

AN APPROACH TO RACE RELATIONS
AND THE LAW IN BRITAIN

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The spirit of English legislation is an incomprehensible mixture of the spirits of innovation and of routine, which perfects the details of laws without noticing their principles; which always goes ahead in a straight line, taking step after step in the direction it happens to be in, without looking to right or to left to make connections between the different roads it is following; active and contemplative; sometimes wide awake to notice the slightest abuse, and sometimes sound asleep amid the most monstrous ones; which exhausts its skill in mending, and does not create except, so to say, without knowing it and by chance; the most restless for improvement and the well-being of society, but the least systematic seeker for these things; the most impatient and the most patient; the most clear-sighted and the blindest; the most powerful in some things, and the weakest and most embarrassed in some others; which keeps eighty million people under its obedience three thousand leagues away, and does not know how to get out of the smallest administrative difficulties; which excels at taking advantage of the present, but does not know how to foresee the future. Who can find a word to explain all these anomalies?

Alexis de Tocqueville
Journey to England, 1835.

INTRODUCTION

This study attempts to fill an important gap in the understanding of the operation of the law in the field of race relations and immigration in Britain. Historical accounts of legislation have been provided by several writers, and the drafting and interpretation of specific legal statutes has been the concern of lawyers and legal theorists. But they have failed to adequately analyse the character of the law as a social institution. By investigating the law not from the perspective of its self-contained character, but by analysing the circumstances surrounding its introduction and dual function as an instrument of cohesion and change in society, the sociologist is concerned with particular social conditions associated with the law's genesis and development.

The particular issues in which we are interested here are the problems posed by the immigration of minority groups into Britain at different points in time, the groups in society which have defined these problems, and the legal responses to them. Our approach follows standard sociological procedure. An analysis of the group aspects of social behaviour investigates the conditions under which these problems arise, and the relationships between them. We outline a model which takes account of the sociological variables influencing the chosen problems, and consider its relevance to the British experience

of immigration. The model, developed in the light of such experience, may indicate more precisely the nature of the relationships between group activity and legal responses, and serve as a source of propositions about them. In order to assert the usefulness of our model in providing insights into the legal aspects of immigration and race relations, these propositions are then tested against the historical evidence provided by the examples of specific statutes. To the extent that it serves as a heuristic device, our perspective may be useful analytically, but its applied value is not ignored in pointing to findings which have implications for policy decisions.

CHAPTER I: A THEORETICAL PERSPECTIVE
AND ITS RELEVANCE TO THE BRITISH SCENE

Introduction. This work is concerned with an aspect of the problem of identifying particular variations in group behaviour and the consequences in terms of institutional responses -- specifically with the beliefs and actions of indigenous British groups towards immigrants, counter-responses on behalf of minority groups, and the reactions of the legal system. These activities constitute a general class of dependent variables in our study.

Among the sociological concepts which identify the kinds of social controls which underlie a stable social structure, values legitimize the existence of specific social arrangements and the behaviour within them, norms regulate the interaction between individuals and are more specific than values, and sanctions (either formal or informal) control the overt behaviour of persons occupying different roles and group positions within any given structure.¹ The stability of such a structure thus rests upon the maintenance of cultural values, normative concensus between individuals, and an effective arrangement for the enforcement of sanctions.

1. Since we are concerned almost exclusively with the group aspects of behaviour here, the normative component of behaviour will be minimised in our analysis.

The concepts of values, norms, and sanctions are used to identify the dependent variables within a fixed social structure. As such, they cannot themselves account for structural change. One can only do this by identifying independent variables, or the associated conditions co-existing with the problems under investigation and presumed to have an effect upon them. The independent variables specify the various operating conditions under which the values, norms and sanctions change. To understand more precisely the relationship between independent and dependent variables -- i.e. to determine to what extent are the former causes, and the latter effects -- they must be organised in terms of particular sets of conditions. This is usually done in accordance with some kind of model which outlines the logical ordering of different classes of variables. In constructing an analytical model, it becomes apparent that independent variables are usually so numerous, and of such variety, that their influence upon the dependent problem is often indirect and circuitous. One may select variables such that the relationship between them is direct and obvious, but this may mean ignoring less apparent, but nevertheless important connections. This difficulty may be lessened by introducing a class of intervening variables, having characteristics such that they depend upon more fundamental, independent conditions, but also exert important independent influences of their own upon the dependent problem under investigation. This chapter is devoted

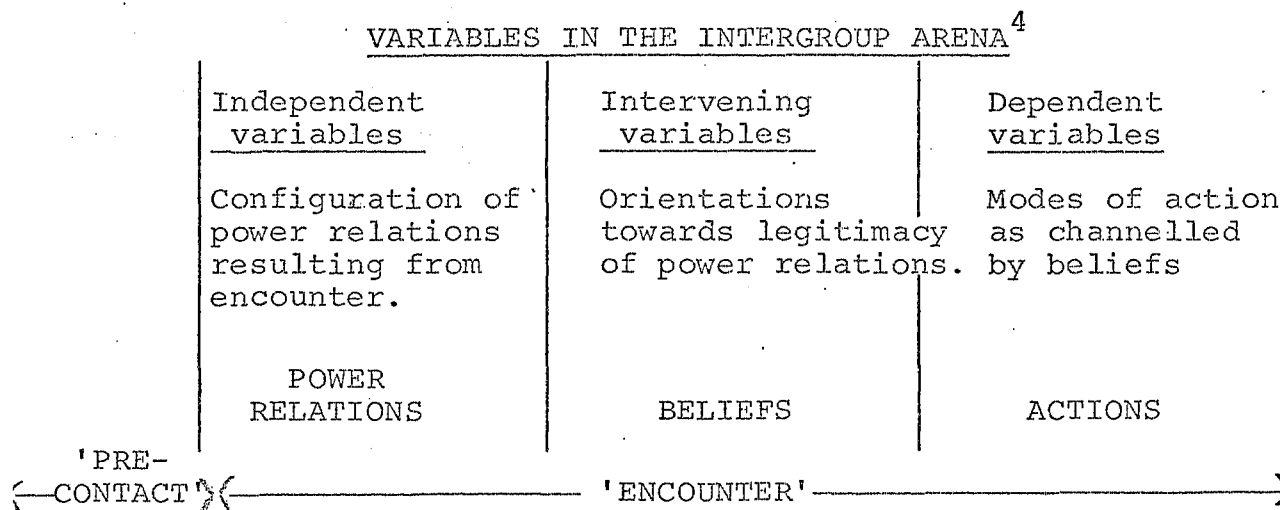
to clarifying a model which takes account of these different kinds of variables, and to understanding their relevance to the British experience of dealing with the problems of coloured immigration.

Schermerhorn's model of group relationships in society presents, at its simplest level, a picture of intergroup contact as one consisting of " . . . superordinate and subordinate as single groups in mutual confrontation."² He refers to the area of contact between groups as the 'intergroup arena', and the variable of power, within the arena, is selected to account for action inside and between groups. Majority and minority group status is determined by the extent to which the respective groups control the resources of power in society.³ The intergroup arena consists of groups with varying potentials for action according to the different power positions they occupy. But power relationships themselves cannot account for intergroup behaviour. Subordinate groups may submit to the demands made by dominant ones, or they may resist. In each case, the power differential between the two types of group remains the same, but the action taken differs. Factors other than power relations must also influence action.

Intergroup activity is seen by Schermerhorn not only

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2. R. A. Schermerhorn. "Toward a General Theory of Minority Groups." Phylon, Vol. 25, p. 240. (1964)
 3. Though we equate majority status with power-dominance and minority status with power-subordination, it is possible of course to have a numerical minority which is power-dominant, as in South Africa and Rhodesia.

as being a variable dependent upon the power relationships between groups, but also upon the extent to which the different groups within the intergroup arena perceive such relationships as being legitimate. Whereas the fundamental independent condition of group relationships is power, majority and minority groups view the system of power distribution from different perspectives, and correspondingly organise their activities differently. Their views of the power structure constitute a class of intervening variables upon which group action is more directly dependent than mere differences of power position. The intergroup arena variables may be presented diagrammatically as follows:



Discussion of this model in terms of its applicability to the British experience of contact with immigrant groups will enable us to clarify the concepts used in it. We may

4. Ibid., p. 241. Slightly modified by the present author.

then reinterpret the relationships between the variables outlined, in order to make some specific hypotheses about the legal responses to the problems voiced by both indigenous and immigrant groups.

'Pre-contact' and 'Encounter': Immigration. The notion of a pre-contact stage between white majority and coloured minority groups, which Schermerhorn calls the 'prior diffuse condition', appears to be more relevant to the British rather than the American race relations situation. In the latter country, coloured minority groups have for some time formed part of the total population. By contrast, contact with coloured minorities in Britain is fairly recent. It was not until after the Second World War that coloured immigrants began to arrive in Britain in conspicuously large numbers. In addition, the size of such groups, both actual and relative to the total population, is much smaller than in the United States.⁵ As a consequence, far fewer people in Britain come into contact with coloured minorities in significantly large groups.

Movement from the 'pre-contact' to the 'encounter' stage has been affected in Britain by immigration. Eisenstadt's studies of Jewish immigration into Israel⁶, though useful in

5. At the end of 1968, the coloured population of Britain was estimated as being approx. 1.3 million (2½% of the total population), of which 800,000 were of West Indian origin, 200,000 Indian, and 130,000 Pakistani. These three largest groups are concentrated in Lancashire, Yorkshire, the Midland and London regions.

6. S. N. Eisenstadt. The Absorption of Immigrants. (London, 1954).

throwing light on the dynamic aspects of group movement, present difficulties if we attempt an uncritical application of his analysis to the process of coloured immigration into Britain. Here the scale of immigration has been much smaller, and until 1960 migrants tended to be single adult males. But in the sense that Eisenstadt treats the matter of immigration as one of group adjustment rather than of individual assimilation, his findings do deserve consideration; before the imposition of legislative controls, there developed a later tendency for immigrant families to arrive in Britain as units. Among his variables of adjustment to the immigration situation are two which can be said to exist at the 'pre-contact' stage:

1. The nature of crises in the country of origin of minority groups which gives rise to a feeling of inadequacy, and motivates migration (the 'push' factor).
2. The social structure accompanying the migration process.

At this stage, it can be said that whereas the 'push' factors of migration are somewhat tempered by a reluctance to change habits and customs in areas where no deep feelings of inadequacy or frustration exist, motivation for migration will be increased by the perceived chance for improvement of status in the new community. As far as Britain is concerned, the main motives for immigration (as for emigration) appear to be economic. Further, migration tends to become cumulative as

knowledge of attractive features of a new community are conveyed to relatives and friends 'back home'. These are the so-called 'pull' factors of migration.

Consideration of the 'pre-contact' stage of our theoretical model is important since initial perceptions of the power relationships between majority and minority groups will depend in large measure on stereotypes formed by each type of group before contact. It is through the modification of such stereotypes that power relationships become redefined, and beliefs reshaped. On the part of coloured groups, these stereotypes have often acted as 'pull' factors motivating migration to Britain. Since it is within the context of the social structure of the immigrants' countries of origin that stereotypes have been developed, we must also examine those aspects of such structures which operate as 'push' factors in the migration process.

The coloured immigrant's perceived chance for an improvement of status has provided the positive attracting force for his migration to Britain. Achievement of higher status depends largely on the degree to which he is able to secure a level of employment compatible with his expectations. A belief in the possibility of achievement of status ideals had been fostered, at least until the late fifties, by the factors of full employment in Britain and the expression of successive post-war governments of their commitment to maintaining high employment levels. At first sight, it might

also seem that the existence of welfare services also acts as an incentive to immigration, but experience has shown that, contrary to popular conceptions, immigrants have resorted to these services proportionately less than have their hosts.⁷ Educational facilities have been increasingly used as a means of improving social status and occupational mobility and their availability must also be numbered among the attractive features of Britain for the immigrant. A desire for better education for their children has been expressed by many immigrants who, once they become established, intended to bring their families over.

We now turn our attention to the degree to which 'pull' factors are operative for different cultural groups within the immigrant population. The degree of transition from the 'pre-contact' to the 'encounter' stage will depend on the degree to which there is 'common ground' between the cultures of the minority groups and that of the host population. A particular 'pull' factor which served to operate for West Indians but not for other groups manifests itself in a desire to visit the 'mother country' where, it was presumed, the ideals of a Christian democracy and sense of 'fair play' existed. Nor was this an unreasonable assumption; Britain's apparently non-discriminatory open-door policy until 1962 gave support to such beliefs, and

7. Ignorance of the existence of welfare provisions, particularly among Asians having language difficulties, may be a factor here. cf. R. Hooper (ed.) *Colour in Britain*. (London, 1965) Chs. 4-7.

optimistic reports sent home by immigrants may have continued to support them. The great degree of heterogeneity amongst West Indian groups produces a lack of strong feelings of the in-group solidarity which is apparent in the case of immigrants from Asian and African countries. All that West Indians from different islands may have in common is their identification with England as the 'mother country'. There has thus developed a situation in which the Caribbean immigrants enter the 'intergroup arena' more immediately and more unprepared than other groups. For Asian groups, for example, almost the only 'pull' factors are economic. There is thus less need for interaction with the host community on any other basis, since group solidarity is maintained by retention of cultural ties with their countries of origin. Particularly this is so in respect of religious and kinship obligations and adherence to native languages.

Returning to Eisenstadt's variables of adjustment to the immigration situation at the 'pre-contact' stage, we can examine the social context in which 'push' factors operate and how far they are applicable to different cultural groups. Two variables have been noted -- the nature of crises in the countries of origin, and the social structure accompanying the migration process. It is the contention here that whereas the nature of crises tend to be similar for all cultural groups, the different social contexts in which these crises develop produce different motivations for migration within the different

cultural groups. This in turn affects the extent to which they are prepared to enter the 'encounter' stage with the host population. Over-population, economic underdevelopment with its resultant large-scale unemployment, low wage levels amongst those who are employed, lack of economic opportunities and incentives, and lack of education and welfare facilities appear to operate as 'push' factors for West Indian, Indian and Pakistani groups. The overall agricultural-economic context of the self-sufficient peasant or rural wage-earner operating in a fluctuating seasonal market is common to most members of each group. However, the social contexts in which the feelings of inadequacy and frustration caused by the above crises exist, differ widely.

Not only is there a considerable lack of contact between the different island communities of the West Indies, but there exists also within each island a large degree of heterogeneity. For example, it has been estimated that Jamaica has 17 percent population of mixed race, Trinidad 16 percent, Windward Islands 12.8 percent, British Guiana (now Guyana) 10 percent, and Barbados 6 percent.⁸ There also exists a great deal of colour-class consciousness in the Caribbean, particularly Jamaica, from where the majority of West Indian immigrants come. Religious beliefs appear to be more strongly held than in Britain, but there is a considerable

8. cited by Hooper. Ibid., p. 31.

mobility between denominations. Both kinship and colour-class systems derive from the institution of slavery and the hierarchy based on it. Patterson has noted that:

"In a society where the great majority of the population is black, this colour-class system with its white bias is obviously likely to produce a profound frustration among the black lower-class majority, to evoke inter-class tensions and hostilities, and to work against group or community solidarity."

We thus have a situation in which there exists a lack of ties of common sentiment both within and between island communities. It can now be seen that not only do situations of economic underdevelopment, etc., within the West Indians' countries of origin operate as 'push' factors, but the absence of any coherent base to community structure itself acts in a similar way.

The regions from which the Indian migrants to Britain have come, the Punjab and Gujarat, are those regarded as being traditional areas of emigration. Many Indian migrants from these areas belong not to the subsistent peasant class, but to merchant groups for whom migration is economically more feasible. Their communities are extensions of a wide system of relationships in the extended family. The 'village-kin' groups provides the traditional basis for community life. From among his relatives, who are many, the intending Indian migrant finds sponsors who may help him until he becomes

economically self-sufficient in his new surroundings. In such a situation the ties he forms in Britain among other immigrants are extensions of the ones he experienced at home. There is, however, some differentiation among Indian immigrants themselves. The caste system as a prominent differentiating factor has been slowly supplanted by a social class system. As well as farm workers and peasant craftsmen, professional classes and students are to be numbered amongst Indian groups in Britain. Despite the fact that differentiation exists, maintenance of kinship ties with relatives at home and re-establishment of such ties with Indians already in Britain provides a basis for community solidarity which is not nearly so apparent in the case of West Indian immigrants. Once Indian groups become established in the host society, this factor of community solidarity may act to 'insulate' them to some extent from the dominant group, thus lessening the area of intergroup contact since more of their social needs are met within their own groups.^{9(a)}

The observations which have been made with regard to the Indian immigrants are generally applicable to Pakistanis, although the latter have a mainly peasant background and have common adherence to the Muslim religion. If the absence of a knowledge of English forces many Indians to find a community of their own people, then for Pakistanis this is even more imperative since a much greater proportion of them cannot speak English.

9(a). Hooper. op. cit., passim.

Because the 'pull' factor of perceived chance for economic gain is much more operative, relative to other factors, for Asian than West Indian immigrants, the former groups are sponsored and organised to a greater degree than are the latter.¹⁰ The 'pull' factor of a chance of increased participation in the social life of the host society is tempered by a desire to retain kinship amongst Pakistani and Indian communities. Comparative lack of such ties at home acts for West Indians as a 'push' factor motivating migration.

For the purposes of analysis, 'push' and 'pull' factors have been considered separately, but it must be remembered that they operate together very closely in motivating migration. Richmond, in saying that "It is not, as many people suppose, the positive attractions of the welfare state which brings so many coloured colonials to Britain, but the complete lack of any social and economic security at home,"¹¹ is suggesting that 'push' factors are dominant. However, in the absence of any close correlation between economic conditions, population pressure in, and rates of migration from, countries of origin, Peach maintains that the major controls, on West Indian migration particularly, are external; it seems that there has been a closer relationship

10. For example, in Sparkbrook, Birmingham, while other groups occupy positions as unskilled and semi-skilled workers, it is the Pakistanis who assume an entrepreneurial role in operating immigrant lodging houses.

11. A. H. Richmond. The Colour Problem. (Harmondsworth, 1955) p. 297.

between the demand for labour in Britain and rates of immigration.¹² For all immigrant groups both 'push' and 'pull' factors appear to be at work and must be viewed in relation to each other; lack of security in their countries of origin is relative to at least the perceived chance of security in Britain.

It has not been the intention here to suggest an exhaustive list of factors motivating migration, but to look at how some factors operative for all groups are given different emphases within different social and cultural contexts. We can now see that not only must a cultural dimension be included within the concept of 'intergroup arena' to distinguish between white and non-white groups, but also to delineate different cultural groups within the non-white minority. The degree to which particular racial minorities are self-supporting will determine the extent of encounter with the majority population and the degree to which there is a need for a redefinition of expectations in particular areas of contact.

Intergroup Behaviour: Organisational Responses. The migrant, arriving in Britain, enters the 'encounter' stage with the host population. But, using Schermerhorn's terminology, is there yet an 'intergroup arena'? To answer this question we

12. C. Peach. "West Indian Migration to Britain: The Economic Factors". Race, Vol. 7, No. 1. (July 1965) pp. 31-46.

must ask how do the host community and the immigrants develop their respective group consciousnesses in such a situation. The initial stance adopted by indigenous British groups, as Banton has noted¹³, appears in general to be one of applying universalistic rather than particularistic criteria in the judgement of newcomers. In the case of coloured immigrants they are, for example, judged in terms of their status as 'immigrants' or 'blacks' rather than as neighbours or tradesmen; etc. Yet it is misleading to assume that once an ethnic or racial category has been established for the purposes of classification of stereotype, social distance is thereby reduced among the people who are placed together. Arbitrary categorisation of all coloured people as 'wogs', for example, does not make them more alike in fact. Cultural differences are often as great between West Indians, Pakistanis and Indians (the three main coloured immigrant groups) as they are between white and non-white groups. West Indian immigrants' children who were born in England may be culturally 'more English' than, for example, first-generation Irish immigrants. The use of colour as an arbitrary method of classifying minorities can be very misleading in such circumstances, and yet it has been the one most often used by the indigenous population in identifying them. In using standards of judgement based on universalistic rather than particularistic criteria, and

13. M. Banton. Race Relations. (London, 1967) Ch. 15
passim.

by applying arbitrary classifications based on colour differences, we can see how minority 'groups' may be perceived by the host community, although they may not be groups (in the sense of individuals attached by common sentiments) in fact. We have now to discuss how the immigrants perceive the host community.

The expectations of immigrants themselves regarding the attitudes of the indigenous population will also govern the reciprocal perceptions between host and immigrant. Since the West Indians are culturally much closer to the host population than Asian or African immigrants, their closer identification and desire for assimilation might be expected to produce a situation in which they can expect a greater degree of absorption into the majority community than would be possible for other groups. But this is not the only operative factor. Greater desire for identification with dominant group values on the part of West Indians tends to produce aspirations which are hardly compatible with conditions in reality.

The insecurity of the coloured immigrant rests on the dilemma in which he is placed by being a member of a highly visible minority. His aspirations are based on stereotypes of the dominant group which may be false and consequently unrealistic. The modification of such stereotypes is not likely to occur unless there is a reduction of social distance between the groups, and yet it is the majority group which

maintains this social distance by perpetuating its own false stereotypes of the minority to reinforce the legitimacy of its own dominant position.

Both the degree of identification with the host population and the aspirations of the minority groups will determine the degree to which the latter accept the system of power relationships in intergroup contact. Also, the extent to which the immigrant regards the attitudes of white society towards coloured persons as being justified will depend on the ways that he is treated once he settles. In a situation of superordination/subordination within the intergroup arena we can see how the perception of legitimacy of power relations determines attitudes between hosts and immigrants. In the sense that power relationships between groups are reciprocal social relationships involving at least some degree of consensus among members of subordinate groups, such groups may accept in principle the legitimacy of power in the hands of the dominant group. Its use may be questioned in some circumstances, though -- for example, when the identity of a minority group is thought to be threatened. It has been suggested that minority groups are provided with a sound basis for their own conduct by a system of ethnic stratification based on differential power distribution, and as such gain a measure of 'security' which gives legitimacy to the position of the dominant group.¹⁴ Given the above consideration, however,

14. T. Shibutani & K. Kwan. *Ethnic Stratification: A Comparative Approach*. (New York, 1965).

groups within the immigrant population appear to be assured of their 'sound basis' only as long as they do not challenge existing power configurations.

Although the concept of intergroup arena is useful in showing us the variables to be taken into account in the area of contact between groups, it is important to note that the intergroup relationship is dynamic rather than static. It comes into existence on the tide of social change, and is instrumental in affecting further change. Not only do intergroup perceptions affect behaviour between groups, but also " . . . new classifications of human beings develop to coincide with the evolving pattern of differential treatment."¹⁵ However, differential treatment arising from inequalities of power distribution does not automatically produce new groups. A minority group identity may only be established when people become aware of differential treatment, and this awareness becomes a focal point for their group activity. Immigrant institutions may arise in response to the special problems of newcomers. The better educated and more settled immigrants may establish organisations to meet the practical needs of their fellows, for example in helping them to find accommodation and employment. Coloured minority interests may be also served through local church and leisure organisations. As well as the above, the needs of the newly-arrived immigrant include reassurance and 'morale boosting' to enable him to

15. Ibid., p. 261.

adjust to a strange environment. Immigrant frustrations may be channelled into organisations existing within, but apart from, the dominant culture, which reaffirm nationalistic sentiments. As a result a new outlook may emerge from an exchange of experiences among those who share a 'common fate' in a strange land. The predominant values embraced by these types of organisation appear to be those of voluntary segregation as far as possible, without challenging the existing power structure. Rather than participating as agents of social change they tend to lessen the area of contact with the host community by, as it were, 'insulating' coloured minority members from those spheres of activity where competition with the host community is most intense.

Once the immigrant begins to settle in his new environment, the changing experiences of both hosts and immigrants are reflected in changing group requirements -- there is a 'redefinition of the situation' on both sides. The dominant group may begin to see the immigrants as constituting less of a threat and grant them some concessions. On the other hand, it may see them as potential troublemakers, once education and wider experience of indigenous social conditions give them access to ideas which challenge the existing order of power relationships.

Direct intergroup contact takes place in an organisational setting, and Henderson has suggested several possible organisational responses to the intergroup conflict situation

based on differential power distribution.¹⁶ Response to a constraint system can lead to coloured minority attempts at some form of effective adjustment avoiding the risk of outright conflict. a) Adjustive attempts recognize at least some measure of legitimacy of the position of the dominant group. On the other hand, responses may lead to an attempt at altering the system of power relations. This leads inevitably to conflict with the dominant power group since the very basis of their power is challenged, and gives rise to b) Protest attempts. A counter-response on behalf of those who hold the imposition of constraints to be desirable, produces c) Maintenance attempts, concerned with preserving the status quo. a) and b) are characteristic of minority groups; c) is characteristic of the response of some groups within the host population. Henderson maintains that control of internal conflict within a society becomes 'institutionalized' and groups of diverse interests are legitimized within the total social framework, since the survival of society depends on the degree to which it can control internal conflict. With this in mind, he postulates d) Synthesis attempts, their efforts being directed towards moderation of the conflict, and being generally composed of members of both host and immigrant groups.

It should be noted that changes resulting in the emergence of d) do not necessarily succeed in eliminating or

16. D. Henderson. "Minority Response and the Conflict Model". Phylon, Vol. 25, 1964. pp. 18-26.

successfully controlling the conflict. As Schermerhorn has noted,

"The more rapid the change, the more it highlights the visibility of (minority) cultural groups in comparison to others and the more such groups are defined as a threat to the survival of the entire society. At the very least this may constitute a threat to an elite whose interests are identified with that of the nation-state. Consequently, the newly-visible cultural groups are singled out for subjugation in one form or another."¹⁷

The limitations of Henderson's typology of responses to a constraint system based on power differentials have to be recognised if we are to adopt it as a possible basis for a clearer explanation of interracial behaviour in the organisational context in Britain. None of the organisations discussed below corresponds to his typology in all details. Each particular organisation cannot be viewed in isolation; it responds to conditions in the wider society and to relations with other organisations as well as to the degree to which it succeeds in achieving stated aims. The continually shifting orientations towards legitimacy of intergroup power relations are a result of the simultaneous activities of adjustive, protest, maintenance and synthesis organisations. Each has its own particular set of attitudes towards the prevailing system of power differentiation. Furthermore, there is no clear-cut distinction between each type of

17. Schermerhorn. op. cit., p. 239.

organisation. Adjustive attempts, in the sense that they are inward looking, may reinforce the existing system of stratification. This is precisely the purpose of maintenance attempts. Both recognize, from different standpoints, the legitimacy of existing power relationships. Synthesis organisations attempt to institutionalise the control of conflict, but this conflict may be increased when their goals are not achieved, and protest movements develop from within them.

The idea of change is inherent in the notion of the readjustment of minority and majority movements, both with respect to each other and to the institutional environment in which they interact. "A social movement is a purposive and collective attempt of a number of people to change individuals or societal institutions and structures."¹⁸ We must consider, then, the implications of the confrontation between dominant and subordinate groups of different cultures as far as the structure of the total society is concerned. To what extent does a situation emerge which represents an adjustment of the power relations between groups? Richmond has suggested that for coloured minorities to be absorbed into the British social structure, there must be a modification of such structure together with an adjustment of attitudes and values facilitating the complete assimilation of immigrants in accord

18. M. N. Zald & R. Ash. "Social Movement Organisations: Growth, Decay and Change". Social Forces, Vol. 43, No. 3. (March, 1966) p. 327.

with their present status and role expectations. Though this might appear somewhat unrealistic, one can hardly argue with the statement that "The inevitable conflict engendered by the process of immigrant absorption may be resolved in such a way that the receiving society achieves a re-integration or equilibrium at a new level of social organisation; or the conflict may be perpetuated with consequent mal-integration of the social system."¹⁹

Once the initial phase of encounter with the host population has passed, processes within the entire society modify the reactions of movements within dominant and subordinate groups towards each other. Orientations may vary on a continuum from perceptions of legitimacy to perceptions of illegitimacy of existing power relations, and serve as rationales for ideas that crystallize around them. Upon the reappraisal of power relationships will depend the modes of action of the different groups vis-à-vis others. Such modes of action may be facilitated by the possession of an ideology stressing ethnocentrism and perpetuation of conflict (real or imagined) with the dominant group, on behalf of cultural subordinates. The superordinate group may stress superiority themes such as racism, maintenance of social distance, active prejudice, and may continue to hold stereotypes even when

19. A. H. Richmond. "Coloured Colonials in the United Kingdom", in A. M. & C. B. Rose (eds.). *Minority Problems*, (New York, 1966). p. 86. Emphasis mine.

experience has shown that they are unrealistic.

Group-consciousness develops through a recognition of common interests. Among underprivileged minorities, such recognition may arise from being subjected to differential and discriminatory treatment, and minority group solidarity may be enhanced when it is recognised that such solidarity is necessary for the survival of the group in a conflict situation with other, dominant groups. In so far as minority cultural groups are founded on a common recognition amongst members of the illegitimacy of the existing power relationships, movements and organisations within them may be dedicated to changing the status quo which maintains this power differentiation. If we take a look at behaviour within the intergroup arena as exemplified by the existence of some specific group organisations, each offering its own solutions to the racial problems in Britain, we may place them in the context of the general framework outlined earlier of Henderson's typology of group responses.

Of the specifically immigrant organisations, the Racial Adjustment Action Society (RAAS) was founded in 1965 after the visit of Malcolm X to Britain. It is modelled on the exclusive Black Muslim sect in the United States, and preaches a form of 'Black Power', though less disciplined. RAAS draws its support mainly from working-class coloured people in slum areas, and is stronger in London than elsewhere. Its leader, Michael Abdul Malik (Michael X) has attracted much

public attention, particularly as the first "victim" of the Race Relations Act, 1965. His argument is that coloured people can no longer trust British institutions to help them, and, RAAS therefore stresses political and economic segregationist themes. Immigrants' relationships with the police are emphasized as being a particular source of disillusionment.²⁰ After the visit of Stokely Carmichael in 1967, the Universal Coloured People's Association, (UCPA) was founded on the model of his movement, the Student non-Violent Co-ordinating Committee. "Universal" is somewhat of a misnomer, since the Association has a small following at present (60 percent Negro; 40 percent Asian), mainly among university students and professional people in the London area. UCPA exhibits a strongly Marxist leadership in the views expressed by its president, Obi Egbuna, who is an articulate theorist. The aims of the Association have, until the present, been similar to those of RAAS, although whereas the former is theoretically oriented, the latter, has, of late, established a small but significant self-help programme in North London. The oldest of the immigrant organisations, the London West Indian Standing Conference, came into existence on the tide of the Notting Hill racial disturbances in 1959. WISC claims about nine thousand members in sixteen affiliated groups in the London Area. (There is also a parallel body in Birmingham.) It is

20. cf. Nigger Hunting in England? (London West Indian Standing Conference, London, 1965).

basically a self-help organisation with a strongly politically-minded leadership which to some extent reflects the different perspectives of the above-mentioned organisations, though it is less militant. Jeff Crawford, the West Indian secretary, has tried with little success to establish a national multi-racial immigrant movement. He has been quoted as saying that multi-racial associations at present are " . . . run by middle-class whites who are wholly out of touch. A much greater effort must be made to speak to ordinary people. Everything is done above their heads."²¹ In 1964, the National Federation of Pakistani Association was formed, and claimed to cater for the interests of 140,000 Pakistanis in sixty affiliated groups throughout the country. It has its strongest bases in Birmingham and Bradford -- areas with particularly high concentrations of Pakistani immigrants. The most inward-looking and least militant of all the major racial organisations, it stressed communal and cultural, rather than political themes. The view of the president, Abdul Matin, is that CARD (see below) is "doing a good job," and "Black Power is dangerous because it foments trouble."²²

Among the specific anti-immigration bodies active at the time of impending control legislation, the Birmingham Immigrant Control Association was formed in 1961 to " . . . press at City Council and Government level for restrictions on

21. Sunday Times. 29th October, 1967.

22. Ibid.

immigration to Birmingham."²³ However, the new Association was soon split by arguments centering around the political role it should play, and whether or not it was desirable to extend their sphere of activity to other areas. Factionalism resulted in the formation of two new organisations -- the Vigilant Immigration Control Association and the British Immigrant Control Association. One of the main proposals of the former was to restrict the benefit of welfare state services to immigrants of over one year's standing. The latter group concentrated on spreading and strengthening its activities to stop the influx of 'cheap labour' within and beyond the Birmingham area by pressuring the Government to introduce stricter controls. Neither of these 'breakaway' organisations reformed after the 1962 Immigration Act had been passed, which suggests that their proposals, at least in part, were met by the new legislation. The original Birmingham-based association still survives, though the disputes which led to its splitting, e.g. whether to sponsor its own candidates in local elections or to act indirectly as a pressure group, still persist.

In April 1964, following the recommendation of the Commonwealth Immigrants Advisory Council, the National Committee for Commonwealth Immigrants, (NCCI) was established. The post of Advisory Officer and Secretary to the Committee

23. P. Foot. Immigration and Race in British Politics. (London, 1965) p. 195.

was founded to direct liaison and co-ordination work between local authorities and voluntary organisations and to advise them on measures to improve relations between immigrants and the rest of the community. Very few of the small number of regional committees previously established to deal with the welfare of immigrants received local authority backing or trade union support in the form of funds. The task of the National Committee has been to assist the formation of regional immigrant welfare organisations where they were previously non-existent and staff them with full-time officers, funded either by local authority or Council of Social Service grants. Foot has suggested that the co-ordinating committees have three main tasks:²⁴ a) to point out particular immigrant problems in the various areas, b) to establish welfare programmes to help the immigrant overcome the problems of daily life in strange surroundings, and c) to demonstrate the value of interracial activities for the whole community.

From a nucleus created by mass lobbies against the Commonwealth Immigrants Act 1962, the Campaign Against Racial Discrimination (CARD) was founded in December, 1964. Its stated purpose was largely political, to expose cases of discrimination and to demand political action to cope with them. CARD claims about 2,500 members (1968), 60 percent of whom are white, and predominantly middle-class. The original organisation is London-based, although the growth of several

24. Ibid., pp. 223-4.

regional groups has been encouraged. David Pitt, CARD's chairman, is a doctor who has been resident in England since 1947 and belongs to the small group of middle-class West Indians. An Indian, Vishnu Sharma, is full-time national organiser and is also chairman of the Southall branch of the more militant Indian Workers Association. Pitt has often been criticised for lack of aggressive leadership. Also, changing opinions amongst immigrants themselves, and the inability of CARD to produce 'quick results' has increased frustration among its members.

Where immigrant frustrations have been 'institutionalised' within the dominant culture, adjustive attempts have not been directed towards changing the status quo but to giving a measure of psychological security to individual immigrants. The other members of the minority group become references for individual behaviour. Adjustive organisations are thus particularly important for the immigrant in the early stages of contact, since they provide an environment where he can express his ideas and pursue his talents without offending members of the dominant group. The Pakistanis are, as we have seen, the most inward-looking of the major ethnic groups who try to retain the communal structure of Asian village life when they come to Britain. The affiliated groups of the National Federation of Pakistani Associations exist at a local level to provide communal amenities for their members.

The adjustive attempts of this organisation have been made from within, rather than by establishing links with other minority groups. Particularly important attempts in this respect have been made through the formation of leisure organisations. Not only do they cater to the interests of their own immigrant group, but they also provide areas of contact with members of the dominant groups on an informal basis. If the competitive advantages of minority organisations in informal intergroup contact are fully realised, they may advance immigrant status within the total social system. Ultimately, successful adjustment involves successful attempts to identify with the values of the dominant group. By working within the existing power relationships, catering to the special problems of immigrants and helping them to adjust to conditions in the wider community, adjustive organisations stress integrationist themes. Although not necessarily encouraged by the dominant group, these organisations are not usually condemned since they do not challenge the existing basis of power distribution. Indeed, they may be assisted in areas where the majority sees the adjustment of minorities as being desirable to prevent a rise in the level of interracial conflict.

In an 'adjustive attempt' situation, minority groups may advance themselves in the intergroup arena by gaining favours rather than insisting upon their rights. However, favours may be extended only as long as subordinates 'stay

in their place' and accept the prevailing power differentiation. Minority expectations will be thwarted in a situation where opportunities for improvement of status are controlled by the dominant group. Tension is likely to increase where minority groups are no longer willing to accept the evaluation placed upon them by others. In a situation where social unrest is the result of discrepancy between perceived social status and actual power configurations, the growth of protest movements is the symptom, rather than the initial cause, of increased conflict. Once these movements become established, however, their activities attempting to change the balance of power may become sources of further tension.

The so-called 'underground' organisations such as RAAS and UCPA have been formed only after members of coloured minorities have become convinced that their aspirations cannot be realised under the existing power relationships. The role of leadership in these organisations has been particularly important in maintaining minority group solidarity. Fundamental to their existence has been the ability of leaders to maintain legitimacy in the eyes of their supporters. The ability of leaders such as Michael X and Obi Egbuna in suggesting instances of persecution by members of the dominant culture has served to solidify sections of an otherwise heterogeneous minority. Allegations of police brutality and local government bureaucratic indifference have, in particular, given direction to the unrest of these minority protest

movements.²⁵ The intellectuals of the black protest organisations have not created an ideology of their own that binds these organisations together -- rather they have adopted the concept of negritude as a focus for stressing that their demands be met in a way independent of British cultural values. "Negritude is the awareness, defence and development of African cultural values . . . it is the awareness by a particular social group or people of its own situation in the world and the expression of it by means of the concrete image."²⁶ Thus understood, negritude is not a racist doctrine, since it does not involve the conscious pursuit of activities harmful to other racial groups. It may be considered to be an assertion of the value of the identity and culture of the black man in building a stable personality within a viable Negro community.

WISC is an organisation of longer standing than the other two black protest movements and has also stressed independence, but not segregationist themes. In emphasizing economic independence particularly, WISC maintains that opportunities for discrimination by dominant power groups will be considerably limited. Members of coloured minority groups would therefore be in a better position to secure status positions compatible with their expectations. Neville

25. cf. Nigger Hunting in England? (London West Indian Standing Conference, London, 1965).

26. N. Maxwell, The Power of Negro Action. (London, 1965). p. 49.

Maxwell, the welfare officer for WISC, " . . . rejects assimilation and apartheid in favour of a policy of integration into British society at all levels as an organised community. The West Indian must not be cajoled into submerging his identity for the sake of acceptance by a patronizing English public."²⁷

Maintenance attempts to assert the legitimacy of the existing power relations have arisen in many areas in specific contexts. Most anti-immigrant organisations have gathered small-scale support in response to local conflict situations, e.g. when a Southall Resident's Association was formed to protect the interest of a 'respectable' area when it was learned that Indian immigrants intended to buy houses in the district. In the sense that maintenance attempts identify with the dominant power group, their demands are likely to be more successful when they can employ this power. However, because these organisations have relatively short-term goals in a specific, local context, they are not likely to remain a permanent feature once their aims have been met. Extreme right-wing, small-scale political organisations have commanded little more than fragmentary support and serve largely to pacify the "Fuehrer" complexes of their founders. Their influence is further diminished by their being highly susceptible to factionalism. The immigration control associations arising in the early 1960's (of which the ones in

27. Ibid., p. 56.

Birmingham were taken as example) were able to influence national political policy with regard to coloured immigrants, however, " . . . by means of their concentration on a single issue, their ability to move freely among established political parties and their dissociation from nominal Fascism."²⁸ They have remained local, rather than national associations partly because of lack of time, organisational resources and funds to extend their spheres of activity. As Foot has remarked, also important is the fact that such organisations have had more success in pressing for stricter controls at local, rather than national level.

The effects of Henderson's so-called 'synthesis attempts' have been directed towards moderation of intergroup conflict and represent adjustment by both dominant and subordinate group members to the changing intergroup situation. In an attempt to reconcile members of each type of group, interracial organisations such as CARD have adopted a 'middle of the road' policy, stressing that time will help to moderate the conflict. The August 1965 White Paper strengthening immigration controls, the narrow provisions of the Race Relations Act 1965, and the 1968 extension of controls to cover potential East African migrants with British passports, suggested to some members of CARD that dominant group attitudes had hardened, rather than relaxed. In this situation the future of organisations such as CARD appears to depend on the

28. Foot. op. cit., p. 209.

extent to which it can lobby against trends such as these. The failure of CARD to press effectively for more enlightened legislation (at least until 1968) has had two main consequences. Firstly, it has been criticised by more militant racial organisations for failing to check the trend to impose apparently discriminatory immigration controls and (until 1968) for its lack of aggression in pressing for an extension of the provisions of the Race Relations Act 1965. These groups have accused CARD of being a middle-class idealist organisation having a white bias, and being out of sympathy with the situation of the working-class immigrant. Jagmohan Joshi, secretary of the 25,000-strong Indian Workers Association has been quoted as saying "CARD is a top people's organisation . . . we can't achieve anything until we have a campaign at the level of ordinary working people."²⁹ Increasing militancy and left-wing tendencies have resulted from the frustration engendered by the ineffectiveness of CARD to meet the demands of immigrants. Secondly, these have been signs of increasing militancy within CARD itself. A militant alliance inside the organisation, led by the assistant secretary, Johnny James, decided " . . . (i) that CARD must become and remain a broad mass of grass roots organisations in which there will be all races, (ii) that it must be militant and it must be officered by the coloured sufferers of racial

29. Sunday Times. 29th October, 1967.

discrimination who know the problems and know the way to struggle against it, (iii) that without attacking the root cause, imperialist oppression, our struggle will not win the support among coloured people and/or natives of Britain."³⁰

The Law. How does one approach an analysis of the legal system through the perspective of conflicting relationships between groups? The system of power differentiation gives rise to various conceptions of justice by organisations occupying different power positions in the hierarchy of inter-group relationships. Dominant groups may exert control over subordinate ones in ways in which the latter perceive as being unjust. Conversely, subordinate groups are often viewed as expressing illegitimate demands which dominant groups fear may undermine their comparative power advantages. What is considered to be 'just' and 'unjust' thus depends upon the respective interests articulated by groups occupying particular power positions within the intergroup arena. Legislation addresses itself to the rival claims of these groups, and the law as an institution imposes a structure upon society which tries to control conflicting group exchanges. It is universal in the sense that it is the supreme arbiter between competing interests.

Furthermore, there are social functions which the state alone, through the operation of the law, can perform.

30. Sunday Times. 12th November, 1967.

It is the only agency which can establish an effective and basic order in a complex society. Its law is binding on all who live within its compass, and it possesses the ultimate right of authority to secure enforcement.

"The state alone can make rules of universal application. It alone can guarantee the facilities which shall be equally available to all members of a community. It alone can establish rights and obligations which admit of no exceptions. It alone can establish conditions of equal opportunity. It alone can assure the universal validity of units and standards of measurement, weight, quality and value. It alone can set up minimum standards requisite for decent living with the assurance that none shall fall below them. It alone can define the areas and limits of subordinate powers. It alone can co-ordinate within one great social framework the various organisations of a society. The state, in short, is the guarantor and guardian of the public order."³¹

In a complex and heterogeneous society, therefore, the maintenance of social order is impossible apart from the instrument of the law which the state may invoke to control the growth and direction of conflict. Yet political and legal institutions cannot be content with the mere establishment of order. For the state to be concerned with broad issues of social policy, the ordering of group relationships also depends upon the ideals and interpretation of its constitution, which necessarily involves some principles of justice. The task of securing justice for all is infinitely more difficult than that of

31. R. M. McIver & C. H. Page. Society: An Introductory Analysis. (London, 1964). p. 459.

merely ensuring order. Insofar as this can be achieved, it can be achieved only through the instrumentality of the state. But we have already noted that there exist differential conceptions of justice between various conflicting groups in society. There are practical limits, therefore, as to what the state can effectively achieve through the operation of the law.

In the past, much argument centred around the extent to which law simply reflected already established patterns of change rather than acted as an independent agent in initiating social reorganisation.³² More recently, it has generally become accepted that the law, by attempting to induce social change in the direction of stability also comes into being as a response to such change. Legislation has arisen as a result of the mobilisation of particular interests which are usually identified with certain kinds of groups rather than others. This is the way in which Howard Becker understands the operation of the law.³³ Laws only come into existence when needed or wanted. Hence someone must have a strong enough interest in the enactment of law to take the initiative and press for its passage. He calls these persons 'moral entrepreneurs', and most of the entrepreneurship comes from a single agency identified with particular group interests.

32. E. M. Schur. *Law and Society: A Sociological View*. (New York, 1968). cf. Introduction.

33. H. Becker. *The Outsiders*. (New York, 1963). Ch. 8 passim.

For example, in the case of the Commonwealth Immigrants Act 1962, such interests coincided with maintenance attempts to extend control legislation. The Race Relations Act 1968 came into being largely as a result of the pressure group activities of synthesis organisations such as CARD and NCCI. Consideration of group interests may thus be viewed as being particularly important in the formation of the law. Particular legislative provisions are often incorporated into a body of law in accordance with particular group interests. Yet the law will necessarily fail to fulfill its universal function as the guardian of justice for all where its operation stresses such interests at the expense of other, and often conflicting ones. An approach to the role of law in society must take account of both these aspects.

No theoretical model can do more than suggest the kinds of conditions under which the various types of inter-group conflict with which the law is concerned may emerge and the directions they may take. Our perspective has outlined a system of dominant and subordinate group relationships in society based upon differential power distribution.

We have noted that the inequalities of power distribution within society, and the subsequent development of structures controlling group exchanges, necessarily produce injustices in eyes of groups whose interests are seen as being inadequately served by the operation of the law. Further, the adoption of particular forms of law may serve to intensify, rather than

reduce intergroup conflict. An evaluation of such conflict, therefore, also requires investigation of the limitation of the law through its formation in accordance with particular group interests.

The Model as a Source of Propositions. At this stage, a more developed model may be suggested which takes into account the issues discussed above. By indicating more precisely the kinds of relationships that exist between intergroup arena variables, our model can serve as a source of some specific propositions concerning the nature of intergroup activity and legal responses. Briefly restated, the issues which serve as a foundation of questions regarding the genesis and development of law in the field of race relations include:

a) The actual problems posed by coloured immigration: Conflict-
ing relationships between groups arise within a system of differential power distribution between white majority, and coloured minority groups. The focus of conflict is sharply defined by both colour and culture differences between groups. Comparative status advantages accrue to those groups having power superiority over others. Dominant group interests may be consolidated by a system of prejudice and discrimination which maintains status differentials. Minority group interests are often thwarted by those groups in positions of power which enable them to discriminate.

VARIABLES IN INTERGROUP ARENA

INDEPENDENT

Configuration of power relations resulting from encounter.

Social and cultural factors prior to immigration.

POWER RELATIONS

(in country of settlement)
Outline actual group positions within the arena, and determine majority or minority group status.

INTERVENING

Orientations towards legitimacy of power relations.

BELIEFS

group values and attitudes interests as determined by group position in system of power relationships.

DEPENDENT

Modes of action as channelled by beliefs and objective possibilities (determined by power and organisational resources).

ACTIONS

responses of interest groups. responses of legal system.

→
←

a) adjustive organisations.
b) synthesis organisations.
c) protest organisations.
d) maintenance organisations.

Interdependent

(definition of problems of intergroup contact.)

(Interest groups redefine problems in the light of legal responses. Has consequences for a), b), c) and d).

b) The definition of problems by different groups: Different definitions of the problems posed by immigration are determined by the interests of groups occupying different power positions in society. These definitions will often conflict. Within the intergroup arena, majority groups have interests in maintaining the existing system of power differences. They define problems in terms of the threats posed to these interests. Problems are viewed as being 'caused' by minority groups failing to conform to indigenous ways of life. Minority groups see problems as being created by inequalities of access to social facilities due to discrimination by majority groups. They have interests in reducing the power of majorities to discriminate by reducing the area of intergroup contact and insisting upon the virtues of minority cultural values. Conciliatory groups define problems not from the standpoint of any particular power position concerned with the ends of securing power interests, but in terms of finding means of mediating between conflicting interests. In attempting to affect compromise solutions to problems, they may possess certain characteristics of both majority and minority groups.

c) Kinds of group action taken: The direction of group action can be seen to be influenced not only by subjective factors, such as problems defined in accordance with group interests and beliefs, but also by objective ones. These include the degree to which organisational resources (such as money, experience and leadership ability) are available to the group.

Both these factors are reflected in strategic considerations of group action -- the degree to which power resources can be concentrated on specific issues within the definition of more general problems. The possibility of influencing other agencies whose support is needed will be affected by the degree to which groups can connect issues, and secure more general public support for their aims.

d) Responses of the legislature, and legal effects: Group activity and the responses of the legal system are connected by a relationship of interdependency. The legislature responds to groups which can effectively mobilize resources to press for legal changes, and such changes will reflect pressure group interests. Particular legal provisions are therefore often partisan, and will be viewed as such by groups whose interests are not represented in the new legislation. Legal 'solutions' to problems will not be acceptable to all groups since they are not considered appropriate to resolving issues subject to a variety of conflicting definitions. The failure of the law to reach solutions appropriate to particular interest group definitions will have repercussions in terms of renewed group responses. These responses will further polarise group interests, and increase intergroup conflict.

A closer examination of the problems of inter-racial behaviour in Britain indicates that the relationships between intergroup arena variables are more complex than they first appear. Particularly, the various classes of variables are

often interdependent, rather than being merely dependent upon antecedent conditions and determinants of future ones. The complexity of the relationship between intergroup and legal activity therefore has important implications not only for an understanding of the conditions under which the legal system responds to interest group pressure, but also for how various groups react to legal changes, and realign their interests accordingly. The ability of the legislature to understand the nature of group responses to the introduction of new laws governing intergroup behaviour will depend upon the degree to which these implications are realised. Bearing this in mind, our model can serve as a critical, as well as an analytical device.

Several interrelated propositions may be suggested by taking into account the kinds of relationships developed in our model.

P(i) - The strength of interest group activity will depend upon the extent to which power resources are available to the group.

P(ii) - The most active kinds of group organisations will exert the most pressure upon the legislature to bring out legal changes.

P(iii) - Such organisations will pressure the legislature into 'solving' defined problems. Solutions will be suggested in terms of legal changes which reflect group interests.

P(iv) - The legislature will respond to group pressure,

rather than take action on its own account to solve problems. The extent of legislative response will vary directly with the strength of pressure group activity.

P(v) - Legal changes will reflect the interests of the groups which are strong enough to bring pressure to bear upon the legislature.

P(vi) - The possibility of realising legal solutions acceptable to all groups will depend upon the degree to which group definitions of problems conflict. Groups whose interests are represented in legal changes will accept such changes as 'solutions' more readily than those whose claims are ignored.

P(vii) - If legislation fails to effect a conciliation between the rival claims of different interest groups, the unintended consequence of its introduction will be to polarise group interests, and increase intergroup tension.

These propositions may be tested against the historical record of the activities of the legislature in addressing itself to the problems posed by immigration and inter-racial behaviour in Britain.

CHAPTER 2: THE LAW: HISTORICAL AND
POLITICAL PERSPECTIVES ON CONTROL LEGISLATION

Introduction. To present a model which outlines the relationships between the variables of intergroup action may be intellectually satisfying, but it hardly constitutes a sufficient approach to the analysis of intergroup relationships under consideration here. Yet to incorporate into our investigation a perspective which by its own account is not strictly sociological requires justification. It is necessary to demonstrate, therefore, that a historical perspective can provide insights into the workings of race relations in Britain which may be overlooked by an exclusively formalistic analysis. The latter can, it has been suggested, indicate the types of groups that may arise in response to a power conflict situation and the posture towards the authority of the law that they adopt. But it can do nothing more than outline the general kinds of conditions conducive to their genesis and development. Our interest in considering a model has been to show how it may function as a source of propositions concerning the nature of group activity and legal responses. As far as the general approach is concerned, its perspective serves as a background against which more specific investigations can proceed.

We have outlined a model which takes account of the incompatibility of interests and values between conflicting groups in society. However, the social world extends beyond the immediacy of the intergroup arena towards the grounding of our actions as law-abiding citizens upon 'higher order' social values than those of more immediate group interests. The power of public opinion as the repository of these former kinds of values -- the social and cultural traditions of indigenous society -- is reflected in the symbolic sources of law which speak to the practical question of the differential claims of groups within it. Legislative policy is an aspect of that practice which generalises social projects and goals, with the ultimate intention of giving shape to publicly-held values. In turning our attention towards a history of legislative practice and taking account of the formal development of policy with respect to minority groups, we note that " . . . it becomes apparent that historical fulfillment is the decisive perspective for evaluating social policy."¹ Such a perspective pays particular attention to understanding legislation in the context of the mobilisation of both different interest groups and a more general public opinion, which are decisive for any policy.

Alien Immigration. Attempts to deal with immigrant problems

1. G. Winter. Elements for a Social Ethic. (New York, 1966) p. 282.

in Britain through the imposition of controls on entry are not new phenomena. The rising tide of international rivalry in late Victorian times fostered a demand for protection from free movements of labour. The comparative economic advantages which Britain enjoyed were being steadily overtaken by the rapidity of industrialisation in other parts of Europe and the United States. Some control over aliens had been affected through the Extradition Act of 1870 which, in keeping the right to political asylum alive, in theory at least, was a poor instrument of restriction. The problem was highlighted by the large influx of Jewish refugee labour from Eastern Europe, some 120,000 coming to settle in the poorer quarters of East London between 1875 and 1914.

The immigrants themselves tended to be self-employed, or organised within their own ethnic work groups, and did not generally hold contracts with British employers. Initial opposition to immigration did not occur within the camps of the working class, but among industrialists and city politicians. They perceived that low immigrant wage rates would undermine the wage base of British workers and result in a call for unionisation to protect the latter's financial interests. In attempting to prevent such a trend, and to uphold their own capital and organisational advantages, employers suggested that it was the immigrants themselves who had created problems for British labour. Tory politicians were afraid that workers'

organisations would ally themselves with the Liberal and Labour parties, of which the latter was yearly growing in strength.

A House of Commons Select Committee reported in 1889 that aliens disrupted the skilled labour market by working for longer hours and for less wages than English workmen. The committee did not see that the absolute numbers of aliens would raise any alarm, but nevertheless pointed to some of the problems of ghetto concentrations. Its conclusions were therefore somewhat tentative -- it was not prepared to recommend the imposition of controls on entry but suggested that legislation to such purpose may become necessary in the future. Some politicians, however, seized on the limited findings of the committee to press for immediate restrictions,² to justify maintenance of their comparative power advantages over both immigrant and indigenous labour groups. Yet they attempted to win support, with some success, of the latter by insisting that it was immigration which posed the real threat. Their activities indirectly gave birth to a Royal Commission which, in 1903, addressed itself to the charges of the anti-alien lobby. To some extent its findings were coloured by the sort of thinking that had given rise to charges against immigrants. Although it considered that " . . . leaving the skilled labour market out of the question we think it proved that the industrial conditions under which

2. cf. Foot. op. cit., Ch. 5.

a large number of aliens work in London fall below the standard which . . . ought to be maintained,"³ the Commission's terms of reference referred to control rather than social legislation to combat the kinds of conditions described in the report.

The Aliens Act 1905 implemented the recommendations of the Commission and subjected certain classes of aliens to legislation and state control. The activities which gave birth to the Act generated considerable political capital in Tory circles but did nothing to improve conditions of labour or overcrowding in areas of high immigrant concentration. The reform of industrial conditions came through other channels, notably as a result of the Factory and Workshop Act 1901, and an unprecedented rise in the number of Jewish trade unions around the turn of the century.

The Home Secretary to the new Liberal Administration suggested in 1906 that the benefit of doubt as to the right of asylum should rest with the immigrant, rather than the immigration officer. Although this opinion brought forth a wave of protest from the advocates of greater control, who maintained that the 1905 Act would consequently be evaded, the immigration question remained largely dormant for several years. At the suggestion that a ring of foreign anarchists was operative in London, the Government replied that it was contemplating further legislation, but it did not outline

3. Report of the Royal Commission on Alien Immigration, 1903, Cmnd. 1741, p. 20, para. 133.

any new concrete proposals regarding admission and registration of aliens.

The imminence of war changed the Liberals' nominal concern with sporadic outbursts of small groups of alien anarchists into a policy of strict control when the Aliens Restriction Act 1914 was passed, without Commons division, in a single day. The overriding interest in regulating the activities of subversive alien groups at a time of impending national danger, plus the fact that such activities were projected as being characteristic of all aliens, was sufficient to temporarily unite different political attitudes towards the question of control.

The provisions of the 1914 Act gave Draconian powers to the Home Secretary to prohibit immigration and to deport aliens. Section I of the Act places the onus of proving that a person is not an alien on that person⁴, thus reversing the principle of 'benefit of doubt' mentioned above.

As a result the immigrant became unsure of his legal standing; his status during wartime came to depend more and more upon a popular whim which operated in a general atmosphere of hostility to aliens, increasing anti-semitism, and political chauvinism. The legislature abdicated its responsibility as a guardian of democratic values. As Foot has pointed out:

"No one can doubt that the net result of

4. Aliens Restriction Act 1914. Sect. I(4).

the process was seriously detrimental. The so-called 'advantage' to Britain of control legislation -- marginally fewer immigrants -- must be set against the racial feelings stirred up by the campaign for control. After control the Jews in East London lived in as squalid conditions as they had done before it. The only difference was increased hostility from people and politicians who had previously borne them no grudge."⁵

Although the stated purpose of the 1914 Act was to impose restrictions on aliens in time of war, it was left implicit that the Act, being an exigent measure, would cease to operate once the period of imminent national danger was over. After the war, however, the Government capitulated to a popular opinion nourished by wartime xenophobia and voted through a Bill which became the Aliens Restriction (Amendment) Act 1919. The main provisions of this reinforced Act were:

1. Limitation of stay for three months except for holders of Ministry of Labour permits,
2. Refusal of admission at the discretion of the immigration officer, and
3. Strengthening of powers of deportation, without recourse to appeal, if deportation is alleged to be 'conducive to the public good'.

It was originally intended that the Act should operate for one year only, but it has been extended every year since its introduction by the Expiring Laws Continuance Acts. The Order in Council currently in force is the Aliens Order 1953. Discriminatory provisions are included in several of the statutory provisions of the 1919 Act. Section 5

5. Foot. op. cit., p. 102.

prohibits the employment of aliens in the capacity of aircraft pilots or officers and skippers of British merchant and fishing vessels. Further, Section 5(2) of the same Act allows for differential rates of pay, according to ethnic origin, for ordinary seamen employed on such vessels. It is important to note in passing, not so much the detailed provisions of the Act, but the fact that it embodies certain discriminatory principles still in force today, and that the spirit of the Act, conceived under very different circumstances, remains at the basis of present-day legislation concerning aliens.

We can suggest at this stage the development of two kinds of group attitude which influenced the introduction of legislation in the matter of alien immigration, and the kinds of conditions under which they arose.

The first kind of attitude was specific, and related to an economic consideration of the position of both immigrant and indigenous labour. Objections to the growth of an alien work force were voiced by employers almost entirely in economic terms, in an attempt to placate growing calls for a secure wage base on behalf of British workers. Immigrants were not, initially, regarded as having generally objectionable characteristics. Rather it was felt that the particular types and conditions of their labour were economically pernicious. In short, indigenous attitudes objected to a kind of immigrant activity, rather than to the immigrant himself. Since

objections were specific, those employers and politicians in a position to exert some influence upon the drafting of the 1905 legislation did not voice blanket condemnation of alien groups. The limited provisions of the Act in controlling immigration is a reflection of this fact.

The second kind of attitude was more general, and rooted in the insecurity of immigrant status in a changing political situation. Objections to a perceived political threat were voiced not by any specific interest groups, but initially by the reports of subversive incidents conducted by foreigners. The activities of such minorities were generalised by the public in attributing such destructive traits to all alien immigrants. The indigenous population as a body began to look with increasing hostility towards outsiders at a time of national crisis. This kind of general attitude began to make itself felt in 1914 with the uncontested introduction of legislation which stipulated more general prohibitions upon alien activity than its 1905 predecessor.

Furthermore, the 1919 amendments may be accounted for when we realise that public attitudes of general condemnation of aliens, though possibly understandable in the political context of wartime, are nevertheless more resistant to change than the specific attitudes of small interest groups. Concentrated around the latter kind of attitudes, group activity tends to be particularistic. In responding to an exigent situation, its special features lose their singular character once the need for immediate action has passed.

This was the case after the war. Yet the general attitudes of hostility persisted; it was these that the Government took into account in strengthening postwar immigration controls.

As may have been expected, the harsh legislation and the atmosphere of hostility to foreigners which continued after World War I resulted in a decline in the number of alien settlers in Britain. Further, the climate of economic deprivation during the thirties was hardly conducive to a liberal attitude on the subject of immigration. Apart from the admission of a token number of Jewish refugees from Nazi Germany, both Labour and Conservative policy remained restrictionist; political attitudes preferred to tighten existing controls rather than implement new legislation.

During the Second World War, the effects of Nazi philosophy concerning Jews separated the traditional British antipathy towards foreigners from its more chauvinistic and anti-semitic elements, and the wartime coalition government was forced to reassess the policy in regard to the internment of those refugees from Germany and Austria that had been granted entry.

Labour shortages, and a socialist Government's promise of implementing a policy of full employment, were the immediate post-war factors which created a more favourable climate for the influx of alien labour. The twelve years

from 1939 say a doubling in the numbers of employed aliens in Britain. The Government introduced a resettlement scheme for displaced European workers, and found employment for thousands of Poles and Ukrainians, among others. The important thing to note about this European Voluntary Workers scheme is that its implementation demanded that the provisions of the 1919 Act limiting entry of aliens be ignored in the cause of the economic necessity of providing labour for undermanned and expanding industries. As Foot has remarked,

"It says much about the cynicism of British politicians that, while insisting to some of their own supporters that the Aliens Act must continue, they were prepared, if the economic necessity arose, to move outside the Act."⁶

But if the EVW schemes appear at first sight to be examples of liberally-inspired attempts to assist the absorption of displaced European workers into the home labour market, an examination of their details suggests that they were not implemented by any desire to provide opportunities on a par with those available to indigenous labour. Immigrants were given permits to work only in those industries that the Ministry of Labour deemed appropriate; they could not change employment without official permission, and restrictions were placed upon entry of dependents. The conditions of alien employment led to charges at the United

6. Ibid., p. 119.

Nations General Assembly that displaced persons in Britain were the victims of an official policy of discrimination.⁷ In answer to these charges, some employment restrictions were lifted, but the Government hesitated in providing the resources to combat the social problems created by the large influx of foreign labour -- problems that it had nevertheless previously recognized as its responsibility to solve. While the influx of aliens remained related to the labour needs of the British Economy, employers welcomed the newcomers as a source of profit and expansion of their industrial concerns. However, Government policy remained largely inflexible.

Collectively-imposed restrictions on alien job-mobility had their origin in trade union fears about the position of their 'own' workers, and concern over a possible exodus of indigenous labour. In such an atmosphere, the agreements between Government and trade unions set the pattern for conduct towards aliens, in which controls were looked upon as essential and proper.⁸

What was it about the nature of the post-1945 conditions which created a climate in favour of alien immigration whereas after World War I attitudes had been so hostile? There appear to be many similarities between the two postwar situations. In both, the climate of national opinion became

7. cf. J. A. Tannahill. *European Volunteer Workers in Britain.* (Manchester, 1958).

8. cf. Bob Hepple. *Race, Jobs and the Law in Britain.* (London, 1968). esp. Chs. 3 and 4.

inward-looking and self-questioning in an attempt to recover from the trauma of war. In both, the change from military to domestic production created conditions favouring an expansion of the labour force that could only be met by immigration. To understand the apparent anomaly of similar post-war economic needs, yet different attitudes to the influx of alien labour, attention must again be focussed on the relationship between general and specific indigenous attitudes which resulted in the circumvention of earlier control legislation.

We have already suggested that the extended control legislation of 1919 was not motivated by specifically economic considerations, but because of a general public atmosphere of hostility to aliens. The economic implications of its extension, therefore, were neither considered nor understood. The possibility of an increased domestic production through the employment of immigrant labour was sacrificed to the indigenous desire of maintaining a public order and political stability that immigrants were accused of undermining. Public opinion called the tune on the issue of alien immigration in 1919.

Twenty-five years later, the trade union movement had created a power base which felt itself much less threatened by the influx of foreign labour than had been the case in the days when it was still struggling for recognition. Moreover, it was formally associated with the Labour Party, now the new Labour Government, and could press effectively for

parliamentary consideration of its attitudes regarding immigration. The trade unions were not so much opposed to the earlier public vision of the influx and activities of alien groups, but rather they presented a fresh appraisal of the immigration situation in the light of their own interests as a newly-established power group. In realising that an expanding economic production needed to utilise alien labour, and that such a development would be favourable to the collective bargaining position of the unions, they were generally in favour of immigration, subject to certain conditions, as a method of filling job vacancies in a situation of full employment.

The respective situations, then, can be restated. After the First World War general public opinion overtook the considerations of specific interest groups (employers and some politicians); though it had been nurtured by them. The former was emotional and rigid in its stance towards aliens. The latter were pragmatic, but equally rigid. The resulting control legislation was correspondingly uncompromising and unequivocal. After the Second World War, the interests of the trade union movement, as a specific body in a new position of economic security and eager to maintain its political power advantages, received consideration over those of a more general public appraisal of alien immigration which had not adopted any firm position. A more specific interest group was thus able to set the pattern for regulations governing the conditions for the employment of foreign labour

than had been the case with previous legislation.

Coloured Immigration. While the volume of alien immigration remained related to the fluctuations in the labour market, the Government's approach was not called into question. From the middle fifties onwards, however, coloured immigrants from the British Commonwealth began arriving in Britain in increasing numbers and " . . . to the customary British distrust of strangers was added the traditional disparagement of colour."⁹ Later in the decade the economic tide began to turn, and a series of minor recessions created in some areas and particular jobs, a labour surplus. Whereas the expanded scope of the Aliens Order was sufficient to control the influx of non-Commonwealth labour, there existed no formal machinery for regulating the flow of those to whom the Order did not apply. The creation of such machinery would mean that Commonwealth citizens who, as British subjects had traditional rights of entry and employment, would be denied these rights. It was put forward as a defence of possible controls of Commonwealth citizens that their British citizenship was not the result of a deliberate act of policy, formally embodied in the law, and therefore designs to limit the entry of Commonwealth immigrants were not inconsistent with their standing as U.K. citizens. The fact remained,

9. Ronald Segal. *The Race War.* (London, 1966). p. 307.

however, that they could legally evade the Aliens Order, and immigration from the Commonwealth continued, unabated by legal restrictions, throughout the fifties. The Conservative Government took the view that since the coloured immigrants were merely exercising their rights as British subjects to take up employment in the United Kingdom, they (the Government) could not be automatically held responsible for providing accommodation and jobs for these newcomers -- a responsibility which, at least theoretically, had been accepted for the EVW's.

Most of the Commonwealth immigrants who began arriving in Britain in increasing numbers from the middle fifties onwards were coloured people from the West Indies, India and Pakistan. While the economy continued to expand the reaction to this influx of labour was, initially, favourable. Early arguments that it would pose a threat to indigenous labour were countered by observations that immigrant workers seemed eager to join unions and lend their support to bargaining for higher wages and better working conditions. Opposition grew, however, outside the sphere of employment and began to concentrate its attack on what for a coloured worker in a time of full employment had become his main preoccupation, namely that of finding adequate housing. The immigrant was seen not so much as manufacturing an employment problem, but a housing one. Arguments centering on the squalid living habits of the newcomers were openly exploited. Those Ministers whose responsibility was immigration were lobbied

by their own backbenchers who represented constituencies with housing, rather than employment problems. They generally took the view that the immigrants were guilty of creating these problems.

The point to note here is that at this stage of the immigration process, when relatively few coloured newcomers had yet settled in Britain, attacks directed towards them were specific, and in accordance with particular interests of certain sections of the white population (e.g. attempting to prevent them from settling in better-class, residential areas). Such attacks did not have bad consequences for all of the coloured immigrants' experiences in Britain. No generally adverse climate of public opinion existed within the host population at this time. The particular difficulties that minorities met in the area of housing were usually compensated for by the availability of job opportunities.

The Ministry of Housing recognized that in the long-run the question of living conditions could only be answered by the building of more homes; it announced that a committee of enquiry would look into the matter, but no report was forthcoming. While there was, then, official recognition of difficulties for which immigrants were not directly to blame, the Government abdicated responsibility, suggesting that local authorities were not tackling the problem with sufficient urgency. The Government had no policy for meeting immigrants, for assisting them with accommodation, or for helping them to find schools for their children. Those arrangements that

were made lay entirely in the hands of voluntary welfare agencies such as the British Caribbean Welfare Service, operating on an extremely limited budget. No provisions existed for Asian immigrants with language difficulties. In such a situation, the complacent attitudes of Government became more susceptible to growing calls for control as a solution to problems which it had helped to nourish, if not directly to create.

In 1955 the Central Council of the Conservative Party approved a motion which called for the extension of the laws concerning aliens to Commonwealth immigrants, and shortly afterwards an immigration control motion was passed at the Conservative Party Conference. Commenting on this, the Government took the view that entry should be allowed 'without prejudice'. The flames of agitation for control grew, however, being fanned by the racial disturbances of Nottingham and London in 1958. Meanwhile, the enactment of the Rent Act 1957, with its emphasis on decentralisation of controls on conditions of tenancy left coloured immigrants open still wider to an exploitation in housing -- an exploitation which culminated in the scandals of Rachmannism at the end of the decade.

The General Election of 1959 returned to Parliament an increased number of Conservative MP's who favoured the introduction of control legislation. A group of MP's representing Conservative constituencies with high percentages of coloured immigrants met throughout 1960 to discuss the

various forms that possible controls might take. Yet the Government itself was, as late as May 1961, set against introducing restrictive legislation 'for at least a year'. However, estimates suggested that immigration from the coloured Commonwealth had more than doubled in less than a year over the 1960 figures, since

" . . . the ordinary flow of immigration had been grossly distorted by the constant suggestions of control, coupled with the Government's refusal to declare that it would not bring in control legislation."¹⁰

The campaign to control immigration was assisted throughout the summer of 1961 by local control associations and the activities of backbench Conservative MP's led by Sir Cyril Osborne, who lobbied constituency party organisations to table control motions at the October Conservative Party Conference. Over five hundred such motions were tabled, which led the Home Secretary to consider that, in the light of recent increases in coloured immigration, the country's capacity to absorb newcomers would be impaired. The Government decided to introduce an Immigration Bill in the next Parliament.

In the debate on the Queen's Speech, 31st October, 1961, the Leader of the Opposition suggested that the determining factor influencing immigration rates was the degree of prosperity of the receiving country -- legislation was therefore unnecessary because of an already existing

10. Foot. op. cit., p. 135.

economic regulator. In view of the recent influx of Commonwealth immigrants which bore a highly distorted relationship to the employment situation in Britain, however, the Government introduced the Bill

" . . . to make temporary provision for controlling the immigration into the United Kingdom of Commonwealth citizens; to authorize the deportation from the United Kingdom of certain Commonwealth citizens convicted of offences and recommended by the court for deportation; to amend the qualifications required of Commonwealth citizenship under the British Nationality Act, 1948; to make corresponding provisions in respect of British protected persons and citizens of the Republic of Ireland."¹¹

The rationale underlying the Bill's introduction was fully stated by the Home Secretary, in moving its Second Reading.

"We know how valuable the immigrants have been . . . and we trust that by close contact with the governments concerned we can illustrate the spirit in which we mean the Bill to work . . . It cannot be denied that the immigrants who have come to this country in such large numbers have presented the country with an intensified social problem. They tend to settle in communities of their own, with their own mode of life, in big cities. The greater the numbers coming into this country the larger will the communities become and the more difficult will it be to integrate them into our national life. We have . . . come to the conclusion that the only practical means of dealing with the situation is to control the incoming numbers on the basis of the issue of employment vouchers . . . The Government will decide from time to

11. Hansard Parliamentary Debates, 1st. November, 1961.
Emphasis mine.

time how many such vouchers can be issued having gone into all factors which bear on our capacity to absorb further immigrants without undue stress or strain."¹²

As a result of consultations with the government of Northern Ireland, clause I(4) of the Bill was amended so that the proposed controls on immigration from the Irish Republic would be lifted. A policy of patrolling the border between Northern and Southern Ireland was suggested as being unworkable. The Home Secretary announced this during the Bill's Second Reading on November 16th. He defended this action by pointing out that although the decision may be misunderstood, it was not dictated by any considerations of racial discrimination. The possibility of unworkability of the Bill with respect to the Irish had already been discussed in a Times leader two days previously. The editorial, under the title "A Bad Bill", pointed out that the Irish constituted by far the largest single group of immigrants (their rate of influx estimated at that time as being 70,000 per year) to Britain. If they were to be allowed entry, and yet a considerably smaller yearly influx of West Indians were to be subject to controls, then the Bill would " . . . even though incidentally, involve a colour discrimination."¹³ In debate, Mr. Charles Royal was moved to state

12. Hansard Parliamentary Debates, 16th. November, 1961. Cols. 693-6.

13. The Times. Leading Article. 14th. November, 1961.

"It is generally accepted that the influx of white people from the Commonwealth is infinitesimal in comparison with the total amount of immigration. If we rule that out and we rule out the Irish, who are left? We have the coloured people from the Commonwealth. The Bill becomes a colour bar Bill from that moment."¹⁴

The removal of Irish immigration from the provisions of the Bill gave impetus to the accusation by the Opposition of racial discrimination. Previously, their arguments against control legislation had partly been in terms of the damages it would do to the fabric of the Commonwealth, and partly that controls would do nothing to ameliorate social problems at home. The former was to some extent a poor line of attack -- the decline in Commonwealth relations had begun some considerable time before serious talks of immigration control. That the Irish were consulted on matters affecting them, and yet the coloured Commonwealth countries were presented with the Bill as a fait accompli, did however, serve to hasten the decline.

In answer to the charge that immigrants were presenting the country with an intensified social problem, the Opposition argued that such problems had not been created, but merely highlighted, by the influx of coloured newcomers. It charged the Government, therefore, with not directing policy towards solving problems at home -- the proposed legislation would merely intensify the difficulties experienced by intending

14. Hansard Parliamentary Debates, 16th. November, 1961.
Col. 748.

migrants in their home countries. As Mr. Clement Davies stated,

"To me the Bill is a confession of the failure in two important respects. First, there is the failure to tackle the problems which confront these people for whom we have been responsible for well over a century . . . (Secondly) There has been a complete failure to tackle the problem on this side, of how these people are to be housed when they come here."¹⁵

Housing was seen to be the most important issue that the Government were disregarding. Even the Conservative MP Mr. Norman Fisher claimed that while the whole structure of the Bill was based on the employment argument, he included amongst his reasoning (which was perhaps the most balanced and realistic argument presented by any Member of either party on the question of control) a discussion of the housing problem.

"Of course it might be better to build more houses than accept fewer immigrants. However, I concede that there is . . . a housing shortage, and as houses take time to build this in itself constitutes a good reason for at any rate a temporary check on immigration."¹⁶

We would perhaps do well at this stage to recapitulate and analyse some of the main issues raised by the proposed introduction, and subsequent implementation, of the immigrant

15. Hansard Parliamentary Debates, 16th. November, 1961. Cols. 728-9.

16. Hansard Parliamentary Debates, 16th. November, 1961. Col. 782. Emphasis mine.

control legislation. There appear to be several main questions worthy of more detailed consideration.

Firstly, there is the charge made by the Opposition that controls would have the effect of creating a colour bar. Reference has already been made to the Irish immigration question in this respect. Perhaps equally as important is the fact that the issue of deportation was included alongside that of immigration control in the provisions of the Bill. The effect of its publication, therefore, may have been to equate in the public mind the intention of introducing controls with the innate undesirability of (particularly coloured) immigrants, by obliquely suggesting that criminal elements constituted higher proportions amongst immigrant groups than they did within the indigenous population.¹⁷

Secondly, the original intention of the 1962 Bill was that it should constitute a temporary measure only -- that part of the subsequent Act dealing with controls was to expire on 31st. December, 1963 unless otherwise determined by Parliament.¹⁸ Mr. William Rees-Davies considered that the 'urgency' of the situation demanded immediate passage of the Bill, since

" . . . the Government has no alternative

17. Some Conservative MP's, and especially Sir Cyril Osborne and Mr. William Rees-Davies, argued that the time motion on the Third Reading of the Bill was necessary because of a smallpox outbreak amongst some recent Pakistani immigrants -- they were also considered to be undesirable by posing a health risk.

18. Commonwealth Immigrants Act 1962, Sect. 5.

. . . . This is a vitally urgent problem. We must consider the problem in the light of the present situation. We shall get a flood of people from India and Pakistan, plus increasing numbers from the West Indies, and in those circumstances it is idle to suggest that we should take the Bill slowly for the next five or six months. It is predominantly an emergency measure.

The fact that the Bill was intended to be a short-term measure designed to meet an emergency situation must not obscure consideration of it being short-sighted and ill-considered, however. In constituting a measure of expediency, it might have been expected that when the abnormal influx of immigrants subsided, that the provisions of the Act would be subsequently thoroughly questioned and revised. This has not been the case, however. The very nature of the Act as a transient measure has been changed by its yearly continuation under the Expiring Laws Continuance Act. Furthermore, the powers of restriction given under law have been considerably extended by the implementation of the Commonwealth Immigrants Act 1968, which denies automatic entry into the U.K. of Commonwealth citizens with British passports.

Since the proposed measures to limit immigration did not constitute part of a co-ordinated, long-term immigration policy, The Times suggested that the 1962 Bill would not work in terms of its own stated intentions. "It is difficult

19. Hansard Parliamentary Debates, 25th January, 1962. Cols. 932-4. Emphasis mine.

to see how it is going to reduce numbers or do much more than introduce a lot of complicated paperwork."²⁰ It is apparent that the Government, in intending that the Bill constitute a short-term measure to halt a temporary 'flood of coloured immigrants' (Sir Cyril Osborne's words), did not pay sufficient attention to the wider social problems highlighted by those coloured persons already settled in Britain. There was, however, recognition of the existence of such problems. Lord Balniel, speaking about the Bill in Committee, noted that:

"We have only a limited geographical area, and do not have unlimited resources for the creation of new social capital in respect of housing, educational and medical facilities. This is particularly a problem in that when immigrants come to this country they are not diffused throughout the length and breadth of the land. They do not form just 1% of the total population, but are channelled into one or two focal areas where they form 10%, or even 20% of certain localities the amount of social capital in the shape of houses, schools and medical facilities, is clearly inadequate to meet the needs either of the immigrants or the local population."²¹

The Government did not propose any legislative measures designed to tackle social problems at their sources, and immigration control legislation was not co-ordinated with any existing measures that addressed themselves to these

20. The Times. Leading Article. 14th. November, 1961.

21. Hansard Parliamentary Debates, 6th. February, 1962. Cols. 905-8. Emphasis mine.

problems. The introduction of a work voucher system was supposedly designed to relate the influx of immigrants to the availability of job vacancies and overall economic conditions. Under such a system, and subject to certain exceptions, a Commonwealth citizen wishing to be admitted to the U.K. is not to be allowed entry unless he is the holder of a work voucher issued by the Department of Employment and Productivity.²² Until 1964, there were three categories of work voucher issued -- "A" for people who had been offered definite jobs, "B" for those with certain defined skills, and "C" for unskilled workers. In 1964, category "C" was dropped. The Ministry of Labour announced in February 1968²³ that the system of admissions for category "B" would be revised and restricted to relate more closely to the economic and social needs of the U.K., and category "B" was all but closed.

If the issue of work vouchers was dictated solely by economic considerations, one might expect this system to be responsive to changes in levels of employment, etc. This, however, has not been the case. The limitation on the issue of category "B" vouchers, particularly, was made at a time when vacancies in skilled occupations and the professions far outnumbered those qualified to apply. Furthermore, there has been little or no attempt to make provisions

22. Home Office Instructions to Immigration Officers. (Cmnd. 3064), para. 20.

23. Hansard Written Answers. 26th. February, 1968. Cols. 242-3.

for a planned influx of immigrants on the basis of future employment needs. Neither has the nature of certain kinds of employment been taken into consideration. For example, the demand for teachers is known to be seasonal, the peak occurring in the months before the beginning of the school year. Yet it has been shown that vouchers are often issued without any consideration as to the nature and availability of suitable employment.²⁴

Consideration of the Fact that the proponents of immigration legislation paid little attention to discussion of its wider implications and effects, and that they overlooked any examination of social issues more worthy of investigation, leads us to the question of whether the Commonwealth Immigrants Act has actually served as a measure of control at all. If one takes 'control' to mean merely a 'restriction of numbers' (and this has clearly been the intent of legislation), as opposed to a regulated intake (with due regard being paid to wider socio-economic considerations), then the Act has clearly failed in its intentions.

The published figures of net immigration from the coloured Commonwealth show rates higher after the introduction of the 1962 Act than before it. (cf. Appendix I) Bona fide dependents are legally entitled to entry under

24. Institute of Race Relations News Letter Vol. 3, No. 4. (April 1969) pp. 170-1.

its provisions, and they now constitute by far the greatest proportion of immigrants. The effect of successively limiting the issue of work vouchers has been to magnify the percentages of dependents among arrivals, and it is these very dependents who may be expected to intensify the demand for social welfare services. Therefore, not only has ill-considered control legislation generally ignored the existence of social problems, but has also indirectly contributed to their inflation.

Until 1960, the issue of immigration control remained on the periphery of the political scene. It did not figure as an issue of any significance in the 1959 General Election, and while the influx of immigrants remained fairly closely related to the economic situation " . . . the climate of opinion remained basically laissez-faire, voluntaristic, and non-discriminatory."²⁵ The 'Goldwater Right' (as Foot has termed them) of the Conservative Party came increasingly to call the tune on the issue of controls in 1960 and 1961, however. This was due to a peculiar combination of factors. Whereas the extreme right-wing Conservatives have traditionally held little power in Parliament on their own account, the inability of their more moderate colleagues in the Government to come to terms with growing economic and social problems gave the right-wing voices more weight. Also,

25. Sheila Patterson. *Immigrants in Industry*. (London, 1968). p. xi.

the main organisational strength of the extremists has come from the grass-roots constituencies -- from shopkeepers, councillors, and from small businessmen and lawyers who control the local party associations. This has placed them in a strategic position of confronting problems posed by immigration at first hand. We have already noted their ability to concentrate on specific issues and propose solutions in terms of general demands. It is certain, therefore, that the maintenance organisations led by extremist Conservatives held the balance of power during the parliamentary debates on control. Further, they were able to put into practice the self-fulfilling prophesy of announcing that controls would be necessary, which brought forth a wave of immigration unrelated to Britain's socio-economic situation, and then insisting with renewed urgency on restrictions to 'prevent a flood' of newcomers.

The fact that the interest groups bent on controls were able to operate with considerable success had several consequences in terms of the changing climate of opinion on the issue of immigration immediately prior to, and after the introduction of the 1962 Act. Mr. Norman Fisher acknowledged that one of the good reasons for introducing some form of controls was that:

" . . . the public obviously wants a Bill of this type. From the Gallup Poll of last week (published 14th. November, 1961), there is no doubt about where the public stands on this

issue. I believe that the public is wrong, but I do not think that Hon. Members should utterly disregard a strong expression of opinion by 90.3% of our own electors. It would be rather stupid and unrealistic if we did."²⁶

Fisher was one of the few Conservatives who abstained in the final voting, however, suggesting that although he accepted the principle of controls, the form of the Bill " . . . (was) prejudicial to good race relations."²⁷ The Opposition attacked all stages of the Bill in principle, Mrs. Barbara Castle maintaining that:

" . . . instead of giving a lead at this crucial turning-point in the world's history -- if necessary a lead against the tide of popular prejudice, in order to make people think -- they (the Government) are making people feel emotionally and in a reactionary way about this matter."²⁸

The possibility of the Government taking a stand against a growing public opinion nourished by rising figures of immigration and, as Patterson notes, " . . . the deteriorating American situation; a growing self-consciousness among immigrants and hosts alike about colour and race, and a growing tendency to view situations everywhere on terms of simple black-white confrontations,"²⁹ had already

26. Hansard Parliamentary Debates, 16th. November, 1961. Cols. 781-2. Emphasis mine.

27. Hansard Parliamentary Debates, 16th. November, 1961. Col. 783.

28. Hansard Parliamentary Debates, 25th. January, 1962. Col. 934. Emphasis mine.

29. Patterson. op. cit., p. xii.

been negated, however, by the strategic position occupied by the control lobby. Instead, the Government capitulated to a tide of prejudice which consequently grew in intensity.

The climate of both party-political and public opinion began to move further towards the pole of restrictiveness when it was seen that, because the provisions of the Act allowed dependents unrestricted entry, the influx of coloured newcomers continued unabated after its introduction. Peter Griffiths demonstrated in Smethwick that taking a firm line on immigration could reap electoral successes, and (especially coloured) immigration became the main issue in certain constituencies in the 1964 General Election. Further, the Conservative Party was not the Opposition, and could afford to be a little more demanding in its insistence on stringent controls, especially since the delicate balance of parliamentary power -- with the Labour Party enjoying a bare majority until 1966 -- demanded that Opposition opinion be more seriously considered.

When it became the party of Government, Labour thinking on the issue of controls began to change. The duration of the 1962 Act was extended, through the Expiring Laws Continuance Act, by a Labour Party which had formerly opposed legislation. The Government White Paper of August 1965³⁰ recommended stricter health checks for immigrants,

30. Home Office. Immigration from the Commonwealth.
Cmnd. 2739. 1965.

strengthening the powers of deportation, and giving more discretionary powers to immigration officers.³¹ There was no agreement amongst both Conservative and Labour MP's that immigration was creating problems in the social services, and that something ought to be done to limit the inflow of coloured people³² from the Commonwealth. To secure integration without at the same time insisting on more 'efficient' controls was now considered impossible. As a first stage to this end,³³ the Government suggested that legislation aimed at reducing the level of racial discrimination was essential. Such legislation has, however, been operative in climate where immigration controls themselves (also regarded as being essential) have been discriminatory. Consequently,

"Anti-discrimination measures, which are preventive rather than positive, have been introduced, but only after years of opposition, as a counterbalance to increasingly rigid controls. For the time being, the general climate of opinion is overcharged, negative, legalistic, and 'discriminatory' in a number of senses, including the underlying assumption that the problems of coloured people everywhere are not only identical but unique."³⁴

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31. To some extent the effect of these proposals have been offset by those of the Immigrants Appeals Bill, 1968.
32. In publishing separate statistics for white and coloured Commonwealth immigrants, it was implicit in the White Paper that coloured immigration was the main concern.
33. What, in fact, 'integration' means is open to various interpretations, as we shall see below.
34. Patterson. op. cit., p. xiii.

As we have seen in Chapter 1, the hardening of opinion against coloured minorities simultaneously gave birth to various kinds of organisations suggesting that the problems confronted by members of these minorities were not, in fact, identical. The growth of adjustive, protest, and synthesis groups attested to the fact that members of these different groups met with, and perceived, different problems in different areas. We shall turn shortly to a closer examination of the circumstances surrounding, and the effects of, the introduction of legislation supposedly designed to combat the kinds of problems voiced by these groups.

Maintenance Organisations, and Controls. There have been three broad waves of immigration into Britain throughout this century, each of which has been subject, to a greater or lesser degree, to some form of state control. The circumstances surrounding the imposition of controls has generally depended upon the extent to which maintenance groups have been able to raise the matter of immigration as one worthy of national political consideration. The nature of their organisation as a particular interest group demands that they pay special attention to grass-roots issues. At this stage, the interests they take are usually specific. Maintenance organisations are concerned about issues with which the ordinary citizen can feel sympathy. Their platform voices the same kinds of problems confronted by the rank and file within the wider population. This is necessary in order that they may mobilise public support

for their programmes. In so doing, however, the nature of their demands changes from being often highly specific, to becoming more general. It is only then that they have received consideration in the legislature. The dynamics of such change depends upon a variety of political, social and economic circumstances.

In 1918, the public mood towards aliens was dictated by the political circumstances of wartime, though initial maintenance moves to control immigration were dictated by economic considerations. After 1945, economic factors received prior consideration in influencing policy. A more liberal attitude towards aliens than had existed thirty years previously may be accounted for by the fact that right-wing maintenance groups had to some extent been discredited by their association in the public mind with fascism and anti-semitism, they did not control the balance of political power, and a public attitude of hostility to aliens had not crystallised. The only interest group with a sufficient power base to influence policy on immigration, the trade union movement, welcomed under strict conditions potential recruits to its ranks. The conditions which gave rise to attitudes towards European Volunteer Workers were somewhat special, yet the fact that it was the trade union position regarding alien labour which determined the response of the legislature to their influx serves to indicate that not only can one associate maintenance organisations as being the particular kind which demand restrictions. The trade unions perceived that their organ-

isational interests were at stake, and acted accordingly. These interests demanded that immigrants be allowed entry, subject to certain conditions which would benefit indigenous labour at the cost of limiting the mobility of alien employees. The special kinds of resources that the trade unions could draw upon, resources more valuable since a Labour Government was in power, meant that they acted directly and powerfully in determining the conditions under which aliens were to be allowed entry.

The circumstances surrounding the operations of maintenance organisations were different during the early years of alien immigration than they were from the mid-fifties onwards with respect to coloured immigration. In the earlier period, maintenance groups infected a public mood which led to growing calls for controls. Maintenance attempts directed against coloured groups addressed themselves to specific problems raised by the influx of West Indians, and later Indian and Pakistani immigrants, in particular areas. The charges that they were creating particular difficulties multiplied with the growing numbers of these immigrants, and grew towards a general condemnation of coloured persons on behalf of organisations calling for controls. This was not at first reflected in a public mood of increasing hostility, as had been the case with previous waves of immigration. Maintenance organisations were able by themselves to project their demands in the form of a general call for restrictive legislation. A public mood of hostility did not become apparent until maintenance suggestions

that controls would be necessary were in an advanced stage, and the later phase of coloured immigration in anticipation of future controls was unrelated to economic conditions in Britain. It was when they began to highlight the problems which existed in the social services that the public attitude towards immigrants began to harden. Even without widespread public support until after the 1962 legislation was introduced, maintenance groups succeeded in pressing for controls because of the strategic position occupied by their control lobbies in Parliament.

It is noticeable that maintenance organisations began to grow around the activities of a very few individuals who were persistent at party political and parliamentary level in calling for controls. They did not constitute an organisation, with set aims, which then began to pressure the legislature, but rather their pressure group activities grew with the organisation. They began to link issues which would not arouse public hostility, founded a secure power base, and simultaneously pressed their programmes. In so doing, flexibility was their key asset. Maintenance groups tested the public mood at each step (initially one of indifference, rather than hostility towards immigrants), assessed the balance of political power, and pushed their points of view when the situation seemed appropriate. But if their means were flexible, the goals of securing legal controls were simple, rigid, and appeared to offer solutions to 'problems' as defined by their interests -- solutions which ultimately

attracted public support.

Although we made note of the suggestion that the 1962 Bill should be passed since public opinion favoured controls, it cannot be assumed that the public supported them in the form in which they were presented to Parliament for debate. There is some evidence to support the contention that the British public as a whole is not motivated towards accepting controls on the basis of colour differences. Rose, et. al., suggested that in 1969 only about 10% of the indigenous population expressed strong antipathy towards immigrants on the basis of colour. The public mood of 1969, fanned by the excesses of Powellism, was certainly less tolerant than in 1962. Yet the parliamentary debates surrounding the introduction of the 1962 Act served to heighten the emotions of both parliamentarians, and subsequently the general public, over the issues of race. The Labour Party insisted that the decision to impose controls was motivated by racial considerations, and the Conservatives, pressured by the more reactionary maintenance organisations in their midst, insisted that it was not. But the discussions in Parliament clearly indicated that the real issue was colour differences. Maintenance organisations did not by themselves directly affect a public mood in the early 1960's, but the debates surrounding their insistence on controls of (coloured) immigration brought the matter increasingly to the public's attention.

Certain conditions favour the success of maintenance

organisations in pressing for legal changes. Even where public support cannot be gained for proposals (usually because of indifference, rather than outright opposition), it may not be necessary. Whereas the strength of the activity of maintenance groups may be directly dependent upon the power resources that it commands, the success of such activity depends as much upon strategic considerations as well. The most active organisations are not necessarily those which succeed in bringing about new policies.

Not only has the legislature responded to group pressure, from different sources and under different economic and political circumstances, in the matter of immigration control, but it has to some extent relied on past precedent to meet exigent situations. The history of legislative practice regarding immigration suggests that the legislature is bound to the idea of controls, under given economic and political conditions the form of such controls varying with the extent to which different pressure groups can effectively impose their own interests upon legal changes. The form that controls take is thus an indication of the extent to which interest groups' demands have been taken into consideration. The more stringent they are, the more maintenance groups have been successful in defending their particular interests by portraying the influx of coloured persons and aliens as a threat to indigenous society in general. The more flexible they are, the more is it an indication of the extent to which

pragmatic considerations have overridden those of group interests alone.

The roots of the maintenance tradition towards the issue of immigration control lies, as we can see, in a number of national experiences and the responses adopted towards them. The influx of large numbers of immigrants has often been regarded with concern, if not hostility. Yet the importance of their grievances, and the implications for the wider society, have been neglected. Legislative proposals have called for more effective controls of the external aspects of the problem rather than for a solution of internal ones. The development of particular group attitudes towards issues of immigration and race cannot be properly investigated, we assert, apart from trends within the larger economic and political arena within which they operate. We have indicated some of the particular characteristics of a social structure which gives rise to those hostile attitudes towards coloured and alien immigrants characteristic of groups calling for an extension of control legislation. Suggestions have been made, based on the British experience of dealing with immigration, as to the kinds of conditions under which such calls are likely to prove effective.

Every social order is maintained at some level by a mixture of both tacit consent and by actual or implicit sanctions of social control. Private interest groups may take it upon themselves to influence the administration of sanctions when

they perceive that this order is in jeopardy. In viewing the existing system of law and/or administration to be weak or inefficient, they may act to advocate strengthening of the law, or even in an extreme situation to take the law into their own hands. However, maintenance conceptions of the inefficiency of existing law may be overridden by an undue emphasis upon the tradition of order. Advocates of strengthening the control provisions of immigration legislation have made no attempt to integrate their proposals into the existing body of law. Yet the lessons have been clear. Improvement in the conditions of early Jewish immigrants came about through industrial reform legislation, not by the imposition of greater restrictions on entry. Neither have maintenance attempts promoted a vision of a new social order made necessary by the changing circumstances of immigration and its consequences for intergroup behaviour. Their aim was to strengthen existing legal mechanisms for order patterned on familiar models. Skolnick has pointed to the dangers of this orientation.

"Beneath the pragmatic zeal for order . . .
(lies) a series of dangerous precedents.
The self-help tradition (of maintenance
groups) largely sidestepped the restraints
which a developed legal system imposes
on the quest for order. Consequently . . .
enforcement of the 'law' (may) lean
inevitably toward the enforcement of order,
with or without (justice). Private
violence, sometimes in conjunction with
constituted authority and sometimes not,
(may come) to be used as an instrument
for enforcing a threatened, or presum-
ably threatened, system of social,
political, economic, and cultural

arrangements against the claims of those groups standing outside the system whose actions are seen as threatening."³⁵

The sponsors of the Bill which became the Commonwealth Immigrants Act 1962 lost sight of the lessons of previous control legislation and its consequences in terms of hardening public attitudes towards minority groups, and faith was again placed in mechanisms of control. It is not suggested here that, given the relatively stagnant economic conditions in Britain in the two years preceding the Act, and high incidence of coloured immigration in anticipation of future controls, that some form of control was unnecessary. Rather, the present author believes that emphasis upon racially biased controls to the exclusion of more enlightened social legislation did nothing to alleviate the conditions of the coloured minorities who arrived before the act became effective. Furthermore, several of its clauses were distinctly discriminatory and tended to reinforce racial prejudices and increase racial tension. Some ideas implicit in the 1962 Act are therefore in direct contradiction to the stated intentions of the two Race Relations Acts which followed. It is with a more detailed examination of the background of these Acts that we shall now be concerned.

35. J. H. Skolnick. *The Politics of Protest*. (New York, 1969) pp. 212-3. Additions mine.

CHAPTER 3: RACE RELATIONS

LEGISLATION: THE ACTS OF 1965 and 1968

Brief History. Early attempts to introduce legislation against racial discrimination were made at the beginning of the 1950's, and slowly gathered momentum throughout the decade. The prime mover of these attempts was Mr. Fenner Brockway, who made ten unsuccessful efforts to introduce anti-discrimination Bills in the ten years before the Labour Party's assumption of power. Although initially ineffective at parliamentary level, his efforts did receive support outside Parliament. The Commonwealth Sub-Committee of the Labour Party National Executive recognized, as early as 1955, that the problems posed by the influx of coloured newcomers were not those of immigration per se, but of race.

Although there was recognition of a problem for which racial discrimination was at least partially to blame, the committee's suggestions were clearly tabled in the form of alternatives,¹ and in no way represented a coherent policy statement. Their recommendations, consequently met with little implementation. Later that same year, the London Labour Party executive, in conjunction with the London County Council, issued a statement that was little more specific

1. Foot. op. cit., p. 167.

and dealt with the housing and welfare problems highlighted by immigrants. In leaving implicit the demand for legislation, however, it received no response from central government. Nor did the Labour Party as a whole act immediately on the suggestions of these various committees.

The growing insistence upon controls from right-wing groups, and the Nottingham and Notting Hill racial disturbances, did subsequently prompt the Labour Party into issuing a statement pledging that a future Labour Government would legislate against public acts of discrimination. It incorporated many of Fenner Brockway's suggestions and re-affirmed its opposition to immigration controls. At this time, the main objection amongst Conservative MP's to the suggestion of introducing race relations legislation was that the existing law was adequate to deal with any instances of public discrimination that might arise. Specifically, they pointed out that the Public Order Act 1936 provided that it was an offense to use threatening, abusive or insulting behaviour at a public meeting or in a public place, either with the intention of creating a breach of the peace or in circumstances likely to lead to such a breach. But the fact that this Act had loopholes² was not considered in the climate where the demands for controls were growing in strength. Furthermore, proposals for anti-discrimination legislation

2. The 1936 Act, for example, did not include the distribution of offensive literature, until it was augmented by the Race Relations Act 1965.

were considered to be ineffective and unenforceable.³ They were adhered to by the Opposition in an attempt to shift the balance of debate away from the issue of restricting immigration, towards a more positive consideration of the problems of integrating coloured minorities. In such a situation, the Labour Party could afford to be somewhat vague, using its proposals as a political tool rather than considering the deeper issues involved in future legislation which, in 1962, remained only a possibility. Indeed, Mr. Patrick Gordon-Walker suggested during the debate on the 1962 Immigration Bill that such proposals had not really, until then, been given serious consideration.

"The heart of our Amendment is that the Government are approaching the wrong problem in the wrong way . . . It is a very grave problem, but it occurs only in relatively small areas and the Bill is quite irrelevant to the problem; it will do nothing whatever to remedy it . . . We should consider legislation to punish deliberate incitement of race hatred. We must certainly have legislation to stop the practice of the colour bar in places to which the public has access."⁴

On the eve of its 1964 General Election victory, the Labour Party published a manifesto which included a statement on racial policy which was hardly less vague than its previous considerations. But it did commit the future Government to implementing some kind of race relations legislation while at the same time accepting the need for

3. cf. Hepple. op. cit., p. 130.

4. Hansard Parliamentary Debates, 16th. November, 1961. Cols. 714-6.

controls. A draft Race Relations Bill was produced by the Labour shadow Cabinet early in 1964 which proposed criminal penalties (in line with the unsuccessful Brockway Bills) for discrimination in public places. The Society of Labour Lawyers recommended in June of that year that administrative means could also be found to secure compliance with the proposed law. Considerable debate on the relative effectiveness of conciliation as against criminal sanctions followed; this was partially resolved by the report of the Lester committee adopted by the newly-formed Campaign Against Racial Discrimination in its proposals to the Labour Government. CARD argued that since immigration controls were enforceable, then to be consistent in its desire to secure 'integration with control' race relations legislation should follow similar procedure. However,

"The latter objective, it was argued, could not be achieved through the ordinary criminal law making it an offense to discriminate on racial grounds, because of the possible reluctance of the authorities to prosecute, the heavy burden of proving the case beyond reasonable doubt, and the possible lack of sympathy of juries for such legislation. The right approach, it was thought, would be to create administrative machinery . . . which would rely on education and private conciliation and only in the last resort upon compulsory enforcement."⁵

5. Hepple. op. cit., pp. 131-2.

In March 1965, the Prime Minister announced in the House of Commons a three-pronged attack on the immigration and race problem. First, a junior Minister, Mr. Maurice Foley, was given a brief to look into the question of integration. Second, a Race Relations Bill was promised which would outlaw both racial discrimination and incitement to racial hatred. Third, a mission would be sent to Commonwealth countries to discuss the possibilities of instituting voluntary controls. The promised Bill was drafted by Sir Frank Soskice, the Home Secretary. It was published in April, and would have had the effect of prohibiting racial discrimination in public places.

The Bill was attacked by the Conservative Opposition on the grounds that it introduced an element of criminality into race relations -- an area which was more appropriate for conciliation. The Home Secretary initially justified his approach by suggesting that since the Bill was concerned with public order, its drafting followed the traditional penal approach to such legislation. In May, Donald Chapman, secretary of an all-party group of liberal-minded back-benchers, tabled an amendment to the Bill to set up a conciliation commission in place of the proposed resort to criminal procedures, and the Home Secretary subsequently dropped the original proposal to make discrimination a criminal offense -- instead, local conciliation committees would be set up to enquire into complaints.

A criticism made by CARD was that the Bill proposed that racial discrimination be made a crime in areas where it seldom existed, i.e. places of public resort, but that nothing was done to prohibit it in housing and employment, where it was most frequently found. In the Third Reading debate, the Home Secretary promised that if there was found to be discrimination in other fields, the Bill would be extended. The pressure groups concerned (notably CARD) were not really satisfied, and set about collecting information to support the contention that the Bill's scope be widened.

In December 1965, the Bill whose genesis and development had been attacked from all sides finally became law. After its final passage through Parliament, the Home Secretary reversed his intention of broadening the scope of legislation to include areas of employment and housing if found necessary, suggesting " . . . it would be an ugly day in this country if we had to come back to Parliament to extend the scope of this legislation."⁶ Indeed, to do so seemed inconsistent with the Government's warning, that there should be no discrimination in favour of immigrants, which was embodied in the August White Paper on Commonwealth Immigration. In realising that the 1962 immigration Act was not working as intended, the Government proposed to tighten controls on entry (now having accepted the principle of controls), justifying

6. Hansard Parliamentary Debates, 16th. July, 1965.
Col. 1056.

its action on the grounds that too rapid coloured immigration would produce racial prejudice in the British public. The philosophy of 'integration with controls' was to be implemented by augmenting the limited provisions of the new Race Relations Act with greater restrictions on entry of newcomers. But such an action did not question the limitations of the Act.

CARD, NCCI and other organisations were quick to point out that these limitations could not guarantee the security of freedom from discrimination for those coloured minorities already established in Britain. Voluntary organisations may have been equipped (and even then poorly) to give help in tackling the problems raised by immigration (e.g. overcoming initial culture-shock), but they were scarcely able to come to terms with those raised by race (prejudice and discrimination).

Throughout the year following the introduction of the new Act, the activities of CARD in exposing numerous instances of the practice of a colour bar filled the conciliation offices with complaints. Most of these fell outside the law's compass.⁷ The fact that they did was enough to convince the Race Relations Board and NCCI, to initiate enquiries about the extent of discrimination. These bodies sponsored a Political and Economic Planning (PEP) survey to investigate its nature and scope. The findings of the PEP survey deserve some consideration.

7. The Race Relations Board's Annual Report for 1966-7 stated that until the end of March 1967 it had received 327 complaints, of which 238 fell outside its jurisdiction.

Its intentions were to study the different aspects of employment, housing, and the provision of services (notably insurance and credit facilities). The survey concluded that in each of these areas " . . . there is racial discrimination varying in extent from the massive to the substantial."⁸ More specifically, the motives of discriminators was seen to vary from emotional antipathy, through fear of opinions of others, to doubts about immigrants' qualifications. Although generally resting on a fundamental misunderstanding of coloured minorities, discrimination based on such motives were considered to effectively penalise them from participating in the facilities enjoyed by the majority society. Consequently " . . . it both forces them into and inclines them toward self-supporting, separate groups in society . . ."⁹ The report considered that the situation with regard to housing was, at that time, worse than the one in the employment field. Prospective coloured tenants or house buyers were extremely vulnerable. A large proportion of houses for sale or rent appeared not to be available, and council housing was not yet a possibility for most coloured persons. The practice of exclusion from certain areas contributed to the pattern of ghetto-like concentrations in the less

8. W. W. Daniel. Racial Discrimination in England. (Based on the PEP Report). (London, 1968) p. 209.

9. Ibid., p. 218. We have already noted the existence of such groups. cf. Chapter 1, passim.

desirable sections of cities.

Discrimination had not wholly determined this pattern. The extent to which immigrant groups met particular labour shortages in specific employment areas was also considered to be a factor contributing to the pattern of segregated housing. Three points were made on the basis of the PEP findings.

"First the existence of discrimination will certainly have been a major cause of the current pattern of immigrant housing although its importance will vary for different immigrant groups. Secondly, attempts on the part of coloured people to move outside the existing pattern have been met by massive discrimination, and will continue to be unless the attitudes of private landlords change radically or substantial numbers of coloured people gain access to council housing. Thirdly, and most importantly, until alternative methods of housing coloured people do really exist, the majority of immigrants are not likely to take seriously the possibility of housing themselves differently, or even to be aware of it."¹⁰

Employment was seen to constitute less of a short-term problem -- unemployment rates for coloured immigrants were no higher than those for the indigenous population, since they tended to settle in areas where jobs were available. Although often unable to secure a job compatible with their expectations, all minority workers were engaged in productive activity. Whereas the expectations of first-generation immigrants often seemed unrealistic when viewed in the light

10. Ibid., p. 222.

of their lack of qualifications, PEP concluded that the existence of job discrimination would pose more of a threat to second-generation minorities wholly or mainly educated in Britain. Their findings showed relatively more experiences of discrimination among those more highly trained, and with more realistic expectations in terms of qualifications. In the longer term, therefore, the existence of discrimination in employment was likely to produce a situation as pernicious as that already existing in housing.

In his introduction to Daniel's account of the PEP survey, Mark Abrams points out that ". . . all but those with totally closed minds must accept the fact that in Britain today discrimination against coloured members of the population operates in many fields not covered by the existing legislation and it operates on a substantial scale."¹¹ Although the directives were clear, the PEP report was not a legal document. Following its publication, the report's sponsors established a legal panel to study suggestions as to how the Race Relations Act should be extended. The resulting Street Report (named after the panel's Chairman) was published in October 1967.

Meanwhile, the Government had already come to accept the suggestions of the PEP report. On July 26th. the new Home Secretary, Mr. Roy Jenkins, announced that the Government intended to illegalise discrimination in housing, employment,

11. Ibid., p. 13.

and insurance and credit facilities, and subsequently presented to Parliament a Bill which finally became law in November 1968. The Race Relations Act 1968 largely followed the recommendations of the Street Report, and considerably extended the provisions of its 1965 predecessor.

MacDonald¹² considers that whereas the protection of coloured minorities is to be achieved through the new Act's administrative machinery, the laying of a basis for a better climate of inter-racial opinion arises from the assumptions of the Act. The former point is to be considered later. For the present, we shall be concerned with the provisions of legislation, prior to an investigation of the conditions and assumptions surrounding its introduction.

The Provisions of Legislation. In turning our attention towards the specific provisions of race relations legislation in Britain, we note that the first four Sections, and part of Section 8, of the Race Relations Act 1965 were repealed on the introduction of new legislation. What remains of the 1965 Act is the provision relating to discriminatory restrictions on the disposal of tenancies, and that to racial incitement and public order. As for the former, the law provides¹³ that it is not an offense for a landlord to withhold consent to a lease on racial grounds, living on the same premises

12. MacDonald. op. cit., pp. 2-3.

13. Race Relations Act 1965. Sect. 5(1).

as that to which the lease applies, and sharing facilities other than access with the tenant. Also, colour bar clauses in leases are not outlawed in this situation. MacDonald has suggested¹⁴ that this provision has extended, rather than reduced, the areas where a person may discriminate. One may admit that this is true, but more importantly it gives an indication of the extreme reluctance of legislating in matters relating to the private domain, where individual wishes are held in account. We shall return to this theme later, but it should be noted in passing that such a stance is reflected in several other statutory provisions, revealing similar problems inherent in the law's operation.

The Race Relations Act 1965 created a new offense of incitement to racial hatred, and this has been retained by the 1968 Act. In following its provisions, present legislation closely parallels the guiding principles of the Public Order Act 1936 -- to be charged with the offense of incitement leaves the defendant open to criminal proceedings. In practice, this is a matter for the Attorney-General in which the Race Relations Board plays no part. Prosecutions can only be made with his approval, and to be successful must show the directly offensive character of the activity and proof of its intention to disrupt public order. Successful prosecutions have so far, with one exception¹⁵, been against militant leaders of black protest

14. MacDonald. op. cit., p. 32.

15. The British national socialist, Mr. Colin Jordan, received an 18 month sentence for the distribution of anti-semitic literature.

organisations. Although the 1965 Act was specifically designed to give an element of protection to coloured immigrant minorities, in reality it has more often been used against their members than against non-immigrant groups. The danger of the incitement provisions therefore appear to be that it is possible to use them equally (in theory) and more often (in practice) against those people in Britain that they were legislated to protect. The danger is magnified when one considers the incitement provisions of the Race Relations Act alongside those of the Public Order statutes. The Attorney-General has been reluctant to take action on behalf of the former (he has not responded, for example, to charges made against Duncan Sandys or Enoch Powell), and his authorisation is not required to prosecute in cases covered by the latter. Here, charges can be brought by local police who may be (if the accusations of minority protest groups are considered accurate indicators) at best unsympathetic to immigrant interests.¹⁶

Under common law, racial discrimination is not recognised as a distinct legal wrong in itself. To obtain redress in the courts, the person discriminated against must show racially prejudiced behaviour to be the way in which a recognised wrong is committed. Hepple has suggested

16. cf. esp. Derrick Sington. "The Policeman and the Immigrant", New Society 24th February, 1966.

several closely connected reasons why the system of common law has failed to evolve effective remedies against racial discrimination.¹⁷

1. There is no coherent legal principle in the form of a constitutional guarantee of freedom from discrimination. Hence those attacking discrimination are " . . . unable to point to any unifying legal principle"¹⁸ on which to base their case.

2. Under common law, racial discrimination and incitement is closely tied to the issue of public order -- plaintiffs are required to show that such behaviour constitutes a threat to that order. In isolated cases of discrimination against particular individuals it is difficult to prove such a threat.

3. Following from the above, although racial discrimination is admitted to be undesirable, it is not necessarily considered to be contrary to public policy. The courts have traditionally taken the view that they can neither create nor accurately ascertain a particular level of public policy at any given time, these tasks properly belonging to the province of parliamentary decision.

4. The problem of proving that any act of discrimination is specifically racial in character is amplified by the fact that rarely is intent explicitly racial. It may

17. Hepple. op. cit., Ch. 6. passim.

18. Ibid., p. 94.

usually only be inferred from other established facts. The burden of proving racially-inspired intent rests with the plaintiff in cases where discrimination is treated by common law as a civil wrong.

5. In cases where the plaintiff can prove racial discrimination, he is likely to receive only nominal compensation, and the person against whom a civil wrong is proved cannot be barred from possible further acts of discrimination. Racial minorities therefore appear to be inadequately protected under this system.

One can now see that the Race Relations Act 1965 had both social and legal justification for its introduction. However, as a declaration of administrative policy in dealing with a limited range of social problems raised by discrimination and incitement, its value has been severely restricted by a failure to recognize the widespread extent of discrimination and its repercussions for coloured minority groups. As a legal document it implicitly recognised the inadequacies of the common law approach in coming to terms with the problem of discrimination, yet its rationale has been undermined by an inability to defeat the shortcomings of such an approach.

Following the recommendations of the Street Report, the Race Relations Act 1968 considerably extended the range of inter-racial behaviour calling for legal endorsement. The administrative difficulties posed by the law's operation will be discussed later. For the present, it should be noted

that in being grounded in similar principles to that of its predecessor, several of the new Act's provisions have been called into question.

Section 2 of the new Act makes it generally unlawful to discriminate in the provision of goods, facilities and services on racial grounds. The exceptions to this provision give useful indications of the extent to which the law is prepared to safeguard the autonomy of personal choice and commercial judgment. Private clubs, for example, are exempt from legislative control, provided their facilities are not normally available to members of the public. If the distinctively private nature of clubs is to be determined by its admittance procedures, however, then no guidelines have been established to suggest the kinds of procedures that would be illegal under the Act. The expectation is that each case shall be decided on its own merits. Similarly, refusal to provide accommodation on racial grounds is not considered illegal under Section 7 of the Act if the hotel or boarding-house keeper catering for no more than twelve persons shares facilities other than access with them.

The Act provides that commercial services such as banking, insurance and credit facilities should be provided to all customers irrespective of ethnic or racial considerations. Nevertheless, in being unwilling to stifle the exercising of commercial judgment, it has no power (in the absence of a subpoena provision) to punish, for example,

the internal circulation of discriminatory notices amongst business colleagues. The activity of racial discrimination may thus be hidden beneath the guise of economic prudence.

In binding the Crown, and local and public authorities the 1968 Act applies both to state and private schools in the provision of educational facilities. The activities of local authorities which institute special facilities for immigrant children with language difficulties are sanctioned by the Act since this is accepted as an example of 'positive' discrimination where no one is treated unfairly. Also, it is considered to be discrimination on the basis of language, not race. Apprenticeship training schemes and industrial training courses for immigrants have been established under the Industrial Training Act 1964. However, the Race Relations Act is powerless to prevent coloured immigrants being refused apprenticeships on the basis of age. Because of a comparative lack of educational qualifications at an equivalent age to that of whites, MacDonald has pointed out that many coloured immigrants may be too old to be considered when they do so qualify.¹⁹

Section 5 of the Act covers discrimination in the disposal of housing, business or other property, and includes four sets of circumstances -- outright refusal to

19. MacDonald. op. cit., p. 18.

sell on racial grounds, discrimination in terms of tenancy, differential treatment of tenants, and discrimination by refusal to disclose availability of property. Owner-occupiers may, however, discriminate in the sale of houses provided they sell privately without using the services of an estate agent for the purposes of the sale.²⁰ If an estate agent or solicitor complies with a discriminatory request made by the vendor, he is liable to prosecution under the Act for failing to accept the terms of the provision of services. Local authorities must also comply with the housing provisions of the Act. Although these are generally considered to be quite comprehensive, MacDonald notes²¹ that the findings of the Milner-Holland Report on housing conditions in London -- namely that in some areas coloured tenants pay higher rents than others for equivalent accommodation, due to a shortage caused by previous discrimination -- have been overlooked by the Act. In such a situation a landlord may charge a higher rent for accommodation not because of racial discrimination, but because of short housing supply and high immigrant demand for accommodation.

Generally, racial discrimination in employment is made illegal by the Race Relations Act 1968. The Act applies not only to employers, but to trade unions and employers' associations, as well as labour exchanges and

20. Race Relations Act 1968. Sect. 7(7) and (8).

21. MacDonald. op. cit., p. 29.

employment agencies. The latter organisations are also bound by the sections regarding the provision of services. Section 3 covers discrimination in engagement, promotion and dismissal, and terms and conditions of work. Hepple²² has noted the existence of many collective agreements between management and trade unions in imposing a quota on the numbers of coloured workers employed in any particular establishment or occupation. In this case, management, trade unions and shop stewards would be liable under the Act, except where such a quota can be shown to be necessary to preserve a racial balance among employees.

"It shall not be unlawful . . . to discriminate against any person with respect to the engagement for employment in, or the selection for work within, an undertaking or part of an undertaking if the act is done in good faith for the purpose of securing or preserving a reasonable balance of persons of different racial groups employed in the undertaking . . .

In determining . . . whether a balance is reasonable regard shall be had to all the circumstances and, in particular, to the proportion of persons employed in those groups . . . and to the extent, if any, to which the employer engages . . . in discrimination of any kind which is unlawful by virtue of this Part of this Act."²³

The 'racial balance' provisions have been motivated by a desire to promote racial integration and harmony in industry. In some industries, particular parts of a factory or particular occupations have become identified with one

22. Hepple. op. cit., Appendix II.

23. Race Relations Act 1968. Sect. 8(2) and (3).

racial group, to the exclusion of other groups. It has been suggested²⁴ that such distinctions, which clearly work against integration, are increasing. Therefore these provisions are suggested as means of assisting the arrest of this development. However, MacDonald notes that

"The exception for preserving a reasonable racial balance introduces nothing but uncertainty into the employment provisions of the Act. If it had been omitted completely there is no doubt that the Race Relations Board, or special industrial body, who investigates a case of alleged discrimination, would have taken into consideration the arguments for and against the maintenance of some kind of quota in place of work. The conclusions of the Board would be reflected in the kind of settlement it produced. Instead they have to consider an almost unworkable exception."²⁵

The Act provides for an exception in its provisions that the law shall not apply to small-sized businesses employing more than twenty-five persons.²⁶ Nor does it apply to the employment of any person for the purpose of a private household. It further appears that the Act will not be effective in covering the non-recognition of technical or professional qualifications obtained by immigrants outside Britain, and cannot be invoked in the case of dismissal of coloured immigrants on a 'last in, first out' basis.

24. Race Relations Board Guide to the 'Racial Balance' Provisions of the Race Relations Act 1968.

25. MacDonald. op. cit., p. 24.

26. In November 1970, this will be reduced to ten persons.

We have now considered the most important provisions of existing race relations legislation in Britain. In pointing out some of the areas where it does not apply, we note the great difficulty of distinguishing in law between racial discrimination and the exercising of personal preference, and that in limiting its scope to the public aspects of interracial behaviour the 1965 and 1968 Acts have preferred not to make such a distinction.

Organisational Responses and Liberal Assumptions. In the 1950's, attempts to introduce anti-discrimination legislation failed because of a lack of effective pressure groups to push for reforms. Individual initiatives did not command organisational support within a rapidly-growing coloured community that was still a stranger to British conditions. Since the proposals for legal changes were tabled in ways which did not take the interests of immigrants as distinctive groups into account (e.g. in providing for sanctions governing wrongs committed on individuals) coloured persons were implicitly assumed not to have interests as group members, and their support for legislation was not sought. We cannot accept that no immigrant group organisations existed at this time, rather the possibility of gaining their support was ignored. Adjustive attempts had been made from the beginning of the wave of coloured immigration, but they possessed special characteristics making them unsuitable as either initiating or supporting agents for proposed legal changes.

Adjustive organisations were founded initially to ease the difficulties posed by the recent arrival of coloured newcomers. They did not operate from any position of political or economic influence, tended to accept the prevailing system of status differentials between indigenous groups and themselves, and attempted to compensate for the problems of discrimination by remaining socially isolated and culturally self-sufficient. Organisations that did exist within the minority community were of the self-help kind, rather than pressure groups. Their programmes were informal, local, and they lacked political voice. These characteristics, added to the fact that no organisation existed within the indigenous community which spoke for minorities, meant that they did not warrant consideration as a group, having legitimate group interests, by their hosts. Until 1962, no significant minority organisations existed which voiced problems from the immigrants' perspective -- hence the minority viewpoint did not really receive consideration in legal changes. Their interests were ignored over the claims of more vociferous and persistent maintenance groups.

The emergence of minority organisations advocating proposals to deal with the types of problems examined in the PEP report may be traced through the following stages.

- a) The aftermath of control legislation. 1962-4: We have already stated that this produced a heightened awareness among the public in general of the problems posed by an

unregulated influx of coloured immigrants -- especially the consequences in terms of the strains upon housing and social services. This awareness was also apparent within the immigrant communities, where the issue of controls could not possibly be a source of solutions to the problems they confronted. It was irrelevant to the social conditions facing the already established coloured immigrant. Yet the discussions surrounding the control legislation did point to the existence of immigrants as groups, and served to develop an awareness of group identities amongst them.

b) 1964-5: The organisations which began to grow around this developing group awareness recognized the irrelevance, and positive harm, of control legislation. Not only did it fail to alter the prevailing system of power differentiation which left coloured groups open to widespread discrimination, but since controls had been established at the insistence of a maintenance lobby identified with dominant power group interests, directly consolidated this system. But the problems confronting minorities were formidable, and the issues demanding attention numerous and complex. The activities of synthesis groups, at this early stage in their formation, were confined to general criticisms of the discriminatory nature of controls and outlining vague proposals for legal reforms which had little chance of success. The Act of 1965 was introduced primarily as a result of the Labour Party's opposition to the controls of 1962 -- controls which they had now come to accept and even to strengthen -- but which

nevertheless committed a future Labour Government to introducing some reform legislation. The limited provisions of the new legislation illustrates the fact that its proponents failed to recognize that a widespread system of colour discrimination was supported by a system of differential power distribution between dominant white, and subordinate coloured groups. Pressure group activity was noticeably absent in the debates surrounding the introduction of the 1965 Act. For maintenance groups, the issue of restricting immigration was paramount. They were temporarily placated by the strengthening of controls, and did not see their interests as being threatened by the introduction of a new law which largely duplicated common law practice and public order statutes. On the other hand, organisations representing immigrant interests did not have any specific proposals for legal reforms at this time.

c) 1965-8: The Race Relations Act 1965 limited its provisions to activities dealing with public incidents of discrimination. As we shall see, the machinery designed to enforce this legislation was also limited. However, its introduction did open at least the possibility of considering racial problems from the point of view of the difficulties met by immigrants. Immigrant groups at an immature stage of development could not exploit this possibility earlier, since previously there had been no legislative evidence to show that their interests, whether as individuals or groups, would be considered. The 1965 Act provided such evidence, and since

its domain was limited, provided a particular focus of attack for immigrant groups to press for consideration of their interests.

The organisations which pressured the legislature into extending the scope of race relations legislation represented the interests of immigrant groups whose claims had not received consideration, but they were not composed entirely of coloured persons. In the absence of a sufficiently strong power base to effectively demand reforms on their own account, some immigrants made tactical alliances with members of the indigenous community in the formation of synthesis organisations dedicated to reducing the status differentials supporting, and supported by, discrimination. Synthesis organisations recognized the limitations of a law which merely prohibited public acts of discrimination. The possibility of extending the 1965 Act depended upon the production of sufficient evidence to show that it was ineffective as an instrument of reform. The programmes of CARD and NCCI were therefore dedicated to providing such evidence, and became more specific in attempting to expose cases of discrimination which fell outside the scope of existing law. The degree to which their methods have been successful can be measured by the extent of legal changes incorporated into the 1968 Act. The provisions of this latter legislation appear to offer much greater protection to members of coloured minority groups. But the overall success of synthesis organisations cannot be measured merely by the effectiveness of their

pressure group methods of providing relevant information upon which the legislature can act. It must also be weighed against the viability of the changes they help bring about not only in reducing the degree of discrimination, but also in lessening the extent of intergroup conflict by effecting a conciliation between dominant and subordinate group interests. The possibility of successful reduction of racial conflict depends upon the assumptions made by the legislature in implementing the proposals of synthesis groups.

After the introduction of control legislation in 1962, and before the first Race Relations Act there were a few examples of Conservative forward-thinking on the issue of coloured immigration. Mr. Aubrey Jones argued against possible further cuts in immigration on the grounds that the economy needed labour. Further, the Home Office accepted the beneficial aspects for race relations of single immigrant workers being joined by their families. The announcement of further controls on immigration in August 1965 suggested to the liberal wing of the Conservative Party that integrative measures ought to be sought now that 'realistic' controls had been imposed.

"This liberal ascendancy was reflected at the Conservative Party Conference in October. Motions called for 'positive and wide-ranging measures for the integration of existing immigrants in the fields of housing, education, employment and the social services, backed

by the generous resources of the central Government."²⁷

Of course, a more extensive attitude of liberalism towards the race relations question was present in the Labour Party, and had been for a much longer period. Foot characterised the Liberals' 'Golden Hour in British race relations', continuing throughout 1966 and 1967, as a multi-party phenomenon.²⁸ Roy Jenkins described its philosophy of integration more cogently than most.

"In my view integration is rather a loose word, because I do not regard it . . . as meaning a loss by immigrants of their national characteristics and culture. I do not think that we need or want, in this country, a sort of melting pot which will turn everybody out in a common mould as one of a series of carbon copies of someone's misplaced idea of the stereotyped Englishman . . . It would deprive us of one of the most positive aspects of immigration . . . which I think can be great. I would therefore define integration not as a flattening process of assimilation, but as equal opportunity accompanied by cultural diversity in an atmosphere of mutual tolerance."²⁹

Largely as a result of Jenkins' initiatives, the Labour Government had entered into a period of cautiously progressive race relations. The establishment of community relations committees, the birth of multi-racial housing associations, language classes for immigrants,

27. P. Foot. *The Rise of Enoch Powell*. (London, 1969). p. 89.

28. *Ibid.*, Ch. 3, *passim*.

29. *Hansard Parliamentary Debates*, 8th. November, 1966. Cols. 1233-4.

and the providing of small local government subsidies for areas with high coloured minority concentrations, had all followed the 1965 Act. Further, the somewhat tenuous convergence in inter-party thinking on the race question temporarily removed the issue from the political platform. Immigration was not raised as an issue of any importance during the 1966 General Election. However, attitudes began to harden again during 1968. We would do well to examine the reasons, since they appear to be embodied in the attitudes of liberally-minded politicians.

The arguments of the liberals have been derived from theoretical, a priori assumptions about the nature of democratic society, rather than from personal experience of its somewhat distorted workings in reality. Particularly, liberalism has conspicuously misunderstood the nature of conflicting interest groups in society. Deakin defines the modern liberal in the following context.

"What is meant here is a man identified with certain broad trends in British politics, who believes in the rights of man and social justice as ends and the possibility of promoting them by means that imply gradual social change, change of a kind, that is, that can be achieved both through the intervention of the state and the activities of the individual."³⁰

The point to note here is that the liberals' attitudes during the years before the strengthening of the 1965 Race Relations Act were principled, being based often on highly

30. Nicholas Deakin. "Lord Radcliffe and the Scolding Liberals". Institute of Race Relations News Letter, Vol. 3, No. 3. (March 1969) p. 114.

individualistic conceptions of integration, but generally impractical and unrealistic. The modern liberals' contention is that any policy issue relating to social problems, such as those raised by race, cannot be derived from pragmatic principles alone. To them, the 'just society' is not to be built without a concern for morality. In order to achieve integration, therefore (and this is a goal to which the mainstream of British political opinion currently adheres), mere factual considerations are the enemies of reason. Enoch Powell's 'numbers are the essence' notions are rejected, for example, on the grounds of superficiality. For the liberal therefore, the workings of the law must be linked to moral principles.

The Labour Party as a body, and many Conservatives as individuals, accepted that a liberal-minded doctrine of integration justified the extension of legislation, especially in the light of the widespread existence of discrimination reported by PEP. 'Integration' was being used in so many different senses, however, that it soon became useless for the purpose either of political argument or implementation of social policy. The liberal interlude ran its course, being caught in the dilemma of resisting forceful measures to implement policy in an attempt to 'play fair' and see both sides of the racial argument, yet being caught in a " . . . paroxysm of inaction."³¹ The

31. A. Sivandan. "A Farewell to Liberalism". Institute of Race Relations News Letter, Vol. 3, No. 4. (April, 1969) p. 176.

Government justified its inertia before introducing a strengthened Race Relations Act on the grounds of insufficient evidence of the extent of discrimination.

Given the existing power situation in society, the adoption of a posture unable to make clear-cut, consistent decisions has had the consequence of the rise of minority protest groups, as we have seen,³² which identify lack of effective action among integrationists with the possession of dominant group interests. More importantly, however, the climate of political thinking before 1968 had had widespread and pernicious consequences in terms of more recent developments. "The task of establishing connections between race relations and other issues has been left to the totally untutored and the prejudiced."³³ Reactionary elements have not wasted this opportunity.

Initially, it came at the end of 1967 in the form of renewed demands for stricter immigration controls, especially over Asian immigrants from Kenya. In granting independence to that Country in 1963, the Conservative Government included a clause in the Kenya Independence Act giving the right to citizens in Kenya to hold on to their British citizenship if they so desired. A programme of 'Africanisation' instituted by the newly-independent country resulted in the exodus of many Asian holders of British passports to

32. cf. Chapter 1, passim.

33. John Rex. "The Race Relations Catastrophe" in Tyrell Burges, et. al. Matters of Principle: Labour's Last Chance. (London, 1968) p. 80.

Britain. Mr. Duncan Sandys, who had piloted the original independence legislation through Parliament, realised the loophole it contained and in February 1968 called for " . . . drastic legislation to curb the flow of dependents from the Commonwealth and of Kenyan Asians in general."³⁴ Public opinion began to respond to a Sandys/Osborne initiative in calling for tighter controls. This response was reflected in a less apparent, but nevertheless still significant way in renewed trade union calls for utilising traditional conciliation machinery for the resolution of complaints of job discrimination, without formal recourse to sanctions.

As extra-political opinion began to harden, the changing climate was also evident at party-political level. The Labour Party in 1968 capitulated to calls for extending immigration controls to Kenyan holders of British passports with the passage of the Commonwealth Immigrants Act 1968, and created in effect a distinction between two kinds of passport on plainly racial grounds. What Dipak Nandy has called a doctrine of 'neo-realism'³⁵ began to superimpose itself upon the liberalism of its predecessor. The neo-realistic approach assumes that selective concessions to a periodic public protest -- that immigrant interests are receiving greater consideration through the introduction of race relations legislation than indigenous ones -- will

34. quoted in Foot. The Rise of Enoch Powell. op. cit., p. 110.

35. Dipak Nandy. "The Loss of Nerve". Institute of Race Relations News Letter, Vol. 3, No. 3. (March, 1969) p. 122.

help subdue that protest. Such an approach seriously misjudges the situation; ". . . it is in the nature of these grievances that the more concessions that are made to them, the more justified they appear."³⁶ Not only has this kind of approach failed to subdue the activities of maintenance attempts, it has increased them in addition to giving rise to counter-responses of increasing militancy on behalf of minority protest organisations. In short, interest groups have tended to become more polarised within the intergroup arena.

The activities of a renewed anti-immigrant lobby within the Conservative Party were given impetus by Enoch Powell's inflammatory April 1968 speech in Birmingham, and a growing questioning of the shadow Cabinet's moderate approach to the new Race Relations Bill forced a parliamentary division on the issue, against the wishes of the more liberally-minded Conservatives. But this has not been Powell's main concern. In anticipating the changing climate of public opinion, he has taken a populist stance by conducting his argument not in Parliament, but throughout the country. The liberals have been unable to counter effectively in this situation. Their work has been geared to private activities avoiding public confrontation, to the efforts of lobby organisations such as CARD and individual MP's like Fenner Brockway and Jenkins. In being forced to confront manifestations of a

36. Ibid., p. 123.

desire for increasing coloured immigration controls in the form of populist demands, the liberals have adopted a neo-realistic stance which gives those demands credence. The words of Paul Foot appear not to have been heeded.

"Popularly-held views do not have to be accepted by politicians just because they are popularly-held . . . In matters of race relations, it is even worse (if they are)."³⁷

Administration and Enforcement of the Law. Before the introduction of the extended 1968 legislation, the Race Relations Board, established under the auspices of the 1965 Act to enforce the provisions of that Act and to investigate complaints of discrimination referred to the Board by local conciliation committees, was able to experiment in a small way with conciliation machinery. During these two years criticisms of the administration of the law itself was extremely limited in scope. Most of the complaints received by the Board fell outside the province of the 1965 Act (cf. Appendix II). Since its provisions have been considerably expanded to cover new areas of behaviour, however, the Race Relations Board has encountered some adverse comment on the basis of its administrative record. The Board recognised that

" . . . simple, speedy and credible enforcement procedures are the prerequisite of successful conciliation

37. Foot. The Rise of Enoch Powell. op. cit., p. 113.

and the number of satisfactory settlements achieved is directly related to them."³⁸

Out of 366 employment complaints received in the first six months after the introduction of the 1968 Act only 18 were upheld, with 189 still under consideration in July 1969.³⁹ All the remainder were deemed by the Board either to fall outside the scope of the law, or to be unfounded. The Board recognised that there was a danger of a large number of complaints continuing to be rejected, and that this could diminish immigrants' confidence in the operations of both the Board and the Act.⁴⁰ As a result, Mr. Mark Bonham Carter, the Board's chairman, pointed out that

"The evidence which we have so far received suggests that immigrants are confining themselves to safe job areas where they think they are less likely to encounter discrimination -- more often than not in low status jobs."⁴¹

The immigrants' response has thus been to reinforce the system of employment inequality, contrary to the intentions of legislation. Furthermore, the climate of opinion among certain sections of the immigrant community has begun to harden. To compensate for this, the Board suggested that immigrants ought to aim for better jobs and complain more often when

38. Race Relations. Quarterly Journal of the Race Relations Board. No. 3. (September, 1968) p. 4.

39. The Times 3rd. July, 1969.

40. Annual Report of the Race Relations Board. 1968-9.

41. The Times 3rd. July, 1969.

discriminated against. However, this appears to be an unrealistic solution in view of the Board's inability to deal with existing complaints quickly and efficiently, and is likely to result in a larger number of complaints being rejected. A more realistic approach would concentrate on a simplification of conciliation proceedings and an extension of the network of local conciliation committees, in an attempt to restore immigrants' faith in anti-discrimination legislation.

Section 25 of the Race Relations Act 1968 outlines the provisions for the establishment of a Community Relations Commission, consisting of a chairman and eleven other members, to replace the non-statutory National Committee for Commonwealth Immigrants in taking steps to secure the establishment of harmonious community relations (a synonym for integration) between different ethnic and racial groups, and to co-ordinate on a national basis the measures adopted for that purpose by other (mostly voluntary) groups.⁴² While the concern of the Race Relations Board is with the enforcement of anti-discrimination legislation, the Community Relations Commission has broader terms of reference incorporating all aspects of community life and intergroup relations. The Commission is empowered to study special minority problems as they arise and support the network of over seventy community relations councils (CRCs) and voluntary bodies throughout the country.

In attempting to co-ordinate the activities of local

42. Race Relations Act 1968. Sect. 25(3)(a).

CRCs and other organisations addressing themselves to the problems of minority racial groups, the Commission has, however, been caught in the dilemma of determination of role. As a body dedicated to the concept of integration and the eradication of social injustices resulting from the system of discrimination, it has consistently been confronted by choices which seem almost impossible to make. Its survival to date appears to be due to an ability to retain the confidence of authorities in order that its views may be heeded when it comes to policy-making. However, local CRCs have been criticised for a failure to inspire the confidence of immigrant groups. Community Relations Officers have had to work in a atmosphere of both local and national political influences that have hardened attitudes to race over the last two years.⁴³ This has been a consequence of several factors.

Firstly, as statutory bodies both the Race Relations Board and the Community Relations Commission have no power to question either the assumptions or the provisions of race relations legislation. Secondly, neither can individual members of these bodies make statements to the Press, television or public meetings, except where authorisation is given by headquarters. Also, members of the Board, its conciliation committees, and the Commission are barred from sitting in the House of Commons. Thirdly,

43. Institute of Race Relations News Letter, Vol. 3, No. 4. (April, 1969) pp. 155-6.

overall control of racial policy lies in the hands of the Home Office, which is responsible for grants and appointments to these bodies. Furthermore, Home Office control has been steadily growing⁴⁴ and its attitudes over immigration control have severely compromised administrative bodies in the opinion of immigrant bodies.

Despite these difficulties, the activities of the Community Relations Commission have served to increase public awareness of the connection between racial issues and the wider social problems out of which they arise. However, in the absence of powers to implement policies designed to alleviate such problems, their recommendations have not been particularly forceful. The conclusions of independent research, such as the 1969 report⁴⁵ sponsored by the Institute of Race Relations, have pointed much more forcefully towards revisions in legislative and administrative policy.

The pattern of race relations in Britain is closely related to a whole series of difficulties arising from the problems of the inner city, and especially housing. The IRR report considered, therefore, the necessity for a policy directed towards the urban situation, based on need and not race. With this in mind, it recommended transferring responsibility for community relations from

44. Ibid.

45. E. J. B. Rose, et. al. Colour and Citizenship (Institute of Race Relations, 1969)

the Home Office to the Department of Health and Social Security. As far as housing is concerned, the root of the problem for coloured immigrants is the progressive decline in availability of private rented accommodation, traditionally the sector that has catered for newcomers of all kinds drawn to industrial expansion areas by the high demand for labour. The housing shortage has been worsened by slum-clearance and the growth of owner-occupied housing, resulting in a crisis of multi-occupation in 'twilight zones'. With few exceptions, local authorities have failed to cope with these problems, partly because of a view that newcomers have no call on local authority housing.

In the area of immigrant employment, policies so far undertaken have not proved adequate to the situation. Although unemployment rates for coloured newcomers are low, few of the more established have succeeded in climbing the ladder of promotion. No immigrant group is as proportionately well represented as the indigenous population in the managerial, foreman and supervisory categories. This is especially true of the West Indian group in London and all the immigrant groups in the West Midlands, where the general status of immigrants is less favourable than in London. Although prejudicial behaviour in much of the public sector of industry is restrained by the official credo of non-discrimination, unofficial decisions taken

at local level have resulted in a widespread and pervasive system of employment discrimination against coloured workers.

The IRR report maintained that only a small proportion (10%) of the indigenous population showed signs of strong racial prejudice. However, this figure obscured the extent of the impact of prejudiced behaviour in terms of its social consequences for coloured minorities. With this in mind, we now look at how the statutory bodies discussed above see their roles of law enforcement and administration, and the roles of minority organisations themselves.

The activities of the Race Relations Board and the Community Relations Commission reflect different, though closely related aspects of government thinking on the issue of race. While the concern of the Board is with the enforcement of the anti-discrimination provisions of the law, the Commission has broader terms of reference incorporating all aspects of community relationships. Yet both bodies subscribe to the idea that the law alone cannot resolve racial differences. When used as a basis to ensure equality of opportunity, it must be supported by positive action. In its first Annual Report, 1966-7, the Board summarised the role of law in the field of race relations 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 pressure.
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 tensions.
5. A law reduces prejudices by discouraging the behaviour in which prejudice finds expression.

And it was also stated that

"The effect of widespread discrimination has consequences on the whole structure and style of the life of the society in which it takes place, spreading far beyond the individuals who are its victims. We believe there is no more effective way for society to express its disapproval of discrimination, to protect itself from its consequences, or to mobilise opinion and voluntary action against discrimination than through the law."⁴⁶

The Race Relations Board has further pointed out⁴⁷ that legislation needs to be accompanied by other Government policies to diminish inter-racial tensions and decrease prejudice, such as action in housing, education and industry. Churches, local government, voluntary bodies and individuals

46. Race Relations. Quarterly Journal of the Race Relations Board. No. 3 (September 1968) p. 3.

47. Annual Report of the Race Relations Board. 1967-8.

all have a role to play. Co-ordinating the activities of these latter groups is the stated function of the Commission.

The functions of the Board are primarily confined to its being an agency for securing compliance with the law, and since the Race Relations Act 1968 is based on the proposition that racial discrimination is against the public interest as a whole, the Board does not see itself as a pressure group designed to protect the interests of various minority groups. Further, the heart of racial legislation is the process of conciliation, and the Board remains neutral in serving the law.

The fact that the law relies heavily upon conciliation leads to the question of its enforceability. The Board considers that if conciliation is to be effective it must be possible for a complaint to be investigated thoroughly, and this can only be done where all the facts of the case are open to scrutiny by conciliation officers. However, Mark Bonham Carter considers that the effectiveness of the Board's role may be undermined by its inability to ask the courts to order the production of documents and witnesses relevant to a complaint.

" . . . the Board would be forced to drop cases where it has been unable to make an adequate investigation to establish the facts. One will get more conciliation if the sanction of the law is real and credible; very few if the

law is obscure and cumbrous."⁴⁸

If conciliatory mechanisms have been intended to defend the public interest, then the other stated role of the Board, i.e., affording protection to minority groups and redressing individual grievances, may be thwarted where such mechanisms result in a compromise solution insufficient to recompense the plaintiff. This has been recognised by the Board, in the suggestion that the individual himself should have the right of access to the courts in cases of discrimination. Further,

" . . . where the board has decided not to pursue a complaint either because it does not sustain it or for some other reason, (this) would be a check on the Board's efficiency and, in giving the right of appeal, would conform with natural justice."⁴⁹

A more stringent test of the efficiency of the law's administrative machinery may be provided by the activities of voluntary liaison committees and local CRCs in reporting violations of the law and studying the particular social situations of local immigrant groups. However, the role of the local CRCs is somewhat difficult to define precisely, since the problems of particular coloured immigrant areas are usually different from those in other parts of the country. The composition of the immigrant population, industrial structures, and the

48. The Listener. 9th. May 1968. p. 606.

49. Ibid.

housing situation are varying factors, and consequently demand different methods of investigation and communication of findings. Hence,

"Community relations committees have to learn by experience, by assessing the unity and team spirit of their members when to negotiate and when to protest; when to proceed carefully and when to take risks. No blueprint can be provided. This is a matter of judgement which has to be acquired . . . "50

Local CRCs clearly have an intermediary function, in co-ordinating other organisations' findings concerning particular minority problems, and then referring suggestions and complaints to appropriate local government authorities. They thus carry more responsibility than grass-roots organisations, and in so doing are more vulnerable to criticism. Specifically, they have been attacked for limiting suggestions to remedial action, rather than making more forceful demands on local government to undertake preventive social policies.

In arguing from the assumption that coloured persons may find a place in an integrated British society, given good community relations and effective conciliation machinery, both CRCs and conciliation committees have welcomed the growth of immigrant organisations who nevertheless have sometimes challenged this assumption. Perhaps not surprisingly, the former see the sole function of

50. Institute of Race Relations News Letter Vol. 2, No. 9. (Nov./Dec. 1968) p. 447.

immigrant leaders as being communicative⁵¹-- in spreading information to make both immigrants and all organisations concerned with race relations aware of the social problems and injustices resulting from high coloured minority concentrations in urban areas. However, immigrant leaders have generally be considered not to be aware of this function, and are presented as promoting organisations simply for the sake of power. In Britain, protest organisations have not developed interests around an evaluation of indigenous conditions, but have imparted philosophies and adopted more militant ideologies, developing their platforms around a limited range of issues which appear congruent with their ideas. Not all militants are on the anti-Powell bandwagon, however. The Indian Workers Association has been cited as an example of a militant group which has sponsored candidates in local elections and questioned trade union practices of restrictive agreements with respect to coloured workers.⁵²

The Law and Change. Hepple suggests that the role of the law in race relations should be of a promotional kind, related to other policies designed to reduce the incidence of discrimination and its resultant social effects. However, local liaison committees

" . . . do not see it as their role

51. I am indebted to Mr. Fazlun Khalid, for his observations concerning this issue.

52. cf. Hepple. op. cit., p. 175.

to discover discrimination or to present an image of an active anti-colour bar organisation to the immigrant communities. On the contrary, the very 'respectable' composition of the committee and its desire to win and retain the ear and support of the local authority and other official bodies, are likely to compel the committee to avoid such an image at all costs. This, in turn, is bound to disenchant the more militant immigrant organisations who seek, instead, to redress their complaints through alternative channels or do nothing about them."⁵³

Indications of the effect of policies on the system of intergroup relations are generally reflected in the reactions of immigrants and their organisations. Reaction to the 1968 provisions legislation has been favourable, but increasing left-wing tendencies on behalf of minority groups suggest that the administration of the law and the implementation of social policies have so far made few breaches in the wall of inequality.

Much argument has surrounded the question of how far the law can induce, rather than simply respond to, patterns of normative and structural changes in society. Race relations legislation in Britain operates under the assumption that the law has a substantial part to play in educating public opinion on racial matters. Nevertheless, it is accepted that successful operation depends upon substantial support in the mores; a tolerant atmosphere is essential to the law's effectiveness. Legislation is

53. Ibid., p. 173.

therefore seen as both reflecting and influencing the course of social change, where the public consents, or at least acquiesces to its operation. This view is maintained in the emphasis placed upon conciliation, where all parties are expected to accept the principles of cooperation and compromise. Such a compromise is seen as being likely to command general consent and to be publicly endorsed. Public endorsement, however, is less likely in matters concerning private morality, since as " . . . discrepancy persists between the norms governing the public and private spheres."⁵⁴ By its very nature, the law is concerned with the externals of conduct. Whereas it may prohibit racial discrimination, it is not the direct concern of legislation how the individual makes his choices within such freedom as the law permits. We have already noted the reluctance of the law to intervene in matters of private conduct more than is necessary to preserve public order, yet it has been noted by Banton that " . . . discrimination enters more readily into decisions of a private character."⁵⁵ The educative function of legislation in attempting to eliminate racially prejudiced motives is therefore necessarily a long-term one.

The limited provisions of the 1965 Race Relations Act were primarily designed to reduce the incidence of

54. Banton. op. cit., p. 379.

55. Ibid.

discrimination in public places and to educate public opinion so that coloured people would receive more just treatment. In emphasizing the importance of the psychological effects of the introduction of legislation, its administrators have tended to ignore the fact that discrimination is at least partially determined not by individual attitudes but by the nature of the social situation in which it occurs. The group aspect of prejudice was overlooked. In treating persons as members of a group for the purposes of giving legal definitions of discrimination, there is no guarantee that they will receive redress as a group for acts which, although perpetrated against individuals, nevertheless reflects their inequalities as group members. The PEP report recognised this, and in showing that discrimination is of significance socially, it pointed out that action designed to eliminate discrimination could not, by themselves, create equality. Liberally-inspired notions of integration have subsequently been adopted with a concern that the coloured immigrant receive a measure of justice on a par with that available to the indigenous population, and attempts have been made to secure levels of both legal and social equality to this end. When translated into policy objectives, however, such notions have failed to understand the nature of conflicting group interests in society, and the different interpretations that may be placed upon concepts of 'equality' and 'integration'. In relying upon definitive concepts of integration, rather than realistically flexible ones, statutory bodies have tended

to treat equality as if it were an absolute. Yet as Banton points out,

"Members of the majority and minority often value particular kinds of equality differently. Notably, they view incidents of racial friction from contrasting stand-points. Majoritarians are relativists; they judge their society . . . by comparison with what other societies have, or have not, achieved . . . On the other hand, minoritarians are absolutists; they emphasize that civil rights cannot be qualified and criticise the national society by reference to the preferred ideals that it never quite attains."⁵⁶

Those aspects of the British value-system such as the notions of equality and integration which are embodied in the principles of racial legislation, are used in so many different and often arbitrary senses by these groups that they result in a loss of precise meaning of the words employed. Such loss of meaning makes it correspondingly easier for individuals to feel that their private interpretations, coinciding with the interests of their own group, conform to a general consensus concerning such values, when in fact they may not.

The existing system of social injustices still favours majority power interests. The gap between dominant and subordinate power groups cannot be closed merely by penalising those in a position to discriminate against members of the coloured minority, however desirable this may appear. Maintenance groups will not consent to what

56. Ibid., pp. 388-9.

appears to them to be discriminatory treatment in favour of minorities unless the overall administration of legislation ensures the continuation of their comparative power advantages. The task of legislation must therefore be to try and improve the absolute position of minority groups, while at the same time avoiding the risk of antagonising dominant power group interests.

SUMMARY AND CONCLUSIONS

Brief Summary. Since the great influx of coloured immigrants to Britain began in the late 1950's, the British Government has increasingly turned to legislative action to deal with racial problems. Often, these measures have been negative; the Commonwealth Immigrants Act 1962 was aimed at restricting the numbers of immigrants entering the country rather than assisting the settlement of recent arrivals. More recently, controls have been extended to Asian 'exiles' from East Africa, even though they may be British passport holders. Such measures were introduced because successive governments recognised that uncontrolled immigration presented problems to the wider community. However, policies were often used to conceal a failure to cope with such problems. The difficulties that coloured newcomers face in their dealings with white groups had, until 1965, been largely ignored. Legislation against racial discrimination in public places and incitement to racial hatred was introduced with the passage of the Race Relations Bill 1965. Many arguments then began to centre around the extent to which legislative machinery was to be regarded a desirable tool in preventing discrimination.

Most industrialists and trade unions have suggested that legislation which extended the scope of the 1965 Act

to cover, in its 1968 successor, employment should operate within industry's own conciliation machinery. They maintain that complaints of discrimination in industry should be considered initially by employment committees at factory level where most disagreements would be solved. Where disagreements remain, regional conciliation committees of the Race Relations Board would examine cases only in consultation with firms. The Board accepted in principle that whereas conciliation should be a first step, the presence in the background of legal penalties would be the vital 'persuader'. As far as employment is concerned, conciliation machinery is not always present; more than half of the indigenous population and a third of immigrants do not belong to unions.

The inter-racial organisations have placed more emphasis on enforcement. Their proposals consist of using legislation as a substitute for voluntary conciliation. That extensions of the original provisions of the 1965 Act have been necessary is seen by the fact that some two-thirds of all the complaints received by the Race Relations Board fell outside the law's scope, even though most were considered to be justified. Emphasis upon conciliation was still retained by the 1968 Act, with the threat of legal action no more than a background to make it effective.

Recent pressure for strengthening the enforcement provisions of legislation has built up because of the failure of voluntary action to significantly reduce the extent or consequences of discrimination. Law alone cannot guarantee

good race relations, however. Different forms of discrimination are more amenable to legislative action than others, and even where the law succeeds in eliminating manifestations of prejudice, there is no certainty that it can kill the root causes. One of the main arguments at government level in favour of legislation has been that it provides a means of setting a new pattern of public behaviour. The standards embodied in legislation may eventually enjoy consensus on the basis of social approval rather than because of fear of sanctions. These arguments depend in large measure on the kind of legislation adopted; the imposition of immigrant controls, for example, may only highlight the 'problem' of colour and reinforce majority group prejudices. Even so-called 'progressive' legislation may be limited to particular situations in terms of utility and propriety. If the law is limited in its capabilities of dealing with the kinds of discrimination at issue, there are some areas where it may not be a desirable tool with which to eliminate root causes. Further, the degree to which law can be an effective agent in helping to secure justice for the coloured minority depends on the existence of an adequate system of enforcement, and the degree to which it is co-ordinated with other social measures designed to reduce inequalities. We have suggested that both legislative provisions and their administration leave something to be desired.

The value of legislation in the field of race relations in Britain will be determined in the light of how

far it succeeds in affording protection to individual members of coloured minorities, through the operation of the law, and how far it is able to equalise the existing differences of access to social and economic facilities between dominant and subordinate groups in society, through the implementation of wider social policies. To the present time, the legislature has conspicuously failed to understand the nature of conflicting group relationships in society, and has overlooked the group aspects of prejudice. As a result, many of the consequences of legal changes have neither been foreseen nor intended. Changes in the climate of inter-racial opinion have been largely due to the political circumstances surrounding the introduction of immigration and racial legislation, rather than as a direct result of the operation of the law itself.

Propositions Re-examined. On the basis of evidence provided in the previous chapters of the British experience of inter-group activity and legal changes, we are in a position to consider the validity of the propositions derived from our model of intergroup behaviour.

P(i) - The strength of interest group activity will depend upon the extent to which power resources are available to the group.

We have outlined historical evidence which illustrates the different conditions under which attempts to assert group

interests have been made on behalf of organisations identifying with particular group values. To test the validity of this proposition, the kinds of organisational activity and the circumstances surrounding their development may be restated.

The most persistent and vociferous maintenance attempts have not only identified with dominant group values, but have also portrayed themselves as being their very guardian. Maintenance organisations have arisen in response to perceived threats to these values. The mere influx of alien and coloured immigrants has not been sufficient to constitute such a threat -- rather, objections have been raised to the particular activities of immigrants, once settled. The establishment of immigrants, for example, in areas of high coloured minority concentrations has been determined not only by the availability of job opportunities in particular locations, but also by a desire to reaffirm minority cultural sentiments. Communal living, and the establishment of neighbourhood groups is seen as functional to the upholding of such sentiments by minorities. But it may be seen as dysfunctional by maintenance groups -- socially, by increasing the problems of overcrowding and ghetto concentrations; culturally, by undermining indigenous values. Organisational responses crystallize around the perception of problems such as these. The direction which they take is necessarily influenced by them, and the strength of the responses will also depend upon the extent to which problems

are considered threatening. Maintenance organisations, although they are able to call on power resources more readily than other groups, may not choose to do so if problems are not perceived by them as constituting a threat to their interests. We may attribute the lack of maintenance group activity towards the influx of European Volunteer Workers after 1945 partly to this fact.

If we regard the mobilisation of public opinion as a particular power resource which it is possible for maintenance groups to command, then assuming P(i) to be valid, the strength of their activities would be related to the degree of public support for their programmes. Yet we note particular occasions on which maintenance proposals have been implemented by the legislature without positive and simultaneous public support -- namely the Aliens Act 1914, and the Commonwealth Immigrants Act 1962. In these cases, extensive public support did not come until after the passage of legislation, rather than being instrumental in its formation, and resulted in a strengthening of controls dictated by political circumstances in the former case, and economic ones in the latter, which generated a positive public support for majority group interests, in contrast to a merely passive acceptance of them.

Group activity may not be apparent if it does not have manifest consequences in terms of a strengthening or reordering of intergroup power relationships. The activities of adjustive groups are not apparent in the organisational

responses towards legal changes, but it cannot be assumed that they do not exist in other areas of group behaviour. These groups do not provide a clear example of the validity of our proposition. They are identified with minority cultural interests, and their programmes are directed towards securing such interests within the minority community itself -- that is, they are intra-group, rather than inter-group oriented. From the perspective of the intergroup arena they appear not to be politically active, since adjustive organisations do not consider the possibility of commanding power resources in group exchanges. Power resources are not seen as being relevant to the problems with which they are concerned -- i.e. preserving the integrity of minority cultural values by insulating themselves from majority group contact. The latent consequence of the apparent inactivity of adjustive groups may be to strengthen the existing system of power relationships to their disadvantage, should they ever desire to press for legislative reforms. The political impotence of adjustive groups is also apparent in the activities of protest organisations who voice similar interests, those of minority cultural values, though from a different perspective. This perspective is reflected in the illegitimacy which they accord to the existing system of status differentials between dominant and subordinate power groups. Our proposition would be acceptable in the case of protest organisations which may be active in voicing demands that power distribution be re-organised, though not strong, since they operate from a

position of subordination.

Synthesis organisations present a special case in combining some of the characteristics of both dominant and subordinate groups. The strength of their activities is less easy to judge. They may be strong, given certain conditions which do not necessarily depend upon the extent to which power resources are available to them. In the example of the 1968 extensions of race relations legislation, synthesis organisations operated successfully as pressure groups because of an atmosphere of government willingness to consider their proposals. They acted as sources of information which were not available to members of other organisations. Synthesis groups did not operate as pressure groups in the same way that maintenance organisations did during the debates on control legislation. The validity of synthesis group interests in securing conciliation between conflicting groups had already been accepted by a legislature prepared to consider extension of reforms if evidence so warranted. The power of organisations such as CARD cannot be attributed solely to a particular position which they occupy in the hierarchy of power relationships. Such a position would, in fact, be difficult to distinguish. They pointed to objective needs not determined by considerations of power group interests. The strength of synthesis group activity appears to be related more to the needs of the legislature for information on which to base legal changes rather than to any other consideration.

Our proposition may be considered to be generally valid with respect to adjustive and protest groups which, being representative of minority group interests and commanding limited power resources, have been without influence in reorganising power differentials in accordance with their interests. In the case of maintenance organisations, the strength of their activity is related to the power resources which they command, but must be qualified by taking into account the general political and economic circumstances surrounding the immigration of minorities. Synthesis groups do not rely upon the power resources available within the intergroup arena, but their activities are determined by their particular usefulness in situations demanding access to information on which the legislature may act.

P(ii) - The most active kinds of group organisation will exert the most pressure upon the legislature to bring about legal changes.

It has been demonstrated by historical example that this proposition is generally valid. Active maintenance groups have consistently pressured the legislature to extend the control provisions of immigration laws. Synthesis organisations, by exposing cases of discrimination and demanding legal action to cope with them, are also conspicuous by their activity. Adjustive attempts, in accepting the existing system of power relationships, have not resorted to demanding that legal changes be made. However, it cannot be assumed

from this fact that they are not active. We must qualify our proposition with respect to adjustive attempts in a similar way to that discussed in P(i) above. Organisational activity at intra-group level may be considerable, but given the acceptance by adjustive groups of the legitimacy of existing power differentials, such activity would not be reflected in independent calls for legal changes. Protest groups may be insistent in their demands for changes, but to the extent that their ideologies refute the possibility of achieving changes through legal means, are unlikely to pressure a legislature which they perceive as representing dominant group interests. So it is necessary to amend P(ii) in order to account for groups which may be organisationally active, but whose activity is not necessarily reflected in pressure group demands.

P(iii) - Such organisations will pressure the legislature into 'solving' defined problems. Solutions will be posed in terms of legal changes which reflect group interests.

Both maintenance and synthesis attempts have been made to present proposals for legal changes. Maintenance organisations present the clearest example of the validity of this proposition. Their interests are represented at two levels -- culturally, through a positive evaluation of indigenous sentiments and a correspondingly negative evaluation of alien ones; socially, by a maintenance of group distance from contact with minorities. The desire to avoid contact

at these levels may be attributed to an anxiety that rapidly-growing coloured groups may undermine majority values, and to a fear of minority competition for scarce socio-economic resources such as jobs, houses, and welfare facilities. Maintenance group interests are organised around the desire to protest majority values by eliminating threats which are perceived as having a simple, singular cause. That cause is unrestricted immigration. The 'solutions' suggested by maintenance organisations are therefore implicit in their perceptions of racial problems -- reduction of the possibility of competition by minority groups by restricting their activities and growth. This may be achieved by a control legislation which attaches strict conditions upon the entry and mobility of immigrants. It has been the standard and consistent response to the problems perceived by maintenance groups. Not only does it reflect the consistency of maintenance group standing as a dominant power group, but also the existence of legal precedents for implementing its solutions. The continuing demand for strengthening control legislation has its basis in the apparent success of previous proposals which have met with government implementation. Maintenance proposals will continue to be posed in the form of controls as long as their chances of being acted upon by the legislature are high.

The observations which have been made with respect to maintenance groups, relating their proposals to group interests, cannot be accepted for synthesis organisations.

The latter show no clear indication of the possession of group interests determined by particular power positions. They do make proposals in terms of legal changes, but are not motivated primarily by interest group considerations. Synthesis views of the possibilities of legal solutions to inter-group problems are indicative of more objective factors than value orientations. In attempting to conciliate between conflicting interests, synthesis groups must uphold a posture of neutrality to be accepted as arbitrators by conflicting parties. The value of synthesis organisations in influencing legal changes is determined by the degree to which they can provide sources of objective information upon which the legislature may act, as in the case of the Race Relations Act 1968. Proposals for solutions will be outlined according to informational findings, as well as by the strategic considerations of the viability of particular legal activity given the existing system of relationships between conflicting groups. In short, synthesis programmes are oriented around an inter-group perspective, rather than being influenced overwhelmingly by the interests of a particular group. Proposition (iii) may be accepted in the case of maintenance organisations, but not for synthesis ones, whose activities are influenced by factors other than the interests of a particular power group position.

P(iv) - The legislature will respond to group pressure, rather than take action on its own account to solve problems.

The extent of legislative response will vary directly with the strength of pressure group activity.

With one noticeable exception, the first part of this proposition has been demonstrated as being true. Pressure group activity has been responsible for almost all legal reactions to both objective and subjective group definitions of the problems of immigration and race. Indeed, as in 1962, pressure groups have often found their leaders from within the legislature itself. We note, however, that the Race Relations Act 1965 came into being not as a result of the pressure group activities of immigrant or synthesis organisations (which were in a very early stage of development), but from the circumstances surrounding the previous control legislation of 1962. The 1965 legislation was a counter-response to the earlier successful maintenance group activities and a subsequently growing public mood of hostility towards coloured minorities. The fact that its provisions were extremely limited can be attributed to the lack of insistence by pressure groups on a stronger race relations law at that time.

This leads to the second part of our proposition. The extent of legislative response has been demonstrated to vary, up to a point, more or less directly with the strength of pressure group activity. However, it appears that beyond such a point this activity may be subject to diminishing returns in terms of the degree to which the legislature will incorporate pressure group proposals into new laws. The more right-wing maintenance organisations have not been

successful, for example, in pressing for a repatriation scheme for coloured immigrants. Since their proposals have not met with consideration at government level, their activities have been conducted locally through a populist stance designed to harness public support for their programmes. Historical evidence, such as that provided by the 1918-19 example of strengthening alien control laws, suggests that the legislature will respond to demands which attract obvious public support more readily than those which merely reflect the interests of particular pressure groups.

P(v) - Legal changes will reflect the interests of the groups which are strong enough to bring pressure to bear upon the legislature.

Two general kinds of legal changes have been noted -- changes towards increasing controls over immigrant entry into Britain, and extension of the provisions of anti-discrimination legislation. P(v) is fairly self-evident with respect to the former. Whereas the legislature as a whole has accepted the principle of an unbiased application of controls to all racial groups, the form of particular laws has been such as to uphold the interests of dominant white power groups at the expense of coloured minority claims. But within the broad category of legal changes, we must distinguish between changes in particular laws, and in the administrative agencies designed to enforce them. Renewed anxiety developed within the ranks of maintenance groups that

the law was not operating as they intended. Administrative policy accepted the influx of coloured immigrants' dependents, and the rate of immigration still remained high. Group interests may therefore be represented in the changing provisions of legislation, but are not necessarily perceived as so being in its administration.

This point is also valid when one considers the circumstances surrounding the extension of the Race Relations Act 1965. Although new legal provisions were accepted in accordance with the findings of synthesis groups, the administration of the new 1968 Act does not operate with an equivalent regard for their suggestions that it be made easier for discriminators to be brought to court, or for coloured persons to institute legal proceedings on their own account. Our proposition is therefore generally valid in the case of changes in the provisions of legislation, but not necessarily with regard to its administration.

P(vi) - The possibility of realising solutions acceptable to all groups will depend upon the degree to which group definitions of problems conflict. Groups whose interests are represented in legal changes will accept such changes as 'solutions' more readily than those whose claims are ignored.

We have outlined evidence in support of the contention that there exist considerable differences in the group perceptions of problems posed by inter-racial contact. No legislation that has been discussed, whether of the control

or the 'reform' variety, has met with the unqualified approval of all groups. The fact that this is so may be attributed to the different perspectives on problems that are voiced by different organisations representative of particular group interests. The legislature has usually responded to pressure from organisations which have commanded sufficient power resources and/or established strategic positions within the intergroup arena to receive government consideration of their claims. Although groups not possessing these advantages have not necessarily had their claims ignored -- minority groups, for example, may be partially represented in the attempts of synthesis organisations to effect conciliation between conflicting power groups -- control legislation is seen as being irrelevant to the problems of discrimination which minorities confront. The difficulty of the operation of race relations legislation is particularly evident in the different appraisals of problems. Members of majority groups may consider the sanctions of such legislation unjust where it appears that their definitions of problems are being ignored at the expense of minority claims. Coloured persons themselves may regard the administrative machinery of race relations legislation as being able to provide only a minimum compensation, unequivalent to injustices committed against them. The validity of the claims of different groups is upheld by the interests and values which the groups embody. Conciliation between groups having different interests has often resulted

in compromise solutions. Legal solutions may at best be partially acceptable to conflicting groups where they deny the ultimate and universal validity of the claims of one party to the conflict over the other. Proposition (vi) may therefore be accepted as being valid.

P(vii) - If legislation fails to effect a conciliation between the rival claims of different interest groups, the unintended consequence of its introduction will be to polarise group interests, and increase intergroup tension.

Our model has pointed to a relationship of interdependence between organisational responses to perceived problems, and legal changes. It can be expected that the introduction of new legislation addressing itself to these problems will have consequences in terms of renewed responses on behalf of both minority and majority organisations within the intergroup arena. In order to determine the validity of P(vii) we must investigate their nature.

After legal changes have been made which incorporate the proposals of maintenance organisations, there have been indications of renewed activity on their behalf which point to a hardening of maintenance attitudes. Theoretically, it would appear that since maintenance interests are consolidated by the strengthening of controls, they may afterwards not consider already established minorities as constituting so much of a threat. In fact, the form that controls have taken has served to highlight the problematical aspects of coloured

immigration to dominant groups. The 1962 legislation, we have noted, did not really control immigration at all, but allowed dependents unrestricted entry and increased inter-group competition for scarce housing and welfare resources. An unintended consequence of the 1962 Act has been to renew activity within maintenance groups, since they have recognised that the law has not been operating as they intended it should. Further, the Act still allowed, until its strengthening in 1968, British passport holders from the Commonwealth unrestricted entry. When the situation in Kenya suggested to maintenance groups that coloured immigrants might use their passports to come to Britain, they re-asserted their interests in insisting that immigration be further controlled.

At present, the situation with respect to control immigration is such that it is difficult to see how further controls can be placed upon the influx of coloured minorities, short of an outright ban. The Government to date has shown no indication of further strengthening controls. Indeed, refusal of admittance is now subject to appeal, under the Immigrants Appeals Act 1968. Recognizing that by themselves, maintenance groups can influence the legislature little more, they have turned towards attempting to directly influence public opinion to press for changes. The general association of 'colour' with 'problems' is one which, we note, has not been made from within the ranks of maintenance groups who initially objected to particular forms of immigrant activity rather than to coloured persons themselves. But maintenance

groups, by publicising the limitations of immigration laws from their own perspective, may leave public opinion to make this equation. The fact that Mr. Powell, for example, now commands the support of a large section of public opinion may serve to heighten the legitimacy of his interests in securing a ban on all immigration, and further harden his attitudes.

Protest organisations that we have already considered exhibit the more militant characteristics of left-wing organisations which deny the possibility of re-ordering power relationships through pressing for legal changes. Recently, synthesis organisations have been showing some of these characteristics. They have insisted that the Race Relations Acts of 1965 and 1968 are limited in their effectiveness to provide security for minority groups. Although the extended legislation has strengthened the provisions dealing with inter-racial behaviour, as a result of incorporating the findings of synthesis groups, the implications of their administration in terms of consequences for minority groups have not been well understood by law-makers. The Race Relations Board may act upon a recognition of the validity of individual complaints, but not recognise that these reflect the standing of persons as particular group members. Justice may be dispensed to individuals, but is not necessarily perceived as compensating the group from which he comes. In recognising the desirability of controlling individual incidents of discrimination, the group aspect of prejudicial behaviour

has been overlooked. A particular coloured person may, for example, be concerned with securing a particular job or house, but coloured minorities are concerned with the general availability of employment and housing -- not at all the same thing. Administrative bodies have been unable to provide the assurances that minorities desire since they operate according to a highly individualistic conception of justice. Administrative agencies have also been severely compromised in the eyes of coloured immigrants, since as statutory bodies they are associated with a Government which insists upon the need for controls -- controls which immigrants see as being racially biased and in favour of dominant group interests.

Since minority groups and their members within synthesis organisations perceive that their interests as group members are not being sufficiently considered by the agencies administering race relations laws, they are left with little alternative but to re-assert these interests on their own behalf. Minorities have begun to re-assert the values of their own groups, even to the extent of forming alliances with more militant protest organisations. Factionalism within synthesis attempts has appeared between those persons accepting the current policies of administration and those recognising its limitations.

We can distinguish the unintended consequences of the law and its administration in terms of an unforeseen polarisation of group interests, and proposition (vii) is therefore valid.

Since our model has served as a source of propositions which have, with a few exceptions, been generally validated against the historical experience of British legislation, it can serve as a useful device for analyzing intergroup activity and organisational responses to legal changes. Yet we must also note its limitations. Particular attention has been paid to the climates of public opinion which have existed at different points in time concerning matters of immigration and race, and we noted that they have not been without influence in the legislature. It is difficult to see how the variable of public opinion, awkward enough to define in itself, can be accounted for by a perspective on race relations which emphasized the intergroup aspects of behaviour within and between particular organisations. More research is needed into the relationships between organisational activity and the degree of public support it may be expected to command. Public support for legislation has come after the fact of legal changes, being merely passive during its introduction. It is perhaps a pious hope that race relations legislation will eventually receive such support. But the indications are ominous. Maintenance groups are beginning to attract public sympathy by offering symplistic solutions -- more controls -- to a public which has not educated itself on the issues involved.

This work has been motivated by a desire to counter the tendency of looking at organisational activity and legal behaviour solely in socio-psychological terms. The author believes that the more important factors of social, political,

and economic circumstances deserve primary consideration. These factors have important consequences for all groups in society, as the issue of race certainly does. Unfortunately, this tendency is also reflected in legal and administrative policy which has approached problems of discrimination in a highly individualistic, ad hoc fashion, and designed immigration laws to meet exigent situations with little thought to their effects. The consequences of the particular legal approaches we have discussed have not been well understood. Our approach may, it is hoped, inform future policy-makers by making them more apparent.

APPENDIX I

NET ANNUAL INTAKE OF COLOURED
COMMONWEALTH IMMIGRANTS

(i.e., excluding Australia, Canada and New Zealand)

	VOUCHER- HOLDERS	DEPENDENTS	TOTAL
1955			42,700
1956			46,850
1957			42,400
1958			29,850
1959			21,600
1960			57,700
1961			136,400
1962 (to June 30)			94,900
1962 (July 1 to Dec. 31)	4,217	8,218	12,435
1963	28,678	27,393	56,071
1964	13,888	38,952	52,840
1965	12,125	39,228	51,353
1966	5,141	39,130	44,271
1967	4,716	50,083	54,799
1968	4,634	46,807	51,441

Sources:

1. 1955 to June 1962 and 1963-4: Immigration from the Commonwealth (1965) Cmnd. 2739.

Remainder from annual Control of Immigration Statistics published under Commonwealth Immigrants Act 1962:

July 1962 - December 1963: Cmnd. 2379.

1965: Cmnd. 2979.

1966: Cmnd. 3258.

1967: Cmnd. 3594.

1968: Home Office monthly statistics.

APPENDIX II

ANALYSIS OF COMPLAINTS

Received from the start of the Race Relations Board's operations up to and including 30th. June, 1968.

The figures shown in brackets relate to complaints received, or dealt with, since the publication of the Annual Report for 1967-1968 (April 1, 1968).

TOTAL RECEIVED: 1,193(173)

A. COMPLAINTS INSIDE THE SCOPE OF SECTION I OF THE ACT = 224(31)

<u>Establishments</u>		<u>Conciliation Areas</u>	
Public Houses	153(19)	Northern	1
Hotels	8	Yorkshire	23 (2)
Cafes	21 (3)	North West	22 (3)
Clubs	24 (9)	West Midlands	45 (8)
Hospitals	2	East Midlands	10 (1)
Public Transport	9	Eastern	10
Municipal Enter- tainments		Berks, Bucks & Oxon	4
Centres	1	Hants, Surrey & Sussex	5 (4)
Public Utilities	2	Kent	8
Police Stations	1	South Western	3
Town Halls	1	Greater London	86(13)
Places of Public Entertainment	2	Wales & Monmouth	3
		Scotland	4
		<u>How dealt with</u>	
Settled by con- ciliation	63 (4)	Under Investigation	69
Not sustained	87(27)		
Referred to Attorney General	5		

B. COMPLAINTS OUTSIDE THE SCOPE OF SECTION I OF THE ACT = 959(136)

<u>Establishments</u>		<u>Conciliation Areas</u>	
(a) Public Houses	37	Northern	7 (1)
(b) Hotels & Guest Houses	6 (1)	Yorkshire	119(19)
		North West	123(13)
		West Midlands	86 (8)

(c) Clubs	19 (1)	East Midlands	49 (9)
<u>Subjects</u>		Eastern	15 (1)
Employment	412 (57)	Berks, Bucks & Oxon	37 (11)
Publications	49 (6)	Hants, Surrey & Sussex	22 (2)
Housing	112 (14)	Kent	42 (1)
Shops	22 (6)	South Western	11
Financial Facil-		Greater London	418 (64)
ities	39 (6)	Wales & Monmouth	19 (4)
Car Hire	9 (1)	Scotland	11 (3)
Police	98 (10)		
Religion	3		
Display Notices	4		
Miscellaneous	149 (32)		

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