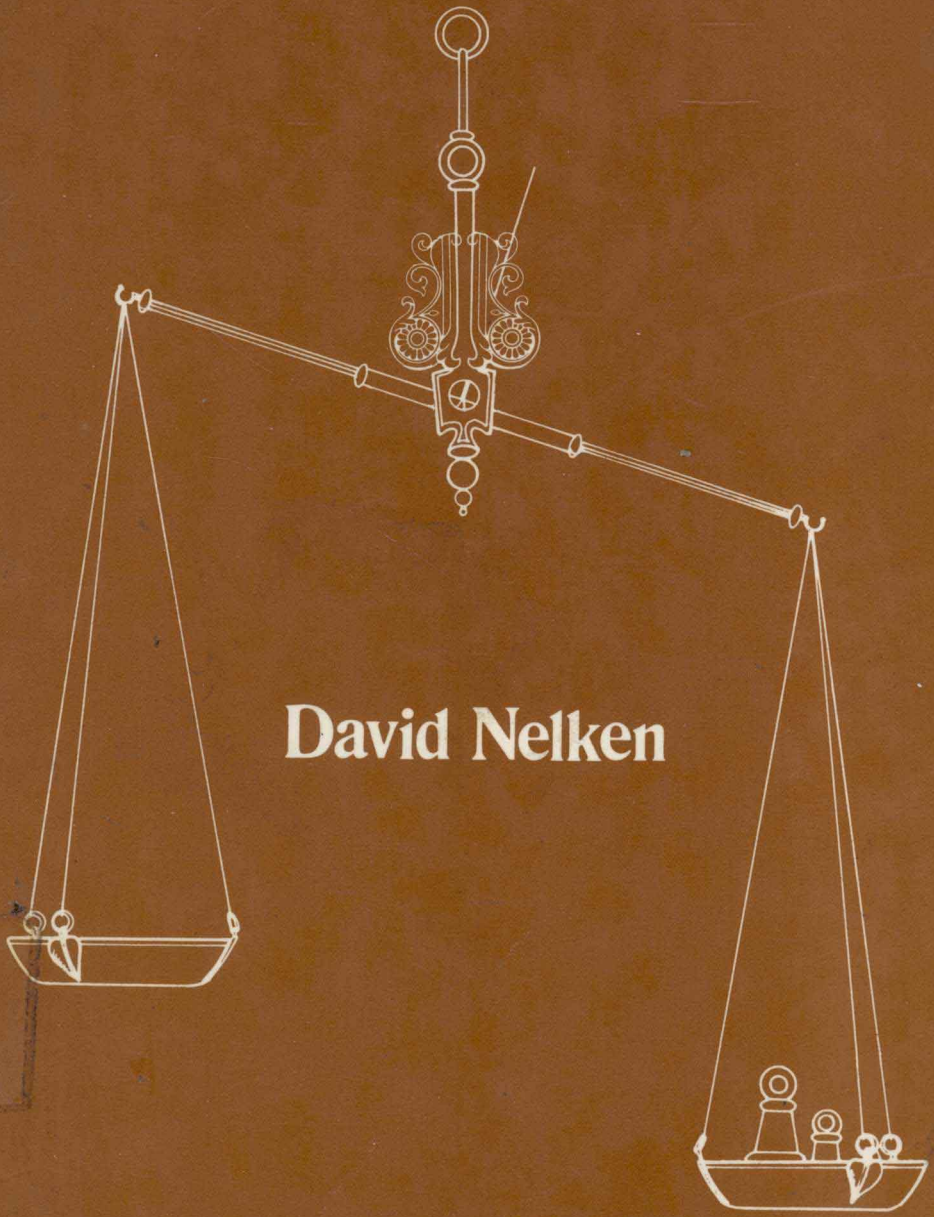
Law, State and Society Series

The Limits of the Legal Process

A Study of Landlords, Law and Crime



David Nelken

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The Limits of the Legal Process

A Study of Landlords Law and Crime

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The University of Edinburgh
Edinburgh, UK

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Foreword

It is a pleasure to introduce a book which raises the level of discourse on its subject. The literature of "criminalization" is full of over-simplified stories. Facts and gossip are selected so as to fit a pre-conceived theory about the function of law, the power of an elite, the role of moral panics. Nowhere is the "hegemony of an idea" demonstrated better than in sociology. An explanation is not intellectually respectable until it has been formulated in the terms of a single "model". There must be a "general theory of deviance", a feminist explanation of rape, a conflict history of law.

David Nelken's realism confronts us with a story which cannot be told in such terms. For years I have urged that a single mechanism or analogy is unlikely* to be adequate as a basis for explaining anything but the simplest of human actions. During the writing of this book the author had to face critics who expected it to be an illustration of some unified interpretation. It is his insistence that false alternatives in sociological explanation need to be transcended which puts his book on a higher level.

Eclecticism has to forego the appeal of the straightforward. Its first rule of method must be "It's probably not that simple". David Nelken's case-study is a beautifully documented justification of this rule.

November, 1982

Nigel Walker
Cambridge, UK

* I say "unlikely" rather than "never" because of the danger of generalization; but see my *Behaviour and Misbehaviour.*

Preface

This study of the criminal behaviour of private landlords deals with the practices which were turned into crimes by the 1965 Rent Act as a result of the Rachman scandal. It describes the kinds of landlord who are typically prosecuted for the offences of harassment and illegal eviction of those occupying privately rented accommodation, discusses the way the legislative provisions came to be enacted and examines the manner in which the law is enforced. In addition, however, it also describes the practices of other landlords whose conduct remains immune from criminal sanctions and discusses why such immunity is retained despite recurrent moral panics concerning their behaviour.

The dual focus of this investigation was prompted by a puzzling report of a parliamentary housing debate in 1971 in which Geoffrey Finsberg MP criticized the conduct of a property company which he characterized as the "Legal Rachman of the 70's". I found it difficult to understand what this meant. If the behaviour at issue was a form of Rachmanism then how could this still be legal after the passage of the 1965 Rent Act? Moreover, if Rachmanism by property companies was not the type of activity being handled by those who enforced the relevant provisions of the Rent Act, then what were they doing and how did they account for their activities? In order to obtain some answers to these questions I gathered information on the practices of different landlords and the enforcement of the Rent Act and spent periods working for a large property company and observing the handling of harassment complaints at six local authorities in areas of housing-stress in London. The findings of this investigation illustrate the range of official responses to diverse forms of landlord practices and malpractices and thereby offer some insights into the relationship between property and propriety in contemporary Britain. More generally, as a demonstration of the limits of legislative intervention by Labour governments in the course of regulating private landlords, this case-study is well calculated to reveal the underlying constraints which shape legislative interference with commercial behaviour and property ownership in capitalist societies.

This enquiry benefitted greatly from the help of a number of people. I owe a considerable debt to the Harassment Officers, Solicitors and other council officials who allowed me to observe their handling of harassment cases. Unfortunately, I am unable to thank them individually because of the need to preserve the confidentiality of the councils, as well as the landlords and tenants referred to in this study. Thanks are due to the S.S.R.C. for financing the research. Professor Nigel Walker of the Cambridge Institute of Criminology and my colleagues and friends at Edinburgh University, especially Professor Neil MacCormick, Professor W. G. Carson and Mr. Zenon Bankowski, have been generous with their interest and advice—even though I have not always been able or willing to take advantage of it. Mrs. Sheila Macmillan typed the final manuscript against considerable odds. Thanks are due, finally, to Deborah and the children for putting up with a constant, if relatively mild, form of harassment during the time this book was being completed.

July, 1982

David Nelken
Edinburgh, UK

Acknowledgements

The following authors and publishers are thanked for permission to quote:

John Lofland, *Deviance and Identity*, 1969, Prentice-Hall Inc., Englewood Cliffs, N.J.

Piers Beirne, *Fair Rent and Legal Fiction*, 1977, Macmillan, London and Basingstoke.

Andrew Arden, *Housing Security and Rent Control*, 1978, Sweet and Maxwell, London.

Vic George and Paul Wilding, *Ideology and Social Welfare*, 1976, Routledge and Kegan Paul, London.

Contents

1 *The Response to Rachmanism*

> Sometimes one turns over a stone in a garden or field and sees the slimy creatures which live under its protection. This is what has happened in these past weeks. But the photophobic animal world has nothing to compare with the revolting creatures of London's underworld. Living there, shunning the light, growing fat by battening on human misery. (Harold Wilson, introducing the 'Rachman Debate' in the House of Commons, July, 1963)
>
> Rachmanism: systematic intimidation of tenants to extract exorbitant rents. (Penguin Dictionary)
>
> Rachmanism: conduct of a landlord who charges extortionate rents for property in which very bad slum conditions prevail (from the name of one such landlord exposed in 1963). (Chambers Dictionary)

Prologue: The Rachman Scandal

The 1965 Rent Act—the criminal provisions of which are the main subject of this study—was passed in the aftermath of a scandal arising out of the activities of a landlord named Peter Rachman. In fact, Rachman had been dead for a year before his career took on national significance in 1963, but, until then, tenants' groups and individual MPs had been unable to make the methods used by Rachman and other landlords a matter of national importance.

The escalation of interest in Rachmanism was largely a by-product of the Profumo Affair. This Affair, which hastened Harold Macmillan's departure from office as Prime Minister in the final years of the Conservatives' uninterrupted 13 year period of rule, concerned the threat to national security posed by the fact that Profumo, a junior Defence Minister, had associated with certain well-known call girls but denied doing so when questioned in the House of Commons. These assignations had taken place in property owned by Rachman, who had also enjoyed liaisons with the call girls involved. Mention of Rachman's name in

connection with trials arising out of the Affair, together with wild reports that he was still alive and had been seen, lent topicality to exposés of his empire, in a series of articles in *The Sunday Times* and on television, which led to the scandal being raised in Parliament.

The so-called 'Rachman Debate', held on July 22nd in 1963, was the scene for a determined Labour attack on Conservative housing policy and was the prelude to further vigorous housing debates; the Conservative response was to speed up action by the Committee which they had set up in March to look into the general problem of housing in London. However, in October, 1964 a Labour Government was returned to power, with a mandate to offer urgent assistance to tenants, and one of their first actions was to pass the Protection from Eviction Act, 1964 which made it illegal to evict a tenant without first obtaining a Court Order. This temporary measure was replaced by Part III of the Rent Act, 1965 which created the offences of Harassment and Illegal Eviction. Other parts of the Act provided security of tenure for tenants in unfurnished accommodation and introduced new machinery for regulating their rents. The offence of Harassment involves interference with 'residential occupiers' with intent to make them give up their occupation; the offence of Unlawful Eviction is committed by actually excluding occupiers from their accommodation without a Court Order (see Appendix 1). These provisions have now been consolidated in the 1977 Protection from Eviction Act, s.1(2) and (3) (Farrand, 1978) but I shall refer to the 1965 legislation for convenience of exposition. I shall also follow the common usage and use the term 'harassment' to refer to both offences, except where required by the context.

Both then and since, public impressions of the nature of harassment have been bound up to a large degree with the furore over Rachman's activities. A short account of his career therefore provides an appropriate starting point for this study.[1]

Rachman, who was born in Poland in 1919, came to Britain in 1946. After serving for two years in the Polish resettlement corps he worked first as a tailor and later as a clerk in an estate office. In 1954 he acquired his first houses in Shepherds Bush in London and from then on until 1959 he acquired interests in a considerable number of residential properties in the area of West London around Notting Hill. By 1959, at the peak of his empire, Rachman owned as many as 1000 tenancies, and was a director and shareholder in a number of small property companies. In addition he owned interests in other sorts of property such as clubs and hotels. He lived in luxury in a large house in one of the wealthier roads in Hampstead, was a frequent visitor to night clubs, and pursued a flashy life-style.

From 1959 Rachman began to dispose of his residential property, moving instead into other areas of investment. According to the account of events in the Report of the Milner Holland Committee (HMSO, 1965), the Police, the Local

Authorities, the Board of Trade and the Inland Revenue all made it "increasingly difficult for Rachman to carry out his operations" although in fact Rachman was never prosecuted. The St Stephens Tenants' Association also tried to combat his activities by co-operatively buying up houses in the areas where he was active, but was hampered by lack of finance. Another reason for Rachman's shift of business interests was his ambition to obtain British citizenship, which had previously been refused. It continued to be refused, however. Rachman died suddenly in 1962, leaving £72850 gross (£8808 net). It was rumoured that he had more money salted away abroad and it was further suggested that the numbers of his foreign bank accounts were engraved on the inside of a golden bracelet which he always wore on his wrist and which he was wearing when he died.

It is particularly significant to the argument of this study to consider what is known of the business methods which Rachman employed to make his profits. It appears that, from the start of his operations in 1954, Rachman specialized in the purchase of short ends of long leases in large houses suitable for multiple occupation. These purchases were financed from mortgages. Many of the houses were in a poor state of repair owing to years of neglect since the war, and were divided into flats of three to four rooms each, let unfurnished to controlled tenants at very low rents. Rachman offered some of these tenants sums of money up to £200 in return for their agreeing to move out of their accommodation and their vacated flats were then turned into furnished single-room dwellings. These flats were easy to let at high rents because of the general shortage of rooms and flats and because furnished tenants did not possess the same rights as controlled tenants to security of tenure or to controlled rents, although they could, in principle, apply to have their rents fixed by Rent Tribunals. Rachman also developed letting policies which had repercussions for his other tenants. At best he was 'not particular' about whom he accepted as tenants; prostitutes, paying high rents, were commonly allowed to use flats, although Rachman denied personal knowledge of this whenever complaints were brought to him. He was also unusually willing to accept immigrants as tenants. In one newspaper interview Rachman claimed to be a benefactor of West Indians by providing them with accommodation, and he insisted that he provided 'financial assistance' to the controlled tenants who made way for them in the form of the inducements he paid them to leave. The results of this policy for other tenants and how it led Rachman to begin his notorious campaign of harassment were described as follows by the Milner Holland Committee:

> Coloured people, always in some difficulty in finding accommodation in the face of the shortage, made worse for them by racial prejudice, were welcome. Cheerful people, and given to much singing, to playing radiograms and to holding parties, they were not always appreciated as neighbours by the remaining statutory tenants in Rachman's houses. These started to move out and what perhaps began naturally Rachman began to exploit, seeing,

> perhaps, no point in paying controlled tenants to go if they could be persuaded to do so by other means.

Some further impetus was given to Rachman's operations by the Conservatives' 1957 Rent Act which removed security of tenure and rent restriction from a large proportion of controlled tenancies in an effort to make residential property a worthwhile area of investment. This meant that Rachman had more openings for investment and no longer needed to convert his properties to furnished tenancies in order to charge high rents.

At the time of the Rachman scandal public interest naturally focussed on the methods of harassment which Rachman used to force unwilling tenants to leave their accommodation, and this has continued to be the public image associated with Rachman and landlords of his type. A *Panorama* television report at the time of the scandal, for example, showed a film of a Rachman-owned house in Bayswater which had been stripped of its roof whilst the tenants were still living there. Yet, in its detailed account of Rachman's activities, *The Sunday Times* was at pains to point out that this was a "bizarre and unusual incident", and it emphasized that Rachman generally "avoided open threats and violence for getting rid of recalcitrant tenants". More recently Green (1979, p.59) has gone even further, claiming that "despite posthumous stories of evictions and wholesale intimidation, there is little evidence to suggest that he forced them out in any way", although she concedes that some of his rent-collectors may have used violent methods. Whatever the truth of this it appears to be the case that only a small part of Rachman's profits came from sales of property with vacant possession whose previous tenants had been persuaded to leave, the main part coming from his policy of charging high rents whilst at the same time doing few repairs. Council repair notices were disregarded and ground rents on leases left unpaid, by means of passing leases from one dummy company to another amongst the 22 shell companies, each with few assets, which made up Rachman's empire. One ex-employee was reported as saying:

> One way or another we reckoned we could keep a defective drain going for four or five months without the legal penalties becoming uneconomic.

It may be noted finally that, in all his operations, Rachman never lacked for astute legal and other professional advice. There were also some unconfirmed suggestions that he was merely a front man for highly connected investors. In general, therefore, although it is likely that Rachman, or his henchmen, did make use of harassment in amassing and running his property empire, the important point to note is that such actions belonged to a brief episode in his career and constituted no more than a small and unrepresentative aspect of his normal commercial operations.

The 1965 Rent Act and After

Legislation to control rents and to provide security of tenure to at least some groups of tenants in privately rented property goes back in Britain as far as 1915. Typically, however, such measures were treated as a series of temporary expedients and were subject to violent swings of the political pendulum, as in the Conservatives' attempt in 1957 to reintroduce free market criteria into the privately rented sector. The 1965 Rent Act, however, represented a major restructuring of what was left of this declining sector of housing by introducing the concept of rent regulation and 'fair rents' in place of rigid rent control and by extending security of tenure to all tenants of unfurnished accommodation. Despite some significant later changes such as the extension of security to furnished tenants and the relaxation of security for resident landlords in the Labour 1974 Act and the introduction of various exemptions from rent regulation and security rights in the recent Conservative Housing Act, the provisions introduced in 1965 have remained fundamental to housing law in this sector (Partington, 1975, 1980a; Farrand and Arden, 1981). The law against harassment has become a permanent and uncontroversial feature of the law governing rented accommodation, the only public criticism being of its alleged lack of sufficient severity or effectiveness.

At the time of its passage through Parliament the 1965 Rent Act was hailed as "a tenant's Magna Carta", "the finest piece of social policy this century" and "one of the most courageous and valuable (Bills) ever placed before Parliament". Yet, as later chapters of this study will demonstrate, the effects of the legislation were rather different from that suggested by these plaudits. The discrepancy between claims and achievements is particularly evident in terms of the type of landlords who are prosecuted for the offence of harassment. Landlords of Rachman's type are rarely convicted of harassment and, to some extent, this legislation has actually increased their opportunity to make very considerable profits using methods which are not dissimilar to those actually used by Rachman in his prime. By contrast, those prosecuted and convicted of harassing their tenants tend to be small, resident landlords caught up in disputes with their tenants in situations very different from those in which Rachman was likely to be involved.

A common reaction to this state of affairs is to assume that this means that in some way the legislation has 'failed' in its objective. Official and academic commentators have differed over the extent of this failure and on whether to attribute it to the wiles of commercial landlords or the pusillanimity of magistrates, but all have agreed that the legislation was intended to restrict and penalize the activities of large commercial landlords.

An official review of the effects of the legislation soon after it began to operate,

and a more recent official reconsideration, both expressed general satisfaction with the way its provisions concerning the crime of harassment had turned out. The practice of harassment, it is suggested, has largely been ended or is successfully being dealt with, although there may still be a slight problem over some subtle methods of harassment by commercial landlords which are difficult to bring to book; a further increase in the penalties available and actually imposed by magistrates would help to deter those landlords who still engage in harassment by depriving them of the profit which is assumed to be the animating purpose of the behaviour (HMSO, 1971, 1977).

A variety of academic assessments of the Act although less satisfied with its achievements, also share the same underlying assumptions concerning the nature of the harassment problem. Their diverse explanations of the alleged failure of the legislation say as much about the writers' theoretical and political viewpoints as they do about the legislation. But they too are united in assuming that the blame for the varying degrees of failure they assert can be attributed on the one hand to the wiles of commercial landlords, and, on the other hand, to the lukewarmness of the attack on harassment by magistrates, local authorities or politicians.

'Progressive' lawyers, committed to the reduction of economic and social inequality through the use of law, see the courts as the obstacle to the full success of the Rent Act in general and of the harassment provisions in particular. In the words of Andrew Arden:

> The attitude of the courts is one that many see as having been hostile to the idea of protection itself . . . It would be disingenuous not to accept that the courts, and in particular the Court of Appeal, have reacted with antipathy to the whole body of protective legislation . . . The Rent Acts have interfered extensively with the Common Law position, and more importantly, with the free trade, private enterprise approach to housing with which the Courts are both familiar and more at home. (Arden, 1978, p.21)

The similar attitudes of magistrates therefore explains the persistence of the harassment problems despite the existence of a law designed to stamp it out:

> . . . These pathetic penalties suggest that magistrates do not consider the offences to be very much worse than a breach of parking regulations. The spirit of the criminal law is to deter and to punish; where harassment and eviction are involved, the courts have effectively failed to do either. Because the penalties are so low, they gain little or no attention from even the local press . . .—(Ibid, p.145)

The solution to harassment, it is claimed, is to impress on magistrates the seriousness of the offence so as to get them "to award a punishment to fit the crime" (p.148); the remedy for the lack of impact of Rent Acts is to press on

more firmly with the political and legal campaign for the rights of the underprivileged.

A less sanguine view is taken by 'radical' writers on social administration. The allegedly lenient treatment of harassment is here treated as an index of fundamental limits on the character of interventions by the modern state. But the promise of this theoretical approach is betrayed by their slick reference to harassment as illustrative evidence for their case. The actions of magistrates courts are simplistically identified with that of 'the State', and a dubious psychological analysis of attitudes is made to serve as a substitute for the hard task of sociological investigation:

> Although there are occasions when the State does interfere with the freedom of individuals to do what they will with their own, attitudes to such action are highly ambivalent. One obvious example of such interference is legislation to control rents and to provide tenants with a degree of security of tenure. The ambivalence of attitudes to such legislation is, however, clear in the sentences passed by the courts on landlords found guilty of harassment or illegal eviction. Greve notes that out of over 700 convictions between the 1965 Rent Act coming into force and the end of 1969, only six resulted in imprisonment and the average fine imposed on the landlords was just under £20—less, as was pointed out to Greve, than the cost of getting a legal eviction through the courts. Clearly implicit in such light sentences is the view that such laws have a dubious moral basis and that those who offend should therefore be treated tenderly. (George and Wilding, 1976, p.120)

For these writers the success of social policies such as that embodied in the Rent Acts cannot be ensured until a break is made with the "liberal notions of freedom" which perpetuate the social problems they are supposed to solve.

The most antagonistic appraisal of the Rent Acts to be considered here is that put forward by Piers Beirne in the course of an extended Marxist examination of housing legislation. In his view, recent Rent Acts have undone much of that which was gained by working-class pressure in this area of class struggle. It is all the more remarkable, therefore, to note how closely his assessment of the 1965 Rent Act rests on the same assumptions as those previously identified.

His starting point is a surprisingly generous interpretation of the goals of the legislation: "Formally, it seemed that Labour had introduced enough legislative machinery to curb many of the worst ills of the housing rent process."—(Beirne, 1977, p.124). Beirne then goes on to parrot the received "apparently obvious" version of the effects of the law against harassment and the nature of the harassment problem:

> The security of tenure and eviction safeguards were astutely circumnavigated by landlords who pressurized tenants by overt and sometimes subtle psychological methods . . . Penalty for conviction was slight,