

CHAPTER SEVEN

Reconstructing Socialist Criminology

7.1 The Riots of 1981

The most serious problem to confront the Thatcher Government in the first 2½ years of its project of social and economic construction emerged, in the event, from the underclass rather than from the organised Labour Movement.

The serious but localised riots of 1980 in Brixton and Bristol - which had been authoritatively explained as resulting from conditions peculiar to particular neighbourhoods - were followed in July 1981 by a series of major disturbances in Southall, Toxteth, Brixton (on several separate occasions), Moss Side, and elsewhere. Massive amounts of property damage and looting occurred and large numbers of police and the public were injured. On 13 July, the Merseyside Police became the first force in mainland Britain to make use of rubber bullets and CS gas on civilians, and, in the same week, the Government announced that army camps would be used to house those who received prison sentences as a result of the riots. The Government also announced its intention to investigate the possibility of legislating for a new Riot Act and generally proclaimed its support for more aggressive police responses in any future situation where there was "a threat to public order". In July and in August, further outbreaks of street violence occurred sporadically in Liverpool and in other British cities. These were authoritatively explained as "copycat riots", requiring the firm and deterrent response from the authorities. On 29 July, in Liverpool, 22 year old David Moore, crippled in one leg, died after being pinned against a wall by a Police Land-rover, after Merseyside Police had adopted the method of clearing crowds used by the RUC in Belfast (of driving vans at and through the people on the street). As in Ireland, and as over the question of soccer

violence at home, the social violence of the inner-city under-class was to be met with the force of intensified penal discipline.

But the riots in English cities were clearly rather more alarming for the popular press than even the troubles in Ireland or the "aggro" of the soccer grounds. The rioters had been seen to be white and black, and adult as well as youthful. They were normal residents of the English inner city, which was obviously in an abnormally depressed and distraught condition. They were not untypical of the readership of the English popular press itself. So the Daily Star, which had urged its readers to vote for the Tory Party in 1979, now responded to Margaret Thatcher's moral denunciations of the riots with the angry headline "Work, not Talk, is the Answer" (Daily Star, 7 July 1981). Nearly all editorial writers in the popular press supported some reversal of the Government's policy of cutting public expenditure, especially insofar as these policies affected the inner city. Margaret Thatcher spoke of the riots as her most difficult ten days in office, and, although community leaders in Toxteth and Manchester deplored the Government's complete failure to understand the resentments which fuelled the attacks of property and police, it seemed as if the events of the summer were going to force some mitigation of the unremitting monetarism of the Thatcher Government. A fundamental assumption in British society - that the underclass will acquiesce in the housing, the work and the social facilities it is offered, as well as in the place it is assigned in the class structure - was obviously at risk.

Whether or not a reversal in Government policy does occur, the riots unambiguously achieved one other object. They decisively challenged the claim made by the radical right leadership of the Conservative Party to be offering out a politics of social order.

Two years into the Thatcher Government, the fallacies in the "philosophical" assumptions of the radical right were more and more plain to see. The

The freeing of the market forces has resulted in a widespread sense of hopelessness and anger among large sections of the population, who were now experiencing a level of unemployment and poverty far beyond their previous expectations. The social relations that resulted from Government policies of cuts in public expenditure, so far from being those of a disciplined individualism, had taken the form of collective insubordination in the inner city, militant self-defence by the beleaguered black communities (against police harassment and racist organisations alike), and, most ominously of all, the collective violence engaged in by skinheads and other poor whites against their Asian or West Indian neighbours.

Each of these developments has a lengthy history, going back at least until the 1960's, but it was not until the late 1970's, and the moment of Thatcher's Election victory in 1979, that the desperation of a divided and dislocated under-class spilled over into violence on the streets. In the course of the Election campaign itself, on 23 April 1979, the Asian population in their thousands attempted to prevent the holding of a meeting of the National Front in the centre of their community by a massive peaceful sit-down; they were rewarded for their efforts with 347 arrests and a violent attack by the Special Patrol Group of the Metropolitan Police. The significance of the events in Southall on 3 July 1981 (a massive attack on the Hambrough Tavern) is clear: the Asian Youth Movement acted independently both of the police and their more moderate elders in order to remove a racist presence (a Skinhead band that attracts fascist support) from their community.

Throughout 1979 and 1980, popular organisations in Bristol, Manchester, Liverpool and other major cities had forced the liberal press, and some television programmes, to pay critical attention to police practices, especially in the inner city and in areas of South London. Particular anger was directed at the use by police of ancient legal statutes to arrest young

blacks, in particular, on suspicion, and at the inflexible enforcement of the criminal law on drugs and alcohol in raids on West Indian social clubs and parties. Few of these complaints, however, found a place in the popular press, which continued to advocate uncritical support for the "British bobby". In 1980 and 1981, popular frustrations at the indifference of the media and officialdom, and the continuing harassment by the police, gave rise to the riots which occurred in Bristol, Brixton and Moss Side. And once again, in the course of the Scarman Inquiry into the Brixton riot, and during Mr. Heseltine's three-week investigation into the background to the troubles in Liverpool, leaders of the black community insisted that the central topic in these enquiries must be the question of police harassment and police racism. The evidence presented by the Metropolitan Police to the Scarman Inquiry in explanation of their so-called "Swamp 81" campaign of 8th to 11 April in south London, when police swamped the areas around Brixton with a view to controlling the level of burglaries and "footpad crime", indicates why the community leaders are so concerned. In the course of the four days' work, the four specially established "Swamp 81" squads, comprising 114 police officers, made 2,101 stops and arrested 116 people, 72 of whom were residents of Brixton. Some 24 people of the people arrested were charged with offences connected with theft or burglary. But the vast bulk of those arrested were charged with carrying threatening weapons (screwdrivers, penknives and combs) (17 people), obstruction of or assault on a police officer (7 people) and a variety of drunk and disorderly and drugs offences and driving offences (10 people). (Anning, 1981). The police campaign had mainly "netted" - and therefore further alienated - ordinary and typical members of the local West Indian community. And whilst the campaign had been unsuccessful in identifying and controlling "muggers", it had nonetheless had the effect of producing further public evidence of the generalised criminality of the local black population. It is also clear that

the "stops" and "arrests" involved in this campaign (and in the policing of the riots in Moss Side and elsewhere) were also accompanied by significant amounts of racial harassment and verbal racist taunts on the part of individual police officers. It was little wonder that local community leaders and the ethnic press insisted that the question of police racism was central to the inquiries into the riots.

Police racism was not, however, a favourite topic for the popular press. For the leader-writers and news journalists on these papers, the riots were primarily to be interpreted as an effect of the overwhelming deprivation in inner city areas. The looting that occurred in some of the riots enabled the press to present events as examples of individualism at work but in an undisciplined fashion. According to a youth interviewed by Jeremy Seabrook, people were "shopping without money". (Seabrook, 1981).

This interest in consumer goods was hardly surprising. It had been in the name of such individual consumerism that the major transformation of Britain's urban centres had occurred through the post-war period. But this prioritisation of the interests of some possessive individuals over the social communities in which most individuals lived had massively prejudiced the possibility of social order in these areas (and also in the privatised council estates to which many were removed). Housing policies have continued to pursue the goal of providing individual privacy and possession, without reference to the communal traditions which sustained these neighbourhoods; and employment and social policy has continued to work to the advantage of the already-employed individual wage-earner, to the detriment of women, blacks and young people in the working class, who were thereby excluded from the consumer economy. It is no surprise that the symbols of individual consumerism (like videocassette machines) were the most highly-prized targets of the looters. But the individualism that was present in these events was an effect of years of living in a mass media dominated capitalist society,

rather than being the cause of the riots as such. The riots were primarily significant for the way in which they expressed the desperation of the "marginal" populations in British class society, in a highly-patterned and collective fashion. The anger of black youth was directed at symbols of white racism (like the Hambrough Tavern in Southall) or police racism (the police headquarters attacked in Moss Side and police cars burnt out in Brixton); whilst the anger of the poor whites involved in the Toxteth riots were also directed at the police and, in particular, at the constant harassment that appears to be involved in that police force's contacts with its local community. If only the possessive individualism so beloved of the Right (and the popular media) had been involved in the riots of 1981, the damage caused to property and to persons would have been much more random than it actually was. Thefts and looting would have occurred from all available sources, and the police would have been avoided rather than confronted in the streets.

The market forces have been active enough, throughout the post-war period, in ensuring the advance of possessive individualism throughout society, and it has surely been this advance (rather than the advance of social welfare, for example) which has disrupted and dislocated the communities in inner-city urban areas. It is also this individual consumerism that has resulted in the extension of a narcissistic individualism in the middle-class, which often prevents the members of that class from realising that they are members of a human collectivity, encouraging instead an individual competitiveness that obstructs the growth of friendships and trusting social relationships. It is difficult to see the contribution such individualism makes to a social order that operates in the universal interest. But it is on the basis of a further extension of free market economics and possessive individualism that Margaret Thatcher in 1979, and Ronald Reagan in 1980, predicted the restoration of order in their troubled late-capitalist societies. Indeed, in America,

as some American observers of the British riots have now anxiously realised, the Republican commitment to "supply side economics" has been accompanied by a popular-academic literature which announces that this version of monetarism has "no social cost". That literature is looking transparent in the aftermath of the British riots of 1981.

At the time of re-writing this chapter before final submission of this thesis, in August 1981, the reactions of social democrats, liberals and conservatives to the riots are just taking shape. The Shadow Home Secretary, Mr. Roy Hattersley, has, of course, insisted that the riots are an effect of the Government's politics of cuts in public expenditure and has given support to local authorities who have called for massive infusions of funds in inner-city programmes.¹ The Environment Secretary, Mr. Michael Heseltine, on his three-week investigation into Liverpool, whilst insisting that there is no Governmental "pot of gold" available, has been attempting to conjure investment into Toxteth from a consortium of private capitalists. Many of the conspiratorial interpretations of the riots advanced by the police in Liverpool, Manchester and Leeds - that the riots were fomented by "outsiders" - appear to have collapsed in the face of the details, since released, about the people arrested in the riots (nearly all of whom turn out to be typical local residents).

What does seem clear is that there is no widely-supported or accredited liberal interpretation of the riots. The closest approximation to any liberal account, advanced not surprisingly in New Society magazine, is one which "normalises" the specific riots of 1981 by locating them in a long sweep of history, characterised by the occasional emergence of "riot". This particular account relies on a sudden rediscovery of the riots which occurred in several English cities the summer of 1919 (White, 1981), which were similar to the riots of 1981 in every respect except for the involvement in all of soldiers demobbed from the First World War :

"In May and June, there were race riots in seaports; in July, riots by soldiers who were awaiting demob or just discharged; in August, mass looting in Liverpool after the abortive Police Union strike, and in July and August, running battles between London youth and the police with some casualties."

(White, 1981, p.260)

By denying that the 1981 riots were "unprecedented" (in the dramatic language of the police and the political right) this liberal interpretation presents the riots as an inevitable accompaniment of difficult moments of social transition. It is an argument against the State reverting to the use of draconian or exceptional measures for the control of riotous situations - which, it is implied, will fade away of their own accord. Like all the other various liberal accounts of the current economic and political moment in Britain, this is an essentially uncritical and a-theoretical interpretation of how social order holds together: everything depends, in the end, on goodwill and on the willingness of Governments, acting on everyone's behalf, to provide for the needy. This was the way in which the Liberal Government of 1919 presented itself to the public, but it is not the social ideology of the Thatcher Government. And the economic situation in Britain in 1981 (in the middle of a long period of decline following on from a period of continually rising economic expectations) is, indeed, altogether different from that which confronted the British ruling class in 1919, at the beginning of a further phase of colonial exploitation and industrial growth - resulting, in part, from a successful conclusion to an imperialist war. Nor, finally, is the racial situation in Britain in 1981 remotely similar to that which existed in 1919. Thousands of second and third generation blacks have clearly demonstrated their refusal to accept the racism of surrounding English society and ^{/are} unlikely to accept the kinds of harassment to which immigrants were subjected in the period after the First World War.

So attempts to establish a liberal account of the riots are based on a poor analysis of the current political and economic conjuncture. But this

kind of liberalism is still likely to have some appeal in the British middle-class (of the kind that is attracted to the fold of the new Social Democratic Party) as well as to certain sections of the Labour Party.

7.2 The Incoherence of the Two Liberalisms

In the first six chapters of this thesis, I tried to trace the ways in which socialists have accommodated in all areas of policy (but especially, for our purposes, in the area of crime) to liberalism as a form of analysis and a theory of action and policy. I do not need to repeat my excavation of that liberalism here, except to highlight the continuing emphasis in this liberalism on the State doing more in the way of whatever the State is doing at the moment. Jeffrey Galper puts this well :

"If (the welfare state) does not point in the direction of heightened well-being, then liberalism has no vision of how the good society can be achieved. Liberalism presupposes a basic faith in institutions as they are and in the fact that they can be gradually transformed into better versions of themselves. Otherwise it has no notion of progress."
(Galper, 1975, p.20) (my emphasis)

Above all else liberalism is an ideology which can embrace an enormous variety of professional practices (e.g., in the criminological area, from social work in large urban areas justified as a form of crime prevention programmes right through to individual chemotherapy or behaviour modification justified as social defence); and so orthodox liberalism has been the appropriate ideology for the enormous number of professionals employed as State workers in the period of the post-war economic expansion, which is now at an end.

Some of the inadequacies of professional liberalism were made plain in the critique advanced in the late 1960's and early 1970's by the orthodox liberal's alter ego, the radical liberal. The activities of professionals employed by the State were shown to be ineffective in performing their announced function of resolving social problems. In many cases they were indicted for having the latent consequences of institutionalising or even



amplifying these problems (in order to ensure that professionals continued to have a clientele). (McDonald 1976, Friedenberg 1976). Radical libertarians, in particular, indicted professional liberals for their continuing use of the rhetoric of benevolence and care to mask the reality of a discretionary exercise of considerable degrees of social control over clients, with minimal regard for classical conceptions of guilt, due process or legal representation. (Schur, 1975; Cohen, 1979c). In the work of radical libertarians, the state's control over clients (deviants, criminals and others) was developed either in the name of some unexplicated notion of a society without controls or in the name of a classical and individualist concept of society in which all forms of state control over individuals must follow a formal and public process.

The irrelevance of both these professional and radical versions of liberalism to the material reality of the working class in late capitalist Britain (and, indeed, to the underclass in the U.S.) should be clear from our discussion of the realism of right wing criminology. The demands of professional liberals for a continuing expansion of state social work interventions, discretionary welfare payments, bureaucratized health provisions and compulsorily progressive educational provisions are likely to be experienced by working class people merely as further elaborations of the already alienating and authoritarian state, without there being any evidence that further expansion of the state will be of concrete assistance in daily problems of living. Professional liberals will also experience the incredulity that confronted middle class socialists in the late 1970's when they tried to rally members of the working class in defence of "their" health and welfare services. In the particular area of crime and delinquency, it is even harder to imagine how a liberal defence of the activities of state professionals could have any meaning. The interventions of social workers into what they see as disorderly working class families are experienced by most of those families as

a further disruption of the "natural" family unit, and even the most caring and humanitarian of community homes which takes working class children away from their families will experience the contradiction that the children will abscond back to their officially inadequate parents. It is even difficult to imagine massive popular support in the working class for the defence even of the most developed programme of intermediate treatment, even though some I.T. programmes do actually provide a functional equivalent of a vacation for many working class children and their parents.²

Radical or libertarian inversions of professional liberalism of the kind advocated by Stan Cohen in this country are even less likely to support within the class. Arguing for limitations on state control over youth, for example, seems unlikely to deal with the anxieties of residents of working class communities living in and around football grounds, or within the routine fears of workers on public transport systems. And even if "radical non-interventionism" could win support as a popular response to troublesome youth, and the hypothesised cause of spurious labelling and deviancy amplification thereby removed, it is unclear what this act of permissiveness would concretely contribute to the actual improvement of social order. Only if one believes, as does Edwin Schur and sometimes Stan Cohen, that the important operative cause of delinquency in a divided, and increasingly crisis-ridden, class society is the fact of excessive intervention and labelling by professional social workers, could radical non-intervention in itself appear as a contribution to the creation of a genuinely orderly society.

Radical critiques of professional liberalism have been conducted on behalf of just about every disorganised deviant interest other than that of the currently disorganised working class itself. That is to say that they have mounted critiques of the way in which state controls may repress the authentic humanity and constrain the freedom of action of gays, lesbians, transvestites

and other sexual deviants; working class youth in pursuit of leisure and entertainment; and a variety of other people who frequently find themselves to be the targets of law, most of whose activity is said to be "victimless" and without material effect on other people's living standards or personal space.³ They have advocated "if only by implication" the removal of any such controls in the name of tolerance or civilisation. In The New Criminology, prior to our full encounter with the implications of Marxism, I myself argued, with Paul Walton and Jock Young, for the creation of :

"a society in which the facts of human diversity, whether personal, organic or social, are not subject to the power to criminalise."
(Taylor, Walton and Young, 1973, p.282)

and this was read at least by Paul Hirst as advocacy of "an anarchy of conduct" (Hirst, 1980, p.85) and by others as a call for the abolition of law and/or of social control.⁴

Intentionally or otherwise, calls for the removal of social controls can only emanate from the most dangerous of utopian ideologies; that is, from ideologies which only conceive of conflicts of interest (for example, between men and women) as being constructed in ideology, and as having no other (for example, biological or "structural") reality. Conflicts of interest here are spoken of as if they can be "talked through" or transcended "in practice". Their brute and factual basis in the reality of social and economic relations is downplayed, and then the idea of a tolerant diversity of all interests, none of which is fundamentally contradictory with any other, is advocated: the "universal interests" of the feminist, the rapist, and the pornographer, for example, by implication reside in mutual toleration.

There are errors here, which we did not speak of in The New Criminology (which was not centrally about such questions). Most importantly, socialism does not in itself abolish conflicts of interest (for example, between patriarchal and feminist forms) and re-establish them as equal forms of

"human diversity", coexisting together in their individual ghettos of preference. Socialism must be a set of social relations which allows for struggle between interests, and allows for a continuing "revolution" in the relationship between interests. It cannot merely institutionalise all forms of diversity in stasis or treat them as if they were of equal value to a socialist set of social relations.

This is also to say that there has to be a State under socialism and that it does have to exercise some control over interests which are not deemed to be in the common interest. The identification and protection of the common interest would be the project of what, with Walton and Young, I referred to as "socialist legality"; and it is clear that any such legality would need to involve a legal apparatus that was authentically independent of any central State and also routinely responsive to the recognition and representation of "interests" that were supportive of socialist order. There would have to be an authentic utilitarianism along with an institutionalised recourse to popular and class representation, and there would also have to be a State apparatus under a form of control of the class as a whole (rather than under state bureaucratic control alone), which is capable of policing the broad society, identifying and processing offenders against the common interest. We would still want to argue that this processing of offenders does not need to take the form of criminalisation, in the sense of involving a stigmatising and debilitating process of marginalisation and incarceration of rule breakers, but we certainly recognise that offenders against a common interest under a fully democratic socialism would clearly need to feel the weight of "popular justice".

These last remarks are nothing if not utopian in the present moment. They are intended in part to clear the record, but also to point out the distance between radical liberal critiques of social control as such (with which The New Criminology could certainly have been identified by a

symptomatic reading) and socialist critiques.

What is clear is that no vision of an alternative economic order or of a social order has been offered by liberal professionals in the aftermath of the end of the Keynesian boom or the face of the social deprivations of the socialism cannot therefore continue to work "in the wings" of Keynesianism and liberal social policy. A fundamental revision of social democracy's posture vis-a-vis liberal professionalism is required, even if this may mean the abandonment of the traditional defence of all forms of professional work for the State.

7.3(a) Social Democracy as Authoritarian Statism

In Chapter Six, I tried to utilise the recent work of Stuart Hall in order to highlight the way in which social democracy has allowed itself to take the place of Authority and the State, against the people. This has been most marked of all in the various post-war Labour governments' use of a variety of incomes policies against large sections of the working class, notably during the years of the "Social Contract" but especially in relation to low-paid public sector workers in the winter of 1978-9. One consequence of this posture of "authoritarian statism" in wages policy is the present collapse of commitment of many public sector workers, even in the National Health Service, to their clients and patients, and also the increasing acceptance of various forms of "populist" rhetoric (including Thatcherism and racism) as to the cause of current dire shortages of provision (including wage provision) in the public services.

But Labour Government use of the State as a means of "managing" and then repressing social problems and popular grievances has not been confined to its economic strategies. The expansion of the various forms of liberal professionalism,

the first theme discussed here, did actually involve massive expansion in the variety of State interventions that are possible into civil society. The "net of social control" has been widened, as we saw in Chapter Six, to include work with "pre-delinquents" as well as released borstal boys; neurotic and troubled women in families as well as the seriously disturbed long term patient; and general surveillance of inner-city neighbourhoods as well as the particular policing of black individuals. The boundaries between civil society and the penal system have become more blurred, and also within prisons and juvenile institutions new calibrations of control within regimes (between open and closed conditions, and containment and resocialisation regimes) have arisen. Each of these forms of surveillance, control and containment has authority as a form of State power: that is, it is experienced by citizens of the broad society as a part of "the power" that is exercised over them by some unspecified Other. This expansion of the "strong state" has had disabling effects, in weakening any popular sense of being able to influence or control one's life chances (and thus encouraging fatalism and privatisation), but it has also encouraged a populist revulsion against the bureaucratic impersonality, the complexity, the lack of accountability, and the meanness of the form and substance of state social provision. As we have seen, this has been especially marked in the rules governing the practices of offices of the Department of Health and Social Security; but bureaucratisation and alienation of the state workers from his or her client is far from absent even in local authority social work departments. It has also identified the state (and thus collectivism) as being, by definition, a form of unfreedom as well as being in itself one of the "problems of living" that unnecessarily confront working class people. This populist sentiment emphasises the interests of people in general set against the state, and in this way it disconnects social democratic politics (as a form of "statism") from popular interest.

in need, which may amplify their problems through stigma, and which could always have been much more effectively resolved in conditions of community solidarity. Lack of power here has generated a distrust of the direction of state social work. Clearly, there are differences between the activities of liberal social workers, employed by the State, in trying to help a family or an individual "in trouble", housing officials allocating houses or dictating conditions of residence, and child care workers "treating" working class kids. And there is a lot of difference between all of these State workers and officials of the DHSS investigating working class areas for claimants attempting to discover who is living in cohabitation. All the same, democratic practice that the State acts in lieu of the class, rather than at the behest of local segments of the class, inevitably renders each intervention of the State, whatever its particular purpose, an instance of the general uncontrolled "power" of the State.

Social democratic politics has to be reconstructed in a "popular-democratic" form. That is, the recognition of a State form as a necessary element in the administration of complex industrial societies has to be connected to the recognition of the State as a site of popular needs and popular political rights. The lack of such responsiveness to popular needs and rights in authoritarian statism is another source of the rise of the "authoritarian populism" that has been articulated by Thatcherite elements in the British Conservative Party, as well as by the radical right in the United States.

Such a "democratic statist" conception of social democracy may have to begin at local levels, as currently appears to be happening, for example, in the opening out of the local City Council in Sheffield to local organisations and communities. And it will almost certainly have to happen around particular issues and campaigns, like the subsidised bus fare policy in Sheffield, or the accountability of local police to women in West Yorkshire.⁵ But in order that it can effectively mount a challenge to "authoritarian populism" as a

Social democracy is highly vulnerable to such a populist attack not only because of its collusion with liberal professionals and their "expert" interventions into the lives of working people (which have proven to be harassing and alienating in practice, and often to be ineffectual or counterproductive in their consequences), but also because such interventions were and are unchecked by any regularised and routine form of popular control. State power has been experienced as exercised by "them" rather than by "us", and this fact of statism has correctly been understood, popularly, to be part of the reason for the lack of success that frequently accompanies such measures. In other words, working class people have experienced "social democracy" as a condition in which they have no influence over what state professionals do to community deviants or do in respect of other community problems generally. Lack of power has meant lack of ability to influence the direction of state penal policy. But elaborate schemes of "treatment" of juvenile delinquents by liberal professionals are demonstrably no more successful in reducing levels of vandalism in working class estates than the much loved clip around the ear of traditional working class community. That such communities no longer exist in their prewar form, and that such discipline could no longer "work" in quite the same fashion, does not detract from the fundamentally correct scepticism that working class people have of liberal professional, statist measures. The housing that has been built for working people by professional architects throughout the post-war period was designed and erected without any significant popular consultations, and with characteristically liberal individualist disdain for the established patterns of working class sociability. It now exists as a fundamentally authoritarian restriction, in many cases, on working class life and leisure, in forcing the residents of high rise flats and estates to retreat into private space. Lack of power here has meant that the class has been unable to influence state housing policy. Liberal social workers recommend measures of support (home helps, more frequent visits, cash coupons etc.) for isolated problem families

hegemonic conception of social order - in other words, as a popularly accepted, consensual definition of social reconstruction - "democratic statism" will have to evolve as a thoroughgoing democratisation. The state itself will have to be democratised from within, in the process of being challenged to meet needs and to enshrine rights by feminist, radical and social democratic organisation.

I shall want to address specific instances in the very last pages of this thesis. For the moment, we want to underline that this democratisation of the State must clearly involve a fundamental revision both of the familiar authoritarian, corporatist form the State assumed throughout the post-war period (until 1979) and a fundamental rejection of the conception of the State in Thatcherism (where a strong and disciplinary State is also erected, but apparently to police the freedom of the mass of the citizenry).

7.3(b) Social Democracy and Reform

Such a conception of a democratic State form will obviously demand a revision of the ends to which social democratic politics have been directed throughout the period of the post-war "settlement". This is not the place to enter into a doctrinal investigation of the long-standing debate between "reformism" and "revolution" in socialist thought. What is clear, however, is that the version of the reformism which has been in dominance in ideology and in practice in Labour Governments and in influential social democratic constituencies during the post-war period is no longer a coherent option.

In place of a reformism which has tended to manage and therefore to reproduce the social relations of a class society, there has to be inserted a politics which will diminish and eventually abolish the longstanding and anachronistic divisions of the oldest class society in the world. These divisions include not only the fact of class in itself but also the independently

effective fact of patriarchy and also of racial division. Only this kind of politics can authentically claim to represent a universal interest. Populism, of whatever form, is always in the end a form of ruling class politics, advanced when historical contingencies do not allow the ruling class to "represent itself" as a natural form of authority and when the economic conditions are such as to necessitate a direct attack on the accustomed alliance of the left and organised labour. (Cf. Laclau 1977). Utopian though such a radical conception of the abolition of social division may appear, it is no more impractical or desperate an option than the social reconstruction implied by Thatcherism.

Programmatic observations of a generalised character aside, the character of social democratic reformism is crucial in the specific ideological struggles taking place over crime and law and order. That is to say that the changed economic conditions that have been created by the demise of Keynesian solutions to capitalist economic problems, along with the changed ideological conditions that have been created by the attack on social democratic social order by the radical Right, demand an entirely new set of responses from social democracy.

A key element of this reconstructed social democracy must be a revival of a particular kind of commitment to crime control. The left must relinquish its accustomed posture of agnosticism as to the effectivity of particular kinds of crime control measures and also modify the libertarian revulsions to all forms of policing, control and containment. In particular, the left must declare itself to be in favour of the proper policing of established working class residential areas and also areas of black settlement. The character of the policing should be decided in conjunction with local residents active in local community groups, and regular reports should be submitted by police to enlarged local authority police committees, on which should sit democratically elected representatives of all community groups, and especially all minority group organisations. I will discuss this proposal in more detail in a later section.

The left should also declare itself in favour of the effective policing and control of the inner city and indeed of all public space in the city. The bus and rail stations of most major urban areas in Britain are now major centres of vandalism, public drunkenness, and sexual and other forms of assault. It was and is no part of any socialist criminology to argue that behaviours of this kind (however patterned and discriminate they may sometimes be) were evidence of an authentic socialist diversity; (they are expression of the brutalisation of the underclass in an old class society) and it is no bourgeois apologetic to argue for the defence of the mass of the urban population from the real harassment and the real dangers of the late capitalist city.

The point about the demand for effective policing is that it is contradictory with the existing direction of police practice, which (as we showed in Chapter Five) is continually moving in the direction of the defence of public order as defined by the state. The demand for effective policing speaks to particular and urgent needs of particular segments of the citizen population. In particular, it echoes the increasing demands of Asians and West Indians for protection for racial attacks,⁶ of women from attacks by men, and of working people in general from the variously brutalised cohorts of skinheads and hard unemployed lumpenproletarian youth who currently patrol the urban space of Britain. The reform of the police, and the "subjugation" of the police to effective democratic accountability to communities it polices, is therefore no mere liberal flourish: it is an essential part of any programme of winning the support of a fragmented "community" for social democracy (rather than the strong capitalist state) as a guarantor of public order. Future reform of the police must be in the direction of the defence of real (but very varied localised and specific) popular needs for law enforcement (defined by local communities) rather than in the abstract direction of law and order as defined, undemocratically, by the

State. A socialist conception of policing is one that intervenes in the debate between the two competing versions of policing (the authoritarian statist version of community policing and surveillance spoken of by John Alderson, and the authoritarian populist conception of police as a "fire brigade" and a morality patrol spoken of by James Anderton) and speaks of policing instead as a popular community institution. It is a conception of law enforcement which Hermann Mannheim understood in the 1940's as an essential precondition of legitimate social reconstruction: it must be an essential precondition of any more fundamental socialist reconstruction of the future.

Socialist reconstruction (like Thatcherism) requires effective policing in order to work. But, unlike Thatcherism, it obviously does not work on the basis of policing or indeed on the basis of any penal measures arrived at for the containment of anti-socialist elements. The key point about an effective socialist reformism is always its ability to transform the fundamental exploitation of labour by capital (and this must always be the central objective of its activity and initiatives) and also to end the effects of this exploitation in lived social relations (one of which is the kind of interpersonal contact which occurs in urban areas). In other words, for socialist reformism to win a popular legitimacy, it must begin to win an economic struggle, by abolishing the dependency of production on Capital, but it must also win an ideological struggle, in its ability to reshape everyday lived social relations into a more human form.

So a socialist policy towards reform must be predicated on its ability to transform the character of capitalist social and economic arrangements, and socialist policies of reform of law or of welfare, for example, must properly be formulated in terms of this initial premise. This is to say that policies towards the reform of law or towards policing cannot be substitutes for the initial, fundamental economic and social reconstruction. Demands for the democratisation of policing, therefore, are not in themselves part of an integrated programme of socialist transformation, and they are not, and cannot be, substitutes for any such a programme. So socialist reform strategies of the future must be

integrated in this way, in order to avoid the danger of a piecemeal and unprincipled approach to the reform of discrete elements of the State apparatus.

The notion of an "alternative economic strategy" is becoming much more widely understood and canvassed at the present time, as monetarist policy wreaks havoc on industry, on jobs and on investment for the future. Though subject to different interpretation and emphasis, the alternative economic strategy is formulated in terms of centrality of human need. It is concerned with the organisation of production for socially useful purposes, including the creation of useful and supportive employment and also the fulfilment of widespread and urgent human needs. In particular, theorists of the alternative economic strategy writing about contemporary Britain point to currently unfulfilled demands for medical care and indeed for operations and hospitalisation, to the need for alternative sources of food and fuel energy, for a new and more varied housing stock, and to pressing needs for new forms of community leisure provision, all of which could be met by a production system established to meet collective needs rather than private profit.

Organised social democracy, in the form of the Labour Party, currently has no alternative social strategy, however, except in the shape of some reflex desire to defend the existing apparatus of the welfare state.⁷ At the time of writing, there are some signs of a process of re-thinking of social policy on the Left, especially in pamphlets (like In and Against the State), in new journals (like the Bulletin of Social Policy and Critical Social Policy) and in the very large conference on the welfare state held in London by the C.S.P. collective in November 1980. For our purposes, one of the key questions in this process of re-thinking will be the development of a social strategy like the alternative economic strategy now articulated on the Left, articulated around the changing and urgent needs of working class people; women; blacks and young people rather than the interests of capital. It will have to be a social strategy which (unlike its Fabian predecessor) does not assume the appeal of the State and the Family as the sources of community and individual realisation for all citizens of

industrial society. It can only be out of such a social strategy (and out of the vision of an ideal socialist order) that sensible socialist reformism can emerge, and the incoherence of "modernising" or "permissive" reformism of the recent past avoided.

7.3(c) Social Democracy and an Alternative Social Strategy

In Chapter One, we identified the centrality of the family as a guarantor of social order in the early post-war thinking and policy-making of the Fabian Society and the Labour Party itself. Recent statements from the Labour leadership and publications of the Party itself do not suggest that developments since in social relations in and around the family have had any serious effect on social-democratic thinking. When James Callaghan as Prime Minister in October 1978 took time off from the management of the economy in order to send a message to a large national conference on vandalism, (a message which was headlined in the London evening press) he announced that

"mindless destruction and damage is a danger signal of the breakdown in the rules, standards and disciplines of the family and the country, especially when they occur among the young".

(Evening Standard, 31 October 1978, my emphases)

As if anticipating explanations of this vandalism couched in terms of the inadequacies of the post-war Labour Governments' efforts in attacking economic and environmental deprivation, Mr. Callaghan continued by asserting that

"The Government can only do so much. Parents bear a large part of the responsibility for bringing up their children properly "

(Ibid.)

He then linked this appeal to parents to bring their children up in a "proper" fashion to a national mobilisation, declaring that there was a need for

"every person in the realm to help create a sharing, caring society which will make outcasts of violence and vandalism."

(Ibid.)

Similar sentiments, less rhetorically expressed, find a place in the official Labour Party pamphlet on "The Deprived Child" (1973) and in the booklet on "Law, Order and Human Rights" produced for the use of parliamentary candidates in 1979.

I tried to show the function of this kind of talk about crime and delinquency in Chapter One. In the Callaghan speech, the particular objective appears to be to argue that social democracy has done as much as it can in tackling problems of deprivation, urban decay and blight, and that any continuing vandalism must therefore be a product of other factors. In particular, Mr. Callaghan, like Sir Keith Joseph in his popularisation of the notion of the cycle of deprivation as arising primarily out of pathological child-rearing practices in the underclass, invites his listeners to see the problem of youth crime as a product of faulty parenting in multiple problem families. This formulation "problematicizes" the internal dynamics of particularly disturbed families as the cause of social problems, crime and violence, especially in working class communities, and detracts attention from the worsening conditions in inner city areas which in turn derive from the destructive logic of urban development in capitalist societies.

Callaghan's speech has at least two other ideological effects. It suggests that the existing direction of Labour Government policy on urban development and social deprivation is very developed and far-reaching and that therefore any failings in such a policy could not be due to the policy itself (this allows the shift towards family pathology). But the Labour Party in Government had a very limited, and fundamentally corporatist, policy towards the inner city and urban blight. That is, it has tended to use its own position of State power to direct money towards local authority schemes of urban renewal, many of which schemes were developed in close collaboration with local capital rather than local communities; Labour Governments and local authorities have tended to generally work only through existing, established interest groups. When one other radical interest group, the Community Development Project, established by the Labour Government of Harold Wilson, began to point to the frequent incompatibility of local capitalist and community interest, it was closed, by the Labour Government of James Callaghan.

Callaghan's speech also suggested that the problems experienced, often in a "multiple" form, by certain families arose out of the inadequacies of the parents themselves. There is a traditionally social democratic reversion here to some absolutist conception of proper "child-rearing", and in particular to the deferential proletarian notion of the family as an institution for inculcating bourgeois respectability and good order amongst otherwise unruly working people. But there is also a very limited and ideological conception of the "family" and its relationship to wider social forces. It is almost as if "theFamily" stands apart from the social pressures and contradictions of late capitalist urban existence, largely unaffected by changes in the economic structure or moral order. There is no reference in Callaghan's speech to the massive effects on youth of the rapid decline in the casual labour market in the 1970's, or the consequences on women who had also entered the waged labour market in order to express themselves outside of motherhood and the nuclear family. Callghan's rhetoric about the family is a rhetoric which literally represses the broader personal and social needs of women and also of young people, and instead speaks of the family as an institution which must discipline its constituent members, in the name of "the rules, standards and disciplines of the family and the country".

Gordon and Hunter, in an insightful article on the successful use of a reactionary and patriarchal "sexual politics" by the New Right in America as a means of gaining working class support, have shown how this kind of defence of the family has a rational basis in the experience of the class. The family has historically acted as a

"vital source of economic and emotional support, as well as a basis for anti-capitalist struggles, as in strikes, community boycotts and cultural rights".

(Gordon and Hunter, 1978-9, p.13)

Moreover, the family has acted as an escape from the loneliness and the disintegration of the wider social and material world of capitalism. Finally, in the current period of inflation and fiscal crisis, the family has once again informally taken on a set of servicing functions that had earlier been taken over by consumer outlets and private and public health services.

"Many of the services that families provided - ranging from cooking to healing to entertainment - must be purchased or paid for through taxes, and the services paid for are an inadequate approximation of more personally provided services."
(Ibid.)

There is no doubt that "the family" has also had once again to take on these kinds of responsibilities in Britain in recent years, and that this has meant concretely that many women in both the middle and working class have had to readjust their expectations vis-a-vis the waged labour market, and to return to domestic labour. What is not at all clear, however, is whether this is a matter for celebration amongst men or amongst women. There had been no significant articulation of the family as a populist issue by the Right in this country of the kind that occurred in the USA, albeit the "defence of the family" (specifically from "moral pollution" of the media) has been the central slogan of Mary Whitehouse's National Viewers and Listeners Association. What has happened instead is that a traditional, social democratic rhetoric about the family has been articulated by Labour leaders (as in the Callaghan speech) and by senior social workers as a preferred alternative to the generalised rhetoric of the Right regarding the collapse of Social Authority as a whole (as a prelude to the call for the reintroduction of penal discipline by the State). What evidence there is on "the family" in Britain in 1980 suggests an astonishing degree of ambiguity, contradiction and pluralism.

Divorce rates have been increasing in Britain very rapidly over the last decade and a half, but so also have remarriages.

"In 1965, 11% of the 370,000 marriages involved a divorced bride or groom; this increased to 22% of the 426,000 marriages in 1972, and increased further to one in four marriages in 1974".
(Leete, 1976, pp.6-7)

Most leading texts on family sociology in Britain now start with a recitation of the definitional difficulties involved in any discussion. Thus, Peter Worsley et al,

"Uncertainties about the definitions of words reflect ambiguities in social relationships ..."
(Worsley et al, 1977, p.168)

They observe further that :

"all of us, in society, are engaged in the business of defining 'the family' by the ways in which we think and act in relation to those whom we label as family and non-family."
(Ibid., p.169)

Contemporary ambiguities surrounding "the family" revolve predominantly, though not exclusively, around the issue of the sexual division of labour.⁸ Research undertaken at the Birmingham Centre of Contemporary Cultural Studies, for example, into situation comedies shown on television in recent years shows that nearly all these comedies are taken up with making jokes of the troubled areas of "masculinity" and "femininity", whilst analysis of popular women's magazines and of male pornography reflects a similar attempt to negotiate these changing definitions (Winship 1980; Mort 1980).⁹ More obvious of all, perhaps, is the work done by the five popular daily newspapers (the Sun, Star, Mirror, Mail and Express) around these questions, and in particular in their sponsorship of eroticized and open relationships between consenting heterosexual adults. This is not to say that tolerance has been extended towards all forms of sexual preference. Popular television shows and everyday popular humour are as anxious and antagonistic towards homosexuality as were popular newspapers in earlier periods; there is an almost universally negative reaction to attempts to lower the age of consent below 16; and there are stunning silences in popular discourse about the facts of lesbianism. The freedom granted to adult heterosexuals is paralleled by a disciplining and a silencing of other sexual characters. (Pratt, 1981).

But so far as heterosexual preferences are concerned the Government of the radical Right has made no attempt to reassert a classically puritan posture, and neither has there been any direct attempt to reestablish the nuclear family ideologically as the only, natural or universal form of sexual or social relation.

So whilst we do not live in a society of mutual toleration of all forms of personal relationship or sexual preference, we do not all live in families; nor either do those of us who live in families find the family to be an uncontradictory, unproblematic institution. The structure on which social democracy placed so much hope in the 1940's - the nuclear family - no longer relates to "reality" in quite the way it may have done then. In some respects, this is simply to say, following researchers into popular youth culture in the 1960's, that the kinship group has lost some of its importance to the peer group, especially in the working class (Cf, inter alia, Downes 1966); but, in other respects, it is also to point to the fractured and contradictory status of the family, particularly as an institution in which men, women and young adults struggle for support, group membership and self expression.

The women's movement has developed major critiques of the repression of women in the family, ranging from studies of the differential socialisation of young girls and boys to investigations of the disadvantaging of women in the waged labour market and in the welfare state. Recent analytical work in the women's movement has resulted in the demand for the "disaggregation" of the family, or, in other words, the dismantling of all laws and conventions which treat women as a part of a husband's estate (for tax purposes, or for purposes of social security etc.) (McIntosh 1981). Radical feminists have argued that women should now break entirely with heterosexual relations, on the grounds that they are irretrievably patriarchal (Delphy, 1979), and groups of socialist feminists have once again initiated communal forms of child-rearing, in order to avoid having to retreat into the contradictory and privatised interior of the bourgeois nuclear family.

Very little of this initiative in life styles may be percolating into working-class neighbourhoods. But it is well known that the changes that have been occurring in the sexual division of labour, in particular in the increase of the number of working class women who are in the wage labour market, has had effects within the working class. Either wife beating is on the increase in the working class

or else working class women are far more willing to leave their husbands, to escape to refuges, and also to report the assaults being made on them (Pizzey, 1974; Dobash and Dobash, 1979). Psychiatric disturbances, in particular, those associated with stress, continue to increase, as do crime-rates, amongst women. There is no open revolt against "the family" as a preferred form of living - most divorcees appear to want to remarry - but neither is there evidence that the family is a universally celebrated or romanticised institution, in the way that it appears to be in social democratic policy thinking.

Our argument here is that any alternative social strategy by the Labour Party must begin to break with rhetorics that are defensive in a one-directional manner of "the family" as a central element in social order, and begin to construct policies that recognise the rights and needs of individuals, who may or may not choose to live in nuclear (or extended) families, who may want to live in "serial monogamy" or who may want to live in broader kinds of communities. The legal and practical difficulties that are currently involved in departing from the nuclear family form are partly responsible in themselves for the continued reproduction of unhappy existences in nuclear families. That is to say, the left should not fall into the trap of advocating either a straightforwardly oppositional or celebratory position on the institution of the family. It should recognise the support that the family provides for many working people. It should neither be dismissive of the widespread popularity of the "bourgeois" nuclear family relationship, nor be too romantic or utilitarian as to the social and economic functions the family may perform.

To argue for an attack on the exclusive concentration on the family-society couplet in social democratic thinking is not, I repeat, to argue that the family is currently withering away or to argue that it will or should wither away under socialism. It is to argue that a properly social-democratic social policy must allow people to engage in what the demographers call "family formation" according to their needs and wants, and not to be penalised (legally, financially or otherwise) if they choose to do otherwise. Feminist analysis of the family under

existing social democracy has demonstrated conclusively that women who choose not to form families are penalised in particular ways (whilst women who do form families are penalised differently).¹⁰

Any such revision in social policy would have fundamental consequences across the entire field of policy activity in a future social democracy. In particular, the deprivileging of the nuclear family would have fundamental effects at law, especially in the already fluid area of family law. The patriarchal character of much familiar law should be challenged by women, who should be given state support for such challenges, and by children and adolescents. A reconstructed social democracy of the kind that has been discussed here could not merely be a reassertion of the patriarchy of the pre-war and early post-war working-class (there is no essential a-historical class interest), but would have to be a democracy in which social interests could contest according to a new utilitarian calculus. For social democrats, this should encourage new orientations both towards particular aspects of law and towards law in general. That is, the law could begin to be seen other than in conspiratorial terms (merely as a mystifying and coercive aspect of ruling class domination), as an arena for institutionalising alternative forms of social living as legal rights. In other words, for example, women's struggle for "disaggregation" could go on in the law courts, as could struggles over different people's rights after marriage breakdowns. Such a popularization of the use of law for the settlement of disputes would depend on, and therefore might even force, the kind of democratization of law we discuss in the final section of this thesis. What is clear is that the classic disavowal of law by social democrats is a posture which will not aid the creation of a viable alternative social policy; any more than will the repetitive insistence on the family as currently constituted as the inevitable basis for all forms of social order.

A third area requiring immediate reconstruction in social democratic thought is the question of youth, which has been the subject of very detailed treatment at various points in this thesis. If we take the pronouncements of the

OECD and of western governments seriously, "juvenile labour markets" are going to be much less extensive in the future than for some time in the past. The "new technology" will virtually put an end to the need for a large reserve army of labour, and the crisis of profitability will force increases in lay-offs in competitive industries.

Post-war social democratic thinking about "modern capitalism" has tended to assume a certain continuity in the character of the economic and social relations, including the relations of production and employment. In a similar fashion, it has also tended to think that a refurbished Keynesian capitalism could continue to produce a surplus with which to fund a variety of social programmes (including those involving job creation funded out of state revenues). These two assumptions have been the basis for many social democratic responses to troublesome youth throughout the post-war period (in America, in the form of the Mobilization for Youth programmes during the 1960's, and in the Youth Opportunities schemes of the last Labour Government in Britain). The state has subsidised an "artificial" labour market for youth.

Neither private nor public sector provisions can be expected to fulfil this task once the current world recession and the new technology have their full impact on levels of youthful unemployment in the west. The pessimism and nihilism of New Wave youth culture is therefore likely to be justified; and, unless socialist advances are achieved, the main political beneficiaries of the recession are likely to be racist and fascist parties, which have recently recognised the primary importance of recruiting in the massive army of unemployed and alienated youth.

What is abundantly clear is that the familiar response of social democrats to the "youth problem" - as a "temporary" problem occurring for youth particularly in the transition from school to work - no longer makes sense of the social relations of "modern" capitalism. There is likely in the near future to be a large youthful sector in all the "developed" capitalist societies which can have no

realistic expectation of secure, long-term employment. The full implications of this recognition cannot even begin to be grasped, culturally, politically or in social policy terms, by a Fabian and/or liberal professional version of social democracy which speaks only of economic deprivation and the pathological child-rearing practices of the problem family.

7.3(d) Social Democracy and Commonsense

Throughout this thesis, but especially in my discussion of consensus politics in Chapter Two, I have been trying to show the baneful effects of social democracy's commonsensical and empiricist acceptance of "crime" as a major social problem. To recognise social disorder in this particular way, as an expression or consequence of "criminality", has resulted in very substantial accommodations to conservative ideology and to ruling class institutions. In Chapter Two of this thesis, we identified this process of accommodation as having been most marked during the 1950's, especially in the aftermath of the increases in delinquency statistics after 1955.

Weakening the hold of the commonsensical conception of crime in social democracy will be no easy project, because the power of the commonsense resides in its proximity to the lived reality of working class people. Theft of property and interpersonal violence are much more frequent occurrences in working class residential areas than they are in middle class areas. Working class people do spend greater amounts of time in public spaces like the "downtown core" of our cities and the inner city (travelling to and from work and home) than do middle class people. There has been a real dislocation and dis-ordering of patterns of working class life throughout the post-war period. It is not surprising that this process of dislocation has been "appropriated" in popular commonsense, and "explained" in terms familiar to the class (the failure of certain parents down the street, the weakening of discipline in local schools, the entry of strangers from the Third World into the neighbourhood). Given the posture of post-war Labour Governments towards management

of capital and their preference for pragmatic and consensual politics, it would be absolutely amazing if the working class were anything other than "commonsensical" in their accounts.

But commonsense does not actually make sense of many of the developments that have occurred, and are now occurring, in Britain. To take one contemporary example from commonsensical discussion of "freedom"; "commonsense" tends to attribute a "freedom of expression" (without the interference of the State) to political groups and to the press. But it can quite easily be shown that, under existing mass media, "freedom of expression" will result in the legitimization of groups of the extreme Right, as occurred vis-a-vis the National Front during the 1979 General Election in Britain, and the de-legitimation of their left-wing opponents. (cf. Clarke and Taylor 1980). Similarly, the commonsensical celebrations of the "freedom of the press" does not explain how such a very limited range of political and social opinions emerges from the popular newspaper press in Britain today. (cf. Curran 1979). "Freedom" here is not the production of the informed choice between alternative views, but the freedom of press proprietors and their a-moral, but highly professionally socialised, apparachniks to reproduce the rhetorics of populism, Thatcherism qualified (occasionally) by some liberalism. What never emerges from the everyday press in Britain is a newsworthy defence of socialism as a solution to our present discontents.

Earlier in this chapter, we spoke of working class commonsense as having at least as much relevance to problems of order in working class housing developments as do the interventions of liberal professionals. But this was not to suggest that commonsense would work as a means of restoring the status quo ante. In other words, commonsense cannot conjure the social conditions (and therefore the social order) of earlier historical periods. The relations of the class to its environment may be lived in commonsense, but still the commonsense deceives the class.

Perhaps it is once again in relation to the women's question that the ideological character of commonsense is most apparent. There is no doubt at all that the commonsense of the class contains a full store of "wisdoms" about the

essential character of women and their inferior, troublesome, contrary and generally untrustworthy personalities. Working class jokes make it clear that "their" women do not really want to work for wages or to be independent; that they really do like being dominated domestically (and sexually) by a single man. These women are the private property of individual men. There are also other women who enjoy putting on a display for all men, and that these are the kinds of women who say no to sexual relations really mean yes. These women are the common property of all men.

This kind of ideological account has found expression in the kinds of social democratic responses to prostitution and rape we discussed in Chapter Four of this thesis. "Socialist" male MP's collaborated in 1959 in the passage of legislation which allowed women on a police officer's evidence alone to be described in court as "common prostitutes", and subsequently to be imprisoned or fined for selling their sex. The MP's did so on the basis of rhetorics which explained prostitution in terms of the pathology of the women, and which were silent on the overarching presence of patriarchy. Rape law has remained unchanged in this country until very recently; it was only in the aftermath of feminist agitation that the Heilbron Committee's recommendations (that a woman could accuse her rapist in court anonymously) was accepted by a Labour Government, with a consequent highly significant increase in the number of rapes and sexual assaults reported. And it is still commonsense in contemporary social democracy to allow the spread of (sometimes violent) pornographic images of women even into advertisements, television, cinema and pornography proper, as if this imagery "works" on men's imaginations without any real behavioural effect. In the current conjuncture of the women's struggle (with the Yorkshire Ripper merely acting out what many popular media suggest), a commonsensical adaptation to a decadent bourgeois culture simply will not do, and certainly does not form the basis of a social democratic alternative.

These popular appropriations of "commonsense" are reflected faithfully

in the preference of social democratic intellectuals for empiricist and anti-theoretical accounts of the world. So social democratic criminologists, like C.H. Rolph, may explain prostitution, for example, not just in terms of the pathological character of some women but also in mundanely positivist terms as being a product also of deprived environments and difficult economic circumstances. Rape may be given additional explanatory contexts, as in the work of American interactionists who want to identify the patterns of "victim-precipitation" in rape. What none of these kinds of accounts do is to address the overarching structures of Patriarchy and Capital. Neither do they try to explain the particular, contradictory and even fundamentally crisis-ridden "conjuncture" that exists in contemporary western society vis-a-vis the relations of the sexes and the relations of Capital and Labour. In "theory" as well as in popular folklore, we are left still - hopelessly - with "commonsense".

It should also be abundantly clear from the remarks made about the need for alternative social strategy vis-a-vis youth that the existing (very rich and forthright) commonsense of the class on "youth" and its proper discipline will not really "work" in the current conjuncture or in the immediate future. This commonsense was forged in an entirely different moment, at the time of the development of the industrial base of capitalism, and cannot make sense of the social relations of a capitalism that does not employ large sectors of the population in industrial or associated office labour. It makes even less sense of a capitalism that simply does not employ very large sectors of the population at all. Without the help of the "discipline of the workplace", working class commonsense may be powerless in the project of reproducing relations of order and deference between the classes or indeed within the class.

7.4 Agencies for a Transitional Socialist Criminology

These last remarks might be taken as a preamble to an excursion into some "criticaltheory" on the current debacle of "bourgeois culture". This work certainly

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has to be done, but it is probably not so important and in many ways it is less difficult than the task of identifying the current points of departure for practical political action. Any such involvement involve some kind of accommodation to existing social democratic politics in order that they can be challenged, but any such accommodation cannot be undertaken at the expense of the critical imagination (for example, the critical imagination of contemporary socialist feminism). This makes practical political involvement very difficult for those who want to engage in the transformation of existing political and social ideology in order to "prefigure" its alternative.

The necessity of this accommodation arises because transformations of the kind envisaged here cannot arise out of theory. In other words, there is no constituency for the kind of critical and practical socialist alternative that is being elaborated, except the particular segments of the class who are most immediately and "materially" affected by the particular problems that arise out of institutionalised sexism, out of the legal and penal system, and out of the contemporary patterns of policing. That is, there is no constituency that is likely to be thrust into action against Thatcherism out of an abstract and philosophical objection to the ideological character of Thatcherite law and order rhetoric, unless it is the minute and popularly delegitimated body of left-wing intellectuals.

Involvement in the organised part of social democracy and amongst working people at large is essential for the particular reason, identified earlier, of recognising the ongoing character of popular anxieties and understanding their real and rational basis: earlier idealist versions of radical criminology were guilty of mis-understanding these anxieties by describing them merely as ideological caricatures, created out of moral panics. But a practical radical criminology, as we have also explained, cannot merely be a reflection of the commonsense of the class. There cannot be a general return to conventional social democracy or indeed a particular return to individual items of social democratic

policy making, wrenched out of historical context. Radical criminology needs to be formed as practical politics in making connections between established agencies of penal and legal action and working class people as a whole.

There are currently only five potential agencies in which to begin the task of constructing a practical socialist criminology. These are the prison movements, the police critics, the socialist lawyers and civil libertarian organisations, and the various organisations that have arisen within the Women's Movement. The established "agency" of critical academic criminologists, is currently a poor sixth, with little obvious "practical" relevance.

7.4(a) The Prison Movement : Rehabilitation, Abolition, Justice

In July 1981, the daily population in prisons in England and Wales reached its highest ever figure of 45,500, nearly four times the size of the daily average prison population in the first year of the post-war Labour Government in 1945 (12,910). It is true that the prison population was therefore smaller in 1980 proportionately to the number of offences known to the police, than it was in 1945.¹²

The prison population was nonetheless - according to the Howard League - the highest per head of population of any country in Europe. For every 100,000 people in the population in July 1980 in the United Kingdom, 80 were in prison; 67.1 in West Germany; 56 in Luxembourg; 39.4 in France; 34.8 in Denmark; 32 in Ireland; 31.7 in Belgium; 21.8 in Italy and 13.4 in Holland (Howard League for Penal Reform, 1980).¹³ Partly as a result of this massive use of prison sentences by the courts, most prisons were overcrowded to an entirely unprecedented extent. Over 18,000 of prisoners in British jails in 1981 were housed two or three to a cell, and many were locked up in their cells for long hours (sometimes up to 23 hours a day). This level of imprisonment was a savage indictment of post-war social democracy and the form assumed by its "social reconstruction". The prison system was in 1980 being asked to hold and contain an impossibly high number of largely working class convicts, most of whom (nearly 70 per cent) had been convicted

of relatively minor and non-violent property offences. (Fitzgerald and Sim 1979, p.135). Within these overcrowded prisons, as we saw earlier in this thesis, other crises - in the legitimacy of the system used to maintain prison discipline, in the effectiveness of the management of difficult prisoners and in the degree of trust between management and prison officers - were unfolding at a rapid pace. And all of these crises were developing within institutions which palpably were not successful in preventing further crimes - 1975 data showed that 88 per cent of a sample of adult male prisoners discharged in 1973 had already been reconvicted. (Fitzgerald and Sim, 1979, p.134). These overlapping crises of overcrowding, "legitimacy", "control" and of trust between state and authority and its own prison officers have arisen, we should remember, at the end of a period (1945 to 1979) which was dominated by the State's pursuit of largely social-democratic policies towards crime. They arose, in part, out of a social democratic insistence on crime as a form of pathological behaviour, which could be treated by correctional measures applied to offenders by professionals, and in serious cases by correctional measures applied in conditions of segregation, in prisons.

Social democratic thought, in both its romantic and practical versions, until recently remained faithful to the prison as a primarily correctional institution working with pathological individuals. Writing in 1905, the utopian socialist, Edward Carpenter, identified the Conservative conception of prison as a house of punishment and then observed that

" ... mere punishment must be abandoned; ... reform must go more and more in the direction of health - giving life in Workshops and on Farms. Healthy industrial life must be made the basis of the reformatory system. The feeble-minded and bodied must be treated for what they are, as the sad product of social errors; and must be given such occupation or work as they are capable of. The more able-bodied and capable must be trained with a view to their return to life in the outer world. Throughout the fundamental connexion between labour and its natural rewards must be kept in sight, as the main engine of regulation and stimulus. And where a man has injured another in any way that can be estimated by money values, as by theft or personal violence,

it would be well to make him realise what he has done by working off, in the industrial House, the full value of the injury inflicted. This, so far from being a mere punishment, would be a fulfilment of social justice, and a help to the offender - having made compensation - to return to society again with a clear conscience." (Carpenter, 1905, pp.75-76)

Whilst social democratic governments and agencies have rarely been so imaginative as to place the connection between labour and natural rewards at the centre of their penal policies, they have nonetheless continually urged the replacement of punishment by reformation or rehabilitation as the goal of prison (and its associated penal apparatus). One of the effects of this elevation of prison into a treatment agency, especially in the 1950's and 1960's, was the development of ideologies about sentencing, for example, which suggested that people were being sent into prison "for their own good", for treatment, and which also de-emphasised punishment as a function of prison. This celebration of prison treatment was most marked of all in the fourth edition of the Home Office's Prisons and Borstals in England and Wales in 1960, published at the height of R.A. Butler's period as Home Secretary, but it was a legitimating ideology that continued to have force, I would argue, even beyond 1966 (the year of the escapes and the Mountbatten Report) - throughout the period of the Labour Government of 1964-1970. It was only really made fundamentally problematic by the prison revolts of 1972.

In 1976, Labour's Programme announced - for the first time in a Labour Party policy document that

"there is growing evidence that custodial sentences are not only expensive but also rarely successful as a method of reform and deterrence."

It therefore asserted that the Labour Party

"believe(s) that the prime purpose of prison is to protect society from those offenders who are a real danger to it."

Apparently accommodating to the panics about the growth of "dangerousness" in civil society, the Labour Party indicated that

"In cases of violence and other crimes which justifiably arouse great public concern, custodial sentences will still be available."

Major reductions in the size of the prison population could nonetheless be achieved by reducing maxima for offences and by a considerable extension in the use of parole. So, in the 1979 Campaign Handbook on Law, Order and Human Rights, Labour Party penal policy took the form of a series of important, but quite technical, proposals on the reduction of sentences and on parole reform. In the same year, Mr. Justice May's Committee of Enquiry into the Prison Services recommended the introduction of a new Rule One which would specify the object of prison as that of "positive custody". Once again, political debates between social democrats and conservatives about crime and crime-control appeared to focus down onto a narrow, more or less consensual, terrain: in this case, the technical question of identifying the dangerous. Custody, we could all agree, should be continued (on a reduced scale) but clearly it should be positive.

These rhetorical or ideological agreements on the character and function of prison, have, of course, been challenged by the various prison movements that have developed in most western societies since the late 1960's. Three connected accusations have been made, angrily and forcefully, in recent years. Firstly, the prison movements have echoed critics of prison's reconviction rates by insisting that prisons by their nature do not and could not "rehabilitate". But they have also insisted, secondly, that the alternative description of prison, as a warehouse for the containment of dangerous people is also misleading and ideological. An overwhelming proportion of the prison population are petty (actually non-violent) property offenders (social nuisances) and as the British Prisoners' Union, PROP, asserted in its Report to the May Committee of Inquiry, many of those who then get to be defined in prison as troublemakers (and often therefore as dangerous) are precisely those "men and women who are prepared to stand up for themselves and for others". (PROP, 1979, p.6).

The concept of "dangerousness" is obviously a convenient instrument for legitimising all kinds of repressive measures (from the use of tranquillising drugs to Control Units) against rebellious or difficult prisoners. It also has the powerful extra connotation of legitimising the tight security that characterises most prisons in Britain, and which actually dominates some prisons, as a necessary element in the containment of a dangerous prison population. It is an ideological term therefore in that it legitimises existing practices, and it is also ideological in constructing a false description of the prison population: the vast majority of the prison population simply are not dangerous in the sense implied. Even more infamous convicts like Wally Probyn and John McVicar, widely thought to be violent and dangerous in their "outside" criminal careers, turn out to be very different again in prison. And whilst the Krays and Richardsons were systematically involved in violence in the course of their earlier careers, and there were grounds for seeing them, and others like them, as dangerous, they were a very small minority of particular prison populations. The notion that prisons have to be secure in order that they can effectively contain the dangerous is clearly an ideological construction.

The third accusation made by the prison movement therefore suggests that prison is neither primarily rehabilitative nor containing in its real social function. This is an argument that has been put most cogently of all by Thomas Mathiesen, the founder of KROM, the Norwegian prison movement, in a series of reflexions on his experiences within that movement (Mathiesen, 1976). For Mathiesen, the prison has four quite specific ideological functions in advanced Welfare State capitalist societies. The prison is, first, an institution within which a proportion of the unproductive population of late capitalist societies can be housed and controlled (its expurgatory function). In other words, the prison is a support to the factory and labour market as a part of the social control system of capitalist societies; oriented in particular to the control of the unemployed, and the reserve army of labour generally. But apart from

segregating its inmates, the prison also "strips them", in Erving Goffman's terms, of any sense of personal identity and thereby attempts to deprive the inmate in his own eyes, and in others, of any legitimacy. The prison in this respect has a power-draining function. It deprives prisoners in advance of the legitimate right to criticise the existing penal system or social order.

Imprisoning largely working class offenders, the prison also works to highlight certain kinds of behaviours as serious social harms (i.e. as imprisonable crimes), and to suppress popular interest in other forms of behaviour (by finance capitalists, factory owners and other powerful agencies). In this respect, the prison has the important function "of diverting the attention from the really dangerous acts that are committed by those in power". (Mathiesen, 1976, p.78). Finally, the prison stigmatizes its inmates in the eyes of non-inmates. In other words, the prison has a crucial symbolic function, in reproducing an imagery of the criminal as against the respectable, conforming population. It thereby divides working people at large within themselves along largely symbolic (rather than real) divisions; and because the prison is closed off and invisible to the mass of the population, it can do this ideological work relatively untransparently, without fear of being contradicted by the visible evidence.

Mathiesen's overall thesis is that the prison has the general - largely ideological (but in part economic) - function of creating an "expelled" population in late capitalist societies, which will then become the object of anxious surveillance and coercive, controlling responses on the part of the employed, productive population, as well as being the subject of a considerable and varied amount of ideological work. It is also a function that has accrued to the prison in part because of the strength of social democratic politics in Scandinavia, and Norwegian social democracy's continuing insistence on the prison as an institution purveying rehabilitation.

Mathiesen's conclusion has been paralleled and echoed by many other recent analyses of the prison system and of the penal system as a whole. In the

United States, the American Friends Service Committee, reporting in 1971, spoke of the criminal justice system in that country as being a system for the containment of the underclass (blacks Chicagoans, Puerto Ricans, Indians, women and youth) and the obverse of rehabilitation. In 1979, Jeffrey Reiman recognised that the continuing failure of rehabilitation of American prisoners was nonetheless coupled with a continuing and increasing high level of investment in prisons; this had to mean that the criminal justice system in America had another, specific and very important social function. He surmised that the criminal justice system had the specific function of sustaining Pyrrhic defeats in the struggle against crime. (Reiman, 1979, c.1). It sustained defeats, that is, in the continuing and difficult struggle of providing defences against the crimes that are committed against the general population, and in particular against the poor. So each defeat of the poor, in terms of general declines in their living conditions and sense of personal security, became the occasion for further State commitment to the criminal justice system. More prisons are built but street crimes and other social anxieties continue to escalate. The effect of these circular ideological arguments, translating the problem of social order into problems of law and order, is to continually increase the capacity of the criminal justice system, and hence to increase the likelihood of working class people being subjected to criminalization; it is a particularly powerful process in a period of crisis in the relations of capital to the labouring and unemployed population, and in the crisis of community that this is translated into at local level. It appears to anticipate the restoration of social order through the expansion of coercive law, including of course the expansion of prisons.

Both Mathiesen's and Reiman's arguments suggest that the prison and justice systems are incapable, in capitalist societies, of producing either rehabilitation or social defence. So one of the "required" ideological functions of the prison under capitalism is to deny and to thwart all the best

rehabilitative efforts of more liberal and progressive prison staff in order to produce evidence of the need for coercive exercises of social control, in the form of failed, recidivist offenders. So the Labour Party's and liberal professionals' only recently modified commitments to rehabilitation were not only a-historical (they did make more sense in the 1950's, when reconviction rates in the penal system were rather lower); they were also a misapprehension of the true function of prisons, especially in the contemporary "moment" of late capitalist societies in crisis.

One important feature of the penal system's "pyrrhic defeat" is that it must be seen to have been sustained because of the character of the prison population. In other words, prisons must actually continually proclaim that they fail because of the troublesome and even dangerous populations which they have to house. It is a contradiction which was perhaps most clearly observed by the late George Jackson, who, as a prisoner in Californian jails for ten years for a seventy dollar theft and later shot dead "whilst escaping", was a clear example of someone who had "dangerousness" thrust upon him :

"Penologists regard prisons as asylums. Most policy is formulated in a bureau that operates under the heading Department of Corrections. But what we can say about these asylums since none of the inmates are ever cured. Since in every instance they are sent out of the prison more damaged physically and mentally than when they entered."
(Jackson, 1970, p.49)

Institutions that function so as to produce crime and also dangerous, damaged and bitter populations of ex-convicts clearly cannot be expected to be effective in the provision of the "social defence" that is now spoken of as prison's main function in Labour Party policy briefings.

For so long as sentences into prison are administered by undemocratic and authoritarian Law Courts, as a consequence in particular of discretionary decisions by an unaccountable policy force, then prison will be a form of punishment, within a set of relations of social control, that has and have no

fundamental legitimacy. Individual prisoners may accept the "justice" of their sentence, but prisoners as a whole will see themselves to have been victims of an unjust and impersonal system, characterised by double-standards, and unresponsive to their own case. (cf. Bottoms and McClean, 1976). This fundamental, recalcitrant feature of prisons will then be exacerbated by the most immediate, inessential, and intrinsically reformable features of overcrowding, lack of exercise, contact between the sexes, censorship and lawlessness in prisons to produce an alienation from the state amongst prisoners that will be visited later on civil society. The impossible experiences of ex-convicts in the declining labour market will further undermine the contributions made by prison to social order.

So continuing rhetorical references to imprisonment as a means of social defence are ideological in massively exaggerating the intrinsic dangerousness of convict populations and in silencing the contribution made by prison to the continuing disorders in civil society. They also suppress the role of prison in brutalising and damaging its inmates and therefore producing anti-social behaviours amongst ex-convicts. Social democratic rhetorics on prison should be directed to these effects of mass imprisonment (to the contribution of prison to social disorder), and to a thoroughgoing reform of (unaccountable and undemocratic) legal and penal systems that make so little contribution to popular social defence.

Prison movement critics have also argued that talk of reform of the penal system is a dangerous self-deceit. The American Friends Service Committee, for example, observed how :

"The criminal justice system has a phenomenal capacity to absorb and coopt reforms. Throughout the years reformers have won all sorts of concessions. Many specific abuses have been halted or diminished. But the system grinds on inexorably. No matter how many new police have been hired, how many new courtrooms and prisons built, the system has remained overcrowded. Reforms have not succeeded in getting the system off people's backs. Increased discretionary powers have not led to more equal law

enforcement. The criminal justice system is not solely responsible for the level of crime and violence in our society, but few would claim that the system has functioned effectively to diminish these problems."

(American Friends Service Committee, 1971, p.155)

Mathiesen, in a very similar fashion, writes of the danger of advancing "positive reforms" which are then taken up by the system in order to strengthen the existing system and to protect it from criticism and subversion. Many proposals to provide concrete alternatives to imprisonment have been accepted by authorities in western societies, being used in addition to, rather than instead of, existing measures of penal discipline. Many of the currently most oppressive penal institutions (for example, Attica and Wormwood Scrubs) have at earlier points in their histories been examples of more liberal forms of "humane" correction.

Recognising the ideological character of the rhetoric of rehabilitation and the severe dangers of strengthening a coercive system with "positive reforms", Mathiesen, along with other prison movements, has argued instead for the abolition of prison. Only with such an abolition could there begin a successful and thoroughgoing transformation of arrangements for social control, because only in a society without prisons could the "unfinished ground" be glimpsed, and new, democratic forms for social control initiated. In Mathiesen's abolitionist vision, going beyond social democratic penology will necessitate the self-activity of prisoners and their supporters against the fact of imprisonment as such; and it will also require mass, democratic discussion ab initio as to the requirements of social control in a socialist society.

This visionary conception of an "unfinished" society determining its own future shape and trajectory through mass democratic discussion may be a possible political option in a small unitary society like Norway (although there must be some question as to whether Mathiesen underestimates the potential antagonism of Norwegian workers and peasants to the exercise of such libertarianism). It is certainly not at all clear how mass support for any such abolitionism could be

generated in societies like America or Britain, where there is minimal opportunity for penetrating the dominant ideologies which operate at the level of the national state via exercises of abstractly libertarian or democratic rhetoric. What is really crucial in these societies is to connect demands for immediate reductions in the use of prisons to popular sentiments or class rhetorics about "justice", and to popular notions of desert and equality of consideration. A first move in going beyond existing social democratic penology in Britain, for example, would be to argue that minor non-violent property offences should not be imprisonable offences at all, unless a judge and jury of the offender's peers should find reason to make a particular offence an occasion for such a disposition. Such a demand not only places a new and proper emphasis on the prison as being an institution of popular justice (i.e. an institution for housing offenders, of all kinds, who may have been popularly adjudged to need punishment or control): it also raises the question of the relationship of the sentencer and the judging agencies to their proper, popular constituencies. It speaks to the urgent and immediate requirement of the democratisation of law, to which I shall turn later.

To begin to think of prison as having a place, only, in a popular justice system has several implications for the reconstructed form of social democracy I have been discussing in this thesis. It disconnects social democratic discussion from existing movements for conventional types of reform of the existing prison system, and also from rhetorics which speak of prisons as having even potentially rehabilitative capacities, in retraining individuals for citizenry within existing capitalist society. It also subjects notions like that of "dangerousness" to popular control and adjudication, to be applied personally to individuals by communities rather than generally to types of offender by prison administrations and the judiciary. To speak of prison as an institution of popular justice refocusses political and policy discussion on prisons onto the role of the state apparatus in providing for defence of popular living conditions, according to

the varied and democratically-expressed demands of particular, organised "constituencies" of working-class opinion.

One immediate consequence of any such democratisation of the justice system should be a substantial reduction in the numbers of people being sent into prison. That is, popular rhetorics of justice would operate to redefine the bulk of the offences for which people are currently imprisoned as offences demanding compensation or other non-segregative responses. This was indeed the effect of the Portuguese revolution of 1974 on the size of the prison population in that country, when popular courts released very large numbers of the property offenders who had been imprisoned by the pre-revolutionary courts of the Salazar regime (cf. de Sousa Santos, 1976). The work of Moorhouse and Chamberlain in Britain on popular attitudes to property would suggest that a decarceration of petty property offenders would be a feature of any popular justice system in this country also, albeit the system would also be quite punitive towards other categories of offenders, (for example, landlords in contravention of tenancy agreements, or employers in contravention of safety or wages legislation). (cf. Moorhouse and Chamberlain 1974).

The demand for the democratisation of the prison system anticipates the broader demand for democratisation of law in general and the building of popular legal institutions. The precise content of any democratisation programme for any specific institution - but especially for an institution like prison, which is so closed off from mass experience and scrutiny - must derive from groups which have particular experience of the institution or from organisations which can authentically claim to demonstrate that they are representative of such groups. In its Report to the Committee of Inquiry into the United Kingdom Prison Services in 1979, the National Prisoners' Movement (PROP) made twelve recommendations :

1. The immediate opening of prison administration to public scrutiny.
2. The initiation of a massive and lasting reduction in the prison population.
3. A moratorium on all new prison building and the phasing out, in step with the reduction in the prison population, of existing prisons, starting with those

remote from centres of population.

4. The promulgation of a new constitution for the residual prison system after consultation with all interested bodies and prisoners themselves. The constitution must start from the premise that prisoners should be guaranteed maximum freedom commensurate with their overall restriction.

This means :

- a) Freedom to move about the prison subject only to the minimum necessary security and control.
 - b) Freedom of communication between prisoners and outside bodies and persons (see 5, below).
 - c) Freedom to meet with visitors with the maximum frequency practicable and the minimum security necessary.
 - d) Freedom to receive or circulate any document or publication available to the general public.
 - e) Freedom to determine the organisation and running of their own lives to the maximum degree commensurate with security, including the right to organise and elect their own representatives.
 - f) The right to know precisely the wording of all regulations and administrative procedures to which they are subject.
5. The immediate abolition, for all prisoners in all prisons, of all forms of censorship of the written or printed word.
 6. Disbandment of the Prison Medical Service and the provision, for all prisoners in all prisons, of medical care by NHS doctors responsible to the local Area Health Authority (the aims of the Medical Committee Against the Abuse of Prisoners by Drugging).
 7. The disbandment of educational services as a branch or responsibility of the Prison Department and the provision, for all prisoners in all prisons, of the right to education provided by the local Education Authority.

8. Provision of these and other specialist facilities to be made available through the relevant services operating in the local community and to be integrated, as closely as practicable, with local medical practices and the activities of local schools, universities, churches, ethnic groups etc. Inspection and regulation of health and safety standards to be provided by the relevant statutory authority.
9. The right of all prisoners in all prisons to independent legal advice on all matters, including internal prison matters.
10. The right to independent fair hearings of all internal offences. All acts which constitute offences under the criminal law to be tried in the ordinary courts.
11. The removal, from all prison staff or those working in prisons, of the restrictions (or, as we would prefer to put it, the protection) of the official Secrets Act or any other Act, on any matters not relating explicitly to security.
12. The local or at any rate regional placing of prisoners so as to facilitate family links; i.e. an end to the inhumane imprisonment of Irish prisoners in English jails and of the regular use of distant allocations as a means of putting pressure on prisoners and their families.

(PROP, 1979, pp.14-15)

These demands are clearly not exhaustive. Recent revelations about the use of special training of prison officers to engage in riot control suggest the need to add a demand for the immediate cessation of techniques of force in prison management; with prison officers, governors and prisoners (or their representatives) being introduced into common assemblies in which the long-term and daily problems of management of prisons are openly discussed and specific administrative arrangements subjected to popular votes. The bitter and lengthy strike of the Prison Officers' Association in 1980 suggests that any such democratisation of prison management would have to be an improvement on what presently exists. Such a democratisation of the prison could also put an end

to the divisive relationships that gave rise in 1981 to the murder of Barry Prosser in Winson Green Prison in Birmingham.

Democratisation of prison management is perhaps the only way to force the final closure of the ancient prisons which along with workhouses and mental hospitals are monuments to the "Great Incarceration" of the early nineteenth century. These relics of early capitalism are notorious not only for their overcrowding, but also for the poverty of living and working conditions for prisoner and prison staff alike. In 1980, indeed, they were described as "stinking ruins" by a tutor at the Prison Staff College (Godfrey, 1980) and the House of Commons Home Affairs Committee was informed by Mr. Duncan Buttery, the senior civil servant in charge of prison building, that

" our existing estate ... is suffering from years of neglect and problems of maintenance exacerbated by overcrowding, a shortage of work staff and a shortage of tradesmen. The whole estate, to put not too exaggerated a view on it, is collapsing around our ears."
(Guardian, 4 November 1980)

Democratic assemblies of prisoners and prison officers would surely insist on the demolition of these prison buildings, and the establishment of decent living and working conditions in any residual prison system. The continued use of these relics has been useful and beneficial only to the State.

The PROP demands could be a topic for lengthy examination in terms of their strategic utility and some aspects of the implicit analysis. This examination will not be undertaken here, because the really central features of the PROP recommendations are that they derive from PROP members' own detailed experiences of the injustices and deprivations of prison and that they are therefore formulated as demands for popular justice. It is this conception of "justice" which demands a massive and lasting reduction in the prison population and therefore a prison-building moratorium; and it is this justice which demands an end to the needless and often illegal petty deprivations which prisoners experience in jails. It is also this justice which allows, in demands numbers

4 and 5, for more radical conceptions of the prisoner as an individual who should be free in all aspects of his or her existence, "commensurate with (his or her) overall restriction". (my emphasis).

So the PROP demands are for a transformation both in the marginalising and dehumanising character of imprisonment under late capitalism and simultaneously for a massive reduction in the use of imprisonment, by taking seriously the existing State's own description of itself (as both lawful and humane) in its relationship to the people. In this respect, the demands are classical examples of what have been called transitional demands: they make demands which are entirely legitimate in terms of the set of ideological relations of the existing social and political relations (of liberalism and democracy) which are also incompatible with the inequality demanded by the capital-labour relationship, and the criminalisations and expulsions that are demanded in order to protect that relationship of inequality.

It is only in moving towards transitional demands of this kind that organised social democracy can hope to do contest with the populist rhetorics on law and order which have recently been appropriated by the Right; and it is only by making such move that the relation between the law and order question and the question of social order can be posed in a popular fashion differently from the way that it is posed in authoritarian populism. For social democrats to argue for "reforms" of the prison by informed penological expertise or other existing authority (as do the Howard League and the Labour Party's Committee for Justice) is to perpetuate the collusion of socialists with "liberal" State bureaucrats that has now been penetrated and subverted in the New Right's critique of post-war social democracy.

7.4(b) The Police Critics

Unlike prison, the police force does not generate its own permanent group of clients or consumers on a mass scale. The police deal with "the public",

and with suspects and accuseds, almost exclusively as individual suspects, complainants or enquirers, accuseds, (where the prison dealt institutionally with masses of "convicts"): and moreover the police almost always relinquish their individual charges to other institutions or agencies in the penal system rather than remaining responsible for them over any length of time.¹⁴ So there are no "natural" constituencies, made up of clients of the police, on which to base a popular socialist conception of policing. There is no equivalent to the prison movement.

This fact may be responsible in part for the historical tendency of the left to adopt rather generalised oppositional positions towards the police, although, as I remarked in Chapter One of this thesis, it is also clear that the social democratic left's attitude to the police in Britain has been heavily influenced by the role played by the police during the General Strike and also in the defence of fascist marches prior to, and just after, the Second World War. It is primarily on the police as the State's main instrument for the maintenance of public order that the left have focussed their attention.

There is, of course, every reason for disquiet about the developing logic of public order policing in Britain. In Chapter Five, we examined the tendency for the new police technology to transform the police into surveillance experts and the public into data on computers, and we also showed that the police are now, de facto, capable of armed and coercive intervention into all kinds of "public order situation" (from bank robberies and embassy sieges to massive but peaceful anti-racist demonstrations). The frequent lumping together of all these kinds of event as "public order situation" is an example of the dangerous logic of what has come to be called either "reactive" or (more dramatically) "firebrigade" policing. A summary article on changes in policing in Britain during the 1970's in State Research described fire-brigade policing as

" ... a system of policing which because it places efficiency at the forefront, not only leads people generally meeting the police into conflict, but necessarily negates 'community/preventive' policing in any meaningful way. It also relies on an ideology which designates part of inner cities as 'high crime areas' - those working class areas of high social deprivation and often large black communities like Brixton, Hackney and Lewisham in London, Huyton in Liverpool and Lozells in Birmingham - where policing is not a question of protecting the community but of keeping it under control. The same ideology also leads to the creation of specialist 'heavy' squads like Special Patrol Groups.

The degree to which 'fire-brigade' policing has been adopted is indicated by the number of forces which have 'command and control' systems to ensure 'quick response time' to incidents. 27 forces either have, or will soon have, such systems. This indicates that 'fire-brigade' policing is not a passing phase but is now a permanent feature of policing. It is the means by which everyday policing in the community will be conducted in the 1980's."

(State Research, (vol.3) no.19, 1980, p.148)

The concluding sentence of this analysis is contentious, but the coexisting and contradictory tendencies in contemporary British policing are put very clearly nonetheless. Firebrigade policing as described here is firmly established in the police authority areas mentioned and in many others, and as a form of policing it has contributed to massive breakdowns in relationships between the police and the public, of the kind that surfaced in the riot in St. Paul's, Bristol, in March 1980, and was later evidenced in public opinion surveys like that which was highlighted on the Granada T.V. programme on 8 April 1980.¹⁵ It is at the core of the "post-mortems" that are now in progress into the riots of the summer of 1981.

"Community policing" is often presented as an attempt to prevent such breakdowns. As a form of policing, it concentrates on the attempt to prevent crime through the use of police patrolling neighbourhoods, attempting to integrate themselves into local communities and win trust. It is an approach which has been most widely publicised by the Chief Constable of Devon and Cornwall, John Alderson (Cf. Alderson, 1979), but experimental community policing schemes are also being undertaken in the West Midlands, in Gloucestershire and on Humberside. Beat police have also been re-introduced, as a support (or symbol)

in other Constabularies (like South Yorkshire) which rely fundamentally on reactive rather than preventive systems.

The response of the left to firebrigading and community policing has been remarkably similar. Firebrigade policing is seen as evidence of the "iron fist" of the State; an instrument for the repression of the wide varieties of threat, disorder and subversion which confronted Capital and the State during the 1970's, and which influential groups clearly anticipate will continue during the 1980's. Community policing is seen as a confidence trick, the velvet glove enclosing the iron fist: it is the means by which the State extends its capacity to survey and thereby to control populations (for example, in inner city areas of Birmingham, Plymouth and Exeter) which might otherwise be more difficult for police to penetrate.

The instinctual attitude of opposition adopted by the left towards both forms of policing are based on a healthy distrust of uniformed and coercive authority in a class society, but the response does tend to reinforce a conspiratorial and instrumental theory of policing, and also to discourage socialist involvement in debates and struggles over police form and function. It is a conspiratorial interpretation of the relationship of the police to the State and to civil society would have been given support nonetheless by recent experiences of systems for investigating complaints against the police and also by the dilution in the Police Authorities even of the limited amount of control over police policy and practices exercised by the old Watch Committees.¹⁶ The left's agnosticism has also been allowed by a continuing utopianism on the question of social control in future socialism: in the absence of any serious examination of this problem, conflict of interests in socialist society have been spoken of, abstractly, as being resolvable through merely administrative, rather than legal and enforceable, forms of regulation. We have been asked to think of socialist societies without police.

Conspiratorial theories of the police as an agency simply of a repressive capitalist state do not account for the kind of policing that existed in Britain, with significant social-democratic support, in the 1940's. Policing can take the form, as it did in that period to an extent, of the defence of local communities from behaviours that were subject to local complaint, as well as the defence of the universal social interest from the self-interested "economic offences" of the privileged.

Conspiratorial theories do not account either for the initiatives that have been taken by some police forces in recent months against the National Front and the British Movement. In 1980, the West Midlands police were able to raid houses belonging to members of these Fascist groups in order to prevent the use of the arms supplies which were stored there. In 1980 and 1981, more and more forces have demanded bans on marches proposed by the racist Right. In April 1981, eight members of the British Movement were arrested by the South Yorkshire police at the start of a march in Sheffield, under the controversial clause in the Public Order Act of 1936 which bans the wearing of political uniforms. No matter that there may be argument over the utility of particular police initiatives in the struggle against racism, and even though there should be no illusions that the struggle against Fascist ideas can in itself be won through the application of firm policing, the socialist left cannot afford to dismiss these police initiatives as if they were merely ideological ploys by an essentially racist police force.

The logic of the left's instinctual opposition to police has also worked in an opposite direction to the "realist" logic of working class communities themselves. Indeed, working class support for the police has appeared to increase the more that the traditional social controls of working-class community have been dislocated by post-war social and economic changes.¹⁷ Sections of the white working-class populations living in particular parts of London, in particular, have in recent years come to demand the kind of reactive "fire brigade"

policing that is provided by the S.P.G., in the sense of having constantly appealed for police action against what they (the white populations) see to be a threat to "their" community, in the form of mugging and even in the form, simply, of rowdy street parties. In 1970, when Judge Gwyn Morris went further and proposed the establishment of vigilante squads in South London, particularly to deal with the threat of mugging by blacks, he claimed to have received "hundreds" of pitiful letters, notably from frightened working class women; and for a time there appeared to be a real possibility of vigilante squads being created in Brixton and Lewisham.¹⁸ In more recent years, there has been increasing evidence of working class support for a strong police presence on public transport and on football match days. Metaphorical and misled though the racialism in some of these responses may have been, there is no doubt that street crime and interpersonal violence have become a serious and fundamental problem in the everyday life of white and blacks alike in many of the more dislocated areas, and also in the central city.

There is little doubt that the visible presence of uniformed police officers is a deterrent, moreover, to unemployed youth who, for want of material alternatives, have recently taken to lives of street crime and hustling or who "live" through their experience of aggro at soccer games. A police presence is a rational defence for working class and bourgeois, and black and white alike, against the unforeseeable expressions of contemporary youth cultural nihilism.¹⁹

A police presence is also demanded by most of the black population itself, albeit blacks have little confidence in existing police practices in relation to racist groups, and in some areas accusations have been made that the police collaborate with the National Front and British Movement. (Cf. Bethnal Green and Stepney Trades Council, 1978, pp.44-48). In part, this accusation arises because of the poverty of existing legislation on racist provocation in Britain (and the lack of political will to extend it), but in part it is based on the experience and observation of police tactics in dealing with the growth of the

National Front and the British Movement in areas like the East End of London. Police action is often only taken when groups of anti-racists organise (for example, to close the NF headquarters in Shoreditch or to stop racist leafletting in Brick Lane) (Ibid., pp.43-44). The arrest of anti-racists on public order charges then has the effect of problematising the anti-racist left as extremist and violent. In 1979, police in London gave further support to the anxieties amongst the black population by inaugurating a series of night-time raids on private homes and on factories employing immigrant labour as part of the search for illegal immigrants or for immigrants "over-staying" the time limits on their visas. (Guardian, 9 July 1979).²⁰ In 1980, the Metropolitan Police's 200-strong Special Patrol Group was accused of harassing the black community as a whole during two periods of "saturation policing" of Hackney (as part of an attempt to discourage street crime in the area (Guardian, 26 March 1980)). Not unsurprisingly, a multi-racial joint conference of the Asian, West Indian and Pan African movements meeting in London in July 1980, called for the establishment of a new Civil Rights movement in Britain, and also announced that blacks should no longer cooperate with the police in recruiting, identification parades and liaison work. (Sunday Telegraph, 6 July 1980).

But these developments do not amount to a call from blacks for an unpoliced society. The black communities of Britain, like the white working class in the declining inner city, are torn between demanding effective social defence from the existing State police (from white racists and from black and white delinquents alike), on the one hand, and attempting to build organisations for self-defence of black community, on the other.

A similar schizophrenia towards police is apparent amongst women, in the working class and middle class alike, in the current period. In the North of England, in particular, throughout the late 1970's, large numbers of women had to reorganise their lives in order to ensure that they were never out alone at night (Guardian, 17 December 1979); and, in 1979 and 1980, in particular,

increasing numbers of women gave support to marches and demonstrations opposing the curfew which the West Yorkshire police attempted to impose on women in wake of the murder of Barbara Leach in Bradford in September 1979. Protests were also made against the failure of the police to act against pornography shops and film shows in London; and women invaded and vandalised cinemas in London, Leeds and elsewhere protesting against films like Dressed to Kill depicting violence against women (Guardian, 13 December 1979). One of the women's demands was for the more vigorous enforcement by the police and local councils of existing censorship laws to outlaw films which could be seen to legitimate male violence against women. During the same period, other women's groups, and particularly the organisers of women's refuges (which sheltered victims of violence within the family), also called for a greater responsiveness on the part of the police to women's demands for protection in domestic quarrels. In the meantime, other calls were made, especially by women student leaders, for women to have the right to carry offensive weapons for their own defence, especially after dark, and also classes were arranged for women to learn Karate and also to build up and rely on their own physical prowess as a defence against men.

Within the white working class, among black workers and amongst women, the same contradictory attitudes towards police were becoming more and more apparent. But the criticism of existing police practices was decidedly not made with a view to the abolition or withdrawal of any form of police from working class neighbourhood, from the black community or even from domestic encounters between the sexes. The critique of policing from these quarters was in this sense a demand for the radical reform of existing police ideology and practice, and for the development of a police that was adequate to the task of social defence in divided and pluralistic society.

For these reasons, the orthodox and instinctual attitude of the left to the police - of a generalised opposition to policing coupled with an ambiguity as

to the role of police under socialism - is unlikely to find much response amongst workers, white or black, or amongst women generally, especially in continuing conditions of high unemployment, social insecurity and increasingly contradictory relationships between the sexes. A socialist police policy is in need of immediate construction, for present conditions as well as for some hypothetical socialist future.²¹

There are two main sources of this reconstruction in the current period. On the social-democratic left itself, there are the councillors who have been forced to confront fundamental questions about the character of policing, because of the heavy fiscal implications for local authorities of central Government policies on law and order. Lewisham Council, for example, refused in April 1980 to forward its £5.5 million share of the Metropolitan Police budget until it was given greater responsibilities in the decision-making bodies of "the Met". (Guardian, 18 April 1980). South Yorkshire Council in 1980 imposed cuts (of £1.8 million) on its police - at a proportional rate to the other cuts imposed (by the national Government) on social services expenditure (refusing to implement certain other cuts, for example on public transport subsidies) (The Star, Sheffield, 16 April 1980). On 15 August 1980, London councillors came together with representatives of bodies like the NCCL to hold a conference on the Policing of London. The concerns of this conference were in part fiscal, but it was apparent that there was widespread disquiet in these initiatives as to the proportion of police energy and expenditure that was being expended on firebrigade policing and on the technology of surveillance (The Leveller, April 1980). In May 1981, the Labour Party regained control of the Greater London Council with a Manifesto commitment to bringing the Metropolitan Police under much more direct accountability to the council's Police Committee than was allowed under existing police legislation. The Manifesto said that a Labour GLC

"would campaign for a police authority consisting solely of elected members of the GLC and London Boroughs to have control over the Metropolitan and City Borough Forces."
(The Times, 13 April 1981)

In other parties of the country, other Labour councils pursued similar programmes, as the gap between the logic of policing at the level of state and the popular demand for policing became more and more apparent. Already in March 1981, the Association of Metropolitan Authorities had sent a resolution to the Home Office demanding the removal of the non-elected magistrates from all police committees nationally. (Morning Telegraph, Sheffield, 19 March 1981).

The central demand here is for the democratisation of the Police Authorities established by the 1964 Police Act (which currently are composed two-thirds of local councillors, and one-third of magistrates), and for the extension of police accountability to broad interest groups in each community. Such a broadening of Police Authorities would give strength to those councillors who have already begun to question contemporary directions in policing. It would also challenge the present exclusion of policy questions from the powers of local authority policy committee and the consequent restriction of the agenda of such meetings to fundamentally trivial questions. It was in order to retrieve some of the control over policy that was lost by local authorities in the 1964 Police Act that Jack Straw, M.P. introduced his Private Member's Bill into Parliament on 11 March 1980. This Bill draws a distinction between day-to-day operational decisions like emergency calls or decisions as to which officers to deploy on particular cases (over which the authority would have no powers) and general strategy issues, as to what emphasis should be placed by a local police force on particular kinds of police work (where the authority would have power). The Bill includes two safeguards for Chief Constables, in allowing them to delay changes in policy with which they disagree for six months and also in allowing disagreements to be arbitrated by the Home Secretary (cf. Straw, 1980), but it has nonetheless encountered a fierce and almost unanimous opposition from the Police Chiefs. (Dean, 1981). The Jack Straw Bill did receive a first reading in 1980, but was given no Government time. It is apparently Mr. Straw's intention to re-introduce the Bill during the 1981 session of Parliament.

The struggles over this Bill, and over any further bills on police accountability, may appear to be fundamentally liberal (nearly every other State institution other than the police contains some procedure allowing public accountability, but this does not make them genuinely and popularly "democratic"), but it is vital for the left to open up the police to public scrutiny, in order to be able to pose further questions about the divergence of "public order policing" from the real public needs for policing.

A third aspect of the public problematicization of contemporary policing is the need to pose a further challenge to the existing system for investigating complaints against the police. This is important not only because of the increasing friction between the police and the various groups we discussed earlier who are clearly unhappy with the character of the policing they receive. It is also important because of the continuing re-emergence of corruption within the police (as revealed in 1979 and 1980 by the existence, and slow progress, of the Operation Countryman investigation into the Metropolitan Police) even in the aftermath of Sir Robert Mark's much publicised reforms. And the need for an adequate complaints procedure connects very closely to the question of accountability, as Malcolm Dean has observed, because

"the most corrupt force in the country - the Metropolitan Police - has been the least accountable. The Met's line of accountability runs direct to the Home Secretary who even in Robert Peel's day was too busy to spend any time examining London's policing priorities once the force had been established."
(Dean, 1981)

Despite a lengthy period of resistance from the Metropolitan Police Commissioner and other Chief Constables throughout the 1970's, an "independent element" has eventually been introduced in the Police Act of 1976 into the investigation of complaints in the form of the Police Complaints Board. The Board's responsibility is to scrutinise complaint cases subsequent to the police completing their own internal proceedings, and to decide as a Board whether charges could be brought against police officers, irrespective of decisions already taken by the police not to prosecute. Prior to the creation of the Board, police spokesmen saw the introduction of this amount of independent assessment as a real threat to the integrity of the police and seemed to anticipate subversion of the police's decisions in disciplinary proceedings.

But in 1979, the third year of the Board's operation, when the police themselves made charges on their own account in only 79 of 12,434 cases, the Board itself disputed the police decision in only 18 cases (0.1 per cent of cases). The police reaction to these statistics predictably interprets them as a measure of the number of unfounded complaints. So we are told by the Chief Constable of Kent in his Annual Report for 1979 that

"The complaints system is an expensive ploy for the ratepayers and yet another factor to inhibit police officers in the performance of their duties."

(quoted in State Research 18, (1980), p.121)

Research undertaken by Ken Russell prior to the creation of the Police Complaints Board anticipated this outcome. Russell was able to show that police have developed a variety of strategies for discrediting complainants (for example, by describing them as mentally ill, criminal or drunk). According to Russell, this "discrediting" occurred in a "sizeable proportion" of the cases he investigated in complaints proceedings in two police forces in England. (Russell, 1976). Russell was not able to anticipate the precise limitations on the powers of the Police Complaints Board, but he was certainly unpersuaded of the Board's ability to represent the public (or, probably more correctly, the various publics) in genuine grievances at their handling by the police. The procedure established by the 1976 Police Act has at least four other major faults. First, the public have complaints against particular policemen investigated by other policemen, albeit senior officers from other forces. Prima facie, the suspicion must be aroused that many complaints are rejected on grounds of professional solidarity. Second, the investigating police officer's report is not shown to the complainant before it is sent to the Director of Public Prosecutions. Thus there is no way that the public can check the accuracy or the comprehensiveness of the police "dossier". Third, the DPP and his staff are prevented under English law from interviewing the complainant, the police officer or any eye witness witnesses; and as a result the system for making complaints has been rendered impersonal and bureaucratic. (Meacher, 1980). Fourthly, however, the procedure that was

eventually constructed by the 1976 Act is one which effectively prevents the Board from bringing disciplinary charge against police officers "if the evidence required to substantiate it is the same as that required to substantiate a criminal charge which the Director has decided should not be preferred."

(Police Complaints Board, Triennial Review Report, 1980, para.13). In other words, the crucial decision of whether individual complaints should result in either criminal charges or internal police discipline remains as a responsibility of the Director of Public Prosecutions. As the 1980 Report rather self-consciously observes, this is "an important limitation on the Board's powers".
(Ibid).

Our earlier analysis of the demand being made for policing by various sections of the public would suggest that a complaints procedure with these built-in limitations would seriously undermine the democratic accountability of the police. So a radical reform of the existing Board is clearly required. As a first move, we would suggest that complaints (and suggestions for change) should be publically invited (via the local media, notices in public buildings etc.) and handled, in the first instance, at the level of local authority police committee. Sub-committees of this body should sit as public tribunals, adhering to formal rules of evidence, and recommendations to bring criminal charges or internal disciplinary charges should be made, publically, to the local representative of the D.P.P. or to the Chief Constable, as appropriate.

Certainly, support for the police amongst working people is by no means uncritical or uncontradictory, as is evidenced by the emergence in recent years of popular working class groups reacting against particular instances of police behaviour. The most well-known examples of this are the essentially local committees of working people which were established spontaneously in Birtley, Co. Durham, subsequent to the death of Liddle Towers in 1977 and in Huyton, Liverpool, subsequent to the death of Jimmy Kelly in 1979. Both Towers and

Kelly were in police custody at the time of their death. The death of Blair Peach in the hands of the Special Patrol Group on 23 April 1979 also resulted in the establishment of an ad hoc committee, which has done a lot of valuable work in publicising the completely inappropriate use of the coroner (who normally works closely with the police) as a quasi-judicial agent investigating deaths in police custody.²² And the work of all of these committees has also been vitally important in revealing the degree of force that is sometimes used in arrests in some police areas, and also therefore in posing the urgent requirement that police forces should be open to regular, routine investigations by a broad, concerned local public.

These requirements have of course been apparent at times of major class confrontations like the Miners Strike of 1974 (especially at the siege of the Saltley depot) and the Grunwick dispute during 1977-8. On both these occasions, senior police have utilised extraordinary numbers of officers and very considerable degree of force in attempting to contain picket lines and also in trying to harass strike leaderships. It is extremely significant for our argument to notice that the South Yorkshire Police were much more restrained in their handling of the steel strike in 1979 and particularly the enormous picket of the private sector plant at Hadfields, since the South Yorkshire force are ultimately under the surveillance of an (untypical) local council which treats the Police Authority as an important part of the Council's fiscal and political responsibilities.

The class appears to be much more divided over police role in class struggles than it is towards the police's role in crime control and social defence; and indeed the police themselves are far less happy with their role as agents of the British State vis-a-vis trade unions than they are on their role as "peacekeepers" in the area of crime. (cf. Reiner, 1978). It may be that this political space can be opened up "transitionally" by socialists attending

closely to the police question, in particular by stressing the common interests shared by police and other white collar workers; and also in making political connections on the questions of racism and sexism to blacks and with women within the force. Any future socialist social order will clearly have to allow full political discussion as to the political character and the legal scope of police action. The struggles that will continue under socialism over the scarcity of resources will require policing, as will violence within families and in public space, property theft and a variety of anti-social activities (from pollution to fraud): the question is what kind of policing will be required, using what techniques and supported by what sanction? It is clear that if the police under socialism are to develop a separate "professional" ideology and practices they will have to be subjected to continual popular scrutiny and the ultimate control of the local political community. The large amalgamated police forces may have to be replaced by a patchwork of smaller police forces reflecting the particular character of local areas. Any retention of "firebrigade" policing would have to be directly accountable at a local level (unlike the existing S.P.G.'s, with their literally irresponsible "snatches" into local communities). Recruitment into the police of a cross-section of all the interest groups in society would have to be encouraged. The current introduction of black and women police would have to be speeded up considerably and political and legal initiatives would have to be taken to ensure that these groups were not merely given token tasks in the policing of inner-city ghettos or in the handling of only women offenders.

The questions of great importance for socialist police policy can only be begun to be thought at this moment. In the current period of reconsideration of social democratic assumptions, however, new perspectives on the police are urgent. Critics of the police who emerge "spontaneously" out of the working class, as did the Jimmy Kelly Committee, must clearly be given a much greater voice in

Labour Party and socialist debate and in the formulation of future policy options and generally they must allow the "police question" to become a public issue. Hermann Mannheim's programme, as conceived in the 1940's, for a democratic and accountable police, oriented to the apprehension of the powerful criminal as much as to the street offender, was a clear demand for the reform of an aristocratic form of policing, and its replacement by a social-democratic police; it was a demand based on a confident and unitary working class, united for Social Reconstruction. It made existing forms of police an issue in a specific and relevant fashion. Any modern alternative and socialist conception would have to emerge from less promising circumstances, out of a fractured class experiencing the worst effects of a recession, of racial strife and of cultural conflicts in family and neighbourhood, and disunited ideologically by the failures of social reconstruction. But such disunity is no grounds for continuing to restrict debates about policing to the authoritative agencies of the State and senior policemen themselves.

7.4(c) The Legal Critics

Existing social-democratic approaches to the question of law itself have been either legal-rationalistic and/or civil-libertarian.

Many social democrats who have been interested in the relationship of law to social order have tended to have essentially liberal concerns, in wanting to encourage law reform on behalf of some hypothesised universal good. Throughout the last century, the primary concern of such social democrats has been to widen access to the law in order to make the law available to "the poor". The conception of law held to here has been of law as a body of rules that can be used to arbitrate between conflicting interests in an essentially neutral fashion. Insofar as law has operated otherwise in the twentieth century, and insofar as it has appeared to operate in the interests of property as against labour, it is said to have done

so because of the undemocratic and class-bound procedures of recruitment of judges and magistrates and the narrow and unsociological training of professional lawyers. Law has been seen as an instrument through which the hierarchies of class society and the pre-eminence of propertied interest are reproduced, but it is not thought to be an essential feature of law that it must operate instrumentally in this direction. The remedy for this bias in law has been seen to be the reform of the class character of recruitment of legal personnel, and in particular, in some writing by social democrats, the introduction of a full-time professional magistracy and the radical reform of the training of the judiciary as a means of wresting control of law from aristocratic amateurs. The anonymous author of the Left Book Club's critique of Justice in England, published in 1938, observed that

"just because (magistrates) are unpaid, it is easier for the governing class than for any other class to take on the work. In most cases, too, they can be relied upon to possess, consciously or unconsciously, the right class bias. Moreover, in courts, which have so much to do with the maintenance of 'lorandorder', the rough and ready methods of the untrained justice are much more efficient from an executive point of view. Impartial and well-trained professional judges would not merely acquit the innocent; they would acquit all those whose guilt was not clearly proved."
("Barrister", 1938, pp.43-44)

"Barrister" was convinced that "real improvements" in the magistracy and judiciary would be opposed in powerful circles because it was in the interest of the governing class "to keep all its weapons sharp for times of trouble".

(Ibid., p.44).²³ Forty years later, assessing the political role of the judiciary in Britain in the post-war period, John Griffith could indeed still conclude that :

"on every major issue which has come before the courts concerning industrial relations, political protest, race relations, government secrecy, police powers, moral behaviour - the judges have supported the conventional, established and settled interests. And they have reacted strongly against challenges to those interests. This conservatism does not necessarily follow the day-to-day political policies currently associated with the party of that name. But it is a political philosophy nonetheless."
(Griffith, 1977, p.213)

The narrow class character of legal decisions can nonetheless be challenged, according to social democrats, by the persistent reform of the training

of lawyers by the provision of financial support by the State to enable much broader sections of the public to serve on the magistracy without loss of income, and ultimately the replacement of existing judges by much more broadly educated, socially-aware individuals, drawn from the ranks of practising lawyers.²⁴ In the last two decades, this reform programme has expanded to encompass support for the use of State expenditures to subsidise the recourse to law by the poor and also to support the expansion of law centres in working class and inner city neighbourhoods "taking law to the people".

In this conception, the courts and the Law itself are agencies that have had a class character historically, but which can be reformed, largely as a result of State initiatives, to become means for resolving problems experienced in living by any section of society. Law reform activity by the State must therefore be an ongoing process by and through which the law is constantly reformulated and "consolidated", to bring it into line with what social democrats would refer to as "modern" conditions. It was this conception of law reform (as a "modernising" influence) which activated the Labour Party lawyers Gerald Gardiner and Dr. Andrew Martin in producing a collection of essays, in 1963, demanding "Law Reform Now" (which led to the establishment of the Law Commission in 1965) (Farrar, 1974, c.1), and it was this notion of law reform which continued to inform the Labour Party's claims to progress in law reform in their 1979 Capitalist Campaign Handbook (particularly in respect of "modernising" the law relating to women's rights in the family and divorce, and in landlord-tenant disputes).

This "rational" conception of the law as a recourse for problem-resolution in society as a whole has sat rather uneasily with many social-democrats' civil-libertarian perspectives on law. Classical civil-libertarian perspectives focus on the dangers of repressive law, and in particular the use of law by the State to enforce and protect the interests of those with Authority under existing social arrangements. The National Council for Civil Liberties was founded in 1934

by liberals and radicals who saw a real danger of encroachment of such a repressive law in Britain particularly at the hands of the National Government: and from that point onwards, the NCCL has tended to problematicize law rather than to celebrate it in the manner of some law reformers. In particular, the NCCL has given prominence to the repressive character of most immigration law, to the sexist character of much labour law and some criminal law and to the discriminatory and often repressive use of existing law by the police in their public order and crime work, without adequate legal controls. The overall emphasis in NCCL work over the 47 years of its existence, however, has been on conflicts between individual "rights" and the claims of Authority, usually identified with Government or the State. Particular attention has been given to cases of individual members of particular "minority" groups (gays, gypsies, blacks, working women etc.) who have been subject to discrimination in employment or in other respects, by virtue of their subordinate or minority status. The NCCL has also worked to publicise and to reverse censorious restrictions on the freedom of individuals to read and to view whatever books, films or theatre they want, and to be able to give expression to whatever opinions they may hold. Court cases have been fought in order to try and reverse the decisions of authorities in particular cases and if possible to establish new legal precedents. The ultimate reference point for NCCL activities has always been the sovereignty of "individual freedom", with threats to such a sovereignty being seen to arise from the State, the Government and especially from the judiciary and the police. So the relation between civil-libertarians and social democrats has often been uneasy. Social democrats have given support to the expansion of the State in the regulation of civil society and economy (in the interests not of "individuals" but of what they call the "community"), and have introduced laws which legitimate and structure this regulation, but they have also been uneasy about the additional powers accruing to the police and judiciary as a result of the development of the power of the

State. So social democratic politicians have expressed civil-libertarian conceptions about the powers of State-employed officials in the prison system, about police powers generally and also about the arbitrary discretionary powers that have accrued to social workers and doctors in the child care and mental health systems. But they have not tended to be so concerned about the "rights" of individuals to contract out of closed shop employment supported by State law or about the various "rights" claimed by individual employers in the face of Labour Government legislation on conditions of work for employees. The rhetorical references to threatened rights of individuals have rarely challenged the logic or effect of social democracy's support for State interventions in the body of civil society, on behalf of social-democratic community against its enemies. It has been an article of faith, for social democrats, that the State authentically represents the interests of working people at large, rather than an undemocratic intrusion on them, and the NCCL, caught in a libertarian version of social democratic theory, has tended not to question this "statism" in any fundamental fashion.

Other versions of civil libertarianism are less sanguine about the beneficence of the State. Perhaps the most radical, though currently least well-known, are the critiques of existing law developed by the "small society theorists". (Cf. Christie 1976). In this conception, the problem with law in contemporary society is not that it is an instrument of class rule in need of democratisation, nor either that it is a potential instrument of State repression or Authoritative coercion. Rather, the problem with law is that it has not been sufficiently widely institutionalised and given an accessible, normal social form as an instrument for the discussion and settlement of the disputes that are inevitable even in simple societies and pervasive in complex societies. Specifically, what Law and lawyers do is to steal the right of victims and accuseds in criminal cases to participate in the resolution of their own conflict.

".... in a modern criminal trial, two important things have happened. First, the parties are being represented. Second: the one party that is being represented by the State, namely the victim, is so thoroughly represented that she or he for most of the proceedings is pushed completely out of the arena, reduced to the trigger-off of the whole thing. She or he is a double loser. First vis-a-vis the offender, but secondly and often more crippling by being denied rights to full participation in what might have been one of the more important ritual encounters in life. The victim has lost its case to the State."
(Christie, 1976, p.5)

Law is therefore unfamiliar and mystifying to the vast majority of citizens, who feel alienated and powerless at the workings of the legal system as presently established and cannot believe that such an instrument could work mundanely and democratically to settle ordinary problems of living to their satisfaction. Law is seen as an alien instrument of "power" in society, in the same sense as are most of the disciplines through which the powerful rule society. It is a part of what Foucault called the power-knowledge form, through which elite groups ("them") "naturally" govern the mass of the rest of society ("us"). In this perspective, one means for demystifying both law itself and also the discipline of the powerful would be to allow and even to encourage the elaboration of as many different forms and agencies of law as possible, of both a civil and criminal character, in order to "secularise" law as part of the lived and experienced world of all citizens of society. There are some crucial silences in this version of democratising the law. In particular, the role of the State itself in relation to an expanded system of law is left unexamined, and also the problem of avoiding an undemocratic expansion of State legal bureaucracies tends to be unaddressed. Thus, it is not easy to see how the call for the expansion of law by "small society" theorists is any different in principle and in practice from the expansions of legal specialism and practice that have characterised most capitalist states in the post-war period. The rapid development of what is euphemistically called Public Law - governing the relationships between specialised and powerful agencies of the State and the rest of society, and operating predominantly through closed tribunals rather than "open" courts - is

a good example of an extensive new legal form that has no obvious, immediate relevance to the problem of democratising the State. Small society theorists have been conspicuously silent on the developments that are occurring within the existing State, and the relationship of these developments to their own utopian alternative.

The other perspective on civil liberties under the law comes from the radical Right, and has found expression in recent years in the support given by sections of the Conservative Party and the judiciary for a Bill of Rights, which would have the function of limiting the power of the State in specific areas of property and industrial law.²⁵ It is no great distance from the orthodox civil libertarian focus on "individual freedom" as threatened by "Authority" to an ideological position which equates individual freedom with untrammelled egoism and Authority with the State form itself. In the view of Sir Keith Joseph, arguing for a Bill of Rights in order to defend the rule of law (in particular against pickets but also the closed shop itself),

"The rule of law begins with the individual, because individuals are real whereas society is an abstraction."
(Joseph, 1975, p.6)

Socialists can clearly have no truck with analyses which extinguish the facts of class and even of social structure itself whilst attempting to establish egoistic (capitalist) accumulation as an "obvious", empirical fact of human nature and as the basis of social order. Nonetheless, the elaboration of the original civil liberties position by the small society theorists should be of more interest in highlighting the importance of socialist legality (as a state form) becoming accountable to the community of a socialist society; and also this kind of analysis is important in beginning to fill out what is meant by the abstraction "community" in relation to crime and to law-breaking. Christie rightly, for example, insists on crime victims obtaining a much more active role in the resolution of conflicts in court than they do under the existing State judicial system, and he also rightly insists on a much greater

degree of lay participation in the legal process than the current system allows. His distrust of legal professionalism, indeed, stands in marked contrast to the sanguine support for professionalism and training in the social democratic penology of Hermann Mannheim. Christie's call for the extension of law as a popular and familiar form must also be taken as a serious goal in any socialist transformation of the legal apparatus, for the alternative would indeed be the perpetuation of a rule of law justified in terms of its "majesty" (in other words, as a form of domination) rather than its accessible and useful character (as an authentic form of problem-resolution between competing parties in a democratic society).

We can illustrate this with concrete examples. A crucial terrain of political struggle over the legal apparatus at the time of writing is that of the jury, for, as E.P. Thompson observes, "the jury box is where the people come into court" (Thompson, 1978, p.130). In 1978, the Labour Government's Attorney-General Mr. Samuel Silkin, Q.C., revealed to the House of Commons that there had been 25 cases over the previous three years in which the Director of Public Prosecutions had allowed checks on the records of potential jurors (in Criminal Records Office, Special Branch records and in inquiries of the local C.I.D.). Twelve of these cases were said to have involved terrorism and another two were official secrets cases, including the infamous ABC trial, eventually lost by the State. The introduction of jury-vetting (albeit under a set of "guidelines") cut away at the English common law principle that accuseds should be tried by their peers "selected at random, without respect to their beliefs or opinions and subject to no influence of State". (Thompson, 1978, p.129). The principle of random selection was established in the early middle ages, partly because of the large numbers of possible citizens who could participate in trials by jury as informants on a case, but also because a randomly selected jury was thought more likely to reach a balanced and just decision in a contested case than a judge, who has no-one to challenge his prejudices. The

jury system was therefore a product of continuing popular struggle against absolute forms of power, whether vested in the Monarchy or in the Gentry. It was one of a series of "pacts" that was struck by the English ruling class with the people in order to win their consent to its rule.

The introduction of jury-vetting - originally in a Home Office circular of 10 October 1975 - by a Labour Attorney-General is an expression of the depth of the commitment to the defence of the State that exists in some quarters of the Labour Party. Panels of Juries were allowed to be investigated by the police, through a search of their records, for "disloyalty", in cases which "broadly speaking" may involve "strong political motives". (Harman and Griffith, 1979, p.24). The 1975 guidelines themselves were not debated in the Commons (on the grounds that they were merely administrative), nor either were they published in Archbold (the standard text for practitioners in criminal law) - and the Home Office continues to refuse to release the circular to the press - but they were nonetheless circulated to all Chief Officers of Police, to the Director of Public Prosecutions and to prosecuting counsel in every case where vetting has taken place. In effect, the principle of the random selection of a jury from amongst peers has been modified to allow the State to pack the court - and this transformation has been accomplished without any significant debate by the legislature. A private member's bill to ban jury vetting, brought by the Labour MP, Alfred Dubs, was given an unopposed first reading in the Commons on 20 November 1979, but was not given the Government time, and did not reach the statute book. So the vetting of juries continued after the election of the Thatcher Government in 1979, and was used, for example, in the trial of three anarchists charged with the theft of explosives, in the winter of 1979-80. Computerised records on 93 potential jurors had been vetted without their knowledge by the Special Branch, and the police discovered information on 19 of them "which might be useful to challenge a juror" (Guardian, 20 September 1979).

The acquittal of these defendants met with bitter criticism from the serving judge, Alan King-Hamilton Q.C., and an angry correspondence between the jury and the Attorney-General, Lord Hailsham (Guardian, 1 February, 13 February 1980).

The introduction of jury-vetting is just one instance in a recent sequence of attacks on the jury as a popular institution. Increasingly, the jury has been transformed by the State as a part of the apparatus of prosecution and punishment. In 1967, the Criminal Justice Act abolished the "requirement of unanimity", allowing verdicts by ten out of twelve jurors if the jury had failed to reach a unanimous verdict after a minimum of two hours' deliberation; and in 1977, through an apparently innocuous Report on the Distribution of Criminal Business (The James Report), about 8,000 cases a year (mainly thefts of less than £20) were taken away from the Crown Court (where they would be tried before juries) and given instead to the Magistrates Court. 8,000 defendants a year could therefore be tried only on a summary basis before magistrates where previously these defendants could have gone to a jury of their peers in order to judge their guilt.

Two observations are in order about the recent struggles over the jury. First, though the removal of the requirement of unanimity, the withdrawal of jury trials from cases and the introduction of jury-vetting are all major intrusions into common-law principle of democratic trials, there have also been victories for defendants of the jury. In 1973, the judiciary itself directed that members of the jury could no longer be questioned - in order to be challenged - on their religion, political beliefs, racial origins or occupation, and later in the same year jurors' occupations were actually removed from the list from which the prosecution and defence would select a trial jury.²⁶ In March 1980, the Court of Appeal actually ruled that jury-vetting was "unconstitutional", although by a 2-1 majority it also ruled that it had no legal authority to intervene to obstruct the vetting order made in the Crown Court case under consideration.²⁷ This strengthening of the principle of randomness has occurred

concurrently with other measures which have undermined it. So there is no inexorable logic in operation here undermining the democratic form of the jury ineluctably transforming it into a part of the apparatus of the strong State. There are serious challenges to the jury from the State,²⁸ and they require a clear political response.

Our second point is indeed to underline the imperfections in the existing role of juries, which have after all been a functioning part of a bourgeois legal system, and to demand a clarification of socialist thinking on the jury. The jury should not be supported on the grounds of any tendency it may be thought to have to acquit, since the objective of a socialist justice policy, responsive to working class demands for order and also responsive to popular "theories" of justice, must be the democratisation, and not the avoidance, of justice administration. Picciotto clarifies one of the implications of thinking of the jury as a popular justice institution in this sense when he writes:

"To try to make (the jury) an instrument for anything that could move towards popular justice would mean much more than to ensure that the jury is 'randomly selected' (whatever that may mean): for a start it needs an effort to turn that randomly selected group of stony-faced individuals into an actual collection of human beings, whose job is to look at a human problem."
(Picciotto, 1979, p.173).

To argue in defence of the jury as the main area "in which the people come into court", as does Edward Thompson, therefore requires an attack on the sacred rituals and the alienated and impersonal ecology of the British courtroom (an attack which Thompson fails to mount). Instead of being directed to its task by professionals and lawyers, a jury should be allowed to "find the facts" in whatever way it deems fit, including cross-examinations from the jury box, within the general parameters of appropriate legal precedents. Popular discourse must take precedence over a purely legal form.

It is also clear that the defence of the jury should not be utopian as to the current impact of jury practices. Research on the jury in North America shows beyond any doubt that "minority groups have historically been unfairly

subjected to jury lawlessness" (Brooks and Doob, 1975, p.180); and in Britain, Dashwood (1972) amongst others has documented the insecurity amongst the black community towards jury trials, and the consequent demand for all-black juries. According to Baldwin and McConville, in the most important piece of empirical research undertaken in Britain in recent years into the operation of the jury system, the evidence suggesting that "juries are moved by racial prejudice" is "suggestive". (Baldwin and McConville, 1979, p.81). They also show that juries convict on questionable evidence "with a surprising frequency" (in at least 5 per cent of cases of conviction, according to the measures they adopt), and they do this mainly in serious cases, where convictions led, in the main, to immediate custodial sentences. (Baldwin and McConville 1979, pp.127-128). The explanation offered of these questionable convictions is not altogether clear (amounting to the jury's "sympathy" or lack of "sympathy" for defendants) but their clear conclusion is that a substantial improvement in the access of defence lawyers to the elaborate system of Appeals Courts and procedures is an urgent necessity.

The jury is therefore no automatic guarantor of "justice"; but neither is it the site of mischievous or irresponsible injustices (as the police have frequently claimed). On the basis of their recent research work, Baldwin and McConville, for example,

"remain firmly convinced that the number of serious miscarriages produced by jury trial is, in numerical terms at least, of slight significance compared to the number of injustices encountered in those cases in which defendants are induced to plead guilty following some form of plea bargaining or other form of negotiated plea settlement."
(Baldwin and McConville, 1979, p.130)

It is precisely when "justice" is done out of sight, by professionals acting on what they say is their clients' behalf, that real injustice is most common. So the defence of even the existing jury system is important in keeping the machinery of law visible and accountable to a random selection of the population: the extension and demystification of the jury system and of courtroom

procedures generally is an essential element in the creation of a socialist penology of a potentially popular character.

I take it as a self-evident also that any such socialist penology would require a sustained attack on the existing methods of recruitment of both the judiciary and the magistracy. A reform of the judiciary is demanded not only in order to "modernise" judicial decision-making, by allowing much younger lawyers to enter onto the Bench, but also it is required in order to make the judiciary much more representative of the social, sexual and racial divisions in society. John Griffith observes that

"there are those who believe that if more grammar or comprehensive schoolboys, graduating at redbrick or new glass universities, became barristers and then judges, the judiciary would be that much less conservative."

He thinks, though, that

"this is extremely doubtful for two reasons. The years in practice and the middle-aged affluence would remove any aberration in political outlook, if this were necessary. Also, if these changes did not take place, there would be no possibility of their being appointed by the Lord Chancellor, on the advice of the most senior judiciary, to the bench."

(Griffith, 1977, pp.208-9)

This seems unduly pessimistic and certainly does not take into account the likely future demands (not just of "comprehensive school boys") (sic) but of British-born blacks and women in particular for entry into law and onto the Bench. It certainly is unhelpful to accept defeat on the question of the composition of the judiciary in advance, when other major capitalist societies, like the USA, Canada and West Germany, have been successful in democratising recruitment into their judiciaries, with the effect of wrenching "law-making" from out of its traditional class location. How far the reform of the judiciary's functions in the making of law should proceed is a serious strategical question for socialists: there are certainly good grounds for attempting to retain the independence of the judiciary even from an elected government in a socialist society, since the judicial use of public law is the best guarantee of the defence of different social interests in socialist societies, and the best

defence against the degeneration of State socialism into authoritarianism by a State bureaucracy. (cf. Hirst 1980). What is clear is the urgent need for an attack on the existing monopoly of the traditional English ruling class on recruitment into the judiciary.

The last reform of the magistracy, the local representatives of Law, resulted from the Royal Commission into the Justices of the Peace, established by the first post-war Labour Government, which reported in 1948.²⁹ This reduced the compulsory retirement age to 70. Again, the immediate problem for socialists is the reform of the present system of recruitment. This system is nowhere defined or described by Act of Parliament, and the operation of it is shrouded in secrecy. In practice, local Advisory Committees, made up of magistrates from each county or county borough, prepare lists of names selected from lists submitted by the main political parties, and forward these to the Lord Chancellor. From these lists, the Lord Chancellor makes his appointments. The objection to this system, apart from its complete lack of popular accountability, is that it reproduces a magistracy chosen from among the senior officialdom of local politics or from their contacts in the local social and political structure. It is, indeed, a form of local patronage from within the existing local structure of State power operated by an unaccountable national State. As a consequence, the magistracy, which has a vast range of powers, ranging from the granting of warrants to the police for arrest to adjudication (with the assistance of the trained clerk to the justices) of points of law, tends unsurprisingly to become "prosecution-minded". D.N. Pritt observes that

"in most courts (there is) a strong tendency to make orders which the police ask for (especially on questions of releasing accused men on bail, where the police often want to keep them in custody, not because there is any fear of their disappearing but in order to spend hours 'interviewing' them - occasionally, too, because they want in effect to punish them by keeping them in prison for a week or two for offences for which, even if they are in the end found guilty, they would only be fined and imprisoned), and also to accept the evidence of police officers even when there is grave doubt of its reliability."
(Pritt, 1971, Book 2, pp.71-72)

The magistracy as currently established and recruited is clearly an integral part of the State apparatus at local level and therefore it relates, ideologically and functionally, to other elements of the State apparatus like the police. A socialist penology which tries to break from a purely statist conception of socialism, in order to make existing structure of State power accountable to the range of popular interests, would have to devise a radically different system for the selection of the magistracy, such that the composition of the magistracy would much more accurately reflect the occupational, class, racial and sexual divisions of the locality. Stipendiary magistrates, who are responsible only to the Lord Chancellor's office, should be abolished, as part of the move away from a reliance on State professionals as the agents of social democracy.

The democratisation of the magistracy would not in itself solve all problems in the relationship of law to the citizenry. In particular, it would not solve the problem of how the complexity of modern law can be handled by a representative but legally untrained local Bench. This is already a problem, however, in respect of the existing magistracy, who are often prevented from acting in a "lawless" manner only by the intervention of the clerk to the court. The existing magistracy is further disadvantaged as an instrument of local justice in being far removed from the lived problems of the sections of the local community (the majority of the local population) who are not involved in the higher echelons of local State power, in commerce or in trade unionism.

To some extent, this discussion of some selected aspects of the existing apparatus of law flies in the face of contemporary Marxist discussions as to the character of the legal form. That is, attempts to speak to the radical reform of the courtroom, the jury, and the judiciary and magistracy, could be described as "idealist" or utopian in ignoring the extent to which these institutions are merely frameworks within which -crucially - bourgeois social

relations are reproduced but in abstract and neutral legal form (cf. inter alia Jessop 1980). According to this kind of analysis, the key to an understanding of law is an understanding of the precise ways in which law necessarily reproduces the unequal and exploitative relations of the classes in capitalist societies (albeit, sometimes, in a "complex articulation"). The recent revival of interest in the work of the Soviet legal theorist, Pashukanis, has been important in drawing attention to the importance of the form of legal discourse in this reproduction to class relations. Pashukanis shows how law is built around bundles of rights and duties ascribed to legal subjects, and also around processes of reasoning that are attributed by lawyers to "reasonable" or rational individuals (cf. Pashukanis, 1978, passim). Once this general legal form is established, as it has been from earliest days of capitalism, the generalised rhetorical references to individual rights and duties and to the reciprocity of contracts between individual and society will always be resolved in courts specifically, in relation to the particular relations existing between owners and producers of commodities. That is

"the (particular) relationships (between) legal subjects are ...
the projection back on to individuals of the social relationships
between things involved in commodity production."
(Cotterrell, 1979, p.112)

We have tried in this thesis to avoid too great an involvement in some of the more abstract theoretical debates (on subjectivity and materialism, for example) that are occurring on the academic Marxist left, even though these debates are clearly pertinent to our critique of social democratic ideology (and indeed to an understanding of the character and boundaries of ideology). It is simplest to say that my major objection to theories of the legal form as a necessary reflection (in the abstract) of relations between commodities is actually that they do not identify or prioritise law as an arena of political struggle. Socialists do need a conception of law's relationship, as Pritt put it rather starkly, to the "class war"; and Marx himself was clearly convinced in the German Ideology

and in other works that such a relationship did exist.³⁰ Marx's earliest years were spent in the study of law, as well as in practical and political interventions in struggles occurring in the German courts on the customary rights of peasants on common land, on the importance of laws defending the "freedom" of the press (from State censorship), the importance of the jury in political and other trials, and a variety of other "legal" questions. He concluded, quite unambiguously, that "a people's statute book is its Bible of Freedom" (Marx, 1842). The danger in abstract, Marxist functionalist accounts of law (a problem they share, paradoxically, with some social democratic accounts) is that they frequently present Law and legal institutions as an impenetrable and secure element in the apparatus of class domination, and thereby that they discourage the use of legal interventions as a useful move in political struggles. To say this is not, of course, to deny that one of the "achievements" of bourgeois law is to displace the class struggles that are constantly occurring in capitalist societies over commodities into disputes between individual legal subjects. The ongoing common law is the sum total of judgements made in individual cases contested in the names of individuals or individual corporate bodies (and not classes, sexes, tribes or castes): individuals are, indeed, "interpellated" as the subjects of legal disputes that are in reality about the distribution of properties between classes and (because of patriarchy) between the sexes. So legal discourse is a mystification of the true character of social relations in a propertied, unequal society, but it is nonetheless an important (imperfect) instrument in the defence of the liberties of the classes and the sexes. The resolution to the mystifications in law lie not in an abstracted analysis of its overall functions nor either in a polemical dismissal of the inevitable class character of the legal institution: the resolution lies in the democratisation of law for the practical use of the various interest groups which constitute civil society.

7.4(d) The Women's Movement and Law Enforcement

Nowhere is the contradictory character of law, as an oppressive instrument of a particular social interest as well as an immediately important area of struggle, more apparent than in the relationship of "law" to "women". Despite some recent advances, women who marry still lose most of their legal rights to their husbands and may also suffer the double disability of having no independent income with which to go to law should the need arise. Access to the legal aid systems created over the last decade (which are currently heavily threatened by cuts) has served to mitigate some of the effects of this double disability, but it has by no means enshrined women as equal in law with the male subject. The anti-discrimination legislation of the 1970's (the Equal Pay Act 1970 and Sex Discrimination Act 1975) was important in attempting to prohibit gender discrimination in employment and in education, advertising and the provision of public services but the legislation failed to bring about any major changes in the women's and men's wage-rates in employment. Like the race relations legislation on which it was modelled, the anti-discrimination legislation puts the onus of proof almost exclusively on the victim instead of requiring proof of non-discrimination on the part of employers. The procedural weaknesses of the anti-discrimination legislation are compounded by the number of exemptions it allows (such as the church, the forces and Northern Ireland) and also for a failure to establish rigorous machinery for enforcing the new laws. (cf. Sacks and Wilson, 1978, pp.202-6). The law is also far from being popularised in advertisements in workplaces, on television programmes, or in other public realms: it remains as a part of that "public" law that is known only to a few, and in particular to a few middle-class women. In the meantime, the anti-discrimination legislation has made very few inroads into social security law, which continues to operate (for example, in the income maintenance system) on the assumption that men are breadwinners and that women are housekeepers. The notorious "cohabitation rule" continues to allow the

Supplementary Benefits Commission to withdraw benefits from a woman who is observed, by S.B. staff, to be sleeping regularly with a man (the conclusion being that a woman who has steady sexual relationship with a man is being financially supported by him). So in general law, even in the current period of advance by the Women's Movement, continues to reproduce patriarchy.

Nonetheless, fundamental victories have recently been won in the law courts on women's issues making inroads into the rights of men in family breakdown cases and in other areas of family law.³¹ Also, as we shall see in a moment, the area of criminal law defining the character of sexual offences (especially rape) is currently a subject of a vigorous political debate, especially between civil libertarians, feminists and criminal lawyers, with what may be important consequences in the relations of men and women generally. These consequences may or may not be "beneficial" according to abstract criteria, but they will certainly express some weakening of patriarchal assumptions in law and also therefore some strengthening of women's legal position. This is an important development in itself, and a demonstration of the contradictory character of the rules (defining "rights") which make up legal discourse and which are the stuff of the "relative autonomy" of law from its surrounding context of class and inequality.

One of the most telling indictments of "modern" capitalist societies is the restriction of vast areas of "public space" and large amounts of "leisure time" for that half of the population who are women. Specific areas of North American and European cities (in the inner city, in certain parks, or on isolated pathways) are increasingly defined as unsafe for women to negotiate, especially at night, for fear of some form of sexual attack. The hours of darkness have also become defined as unsafe for unaccompanied women³², and both in North America and in Britain, the Women's Movement has organised campaigns to Reclaim the Night. (cf. Lederer 1980; Spare Rib January 1981). The "public" space of advanced capitalist "democracies" has been closed off

to women, and even in the private spaces of family life, the evidence is of an increasing use of physical violence towards women, as the privileges of the male are increasingly undermined by demands by women for shared domestic work, as women themselves come increasingly under pressure in both the waged and domestic labour markets.

We have already spoken of the need for a socialist conception of policing which is responsive to the demands of the women's movement. The objectives of the Reclaim the Night movement do demand the reintroduction of beat police in the central areas of cities and in other areas where the sexual harassment of women is known to be common. The effectiveness of such policing would clearly have to be monitored by democratically representative bodies which would include representatives of women's organisations.

But reclaiming the night and women's rights to full and equal citizenship generally (even in a socialist society, but particularly in a capitalist society in crisis) will also involve legal struggles. These struggles will entail the attempt to repeal some legislation which is essentially patriarchal in character and function; demands for the effective enforcement of other legislation (which is practically useful to women and also politically useful as a base for further advances) and also, I will argue, the struggle to create new legislation. These struggles should begin with current awareness of the need for a public law which will defend women's ability to walk the streets, parks and public space generally without harassment, and extend into areas traditionally designated as private law, in the defence of women's rights in the family and also vis-a-vis the State (for example, in respect of social security and taxation law). We can only give some sense here of the kinds of demands which must be raised, and which must become a part of a transitional socialist strategy: the precise character of these demands must arise, in part, out of particular struggles of the women's movement and the experience women have of the State's response.

In three of the areas we discussed in some detail in Chapter Four, prostitution, domestic violence and rape, specific strategies have already begun to be clarified and formulated as a result of the campaigns and official State initiatives over the last decade. The prostitute organisation PROS has formulated four demands, for

- "1. In the short term, the abolition of all prison sentences for the offences of loitering and soliciting for the purpose of prostitution.
2. The abolition of the term 'common prostitute' in legal proceedings.
3. The abolition of the offence of loitering for the purpose of prostitution.
4. The abolition of the offence of soliciting for the purpose of prostitution."

(PROS bulletin, 3, (1979), p.3)

The English Collective of Prostitutes (ECP) and Prostitution Laws are Nonsense (PLAN) organisations have gone further and demanded the "total abolition of all laws concerning prostitution". Their arguments for abolition are in part specific to the increasing problems involved in prostitution (resulting from police harassment, interference of professional social workers and exploitation by pimps and landlords) - which they argue are due to the prostitute's weakness before existing law. Prostitutes are unable to protest against unjust arrest, unjust removal of their children into care, or unjust rental charges or physical violence from pimps because they are liable to arrest as "common prostitutes" on the basis of a policeman's decision to so charge. So the illegal status of soliciting and loitering for prostitution actually prevents the regularisation of prostitution under other legislation (for example, under laws governing wage rates, public hygiene or public nuisance).

The ECP and PLAN's call for abolition of prostitution laws as such is also premised on the repressive effects of these laws on all women. The

harassment of prostitutes by police under existing law often carries over into the harassment of women generally by police, especially at night, and especially if women are not accompanied by men. The enforcement of existing law is one of the contributory factors in the prohibition of certain urban spaces (in coffee bars, or just walking home), and certain periods of the night, to women: it is law enforcement which deters women from exercising the right to freedom of movement, by suspicion. Women and girls who live in or near red light districts are also likely to be harassed by "curb-crawlers", who have to search for prostitutes in this way because existing prostitution laws do not allow for a more regularised and commercial form of soliciting. ³³ But the fundamental objection raised by ECP and PLAN to the laws is that they are a "trespass on the rights of all women" as to how to control their own bodies. They are therefore patriarchal laws, in that they penalise women for marketing their sexuality for gain outside of marriage, in order to legitimate the conventional domestic division of labour in the nuclear family.

The arguments of the three prostitutes' organisations are currently posed in terms of a fundamental and humanitarian objection to the use of prison sentences for prostitutes coupled with a revolutionary feminist appeal to the interests of all women in being able to control their own bodies, and to sell their labour to men, in whatever form, at a market price. These arguments are not socialist arguments in themselves, for a socialist programme on sexuality would clearly involve, minimally, the freeing of sexual exchanges from the cash-nexus. Engels' vision of a society of spontaneous sexual love is currently unimaginable outside of certain subcultures; ³⁴ but the dismantling of patriarchal domination over women is an active area of current political struggle, so far as the regulation of sexuality itself is concerned, and also with respect to both the domestic and wage labour markets. A "transitional" socialist penology must demand the abolition of laws criminalising prostitution, whilst also prioritising the freeing of sexual relations from puritanical and

repressive moralities and the fetishism of commercialised pornographic sexuality.

Historically, the institution of the family has been a major source for the repression of women's and men's sexual needs alike, whilst also being apparently, as we have said earlier, an institution for the partial fulfilment of other human needs (for company, emotional contact etc.). The future of the family in a socialist society is a matter for constant debate and reflection. What is clear in the present period, however, is that the sanctity of the family in both the major ideological formations (of Conservatism and Social democracy), and also in legal and police ideologies, has worked to the general advantage of men and to the detriment of women and also children. We have in mind the historical tendency for the courts to make judgements for men, against women, in cases of dispute over property, in particular; and to find for women only in divorce cases involving dispute over possession of children (in other words, for women as mothers, except in cases involving lesbians). In Britain and in North America, there have been advances in the law enabling courts to find for fathers in child custody cases, (which is certainly to be welcomed as a weakening of traditional assumptions about sex roles) but these have proceeded rather faster than changes in the law allowing women to act as full legal subjects in disputes over property. The advances in the law have not yet extended to the point of enabling gay men or women to take on full parental rights either individually or in couples, though there is now no obvious "natural" or social reason why families should be organised around the heterosexual couple.

It is also clear that the women's movement has been remarkably unsuccessful in forcing any significant change in the practice of police vis-a-vis the family, for example, in cases of domestic violence towards women. Yet research in both Britain and America suggests that violence against women is much more prevalent than is generally realised, and also that the violence used on women is much more severe, and often brutal, than popular wisdoms would suggest.

Existing statistics on cases actually reported to the police massively underestimate the extent of this domestic violence, with middle-class women in particular being much more unwilling to report to the police for fear of loss of respectability, and also much more able to disguise the violence of their marriages from neighbours. The police themselves continue to exhibit a belief in the sanctity of the family as a social unit transcending the immediate interests of its members and also (more justifiably) are convinced that domestic disputes are better dealt with by social workers than by police. In their unwillingness to involve themselves in family disputes, except where they suspect serious physical assaults, the police do thereby help to reproduce the control exercised by the male over the family (through his relative monopoly of violence) and also they ensure the continuing privatisation of the injuries done to women within the family. This privatisation may also, of course, have dire consequences for the children of troubled families. Police policy in domestic cases is still one of reluctance to intervene. This in turn deters women from turning to the police - thus, only 2 per cent of the sample of battered wives in Scotland studied by Dobash and Dobash actually contacted the police, and very few arrests were made. Studies in America of police response to wife battering suggest that many women despair of receiving help from these (or other) quarters and finish up drinking, existing on drugs prescribed for "depression" or attempting suicide. (Klein, 1979, p.27). It is only when women turn to "refuges" or "shelters" established by other women that they receive any significant attention and support.

A critical observation is in order here. The call made by Dobash and Dobash, Klein and others for more intensive police intervention in domestic violence cases is clearly intended to deal with situations in which violence is continuous and the woman cannot leave the home to search for help or for a lawyer, for fear of leaving her children, or for financial reasons.

"The police alone provide 24-hour service to individuals in distress, but given their training and policies, it is likely that they will provide little or no assistance to a woman being assaulted by her husband."

(Dobash and Dobash, 1980, p.211)

This formulation does seem to confuse women's need for protection from a violent husband/man with her need for personal support from sympathetic women and social agencies. As currently established, the police (for all that they are a 24-hour service) are unlikely to provide the latter; the call for more vigorous police intervention in immediately dangerous and repressive domestic violence situations has surely to be coupled with the demand for 24-hour social services that are able to act in support of battered women, frightened children and (even) disturbed and isolated men alike.

The continual privatisation of the problem of women's subordination within the family has however been under significant challenge in the last year. The sentences of three years imprisonment which were passed on the Maw sisters at Leeds Crown Court in November 1980 for the manslaughter of their drunken, battering father provoked such protests as to result in the hasty convening of an Appeal Court in December, which reduced the younger sister's sentence to six months. (Guardian 4 December 1980). A feminist demonstration outside the court demanded that both girls be freed on the grounds of acting in self-defence. Similar demonstrations of sorority with women accused of acts of violence against brutal men within the family have also occurred in North America in recent years (Klein, 1979, p.28); and feminist lawyers have increasingly articulated trial strategies based on concepts of self-defence rather than on pleas of mental impairment. Similar developments are to be expected, and encouraged here. But the development of feminist legal strategy must be accompanied by new relationships within the police to ensure that women who are experiencing violence within a family, either directly or through the children, or within some other kind of relationship with men, can turn to the police for help when necessary. To think of the enforcement of existing law by the police, however, clearly involves the kinds of reforms in police accountability and recruitment which we discussed earlier in this chapter.

Struggles for the abolition of certain laws or for the enforcement of others may however - and more controversially - have to be accompanied by

struggles by feminists and their socialist allies for the creation of new legal offences. It is not at all clear that the recent demands for "the closure of porn shops, the suppression of films and advertisements depicting women as targets of male sexual violence, the intensification of police action against rapists, wife-beaters etc." (B. Taylor, 1981) can be met within the framework of existing legislation. An offence may have to be created for example which specifically criminalise the depiction of women as legitimate targets of sexual violence. There are obviously great problems in justifying such a law. I would not argue that the films, videotapes and magazines which depict such sexual violence against women should be outlawed on the ground of their "effects" i.e. that they might encourage imitative behaviour on the part of the men who view them. There is no sound evidence for such a view. But as I argued in Chapter Four, and as Beverly Brown has now reasserted (Brown, 1980), this liberal behaviourist criterion is irrelevant. What is crucial about pornography is what it legitimates ideologically. "Soft" pornography legitimates (patriarchally) male sexuality by portraying the naked or half clothed female body in heavily sexually-scripted postures or scenes. In recent years, as I suggested in Chapter Four, some soft pornography has tried to legitimate a "liberated" women's sexuality with pictures of naked men, and with the elaboration of different sexual scenes generally in which women's sexual needs are more prominent. For all that most soft pornographic magazines and films are patriarchal, the terrain is now "contested", and some celebration of women's sexuality is allowed. The only grounds on which this kind of pornography could be outlawed would be on the basis of some new moral puritanism which attempted, like its Victorian precursor, to deny the joys of male and female sexuality. For socialist feminists and their allies to move in this direction would be to threaten one of the most important women's gains in recent years: the recognition of their sexuality outside of reproduction. It certainly would make no sense to propose the outlawing of this kind of pornography on the grounds that

it helps to reproduce patriarchy, since in this respect it is no different, and probably less insidious in its effects, than the average romantic comedy on television. Both depict women in patriarchal terms, but both do so "consensually". That is, they do so in terms which some women and men found objectionable, and which have therefore been modified and transformed over time to take into account objections and criticism. So the sexism of soft pornography and romantic comedies, whilst still fundamental and still objectionable, is qualified by new scripts and images, and therefore acceptable to many.

"Hard" pornography is altogether different; and our present concern is that some of the themes of hard pornography are now playing into cinema films on the mass circuit. Films which depict the mutilation of women in sexual contexts, or which set up woman as a legitimate target for violence because of her sex (or a behaviour associated with her sex, like "nagging") have an ideological factor in common: they work to celebrate patriarchy that is enforced by coercion and indeed by terror. As I suggested earlier, in Chapter Four, they make sense only as extremely reactionary, male "redneck", populist response to the advance of the women's movements over recent years. They legitimate the violent responses of some husbands to the stirrings of women's consciousness in their wives and they also legitimate the use of violence for instrumental purposes. Women have to respond to what is a direct ideological attack on the movement towards greater independence within the family (this in itself does not necessarily involve the law), but they also have to gain the power to prosecute men who produce and promote the films, the tapes and magazines that celebrate a coercive form of patriarchy. To fail to do so would be analogous to black groups failing to press for the outlawing of films celebrating racist attacks by the British Movement.

In Chapter Four, I also identified some of the inadequacies of existing rape law. The discussion there anticipated the needs for a rape law of much

broader scope (perhaps, simply, of "sexual violence on a woman"), and which does not, in particular, require the penetration of the woman by a penis. Charges could then be brought against men in cases which are currently reported initially as cases of rape, but which fail because of lack of material evidence (of penetration). The existence of a broader offence, of sexual violence on a woman, might also encourage greater numbers of women to report to the police in domestic violence situations. Its two main effects would be to challenge the restrictiveness of existing rape law, whilst retaining the sexual character of violence against women in the charge, and also signalling to women that law could be used against men who attempt to enforce their patriarchal position, by violence and physical coercion.

The formulation of a demand for a new criminal offence would certainly offend civil libertarians, and it would also run counter to the reasoning adopted by some feminist criminologists and socialist lawyers. Civil libertarians would see the attempt to use State law as a form of social defence for women (and, in this case, human social relationships in general) as a dangerous exercise in State authoritarianism: to this, the response must be that the struggle against male violence must be then continued on all fronts, including State law itself and also including all the various arenas of ideological struggle (including the media itself). State law will be no more coercive than currently for being asked to take on the defence of women from patriarchs.

Some feminist criminologists, including Lorene Clark and Debra Lewis (writing on Canada) have reacted to the urgent need felt by women for legal protection for calling, in particular, for the deletion of the charge of rape, in all its specificity, from the Canadian criminal code, and the replacement of the rape charge by "new assault charges", which, whilst being based on principles acknowledging the full equality of men and women, would nonetheless make it easier for women to take men to court, and also would encourage women to report men to the police for criminal violence. (Clark and Lewis, 1977,

chapter 11). Their twin objectives are to increase the rate of reportage of rape to the police and also to increase the number of actual convictions of men who commit violence against women. Their argument is quite different to that advanced in Britain by the radical barrister, Geoff Robertson Q.C. Robertson believes that it is the emotional character of the rape label which causes women to hesitate in reporting an offence to the police, and also this emotional element which causes judges to sentence to long terms of imprisonment (on a tariff, in the middle 1970's, of three to six years) (Robertson, 1975). Both these problems could be solved by integrating rape into the existing offence of assault. So Robertson's concerns are to encourage more women to report being raped to the police whilst simultaneously encouraging the courts to be less punitive towards convicted male rapists. This is an essentially sexist position, under current conditions, since it fails to deal with the specific character of rape (which is a direct attempt to control and humiliate women by the use of fundamental physical and psychic violence); and it also is silent on the question of women's attempts to "reclaim the night", and on the pressing need for women to be able to turn to the law in their own defence against sexual assault.³⁵

With Anna Coote and Tess Gill, we would argue for the retention of the rape charge, precisely because rape is a sexual crime committed by men against women's bodies and a crime which currently terrifies large numbers of women in Britain and America. It does actually exclude most women from "open territory" (as Clark and Lewis call spaces outside the home, work and other "respectable" areas) and it is therefore a major control on women's freedoms. The problems with rape law are that the law is still too restrictive in scope and application,³⁶ and also that the procedure for following through a complaint involve further trials and physical and psychic humiliations primarily for the women victim rather than the man.

We have already spoken of the need for a new offence of "sexual violence on a woman" which would not be subject to such a narrow set of definitions as is the existing law on rape. In the demands for this new law and in demands for the reform of existing rape law alike, other transitional advances can be made. In particular, as the Rape Crisis Centre argued in its Second Report, the 1976 Sexual Offences Amendment Act should be amended to disallow any reference in rape trials to a woman's past sexual history (which the 1976 Act continued to allow when the judge considered it relevant), and also all references in the Act to the woman giving "consent" should be replaced by the phrase "reasonable grounds for believing that she willed it". A formulation of this kind avoids reproduction of the idea of a passive and subordinate female sexuality, of the notion that sex is more important for men than for women, and the belief that it is a "woman's duty" to provide sexual enjoyment for the man.

The effect of these two amendments would be to undermine the defences that are used by men in the majority of rape trials. They would in fact prioritise the woman's statement that she had been raped as the primary evidence in such cases. As the Second Report of the Centre observed: "The burden of proving that the women consented to intercourse should be placed on the man whenever his defence is one of consent". (p.11).

In constructing these two amendments (and ten others) as proposals submitted to the Criminal Law Revision Committee, the Rape Crisis Centre had been heavily influenced by its intense recent experience of the courtroom processing of rape cases. The project workers were clearly impressed by the enormous burden of proof that still rested on women in such cases, even in the aftermath of the 1976 amending legislation, and they were appalled at the ease with which men accused of rape were being acquitted, often on minor legal technicalities. So in contrast to other critics of rape-law, who have concentrated on removing the requirement in existing law, dating from 1736, that women's evidence

in sexual matters must receive independent corroboration, the Rape Crisis Centre want women's evidence to be at the very centre of rape trials. The demand may appear revolutionary, but of course the effect of this reform of the law would merely bring the practice in rape cases into line with the rest of criminal law. Subsequent to such reform, it would become the task of prosecution counsel to prove the man guilty of rape, as in other criminal cases, "beyond reasonable doubt", just as it is the task of prosecutors to prove guilt in such terms in other cases.

Prioritising the woman's evidence in rape trials does not necessarily involve a reversal of the notorious ruling of the House of Lords DPP vs. Morgan of 1975. On that occasion, the Lords ruled that "if a man genuinely believed that a woman consented he should not be convicted, no matter how unreasonable his belief may have been". As Coote and Gill have argued, it is important that courts cannot convict people of offences they genuinely did not intend to commit, and situations of close physical contact between men and women, and consequent sexual arousal, do create the possibility that cues will be misread. This could and should in principle be a defence against the charge of rape even under the Rape Crisis Centre's proposals, but the burden of proving genuine belief must rest firmly on the man, who could not adduce evidence about the woman's previous sexual history, in order to support his case, or rely on the notion of a passive, compliant consent.

In the short term, further pressure must be put on giving legal recognition to rape in marriage. This is crucially important in registering the changing significance of legal and common law marriage for women (and for many men): marriage should no longer be allowed to transform a woman's body into the property of her husband. It is also important to define rape as an offence against all women, thus preventing police and lawyers acting for men continuing to imply that there are women of virtue and women of vice, with the latter legitimate targets for sexual violence (by reason of being unmarried or independent

of any one man). The law must be required to offer a defence of marriage as a conditional contract only between a free woman and free man that confers no special rights and no particular disadvantages on either partner, whether these are financial or sexual; and the law must also protect all women (and men) from sexual interference committed against their will whatever the social standing or occupation of the victims of such attacks might be.

To recognise that the law is an area in which demand can be raised in this fashion is to recognise that transitional legal demands can also be raised, and are likely to be raised in coming years, across a broad range of feminist and socialist "terrains". A major area of investigation and political agitation amongst feminists and their allies in the coming months, for example, is likely to be the question of "disaggregation" of women (from the "aggregated" "family income") so far as existing taxation and social security law is concerned (Bennett et al, 1980). It is to be hoped that feminists may also begin to pose challenges to the use of apparently permissive criminal law, like the care proceedings of the Children and Young Persons Act of 1969, to put young girls into care for their own protection, because of the "precocious" exercise of their sexuality. It is in the interface of different areas of law that the scope and functions of social policy and social control vis-a-vis women are regulated, with fundamental consequences for all women clients of the State welfare and legal apparatus. Socialist feminists and their allies have a heavy burden of analytic and practical work to do in identifying the crucial areas in which patriarchy is reproduced by "law" and "public policy", in making these areas publically problematic, and in developing demands from them as a part of the more general struggle for social transformation.

* * * * *

The discussion of "transitional demands" presented here has focussed on the question of prison (prioritising prisoners as the main political agency),

the police (with police critics and new local police authorities the significant agency), law (to be combatted on all fronts, by socialists outside and within the legal profession) and the question of patriarchy and legal reforms (prioritising the women's movement). The examination is obviously not exhaustive of all the 'crime' topics that could be included within a transitional or prefigurative socialist penology, and there are also other, possible agencies which could be discussed in such an analysis.

One obvious absence in the list of agencies of change is the social worker. Partly I have avoided discussion of the role of social work in "prefigurative" analysis and practical politics because many other people have written at length and informatively on the current contradictions in social work and the potential contributions of radical social work to the struggles for socialism. (cf. inter alia J. Clarke et al 1980, Simpkin 1979, Edinburgh Weekend Return Group 1980, and Leonard and Corrigan 1978). But partly I have not given prominence to social workers as a "prefigurative" agency out of a sense of the real disadvantages under which radical social work must suffer in current ideological struggles. Demands for improvements in social provision or in "care" facilities are heavily problematized in advance by the broad acceptance of authoritarian populist ideology especially on "welfare", not only in the popular press but also amongst large sections of the general population, even amongst working class populations themselves. So calls for an extension of welfare, except where they have some specific relevance to a specific population that is itself in immediate need, are unlikely to "prefigure" social change, in the sense of encouraging widespread popular rejection of authoritarian populist ideologies and monetarist social and economic policies, and a turn towards alternative politics. In this sense, insofar as it makes economic demands about provision or classically liberal demands for "care", radical social work does not and perhaps cannot make demands which are able to contradict existing ruling class practices and rhetorics ideologically. Especially in the current phase of

monetarist reconstruction of the British economy, the rhetorics of social work itself of either a liberal or a radical character are widely defined as "a luxury"; they are "candy floss" which cannot currently be afforded.³⁹

As I indicated earlier, the role of academic social theorists themselves is less important in prefigurative struggles than they themselves would like to believe. In particular, we can see that "critical theorists" (like the deviance theorists of the late 1960's and early 1970's) who continue to^{theorise} abstractly and un-historically about the evils of "social control", or, following Foucault, the insidious character of a "disciplinary society" seem particularly irrelevant to the struggles that have^{now} to go into the construction of "practical" demands (for example, in the area of prison reform) or policy construction (in various areas of law). The heritage of this critical tradition will live on as a way of reminding socialists of the dangers of "labelling" in the "process of social control" and also, as suggested earlier, as a critique of the claims of "experts" or "professionals", in any form of State, to provide the services their rhetorics proclaim. But, in itself, these essentially academic traditions of social policy thinking and criminology have not been able to reach a firm agreement on the character of the social order their critical reflexions anticipate (or "prefigure"): and it is into that space that specifically socialist and feminist politics and transitional strategies have to be inserted.

This point can be put in another way. Identifying the failures of post-war social democracy, for example in providing the sense of social order its 1940's rhetorics anticipated, is not to identify the impossibility of social democracy as such. In this thesis, indeed, I have tried to analyse the limitations of social-democratic crime talk across a wide range of topics and to suggest ways of reformulating socialist definitions and responses to them. This task was not solved or advanced, however, by analysing existing social democratic responses as illegitimate exercises in social control, unwarranted

because of their unseen, unintended or mischievous effects on their clients. Increasingly, as the analysis of particular questions (like prison or policing) has proceeded, it has become more and more clear that there are two key questions in the examination of social control. It is in highlighting these two questions that I shall finish. These two questions are the question of the relationship of social control to a democratic State formation and, indeed, the practical efficacy of social control as a guarantor of social order.

5 Democratisation and Socialist Reconstruction

In his Arguments for Socialism, Tony Benn advances an argument for a thoroughgoing democratisation in Britain, that concentrates, in particular, on the need to make "government more accountable to Parliament and to the people" (Benn, 1980, p.108). The alienation of people from Parliament and government is seen to derive in particular from Parliament's inability to deal with "the bigger and more centralised units of production or bureaucracy" which have resulted, primarily, from "technological change". (Ibid.). Tony Benn then proceeds to make a series of practical demands for making governments and the civil service accountable to Parliament, and also for making both Government and Parliament less private and indeed less secretive in their proceedings.

The arguments for democratisation presented here extend Tony Benn's analysis in the sense of demanding the democratisation of the existing institutions of the State, like the prison or the police force, in order to transform their character. Democratisation of policing is not simply advanced as a means of observing existing police practice and making it more accountable. Democratic control of the police is demanded in order to subordinate police practices, especially in so-called community policing, to the demands of a wider range of social interests for effective policing than the current "professional" definition of policing allows. Democratisation of the prison is demanded as being the most effective means of challenging the massive rate of imprisonment in this country, and of "problematicizing" the prison and its function as a public and also a class issue. Democratisation of the law and

legal system is demanded in the attempt to put an end to the astonishingly class-bound and patriarchal character of the British judiciary, courtroom procedure and legal rules themselves.

So the call for democratisation here is forwarded as a way of opening existing State institutions to the influences and demands of organised social interests that currently relate to the State only as clients, employees, or, in the case of police and courts, as accuseds. It is a way of "enfranchising" women, prisoners, blacks, tenants, welfare recipients, and other interest groups that are currently "handled by" the State in different capacities, and who experience the State indeed primarily as a bureaucratic and impersonal agency (a part of a disciplinary apparatus - run by an unidentified "them" - rather than as a part of "our" community). Such an enfranchising, for example of women's organisations in relation to local police committees, would significantly transform the character and function of particular aspects of the police and the local state, and in this respect prefigure, by making possible, the construction of other demands by women on the local state apparatus generally (for example, in relation to provision of housing for single women, battered wives etc.) or the police specifically (in relation, for example, to the way in which rape and domestic violence is handled in particular forces).

Such a view of the need for democratisation does not derive simply from a generalised view of the alienation that citizens feel from "the bigger and more centralised units of production or bureaucracy". It depends instead on the recognition that the institutional apparatuses of the British State, built up over centuries, and predicated on deep traditions of deference towards aristocratic rule and of an assumed continuity of patriarchal family life as the foundation of social order, are increasingly irrelevant to particular, identifiable social interests. In particular, we have tried to reactivate a traditionally social-democratic analysis of these institutions and apparatuses

by attempting to see the State being in its present form as a class institution (working by coercion or in ideology to reproduce the class relations of a capitalist society). But we have simultaneously tried to show the inadequacy of conventional social democratic understanding of class: unexplicated references to the "interests of working people" are no substitute for recognising that "the working class" is now fractured into a variety of different specific interest groups and class fragments. The "unification" as a class of men and women, of blacks and whites, of skilled and unskilled worker, of employed and unemployed, and of the variety of interest groups contained within the penal system cannot be accomplished at a merely rhetorical level: it is a project that requires that these fragments can first have their real interests recognised as an important element in socialist politics. And such a project of recognition - the opening out of existing social democratic parties to these different class fragments and interest groups - is made all the more urgent by the economic collapse of the traditional basis of Labour politics (the blue collar working class) under the logic of monetarism, and by the ideological advances of right-wing populism.

The recognition of the particular needs of these different interest groups in reconstructed Socialist perspectives must be achieved by a fundamental modification of conventional social democratic commitments on the question of the State. To call for the democratisation of the State is not to surrender to right-wing individualism or to economic interests who see chances of gain in the privatisation of some forms of State activity (for example, in health care or even in child care). Indeed, renewed ideological commitments are necessary (given the current sorry situation of the National Health Service and local authority nursery and child care provision) to the defence of the State as the only institution that can ensure proper health care for all and the only institution that can provide child care on behalf of working fathers and working mothers, single parents and others on low incomes. It is often only through State

provision of such facilities, indeed, that young children can encounter children from other social classes, races and general background. The State is also the only apparatus that is capable of organising income redistribution in a capitalist society, as well as being the only centralised apparatus that can collect taxation and provide services (like energy) for the population as a whole. (cf. E. Wilson 1981). It is indeed the only institution that can universalise the availability of health, education and welfare. Finally, the State is, of course, the only apparatus through which the economic future of the mass of the people can be underwritten. The left's current rejection of corporatism of the Wilson and Callaghan Government, and its increasing commitment to an alternative economic strategy, still involves a central role for the State, especially in organising the use of public expenditure in investment into industry and in the economy generally. As Tony Benn observes in his Arguments for Socialism

"only public expenditure can convert human needs into economic demands able to command resources and help restore full employment."
(Benn, 1980, p.149)

What is crucial in the portrayal and the actual carrying out of socialist economic policies through the State is that the identification and evaluation of "human needs" occurs in the most democratic and public fashion, at both local and national level.

This recommitment to the State as an economic apparatus and as the sole institutional apparatus concerned with the provision of universal health, education and welfare cannot however be an excuse for an unreflexive recycling of social democracy's familiar bureaucratic and authoritarian statism. The problems that confront socialists in Britain in 1981 (and also now in North America) are increasingly ideological, in the sense that socialist alternatives to right-wing populism are already impugned ideologically, by the popular press, the Thatcherite leadership and also in popular commonsense, as forms of

authoritarianism and inefficient bureaucratic statism. Cold war analogies are often introduced as a way of implying that the ideas of democratic socialism are of a piece with the ideas used to legitimate the rule of the State bureaucracy in Soviet Russia. It is only by showing that the real interests of the many different subordinate interest groups in the British class structure lie with a reconstructed socialism that such a socialist future can indeed be "prefigured". So the thoroughgoing democratisation of State activity has to be at the centre of socialist demands, not only in relationship to industrial workplace but also in relationship to every aspect of State social provision and to State policing and social control generally. I have left open the question of whether the reconstruction of socialism must take place within the Labour Party or within the various class "fragments" themselves. Like other recent authors I have only been able to point to a "patchwork" of democratising socialist interventions in the State. This is indeed the character of the "conjuncture", as Hilary Wainwright observed, in the very first "text" to recognise the existence of the "fragments" in a systematic way.

"When a dominant theory of socialist changes collapses in the face of economic and social problems that it can no longer explain or resolve, and when no alternative has matured in previous contestation with the dominant view, then there is likely to be tremendous variety in the attempts to fill the vacuum. Especially when the objective problems are urgent and there is a periodic groundswell of mass activity in response to them. This, in effect, is the situation ... with the decline of left reformism. Out of this diversity can then come new solutions, greater agreements and greater strengths."
(Wainwright, 1979, p.244)

The call for the democratisation of the State as a part of a new socialist penal politics is in this perspective a call for the recognition of the crucial role of the "fragments" in identifying, inter alia, the kinds of policing different communities require, the kinds of social and penal provision required for adults and youth and the kinds of laws and law enforcement procedures that would help to sustain a genuine sense of order in particular communities and across civil society as a whole. It is a firm denial of the generalised populism of the radical Right which encourages massive reductions in State social

provision whilst simultaneously encouraging popular support for increased expenditure on "law and order", and which then presents this restructuring of the State as if it could in reality underwrite social order in working class communities and in civil society as a whole.

7.6 Right Wing Criminology : A Class Rhetoric about Social Disorder

There is no doubt that Socialists were put onto the defensive in Britain by the result of the 1979 General Election and also by the speed and vigour of the Thatcher Government's attack on public expenditure across the board, as well as by the cancerous effect that the threat of unemployment has had on trade union militancy. Internationally, the advancing recession had signalled the end of Keynesianism and thereby has also undermined the social democratic and liberal descriptions of capitalism as a healthy mixed economy, more or less always able to reproduce itself without a fundamental collapse into recession. Social policies which had assumed the continuing existence of a surplus with which the State has financed its social expenditure were nearly all put under threat. The threat posed to the economic wage by unemployment and the threat to the "social wage" (the welfare state) put "working people" and the "fragments" alike on the defensive, as each individual has looked, first, to the defence of his or her individual job.

In such circumstances, it is perhaps inevitable that the individualistic themes of radical right thinking should have started to find an echo in some academic and intellectual circles (especially in the United States, but also in Britain),⁴⁰ as well as to have what appears to be a massive and unchallenged effect amongst "working people" as a whole. The fact that right-wing populism appears to speak to the reality of many working people's lives (and in particular their experience of the State) has caused considerable pessimism and despondency on the left in most western societies.

This despondency is unjustified, especially in the medium term. In particular the widespread fear of the spread of authoritarian populism forgets that this populism is, after all, a specific form of ruling class ideology. Several observers have described the evolution of authoritarian populism, and I tried to summarise the main themes myself in Chapter Five of this thesis. Jessop has recently provided a succinct summary :

"Thatcherism attempts a radical realignment of social forces across a broad front in order to effect an irreversible rupture with the post war social democratic consensus. It involves populist mobilization against the evils responsible for Britain's crisis (such as socialism, bureaucratism, welfarism, trade union dictatorship, penal taxation and rising crime) and promises national regeneration through the liberation of market forces and the development of a strong state able to discipline those opposed to freedom under the law."

(Jessop, 1980, p.364)

Two points are important for our purposes. One is that the appeal of authoritarian populism and Thatcherism is in part dependent on the lack of appeal, and indeed the widespread unpopularity, of the Callaghan Government's pragmatic pursuit of corporatist economic policies via the authoritarian construction of State policy, and the bureaucratic enforcement of it, sustained only by cynical parliamentary alliances. Working people's experiences of Thatcherism have certainly not led them to embrace this populism in its economic and political forms. The success of the Conservative Party in 1979 of cutting into traditionally Labour voters' affiliations is unlikely to be repeated again. To say this is not, of course, to deny that Thatcherism has worked with enormous effect in unsettling popular support for the Welfare State and for "liberal" social policy generally. Nor either is to say that the apparent inability of Thatcherism to break the hold of popular "social-democratic" or Keynesian beliefs vis-a-vis the national economy could result in large numbers of electors returning to traditional Labour voting patterns or even to turn to the left. It is obvious that the mass of working people are on the defensive and very confused, and that this confusion has been compounded by the creation of

/Democratic
the new Social Party. But it is important to realise that forthcoming Elections, and other extra-parliamentary struggles, will be fought on ground that is much less advantageous to the radical Right than that of 1979. Not only will populist ideologies and policies lack the newsworthiness and the appeal of being different from the post-war social consensus generally and the Callaghan Government's authoritarian statism in particular. They will also be seen to be ideologies that have allowed, and indeed made legitimate, a fundamental weakening of the industrial economy and also contributed to the reintroduction of the human waste of long-term unemployment as a feature of life for over 2 million people.

Crucially, it is the responsibility of the various socialist "fragments" to show also that right wing populism cannot work as a form of social policy. So, for example, socialists working in the Health Service have to show how the growth of private medicine is parasitical on society as a whole, and that the residual public health service cannot provide fundamental health care for the rest. And in the area which we have been discussing here, crime and social order, socialists have to show that authoritarian populism cannot actually provide for the human need (for social order) which Thatcherite rhetoric appeared to "prefigure".

Two years into the Thatcher Government, there is little sign of the national economic regeneration that was promised in 1979, nor either is there any real evidence of the "social peace" which was implicit in the law and order rhetoric of the Election. Indeed, the slight declines in official crime rate of 1978 and 1979 look now to have stopped and the crime rates reported by the police to the Home Office are on the increase. In South Yorkshire, the number of offences known to the police increased by 11.7 per cent during 1980, with crimes of violence and burglary being among the heaviest increases. Local police spokesmen indicated that the rising figures were part of a national trend.

(The Star, Sheffield, 30 January 1981) ⁴⁾ We have already noted that this national

trend included massive increases in racist attacks on the homes and persons of blacks and Asians, continuing increases in predatory crimes in public inner-city and city centre areas and on public transport (especially at night) and significant increases in reported cases of domestic violence and sexual assault and rape. In the summer of 1981, all of these developments climaxed (along with the militancy of the beleaguered black population) in the riots which occurred in many of Britain's urban centres.

Continuing increases in the rate of crime and in particular in the desperate forms of interpersonal violence (either for gain or as an expression of forms of nihilism) are entirely to be expected. If reformist welfare State policies adopted during the post-war period were unsuccessful in producing material conditions and the social relations within a capitalist mode of production which could significantly reduce interpersonal violence, property thefts, and "anti-social" activities as such, then it is even more difficult to see how a withdrawal from welfare and an accelerated commitment to coercion could produce the appropriate conditions for a "crime-free" society. Increasing the police presence in society may or may not deter individuals from acts of predatory crime or interpersonal violence in public places observed by the police (there are different research results reported on this) but they cannot influence the conditions that produce inequality in access to material goods and life possibility or which produce interpersonal, racial or sexual competition, envy, mistrust and violence.

We can expect that the Right will attempt to portray increases in crime rate in forthcoming years as evidence of the need for further increases in social discipline and also as evidence of the need for further increases in police power and in State expenditure on law and order. The Left must clearly challenge this interpretation, by identifying Thatcherism and right-wing populism as ineffective as social and penal policy. In so doing, Socialists will increasingly be able to reassert older and more fundamental connections than was allowed within the liberalism and social democracy we have discussed in this thesis:

it will be possible to show how the social relations of capitalist societies as such, whether in health or in decay, must divide human beings from human beings, and therefore produce a variety of acts of crime and violence, in the very nature of the form that social organisation must assume. The freeing of "the market" (that is, of capitalists) from the regulation of the State cannot usher in a new era of interpersonal responsibility and self-discipline, as the New Right believes, and neither can the economics of the market place repair the dislocation of fractured urban communities. Human beings' responsibility to each other and their cultivation of social and interpersonal "discipline" depend not on the anarchy of the struggle for survival or profit, but the creation of a genuine community of interest of all citizens. It is no accident that homicide and crimes of violence are commonest of all in societies like the USA, Hong Kong and many South East Asian countries, with the least degree of community control over "free enterprise" Capital. It is no accident that it is in societies like the USA that New Right criminologists like James Q. Wilson and Ernest van den Haag are most vocal in proclaiming the loss of community, but also pessimistic in their demands for remoralisation in the life of the community.

So the increasing dislocation of civil society through crime and violence under Thatcherism does create a political space for socialist advance. The left must enter this space, not in the manner of the social democrats of the post-war period - as experts working primarily within and through the State, on behalf of the people - but increasingly through community and special interest organisations at local level, struggling to make popular demands (for example, for policing), and articulating popular fears and anxieties. A public and popular socialist criminology has to be constructed in practice, through the different "fragments" that are working to explicitly socialist goals and also within established institutions of the class. In so doing, the socialist

left may finally put an end to the "truth" on which the contemporary New Right has relied; that the crime question is one which works, by its nature, to the advantage of the ~~Right~~. It should also be able to make obvious by reference to the character of crime under late capitalism, that the obverse of socialism is barbarism.

CHAPTER SEVEN : Footnotes

1. Mr. Hattersley was obviously aware of the involvement of racists in some of the riots of 1981. The "riot" in Southall on 3 July occurred when members of the Asian Youth Movement burnt down the Hambrough Tavern, which was playing host to large numbers of young National Front members attending an Oi! concert. The street-fighting in Coventry on 23 April occurred as racists attacked a peaceful march protesting against two racial murders in that city. Hattersley has called for a strengthening of existing race relations legislation to enable police to make arrests of racists openly organising on the streets, without the fear that juries might later release the racists on evidential grounds.
2. These remarks are not intended to suggest that there can never be alliance between professional social workers and their clients. There are many examples of such alliances (for example, in the history of the C.D.P.'s): but the common element to nearly all of them is that they involved social workers acting as agents in the defence of cherished facilities of working class neighbourhoods or for the expansion of particular provisions (like adventure playgrounds etc.) that clearly did improve the amenities in particular working class areas. The alliances involved social workers as community activists responsive to the particular needs of segments of the class, and not as "liberals" exercising the specific skills of their profession.
3. The liberal concept of "crimes without victims", closely examined, is not so innocent as it may sound. When extended from abortion and homosexuality into an area like prostitution the voluntaristic assumptions in the concept has tended to suppress the sexist structure of prostitution (and its victimising of women generally). Its use as an account of drug addiction has also been naive, in suppressing realist discussion of the role of the pusher in encouraging addiction (for example, in the recent growth of heroin addiction in the United States).
4. Neither objective (of anarchy and/or the removal of Law) was intended, but what was true was the concern to distinguish between the establishment of an administrative State structure under socialism (in order to regulate conflicting or diverse social interests) and a repressive one. Hirst's recent argument for a public law is not substantially different from our own concerns in the last programmatic pages of The New Criminology, though it is more formally stated and also more central to his present concerns than it was to our concerns then. However, it is not at all clear that Hirst's conception of public law under socialism works with the same notion of the content of socialism as we did: his own advocacy of socialism appears in part to be premised on socialist social order as a domesticator of existing social conflicts (between men and women, for example, and between adults and youth) rather than a solution to them. Cf. my review essay of 1981.
5. On 22 November 1980, a demonstration of 600 feminists in Leeds was held to protest against levels of violence against women in West Yorkshire and to demand greater protection for women by the police. There were strong suggestions of negligence by the police (born of an unconscious chauvinism on their part) subsequent to the discovery of the handbag of Jacqueline Hill - the twelfth victim of Peter Sutcliffe, and also of an

inability to understand feminist demands for a curfew on men the following Friday night. Also in 1980, demands were placed on the Metropolitan Police for a more stringent policing of the Soho area of London by several angry demonstrations by members of the Women's Movement.

6. Further reports of "an unprecedented" increase in the number of attacks on blacks and Asians throughout London appeared over the weekend of 22-23 November 1980, on the occasion of the first overtly fascist march in London for over thirty years (a British Movement rally in Paddington) "Neo-Nazi's March as Racial Violence Grows" Sunday Times 23 November 1980. In July 1981, Socialist Worker reported that there had been 24 racial murders in Britain since January. (Socialist Worker 25 July 1981)
7. The absence of any systematic social policy thinking within the Labour Party was noted by the usually well-informed Guardian Home Affairs Correspondent, Malcolm Dean, in September 1980. Dean noted that on questions of crime (meaning the specific issues of juvenile and young adult offenders and on sentencing) "the Labour Party still has no collective view" and that the prison question was "a policy field which through indifference and timidity the Party had always left to pressure groups". He accepted that "there is a private paper now in circulation but the All Party Parliamentary Committee on Penal Affairs has already pre-empted the Party with a radical programme". Malcolm Dean, "Age of Uncertainty After the Reformation" The Guardian 24 September 1980.
8. There are obviously other strains on and in the family in the current period. In particular, the rapid rise in unemployment amongst school-leavers and young people in general has placed extra "responsibilities" on parents, for which the culture has not prepared them.
9. The way in which the popular media has reflected, negotiated and informed these changes in the sexual division of labour should be the subject of a major study in itself. As we suggest later in this chapter, films on general release in 1980 appeared to legitimise male violence against women to quite an unprecedented degree (in The Shining and Dressed to Kill) and could only be read as part of a "male backlash against the growing power of the women's movement") (Root and Murray, 1980, p.30).
10. Women who marry are penalised by their structural subordination to their husbands in the social security and tax system. They are no longer treated as being "available for work" and therefore as able to receive supplementary benefit payment for being "unemployed": this reduces women's income and the strength that having a financial income provides. Women who then have children are further penalised by the relative absence of collective child-care provisions in patriarchal, capitalist societies for parents of young children, and by the inevitable intensification of domestic labour. Domestic labour is turned into the most "exploitative" form of unpaid labour in capitalist societies.

But women who refuse either to marry or to have children face other problems in patriarchal societies. They find amongst other things that they are often unable to act as responsible legal agents, for example in house-purchase transactions; that they are most likely to be targeted for redundancies during economic recessions; that their wages are likely to be lower for similar work than men and that, when unemployed, they are likely to be the subject of intense investigation under the cohabitation rules of the DHSS.

11. Some promising work has been undertaken recently into the forms of "bourgeois culture" that are currently being purveyed on television during what TV planners call "prime-time". I have in mind the work of the Media Group at the Birmingham Centre for Contemporary Cultural Studies and also the valuable article on American popular television by Todd Gittlin (Gittlin, 1979).
12. This point is made by Tony Bottoms in his discussion of "the coming penal crisis" in Bottoms and Preston (ed) (1980) p.5.
13. In June 1981, the Home Office released a slightly different set of figures on prison population per head of population in each of the EEC countries. These figures gave England and Wales a prison population of 89 per 100,000 on 30 June 1980 and Scotland an average throughout 1980 of 94. Northern Ireland had an average of 162 in the same year. In the meantime, European prison populations in other European countries, measured at different recent times were as follow :

	<u>Number per 100,000 of total population</u>
Federal Republic of Germany (November 1979)	91
France (March 1980)	72
Luxembourg (April 1980)	69
Denmark (April 1980)	62
Italy (April 1980)	54
Ireland (April 1980)	35
Netherlands (January 1980)	23

(Mr. Patrick Mayhew, written answer, House of Commons, 1 June 1981)

Mr. Mayhew observed that "as definitions of prisons and prisoners differ between countries simple comparisons are likely to be misleading."

14. The exception here is the Attendance Centre sentence. Attendance Centres are intended for use as a short, brisk form of punishment "in the community". They are held every Saturday afternoon and run by the police. Their clientele obviously includes many young people arrested for offences at soccer games.
15. The programme was entitled "The Public and the Public" and was produced by and for Granada, but in a late programme change, was put onto the ITV national network. This decision was clearly influenced by the recent riot in St. Paul's, Bristol. Prominence was given to a survey undertaken in the North West by Opinion Research Centre and M.A.F.S. (of 2,000 residents) in Huyton and Wavertree in Liverpool and Moss Side and Blakeney in Manchester. The data from this survey showed that 63 per cent of young people generally and 58 per cent of blacks of all ages had little or no confidence in the police. Whilst 48 per cent of people living in the region saw police as their friends, only 18 per cent of young people agreed. 49 per cent of blacks thought the police force "anti-immigrant".
16. See the discussion of police accountability in Chapter Six.

17. The traditional opposition of solid working class areas to the police (and the consequent failure of the police to penetrate into these areas until the inter-war periods) is described in P. Cohen, 1979.
18. Keith Waterhouse cast some doubt on the judge's claims, writing for the Daily Mirror: "not many classes of person get letters by the hundred. Pop stars do, disc jockeys do ... but I would have thought it unique for mail to arrive by the sackful at the chambers of a circuit judge of the Central Criminal Court." (quoted in L. Taylor, 1976, p.260).
19. There is even some evidence to suggest that the intensified presence of police in an area, even over a short period, may result in a decrease in street crime and burglary in that area. (cf. Malcolm Dean "The Other Side of the Track" Guardian 19 November 1980). What is not clear is whether this is a function of young "burglars" and "muggers" turning to other areas, where the police presence is less visible or effective.
20. The police raids were a product of a new agreement worked out between the Home Office and the Association of Chief Constables during the last months of the Labour Government of 1974-1979. Under this agreement, the police personally serve notice of refusals of applications for an extension to stay. In the past, these notices have been sent by registered post, and, in many cases, if MP's intervened, deportation was postponed. The police are now involved in finding and detaining over-stay immigrants. Guardian 9 July 1979.
21. In this country, the only socialist to have discussed "the police task in socialist society" is Robert Reiner (1978). He argued that the achievement of socialism (involving "changes in the distribution of resources and a less competitive tone in social relations, including sexual ones") would transform the police task from being "the apparently impossible endeavour of controlling a mass of human misery, degradation and brutality" into one in which the police could at last achieve "the status of skilled professionals which ... has eluded them in the past" (Ibid., p.79). In particular, preventative police work could be concentrated on the control of violent street crime and routine patrols of public space established, preferably with a degree of routinised citizen involvement. Additionally, police could become highly skilled in the kind of detective work involved in detecting and prosecuting "crime in the suites". (Ibid.) Finally, Reiner argues some police activity would be necessary under strict legislative control in order to forestall "counter-revolutionary activity and foreign subversion". (Ibid., p.80).
22. For a useful account of the role of the coroner in the Blair Peach case see NCCL (1981), and in the Jimmy Kelly case, Scraton P. and Benn M. (1981).
23. "Barrister" was clearly the pseudonym of D.N. Pritt, the Communist author of the four volume Law, Class and Society (Pritt, 1971). Cf. the almost identical analysis of the magistracy in Barrister, 1938, pp.43-47 and in Pritt, 1971, Book Two, pp.72-4.
24. Social-democratic faith in the provision of full-time professionals as guarantors of impartiality and defenders of the innocent, as well as those whose guilt has not been proven, has been shaken by the experience of stipendiary magistrates since the War. Pritt observes that "with one or two distinguished exceptions, the stipendiaries have proved to be rather more orthodox and "prosecution-minded" than lay magistrates, and further

from understanding what "makes the ordinary citizen tick". (Pritt, 1971, Book Two, p.73).

25. Social-democratic and libertarian opinions have been polarised in a variety of directions by the debate over the Bill of Rights. For a polemical critique of the Bill of Rights from the social-democratic left, see Kilroy-Silk 1977; and for support from the libertarian wing of law, see Zander 1975. Orthodox civil-libertarian opinion has been a little more cautious over the Bill of Rights than Zander, and certainly much more worried over its implications for the Labour and trade union movements. Cf. McBride and Wallington 1976.
26. This strengthening of the principle of randomness occurred in paradoxical circumstances. In particular, the judiciary were anxious at the way in which the defence lawyers had cross-examined jurors selected for the "Angry Brigade" trial in January 1973, in order to discover whether the jurors would be biased against the defendants. Subsequent to the trial, without any consultation with MP's, a Practice Direction was issued to all judges affirming that "it is contrary to established practice for jurors to be excused on more general grounds such as race, religion, or political beliefs or occupation". Later in the same year, the removal of jurors' occupations from jury panels by the then Lord Chancellor, Lord Hailsham, was thought by some to have been in anticipation of attempts by the Shrewsbury building workers, due for trial under the Industrial Relations Act, to discover which potential jurors were trade unionists. (Harman and Griffith, 1979, pp.15-16).
27. The Court of Appeal arose out of an appeal from the Chief Constable of South Yorkshire, Mr. James Brownlow, against a Court Order issued by Judge Pickles in Sheffield Crown Court which required the Chief Constable to provide defence and prosecution solicitors who would be involved in a forthcoming trial (of two police officers charged with assault) with full details of any criminal proceedings against members of the jury panel. For a full report of the Court of Appeal judgement, see Star, Sheffield, 4 March 1980.
28. In 1978, for example, the Association of Chief Police Officers' evidence to the Royal Commission on Criminal Procedure argued that "all jurors ... should be subject to these inquiries" so that criminal, dishonest or "irresponsible" elements could be kept off juries. (David Leigh 'Police Carry On Vetting Juries', Guardian 21 February 1980). In this way, the ACPO wanted police vetting as allowed in exceptional circumstances by the 1975 Circular of Mr. Sam Silkin to be extended to all cases.
29. Cf. our discussion of this Royal Commission in Chapter One.
30. With my co-authors, I discussed Marx's writings on law in Taylor, Walton, Young (1975) c.1.
31. The Matrimonial Homes Act, 1967, gave some protection from eviction to women, and the Domestic Violence and Matrimonial Proceedings Act, 1976, introduced a variety of provisions, including measures allowing for wives to obtain injunctions quickly against violent husbands. Divorce law underwent a fundamental transformation in the Divorce Reform Act 1969 which replaced the concept of matrimonial fault with that of "irretrievable breakdown of marriage". And the Matrimonial Proceedings

and Property Act 1970 and Matrimonial Causes Act 1973 have introduced entirely new rules for the division of property between husband and wife after divorce. The "creation of separate property regimes" by the Married Women's Property Act 1882 had separated women and men in the eyes of the law (previously they were one, under the doctrine of *couverture*), but since husbands had the greater earning and purchasing power, they had generally finished with the bulk of the matrimonial property subsequent to divorce. The principle established by the 1970's legislation is that husband's and wife's assets are pooled and then distributed according to what is regarded by the judge as fair and just, rather than according to proprietary right. (cf. Sacks and Wilson, 1978, c.3).

32. In the winter of 1980-1, this University put out a series of leaflets on the dangers facing women students at night. Protests by feminists in the Students' Union to the effect that these leaflets constituted a curfew on women resulted in a pamphlet on "student safety at night" which made no overt reference to gender. These appear as Appendix Two to this thesis.
33. At a local level, some progress was made in 1980 in publicizing the harassment of women generally by kerb-crawlers. Police in Birmingham and Wolverhampton began to arrest male kerb-crawlers in red light districts on charges of loitering. (Guardian 1 October 1980) and on 13 November 1980 in the House of Commons, Mr. Tom Cox, Labour MP for Tooting, demanded that the Vagrancy Act be amended to give police powers to arrest kerb-crawlers. He observed that schoolgirls and women in his constituency were continually accosted by men in search of prostitutes. (Guardian 13 November 1980).
34. As Zaretsky and others have pointed out, Engels' vision of sexuality under socialism contains "a bias towards heterosexuality". He "portrays the sexual division of labour as a natural or spontaneous phenomenon that derives its oppressive meaning only through the growth of production."
(Zaretsky, 1973, p.34)

Revolutionary feminists like Firestone have observed that

"the development of contraception, changes in the technology of reproduction, and the declining need for labourers make it possible to challenge the original biological imperatives."
(Ibid., pp.34-5)

Male and female homosexual love can therefore be liberated in social arrangements that are not predicated exclusively on heterosexual and patriarchal nuclear families.

35. Recent feminist campaigns have resulted in the demand, for example, for the legalisation of the carrying by women of "offensive weapons" for self-defence. This demand was accompanied by the prosecution of a woman in a London Magistrates' court for carrying an anti-rape spray, of the kind now widely available in the USA.
36. Our support for an extension of the law of rape might be read as implying that we believe in the existence of dangerous rapists, who are likely to commit further offences if they are not apprehended and thereby incapacitated institutionally. Existing research on sexual offenders, however, has tended to challenge the popular idea of such offenders

being repeaters. In what is thought to be the most thorough study of sex offenders' recidivism, a survey carried out in Denmark in 1965, Christiansen et al found that only 10 per cent of sex offenders who were later reconvicted in the courts were actually convicted of a sex crime. This finding is consistent with general survey of sex offenders in Britain in the 1950's (Radzinowicz 1957), and in the USA (Gebhard et al 1965). But an agnostic conclusion on the recidivism of sexual offenders generally has to be qualified by the tendency for all research to speak of a minority of offenders who do repeat. This minority includes "the indecent expositors ... , those who play sex games with small boys ... and those who make unwanted advances to young girls" (West, Roy and Nichols, 1978, p.141) - which some commentators want to call "misbehaviour" (Ibid.) - as well as a small number of individuals, usually men, who appear to use "psychopathic" violence in performing sexual assaults on their victims. (Frisbie and Dondis, 1965). Unfortunately no clear factors have yet been adduced, by sex researchers, as a distinguishing feature of these "personality types", and thus there is no way of predicting the future "dangerousness" of an apprehended sexual offender (cf. Bottoms, 1977).

The warrant for our support for a more "repressive" rape law does not lie in the ability of the new law to identify and incapacitate dangerous individuals per se, but rather in its importance in extending the availability of law as a symbolic defence for women, as well as in providing a temporary respite for women caught in sexual relationships involving physical violence from men. It may also be that the struggle for new law could be important in the struggle against the eroticization of violence against women in film and in other media.

37. The experiences of the Rape Crisis Centre in the courts and with police make the plea made later by Dumaresq (that courts ought in principle to equal weight to men's reasonable belief (that consent was given) and to women's reasonable belief (that consent was refused)) seems naive as to the actual practices of courts and police, and also very conventional in its lack of challenge to the passive notions of women's sexuality implied in the word "consent". (cf. Dumaresq 1981).
38. Though these arguments (for a new law of sexual assault) may appear revolutionary in current circumstances in Britain, they have been substantially accepted at Government level in Canada. In December 1980, the Canadian Minister of Justice, Mr. Jean Chrétien announced that a new Bill would shortly be presented to the Canadian Parliament on the criminal law on sexual offences. This Bill would, amongst other things, replace the offences of "rape" and "indecent assault" with the offences of "sexual assault" and "aggravated sexual assault". In this way, the sexist character of particular kinds of attack on women could be highlighted and severely prosecuted. The law would also ensure that a victim of rape :

"would no longer be forced to reveal his or her sexual history. (Questions about a victim's past sexual activity may still be asked at an in-camera hearing, but the victim would be under no compulsion to answer). The law would make it clear that a victim of sexual assault could not be assumed to have given complaint merely because he or she failed to file a complaint right away or failed to offer what the court judged to be sufficient resistance, and it would remove all references to penetration as a necessary condition for a sexual assault to have occurred. The law would spell out that a spouse can be a victim of sexual assault by his or her marriage partner, thus clearing the way for charges of rape against a partner"

(Liaison (Monthly Newsletter of the Criminal Justice System) 8(1) (January 1981) (Ottawa) p.22).

39. The description of social services, as well as education, as "candy floss" services was made by Councillor Ronald Wootton, Chairman of the West Midlands Police Committee, in a speech in March 1980. He was calling for these services to be cut in order to provide the finance for the extra 1,171 policemen requested by the Chief Constable of the West Midlands in a special report to the local police committee. (Guardian, 6 March 1980).
40. I have in mind here the newly formed branch of the Institute of Economic Affairs, the Social Affairs Unit, established under the directorship of Digby Anderson in 1981, which has begun to release a series of critiques of the existing liberal models of criminal justice and social work, and the welfare state generally.
41. In February 1981, the Assistant Commissioner for Crime of the Metropolitan Police, Mr. Gilbert Kelland, revealed at a press conference that "after three successive years of falling or static crime rates in the capital, serious crime rose last year by 5 per cent". In other words, "the steadily rising tide of crime figures over the last 20 years, which seemed to have been checked since 1977, was now in flood again. Crime rose sharply in the last quarter of last year". ("London's New School-Age Crime Wave" Guardian 20 February 1981).

A P P E N D I X O N E

"The Aetiology of Homicide in Britain"

APPENDIX ONE

THE AETIOLOGY OF HOMICIDE IN BRITAIN

We suggested in Chapter Two that Conservative arguments on homicide were ideological (in the sense of being mystificatory) in that they misrepresent the bulk of murders that actually occur. This argument can be illustrated in a number of ways, beginning with the official statistics on homicide produced by the Home Office each year, systematized here by Gibson (1975).

APPENDIX I : TABLE 1

Offences known to the police (as charged by police)⁺

	<u>Homicide</u>	
	(Murder, Manslaughter and Infanticide)	
	<u>No.</u>	<u>per million popn</u>
1930-1934 (av)	317	7.9
1935-1939 (av)	326	7.9
1940-1944 (av)	338	8.0
1945-1949 (av)	370	8.6
1950-1954	342	7.8
1955	279	6.3
1956	315	7.1
1957	332	7.4
1958	261	5.8
1959	266	5.9
1960	282	6.2
1961	265	5.7
1962	299	6.4
1963	307	6.5
1964	296	6.3
1965	325	6.8
1966	364	7.6
1967	412	8.5
1968	425	8.7
1969	392	8.0
1970	393	8.0
1971	459	9.4
1972	410	8.4
1973	391	8.0
1974	527	10.7
1975	445	9.0
1976	493	10.0
1977	482	10.0

Source:
Gibson (1975)
Table 1 and
Criminal
Statistics,
England and
Wales

⁺ Uncorrected for acquittals. An offence = a death
(not equivalent to number of incidents, or to number
of offenders)

Several initial comments of qualification must be made about this table. The figures presented here are for offences or victims rather than incidents or offenders, and there are always more "offences" than incidents or offenders in the English system of recording homicide. In Scotland, the number of incidents is counted. (In the U.S. and Canada, both).

Second, when a case of "non-natural death" becomes known to the police, their practice is to record the case as homicide if there are good grounds for doing so, in the recognition that it may later be "reduced" by the court, or by themselves or others, to a lesser offence (involving self-defence without a manslaughter charge, or accident, or otherwise). This process is occurring constantly, as a result of delayed court decisions or as a result of an incident which has been unsolved being filled in for some reason. The latest figures in any statistics are, therefore, particularly unreliable, and they tend to suggest more murders than are actually found in law to have occurred, as a significant proportion of these "homicides" will be found to be lesser offences as a result of occurrences like those described.

Third, the figures presented in Table One include what are now called "section 2 manslaughter" offences as well as murder (in other words, the offence created by the Homicide Act of 1957, discussed in Chapter Two, allowing for a more extensive definition of diminished responsibility). Some of the people who were found guilty of section 2 manslaughter after 1957 would previously have been found guilty of murder (and thus the actual number of murders, as finalised by the courts, has been depressed).

On the other hand, these figures do not reveal what may be the most important feature of homicide statistics overall, although Evelyn Gibson touches on the issue indirectly. This is the general unwillingness of juries to convict people initially accused of murder of that offence, even though persons so convicted would no longer face the punishment of death. Over the five years from 1967 to 1971, "80 per cent of the deaths recorded in homicide returns were

initially recorded as murder, 17 per cent as manslaughter and 3 per cent as infanticide. The "final" classification was 34 per cent murder, 44 per cent manslaughter, 4 per cent infanticide, and 18 per cent not homicide at all". Gibson comments with great restraint that "the initial classification would be very misleading as to the true nature of the offences" (Gibson, 1975, p.6). She later analyses the decisions of the court as to whether an offender was normal, insane within the meanings of the Mental Health Act of 1959, or whether the person was guilty of common law manslaughter (whether involuntarily, as a result of neglect of duty, or voluntarily in a situation of provocation), guilty of infanticide (an offence created for mothers who kill their children up to 12 months during post-natal depression (the Infanticide Act of 1922, amended 1938)), or section 2 manslaughter. During the five year period analysed, the courts concluded that 29.4 per cent of all homicide suspects were initially accused of murder but were found to be guilty only of common law manslaughter, and another 9.46 per cent were accused of common law manslaughter at the outset; that 2.1 per cent of the suspects were found to be insane, that 8.0 per cent of the suspects committed suicide, that 5.1 per cent of the suspects were guilty of infanticide, and another 16.4 per cent of section 2 manslaughter. Only 29.6 per cent (528 out of an overall total of 1,782 suspects) were found guilty in the courts of what Gibson calls "normal murder", or, in other words, of an offence which could have met with a capital punishment after 1957 and before the beginnings of the experimental suspension in 1965.

A further observation is still required, again on the basis of the figures provided by Evelyn Gibson and the Home Office Research Unit. This is provided by comparing the number of "non-natural deaths" arising from homicide to those that occur on the roads. The Road Traffic Act of 1956 created the offence of "causing death by dangerous driving" in order to deal with the reluctance of courtroom juries to make findings of manslaughter in the cases

of deaths resulting from motor traffic "accidents". The number of victims to such an offence increased from 342 (7.6 per million inhabitants in England and Wales) in 1957 to 728 (or 14.9 per million) in 1971. Only a proportion of the deaths on the road, of course, resulted in drivers being charged with the offence of "causing death by dangerous driving", and there are grounds for the view that many more drivers could be so charged, given a change in the political definition of what should constitute dangerous driving, and a resulting change in police charging practices.¹ Some 5,879 people died in motor vehicle accidents in England and Wales in 1976 (in the same year that 540 people died as a result of "homicide and injury purposely inflicted by other persons"). Some 4,918 people died in the same year from "accidental falls", 701 from accidents caused by fires and flames; 780 from various kinds of accidental poisoning, and 1,799 from other accidents (including those occurring in places of work, especially in heavy industry). Dwarfing these figures, however, are the rates of death resulting from diseases of the circulatory system (300,061) in 1976, from neoplasms (cancer) (126,781 in 1976) and from respiratory diseases (94,910 in 1976) (Office of Population, Censuses and Surveys, 1978b). An unknown proportion of these deaths - many of which occur "unnaturally" early in life - is said in medical circles to result from either "self-induced" health risks (cigarette smoking, drinking) or from unsatisfactory work and living conditions. In this perspective, the fact that people's anxieties about an early, non-natural and violent death are associated at least abstractly with the idea of murder is "irrational". There are other existential reasons for the ease with which "moral panics" can be generated over murder and for the massive popular support for capital punishment. We discuss some of these reasons in Chapter Two, advocating a socialist ethic that does not pretend that death is avoidable.

In the meantime, we should note that the statistics on homicide for England and Wales are a prime example of one of the few nineteenth century

wisdoms of criminology that has stood the test of time (at least in Britain): the law of the constancy of crime, as originally propounded by Gabriel Tarde. There has been very little fluctuation in the homicide rate in England and Wales since 1930; and indeed, as Gibson notes, the figures for 1969 and 1970 when corrected for population, were about the same as those from 1930 to 1944.

The slight increase in the homicide rate in the 1970's has to be treated with some suspicion, as we have argued, since a number of the incidents currently classified as homicide may subsequently be reduced to other charges. The homicide rates that are "finally" recorded for the early 1970's may also be a function of a slight drop in the number of manslaughter findings in the courts, which in turn may be explicable in terms of an increased public anxiety over an alleged increase over crimes of violence.

The fluctuations in the homicide rate in each year could be "explained" in a variety of ways (it is tempting to observe that the homicide rate appears to be more on the increase during periods of Labour Government than during periods of Conservative Government), but in the case of the U.K. the fluctuations are not all significant statistically. The attempts by Conservatives (and the mass media) to explain fluctuations of this kind in Britain and elsewhere in terms of the absence or presence of capital punishment in the arsenal of the state were long ago shown by the American criminologist, Thorstein Sellin, in his submission to Sir Ernest Gower's Royal Commission on Capital Punishment, to be unjustified.

It is not however our intention to be oblivious to reported increases in criminal activities, for, as we argued in Chapter Two, many of the offences involving violence (and much of the theft also) has a profound impact on working class communities. And as the authors of the commentary on the Criminal Statistics for 1977 observe

"there has been a continuous long-term increase in the number of offences of violence against the person recorded by the police. From the mid-1930's to the mid-1960's, apart from irregular movements during the Second World War, the percentage increase averaged about 6 per cent per annum; from the mid-1950's it has increased at an average rate of about 11 per cent per annum."

(Criminal Statistics, 1977, p.33)

The total number of offences of violence against the person known to the police in England and Wales increased from 37,818 in 1969 to 82,190 in 1977, with the bulk of these offences being in the category of 'other wounding' not endangering life, to the tune of 92 per cent of all such offences in 1977. (Criminal Statistics, 1977, Table 2.8).

These increases are matters of frequent report and comment in the mass media. Less likely to be the subject of public comment, except amongst isolated social democrats, is the fact that offences of fraud and forgery increased over the same period from 78,846 offences in 1969 to 120,592 (even though offences in this category are difficult to detect). (Criminal Statistics, 1977, Table 2.14). And even less likely to be discussed is the fact that most of the social statistics that are produced by the data-collecting workers in the Home Office, the Department of Health and Social Security, and other centralised agencies are likely, much of the time, to be on the increase, because of the increase over time in the level of surveillance of the world engaged in by social statisticians and those who feed data to them. (cf. McDonald, 1976, c.6).

Any attempt to relate the increases in crimes of violence as such directly to the absence of capital punishment is likely, therefore, to be spurious. As the commentators in the 1977 Statistics observe, the increases in the level of reportage of crimes of violence to the police commenced early in the 1950's prior to the Homicide Act of 1957. So the relative and absolute stability of the homicide rate - which is to some considerable extent dependent on the objective existence of a corpse² - suggests that the comparatively massive

increase in the rates of recorded crimes of violence since the 1950's is a much more negotiable question, intimately bound up with police charging practices and with changes in social reaction generally to certain kinds of behaviour. Otherwise, explanation is required as to how and why so many reported incidents of violence could have been controlled by their participants at just below the level of homicide.

In Chapter Three, we argued that such changes in social reaction to youthful behaviour were the product of a real change, or a dislocation, in the environment controlled by the police, and "managed" by social workers and the welfare apparatus. The reported increases in rates of "crimes of violence" were, in other words, a product of the social anxieties over the control of youth (the post-war origins of which we examined in Chapter One), and the practices that were consequently followed by the teachers, social workers, police and the magistracy in their dealings with problematic youth. Homicide itself remains a remarkably uncommon phenomenon in Britain, partly because of the long-term stability of family life in working-class and also in its middle class form. This "stability" has been dislocated by social changes deriving from the changing position of youth and, more recently, from some changes in the position of women in the domestic division of labour. But the relationship of the family unit to its kinship group and to its local neighbourhood or community has been more permanent and important than in societies with higher degrees of social and geographical mobility. But another crucial factor in the low rates of homicide in Britain has been the existence of legislation which effectively controls the availability of firearms.

The continuing existence of some sense of "community" in British social life and the restriction on ownership of guns are far more important and demonstrable as the cause of the low homicide rate in this country than the factor of capital punishment.

A Crime Between Family and Friends

Homicide in England and Wales is overwhelmingly a phenomenon occurring within the family, and/or between close acquaintances.

TABLE 2

RELATIONSHIP OF SUSPECT TO VICTIMS

All Homicides, England and Wales 1967 to 1971*

	Immediate Family	Other Relative	Other Associate	Police Prison Officer	Stranger	Known ³
Victims aged under 16	307	7	40		25	23
Male Victims aged 16 +	79 ¹	64	317	5	127	43
Female Victims aged 16 +	290	55	173 ²		79	34
TOTAL	676	126	530	5	231	100

Total number of homicides known to the police: 1,668

1. Immediate family here = "husband or lover"
2. Includes 55 "girl friends etc."
3. Cases not "cleared up" (= victims of hit and run drivers, abandoned babies)

* Source: Gibson (1975) Tables 11, 12, 13.

Just under half (812) of the 1,668 victims of offences recorded as homicide in 1967 to 1971 were members of the immediate family of the suspect. In fact, 115 of these victims were infants (babies of under 12 months killed by their natural mothers) (Gibson, 1975, Table 14). Another 730 were classified by Gibson, from her scrutiny of police files, as "other associates" (43 per cent of the total number of homicides).³ In only 231 (19 per cent) of the 1,668 homicide cases was it possible to classify the victim as having been killed by a complete stranger (and here of course the information in police files may be incomplete).⁴ More recent figures (for 1976) confirm these very stable features

of homicide. Only 18 per cent of the total number of homicides in that year were identifiable as having been committed by a stranger. In 182 cases (10 per cent of the total number of all homicides) the suspect committed suicide prior to the trial (69 per cent of these cases were wives (including common-law wives) killed by their husbands). In a rather crude attribution of apparent motive for the murders and manslaughter committed between 1967 and 1971, Gibson concluded that some 29 per cent of all offences were motivated by a "rage or quarrel", 18.5 per cent by "jealousy or revenge", 12.9 per cent by some sexual motive and 11.4 per cent as a result of theft or the desire for other gain. 13.3 per cent were classified (on the basis of the information contained in police files) as "motiveless", and 14.9 per cent had "other" motives. These findings were remarkably consistent with the findings reported for homicides in England and Wales for 1957 to 1968 (Gibson, 1969), and indeed with research conducted in rather more detail on suicide-murder by West (West, 1964).

Homicide and the Courtroom

There is one important qualification to be made to the rather functionalist impression we have conveyed, from the official figures as analysed by Gibson, of an unremitting constancy of murder. Gibson divides homicide up, for purposes of analysis, into normal and abnormal homicides. Abnormal homicides include murder in which a finding of insanity was made (a rapidly reducing category, after the creation of the new defence of "Section 2 manslaughter" in the 1957 Act), and murder followed by suicide. Analysis of these figures show that abnormal murder has remained steady (or rather has shown no significant changes) where normal murders have marginally increased. The figures presented here are for suspects (and it is crucial to remember that the number of suspects has increased much more rapidly than the number of victims, owing to an increasing number of cases in which "ganging up" of suspects has apparently occurred).

TABLE 3
NORMAL AND ABNORMAL MURDERS

(Suspects) 1967-1971

	"Normal" No.	Murder %	"Abnormal" No.	Murder %	Total
1967	90	58.4	64	41.6	154
1968	96	64.9	52	35.1	148
1969	80	67.8	38	32.2	118
1970	112	83.0	23	17.0	135
1971	118	68.2	55	31.8	173
TOTAL	496	68.1	232	31.9	728

Source: Gibson (1975), p.13.

These figures could clearly be used to argue that there was an increase of 10 per cent in the number of people engaging in the conventionally understood crime of murder, within a period of only four years. This increase (from 90 to 118) is small in total, and still constitutes less than a quarter of all the homicides, but it is statistically significant. It is crucial however to recognise that the normal murder is only identified if a person accused of murder is unable or unwilling to enter an alternative plea, and to have this plea accepted in a courtroom. The chances of a person refusing to make such a plea are slim, although there is some evidence to suggest that people who have killed even by accident or otherwise unwittingly may wish to be punished by their own death in order to make recompense, by undergoing a long-term sentence. (Some of the people in this category may also commit suicide before trial.)⁵ Our attention is directed to the circumstances under which a plea of diminished responsibility (especially for a reduction of the charge "section 2 manslaughter") is likely to be "judicially" accepted in a court. There are no studies of the variety of ways in which such negotiations

are in practice conducted in court in England and Wales, but it is clear from the statistical evidence presented by Gibson that the vast majority of cases in which a finding of "section 2 manslaughter" and/or a common law manslaughter (accident or provocation) was made were those in which a close family or friendship relationship existed. They were, in other words, cases which did not resemble the archetypal picture of the true murder, which is constantly reaffirmed and signified in popular novels, in television and cinema "cops and robbers" dramas, and in the headline coverage given by most newspapers to certain kinds of murder.

The courtroom is a place in which what may be a less stereotypical, and certainly more personally consequential, form of reasoning takes place. That most vital relic of Anglo-Saxon "popular" justice, the jury, has to be persuaded by the prosecuting counsel, operating for the police, that the person in the dock is indeed the kind of cold-blooded killer which our culture has prepared us to recognise and to fear. We think it is vital to understand why it is that the prosecuting counsel fails in this task more often than he succeeds (and why the police are therefore so irate at the continuation of the jury system, and at the burdens of proof that are placed upon them by the defence counsel). The fact is that the killers we know from fiction novels are fictional, and that the killers who are headlined in the mass media are presented as if they were typical, when they are quite untypical. Professional killers (other than mercenaries, who work abroad), are almost non-existent in Britain (although the committal proceedings of Jeremy Thorpe, M.P. in 1978 revealed that they do exist) and even murders committed by organised crime are rare.

One of the main strategies of the police and the prosecuting counsel in jury trials has to be to carry out a character-assassination in order to make the defendant's account of his action incredible. Work of this kind is most

likely to succeed, however, when there is general pressure on the law courts to impose "strict penalties" and not shirk their "responsibilities to society". Pressure of this kind will be felt by jurors as much as it certainly is felt by magistrates, and it may result for example in a reluctance to allow pleas of diminished responsibility in homicide cases, especially in a general climate of punitiveness towards "the criminal". The period of homicide examined by Gibson was certainly such a period: 1971-2 was the high point of a generalized ideological reformulation of "social problems" in Britain, and an acceptance of the view that Britain had become a violent society. The slight change in the number of suspects who were unable, by one means or another, to win a plea of diminished responsibility during 1967 to 1971 may therefore be a product of the general atmosphere within which the courts were working during the period. There are certainly no grounds for arguing that these figures can be explained in terms of the absence of capital punishment (how could this have affected only 18 more people in 1971, in making rational decisions to kill, than it did in 1967?).

Capital Punishment and Firearms

The suggestion was frequently made in the past that the abolition of capital punishment would result in an increase in the number of people prepared to carry guns for use in the course of other criminal offences, and that this would result in a rapid increase in the number of homicides by shooting. In recent years, some police chiefs have justified the increased carrying of arms by police (and a programme started of training all police officers in the use of arms) by arguing that there are more guns 'in circulation' amongst the public. There is however currently no evidence in existence which would suggest that the increase in gun ownership⁶ is a product of capital punishment legislation, and the evidence would suggest that shooting remained the most uncommon of the five classifiable methods of killing in the period 1967 to 1971.

Only 9.3 per cent (164) of the 1,763 homicides of that period involved "shooting" (in contrast to the 26.7 per cent which involved a "sharp instrument", 11.9 per cent a "blunt instrument", 18.2 per cent "hitting or kicking" and 21 per cent "strangulation or asphyxiation"). (Gibson, 1975, Table 18). As Gibson rather blandly remarks, referencing her own and other work, "in practice, guns were seldom used to kill in the course of other crime" (Gibson, 1975, p.23).

Looking at the statistics for robbers (theft with violence) in England and Wales from 1967 to 1975, Greenwood concluded that the "use of firearms remained a constant factor at around 7 per cent" (Greenwood, 1979, p.7). "Violence" in the other 93 per cent of cases involved "fists or feet, iron bars, acid sprays and the like" (in what proportions Greenwood does not specify). There is rather more evidence, in other words, to suggest an increase by "organised criminals" in the use of acid sprays and similar disabling substances in attacks on armoured vehicles of the private security industry than there is for any increase in the use of firearms resulting from the "permissive" legislation of 1956 or 1965: the weaponry in use in thefts seems to be related instrumentally to their utility in particular kinds of theft rather than to the presence or otherwise of capital punishment on the Statute Book.

What does seem clear from other evidence, however, is that homicide rates are related to the level of firearm ownership that exists in any society for sport and for hunting. That is, the legal availability of firearms in private households does seem to make it more likely that a domestic fracas may result in a killing rather than a wounding. Research undertaken in Canada at around the time of an attempt by the Government to tighten up existing Gun Control legislation, in 1976, indicates that the use of guns in domestic homicides is much higher in Canada than in this country, and, moreover, that

this tendency has been on the increase as gun-ownership for sporting use has spread through the population. 44.7 per cent of all the murder victims in Canada between 1961 and 1974 were shot (Statistics Canada (1976), p.78), as against only 9.3 per cent in England and Wales between 1967 and 1971. The relative effectiveness of the firearms legislation in the two countries must be a significant factor in their respective homicide rates: 1.98 murders per 100,000 population in Canada in 1971 with 0.22 manslaughters per 100,000 population in the same year, as against a homicide rate (i.e. for murders, infanticide and manslaughter counted together) of 0.94 in England and Wales, also in 1971. (Gibson, 1975, Table 1).

Conclusion

In our view, there could never be a succinct relationship between "capital punishment" and "murder", since "murder" is a general label applied to quite a wide variety of interpersonal conflicts that have resulted in death, and which are only co-related by that fact, and also because the relationship between the punishment in use by the State for murder and the acting-out of interpersonal conflict is complex to the point of being almost unknowable. To assert that there is some such relationship is merely to reproduce the belief of the classical philosopher i.e. that there is something called criminal behaviour and that "its" occurrence is primarily determined by the type, level and likelihood of punishment exerted on that individual. It highlights the nexus of "criminality" and "punishment" rather than the overall relation between social relations, the occurrence of conflicts of interest, and the differential use of criminal law by socially advantaged interests over others. That is to say, in some circumstances, there is absolutely no relationship between the consciousness of the eventual "murderer" and/or his or her victim and the events leading up to a killing, and, in others, the so-called "pre-meditated murders", the relationship is extremely contingent

and complex. The contingencies are such that even in these few cases (of apparently intentional killing; i.e. of murderous behaviour) (which are very uncommon as proportions of the criminal statistics as a whole) the only viable "position" is that of disbelief in the power of capital punishment as such, by itself, to deter.

What must also be said, however, is that homicide is not a static and inevitable normal product of a "culture". That is, just because homicide has been at a relatively constant level in England and Wales since 1930, it does not mean that some fundamental change in the relations of the classes, or in the functions demanded of the family (for example) would not result in a significant change in the homicide rate. By the same token, it does not mean that significant changes in the relations of black and white coupled with radical attacks on the structure of the labour market and on the housing ghettos in the United States, would not result in a massive reduction in the homicide rate in that country. Durkheim was right to see homicide (and suicide) as a function of what he called "pathological" social arrangements, but he was wrong to restrict his analysis of "social pathology" to the division of labour. Homicide and violence are products of anomic relation of labour to capital and therefore of human being to human being. They are crimes of "free" (capitalist) market societies and they may be attacked, in part, through attacks on the freedom of capital to impose the relations of the market onto the relations of man to man.

APPENDIX ONE FOOTNOTES:

1. Research by Hood and Willett suggests that it may be entirely inappropriate to continue speaking of road traffic incidents involving violent deaths and injuries as "accidents". There are at least as many grounds for explaining road traffic behaviour in terms of personality pathology or "poor environment" as there are for explaining "normal crime" in such terms. (cf. Hood, 1972; Willett, 1964, 1973).
2. Nonetheless, definitional work is required, usually by a coroner (in conjunction with the police), before a corpse is recorded as being the product of a homicide, and there are grounds for thinking that some "unsolved" homicides may result from suicide or accidents. (cf. Atkinson, 1971).
3. The criteria used by Gibson in categorising people as "other associates" are not made clear, except in the case of female victims over 16, where 55 are identified as having been a girl friend or having had a similar relationship to their suspected killer. Whatever criteria were used, her figures are comparable to those arrived at in studies of homicide in other societies. According to the recent investigation of Homicide in Canada, 69.5 per cent of all homicide incidents in that country between 1961 and 1974 occurred within "previously established social and business relationships". (This report is discussed in more detail in Taylor, 1979b).
4. In the comparable Canadian study, some 7.1 per cent of the homicides committed between 1961 and 1974 were classified as having occurred on victims who had "no known relationship" with their suspects, and another 10.7 per cent as having occurred "in the course of the commission of another criminal act". (Homicide in Canada Table 4.1). Gibson's research does not investigate the contexts of homicide in quite the detail of the Canadian research, but she does record that 81 of the male victims over 16 were killed during crimes of theft (or other gain) and 55 of the females over 16. 6 of the males were killed by a suspect "escaping arrest" and 7 out of some sexual motive, and 62 females as a result of "sexual motives". Some 211 (12 per cent) of the 1668 victims of homicide could be said on this calculation to have been killed "during the commission of some other criminal offence" (including rape). Gibson (1975) Tables 15, 16, 17.
5. This version of the Freudian death wish has been argued, amongst others, by Karl Menninger (1938) and Frederick Wertham (1949).
6. According to a police writer specialising in the subject of firearms "the total number (of pistols) legitimately held (in Britain) is now about 60,000. The total number of shot guns in the country cannot be known, but is not less than two million and probably many times that number". (Greenwood, 1979, p.7).

A P P E N D I X T W O

Leaflets released to students and staff

by the University of Sheffield

November 1980 to January 1981

The University of Sheffield

Student Safety at Night

This University, in common with other universities and colleges, urges its students to take all possible precautions for their safety, particularly after dark. The following are a few suggestions to bear in mind:

- DON'T** — go out unaccompanied after dark;
- DO** — ensure that others know of your whereabouts if you intend to be out late at night;
- DO** — keep to streets and paths that are suitably lit;
- DO** — avoid areas where incidents may have occurred in the past;
- DO** — travel by public transport or taxi;
- DO** — keep ground floor windows and doors securely locked after dark; take special care in answering doors;
- DO** — report any suspicious behaviour to the Police;
- DON'T** — accept lifts from strangers — always bear in mind the dangers of hitch-hiking.

We view the situation with considerable concern —
YOU ARE ASKED TO TAKE CARE

F J Orton
Registrar and Secretary

SOUTH YORKSHIRE POLICE
CRIME PREVENTION DEPARTMENT

THE SAFETY LINE

KNOW YOUR ENEMY

Criminals do not look any different to ordinary people, if they did your task would be simple. They do not wear striped jerseys, masks, or carry bags marked "swag", neither do they have staring eyes, or walk in a furtive manner. Most people are law abiding, but you should be prepared for the exception; casual acquaintances should not be invited into your home until you know as much about them as they know about you. A little healthy suspicion is no bad thing.

STREET SAFETY AT NIGHT

Walk confidently near the edge of the pavement, if possible towards oncoming traffic. Avoid quiet unlit areas, waste ground, alleyways and short cuts. Use subways only if they are well lit and being used by others. A longer detour may be safer. Avoid using communal lifts if there is only one other unknown person to ride with you.

If you think you are being followed, go to a petrol station, shop, or house with a light on, tell them your suspicions and ask them to call the Police. If there is a nearby telephone kiosk — use it to dial 999.

If you are attacked — SCREAM — this will often deter an attacker. You may not carry offensive weapons, but a comb, a ball point pen, or a perfume spray can be very handy as a defensive weapon.

NEVER WALK ALONE AT NIGHT IF YOU CAN AVOID IT — THERE IS SAFETY IN NUMBERS.

UNIVERSITY OF SHEFFIELD

A NOTE FROM THE REGISTRAR AND SECRETARY TO ALL WOMEN STUDENTS
IN THE UNIVERSITY

If you find yourself alone in the University area after the departure of your last bus home, I urge you to call in at the Porter's Lodge in the Main Western Bank Building and ask a porter to telephone for a taxi for you. If you are unable to pay the fare, a porter will make you an appropriate loan (on production of your Union card), for which you will be required to sign a receipt and to reimburse the Cash Office at the earliest opportunity.

F. J. ORTON
Registrar and Secretary

Take care



You have no doubt heard that persons have been molested or attacked in the recent past in this area and other University cities and towns. The Union of Students has lately circulated a note on the dangers that students (and indeed other members of the community) can face, particularly after dark. We too are concerned that you should take all possible precautions for your own safety; in particular female students should take special care.

PLEASE:—

- DON'T** — as far as possible, go unaccompanied after dark;
- DO** — if possible ensure that others know of your whereabouts if you intend to be out late at night;
- DO** — try to keep to areas/streets that are suitably lit;
- DO** — avoid areas where incidents may have occurred in the past;
- DO** — try as far as possible to travel by public transport or taxi;
- DO** — keep ground floor windows and doors securely locked after dark; take special care in answering doors;
- DO** — report any suspicious behaviour to the Police;
- DON'T** — accept lifts from strangers -- always bear in mind the dangers of hitch-hiking.

**We view the situation with considerable concern —
YOU ARE ASKED TO TAKE CARE**

G D Sims, Vice Chancellor
Wardens of Halls

Registrar and Secretary
Accommodation Officer

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