Housing, Race and Law

Martin Macewen

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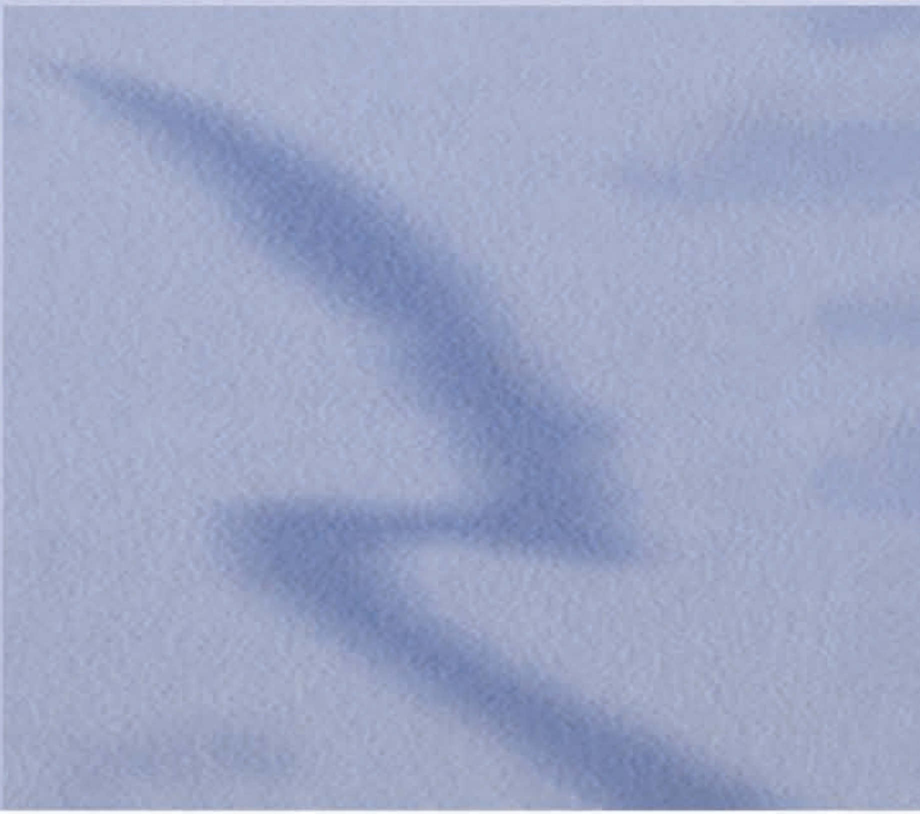

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The British Experience

Martin MacEwen

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ABBREVIATIONS

ADA	Association of District Councils
AMA	Association of Metropolitan Authorities
BSA	Building Studies Association
CAB	Citizens' Advice Bureau
CARD	Campaign Against Racial Discrimination
CBI	Confederation of British Industry
CHAC	Central Housing Advisory Committee
COSLA	Convention of Scottish Local Authorities
CRC	Community Relations Council
CRE	Commission for Racial Equality
DAFS	Department of Agriculture and Fisheries for Scotland
DoE	Department of the Environment
EAT	Employment Appeal Tribunal
EC	European Community
EOC	Equal Opportunities Commission
FBHO	Federation of Black Housing Organisations
GLC	Greater London Council
HAC	Home Affairs Committee; housing advice centre
HAG	Housing association grant
HAS	Housing Advice Switchboard
HMSO	Her Majesty's Stationery Office
IAP	Inner area programme
ICD	Inner Cities Directorate
IDS	Industry Department for Scotland
IEHO	Institution of Environmental Health Officers
ILPA	Immigration Law Practitioners Association
IoH	Institute of Housing
IRR	Institute of Race Relations
LAG	Legal Action Group
LARH	London Against Racism in Housing
LCC	London County Council
LHU	London Housing Unit

Abbreviations

LPAC	London Planning Advisory Committee
LRC	London Research Centre
LRHRU	London Race and Housing Research Unit
LSS	Law Society of Scotland
MSC	Manpower Services Commission
NACRC	National Association of Community Relations Councils
NACRO	National Association for the Care and Resettlement of Offenders
NCCI	National Committee for Commonwealth Immigrants
NCCL	National Council for Civil Liberties
NCWP	New Commonwealth and Pakistan
NDCF	National Development Control Forum
NFHA	National Federation of Housing Associations
NHPRA	North Hyde Park Residents Association
OMCS	Office of the Minister for the Civil Service
PAG	Planning Advisory Group
PAN	Planning Advice Note
PAS	Public Attitude Surveys
PEP	Political and Economic Planning (later PSI)
PSI	Policy Studies Institute (formerly PEP)
RRB	Race Relations Board
RSG	Rate Support Grant
RSRG	Radical Statistics Race Group
RTPI	Royal Town Planning Institute
SCOLAG	Scottish Legal Action Group
SCPR	Social and Community Planning and Research
SCRE	Scottish Council for Racial Equality
SDA	Sex Discrimination Act
SDD	Scottish Development Department
SED	Scottish Education Department
SEMRU	Scottish Ethnic Minorities Research Unit
SFHA	Scottish Federation of Housing Associations
SHHD	Scottish Home and Health Department
SI	Statutory instrument
TCPA	Town and Country Planning Association
TRO	Tenancy Relations Officer
UDP	Unitary development plan
UKIAS	United Kingdom Immigration Advisory Service
YOP	Youth Opportunity Programme
YTS	Youth Training Scheme
WLDF	Women's Legal Defence Fund

THE READER'S CAVEAT

A writer of limited vision
embarked on a book with a mission.
As he fumbled and faltered
the facts he had altered
to match arguments which had arisen.

The product was limped and lame:
just a gloss on a skeletal frame.
It didn't add much
but a thought or two, such
that its length gave weight a bad name.

A nose for the truth, well he knew it
would sniff out the lean from the suet.
But the fiction he wrote
gave facts a footnote.
And his nose for the truth? Well, he blew it.

INTRODUCTION

According to a 1989 survey, a majority of the British population believe that we live in an unjust society. A prime facet of injustice is racial discrimination. Together with employment and education, housing is one of the most important aspects of an individual's life: moreover, to the extent that it facilitates or inhibits family cohesion and support, housing frequently constitutes a precondition of an individual's educational, social and economic development. The success or failure of the legal provisions designed to promote equality of opportunity in housing, and the policies and practices which further or retard their implementation, must be viewed as a litmus test of social justice.

A plethora of public, private and personal considerations affect the tenure, location, type, condition and quality of our housing. The isolation of race or colour is clearly problematic. This fact often legitimises or gives plausibility to non-discriminatory explanations for racial disadvantage in housing.

Clearly, too, law is an imperfect instrument for effecting social change. Nevertheless, to be given any meaning, law must arrogate a claim to its social impact, a proposition emphasised by the Conservative Government's constant endorsement of the primacy of the rule of law. Consequently the question 'Has the law achieved its purpose?' demands a response, even if no Government has been willing to provide one. This book attempts to examine the question and to provide a tentative answer.

In its first Annual Report, the Race Relations Board (RRB, 1967) summarised the role of legislation as follows:

1. A law is an unequivocal declaration of public policy.
2. A law gives support to those who do not wish to discriminate, but who feel compelled to do so by social reasons.

3. A law gives protection and redress to minority groups.
4. A law thus provides for the peaceful and orderly adjustment of grievances and the release of tension.
5. A law reduces prejudice by discouraging the behaviour in which prejudice finds expression (para. 65).

While this statement of purpose largely reflects the tenor of Parliamentary debates for those advocating such legislation it makes a number of assumptions which require to be tested.

First, the extent to which law represents an unequivocal declaration of public policy will be a reflection, in part, of the specific provisions within the legislation. Thus the 1965 Race Relations Act, in restricting its ambit to places of public resort, remained implicitly equivocal concerning all other aspects of racial discrimination including direct discrimination in both public and private housing. Similarly the Race Relations Act 1968, in ignoring practices which, while not overtly discriminatory, had the effect of racial disadvantage, equivocated on the scope of unlawful practice, including allocation policies in public housing.

Second, while in a formal sense the law may be unequivocal in its declaration of public policy, in reality the declaration cannot be meaningfully severed from how public policy is to be interpreted and given effect. Thus the debates in Parliament on Section 71 of the Race Relations Act 1976 demonstrate that the 'duty' imposed by that section on local authorities was acknowledged to be so vacuous that enforcement was not practicable. Indeed, Lord Hailsham's description of Section 71 as 'cosmetic' has been borne out by the fact that local authorities may choose to ignore that section and by the fact that the Home Secretary has never sought to prosecute its observance.

Third, while legislation may provide protection and redress in respect of unlawful acts, the extent and quality of such measures may reflect not only the draftsman's skills but also the political conviction of the legislature itself.

Certainly the multiplicity of aims listed recognises that different views and priorities may conjoin to enact Race Relations legislation but, and this underscores a fourth assumption, there is no recognition that such motives may conflict and the legislation in its final form represents compromises obscuring unresolved conflict. Thus, while the law may equally meet all the objectives outlined, the fourth, that of providing for a peaceful adjustment of grievances and release of tension, has no necessary correlation with the other objectives. If the primary purpose is conflict management and the orderly release of tension, the other objectives may be viewed as a necessary psychological payment in the bartering process. The down-payment is the legislation but the rental, in the form of its implementation, will be subject to period review and varied in accordance with prevailing circumstances and, more importantly, the prevailing view as to its relevance. The Brixton disturbances in 1981, and the Scarman Report which followed, pointed to racial discrimination and disadvantage as a structural component in urban unrest. The report did not suggest a strengthening of the Race Relations Act but it did indicate a need for complementary measures of support, some of which followed in the form of improved community policing and a sharpening of urban programme assistance. In contrast, following the disturbances in Handsworth in 1985, Government called merely for a police inquiry: the Home Secretary, Douglas Hurd, declared that the riots were not 'a cry for help but a cry for loot'. As Gaffney (1987) has shown, Government clearly denied other structural causes of the riots - including racism and institutional discrimination - and sought 'a clear view' in terms of social control and policing, thereby distancing itself from any association between unemployment and social problems and the riots. In this light the rental payment for social control, while clearly demanded in respect of discrimination, was not to be effected but was to be paid in terms of policing. The perceived need for a peaceful adjustment of grievances and release of tension had been superseded by a perception that adjustments in policing would solve the problem: in doing so it substituted a narrow functionalist view of policing society for a broader structural view of underlying causes to the disturbances.

Such a change of course, without rational explanation, constituted not merely a refutation that racial discrimination and racial disadvantage were a principal cause of social unrest but, in its failure to identify any other rational explanation, it appeared to add weight to the view that the black community was pathologically predisposed to riot. Hurd did not say blacks cried for loot and not for help but the inference was unequivocal.

This conclusion may question the parameters of the last stated objective of legislation, that it reduces prejudice by discouraging the behaviour in which it finds expression. Given that Hurd's view was not supported by evidence and preceded the report of the limited 'authorised' inquiry (the Silverman inquiry and the Black review supplied major 'unauthorised' versions), it is both prejudicial and racial in its connotation (Gaffney, 1987). Given that it was made by the Secretary of State responsible for race relations in terms of the Race Relations Act 1976, it was significant as a pointer to Government's response to urban unrest and to racial discrimination. With equal clarity, however, his utterance (and behaviour in terms of policing responses) was irrelevant in terms of legislative control over racial discrimination. In short, while the law relating to discrimination is likely to influence behavioural norms and the prejudices which underpin them, the countervailing expression of prejudice, not covered by legislation, may well sustain prejudice in other areas, such as employment, education or housing, where its expression in behavioural norms would be unlawful. The result will be either a severance of beliefs from behavioural norms - thinking one thing and doing another - or a surreptitious confluence of behaviour with beliefs. In the former instance, prejudice remains severed from but unaltered by changed compliant behaviour and in the latter, a lack of enforcement negates the legislative intention of changing behavioural norms even when they are in the form of unlawful behaviour.

Some critics of the law have been accused of separating the law from social life, which has led them to an expectation that it can direct social change. As Hepple (1987) has observed, the ineffectiveness of the Race Relations Act 1976 is clearly demonstrated by the PSI Third Survey (Brown, 1984) showing a continued gap not only in the unemployment rates, job levels, earnings and household income but also in the quality of housing between ethnic minority and white people; an outcome confirmed by the 1986 Labour Force Survey (Department of Employment, 1988). The Act has had some effect in breaking down barriers in access to jobs, housing and services in that overt expressions of discrimination which were familiar twenty years ago are no longer so explicit and equal opportunity expressed as a norm of social behaviour is rarely challenged. Nonetheless frustration is expressed that discrimination has been driven underground and entrenched attitudes and behaviour emerge in the resultant disadvantage experienced by Britain's ethnic minority communities. However, to criticise the legislation in this area by reference to some obvious procedural and substantive weaknesses and to suggest that substantial change would be effected by sympathetic revision would appear to ignore the insights provided by sociologists into law as an instrument of social change.

Given the relative weakness of ethnic minority groups in the United Kingdom in relation to economic and social power, there are significant structural handicaps. First, this handicap is evidenced in the difficulty of negotiating effective race relations legislation without significant concessions either within the legislation itself or in related legislation, as illustrated, in relation to immigration, by the 1962, 1968, 1971 and 1988 Acts and in relation to citizenship by the British Nationality Act 1981. Second, this handicap is evidenced in the difficulty of securing not merely adequate instruments of enforcement but also the social ambience which would act as a lever effectively to match objectives with the reality of practice whether in terms of administration or in terms of judicial attitudes and approaches.

One does not have to link the relatively weak economic and social position of ethnic minority groups with the approach of the pluralists, who would interpret legislation as a compromise between conflicting social groups, or with Marxist or other theories of power which interpret the legislation as a mechanism for maintaining social control, to appreciate that the law is an expression of power both in its formulation and in its implementation. Thus Hepple (1987) has argued that the more powerful social position of women along with the influence of EEC law has resulted in the Sex Discrimination Act 1975, which shares almost identical wording[1] with the Race Relations Act 1976, being given much more liberal and sympathetic interpretation by the judiciary. Furthermore although such power relationships will be reflected in social structures and informal policies and practices which emanate from such structures in housing as elsewhere, as Henderson and Karn (1987) have demonstrated, it is not possible to understand the extent and forms of racially discriminatory outcomes purely by reference to such policies. They have argued that discrimination in the distribution of council housing is not predominantly a result of the application of particular allocation policies but, contrary to the prevailing view of racial discrimination, primarily a consequence of individual and collective attitudes.

In addressing solely one aspect of unlawful racial discrimination, in this instance housing, there is an inherent danger that its interdependence with other aspects of racial disadvantage, principally employment and education, is obscured. Moreover the extent to which racial disadvantage in housing has broader social and economic causes than one encompassed by a concept of racial discrimination, however defined, begs fundamental questions regarding the meaning of equality of opportunity and affirmative action. Following the Housing Act 1949, reference to the 'working class' in legislation virtually disappeared but class or a perception of class remains an influential determinant of opportunity. To discriminate on the basis of class is not unlawful: so far as ethnic minority groups are located within broader social structures of British society, as opposed to a distinct housing class, racial disadvantage will result irrespective of racial discrimination. Housing authorities, estate agents, building societies and landlords frequently base decisions on the economic circumstances of their applicants, clients and members. Indeed it would be imprudent and on occasion unlawful (see for example the Building Societies Act 1962) to do otherwise. Again, where such decisions are shown to be justifiable in economic terms and untinged by racial discrimination, racial disadvantage is likely to result because of the disproportionate representation of ethnic minority groups in lower income brackets. The Race Relations Act 1976, inadequate as it has proved to be in tackling direct and indirect unlawful racial discrimination, does not constitute an assault on discrimination based on socio-economic class. Its objective of achieving equality of opportunity is consequently purely relative: the conferring of benefits and subjection to disbenefits in access to decent housing, where based on class or status, recognise no legal master. Accordingly the boundaries of racial justice according to law define a limited area for intervention. It is acknowledged that the focus of this book on housing, race and law has irrational limits reflecting the artificiality of legislation itself. Nonetheless an appreciation of the capabilities of law as an instrument of social policy, it is hoped, will inform the debate beyond such boundaries and in turn enable the law to become more effective.

But even within such confines the structure and approach to legislation require explanation. This is attempted in Part I, 'The Framework'. The first chapter attempts to highlight central arguments concerning legislation and race.

Rather than constructing one theoretical hypothesis as an analytic tool in dissecting the discussion of policy and practice, it attempts to outline a multiplicity of perspectives, which not infrequently conflict and which anticipate the contradictions in law and practice exposed, both explicitly and implicitly, in the discussion of various facets of public and private housing affected by race legislation. In attempting to describe a context of contemporary legislation, the second chapter refers to the pattern of ethnic minority settlement and outlines some demographic and social characteristics of minorities relevant to housing. The third chapter attempts a legal backdrop to UK anti-discrimination legislation. It outlines some issues and approaches, examines the earlier responses of the courts to anti-discrimination and public policy in the interpretation of common law and puts the case for anti-discrimination legislation.

The fourth chapter describes the provisions and effect of the first (1965) and second (1968) Race Relations Acts, attempts a brief assessment of the latter in respect of its impact on housing and outlines proposals for change which led to the 1976 Act.

The fifth chapter attempts a concise summary of the Race Relations Act 1976 in respect of its application to housing, incorporating references to subsequent judicial decisions and legislative amendments. The aim is to provide a reasonably comprehensive but concise outline of contemporary housing rights and duties prescribed by the 1976 Act and, in so doing, to enable an assessment of its potential and actual relevance in its application to the subject areas that follow.

Part II, 'The Law in Practice', deals with the experience of the legal provision by reference to subject areas: urban planning (Chapter Six), homelessness (Chapter Seven), public housing allocation (Chapter Eight), housing associations (Chapter Nine), and private housing (Chapter Ten). The attempt here is to provide some integrity within each chapter, enabling the reader to acquire an appreciation of law and practice on race relating to the subject under discussion without, of necessity, having to refer constantly to the various theoretical perspectives, or to the general description of the 1976 Act provided in Part I. The subject chapters describe what the law is and its evident failings. Inevitably in each subject area the treatment lacks uniformity, reflecting not only the author's own predilections and knowledge, or lack of it, but also the selective nature of information available (and accessible).

Part III, 'Evaluation and Reconstruction', attempts to regroup, evaluate and progress. The purpose of addressing 'Institutional Responses' (Chapter Eleven) is twofold. First, in recognising that the law in its formulation and implementation reflects mongrel interests, it attempts to outline the expression of such interests affecting race and housing in the key institutions in government and administration and in the housing and legal professions. Second, while the subject areas dealt with in earlier chapters may refer to such interests, their segregation provides an opportunity both to avoid repetition and to attempt rationalisation. The purpose here is not to analyse government and the professions nor to advocate institutional reforms to such bodies, desirable as they may be, but to outline in what way their current practices on race and housing restrict or facilitate the implementation of the race relations legislation.

The penultimate chapter (Twelve) attempts an assessment of the Race Relations Act 1976 in respect of housing and the concluding chapter (Thirteen) posits proposals for reconstruction in a broader social context.

This structure is designed to serve a number of related purposes. First, for the legal adviser it attempts to state, in a reasonably comprehensive fashion, what the law is and how it has been interpreted. Almost inevitably in attempting to provide a useful legal tool, by referring to the substance and interpretation of the major legal provisions of the Race Relations Act 1976 in Chapter Five, while keeping the text to a manageable length, what is sacrificed there is an assessment of the relevance of these provisions to contemporary issues in housing. To counter-balance such legalistic description and to emphasise the relevance of the legislation to the housing profession, a broader contextual approach is given to the subsequent chapters which focus on distinct areas of housing concern. The purpose here is not merely to provide a broader based approach for the lawyer, but to provide a useful reference for housing officials, local government officers, race relations advisers and other service providers. Whether or not the discussion of the policy implications of the legislation and the opportunities and strategies for change manages to transcend such 'professional' interests, suffice it to say that some attempt has been made to place the discussion of race, housing and law in a broader context. Earlier drafts included a chapter on racial harassment, a key concern to potential victims and a growing number of housing authorities. Its omission is due to three factors; first, it does not fall within the enforcement provisions of the race relations legislation; second, there is a growing literature on the subject area; and, third, space demanded excisions. Its omission is neither a denial of its importance nor of its relevance particularly in respect of public housing allocation policies.

The approach to the subject of race, housing and law adopted in this book is essentially eclectic. Evidently, however, the author's attitude will influence the selection of issues and how they are debated. The text is not an encyclopaedic compendium of theory and practice but a partial and subjective statement based on a number of assumptions. These include the following: first, that racial discrimination is a debilitating practice which requires to be challenged both at a personal and societal level; second, that while law may not be the sole, or even the most effective, sanction against racial discrimination, it provides, at minimum, a potential for its control; third, that its relative influence as a mechanism of control is largely conditioned by policies and practices of central and local government; fourth, that such policies and practices are a reflection of ideology and of the power relationships from which ethnic minorities are largely excluded; and lastly such exclusion is likely to ensure the persistence of racial discrimination as legal controls clash with countervailing ideology.

To question the efficacy of existing legislation, even within such a general framework of assumptions, requires some disaggregation of issues to be addressed. The following questions are implicit recurrent themes throughout the text:

1. What is the nature of racial disadvantage in housing?
2. What is the relationship between such racial disadvantage and the law, principally as expressed as unlawful discrimination in terms of the Race Relations Act 1976?
3. How has the law been interpreted and applied?
4. In the context of the stated objectives of the legislation, how successful has it been in respect of housing provision?
5. To what extent has such success been promoted or counteracted by attitudes, policies and practices of

central and local government and others involved in the housing process?
6. In the light of this analysis, are the objectives for legislation practicable? If not, in what way should they be revised?
7. What recommendations for change in legislation and policy result from this discussion?

Martin MacEwen
Edinburgh

Part I

THE FRAMEWORK

Chapter one

THEORETICAL PERSPECTIVES

RACE AND RACISM

In dealing with the issue of race it is essential to accommodate a parallel and apparently mutually exclusive dualism. In the first place as Miles (1982) has demonstrated there is a fundamental challenge to the legitimacy of the use of the term 'race'. The term has been defined (Bulloch and Stallybrass, 1977) as a classificactory term broadly equivalent to sub-species. Applied most frequency to human beings, it indicates a group characterised by closeness of common descent and usually also by some shared physical distinctiveness such as colour of skin. Biologically, the concept has only limited value. Most scientists today recognise that all humans derive from a common stock and that groups within the species have migrated and intermarried constantly. Human populations, therefore, constitute a genetic continuum where racial distinctions are relative, not absolute. Any remaining categorisation of races, then, relates only to gradients of frequency delineating the varying geographical incidence of particular genetic elements common to the whole species. It is also acknowledged that visible characteristics, popularly regarded as major racial pointers, are not inherited in any simple package and that they reflect only a small proportion of an individual's genetical make-up. In short, the term race is applied more often to phenotype - the physical characteristics, such as colour, more frequently found in particular ethnic groups - than genotype - those distinctions which have some biological underpinning. Socially race has a significance dependent not upon science but upon belief. As a consequence it might be argued that as soon as there was a popular recognition that the term 'race' had no scientific base its utility would diminish. Nonetheless, it is a social fact that people see themselves in terms of group. However frail their objective bases, such groups assume social importance and race relations between groups so identified become a social fact irrespective of their lack of any scientific underpinning. Unfortunately the history of racial ideology from Roman slavery through to social Darwinism, imperialism, antisemitism, the British Movement and the National Front represents a continuum of association and practice which remains embedded in much popular thinking about race. As the well documented increase in racial attacks demonstrates, the term 'racialism' is an important and accurate description of social behaviour which has not been undermined by the scientific irrelevance of the description 'race' pertaining to biological, genetic or other objective descriptions relating to the differentiation of human groups.

ETHNICITY AND INTEGRATION

The terms 'ethnic' and 'ethnicity' are frequently used, erroneously it is suggested, as a substitute or euphemism for race and to that extent are subject to the same criticism. More correctly, however, they may be used to incorporate the homogeneity of a group of people in terms not of physical appearance but of religious, social and cultural norms. Consequently reference to ethnicity in relation to Pakistanis, Chinese or Sikhs, for example, may well be relevant in relation to behavioural norms, particularly in determining the nature of local authority provision for the needs of such groups which may in part be determined by such factors. Evidently, however, it is possible, and indeed not uncommon, to make generalised and insensitive value judgments based on a perception of behavioural norms attributable to the ethnicity of a particular group and thereby to restrict or limit access to private or public housing without, of necessity, having any intention to discriminate on racial grounds adversely.

Roy Jenkins, as Home Secretary, introducing the Race Relations Bill 1968, rejected the concept of assimilation in favour of integration - a mutual respect for different cultures and religions. This symbolised Government's recognition that being British and claiming equal opportunity could not and should not be dependent on a conversion to English ethnicity, i.e. the dominant social, cultural and religious norms. But what Governments have meant by integration has been far from static. Some homilies have been offered by Government Ministers on this subject following the demand by some Muslims that Salman Rushdie's Satanic Verses be banned. Speaking to Anglo-Asian Conservatives in Coventry on 14 April 1989, Mr Timothy Renton, the Home Office Minister of State, advised that equal opportunity would remain only an aspiration if ethnic minorities did not choose the route to greater integration (Knewstub, 1989). 'That means making a very real effort to communicate in English, to learn the norms and customs of British life. It means looking outward rather than living introspectively within the confines of a small community.' At the same time that Renton was stressing the desirability of a single school system, the Labour Party published its own policy proposals which accommodated separate Muslim schools. Clearly there is no one view in the host community as to what integration means or how it is best achieved.

Nor is there unanimity amongst the different ethnic minority communities. Modood (1989) has observed that the right-wing 'Become British or go home!' attitude is threatening, coercive and likely to produce the insecure and ill-fitting communities it aims to avoid while in contrast the 'Become black and fight racism' of the left is equally assimilationist to the Asian communities: the choice - become quasi-whites or quasi-blacks - appears stark and unreal. In a 1988 BBC Network East telephone poll on the question 'Should Asians be called Black?' nearly two-thirds of the over 3,000 who rang voted No. Consequently while Afro-Caribbeans and Asians may choose to identify with the Black label as a symbol of mutual oppression against racism and racial discrimination, Asians, in particular, see the danger of cultural submergence and loss of identity in this process. The road to social integration and race equality politics, Modood observed, has to go through ethnicity, not against it: people who feel more secure in their own identities and in some ability to control the pace and nature of change are more likely to adapt with confidence and become genuinely bi-cultural. Western secular individualism, Modood argues, is no less a threat to historical communities than western racism, particularly as in Britain today when such individualism is far more confident and unapologetically interfering.

Ethnicity has an obvious spatial dimension in the provision of housing - such as sheltered housing association provision for the elderly Chinese, Sikh or Afro-Caribbean communities. But choice in housing provision may demonstrate a clash of cultural values which are not readily reconciled. Moreover the law will not be a neutral arbitrator but will reflect inherited values. Conversely if the law is to be certain and predictable it cannot be all things to all people. It may have to seek a median path by eking out a common core but tolerating deviation.

INEQUALITY IN HOUSING

As Smith and Mercer (1987) have observed, the last twenty-five years have witnessed a dramatic expansion of research and writing on the experiences of black people in urban Britain, a large proportion of this work having focused on residential patterns and access to housing. This had often centred on relative disadvantage in terms of a short-lived problem associated with immigration experienced by refugees, migrant labourers and their dependants. Much of this work had depended on the legacy of Park, and the Chicago school of urban geographers, who tended to apply a functionalist and deterministic interpretation to the nature of settlement and social segregation. In such analyses it was often assumed that, in the British context, a process of acculturation and assimilation would dissipate the geographically distinct patterns of settlement over time: thus so-called ghettoes of black concentration would disperse as the need for social support structures waned and opportunities for job and housing mobility increased. By the 1970s and 80s many researchers and commentators began to face the reality that racial inequalities in housing persisted despite the introduction of legislation to combat direct and indirect discrimination and despite the longevity of many so-called immigrant communities. As a consequence theoretical perspectives on race and housing moved from a descriptive concern with settlement patterns and processes of acculturation towards an address of the phenomenon of direct and indirect discrimination based on racial perception. Thus from the 1970s the terms 'structural disadvantage' and 'institutional racism' became part of the common vocabulary and their validity was reinforced by a number of studies, particularly those by PEP and the Runnymede Trust. These showed that, despite the general improvement in housing conditions from the Second World War resulting in few dwellings now lacking the basic amenities and overcrowding being less widespread, black households continue to live in properties that are physically amongst the worst of the housing stock whether in the private or public sector. Brown (1984) demonstrates that although Asian and Afro-Caribbean households have shared in the improved benefits attributable to local authority programmes aimed at slum clearance and rehabilitation of the existing housing stock they remain over-represented in the country's most deprived enumeration districts. Generally they suffer the same extensive relative disadvantage in housing terms as they did ten or twenty years ago.

CAUSES OF INEQUALITY

While the evidence of continuing racial inequality in housing is undeniable its causes are less easy to explain. One basic dichotomy in explanation is between the one extreme of ethnic choice determining patterns of relative disadvantage and racial segregation as opposed to institutional constraints arising from indirect and direct racial discrimination. The former approach attempts to define the issue of the housing experience of Britain's black ethnic minorities as being predominantly a reflection of cultural choice. Such theories, however, have difficulty in maintaining credibility in the face of the evidence that black households have been found paying more rent than whites for lower-quality properties (Doling and Davies, 1982) and that black owner-occupiers have frequently found access to mortgage finance restricted. Access to private housing, as a result, often centred on older properties in the inner city which are not infrequently expensive to maintain and slow to increase in value (Ward, 1982; Karn et al., 1985). Similarly in the public sector studies by Flett, (1979), Phillips (1986), Henderson and Karn (1987) as well as the investigations of the Commission for Racial Equality (Hackney: CRE, 1984b; Liverpool: CRE, 1984a) in tandem with studies of housing association experience (CRE, 1983b; Niner, 1985 and 1987; Dalton and Daghlian, 1989) demonstrate significant disadvantage among black households in this sector.

Cumulatively these studies of housing in both the public and the private sector confirm the conclusions drawn from Brown (1984) in the second chapter but at a more specific level that while it may be difficult to identify the extent to which the genuine exercise of choice by ethnic minority groups in relation to housing tenure and location may limit housing opportunities, there can be no doubt that discrimination both direct and indirect is a more significant factor in explaining relative housing disadvantage. This conclusion is far from new. In 1967 Political and Economic Planning (PEP, 1967) issued a report based on interviews with both white and black people on a series of situation tests carried out in six towns where they focused on opportunities available in the fields of employment, housing and commercial services. In housing it was discovered that out of a total of sixty personal applications to landlords, the West Indian applicant was refused accommodation or asked for a higher rent than the white Englishman on forty-five occasions and was discriminated against in twenty out of thirty inquiries about accommodation through estate agents. In summary the tests revealed that black people's views about the existence of racial discrimination were not exaggerated but were closely related to their own experience or to their knowledge of the experience of others. The findings showed that the groups who were most physically distinct in colour and racial features from the English control group experienced the greatest discrimination and that the group who were culturally most like the English and who sought integration were the most likely to experience rejection. The report established that racial discrimination was a serious and growing problem in Britain and that it related more to colour than to ethnic origin or culture.

GENDER AND RACE

There is strong evidence that the needs and aspirations of black women suffer double jeopardy: they are under-valued, under-researched, under-resourced, but far from understood. Superficially it might be argued that the anti-discrimination legislation in dealing with both race and gender discrimination would secure that black women were no less under-privileged in housing provision than black men and that similarly they were no more discriminated against than white women. The evidence suggests that this is not the case (Institute of Housing, 1987a). Debates on the purview and efficacy of legislation relating to race have been dominated by men, both black and white, while the gender issue has been dominated by white women. Consequently, despite the fact that black women, and young black women in particular, are a growing and significant section of society their voices remain unheard and their experiences largely ignored (Parmar, 1988: 197). Moreover the very segregation of race and gender in legislative provision has, if anything, failed to see the racialised gender roles ascribed to black women as of any significance. As Parmar has argued in the context of young black women, the experiences of living in a racist society are determined by factors of race, gender, age, class and sexuality, and it is a simultaneous operation of these oppressions which shapes their experiences and contributes to their significant lack of power in society. Despite the similarity in the legislative provisions of the Sex Discrimination Act 1975 and the Race Relations Act 1976 and the occasional consultations which have taken place between the Commission for Racial Equality and the Equal Opportunities Commission, the extent to which cooperation has taken place has been limited and piecemeal. The result has been a lack of any concerted strategy to secure that black women's interests in housing, as in other spheres of service provision and employment opportunity, are adequately addressed.

The Institute of Housing (IoH, 1987a) has demonstrated that, despite a decade of equality legislation, women are still disadvantaged in almost all areas of their lives. Furthermore, although the vast majority of local authorities and a number of organisations have now adopted equal opportunity policies, it would appear that in many cases these simply pay lip service to the concept and have had little impact on practice. Part of the reason why the situation of women has been slow to improve can be attributed to the fact that it has often been assumed that women's needs are not distinct from men's and that any policies or initiatives aimed specifically at women are an unnecessary waste of resources. The reality is, however, that the pattern of women's lives is quite different from men's: women carry the main responsibility for bringing up children, for looking after families, for work at home and for looking after people who are ill, disabled or frail. Females are subjected to discriminatory behaviour from an early age: at school they receive different education and at work less training, resulting in fewer skills, low pay and low status jobs. Despite their resultant dependence, in disproportionate terms, upon the public and social services, such services have rarely reflected women's needs in proportion to their number. The 1986 Institute of Housing survey (IoH, 1987a: 6 et seq.) confirmed the generality of the above proposition in respect of housing by demonstrating that of the 7 per cent of housing staff working part-time, 96 per cent were women, that 85 per cent of employees at basic level were women compared to 13 per cent of employees at section head level and, further, that 50 per cent of all male employees as opposed to only 6 per cent of all females were found to be on principal or senior officer grades. As a result, although women do constitute between 43 and 40 per cent of the housing workforce in local authority departments in Britain, their dominance of the part-time, low paid and low status jobs reflects broader social structures in determining that women's ability to shape housing policy is severely inhibited by their abysmally low representation in hierarchies of power.

In respect of women as consumers of public housing the survey concluded that women formed the main client group. One in eight of all families with dependent children are single parents and 90 per cent of these are female-headed. Forty-nine per cent of female-headed one-parent families, compared with only 5 per cent of two-parent families, are reliant upon supplementary benefit as their main source of income. In 1982 some 42 per cent of male-headed one-parent families as opposed to only 23 per cent of those headed by women owned their own homes (IoH, 1987a: 20). Consequently single-parent families, particularly those that are headed by females, are likely to rely on local authorities to provide their housing and council policies in this area will have a profound effect upon the quality of their lives.

In 1985, of those households accepted as homeless by local authorities, 62 per cent contained dependent children and 12 per cent had a member who was pregnant (DoE, 1986a). The 1986 GLC report recorded that female-headed households accounted for two-thirds of those accepted as homeless in London and the majority of these were single-headed families. The increasing use of temporary accommodation for the homeless, particularly sub-standard bed-and-breakfast hotels and short-life property, affects women particularly badly since they are likely to take primary responsibility for child care and domestic responsibilities and are often confined to the home for long periods. In respect of the single homeless the IoH report (1987a: 22) concluded that there are as many, if not more, single homeless women as there are single homeless men although there were far fewer hostels for women than men:

statutory hostel provision for men exceeds that for women by a ratio of 9:1. A survey by Watson and Austerberry (1983), of homeless women living in hostels and calling at women's aid centres, found that the most important reason for homelessness was marital dispute and domestic violence: 15 per cent of those accepted as homeless by local authorities were rendered homeless because of marital breakdown. There is a severe shortage of refuges for women suffering domestic violence and, because of the policies of some councils requiring victims to obtain an injunction, ousting or exclusion order prior to rehousing, there is a risk of further attacks as the whereabouts of women so affected may be known to the past perpetrator of violence.

Ethnic minority women are even more likely than women generally to be poor and to encounter difficulties in obtaining suitable housing and employment. The IoH report (1987a: 23) concluded that whilst the position of women in all sectors of the housing market was disadvantaged compared with that of men, the housing problems experienced by black women were particularly serious. The formal investigation of the CRE into the London borough of Hackney (CRE, 1984b) showed that black households were disproportionately represented amongst the homeless and were more likely than whites to present themselves as literally homeless. Amongst this group it was also found that single parents were over-represented, one-parent families accounting for 27 per cent of white homeless households as opposed to 39 per cent of black homeless households. There is also evidence to suggest that black women in bed-and-breakfast accommodation are particularly vulnerable to racial discrimination by hoteliers (IoH, 1987a: 23).

Cultural factors as well as racial discrimination may also affect opportunities in the allocation process in respect of council housing: Asian women may be precluded from involvement in discussions relating to property and area preferences at the early stages of the housing application process - especially when male housing officers are present.

Most studies on racial harassment (CRE, 1987a, 1987b, 1987c; AMA, 1985, 1987; Home Affairs Committee, 1986; Home Office, 1981, 1989; Gordon, 1986; MacEwen, 1986; Walsh, 1986) do not attempt to isolate gender but the evidence available would suggest that women are particularly vulnerable to racial harassment because they are likely to spend more time in the immediate vicinity of the home and they are also perceived to be physically weaker than men (IoH, 1987a). It also seems likely that because of their dependence on the home the effects of physical attacks upon women are particularly devastating, leading frequently to a sense of imprisonment.

In the private sector there is further evidence of a double disadvantage that black women suffer as a consequence of discrimination by reason of gender and race. The GLC survey of private tenants in London (GLC, 1986b) showed that black women under pension age living alone were twice as likely to be unprotected tenants in comparison with the average for all households in that sector while black women are likely to experience difficulties in securing mortgages with the resultant dependence on high-interest loans from finance houses or deferred purchase schemes.

White male dominance of institutions leads to the projection of negative stereotypical images of Afro-Caribbean and Asian families generally, being associated with the influence of black women in particular. 'Problems' associated with Asian and Afro-Caribbean women and men are traced back to their pathological dependence on black women in their early years: the Afro-Caribbean family is seen as being too fragmented and weak and the Asian family as too strong, cohesive and controlling of its members. Black women are responsible for the numerous 'problems' with which the different welfare agencies are confronted: Afro-Caribbean women are stereotyped as matriarchs or seen as single mothers who expose their children to a stream of different men while Asian women are construed as faithful and passive victims centring their lives upon their religious rituals, family and home (Parmar, 1988: 199). Asian women are seen as failures because of their lack of English, because of their refusal to adopt English eating, dressing and speaking habits and because of their cultural transference of abnormal and idiosyncratic habits to their children. A deterministic view that all social problems relate to the family and its relative strength or weakness may lead to a distinctly ambivalent admiration for the stability and close knit nature of the Asian family in contrast with white families. It is apparent, however, that aspects of cultural identity such as religion, language and dress frequently attract ill-informed and denigratory criticism. Moreover particular facets of culture have not infrequently been depicted as a crude form of female oppression, the media being prone to cite sensational individual cases of Asian girls running away from home. The image of 'innocent' Asian girls being victims of 'backward' and 'tradition-bound' parents forcing them against their will into unwanted marriages has facilitated Central Government's development of immigration laws and policy which seem divisive, sexist and racist. As Parmar (1988) has observed the danger of 'commonsense' images of arranged marriage continuing to dominate official perceptions of the Asian family is that they will systematically distort the delivery of public services and resources to a particular group, namely young Asian women.

Bains, in addressing the professionalisation of ethnicity (Cohen and Bains, 1988: 240), has argued that the growth of Central and Local Government funding for community groups has seen, in tandem, the emergence of professional 'ethnics' as a new intermediary force between black people and the State. With reference to Southall he argues that two communities have emerged: the first, more visible, is created and funded by various State agencies and run by 'career militants' and the second, more hidden one, is populated by the ordinary people who live and work in the area. The first community imagines it stands in a symbiotic relationship to the second - it is serving 'the people' while, in fact, the relationship is largely parasitic. The upper echelon consists of ethnic arts officers, community liaison officers and the like, employed by the local council, the Commission for Racial Equality (CRE) and by implication the local Community Relations Council (CRC) while below them are the black people who set up local organisations, often with the specific intention of obtaining funding. This latter group represents 'community one' which is involved in processes of negotiation for power and resources, with the women in the street, the 'grass roots', being largely bypassed. To the extent that the experience in Southall is likely to be reflected elsewhere this structure ensures not only a filtering of grassroots opinion but also that black women's needs are effectively diluted before the filtering begins to take place. Consequently even where Central and Local Government have established a meaningful dialogue with the professional 'ethnics' it is more rather than less likely that the interests of black women will be largely marginalised or ignored. The fact that this state of affairs is reflected in the inadequate treatment of this issue in this book is neither condoned nor justified. Being dependent on secondary sources, the text reflects the generally pervasive failure to give this issue the prominence it deserves.

However, given the similarity between the anti-discrimination provisions in the Race Relations Act 1976 and the Sex Discrimination Act 1975, there is evidence that the two enforcement agencies, first, recognise areas of common concern and, second, acknowledge that closer co-operation in both promotional and enforcement work has the potential for improving the impact of work in both race and gender issues. To the extent that such cooperation evolves, the issue of black women in housing will be advanced. But such optimism is merely relative. For those who wish to believe that the anti-discrimination legislation is effective, black women constitute an advantaged group. However, so far as this text provides evidence of significant disadvantage in housing on the grounds of race it will in like measure but in silent testimony bear witness to inadequacies in the legislation concerning gender.

IDEOLOGY AND LAW

Some authors such as Richard Quinney (1974) have argued that law itself is a peculiarly western phenomenon - developed in the Judaeo-Christian religion. The concepts of God's law, the law of nature and scientific laws are enmeshed in our intellectual history, and today's concern with the laws of economics and the need for law and order is in keeping with such a conceptual framework. Quinney argues that this western image or ideology of law has been remarkably consistent whether in the popular mind or in academic disciplines. Its leading exponent, Rosco Pound, saw law as a specialised form of social control - to pressure man into upholding civilised society and to deter him from anti-social conduct, i.e. conduct at variance with the postulates of social order.

This consensus model depicts law as reflecting the consciousness of the total society. It is a social institution to satisfy social wants - only the right law can emerge in a civilised society. Pound (1943) states:

> Looked at functionally, the law is an attempt to satisfy, to reconcile, to harmonise, to adjust ... overlapping and often conflicting claims and demands ... so as to give effect to the greatest total of interests and to the interests that weigh

> most in our civilisation, with the least sacrifice of the scheme of interests as a whole.

Society is, therefore, depicted as relatively homogeneous and static rather than being characterised by diversity, coercion and change. Moreover, law is not seen as the result of private interests, but as operating outside particular interests for the good of society as a whole. However, if law reflects the particular interests of those who have the power to translate such interests into public policy, the pluralist, consensual model evaporates and law may then be seen as the tool of a dominant group to perpetuate their dominance.

While the creation of new law may be seen as a process aimed at the resolution of conflicts and dilemmas which are inherent in the structure of a particular historical period it does not address the underlying contradictions which may be basic to the interests of different groups (Chambliss, 1977). Consequently a resolution of conflict may not only fail to resolve a contradiction which may emerge in a different form but may spotlight contradictions which were previously less salient or merely latent. Mathieson (1980) has contended that the legal process acts as an ideological filter to emasculate radical proposals for change so that the final legislation does not after all break significantly with dominant interests. The practice of political trimming, stripping down of legislation and the creation of pseudo-alternatives and what he calls 'co-optive co-operation' may all play a part in such a process. Mathieson sees those groups associated with the introduction of radical change as being either absorbed by the State or stigmatised and thereby excluded from effective power and influence for change. In sociological terms the impact of this process has been to inflict a sense of helplessness - at worst despair and at best apathy - in those groups and individuals most seriously disadvantaged by the prevailing ideology, a state Mathieson describes as psychological deprivation.

In short the ideologies of the law, of the professions, of the public interest and indeed of property and housing themselves will have a significant influence not only on new legislative provision in relation to racial discrimination and housing but also on its implementation. Consequently a description of law in the abstract will be deficient: an explanation of what the law is, in statutory terms, must be complemented not only by an explanation of how it is applied in practice but by reference to the climate of ideological opinion which will influence the actions of each participant in the legal process.

IDEOLOGY AND LANGUAGE

The language of ideology and race is a powerful generator of misunderstandings, which has produced much heat and little light. Thus Lord Scarman's rejection of an institutionally racist Britain as a component in the explanation of the Brixton disturbances in April 1981 (Scarman, 1981: 11) and Sharon Atkin's assertion in the lead-up to the 1987 General Election that the Labour Party is a racist institution raised vehement opposition. Self-evidently in forming a view as to the accuracy of such descriptions it is of fundamental importance to ascertain whether the terms employed have a generally accepted meaning. The purpose of examining the meaning of such terms is not purely one of semantics but extends to the functional purpose of labelling. What is meant by this is best explained by illustration. If what Scarman meant by rejecting the concept of institutional racism was that the evident disadvantage suffered by blacks in Brixton and elsewhere was the result of cumulative individual acts of discrimination as opposed to structures, policies and processes which, whether or not with that explicit intention, are nonetheless a product of implicit assumptions concerning race, this conclusion will have implications (the functional purpose) for how racial disadvantage in housing, as elsewhere is tackled. Thus, in the absence of institutional discrimination, where rules - such as those relating to waiting time regarding council house applications - do have an adverse impact on racial minorities, the solution is straightforward - change them. Conversely if such rules are a product of racist ideology which permeates the institutions which are responsible for their formation, implementation and modification, then changing the specific rules without tackling the ideological climate in which they were formed and applied may have only marginal beneficial effects because the underlying racist ideology will find expression in other forms, including the way in which the changed rules are implemented.

INSTITUTIONAL RACISM

As Phillips has observed (in Smith and Mercer, 1987: 128) this concept was first formulated in the United States in stressing the discriminatory effects of institutional rules and procedures which 'reflect and produce racial inequalities in American society' irrespective of individual intentions (Jones, 1972): the emphasis was on the racist consequences of the normal processes of institutional operation as exemplified by the American ghettoes of the 60s. Then the concept was linked, by black political activists, to 'internal colonialism' and the existence of a black underclass. Despite the historical specificity of the concept in the United States, the subordination of black minorities in Britain in terms of wealth, power and status (Sivanandan, 1982; Castles, 1984; Miles and Phizacklea, 1984) is sufficiently clear to permit certain analogies (Kushnick, 1981), including the marginal political and economic status of blacks affecting opportunities in the housing market (Phillips; Smith and Mercer, 1987: 128). Thus after three decades of New Commonwealth (NCWP) settlement in Britain striking inequalities persist across all types of tenure and the declining inner-city reception areas still provide the focus of minority clustering: in some cities segregation is increasing. The option of moving is largely theoretical for many black families suffering the cumulative disadvantage of inadequate education, limited employment opportunities and a growing threat of racial harassment outside established areas of settlement.

However, it is necessary to go beyond a statement of parallel disadvantage of blacks in the States and Britain (albeit in distinct forms of expression) in a search for explanations. Not infrequently the concept of institutional racism has lacked conviction not because of any dubiety about relative disadvantage but because there had been demonstrable weaknesses in linking cause and effect.

In the public sector such linkage depends on two factors. First, the normal processes associated with the selection, rationing and matching of housing need with housing availability must be shown to be discriminatory in effect and, second, it must be shown that such processes are not merely inadvertent but are the concrete expression of racial ideology. The former proposition is now well accounted for. Thus it has been noted that the formal CRE investigation into public housing allocation in Hackney

(CRE, 1984b) and the CRE research report on Liverpool (CRE, 1984a) demonstrate, unequivocally, that it is the policies and procedures adopted (rather than the individual acts of discrimination) which have resulted in blacks being systematically allocated worse housing than whites in like circumstances. Moreover, Henderson and Karn (1987) have shown, in their analysis of public housing allocation in Birmingham, that even where the formal rules should not have resulted in racial disadvantage and there was no explicit reference to race in the application of such rules, blacks fared less well than whites in housing outcome. In that instance class, by reference to socio-economic group, may also have influenced the exercise of discretion by housing officials but this facet did not, in isolation, provide a full explanation of disadvantage.

It is the second factor, however - that the evidence of black disadvantage was the concrete expression of racial ideology - which is most difficult to prove. In Britain there is no legacy of overtly and transparently racist provision in the public sector as there has been in the United States (Greenberg, 1959). As a consequence both in historical and in contemporary provision, taking into account the requirements of the Race Relations Acts, the racial intentions of a particular practice, policy or process will not be apparent, but may only be implied from the circumstances and the effects. The effects, however, are a premise and not a conclusion: there is irrefutable lack of logic in imputing motive or design from effect in respect of a particular practice, policy or process. Nonetheless it may be argued that where, cumulatively, a pattern of racial disadvantage emerges, racial ideological underpinning may provide a 'real' explanation when no other single factor may be imputed as a constant in the various equations analysed. In short the argument may be that where racial disadvantage in the allocation of public housing is demonstrated to be present in a variety of different situations and no satisfactory explanation is evinced in respect of any specific practice, policy or process, then, by a process of elimination, racial discrimination may remain as the sole constant and the only rational explanation.

However, it is seldom possible to eliminate other explanations completely from a particular situation leading to racial disadvantage. Not infrequently, therefore, an alternative partial explanation may be argued. Thus the allocation of blacks to poor housing may be explained, in part, by their proportional over-representation on the homeless persons access route in a particular district which, in turn, is provided with poorer quality council housing. In another situation blacks, because of the immediacy of housing need, may take up a greater proportion of first offers of allocation leaving them at a comparative disadvantage with those who could wait for better offers (by the accumulation of points which would result in improved offers). Individually such explanations of disadvantage in outcome appear to refute any overt intention of discrimination and suggest that the outcome is merely an unfortunate but unintended consequence of a non-discriminatory system. Where, however, these various systems and outcomes are collated and racial disadvantage is seen as a constant, then such partial explanations take on a different perspective - are they not the superficial and immediate explanation in non-racial form of underlying institutional practices designed to perpetuate black disadvantage? Whether such an explanation is tenable does not depend on a master plan of intent: it merely contends that an ideology perpetuates the classification of blacks as a relatively undeserving underclass. Such categorisation may not be expressed in intentional or overt racism but may find itself in subliminal or subterranean attitudes which, often unconsciously, inform the value systems which determine the formation, implementation and modification of the practices, policies and processes of any given institution.

What has been argued, then, in respect of institutional racism, is that while, individually, racial disadvantage in housing as elsewhere, may not be directly attributable to processes which appear to have an ideological rationale, cumulatively such processes are not readily explained otherwise, while acknowledging that overt intention to discriminate may be absent. Such explanation does not imply that individual discriminatory acts do not exist nor that they are of necessity tolerated or condoned. Certainly individual acts are crucially bound up in the reproduction of structures (Giddens, 1979) and may reflect or, in concert, modify the ideology which the structures symbolise but the concept of institutional racism does not imply that all participants within the system need subscribe to, or indeed appreciate, the consequences of specific decisions which it generates for its viability.

The relevance of this debate is twofold. First, an unqualified anti-racist commitment by an individual employed within a system that generates or perpetuates racial disadvantage is likely to have marginal impact on the structures themselves: moreover such an individual, when presented with a non-racial explanation for the adverse impact of policies and procedures on racial minorities, may accept such explanation as both coherent and logical. Indeed such a conclusion may be justifiable not only for the reasons already discussed but also because the cause of such disadvantage may lie outwith the control of his or her employer. Low income, poor communication skills and a failure to optimise choice within housing allocations may all be critical aspects of an applicant's profile on which the allocations officer can have little impact as they reflect a history and process of limited opportunity outside the sphere of influence of the housing department. Any legal provision designed to combat direct and indirect discrimination in housing, therefore, will, to be effective, have to burrow beneath individual motive and superficial explanation to challenge preconceptions and assumptions which, although not expressed in racial terms, may reinforce racial stereotyping and racial discrimination.

Second, the relevance of explicit motive and intention must be open to challenge within the legal process. Evidently if it is argued that institutional racism is to be located in practices, processes and procedures then those responsible for their implementation will frequently be innocent in both senses of the term. Unlawful racial discrimination is a civil but not a criminal offence. Consequently proving innocence or guilt is not an issue before the court. But the relative innocence of the defendant may well be an uninvited intruder into the psychology and psychopathology of the process of adjudication.

It is suggested, therefore, that a sense of guilt for past discrimination or the issue of innocence in respect of institutional racism is a wasteful diversion from the general goal of establishing equality of opportunity and the specific task of administering anti-discrimination legislation.

The CRE investigation into the immigration control procedures demonstrated that racial stereotyping occurred sufficiently frequently to raise serious questions about the ethos in which the work was conducted. The rules and their application created a climate conducive to racial stereotyping, confirmed by an examination of the files where Mirpuris were said to be liars, Moroccans, like Mirpuris, both simple and cunning, Ghanaians like lost and confused children and Nigerians, like Ghanaians, having ambitions out of all proportion to their capabilities and circumstances (CRE, 1983a). If nothing else the CRE report shows that in one Government department the framework of law sustains an ethos of racial stereotyping allowing official discretion to reinforce racial discrimination. Such discrimination on the grounds of nationality is overt but not unlawful in the context of immigration controls. In contrast, to discriminate overtly on such grounds in housing is unlawful and generally recognised as such by public housing authorities.

A STRUCTURAL APPROACH

Nevertheless, if the existence of such stereotyping is demonstrable inferences of discrimination may be more readily accepted as a logical explanation for racial disadvantage. In Britain there was a legacy of a colonial society in which the colonised people were considered inferior (Hill, 1965: 49; Biddiss (ed.) 1979: 189) and an industrial and social structure in which socially mobile whites had abandoned certain jobs and other social positions and black workers had been brought in to fill them. The problems were not those predominantly of racism on the psychological or theoretical level, but questions of structure and inequality (Rex, 1986: 105). As Marx (1962) observed, 'It is not the consciousness of men that determines their existence, but the social existence that determines their consciousness.' Pareto (1963) assumes that much of our social action is of a non-logical kind. We do not first set our goals and then choose the scientifically appropriate means for attaining them. Instead we begin with certain sentiments requiring expression and at the same time as we act we offer a verbal explanation of that act. This contemporaneous explanation (which Pareto terms the 'residue') is subsequently rationalised to give the appearance of logic ('derivations'). Human action may therefore be observed at two levels. One deals with actual behaviour and the other with the verbal justification of that behaviour - a post hoc, ad hoc rationalisation which is likely to be very distant from the sentiment motivating the behaviour itself.

An illustration of this approach may be given by the example of crime and its apparent increase under the Conservative Government from 1979 to 1989. First, this

Government, in the manifestoes relating to the General Elections immediately prior to and during its term of office, stated a commitment to the rule of law and a crack-down on crime. The various police forces have witnessed an increase in resourcing at various levels, including the number in the workforce to meet, or nearly meet, target establishment levels. Generally the police forces are better manned, better paid, better equipped and better trained. So far as law enforcement, therefore, is a factor inhibiting crime one would expect a decline in crime statistics, and an explanation for crime increase will have to be sought elsewhere.

At a psychological and theoretical level explanation may be sought in a waning respect for property and the person, a sense of personal alienation from dominant social values, a breakdown in family and community life. Such explanations, although not always severable from an explanation rooted in structural causes, often take the form of Pareto's derivations. Conversely the clearly structural explanations - poverty, bad housing, poor educational provision and unemployment - have been rejected by Government. It may be argued that increased policing, neighbourhood watch schemes and increased security measures promoted by this Government have focused on crime containment and have not sought to tackle the causes of crime - whatever explanation is preferred - but in any event Government has strenuously denied any links between increased unemployment and crime.

France, which has suffered from rising unemployment, a legacy of inadequate housing and increasing numbers below the poverty level during this period, has assumed that these issues are important structural components affecting the incidence of crime. Critical measures have been taken to intercede at a structural level and crime figures have been substantially and consistently reduced in tandem with the measures taken. Since 1981 France has had no inner-city disturbances or violent confrontations with the police. In 1982 the Bonnemaison Commission's report - sparked by the 1981 disturbances and a survey showing that 88 per cent thought they lived in a 'violent age' - initiated the establishment of a national crime prevention council and 480 local councils. These councils have been involved in renovating dilapidated public housing blocks (HLM) after consultation with local youths who are frequently provided with jobs and training. Councils have funded workshops for the repair of motorbikes, bicycles, scooters and cars on housing estates and even provided some holidays for the young to go sailing, canoeing, swimming and cross-country cycling. In 1985 the Toulouse Council supported 300 to 400 youngsters each day for the whole of the summer period at a cost of £50,000. Michael King has emphasised that crime cannot be isolated from other behaviour, and other changes in French society must play their part. Although the cost of such an approach is substantial the drop in crime rates is impressive. For example the crime prevention council of Chanteloupe les Vignes, one of Paris's northern suburbs, reports that robbery with violence has dropped by 75 per cent, car thefts by half and burglaries by 20 per cent since 1985-86. But the benefits are longer-term. King observed:

> If the French are right about the underlying causes of youth crime, the real benefits of the present policies will be felt five years or more from now (Boseley, 1987).

Since 1981, and Lord Scarman's report on the Brixton disturbances of that year, the incidence of racial violence and attacks has increased - not infrequently in those boroughs which have introduced Equal Opportunity policies and addressed multi-cultural and anti-racist educational provision. Although the impact of such approaches should not be exaggerated and the benefits must be considered longer-term, it is evident that their immediate affect on racial harassment is marginal. Obviously local authorities are not the only or dominant influence in sustaining and counteracting racist ideology. Central Government, the work-place and the media may inform and influence the climate of opinion. However, by analogy with the experience of crime, the hypothesis which emerges is that, to tackle the expression of racism effectively, there must be an attack on the underlying economic and social structures which facilitate such expression. Thus, while the existence of a 'racial' underclass in education, housing and employment may both be a product of and reinforce racial beliefs, more general lack of opportunity in those areas sustains the conditions for scapegoating and the translation of ideology into practice. Evidently these 'structural vehicles' may not be the root cause of criminal or racial mentalities but they are an immediate and tangible explanation for their expression in practice.