which recompensed the provincial and Scottish landlords. Their feelings were but anticipations of arguments used by landlords in the post-1960 housing situation in London.

46. Edward Gibbs, 1919 Report op.cit. p.14. Forty years later Professor E.F.Nash was to write:

"But for the rigidities which now cripple its operation and threaten its survival (the English landlord-tenant system) could have been expected to continue for many years to fulfil the purposes which, by general agreement, it has so notably contributed in the past." The Times, 5th February 1958.

The year of 1919 saw the introduction of the first national housing programme, and this was the effective origin of public sector housing. Partly stemming from the realisation that the working class simply could not afford the open-market rents of private accommodation, and partly from the financial exigencies of the immediate post-war years, Lloyd George's government decided that it was necessary to build 500,000 houses for the working class by 1922. Local authorities and public utility associations were to build the new 'Homes Fit for Heroes' and profits were strictly limited to a maximum of 6%. This of course cannot be called a poor return on capital investment. The rents were intended to meet the costs of management plus 3-4% for capital interest; since interest rates were high in this period the government estimated that it would have to subsidise the rents at a level of £10 million per annum if the original capital cost was to be repaid. For the next fifty years the major gain in income for the working class was in the area of housing, and it would be unrealistic to argue otherwise. Since the State guaranteed deficits of the 'uneconomic rents' of local authorities it was placed in an ambiguous position, and for this and a variety of other reasons only 217,000 public sector houses were built with State assistance in the next four years.

Contemporary speeches in the House of Commons show the (parliamentary) lines of battle ⁴⁷,

"A Return, which is the best I could find,
was provided by local authorities in 1914,

47. Dr. Addison, President of the Local Government Board, on
April 7th 1919. Parl. Debates Commons, 1919, vol. II4, col. I713

and although it only covers about a quarter of the houses of the working class type, it showed that there were 70,000 quite unfit for habitation, and a further 300,000 which were seriously defective...I see that there are about 3,000,000 people who live in what is described as an overcrowded condition—that is to say more than two in a room."

Despite this touching concern the Shelter organisation was to report that 3,000,000 families still lived in slums or grossly overcrowded conditions in 1971 and that there were 1,800,000 houses unfit for human habitation.⁴⁸ However since the local authorities now had to compete on the open market to finance their building operations the rents of the new council houses were at least half as much again as the controlled rents in the private sector. There have always been two halves to the bourgeois solution of subsidies: the first holds that sub-market rent levels are necessary for unimpeded profit-making in industry, the second can be illustrated by a statement from Colonel Wedgwood in 1919⁴⁹,

" Houses are not being built now, because the cost of labour and material is very high indeed, and because the rents of houses are artificially kept down by Acts of Parliament. You cannot go on indefinitely interfering with economic laws by Acts of Parliament."

48. Shelter, Face the Facts, 1971, p.6.

49. Parl. Debates Commons, 1919, vol. II4, col. 1768. One wonders whether the good Colonel was speaking for his constituents or for himself.

The Addison Act (1919) created an important legislative innovation which slipped in almost unnoticed and which provided a direct precedent for subsequent Acts in 1965 and 1972. The Act stated that "land and houses sold or leased by the local authorities must be sold or leased at the best price or for the best rent which can reasonably be obtained." The controversial concept of 'fair rent' was to be invoked again in much harsher circumstances.

We must now return to the private housing sector. The consequence of the Hunter Report was the Increase of Rent and Mortgage Interest (Restrictions) Act (1919), and this doubled the original rental limits of houses on which control had first been imposed, raising them to £70 in London, £60 in Scotland and £52 elsewhere. It allowed landlords to increase rents, but not by more than 10% and a maximum increase of $\frac{1}{2}\%$ in the rate of mortgage interest. The Act also prolonged to 1921 the Act of 1915, but this measure was repealed in 1920.

The Salisbury Committee reported in 1920, largely along the lines urged by the Labour minority report under Hunter. The membership of this committee was composed of the Marquis of Salisbury K.G. G.C.V.O. C.B., His Honour Judge Sir Edward Bray, E.Halls M.P., Sir Aubrey Symonds K.C.B., and P.B.Moodie. Obviously it was felt that these people were fully in touch with the problems surrounding working class housing.⁵⁰ They said that more aid ought to be given to landlords to allow for repairs, and that rents must be increased by 25% with the proviso that the tenant could move to get payment

50. Committee on the Rent and Mortgage Interest (War Restrictions) Act (1920) H.M.S.O. London, Cmd.658

suspended or revoked during this period if the landlord did not actually carry out repairs.(para.5) Further, they held that the rent control limits be raised again to £105 in London, £78 elsewhere in England and Wales and £90 in Scotland. Significantly they said: 51

" It is, however, essential to realise that the reason why rents would rise is not merely the scarcity value which would then become effective, but also, though in a lesser degree, the increased price of housing accommodation which is attributable in part to the devaluation of money. It is impossible to ignore this side of the problem, not only because it would be unjust that owners of houses should continue to be differentially treated as compared with owners of other things, but also because the want of conformity between the low rents of houses as at present being restricted and the high prices of the building trade makes necessary repairs impracticable, and tends to paralyse the provision of new accommodation by private enterprise."

Apart from the essential fusion of definition between this committee and the National Association of Property Owners, several points must be made about this statement of reality. First, it is true that building costs were rising rapidly in 1920, and were not to hit their peak until the middle of 1921, but there is no absolute

51. *ibid.*p3. For a markedly different interpretation of these events see M.J.Barnett, The Politics of Legislation, Weidenfeld & Nicolson, 1969, p.21.

reason why the housing shortage had to be 'solved' by the donation of financial carrots to private entrepreneurs: which would therefore push the final cost of housing up still further, and so also the level of rents. But it was precisely because house construction was caught in the web of a capitalist economy (and dependent on the whims of private investment in such an economy) that housebuilding had fallen off so dramatically in these early years. Most of the 200,000 new houses erected between 1918 and 1923 were completed by local authorities, and private enterprise played only a minor part except in the few cases where the government had given it the full state subsidy per house. (See Fig.2 over page). Further, most of the new local authority homes were built for sale to intending middle class owner occupiers, and were not available for renting. The committee was correct in its inference that in market terms housing is a commodity like any other and can be sold without any necessarily expropriatory characteristics. Engels himself identified the housing shortage as a result of industrialisation, and urbanisation as an extraordinary circumstance in which the tenant is forced to pay for the goods at 'above value'. But it is by no means difficult to demonstrate that 'above value' is the norm in capitalist society unless there is a political intervention in the housing market. For example, prior to 1914 interest on capital invested in the housing market was characteristically higher than in other investments. 52

52. M.Bowlby, Housing and the State, Allen & Unwin, 1947, p.206.

FIG.2 HOUSES ERECTED IN GREAT BRITAIN 1919-1939

<u>Year</u>	<u>Local Authorities</u>	<u>Private Subsidised</u>	<u>Private Non-Subsidised</u>	<u>Total</u>
1919-20	576	139		
1920	16,786	13,328	(58,000	(275,930
1921	86,579	21,577	approx.)	approx)
1922	67,062	11,083		
1923	19,582	4,534	69,396	93,516
1924	23,862	48,830	71,072	143,764
1925	49,508	66,569	68,254	184,331
1926	83,714	83,681	65,867	233,262
1927	120,494	77,725	62,479	260,698
1928	69,677	52,156	66,015	187,848
1929	73,268	53,825	93,099	220,192
1930	60,636	5,626	130,542	196,804
1931	76,528	5,309	132,629	214,466
1932	66,731	6,393	149,007	222,131
1933	70,247	11,229	212,228	293,704
1934	75,326	1,139	292,470	368,935
1935	70,486	222	279,607	350,315
1936	87,423	797	281,683	369,903
1937	92,047	2,551	265,058	359,656
1938-39	121,653	4,207	233,013	358,873
Totals	1,332,189	470,920	2,531,219	4,334,328

Source: Housing in Great Britain, H.Ashworth, Skinner, 1957. (adaptation)
 The figures exclude Northern Ireland, and are for years ending
 31st March.

The resultant Increase of Rent and Mortgage Interest (War Restrictions) Act (1920) repealed the previous legislation and consolidated them in an amended form, and this is now the earliest of the Acts consolidated in the Rent Act (1968). It was also the basis of all ensuing legislation concerning rent restriction and regulation. It awarded a flat increase of 15% in rent, plus increases of 25% if the landlord was responsible for all repairs, and subject to agreement if he was responsible for less. (Clause 2.I) In other words, from the battle for competing definitions of reasonable rent, this was a landlord's victory. The repairs clause has always been cited in rent legislation, and is little more than a trick in favour of the landlords. Certainly it is in the interest of tenants to live in good accommodation; but the landlord recoups his outlay on repairs firstly by the increased rent, and then subsequently by the higher sale price which his property can now command.

A new committee under the chairmanship of Lord Onslow was appointed in July 1922 to look into the state of the rent restriction Acts.⁵³ Although 95% of houses built since 1918 had been erected by the local authorities, the committee concluded that

53. Departmental Committee on the Increase of Rent and Mortgage Interest (Restrictions) Act, 1920. H.M.S.O. London, 1923, Cmd.1803. Membership: Lord Onslow, Eustace Percy, Sir Ernest Hiley, Colonel E.F. Fremantle, Colonel Wheler, Major H. Barnes, Sir Aubrey Symonds, Edward Bray, Theodore Chambers, A.S.D. Thompson, Thomas White, P.B. Moodie. Of interest is the relation between the elitist views of this committee and those expressed obiter in *Kerr v. Bryde* (1923) A.C.16.

"...the Rent Restriction Acts...have helped to prolong the shortage of accommodation which renders them necessary, so that if the country is ever to get back to the position whereby the bulk of its houses is to be provided by private enterprise, the sooner all restrictions can be removed the better." (para.7) In other words, the recurring theme of the committees was that housing construction ought to be placed firmly in the hands of capitalist entrepreneurship. Indeed, it was not predominantly the Acts which impeded the provision of new houses, but much more so the transitional post-war period in which large numbers of men and materials were required for purposes other than building. The majority on the committee argued that rent controls must be removed as quickly as possible, but not for the present lest 'industrial and social unrest' should follow. They therefore proposed a withdrawal of the lowest rated houses by allowing control to lapse when the landlord gained possession. Benevolently, they urged that tenants should not have to pay any increase for repairs which the landlord had not made.

Three important pieces of legislation followed from the aftermath of the Onslow committee's recommendations, the first of which was the Increase of Rent and Mortgage Interest Restrictions Act (1923). This provided that whenever a landlord gained possession of a house then it would become decontrolled. The committee hoped that this system would cushion landlords' hardship (!) and that rent control would gradually die out with the death or departure of the tenants. In practice landlords were now in a position to put pressure on tenants to vacate their premises, and that the Act did

not work smoothly can be seen by the necessary introduction of the Prevention of Eviction Act (1924), which was to "prevent landlords unreasonably evicting their tenants".

The Chamberlain Act of 1923 was introduced to encourage the private construction sector, and in effect it re-established the inequalities between need, income and cost which the Addison Act had removed in principle. The Act meant that local authorities received a state subsidy of £6 per dwelling, that the Exchequer would meet half the annual loss occasioned by local authority slum clearance and that private builders could also obtain a subsidy of £6 per dwelling unit per year or a lump sum of £75. Significantly, intending middle class owner occupiers benefited by the proviso that local authorities could guarantee building society loans which exceeded the normal 70% mortgage on a house which cost £1,500 to buy: £1,500 was well above the means of the working class.

This position was largely reversed the following year by an Act of the first Labour government, generally known as the Wheatley Act. Now the subsidy was increased to £9 for forty years for houses built for letting by local authorities; this must rank as the outstanding achievement of this government. Council house rents were to be fixed at the general level of pre-war rents of working class houses. Eleven years later local authorities were given an almost completely free hand in fixing rents and formulating rent policies. The essential element was that the Housing Revenue Account, the consolidated account covering all rents and

and subsidies, should balance and the only major constraint on a local authority's rent setting was the possibility that the district auditor would declare a particular rent scheme Ultra vires because the deficit on the housing revenue account which had to be met by a rate-fund subsidy was "unreasonably large". The essential elements in the 'rents' which emerged from this process is that they were cost determined. The housing revenue account had to meet the costs of housing construction, management and maintenance, including of course, interest charges on, and capital repayment of, loans. The income to the account was in the form of three elements, viz. 'rents' paid by tenants, exchequer subsidies and local rate fund subsidies. It must once again be emphasised that although the British working class undoubtedly gained in physical material terms from this situation, the function of these legal changes must be seen as an attempt to ameliorate the life of the workforce so that repetitions of 1915 would not hinder the process of capital accumulation. Thus, a committee reported in 1925 that "overcrowding and insanitary houses not only had an effect on the health and morale of the population but also accentuated discontent with the situation." 54

These legal changes in housing definitions must be seen in the light of the more general housing situation of the time. More than one and a half million houses had been built between 1918 and 1930, mostly of the small type (See Fig.2, p.88). There

54. Committee Report, Rent Restriction Acts, 1924-25, H.M.S.O.
Cmd.2434, para.64.

was some evidence to show that in many areas the worst cases of overcrowding were being overcome, and that when houses became decontrolled high rents were too often demanded, and obtained. Contemporary Ministry of Labour research revealed that about one-eighth of all working class houses had been decontrolled under the provisions of the 1923 Act, and that the decontrolled rents of such houses ranged from an average of 85-90% above the 1914 level, inclusive of rates, as compared with the 50% increase in the rents of controlled houses (again inclusive of rates). This 50% was composed of the permitted increase of 40% plus an additional sum for increased rates. For example, a house whose pre-war rent was 6/- per week would have an average controlled rent of 9/- per week; on decontrol the rent would rise to an average of 11/3. Figures in the Marley Committee report of 1931 suggest that the working class, who for the most part could only rent their homes, were hardest hit by the housing shortage. This was of course to be expected. For other 'housing classes' the shortage was generally less acute.

In 1929 the Building Societies had lent out over £70 million, predominantly to intending owner occupiers, and the facilities made available through these societies no doubt played an important part in the stimulation of private enterprise between 1923 and 1931, so that private house construction, reaching a peak of 149,548 in the year 1926-27, averaged approximately 100,000 per year in this period.

It is clear that the relatively large number of new houses had not had the effect of improving the conditions of the poorest workers to the extent which had been anticipated. The increase in the number of new houses, although large in itself, must be considered in the light of other relevant factors, such as the overall increase in the number of working class families. Further, the general moving or 'filtering-up' process, on which reliance was apparently placed to improve the conditions of the poorest, did not occur. The reason for this lull is that both private and public sector housing construction were carried out within the context of capitalist financial institutions (of which there is detailed discussion later). Although the declared policy of governments after 1924 was the amelioration of working class living standards, this could neither realistically or substantially be obtained within these guidelines because both housing construction and housing finance were tied to the private capital market: no amount of government incentives could alter this fact. After the political victory of 1915 the working class had in general been able to circumscribe the landlords' power to extract absolute rents. What attrition there was in this situation in 1923, 1933, 1957 and 1965 benefited the large landlord.

It should be noted that one authority, Adela Nevitt, has a very different perspective on this period. She contends that it was the relative taxation position of landlords which was important, and not rent control. In other words she sees the landlords' disabilities

as stemming from ⁵⁵,

"...the fiction in tax law that a 'house' lasts for ever and cannot therefore rank for any depreciation allowances."

However, the treatment by the contemporary Inland Revenue of the landlord's income as a rent only becomes a burden to that class when they are prevented by legislation from extracting an absolute rent for their properties. Those landlords who have utilised decontrolling legislation seem to have no difficulty in living with their taxation position and there is no known evidence that landlords actually sell properties on decontrol or regulation rather than re-let. Rather it is the smaller landlords who have fled this sector on decontrol.

The population of England and Wales increased by nearly two million between 1921 and 1931, and the number of houses by approximately 1.5 million, so that surplus accommodation had apparently been provided for some four million people, allowing for demolitions. This ought to have gone far towards easing the working class housing shortage; but between 1921 and 1931 only 11,500 houses were demolished and only 38,000 were subject to closing or demolition Orders. It is probable that between five and six million pre-war houses were rented by working class families, and together with the near 600,000 municipal houses, these really constituted the only accommodation available to those unable to buy their own

55. A.A.Nevitt (1966) op.cit. p.43.

homes. About one million of the new houses built by the time of the Marley Committee had been erected for sale (a process which was unheard of prior to 1918), and the remainder, owing to the increased cost of building and the higher standards then required, were let at rents which were more than the poorest members of the working class could afford. 56

The process of filtering-up had been further frustrated by 'working class immobility'. The Marley Committee felt that the solution to the problem depended partly on taking such steps as were supposed to be necessary to secure that the filtering-up process would have success on a larger scale. The committee concluded that the system of decontrol by possession had successfully met the needs of the situation as far as medium-sized houses were concerned, but too slowly with regard to the largest and too quickly with regard to the smallest types. They recommended that houses subject to the control of the Acts should be divided into Classes A, B and C, according to their rateable values. (paras.39-50). Class A would be those houses with a rateable value in London of

56. Report of the Inter-Departmental Committee on the Rent Restriction Acts, H.M.S.O.London, Cmd.3911, July 1931. The committee was chaired by Lord Marley D.S.C., and included Captain V.A.Cazalet M.C. M.P., Lt.Col. Fremantle O.B.E. M.P., H.H.George M.C., D.M.Graham M.P., Alderman E.Huntsman, J.S.Mercer O.B.E. and the Sheriff Substitute of Lanarkshire, His Honour Judge Sir Mordaunt Snagge, Bailie Andrew Young, four further M.P.'s and two laymen. Impressive!

£45, in Scotland of £45 and elsewhere of £35. For Class B the limits would be over £20 but below £45 in London, over £26.25 but below £45 in Scotland, and over £13 but below £35 elsewhere. Class C would include those houses with a rateable value of less than £20 in London, £26.25 in Scotland and £13 elsewhere. In effect, this classification was adopted by the subsequent Rent and Mortgage Interest Restrictions (Amendment) Act (1933) and Class A houses were then decontrolled. Class B became liable to decontrol on the landlord obtaining possession, whilst Class C was kept free from this liability. The debate over this Act is important because it set the tone for future legislation, and especially so for the Rent Act of 1957. Sir Hilton Young, the Minister of Health, declared ⁵⁷,

"...when natural forces have their free play, they can be left to their free play, but when you are restraining and confining them by laws, you have constantly to exercise vigilance to see that the laws are adapted to the changing circumstances which they have to meet... It is recognised by all of us that we are working towards the goal of being able to get rid of the system altogether."

Anthony Greenwood replied that "this is an early Victorian theory which is not applicable today." ⁵⁸

57. 273 HC Deb. 5s, col.48.

58. *ibid.* col.76.

The Marley Committee further noted that tenants were not making full use of their legal rights, such as the disrepair procedure (para.67). For example, in ten years in Manchester only two hundred certificates had been applied for, despite there being an annual average of 3,000 notices served under the Housing and other Acts, and "in nearly all these cases a certificate would have been granted if application had been made". Several proposals were rejected at this stage, notably the use of rent courts (paras.58-60). In a minority report Duncan Graham declared that "the Committee had not seen their way to devise some new form of tribunal for dealing with rents and generally with the questions that arise between landlord and tenant...working class houses must be recontrolled, rents further restricted, repairs control better enforced." It seems that the evidence of the National Federation of Property Owners was fully accepted by the Committee: in particular their arguments concerning the rising costs of repairs.

For the next five years the focus of concern shifted from the problem of rent to that of maintenance, and this time the team of experts was the Moyne Committee.⁵⁹ The membership of this body was even more noteworthy than usual: The Right Honourable the Lord Moyne D.S.O., the Right Honourable Sir Francis Dyke Acland Bt. D.L. M.P., Sir Charles Barrie K.B.E. D.L. M.P., Sir Geoffrey Ellis Bt. D.L. M.P., Lt.Col. Sir Vivian Henderson M.C. M.P.,

59. Report of the Departmental Committee on Housing, H.M.S.O.
London, Cmd.4397, 1933

Major the Right Honourable J.W.Hills M.P., Miss F.Horsbrugh M.B.E. M.P., and three further M.P.'s. The Committee urged that uninhabitable working class houses should be compulsorily purchased by local authorities for the purpose of reconditioning, and that this ought to be financed by the Public Works and Loans Board. (p.56) This matter was to lie dormant until 1954. Despite the fact that the census of 1931 had shown that there were a million more families in Britain than there were dwellings, the last major act of the 1933 government was to abolish the Wheatley subsidies and with them all government provision for new public housing for general needs. Thus, 1934 saw a ten thousand reduction in the number of private subsidised house construction.

In 1937 the Ridley Committee report was completed.⁶⁰ Six members of this had already served time on the Marley Committee seven years earlier, and the bias towards professional expertise is shown in their report (paras.3 and 6):

"We invited various bodies and persons representing property owners and tenants, or possessing special knowledge or experience of the workings of the Acts, to give oral evidence before us and we invited other bodies and persons to submit written statements. We have had the advantage of the views of County Court Judges on the legal aspects of our inquiry...In addition over 3,000 letters and representations were received from various sources, of which=170

60. Reports of the Inter-Departmental Committee on the Rent Restriction Acts, H.M.S.O. London, Cmd.562I, 1937.

were from individual landlords, and 70 from tenants...The evidence appears to us to have been fully comprehensive."

Later in the report the committee speaks of "presenting the statistical evidence submitted to us in a form giving an intelligible picture to the layman of those aspects of the general housing situation which bear on problems of Rent Restriction." In other words we must listen to 'expert' appraisals and definitions of the situation: definitions which were largely those of landlords. The committee argued that Marley had emphasised the close connection between the control of rents and the general housing situation, and it drew attention to the fact that although the Rent Restriction Acts were originally intended as emergency measures designed to protect tenants from increases of rent due to the temporary cessation of building during the war, the prima facie ground on which the Acts were periodically extended was that the continued shortage of houses might result in the extraction of 'scarcity' rents if legal controls were removed. The committee therefore recommended that "regional decontrol should be used to combat the regional difficulties which made overall decontrol undesirable." (para.53)

However, the committee (in common with all its predecessors) was embroiled with the theoretical absurdities of bourgeois economics. They argued that rent control would only last while there was a shortage of houses in a given Class: supply and demand would then be equated through the free market price mechanism to establish the optimum allocation of resources. But, of course, as soon as control was

removed and rents having as a consequence risen, tenants would no longer be able to afford to pay them. Had the committee gone further in its economic analysis it ought to have realised that this would have caused price to fall! The doubts of three Labour members were ignored, and the declaration supporting early decontrol was finally ensconced in the White Paper of 1938. ⁶¹

According to Ministry of Health evidence submitted to Ridley there were 341,554 families living in overcrowded conditions in 1936 even though private enterprise had erected 1,331,046 non-subsidised houses between 1933 and 1937, at an average of 250,000 per year. It is impossible to discover the profit margins of this private addition to the national housing stock. Interestingly Ridley said ⁶²:

"...new legislation against overcrowding has introduced a fundamental change in the housing policy of this country. Housing of the working classes is now quite definitely a public health service. In future it is not to be sufficient that a man has a roof over his head. He must have a certain statutory minimum of accommodation in which he and his family can live in reasonable health and comfort. The corollary to this statutory requirement, of course, is that such accommodation must be available for all families at rents within their means."

⁶¹. Government Policy on Rent Restriction 1937-1938, Cmd.5667, parliamentary papers, xxi, col.1017.

⁶². *ibid.* para.63.

It is surprising what a multitude of sins can be concealed by the phrase 'of course'. This quotation reveals most clearly the transition in British housing from the Victorian laissez-faire to the new social capitalism of the twentieth century. The earlier concern that working class sickness and fatigue hindered the process of capital accumulation had by the mid-1930's been firmly translated to the view that the state and local authorities had a duty to provide good accommodation. But, the essentially capitalist nature of the housing problem remained intact. Land and houses were still very largely in private ownership, house construction was still a predominantly entrepreneurial affair, and housing finance was still dependent on private loans and private investment. The Labour members of the Ridley committee caught the resultant evils of the system as (para.15, p.57):

"...we cannot agree that housing is a fit subject for commodity economics...fear of being turned out operates in favour of the grasping and unscrupulous landlord...We are impressed by the quantity of evidence coming in from all parts of the country alleging wide disregard of the provisions of the existing Acts."

The committee refused to extend legal aid to tenants on legal questions arising between individual landlords and tenants on the nebulous grounds that "it would, in our opinion, be open to the gravest objections." (para.II6)

The subsequent Increase of Rent and Mortgage Interest (Restrictions) Act (1938) carried on the process of decontrol which had really been started by the Act of 1933; it never became operative because of the emergency measures necessitated by the new European war in September 1939. At the outbreak of war 10.5 million houses were subject to control, and although it was thought (at least in parliamentary circles) that there was now sufficient excess accommodation, nevertheless the limits of control were once again raised— to £100 in London, £90 in Scotland and £75 in Wales and the rest of England. ⁶³ Between 1919 and 1939 local authorities had built 1,112,000 houses, nearly half of which had been erected between 1924 and 1933 under Wheatley's Act. In the same period private enterprise had built 430,400 houses with state subsidy (the majority under the Chamberlain Act of 1923) and nearly 2.5 million without any form of subsidy. This boom in private construction cannot be said to be the result of Conservative policies; rather it was an indirect result of the fall in the rate of interest.

Alternate booms and slumps in the private and public sectors of house construction were largely the result of financial inducements offered by successive governments which were provided for by legislation. Even the 'bourgeois' solution to the housing problem could not possibly be successful in this period because the parties in Parliament were far from united on what they thought necessary. The Labour party approach had been christened with Henry George's Progress and Poverty in 1871, where George had tried to show that the laws of the universe "do not deny the natural aspirations of

63. 332 H.C. Deb. 5s, col.1225.

the human heart"; he urged that land be given to communal ownership. In 1918 the Labour Party, in Labour and the New Social Order, declared that the first stage towards George's manifesto could be realised by a combination of national farms administered on a large scale, smallholdings, municipal enterprises in agriculture and farms let to co-operative societies and other tenants, under covenants requiring the kind of cultivation desired, with universal protection, by insurance, against the losses due to bad seasons.⁶⁴ In other words the Labour Party had 'sold out' the working class. Indeed the concept of the municipalisation of all urban housing was not seriously considered by Labour until their conference of 1956. The idea was finally buried at the 1961 conference after a warning from Walter Padley M.P. (and speaking for the National Executive) that "it was not possible for a Labour Government to commit itself to this." The only strong Liberal principles were submerged after 1926. In 1913 Lloyd George had said: "Houses are atrocious, inadequate, insufficient, insanitary, rotten."⁶⁵ He said that he was not attacking the landlords individually, or as a class, but only the "fatuous and unbusinesslike system." Finally, and most ambiguously, the Liberal Land Conference of 1926 had set forth the principle that the right to own and hold land should be conditional on its proper use in the interests of the whole community.

64. The first agricultural rent restriction had been afforded by the Agricultural Holdings Act (1883); security of tenure was enacted by a Defence Regulation in November 1941 which provided that notices to quit were null and void unless approved by the Ministry of Agriculture. This was re-enacted in the Agricultural Holdings Act (1948). See also J.A.G.Griffith (1959) op.cit.

65. The Times, October 13th 1913.

The effect of the six year war was drastic: the very small number of new houses constructed had been more than offset by the German bombing of industrial targets, and the demobilisation of the armed forces in 1945 caused further severe shortages of accommodation. This position was exacerbated by an increase in the number of separate families; the population as a whole increased by one million.

In 1945 therefore a new committee was formed, and its report was concluded in April 1945. Its distinguished membership of fifteen included one viscount, one viscountess, one high court judge, four knights bachelor, a justice of the peace and a retired lieutenant colonel; this was Ridley's second report. The committee's recommendations were put forward in the new context of a Labour government which accepted that land ought to be planned, that compulsory purchase orders were both desirable and necessary, and that the construction of a system of New Towns would considerably alleviate pressure in existing conurbations. The committee argued that rent control would probably last for at least another ten years; the two important proposals were the institution of rent tribunals and the establishment of rent registers which would contain information on all houses to which the Rent Restriction Acts applied. Although the Hunter committee (1919) had rejected the introduction of rent courts on the grounds of the impossibility of securing national agreement on what constituted a fair rent in the regional areas, the Ridley

committee thought that ⁶⁴

"In our view the Tribunals to be appointed should not specifically be legal or professional bodies, but should be composed of persons of experience in public affairs... The Tribunals must be composed of members able to appreciate the views of both owners and tenants, and by their work to inspire confidence in their decisions."

The official viewpoint seemed to be decidedly in favour of 'tenants' rights', but in practice, as we shall see in more detail in our last chapter, the reality was to be very different. In the minority report Buchanan and Key urged that council dwellings ought also to be subject to control. Up to and including this period, of course, the national government had not attempted to intervene directly with local authority rent policies. One year later, with the Furnished Houses (Rent Control) Act (1946) the system of rent tribunals was formally constituted; but the system of control had not been fundamentally changed. ⁶⁵

With the outbreak of peace on the European front the Labour government was faced with a tremendous chance to put forward policies which could have attacked at root the nature of the housing shortage. Instead they initiated a set of policies which not only failed

64. Report of the Inter-Departmental Committee on Rent Control, Cmd.662I, H.M.S.O. 1945, para.50. The committee also urged that the notorious Small Tenements Recovery Act (1838) and the Distress for Rent Act (1737) must be repealed, and that decontrol by vacant possession be abandoned (para.50).

65. The Tories were of course hostile to the tribunals: see further 460 H.C. Deb. 5s, col.639.

to achieve this objective but also laid them open to further onslaught by the next Tory government. Between 1945 and 1951 the government licensed private building and made 'cheap money' available to local authorities at a rate of $2\frac{1}{2}\%$ through the Public Works and Loans Board; the Board met the difference between this and the current market rate. In these six years there was little opportunity for finance capitalists to invade the realms of public sector housing since the local authorities obtained almost all of their long-term capital from the Board at rates of interest comparable with the yields on government securities with similar redemption dates. The result was disastrous for house construction (See Fig.3 over page): private house construction was at lower points than in any other period since the second world war, averaging under 30,000 new houses for each year between 1947 and 1951. Because the official Labour policy of the time was that need, and not the ability to pay, would be the main criterion in the allocation of accommodation, the obvious consequence would be that private construction must necessarily decline.

The policy of cheap money worked in that local authorities could now build more cheaply by reducing the demand for land; and thus ultimately reducing the price of houses. In damaged cities such as London, Liverpool and Birmingham there were many desolate sites available for the local authorities to erect new dwellings. The lack of competition from private

FIG.3 HOUSES ERECTED IN GREAT BRITAIN 1945-1960

<u>Year</u>	<u>Local Authorities</u>	<u>Private enterprise</u>	<u>Total</u>
1945-46	26,735	32,086	58,821
1947	98,710	40,890	139,690
1948	194,883	32,887	227,770
1949	171,837	25,790	197,627
1950	170,813	27,358	198,171
1951	172,320	22,551	194,871
1952	205,602	34,320	239,922
1953	255,858	62,921	318,779
1954	257,169	90,636	347,805
1955	203,938	114,510	318,448
1956	176,464	124,161	300,625
1957	174,635	126,455	301,090
1958	145,547	128,148	273,695
1959	125,966	150,708	276,674
1960-61	129,189	168,629	297,818
Totals	2,509,666	1,182,140	3,691,806

Source: Annual Abstract of Statistics

Notes: 1. These figures are for years ending 31st December.

2. The figures for local authority houses include houses completed by New Town Corporations, Housing Associations and Government Departments.

3. In addition to these figures 157,146 prefabricated dwellings were erected between 1945 and 1951.

enterprise and the cheap money policy were obviously contributory factors in the low price of building, but this short-term advantage has severely hindered current local authority operations.

Local authority borrowing comes from three main sources: mortgages from the Public Works and Loans Board, stock quoted on the London Stock Exchange and 'other' borrowing from companies, banks, insurance and pension funds and other private institutional lenders. Needleman has painted a very rosy picture of this area, 'demonstrating' that "...only for small authorities were fresh borrowings from the Board greater than repayments" or "...temporary loans to local authorities are quite attractive short-term investments for companies with a temporary surplus of funds."⁶⁶ But most contemporary local authority borrowing is made necessary by the massive accumulated debts from the earlier building in the period of Labour's cheap money policy. To service this debt councils must keep up a high rate of new borrowing which has to be at the interest rates current on the market. Thus (see FIG.4 over page) although in the 1950's and early 1960's total local authority loan debts in England and Wales were increasing by an average of £385 million per annum, gradually the debt to private financiers grew from £4,373 million in 1962 to £10,625.5 million in 1972. Further, the differential between the debt owed to the Public Works and Loans Board and finance capitalists has changed from 3:4.4 in 1962 to 7.1:10.6 in 1972. The total interest charges for a loan of £1,000 at 8% are £1,500 if the principal is repaid

66. L.Needleman (1965) op.cit. pp.138-141.

FIG.4 LOCAL AUTHORITIES: gross loan debt outstanding (£million)

Year	PWLB	N.Ireland Gov't Loans Board	Other Debt	Total (U.K.)
1962	3,053	81.8	4,373	7,508
1963	3,010	89.3	4,982	8,082
1964	2,988	98.9	5,712	8,799
1965	3,217	110.1	6,403	9,731
1966	3,750	125.0	6,876	10,752
1967	4,280	149.0	7,392	11,821
1968	4,633	171.1	8,171	12,975
1969	5,101	185.4	8,880	14,166
1970	5,625	202.4	9,355	15,183
1971	6,295	222.9	10,099	16,618
1972	7,103	251.5	10,625.5	17,980

Source: Annual Abstract of Statistics, 1973, p.336, table 349.

Notes: I. Years ending 31st March

FIG.5 EXPENDITURE OF LOCAL AUTHORITIES OUT OF REVENUE AND SPECIAL FUNDS

England and Wales		(£thousand)
Housing to which the Housing Revenue Account relates		
1962-1963	316,947	
1963	343,181	
1964	381,745	
1965	432,206	
1966	480,780	
1967	532,919	
1968	605,935	
1969	701,123	
1970	783,922	
1971-1972	855,955	

Source: Annual Abstract of Statistics, 1973, p.337, table 351.

in ten years and £5,000 if repayment is spread over sixty years. Thus, by the time interest has been paid over 60 years at current rates a council flat costing £5,000 in 1970 will ultimately cost nearly £30,000. This calculation is based on the accepted and common local authority method of borrowing, representing that each pound repaid is composed of 68 pence in interest and 32 pence in repayment of the principal. In 1965-66 the debt charge made up no less than 72% of all expenditures under the Housing Revenue Account. Of the total repayment money, on our £5,000 council flat, 15% represents the cost of land, labour and materials; the remaining £25,000 is swallowed by interest charges. Given that a proportion of the principal will be underpaid in real money terms because of the existence of 4% inflation in the British economy, then it is estimated that this will be cancelled out by that proportion of the principal necessary to cover land and construction costs described as exploitative. In this case the interest payments on the loan become an accurate measure of the exploitative component of the debt charge. ⁶⁷

The result, therefore, of the cheap money policy is that local authorities are now having to pay an average 70% of their Housing Revenue Accounts on loans contracted during this and later periods when loans were harder to obtain. With subsequent competition from the private sector the price of land began to rise dramatically in the early 1960's, thus restricting the local authorities in their new ventures since so much of their Account was being used for the

67. See further S. Merrett, 'Council Rents and British Capitalism', Conference of Socialist Economists, London, 1974.

repayment of loans granted in the post-1945 era. The crux of the matter, of course, was that the local authorities were, and increasingly are forced to borrow money from City financiers.

Some attention must now be paid to the status of council housing and council rents in this period. We have seen that the main feature of the hundred years between 1850 and 1950 was the demise of the small private landlord, and the relative increase in the domain and scope of the local authorities. The situation can by no feat of the imagination be represented as a working class victory at the expense of the capitalist class. Given that the accumulation of capital and the extraction of surplus value are of overriding importance to the bourgeoisie, it is both plausible and inescapable that we interpret the apparent ascendancy of municipal power since the 1860's as a device to control these two aims. This of course entails an analysis of the structural and functional links between the tripartite of national government, local state and 'business'. The cheap money policy of the post-1945 Labour government becomes explicable in this context. By 1970 the local authorities were using 30% of national public expenditure and employed some 10% of the national work force. Further, British local government expenditure has grown at a phenomenal rate: it grew by 170% alone in the 1960's, £1,500 million of which is currently spent on construction.⁶⁸ Given that

68. See the National Income and Expenditure Bluebook for 1970; and J. Benington, 'Local Government Becomes Big Business', paper given to the Conference of Socialist Economists, London, 1974. Benington, quoting Glyn and Sutcliffe (1972), argues that the British state has expanded in the construction industry, rather than in defence as with the U.S. government, because of the 1950's crisis of falling profitability in the British economy: largely caused by increased international competition. The construction industry is better protected than most others.

the state in capitalist societies has two basic functions to fulfil, namely the accumulation of private capital and the legitimation of the social order, the phenomenal growth in the area of the local state in Britain in the twentieth century, and the expansion of the local state into the public sector housing field, can be seen now in its proper structural context. The council house sector has fulfilled the role of ameliorating the lot of the working class which parliamentarians such as Lloyd George and Addison originally set it, on the one hand; on the other, it has allowed private enterprise to reap considerable financial profit.⁶⁹

We can now say two things in relation to the status of council house rents since 1915. The essential element in the rents which emerged (and especially so after the 1935 decree that local authorities were to have a virtually free hand in fixing rents) is that they were cost determined. It is important to realise that, with the exception of certain Scottish and Welsh 'red enclaves' which prior to 1972 had actually expropriated the bourgeoisie through the agency of the general rate, subsidies had, as Donnison correctly argues, far more importance as a pump-priming mechanism than current importance as a source of reduction in the housing costs of council tenants.⁷⁰ 'Rents' paid by council tenants since 1935 had only to

69. For brevity most of the Marxist argument on the role of the State must be taken as read; its application to council housing is of course correct. See R.Miliband, The State in Capitalist Society, Weidenfeld & Nicolson, 1969; N.Poulantzas, 'The Problem of the Capitalist State', New Left Review, no.58, 1969; A.Gramsci, Prison Notebooks, Weidenfeld & Nicolson, 1971.

70. D.V.Donnison (1968) op.cit. p.235.

cover the pooled historic cost of the construction, maintenance and management of the local authority housing stock. The only true rental element within them related to land purchase costs, public health and slum clearance legislation. Some tenants in older properties might be considered to have paid a tax, in other words the amount by which their actual payment exceeded the individual historic cost charge of their dwelling, but the only beneficiaries of this tax were the tenants of newer property who paid less than the individual historic cost. This intra-class transfer of surplus value was of course by far the largest and most important element in council housing subsidies. The situation where landlords were unable to expropriate surplus value in the rent payment unequivocally existed in council housing between 1935 and 1972.

The second statement is short and unfortunate in its contents. The historic rents had to include interest repayments for loans negotiated by the local authorities with the City of London. The process is governed by relevant legislation (see back pp.109-11), and it must be stressed that this debt charge now comprises over 70% of all expenditures under the Housing Revenue Account.

From their ascent to power in 1951 and for the following thirteen years the Conservative government systematically repealed the meagre reforms which the Labour government had managed to enact. Although council housing had always been free from the control of the Rent Restriction Acts ⁷¹, the government attempted to intervene

71. Ridley had argued that there was no need of control in the public sector, since councils had numerous statutory duties already placed on them to set reasonable and comparable rents. See also M.H.L.G. 'Transfers, Exchanges and Rent', 1953, para.66, p.17

indirectly in this sector by increasing the rate of interest on money borrowed from the Public Works and Loans Board by the local authorities until it was very nearly equal to the free market rate. In 1954 the Tories reached their election manifesto promise of building 300,000 houses per year (See FIG.6 over page), and immediately made a major redirection in housing policy. The licensing of private building was abolished, and the role of the local authorities was now to be restricted to the provision of housing for needy tenants and slum clearance. The result was that local authority house building fell from its 1954 level of 257,169 to 176,464 in 1956. The move was summarised in the Radcliffe report on the workings of the monetary system ⁷²:

"They (local authorities) have only been able to borrow from the P.W.L.B. at a rate of interest reflecting the current level of local authority credit in the market. Access to the stock market is regulated by the Bank of England, which exercises on behalf of the Treasury a control of the terms and timing of issues of local authority stocks in the interests of orderly marketing and in order that local authorities may be in keeping with government financial policy."

The abolition of rent control, the encouragement of the private market and the expansion in the numbers of owner occupiers were to be the main features of what passed as the informed Tory housing

72. Committee on the Working of the Monetary System, H.M.S.O., Cmnd.827, 1959, p.32, para.93.

FIG.6

HOUSES ERECTED IN GREAT BRITAIN 1954-1970

<u>Year</u>	<u>Local Authorities</u>	<u>For Private Owners</u>	<u>Total</u>
1954	257,169	90,636	347,805
1955	203,938	114,510	318,448
1956	176,464	124,161	300,625
1957	174,635	126,455	301,090
1958	145,547	128,148	273,695
1959	125,966	150,708	276,674
1960	129,189	168,629	297,818
1961	112,421	177,513	296,062
1962	124,090	174,800	305,428
1963	118,179	174,864	298,872
1964	148,624	218,094	373,676
1965	159,608	213,799	382,297
1966	169,955	205,372	385,509
1967	192,569	200,438	404,356
1968	180,060	221,992	313,714
1969	173,782	181,704	366,794
1970	169,275	170,304	350,433

Source: adapted from the Annual Abstract of Statistics, No.108, 1971, p.70.

Notes: Northern Ireland is again not included, primarily this time because the current 'civil war' there will distort the data...especially for demolitions.

The missing element in our historical dimension is the status of owner occupation. The actual number of owner occupied dwellings has grown from 1.5 million in 1900, to 4.0 million in 1939 to the level of 9.8 million in 1972; or from 19% of the total housing stock in 1900 to 54.7% in 1972. (See FIG.7 over page). But owner occupation is by no means the political panacea which it is so often held to be: it is unsurprising that a Tory housing pamphlet declares simply "...Home ownership appeals to Conservative philosophy." ⁷³ Engels has argued that the very same circumstance (home ownership) which can serve as a basis of actual prosperity for the worker can also quite easily become his greatest obstacle. ⁷⁴ The workers in West Germany in 1800 whose wages fell with the introduction of machinery could not readily look elsewhere for work because they were spatially immobile as they owned the houses in which they lived (they were in fact also domestic industrial workers). This situation has its origins in Europe as far back as the feudal era. The close correlation between job security and house tenure has its origins in villeinage.

The situation in contemporary society is functionally identical to the feudal system: the miner who rents a cheap National Coal Board home, the Dagenham worker who has bought his house with the financial assistance of a mortgage through Ford, the Lloyds bank worker who has been given similar assistance, and the Prime Minister at 10 Downing Street. All are in the position of being

73. G.D.M.Blalock, 'Rents in Perspective', a Conservative Political Centre pamphlet, 1961.

74. F.Engels, The Housing Question (1970) op.cit. p.II

FIG.7 STOCK OF DWELLINGS IN GREAT BRITAIN BY TENURE 1900-1973

<u>Year</u>	<u>Owner Occupied</u>	<u>L.A./New Towns</u>	<u>Private Rented</u>	<u>Other</u>	<u>Total</u>
1900 (1)	1,500,000	100,000	6,000,000	920,000	7,600,000
1939 (2)	4,000,000	1,350,000	7,350,000		12,700,000
1960 (3)	6,805,000	4,320,000	4,170,000		16,215,000
1965	8,058,000	4,912,000	3,476,000	941,000	17,387,000
1966	8,318,000	5,064,000	3,331,000	947,000	17,660,000
1967	8,570,000	5,234,000	3,181,000	956,000	17,941,000
1968	8,847,000	5,389,000	3,033,000	965,000	18,234,000
1969	9,063,000	5,547,000	2,916,000	962,000	18,488,000
1970 (4)	9,270,000	5,705,000	2,798,000	958,000	18,731,000
1971					
1972 (5)	9,800,000	5,900,000	2,550,000		

- Sources:
1. Adapted from the Estates Gazette, February 7th, 1959.
 2. M.Abrams, Condition of the British People, 1911-45, Victor Gollancz, London, 1946, p.54.
 3. Adapted from Social Trends, November 1970, p.137.
 4. Adapted from Department of the Environment Housing Statistics Quarterly, 1971, table 30, p.51.
 5. Sunday Times, November 1973. This article also revealed that of the private tenancies 1.9 million were unfurnished and 0.65 million were furnished.

spatially tied to their local capitalist through home ownership. Most of the large British companies practise some form of preferential home ownership scheme for their employees. The General Electric Company "is concerned about housing and accommodation problems, and tackles it in many different ways, depending upon location and conditions"; the National Westminster Bank aids 58.6% of its 48,300 work force with mortgages, purchasing advice, rent allowances and beds in company hostels and flats; the Prudential Assurance Company assists 49% of its 21,365 employees with its house purchase scheme. As our appendix demonstrates this picture is far from atypical of British industry. The matter resolves itself not into a question of whether home ownership is a 'good' or a 'bad' thing, but rather that it is a mechanism whose function is to ensure the smooth extraction of surplus value in industry, yet again, by minimising the incidence of job turnover, migration and absenteeism. From another angle Audrey Harvey has said ⁷⁵:

" For families of low income, buying a house- the best way out- has long been out of the question (unless they are sitting tenants) because of the initial cash outlay. The Government has reduced this by abolishing stamp duty on houses up to £3,500 and by enabling building societies and, to a lesser extent, local authorities, to make bigger loans. But these loans are still made on the lender's valuation, and the borrower still has to find the prohibitive difference between

75. A. Harvey, Casualties of the Welfare State, pamphlet, 1964.

the sum lent and the purchase price. On an oldish house costing £2,000 this difference usually works out at roughly £400, while conveyancing and survey fees come to about £75- let alone the costs of insurance, removal and extra furniture and fittings- all of which puts the average and low wage earner with young children clean out of the running."

We must now return directly to housing legislation. In 1954 the Tories introduced the Housing and Repairs Act, and this measure apparently had the dual concerns of repairs and slum clearance. Part I of this Act encouraged the local authorities to eradicate slums. Part II was intended to encourage landlords to repair privately rented houses, the majority of which were still controlled at the 1939 rent levels. But all new local authority, development corporation and housing association houses were excluded. As such the Act marked the beginning of the decontrolling legislation which was to be set in motion more completely by the Act of 1957. Nye Bevan labelled the Act as a "mouldy turnip for the landlord."

Tory housing policy at this time seems to have been based on two assumptions, the first of which was wrong, the second (if for one moment we can step down from the social science plateau of ethical neutrality) being evil. First, the Tories argued that the acute post-war housing shortage had largely been solved because the actual number of houses was in harmony with the actual number of households. Thus, on November 21st 1956 the Parliamentary

Secretary to the Minister of Housing (a certain Mr. Enoch Powell) declared at the second reading of the Rent Bill ⁷⁶:

"We are now within sight of, and should in twelve months or so be level with, an equation of the overall supply and demand for houses."

Powell proceeded to argue that because there was no absolute shortage of housing therefore it followed that if any 'shortage' existed it could only be caused by the 'maldistribution' or 'under-occupation' of private rented accommodation. The Pakistanis in Birmingham would no doubt have to be squeezed even tighter into their sardine cans. Second, it was argued that in the long run housing standards and housing demand could only be equated with supply via the free market: this of course was the neo-classical cry for the

76. Powell has succinctly put forward his own version of the Tory approach to housing and rent legislation in Freedom and Reality, Batsford, 1969. "...But this does not mean that the state ought to provide houses any more than television sets. The same system of competitive enterprise which has given us all the technical and physical advances and amenities of modern life could provide us with modern housing too, if we would let it. The trouble is that for a generation or more we have been preventing and hampering it...The Conservative policy is to get house-building into modern production, and subsidize, where necessary, the tenant but not the house. There is no reason why the community which cares for its members should deny them access to the fruits of modern production or the right to choose. Thus the two aspects of Conservative home policy, the economic and the social, are neither detached nor, still less, contradictory: they are consistent and complimentary, both founded on the belief that nothing less than the desires and efforts of the people as a whole ought to be trusted to work out their destiny, economic or social." (p.16)

abolition of rent control. These two premises formed the parameters of informed debate prior to the 1957 Act.

In the House of Commons the preamble to the Act had all the verbal trimmings of open class warfare: the guillotine was used in parliamentary debate by the Tory government, and accusations of inhumanity were countered by accusations of inefficiency. The government claimed that the Act would upgrade the tenor of private rented accommodation which had considerably deteriorated since small landlords could apparently not afford to carry out necessary repairs. Labour members were sceptical that landlords would actually carry out repairs- correctly as it happened.

On the basis of government opinion three major policy decisions were implemented in the Rent Act (1957). First, a proportion of private rented dwellings were immediately subject to decontrol: tenants could now be evicted. This argument was based on the official estimate that there were five million houses in England and Wales which were rented privately, of which at least 750,000 were relatively large units. Since it was thought that the larger houses were more likely to contain better-off tenants the government decided to free these first. The increase in the level of controlled rents was held to be about twice the gross rateable value. All dwellings with a net rateable value above £40 in London and Scotland and £30 in the rest of England and Wales were completely released from control. Further, dwellings were to be decontrolled as soon as a landlord gained possession. Secondly, since it was felt that there was no real housing shortage the government decided to discourage new house construction.

One method to be used to pursue this objective was the abolition of the subsidy for general needs and to restrict it to local authority slum clearance. (see page II5). The denial of loan sanctions and the raising of interest rates completed the process. Thirdly, and apparently to support the system, the repairs procedure prior to 1957 was in effect reversed. The burden of proving disrepair, which had up to this time traditionally been with the landlord, was now shifted to the tenant. Now, not only could the landlord invoke the repairs procedure to gain an increase in rents, but also the tenant could not invoke the procedure to stop an increase.

The Rent Act of 1957 failed to realise even the objectives of the Tory party. Because there were often several separate households within a large house very few large houses were actually freed from control. Thus, instead of the hoped-for figure of 750,000, only 400,000 houses were decontrolled. But, by 1959 only 2,500,000 houses were to have controlled rents. People did not move to smaller houses; there were not enough of them anyway, and people wanted to move to a bigger or better-equipped house if they had to move at all. The Act did not ease underoccupation. Tenants reported that landlords had done more repairs since 1957, but also that rents in controlled properties had risen at random, sometimes by more, sometimes by far less than the increase allowed. The level of repairs, although improved, was still inadequate to deal with the delapidated condition of much of the private rented sector. From 1957 onwards the pressure for accommodation within urban areas became intensified, not only for houses but also for offices, hotels, and the new service industries were arose in the 1960's. This meant inevitable pressure on land values.

We have already shown that the Tory government operated under the main assumption that the supply of and demand for houses were in balance: the assumption was incorporated into the 1957 legislation. For them the problem could therefore be reduced to improving the existing stock and removing the worst slums. Were such policies implemented not in a period of housing balance but in a period of shortage, then the only beneficiaries could be landlords and property companies who could then demand and receive absolute rents. If however there really was a situation of balance between supply and demand then legislation would have no relevance since rents would be determined at the free market level where both suppliers and consumers of housing had equal control over price. The fact that this situation unequivocally did not exist in the era of 1957, and never has done in Britain, demonstrates conclusively that we live in a position of relative housing scarcity.

What little evidence there is on this point suggests that supply and demand for houses (measured in absolute terms of the number of dwelling units available) may have become equal in the mid-1960's. (See FIG.8 over page). The figures in this table were computed by calculating the demand for independent households made by those married each year in England, Wales and Scotland. This figure was subtracted from the total number of new houses, minus demolitions. The surprising conclusion is that by 1964 there existed in excess of 100,000 dwelling units above the normal demands on the housing stock made by existing tenants and newly weds. This apparently rosy picture is complicated by two sour notes. First, dwellings are not evenly distributed: serious shortages of accommodation occur in London and other urban areas, and much of the national housing stock

FIG.8 DWELLINGS-HOUSEHOLDS SHORTAGE IN ENGLAND, WALES AND SCOTLAND 1959-64

<u>Year</u>	<u>Marriages</u>	<u>New Houses</u>	<u>Demolitions</u>	<u>Total Addition</u>	<u>Shortage</u>
1959	380,568	276,674	70,913	205,761	350,000
1960	383,717	297,818	68,846	228,972	261,628
1961	387,240	296,062	73,700	222,362	183,566
1962	387,976	305,428	74,516	230,912	96,954
1963	390,982	298,872	73,503	225,369	15,885
1964	399,549	373,676	75,607	298,069	+134,184

- Notes: 1. See Labour Research, 'The Housing Shortage', April 1960, vol.XLIX, no.4, pp.69-72 for figures prior to 1957. The figure of 37 households increase per 100 marriages has been proved correct for the periods 1891-1931 and for 1931-51; this allows for the reduction in the number of households caused by deaths.
2. The figure of 350,000 households shortage for 1959 was deduced by Herbert Ashworth, general manager of the Cooperative Building Society, in December 1959.
3. All figures in this table above are computed and abridged from the series of Annual Abstract of Statistics. Further computation suggests that by 1970 there was a surplus of 1,556,477 dwelling units in relation to households.

is either old or in bad condition: the 1971 House Condition Survey found that whereas 4% of all housing in South East England is unfit, as much as 10.1% of all stock in the North is unfit. Second, whilst it is manifestly apparent that housing shortages exist in many parts of England, the only way in which a surplus of 1,556,000 dwellings in 1970 can be interpreted is that some people own two or more houses and some of which are either used periodically or not at all. This is consistent with other modern trends: property companies which keep houses vacant in the expectation of a capital gains profit on subsequent sale, local authorities who take a long time to demolish or repair old houses (hence the current ease and vigour with which squatting is pursued), and the practice followed by Londoners who buy holiday homes in Cornwall and Wales.

It is quite possible that the net shortage of houses may in fact be overcome in the sense that the number of units of accommodation is equal to or more than the number of households; this is of course very different from the view that large sections of the population do not suffer from shortages in particular areas or from high and rising rents in all areas. It is of little use to Londoners that there exists a housing surplus in the north east of England- there is also 15% unemployment in many parts of the north east. This perspective in turn explains why local authorities have such long waiting lists from prospective council tenants. For example, the National Housing and Town Planning Council received returned questionnaires from 532 housing authorities which embraced more than half of the population of England and Wales, and found that the number of applicants on the general housing waiting lists of those authorities numbered 752,000:

of these 282,000 were thought to be in urgent need. London, Scotland and slum areas were excluded from the inquiry.

This situation has in turn been exacerbated by the policy of successive governments in the post-1945 period of halting local authority construction for 'general needs' and simultaneously encouraging private industry to build for sale. But partly due to the inefficient organisation of the British construction industry and also partly due to rising prices for raw materials, private enterprise has not built enough houses: the result is that house prices have soared since 1959. It is not coincidental that this same period produced the era of a housing 'surplus'. (See FIG.9 over page). Some older houses are left vacant in the process but they too can be sold for inflated prices. That this has in fact been happening can be seen from the sharp and prolonged rise in house prices since 1959: between then and 1973 houses have risen in price by more than 1,300%. Local authorities are currently erecting new houses at the rate of 150,000 per year, and it will take at least fifteen years for there to be no real housing shortage given that houses themselves degenerate into slums. This is as yet to say nothing of the differences in quality between the three tenure groups.

Tory policy towards rented accommodation was of course based on the belief that if landlords do not receive a large return on their capital investment then the only result can be a decline in the number of dwelling units for renting. Thus, in order to encourage investment in the housing market the Tories in this period inevitably had to rely on policies which would raise rents up to more profitable levels. The 1957 Rent Act was just such a piece of

FIG.9 CHANGES IN THE CAPITAL VALUE OF URBAN HOUSES 1939-73

Year	Houses	Year	Houses
1939	100	1961	477
1949	279	1962	500
1950	296	1963	565
1951	327	1964	634
1952	307	1965	676
1953	301	1966	683
1954	295	1967	742
1955	308	1968	780
1956	321	1969	823
1957	323	1970	874
1958	327	1971	1,079
1959	367	1972	1,570
1960	421	1973	1,683

- Notes: 1. These figures were computed from a table supplied from the Nationwide Building Society, Occasional Bulletin II6, July 1973.
2. The figures for 1959-73 are an amalgam of modern and older houses in London and S.E.England.
3. The figure for 1973 is based on returns for the period January 1st 1973 to June 30th 1973.

decontrolling legislation...12% of the tenancies freed from control were immediately sold for owner occupation. Individual ownership was encouraged by the House Purchase and Housing Act (1959), whereby the Exchequer provided loans to approved building societies for financing the purchase of pre-1919 houses up to the value of £2,500. Almost certainly these were the very houses which provided the working class with relatively cheap accommodation because of their age and condition. In 1961 the Tories provided £25 million in loans to housing associations to provide accommodation at 'economic' rents: these rents more often than not were higher than those of the local authority, and therefore discriminated against the lower paid families. In sum, Tory policies in the 1950's were designed to reduce the local authorities' responsibility for the provision of adequate housing for the working class.

In 1958 an important event for reference to the Housing Finance Act of 1972 took place: the Agriculture Act. The purpose of s.2 of this Act was to give an 'objective' definition of the rent which should be 'properly payable', referred to in s.8 of the Agricultural Holdings Act (1948). The official interpretation of the 'rent properly payable' was (as with Walmsley ⁷⁷) "...that rent which a prudent tenant might reasonably be expected to accept on an open market letting of the holding, but excluding scarcity value." In this context scarcity meant a premium value offered in order to secure the tenancy with a view to obtaining a revision to the proper

77. R.C. Walmsley, 'Farm Rents', The Chartered Surveyor, March 1956, p.502.

rent at the end of three years. This definition presupposes as correct the neo-classical assumption that the free market equation of supply and demand via the price mechanism leads to the optimum allocation of scarce resources.⁷⁸ But this 'free' mechanism can only allocate resources according to the criterion of the ability to pay, not to the criterion of need. Interestingly, this assumption and its implementation in legislation led to an increase of 63% in farm rents between 1939 and 1957, whilst in the same period profits on farm production increased from £57 million to £320 million, i.e. by 561%.

By 1963 it was painfully obvious that a major review of the British housing situation must be entered into. Crouch and Wolf argue that when the Labour government took office in 1964 there were three main areas of housing inequality.⁸⁰ First, it was estimated that 3 million families were living in "slums, near slums or grossly

78. For example see R.G.Lipsey (1973) op. cit. pp.132-33.

79. These figures were computed from K.A.H.Murray, 'History of the Second World War- Agriculture', Appendix IX; and 'Annual Review and Determination of Guarantees', 1957 and 1958, Cmnd.109 and Cmnd.360, London, H.M.S.O.

80. C.Crouch and M.Wolf, 'Inequality in Housing' in P.Townsend (ed) and N.Bosanquet Labour and Inequality, D.Neil and Co., 1972, pp.26-46.

overcrowded conditions." ⁸¹ In many respects neither house building efforts nor government finance were geared to rectifying this problem. Things had remained quantitatively unchanged since Addison's report to the Commons in 1919. Second, although few families had to bear the full market cost of their housing, nevertheless the means by which households in different housing sectors were protected from bearing this cost bore no relation either to each other or to any criterion of reducing inequality of needs. Third, within the owner occupied sector house buyers benefited from tax concessions which served a directly inegalitarian purpose: the higher one's income the higher the concession. There are in fact two other areas of inequality. The rents of council houses were subsidised by both the Exchequer and the local rate contributions, but the criteria for allocating subsidy both to individual authorities and to the tenants varied so enormously and were so anomalous that few principles of social justice could be observed in their operation. These anomalies were partly offset but also partly intensified by the operation of rent rebate schemes. Finally, while both owner occupiers and council tenants were protected from their full housing costs by state financial aid, private tenants benefited through rent controls, at the expense of the landlords alone. Partial decontrol had made more confused a system which was in any case based on no distinct criterion of providing aid where

81. Ministry of Housing and Local Government, The Housing Programme 1965-70, Cmnd.2838, H.M.S.O. 1965

need existed. The state intervened more directly in 1963 with the birth of the Greater London Council. From the beginning this organisation played an important role in London's housing position, in part intended to regulate the changes taking place in the composition of the working class in London through the manner in which it operates its accommodation policies: transfers, overspill estates, expanding towns, the industrial selection scheme, with central working class areas (eg. Battersea and Islington) being replaced by high density inner London development schemes etc. ⁸²

The Milner Holland Committee was appointed to investigate the problem of housing in Greater London with the explicit brief to concentrate on rented housing. ⁸³ The committee pointed out that the housing shortage in London was now acute, and was likely to remain so. Rent control was a short term solution and a most unsatisfactory one: investors could not be expected to put money into the housing market if there was no profit. This view of course depended on investment being in private hands. It was time for "rent control to be considered within a context of

82. The Greater London Council was to be the first municipal landlord to introduce on a large scale a policy of 'fair' market rents in 1968, with the attendant means-tested subsidies for low-income tenants; see 'From the GLC Rent Strike to the Housing Finance Act', pamphlet 1973. There is some evidence to show that 'ghetto' council estates, with their attendant concentration of malaise and deprivation, are a direct result of the administrative policies of local housing departments, and that this reflects both national practice and the orthodox school of housing management. This correlation was found in two separate estates in D. Byrne, 'The Problem of Housing and the Problem Family', University of Durham, 1973.

83. Cmd.2605 (1965) op.cit. One member was Prof. D. Donnison J.P.

housing policy rather than as party-political football." In fact the Labour party came to power in 1964 very largely as a result of its declared policies on housing. The committee was the first large housing study since the Royal Commission on the Housing of the Working Classes of 1885. It traced the trend of contemporary urban development in the sense that the drift to owner occupation took place in the suburbs whilst slum clearance and 'redevelopment' occurred near the city centre. (Part II). Interestingly, the committee quoted the findings of the 1960 Housing Survey which showed that of the 2,328,000 rateable dwelling units then in London, some 771,000 were erected between 1880 and 1918, and a further 305,000 before 1880. Since slum clearance affected older property and owner occupation was concerned with new, what was left over for private renting were large houses in the central areas which were suitable for subdivision into a number of rented tenancies, large luxury flats, and 'service' tenancies of various kinds provided for railwaymen, maintenance staff and others by their employees. The functional meaning of this trend has already been commented upon. (See p.II7). Whilst the committee felt that relations between private landlords and their tenants had in some places deteriorated to the point of more or less open warfare it stated ⁸⁴:

"...our governments have failed to take responsibility for this (rented) sector of the housing market, either subjecting it to severe restrictions (without the

complementary support and the additional controls needed to offset and to mitigate the effects of such restrictions) or abandoning control altogether and leaving this sector to escape, haphazard and piecemeal, into a 'freedom' politically insecure and sometimes abused."

In the context of the era of Percé Rachman and the great metropolitan housing shortage the Labour election promises of 1964 and 1966 were to "build 500,000 a year, bring down rents, offer 3% mortgages, give security of tenure, and solve the housing problem."⁸⁵ In this promise of a new land Anthony Greenwood claimed that by 1973 there would be a surplus of one million homes, whilst Alan Day declared that "we are still building far too many new houses."⁸⁶

The direct consequence of the Milner Holland Committee was the Rent Act of 1965. A form of control called regulation was introduced for all dwellings up to the value of £400 in London, and £200 elsewhere. This was to cover dwellings decontrolled in 1954 and 1957. Rent Officers were appointed in every county, county borough, and the London boroughs. In meaningless fashion the Act declared that "...in particular the circumstances of landlord and tenant are to be disregarded." (s.27). The Act provided for decontrol on a regional basis. Some measure of security of tenure was given by the Act, in conjunction with the Protection from Eviction Act (1964).

85. Labour's White Paper 'The Housing Programme 1965-70' (Cmnd.2838) held that local authorities should be producing something in the order of 250,000 houses each year until 1970. The target was 180,000 short by 1970 (See FIG.6, p.II6).

86. Alan Day, 'Don't Pull Down the Slums', The Observer, November 9th, 1969.

In real terms the Labour government came nowhere near their election pledge of building 500,000 new houses each year, and in fact reached a peak of 400,000 in 1967 and then declining to 370,000 in 1969. The security provisions were easily evaded by landlords who astutely put pressure on tenants to leave by overt and sometimes subtle harassment: penalty for conviction was slight, averaging only £17 in the years 1966-70. The motive here of course was that furnished tenants were not within the control of the Act of 1965, and so landlords had an incentive to turn their unfurnished properties into furnished ones by the inclusion of a few sticks of furniture. The Guardian estimated that between 1964 and 1967 the share of the private market which was furnished increased by 25% in London and by 50% elsewhere.⁸⁷

This Labour government was in no sense a socialist government and was not even prepared to take the parliamentary road to socialism. The failures between 1964 and 1970 were identical to the mistakes made between 1945 and 1951: Labour was not prepared to attack the foundations of capitalism. In his first statement as Labour's Minister of Housing Mr. Robert Mellish observed that it was necessary to "stand the whole housing policy of this country right on its head."⁸⁸ Three months later, in a moment of honesty, he declared that "...as one of the politicians involved, I admit to being thoroughly ashamed that my term in office did not produce anything like the approach that is needed to solve the problem of housing."⁸⁹

87. The Guardian, March 3rd. 1972.

88. The Times, June 1st. 1970.

89. New Statesman, September 11th 1970.

We stressed at the beginning of this chapter that it was impossible, and artificial, to discuss either rent, housing or the legislation relating to them in isolation from each other. Our argument has been that the Rent Acts, which related primarily to private rented houses, could only be understood within the more general context of the social relations surrounding housing in a capitalist society. Whilst the three tenure groups have a certain dynamic and autonomy of their own we have seen that there are common bases which connect them: the legislative elite which determines their level of rent, standard of repair and geographical distribution; their dependence on private or state finance for construction; the growth of public sector housing since 1919 as a mechanism to 'ameliorate' the conditions of the working class, and the expansion of owner occupation at the expense of the small private landlord.

Thus far analysis of this area has included the period from 1915 to 1965. The next chapter will provide some insight into what in many ways is the most important piece of housing and rent legislation in British social history: the Housing Finance Act (1972). Here, more clearly than anywhere else, can be seen the coercive and essentially political meaning of law.

3 THE HOUSING FINANCE ACT (1972): HOUSING AND HOUSING FINANCE

A new committee was appointed in October 1969 to report on the operation of the 1965 Rent Act especially in large centres of population where accommodation was scarce and, secondly, to review the relationship between the codes governing the furnished and unfurnished lettings. The chairman of the committee was the distinguished Lord Francis Q.C. (Cambridge and Honorary Bar Treasurer 1961-64). The committee received its social science information from Miss Lyndal Evans who was later to be director of the Catholic Housing Action Centre post-1970. The committee received oral evidence from a great many individuals and organisations, and at least half of the 526 page report is devoted to three important appendices. Julian Amery, then the Minister of Housing, referred to the committee report as "one of the great state papers of our time." ^I

Since the committee's conclusions were strongly influenced by the set of information with which it was provided it is crucial to examine the ideological component of this knowledge. With the exception of the Notting Hill Housing Service no account was taken of the views and recommendations of socialist movements (bar the British Communist Party), radical tenants' associations or squatters. By far the majority of the evidence came from the presidents of the

I. Times March II, 1972

rent tribunals and rent assessment panels, local authorities, property and development companies, public health inspectors and lawyers. The National Citizens' Advice Bureaux thought ²:

"...The machinery appears to be working well in most parts of the country... Rent officers have received from bureaux contributing to this memorandum almost uniformly high commendation for the quality of their work...Many people without much business experience have difficulty in suggesting a realistic figure of fair rent...The greater need appears to be for more adequate enforcement of the present machinery rather than radical alteration of the law."

In their submissions to the Francis Committee the National Association of Property Owners suggested that ³

"...more realistic levels for council rents are necessary if housing shortages are ever going to be eliminated and mobility and choice between different forms of tenure restored...The basic problem in areas of housing "difficulty" (a shortage of rented accommodation) springs directly from rent levels that provide too little incentive

2. National Citizens' Advice Bureaux memorandum, March 2nd 1970.
3. 'Suggested Priorities for Consideration by Her Majesty's Government in regard to Residential, Commercial and Industrial Property', NAPO. The President of NAPO is Lord Nugent of Guildford; the 21 vice-presidents include three dukes, two viscounts, five lords, three knights, three service officers, an M.P., three chartered surveyors and one layman.

to landlords to continue to invest in the provision of accommodation...A registered rent should be a reasonable rent, not an extortionate rent, but neither should it be below the open market level...There should be no extension of the security of tenure afforded to furnished tenants...The individual family in need should be subsidised and not the building."

Perhaps the most influential of evidence came from William Stern. Stern was a Hungarian graduate of the Harvard Law School who arrived in Britain in 1960 having married Osiah Freshwater's daughter in 1956, and who by 1970 had become the largest owner of rented accommodation in London. In December 1969 Freshwaters sent a number of Rent Officers presents of two bottles of whisky, and two bottles of sherry. At the time Freshwater argued that "most commercial concerns give seasonal gifts to people with whom they have business relationships", and the chairman of the Institute of Rent Officers said to Sunday Times journalists that it would be "churlish" to misconstrue "such an act of basic human decency and friendship."⁴ In fact it was the proposals of Stern which finally carried the day with Francis. He was to be directly responsible for the system of rebates finally introduced by Peter Walker, pleading that rent legislation has put the scales heavily against the landlord and "protects the tenant from reality". In June 1972 the

4. P.Knightley and R.Milner, 'How Britain's Biggest Residential Landlord learned to live with the Rent Act', Sunday Times, November 8th 1970.

Guardian was to publish an article which demonstrated that Stern had been exploiting a loophole in the Act subsequent to Francis (buying when rents are low, raising the rents and hence the capital value of the property, remortgaging and repeating the process), with the result that he had built up his rented empire to some 25,000 London flats. ⁵ By the beginning of 1974 Stern's major company, Wilstar Securities, had assets of £215 million.

The committee apparently thought that one of the most important and difficult questions facing them in reviewing the workings of the Act of 1965 was what recommendations they should make about the integration of the two codes. (p.202) Although the fair rent formula of the 1965 Act was theoretically nonsensical the committee thought that it had been a successful weapon. Inexplicably this conclusion was based on the switchover from furnished to unfurnished lettings: by June 1971 nearly 25% of all tenancies were furnished. The report argued that the security of tenure for furnished houses would automatically reduce their supply. One of the committee's main recommendations was that "all controlled tenancies should become regulated as soon as practicable". (p.223). Stern, indeed, had argued in his evidence that "all controlled properties should be transferred to regulation immediately". ⁶

In a minority report Miss Lyndal Evans argued that more important factors than the Rent Acts had affected the supply of private accommodation to let, because even in the heyday of

5. 'Stern's Housing Finance', The Guardian, June 16th 1972.

6. NAPO op.cit. p.16

decontrol from 1957 to 1965 the supply of private dwellings for renting fell by some 2 million. The committee therefore recommended a middle course, approved of by both the government and the Times, namely the partial assimilation of the codes governing the two types of tenancy by the extension of the 'fair rent' formula to furnished tenancies and the merger of their rent-regulation machinery.⁷ Controversially, the report said that rateable value ceilings above which tenants were not protected by the Acts should be reduced, from £400 to £300 in London, and from £200 to £150 elsewhere. This was in the expectation that tenants who would thus be denied security could, if they lived in London, afford to buy a house or flat. But Evans again dissented, thinking that although the percentage of property affected would be small, it would mean that the tenants of such properties would lose their security of tenure, and it might mean that many of these flats would then be sold at inflated prices. Further, Bramall argued that the revaluation of rating assessments in 1973 would have the effect of taking many more units of accommodation in the central area of the cities outside the scope of the Rent Acts.

It must be stressed that this committee report formed the basis of a landlord's charter. The recommendation that newly created accommodation for letting should be taken out of regulation altogether was in the hope that it would lead to a massive investment of private capital in new building. Anyway, it was unlikely that this would strengthen the stock of private rented

7. The Times, March 3 1972, and March 11 1972.

accommodation: the inflationary and fiscal advantages accruing to owner occupation on the one hand, and the fact that there were no investment of depreciation allowances for any building to let on the other, weighed the scales too heavily against the rented sector of the market. Second, the recommendation that the 1.5 million controlled tenancies ought to be converted to regulation was overtly put forward because "controlled tenancies encouraged the decay of much of the housing stock and caused more injustice to landlords."⁸

The credibility of various sets of evidence to this committee, and as we have seen to all the rent restriction committees between 1915 and 1971, shows that public discussion of housing and rent is completely dominated by 'official' and 'influential' versions of local and national housing needs.⁹ Housing problems since the mid-nineteenth century have been defined in ways that are acceptable to the power holders, to the governments and to the selfish interests of finance and industrial capital. No official view ever challenges the legitimacy of the extraction of rent itself, no official view ever challenges the present method of housing finance. Even the views of essentially reformist housing organisations were ignored at the time of Francis. The director of Shelter labelled the committee's recommendations as "three years out of date"¹⁰; George Clarke, the

8. See also for a 'legal' interpretation of Francis, J.E.Trice, 'Report of the Committee on the Rent Acts', Modern Law Review, July 1971, pp.427-32.

9. For more on this concept of 'need' see J.B.Cullingworth, 'The Measurement of Housing Need', British Journal of Sociology, vol.9, 1958, pp.341-58.

10. Des Wilson, The Western Mail, March 3rd. 1971.

secretary of West London's Notting Hill Housing Service, said that "...if the broad recommendations of the committee are accepted it will spell the end of fair rent and regulation as laid down in the 1965 Rent Act." Restrictive definitions of the national housing problem are put forward in terms of minimal standards, tax relief and tax concessions, inducements for housing repairs and Exchequer subsidies to the local authorities instead of in the proper framework of unequal ownership. Housing is therefore divorced, in official eyes, from more fundamental problems peculiar to capitalist society. Peter Townsend has said ^{II},

"They (housing problems) are measured in the census and in central departmental surveys, and are published by the press more in terms of physical appearance, amenities, and layouts than of social and economic allocation and use. Housing problems are seen by politicians as temporary aberrations which will pass either with increasing prosperity or as existing policies are streamlined. They are not seen as an inevitable and continuing aspect of structural inequality."

Three months after the publication of the Francis Report the government put forward its own proposals in the white paper entitled

II. P. Townsend, 'Everyone His Own Home', RIBA, January 1st 1973, pp.30-42, at p.40. That social perception of housing problems is essentially restricted could be demonstrated in many areas, but by way of illustration see my appendix on slum clearance.

Fair Deal for Housing.^{I2} Boldly, it declared (paras.I and 4):

"Over the last 50 years the housing problem has been transformed. It has not been solved...In these changed circumstances the time has come for a radical change in housing policy. Nothingless will create the conditions for a final assault on the slums, the overcrowding, the dilapidation and the injustice that still scar the housing scene."

The government ambiguously had decided that the achievements of a decent home for every family, of a fairer choice between owning a home and renting one, and of fairness between one citizen and another were thwarted "by the present system of housing finance",^{I3} The White Paper left no doubt as to the government's intentions^{I4}:

"The rents of most council dwellings are at present less than the fair rent. The government proposes to apply the principle of fair rents to local authority dwellings. These rents will be subject to the same broad criteria as the rents of private unfurnished dwellings."

This stance was justified by the government spokesman in the House of Lords because rents "have, in the main, been too low for too long, and the sooner we get realism into the rents of local authorities the better."

I2. H.M.S.O. Cmnd.4728, July 1971

I3. *ibid.* para.5.

I4. *ibid.* paras. 30 and 36.

Rent restriction had always been regarded by the Tories as essentially a short-term measure: necessary but obnoxious. It was therefore not surprising to learn that the White Paper thought "For many years rent legislation has been unbalanced. Landlords, of whom the majority own only one or two dwellings, have been discouraged by the burden of rent restriction." (para.22) Relying on the Francis Committee report the government proposed to "bring controlled tenancies more speedily into the fair rent system" (para.24), "to apply the principle of fair rents to local authority dwellings" (para.30) and to "introduce a rent rebate scheme for council tenants" (para.41).

The government based its policies for the private rented sector on the key assumption that landlords of such property were the small, pitiable petit-bourgeoisie of popular imagination. This view is supported, once again, by Donnison, who states "Over the past sixty years private landlords have been turned into a stagnant and then a dying trade".¹⁵ Nothin could be further from the truth; large landlords are still an extant breed. In the early 1960's in Lancaster Cullingworth found that 47% of all Lancaster's private rented houses were owned by that 8% of all landlords who owned more than ten houses.¹⁶ Again, in Durham City in 1972 this author found that 62% of all private furnished rented accommodation was owned by a mere six landlords; and two of these were brothers. Cullingworth's research revealed that large landlords (i.e. the 1%

15. D.V.Donnison (1967) op.cit. p.227.

16. J.B.Cullingworth, Housing in Transition, Heinemann, 1963, p.II5.

of all landlords owning 25% of all private rented houses in Lancaster) were able to extract rents of more than twice gross rateable value for their properties. ^{I7} Greve found that in a national sample of tenants of private landlords 58% of tenants rented from landlords with less than ten tenancies, 27% from medium sized landlords with 10-99 tenancies, and 15% from large landlords with more than one hundred tenancies. ^{I8} The Francis Committee, in a for once useful piece of government-sponsored research which complemented the earlier work of Cullingworth and Greve, found that in 1970 the ratio of registered rent to gross rateable value was 1.85 for all types of properties in England and Wales. ^{I9} It also found that 48% of all regulated tenancies in the conurbations were managed by landlords or agents with more than 100 tenants. ^{I9} Therefore the private landlord is far from extinct. In order to demonstrate that the power of private landlords has in fact declined in the course of the twentieth century, it would be necessary to prove both that private landlords own less property and also that rent as a percentage of household income has not diminished. The first requirement is clearly untrue for the large conurbations (and indeed, overall it may be only that the relative power of the private landlord has declined in favour of state landlords and property and development companies); we shall see the truth of the second later.

I7. *ibid.* p.90

I8. J.Greve, 'Private Landlords in England', Occasional Papers in Social Administration, No.I6.

I9. Cmnd.4609 (1971) *op.cit.* p.27

Julian Amery lauded the Bill as "a sharp sword with which to slay the dragons of the slums, the overcrowding and the individual hardship which are still plaguing our housing situation." The Bill was debated vehemently and at length in the House of Commons, where the committee proceedings lasted some five months: the net result was a report which filled four substantial volumes.²⁰ Although the government was forced to modify its proposals for phased increases in rents, nevertheless the main proposals emerged from the pre-legislative stage relatively complete. Shortsightedly, there was very little criticism of the scheme for rebates and allowances.

Immediately after the publication of the Bill some commentators thought that rents would be doubled on average, producing an annual increase of £1,000 million. Frank Allaun leaked some Department of the Environment estimates which confirmed this prediction. (See FIG.10 over page). And yet at the time of the committee stage of the Bill Amery said "We are inevitably a great deal in the dark as to what fair rent levels council houses will command." Finally, in answer to the embarrassment caused by Allaun, Amery conjured up new estimates which indicated only a 50% increase, and not the 100% projected by the original figures. Until becoming a Tory Housing Minister Amery had been director of Pollard Bull and Roller Bearing Co., which had substantial subsidiaries in South Africa.

20. Official Report of standing committee E on the Housing Finance Bill, H.M.S.O. vol.I-4, 1972.

FIG.10 DEPARTMENT OF THE ENVIRONMENT ESTIMATES OF AVERAGE
RENT INCREASES UNDER THE HOUSING FINANCE ACT

	<u>Average council rents 1970</u>	<u>Fair rents 1976</u>
London	3.50	7.45
South East	3.13	6.49
East Anglia	2.16	5.72
West Midlands	2.43	5.72
South West	2.43	5.53
East Midlands	2.02	5.14
North West	2.23	4.66
Yorkshire	2.02	4.56
North	2.08	4.38
Wales	2.39	4.18

Source: Unpublished, but obtained from within the Department of the Environment by a group of Labour M.P.s. See also F.Allaun No Place like Home, Andre Deutsch, 1972, p.184.

Note: The figures above are exclusive of rates.

In December 1971 the Trades Union Congress brought out a circular which vigorously attacked nearly all of the Bill's proposals. It disagreed that the 1965 rent machinery should be extended to the public housing sector, arguing that the local authorities ought to be free to set their own rents which should broadly be on a pooled historic cost basis.²¹ A year later the T.U.C. was to declare its support for councils who refused to implement the subsequent Act.²² Although the T.U.C. represented the views of some 12 million workers, its views were to be disregarded by the Tory government.

The government's proposals were duly given effect in the Housing Finance Act (1972). The main and avowed purpose of the Act was to extend the concept of 'fair rent' which had first been introduced by the 1965 Rent Act for regulated tenancies, to all unfurnished tenancies (other than private tenancies excluded by the Rent Act 1968) in both the public and private sectors. (s.v) A duty was now placed on every housing authority to bring a rent rebate scheme into operation for tenants of their Housing Revenue Account houses; in effect, these were most council houses except properties let on long leases or houses being used for temporary accommodation. (s.I04) This procedure was to be brought into operation by October 1st 1972. (s.I8) With the exception of the Greater London Council all local authorities had to introduce a rent allowance

21. T.U.C.Circular No.60 (1971-72), December 16th 1971.

22. T.U.C.Circular No.209 (1971-72), August 3rd 1972.

scheme for private unfurnished tenants in their area by January 1st 1973. (s.19). Tenants of housing trusts and housing associations were also entitled to the scheme. If a local authority refused to operate the scheme, then under clause 93 the government could withdraw all its subsidies (in 1972 government subsidies to local authorities were actually expected to be around £350 million), appoint a housing commissioner to run the council's housing department and to impose the rent increases, levy fines and 'discipline' individual officers or councillors.

The distinction between the two forms of payment was that the local authority tenant's rent rebate meant that the rent was to be reduced by the amount of the rebate; the private tenant's rent allowance was a cash allowance which the tenant could hand over to his landlord with the remainder of his rent. But both tenure groups had to undergo a means test via their local authority housing department for assessment of entitlement.

A council tenant who was renting a furnished home, under a service tenancy, or as a business tenant or any licensee was to be excluded from the Act (s.18, 3b) As a family in Part III 'homeless or emergency' accommodation was usually there under license this was an important distinction. A local authority could also grant a rebate to a tenant when they were also providing furniture for the tenant or supplying it on hire purchase. (s.94, Housing Act 1957). Local authorities further had the discretionary power to treat a council tenant as a private tenant if he was living in non-Housing Revenue Account accommodation, and could then grant

a rebate under the allowance scheme equal to the allowance for which the tenant may have qualified as a private tenant. (s.19, 8).

Part III, which replaced Part III of the 1969 Housing Act, as from August 27th 1972, deals with 'Rents of Dwellings in Good Repair and Provided with Standard Amenities.' This was to operate on the same broad principles as its predecessor, but the procedure was modified and simplified, especially with regard to the phasing of the new rent increases towards a 'fair rent'.

Part IV provided for the gradual elimination of controlled tenancies and their conversion into regulated tenancies (ss.35, 36), and for the application of the Rent Act (1968), subject to certain modifications, to such 'converted tenancies'. This of course was exactly what William Stern had outlined to the Francis Committee. Secondly, it provided for phased increases in the rent recoverable, in respect of such tenancies, which would usually extend over a period of two years from the date of the first registration of the new fair rent, until such time as the amount of that rent had been reached, (s.38 and Schedule 6). Third, it made some very general amendments to the Rent Act (Parts III and IV) 1968 which dealt with the control of regulated tenancies. Finally, it extended the provisions of the 1968 Rent Act which related to statutory tenants by succession. (s.47) On August 9th 1972 the Minister for Housing announced in the Commons that legislation to extend the allowance scheme to furnished tenants would be introduced as soon as was possible.

Until 1975-76 the government said that it would refund the cost of rent allowances to the local authorities in full, but that after that date the refund would only cover 80% of the total figure; the residue would in the first instance have to be met from the rates. Until this date local authorities had received subsidies from the Exchequer for part of the cost of their housing programme to encourage them to build. These subsidies would thus be withdrawn by 1976. In future the Exchequer would pay 75% of the deficit between council rental income (after rent rebates have been given) and its expenditure on housing. But if there was a surplus on the housing revenue account of each local authority, then it would automatically go to the Exchequer to help pay for the allowances. If there is still anything left over then it was to be divided equally between Exchequer and local authority general rate fund.

The final, and probably major element in the Housing Finance Act related to the concept of fair rent. s.50 states:

- (1) In determining a 'fair rent' for a dwelling, regard shall be had to all the circumstances (other than personal circumstances) and in particular the age, character and locality of the dwelling and to its state of repair.
- (2) In determining the rent it shall be assumed that the number of persons seeking to become tenants of similar dwellings in the locality on the terms (other than those relating to rent) of the tenancy is not substantially greater than the number of such dwellings in the locality which are available for letting on such terms.
- (3) In fixing the rent any disrepair or defect attributable to a failure by the tenant or his predecessor to comply with the terms of his tenancy must be disregarded, and so must improvement

(eg. replacement of a fixture or fitting) carried out by the tenant or his family.

(4) In any case where, if the dwelling had been a private one, consideration would have been given to the return that it would be reasonable to expect on it as an investment, the like consideration shall be given...and the fact that it is invested in a public body shall be disregarded.

Despite ministerial claims that council house rents were unrealistic, the Institute of Municipal Treasurers and Accountants revealed that between August 1968 and August 1971 the average rent for local authority rents had increased by 30%, and that in 1970 there had been an 11.2% increase in the rents of London dwellings and 14% in the rents of borough dwellings. It seems, therefore, that the real objective of the Housing Finance Act was to reduce the subsidies paid from the rates and by central government to the council house sector. In 1972 these subsidies totalled some £220 million; of this figure £157 million came from the Exchequer and £63 million from the rate fund. Combined expenditure on education, health and social security at this time amounted to £10,000 million per year, so public expenditure on housing was really only a minor part of state expenditure. At £300 million per year, public expenditure on sewage is already a good deal higher than on housing subsidies. The average council house at present receives a subsidy of 0.60p per week; owner occupiers currently receive £300 million per year in tax relief on mortgage interest. The Tory government in 1971 forecast that if the present subsidy system were to be continued, the council house subsidies would rise by some £300 million per year by 1981. The intention of the Housing Finance Act was quite

plain therefore- to make council tenants pay the cost of this increase, by raising council rents by 100%. The residue would go to paying off the huge interest charges incurred by the necessity of local authority borrowing. (We have already discussed this in some detail.) In 1961 £250 million was taken from council tenants via the rent payment, and local authorities paid £250 million in loan charges. By 1968 loan charges had doubled to £500 million per year; rents followed suit. All of the rent increases levied over this period were absorbed by the extra burden of local authority debt interest. 70% of all local authority expenditure on houses reverts to the loan charge, and the proportion increases.

'Fair Rent' and the Housing Finance Act

We have seen that the 1965 Rent Act first introduced the concept of fair rent: "A fair rent is the likely market rent that a dwelling could command if supply and demand for rented accommodation were broadly in balance in the area concerned." In discussing compensations the royal commissioners had decided in 1885 that the concept of fairness as applied to market conditions was not without difficulties ²³:

"The Artizans Dwelling Act of 1875 provided that the estimated value of the premises within the unhealthy area shall be based on the fair market value as estimated at the time of the valuation being made and on the several interests in the premises,

23. First Report of Her Majesty's Commissioners for inquiring into the Housing of the Working Classes, Eyre and Spottiswoode, London, 1885, p.45.

due regard being had to the nature and the then condition of the property, to the probable duration of the buildings in their existing state, and the state of repair thereof, and of all the circumstances affecting such value, without any additional allowance for compulsory purchase. So far as the intention of the act goes, it appears manifest that the object of the authors and the object of parliament was that the owners of this property should only obtain a fair value and nothing more: and in practice, as a matter of fact, they have succeeded in spite of the act in obtaining a great deal more."

Donnison provides an excellent description of the content of the rent regulation system introduced by the 1965 Act ²⁴:

"Unlike rent control, which was designed to freeze a market, thus eventually depriving its prices of any systematic or constructive meaning, rent regulation is designed to recreate a market in which the overall pattern of prices responds to changes in supply and demand, while the local impact of severe and abnormal scarcities is kept within bounds... The first task of those responsible for regulating rents is to bring down some of the highest to a level that is rationally related to those that are freely determined in the open market. Their second task, when Parliament calls upon them to assume it, must be to help raise controlled rents to the same rational level."

24. D.V.Donnison (1967) op.cit. p.226

At this stage it is worth documenting some of the impact of the Act of 1965, as amended by the Rent Act (1968). The Francis committee had shown that the fair rents machinery evolved by Labour in 1965 has resulted in four times as many landlords applying for registration of rent as tenants. In 1970, 94% of landlords who applied for an increase in rent were successful. Overall the system had resulted in an increase of rent in 61% of cases and a decrease in 30.2% of cases. The rent was approved in the remaining 8.8% of cases. (See FIG.II, p.157). In only 10% of all cases was the reduction greater than 50% of the previous rent; and in 22.0% of the total number of cases the rent was increased by between 50% and 200%. These figures were computed for the period between January 1966 and March 1970, and the number of cases analysed was 101,000.

If we consider the historical information in relation to the view that landlords extract a rent and that the level of that rent is a function of the relative political power of tenants as opposed to landlords, then we can briefly summarise developments since 1915 thus. The 1915 Act, which was a direct and immediate response to a unique position of industrial and political unrest, resulted in the setting of unfurnished private rents at a low level. Despite some changes in the level of rent control this generally remained the situation until 1972. However, large landlords were far better able to take advantage of both decontrol and of the introduction of rent regulation in 1965 and were therefore able to extract absolute rents as opposed to the far smaller controlled rents.

**FIG. II REGISTERED RENTS COMPARED WITH PREVIOUS RENTS
JANUARY 1966 to MARCH 1970: % OF TOTALS**

	Greater London	England and Wales	Numbers
<u>Decrease</u>			
More than 50%	3.1	2.4	2,730
More than 40-50%	4.5	3.3	3,851
More than 30-40%	6.1	5.0	5,554
More than 20-30%	6.7	6.5	6,646
More than 10-20%	7.0	6.8	4,786
Up to 10%	5.3	4.3	6,973
No change	9.5	8.4	8,986
<u>Increase</u>			
Up to 10%	8.1	6.5	7,276
10-20%	9.8	9.6	9,853
20-30%	7.5	7.6	7,653
30-40%	6.0	6.2	6,190
40-50%	4.5	5.3	5,010
50-100%	12.5	15.5	14,337
100-150%	5.4	6.9	6,429
150-200%	2.3	2.6	2,853
More than 200%	1.8	3.3	2,279
	<u>100.0</u>	<u>100.0</u>	
Total increases	57.9	63.5	61,780
Total decreases	32.7	28.3	30,540
No change	9.5	8.4	8,986

Source: Francis committee (1971) op.cit. p.25

Note: The national figure excludes Greater London.

FIG.12 ACTUAL REGISTERED RENTS AND ACTUAL PREVIOUS RENTS
JANUARY 1966 to MARCH 1970

	Greater London	England and Wales
Average Rent Registered	£257 p.a.	£156 p.a.
Average Previous Rent	£235 p.a.	£136 p.a.
Average % Change	Plus 10	Plus 14
Mean % Change	Plus 25	Plus 37

FIG.13 PERCENTAGE CHANGE IN REGISTERED RENTS 1966-69

	percentages			
	1966	1967	1968	1969
Total decreases	45	33.6	27.4	24.6
No change	11	8.8	8.9	7.9
Total increases	44	57.9	63.6	67.4

Source: Francis committee (1971) op.cit. tables I2 and I3, p.25.

Cullingworth found that in Lancaster ²⁵

"...the controlled rents of private inter-war houses were roughly equal to the unsubsidised rents of municipal houses of the same age. Decontrolled rents, however, were very much higher....on average the relationship between value and rent (for all houses, not just inter-war) was identical for local authority and privately rented controlled houses, at 1.73. The average ratio for decontrolled houses was 1.96."

As we have seen, it was the larger landlords who owned the decontrolled properties. Thus, after the 1915 victory the working class was in general able to curtail the ability of landlords to extract absolute rents for housing. What attrition there was, in 1923, 1933 and 1957, was primarily in the interests of these large landlords. The Act of 1972 extended the 1965 definition to all furnished tenancies, and for the first time to public sector housing. (See s.50, pp.152-53). The essential change in the 1972 Housing Finance Act therefore is that local authorities must show a profit on the rental income of their council houses. In other words, the transformation from pooled historic cost rents to 'fair rents' extracts yet more surplus value from council tenants. ²⁶ However, s.50 of the Housing Finance provides no precise basis for the actual

25. J.B.Cullingworth (1963) op.cit. p.135.

26. The problem of whether rent is part of surplus value has already been chewed over. It is neither a very satisfactory nor a very fruitful debate.

calculation of fair rents; decisions as to the level of such rents must therefore be somewhat arbitrary. Until 1965 we have seen that rent levels were determined in one of two ways (this is for the moment to exclude the importance of the Furnished Houses Rent Control Act, 1946): either by open market means of supply and demand, or by statutory limitation. However, where overt conflict exists, the modern capitalist method is to submit evidence from landlord and tenant to an 'independent' arbitration body. The Rent Assessment Committees have traditionally been responsible for setting rents in the private sector, whilst the public housing sector is determined by the Rent Scrutiny Boards (after 1972). It is very important that we look into the methods of determining a 'fair rent' used by these bodies: there are four of these which are commonly used.

I. Scarcity

The Rent Act (1965) made no mention of any relevance of market rents to fair rents, although s.27 (and later ss.46, 47 of the 1968 Rent Act) held that the effects of substantial scarcity were to be eliminated from the figure for fair rent. The Francis committee believed that this would produce an 'objective' assessment²⁷ :

"Since all the objective circumstances, except scarcity, are considered, the fair rent is in effect what the market value would be if there were no scarcity (since the market reflects all objective circumstances."

27. Francis committee (1971) op.cit. p.5

But in practice, of course, it is difficult to determine the exact nature of 'scarcity'. The Francis committee (p.62) stated that "...generally speaking registered rents are, on the average, about 20% lower than the related market rents." The committee also found that the differential was actually greater in areas of housing stress, eg. 40% in Notting Hill Gate in West London. Harry Samuels, chairman of the Islington and East London Rent Tribunal for twenty one years, wrote to the Times stating that the average 20% allowance then being given to compensate the effects of scarcity had little relevance to a market whose prices were soaring daily.²⁸ The Institute of Rent Officers told Francis that²⁹

"Essentially it is a matter for opinion whether a rent is inflated by an excess of demand, and, if so, to what extent... Certainly it is now generally, if not universally, accepted that it is not possible to quantify the scarcity element directly. Initially a practice arose of assessing the scarcity element in terms of a percentage of the market rent, such as 5, or 15, or 33 $\frac{1}{3}$, or 40%; but this practice has long since been abandoned."

Very little evidence was submitted to rent officers and rent assessment committees on the subject of scarcity at the time of Francis; such evidence as there was was hardly ever presented by individual landlords or tenants. Thus, rent officers and assessment

28. The Times, June 20th 1972.

29. The Francis committee (1971) op.cit. p.58.

committees had to rely heavily on their own interpretation of local variations in supply and demand. One of the most difficult conceptual distinctions which the rent machinery bodies had to make was that between excess demand generated by a shortage of supply in relation to the level of demand, and the excess demand generated by the 'amenity'. A further criticism of s.46(2) is that the level of demand is not a reliable yardstick for measuring scarcity because the extent of the demand is affected by the level of rents: if the landlord puts a high rent on his property he will reduce the demand, and so be able to argue that there is no scarcity.

Further difficulties arise from the use of the word 'locality' in s.46(I and 2) of the Rent Act 1965. Francis explained that locality in subsection 2 (the substantial scarcity discount provision) had been interpreted by rent assessment committees in a sense much wider than that to be normally attributed to the 'locality' in subsection I (the circumstances to which regard must be had in determining the rent).³⁰ Apparently the draughtsmen of these provisions had intended subsection I to mean the immediate locality of a house because as a rule only the immediate locality is likely to affect the value of a house.³¹ The London Rent Assessment Panel had told Francis that they had taken 'locality' in subsection 2 to mean, not the mere vicinity, but the area within which persons likely to

30. *ibid.* p.61

31. To avoid confusion to the uninitiated, s.46 of the Rent Act 1965, and s.50 of the Housing Finance Act are almost interchangeable.

occupy this class of accommodation, having regard to their requirements and work, would be able to dwell. In any case, in *Cubes Ltd. v. Heaps* (1970) Parker L.C.J. argued that rent assessment committees might do better to rely purely on their own 'general knowledge and experience' and to disregard the information of 'outsiders'.³²

2. The use of comparables.

One apparently good guide for rent arbitration bodies to work with is the rents which have previously been registered for similar or 'comparable' properties. In the leading case of *Tormes Property Co.Ltd v. Landau* (1970) the High Court approved the following criterion³³:

"Where the rent of comparable properties has been registered within a year or two previous to the determination, the best evidence of the fair rent for a dwelling house may be the rent registered for such comparable properties: the rent so registered will normally have excluded any scarcity element. Where there is no comparable property, or no rent for it has recently been registered, the best evidence of the fair rent would seem to be evidence of the market rent for the type of dwelling house less such percentage as appears to represent the scarcity element in the rent, if it is substantial. A fair return on the landlord's capital investment may be a guide or check on rental values but it is by no means conclusive."

32. All England Law Reports, vol.3, 1970, at p.653.

33. Reported in the Estates Gazette, 8th August 1970

The problem with assessing a 'fair rent' by comparables, of course, is that if there are no comparables and the rent under review is set wrongly even by the criteria of Acts of Parliament, then one wrong comparable will breed as many wrong rents as are based on it.

3. Gross values.

Gross values are often used by the rent machinery to assess fair rent. Analysis of some 22,000 registrations of fair rent, for which case records reached the Department of the Environment between January and September 1971, reveals that the proportion of dwellings for which fair rent exceeded 2.5 times the 1963 gross value was 10%, and that the proportion of fair rents which was less than 1.5 times gross value was 9%. In 9,980 cases the fair rent was equal to, or greater than, twice the gross value of the dwellings concerned. The Francis committee found that in 1966 the ratio of registered rent to gross value was 1.79 for all types of property in England and Wales.³⁴ Parker found that in the same period twenty one of the thirty two new London boroughs were charging council house rents which were a straight multiplication of gross rateable values and that the multipliers varied from 0.7 to 1.3.³⁵ In fact the disparity was even greater in Greater London as the average regulated rent was 1.86 times gross rateable value.³⁶ In general, then, regulated rents

34. Francis committee (1971) op.cit. p.27

35. R.Parker, 'The Rents of Council Houses', Occasional Papers in Social Administration, No.22, 1967, p.61.

36. op.cit. p.27

were at least approximately 50% higher than council rents in Greater London in 1966.

But when the concept of locality is again introduced, gross values must be treated with scepticism ³⁷:

"While gross values provide a fair basis of comparison as between one dwelling and another in terms of size and amenities (such as central heating) little, if any, regard is had to differences in locality, so that similar dwellings tend to have the same gross value wherever they are situated... The criteria used in determining a level of rents which could be recommended as fair, has led to the conclusion that a basic rent for a modernised pre-war house should be in the region of twice the 1963 gross value. From this, it follows that pre-war houses, which have not been modernised, should have a lower multiplier and recently completed dwellings to full Parker Morris standards, with central heating, a corresponding increase."

The 1973 valuation lists, which forecasted market rents for 1973, seemed likely to produce gross values on average 2.4 times the 1963 gross values. Therefore fair rents under the Housing Finance Act are likely in many cases to be approximately 2.4 times the present gross value, less discount for scarcity appropriate for the area concerned. The Family and Expenditure Survey for 1970 shows that local

37. 'Some implications of the Housing (Finance) Bill, 1971', IMTA, February 1972: an article by the Birmingham City Treasurer.

authority tenants paid more in 1970 in average weekly rates than private tenants, £0.74 as compared with £0.61 in England and Wales, and £0.99 as compared with £0.65 in Scotland. However, council properties do tend to have lower gross values; this is a practice upheld by the Lands Tribunal on the ground that private properties command a higher rent than similar council properties.

Gross value is defined as 'the rent at which an hereditament might reasonably be expected to let from year to year if the tenant undertook to pay all the usual tenant's rates and taxes... and if the landlord undertook to bear the cost of repairs and insurance, and the other expenses, if any, necessary to maintain the hereditament in a state to command rent.' To allow for changes in the value of money since 1963 it is arguable that fair rents should be no more than 1.6 times gross value. Indeed, fair rent ought perhaps to be lower than the 1.6 multiplier level because gross values assume that the landlord does internal decoration, whereas most council tenants do their own; moreover, if the tenant makes an improvement the gross value rises but the improvement is not taken into account in the assessment of a fair rent.

4. Cost

The White Paper Fair Deal for Housing indicated that there was likely to be a relationship between the cost of a dwelling and its rent. 'Cost' here was obviously to be measured by such criteria as

age and state of repair. It declared ³⁸:

"The rent of every council dwelling will in future reflect its value by reference to its character, location, amenities, and state of repair, but disregarding the value due to any local shortage of similar accommodation. Council tenants will no longer be liable to rent increases resulting from the state of their authority's Housing Revenue Account or the size of its housebuilding programme. The rent of a tenant without a rebate will no longer be affected by the rebates granted to other tenants. Nor will it be affected by the extent to which the Housing Revenue Account is made to bear part of the cost of slum clearance or of the community benefits connected with council housing."

The Housing Finance Act s.50(I) states that, amongst other factors (see p.I52) the age of the dwelling must be taken into consideration in the determination of fair rent. This alone presupposes that the construction cost of the dwelling should enter into the calculation. Using Labour Research and Annual Abstract of Statistics figures, a rough estimation of when the present stock of local authority dwellings was built is seen in FIG.I4 (over page). It can be seen that nearly 60% were completed before 1955, and nearly one third before the second world war. The pre-1919 houses include those

38. Cmnd.4728 (1971) op. cit. para.31

FIG.14 LOCAL AUTHORITY DWELLINGS: ESTIMATION OF AGE OF STOCK

<u>Date of completion</u>	<u>% of stock of council dwellings</u>
Pre-1919	6
1919-1939	25
1939-1945	0
1945-1954	27
1955-1966	27
1966-1971	<u>15</u>
	100

FIG.15 AVERAGE CONSTRUCTION COST OF LOCAL AUTHORITY DWELLINGS

		£
Pre-1919	3 bedroom houses	unknown
1938	3 bedroom houses	380
1947	3 bedroom houses	1,242
1954	3 bedroom houses	1,380
1960	3 bedroom houses	1,611
1966	all dwellings	2,929
1971	all dwellings	3,491

Source: Annual Abstract of Statistics and Labour Research (adaptation).

acquired by local authorities as opposed to those actually built by them. But if we assume that these pre-1919 houses cost no more than those built between the two wars, it follows that more than 30% of all local authority dwellings have cost less than £400 to build. A private investor who laid out this initial sum and wanted to receive a satisfactory return on his investment, say 10%, would charge a rent of £40 per annum (i.e. 77p per week) and would at the end of ten years have recouped himself for his outlay; the house would of course continue to exist for some further fifty years. ³⁹

The reason why, in FIG.15, the costs given for 1971 are so much higher than for earlier years is partly that building costs have risen, but mainly that there is an increasing number of expensive high-rise flats among them, and that standards have risen; the Parker Morris standards only became mandatory in 1969. ⁴⁰ Rents for these flats cannot be classed as 'fair' since it is well-known that the majority of tenants do not choose to live in them- because of housing scarcity in urban areas they have no choice.

39. The concepts of 'fair terms', 'fair price' and 'fair return on capital' has of course been debated at length by legal philosophers. See the 'reasonable profit' approach in *Re Water-Tube Boilermakers' Agreement* (1959) L.R. 1 R.P. 285; *Re National Sulphuric Acid Association's Agreement* (1963) L.R. 4 R.P. 169; *Cmd.2605* (1965) p.43, where a rent of 9% capital return is regarded as normal.
40. These standards are set out in detail in circular 36/67 from the Ministry of Housing, H.M.S.O. April 25th 1967.

The tenant of a pre-1960 local authority dwelling, already paying a rent in excess of the cost rent for his dwelling and repeatedly, because of rent pooling, being faced with paying an increased rent to meet an increased subsidy to tenants in newer, more expensive dwellings, is still faced with the process of an enlarging differential between the cost rent for his dwelling and his actual rent. Julian Amery himself has said ⁴¹:

"...the fair rent could in certain circumstances be less than the cost rent. Under the play of market forces, the fair rent is at the moment the market rent, but it is possible that the value of a tenancy may be less than the actual cost of providing it."

Thus, we have seen that on the basis of actual construction costs of local authority houses, council rents should be much lower than Department of the Environment estimates under the Housing Finance Act. (see p.148) High costs should not necessarily however be taken into consideration. Multi-storey flats, tower blocks, bungalows and homes for the elderly and physically handicapped tend to be more expensive, but because of the restrictive nature of their tenancy their rents, if anything, ought to be lower than even a 'fair rent'.

41. Standing Committee, Col.2235, February 22nd 1972. Julian Amery, the then Housing Minister and leading light of the Monday Club, ought to know about bad houses: he owns eight of them. Two of his tenants in Colnbrook St., Southwark have complained about their conditions; Mr.Chave is 77 and blind. Both houses suffer from damp, leaking roofs and basements, and both fail to comply with legal standards for natural lighting. Their rents are £4 per week. Amery claims he is too poor to provide basic amenities such as inside toilets, hot water and a bathroom. Under the Housing Finance Act these rents are automatically doubled: Socialist Worker, 2.9.71

Under the Housing Finance Act no regard can be paid to the individual tenant's capacity to pay a 'fair rent'. The Francis committee found that in 1970 over half of the furnished tenants in Greater London were paying out more than one third of their weekly income in rent. Julian Amery estimated that when the fair rents scheme is fully operational in 1975 about 40% of council tenants will be entitled to rent rebates. The logic in setting rents which 40% of the population cannot afford is elusive. The director of housing for the Birmingham City Council argued in his first report ⁴²:

"Figures have been obtained of average earnings in the region. Your department do not consider that fair rents fixed in accordance with the definition in clause 50 could be at a level where a large proportion of tenants are forced to apply for a rebate. If the definition of fair rents in the clause implies that the market, in terms of supply and demand is roughly in equilibrium, then the price or rent which people would pay in these circumstances would not be at such a level that the majority would require assistance by way of rebate, to meet it."

It is arguable that if the local authority houses were owned by private landlords they would not be able to extort such rents. In effect the government has placed itself in the position of a monopolistic landlord in relation to the rents of local authority houses.

42. Local Government Chronicle, 26.5.72.

The factor upon which the government placed most reliance is comparability with the rents of the private sector.⁴³ For some reason this was not explicitly written into the Act. The director of housing in Birmingham commented that "...relatively few rents in the private sector have been registered and many of these cannot be used for direct comparisons with municipal houses." Paul Channon, on the other hand ((the subsequent Minister of Housing), has said that "...there are plenty of comparables among rents registered in Birmingham to enable the authority to rely on the comparability method." Paul Channon owns the massive Kelvedon Hall, near Brentwood, and a £170,000 London house at Chester Square. He also owns two million shares in Arthur Guinness and Sons. In Brent, since 1965, only 7,000 rents have been registered by the Rent Officer, at an average of 1,000 per year, and of these only 3% were determined by the rent assessment committee from whose membership the rent scrutiny boards are drawn. Moreover, no clear pattern emerges when the private rents fixed are expressed as multiples of the 1963 gross values, the factor of variation being between 1.30 and 3.90. Above all, the rents fixed by the rent assessment committees average 2.30 times the gross value, i.e. about 1.1 times the average gross value in the 1973 valuation lists, so that the rents registered as 'fair' in the private sector have often included a substantial scarcity element. In

43. eg. P.Channon at standing committee col.I746, and his successor Reginald Eyre on the report stage vol.836, col.69I, and circular 75/72 paras.7 and 28.

Merthyr Tydfil, where there are only 6,000 council tenancies, in seven years only 54 rents have been fixed in the private sector. In Hackney, virtually the only houses in private ownership are either awaiting slum clearance or were built before 1914 by such august bodies as the Peabody Trust.

Of the 1.2 million regulated tenancies estimated by the Department of the Environment to have existed at the end of 1969, only 192,360 (under 14%) had been the subject of applications to register up to the end of June 1970. There is no information available on how many of the registered rents have been fixed by the rent officer and how many are the mere recording of terms which the tenant has accepted. By the end of 1970 only 18,000 post-1919 dwellings had been registered, and all purpose built council dwellings have been erected since 1919.⁴⁴ The Local Government Review stated⁴⁵:

"Officers advising on council house fair rents will need to be wary of registered rents in the private sector...To determine fair rents for housing authority dwellings is a distinct problem, and there will be considerable risk in following too closely much of the private sector rent determination."

44. Francis committee (1971) op.cit. p.II,24.

45. Local Government Review, July 1st 1972

The secretary of the Rating and Valuation Association, Frank Othick, wrote in the same journal that "...registered rents may contain many which reflect tenants' bargaining weakness through severe scarcity," and further:

" Any list of recommended fair rents must have regard to the overall 'market', which of necessity can exist only where tenants can reasonably afford the rents offered. It is not a bit of use submitting a list of rents palpably beyond the reach of most tenants. And at the stage of estimating fair rents, it would be quite erroneous to have regard to a possible rebate."

That it is quite inapt to apply fair rents to local authority dwellings was recognised by the National Board of Prices and Incomes in 1968.⁴⁶ Unlike a private landlord a local authority does not need a fair rent from every dwelling to cover costs of maintenance and improvement; and the principles for determining the level of fair rent do not contain any objective criteria. As Della Nevitt has argued:⁴⁷

"In effect, the 1965 Act created arbitrated rents...It was the arbitration system that was designed to be 'fair' not the rent."

In the second reading of the 1965 Act Richard Crossman likened the Rent Officer to the Ministry of Labour conciliation officer.

46. P.I.B., 'Increases in Rents for Local Authority Housing', 1968, para.64.

47. A.A.Nevitt, 'Fair Deal for Householdors', Fabian Research Series, No.297.

The last item to be taken into account in the assessment of fair rent is any service provided by the landlord. (s.58) Paul Channon has said:

"This clause (58) means that the local authority, in the first instance, and the rent scrutiny board subsequently, must look at the values of dwellings including services. If services are provided, the fair rent represents the fair rental value of the dwelling with those services. The value of a service may, in one case, allow for reasonable profit in the cost of providing the service..."

The Times has declared ⁴⁸:

"In spite of what the critics say, most people with a real knowledge of housing problems regard the Housing Finance Act, 1972, as a good piece of social legislation. It was certainly bold, and was at least a step in the direction of subsidising people according to their need."

The falsehood of this assertion is quite easily demonstrated, and it is to a more general appraisal of the Housing Finance Act that we now move.

48. The Times, 'Local authorities' burdens eased by the 1972 Act', April 23rd. 1974.

Needs, Rebates and Allowances

One of the major proposals in Fair Deal for Housing had been a 'decent home for every family'.⁴⁹ This is of course a changing social conception which can be properly defined only in relation to the whole spectrum of housing and the conditions in which it is occupied. For example, standards of minimum provision have altered drastically between the period of Octavia Hill and Parker Morris. As we have seen, these conceptions were embodied in legislation; in the early 1880's Hill thought it was justifiable for a family with several children to live in a single room.⁵⁰ Needs are socially mediated and socially determined. Their satisfaction is obtained by the use of commodities purchased from others for whom these commodities represent not use value but exchange value. In the housing context the socially determined need is that for accommodation. This need has the special characteristic of being a necessary, essential object, the exact characteristics of which are determined by the specific social situation within which the commodity transaction takes place. In the context of housing rent this distinction between use value and exchange value is particularly easy to illustrate. The landlord sells the commodity of accommodation, a good which he cannot enjoy for two properties simultaneously. Each house rented produces the exchange value of the commodity, defined

49. Cmnd.4728 (1971) op.cit.

50. O.Hill, Homes of the London Poor, Macmillan, London, 1883.

by amenity, location and time period which the tenant offers in return for the use value of a particular accommodation stock. It has already been argued that the commodity accommodation is not unique.

But in the housing market there will always be many people who cannot quite afford the market rent of the commodity. The intention of the Housing Finance Act at this juncture seems to have been to enable this group to pay for the commodity via a system of rebates and allowances. The success of the system will therefore depend on those needing allowances actually receiving them. It seems that either the Tory government had aims different to its declared intentions in Fair Deal for Housing, or that it did not understand the message of earlier such schemes. Liberal commentators have been content to say that "...the Act created urgent information needs, especially in relation to the take-up of rent allowances." ⁵¹

There is ample evidence that means-tested benefits fail to reach those in need of them in the large majority of cases. In 1969 Birmingham Corporation took powers through a private Act to pay rent allowances similar to those in the Housing Finance Act. Although 6,000 families were believed to be eligible, only 1,000 applications were made and only 250 were in fact granted. ⁵² Annual reports on the

51. P.Byrne, 'Rent rebates', New Society, September 2nd 1971.

52. F.Cocks, 'Housing allowances for private tenants', Housing Review, February 1972.

number of recipients of rate rebates show that a disproportionately large number of persons who are owner occupiers obtain rebates and, for example, that the number of successful claimants is relatively eight or nine times higher in Clacton and Morecambe than in Tower Hamlets and Islington. 53

During 1971-72 the government was able to improve the take-up of certain free health and welfare benefits, school meals and family income supplement but at the price of very expensive and extensive advertising; but to levels far short of the estimated need. The introduction of a rebate system for council tenants and an allowance scheme for private tenants is therefore unlikely to work. The scheme will in fact raise housing costs disproportionately for low income groups: either because they do not apply for aid, or because they do not pool household income in the way suggested by the government in its rules for allowances, or because their rents will rise by more than the allowances for which they become eligible. So far the take-up figures for rebates and allowances have not come through, although in Lambeth, where the scheme has been in operation since October 1972, 20,000 tenants were officially eligible but by May 1973 only 1,479 applications had been made. In Hammersmith only 800 had applied by the end of March 1973 from an estimated 5,000 who were eligible. One can only conclude that the Tory government is confident that a small percentage of those eligible will actually receive allowances and rebates.

53. See also C.Purnell, The Prospects for Rent Allowances, Wandsworth Peoples' Rights, No.2, p.II: a 14% take-up rate; M.Meacher, 'Rate Rebates: a study in the Effectiveness of Means Tests', Child Poverty Action Group, 1972: 19%. In 1971 £300,000 advertising produced a 50% take-up rate for the Family Income Supplement.

Subsidies and owner occupation

It is impossible that "fairness between one citizen and another" can be achieved by the Housing Finance Act policy of reducing subsidies for public sector housing whilst simultaneously ignoring subsidies for owner occupiers through tax relief on mortgage interest.⁵⁴ For this latter group the higher their income and the higher the initial purchase price of their property the higher the tax concession. In 1967 owner occupiers received subsidies of £727 million through not paying tax on imputed rental income or capital gains, whereas council tenants attracted subsidies amounting to £303 million in the same year. The former is ignored, the latter reduced. In 1971 a government spokesman estimated that tax relief for a standard rate income tax payer would amount in total, at an 8% rate of interest, to £2,029 on a mortgage which cost £5,000, £4,019 on a £10,000 mortgage and £8,038 on one costing £20,000.⁵⁵ Because of the abolition of schedule A tax in 1963 the exemption of owner occupiers from capital gains tax, and the extension of improvement grants, owner occupation has become a very rewarding form of investment.

According to the latest figures, the Tory's housing subsidies, plus rate fund contributions and supplementary benefit rent payments,

54. Cmnd.4728 (1971) op.cit para.5.

55. Written answer to a parliamentary question, Hansard, col.83, November 16th 1971.

amounted in 1970-71 to £465 million. By 1975-76, when the fair rent scheme is fully operational, the best figures suggest that rent rebate and rent allowance subsidies, plus supplementary benefit rent payment will amount to only £240 million. What this means for the local authorities is a cut in subsidy from £63 to £33 a year per house. By contrast, over exactly the same period the total of mortgage interest tax relief to owner occupiers will rise from £300 million to nearly £400 million, representing an average rise for the owner occupier of from about £62 per year to £68 per year. "It is this shift from the poorer half of the nation in favour of the better off half that lies at the heart of the Bill." 56

The status of owner occupation leads to other benefits: directly of course when the property is sold, and indirectly because the real rate of mortgage repayment shrinks rapidly in a period marked by rapid increases in wages and prices. The owner occupier, in being given incentives to improve or buy a second home, takes valuable construction sources away from public sector housing programmes. Further, the market price of houses generally is inflated by the tax relief that an owner occupier is able to obtain because of the attraction of additional resources into the market: this position will be aggravated by an estimated 350,000 council tenants who will try to buy homes because of the rent increases on council homes. As Roy Parker has pointed out, it

56. See M.Meacher, Hansard, col.I,020, May 8th 1972.

is not only that some council tenants will lose rent subsidies and be contributing, by the higher rents they will pay, to the rent rebates of other council tenants, but also that they will be helping to reduce the cost to the exchequer of its private sector subsidies. "It is difficult to avoid the conclusion that some council tenants will, under this procedure, bear a disproportionately heavy tax burden." ⁵⁷ Or, "(the Housing Finance Act)...is in some respects far from bold...far from logical...much less than fair...perpetuates and deepens the social gulf that exists between the house buyer and the house renter." ⁵⁸ The effect of the rebate scheme, therefore, is a redistribution of income, but confined within the population of council tenants.

Opposition

Sumner has said that "Legislation...has to seek standing ground on the existing mores, and...legislation to be strong must be consistent with the mores." ⁵⁹ Missing from this vein of thought

57. R.A.Parker, 'The Housing Finance Bill and council tenants', Poverty, No.9, Child Poverty Action Group publication, 1972.

58. D.Page, 'Housing:how fair?', New Society, August 26th 1971.

59. H.V.Ball, C.E.Simpson, K.Ikeda, 'Law and social change: Sumner Reconsidered', American Journal of Sociology, Chicago; University of Chicago Press, 1961-62, vol.67, p.538.

is consideration of an enforcement machinery. Whilst it seems that in certain cases the inner conviction of individuals with regard to a rule is of decisive importance for its acceptance, in the last analysis, however, the mechanisms working for acceptance of the rule, whether they have their basis in voluntary or coerced compliance, may often be less important than the mechanisms working for non-infraction. This distinction is of some importance and has not been adequately raised elsewhere.⁶⁰ There are different mechanisms at work in the acceptance of legislation which forbids certain actions (eg. murder and the Homicide Act (1957)), and legislation which makes other actions compulsory (eg. the duty placed on a landlord of furnished accommodation let on a weekly basis to provide a rent book and the Landlord and Tenant Act (1962)). The Housing Finance Act (1972), and the acceptance by local authorities to implement the fair rent scheme, falls into the latter typology. The local authorities were faced with a clear choice: either they did not raise their tenants' rents but would therefore lose Exchequer subsidies, or they raise rents and keep their subsidies. The horns of this dilemma were to be solved after a period of verbal outrage and demonstrations because the local authorities decided that the consequences of infraction would be greater than non-infraction. At this point it must be stressed that the Housing Finance Act has generated more hostility and public

60. And would of course require a paper in itself. See for example, J. Van Houtte and P. Vinke, 'Attitudes Governing the Acceptance of Legislation among various Social Groups', in A. Podgorecki et al, Knowledge and Opinion about Law, Robertson, London, 1973; a good illustration of the failure.

debate than any other piece of legislation this century-- in the national press, parliament, television, council meetings, periodicals, squatters' movements and tenants' associations. Full documentation of the debate would be neither particularly useful nor possible within the confines of this paper.⁶¹

The National Executive Committee of the Labour Party declared that it would repeal the measure in January 1972, but this was to be the only positive opposition taken by Labour leadership. Two months later Labour's shadow Minister of Housing, Anthony Crossland had decided that "...there are some good parts in the Bill that we might want to keep." At its March 1972 meeting the National Executive Committee wrote a carte blanche for local authorities to subscribe to the Act with a clear conscience by saying: "The effects will be different from authority to authority and therefore the National Executive Committee has decided that it is not possible to give advice to local authorities on a national basis." Speaking at an emergency of the Association of London Housing Estates in May 1972 Crossland advised Labour council to "not defy the law- that is not only wrong in principle...".⁶² His justification was based on the so-called 'Birmingham concession' in which many local authorities thought they might be able to implement the Act with much lower rent increases than those originally planned by the Tory government; or, as Harlow council argued, Labour authorities would implement with far more humanity than the Tories. The Birmingham concession was of course an

61. Much of what follows is made up from notes taken by this author in what can only be described as 'action research.'

62. Verbatim report.

inducement by the Tory government to secure even limited compliance on the part of local authorities. Three days before the local elections in May 1972 Birmingham's Tory-controlled council announced that rents in their area would only rise by 35p in October and not the apparently obligatory £1; most importantly, this action had been approved by the government. What in fact had happened was that it had been calculated that after the introduction of the fair rent scheme more than 50% of local authority tenants in Birmingham would be eligible for rent rebates. Fair rents were then re-assessed on the basis of tenants' earnings until no more than 25% of tenants were eligible for rebates. As a result Birmingham City council was to urge other local authorities to implement the Act on the evidence that fair rents were reasonable. The 'catch' in this plan was that neither the City council nor the government would actually set the level of fair rent- this was to be left to the Rent Scrutiny Boards in October 1972.

In mid-January of 1972 Harlow was the first local authority to vote to implement the Act- despite fifty members of the International Socialists, and several of the Communist Party, who stormed into the council chambers at the crucial meeting. Again the council used the argument: "We can implement it more humanely than the Tories. If we don't, somebody else will." By now the Labour Party's advice was to implement the Act and "...to try and exploit the loopholes." This piece of legislation was to prove very free from loopholes, as Clay Cross council was to find out. However, the advice was sufficient to persuade many other councils to vote for implementation, even in areas

where in April Labour had fought and won local elections on a non-implementation ticket. Crossland, whilst opening the Conference of Labour councils in July 1972 said: "We are all parliamentary democrats, we may not like the law, but we must obey it." One Scottish councillor replied that he "had never heard class collaboration put so nicely."

The week in October 1972, when the Housing Finance Act was due to come into operation, saw rent strikes throughout Britain, in some seventy cities and towns. But the local authorities were becoming so scornful of the lack of initiative taken by the Labour Party leadership that resistance was inevitably doomed to frustration and recognition of the Act. Eddie Smith, one of the three Labour councillors on Pontypridd Urban Council to vote against the Act's implementation, told a large demonstration in Cardiff that "...we can expect to be expelled from the Labour party unless we publicly disassociate ourselves from those who have supported us." Representatives at this meeting included contingents from the South Wales Joint Trade Union and Tenants and Residents Association, many local authorities in Wales, the Miners' and Engineers' Unions, the Communist Party, International Socialists and Plaid Cymru. Emlyn Williams, the vice-president of the South Wales National Union of Mineworkers said that "... we must struggle industrially against political legislation." Reports were still arriving of more resistance: in Liverpool a 6,000 strong demonstration coincided with industrial strike action at Plesseys, Standard Triumph and the docks; every Labour councillor at Glasgow was behind a majority decision not to implement; Lanark, Kirkcaldy and Falkirk were behind a similar decision; Clay Cross was beginning to muster what was to be the longest

and best organised resistance; in Salford an estimated 20,000 tenants were withholding rent increases; in Merseyside all areas were refusing to pay the rent increases, and four councils (Fazakerley, Birkenhead, Over the Bridge and Tower Hill were on a complete rent strike.

But resistance to the Act was not confined simply to local authorities and tenants' associations. In October 1972 the (giant and American-owned) Singer Sewing Machine Company, which at that time employed some 6,000 workers, threatened to withhold their rate payments unless the local authority agreed to implement the Act. The company claimed that it would cost them £20,000 in extra rates if the local authority refused implementation. Workers at Singers responded at a mass meeting when they pledged full support to Clydebank council and called for industrial action if any local attacks were made on the councillors.

Again, in Kirkby, the management at Birds Eye frozen food factory attempted to dismiss two shop stewards and twenty two other workers who joined a one day strike in support of refusing to pay the rent increases in Liverpool. Flying squads of tenants were immediately organised to picket the factory; the management immediately surrendered. Kenneth Webb, chairman of Birds Eye, flew to Liverpool the next day in his private aeroplane and told reporteress that "...outside influences are manipulating workers at the factory." "The outside influences were indeed to be seen outside the factory gates, as mothers, children and babies in prams demanded that their husbands be given back their jobs." 63

There are of course strong pressures put on local councils from private enterprise, and at the time of the furore surrounding the implementation of the Housing Finance Act this pressure was made manifest by the unwillingness of private companies to locate their new offices and factories in those areas which were unwilling to implement the Act. Southwark council, for example, was torn between social concern for tenants and the rate income which these potential arrivals would add to their rate fund.

Glasgow City Council was the first local authority to take its opposition beyond the Default Order (under the Local Government (Scotland) Act, 1947) issued by the Secretary of State for Scotland. The penalty for defying this Order was put at £5,000 by Lord Wheatley in the Court of Session in Edinburgh. Public financial help was at once sent to help pay the fine, including £300 from the Scottish National Union of Mineworkers. By mid-February of 1972 four Scottish councils were still refusing to implement: Cowdenbeath, Cumbernauld, Saltcoats and Alloa. The collapse of Glasgow was too muc for these authorities, and they rapidly followed suit. By now, only Clay Cross in Derbyshire remained in defiance.

Clay Cross is a Rural District Council with a population of eleven thousand.⁶⁴ It is situated near Dronfield, and its population is largely dependent on the local iron and steel works for employment. The traditional occupation had been coal-mining, but Derek Ezra had closed the local pit. The average rent for the older

64. Material taken from two visits to Clay Cross.

type of 2-3 bedroomed house or flat in Clay Cross at the time was £1.50 per week, the average for modern houses was £2.04; the highest rent on a local authority dwelling was £2.12 per week. Between October 1972 and March 1973 the government withdrew £9 million in subsidies from the council for its position towards the Act.

What perhaps differentiated Clay Cross from most of the other local authorities in 1972-73 was the almost total support from the local population. In November 1972 1,500 tenants in the town had not paid the rent increases simply because the council had refused to charge them; "all 1,500* tenants are solid in their resistance, and support has been pledged by the North-East Derbyshire Labour party and Dronfield Trades and Labour Council." By January 1973 rent arrears amounted to £7,985. The council of Clay Cross themselves were fully prepared to stand up to the Tory government: chairman of the council was Charlie Bunting, unemployed and dismissed from his job in 1971 for his leading role in the local engineering firm of Ingrams, and will not wear his chain of office "because it smells of class distinction"; David Nuttall, miner and General Municipal Workers Union branch secretary, dismissed from his job with a road haulage firm for refusing to carry a letter during the 1971 postman's strike; Roy Booker, coal worker and National Union of Mineworkers member; Graham Smith, unemployed and dismissed with Bunting; Terry Asher, shop steward and foundry worker; Dave Percival, shop steward who twice refused the job of foreman in the local foundry; David Skinner, cable worker and president of the local N.U.P.E.; Graham Skinner, council worker and secretary of N.U.P.E.; Arthur Wellon, planning engineer; Eileen Wholey, canteen cook; George

Goodfellow, school caretaker and local shop steward.

There have been no Tory councillors in Clay Cross in the ten years between 1963 and 1973, and this period saw the elimination of all slums, all council house rents kept down to their historic cost minimum, the buying up of private rented accommodation by the council, free school milk and free travel on municipal transport for old age pensioners. The councillors' refusal to implement the Act for the 1,340 local authority houses and flats in Clay Cross meant that they were individually liable to government surcharges which increased at the rate of £1,600 per week. This could hardly be calculated to add to the prosperity of an area which had a 1971 unemployment level of 17.2%, and where none of the local council could afford to buy their own homes.

The conflict between the government and Clay Cross council could have only one outcome- legal defeat for the council. On 19th January 1973 Housing Commissioner Lacey announced that the eleven councillors must personally pay the surcharge of £6,985 plus legal costs of £2,000. In complete defiance of the government the council retaliated by raising the wages of local authority manual workers by £5 per week in contempt of Stage II of the national wages and pay freeze. After an action in the High Court against the Secretary of the Environment and the district auditor ⁶⁵, the councillors arrived at the Court of Appeal under Lord Denning in January 1974.

65. Here Mr. Justice Megarry said that "the councillors are misguided, but sincere...". David Skinner replied "It was like the script of a West End play. I expected it- everybody in Clay Cross expected it. What else can you expect from the Tory courts?". See the Guardian December 22nd 1973.

Denning declared in his verdict ⁶⁶,

"Each (of the councillors) had deliberately broken the solemn promise which he had given when accepting office. Each had flagrantly defied the law....The councillors by their conduct had presented a grave problem to all concerned in the good government of the country...The men were not fit to be councillors...The proceedings were vexatious."

Denning argued that the consequence of the refusal by Clay Cross council to implement the Housing Finance Act was "...to benefit the well-to-do tenants whose rents were not increased, and to injure the poor tenants who did not get any rebates." Given that the average local authority rent in Clay Cross was only £1.50 per week the idiocy of this comment is clear. David Skinner retorted after the hearing ⁶⁷:

"This is just part of an attack on the working class. But its not the end of the road; but just the beginning. We will be back because the people of Clay Cross will decide on this."

His Lordship trusted that there were eleven good men in Clay Cross ready to take over. Demonstrators and coaches from Clay Cross picketed the entrance to the court.

66. Asher and Others v. Secretary of State for the Environment and Another, Times Law Report January 31st 1974.

67. 'Judges Lash Rent Rebels', Evening Standard, January 31st 1974.

Rent and rent legislation 1915-72: conclusions

Rent legislation was first introduced in the United Kingdom as a temporary measure designed to stem industrial unrest in 1915. The 1915 Act was the basis for rents in the unfurnished private lettings sector throughout the inter-war period; cyclical patterns of change emerged, however, because successive governments were caught in the dilemma of treating rent restriction as essentially harmful on the one hand, and yet simultaneously expressing the view that housing was not "a fit subject for commodity economics" but was rather "a social service of such extreme importance (that it) ought to be controlled, the public being protected against extortion and improper treatment."⁶⁸ As a general rule the rents of most private rented dwellings were at a lower level than that dictated by the open market between 1915 and 1972.

Analysis of public sector rents was seen in the larger context of the growth of health and welfare legislation which began in the 1880's. Although this development must be understood in the context of 'amelioration and regulation of the working class', nevertheless public sector rents between 1915 and 1972 were a major source of gain for the working class. In this period local authorities were able to charge rents that reflected the cost of production of their housing

68. Ministry of Health, Report of the Inter-Departmental Committee on the Rent Restriction Acts, Cmnd.5621, H.M.S.O. 1937.

stock and had no real rental element within them other than that related to land purchase costs. Indeed the slum clearance powers of local authorities under various measures enabled them to socialise even this in some cases and if they built with direct labour and borrowed at reduced interest rates from the Public Works and Loans Board, or under the Housing Subsidy Act (1967), capitalist relations were eliminated at all points in the housing process. This was not, however, usually the case with the financing of council houses, and as we shall see in the next chapter was very rarely the case with their construction.

Attempts to analyse levels of rent in both sectors are inevitably impressionistic: no adequate statistical data exists before 1945, and what material there is cannot be put into a complete time-series chart.⁶⁹ Some indications of general trends must however be made. Parker optimistically estimates that if an average cost rent had been charged to all tenants the proportion of average weekly gross earnings paid in net rent would not have varied much between 1957-58 and 1964-65.⁷⁰ However, other criteria produce different conclusions: between 1960 and 1970 rents for all types of tenure increased as a proportion of G.N.P. from 5½% to 7%.⁷¹ Again, in 1945

69. Census data on this subject is grossly inadequate, and the F.E.S. only began post-1945. Theoretical problems arise in that at different time periods disposable income is restricted to the level of goods available. See eg. A.D. Webb, The New Dictionary of Statistics, G. Routledge & Sons, 1911, p.375.

70. R.A. Parker (1967) op.cit. p.34.

71. D. Massey (1973) op.cit. p.8.

9% of 'representative selections' of houses in urban and rural areas in England and Wales had net rents more than 150% of the gross value, but only 4% had rents under 50% of their gross value. ⁷² The likely conclusion is that for the period 1915-72 private rents changed neither as a proportion of household income, nor as a ratio in the region I.I-I.4 of gross value of the dwelling; public sector dwellings have seen rent rises faster than changes in the level of real wages or the cost of living. (See FIG.I5a over page).

It is the accepted opinion among authors in this general field that there is a strong inverse correlation between rent restriction in the private sector and level of repair of private dwellings. Whilst this view seems intuitively plausible, it would be extremely difficult to demonstrate. ⁷³ To prove the correlation one would either have to show that houses were in good repair when there was no rent restriction, or that houses were in bad repair when restriction was operative. Yet private dwellings were in a notoriously bad condition before the introduction of rent legislation, and this of course part of the cause of the 'health movement' of the mid-nineteenth century. Further, increases for repairs were always awarded to landlords in the provisions of the rent restriction Acts. Two other explanations are far more likely to be true; increased security of tenure for tenants, and changing urban pressures (discussed in

72. Cmd.662I (1945) op.cit. Appendix II.

73. eg. statements by all of the Rent Restriction committees; L.Needleman (1965) op.cit. p.164. But, surprisingly, see 'The Rent Bill', Conservative Research Series, No.25, March 1957, pp.6-7: "(during the 1920's and 1930's) controlled rents were generally adequate for house maintenance."

FIG.15a AVERAGE WEEKLY RENTS OF LOCAL AUTHORITY DWELLINGS
(ENGLAND AND WALES)

Average weekly rebated rents, £

	Greater London	England and Wales	Rest of England/Wales
I964	1.71	1.25	1.32
I965	1.81	1.34	1.41
I966	2.00	1.47	1.55
I967	2.24	1.58	1.69
I968	2.42	1.77	1.87
I969	2.62	1.95	2.03
I970 April	3.07	2.13	2.27
I970 October	3.16	2.18	2.33
I971 April	3.37	2.33	2.48
I971 October	3.48	2.35	2.52
I972 April	3.62	2.56	2.71
I972 October	4.01	2.87	3.05
I973 May	4.01	2.97	3.13

Source: Annual Abstract of Statistics, 1973, p.77.

Notes: 1. Rents between 1964 and 1969 are for April in each year.

2. Average weekly unrebated rents are approximately 50p higher than for rebated rents.

the next chapter) which have partly resulted in the heavy drift to owner occupation, and partly in the competition between dwellings and other forms of use-value for urban space.

The Housing Finance Act of 1972 has been the major legislative weapon in the battle between the various rent classes. The manner in which s.46 of (part IV) of the Rent Act (1968) was reintroduced by clause 50 of the Housing Finance Act, but with paragraph 4 of clause 50 being entirely novel, is without precedent in English lawmaking. For the first time the immense decision to ensure that public sector housing operations were equivalent to their capitalist counterparts was taken; this of course had been requested by the largest private landlord in London.⁷⁴ Now, not only will there be no connection between the level of rents in a given local authority area and the state of the authority's housing budget, but in many areas local authorities will show a large profit on their housing revenue accounts. By way of subsidy this will be paid to owner occupiers in the form of tax relief. Fair rents in the public sector are now operated on the basis of comparability of 'similar' dwellings in the private sector; since the latter include a considerable allowance for profit margins, this profit margin has been extrapolated to the public sector. For the period 1919-71 public sector housing policies have largely been the responsibility

74. Cmnd.4609 (1971) op.cit. see William Stern's evidence pp.81-88.

of the local authorities. Although under the Housing Finance Act it is central government which now largely frames the parameters of housing budgets and rent setting policies, the fact that implementation of the Act is the responsibility of local authorities in the first instance ensures that local authorities act as a buffer between central government and opposition to the Act. Opposition thus became essentially fragmentary and localised. The initial success of Clay Cross and other local authorities may in part be explained by the somewhat unusual character and solidarity of the people in the district; ultimate failure was ensured by the rigid machinery set up to enforce implementation.

The political solution to the problem of the conflict between social policies designed to ameliorate the conditions of those at the bottom of the housing market in capitalist society and economic conditions which allow those at the top to outbid those at the bottom has been subsidised housing and rent restriction. The Housing Finance Act of 1972 can only add to this problem.

4 HOUSING RENT AND THE FRACTIONS OF CAPITAL

We have seen that land and housing became primary sources of capital investment in the sixteenth and seventeenth centuries in response to economic and social pressures brought about by the decay of feudalism and the system of villeinage. This process has not only continued in the contemporary era, but has significantly increased since 1945. The relative unattractiveness of British industry for investment potential, the collapse of the British empire in the post-1945 period and with it the end of much 'cheap labour' in the colonial countries, rising world raw material commodity prices, and substantial increases in rents and house/office sale prices have resulted in the diversion of investment resources into land and property.^I A corresponding set of financial institutions have arisen to exploit this new potential. Until 1957 property companies were not significant

I. See for example, D.Massey, 'Intervention in the land market', a paper given to the Conference of Socialist Economists, London, May 1974; The Recurrent Crisis of London, C.I.S. Anti-Report on the Property Developers, London, 1973. The economic causes of the expansion of British capital into European property investment outlets would require a separate paper; the growth since 1960 has however been phenomenal, for example the estimate that 25% of new office space to be completed in the next few years in Brussels will be financed by British investment, representing a minimum investment of £45 million: 'Property Men Carve Up Europe', The Observer, 10th December 1972.

enough for separate quotation of stock-market valuation, but between 1958 and 1972 their listed valuation soared from £103 million to £2,644 million.

The Milner Holland Committee was the first influential body to notice that with declining overall profits in private domestic property for rental, property companies and many private landlords were switching over to commercial property as new forms of investment.² Since 1945, therefore, urban housing has been forced to compete with other consumers of urban space, and this has produced certain changes in the traditional composition of urban dwellers. This in turn has had a marked effect on urban rents and urban land values. As Doreen Massey says³:

"The increase in land values, however, also means that housing as a sector is less able to compete and that within that sector low-cost housing- precisely that which is needed to house the workers demanded in the city centre- is particularly unviable. Competition within the housing sector works against the spatial demands of the city as a whole..."

The demand for commercial offices in the centres of London, Birmingham and Edinburgh has resulted in the decline of traditional manufacturing employment on the one hand, but an increase in the

2. Cmd.2605 (1965) op.cit. p.37.

3. D.Massey (1973) op.cit. p.3.

demand for living space in the city centre for 'service' workers such as cleaning staff, transport and maintenance workers. Further, traditional working class areas on the fringes of city centres are now being taken over either by property companies for redevelopment or else by middle class owner occupiers. This latter process has been aptly dubbed 'gentrification.' Slowly but surely many working class areas in London have been invaded by these hostile elements. Glass reports ⁴that

"...quarters of London have been invaded by the middle class- upper and lower. Shabby, modest mews and cottages- two rooms up and two down- have been taken over when their leases expired, and have become elegant, expensive residences. Larger Victorian houses, downgraded in an earlier or recent period- which were used as lodging houses or were otherwise in multiple occupation- have been upgraded once again."

In London gentrification has erased whole areas of Hampstead, Chelsea and Islington, and only small working class enclaves are left in Islington, Paddington, Battersea and North Kensington. In the widely-read columns of the Financial Times readers are invited to "...invest in the marginal neighbourhoods" where "...considerable profit potential is yet to be realised." ⁵ While house prices

4. R.Glass et al, London: Aspects of Change, Macgibbon & Kee, 1963, p.xviii.

5. Deborah Waroff, Financial Times, January 13th 1973.

nationally have risen by 40% since June 1970, prices in London and South-East England have risen by 90% and more in the same period.⁶ (See FIG.I6) Again⁷:

"The concept of slum clearance is very nearly obsolete today, as least as far as Inner London is concerned. Planners no longer need to raze whole neighbourhoods and replace them with concrete blocks of flats in order to eradicate derelict housing. All the planners have to do now is wait for a run-down area to be discovered- by investors, or, more often, by middle class families, happy to move into a marginal neighbourhood to save a few thousand pounds on the price of a house. And many people are also enthusiastic about the creative side of doing up a house to reflect their own personalities."

Greve reports that working class displacement due to this process produces nearly 40% of all admissions to local authority homeless family accommodation.⁸ The then Minister of Housing, Julian Amery lamely commented that "I recognise, however, that in

6. *ibid.* and Occasional Bulletin, Nationwide Building Society, 1972.

7. Financial Times, January 1973.

8. J.Greve, 'Private Landlords in England', Occasional Papers in Social Administration, No.I6, 1965.

FIG.16

SALE PRICES OF URBAN HOUSES 1939-73

<u>Year</u>	<u>Houses</u>	<u>Year</u>	<u>Houses</u>
1939	100	1961	477
1949	279	1962	500
1950	296	1963	565
1951	327	1964	634
1952	307	1965	676
1953	301	1966	683
1954	295	1967	742
1955	308	1968	780
1956	321	1969	823
1957	323	1970	874
1958	327	1971	1,079
1959	367	1972	1,570
1960	421	1973	1,683

- Notes:
1. These figures were computed from a table supplied from the Nationwide Building Society, Occasional Bulletin II6, July 1973.
 2. The figures for 1959-73 are an amalgam of modern and older houses in London and south east England.
 3. The figure for 1973 is based on returns for the period January 1st 1973 to June 30th 1973.

London at any rate the buoyancy of the housing market had led to some change in occupancy and movement in population." ⁹ One recalls Engels' dictum of 1872 that ¹⁰:

"This is how the bourgeoisie settles the question in practice. The infamous holes and cellars in which the capitalist mode of production confines our workers are not abolished; they are merely shifted elsewhere."

In the early 1960's the government attempted to ameliorate the worst effects of this trend with the introduction of improvement grants, a notably two-edged sword. This was partly a response to Milner Holland's finding that ¹¹:

"What has been done produced housing of good quality and amenity by present day standards. Desirable though that is, it has left the rehousing of the original tenants as a problem to be solved by others- probably we suspect in older unimproved rented housing, the section in shortest general supply and where the worst conditions appear to obtain...It is unlikely to be solved before a solution is found to the wider general problem of providing and financing housing for those unable to afford the 'economic rent' of the dwelling they require."

9. National Housebuilders Registration Council Conference, October 1972.

10. F.Engels (1962) p.584.

11. Cmd.2605 (1965) op.cit. p.199.

Since the early 1960's improvement grants have had the effect of being a tax subsidy to property companies. From FIG.I7 we can see that between 1956 and 1970 local authorities have received improvement grants for 433,100 houses whilst 'private owners' have received grants on 117,170 houses in the same period. In 1973 local authorities' share remained static, whilst private owners received grants for 40,000 more houses than their 1970 figure. The Housing Act (1969) had given the local authorities the power to give improvement grants 'at their discretion': up to £1,200 tax free per dwelling. It also gave the authorities the power to declare general improvement areas, where the authorities would also spend money on improving the environment. A circular accompanying the legislation stated ^{I2}:

"It is much to be hoped that from the beginning of their enquiries, local authorities will make it absolutely clear that what is under consideration is a programme of action designed to raise the standard of amenity and comfort for the residents."

In retrospect, what does seem clear is that the functional consequence of the Act of 1969 has been an increase in the rent of houses as a whole. If a landlord or company improved his property the return that he would expect on his increased investment would mean a rent increase for his tenants. A Kensington and Chelsea

I2. Government circular 65/69.

FIG. 17 SLUM CLEARANCE AND HOUSE IMPROVEMENTS IN
GREAT BRITAIN 1956-70

Houses demolished or closed
thousands.

Improvement grants approved
(dwellings) thousands.

	England/Wales ¹	Scotland ²	Local Authorities	Private Owners ³
1956	34.3	12.1	1.5	35.5
1957	44.5	12.2	2.6	35.8
1958	52.6	13.4	2.8	33.9
1959	57.6	13.4	16.7	66.5
1960	56.6	12.3	43.0	91.9
1961	62.0	11.7	42.3	90.1
1962	61.8	12.1	32.3	82.6
1963	61.4	12.1	31.5	92.6
1964	61.2	14.4	33.2	93.2
1965	60.7	15.5	40.3	89.0
1966	66.8	16.7	33.7	81.6
1967	71.2	19.1	32.5	88.0
1968	71.6	18.8	40.9	87.0
1969	69.2	17.8	40.4	83.5
1970	60.3	17.3	59.5	120.5

Source: Department of the Environment Housing Statistics
Quarterly, 1971, table 34, p.54.

Notes: 1. Houses demolished in clearance areas and unfit houses
demolished or closed elsewhere.

2. All houses demolished or closed under housing, planning and
other specific statutory action, and unfit houses demolished
or closed by other action.

3. Inclusive of grants to housing associations.

study of an area at present undergoing modernisation pinpointed the irrelevance of this process to those working class people whose accommodation is improved. The economics of development 'bore no relation in any way to the surveyed income.'^{I3} It is therefore not surprising to learn that one speculator in the property market commented in 1972^{I4}

"I agree that public money could have been better spent helping those most in need, but you cannot blame us for taking advantage of the law."

The very rapid increase in house prices (See FIG.I6, p.201) and particularly since 1962 indicates the willingness of landlords and property 'developers' to convert old houses for sale to owner occupiers. It is therefore not coincidental that the introduction of improvement grants on a national scale began only in the five or six years preceding 1962. The incentive of large returns on investment is further reflected in the phenomenal rise of rents on those houses not converted for sale in the private market. In this context the Housing Finance Act (1972) may be seen as a regulating mechanism: by abolishing large differentials between local authorities in proximate geographical areas, rents of all dwellings become higher and more calculable.^{I5}

I3. Director of Redevelopment, the Kensington Society, September 21st, 1972.

I4. A Mr.Church, Sunday Times, 29th October 1972.

I5. 'Higher' in the sense that no rents were rounded downwards under the Housing Finance Act, and 'calculable' in the sense that public sector rents are based on comparability with the private sector post-1972.

The construction industry

The construction industry has traditionally been one of the largest employers of labour in the United Kingdom, and although the growth of the 'lump' in the mid-1960's tends to blur precise figures, the general scale of employment is fairly clear. Almost 1.5 million workers were employed in the industry in 1968, and 1.2 million in 1971. It has two distinct advantages: first by its geographical nature it tends to be insulated from international competition, and indeed has made considerable inroads into the European market ^{I6}; second, and except for circumstances such as 1914-18 and 1939-45, central government has made the industry one of its major policy tools for the regulation of the economy. But, because the industry is still dependent on essentially open market forces, and particularly on private investment within the context of the whims of a capitalist stop-go economy, builders have been prone to sudden bankruptcy. In 1961 there were 80% more bankruptcies reported for building and contracting than for the whole of the manufacturing industry. ^{I7} Before the post-1969 boom in house-building the Guardian found that builders were declaring bankruptcy at the rate of four per week.

The housing labour force within the construction industry

I6. See for example 'British and European Property', The Times, April 13th 1973.

I7. The Guardian, March 30th 1973

has remained relatively static in the last twenty years at 550,000 workers, and it is likely that employment will increase in the future: the large corporate building operations at present being undertaken by local authorities ensures a relative degree of calculability for the large construction firms. Public sector housebuilding is not only higher than private housebuilding, but the differential between the two is widening. In the years 1960-62 the annual average value of the output of the construction industry was £262 million for public authorities and £424 million for private developers; in 1967 the figures were £586 million for public authorities and £837 million for the private sector. In other words the public sector has more 'dwelling starts' per year but the private sector has a greater value of output. This of course is to be expected: council houses are essentially cheap houses. ¹⁸

All housing projects are committed to two basic payments for house construction: cost of land and anything on the land; and clearance of the site and construction of the new dwelling. The second payment may be broken down into wages of site workers, cost of the contractor's machinery and raw materials (including an allowance for depreciation), and the contractor's profit. Figures on contractor's profit are almost impossible to obtain, but some estimates are available. Needleman thinks that 'traditional houses' in England and Wales produce a profit margin of 15% less overheads, multi-storey housing 10-20% ¹⁹; Merret

18. See Housing Statistics, No.12, February 1969.

19. L.Needleman (1965) op.cit. pp.88-9.

thinks the margin of profit is nearer 20%²⁰.

The house construction process may be divided into three distinct phases: the purchase of land, the construction of the dwelling itself, and the financing of both operations. Private construction has capitalist relations at all three points. Since land is a gift of nature, the sale price of the land represents complete profit to the landowner; the house builder then receives his 10-20% profit margin; profit on the financing side of these phases is represented by the rate of interest. Public sector house construction has been able to eliminate capitalist relations at two points, and never completely. A price must be paid to the landowner for the acquisition of the land and site; unless the construction is carried out by local authority labour, again a 10-20% margin will fall to the construction firm; unless the operation is financed by the Public Works and Loans Board or interest-free Exchequer subsidy then further private acquisition will occur at this stage. In fact only 9% of all local authority house construction is undertaken by the direct labour groupings of the authorities. It therefore follows that 91% of all local authority house construction contains a large degree of private capital accumulation: a minimum of 10% of the value of output.

This is of course reflected in the trading accounts of the seven largest construction companies in Britain. (See FIG.I8).

20. S.Merrett (1973) op.cit. p.6. Comparative figures are harder to obtain. In the U.S.A. 25% represents labour and construction materials, 25% land cost, 50% 'operating expenses and a very small portion for profit': President's Committee on Urban Housing, A Decent Home, 47 (1968).

FIG.18 SEVEN BRITISH CONSTRUCTION COMPANIES: ACCOUNTS 1968-71

	Sales (£000)	Trading Profit (£000)	Dividend (£000)
<u>Richard Costain</u>			
I968	86,000	3,776	392
I969	95,000	3,608	396
I970	108,000	5,196	435
<u>John Laing & Son</u>			
I968	99,000	2,108	572
I969	110,000	2,593	603
I970	113,000	3,045	673
<u>Marchwiel Holdings</u>			
I969	50,685	4,597	385
I970	56,118	4,037	435
I971	62,810	6,797	535
<u>R.MacAlpine & Son</u>			
I968	41,000	3,683	370
I969	50,000	2,669	370
I970	66,000	3,858	370
<u>Tarmac</u>			
I968	109,536	10,175	2,635
I969	113,366	11,848	3,192
I970	143,298	13,361	3,305
<u>Taylor Woodrow</u>			
I968	71,000	5,519	687
I969	86,000	5,984	843
I970	97,000	6,327	944
<u>G.Wimpey & Co.</u>			
I969	203,000	11,924	1,474
I970	225,000	11,767	1,440
I971	250,000	13,837	1,600

Source : Companies' House, London; 'Building Industry', Labour Research Department, London, April 1972.

In 1969 the chairman of Richard Costain, Sir Robert Taylor, was paid a salary of £272 pwe week. The deputy chairman, Lord Neverthorpe, received £17,511 in 1969 and is also a director of Lloyds Bank and the Abbey National Building Society. In 1970 the company donated £500 to the Conservative party and £500 to the Economic League.

John Laing and Son is Britain's second largest construction company and employs a work force of 15,000. The chairman Sir Kirby Laing received £17,125 in 1970 whilst in the same year the average employee's pay was £1,545. Further, since the directors own 5% of the ordinary shares and control 68% of them through various trusts, they received a large amount of the £673,000 paid out in dividends in 1970.

Most of Marchwiel Holding's operations are carried out through its main subsidiary MacAlpines. Dividends have grown from £25,000 in 1961 to £535,000 in 1971, and for this excellent performance the chairman, James MacAlpine was paid £47,995 in 1971. Marchwiel donated £1,000 to the North West Industrialists' Council in 1971.

MacAlpine is a family firm which currently employs some 10,000 workers. More than £140,000 goes to the family in dividends from their large holding of preference shares, and in 1970 £102,800 was paid in directors' fees. In addition the company donated £32,357 to the Conservative party in 1969.

The Tarmac group (Tarmac Construction, Campbell & McGill, William Briggs Construction, Ellis & Powell) employs a work force of 20,000. In 1970 the highest-paid director received £27,409, and in the same year the company paid the Conservative party £5,000.

Taylor Woodrow made a trading profit of £6,327,000 in 1970, Francis Taylor, the managing director received £35,967. The company gave £1,825 to the Conservative party in 1969, £10,000 to the Aims of Industry and £1,825 to the British United Industrialists.

George Wimpey and Company is Britain's largest construction company and employs more than 30,000 workers. More than half of the company's shares are held by trusts set up by the chairman Sir Godfrey Mitchell to benefit his family. An interesting link-up exists between this construction firm and property companies. Wimpey's has a 40% interest in the Oldham Estate Co. which owns the now famous Centre Point in London's Tottenham Court Road. In April Wimpey's announced the sale of 75% of their shares in Oldham Estate for £32 million. None of the fifteen directors received a salary less than £10,000 in 1970 and the majority received in excess of £15,000. Many of the directors have connections with other large British companies— Sir Reginald Wheeler is also a director of Guest, Keen and Nettlefolds; Sir Joseph Latham is a director of Black and Decker, Thorn Electrical Industries and Unilever; The Hon. Alexander Lambert Hood is a director of Petrofina (U.K.) and Abbott Laboratories.

Property Developers and Property Companies

The concentration of competition for land in the late 1950's in the metropolis and other urban centres produced a panoply of enterprises whose sole aim was to exploit the new patterns of demand. The situation was intensified by the post-1960 boom in hotel construction, office building and speculation on rising house prices. ²¹ Quoting a speculator in 1857 Marx wrote ²²:

"...the builder makes very little profit out of the buildings themselves; he makes the principal part of the profit out of the improved ground rents. Perhaps he takes a piece of ground, and agrees to give £300 a year for it; by laying it out with care, and putting certain descriptions of buildings upon it, he may succeed in making £400 or £450 a year out of it, and his profit would be the increased ground rent of £100 or £150 a year, rather than the profit of the buildings which...in many instances he scarcely looks at at all."

Speculation in the 'property market' has a twofold cause: rising long term rents and rising sale prices with vacant possession. As office space becomes increasingly expensive in conurbations such as London, where it now costs more to accommodate a clerk in central London than he receives in wages, so too have the fortunes of the

21. eg. 'Couples priced out of flats market', Guardian, November 27th 1971.

22. K.Marx, Capital, Vol.III, Progress Publishers, Moscow, 1971, pp.774-75.

speculators soared.²³ The phenomenal rise in the rents of office space in the G.L.C. area is easily demonstrated²⁴:

FIG.19 RENTS OF OFFICES WITH PLANNING PERMISSION IN LONDON: 1960-71

	sq. feet (million)	£per sq.ft.
1960 (LCC area)	4.3	1.75
1965 (from 1st April)	1.5	2.25
1966	2.7	2.50
1967	2.9	2.75
1968	3.6	3.50
1969	6.1	4.50
1970	7.6	6.00
1971	9.9	7.00

The stock market valuation of property companies indicates the extent to which values have risen. In 1958 the market valuation of the companies listed was £103 million; by 1968 it had risen to £833 million and by March 1972 had reached a peak of £2,644 million. Shareholders have added very little to the growth in the equity: it has mainly been supplied by banks, insurance companies and pension funds. The decontrolling legislation of 1957, and the Housing Finance Act of 1972 have exacerbated the situation. Both pieces were framed by the Tory government partly with the expectation that investment in house construction would increase with the removal of rent restric-

23. From the Recurrent Crisis of London (1973) op.cit. p.3.

24. *ibid.* p.6.

tion. But, beginning in 1957, and escalating in the 1970's the result has been that hordes of property developers have bought up large blocks of old houses and flats, not to provide more rented accommodation, but to sell at exorbitant prices to owner occupiers. For example, in 1971 the First National Finance Corporation bought 114 blocks containing nearly 8,000 flats. Tenants were immediately offered money if they would leave and the price of the flats for sale was periodically raised. The blocks cost the Corporation £52 million to buy, and were sold within two years for £24 million profit. ²⁵

Perhaps the most publicised of property coups was made by Harry Hyams. In the early 1960's Hyams bought some land at the corner of Tottenham Court Road for £1.2 million. Construction of a large office block and interest on the original loan pushed the total costs up to just under £5 million. In December 1969 Hyams was demanding a rent of £1,160,000 per year. For a $6\frac{1}{2}\%$ rate of return on investment this meant that the value of Centre Point had appreciated by £11.7 million to £16.7 million in four years. No tenant has as yet occupied Centre Point; but this cannot concern Hyams because rising land values promise a future tenant. Hyams has said ²⁶:

"I have built up by hard work an important property group. I have in company with my associates built and let over forty large

25. Guardian, February 2nd. 1973

26. Evening Standard, January 19th 1973.

office blocks and many other industrial buildings. I would challenge (Jenkins) to produce a single instance of a transaction which has been regarded by my tenants and other business associates as in any way open to question. I believe that I enjoy and am entitled to enjoy an honourable reputation.

Such is a statement of bourgeois morality. The list of achievements of the property developers is endless. Another excellent example is afforded by Stock Conversion and Investment Trust Ltd. Between February 28th 1953 and March 31st 1972 the company's balance sheet improved from £13,155 to £45,559,000. The principal beneficiaries of this growth were Robert Clark and Joe Levy. Part of their large fortune has been made with the active participation of the G.L.C. planning committee, principally in the Euston Road development scheme. Bennie Gray, a property commentator stated on television that "...in effect, the G.L.C. acted as one of Joe Levy's estate agents." ²⁷ Further examples are to be found in the activities of the Church Commissioners, whose total assets exceeded £420 million in 1972. FIG.20 is a list of the 'big five' private landlord companies: the essential link between the developers and the private rented market. Between them these companies donated £28,000 to the Conservative party prior to the formulation of the Housing Finance Act.

27. B.Gray, 'Something to Say', ITV, August 9th, 1973.

FIG.20 PRIVATE LANDLORD COMPANIES: ACCOUNTS 1968-70

	£	£	£
	Gross rents	Dividends paid	Ordinary dividends
<u>Alliance Property Holdings</u>			
1969	1,387,027	241,515	10%
1970	1,501,367	241,515	10%
<u>London City and Westoliff Prop.</u>			
1969	2,801,845	583,729	10%
1970	2,852,403	658,098	12½%
<u>Peachey Property Corporation</u>			
1969	2,524,000	461,000	8%
1970	2,640,000	569,000	10%
<u>Daejan Holdings</u>			
1968			
1969	1,975,675	375,440	13%
1970	2,053,907	375,440	13%
	2,169,693	375,440	13%
<u>London County Freehold</u>			
1968	7,421,000	1,726,000	n.a.
1969	8,074,000	1,803,000	n.a.
1970	n.a.	2,264,000	n.a.

Source Companies' House, London; Labour Research, September 1971.

The chairman of Alliance Property Holdings, a Major Webb, has publicly stated that landlords ought to be reimbursed for their time and trouble in taking cases of rent increase applications to Rent Officers. The Major paid himself £12,000 in director's fees in 1970 and claimed another £1,056 in dividends. The company donated £100 to the Institute of Economic Affairs in 1969.²⁸

London City and Westcliff Properties owns property, both domestic and commercial, in London and the Home Counties. Its director, W.N. Williams drew £13,994 in dividends in addition to his director's pay of £5,800 in 1970.

Peachey owns 5,000 flats and houses in the Inner London area. E.J. Miller paid himself £17,000 as a director and his 1.27 million shares earned him another £31,725 in 1970.

Daejan is the largest public company in the Freshwater complex, with more than 23,000 flats and houses, the majority of which are in London. The Freshwater family owns 60% of the Daejan shares which in 1970 earned £225,000. O.M. Freshwater is also director of another 316 companies which rewarded him with an estimated £300,000 in 1969.

London County Freehold and Leasehold own 9,000 flats in London and the Home Counties. One of its directors is John Boyd-Carpenter the Tory front bench spokesman on housing. The company contributed £1,000 to the Conservatives in 1970; paradoxically, Jeremy Thorpe was a director at the time when they were exposed as the chief racketeers in the 1972 second mortgage swindle.

28. This section is largely taken from Labour Research, September 1971.

At the time of writing this paper there appear to be two new and significant developments in the British property scene. First, the rapid increase in land and house values seems to have reached a peak. This can no doubt be partly explained by the fact that the post-1960 surge of investment into the property market greatly increased the disparity between current rents and projected company assets and that this gap was too 'optimistic'. Second, there is a distinct trend for British finance capital to exploit the European market. Here we can clearly see the alliance between the construction companies and the development companies. London County Freehold has recently expanded its scale of operations in France, Belgium and Holland. In the European commercial capital of Brussels it is estimated that 25% of all new office space to be completed by 1976 will be financed by British capital investment. There are estimated to be sixty British companies now building in France, and more than 6% of Paris office construction is British. The value of the output of British construction work overseas has increased from £233 million in 1969 to £346 million in 1973.²⁹ Le Figaro sees what the British are doing on French soil as a sign of "the same pragmatism and doggedness that led them to build golf courses in the desert and to withstand German dive-bombers."³⁰

29. See Housing and Construction Statistics, No.7, 1973, p.78.

30. The Observer (December 10th 1972) op.cit.

Financial Institutions

The most significant development in the post-1945 land market has undoubtedly been the merger of the various fractions of capital engaged in the financing and construction of new development. Although the largest profits have been reaped by the development companies, their operations have from the very beginning been heavily financed by the banks, building societies, insurance companies and pension funds. Until 1971 these latter financial institutions were content to secure good returns on their initial investment via interest rates, but recently the various fractions have increasingly been merging their operations. Almost £4,000 million has been diverted from this source into property companies since 1970. In FIG.21 we can see figures for the twelve largest insurance companies. Of interest members of the British Insurance Association increased their total annual net investment from £972.1 million in 1970 to £1,618 million in 1972. Insurance is a quickly growing business. Their income from real property and ground rents increased from £549 million in 1960 to £2,150 million in 1972. As a whole the insurance companies have

31. "(...of the directors of the 13 insurance companies listed in Who's Who)106 went to public school (from a total of 129) and 42 of these went to Eton. Of the 87 university graduates 90% went to Oxbridge...also noticeably high is the number of directors with backgrounds in the armed forces, government, the civil service and the diplomatic corps, which taken together were the most common background of the directors quoted." CIS, 'Your Money and Your Life', No.7., 1973, p.5.

FIG.21 TWELVE LIFE FUND INSURANCE COMPANIES: VITAL STATISTICS

	Life funds (£ m) 1972	Employers' Pay (£ m)	Political Donations (£)
Prudential Assurance	2,619	50	7,500 BUI
Legal & General	1,364	12	1,500 EL
Standard Life	1,053	3.6	-
Norwich Union	799	11	500 EL
Guardian Royal	737	16.1	1,000 EL
Commercial Union	712	18.2	12,500 BUI
Pearl Assurance	630	19	-
Cooperative	575	-	-
Eagle Star	536	10	5,000 Tory 1,250 EL
Sun Life	487	3.7	5,000 Tory
Scottish Widows	478	3	-
Royal Insurance	382	17	10,000 BUI 1,000 EL

Source Companies' House; CIS, 'Your Money and Your Life', (1973) op.cit.
p.4.

Notes BUI= British United Industrialists

Tory= Conservative party

EL = Economic League

increased the percentage of their assets invested in commercial and housing properties from 8.9% in the mid-1960's to more than 13% in 1973. In 1972 British pension funds has net investment assets of £11,000 million, and the level of their investment in property as a percentage of their total assets has increased from 4.7% in 1967 to 11.3% in 1973. Some funds have increased the ratio at a phenomenal rate: the National Coal Board has 60% and the Post Office Staff Superannuation 18.2% of their funds in property in 1973.

The main institutional sources for housing loan purchase are in private hands. (See FIG.22) The most striking aspect of this area is the 400% increase in building societies' stake in the decade 1962-72: from £618 million in 1962 to £3,649 million in 1972. Above all else it is the modern building society which has contributed to the growth of owner occupation in the United Kingdom. Although local authorities do have the power to grant mortgages to owner occupiers, nevertheless their share of the market more than halved between 1965 and 1972. Although we are not interested here in commenting on the 'convenience' or 'sound investment value' of attaining the status of an owner occupier, two points must be impressed: owner occupation does tend to "chain the working class to their local capitalist"³²; and the cost of housing in a capitalist society is kept artificially high by the level of surplus value extracted at every point in the housing process by finance capitalists. At the end of the second

32. See the text here pp.117-20.

FIG.22 LOANS FOR HOUSE PURCHASE: MAIN INSTITUTIONAL SOURCES

	Local	Insurance			
	Building Societies	Authorities	Companies	Banks	
				Totals	
I960	558	78		636	
I96I	544	I07		65I	
I962	6I8	94	II8	830	
I963	852	II9	I07	I,078	
I964	I,052	I95	I32	I,379	
I965	965	243	I63	I,37I	
I966	I,245	I23	I47	I,5I5	
I967	I,477	I6I	I24	I,762	
I968	I,578	III	I68	25	I,89I
I969	I,556	69	I80	0	I,800
I970	2,02I	I57	I54	40	2,372
I97I	2,758	I75	I49	90	3,I72
I972	3,649	I98	I49	345	4,34I

Source: Abridged from Housing Statistics, No.I2, February I969, p.47,
and Housing and Construction Statistics, No.7, I973, p.43.

Notes: The figures for building societies are for advances.

quarter of 1973 building societies had £13,676 million in outstanding advances, compared with the £1,242 of local authorities and the £1,220 figure for insurance companies. At an average rate of interest of 11.2% in the years 1970-73 this represents an enormous level of private capital accumulation.³³ Ostensibly due to falling effective demand the government has recently attempted to stabilise interest rates for building society funds by the use of special aid loans to building societies. The result is the same: in early 1974 the government lent £100 million to the building society movement, but this was immediately re-lent to the City for a short-term profit of £3 million before it was finally advanced to intending owner occupiers at the standard rate of 11½% interest.³⁴

This system of private finance is perpetuated by the (non-) legislative interference of parliament. But this too is not unexpected. In 1972 Andrew Roth found that 16% of M.P.'s were owners or directors of property companies, 9.7% of investment trusts, 11.4% of insurance companies, 17.9% of construction companies and 5.7% of banks. Edward du Cann, for example, brings together the whole range of the property spectrum; he is a director of Capital and Counties, Central and District Properties, City and Borough Property Corporation, and has large interests in Barclay Unicorn, Griffon Assurance and the private bank of Keyser Ullman Holdings.³⁵ In rather lame, but essentially

33. Space does not permit an analysis of the ideological component of such journals as Property Journal, Investors' Chronicle and Lloyds Bank Review. The result would of course be rewarding.

34. See for example Anthony Crossland in The Daily Telegraph, February 7th 1973, p.8; Sunday Times ('Business News') p.1, May 19th 1974.

35. A.Roth, Business Interests of M.P.'s, London, 1972.

correct fashion David Harvey attempts to summarise the goal of all financial institutions in a capitalist society ³⁶:

"Fundamentally, the financial institutions are interested in gaining exchange values through financing opportunities for the creation or procurement of use values. But financial institutions as a whole are involved in all aspects of real estate development (industrial, commercial, residential) and they therefore help to allocate land to uses through their control over financing. Decisions of this sort are plainly geared to profitability and risk-avoidance."

36. D.Harvey (1973) op.cit. p.165.

SOCIAL CONTROL AND HOUSING RENT

"...the philanthropic bourgeois became inflamed with a noble spirit of competition in their solicitude for the health of their workers. Societies were founded, books were written... extensive activity began. Government commissions were appointed to inquire into the hygienic conditions of the working class...Nevertheless, the capitalist order reproduces again and again the evils to be remedied, and does so with such inevitable necessity that even in England the remedying of them has hardly advanced a single step." (I)

Engels' comments on early housing legislation in the above passage capture the two basic functions undertaken by the state in the maintenance of the system of housing rent in a capitalist society. The state must legitimate the social order and it must be able to control social conflict.² Gifts and harmony on the one hand, and coercion on the other. In this context we can quite easily

1. F.Engels (1970) op.cit. pp.38-39.

2. See further R.Miliband, *The State in Capitalist Society*, Weidenfeld & Nicolson, 1969; J.O'Connor, *The Fiscal Crisis of the State*, New York:St.Martins Press, 1973.

the functional meaning of such ploys as rent restriction committees, public sector housing, subsidies and improvement grants: from our historical analysis it has emerged that these institutions have had the dual functions of eliminating the very worst evils of the housing process within capitalist society whilst simultaneously enhancing and even 'justifying' capital accumulation at each stage in that process. The intellectual parameters of all committees from Hunter to Francis, and the set of evidence accepted as credible by them; the authoritative neo-classicist versions of housing and housing rent; the enormous level of private accumulation exacted at each stage in the housing process- all bear witness to the real nature of housing rent in a capitalist society. "We discover this only after we have examined, as I did, the economic nature of house rent".³ As was suggested in our first chapter, the hegemonic functions of the state are part of the reason for the continued existence of this situation. Whilst it would be foolish to argue that the working class and the bourgeois class occupy different types of housing, what does seem true is that there are distinct housing classes roughly distributed along class lines. Rex and Moore have ably demonstrated this in Sparkbrook, although this study was more specifically concerned with housing allocation within the working class according to ethnic origin.⁴ In any case,

3. F.Engels (1970) op.cit. p.80.

4. J.Rex and R.Moore, Race, Community and Conflict, Oxford University Press, 1967. See especially the introduction and table 6.

it is conclusive that the housing process itself follows the capitalist mode of production in the financing and actual construction of houses, even though the rent payment does not represent the creation and exactation of new surplus value but the transfer of already-produced value.

Housing conflict and conflict over rent levels cannot therefore be explained in terms of a straightforward class conflict. This would explain the relative isolation of the 'housing problem' from work place and industrial disputes- except of course for the brief period in 1915 on Clydeside. Only very rarely have tenants' associations and trade unions perceived a common 'enemy'. This, therefore, raises the question of the problem of the manner in which the true class relations in the production and financing of houses have been distorted by state administrative bodies and the diverse forms of welfare organisation. The demonstrable aim of both state and private welfare institutions has been a real concern with such visible problems as homelessness, excessive rents and deteriorating housing repair, but at the expense of long term solutions to problems in the housing process. A variety of ideologies has been offered to explain these visible problems but their parameters are always so narrow that their ultimate consequence must always be the necessary perpetuation and reproduction of the very problems which they attempt to treat. These bodies usually have both roles of legitimacy and amelioration incorporated within them at the same time. Examples of such state agencies are the Supplementary Benefits' Commission, Rent Tribunals and the Citizens' Advice Bureaux; each of these bodies takes as given the problems

necessary of solution, i.e. 'simple' and visible problems. Examples of such private agencies are Shelter, the Child Poverty Action Group and the All-London Association of Housing Estates.

Shelter was founded in 1966-67, attained the status of a charity in law, and immediately exercised tremendous influence in the mass media and the circles of liberal intellectuals. Its growth can largely be put down to the organising talents of its director Des Wilson- "People love him or hate him but they can't ignore him." ⁵ Two or three times each year Shelter issues statements or pamphlets outlining what it sees as the elements of the British housing problem. Thus ⁶:

"The housing problem is, firstly, a problem of scarcity...Whether economic difficulties, timidity, or a sanguine view of housing needs are the causes, or not, there has been a decline in what previously looked to be a promising housing effort...All three political parties must commit themselves to giving priority to this massive economic and social problem."

This author was given an interview at Shelter's head office

5. D. Wilson, Minority Report, Quartet Books, London, 1973, from the introduction.
6. Taken piecemeal from 'Face the Facts', A Shelter Report, January 1971 and 'Condemned', A Shelter Report, January 1971.

in London and was informed that ⁷:

"...As far as the primary cause of the housing shortage is concerned, SHELTER attributes the shortage to the drift to the cities and the south east...The main disadvantage SHELTER saw about the Fair Rents Bill is that furnished tenants won't be able to get rebates...SHELTER is a political campaign, but not party political. The extent of our real political activity is limited by our status as a charity. But we are political in that we want changes of attitudes and changes of legislation..."

In other words, and once again, housing problems are seen independently of the capitalist mode of production; what is condemned is the manifestation and appearance of something far deeper. Engels would no doubt see this as the 'Proudhonist' solution to the housing problem. ⁸ The essentially myopic attitude of reformist agencies to the problem can be synthesised as ⁹:

"This document is not a comprehensive housing policy. We have avoided comment on issues on which we have no special knowledge. We may have given undue weight to some issues which are especially close to our experience. We have kept our pro-

7. Notes taken on December 5th 1971.

8. Engels (1970) op.cit. Most of his three articles here are attacks on similar reformist attitudes, and well worth careful attention.

9. Shelter, Policy for the Homeless, 1972, p.8 (cover).

posals simple: they are all possible, all practical. They could all be initiated by government, by local authorities, or by the voluntary housing movement in 1972."

But they could not remove the cause of housing problems in a capitalist society. Another such agency commented that "...we're sometimes referred to as ambulance services. We meet specific needs." ¹⁰ What all the welfare agencies have in common, irrespective of their clients or source of finance, is a practice based upon obscuring the class nature of housing rent problems. This effect has already been well documented and it will not serve our present purpose to continue the digression. Research in the area is as constrained in objective as the agencies themselves. ¹¹

The formal social control agent in the determination of rent levels is the rent assessment committee machinery, and it is to analysis of this that we must now turn. Although the idea of 'rent courts' had been proposed as early as 1923, rent tribunals were not constituted until the Furnished Houses (Rent Control) Act (1946). This was of course one of many pieces of welfare legislation enacted by the post-1945 Labour government. Although they had originally been

10. Interview with the Grove Community Trust, February 2nd. 1972.

11. eg. D.Brandon was awarded £30,000 for research by the D.H.S.S. in December 1973. He believes that "voluntary organisations which provide shelter have deliberately exaggerated estimates of homeless people because they have a vested interest in presenting the issue as a serious one". Guardian, January 11th, 1974.

set up in Scotland in 1943 the Scottish tribunals did not provoke such apparently hostile feelings as their English counterparts: one such explanation offered is that "...the Scottish tribunals have seldom if ever been bones of contention, whilst the English tribunals have been the subject of heated debate among lawyers (because) the English variety were constituted in the context of an overall plan for new legislation in the 1940's".¹²

The Act of 1946 was designed to be a temporary statute which would last until the end of 1947, but its provisions were perpetuated from year to year by the Expiring Laws Continuance Act. In 1965 the Rent Act (s.39, I) made sure that its provisions became permanent. The main purpose of the Act was to consider the rents charged where there were furnished lettings, or where there were unfurnished lettings with services provided by the landlord. The Act provided that where a reference had been made to a tribunal, then regardless of the decision of the tribunal on rent to be charged for the future, the tenant should be entitled to a security of tenure for a period of three months from the date of the tribunal's decision, unless the tribunal should decide at the hearing that this period ought to be reduced.

12. A full account of the substantive law relating to rent tribunals is to be found in R.E.Megarry, The Rent Acts, Butterworths, London, 1967, vol.I part v. See also D.C.M.Yardley, 'Rent Tribunals and Rent Assessment Committees', Public Law, 1968, pp.135-53.

As the second Ridley committee had argued in 1945¹³:

"The incidence of the Rent Restriction Acts is so uneven that no single and simple formula can be devised which can be universally applied to produce fair rents...the only solution is to establish some form of Rent Tribunal."

Both rent assessment committees and rent tribunals have their membership drawn from the rent assessment panel. Each tribunal consists of a chairman and two other members, and there is no legal requirement that any of them should be qualified lawyers or professional valuers. The Furnished Houses (Rent Control) Act did not explicitly state that rent tribunals must be professionally staffed, but especially since the Tribunals and Inquiries Act (1958) s.3(I), the tendency has been to have a lawyer as chairman, assisted by a valuer and one 'layman'. (Other than the addition of two members nominated by the Secretary of State for the Environment the post-1972 Rent Scrutiny Boards are not substantially different in composition.) The 1958 Act further provided that the chairman must be selected from a panel appointed by the Lord Chancellor, s.3(I). Of the two members of each tribunal one is designated reserve chairman.

s.42 of the Act of 1946 provided that notice in writing of any reference to the tribunal must be served on the lessor (See also the

13. Cmd.662I (1945) op.cit. para.43.

Rent Act 1965, s.39), and that this notice should require the lessor to give relevant particulars about the contract of the tenancy within not less than seven days from the date of the service of the notice. Regulations governing the application to a tribunal and the actual procedure at the hearing are substantially unchanged from the position in 1946.

Three points must be made about this system of settling disputes between landlord and tenant over rent levels. First, the composition of the tribunals, like the membership of county and high courts, is excessively biased in that members tend to come from one strata of British society. In *Metropolitan Properties Co. (F.G.C.) Ltd. v. Lannon* (1968) this question of bias was considered.¹⁴ The courts will be clearly very slow to hold that bias influenced decisions of rent assessment committees¹⁵:

"It has to be faced courageously that members of assessment committees have private interests which may well be affected by decisions they take, but that, having been selected for their superior judicial and professional attainments, the community has assumed the risk implicit in the setting-up of such tribunals...indeed they are expected to have regard to their own personal experience and to the knowledge which

14. 1 All E.R. 354. See also *M.P.C. v. Noble and Another* (1965); and H.Shepherd, 'The determination of a fair rent- matters to be taken into account', Justice of the Peace and Local Government Review, July 1970, pp.515-16.

15. *ibid.*

comes to them from a variety of sources as members of a complicated and advanced society. They must do the best they can in the very difficult circumstances; that appears to be the sensible gist of the matter. After all, exactly the same principles apply (do they not?) to Judges of higher tribunals."

Further, the 'lay' composition of the tribunals appears to be as biased as that of the chairmen. In 1971 the fifty five members of the London rent assessment panel included eighteen local councillors, four university lecturers, seven housing managers, eleven senior social workers, two doctors and yet only six trade unionists. In 1962 Susan McCorquodale found that "...in making appointments the Minister apparently seeks to avoid as far as possible the selection of people who are politically committed."¹⁶ One of the most outstanding characteristics of rent tribunal chairmen is that they are the oldest of the chairmen of the different administrative tribunals: over 20% of them are more than 75 years of age. The Francis Committee had observed that "...the professional expertise of valuers inevitably predisposed them to adopt a sympathetic attitude towards market rents" and one piece of subsequent research has recorded that 35% of valuers on the rent assessment panels earned more than £100 per week.¹⁷ Further, the average age of appointment for valuers to

16. S. McCorquodale, 'The Composition of Administrative Tribunals', Public Law, 1962, pp.298-326.

17. G. Hawker, 'Experts on tribunals- Valuers on rent assessment panels, Local Government Chronicle, May 1973, pp.534-35.

the panels was 62, and only 26% fell into the middle age bracket of 35-54. The survey showed that valuers thought that "lay members were esteemed most for their common sense and awareness of social problems, and professional members for their impartiality and sense of justice and fair play." Significantly Hawker says that "...the mixture has worked well, and an important feature has been the cooperation of lay and expert members. The partnership between the two will continue in the rent scrutiny boards...". The simple truth is that many valuers work for private property companies.

The Franks Committee of 1957 was disturbed that the quality of rent tribunals' membership was excessively unprofessional, and that there was little comparability either between or within rent tribunal decisions. "Our general conclusion is that, whilst Rent Tribunals constitute an expeditious means of determining disputes which arise under a policy of rent restriction, their functions have not in the past been defined with sufficient precision and insufficient attention has been given to their procedure." I¹⁸

Our second comment on the status of rent tribunals lies in the inadequacy of representation. Yardley has said that I¹⁹:

"It is common for lawyers to suggest that legal aid ought to be available for the parties who appear before all sorts of tribunals. It is the clear impression

I¹⁸. Report of the Committee on Administrative Tribunals and Enquiries, Cmnd.218, July 1957, p.37. The committee included three lords, three knights, two Q.C.'s and two high court judges.

I¹⁹. D.C.M. Yardley, 'Rent Tribunals and Rent Assessment Committees', Modern Law Review, 196.

of this author that such an innovation is unnecessary and even undesirable. Quite apart from the enormous burden upon the taxpayers, it must be remembered that the lawyers who still most usually appear before tribunals are solicitors, who often have no great experience of the work of the tribunals."

In the United States, Australia and New Zealand it is common practice for the contestants at administrative tribunals to be represented by lawyers at the hearing.²⁰ The Francis committee found that in 2,278 cases in all the rent panel areas excluding London in the year ending 30th September 1970, 1,141 of the landlords (50.1%) and only 212 of the tenants (9.4%) had legal representation.²¹ As we shall soon see, this is part of the explanation for a large majority of all rent tribunal hearings ending in rent increases. A good illustration of the consequences for the tenant of non-representation, especially if he is inarticulate is afforded by a case this author participated in in August 1972, in M. in County Durham.

Case I

Mr. and Mrs. Reg and Nin J. rented a two bedroom semi-detached house in M. (a Category C village in Co.Durham) from the landlord

20. For example see H.Whitmore, 'The Role of the Lawyer in Administrative Justice', Modern Law Review, vol.33, September 1970, pp.481-93.

21. Cmnd.4609 (1971) op.cit. p.51.

a Mr.N, at a rent of £4.65 per week. Both were old age pensioners, and both were nearly illiterate. Both were good tenants, in that their rent was always paid punctually and they had good relations with their neighbours. The landlord decided that he wanted to oust the couple, and therefore proposed to them that "they forget the rent for a couple of weeks as I can see you are hard up." After a fortnight they received a note from the Newcastle rent tribunal informing them that they were to appear at a hearing in three weeks time. At the hearing that landlord, armed with a solicitor and documentary evidence of two weeks non-payment of rent, argued that the couple were bad tenants. Although the chairman pointed out that the tribunal was "essentially a very informal type of hearing" the couple were completely overawed and could not find adequate words to express their situation. The rent was raised to £5.85 per week, and only three months security of tenure was given. The couple expressed after the hearing that "yes, wasn't the hearing fair, but we didn't quite understand what we had done wrong." In the experience of this author this is a common theme running through rent tribunal cases where the tenants are "poor, uneducated folk". The rules of the game appear fair, but are interpreted differently by the contesting parties.

The 'legal philosophy' authorities are themselves undecided as to whether or not a person who has a statutory, contractual or common law right to appear before a tribunal is entitled to appear through a representative, and whether or not such a claim is founded upon the principles of natural justice. In *Pett v. Greyhound Racing*

Association (1970) a majority of the Court of Appeal, and with the support of Lyell, J. expressed obiter that natural justice does not confer a right to legal representation.²² A majority of the same court also held that a prima facie right to a representative exists by virtue of agency and that this right is not excludable by the tribunal itself. In England the consequence of non-representation is that in many cases an applicant is confronted by what he thought would be an informal and 'easy' hearing; in fact he is confronted by a landlord's solicitor who is prepared to argue the case coherently with all the majesty of law and available knowledge at his disposal. The battle for authoritative definitions in this case is heavily loaded in favour of one of the participants: knowledge is power. The position is often intensified by the patronising attitude of chairmen towards obviously inarticulate applicants; this is exemplified by an extract from the introductory remarks at a hearing in May 1972 in Newcastle:

Case 2

Chairman (a well-dressed and polished lawyer): "Now then I want you to understand that you can interrupt the proceedings at any time to ask me a point of law or fact which you have not grasped."

Tenant (22 year-old unmarried mother living on social security):
"I don't understand why I have been asked to come here."

Chairman "Your landlord applied to us for registration of fair rent."

22. (No.2) 1 Q.B. 125.

Tenant "But my rent isn't fair at the moment."

Chairman "Good. So now presumably you understand why you are here."

Rent Tribunals and Fair Rent

We discussed in chapter 3 the criteria which are currently used by the rent assessment machinery to determine 'fair rent', and have pointed out not only the ideological bias in favour of the system of the private ownership of property but also inconsistencies and contradictions within and between the criteria. To pursue a piecemeal analysis of the minutiae of the arbitration machinery would not be particularly useful: this can perhaps be left to 'socio-legal' scholars. But general trends since 1965 must be observed. FIG.II is broken down into more detail on FIG.23 over page. Several prominent factors emerge from this table. First, the sheer volume of work undertaken by the rent assessment machinery (tribunals, committees and Rent Officers) has grown enormously since 1965. In the last year before the 1965 Act tribunals in England and Wales decided 5,318 cases, whereas in the first complete year of the operation of the Act (i.e. 1966) they decided 12,197 cases. Although the Act of 1965 had raised the rateable value limits of the tribunals' jurisdiction, much of this increase can be explained by applications which formally appeared as registrations of rent but in fact were applications for security of tenure. The Francis committee had found by 1971 that out of some 101,000 cases analysed during the period January 1966 to March 1970, 30.2% of rents were reduced, 61% were increased and 8.9% remained

FIG.23 RENT REGISTRATION: AVERAGE REGISTERED RENTS AND CHANGE ON PREVIOUS RENTS.

	<u>First registrations:Rent Act 1968</u>			<u>Re-registrations</u>		
	<u>Average registered rent & p.a.</u>	<u>Increase % on average previous rent</u>	<u>Number of cases</u>	<u>Average re-registered rent & p.a.</u>	<u>Increase % on average reg. rent</u>	<u>Number of cases</u>
<u>Greater London</u>	266	15	11,193	314	10	834
I969						
I970	295	17	9,653	344	11	3,335
I971	322	22	7,922	311	13	4,534
I972	345	27	13,705	355	16	7,485
<u>England and Wales</u>						
I969	202	17	28,036	273	10	1,332
I970	216	21	26,354	286	11	6,177
I971	224	29	24,164	267	14	8,205
I972	242	34	40,957	280	17	15,779
<u>Scotland</u>						
I969	72	50	4,600	-	-	-
I970	75	74	3,421	75	19	309
I971	89	89	2,881	81	31	563
I972	96	81	3,389	90	38	1,845

Source: Adapted and abridged from Housing and Construction Statistics, 1974, table 43, p.50.

FIG.23a RENT REGISTRATION: AVERAGE REGISTERED RENTS AND CHANGE ON PREVIOUS RENTS

<u>Decontrolled with qualification certificate, (Housing Finance Act 1972 Part III)</u>			<u>General decontrol with all amenities (Housing Finance Act 1972 Part IV)</u>		
<u>Average controlled rent</u>	<u>Average registered rent</u>	<u>Number of cases</u>	<u>Average controlled rent</u>	<u>Average registered rent</u>	<u>Number of cases</u>
£ p.a.					
<u>Greater London</u>					
I97I	98	29I	6,798		
I972	92	279	I5,082		
I973	89	283	2,034	98	305
I973	86	289	I,370	I00	I,380
I973	89	288	790	93	2,390
<u>England and Wales</u>					
I97I	74	22I	22,378		
I972	69	2I0	53,675		
I973	64	20I	8,935	76	234
I973	64	205	6,440	73	8,930
I973	63	200	4,430	67	208
<u>Scotland</u>					
I97I	29	I23	2,079		
I972	28	I24	4,I55		
I973	27	I38	45I	27	I26
I973	3I	I4I	I97	27	I3I
I973	30	I37	243	3I	I24

Source: Adapted and abridged from Housing and Construction Statistics, I974, table 43, p.5I.

Notes: The three entries for I973 in each geographical area are for first, second and third quarters.

unchanged. The committee concluded that from the outset the annual combined total of increased and confirmed rents has exceeded the number of reduced rents, and since 1966 the proportion of cases where the previous rent was increased has increased substantially and far exceeded that of cases where the rent was reduced. Further, in 40% of cases where the rent was increased the extent of the increase was in excess of 50% of the previous rent. From the tables in the previous two pages we can see that registrations of rent under the Rent Act (1968) were 23-33% higher than average previous rents in the period 1969-73. Re-registrations were an average 15% higher than this. These large increases were not simply confined to London, England and Wales, for in Scotland in the period 1969-73 average registered rents were approximately 47-160% higher than average previous rents. The early returns for registrations of fair rent under the Housing Finance Act (1972) were always much higher than average controlled rents: 210% higher in 1973 in Greater London, 208% in the rest of England and Wales, 208.2% in England and Wales as a whole and 350% higher in Scotland. It is therefore not surprising that (prematurely) the Francis Committee was able to declare that "...it is the general view that the system is working well."

The rent registration system has not been working as "well as could possibly be expected" partly because landlords have been able to manipulate the various pieces of relevant legislation to their own advantage. By switching over to furnished lettings many landlords have managed to evade even the minimal restrictions which the system exercises

over unfurnished rents. Evening Standard advertisements reveal that in 1963 90% of the flats and houses to let in London were unfurnished; in 1970 only 5% were unfurnished.²³ Unfurnished letting applications are dealt with in the first instance by the Rent Officer (and subsequently, on appeal) and the rent assessment committee if his decision is not accepted by either party. It is a peculiarity that one man can hold such a powerful position, and even more so when we learn that many rent officers are qualified (and often unsuccessful) estate agents and valuers.²⁴ But more, "...a good number of Rent Officers are retired senior members of the police force and a few from HM Forces."²⁵ Although 86% of all tenants' applications to the rent assessment machinery as a whole result in decreases in rent, this can by no feat of the imagination be lauded as a "tenants' victory": a majority of all applications come from landlords (somewhere in the region of 70% in the years 1967-72) and 90% of this class of applications result in confirmation or increase of rent.

23. Evening Standard advertisements are not of course typical portrayals of all the property to let at any particular moment: further, they are restricted to London and the Home Counties. However, there is quite simply no other source for comparable data.

24. Whilst doing this research in Teeside I asked the Middlesbrough Rent Officer "Where do you get your ideas about current market values from?" I was informed "From local estate agents and advertisements in newspapers around the town. I used to work as an estate agent you know, and have a good idea of what's worth what."

25. Cmnd.4609 (1971) op.cit. p.9.

The Tribunals and Inquiries Act (1958) constituted a formal body whose function was to be the overall review of the workings of all administrative tribunals: the Council on Tribunals.²⁶ Although the Council has tended to exercise its functions in an advisory rather than an executive capacity, it is complementary to the rest of the machinery. Its early aristocratic character has remained unchanged. In 1973 its membership comprised Baroness Burton of Coventry the chairman, consultant to Courtaulds and Waddingtons; Mrs.E.Bayliss; Professor K.Bell; C.R.Dale; Mrs.C.Davies; Lady Fulton; Sir Desmond Heap, president of the Law Society in 1972; I.Hilleary C.B.E.; D.C.H.Hirst Q.C.; Sir Alan Marre K.C.B. and Parliamentary Commissioner for Administration; Sir William Murrie GCB, K.B.E. In 1960 the Council was asked to enquire into the effectiveness of Rent Tribunals and reported that "on the whole the tribunals are discharging a difficult task well."²⁷ In relation to a possible appeal from a tribunal's decision, either on a point of law or fact, the Council declared "...by virtue of their experience built up over a period of time, rent tribunals become expert in the problems which face them, and an appeal on the merits to a county court judge sitting with a valuer as an assessor...could only mean that the decision of an expert tribunal would become subject to review by a less expert body." Correct of course, but for the wrong reasons.

26. See further an excellent short article by J.A.G.Griffith, 'Tribunals and Inquiries', Modern Law Review, 1959, pp.125-45.

27. The Annual Report of the Council on Tribunals, 1961.

The Housing Finance Act (1972) was careful to ensure that this system would continue uninterrupted; Rent Scrutiny Boards were set up to adjudicate the 'fair rents' of all local authority dwellings in the United Kingdom. As we saw in Chapter 3, these boards extrapolate council rents from the private sector registrations. Although there are numerous rent scrutiny boards in the United Kingdom as a whole, the Greater London Council area has only one; the seventeen members of this board therefore have a tremendous amount of influence. The actual determination of rent levels is ultimately in the hands of each rent scrutiny board, and local authorities have only an advisory function. Further, there can be no appeal from a board's decision. Thus, "...the Rent Scrutiny Boards shall not be required to have any regard to any representations made to them with respect to provisional assessments"- Housing Finance Act (s.55).

The membership of the London Rent Scrutiny Boards has been carefully chosen: chairmanship is divided between the Tory Baroness Phillips and Sir John Edwards, president of the London Rent Assessment Panel since 1968; more than half of the ordinary members are Fellows of the Royal Institute of Chartered Surveyors. One member, Mrs. Philomena Rossi is the wife of the Tory M.P. for Hornsey. The rent scrutiny boards are open neither to members of the public or the press. In August 1973 Hackney Borough Council complained to the Tory government that rent scrutiny boards should not have any "secret meetings", and that they should be completely open to the public and press. The leader of the council, Alderman Martin Ottolangui said to reporters

that 28:

"We are accusing the Government of wanting to operate these boards in secret. We think justice should be seen to be done. At the moment a lot of people do not feel that these boards will be working fairly on their behalf. These people feel the boards will be weighted as they are made up of a lot of professional people."

But of course the rent scrutiny boards had been set up under the Housing Finance Act with the explicit brief that "council rents at the present time are too low and ought to be brought in line with the private sector on an investment basis." A Department of the Environment spokesman commented that

"These boards will not be sitting like a court of law. It will be more like an office...Their method of work is not appropriate for the public to be allowed in."

The introduction of rent scrutiny boards as continuations of the original functions of rent assessment committees follows a long historical development in the historical relations between central and local government in the twentieth century. The first world war, the early reforms introduced by the Liberal government of 1906, the 'social welfare' legislation of the Labour party between 1945 and 1951- all have

28. Evening Standard, August 2nd. 1973.

contributed to the increase in the functions and extent of the executive. It has been argued that the power of the courts has been gradually superceded by the growing jurisdiction of administrative tribunals.²⁹ Although the bare outline of this process cannot be denied, it makes little difference to the status of rent legislation and housing rent more generally in a capitalist society; the process continues. Some tenants will undeniably be better off under the system of rent restriction; other tenants will gain rebates and rent allowances under the provisions of the Housing Finance Act. But we can assume that those tenants who actually benefit will be those who have a very low level of income; firstly, the means-tested benefits under the Housing Finance Act ensure this and second, properties of the least gross value have tended to have reduced registrations of fair rent under the rent assessment machinery. Further, there has been an increasing number (and percentage) of increases in registered rents; this is partly caused by inflation, but much more so with the realisation on the part of landlords that 'fair rents' are essentially free market rents and therefore near their optimum expectations. In short, housing rent legislation has served efficiently the dual tasks of all law in capitalist society: public harmony and private accumulation.

29. See for example W.A. Robson, 'Administrative Law', in M. Ginsberg (ed) Law and Opinion in England, Stevens & Sons, London, 1959, pp. 193-214.

I. The apparent controversy between Weber and Marx has often been remarked upon, and because their focii of interest diverged it is not surprising that their analysis of the role of law was also different. Both were intensely interested in the new capitalist order, and although both started from the conception of an organised productive unit Marx's focus was the genesis of the struggle between the capitalist and proletarian classes, whilst Weber's was the specific type of capitalist organisation per se. Since Marx and Weber started by asking fundamentally different questions of the capitalist order it is not too fruitful to hold that one must either accept the Marxist thesis and reject the Weberian, or vice-versa. See A.Sahay (ed) The Importance of Max Weber's Methodology, Routledge & Kegan Paul, 1971; T.Abel, 'The Operation called Verstehen', American Journal of Sociology, November 1948, pp.211-218. There are two other points worthy of mention. First, despite the heuristic attraction of the ideal-type method, there are many examples in the 'legal history' literature which demonstrate that an evolutionary framework detracts from an understanding of the actual development of legal rules: see, for example, the anthropological literature in S.F.Nadel, 'Social Control and Self Regulation', Social Forces, 31, 3, March 1953, pp.265-73; J.S.Slotkin, Social Anthropology, New York, Macmillan, 1950.

Second, it seems that the reason why Weber did not provide an explicit formulation of the transformation of legal domination

is that he died before he could finish this section of his work; the concept remains defective. For Weber legal domination was akin to that of the continental legal profession where "...the state is not allowed to interfere with life, liberty or property without the consent of the people or their duly elected representatives. Hence any law in the substantive sense...must have its basis in an act of the legislature."

(For an excellent discussion of judicial creativity see W.Friedmann, 'Legal Philosophy and Judicial Lawmaking', Columbia Law Review, vol.61, 1961, pp.821-45.) This would appear to deny common law and precedent-based domination of the Anglo-Saxon variety. Thus, the essential difference between the Weberian and Marxist approaches to law can be reduced to their orientations towards the notion of power. The Weberian view, located within a faulty analysis of the power struggle under legal domination, cannot explain the emergence of legal rules and its value must therefore be doubtful.

2. The 'classical approach to criminology' had begun as far back as the Justinian Code: it then proceeded through the middle ages and reached a peak with the work of Cesare Beccaria, Francesco Carrara, Enrico Pessina and Jeremy Bentham. The distinguishing feature of this orientation is not, as Vold had described it, "...its concentration on administrative and legal criminology" but rather its conception of man as a free-will, self-determining agent". (Theoretical Criminology, New York: Oxford University Press, 1958, p.23.) It is not coincidental that the leading proponents of classical criminology were Italians in

Catholic Italy and that they grew up in the age of intellectual and economic laissez faire. A sharp divergence occurred towards the end of the nineteenth century with Lombroso (1835-1909) and Ferri (1856-1929), and their contribution was the free-will/determinism debate which in some ways is still the theoretical fence within criminology.

Since the end of the nineteenth century sociologists who have turned their attention to the study of law have done so almost exclusively from the perspective of the criminal law, the criminal actor and criminal law enforcement. Biological, personality and generally positivist theories are entertainingly castigated by David Matza: Delinquency and Drift, John Wiley and Sons, 1964, Chapter I. Since the relative demise of the Chicago school of the 1930's a veritable host of perspectives have been offered as explanatory models, and all within the positivist theme; psychoanalytic theories, cultural transmission, differential association, subcultures, anomie etc. Nearly two decades ago (i.e circa 1956) a reaction to positivism set in, with two books each by Matza, Becker and Lemert, and this new trend has claimed to be concerned with the subjectively-problematic nature of deviance. Its emphasis has been on the differential perception of legal rules and social action by rule-breakers, on societal reaction, stigma and secondary deviation. Important additions have been made by the work of Goffmann, Garfinkel and Sykes; not the least being their engrossing interest with their own values and methodology. The link between the 'social interactionists', or in Britain (loosely) the members of the National Deviancy Symposium, and their contribution

to sociological theory in this area, is their acceptance that in modern societies the distinction between deviance and political dissent is becoming less clear-cut in the eyes of the rule-makers: Horowitz and Liebowitz (1968) op.cit. However, the vast majority of the social interactionists' intellectual output has focused on such esoteric studies as the alcoholics, street corner drop-outs and junkies, systematic cheque forgery, the stuttering habits of north pacific coastal indians and football hooliganism. It seems true that "this sentimental attachment to the underdog" is common both to the interactionists and to the Chicago school of the 1930's. The very phenomena that the U.S. and British governments consider 'problematic' or necessary of solution, are the studies undertaken by these schools. Although alcoholism is a very real problem to alcoholics there are problems nearer to the core of capitalist society more necessary of study by 'radical theorists'. Richard Quinney is nearer the mark than most in this field: The Social Reality of Crime, Boston: Little, Brown & Co., 1970; 'The Ideology of Law: notes for a radical alternative to legal oppression', Issues in Criminology, 7 (1), 1972. Alvin Gouldner has put it more succinctly (The Coming Crisis of Western Sociology, Heinemann, 1970: "Becker's school of deviance thus views the underdog as someone who is being mismanaged, not as someone who suffers and fights back. Here the deviant is sly but not defiant; he is tricky but not courageous; he sneers but does not accuse; he 'makes out' without making a scene. Insofar as this school of theory has a critical edge to it, this is directed at the caretaking institutions who do the mopping-up job, rather than at the master institutions

that produce the deviant's suffering". (p.107).

Marx and Engels had a very different perspective on the 'underdog'. Writing as political revolutionaries who had already witnessed the ineptitude of the Paris lumpenproletariat in June 1848 they say "The dangerous class, the social scum, that passively rotten mass thrown off by the lowest layers of the old society, may, here and there, be swept into the movement by a proletarian revolution; its conditions of life, however, prepare it far more for the part of a bribed tool of reactionary intrigue."- Communist Manifesto (1848) op.cit. This is neither harsh nor idiosyncratic in the context of the aim of the Manifesto and the barriers to the success of the revolution. See also F.Engels, 'Preface to the Peasant War in Germany' in Marx/Engels Selected Works (1962) op.cit. p.645- "The petty criminal class are thus the natural enemies of a disciplined socialist movement..."; and also for the meaning of the 'criminal career', F.Engels, 'The Conditions of the Working Class in England in 1844', in Marx and Engels on Britain, Foreign Languages Publishing House, Moscow, 1962, p.163.

Chapter 2

I. LARGE COMPANIES AND EMPLOYEES' HOUSING ASSISTANCE

Company	Work force	Mortgages	Other	Total help
<u>Prudential</u>	21,365	10,644	-	49%
<u>Nat. West.</u>	48,300	27,600	710 ²	58.6%
<u>G.K.N.</u>	'information unavailable'			
<u>G.E.C.</u>	'All types of housing assistance are given to our employees.'			
<u>Courtaulds</u>	'we are quite unable to help.'			
<u>London Transport</u>	'...unable to assist you at the present time.'			
<u>N.C.B.</u>	248,000	-	64,000 ³	25.8%
<u>Fords</u>	'Employees will receive advice and an introduction to a building society.'			

- Notes
1. Work forces at April 1974. All figures were obtained direct from the companies by personal letter. No replies were received from I.L.E.A., I.C.I. and British Leyland.
 2. The National Westminster Bank figure includes beds in Bank hostels and vetted lodgings in London. Since this figure only includes London aid, then the national percentage is likely to be nearer 60%.
 3. The National Coal Board houses 57,000 of this total directly. In addition some 7,000 houses are provided for mineworkers. Further, increased rent allowances are paid to families required to move beyond daily travelling distance of their home.

Chapter 3

I. The slum problem has often been viewed as one which can be solved in a matter of time given a moderate building programme. This mistake has been made time and time again by government ministers. In 1933 a Ministry of Health circular called on local authorities to estimate the number of their slums, on the basis of clearing them in five years' time: "The government has sounded the trumpet for a general attack on slum evil" said the Minister of Health, Sir Hilton Young in 1933. "I am confident that this movement is going forward with such force and conviction that nothing can stop it." In the following year he added that "...five years was not an unduly long time in which to cure an evil which had been growing for a hundred." Manchester Guardian 1933, and The Times, March 8th 1934, quoted in P.Townsend (1973) op.cit. In 1954 new estimates were called for. "Many local authorities should be able to solve their housing problems in five years or so", stated the Minister of Housing, Harold MacMillan. In 1955 the new minister Duncan Sandys said "From now on we attack on all fronts" and that "...we think there may be about a million slum houses. If this figure proves correct, I suggest we should aim at breaking the back of the problem within ten years." Conservative Annual Conference, pp.91-3, fifth session October 15th, 1971. In 1971 Julian Amery was to say "What we have to do is to mount a final assault to clear the slums, and the overcrowding, improve the homes, and give real help to the people in need...I can see no reason why local councils should not clear away all the existing slums by 1980."

Chapter 4

- I. In a party political broadcast on television, on the same day as the heated exchanges between Julian Amery and Frank Allaun, Peter Walker (the Secretary of the Environment) replied to a Labour accusation that the Housing Finance Act would double rents throughout the United Kingdom: "...It is absolutely untrue. It is an attempt, obviously, before the Bill is in operation for the Labour Party to scare council house tenants, I suppose in the hope of getting a few extra votes at council elections. But the reality is that thousands of council tenants will pay lower rents than they are paying at the present time." Walker owns a mansion at Droitwich and a flat in fashionable Belgravia; he is a multi-millionaire and co-founder of the investment, banking and financial empire that is Slater Walker.

2. For all households in the United Kingdom in 1966 housing expenditure constituted $11\frac{1}{2}\%$ of total expenditure; but in Greater London the proportion was $14\frac{1}{2}\%$. By 1968 both percentages had increased by 1.2: see the Family and Expenditure Survey, 1969. However, for those households with a total income below £15 per week housing expenditure constituted 20% of household expenditure, and more than 25% for households with an income of less than £20 per week. In Camden 45% of those earning less than £12 per week and 37% of those earning £12-15 per week spent more than 33% of their net weekly income in rent for their unfurnished accommodation. It is therefore not surprising that local authority waiting

lists have increased by 20,000 to 170,000 in London in the two years 1969-71.

The Shelter Housing Aid Centre had 9,473 requests for help in 1973, and 20% of all families interviewed were paying at least 30% of their total net weekly income in rent and rates: S.H.A.C. Annual Report, 1973, p.3. Again, in 1973 the Report found that 60% of all families interviewed were paying more than £6.00 per week in rent.

3. We have already seen the provisions of s.50 of the Housing Finance Act relating to the determination of fair rent. From the content of this and from various circulars sent to local authorities by the Department of the Environment, it is possible for a local authority upon the representations of tenants or their representatives to either hold constant or reduce the rent of dwellings currently in a poor state of repair and awaiting improvement.

In Circular 75/72, Fair Rents and the Progression Towards Them, the Department of the Environment instructed local authorities that in the determination of the level of fair rent for properties which were either undergoing improvement or upon which improvements were shortly to commence, the assessed fair rent should reflect the value of the property as improved. (para.42) The same circular reminded authorities that they had a statutory duty to prepare a published schedule of fair rents by February 9th 1973. Many authorities have prepared their schedule of rents and have fixed fair rents for properties which they anticipated would shortly be improved on an 'improved value' basis. However, the current difficulties in implementing improvement schemes means that many properties which, as of February 1973, were

'shortly to be improved' will not now be improved in the short term. This has two implications. The first and most obvious one is that the fair rents which were determined for these properties on the basis that they were shortly to be improved are now inappropriate and require downward revision and fixing at a level which reflects the value of the properties as unimproved. As they are reminded by circular 75/72 (para.4I, p.10), authorities have a duty under s.8 of the Housing Finance Act to "assess a new fair rent for a dwelling without waiting for triennial review (unless within three months of that review) if there have been any changes in circumstances affecting that dwelling which in any way affects the fair rent determined for it." This would seem to be a clear duty on authorities who have 'deferred improvement property' and they may well feel that current rent levels are an adequate fair rent for 'unimproved value.' Authorities should also note that if on the refixing it involves less than 5% of their total Housing Revenue Account stock they can do it without reference to any outside body.

However it can be argued that the deferrment of improvement schemes has resulted in a situation in which fair rent for a property may be less than the rent currently paid for it and there is a substantive case for an actual reduction in the level of rent now paid. One of the accountable factors in the determination of rent levels is the state of repair. Authorities who envisage initiating major improvement schemes in the medium term are reluctant to carry out repairs in the houses still unimproved. However, this leads to a decline

in the state of repair of the dwellings and considerable hardship for the tenants. This would seem to justify the imposition of a new and lower rent level under s.58 of the Act. Another factor which supports this relates to the market-relatedness element of fair rents under the Act. In many local authority areas in which there is broadly a balance in supply and demand for accommodation, the substantial improvement of large sections of council and private property (under the Housing Act, 1959) has resulted in a major relative decline in the amenity level of unimproved council houses. Since relative amenity level is a statutory element in the rent determination process then such a decline is ipso facto an element in the case for fixing fair rents at a low level.

Finally, it is noted that local housing authorities have been reminded by Circular 75/72 that they have a duty to take the representations by tenants or their agents to the effect that there has been a change of circumstance affecting dwellings, which duty arises under s.58 of the Act, and that they likewise have a duty to backdate any such changes or reduction in rent level to the point of impact of that change in circumstances. (para.43).

Chapter 5

I. There is little recorded research in the area of rent tribunals, and none at all which has attempted to relate administrative tribunals as a whole within the theoretical structure of capitalism. Most of the research to date has been carried out in the manner for which British empiricism is now so well known-- statistical surveys in dense urban areas. The first was a survey by the Council on Tribunals into the membership of rent tribunals: Franks Committee (1957) Cmnd.218 op.cit. especially paras. 160-66. The second was a survey in Islington under the direction of Michael Zander of the London School of Economics: 'The Unused Rent Acts', New Society, September 12th 1968. This produced the startling conclusion that in eight Islington streets at least, a high proportion of the respondents had not only not heard of the Rent Acts but even did not know how or where to apply for a registration of fair rent. The author of this research admitted that it "lacked true methodological rigour." The results of a new survey under the auspices of Sheffield University are eagerly awaited.

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