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THE INTERPRETATION OF STATUTES IN MODERN BRITISH LAW

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Mr. Justice Frankfurter recently said that the number of cases coming before the Supreme Court of the United States which were not based on statutes was "reduced almost to zero." [1] This growth of statutory as against pure case law is, of course, not confined to the United States. It inevitably accompanies the social welfare state and the increase in government which every modern industrial society has experienced and which two world wars, with their need for the total mobilization of resources, have further stimulated.

Apart from these sociological factors which affect states with the most different legal systems, it is still customary to contrast the "code-minded" continental systems with the "case-minded" tradition of Anglo-American jurisprudence. Insofar as it is meant to indicate a parallel contrast in the judicial approach to statutes, this is in many ways a false antithesis. It is quite true that the history of the common law systems has encouraged an empirical and inductive approach to legal problems, a disinclination to think in terms of abstract rights and duties rather than of concrete remedies, a judicial distrust of parliamentary encroachments upon the sphere of the "lawyer's law." As will be shown, this attitude still powerfully influences the judicial approach to statutes in contemporary England. Insofar as American law has taken over the basic principles and approach of the common law, this may well be true of the United States too; but the fundamental difference is that the United States, like other countries inside and outside the common law system, likes a written constitution. It is the supreme law of the country, and it contains a Bill of Rights and "due process" clauses which constantly compel judges, legislators and anybody concerned with the making, administration or interpretation of law to think deductively and in terms of general principles. The American lawyer may find it difficult to appreciate how deep the difference is between his own "constitution-conscious" outlook and that of the English lawyer, where the absence of such a constitution and the consequent lack of any catalogue of fundamental rights, coupled with the unbroken common law tradition of English law, preserves the empirical and inductive approach to a much greater extent. In recent years, this difference of outlook has often become evident, wherever British

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1. *Some Reflections on the Reading of Statutes*, 2 THE RECORD 213 (Ass'n of Bar of City of New York, 1947), also in 47 COL. L. REV. 527 (1947).

and American statesmen, administrators and lawyers have jointly faced such problems as the remaking of democracy in Germany, or the formulation of the Declaration of Rights of the United Nations Organization. British enthusiasm for abstract rights and proclamations of principles is generally much less marked than that of their American friends. In the field of constitution-making, I believe the British scepticism to be justified, but as regards the interpretation of statutes in general, this attitude and the common law tradition altogether retards a systematic and well thought-out approach to the whole problem. This is not the place to discuss the complex details of the technical rules supposed to govern the interpretation of statutes.[2] The unholy mixture of technical rules, historical absurdities, and confused ideologies which still largely represent current doctrine on this matter is well illustrated by the following passage from the last edition, published in 1946, of a leading textbook:

> "The tendency of modern decisions, upon the whole, is to narrow materially the difference between what is called a strict and a beneficial construction. All statutes are now construed with a more attentive regard to the language, and criminal statutes with a more rational regard to the aim and intention of the Legislature, than formerly. It is unquestionably right that the distinction should not be altogether erased from the judicial mind, for it is required by the spirit of our free institutions that the interpretation of all statutes should be favourable to personal liberty, and this tendency is still evinced in a certain reluctance to supply the defects of language, or to eke out the meaning of an obscure passage by strained or doubtful influences. The effect of the rule of strict construction might almost be summed up in the remark that, where an equivocal word or ambiguous sentence leaves a reasonable doubt of its meaning which the canons of interpretation fail to solve, the benefit of the doubt should be given to the subject and against the Legislature which has failed to explain itself. But it yields to the paramount rule that every statute is to be expounded according to its expressed or manifest intention and that all cases within the mischiefs aimed at are, if the language permits, to be held to fall within its remedial influence." [3]

From this jumble of conflicting propositions it is not difficult for a judge to pick out whatever he chooses.

In contemporary Britain a vast number of statutes and regulations never reach the ordinary courts, except perhaps on the rare occasions of a prerogative order bringing up a case from an administrative tribunal. They are interpreted by the many hundreds of statutory tribunals, mixed commissions, ministerial orders, which together make up a vast though unsystematic body of administrative law. Even so, the English judge may find himself at any time called upon to interpret the Rent Restriction Act, a factory act, a workmen's compensation act (now merged in the national insurance legislation), a taxation statute, a town and country planning act,

2. For an instructive brief review, see Willis, *Statute Interpretation in a Nutshell,* 16 CAN. B. REV. 1 (1938); see also Friedmann, *Statute Law and its Interpretation in the Modern State,* 26 CAN. B. REV. 1277 (1948).

3. MAXWELL, INTERPRETATION OF STATUTES 288-89 (9th ed., Jackson, 1946).

or one of the series of statutes governing the newly nationalized basic industries. Not only do all these statutes deal with very different subject matters, but they also stand in very different sorts of relationships to the common law. Some, like the legislation laying down certain fair rent standards or that dealing with slums, impose certain, often far-reaching, restrictions on the freedom of contract which still remains the basic relation between the parties. Other statutes, such as the act apportioning the liability between joint tort feasors are glosses upon the common law; they alter a specific rule in what mainly remains a common law subject. Others, however—and their number is steadily increasing—like taxation statutes, or the acts governing the nationalisation of industries, or the National Health Service, deal comprehensively with an entirely new subject matter. They are overwhelmingly concerned with matters of public law and only incidentally with matters of private law. For example, the Coal Industry Nationalisation Act, 1946, or the National Health Service Act, 1946, are mainly concerned with the organization, the legal status, the financial responsibilities and the practical control of new public corporations. The constitution of the boards, the powers of the Minister, the relation of the new public authorities to the National Exchequer, their powers of expropriating or otherwise restricting private property, their methods of management and accounting—all these are, in a wider sense, problems of constitutional and administrative law, though incidentally such questions arise as the ultra vires problem, the limits of legal liability in contract and tort, the mixture of public and private law elements in the employment of staff, and so forth. Owing partly to the absence of a definite system of administrative law and jurisdiction, the growth of the social welfare state in contemporary England often necessitates the adaptation of private law institutions to public law purposes. The injunction and the declaratory judgment, both equitable remedies, serve increasingly as remedies for the ascertainment of rights and duties of public authorities and for the protection of the public interest against encroachment by other public authorities or private enterprise.[4]

An intelligent interpretation of modern statutes is therefore impossible without a study of the public law problems with which they are overwhelmingly concerned. Yet, for such a task, the English judge is hardly equipped, either by legal training or practical experience.[5]

In the first place, it is necessary to root out the lingering heresy of the distinction between "lawyer's law" and "political law." Even a judge

4. For a detailed discussion, see Friedmann, *Declaratory Judgment and Injunction as Public Law Remedies,* 22 AUST. L.J. 446 (1949).

5. This may improve somewhat with the coming generation of lawyers, but so far as I know there is not yet any full course on statutory interpretation at any English law school. The teaching of public law, however, is on the increase, especially at the University of London, which attracts an increasing number of civil servants.

who has done as much to spread a new and sympathetic approach to statute law as Lord Wright said in 1937 that "such law is for the specialist and has little interest for the student of law save in so far as it illustrates principles of construction or save in so far as it indicates trends of social thought and policy, which may have repercussions on the attitude of judges when they deal with common law questions of kindred character."[6] The trouble is that public law, and with it the so-called "political" law, has caught the English lawyer unawares. A legal training and apprenticeship overwhelmingly concerned with common law and equity means a preoccupation with private rights and duties, and with it a conscious or unconscious suspicion of the intrusion of public law, represented by ministerial "delegated" legislation. Suspicion of administrative powers and suspicion of statute law have largely the same source. This is most clearly seen in the decisions dealing with discretionary clauses which are becoming more and more frequent. The development of modern English administrative law is marked by the struggle between the legislator to secure, either directly or by delegation of powers, a wide and legally unchallengeable measure of administrative discretion, and the attempt of the judiciary to restrain administrative power by such tests as "reasonableness." Technically, the legislator is ultimately bound to win, because there is no written constitution to limit his powers, but the pressure of public opinion acts as a powerful check on the legislator, just as it has greatly modified the attitude of the judiciary towards statutes and the social service state in general.

The clash between the old individualist common law ideologies and the new ideologies of the social welfare state, as well as the differences in the personal outlook and premises of different judges, are reflected in the judicial interpretation of statutes and may be illustrated by four groups of recent cases.

The first concerns the judicial approach to modern housing legislation, that is to say, a type of case where freedom of contract and private rights are deliberately restricted for the sake of certain minimum standards of social service. The second concerns taxation, a field necessarily reserved to the state, but inevitably of considerable impact on the scope and freedom of private property. The third concerns some recent examples of statutes which have given public authorities certain powers to override private agreements. The fourth concerns the question of abuse of statutory powers by public authorities.

The Housing Act, 1925, in a clause later re-enacted in the Housing Act, 1936, imposed on the lessor of houses below a certain ratable value a statutory obligation to keep the house "in all respects reasonably fit for human habitation." An identical situation was treated first by the Court of Appeals

6. WRIGHT, LEGAL ESSAYS AND ADDRESSES 397 (1939).

in 1927 [7] and fifteen years later by the House of Lords.[8] The defective sashcord in a working class house had caused the window to fall and crush the plaintiff's hand while she was cleaning the window. The Court of Appeal in the earlier decision adopted the approach of Salter, J., in a case decided some years earlier that "the standard of repair required by those Acts is naturally . . . a humble standard." [9] The Court of Appeal by a majority held that the breaking of the sashcord did not prevent the house from being in all respects reasonably fit for human habitation, and Lawrence, L. J., went so far as to describe a different attitude as "somewhat fantastic." [10]

It was indicative of the same "private rights" approach to a public law statute that the court regarded the statutory warranty as contractual, so that damages could not be recovered unless notice as required by common law was given by the tenant to the land-owner (although the Housing Act did not stipulate any notice and the defect might be hidden). The decision of the House of Lords—given in the middle of the last war when the people of Britain had transferred to the Government almost unlimited powers over their persons and properties, and when the hope for a better social order inspired the vast majority of Britons to suffer danger and privation—struck a note very different from that of the Court of Appeal fifteen years earlier. The House rejected both the contractual approach and the somewhat cynical interpretation of what sort of house is fit for the underdog to live in; as Lord Wright put it:

> "The provision was to reduce the evils of bad housing accommodation and to protect working people by a compulsory provision, out of which they cannot contract, from accepting improper conditions. Its scheme is analogous to that of the Factory Acts. It is a measure aimed at social amelioration, no doubt in a small and limited way. It must be construed so as to give proper effect to that object. . . . 'In all respects' must mean in all respects material to the enjoyment of the tenement, and the unfitness of one room may be a most material detraction from that enjoyment. 'Human habitation' is in contrast with habitation by pigs, horses or other animals, or with use as warehouses, and the like, but I think it also imports some reference to what we call humanity or humaneness." [11]

In other words, the statutory obligation is to be interpreted in the spirit of the statute which contains it, as a deliberate measure of restraint on the use of property and the freedom of contract; it is not to be thwarted by conceptions of freedom of contract and property which the statute deliberately sets out to restrain.

As modern taxation has increased in volume and weight, taxing legislation has increasingly become the object of a duel between state and tax-

7. Morgan v. Liverpool Corp., [1927] 2 K.B. 131 (C.A. 1926).
8. Summers v. Salford Corp., [1943] A.C. 283, [1943] 1 All E.R. 68 (1942).
9. Jones v. Geen, [1925] 1 K.B. 659, 668.
10. [1927] 2 K.B. at 152.
11. [1943] A.C. at 293.

payer. This is a field in which the ordinary law courts in England have still a decisive voice, for they decide on appeals from the inland revenue commissioners on a point of law. The change of judicial outlook here corresponds very closely to that just described in regard to housing legislation. One of the many conflicting textbook rules on statutory interpretation says that statutes should not be presumed to encroach on private rights unless they provide otherwise in clear terms. In regard to taxation, this led to a judicial tradition of condoning attempts by taxpayers to use loopholes in order to avoid taxation. The classical formulation of this attitude is a dictum by Lord Sumner in a case where a British subject who, over a period of years, lived abroad for about seven months and spent the remaining five months in the United Kingdom, the place of his normal business and of all his affiliations, thus avoiding income tax which, under the Income Tax Act, 1918, depended on ordinary residence.[12] The House, including Lord Sumner, had no doubt that the movements of the taxpayer were regulated so as to avoid the incidence of taxation. But, Lord Sumner went on to say, in regard to taxpayers in general, "They incur no legal penalties and, strictly speaking, no moral censure if, having considered the lines drawn by the Legislature for the imposition of taxes, they make it their business to walk outside them." [13] Although the House held the plaintiff liable, Lord Sumner's dictum indicated a judicial outlook radically different from that expressed both by the Lord Chancellor and the Master of the Rolls in two wartime cases. In a case where a company had been formed abroad with the purpose of disguising as capital issues the income enjoyed by the appellants' wives resident in the United Kingdom, the House of Lords made short shrift of this attempt to evade taxation. As the Lord Chancellor said in regard to the debentures issued by the company: "It is manifest that the debentures were brought into existence merely that their redemption might serve as a means, from time to time, of transferring part of the profit of the mine to these women in the form of capital." [14] The Lord Chancellor opened his judgment with the following remarks:

> "My Lords, of recent years much ingenuity has been expended in certain quarters in attempting to devise methods of disposition of income by which those who were prepared to adopt them might enjoy the benefits of residence in this country while receiving the equivalent of such income without sharing in the appropriate burden of British taxation. Judicial dicta may be cited which point out that, however elaborate and artificial such methods may be, those who adopted them are 'entitled' to do so. There is, of course, no doubt that they are within their legal rights, but that is no reason why their efforts, or those of the professional gentlemen who assist them in the matter, should be regarded as a commendable exercise of ingenuity or as a discharge of the duties of good citizenship. On the contrary, one result of such methods, if they succeed,

12. Levene v. Comm'rs of Inland Revenue, [1928] A.C. 217.
13. *Id.* at 227.
14. Latilla v. Inland Revenue Comm'rs, [1943] A.C. 377, 382, [1943] 1 All E.R. 265

> is, of course, to increase pro tanto the load of tax on the shoulders of the great body of good citizens who do not desire, or do not know how, to adopt these manoeuvres." [15]

In another case which concerns the interpretation of a statute specifically enacted to subject a certain type of ingenious transaction to tax, Lord Greene, M.R., expressed himself as follows:

> "For years a battle of manoeuvre has been waged between the legislature and those who are minded to throw the burden of taxation off their own shoulders on to those of their fellow subjects. . . . It would not shock us in the least to find that the legislature has determined to put an end to the struggle by imposing the severest of penalties. It scarcely lies in the mouth of the taxpayer who plays with fire to complain of burnt fingers." [16]

No doubt the fact that these cases occurred during a war which demanded the utmost devotion of all resources to the pursuit of war made the law courts more impatient with ingenious evasion manoeuvres than they might have been under more normal circumstances. But it is unlikely that the courts will ever completely revert to their former attitude. The significant difference between the approach of Lord Sumner and that of Lords Simon and Greene lies in their attitude towards the statutory imposition of public duties. Instead of a slightly cynical and detached attitude of watching the struggle between the state and the evasive individual, the later decisions show an awareness of social purpose. In the conflict of interests between the state, eager to extract the maximum contribution for national purposes, and the individual, wishing to preserve his property, the latter is no longer regarded as necessarily inferior. This does not of course mean that the courts will in all circumstances decide against the taxpayer. It does mean that they are getting rid of certain inarticulate premises induced by a long tradition and a scale of social values no longer supported by contemporary public policy.

The degree to which public authorities may intervene in freedom of contract in the exercise of statutory powers has occupied English courts on a number of occasions. Nowhere is the clash between conflicting personalities and ideologies revealed more clearly.

In the absence of a written constitution whose interpretation rests in the hands of the courts, English courts have of course far fewer occasions than American courts to come to grips with legislative encroachments upon individual rights. They cannot invalidate parliamentary statutes, and the conditions under which they can tackle delegated or subordinated legislation entirely depend upon the terms of the enabling statute. It is in the interpretation of these enabling terms that divergent interpretations have

15. [1943] A.C. at 381.
16. de Walden v. Inland Revenue Comm'rs, [1942] 1 K.B. 389, 397, [1942] 1 All E.R. 287 (C.A. 1941).

become important. In the absence of statutory appeals, the courts can invalidate delegated legislation insofar as it is ultra vires, but this they can do only by virtue of the ancient prerogative jurisdiction by which the Curia Regis has always supervised the decisions of inferior courts. Hence it is a condition of prerogative jurisdiction that the administrative body in question should have performed a quasi-judicial function. When coping with a stream of administrative and planning legislation, after the first world war, the courts tended to extend their supervisory power by giving a very wide meaning to "quasi-judicial." A decision of the Court of Appeal [17] has exercised great influence. The Electricity Commissioners were a public authority with strictly defined statutory powers to formulate schemes for the improvement of the electricity supply and to make orders subject to confirmation by the Minister of Transport. The Commissioners made an order by which they constituted a joint authority, in terms which in the opinion of the Court of Appeal were ultra vires. But the Court had further to prove that the scheme constituted the exercise of a quasi-judicial function, although it was subject to confirmation. Atkin, L. J., who delivered the leading judgment, saw in the "withdrawal from existing bodies of undertakers of some of their existing rights, and the imposing upon them of new duties, including their subjection to the control of the new body, and new financial obligations"[18] quasi-judicial decision. By some highly strained reasoning the court also found that the quasi-judicial character of the scheme was not impaired by its being subject to the approval of the Minister, and ultimately Parliament. By contrast, several decisions of the House of Lords and the Court of Appeal have, after the second world war, taken a much more restrained view of the judicial powers of interference with the exercise of statutory powers. In two important decisions, the House of Lords [19] and the Court of Appeal [20] have refused to consider the decision by which a Minister was empowered to make certain orders in regard to the acquisition of a site for town and country planning, or the confirmation of a compulsory purchase order made by a local authority under the Housing Act, 1936, as quasi-judicial. Lord Greene's important judgment, in the second case, emphasises the dangers of the very notion of quasi-judicial and the need for the utmost self-restraint in judicial interference with the exercise of administrative powers in regard to which the Minister must be guided by public policy and for which he is responsible to Parliament. It is of course possible to distinguish the latter from the former group of cases on the facts, or on technical grounds. The deeper explanation, however, is that some judges at least have become more

17. The King v. Electricity Comm'rs, [1924] 1 K.B. 171 (C.A. 1923).
18. *Id.* at 207.
19. Franklin v. Minister for Town and Country Planning, [1948] A.C. 87, [1947] 2 All E.R. 289 (1947).
20. B. Johnson & Co. v. Minister of Health, [1947] 2 All E.R. 395 (C.A.).

clearly aware of the complexities of policy-making and administration in the modern state, and of the obvious limits of judicial interference. The actions of the Commissioners and of the Minister in the Electricity Commissioners' case were hardly less administrative than in the later cases. It was the judicial approach which had changed.

On a lower level, the question of how far the courts should go in declaring the use of statutory powers by local and other public authorities as illegal is still highly controversial. It should be explained that the English courts have given themselves the power to invalidate the by-laws of local authorities and other statutory bodies not only for excess of powers in the strict sense but also for abuse of power, that is, for an exercise of their powers which is "manifestly unjust, shows bad faith, is oppressive, or a gratuitous interference with the rights of those subject to them, as could find no justification in the minds of reasonable men." [21] In the famous and highly controversial decision of *Roberts v. Hopwood*,[22] the House of Lords, at a time when the English courts generally took an unsympathetic attitude towards new social legislation, interpolated the word "reasonable" in a statute which had given local authorities power to fix wages for their employees "as they think fit." The House confirmed the surcharge of the district auditor against the members of a London Borough Council which had fixed a uniform minimum wage of £4 a week for all its male and female employees. It rejected the very conception of a basic minimum wage for all employees as not being a reward for labour.[23] It also considered the amount fixed as grossly extravagant, an outburst which in its betrayal of political prejudice is very exceptional in English courts. Lord Atkinson said that the council "allowed themselves to be guided in preference by some eccentric principles of socialist philanthropy, or by a feminist ambition to secure the equality of the sexes in the matter of wages in the world of labour." [24] The question is not, of course, whether the borough council were wise or cautious in fixing the wage as they did. It is whether the House of Lords, by reading the words "as they think fit" as "as they think reasonably fit," and regarding themselves as the arbiters of reasonableness, did not transgress from the judicial into the policy sphere.

By contrast, in 1944, the Court of Appeal unanimously refused to uphold the district auditor's surcharge against the councillors of the Birmingham Corporation, which had decided to pay a fixed weekly war bonus, with the addition of a children's allowance in the case of married men, widowers

21. Kruse v. Johnson, [1898] 2 Q.B. 91.
22. [1925] A.C. 578.
23. The House was apparently unaware that at that time, as now, the basic wage had already become the cornerstone of Australian industrial law.
24. [1925] A.C. at 594.

or widows.[25] The court was obviously right in holding that this was a perfectly reasonable decision, in accordance with public policy and the practice of good employers, but it had some difficulty in overcoming the obstacle of *Roberts v. Hopwood.* Again it is easy to see behind the technical differences the fundamental evolution which has taken place. The Court of Appeal, unlike the House of Lords in the earlier case, was unwilling to set itself up as judge of how a local authority, responsible to its ratepayers on the one hand and to the Minister of Health on the other hand, ought to exercise its statutory powers.

The struggle is, however, far from over, and in some very recent decisions it is illustrated by the almost diametrically opposite approaches of the present Lord Chief Justice (Goddard, C. J.) and the former Master of the Rolls, Lord Greene (now a Lord of Appeal). In two recent decisions, Lord Goddard, C. J., presiding over the divisional court, invalidated the actions of public authorities for abuse of powers. In *Middlesex County Council v. Miller,*[26] a licensing authority, under the Nurses Act, 1943, had power to grant a license to a person desiring to carry on an agency for nurses, subject "to such conditions as they may think fit for securing the proper conduct of the agency, including conditions as to the fees to be charged by the person carrying on the agency, whether to the nurses or other persons supplied, or to the persons to whom they are supplied." In the exercise of this power, the county council imposed on the granting of a licence the condition that the licencee was not to demand in respect of the services supplied any sum in excess of the amount appropriate to the service "calculated in accordance with a scale of charges approved by the council and furnished to the licencee." In short, the council had coupled the fees which the agency might claim with a scale of charges for the nurses. The court held that this had nothing to do with the proper conduct of the agency, but meant an indirect limitation of the fees or wages for which nurses were willing to work. But it is difficult to see why this should not have been an aspect of the "proper conduct of the agency" which lay within the power of the authority. The supporting judgment of Singleton, J., said that the condition imposed here was not in any sense "necessary" for securing the proper conduct of the agency. The Act, however, does not use the word "necessary," but the phrase "of such conditions as they may think fit." The approach of the Court here resembles that of the House of Lords in *Roberts v. Hopwood,* and it contrasts with the decision of the Court of Appeal in the recent case of *Associated Provincial Picture Houses, Ltd. v. Wednesbury Corporation.*[27] The licencing authority here, in granting

25. *In re* Decision of Walker, [1944] 1 K.B. 644, [1944] 1 All E.R. 614 (C.A.).
26. [1948] 1 K.B. 438, [1948] 1 All E.R. 192.
27. [1948] 1 K.B. 223, [1947] 2 All E.R. 680 (C.A. 1947).

licences for cinemas to be opened on Sundays, had power to impose "such conditions as the authority thinks fit to impose." The defendant authority in this case had allowed Sunday cinema performances in its area, provided that children under the age of fifteen were excluded. Lord Greene, with whom the rest of the court agreed, once again emphasized that it is not the function of a court to impose its own views of public policy on those of the local authority:

> "Some courts might think that no children ought to be admitted on Sundays at all, some courts might think the reverse, and all over the country I have no doubt on a thing of that sort honest and sincere people hold different views. The effect of the legislation is not to set up the court as an arbiter of the correctness of one view over another. It is the local authority that are set in that position, and, provided they act, as they have acted within the four corners of their jurisdiction, the court, in my opinion, cannot interfere." [28]

A similar contrast is shown in another pair of recent decisions. The Paddington Borough Council, following some individual complaints by tenants, had applied to the Rent Tribunal set up under the Furnished Houses (Rent Control) Act, 1946, for the review of rents for an entire block of 555 flats. The tribunal made orders reducing the rents of eight of these flats. The land lords then moved for an order of certiorari, which was granted. Lord Goddard, C. J., delivering the judgment of the court,[29] considered that such block reference to the tribunal was not a bona fide exercise of the powers conferred by Parliament on the local authority. The tribunal was there to deal with individual cases. There was no doubt that under the statute the local authority had power to refer the tenancy contracts to the tribunal, nor had any other section of the Act been infringed. The court, therefore, had to fall back on the mala fides test by giving its own interpretation of the objects of this Act. Its underlying attitude was the minimisation of statutory interference with freedom of contract. It is once again a matter of balancing conflicting policies and interests. As the Act was expressed, it was no less legitimate to consider the rent tribunal as an institution generally supervising the fairness of rents, on application by one of the interested parties, than it was to make its jurisdiction dependent on a specific complaint by a specific party to the local authority which referred the case to it. The decision depends on the respective value attributed to freedom of contract between landlord and tenant, and the right of the state to ensure some fairness between the parties, at a time of general housing shortage.

It is not likely that Lord Goddard would have decided the following

28. [1948] 1 K.B. at 230.
29. Rex v. Paddington and St. Marylebone Rent Tribunal, [1949] 1 K.B. 666, [1949] 1 All E.R. 728.

case as the Court of Appeal did very recently.[30] Under a now superseded Town and Country Planning Act, the owners of certain land had been given permission for development by local authority, subject to certain conditions laid down in two agreements between themselves and the local authority. The war halted further development. After the war, the so-called Greater London Plan had included the area in question among those which were not to be developed. Consequently, the Minister, exercising powers conferred by a new act, withheld permission for further development, although the plaintiffs had already laid out some money in the construction of sewers. They claimed that the defendants had assumed a contractual obligation by which they had bound themselves not to exercise any existing or future statutory powers in such a way as to restrict the development of the land in accordance with the agreement. Again Lord Greene, with whom the other two judges agreed, pointed out that the planning authority could not bargain away its statutory powers of planning conferred on it by an Act in the public interest.

> "Is it likely that Parliament, . . . without express words to that effect would do anything so unusual, so explosive, as to enable a planning authority to do that which all the principles laid down and observed by the courts and the legislature in regard to statutory duties of this kind forbid, namely, to tie its hands and contract itself out of them?" [31]

He went on to point out that the agreements into which the authority had entered were not contractual in the sense that they would, for example, be enforceable covenants, running with the land. The agreements were mainly a manner, permitted by the act, of carrying out certain statutory duties, and they were subject to the overriding purpose of the statute as a whole.

The foregoing cases indicate only a few out of the hundreds of problems of statutory interpretation as they now confront the courts daily. Moreover, they have been mainly concerned with the conflict of welfare policy and private right, which is not the only, although it is probably the most important, aspect of statute interpretation. The conflicting approaches of these decisions show that the problem of values, of ultimate policies and ideologies swaying the court in one or the other direction cannot be eliminated. There are not many lawyers left now who genuinely believe that legal problems are a matter of pure logic. Certainly none of the great jurists who, particularly in the United States, have thought and written on these problems, men like Holmes, Cardozo, Pound, Frank, Radin and others, have this illusion.

I have elsewhere ventured to suggest a differential approach to statutes with the purpose not of eliminating but of rationalizing the problem of statutory

30. Ranson & Luck, Ltd. v. Surbiton Borough Council, [1949] 1 Ch. 180, [1949] 1 All E.R. 185 (C.A. 1948).
31. [1949] 1 Ch. at 195.

interpretation.[32] It is suggested that neither the psuedo-logical nor the social policy nor the "free intuition" approach is sufficient for all purposes, that there is a vast difference between, for example, planning statutes and trustee acts. It is therefore submitted that different principles of interpretation should apply to statutes carrying out a definite social or legal reform, to penal statutes, taxation acts, and predominantly technical statutes. This is not, of course, an exhaustive or necessarily a compelling classification. Except in totalitarian legal systems, where the judge is the instrument of a definite political will, there must always be a residue of free and creative discretion. All that jurisprudence can contribute is to make the conflicts of value as articulate and the choice between them as rational as possible.

32. Friedmann, *Statute Law and its Interpretation in the Modern State*, 26 CAN. B. REV. 1277 (1948).