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Historically the control of housing conditions was based upon a concern for the health of the community and was safeguarded by the enforced repair and improvement of substandard property. In the United Kingdom the high cost of repair eventually induced a policy based upon subsidy to both home owners and private landlords as the price of healthier housing. This paper outlines the process by which the legislative standards invoked to protect health were modified to distribute subsidy. In 1989 the standards are poised to become criteria for the measurement of poverty rather than the identification of unhealthy housing conditions. In this process the protection of public health is being overlooked. There is strong evidence to suggest that the health of occupiers is at risk from modern and traditional housing hazards. Unless health is readopted as a concern of housing policy, the regulatory response needs radical rethinking.

Regulation in the sense of prescribed standards, the observance of which are coerced by penal sanction, is a form of control which has been the butt of critique for politicians and academics in both the United Kingdom and the United States in recent years. The experience of the regulation of housing conditions in England and Wales indicates that the coercive model of regulation, even as a background to negotiated compliance, had fallen into disuse as a mechanism for intervention in the housing market many years before the recent dissent. The regulatory framework of control fashioned in the nineteenth century had been transformed into an apparatus for the distribution of subsidy. The English and Welsh history is of more than parochial concern. It contains features reminiscent of developments in the United States and elsewhere. It is significant for the light that it sheds on the relationship between law and housing policy. It has

ramifications for the wider role of regulation in the pursuit of administrative objectives.

Housing law in England and Wales (legislation in Scotland as will be made clear is significantly separate) is undergoing extensive reform at present. The reforms are not based upon a policy which is derived from an analysis of housing need or the espousal of goals. In common with other wide ranging social reform, the restructuring of the housing market is being achieved by a relaxation of control on private investment, and tight regulation of the public sector. Thus there is deregulation of rent control, some relaxation of the regulation of building construction, and the unfettering of Building Societies, which have historically been the major provider of mortgage finance (Stewart and Burridge, 1989). These proposals and others reflect the policies of an administration concerned to dismantle what it regards as the suffocating regulatory restrictions on commercial behaviour. The arguments will be entirely familiar in the United States.

Housing provision has also been significantly affected by an increase in regulation of local government. The public sector in Britain, unlike the United States, has been a major provider of housing (nearly 30% in 1980). Public housing provided by local authorities has become a target for central government intervention. Initially the disposal of council housing was prompted by Conservative convictions that it was both an expensive object of public expenditure and a site of sympathetic Labour voters. Complex legislation was introduced forcing local councils to sell their housing to tenants, and almost accidentally the sale of council housing became one of the government's most lucrative privatisation schemes (Forrest and Murie 1987).

This brief review of recent interventions in the housing market as a background to the regulation of housing conditions is directed to two separate issues. Firstly, the mechanisms for controlling the housing market continue to be the allocation (or withdrawal) of central government subsidy rather than the implementation of penal regulation. Secondly, whilst state intervention in the housing market is achieved primarily through subsidy, regulatory controls still exist. The regulatory framework is sustained but it has been separated from the foundations on which it was constructed.

The Roots of Regulation

One of the earliest instances of the failure of market forces to protect the interests of the community arose from the threat posed to collective health emanating from individual houses. In England, a reform movement enthused by pity for the poor, frightened by contagion from their crowded courtyards and eager for their healthy labours (Finer, 1952), won for local Boards of health the power to close houses where insufficient "privy accommodation, means of drainage or ventilation" or other nuisances were "such as to render the house or building unfit for human habitation" (Nuisances Removal and Diseases Prevention Act 1855). The impetus for change was a concern for ill health, whether it was the poor who suffered it, the middle classes who feared it or the employers who lost labour from it.

By 1868 the power to intervene in the housing market locally had been extended to "taking down or improving dwellings occupied by working men and their families which are unfit for human habitation" (Artizans and Labourers Dwellings Act 1868; and Moore, 1987).

The identification of poor housing and sanitation as a source of epidemics was sufficiently powerful to subjugate to the control of local sanitary officers a slum owner's right to let unfit property. Although in England the reform movement met opposition, the thrust of its legal intervention was the adoption of the penal sanction: owners of unfit property faced the prospect of compulsory demolition and harbourers of nuisances faced prosecution if they did not abate them. The free housing market encountered state control.

The American Codes evince a similar collective disapproval of antisocial landlords. At much the same period as the reform movement in England, similar sentiments were reflected in the *Report of the Sanitary Commission of Massachusetts 1850* (Shattuck, 1948) and later in initiatives such as the Tenement House Act in New York and elsewhere. The American experience reveals a pattern of local regulation based upon the adoption of detailed housing codes, both to control the standard of new homes, and the conditions within existing ones. Intervention was prompted by the notion that national health was too important to be left to the vagaries of market forces.

Regulatory Responses

In English housing regulation, two separate concepts emerged as triggers for intervention. Both had health as their objective, but they focussed upon different community situations. The 'statutory nuisance' was directed towards hazards in the local environment, whereas 'unfitness for human habitation' concentrated upon unhealthy conditions within the home. Initially both interventions were reactive and directed towards dealing with the unhealthy conditions that the market had unleashed in the tenements and rookeries of the industrial revolution.

A third parallel regulatory mechanism had emerged, directed at the control of the building process. Bye laws developed, until recently within the framework of the Public Health Acts, into Building Regulations. These dictated the size of components of new buildings, specified basic quality standards for materials, and laid down criteria for layout and design.

The principles underlying all three mechanisms were the Victorian conviction in the wholesomeness of space, light and fresh air. Traces of these concerns are evident in the modern formulations of all three regulatory approaches.

Fitness for Human Habitation

The Common Law concept was first reduced to ministerial guidance in a Ministry of Health Manual issued to local authorities in 1919 (Moore, 1987). The approach then, as now, was to identify a list of attributes to be expected of fit houses. These included freedom from damp, satisfactory lighting and ventilation, proper drainage, satisfactory water supply, adequate washing and food preparation facilities, and good general repair. The present procedure is to require action by local authorities to deal with houses in their area which are 'unfit' because they are so far defective in one or more of the items from a slightly more modernised list of attributes. The mechanism of enforcement is that Local Authority Environmental Health Officer's either serve a Repair Notice specifying the work to be done to make the property fit or require its closure. Local civil courts, the County Courts, hear challenges to the procedure.

Statutory Nuisance

The procedure for the abatement of statutory nuisances is that local government environmental health officers can serve upon any person who "suffers permits or allows" a statutory nuisance, a Notice requiring her to abate it and specifying how it should be done. If the person fails to abate the nuisance, the officer can apply to the Magistrates' Court for an order to enforce the Notice. The concept of nuisance is wide, and is accompanied by an extensive and historic body of judicial elaboration. The proceedings are criminal and a fine can be imposed.

Building Regulations

The regulatory approach of the Building Regulations has recently undergone significant changes. The rationale for the changes was the regulatory reaction — the system was felt to be "more cumbersome and bureaucratic than it need be; and that the present form of Regulations is inflexible; inhibits innovation and imposes unnecessary costs" (HMSO, 1981). The Building Act 1984 made two important changes to the procedures for building control. Firstly, it created a statutory framework of broadly defined Regulations and relegated the detailed requirements to practical guidance which has no statutory authority. Secondly, it created a band of "approved inspectors" with powers to certify compliance with the Regulations alongside the existing system of local authority Building Inspectors.

These three English models of housing control, illustrate the variety of regulatory techniques. Most studies of regulations concentrate upon an assessment of the effectiveness of regulatory agencies in the attainment of their espoused or supposed objectives. Such studies rightly emphasise the resource implications and institutional behaviour of the agencies, but ignore the regulatory alternatives. At most comparison is made with the regulation of 'real' crime by 'police forces' (Carson 1970, Hawkins 1984, Hutter 1988,). Current models of control are studied; there is little venture into the design of prototypes.

As the explanation of the control of English housing conditions illustrates, regulation is not a series of distinct legislative models. It is one manifestation of administrative power. Thus the penal component of fine for infringement can be redesigned

as subsidy to afford compliance; the criminal conviction for violation can be alternatively coerced by civil injunction; the pecuniary levelling of a fine against offenders can become the award of damages to the victim; documents from state officials range from letters of advice and information through official circulars, Codes of Guidance, enforceable Notices prescribing action to broad statutory norm and strict regulatory rule. The range of administrative mechanisms for the achievement of policy objectives and the combination of each of them is extensive. Models of regulation are misleading descriptions of state control; components of administration may provide a more accurate explanation.

Whatever components are assembled to create a legislative and administrative vehicle for the delivery of government policy should be determined by the objectives to be attained. Discussion may take place over which component is most appropriate to reach a given objective, but in the absence of such a policy objective, any initiative is likely to be misguided. By the same argument, a regulatory framework designed and built to achieve one set of objectives may be quite inappropriate as a vehicle for a different policy. It has been contended that the control of English housing conditions lacks such objectives; the mechanisms for control are available but there is confusion as to the purpose (Ormandy 1987). Should regulation maintain the housing stock or protect the community? Does the state invest in the fabric of the house or subsidise the income to the home? Are the standards minimum health requirements to be achieved by coercion or optimum targets to be obtained by subsidy or loan? What is the relationship between controlling the external as contrasted with the internal environment? Are controls directed towards the productions of housing or its consumption?

From Health to Comfort to Cost

The early concept of 'fitness for human habitation' was clearly built upon a concern for public health. The criteria first set out in the 1919 Manual from the Minister of Health and largely replicated in the unfitness standard today, echo the anxieties of the midnineteenth century sanitary movement. The legislative intervention was appropriately robust to counter the

threat to health. One of the luminaries of twentieth century housing policy, Professor J.B. Cullingworth summarised the response thus,

> During the late nineteenth and early twentieth centuries a formidable-looking body of powers was built up to secure the adequate upkeep of private property. These not only made it the clear duty of owners to maintain their houses in a 'fit' condition, but also armed the local authorities with default powers. The principle was also established that an owner of an 'unfit' house could be compelled to demolish it or be bought out at site value only. (Cullingworth, 1966, p. 204)

The midcentury, however, witnessed changes in housing policy that are well documented (Cullingworth, 1966; Merret, 1979; Burnett, 1982). Firstly, there was growing recognition that the 1939–1945 war, and the clearance programmes before and after it, had eradicated the worst of the Victorian slums. Attention was turning towards properties that were not unfit, but which were substandard and rapidly deteriorating (Cullingworth, 1966). By the 1950s, the wholesale clearance of large areas of slums required a standard that could be used to justify the demolition of buildings which, whilst not immediately a danger to health, nevertheless fell below the rising perceptions of adequate housing for the day. Stability was included as a criterion for unfitness in 1954 and by 1969 poor internal arrangement was added as a ground of unfitness. Environmental health officers today recognise that the heydays of mass clearance were largely achieved by a generous interpretation of the unfitness standard (Burridge, 1987).

Many of the dilapidated properties were owned by the growing number of owner occupiers for whom the coercive powers of the Housing Acts were inappropriate. The easier economic climate of the 1950s allowed an expansion into a programme for the rehabilitation of private houses by the award of housing subsidy. Improvement grants, which had long been available but little used, increased dramatically in number as eligibility restrictions were lifted. Cullingworth (1966, p. 1207ff) records that only 6,000 grants were given between 1949 and 1953. By 1960 this had risen to over 130,000.

The impetus in favour of rehabilitation and subsidy to owners was fuelled in the seventies by a growing disillusionment with high-rise development as a solution to mass housing provision. The rising cost of new building coupled with increasing pressure to spend less indicated that rehabilitation was a cheaper economic goal.

This process had affected the implementation of the standard of fitness. The enthusiastic pursuit of wholesale clearance which had resulted in the adoption of a generous standard of unfitness by environmental health officers was contributing to the demolition of buildings that would otherwise have been capable of conservation. (Burridge, 1968; Moore, 1987).

The standard of fitness, first conceived as a penal standard to protect popular health was increasingly perceived as being based upon an outdated and narrow concentration upon health. In Scotland, for example, the Scottish Housing Advisory Committee, under the chairmanship of Cullingworth, recommended the adoption of a 'tolerable' standard to replace the unfitness standard, marking the acceptance of the view that "standards based on narrow public health concepts are now out of date, minimum standards should be based on considerations of convenience, amenity and socially acceptable living conditions" (Moore, 1987 p.10). The tolerable standard differed from the English unfitness standard in that it was both more objective — it required the evaluation of a building on a checklist of criteria rather than an overall subjective judgement — and was more in keeping with the needs of a postwar society in that it required a house to have hot and cold water as well as satisfactory provision for heating.

In England and Wales the broad subjective unfitness standard was retained, but the progress towards comfort and convenience as a goal of housing policy was marked by empowering environmental health officers in 1980 to intervene and enforce repair where "its condition is such as to materially interfere with the personal comfort of the tenant".

Many of these influences seem to have been present in the shifts in U.S. Housing policy (Hays, 1985). The Housing Act 1949 was acclaimed as the "most important piece of health legislation ever enacted" by the Congress of the United States by the then

Surgeon General, Dr. Scheele (Mood, 1987a, p.2). Intervention seems to have had a chequered past in the United States (Mood, 1987a, p.4) as in England, Wales and Scotland. Whilst estimation of the pursuit of the National Housing Goal ranges from the supremely confident (Weicher, 1977) to the cautious and critical (Mood, 1987a), the picture is one of a progression from the health concerns of individuals, through clearance of areas to rehabilitation of individual dilapidated houses. Furthermore, the change in emphasis was apparently accompanied by strong convictions amongst some housing administrators that the problems that had existed in 1949 had been largely eradicated and that minimum standards were already moving beyond the narrow health concerns of earlier administrations:

> The fact that we have nearly eliminated the major housing inadequacies that existed in 1949 does not imply that we need no further improvement in housing quality, or that there are no remaining inadequacies to be eliminated. As our housing quality improves, we are able to raise our standards, to reach for levels or amenities unrealizable or unrealistic in earlier years. To some extent this has already been occurring. (Weicher, 1977).

In the process from clearance to rehabilitation, in the shift from public health under the banner of better standards that seems to have occurred on both sides of the Atlantic, common themes suggest themselves.

In the United States the plaintive call from Carlton, Lanfield and Loken in 1965 for a comprehensive campaign to enhance the public's image of municipal code enforcement was met over a decade later by the critique of regulatory unreasonableness (e.g., Bardach and Kagan, 1982) and the debureaucratisation of the Reagan administrations. The economics of regulation became a major concern. In housing, the implicit acknowledgement that health hazards had been eradicated deprived proponents of regulation of the powerful moral arguments that had sustained the early reformers. Attention moved away from the victims of bad housing conditions to the victims of the regulatory ratchet.

Whilst the Conservative administration in England espoused similar economic goals and political philosophies the flight from enforcement of the Public Health Acts had already

occurred and the penal approach of the Housing Acts had developed into the palliative of awarding housing subsidy. The grant system had already transformed the work of environmental health officers. Since the service of a Notice requiring repair entitles the recipient to grant aid, such officials have become less concerned with wielding the stick of coercion that is implicit in enforced rehabilitation; not surprisingly, the carrot of housing subsidy has proved a more amenable and effective repair mechanism than the threat of prosecution. Public Health Act procedures for most housing matters have fallen into disuse (Burridge, 1987). They are perceived as being unwieldy by those who would otherwise enforce them, and unpopular amongst the enforced. The beneficial effect of implementation to the dilatory landlord is that enforcement will either bring vacant possession and windfall profits via sale on the open market, or entitlement to grant to assist in the very repair which the landlord has in the past failed to carry out.

The involvement of environmental health officers in the apportionment of central government housing subsidy to the private sector resulted in a fundamental shift in emphasis in their role. They ceased to have a primary concern for the condition of houses or the health of the occupiers and became outlets for public expenditure. In many local authorities their housing activities were reorganised within the overall control of housing management. Public expenditure rather than public health became their overriding concern. In this process much of the debate about housing conditions became centred upon the relative importance of subsidy to the private or public sector housing programmes. In the early 1980s public housing was severely underfunded, deprived of finances by a government committed to reductions in public expenditure. Public sector housing, however, continues to provide some of the best housing and is in the least disrepair. The most recent house condition survey (Department of Environment, 1988) identifies the small private rented sector (less than 7% of all dwellings) as being in the worst conditions (ibid., p.31), whilst owner occupiers, the largest tenure group, suffer the next worst conditions.

The utilization of the legislative norms of the Housing Acts as the criteria for eligibility for housing subsidy reinforced a

Treasury lead desire for centralised control. This in turn coincided with a political battle for the control of local government budgets that became a major objective of the Parliamentary power of the Conservatives in the 1980s.

Two potentially conflicting influences were affecting the implementation of the unfitness standard. The broadly defined and subjectively implemented standards suited the distribution of national housing subsidy between localities with widely differing housing stock. For these purposes a nationally applied norm might result in the politically unpalatable concentration of subsidy in more deprived regions to the almost total exclusion of some areas, particularly in the prosperous South East (Burridge 1987). On the other hand control of public expenditure necessitated uniformly implemented norms, preferable susceptible to accurate estimates of potential cost. This could be achieved by the introduction of a more objective standard of fitness, such as the 'tolerable' standard already employed in Scotland. The Building Research Establishment, the government agency entrusted with structural advice to the government recognised the benefits of objective evacuation (O'Dell 1985).

The checklist approach offered a number of advantages for a Treasury concerned with public expenditure control. It facilitated the evaluation of the national housing stock in House Condition Surveys which had been carried out since 1961 using the unfitness standard in the Housing Act as a yardstick; it was amenable to such empirical enquiry and suited the technology of the computer; and a standard of fitness could be set and altered according to calculations of the cost of repair or improvement that the government would sanction. The revised fitness standard currently progressing through Parliament includes adequate provision for heating facilities in the attributes to be contained within a fit house. Whether or not this improvement in the legislative standard has a marked effect on the condition of housing in England and Wales, however, will not depend upon the zeal of environmental health officers in its enforcement. It will be determined by the level at which the new means-tested eligibility for grant aid is set and the public expenditure dedicated for the employment of those officers who can identify the substandard properties. Thus the current housing standards

in England and Wales emerge as ciphers of economic expediency rather than symbols of a healthy housing policy.

The most recent proposals emanating from the Department of the Environment will complete a transformation from curative to palliative (Local Government and Housing Bill 1989). The identification of the owner occupied and private rented sector as being the sites of the worst housing is being used to intensify a policy of grant aid to the private sector. It also has been used as a justification for the targeting of subsidy to those most in need. The proposed targeting requires an evaluation of both the building and the owner, since as well as the adoption of a revised standard of unfitness it is proposed that all grant aid will now be means tested. The administration of housing subsidy has thus moved away from investment in the housing stock towards support for the poor.

This analysis of the regulation of English housing conditions amounts to more than a critique of current housing policy; in effect the recent proposals are symptoms of its demise. Ironically the official disinterest in housing and health is occurring at a time when elsewhere attention is turning towards the regulation of housing conditions. The efforts of the World Health Organisation (Mood, 1987b), and such campaigns as Healthy Cities 2000 are striving to reassert the consequences upon health resulting from the lack of adequate housing provision. The attempts of epidemiologists and clinical researchers to isolate and evaluate the relationship between potential housing hazards and ill health are meeting new success.

Swept aside in the fifties by the enthusiasm for high rise and the eagerness for new housing, further eroded in the seventies for their preoccupation with outdated concerns, then undermined for their unreliability, housing researchers are methodically establishing their credibility. Dampness and mould growth in housing has been identified as a factor affecting respiration (Hunt and Martin, 1986; Strachan, 1986, 1988); protection from cold in the home has been cautioned (Collins, 1983); relationships between building design, behaviour and mental stress are being clarified (Freeman 1984; Ineichen 1986; Gabe 1986) and correlations between ill health, housing, and poverty continue to be reinforced (Byrne, Keithly, Harrison, & McCarthy, 1986), To

these can be added current concerns over chemicals used in construction or naturally occurring (asbestos, radon); fire hazards and other features of design and construction conducive to accidents (Ranson 1987); or modern sanitary threats such as legionella (McEwen 1986).

This paper has argued that the opportunity for reassessing the administrative and legislative response to bad housing conditions should be taken. More is known about the human requirements to be provided by shelter (Lawrence 1986, 1987). The hazards of bad housing and the damage that it does to the national health are better understood. Methods for the evaluation of housing structures can provide detailed comparative assessment, which are capable of quantification and costing. If such objectives can be identified, appropriate regulatory responses can be implemented.

From Health Policy to Poverty Policy

The experience of housing regulation in Britain and the United States emphasises the breadth of legal mechanisms for control that is available, although the maintenance of largely unaltered Victorian standards as the guidons for a succession of diverse housing policies, indicates how ephemeral such legal regulation can become in the service of administration. The history of English housing standards is a tale of new Emperors and old clothes. Successive policies have been fitted in the norms of the past. The idea that regulation can be transformed from an instrument of policy to a product of it, is a reminder of the chimerical image of law.

That such a transformation has been possible is a reminder of the ease with which regulation can become the object rather than the instrument of policy. The policy currently influencing English housing arises from social security principles and emphasises means-tested benefits. It is based upon two fallacies. Firstly, that better housing on its own will improve the health of the poor. Secondly, that only the poor are unable to cope with the unhealthy housing conditions that they suffer. Both misapprehensions follow from policy that focusses upon the incomes of individuals, rather than the evaluation of structures which may give rise to health hazards.

Alternative strategies could reflect a reemphasis of health as a major concern of housing policy. Regulation and subsidy are not mutually exclusive as the review of English housing controls has demonstrated, but the decline of one will require an emphasis upon the other. In view of the sophisticated analyses and calculations contained in the English House Condition Survey (Department of Environment 1988), a comparable detailed programme of repair related to the severity of the structural conditions is possible. If subsidy rather than penalty is accepted in principle as the preferred mechanism for intervention (which would appear to be the case still), then such a programme could be expected to relate the level of subsidy to the estimated £12.6 billion cost of repair (Department of Environment 1988, p.97), rather than the poverty level of individual occupiers or landlords. Alternatively, if subsidy is not to be related to the worst housing, but only to the poorest people who seek assistance in the worst housing, then a return to the regulatory ratchet will be necessary. Since public health and not private comfort is still an issue, the regulatory response is ripe for rethinking for the private and public rented sectors.

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