

The Origins of the Race Relations Act

Philip N. Sooben

Research Paper in Ethnic Relations No.12

Centre for Research in Ethnic Relations
University of Warwick
Coventry CV4 7AL.

September 1990

Philip Sooben is a Higher Scientific Officer at the Economic and Social Research Council. He presently chairs the Branch of NUCPS (ESRC Branch). Philip is interested in issues surrounding the Politics of Race in Great Britain, and in particular Party Politics and Race Relations Legislation. This paper is a slightly amended version of his thesis for M.A. Race and Ethnic Relations, which he successfully completed in 1989.

Mel Thompson is the editor of the Research Papers in Ethnic Relations Series. The aim of this series is to publish papers based on research carried out at the Centre for Research in Ethnic Relations at the University of Warwick. It will also publish papers from external authors, and the editor welcomes manuscripts from other writers and researchers (including research students) working in the field of race and ethnic relations. The main emphasis of the series will be on original research that will be of interest and relevance for students of race and ethnic relations and for those implementing equal opportunity and anti-racist policies.

Abstract

The Race Relations Act introduced by the Labour Government in 1976 was intended to replace and strengthen the Acts of 1965 and 1968. The shortcoming of the existing legislation, and particularly the powers available to the Race Relations Board and the Community Relations Commission, were becoming increasingly evident by the early 1970s. The Labour Government which came to power in 1974 therefore proposed reform in parallel with legislation on Sex Discrimination. It is argued that this factor was of crucial importance. The Sex Discrimination Act of 1975 served as a model for the legislation on racial discrimination, and both Acts were built upon the same principles. Indeed, the Government publicly stated its intention to 'harmonise' the law in these two fields as far as possible.

The extent of racial discrimination and disadvantage was increasingly being demonstrated, particularly by Political and Economic Planning (PEP) who published a series of reports between 1974 and 1976. In January 1975, the House of Commons Select Committee on Race Relations and Immigration was charged with inquiring into the organisation of race relations administration. They gathered evidence and recommendations for reform from a wide range of sources, and their report in July 1975 made a number of proposals for change, foreshadowing the Government's own White Paper on 'Racial Discrimination' of September.

Wider influences on the shaping of the 1976 Act can also be detected. The example of United States anti-discrimination law made a considerable impact, particularly on the Home Secretary, Roy Jenkins. It is held that the concept of indirect discrimination, especially in the employment field, owed its inclusion in the British legislation largely to its American usage. It is also maintained that domestic political factors should not be overlooked. Industrial disputes involving Asian workers, the growing perception of the 'problem' of second-generation black youth and the Labour Party's position on race relations policies since 1970, helped define the context within which the Act was introduced. Other possible influences, however, such as the importance of the black vote and the rise of the National Front were not particularly salient, and a 'crisis of capitalism' analysis is ultimately rejected in favour of a more realistic and empirically-grounded interpretation

Acknowledgements

I would like to thank Zig Layton-Henry and Malcolm Cross of the University of Warwick for their advice and assistance on this project. I would also like to acknowledge the help of Lord Bonham-Carter, Lord Jenkins of Hillhead and Anthony Lester QC, for providing an 'inside' view of the situation. Thanks are also due to Dr Muhammad Anwar and Cathie Lloyd of the CRE for their helpful comments and support.

I am extremely grateful to Pippa, Mike and Iain for reading and commenting on the drafts and proofs of this thesis, and for their many useful suggestions, and to Alicja, for the considerable time and effort which she has put into the typing of this project.

Contents

Page

Introduction	1	
1	Preparing the Political Ground 1965 - 1974	4
2	The Immediate Context 1974 - 1976	8
3	The Impact of Research on Racial Discrimination	16
4	Sex Discrimination and The Race Relations Act	29
5	The Influence of United States Anti-discrimination Law	36
6	The Industrial and Political Context	44
	Summary and Conclusion	55
	Appendix - Chronology of Main Events	58
	Bibliography	60

Introduction

Much has been said about the implementation and effects of the 1976 Race Relations Act. Rather less work has been done on the genesis of this legislation. Most of the major studies and accounts of the Labour Governments of 1974 to 1979, including those of the participants, deal with the Act only in passing, if at all, preferring to concentrate on economic and industrial issues. And yet, the Act must surely stand as one of the more significant pieces of legislation of the 1970s, indicating a new approach to race relations, equal opportunities and tackling discrimination on the part of the state. What is more, the Act was introduced with remarkably little opposition. It is intended, therefore, to examine both the direct and more general origins of the Act, and the political debate surrounding its introduction in 1975-6. It should then be possible to locate the Act within a more general political context, and assess its position within the wider operation of race and politics in modern Britain.

The Act was, of course, a successor to the race relations legislation of the 1960s. The new body which it created, the Commission for Racial Equality, replaced the two existing statutory agencies, the Race Relations Board, which had been established by the 1965 Race Relations Act, and the Community Relations Commission, created by the 1968 Act. The first chapter will, therefore, sketch the historical background to the present Act, outlining the development of race relations policies in Britain between 1965 and 1974, from which an understanding of the continuities and discontinuities which the 1976 Act represented can be developed. In chapter 2, the narrative will examine the period between 1974 and 1976 in detail. This discussion will incorporate the party politics which were in operation over this issue, including Labour's overall programme on race relations and immigration and the attitude of the Conservative opposition. While the majority of Conservative MPs supported the Act, there were some who vehemently opposed it. Their views will be considered as the debate over the legislation is outlined. The specific events leading up to the passing of the Act will be described, most notably the publication of the White Paper on 'Racial Discrimination' in September 1975, and the enactment of legislation on sex discrimination.

It will also be necessary to make reference to the growing evidence being presented during this period to demonstrate the continuing extent of racial discrimination and outlining possibilities for reform. This evidence will be examined in more detail in chapter 3. It can be regarded as falling into three convenient categories. Firstly, Political and Economic Planning (PEP), whose research had influenced the shaping of the 1968 Race Relations Act, produced a series of reports between 1974 and 1976 which demonstrated the widespread existence of discrimination and disadvantage in all areas of society. PEP's investigations covered these issues in more detail than had been attempted before. Secondly, both of the statutory bodies responsible for race relations, the Community Relations Commission and the Race Relations Board, were arguing that the existing legislation was insufficient and that their work lacked credibility among the black communities. They both, therefore, brought pressure on the Government to implement change. Thirdly, the Select Committee on Race Relations and Immigration carried out their own investigation into 'The Organisation of Race Relations Administration' in 1975. Their report, and the mass of evidence submitted to them, constituted a considerable body of information and opinion which addressed most of the principal questions to be tackled by the Government.

Chapters 2 and 3 will thus rely mainly on primary sources such as official publications. In contrast, chapters 4 - 6 will attempt to examine some of the wider influences on the Act. They will, therefore, require a greater emphasis on secondary as well as primary materials. In chapter 4, the importance of the Sex Discrimination Act will be analysed, in particular the way in which it

served to lay the foundations for the ensuing legislation on race. It will be argued that the two Acts cannot be considered in isolation from each other, and that both were based on the same basic legal principles. It might even be held that the Sex Discrimination Act made possible the Race Relations Act, and certainly that it determined the form which the latter finally took.

Chapter 5 will consider the role that the example of anti-discrimination legislation in the United States played in Britain. Above all, it will be demonstrated that this legislation had a considerable influence on the Labour Home Secretary, Roy Jenkins, and especially the concept of indirect discrimination. It is argued that this particular element of the 1976 Act was principally, if not solely, due to the American example.

The final chapter will attempt to locate the Act within its political and economic context. It has been argued that the Act was largely a response to the fear of social conflict and minority discontent, a defensive measure rather than a positive one. The exponents of this view point to a growing concern over the 'problem' of second-generation black youth, the series of industrial disputes in the early 1970s involving Asian workers, and the rise of the National Front. This analysis will be subjected to close scrutiny, and it will be maintained that, although it has some merit, this case is somewhat overstated. Developments within the Labour Party are also crucial to an understanding of the problem. The adoption of more positive policies on race relations after 1970, Labour's drift to the left during this period and their response to the increasing salience of the ethnic minority vote, will all be considered. Their recognition of the potential problems which lay ahead is clear. The question will be how cynically one chooses to interpret the motivation which lay behind the Government's actions.

A belief in the need for legislation and pressure for effective laws against racial discrimination can be dated from at least 1958, the year of the 'race riots' in Notting Hill and Nottingham. The Labour backbencher, Fenner Brockway, unsuccessfully presented a race relations bill to Parliament nine times in the 1950s. But it was not until 1965 that legislation was introduced, by which time the 1962 Commonwealth Immigrants Act of the MacMillan Government was in place, and had been renewed by the new Labour Government in November 1964. Despite Labour's initial opposition to the Act, led by Hugh Gaitskell, their growing recognition of the public's support for immigration controls, emphasised by Peter Griffiths' campaign in Smethwick during the 1964 General Election, had led to something of a volte-face under the new leadership of Harold Wilson.

The 1965 Race Relations Act was a weak measure which represented, to some extent, a compensation for the Government's White Paper of August 1965 on 'Immigration from the Commonwealth' which proposed strengthening the 1962 Act. It was also a response to the racial violence against West Indian immigrants and the anti-semitic speeches of the early 1960s particularly those by Sir Oswald Mosley and Colin Jordan, who was arrested under the Public Order Act in July 1962 (Skidelsky 1981:516). The Act outlawed discrimination in specified public places, and created the offence of 'incitement to racial hatred'. It also set up the Race Relations Board, which co-ordinated 7 regional conciliation committees established to deal with complaints of discrimination. The task of these committees was to secure a settlement of the difference between the complainant and the discriminator and an assurance from the latter as to their future conduct. In the event of failure to obtain a settlement, the matter was referred to the RRB and, if necessary, to the Attorney-General. There was, therefore, no criminal sanction, and the number of cases referred to the Attorney-General up to 1968 was only four [See Brown 1983: 51-2].

There were obvious flaws in this Act. Its enforcement procedures were poor, and it did not apply to areas such as employment and housing. These omissions were highlighted by the first PEP report on racial discrimination in 1967 [Daniel 1967]. This report was, however, compiled rather hurriedly. The Government would not have wanted to introduce legislation on race relations that was likely to be controversial in the run-up to a General Election. Any legislation would, therefore, have to be enacted by 1968. Since the Race Relations Board's first Annual Report was due in 1967, the Board also needed PEP's report in order to decide what recommendations to make. At the same time, the report of the Street Committee on United States anti-discrimination law indicated that further legislation in this field was feasible and desirable [Street 1967. See also chapter 5].

Labour's policy during the 1960s was that of the 'balancing act', stressing the mutual relationship between immigration controls on the one hand and measures to tackle racial discrimination on the other. In Roy Hattersley's famous phrase, integration without limitation was impossible, and limitation without integration was inexcusable. The 1968 Race Relations Act can thus be seen as a 'corrective' to the Commonwealth Immigrants Act of March 1968, which had been prompted by the Kenyan Asian 'scare' and the campaigning of Enoch Powell. It also owed something to the impulse given by Roy Jenkins at the Home Office [Banton 1985: 110]. Jenkins was concerned for Britain's liberal image in the world, and, as John Campbell has argued, 'he was at pains, in frequent speeches to immigrant organisations and other bodies, to identify himself with the improvement of race relations' [Campbell 1983: 92].

The 1968 Act now incorporated housing, employment and the provision of goods and services. The RRB was given the power to investigate where there was reason to believe that discrimination had taken place but no complaint had been received. They also now had the power to bring legal proceedings when attempts to

conciliate failed, and the conciliation procedures now included provisions for securing redress for the victims of discrimination. The Act also created the Community Relations Commission with the brief of promoting good community relations. The CRC replaced the National Committee for Commonwealth Immigrants [NCCI], the local committees of which now became Community Relations Councils [CRCs].

Over the following five or six years, weaknesses in the 1968 Act became increasingly evident, both in the scope of the law, and even more so in its enforcement [Bindman 1975: 7]. While the more public and open manifestations of discrimination diminished considerably, especially in housing and employment [McIntosh and Smith 1974], high levels of discrimination persisted. This was not always of a direct form or nature. It was becoming clear that various regulations and practices could also discriminate indirectly against ethnic minorities [Brown 1983: 52]. The requirement in the 1968 Act of proof of discriminatory intention meant that the existing narrowness of the concept undermined the effectiveness of the legislation, and that the definition of discrimination had, therefore, to be sufficiently flexible to permit positive action to overcome the effects of wider discrimination and disadvantage, such as training schemes and special publicity [Lester 1987: 23].

This perception of the inadequacies of the 1968 Act definition coincided with an increasing awareness of 'immigrant disadvantage', urban deprivation and 'institutional discrimination' [McCrudden 1983: 55]. This dimension of the racial inequality issue was in part addressed by two specific measures in the 1960s. The 1966 Local Government Act included provision in Section 11 for the operation of grant-aid to local authorities in respect of the employment of staff, who have had to make special provision in the exercise of their functions

In consequence of the presence within their areas of substantial numbers of immigrants from the Commonwealth whose language or customs differ from those of the Community.

This aid, originally set at 50 per cent of approved expenditure, was raised to 75 per cent in 1969. It was intended that the scheme would assist in the short-term process of assimilating the immigrant communities, particularly through the education system [Young 1983: 293-4]. This did not prove to be the case, and expenditure under Section 11 rose from some 3.5 million in 1969/70 to over 10 million in 1974/5 [Runnymede Trust, 1976 a, no p: 10].

The second measure, the Urban Programme, was, in part, a response to Enoch Powell's 'River Tiber' speech of April 1968. Two weeks later, Prime Minister Harold Wilson announced the programme in a major speech on race and immigration in Birmingham Town Hall. He stressed that it would be directed at some areas 'where there is virtually no immigrant problem', and that 'Expenditure must be on the basis of need and the immigration problem is only one factor, though a very important factor, in the assessment of social need' [Runnymede Trust 1976 a, no 5: 8, and Demuth 1977]. The Government thus sought to emphasise that the programme was not a race-specific policy. Those officials who shaped the Local Government Grants [Social Need] Act of 1969 in which the programme finally emerged, questioned 'whether it might be possible to disguise the focus on immigrant areas by describing them as 'urban areas of general social need'' [Edwards and Batley 1978: 46]. In practice, only a small minority of the projects funded have been directed towards the needs of the black population, leading Ken Young to suggest that the programme may be read as a compensatory programme aimed at whites living in multi-racial areas [Young 1983: 297]. Indeed, the Select Committee on Race Relations and Immigration were to suggest that it might be desirable if a specific proportion of the Urban Programme was allocated to the needs of the black population [Select Committee, vol II, para 46, 1975]. What is indisputable is that the programme expanded considerably after its inception, with expenditure rising from just over 1 million in 1969/70

to 9 million in 1974/5. As the following two chapters will indicate, the tackling of urban disadvantage was increasingly recognised to be a vital corollary to the legislative efforts to eradicate racial inequality.

Just as the scope of the concepts of discrimination and disadvantage required amplification, it was also evident from the 1968 Act that the procedures laid down were proving unrealistic and limiting. The number of cases being dealt with by the RRB in no way reflected the widespread extent of discriminatory practices, and it was becoming clear that these could not be eliminated solely by a reliance on individual complaints. Moreover, the theme of the 1968 Act was conciliation, so that only if conciliation failed were court proceedings available, and only the RRB had the right to bring such proceedings. Hence, it was increasingly argued that this should be remedied by permitting individual access to the courts [Lester 1987: 23]. During the period between 1968 and 1974, therefore, experience had shown that both the analysis of the problem, and the machinery to tackle it, were insufficient. If the lessons of the 1968 legislation were not to be learnt, it was clear that the existing provisions would gradually lose both their effectiveness and their credibility. As Jenkins stated in a speech to the National Conference of Community Relations Councils:

I have accepted the argument that these weaknesses have impaired our ability to ensure equality of treatment and weakened the credibility of the legislation in the eyes of the minority communities. I have drawn the conclusion that unless we can swiftly devise measures to keep the promise inherent in the Race Relations Act, people will lose confidence in the good faith of Governments. That erosion of confidence is something we cannot permit. [CRC Press Release, 12 September 1975]

Race relations and immigration were not major issues in the General Election campaigns of 1974. The elections were dominated by the conflict between the Government and the miners, the imposition of the three-day week and the defection of Powell from the Conservative Party over British membership of the EEC. Labour, while not at this stage committing themselves to specific policies on race issues, embarked on a programme of cautious reforms. In April 1974, an amnesty was announced for illegal immigrants who were Commonwealth citizens who had been adversely affected by the retrospective operation of the 1971 Immigration Act. In June, the restriction imposed by the Labour Government in 1969 on the admission of husbands and fiancés of women settled in the UK was lifted, and in February 1975 the quota for UK passport holders was raised from 3,000 to 5,000 [Layton-Henry 1984: 153].

The Government's attention was focussed on sex discrimination rather than racial discrimination during its first year in power. The White Paper on 'Equality for Women' was published in September 1974, leading to the Sex Discrimination Act in November 1975. Nevertheless, events germane to race relations legislation were apparent during this period. The first two PEP reports were published in June and September 1974, and in October 1974 the case of the Preston Dockers Club was heard by the House of Lords. The decision in this case, as in the Charter Case of February 1973, effectively put these and other clubs, including some 4,000 Working Men's Clubs, beyond the reach of the 1968 Race Relations Act, since it was held that such clubs did not constitute a 'section of the public' (Section 2 (1) of the 1968 Act). By interpreting the letter rather than the spirit of the law, the judiciary had in practice defeated one of the primary objects of the existing legislation and thereby strengthened the general acceptance of the case for tackling discrimination in the public sphere. The Government recognised that the relationship between members of these organisations was in reality no different to that between, for example, members of a trade union branch. They also acknowledged that the law should not interfere with genuinely private social gatherings. Clause 25 of the Race Relations Bill (and section 25 of the Act) therefore extended the law to cover all clubs with more than 25 members.

The White Paper on Racial Discrimination

The Government's White Paper followed the report in July 1975 of the Select Committee on Race Relations, which criticised the Government for failing to devise effective race relations policies and recommended a clear demonstrable Government commitment to equal rights, the provision of greater resources and a strengthening of the race relations administrative structure. The White Paper acknowledged the deficiencies of the 1968 Act and, to some extent, of the Government's earlier integration policy. It also accepted the widespread nature of the problem.

The problems with which we have to deal if we are to see genuine equality of opportunity for coloured youngsters born and educated in this country may be larger in scale and more complex than has been initially supposed. The Government is convinced, as a result of its review of race relations generally and of the working of the legislation, that a fuller strategy to deal with racial disadvantage will have to be deployed than has been attempted so far. Home Office 1975]

The White Paper proposed a number of ways in which the enforcement of equal opportunities could be extended. The Government acknowledged its own special responsibility as an employer and accepted that 'a vital ingredient' of any effective equal opportunities policy was 'a regular system of monitoring'. The proposals were not, however, particularly explicit on how an effective monitoring system would be administered. Due partly to union opposition, this element of the Government's strategy was to remain on the shelf [Home Office 1975: 4-5. Sanders 1983: 75. Runnymede Trust 1976: 10].

The Government also announced its intention of using Government contracts as a lever for achieving equal opportunity, given the ineffectiveness of the existing provision. All Government contracts would now include a standard condition that contractors should provide on request to the Department of Employment such information about its employment policies and practices as the Department might reasonably require. This proposal was widely regarded as insufficiently firm. In particular, there was no statutory backing for the policy and no provision for sanctions if a contractor's performance was unsatisfactory. Moreover, the Labour Government proved extremely cautious in translating this statement of intention into action, and its consultations with interested parties dragged on so slowly that they were still continuing when it fell from power in 1979 [Home Office 1975: 5. Sanders 1983: 75-6. Runnymede Trust 1976 b, no 1].

The White Paper also pointed to the role of voluntary action, expressing the hope that 'most institutions and individuals will respond to the Government's positive lead in promoting equality of opportunity and will change their practices voluntarily'. Experience has demonstrated that this was a somewhat optimistic prediction. Similarly ineffective was the provision by which the new Commission was given the power to issue codes of practice containing practical guidance for the purpose of eliminating discrimination and promoting equal opportunity in the field of employment [Section 47 of the Act]. Any such code could come into force only if it received the approval of the Secretary of State for Employment, and it would not be legally binding [Home Office 1975: 20. Sanders 1983: 76].

The planned revision of the complaints procedure attracted a range of comment and criticism. The Government felt that complainants' interests would be best served by allowing them direct access to legal redress via industrial tribunals, as was provided for in the employment provisions of the Equal Pay Act and the Sex Discrimination Act [Kumar 1986: 1-2]. They also provided for the potential victimisation of complainants [Section 2(1) of the Act]. However, it was widely believed that the new system might leave the individual complainant in a worse position than hitherto. They would no longer have the automatic right to have

their complaint investigated by a specialist body which would go to court on their behalf. Moreover, the burden of proof might be very hard to satisfy. It was feared that individuals might be deterred from making a complaint, which would consequently reduce the value of the new Commission's powers and efforts. As Geoffrey Bindman, the legal adviser to the Race Relations Board, pointed out, the experience of individual cases would remain an essential source of information upon which wider investigations could be based [Bindman 1975: 13]. The Chairman of the Race Relations Board, Mark Bonham-Carter, signalled a similar warning:

No matter how effectively the Race Relations Commission [sic] performs what the White Paper calls its 'strategic functions', unless the complaints of individuals are speedily and effectively handled, the new Commission and the new law will quickly be written off as useless.
[The Guardian, 19 November 1975]

The new Commission, it was stressed, would not simply be an amalgamation of the CRC and the RRB. It was proposed that the functions of the new agency would be broader and of a more strategic nature than before and should not be confined to responding to external stimuli and individual complaints. For instance, the Commission was to be empowered to conduct enquiries into matters outside the scope of the legislation which might affect the relative positions and opportunities of different ethnic minorities [Runnymede Trust 1976 b, no 7]. As Roy Jenkins explained to the CRC annual conference in September 1975, the new Commission should have 'the power to range over the entire variety of ways in which racial minorities may receive less favourable treatment and to propose the relevant remedies' [CRC Journal, October 1975]. The White Paper was not entirely explicit, however, about the exact 'fit' between the activities of the existing agencies and the new Commission, the resource implications or the 'formal relationship between the new central statutory authority and the local community relations effort' [Rees 1975: 18]. The Government at this stage merely stated that 'it would like to propose arrangements which would enable the local work not only to continue but to gain in its effectiveness'. The question of the exact relationship between the local CRCs and the new body was left open, Jenkins explaining that 'it should be our aim to examine how we can assist this work in developing its effectiveness and penetration' [Runnymede Trust 1976b, no 8. CRC Journal, October 1975]. During the debate on the second reading of the Bill in March 1976, Jenkins stated that 'I have found the resolution of this issue more difficult than any other decision which has had to be made about the Bill'. He recognised that the decision to give the new agency the responsibility for local community relations work might mean that it could be compromised in carrying out its law enforcement duties if it was also obliged to stimulate and co-ordinate local community relations work, because its essential independence, impartiality and objectivity could be impaired. However, he felt that the other possible options than to give the new Commission responsibility would either be unworkable, unacceptable or ineffective [Hansard, vol 906, cols 1560-1].

One of the major omissions from the White Paper was the Select Committee's recommendation that a statutory obligation be placed on the local authorities to promote equality of opportunity. This was raised by the Labour MP, Fred Willey, a member of the Select Committee, during the second reading of the Bill, and was considered by the Standing Committee on the Bill on 24 June 1976. Willey, supported by the Conservative backbencher David Lane, stressed the need to emphasise the importance of the role of the local authority, arguing that 'it deals with what is probably the most serious omission from the Bill'. Willey noted that some local authority spokesmen had been in favour of such a provision in their evidence to the Select Committee, although it is also true that the Association of Metropolitan Authorities has not accepted that the majority of authorities were discriminating or that such a provision would make any

practical difference [Hansard, vol 906, col 1578. Burney 1988: 7-8. Standing Committee A, 1976: cols 763-5. Select Committee, vol III, 1975: 185].

This new clause was intended to re-emphasise a clear and demonstrable commitment to improve race relations at both Government and local authority level, rather than to outline a specific policy. As Willey stated, 'I am not anxious to impose upon local authorities any particular solution. I wish only to empower them so that they can themselves decide to participate if they so wish' [Standing Committee A 1976, col 767]. The new clause, which was approved eight to five by the Standing Committee and became section 71 of the Act, was thus drawn up in very general terms backed neither by sanctions nor incentives [Young and Connelly 1984: 14]. No central Government guidance was to be forthcoming beyond a joint departmental circular of June 1977 which merely stated that

Its effect will clearly differ from area to area and as between different local authority functions. However, local authorities will need to examine their relevant policies and practices to ensure that they meet the requirements of this section.

[Home Office; DoE; DES; DHSS; Welsh Office,
'Race Relations Act 1976', Joint Circular, 10 June 1977].

The White Paper had indicated that the Government should concern itself, not only with outright racial discrimination, but also with a more comprehensive strategy for dealing with disadvantage, and a 'considered response' to Parliament on this question was promised. Indeed, in July 1974, the Home Secretary had announced the development of a new programme to deal with urban deprivation which would involve developing comprehensive Community Programmes in deprived areas, but nearly two years later these new programmes were yet to be launched. The White Paper noted that 'an excessively high proportion of coloured people live in the relatively more deprived inner city areas' and that 'the housing conditions of the coloured population have hardly improved in the last 10 or 15 years' [paras 6 and 8]. However, financial constraints on any more comprehensive strategy to deal with urban disadvantage were clearly in evidence. As paragraph 26 of the White Paper indicated, the Government's Strategy had major public expenditure implications, including a reassessment of priorities within existing programmes. 'It cannot be settled in advance of the outcome of the current major public expenditure review'. In practice, this meant that such a strategy was put on ice so that one-half of the Government's programme on race relations remained unfulfilled [Runnymede Trust 1976 b, no 5]. In the House of Commons, Roy Jenkins stated that 'although this is an important Bill, it is not a money-spending Bill' [Hansard, vol 889, col 516]. In the economic circumstances of the time, Jenkins chose to focus on the legal end of the problem, and this led to a rupture with Home Office Minister, Alex Lyon, who wanted to pursue a more actively interventionist policy dealing with disadvantage as well as discrimination, and involving a range of local authority programmes [Campbell 1983: 163]. The Government's abandonment of a wider policy to tackle disadvantage, and its concentration on the legislative effort, was confirmed by the White Paper on 'Policy for the Inner Cities' in 1977, which stated that:

The attack on the specific problem of racial discrimination and the resultant disadvantages must be primarily through the new anti-discrimination legislation and the work of the Commission for Racial Equality.
[Department of the Environment 1977: 4]

Party Politics

Although the Conservatives, in power, had been reluctant to take a firm lead in dealing with racial discrimination, ignoring a report in 1973 by the Central Policy Review Staff, there was relatively little Conservative opposition to the Race Relations Act [Lane 1987: 15]. William Whitelaw stated in the Commons

debate in March 1976 that because of the Conservative Party's clear commitment to the principle of non-discrimination and in the interests of racial harmony, he advised his 'honourable friends' not to oppose the Bill [Hansard, vol 906, cols 1568-77]. Dudley Smith, the Conservative MP for Warwick and Leamington spoke of:

A need for a crusade to overcome racial discrimination, and to give our fellow Britons who are in the minority a new confidence which they have significantly lacked in recent years.
[Hansard, vol 906, col 1594]

There were some [unsuccessful] Conservative efforts to amend the Bill in Committee, but it received its third reading virtually unopposed, with only 43 Conservatives voting against it.

Many Conservatives did, however, argue that strong immigration controls were a quid pro quo for strong race relations legislation and that the present controls were not strong enough. Whitelaw stated that he would support the Bill if the Home Secretary could clearly show that there was strict and effective control of the numbers coming into the country [The Times, 5 March 1976]. It is likely that immigration remained a more salient issue during this period than the improvement of race relations, with Powell in particular constantly on the offensive, demanding detailed immigration statistics and revealing at the end of 1975 that the immigrations statistics had been incorrectly compiled, using the 'two-card system', for a number of years [Layton-Henry 1984: 153]. Labour were thus under parliamentary pressure over the level of immigration during the passage of the Race Relations Bill [February - November 1976], Alex Lyon responding by demonstrating the incompatibility of discriminatory controls with legislation on racial equality. As he informed the House of Commons on 24 May 1976,

One cannot say to a man who is black 'We shall treat you as an equal member of this society, as a full citizen of this community', and say to him at the same time 'We shall keep your wife and children waiting seven years before they can come and live with you'.
[Quoted in McDonald, 1977: 8]

There were some on the Conservative right who did attack the legislation. Indeed, it has been argued that the new Conservative leader, Margaret Thatcher, was on the verge of ordering Conservative opposition to the Bill, and was prevented from doing so only by a threatened revolt of senior liberal Tories [Russell 1978: 119]. The right-wing opposition to the Act was led by Ronald Bell and John Stokes. Bell argued that clause 69, dealing with incitement to racial hatred, would lead to the denial of free speech and was'..... the greatest infringement of freedom of speech or writing since the days of religious persecution' [Hansard, vol 906, col 1624]. Rejecting the idea that the law can be declaratory and arguing that it should reflect the norms and values of 'ordinary people', Stokes regarded the Act as creating distinct rights for different groups of citizens and disregarded the idea of 'consent' in drafting legislation, creating 'privileges' for 'new comers' which would provoke resentment in the host population who 'believe that there is positive discrimination against them', so that ultimately the law will not carry approval [Hansard, vol 906, cols 1645, 1634]. A similar line of argument was adopted in some quarters of the popular press. George Gale of the Daily Express, for example, declared in 1978 that 'this act of folly' was the 'worst sin of any Government concerning race relations in this country' and was an attempt to 'frustrate the determination of the British people to retain their own identity'.

Those who are indigenous very naturally think they should have better opportunities in their native land than those who have just arrived or who are descendants of recent arrivals'.
[Daily Express, 13 June 1978]

It is clear that the ground had been well prepared for the eventual adoption of the Race Relations Act in 1976. The PEP reports and the findings of the Select Committee had made public a vast range of material on the existence of racial discrimination (See Chapter 3). The White Paper on 'Racial Discrimination' had signposted the Government's main intentions, while allowing scope for comment and public discussion. Above all, the passage of the legislation on Sex Discrimination had set the stage both intellectually and politically for the acceptance of the Race Relations Act (Chapter 4). Intellectually, the arguments about the scope of the legislation, the concept of discrimination and the appropriate means of enforcement had been rehearsed and, in general, approved. Politically, the Conservatives' support for the Sex Discrimination Act effectively precluded an about-turn on racial discrimination. In a sense, events between 1974 and 1976 thus proceeded in a logical and straightforward fashion. Beyond the immediate origins of the Act, however, were a number of wider pressures whose influence was brought to bear on the development of the Act. It is to these influences that the subsequent chapters now turn beginning with the influence of research and reports on racial discrimination.

This chapter is concerned with the growing corpus of evidence on the extent and nature of racial discrimination and disadvantage, and on the remedies and strategies proposed to deal with the problem. It falls into three sections, examining in turn the findings and recommendations of Political and Economic Planning (PEP), the statutory agencies responsible for race relations and the Select Committee on Race Relations and Immigration.

PEP

As illustrated in the previous chapter, PEP played an important role in the shaping of the 1968 Race Relations Act. Their 1967 report not only proved a considerable influence at the time but also served to establish their authority in this field. Consequently, it ensured that future work on racial discrimination would be treated with a degree of seriousness and would provide valuable evidence and ammunition for the advocates of change. Consequently, those resistant to change were not in a position to deny the existence of widespread discrimination after the publication of PEP's reports between 1974 and 1976. Furthermore, whereas the 1967 report had been primarily concerned with discrimination, the scope of PEP's subsequent inquiries was far broader, focusing on disadvantage, whether or not this was the result of unlawful discrimination.

In the field of employment, PEP's first report in June 1974, based on a survey of 300 large factories, found that more than half of the plants practised some form of discrimination [Smith 1974]. Only eight per cent had taken concrete steps to ensure that discrimination should not occur and the majority of black workers (74 per cent) were concentrated in only 28 per cent of all the plants. It was found that black workers had to make twice as many applications as white workers, on average, before finding a job, that black workers were heavily concentrated in non-skilled manual jobs, and that they were more likely to work on permanent night shifts. Discrimination against applicants of Asian or West Indian background was found to occur in some one-third to a half of all cases. Moreover, as David Smith's 1976 report demonstrated, this could not be explained by differences in qualifications. While 79 per cent of white men with degree standard qualifications were in professional/managerial jobs, only 31 per cent of Asian/Afro-Caribbean men with the same level of qualification were in such jobs. Similarly, 83 per cent of white men with 'A' levels were in non-manual jobs, compared with 55 per cent for Asian/Afro-Caribbean men [Smith 1976:67].

It was also found that the level of unemployment among ethnic minorities tended to be higher than for the general population. This was particularly evident during periods of high unemployment, when the level was exceptionally high among minorities. For instance, the level of unemployment among minority groups as a whole was broadly similar to that of the general population, perhaps slightly higher, between 1970 and 1974. However, as unemployment rose sharply after 1974, unemployment amongst minorities rose at a substantially higher rate than for the population as a whole. It was also found that, even between 1970 and 1974, unemployment among young West Indians was much higher than among the general population within the same age group, and that it was higher for minority women than for working women generally [Smith 1976: 57].

In the housing field it was found that there had been a decline in overt discrimination by estate agents against home buyers. However, it was still the case that two-thirds of minorities lived in terraced houses compared to one-third of whites, with 88 per cent of minorities living in properties built before 1940, compared to 48 per cent of whites [Smith 1976: 178]. As Smith stated, 'Within each type of tenure, the minorities are occupying substantially inferior housing to whites' [Smith 1976:145]. This was as true for the public sector as for the private. Minorities tended to be allocated poorer quality

council accommodation than whites, and case studies of local authority housing policies showed that council house allocation systems tended to disadvantage minority groups. PEP's report on Racial Minorities and Public Housing of September 1975 attributed this to three factors - the preference of the minority groups themselves, the policies and practices of local authorities and less favourable or discriminatory treatment [Smith and Whalley 1975]. The Runnymede Trust's investigation into Race and Council Housing of the same year, based on an analysis of the 1971 census statistics, produced similar findings - that minorities were either under-represented in council housing or were in low quality property.

PEP's report on housing pointed to the distinction between housing allocation policies which were directly discriminatory and those which were not formally discriminatory, but tended to bring about discriminatory results. The report also pointed out that the distinction, while useful, was not always completely clear-cut. The priority systems employed by local authorities, which operated to the disadvantage of minorities, could be used for that purpose. Such priority systems were not, however, originally introduced for this purpose, since most residential qualification rules were introduced before the presence of New Commonwealth immigrants and their families. But, it was argued, local authorities had been reluctant to change their priority systems in a way which would reduce the extent of disadvantage to the minorities. For example, if a majority of West Indian [sic] applicants, but a minority of white applicants, were homeless families, and if homeless families were given inferior accommodation, then West Indians would tend to be given inferior accommodation.

The PEP reports aimed to emphasise the weaknesses of a complaints-based form of legislation, pointing out that the majority of people were unlikely to make a formal complaint and that many victims would be unaware of the fact. The inconveniences involved in pursuing a case could greatly outweigh the benefits. Moreover, minority groups clearly needed to be aware of the existence of the Race Relations Board and to understand its functions, in order to take the initiative in making a complaint. What was found was a generally low level of awareness, with many people, especially those of Asian background, not having heard of the RRB [Smith 1976: 165-6]. Although tens of thousands of acts of discrimination occurred each year, the RRB had only dealt with 150 complaints in 1973. As the PEP report of September 1974 concluded

Although the level of discrimination seems to be lower now than it was before the Act, the general conclusion from these findings must be that the number of cases of discrimination that are dealt with by the law forms a very small proportion of the number of acts of discrimination that actually occur. [McIntosh and Smith 1974]

Although there had been a decline in the level of claims of discrimination since the earlier PEP research of 1966/7, this was often due to the adoption of avoidance strategies by the minority groups, such as using landlords from their own community. In other words, many people from minority groups avoided situations in which they might encounter discrimination. It was discovered that few Asians or West Indians had ever applied to rent accommodation from a white landlord who was a complete stranger. In this way their confinement within their own communities is justified and reinforced' [Smith 1976: 160, 185]. What is more, the fall in perceived discrimination also reflected the fact that, in Smith's view, discrimination was now 'less open, admitted and obvious to all'. Although in his opinion, the majority of immigrants were not politically militant and did not see their situation in Britain primarily in terms of racial conflict, he ended his 1976 report with a warning. PEP's research, he maintained, had detected the first signs of 'a more profound disillusionment', particularly amongst West Indian youth, a large number of whom were homeless and unemployed. Such disillusionment might form the basis for a new political force, if black youth were to become alienated from both their families and the

mainstream, if the educational system were to pass them by, and they were unable to find work. This could give rise to a 'profound frustration, bitterness and disorientation' which did not, as yet, amount to a cohesive political force. Smith concluded thus

Meanwhile, action to remove causes of injustice can also be taken by people outside the minority groups within the present framework, and without provoking upheaval and conflict. To the extent that action is taken now, political organisation among the minority groups, when it does develop, can be positive and healthy: if present injustices are allowed to continue, political organisation by the minorities, when it comes, is likely to be extremist and destructive.

[Smith 1976: 187-8]

The Statutory Agencies

The Community Relations Commission, both in its Annual Reports and in its evidence to the Select Committee on Race Relations and Immigration, made a number of specific recommendations for reform. This was based on its experience of the operation of the 1968 Act, particularly in relation to the role that Government should play. The Commission's dissatisfaction with its own situation led it to state in its 1975 Annual Report that 'The Commission's duties as set forth in the Race Relations Act 1968 are so vague that it has largely had to provide its own terms of reference' and that there was a serious lack of 'resources or powerful political support' [CRC 1975 b: 3]. They therefore welcomed the Government's announcement of a review of the race relations legislation, anticipating that it would 'provide an opportunity for strengthening both the anti-discrimination legislation and the institutional arrangements'.

While welcoming new legislation, the CRC were anxious to stress the limitations of the law 'as an instrument of social engineering'. While use of the law constituted a pre-requisite for measures to improve race relations, it provided only the foundation and should not be regarded as a substitute.

We must neither over-estimate what the law can achieve nor, in the short term, become so pre-occupied with the form of the law while new legislation is being prepared and debated that all other activities are frozen.

[CRC 1975: 14]

The preparation of the new legislation should not provide the excuse for failing to take administrative action in areas unaffected by the law. Hence it was important for central Government to set an example of good practice in its own behaviour, which could then be followed by local authorities, employers and trade unions.

The Government, it was argued, should pursue a policy which was directed at dealing with three related but separate areas - discriminatory practices, disadvantages specific to minorities, and wider deprivation which may affect many white people, but from which minorities suffered disproportionately. For such a policy there would need to be a 'lead department'- the Home Office - to initiate and co-ordinate the work of other Government departments, and units should be set up specialising in race relations within each relevant ministry. Such units would advise on the implementation of policy, monitor current policies and their effect on ethnic minorities, develop policies that took into account the needs of minority groups, and meet future needs, for example, by collecting information on the situation of ethnic minorities. They would also need to inform minority groups of the nature of departmental policies and involve them where appropriate. In the meantime, it was argued that the Home Office, as the lead department, should strengthen the departmental machinery responsible for race and community relations, press other departments to

implement the recommendations of the Select Committee and other bodies, make greater use of the advisory functions of the CRC, and provide resources for increasing the number of local projects [Select Committee, vol III, 1975: 158-9].

In more specific areas, proposals were made for the stringent adoption of a contract compliance policy. This had already been strongly advocated by the Race Relations Board in its 1971/2 Annual Report, (paragraphs 94-5), in which it had recommended that contractors should be required to take positive steps to provide equality of opportunity, and that at the request of the Board, they should be required to produce evidence of the steps taken [Marshall 1976: 427]. The CRC recommended likewise in 1975, including a requirement that Government contractors provide regular reports on the numbers and positions of employees from minority groups. In its own recruitment and employment policies, the Government should set a clear example. The CRC argued that monitoring should be introduced in the Civil Service; that positive measures be taken to recruit members of staff from minority groups and that they be provided with training to overcome any disadvantages; that special courses be made available to enable members of minority groups to qualify for entrance into Government service (as was to be provided for women in clause 41 of the Sex Discrimination Bill); and that in-service training courses be established for all Government employees about the minority groups whom their work would affect.

The Commission welcomed the new definition of unlawful discrimination set out in the Sex Discrimination Bill, and the proposed introduction of the right of direct access for complainants to an industrial tribunal or county court. They did however have reservations about the fact that legal aid was not available and that the onus would be on the complainant to make a prima facie case [CRC 1975 b: 14]. The RRB suggested that the onus of proof be shifted from the complainant to the respondent, and that all individual complaints should be channelled through a central enforcement agency as at present (in 1975), and that representation should only be made to the courts if an individual was dissatisfied with the findings of the agency. This was a widely shared concern held, amongst others, by the Runnymede Trust and the National Council for Civil Liberties [Runnymede Trust 1976: 7]. It presented the main procedural problem for the Government, in that one of the main criticisms of the 1968 Act, certainly for the RRB, was that it did not allow for a strategic approach to the elimination of unlawful discrimination, and yet there remained a need to protect the rights and needs of the individual complainant. To fulfil both aims would have required a considerable investment of financial resources, a requirement which, perhaps, constrained and limited the subsequent effectiveness of the complaints and investigation machineries.

At the institutional level, the Commission favoured the establishment of a single body along the lines of the Equal Opportunities Commission, while maintaining the 'advisory, training, co-ordinating and grant-aiding powers' of the CRC. They also suggested that at least half of the members of any new body should come from minority backgrounds, and that minority group organisations should be asked by the Home Secretary to submit names for appointment [CRC 1975 b: 14]. Doubts were, however, expressed in some quarters about the advisability of a single body. Sir Geoffrey Wilson, the Chairman of the RRB, in a speech in September 1975, argued that the 'pressure group' role of CRCs was incompatible with the need of any new Commission, as a quasi-judicial body, to establish its 'credibility as an independent and impartial investigator and adjudicator'. The tensions within such a combined organisation would, he maintained, be such as to seriously impair the efficiency with which it would do either job' [RRB Press Release, 13 September 1975 - RRB Annual Conference]. Wilson also questioned the principle of harmonisation of the sex and race legislation, pointing to the differences between the two areas and arguing that minority groups might lose out so that 'there is a risk that, outside employment..... and in the absence

of powerful black civil rights organisations, the legislation may fall largely into disuse'.

The CRC stressed the general agreement that the autonomy of local CRCs should be preserved and that the responsibility for community relations officers (CROs) should not be transferred to the establishments of the local authorities. However, they also recognised the need for greater local authority involvement in providing facilities to meet the special needs of minority communities. In the Commission's view the best way to achieve this would be the provision for local authorities of powers and duties in this regard' [CRC 1975 b: 13]. Likewise, the National Association of CRCs stressed the need to find ways in which local authorities could be persuaded to give more realistic support to CRCs, while basing the work of CRCs 'firmly in the local community' [Select Committee, 10 April 1975: 110, 116].

The Select Committee

The House of Commons Select Committee on Race Relations and Immigration was set up in 1968, and in the years that followed it reported regularly on various areas of concern, such as Housing [1971], Police/Immigrant Relations [1972], Education [1973] and Employment [1974]. On 14 January 1975, it was charged with the responsibility of reviewing policies in relation to

- (a) The operation of the Race Relations Act 1968 with particular reference to the work of the Race Relations Board and the Community Relations Commission; and
- (b) The admission into the United Kingdom of Commonwealth citizens and foreign nationals for settlement.

In executing this function, the Committee gathered evidence from a range of sources, receiving in total well over 100 submissions and memoranda on the subject. The three main sources of evidence upon which it was to base its recommendations can be regarded as submissions from Government departments, from bodies concerned with community relations, and from bodies representing ethnic minority groups.

In proceeding to put forward its recommendations, the Committee felt bound to make certain assumptions upon which its report should be based. Its 'ground rules' included the premise that significant discrimination and disadvantage still existed in Britain, that this was unacceptable, and that the Government should be clearly committed against such discrimination. In addition, the Committee held that the problems of urban deprivation, acutely felt by ethnic minorities, demanded more effective action and greater resources, and that evidence of a growing lack of confidence in the effectiveness of Government action, particularly amongst young West Indians, might turn into a 'hostile resentment'. They also anticipated the proposals to be made by the Government in its impending White Paper, working on the assumption that the existing legislation would be strengthened, that greater resources would be provided, and that the powers of enforcement for cases of racial discrimination would at least match those being provided against sex discrimination [Select Committee, vol I, 1975: VII].

The Committee recommended that there should be a Minister of State for Equal Rights, that the Home Office should have a much improved establishment concerned with race relations and sex discrimination, and that other Government departments affected should strengthen both their staffs and policies for dealing with race relations. The Home Office was subject to a considerable degree of criticism. Its own witnesses admitted that 'the Home Office does not know a great deal of what is going on' and that under the existing arrangements it did not have the capacity to do so. They also conceded that they were unable to assess the adequacy of the advice they received [Select Committee, Home

Office Memo 1975: 8]. The Runnymede Trust described the Home Office's performance as 'inert', and contrasted its active role in the field of immigration control with its passivity on the domestic front. They stated that

The critical failure has been not to define the nature of Government concern with race relations, not to clarify the objectives of policy and not to assess the scope and limits of potential Government intervention. [Select Committee, vol III, 1975: 160]

The Committee felt that the Home Office had been too passive and had failed to give an effective lead. The 'plain truth', they found, was that 'the Home Office is not at present equipped to give a lead or to deal effectively with race relations matters' [Select Committee, vol I: VIII-XI].

The Government was also berated for its lack of interest in race relations research. Section 26 of the 1968 Act had empowered the Home Secretary to conduct or assist research, but only 85,000 had been expended in the ensuing seven years, a figure described by the Committee as paltry. The Advisory Committee on Race Relations Research, set up in 1969, had reported to the Home Secretary in 1975, criticising the lack of an overall strategy for race relations research and the fact that no specific objectives or requests had been set by the Government. The Advisory Committee stressed the need for further study of methods of improving statistics and monitoring procedures of ethnic minorities, and highlighted a number of 'high priority' research areas, such as employment, education and housing [Home Office 1975 b: 2, 39. Select Committee, vol I, 1975: XIX].

The need for effective monitoring procedures was also indicated by the Select Committee. They recommended that the Civil Service, should keep the necessary records and survey and monitor the recruitment, promotion and establishment policies of Government departments. It was not, however, suggested that they follow the American example on monitoring, which was regarded as too bureaucratic and legalistic, 'and on a scale inappropriate to the circumstances obtaining in this country'. Similarly, as the RRB had already recommended, all Government contracts should oblige contractors to take positive steps on equal opportunities, for which a special unit within the Department of Employment could take responsibility. Such a commitment in the public sector, the Committee argued, would encourage a positive response in the private sector [Select Committee, vol I, 1975: XXI-XXII].

The Committee expressed its general concern about the political response to its work. Referring to a CRC inquiry into the response to the reports of the Select Committee since 1969, they observed that, whereas their reports had had a considerable impact on the climate of opinion, the response from the Government had been disappointing. They pointed in particular to the absence of any response to their Housing Report four years after its publication, which, they argued, amounted to a rejection of the importance of race relations by the Department of the Environment and by successive ministers [Select Committee, vol I, 1975: XXVIII]. In fact, the DoE did finally respond in September 1975, arguing that over half of the 46 specific recommendations in the Report had in practice been acted on by Central Government, and pointing to increased expenditure and recent legislation on housing since 1974. Their emphasis, however, rested on the key role of the local authorities, which suggested a continuation of the official policy position since the 1950s, whereby responsibility for difficult areas of race and housing policies were pushed out to the periphery. In the RRB's view, the DoE's paper, despite the four-year delay, still provided insufficient guidance to local authorities [DoE, 1975. Banton 1985: 83].

In so far as the statutory agencies responsible for race relations were concerned, many of the witnesses to the Committee expressed a lack of confidence

in both the Board and the Commission. In the Runnymede Trust's words, as far as the ethnic minorities were concerned, the RRB 'has to some extent been written off as a body which, with its present powers, cannot tackle the real problems of discrimination' while the CRC 'is probably seen as of some marginal utility', because of the vagueness of its terms of reference. The Commission 'promises more than it can deliver' and 'its net effect may have been to promote cynicism about the reality of Government's good intentions' [Select Committee, vol III, 1975: 161]. This lack of confidence had been emphasised by the agencies themselves, the CRC complaining that while it could urge the Government to do things, 'if when it urges them to do things there is really very little response, its credibility and authority are inevitably diminished'. The Committee thus recognised that both the CRC and the RRB had failed to make sufficient impact or to gain the confidence of the ethnic minority communities. The Board had been afforded unsatisfactory procedures and the Commission unsatisfactory terms of reference. The Committee stated that 'They have not been given the tools to do the job and have been prejudiced by lack of resources and lack of authority'. They therefore believed that a new and single agency should be established, recognising the necessity of some separation between its law enforcement and its promotional work, but considering that this could be achieved within one institution. They noted that the discussions they had held during their visit to the United States had strongly confirmed the advantages of having a single agency, combining enforcement powers with an advisory and educational function [Select Committee, vol I, 1975: XI-XIII].

In the course of gathering their evidence, the Committee had sent a questionnaire to the 82 local CRCs, of which 72 were not in favour of their staff being employed by the local authority, and did not think that the work of the Councils should be the direct responsibility of the local authorities [Select Committee, vol III, 1975: 2]. This feeling was reflected in the Committee's recommendation that the work of the CRCs should not be transferred to the local authorities and that they should remain as local autonomous bodies with some of their activities selectively grant aided. They did, however, recommend that there should be a positive duty on local authorities to promote equal rights, thus foreshadowing Section 71 of the 1976 Act. This need they perceived to stem, in part, from the lack of adequate finance in some areas and the unsatisfactory operation of Section 11 of the 1966 Local Government Act [Select Committee, vol I, 1975: XIV-XV]. Their general impression of the Urban Aid Programme, however, was that it had proved its usefulness, but could be supplemented by grant-aided projects to individual local ethnic minority communities. They recommended that the self-reliance and active participation of these communities be encouraged by the formulation and implementation of these projects, and that, in doing this, the new Commission should concentrate upon, and give priority to, the needs of young West Indians [Select Committee, vol I, 1975: XVII, XIX-XX].

The Select Committee concluded their report by stressing the growing lack of confidence among the second-generation non-immigrant population and the risk of minority communities becoming permanently alienated. They stated that

What is needed, above everything else, is a clear and demonstrable Government commitment to equal rights: to confirm this commitment is the main purpose of the Committee's recommendations.

However, they also recognised the need to balance the necessary provision of greater resources with the current demand for economy in public spending. During a period of economic stringency, restraint on public expenditure demands the selective and most effective use of resources. For this reason, a competent administration capable of making the right choices was regarded as essential, and hence the first priority was the reorganisation and strengthening of race relations administration.

A number of common points and recommendations clearly emerged from the evidence which was available to the Government between 1974 and 1976. How far they were heeded and seriously considered remains open to discussion. As has been noted, PEP had established a reputation for itself, particularly with Roy Jenkins and the Race Relations Board, in the late 1960s, and the research which it carried out in the early 1970s constituted the most comprehensive investigation of racial inequality yet undertaken. Even if it is accepted that the Government was already committed to some sort of reform in 1974, it seems likely that the content of the legislation was influenced to some degree by PEP's findings. Likewise, it would have been churlish to ignore the points made by the CRE and RRB, especially in regard of their own position. It might be estimated that the decision to create a single race relations agency and to revise the complaints procedure owed something to the arguments put forward by the existing bodies.

The Select Committee, while representing a sort of pressure group within Parliament, had not proved overly influential up to 1974, as they themselves recognised. However, the range of evidence which they gathered, incorporating the views of practically all the interested and relevant organisations and bodies, must have constituted a relatively strong bargaining position, particularly when the Select Committee's recommendations reinforced those made by other groups. Their emphasis on the role of Government, for example, echoed the analysis put forward by the CRC and the Runnymede Trust, stressing the need for central Government and the different Government departments to provide a lead. This analysis also emphasised the fact that the law could only play a contributory role in tackling racial discrimination, and that it needed to be combined with a wider programme designed to deal with urban disadvantage more generally. All the major bodies also pointed to the need for an effective system of monitoring within the Civil Service and for the enforcement of contract compliance for all Government contractors. The lack of resources and powers with which the CRC and RRB had been endowed was clearly recognised, as was their consequent ineffectiveness and their failure to win the confidence of the minority communities. With some reservations, the general consensus of opinion appeared to be in favour of the creation of a single agency. This may have been for reasons of publicity as much as for administrative reasons or because it would be in parallel with the provision in the Sex Discrimination Bill for the Equal Opportunities Commission. Certainly the low level of public awareness about the existing bodies had been confirmed, and this contributed in part to criticisms of the current complaints procedure. The need for more wide-ranging, strategic investigations of discrimination was now being urged, while at the same time, any new procedures would have to recognise the role of the individual complainant. The analysis which was now emerging emphasised disadvantage as well as discrimination, as PEP had illustrated with reference to local authority housing policies, and the role of Government at the local as well as the national level. Although the continuing autonomy of local CRCs was insisted upon, it was now being demonstrated that local authorities still had a key role to play in the adoption and promotion of equal opportunity policies. And underlying all these proposals, a common theme warning of the dangers of inactivity and inertia was evident. Failure to act, it was recognised, would shore up discontent and disillusionment, especially amongst black youth, which bode ill for the future of race relations and social order in the United Kingdom.

It is difficult to consider the development of legislation on sex discrimination and on racial discrimination in isolation from each other. Both drew on the received legal and political wisdom of the day, and were to become generally regarded as an acceptable means of dealing with forms of inequality and discrimination not previously tackled within the British judicial process. Moreover, the principle of a declaratory or interventionist law having been established, it would have proved difficult to support its use in one field but not in another. In this sense, the Sex Discrimination Act of 1975 served to 'pave the way' for the Race Relations Act of a year later.

The genesis of the Sex Discrimination Act was clearly related to wider economic and structural changes during the 1960s and early 1970s. The liberalisation of many spheres of public life had created an increasing number of opportunities for women in many fields, especially in education, with the expansion of the system of higher education in the 1960s. Above all, an ever greater number of women were becoming active in the labour market, creating in some cases an economic independence which they had never previously experienced. Women, and particularly young women, in employment were thus able to enjoy greater freedom in their social and sexual relations, and to develop a political consciousness which, to some extent, could challenge the ideological hegemony of the male establishment and construct a counter-analysis of British society. Within this context, pressure for Government action and legislative change had become increasingly difficult to resist, and indeed, it was the Conservatives who first drafted a Sex Discrimination Bill, which was then strengthened and redrafted by Labour. Such a cross-party consensus meant that the final legislation met with less opposition than might have been anticipated, and this was subsequently to prove a crucial element in the acceptance of the potentially more controversial legislation on race relations.

In September 1973 the Government circulated a document entitled 'Equal Opportunities for Men and Women - Government Proposals for Legislation' upon which it invited public comment [Department of Employment et al 1973]. The document suggested that legislation should have three main objectives, none of which were particularly radical or adventurous. These were that the range of opportunities open to women should be widened, that the Government should help remove unfair discrimination against women in areas like employment and training, and that the Government should investigate the need for further measures including, if necessary, legislation to help women contribute to society on equal terms with men, 'thus opening fresh opportunities for both'.

The Conservative Government's proposals were thus of a general nature rather than attempting to deal with specific, detailed issues. Nor, at this stage, was sex discrimination legislation related to reform of the Race Relations Acts. The most concrete aspect of the consultative document concerned the procedures by which alleged cases of sex discrimination were to be investigated and pursued, and foreshadowed a number of the issues raised during the debate over the Race Relations Act a couple of years later. The powers proposed for the prospective Equal Opportunities Commission were felt by some to be insufficient, and, as the Race Relations Board pointed out, in the absence of any provision for an independent investigation to establish the facts of a complaint, a complainant would have to bear much of the burden of proving discrimination [Race Relations Board 1973]. This would exclude many complaints where a complainant could not provide firm evidence, since they would be required to show 'that some action to his or her detriment..... had occurred and that there were reasonable grounds for believing that the action had been taken by reason of his or her sex' [Department of Employment 1973: para 2.23], whereas the 1968 Race Relations Act and the 1971 Industrial Relations Act required only an allegation of an unlawful act. In addition, no arrangements were proposed for complainants to receive legal aid, and, unlike the 1968 Race Relations

Act, it was not intended to place on the respondent a requirement to take steps to prevent future discrimination.

The development of the Labour Party's thinking on racial equality in the early 1970s will be discussed in more detail in Chapter 6. However, it is clear that a commitment to change, in the areas of both race and sex, can be dated at least from 1973. In 'Labour's Programme for Britain' of that year, reference was made to the importance of 'equality of opportunity' and of 'getting rid of discrimination'. So far as race relations were concerned, the party stated that 'In the whole field of citizenship, immigration and integration, action is necessary' [Labour Party 1973]. They went on to argue that 'Women too are still second-class citizens in some areas. We shall introduce legislation to make discrimination in employment on the grounds of sex illegal, and back this up by an Anti-Discrimination Board'. The form which the new enforcement agency was to take remained as yet undetermined. It was suggested that it could either take the form of a strengthened and appropriately renamed Race Relations Board, or an Anti-Discrimination Board independent of the race relations machinery.

Labour were therefore committed to legislation on sex discrimination well in advance of any general election. There was however no reference at this stage to similar legislation on racial discrimination and, indeed, by the time of the first general election in 1974, the party were pledged only to 'review the law on Nationality so that our immigration policies are based on citizenship, and in particular to eliminate discrimination on the grounds of colour'. [Labour Party, February 1974]. Their intention 'to harmonise the powers and procedures for dealing with sex and race discrimination so as to secure genuine equality of opportunity in both fields' was however clearly indicated in the 1974 White Paper 'Equality for Women', which was published between the two general elections of 1974 [Home Office 1974]. For those concerned with the race relations field, the main consideration was inevitably the precedent that the Government's proposals on sex discrimination might set for future race relations legislation. In commenting on the White Paper, the Race Relations Board, while stressing that the powers of the proposed Equal Opportunities Commission were clearly needed in the field of racial discrimination, thus noted the possible weaknesses in the proposed system of dealing with complaints of discrimination if the procedures outlined for sex discrimination cases were to be transferred into the race field [Race Relations Board 1974].

The Sex Discrimination Act became law in November 1975, the Race Relations Act almost exactly a year later. The close relationship between the two is indisputable, and was a theme much stressed by Roy Jenkins and by the Select Committee on Race Relations and Immigration. In their report to the Home Secretary, the Select Committee had proceeded on the assumption that the powers of enforcement would at least match those being provided against sex discrimination, and, although the Government had decided that race and sex discrimination would be dealt with separately, that, as far as possible, there would be a harmonisation of powers, procedures and remedies. Hence they recommended that a Minister of State for Equal Rights be appointed who would ensure a liaison between any new Race Relations Commission and the EOC, and that the specific duties and responsibilities delegated to the new agency should correspond to those delegated to the EOC. They also advocated close co-operation between the two Commissions at the grassroots and in research and educational activities, in aid of which an interchange of staff and shared premises should be encouraged [Select Committee on Race Relations and Immigration, 1974/5, vol I: VII, XXIII].

The Home Secretary's commitment to the 'harmonisation' of the two Acts was constantly re-iterated. Jenkins regarded his reforms as a coherent whole. In the House of Commons in July 1974, he stated that

Sex and race discrimination will be dealt with separately at this stage, but my ultimate aim is to harmonise, and possibly to amalgamate, the powers and procedures for dealing with both forms of discrimination.
[Hansard, vol 877, col 1298]

Jenkins, in public, was anxious to create the image of an inseparable relationship between the two Acts, rarely referring to one without the other. There are probably two main reasons for this. Firstly, he sought to give equal weight and importance to both reforms, so that neither lobby could argue that they were receiving inferior treatment to the other. Once the Sex Discrimination Bill had been put forward, the advocates of similar legislation on racial equality stressed that to provide anything less radical for a statute on racial discrimination would be unacceptable. Secondly, Jenkins wished to present the legislation as being underpinned by an intellectual logic and rationale that was both consistent and coherent, and that would be guided by the same principles. Hence, in his address to the annual conference of the Community Relations Commission in September 1975, he affirmed that

We shall provide a comprehensive code of law against racial and sex discrimination, backed by effective means for the victims of discrimination to obtain redress, and supported by powerful Commissions able to tackle the real, extensive and continuing problems of discrimination.
[CRC Journal, October 1975]

Despite the close relationship between the two acts, the consensus of opinion was that separate legislation for race and sex was preferable to a single, all-encompassing reform. The 1974 White Paper had noted that 'While there are certain similarities between sex and race discrimination, sex discrimination and race discrimination are not identical in their nature or effect' [Home Office 1974: paras 25 and 37]. This issue was considered by a Working Party of the Community Relations Commission in 1975, and in particular they sought to take on board the extent to which differences between the position of women and of ethnic minority groups required different powers, procedures and institutions for dealing with discrimination. Hence, they pointed to the facts that nothing comparable to the CRC or RRB in the field of sex discrimination was in existence before the legislation for women in 1975, and that ethnic minority groups suffered additionally from newness and a heavy concentration in the most disadvantaged sections of the community [CRC 1975: 13]. Although the proposals for the Sex Discrimination Act were based on a close analysis of the experience of operating the 1968 Race Relations Act, there were certain differences between the two which reflected the demands of the two subjects [Bindman 1975: 7]. As Anthony Lester has argued, the reason for separate legislation was largely political, in that women and ethnic minorities each wanted separate laws because 'for the most part, they did not regard themselves as part of a common movement' [Lester 1987: 24]. This is true, but there was also a tactical reason in that Parliament was less likely to oppose a Sex Discrimination Bill than a Race Relations Bill (especially if these bills were radical), as has been indicated above. Consequently, the political task of carrying through the Race Relations Act was made easier by the existence of the Sex Discrimination Act, since it would have been difficult to justify the denial to victims of one form of discrimination inferior opportunities for redress to those given to victims of another. In Lester's words, 'the Sex Discrimination Bill was passed first, as the model and pace-setter for the new Race Relations Bill' [Lester 1987: 24].

The evidence for the view that the Sex Discrimination Act set a crucial precedent for the Race Relations Act is overwhelming. It created both a legal and political environment within which such reforms were acceptable and logical. For the lawyers, there was a direct association between the measures for sex equality and the need to strengthen the law on racial equality and, as Jeanne Gregory has argued, the introduction of the Sex Discrimination Act provided an ideal opportunity to test the climate of opinion and rehearse the arguments

before introducing an almost identical set of measures on racial discrimination the following year [Gregory 1987: 3]. The publication of the Race Relations Bill thus represented 'the culmination of an intensive period of argument, analysis and legislation' in the related field of sex discrimination [Runnymede Trust 1976: 1]. From the political point of view, Jenkins was aware both that sex equality legislation must come first and that the two reforms should be closely paralleled. As early as October 1974, it was felt that he was holding back on racial discrimination until the same power existed for investigating discrimination against women as would be proposed for discrimination against ethnic minorities [The Guardian, 31 October 1974]. He also stressed during the debate on the Race Relations Bill the importance of what had been learnt during the preparation and passage of the Sex Discrimination Act [Hansard, vol 406, col 1550]. Jenkins was aware that only seven MPs had voted against the Sex Discrimination Bill on its second reading, and that Conservative support for the Act was secure. Nor had it excited any great opposition from the press [Bonham Carter 1975: 281]. The Conservative Party were not therefore in a position to turn down the Race Relations Bill in 1976 without a great deal of difficulty.

The reforms of 1975/6 represented a new departure in that they embedded within the British legal and political systems the concept of anti-discrimination law. The two Acts created a new administrative and legal concept drawn from two existing models - the 'administrative agency model' represented by the race relations legislation of the 1960s, and the 'individual complaint model' of the 1970 Equal Pay Act, which was also to take effect in 1975 [Gregory 1987: 32-3]. At the same time, the Government had indicated in the White Paper on 'Equality for Women' that it would attempt to avoid a number of the weaknesses which experience had revealed in the enforcement provisions of the existing race relations legislation. Moreover, the new emphasis in the enforcement role of the two Commissions was to be on wider-ranging investigations and on more general patterns of discrimination, rather than on isolated, individual cases. If the enforcement agencies were to be obliged to deal with all individual complaints, then they 'would be distracted by an ever increasing backlog of individual complaints from playing [its] crucial general role in changing discriminatory practices and encouraging positive action to secure equal opportunities' [HMSO 1974: 7]. The legislation thus marked a considerable development in the Government's understanding of the problems of discrimination, and of its willingness to learn from the experience of the Race Relations Board and its counterparts in other countries [Bindman 1975: 13]. It believed that 'Government and Parliament should give a lead to the nation' [Home Office 1974: 27], and that in this way legislation could make an educative impact on public opinion, so that it might become generally accepted that it was right to tackle discrimination within the framework of the law [Marshall 1976: 425].

It has been suggested that anti-discrimination legislation can be seen as a high point in the development of welfarism, in that it epitomises the values of social democracy by insisting that all citizens should be able to participate in the benefits and opportunities created by welfare capitalism [Gregory 1987: 148]. This is true in the sense that legislative change has effectively served as an alternative to more wide-ranging and fundamental structural change. It thus pursues the goal of equality within the existing framework. However, the concept of 'welfarism' in Britain was traditionally based upon the idea of universality rather than selectivity, and was grounded in the assumption of the formal equality of all citizens before the law. In this respect, the espousal of an interventionist approach to non-criminal areas of the law can be seen as the representation of a basic flaw in the welfare capitalist approach, and a recognition that it could no longer be guaranteed to deliver. If the analysis of the introduction of anti-discrimination legislation is therefore located solely within the British context, then the vital influence of a legal system and philosophy which in many respects is divergent from the British, that of the United States, will be lost sight of. It is with this American model that the next chapter is concerned.

Serious political recognition in Britain of the example of American anti-discrimination law can perhaps be dated from 1967 and the report of the Street Committee [Street 1967]. Alongside PEP's other findings, their report exercised some influence over the terms of the 1968 Race Relations Act. The Committee had sought to examine the value of legislation in other countries, especially in the United States but also in Canada, in more detail than had previously been carried out in Britain, and they had recommended a broadening of the scope of the British law and a strengthening of the enforcement machinery. However, the situation in America had clearly progressed somewhat by the mid-1970s and a fresh appraisal was required. Although there existed some significant differences between the British and American cases, there were certainly a number of areas and recent developments from which much could be learnt, and both the Home Secretary and the Select Committee on Race Relations and Immigration drew on these sources in their consideration of possible reforms in Britain.

There are certain differences between the two countries, both in terms of the judicial process and also in terms of official policy towards minority groups and 'race relations' which would have made a direct transplant of one system on to the other unworkable. In Britain the emphasis has been on 'community relations' rather than on the question of equality and the participation and rights of minorities. Nor in Britain was the concept of ethnic diversity officially promoted or accepted in any genuine sense, unlike in the US [Select Committee, vol III, 1975: 234, 242]. Moreover, judges in the US have demonstrated a greater understanding of and sympathy with the purposes of anti-discrimination law than British judges. Even so, it took a number of years for the American Courts to broaden the interpretation of statutory provisions which, on their face, covered only direct discrimination [Prashar 1979: 23-24]. It was, therefore, necessary to make explicit the indirect discrimination elements of both the Sex Discrimination Act and the Race Relations Act in order to ensure that the British courts would give to discrimination the wider interpretation which had been adopted by the US courts, and this was dealt with in both Acts in which direct discrimination is defined in Section 1 (1) (a) and indirect discrimination in Section 1 (1) (b). This will be discussed further below.

The distinction between America and Britain lies to some degree in the role of the judiciary. In Britain, the courts must in theory follow the will of Parliament, whereas in the US certain Acts can be interpreted as 'unconstitutional'. It has been argued that the American judiciary has a duty to protect minorities, whereas in Britain some have argued that, say, race relations legislation represents an intrusion on the individuals' rights to order his/her private life and personal affairs as (s)he chooses. Compare the view of the American constitutional lawyer Martin Shapiro with that of Lord Diplock. Shapiro argued in the 1960s that 'the courts must inevitably on occasion create the rules that define distributive justice in order to do justice' [Shapiro 1966], whereas Diplock, in the 'Dockers Club Case' in November 1974 regarded the 1968 Race Relations Act as cutting into the traditional common law right to practice discrimination. Therefore, the extension of the existing race relations legislation represented to some extent a further re-orientation of British jurisprudence, in that racial discrimination became seen primarily as a social wrong rather than an individual right [See J Griffith, *New Statesman*, 22 November 1974]. Understandably, the feeling grew in Britain during the early 1970s that the existing legislation was half-hearted and that British judges and tribunals lacked the basic commitment and technical competence necessary for the protection of minority groups. The director of the Runnymede Trust, David Stephen, in a memorandum to the Select Committee on the relevance of the US experience, noted these distinctions and the fact that the US had tackled the problem with some degree of enthusiasm, and argued that the implementation of American processes and attitudes in Britain could only be a long-term approach.

In the short term, he concluded, in the place of strong laws and socially oriented courts, one must look to the Executive for policies to protect minorities and pursue racial integration in the community. The actions of Government were, therefore, crucial to the development of race relations in this country [Select Committee, vol III, 1975: 242].

The above remarks should not obscure the fact that certain weaknesses had also been identified in the American system from which the British could learn. These weaknesses related both to questions of resources and the legal process. The Race Relations Board had pointed to a recent report by the US Commission on Civil Rights, which had demonstrated that federal policy had so far had little impact on the employment practices of Government contractors, largely because the offices set up to monitor the programme were understaffed and lacked sufficient authority. They had failed to demand the necessary data and did not review the programme frequently enough [Runnymede Trust 1976]. In addition, the imposition of criminal sanctions in the US had proved unsuccessful, leading to the adoption of a new system of administrative enforcement for the anti-discrimination laws, so that discrimination became a civil rather than a criminal wrong. This development had persuaded the British Government to amend the 1965 Race Relations Bill, and influenced the Race Relations Acts of both 1965 and 1968 [Bindman 1976: 110-111]. However, consequent on this change, there had emerged an increasing awareness in the US of the weakness of a system which relied almost entirely on individual complaints. As we have seen, this was a major concern for those involved in framing both the Sex Discrimination Act and the Race Relations Act in Britain [Rees 1974].

The American influence in Britain was most direct in two main areas. Conceptually, British thinking on indirect discrimination and positive discrimination drew heavily on America's example. In practice, the areas of greatest attention were employment and contract compliance. As noted, the definition of indirect discrimination constituted section 1 (1) (b) of the 1976 Act in Britain. In the US, it is based on the approach of their courts to the *maining of discrimination in Title VII of the Civil Rights Act 1964 and, in particular, on the case of Griggs V Duke Power Co in 1971 [McCrudden 1983: 56]. Broadly speaking, these approaches attempt to circumvent the problem of proof of intentional discrimination, going beyond its individualised nature in an attempt to provide a basis for intervening against the effects of past and other types of institutional discrimination. The turning point in Britain was a visit to the United States by Roy Jenkins in 1974. The initial drafts of the Sex Discrimination Bill defined discrimination only in the direct sense of the 1968 Race Relations Act, which stated in Section 1 (1) that

..... a person discriminates against another if on the ground of colour, race or ethnic or national origins he treats that other..... less favourably than he treats or would treat other persons.....

In other words, discrimination was defined in terms of the attitude and intention of the discriminator and not in terms of its effect. Jenkins, however, became convinced during his US visit that a law based solely on this definition was insufficient. It had become increasingly acknowledged in the States that the disadvantages suffered by women and ethnic minorities were, especially in employment, much more commonly the outcome of institutional practices and patterns than of deliberate acts by prejudiced individuals [Bindman and Grosz 1979: 21. Jenkins understood that any anti-discrimination legislation would founder if the tests of discrimination applied by the courts did not go beyond the narrowly legalistic and, in a speech to the Women's Year Dinner of the Fawcett Society on 6 February 1975, he appeared to accept the argument that the existence or absence of discrimination should be determined irrespective of intention, stating that

The problem is to choose the best legalistic means of ensuring true equality between the sexes without either being oppressive to alleged discriminators or eroding the fundamental ideals of equality upon which the discrimination is based.

[Select Committee, vol III, 1975: 239]

In a similar vein, Jenkins had initially rejected the concept of positive discrimination [Gregory 1987: 48], but after his visit to the US, shifted his position just enough to allow a modest measure of 'positive action', if not positive discrimination, in the Sex Discrimination Bill -

I believe that we should not be so blindly loyal to the principle of formal equality as to ignore the actual and practical inequalities between the sexes, still less to prohibit positive action to help men and women to compete on genuinely equal terms and to overcome an undesirable historical link.

[Hansard, vol 889, col 514]

A similar statement was made for the Race Relations Bill the following year [House of Commons, vol 906, col 1558]. The 1976 Act did not permit positive discrimination in the American sense. It did provide for a limited amount of positive action, but without the element of compulsion. Under Sections 37 and 38 of the Act, training bodies and employers are permitted, but not compelled, to provide training for members of particular racial groups [and in the case of the Sex Discrimination Act, for members of a particular sex] if they have evidence that members of those groups are under-represented in those areas of employment for which the training is intended. However, positive action schemes can only be made available to the existing workforce. It is illegal to recruit members of a particular racial group [or sex] in order to send them for special training. As the Government's guide to the Race Relations Act explains

The Act does not permit 'reverse discrimination': for example, it is unlawful to discriminate in favour of a particular racial group in recruitment or promotion on the grounds that members of that group have in the past suffered from adverse discrimination and should be given the chance to 'catch up'.

[Home Office 1977: 30, para 7.7.

See also Home Office 1975: para 7.10]

In terms of the practical application of these ideas, the majority of effort had inevitably been exercised in the employment field. Legal changes in America were accompanied by a shift in the political analysis of discrimination which was officially sanctioned. A report of the US Senate Committee on Labour and Public Welfare in 1971 stated that

In 1964, employment discrimination came to be viewed as a series of isolated and distinguishable events, for the most part due to ill-will on the part of some identifiable individual or organisation..... Employment discrimination as viewed today is a far more complex and pervasive phenomenon. Experts familiar with the subject now generally describe the problem in terms of 'systems' and 'effects' rather than simply intentional wrongs, and the literature on the subject is replete with discussions of, for example, the mechanisms of seniority and lines of progression, perpetuation of the present effect of pre-act discriminatory practices through various institutional devices, and testing and validation requirements.

[Quoted in Pollak 1974: 43]

By the 1970s, the prevailing view was that legislative efforts should be concentrated on systems and practices which resulted in disadvantage to members of minorities rather than on individual acts of discrimination. The analysis of collective discrimination in the US began to impact upon British commentators, especially after the seminal case of Griggs V Duke Power Co in 1971, referred to above, which had been brought as a class action, that is, on behalf of a number

of plaintiffs against a common defendant. Such actions came to constitute the vast majority of discrimination cases in the US. Clearly, this type of action was incompatible with the British legal system, and was never a feasible option. Nevertheless, there were a number of obvious lessons to be learnt by British advocates of reform from the American example. Any enforcement agency would need sufficient powers to obtain information about relevant systems and practices. The resources of this agency would have to be channelled away from an investigation of individual complaints towards a wider strategic function. Also, the definition of discrimination would have to be extended. As we have seen, the 1976 Act embodied all of these changes [Bindman 1975: 8 and 1976: 112].

Given this emphasis on tackling patterns of discrimination, and on the role of the state, the American system has, since the mid-1960s, given a degree of importance to the idea of 'contract compliance'. Unfortunately, this was only half-heartedly taken up by the Labour Government and has taken some time to develop in this country. It is now under attack from the present Government's Local Government Act. In the States, the Office of Federal Contract Compliance [OFCC] forms part of the US Department of Labour [Rees 1975: 16], and is responsible for ensuring that Government contractors comply with the requirements of Executive Order 11246 of 1965. This order requires that Federal contractors take affirmative action 'to ensure that applicants are employed and their employers are treated during employment, without regard to their race, colour or national origin' [Runnymede Trust 1976 a]. This applies to all of a contractor's operations and not those merely relating to a Government contract, and the Department of Labour has 'the power to withhold contracts. The OFCC was not without its critics, and this perhaps suggested to the British Government the practical difficulties of a comprehensive enforcement of contract compliance requirements. The magnitude of OFCC's task, with some 250,000 Government contractors, the shortage of staff and the political nature of appointments to the principal administrative post all indicated the magnitude of the task facing a contract compliance enforcement agency. A report in January 1973, 'The Federal Civil Rights Enforcement Effort - A Reassessment', by the US Commission on Civil Rights criticised the efforts of OFCC and urged the importance of taking it out of the Department of Labour and incorporating it within the main body responsible for sex and race discrimination, the Equal Employment Opportunity Commission [Claiborne 1974]. Nevertheless, the essence of contract compliance in the US was clear, providing that contractors, as part of the privilege of contracting with the Government, must take 'affirmative action' over and above the statutory requirements to overcome discrimination and disadvantage. Christopher McCrudden, writing in 1979, noted that the British Government had fallen well short of this. The 1975 White Paper had rejected as 'unacceptable' a requirement that all contractors supply as a matter of form full particulars of their employment policies. Moreover, contractors were not required to do much which was additional to that required by the 1976 Act [McCrudden 1979: 84]. The British Government dragged their feet in this respect, and in the related area of ethnic monitoring, the implementation of which had been requested by some groups before 1976. The Select Committee in its 1975 report had pointed to the value attached to monitoring in the US as a demonstration of the Government's determination to give a lead [Select Committee, vol I, 1975: xx]. But it was not until 1981 that monitoring was introduced with any seriousness in the Civil Service, following the report on 'Racial Disadvantage' by the Home Affairs Sub-Committee on Race Relations and Immigration.

The Select Committee on Race Relations and Immigration gave some weight to developments overseas in its consideration of the evidence presented to it. Primarily, this related to the US, although reference was also made to developments in the Netherlands and Dutch policy towards Surinamese immigrants. This policy included measures of positive discrimination in the allocation of housing and a subsidy on wages, and the provision of special centres and welfare

officers all at a modest cost. The Committee recommended that a study be made of the action taken by the Dutch Government and consideration be given to setting up a centre on the Dutch model [Select Committee, vol I, 1975: xvii, xviii]. Some members of the Committee visited the USA in March 1975 and came back with two main observations - the general acceptance of civil rights law in the US and the close relationship between the anti-discrimination measures and agencies for sex and race [Select Committee, vol III, 1975: 267]. Both of these points became major goals for the architects of the 1975 and 1976 Acts. In this sense, the British initiative can be seen as an attempt to emulate the American model. How successful this emulation has been is open to question. It has been argued that the differences between Britain and the US are too great to permit such a straightforward transposition, and that the British legal system is ill-equipped to handle the concepts and processes which lie at the core of American civil rights law. Certainly, the adoption of the principle of indirect discrimination represented a major departure in British legal ideology, which broke with the traditional method of reducing social conflict to a question of individual guilt and innocence, and sought instead to identify and remove the historical and structural impediments to equality [Gregory 1987: 34-5]. However, it is argued that this was merely 'tacked on' to a legislative framework that had been designed without it, and that, removed from the context of American legal institutions and ideology, the concept of indirect discrimination is a 'legal transplant' which has lost much of its impact [Lustgarten 1980: 187]. This is true in so far as the role of the judiciary is concerned, but it should not obscure the fact that it cannot be reduced solely to a question of legal construction. Treatment which may be discriminatory in its effect on a particular racial group, and is based upon non-relevant criteria, is now enshrined in statute. Although its interpretation and enforcement may not always have been entirely satisfactory, it should still be regarded as one of the primary achievements of the 1976 Act.

There was one further lesson to be learnt from the US but which was much neglected in Britain. This was that for all the benefits of Civil Rights legislation and measures to tackle discrimination in areas such as employment, housing, education and welfare, the real key lay in black political representation and activity. How far this was a consequence of racial violence and the threat of rebellion is open to debate, but it is highly plausible to suggest that the black advance into establishment politics from the Voting Rights Act of 1965 onwards represented, for the state at least, the most credible solution to the problem. In Britain, the question of black political participation came to be addressed only gradually, and there was nothing to compare with the institutional framework that had developed in the US, such as the 'Joint Centre for Political Studies' in Washington DC, which existed to assist and encourage greater black participation in electoral politics, and the Voter Education Project, which had been set up to 'assist minorities to participate in the Southern electoral process' [Select Committee, vol III 1975: 236]. Of course, the significantly greater size of the minority communities in America meant that they represented a more powerful lobby than the minorities in Britain. Nor should we dismiss the importance of political issues in any analysis of the Race Relations Act. However, it is clear that in Britain the appeasement of economic concerns has been the state's primary response to questions of racial inequality and disadvantage, as evidenced in particular by the Government's reaction to the 1981 urban disorders, whereby issues such as youth unemployment and inner city decay were afforded far greater attention than that of black political power.

This final chapter will consider the wider context within which the Race Relations Act was introduced. In the industrial sphere, there had occurred a series of disputes involving minority workers in the early 1970s which had raised a number of fears and concerns for the British establishment. These developments, along with a growing anxiety over the unemployment and discontent of black youth and the example of minority discontent and racial violence in the United States, point to a somewhat more negative interpretation of the Labour Government's race relations policies. Without seeking to construct a 'crisis of capitalism' hypothesis, nor to overlook the positive influences which shaped the development of the Act, it does seem clear that there was a defensive element to the Government's strategy, based on a fear of what might happen if nothing was done. The Labour party in power has always been constrained by external forces and developments. This was evident in the political sphere as well as in the social and economic. In particular, it will be necessary to examine changes within the Labour Party during the first half of the 1970s, the rise of the National Front and an increasing awareness within the political mainstream of the importance of the black vote. Such an analysis might make it possible to assess how far tactical and party political influences played a significant role in the development of race relations policies in the mid-1970s.

The Industrial Context

Of the three most serious industrial disputes involving Asian workers between 1967 and 1974, there existed a common feature, the complicity of not only the employers but also of the trade union movement. The disputes raised not only the question of blatant discrimination at the workplace, but of the attitude of the labour movement and the organised working-class towards them. The TUC's support for immigration controls in the 1960s and their initial opposition to race relations legislation is well documented. However, from the late 1960s/early 1970s, a gradual shift in their orientation is perceptible.

The dispute at the Coneycgre Foundry in Tipton in 1967-8 was sparked off by the implementation of management redundancy procedures which refused to follow the generally accepted trade-union principle of 'last in, first out', and instead, they selected 21 Indians (and no whites) to go. When the Asian workforce came out, the Transport and General Workers Union refused to make the strike official, rejecting the idea that racial discrimination was involved, and white workers in the AUFW crossed the picket lines. But the strikers received support from other Asian workers and from the Indian Workers Association and eventually the management was forced to take back all those of the 21 made redundant who wished to return [Wrench 1986:7].

In 1972, a strike was called at the Mansfield Hosiery Mills as a result of the denial to the 500 Asian-strong workforce of access to the best paid jobs and anomalies in the payment system. The management, supported by the white workers and the local union, recruited 36 white trainees from outside for the knitting job. Eventually, the National Union of Hosiery and Knitwear Workers made the strike official but without calling out the white membership. The eventual success of the strikers was made possible not because of the help of the union, but due to the support of local community organisations and political groups, and to Asian workers from other factories. This dispute created sufficient concern for the Department of Employment to appoint a Committee of Enquiry in December 1972 under the Chairmanship of Kenneth Robinson, one of the main recommendations of which was for a new training agreement based solely on merit, and this proposal was accepted by the Company [Select Committee, vol III, 1975: 183]. Meanwhile, a conference of 'Trade Unions Against Racism' was organised in Birmingham in June 1973, with the aim of pressuring the trade union movement into matching its words with action [Sivanandan 1982: 35-6]. It was now

becoming evident that the success of the strike at Mansfield would encourage black workers into further collective action.

Such action manifested itself the following year (1974) in a dispute at Imperial Typewriters in Leicester, where the manual workforce of 1,650 included some 1,100 Asians, many of them women from Uganda. Against a background of long-standing grievances over low pay, bad conditions and racial discrimination, a strike began involving 40 workers over the bonus system. After an ultimatum by the management and a public denial of support by the union, about 400 workers came out. The dispute lasted for three months with no support from the TGWU, even though the strikers had discovered that the company had been cheating on its bonus payments for over a year (TUC 1983: 37), but the strikers found an alternative source of support within their own community [See Parmar 1982: 264].

As David Smith noted in his PEP report on employment, these disputes all indicated a disjunction between TUC policy and trade union action. The TUC's formal position of opposition to racism should have implied 'energetic representation of any workers from minority groups who are being discriminated against by management', but little or nothing had been done in this respect. As Smith stated, 'On the one hand the unions have seldom made formal representations against ethnic minorities. On the other hand, they have seldom made positive representations either' [Smith 1974: 66-9]. However, by 1974 there were some signs of change at the official trade union level. The publicity given to the recent disputes had produced damning evidence of union racism, accompanied by increasingly public criticisms voiced by black trade unionists frustrated at union neglect of their interests [Wrench 1986: 9].

It has been argued, most notably by Ian McDonald in his *Race Relations: The New Law of 1977*, that these events provide the primary explanation for the introduction of the 1976 Act. The Government's action, he argues, was underpinned by the desire to head off civil disorder (as the previous acts had been), to prevent a repetition of the strikes of 1972-4, and to contain the 'problem' of second-generation black youth.

The Asian community have served notice that they are not prepared to work excessively long hours at discriminatory pay rates with access to higher grade jobs blocked. The extension of the law is a recognition of the justice of their case and is at the same time an attempt to prevent any such future conflict. [McDonald 1977: iii-iv]

In particular the strikes raised four main areas of concern for the state. Firstly, the discriminatory attitude of the trade unions involved raised the possibility of separate black unions, and certainly suggested a growing lack of confidence among black workers in the ability of the trade union movement to represent them. This was clearly a matter of political concern, and perhaps more so for a Labour Government than a Conservative one. Yet it was a Conservative MP, David Lane, Chairman-to-be of the CRE, who referred in the Standing Committee deliberations on the Race Relations Bill to

The risk that may arise of racial monopoly situations in some works or establishments, [saying that] this could lead - there have been practical cases where it seems to have been leading - to pressure for separate unions on a racial or colour basis. [Standing Committee A, 4th Sitting, 6 May 1976]

Secondly, legitimate grievances such as the existence of discriminatory pay rates or work practices, or a racially defined promotion structure, were not being brought within and dealt with by agreed procedures. This suggested the possibility of a deterioration more generally in industrial relations which a Government already facing a number of economic difficulties would be loathe to

contemplate. Finally, the involvement of the National Front in some of the disputes created the possibility of open racial conflict.

This argument is appealing if a little over-stated, although it is doubtful that the activities of the National Front were a crucial factor. This will be discussed further below. It is clear that the state was aware of these possibilities. In its evidence to the Select Committee, the Race Relations Board stated that 'The frustration of legitimate expectations, particularly if this applies to a significant proportion of the workforce, carries a heavy risk of conflict' [Select Committee 1975]. Similarly, the White Paper on 'Racial Discrimination' argued that

To fail to provide a remedy against an injustice, strikes at the rule of law. To abandon a whole group of people in society without legal redress against unfair discrimination is to leave them with no option but to find their own redress. It is no longer necessary to recite the immense damage, material as well as moral, which ensues when a minority loses faith in the capacity of social institutions to be impartial and fair.
[Home Office 1975]

The 'Asian strikes' and the analysis of them that ensued stressed the urgency of Government action in this field. It would be misleading however to describe them as a reason for the introduction of legislation. They represented only the tip of an iceberg which was already being researched and documented. Nevertheless, they should be regarded as a significant catalyst to action for the Labour Government, emphasising that to have done nothing would have been tantamount to opening a Pandora's Box of political and industrial problems.

Likewise, McDonald pointed to the state's concern with the 'problem' of black youth, a theme which is present in all the official literature and many of the speeches of ministers and MPs [McDonald 1977: iv. See also Race and Class 18: 4, (1977); 405-410]. The Select Committee saw that the harmful effect of racial discrimination

is aggravated by growing lack of confidence among the ethnic communities, especially the young - the second generation non-immigrant population..... The Commission should concentrate upon, and give priority to, the needs of young persons, particularly West Indians.
[Select Committee 1975; 448-1, paras 64-5]

In a similar tone, the White Paper spoke of the danger of letting 'the familiar cycle of cumulative disadvantage' trap the second generation in poor jobs and housing (Home Office 1975). Underlying such statements was a fear of racial violence as had been expressed in the 1960s. Many of the speeches in support of the 1968 legislation had referred to the rebellions in the USA in 1967 in Watts, Newark and Detroit. The Kerner Commission set up in 1967 to look into the urban disorders had warned that, if drastic steps were not taken, the United States would become 'two societies', one black and one white [Kerner 1968. Horowitz 1983: 200]. There were some within the Government who treated this possibility with great seriousness. Alex Lyon, the Minister of State at the Home Office, lay great emphasis on the problems of West Indian youth, especially crime and homelessness, and stated in May 1975 that, 'We have done something to lessen tensions but we have not done anything like as much for race as I would like to do'. [The Guardian, 27 May, 1975]. Roy Jenkins, however, was less pessimistic. There is no evidence that any of the problems discussed above gave him undue cause for concern. As his biographer has asserted, looking ahead he was optimistic, seeing no comparison in Britain with America's racial troubles [Campbell 1983: 92], and during the second reading of the Race Relations Bill, he said that it was important not to lend credence to unrelieved pessimism and prophecies of doom [The Times, 15 March, 1976]. The immediate threat of disorder involving young blacks was not perhaps a pressing consideration for the

Government. It does, however, seem clear that, for a number of influential bodies and individuals, the long-term difficulties that lay ahead needed to be addressed as a matter of some gravity if the Government's race relations policies were to have any chance of success.

The Political Context

Labour's unexpected electoral defeat by Heath (and Powell) in 1970 provided the opportunity for the party to reflect on the failures of its race relations and immigration policies. The initial reaction was to blame 'Powellism' and this was reflected in the 1970 conference motion on discrimination

This conference condemns discrimination on the grounds of race, creed or colour. It is concerned that the pernicious and reactionary ideology of Powellism has, with the help of the Tory party and press, gained a hold with many elector who have been frightened into support through not having enough facts to consider the argument.

[Labour Party, Annual Conference Report, 1970: 205]

In March 1972, however, an NEC study group on immigration produced an opposition Green paper on Citizenship, Immigration and Integration. This document was the first detailed examination of race relations and immigration policy ever produced by the Labour Party, and it outlined how policies in these areas should be developed in the future [Layton-Henry 1984: 84]. In particular, it argued that it was possible to devise a coherent and acceptable immigration policy, which was not based on the colour or race of the prospective migrant; that a discriminatory policy makes integration more difficult to achieve and contributes towards racial hostility, and that the idea that increasingly severe restrictions on coloured immigration would play a major part in reducing racial hostility had been proved false.

The report also called for a major review of citizenship law, arguing that any logical immigration policy must be based on a logical concept of citizenship, and advocated the appointment of a Government enquiry. An increase in aid to inner-city areas on the basis of social need generally, and not primarily for the welfare of immigrants, was recommended. Furthermore, since the proportion of immigrants among the black population was declining and the proportion of British-born black citizens was rising, it was recommended that responsibility for integration policies, including the Community Relations Commission and the Urban Aid programme, should be transferred from the Home Office to the Department of Health and Social Security. The Home Office should, it was felt, still retain responsibility for the enforcement provisions of the 1968 Race Relations Act and for the Race Relations Board.

The party was, therefore, anticipating a number of the issues which would be raised in the period between 1974 and 1976 during the debate over the details of any race relations reform, and the analyses now being put forward were certainly in advance of those in vogue during the 1960s. The discussions within the Labour movement which the Green Paper was meant to provoke was largely pre-empted by the Ugandan Asians crisis, but the proposals emanating from the study group came to provide the basis for the policy statements contained in Labour's Programme of 1973 and the election manifesto of 1974. In the section in Labour's Programme on 'Equality of Opportunity and Treatment', the party pledged to give greater enforcement powers to the Race Relations Board, such as the power to obtain information and to take more initiative themselves, and to ensure that Government contracts and other benefits were withheld from bodies which failed to accord equal treatment. The programme also recognised that

These measures will not be effective whilst poor housing, unemployment and educational deprivation provide the breeding ground for prejudice and distrust

among black and white and deny equal opportunity to those who suffer them [page 90].

Two parallel developments can thus be identified which boded well for the advocates of a more positive race relations policy. On the one hand, a more comprehensive analysis of 'race' issues and the structural context within which they would operate was emerging. No longer was the emphasis on immigration to the neglect of inequality and discrimination, and the Labour Party was now committing itself to concrete reform, if not as yet in any specific detail. On the other hand, the development of these policies and of black political activity within the party was encouraged by a trend to the left, both on the National Executive and in the constituency parties during the early 1970s. Although these changes impinged most directly on the adoption of more radical economic and industrial policies [Hatfield 1978], they also helped to foster a more positive approach towards race relations issues and ethnic minority interests which contributed towards the formation of the Labour Party Race Action Group in 1975 as a pressure group to educate and advise the party on 'race' issues. Labour's position in Parliament during the period of the Conservative Government was, however, rather an awkward one, in that it was difficult to develop a response to the Conservatives' immigration policies when they were saddled with the legacy of their own policies in the 1960s. The patriality clauses of the 1971 Immigration Act, for example, had been foreshadowed in Labour's own Commonwealth Immigrants Act of 1968. Any credible opposition to the 1971 Act was, therefore, hard to sustain, and the acceptance of a change in the party's orientation was inevitably a gradual process.

It could be suggested that such change was forced upon the party after 1974 by two important developments - a growing recognition of the role of the ethnic minority vote in British politics, and the electoral success of the far-right National Front. A report from the Community Relations Commission in 1975 on the black vote in the 1974 general election represented the first attempt to seriously analyse the voting behaviour of the ethnic minorities [Anwar and Kohler 1975]. The report showed that there were 59 seats where the black population was larger than the winning candidate's majority and that these included 13 of the 17 seats Labour won from the Conservatives to secure a majority in the October election. The report thus concluded that the ethnic minorities played a significant part in determining the outcome of the election, that the minorities swung more to Labour than did the electorate as a whole, and also that other parties than Labour could attract minority support when they made the effort (for example, the Liberals in Rochdale). However, it has since been shown that the report exaggerated the significance of the black vote in marginal constituencies, and their willingness to switch votes. As Ivor Crewe has shown, a seat must be very marginal, the ethnic swing very marked and the ethnic group a very substantial proportion of the constituency, for a seat to be genuinely owed to the ethnic vote [Crewe 1979]. Moreover, as Crewe points out, there are serious problems with the 'swing' concept, since it ignores abstentions, the intervention of third parties, changes in the nature of the constituency, and so on. It is also the case that the anti-ethnic minority vote is generally likely to outweigh the ethnic minority vote [Crewe 1983: 275].

There is no clear evidence that this report influenced the Labour Party's strategy. They had always been aware of their widespread support among the ethnic minority electorate and, if anything, the report gave them cause for complacency. It demonstrated that there existed a firm bedrock of Labour support in a number of inner-city constituencies, and that, in October 1974, Labour's share of the black vote had increased. Given the success of the National Front during this period, and the ensuing move to the right of the Conservative party under Thatcher, including the adoption of a more hardline approach on issues of race and immigration, and an attempt before the 1979 General Election to win back the electoral support lost to the National Front, Labour decided to do very little. It felt able to count on the black vote for

the foreseeable future without offering a great deal in return. Such a strategy inevitably shored up problems for the party which were to surface in the 1980s, most notably the campaign for Black Sections. Ironically, it was the Conservatives rather than Labour who acted on the CRC report and, in early 1976, they set up an Ethnic Minorities Unit inside Conservative Central Office for the express purpose of winning the votes and active participation of the ethnic minorities, especially Asians, by the next election [Layton -Henry 1978: 274-5].

Labour's primary electoral concern was that they were losing not black votes, but those of the white working-class. Much of the National Front's support in the mid-1970s came from declining industrial areas into which migrant labour had been attracted in the 1950s and 1960s [Husbands 1983]. Their support reached a peak in the May 1976 elections, in which they averaged 8 per cent of the vote, and up to 15 per cent in Leicester, Sandwell and Bradford. In Blackburn, a breakaway group from the National Front, called the National Party, won two seats on Blackburn District Council, a solid Labour area. The rise of the National Front had led to an increase in anti-racist activity on the left, of which the Anti-Nazi League and Rock Against Racism are the best examples. Labour was forced to respond, as a matter of political principle as well as for electoral reasons. It is difficult, however, to sustain the argument that the Race Relations Act can be seen as a response to these developments. The average vote for each national Front candidate in the two General Elections of 1974 was only 3 per cent. The prospective legislation had in fact already been introduced before the NF reached its electoral peak, and, since the NF and its supporters were opposed to the Act, there was clearly little electoral gain to be made. Labour's policy towards organised racism was based upon campaigning and publicity, rather than on legislation. In September 1976, the Party's National Executive Committee agreed to launch a campaign jointly with the TUC to educate Labour Party members and trade unionists about the evils of racism and the dangers of neo-fascist groups such as the NF [Anwar 1986: 88-9]. The only aspect of the 1976 Act which constituted a direct response to the activities of far-right political groups was that which dealt with incitement to racial hatred. The existing legislation, section 6 of the 1965 Race Relations Act, rested upon proof of the deliberate intention of stirring up racial hatred, and had attracted much criticism. The TUC, referring to the propaganda published by the NF, stated that 'firm steps should be taken to end the publication of such dangerous material before it does further harm to community relations' [TUC, Racial Discrimination, December 1975, quoted in Runnymede Trust 1976: 5]. Lord Scarman, in his report on the Red Lion Square Disorders of 15 June 1974, described section 6 as 'merely an embarrassment to the police' [Scarman, February 1975, paras 124, 125]. He concluded that

The section needs radical amendment to make it an effective sanction, particularly, I think, in relation to its formulation of the intent to be proved before an offence can be established.

[See Runnymede Trust 1976 d]

The Government's response, while accepting Scarman's recommendations, was that it was not justifiable in a democratic society to interfere with freedom of speech except where it was necessary to do so for the prevention of disorder or for the protection of other basic freedoms. In the White Paper, they had stated that

The Government is not at this stage putting forward proposals to extend the criminal law to deal with the dissemination of racist propaganda in the absence of a likelihood that group hatred will be stirred up by it (*italics added*).

[Home Office 1975: para 127]

Section 70 of the 1976 Act incorporated the views expressed about removing the need to prove intention, amending the 1936 Public Order Act by inserting in it a

new section. However, the prosecution would still need to demonstrate that, 'having regard to all the circumstances', hatred against any racial group was 'likely' to be stirred up.

Sivanandan has argued that by the mid-1970s, the social and political cost of racism was beginning to outweigh its economic profitability [Sivanandan 1982: 130]. This is a useful conceptualisation of the situation up to a point. Its flaw is that it applies wholly conspiratorial motives to all concerned, and attributes to the Labour Government a far more comprehensive and theoretically-based analysis than it could ever have possessed. To regard Labour's strategy as one of 'crisis avoidance', in which the state employs a range of tactics in order to maintain social order and political consensus in a period of social and economic change, overstates their own perception of the problem. The situation in 1976 was not regarded with the gravity which perhaps with hindsight it should have been. Economic difficulties were certainly mounting but they did not at this stage threaten to bring with them a wider challenge to the status quo. A more adequate analysis of the developments outlined above is that which centres upon the nature of labour and working-class politics, in which there is inevitably a disjunction between the principles and aspirations of the leadership and the beliefs and actions of the grassroots. The Labour movement's 'elites' are faced with two options in this situation. They can either lead or be led. The period after 1973/4 should perhaps be seen as a transitional one, in which the 1960s strategy of following public opinion in the hope of electoral gain was challenged by a policy based on the principles of justice and equality. That this transition was based upon wider social change and external pressure is not disputed. It was also, however, a consequence of internal processes within the Labour movement and a general shift to the left. In this way, it is possible to explain Labour's handling of the National Front, its adoption of more positive race relations policies and the trade union movement's handling of the convergence of race and industrial relations problems. The causal relationship between these issues and the Race Relations Act is, however, not wholly convincing. They focussed attention upon particular areas of reform, especially discrimination in employment, and added a degree of urgency to Labour's programme. But legislation can only play a limited role in tackling these problems. It is likely that the 1976 Act was regarded as only one element within a wider strategy which also included publicity and campaigning against racism, and policies to tackle disadvantage and poverty more generally. That none of these were particularly successful is another matter.

SUMMARY AND CONCLUSION

The 1976 Race Relations Act can be regarded in both a positive and a negative sense. On the one hand, there existed in some quarters a genuine commitment to reform based on a recognition of the serious problems of discrimination and disadvantage. On the other, the Government was to some extent influenced by external circumstances. To regard the Act, therefore, either as the zenith of liberal democracy or as a symbol of the 'crisis of capitalism' would be misleading. At the time of its inception, its importance became subsumed beneath a number of other more prominent political and economic issues, and it was never paraded as one of the major achievements of the Labour Government. Nor was the threat of social unrest and civil disorder so impending in 1975/6 that one should see the Act as a superficial and placatory measure primarily designed to appease the demands of militant Asian workers and unemployed black youths. In reality, the Act constituted a logical extension of earlier policies, hastened and encouraged by a number of contingent factors.

The Acts of 1965 and 1968 had not been comprehensive, long-term reforms. Neither were the products of detailed and careful preparation, and both served to compensate for the Labour Government's extension of controls on Commonwealth immigration. The 1976 Act, however, was not accompanied by further controls and in this sense should be viewed as a more positive measure than its predecessors. The weaknesses and shortcomings of the earlier Acts had gradually exposed the need for further change, and particularly for reform of the procedural aspects of the legislation. These points were emphasised by both the Community Relations Commission and the Race Relations Board in the early 1970s.

Just as the experience of the workings of the existing law and the arguments of the statutory agencies pointed to the problems of procedure, so there developed a greater awareness of the continuing extent of discrimination. It might be argued that the work of an independent research organisation should not be regarded as a major influence on Government policy, and clearly the case for it being so should not be overstated. But the importance of PEP's research in the early 1970s was that it helped inform and influence those who were in a position to bring about change. It provided evidence and ammunition to support the case for reform, and informed the representations of the existing agencies and of the Select Committee on Race Relations and Immigration. It also nullified the argument that the 1968 Act had brought about major, long-term change which was sufficient in itself. It, therefore, seems likely that the evidence and pressure which was brought to bear in this field served as a major catalyst to reform which effectively obviated any intention of delaying the introduction of further race relations legislation.

The key determinant in so far as the timing of the Act was concerned was clearly the Sex Discrimination Act. The acceptance of the principles underlying the 1975 Act prepared the ground for the Race Relations Act and made its introduction far easier. This was particularly true in a party political sense in that the Conservative Party had been the original proponents of action on sex equality and had accepted the Act with little demur. By pressing ahead in 1975/6, the likelihood of serious Conservative opposition to the Race Relations Act was significantly reduced. At the same time, it was not tenable in either an intellectual, moral or practical sense to propose different rules for sex and race discrimination. Indeed, by presenting the reforms as a coherent whole, the Government sought to raise their credibility and acceptability as well as to lessen the possibility of any major criticism of their policies.

It is necessary to identify and distinguish between the reasons for the introduction of legislation, and those influences which help shape and determine its form and content. The example of American anti-discrimination law falls into the latter category. Certainly, United States law had made a major contribution to the British approach in 1965 and in 1968, demonstrating the

strengths and weaknesses of various procedural aspects of anti-discrimination law. Above all, it had shown that the law could be used effectively to tackle a social as well as an individual wrong. The extension of this philosophy into the concept of indirect discrimination was the major contribution of the United States law to the 1976 Act, particularly in its convergence with the problem of 'disadvantage'. The recognition of disadvantage as well as discrimination as obstacles to genuine equality was in one sense the main innovation of the 1976 Act, since it brought within its range a definition of unintentional, or indirect, discrimination, and categorised it as a breach of the law. The Act also recognised the need to investigate systems and practices which reproduced racial inequality rather than to concentrate on individual cases of discrimination. However, it is also true that the Government proposed to tackle disadvantage by means other than pure legislation. Its failure to do so can be partly explained by financial constraints. But its reluctance to build on and improve the precedent set by section 11 and the Urban Programme to some extent cancelled out the achievements of the other half of its race relations policy, and represented a disappointment for the architects of the White Paper and the Select Committee Report who had advocated a more ambitious and wide-ranging programme, rather than a reliance on legislation alone.

The general political context of the Act discussed in chapter 6 certainly contributes towards a fuller understanding of the pressures which impinged upon the Government's actions. The Government constantly stressed the need for public confidence in their race relations policies, and especially the confidence of ethnic minorities. However, the need for such confidence is very different from the need to stave off a major challenge to the authority of the State. There is little evidence that such a challenge was forthcoming in the mid-1970s or that it was perceived by the Government. To an extent, the problem posed by the industrial action of Asian workers was being tackled within the labour movement, and was regarded as a problem for the TUC rather than the State. The needs of black youth, while recognised, were seen as a problem rather than as a threat. Other political developments of importance in the race relations field do not seem to have been a major influence on the Government, at least in so far as the introduction of the Act is concerned. The development of the 1976 Race Relations Act does not, therefore, readily lend itself to a theoretically-based Marxist analysis. While such an approach has its uses, it needs to be informed by close reference to the evidence, which in this instance does not suggest that the introduction of the Race Relations Act was a defensive, negative reaction from a capitalist Government in crisis. The Act was a consequence of a disparate range of pressures and influences in a number of fields, all of which converged to shape and inform the Act in a number of ways. To identify a single cause or stimulus would be misleading. The explanation lies both within and without the Labour Party, both in the UK and abroad, in the political and legal spheres as well as the economic and social. What is clear and indisputable is that it has failed to fulfil its expectations, and that many of the hopes and intentions of its architects and supporters still await their full achievement.

APPENDIX - CHRONOLOGY OF MAIN EVENTS

- 1962 Conservative Government introduces Commonwealth Immigrants Act.
- 1965 Labour Government introduces first Race Relations Act. Race Relations Board established.
- 1966 Local Government Act.
- 1967 Report of Street Committee on Anti-Discrimination Legislation. PEP report on Racial Discrimination. Rioting in a number of US cities. Dispute at Coneygre Foundry, Tipton.
- 1968 Report of Kerner Commission on disorders in US. Commonwealth Immigrants Act. Second Race Relations Act. Community Relations Commission established. Urban Aid Programme announced.
- 1970 Conservatives win General Election.
- 1971 Commonwealth Immigrants Act. Case of Griggs V Duke Power Co in US.
- 1972 Labour Party publishes Green Paper on 'Citizenship, Immigration and Integration'. Dispute at Mansfield Hosiery Mills.
- 1973 (September) Conservative Government publishes consultative document on 'Equal Opportunities for Men and Women'.
- 1974 (February) First General Election.
(June) PEP report on 'Racial Disadvantage in Employment'.
(September) White Paper on Equality for Women.
(October) Second General Election.
(November) House of Lords, Dockers Club case.
- 1975 (January) Select Committee on Race Relations and Immigration set up to inquire into 'The Organisation of Race Relations Administration'. Formation of Labour Party Race Action Group. CRC report on The Participation of Ethnic Minorities in the General Election, October 1974'.
(March) Select Committee visit USA.
(July) Select Committee report and evidence published.
(September) White Paper on Racial Discrimination. PEP report on 'Racial Minorities and Public Housing'.
(November) Sex Discrimination Act.
- 1976 (February) Race Relations Bill published. PEP report on 'The Facts of Racial Disadvantage'.
(March) Second reading and debate on Race Relations Bill.
(April-June) Standing Committee on Race Relations Bill.
(May) Local elections - National Front gain 8 per cent of the vote. Fair Employment (Northern Ireland) Act.
(September) Labour Party - TUC campaign against racism launched.
(November) Race Relations Act. Commission for Racial Equality established.
- 1977 White Paper on the Inner Cities.

BIBLIOGRAPHY

Note: The evidence presented to the Select Committee on Race Relations and Immigration has not generally been listed separately, unless initially published as a separate document.

Anwar, M. (1986) *Race and Politics: Ethnic Minorities and the British Political System*. London: Tavistock.

Anwar, M. and Kohler, D. (1975) *Participation of Ethnic Minorities in the General election, October 1974*. London: Community Relations Commission.

Banton, M. (1985) *Promoting Racial Harmony*. Cambridge University Press.

Bindman, G. (1975) 'The Changes in the Law' in *Racial Discrimination - A Guide to the Government's White Paper* Runnymede Trust.

(1975) 'The Sex Discrimination Bill and Race' in M Rendel and G Bindman, *The Sex Discrimination Bill, Race and the Law: A Guide to the Proposed Legislation* Runnymede Trust 3 - 13.

(1976) 'The Law and Racial Discrimination: Third Thoughts', *British Journal of Law and Society*, vol III 110-1 14.

Bindman, G. and Grosz, S. (1979) 'Indirect Discrimination and the Race Relations Act' in *A Review of the Race Relations Act 1976*. Runnymede Trust 21-36.

Bonham-Carter, M. (1974) 'Race, Sex and the Law', *New Community*, vol iv, no 1, 1-4.

(1975) 'The White Paper on Racial Discrimination', *New Community*, vol iv, no 3, 281-3.

(1987) 'The Liberal Hour and Race Relations Law', *New Community*, vol xiv, no 1, 1-8.

Brown, C. (1983) 'Ethnic Pluralism in Britain: The Demographic and Legal Background' in N Glazer and K Young (eds) *Ethnic Pluralism and Public Policy*. Policies Studies Institute/Heinemann 32-54.

Burney, E. (1988) *Steps to Racial equality: Positive Action in a Negative Climate*. London: Runnymede Trust.

Campbell, J. (1983) *Roy Jenkins - A Biography*. London: Weidenfeld and Nicolson.

Carter, T. (1986) *Shattering Illusions: West Indians in British Politics*. London: Lawrence and Wishart.

Claiborne, L. (1974) *Race and Law in Britain and the United States*. Minority Rights Group Report No 22.

Commission for Racial Equality (1978) *First Annual Report 1977*. CRE, HMSO.

Community Relations Commission (1975) *Review of the Race Relations Act*. London: CRC.

(1975 b) Community Relations 1974 - 1975 - The Annual Report of the CRC. London: HMSO.

Crewe, I. (1979) 'The Black, Brown and Green Votes', The New Society, 12 April 1979.

(1983) 'Representation and the Ethnic Minorities in Britain' in N Glazer and K Young, op. cit. 258 - 284.

Daniel, W. W. (1968) Racial Discrimination in England. Harmondsworth; Penguin.

Demuth, C. (1977) Government Initiatives on Urban Deprivation. London: Runnymede Trust.

Department of the Environment (1975) Race Relations and Housing - Observations on the Report on Housing of the Select Committee on Race Relations and Immigration. HMSO.

(1977) Policy for the Inner Cities. White Paper, Cmnd 6845, HMSO.

Edwards, J. and Batley, J. (1978) The Politics of Positive Discrimination: An Evaluation of the Urban Programme, 1967-77. London: Tavistock.

Feldman, S. (1976) 'Sexism and Racism', CRC Journal, June 1976.

Gregory, J. (1987) Sex, Race and the Law - Legislating for Equality. London: Sage.

Hatfield, M. (1978) The House the Left Built: Inside Labour Policy Making 1970-75. London: Gollancz.

Hines, V. (1975) 'A New Deal for the Blacks?' in Runnymede Trust, Racial Discrimination - A Guide..... op. cit. 20-23

Hiro, D. (1975) 'The White Paper and the Indian Community', *ibid*, 24-6.

Home Office (1974) Equality for Women. White Paper - Cmnd 5724. HMSO.

(1975) Racial Discrimination. White Paper Cmnd 6234. HMSO.

(1975 b) Race Relations Research. A Report to the Home Secretary by the Advisory Committee on Race Relations Research. HMSO.

(1977) Racial Discrimination - A Guide to the Race Relations Act 1976. HMSO.

Horowitz, D. L. (1983) 'Racial Violence in the United States' in N Glazer and K Young, op. cit. 187-211.

Husbands, C. (1982) Racial Exclusionism and the City: The Urban Support of the National Front. London: Allen and Unwin.

Kerner Commission (1968) Report of the National Advisory Commission on Civil Disorders. New York: Bantam Books.

Kumar, V. (1986) Industrial Tribunal Applications Under the Race Relations Act 1976. London: Commission for Racial Equality.

Labour Party (1972) Citizenship, Immigration and Integration. Labour Party.

(1973) The Present Government Won't Listen to You.... The Next Government Will... (Reprinted from Labour's Programme for Britain). Labour Party.

(1974) Let Us Work Together.: Labour's Way Out of the Crisis. General Election Manifesto, February 1974. Labour Party.

Lane, D. (1987) 'The CRE: The First 5 Years', *New Community*, vol XIV, no 1, 12-16.

Layton-Henry, Z. (1978) 'Race, Electoral Strategy and the Major Parties', *Parliamentary Affairs*, XXXI, 274-5.

(1984) *The Politics of Race in Britain*, London: Allen and Unwin.

Lester, A. (1987) 'Anti-discrimination legislation in Great Britain', *New Community*, vol XIV, no 1, 21-31.

Lustgarten, L. (1980) *Legal Control of Racial Discrimination*. London: MacMillan.

Maan, B. (1975) 'A Pakistani Viewpoint' in Runnymede Trust, *Racial Discrimination - A Guide....* op. cit. 27-9.

Madge, N. (1975) *Racial Discrimination - NCCL's Comments on the White Paper*.

National Council for Civil Liberties, Report no 10.

Marshall, R. (1976) 'Racial Discrimination: The Way Ahead', *New Community*, vol IV, no 4, 423-8.

McCrudden, C. (1979) 'The Strategic Use of the Law' in Runnymede Trust, *A Review....* op. cit.

(1983) 'Anti-Discrimination Goals and the Legal Process' in N Glazer and K Young, op. cit. 55-74.

McDonald, I. (1977) *Race Relations - The New Law*. London: Butterworths. (Reprinted in *Race and Class*, 18: 4 (1977) 405-410.

McIntosh, N. and Smith, S. J. (1974) *The Extent of Racial Discrimination*. PEP Report 547. London: Political and Economic Planning.

Miles, R. and Phizacklea, A. (1984) *White Man's Country.: Racism in British Politics*. Pluto Press.

Munro, C. (1974) 'The Law and Race Relations', *New Society*, 19 September 1974, 737-8.

Parmar, P. (1982) 'Gender, Race and Class: Asian Women in Resistance' in Centre for Contemporary Cultural Studies, *The Empire Strikes Back.: Race and Racism in 70s Britain*. Hutchinson.

Plender, R. (1975) 'The Sex Discrimination Bill', *New Community*, vol IV, no 3, 291-302.

Pollack, L. (1974) *Discrimination in Employment.: The American Response*. London: Runnymede Trust.

Prashar, U. (1979) 'The Race Relations Act 1976: Conditions for Success' in Runnymede Trust, *A Review....* op. cit. 1-20.

Race Relations Board (1973) Memorandum on the Government's Proposals for Legislation to Prohibit Discrimination on the Grounds of Sex. 27 November 1973. (Reprinted as Annex E to Memorandum by the Race Relations Board, Evidence to the Select Committee on Race Relations and Immigration. 27 February 1975.

(1974) Comments Concerning the Government Proposals for Sex Discrimination Legislation in the White Paper 'Equality for Women'.
(Reprinted as Annex F to above).

(1975) Comments on the White Paper: Racial Discrimination. London: RRB.

Rees, T. (1974) Equal Employment Opportunity in the USA. London: Runnymede Trust.

(1975) 'The Role of Government' in Runnymede Trust, Racial Discrimination - A Guide.... op. cit. 14-19.

Rose, H. (1976) 'The New Race Relations Proposals - A Real Step Forward?', New Community, vol IV, no 4, 429-433.

Rose, E. J. B. et al (1969) Colour and Citizenship. London: OUP.

Runnymede Trust (1975) Race and Council Housing. London: Runnymede Trust.

(1975a) The Organisation of Race Relations Administration. London: Runnymede Trust.

(1975 b) Review of Race Relations Legislation. London: Runnymede Trust.

(1975 c) Racial Discrimination.: A Guide to the Governments White Paper. London: Runnymede Trust.

(1976) The Race Relations Bill. A Summary of Recommendations Made by Interested Organisations. Runnymede Trust Briefing Paper, January 1976.

(1976 a) Runnymede Trust Briefing Papers - Race Relations Bill Briefing Group.

No 1 Government Contracts and their Role in Promoting Equal Opportunity in Employment.

No 2 The Record and Background to the New Proposals.

No 3 Discrimination in Clubs.

No 4 Incitement to Racial Hatred.

No 5 Race, Disadvantage and Deprivation - The Government's Comprehensive Strategy'.

No 7 The Strategic Role of the Race Relations Commission.

No 8 Local Community Relations Councils and their Central Co-ordination.

No 9 The Administration of Race Relations in Government.

No 10 The Position of the Individual Complainant and the Proposed Complaints Machinery.

(1979) A Review of the Race Relations Act 1976. Proceedings of a one-day seminar in London, 30 March 1979. London: Runnymede Trust.

Russell, T. (1978) The Tory Party. London: Penguin.

Sanders, P. (1979) 'The Strategic Use of the Law' in Runnymede Trust, op. cit.

(1983) 'Anti-Discrimination Law Enforcement in Britain' in N Glazer and K Young, op. cit., 75-82.

Select Committee on Race Relations and Immigration, Session 1974-75. The Organisation of Race Relations Administration, vol I. Report. Vol III. Appendices.

Shapiro, M. (1966) Freedom of Speech.: The Supreme Court and Judicial Review. Engelwood Cliffs, New Jersey.

Sivanandan, A. (1982) A Different Hunger: Writings on Black Resistance. Pluto Press.

Skidelsky, R. (1981) Oswald Mosley London: Macmillan.

Smith, D. J. (1974) Racial Disadvantage in Employment. London: Political and Economic Planning.

(1976) The Facts of Racial Disadvantage. PEP Report 560. London: Political and Economic Planning.

Smith, D. J. and Whalley A (1975) Racial Minorities and Public Housing. London: Political and Economic Planning.

Standing Committee A, Race Relations Bill, 27 April - 24 June 1976. House of Commons. HMSO.

Stephen, D. (1975) 'The White Paper in a White Context' in Runnymede Trust 1975 c, op. cit. 30-32.

Street, H., Howe, G. and Bindman, G. (1967) Report on Anti-Discrimination Legislation. London: Political and Economic Planning.

TUC (1983) Race Relations at Work. Trades Union Congress.

Wrench, J. (1986) Unequal Comrades.: Trade Unions, Equal Opportunity and Racism Policy Papers in Ethnic Relations No 5, University of Warwick.

Young, K. (1983) 'Ethnic Pluralism and the Policy Agenda' in N Glazer and K Young, op. cit. 287-300.

Young, K. and Connelly, N. (1984) 'After the Act: Local Authority Policy Reviews under the Race Relations Act 1976', Local Government Studies, vol 10, no 1, 13-26.