

A CRITICAL SOCIOLOGY OF THE LOCAL PUBLIC INQUIRY SYSTEM

A Study of the Formulation and Presentation of
Opposition to North Sea Oil and Gas Onshore Development

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I CERTIFY THAT THIS THESIS IS MY OWN WORK

ABSTRACT

The aim of this thesis is to achieve both a theoretical and empirical understanding of the local public inquiry system in the context of controversial North Sea oil and gas onshore developments. Part one develops a theoretical framework within which an analytical vocabulary is generated to describe the case studies in part two. It is argued that a concept of the political process which acknowledges that power and participation are inextricably bound together in public institutions is particularly appropriate for studying an institution such as a local public inquiry because it is both an instrument of government and a means of ensuring the fulfillment of 'natural justice' to individuals affected by planning and development issues. Part one develops this idea first through an historical examination of the concept of 'natural justice' as a conflict between 'common-sense' notions of justice and 'formal' legal and administrative interpretations of what is 'fair', and then as a theoretical debate between the critical theory of Jurgen Habermas and the systems theory of Niklas Luhmann. Part one concludes by arguing that the essence of the tension between Habermas and Luhmann articulates the tension between 'common-sense' notions of justice and 'formal legal' notions and that by using the vocabulary of 'classification and framing of knowledge' developed within educational sociology by Basil Bernstein, the Habermas-Luhmann debate can be condensed into an analytical tool enclosed within one theoretical structure. Power and participation as inter-connected forms of political engagement are expressed within the concept of the 'classification and framing of knowledge' as conflicting patterns in the relationship between knowledge and information and the institutional procedures that process that knowledge and information.

Part two explicitly seeks to use the concept of the 'classification and framing' of knowledge to make visible the principles of power and social control that operate in large public inquiries. Attention is focused on local public inquiries into North Sea oil and gas onshore

development; the case studies of the Cromarty Firth, Dunnet Bay and Drumbuie are described to illustrate how the 'classification and framing' of knowledge operated in the Highlands in the 1970's. The case of Shell/Esso's petrochemical development in Fife is examined in detail to describe, first, the nature of participation and discontent within the local public inquiry system, and secondly, the relationship between the formation of local opposition in the form of an action group and the nature of the constraints imposed upon that organisation by the local public inquiry system.

Part three attempts to clarify the theoretical and practical problems involved in reforming the local public inquiry system within the terms established by this thesis. The work of Jurgen Habermas is considered pivotal for developing a critical sociology of the public sphere. It is tentatively suggested that the new social movements rooted in ecology and opposition to nuclear power could be the bearers of an emerging critical theory of society and technology which might be the grounding for a unified theory and practice which could lead to institutional change in society generally and in the planning sphere in particular.

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INTRODUCTION

This thesis is concerned with public inquiries in the context of North Sea oil and gas onshore development.⁽¹⁾ Its objective will be to examine the public inquiry instrument in its own right rather than treat it primarily as a source for gathering data about the social and economic controversies constituting its business. The focus will be on the public inquiry system as a mode of public political involvement in planning controversies and not directly a study about 'development'. Nevertheless I conceive of my project very much within a framework that seeks to understand the social impact of oil on Scotland, particularly in the 1970's at the height of the scramble for North Sea oil and gas resources. All the major public political controversies surrounding the onshore development of oil resources have resulted in major public inquiries. My aim is to understand the place of the public inquiry instrument in those controversies.

One of the most significant effects of oil on Scotland has been the forced re-consideration of values and priorities about the environment and economic development by government and local authorities due to the pressure to change the established use of land for onshore oil and gas developments. This thesis will be examining the pressure to build oil rigs and petro-chemical plants in locations generally regarded as unsuitable for such industrial projects. The discovery of North Sea oil and gas challenged the existing values and priorities in local planning in the 1970's. Land which had previously been zoned for agriculture, tourism and recreation or even as part of inalienable National Trust land, became, suddenly, important for national economic goals. As Robert Moore highlights in relation to Peterhead⁽²⁾ and George Rosie for the Cromarty Firth area⁽³⁾, places considered to be outwith the central avenues of strategic industrial location suddenly became areas of supreme national and international significance for no other reason than geography. One result from this geographical proximity to North Sea oil exploration was the sudden influx of multi-national executives hunting for industrial sites. There was a proliferation of oil related industrial schemes that generated a great deal of concern among many people, not the least significant being social scientists, about the social impact of oil and industrialism on

communities traditionally rooted in agriculture, fishing and tourism.⁽⁴⁾

The pace of change that overtook Scotland in the 1970's had more impact on the imagination of people than on the actual rate of economic development or institutional change. In retrospect it is possible to see that many of the great plans for industrialising the Highlands have not materialised, although in Ross-shire the scars of bad planning exist and have been made all the more stark when compared with the official euphoria described so well by Rosie in his book Cromarty: The Scramble for Oil.⁽⁵⁾ Politically nationalism had an upsurge and decline, and the promise of some form of devolved political control to Scotland has not as yet been fulfilled. The spirit of challenge felt in Scotland in the 1970's was fleetingly captured in The Red Paper on Scotland⁽⁶⁾ where a variety of socialist challenges to the changing oil rich and capitalist-controlled Scotland were sketched by a motley collection of social scientists and trade unionists. That book typified at least a period of vigour in Scottish economic and political life. It was a vigour that was also alive at a community level. The Red ~~Paper~~ was evidence that there was a consciousness, at least within the labour movement and environmentalist movements, of the negative aspects of North Sea oil and gas onshore development. There was an awareness of the dangers that might be caused to Scotland's social and economic structure by transitory industrial projects which caused maximum community dislocation for a minimum benefit to the locality. In a national and international context North Sea oil may have been seen as a great economic boon. However at a local level it seemed to many to be having an impact which merely exacerbated social and economic problems that had not been efficiently resolved in the many decades before oil arrived. More specifically, the urgency felt at central government level for an early start to oil production appeared to many observers in Scotland in the 1970's to be manifesting itself alarmingly as a systematic attempt to either eliminate local constraints on oil development or at least minimise the effectiveness of the public inquiry system in oil and gas development controversies. It was through the many large public inquiries that many local people and objectors groups made their public challenge against the oil companies and an unsympathetic government machine. The public inquiry instrument became the sole means whereby ordinary

people affected by onshore oil and gas development made their objections known. The 1970's saw the emergence of a major conflict between the power of multi-national capital and central government and local action groups who were able at least to slow oil development down by using what little participatory and democratic rights they had within the public inquiry system.

Although major public inquiries have marked out development controversies for the public imagination and for social scientists, their significance in determining the nature and outcome of those controversies has been overlooked. In general, the form which research on public inquiries normally takes is either to focus singularly on the technical issues raised during proceedings (for example, the safety of technology in Petrochemical plants or the possibility of leakage of radioactivity in nuclear power plants) or concentrate on the instrumental ideologies of competing interest groups and official policy (for example, environmentalists challenging government motorway policy). No doubt both approaches can yield valuable information about technical controversies, official policies and competing value systems but very little about public inquiries as institutional mechanisms and as instruments of government. What I will be seeking to do is to examine technical controversies and instrumental ideologies, not in themselves, but as phenomena that can indicate how public inquiries operate and effect public participation and decision-making. More importantly, I think the area of public inquiry research is, on the whole, largely descriptive and in need of a theoretical vocabulary through which systematic observations of the system can be made. Those public administrators and political scientists who have written on public inquiries have done so without developing an adequate theoretical framework through which to make sense of the object of their study. The classic texts on public inquiries from public administration, for example, tend on the whole to describe the subject matter and range of issues covered by public inquiries, the procedures normally followed and the various administrative problems of the system with respect to cost, its relationship with the law courts and government. They tend to describe what 'appears' without pursuing any form of critical analysis. Wraith and Lamb's Public Inquiries as an Instrument of Government is an example of this type of work.

The attention given to the subject of public inquiries in the context of the social impact of oil has been scant. The tendency has been to look past the public inquiry instrument in the rush to get access to information either about technological controversies or land use speculation or general policy issues. Little, if any, attention has been paid to the institutional system within which those issues are shaped and given public meaning as part of the planning process. I do not wish to discuss public inquiries abstractly. The subject does need to be located in the real issues and controversies about oil, technology, economic development and the environment. However, unless attention is paid to the specific nature of the public inquiry system and some effort is expended on attempting to theorise it, there is a danger that in the rush to amend and improve its 'procedures', sight is lost of what it is that is problematic about public inquiries in the first place. Brief mention can be made here of some examples where the public inquiry system has been examined in a context of confusion about what is problematic about it, first in the context of concern about 'participation' in planning in the 1960's, culminating in the Skeffington Report and then in the late 1970's and 1980's with the rise of the nuclear power controversy.

There was a widespread alarm among politicians, amenity societies and the public at large in the 1960's about the lack of involvement by ordinary people in the planning process. That concern was in a context of changing social conditions and political expectations. Emerging concerns about ecology and the built environment were coupled with political radicalism as the youth counter-culture of the sixties seriously questioned the continuing obsession with economic growth, property speculation and the "white heat of the technological revolution", whose virtues were extolled by Harold Wilson. The material prosperity felt in 1963 found expression in speculative development projects, often involving the construction of roads and offices with little regard for the social aspects of the spatial organisation of society. The Town and Country Planning Act (Scotland) 1969, aimed to crystallise these concerns and provide the citizen with statutory rights for receiving information about planning matters and being involved with the decision-making process. The Skeffington Committee set to work out how that could best be implemented.

Skeffington's conclusions can best be illustrated by a brief examination of the vocabulary adopted.⁽⁷⁾

At the bottom of page 24 through to page 29 and 32 to 35 of the Report the tasks and activities of 'the public' and 'the Council' are presented in parallel. While the Council 'announce', the public 'hear about it'. While the planners collect data from the public, the Council 'analyse' the data and 'define objectives'. While the public 'discuss' plans and make 'representations', the Council 'consider' comments and representations subject to revisions and submissions to the Minister. The public inquiry is at the end of this process, presumably considered as a mechanism of last resort should there still remain active objectors not put off by the tokenism of Skeffington's concept of 'participation'. What is striking about that period is the way 'participation' was treated as an appendage of the planning system rather than an integral moment of the system. 'Participation' seemed to be a concept that was newly discovered, a concept that could be 'added in' or grafted on to the general planning process. Importantly, the concept of 'participation' was seen in terms of the public being informed about issues and objectives with nothing at all to connect it to the process of determining those issues and objectives; the agenda setting function remained located elsewhere. What was clearly overlooked was that the root cause of discontent in planning then, as now, was the fact that the problems of planning and public inquiries are not so much a question of the lack of participation, but rather the form participation takes.

Skeffington led nowhere but the issues of democratic planning and public participation were raised yet again in the 1970's with notoriety attaching to the big public inquiries into North Sea oil onshore development (which alerted my attention to public inquiries and which I will examine in some detail) and the emergence of the nuclear power controversy. The Windscale public inquiry led to David Pearce et al publishing a book which considered the problems of the public inquiry instrument in some detail.⁽⁸⁾ Unfortunately Pearce et al commit similar conceptual errors to Skeffington with respect to the notion of 'public participation'. Using a perspective that combines pluralist political theory, where the only interests

exercising power and influence are those that are observable, and a concept of 'rationality' rooted in cost benefit analysis, Pearce et al argue that the local public inquiry system is so inadequate to handle the nuclear controversy that there is a great danger of uninstitutional action spilling over into civil disobedience and a breakdown of an orderly and 'rational' assessment of issues. By adopting the use of Planning Inquiry Commissions instead of local public inquiries, and establishing a permanent Energy Policy Commission, the aim would be to ensure a greater level of public participation in the nuclear debate and more 'efficient' dissemination of information to the public. There is an absence of any recognition of wider power structures that might mediate the experience of participation created by these new institutions.

Again the real problem is not that of finding a place for public participation in the decision-making process as such but rather the form which the participatory experience takes. This is not sophistry. The existence of public inquiries already embodies certain rights of participation, albeit for most participants not statutory rights. The problem has always been about the effectiveness of public or citizen input into decision-making and the lack of real agenda-setting power. Policies and decisions are not made in contemporary industrial societies by the 'rational' policy-maker, as Pearce et al imagine. Political and economic power structures effect the possible options open to decision-makers and public participation. The real task is to examine the dialectical interplay between administrative power and participatory rights in decision-making. Participation is not an external variable of the political process but an immanent moment of political and institutional systems in liberal democracies. It is because of this fact that there is a contemporary legitimation problem with public inquiries. Participation must mean effective influence.

It was this very interesting problem of a tension between power and participation in the context of North Sea oil development controversies that attracted me to the subject of public inquiries. Convinced that a critical sociology could provide useful insights into the phenomenon of the big public inquiry, in a way so far absent in existing literature, I engaged in this research project. I could find

no systematic work that had been undertaken by sociologists on the subject, although as I have already mentioned there were many references to public inquiries but always in the context of examining technical issues or interest group confrontations.⁽⁹⁾ This was particularly curious given that there has been a long-standing interest in the more general subject of public participation within the social sciences. Public inquiries, after all, represent one of the few, and one of the oldest, institutional systems in Western societies which allow a form of open public involvement in the decision-making process. Where specific mention has been made of the public inquiry instrument it has been either complacently described as an efficient and fair mechanism for resolving planning conflicts or alternatively described variously as a 'farce' or a 'charade'.⁽¹⁰⁾ My view is that such conclusions are both wrong and founded on an inadequate understanding of public inquiries born of a neglect of critical attention. It is to advance that understanding that I present this thesis.

CHAPTER 1

THE PUBLIC SPHERE AND PARTICIPATORY POLITICS

One of the enduring problems for political sociology has been to derive a unified conception of the 'political' which can accommodate the classical Aristotelian conception of politics as participation and the modern conception of politics as power, derived particularly from the writing of Machiavelli and Hobbes. The problem of reconciling these two dimensions of the 'political' is all the more compelling in advanced industrial societies faced with the dilemma of sustaining democratic institutions and public traditions within the context of the growth of the state apparatus, especially with the increasing intervention of the state in advanced capitalism.

This tension between the 'two politics' can be a useful conception through which an understanding of the political and legal context of modern society can be grasped, and more particularly, the public inquiry system that is the central concern of this thesis.⁽¹⁾ The main argument of this chapter will be that the participatory notion of politics as competitive interaction between people within a democratic public sphere, debating and forming opinions about public matters, and acting as a countervailing force to governmental and state institutions, is attenuated in modern society, but has not been totally eradicated. The idea of 'participation' will be viewed as an institutionalised normative constraint on power. My task will be to examine the thesis that there has been a 'fall of public man' and a disintegration of the public sphere. However, I will not proceed by an exclusive analysis of power and the state. A focus which turns attention towards new modes of legitimation based on technical imperatives derived from the political-administrative dilemmas of the state is also required. The specific problem that must be isolated is the way in which modalities of participating within the political process change over time and can be the focus of manipulation and state intervention. The philosophical consideration of a pure theory of politics based on participation or a pragmatic view based on the complexities of modern power structures is redundant; participation and power are inextricably linked in the modern political system. Weber's observation that all political regimes must seek legitimation

of their power base encapsulates the necessity to integrate normative and structural features of political power.⁽²⁾ The important questions are what limits are placed upon participatory politics by the realities of existing power structures and vice versa and what resources mediate the two politics creating the conditions under which a balance can exist between the normative and the structural dimensions of politics?

Participatory politics within the public sphere is threatened by new modes of technocratic legitimation and I will develop my analysis of this problem further on, but first I must tackle the thesis that modern capitalist society is characterised by a declining public culture and a loss of the sense of the 'political'. This question is essential for placing in context the more grounded analysis of the public inquiry system.

The Demise of a Public Culture

The distinction between public and private realms of human action has grown in significance with the attempt to understand the political obstacles confronting public participation in decision-making. A body of literature has grown in the 20th century offering varying insights on the 'fall of public man',⁽³⁾ 'vita activa',⁽⁴⁾ 'the active society',⁽⁵⁾ 'the sociological dilemma of the public household',⁽⁶⁾ and the 're-feudalisation of the public sphere'.⁽⁷⁾ The different perspectives on the question of the relationship between the public and the private requires to be ordered and critically assessed in order that a distinct conception of the problem may be formulated. An immediate classification can be made on the different analyses of politics and the public sphere in terms of the location of the analysis; writers such as Sennett, Bell, and Arendt locate their analysis at the level of specifying a 'public culture' or a 'civic culture', which is either under threat from the onslaught of privatising modern culture or the destruction of a pure realm of politics. By contrast, the critical theory of the state by Habermas and Offe, which I will discuss further on, locates its analysis of political action firmly within the orbit of the relationship between the state and economy. The development of this analysis, while

sharing some features of the 'public culture' theorists, offers an explanation more materially located in terms of political-administrative and economic processes.

A recent example of sociological writing on the question of the nature and problems of the contemporary public sphere has been presented by Richard Sennett in The Fall of Public Man. In a wide sweeping discussion on theatrical styles, politics, and urban transformations since the 18th century, Sennett develops an analysis that somewhat reverses the traditional concerns of classical sociology; the fetters on human development come not from the tyranny and dehumanising forces of impersonal social structures and institutions as in the classical sociology of Tonnies, Simmel and Marx, but from the tyrannies of an overly 'intimate' society where public interaction has been transformed into 'psychic encounter'.

"In a sense, I am turning around the argument David Riesmann made in The Lonely Crowd. Riesmann contrasted an inner-directed society, in which men pursued actions and made commitments based on goals and sentiments they felt within themselves, to an other-directed society, in which these passions and commitment depend on what people sense to be the feelings of others. Riesmann believed American society, and in its wake Western Europe, was moving from an inner- to an other-directed condition. The sequence should be reversed. (my emphasis) Western societies are moving from something like an other-directed condition to an inner-directed condition - except ~~that~~ in the midst of self-absorption no one can say what is inside. As a result, confusion has arisen between public and intimate life; people are working out in terms of personal feelings public matters which properly can be dealt with only through codes of impersonal meaning." (8)

Sennett's formulation of the modern dilemma is in some respects a re-statement of a central problem first identified by C. Wright Mills: the linkage between what Mills called the "personal troubles of milieu" and the "public issues of social structure".⁽⁹⁾ Troubles for Mills occur within the character of the individual. They are fashioned out of the daily conflicts and difficulties of an individual's immediate relationships and obligations. 'Issues' are the projection onto the public stage of those personal troubles in a co-ordinated claim for action which transcends each specific milieu. The political

question which arises from this distinction is how to establish a link between private troubles and public issues, whether it be those concerned about the 'health' of the democratic polity or the Marxist concern for transforming a 'class in itself into a class for itself'. Sennett's lament is founded on his observation that in modern society a culture of narcissism reigns and so the private and public sphere are no longer connected in a politically meaningful way. The explanation for the disconnection lies in the demise of a public culture as manifest in various cultural practices.

The work of Sennett can be seen as part of a re-alignment of liberal intellectuals in America described by Etzioni and others under the rubric of Neo-Conservatism.⁽¹⁰⁾ A central feature of this movement is the concern for the recovery of a 'public philosophy'. The traditional pluralist assumptions about a 'participant-allegiant civic culture', described by Almond and Verba in the 1960's,⁽¹¹⁾ have given way to a concern that narcissism and modern hedonistic culture have destroyed a presupposed consensus about moral and political values, mediating institutional structures and pluralist political system. Sennett is, for example, concerned about the 'loss of public restraints upon the self' and the 'tyrannies of intimacy'. There is a hearkening back towards a golden age when people were imbued with 'civitas'. Sennett may not share all aspects of Neo-Conservatism but The Fall of Public Man does seem to have elements of Neo-Conservatism within it.

The theme of a 'degeneration of the public' political dimension of social life has found echoes in a range of other work as part of the same intellectual movement. Daniel Bell has perhaps been the most active analyst of the public sphere in recent times representing the liberal academic tradition of American sociology. In his The Cultural Contradictions of Capitalism the dilemma of modern society for him lies securely in the contradiction between an economy that is "functional, efficient, economising, rational, bureaucratic and hierarchical" and a culture that celebrates the hedonistic and is 'passionately devoted to self-fulfilment'. This major cultural contradiction is the central feature of all western societies which Bell argues are now experiencing the declining force of the Protestant

ethic. The selfishness of public actions and perspectives has led to a lack of 'consensual agreement on the normative issues of distributive justice'.

"Western society lacks both *civitas*, the spontaneous willingness to make sacrifices for some public good, and a political philosophy that justifies the normative rules of priorities and allocations in society." (12)

It is when Bell talks about the loss of '*civitas*' in relation to the need to establish "that spontaneous willingness to obey laws, to respect the right of others, to forego the temptations of private enrichment at the expense of the public weal - in short to honour the city of which one is a member,"⁽¹³⁾ that the conservatism of his thesis reveals itself. The resolution of conflict within Neo-Conservatism has to be based on the restoration of the '*bourgeois virtues*' such as the work ethic, deferred gratification, prudence, diligence, trustworthiness, sexual restraint and moderation. A return to the classical liberal notion of a '*meritocracy*' combined with a conservative concept of the free market distinguishes the strange amalgam that constitutes the Neo-Conservative public philosophy. However this type of political analysis merely assumes that a return to a fundamentalist form of market capitalism will furnish the requisite ethics for a revived public and civic culture. It fails to comprehend that the lack of a public philosophy is not so much at the level of a '*cultural contradiction*' or '*psychology of privatism*' as an artefact of the specific forms of institutional life in modern capitalist society. The analysis emanating from Neo-Conservatism is ungrounded in political and institutional analysis. It lacks an awareness of the difference between attitudinal problems in contemporary society and the failure of political institutions as mechanisms for allowing public participation in society. Political institutions often constrain the forms participation can take within them. The general lament from Bell, Kristol, Lipset and others labelled Neo-Conservative is that too many sectional and selfish demands are made upon an overburdened political system. Their concept of a public philosophy and a healthy public sphere seems to be one in which there exists a vague ungrounded notion of self-sacrifice for the '*public good*'. The public sphere loses any sense of an arena

where public issues can be openly discussed and where a greater level of public participation in decision-making might enliven democracy. I will argue below, for example, that political rights of participation have been secured as normative principles in the historical process of institutionalising public freedoms. Those rights of participation provide immanent standards of judgement against which the public institutions of state and economy are legitimised. However, often those rights of participation can be manipulated and compromised as part of dialectical tension with institutionalised forms of political-administrative power. One might suggest it is worth examining the extent to which public participation and 'public oriented' behaviour is attenuated by the economic forces held to be so important by Neo-Conservatism for recovering their idea of a public philosophy.

C. Wright Mills' much earlier classic analysis of The Power Elite shifts the argument of the degeneration of the public sphere slightly away from the contemporary debate about a loss of 'public culture', towards the idea of a 'mass society' as a concomitant change to increasing concentrations of power. (14)

"The structural trends of modern society and the manipulative character of its communication technique come to a point of co-incidence in the mass societysegregating men and women into narrowed routines and environments.....masses in metropolitan society know one another only as fractions in specialised milieux: the man who fixes the car, the girl who serves your lunch, the saleslady, the woman who takes care of your child at school during the day. Sunk in their routines, they do not transcend their more or less narrow lives. They do not gain a view of the structure of their society and of their role as a public within it." (15)

The imagery of a completely atomised and powerless collectivity of people is strong in Mills' work. It is problematic because it suggests there is hardly any potential for public political action. Power is seen as being highly concentrated and the political will of the population is depressed. It is difficult to see how meaningful political action would be possible either in structural or motivational terms from the analysis offered by The Power Elite.

This kind of analysis of one-way movements towards a shackled public political action is also one of the tendencies in the early Frankfurt School of critical theory. However, the Frankfurt School's concern about the debilitating influence of the modern mass media on class consciousness contributes towards the theoretical identification of the public sphere as a problematic institutional space. Horkheimer, Adorno and Marcuse share a similar focus on the interpenetration of the public and private spheres in late Capitalism because of the extensive reification of modern culture.

The main thrust of Frankfurt theory is derived from an extension of Marx's analysis of the fettered nature of commodity production. Like Lukacs, the Frankfurt School base their analysis of late-Capitalism on a Marx/Weber synthesis. The category of 'commodity fetishism' as reification refers not only to alienated economic relationships, but through 'rationalisation' the idea of reification extends to all spheres of the social structure. Weber's concept is treated as being paradigmatic of the 'hidden dynamic of the developed capitalist system'. Perhaps the most specifically stated position on modern culture and political alienation is contained in Adorno's Theory of Culture which I must necessarily only sketch. Its importance lies in the identification of the interconnection between modes of thinking and perception and political action. That relationship was understood in rather pessimistic terms by Adorno. In his Negative Dialectics Adorno distinguishes between 'Identity Thinking', 'Non-Identity Thinking' and 'Rational Identity Thinking'.⁽¹⁶⁾ 'Identity Thinking' suggests a typical way of conceptualising the world by presuming that the concepts employed or articulated are rationally identical to the objects they focus on or refer to. Within the Marxist framework Adorno would argue, for example, that the concept of freedom does not correspond to the actual experience of reality in Capitalist society confronting human beings and their relationships with each other. A concept is what a predicate stands for; concepts and properties of concepts pertain to objects. Adorno worked with the idea that an object (capitalist market economy, for example) does not fulfil its concept (freedom). There is incongruity between the concept and the object it identifies. His idea of 'Non-Identity Thinking' refers to the ability actually to perceive this incongruity between a concept

and its objects; 'Rational Identity Thinking' specifies a condition where an object actually has all the properties of its ideal state. 'Identity Thinking' is reinforced and reproduced by what the Frankfurt Theorists saw as the awesome power of the 'culture industry'.⁽¹⁷⁾ This concept referred to the mass media and the expanded reproduction of cultural forms and leisure in late capitalism. The rise of the 'culture industry' underwrites or supports the organisational principles of modern society or the regimentation and subordination of people to the dictates of capitalist development. (Bell has argued that the Protestant Ethic 'contains its own contradiction', hence the contradiction between a hedonist culture and rational market economy. By contrast the Frankfurt School believed that the expanded reified culture of capitalism, produced and sold by the culture industry, feeds and supports capitalism.) The source of cultural production and the media through which it is presented become disjointed and the former subordinated to the commercial dictates of the latter. Marcuse's one dimensional man thesis is a further development of this general line of thought.⁽¹⁸⁾ The possibilities for an active critical public evaporate. The only hope emerging from Frankfurt School pessimism is the generative force of marginal culture forms as the repository of genuine critical values and the ultimate ability of a biological and psychical escape from the repressions of modern society in some way hardly made clear. The interpenetration of the public and private spheres seems complete within this perspective.

The work of Hannah Arendt is more promising. A concern for the loss of the public dimension of politics is interwoven with her search for the 'human condition', and the work of Arendt can be presented first through her conception of power and secondly by illustrating how her view of power relates to her theory of politics and the public realm in modern society. Her ideas on the political and that of 'vita activa' represent an approach to modern political problems which shares much of the pessimism about the loss of a sense of the political and a decline in the 'public realm' emanating from the Neo-Conservative perspective, however, she identified significant political ideas which may assist our understanding of politics as a form of participation in society.

It might be helpful to understand Arendt's conception of power more clearly by distancing it from the more conventional view offered by Weber, among others. Weber's view of power can be understood as a teleological model because it reposes on the idea that once an individual or interest group has selected the means most appropriate for attaining the goal or goals set for themselves, goal attainment will depend on the ability to overcome obstacles presented by other actors intervening in the process of negotiating the desired ends. To the extent that obstacles can be removed by making other actors behave in a way desired then 'power' can be said to be exercised. Power is simply, in this instance, the bringing about of consequences desired with no restriction imposed by other actors. "Power means every chance within a social relationship to assert one's will even against opposition".⁽¹⁹⁾ Now Arendt's conception of power differs from this notion because she importantly differentiates between power aimed at attaining success of a particular will or interest; its instrumental function, and power which is generated collectively for concerted action by common agreement; power as a communicative function.

Now it is important to further distance Arendt's emerging conception of power from that commonly associated with Parsons.⁽²⁰⁾ He conceptualises power as "the general capacity of a social system to get things done in the interest of collective goals". Here consent from the governed must be mobilised in order to yield binding commitment towards the political leadership and their decisions for the collective good. Power is the capacity of a social system to attain collective goals. Parsons is simply restating the teleological conception of power in systems theory vocabulary; in Weber's sense of power A wins over B because of more resources or strength or whatever, and in Parsons sense A wins over B because of the right given by some collective agreement from say, C,D,E, and F which B also abides by and accepts. At best Parsons conflates the teleological with the communications concept of power. There is no sense of the distinction between instrumental action and communication aimed towards agreement in the work of Parsons. Agreement for Arendt is often treated as an end in itself and not necessarily instrumental for attaining other goals. This seems to be an important distinction which can contribute much to a project that seeks to conceptualise a

dialectical politics of power and participation. Arendt therefore differentiates between 'power' which she views in terms of a communications process aimed towards generating collective agreement, and 'force' which corresponds most closely to the teleological conception of power favoured most commonly in the sociological literature. (The Parsonian critique of C. Wright Mills' zero-sum concept of power becomes increasingly irrelevant with this further distinction because it too is classified as teleological.)

For Arendt:

"Power corresponds to the human ability not just to act but to act in concert. Power is never the property of an individual; it belongs to a group and remains in existence only so long as the group keeps together. When we say of somebody that he is "in power" we actually refer to his being empowered by a certain number of people to act in their name." (21)

Arendt is able to keep separate the notion of 'the power of agreement-oriented communication to produce consensus' from 'force' which is aimed at the control and manipulation for specific individual or group interests. Power, we may say, lies in the institutionalising of the capacity or facility of a community to seek consensus through debate and reason.

"It is the people's support that lends power to the institutions of a country, and this support is but the continuation of the consent that brought the laws into existence to begin with.....All political institutions are materialisations of power; they petrify and decay as soon as the living power of the people ceases to uphold them. This is what Madison meant when he said 'all government rests on opinion', a word no less true from the various forms of monarchy than for democracies."(22)

The importance of developing this distinctive conception of power lies in Arendt's concern to establish an understanding of political institutions as both the consolidation of collectively agreed upon norms and values in the processing of specific affairs and problems of life and as the political effect of publicly produced opinion. To the extent that institutions defend and extend the protection of liberties against blatant force they also manifest and express this important communications concept of power which is ultimately founded

on consensus which could be rationally justified and validated by reference to common understandings of what is morally and normatively agreed upon and commonly understood. This is what legitimacy must ultimately mean. This idea can be clarified by briefly unpacking the philosophical roots of Arendt's The Human Condition. Eventually this work will need to be rescued from its consensual and idealistic overtones, but it nevertheless has an important contribution to make towards conceptualising a space for participatory political forms.

By distinguishing 'Work', 'Labour' and 'Action' Arendt wishes to assert that within the latter concept lies the most important basis of the human condition, that of the praxis of speech and intersubjective understanding. Work is understood by Arendt to refer to the creation of artefacts of utility or use-objects and man takes on the status of the artisan by the ability to create objects which can serve instrumental ends or means. This is distinguished from Labour which is the activity which provides the means of consumption in order to sustain life itself. Human beings must engage in a circular relationship with nature in order to win from her food and materials to exist. Labour reflects 'the reproductive cycle of the metabolic process'. Labour is expired in order to consume to live. So by contrasting the idea of Action to Work and Labour, Arendt seeks to show that it is within Action, that is by using speech and establishing common understandings between men that their distinctive humanity is achieved. And importantly it is only within what she terms the public realm and with the practice of politics that Action is realised.

"Because of its inherent tendency to disclose the agent together with the act, action needs for its full appearance the shining brightness which we once called glory, and which is possible only within the public realm." (23)

The two most important concepts for understanding Hannah Arendt's work are now revealed: that of Action as the embodiment of those uniquely human qualities of speech and understanding, and the institutional "space of appearances" within which these qualities find true expression. And it is also with the statement of these two concepts that the thrust of her critique of modern society comes to

fruition and connects with her conception of power. She observes a withering of the public realm as social and economic questions and interests enter and dominate the public political sphere, where only an instrumental conception of power is conceivable in modern society with the growth in the state and corporate interests. There are similarities with Habermas' analysis of the public sphere, as we shall see, but there are also fundamental differences regarding how this malaise should be understood and resolved.

The theme of the withering of the public realm becomes a dominant one in Arendt's writing, and having outlined the key concepts of her argument, it is worth exploring it in more depth in order to identify its insights and weaknesses.

Arendt relies on an Aristotelian conception of politics. Within that classical tradition a clear distinction is drawn between techne and praxis, or the distinction between making and doing. Praxis is Aristotle's concept for man's free action or that which makes him truly human and virtuous. It corresponds to, or is interpreted by Arendt as Action and is further based on the classical Greek distinction of the private and public realms. It is only by 'Action' within the public realm that true virtue can be realised because it is a realm devoid of the necessities of Work and Labour which are integral parts of the private realm. The concept of politics within this tradition is based on men freely combining to deliberate on 'the good life' through dialogue and reason. Politics within this framework has a specificity which clearly demarcates it from other human practices. It is in other words a 'pure form of politics'.

There are, of course, damaging criticisms that one can make of Arendt's rather utopian concept of politics. Margaret Canovan for example identifies an unresolved tension throughout Arendt's work between elitism and a profound interest in 'action' and democracy. (24) On the one hand there is the great defence of the classical concept of the Greek polis and the very democratic idea of a communications concept of power rooted in the public sphere. On the other hand, there is a hostility towards any force or interest that would seek to destroy the purity of the political realm by introducing economic and

social questions into it, which by their nature are divisive and mundane, as the following quote demonstrates:

"The fact that political 'elites' have always determined the political destinies of the many and have, in most instances, exerted a domination over them, indicates... the bitter need of the few to protect themselves against the many, or rather to protect the island of freedom they have come to inhabit against the surrounding sea of necessity." (25)

There is an unusual utopianism in Arendt's notion of the public sphere. It might even be described as absurd in relation to the realities of modern politics. Hanna Pitkin suggests that the heart of the contradiction in Arendt's thought lies in the misinterpretation or misunderstanding of Aristotle; whereas Arendt understands the purpose of the public realm to be the rather individualistic pursuit of personal virtue and greatness where men "distinguished themselves" and ensured "immortal fame", Aristotle conceived of the polis as a place to seek justice. (26)

"Aristotle's account, then, does not give rise as Arendt's does to a sense of the citizen's anxiety and egotistical striving.....for Aristotle, what makes political activity valuable, what holds the polis together, and makes the citizens more or less willing to share in the burden.... of public affairs is justice. For Aristotle....politics and justice.....are also about economic privilege and social power." (27)

The idea of a degenerate public sphere based on the intrusion of social questions into the political arena therefore seems odd when related to the realities of the modern polity. Arendt is, of course, too reliant on a rather individualistic interpretation of the classical Greek conceptualisation of the public and private spheres and gives the false impression that the historical direction has necessarily been a one-way movement towards a loss of the political dimension in social life because of a decline in civic virtue, and the increasing intrusion of divisive and mundane social and economic issues. (28) This general form of theorising the historical changes in the public sphere seems to place Arendt's work in the same body of literature discussed above in so far as civic orientation is destroyed by materialism and the forces of modern consumer society.

The idea of the degeneration of the public sphere in her work allows no conceptual space which can be created for a reaction against politically constraining processes and institutions and seems to allow no path back towards the desired goal of a healthy discoursing 'politically oriented' public.

However, I think this interpretation goes too far in the case of Arendt. Her communications concept of power based ultimately on the idea of common understandings, capable of discursive validation and embedded in specific institutional practices is an important idea that can be rescued from her otherwise idealistic, and overly romantic, political philosophy. This concept of power I will argue has echoes in the work of Habermas and E.P. Thompson and implies a normatively based political perspective on law and institutional rights which I hope to establish by the end of this chapter. Both the strengths and weaknesses of Arendt's position can be further highlighted in relation to Habermas' work on the public sphere.

Politics and Rational Discourse

The difficulty of positing an overwhelming process of constraint and domination which does not allow for a purposive meaningful reaction by subjects is addressed by Habermas. His work is very much a re-appraisal of early critical theory and also importantly Habermas' intellectual project includes an appreciation and critique of Arendt's acknowledgement of the political public sphere as an authentic dimension of social life.⁽²⁹⁾ Through an analysis of Habermas' more substantively political writings I wish to conceptualise the problem of the public sphere in terms of a central contradiction of modern society pointed up by his work; that of a major tension between the 'political' or practical mode of problem resolution and decision-making and the 'technological' or instrumental mode. My argument to follow will stress that this tension between political and normative based legitimations and those based on instrumental means-end technical criteria, provides important leverage for understanding the general dilemma of advanced industrial societies and the specific political controversy which forms the focus of this thesis.

Habermas essentially began his intellectual project by taking seriously the analysis of the contemporary decline of the political public sphere offered by Arendt and outlined above. Arendt's idea of a communications concept of power presaged much of Habermas' reformulation of the theoretical framework for a critical social-theory. His major work The Structural Transformation of the Public Sphere sought to ground the insight historically and shape it into a far more powerful theoretical and political tool.⁽³⁰⁾ It provides the starting point for my analysis of the public sphere.

What first must be theoretically recovered and historically delineated is the very idea of the 'public' and the 'public sphere'. This task is presented by Arendt as an enquiry into the classical political heritage of the distinction between the private and public realms in ancient Greece. Habermas begins by focusing on the historically changing mediation between the state and civil society in the development of capitalism. What is important for him is the genesis of the institutionalisation of a normative concept of democracy. It is essentially a theoretical and historical approach to understanding the development of political and social forms which once secured individual spheres of autonomy in the development of Capitalism out of Feudalism.

The concept of the public sphere, while derived from the classical Greek conception of a domain distinct from the worldly concerns of the private sphere, can be more usefully seen as part of the changing relationship between an increasingly public state apparatus and civil society.

In presenting his thesis on the 'structural transformation of the public sphere' Habermas clearly distinguishes between its historical and empirical specificity and its theoretical and normative utility. His main objective is the latter and it is that dimension of his work that I too wish to emphasise.⁽³¹⁾

It is only with the decline in the complex network of private rights and obligations characteristic of the feudal nexus that the concept of a state apparatus with a distinctly public character becomes a reality.

Poggi's analysis of the development of the modern state parallels and supports Habermas' approach and can be helpful here in locating the emergence of a politically significant public political sphere.⁽³²⁾

Feudalism as a political structure of mutual private rights and obligations was characterised above all else by the assimilation of the private domain of the powerless within the prerogatives of the wealth, power and influence of the feudal lord's private household. Whereas the normative structures of the feudal nexus bound lord and serf together, there was no fully developed state apparatus and codified laws to ensure the fulfilment of those feudal rights and obligations. The model of the private household is important for stressing the continuity between private power and public domination.⁽³³⁾

The public sphere in the feudal period up until about the 12th and 13th century, was nothing more than a representative sphere for the public display of monarchical might and the display of power by feudal lords in their relations with each other. There was, of course, no sense of a political society beyond those relationships.

The crucial point I wish to emphasise is that the development of a distinctly public dimension to monarchical power in the absolutist period, and the growing state apparatus in the development of the capitalist mode of production, is crucial for understanding the development of the distinction between the public and private spheres as we might conceptualise this distinction in modern society. The overall argument advanced by Poggi in which the transition of feudalism to absolutism is mediated by the phenomenon of the Standestaat must be left unexplored here. However, his general argument is useful. The development of the modern state out of the systems of feudalism, and on the continent the Standestaat, was characterised by the increasing success of the absolute ruler to integrate and concentrate national power in one centre rather than within a plurality of dispersed power centres. The concentration of power in the absolutist period crucially led to the emergence of civil society as the state's institutions around about the 10th and 11th century (court and ministerial and administrative systems) became increasingly public in the

consolidation of national jurisdiction over an increasingly powerless aristocracy.

"The state's codes and statutes, of course, had to be officially promulgated and published, printed in vulgar tongue, widely diffused.....Thus the state had moved, as it were, up and away from the larger society to a level of its own, where specifically political personnel and functions were concentrated." (34)

In Britain, and on the Continent, the state began to address the population as private individuals "the state addressed them in their capacity as subjects, taxpayers, potential military draftees."⁽³⁵⁾ Civil society had emerged but was subordinate to the rule of king and state. It is at this point that the theoretical and historical analysis of the public sphere must concentrate its focus: the emergence of a political challenge to the state within civil society at the inception of developing capitalism; it is at the point where the conflict between anciens regimes and the new social, political and economic order began that a politics based on the challenge of a discoursing bourgeois public became significant. The development of a distinct social, political and economic identity for the propertied and commercially oriented bourgeoisie occurred within the midst of absolutism. The contours of a distinctly class society, based on competing economic interests and differential location to the centres of power and control, emerged out of the conflict between the developing hegemony of the capitalist mode of production over vestiges of feudalism and traditionalism.

The nature of the political challenge to the absolutist system was not a purely overt clash of different economic interests. Its nature is extremely important for laying the theoretical foundations for my analysis in subsequent chapters.

The crucial starting point for understanding the development of the mediation of the public sphere in the relationship between the state and civil society is to recognise that the absolute state was able to, and did, accommodate the burgeoning market activity of the growing commercial bourgeoisie. As Poggi interestingly remarks in relation to the reasons why the bourgeoisie posed a throughgoing political

challenge to the old order.

"In my view, such bourgeoisies were politically radicalised and 'energised' by components of them distinct from the entrepreneurial groups....These components were involved particularly in intellectual, literary and artistic pursuits, and had been developing a distinct social identity - that of a public, or rather, at first, of a variety of publics." (36)

The period from approximately the mid 18th century to 1870 in Europe saw the beginning of the creation of a public sphere that had significant political consequences. The development of an increasingly public political form created from above by the growth in the state apparatus came to be complemented from below by the gradual institutionalisation of criticism and controversy in the form of literary salons, publishing houses, scientific societies, and the development of the daily and periodic press. The emergence of 'public opinion' as a mediation between state and civil society became developed.

"A reasoning public might lead the civil society to break through the passive, subject position in which the official power sought to confine it. The reasoning public not only dared to open debate on matters that those powers had ever treated as arcana imperi but threatened to extend that debate to wider and wider social circles in order to increase its support." (37)

It was this political challenge of a discoursing public rather than a call for respect to markets that posed the real challenge. It is precisely this political challenge posed by a discoursing public which provides the basis of the critical social theory of Jurgen Habermas. He was concerned initially with historically and institutionally delineating those political forms which established a normative concept of democracy in liberal capitalism. Overall his project can be understood as an attempt to identify social and political forms which can, and historically have, secured public freedoms in order to argue for their radicalisation and adaptation to contemporary conditions in late capitalist society.⁽³⁸⁾ Against Marx, Habermas has always argued that class interest embodied in legal forms (bourgeois norms generated by the sphere of circulation)

is not the only mediation between the state and civil society. The public sphere, as an attendant development of the modern state, was premised on the idea of reason as a countervailing power to the state in opposition to the particular interests of the monarchy. The importance of this phenomenon lies in the fact that political and social questions were opened up for consideration by a reasoning public for the first time. Historically the emergence of 'public opinion' came to have a specific political effect by influencing the actions of governments. The significant aspect of this for Habermas' task of revising critical theory was the very idea that dialogue and public discussion could take the form of generating normative evaluations which influenced and directed the political process in the development of the modern state at all.

The central feature of Habermas' focus on the emergence of a discoursing bourgeois public is to recover theoretically the important normative and legal principles embodied in the literary salons, political societies and the press of the 18th and 19th centuries, in order to establish a social theory in which reason and discourse constitute the core. This has a political as well as a theoretical objective; to investigate the idea of the public sphere as an institutional space where public opinion can be formed and be influential in directing social and political processes and theoretically to ground that investigation in an analysis of language, knowledge and human interests in order that the basis of a non-distorted communication process can be conceived within areas of public freedom still to be won and sustained in modern society. This political and theoretical task is a most important idea to be underscored. The thesis that the public and the public sphere have disintegrated in modern society is re-shaped when it is realised that unlike Sennett, Arendt and the early Frankfurt School, Habermas is arguing for a recognition that certain political and legal principles of criticism and democracy have been institutionalised in the course of the historical process. They must be identified and recovered in order that a genuine democratic politics based on public openness and discussion can be defended against tendencies which would eradicate those gains, and further that any gains that exist must be extended and placed on a firmer social and political base. (39)

In Strukturwandel Habermas steers a course between the neo-Aristotelian Arendt and the overly pessimistic Marxism of the Frankfurt School, and in doing so attempts to locate our understanding of the public sphere, democracy and political action on firmer ground.

Arendt had argued, from an essentially elitist position which contained elements of anti-modernism, that the great political model of the Greek polis should be sought.⁽⁴⁰⁾ Her writing is really a lament for its passing. The public sphere for her should similarly be exclusively concerned with a pure politics untarnished by divisive social and economic questions. She argues that it is the intrusion of modern society into the political arena that destroys the interest free interaction of the political public sphere. Habermas' position is quite different. The theme of Strukturwandel is what Jean Cohen calls, the "renormalisation" of the democratic state.⁽⁴¹⁾ That is, opening the ends of economic, political and social policy and practice to ethical, rational and public reflection. In other words, the social and economic questions which Arendt holds to be divisive and destructive of the public sphere are the very subjects which should be open for public debate, reflection and action. It is the lack of opportunity for democratic reflection on these issues that destroys the public sphere, not their intrusion.

It is by a similar reconceptualisation of the political question of emancipation and freedom that Habermas distances himself from the early Frankfurt School. Horkheimer, Adorno and Marcuse, for example, tended to equate objectivation with alienation (two concepts kept separate in Marx, the former representing the externalising of man's human achievement in objects through labour, the latter the severing of the relationship between subject and object). The Frankfurt School consequently rejected all bourgeois institutions in total. They were unable to identify any emancipatory moment in social and political institutions that were the product of social processes dominated by the values of bourgeois freedom. The idea of created increments in freedom containing a rational core capable of recovery and extension were ignored by the early critical theorists but evidenced throughout Habermas' work.

The crucial theoretical idea recovered by Habermas from the historical analysis of 18th and 19th century public institutions is that of an open and free community debating and forming common perspectives on problematic issues. This communicative model, Habermas argues, first established itself in the forms and relationships of the bourgeois family. Jean Cohen, for example, draws attention to the subsequent development of this phenomenon both in terms of the political public sphere and Habermas' theoretical interpretation of it.

"Habermas locates the emergence of the bourgeois public and the separation of state and civil society not in liberal capitalism, but rather in the framework of 17th and 18th century absolutism. Despite the regulative activity of the mercantilist state in trade, production and labour, and despite its role in integrating production and consumption into a national market network, the developing system of contracts, private law and private enterprises remained distinct from the political apparatus. Although intervention by the state into private systems was always possible, it presupposed a distinction between private and public spheres..... Accordingly, the core institutions of modern society - the bourgeois family, civil society, the literary and political public - are analysed both in terms of the 'increment in freedom' which these structures institutionalised as well as their limits. Habermas' strategy is to articulate the institutional gains of modernity (universal norms) and to preserve them. Thus in so far as the norms of 'humanity' and 'intimacy' based on free individual choice are located in the intimate and not, as in the Greek model, in the public sphere, there is an emancipatory moment inherent in the bourgeois family."(42)

Now the historical model of the public sphere rooted in the private sphere of civil society has important theoretical consequences because its emancipatory potential is not dependent on the non-intrusion of state and economic institutions into ever more areas of social life, e.g. the repoliticisation of economy and society. As has been described above, the distinction between the state and civil society predates the emergence of what Bell would call 'the public household' and the crucial state and economy distinction.⁽⁴³⁾ An independent private sphere pre-existed and embodied historically gained liberties which Habermas presumably would always conceive of as a model and potential resource for reaction against total political domination by an unregulated state capitalism. This point is merely to underscore the difference between Habermas and those

theorists who locate public freedom at the level of the state and economy relationships. "The uniqueness of the bourgeois as opposed to the Greek public, is that it consists of private persons publicly assembled in the social sphere already individuated via the family and the market".⁽⁴⁴⁾ This point will be important to retain as I turn to consider the theme of the repoliticisation of civil society in modern capitalism and the thesis of the dissolution of the public sphere.

The Repoliticisation of Civil Society: The Demise of a Public Culture Re-Examined

The central theme emerging from my discussion so far needs to be stated clearly. At the outset I suggested that the concepts of power and participation as the foundation for two distinct politics is unsatisfactory; they are inter-related dimensions of the political process. I have so far formulated this axiom in terms highlighted by Arendt's, and in turn Habermas', communications concept of power based on institutionally secured rights of 'participation' which is distinguished from power based on coercion or force. The argument being advanced here is that rights of 'participation', among others, have been historically gained and once secured provided a constraint upon the actions of the powerful and the prerogative of institutional processes. The general categories of rights secured in the course of the development of the modern state and civil society are (a) freedoms reflecting the emergence of the public as a politically relevant sphere of private persons such as freedom of opinion, speech and press and freedoms of association and assembly, (b) the establishment of rights protecting the intimate sphere such as personal freedom and the restricting of search and seizure, and (c) rights securing civil society such as the protection of private property and equality before the law.⁽⁴⁵⁾

Now I must hasten to add that I am discussing the institutionalisation of a bourgeois concept of democracy. The concept of democracy embodied in public institutions was historically fought for and won by the propertied bourgeoisie. In capitalist society those principles will tend to express bourgeois ideology. They are victories of the bourgeois public, as Habermas rightly emphasises. However, regardless

of how far these principles and norms are distorted by the hierarchy and inequalities of the class structure of capitalist societies, they are nonetheless significant principles which Habermas provocatively argues should be retained. The obvious intention is that they can be extended ultimately to a society less exploitative by first identifying how they are distorted in contemporary public institutions. The incorporation of these principles in constitutions of formal democracies established immanent standards against which institutions of the state are still forced to legitimate themselves. However only in so far as there exists an institutional space which will subject state policy and decision making to a radical public scrutiny, based on general rather than particular class interests, can it be said that those principles are firmly secured or capable of extension. It is the problematic question of how far or to what extent there has been a closing down of institutionally secured public space for political criticism and participation in decision-making that must be examined. My view is that Habermas' historical analysis of the public sphere shows that this question must be approached by a perspective which does not eradicate normative and legal victories which already secure a yardstick against which the state is judged. It is also important not to theoretically eliminate any possibility of political action and controversy over those very secured normative and legal victories. As Thompson clearly shows us in Whigs and Hunters,⁽⁴⁶⁾ the law, and by extension, the principles of establishing public political institutions, are not mere shams. They are the product of social and political struggles. The question of interest is the way in which participatory principles of politics and legal rights are manipulated and distorted in the course of both the political and legal process. Therefore I will examine the thesis of a demise of the public sphere in terms which view principles of power and participation in law and politics as dialectically related. By this I mean that contradictions and change in public institutions are rooted in the incompatibility between their instrumental and expressive tasks. The question now focuses on the dialectical relationship between the power of the capitalist state, grappling with the problems of crisis management of the economy, and the public sphere which allows public participation and access to the political and administrative institutions of capitalism as part of the

legitimatory ideology of liberal-democracy.

The crucial question posed to the modern capitalist state is what forms of political participation are compatible with the management problems of the economy and society experiencing recurring crisis? I intend to pursue one significant response to that question in a following chapter by discussing science and technology as a contemporary legitimating ideology. However it is first important to examine why this legitimatory ideology takes on a significant political position. This requires a broader focus on the political problems for democracy in late capitalism - a problem not rooted in a narcissistic, hedonist culture which saps the public political virtue of the citizen, but rooted in the political strategy of state intervention in capitalist society essentially contradictory and crisis ridden.

The state and public sphere should be seen as mutually constraining and dialectically related institutional systems. The growth of the state is inextricably coupled with the growth in the public sphere and the institutionalisation of legal and normative entitlements, so the question of whether or not there has been an attenuation of the public sphere in late capitalist society must be based on an understanding of the capitalist state. Unlike the theories of Sennett, Bell, Arendt and the Frankfurt School the emerging critical theory of the state locates the political crisis of the public sphere within the relationship between the capitalist state and economy, not in the realm of culture. An elaboration of the critical theory of state and economy will provide an important building block for a theory of the public inquiry system.

The general thesis underlying the critical theory of the state and economy is found in the work of James O'Connor, Claus Offe and Habermas.⁽⁴⁷⁾ Their basic premise is that the expanded function of the state in 20th century capitalism is itself a source of dysfunction and crisis. (Contrary to the view that the state has produced a crisis-free stabilization and integration of advanced capitalist societies.) In order to fulfil its expanded functions the state has relied upon three main resources which have now become

problematic, namely, fiscal means, administrative rationality, and importantly for my focus, the reliance on mass loyalty. If preferred, these three resources can be understood as the central means through which three central concepts are elaborated. Fiscal crisis (O'Connor), Administrative Recommodification (Offe) and Legitimation Crisis (Habermas). These concepts can be related together in a unified critical theory of the state.

First, O'Connor's study elaborates the overall framework. The capitalist state must try and fulfil two basic and often mutually contradictory functions, accumulation (the state must try to maintain or create the conditions in which profitable capital accumulation is possible) and legitimation (the state must try to maintain or create the conditions for social harmony).

"A capitalist state that openly uses its coercive forces to help one class accumulate capital at the expense of the other classes loses its legitimacy and hence undermines the basis of its loyalty and support. But a state that ignores the necessity of assisting the process of capital accumulation risks drying up the source of its own power, the economy's surplus production capacity and taxes drawn from this surplus." (48)

This perspective is developed into a theory of how and why the state's functions have grown and what kind of stresses, particularly budgetary stresses, have resulted. In answering the question what is the rationale behind the burgeoning state budget, O'Connor provides a structural theory of public finance. He argues that the state expenditures have a twofold character corresponding to the capitalist state's two basic functions of accumulation and legitimation, namely social capital and social expenses respectively. Social capital breaks down into social investment and social consumption (equivalent to Marx's distinction between constant and variable capital). Social investment entails expenditure on projects and services which increase the productivity of labour power and hence lead to greater profitability. Examples are state financed industrial development sites, or loans and grants for new plant, roads or manpower development programmes. Social consumption relates to expenditure on projects aimed towards reducing the reproductive

costs of labour, like the provision of welfare services, education and training schemes, and the underwriting of urban, suburban and rural developments. Social expenses are expenditures which are directly and explicitly required to maintain social harmony. These are expenditures on projects and services which O'Connor describes as aimed towards "repressive and materially co-optive forms of internal and external social control" which are not even indirectly productive. The police and military are obvious examples of this, but projects of various kinds in the area of social work, and community work could be conceived in terms of this social control - legitimation task. It is important to stress, especially in relation to this latter dimension, that all state actions contain a mixture of these components. However, it is O'Connor's claim that some state actions and agencies do express one or another of these dimensions in relatively pure form.

Now the significance of this perspective is to point to a 'fiscal crisis' which arises in the modern capitalist state as the two branches of expenditure become unbalanced through political and administrative overload on state finances. A gap between state expenditure and revenues arises. This can be theorised further by reference to the work of Claus Offe and his concept of administrative recommodification, which specifies the underlying nature of the structural crisis of the capitalist state. (49)

Offe argues, that as the capitalist state cannot organise production directly, (property is private and institutionally secured as such in capitalism) then political power depends indirectly on the volume of private accumulation (through tax appropriation). The occupant of a power position in a capitalist state is powerless, therefore, unless the volume of the accumulation process provides the material resources necessary to promote political goals. So as the state depends on the process of accumulation beyond its power to control, then state personnel are interested in creating the conditions conducive to accumulation. Thus institutional self-interest of the capitalist state depends on guaranteeing and safeguarding a healthy accumulation.

However, the democratic and representative institutions of the capitalist state tend to obfuscate the interconnection and dependence of political programmes on the accumulation process. The democratic-political process of elections, lobbying and pressure group action gives the appearance of a political-administrative system that is adaptable to, and the outcome of, electoral preferences and choices. Offe however describes this in terms of the dual determination of political power e.g. the institutional forms of government are based on access via democratic and representative processes whereas the material content of political programmes is determined by the course and further requirements of the accumulation process. There is a crucial contradiction here for politics in late capitalist societies: the dual determination of political power can mediate and can compromise the relationship between the state's political-democratic and political-administrative institutions in favour of the latter. But as I have argued democratic rights, principles and expectations must be viewed as constraints on state power and action. They are indicative of institutional space fought for and secured historically by both the bourgeoisie and the trade union and labour movement. These institutional rights and normative expectations are both a resource for action and focus of control. Popular democratic struggle can extend them and defend them in relation to the state as an arena of class and popular democratic struggle. Social and political forces within the state will aim to limit their extension and impact on the management of the capitalist economy and society. This fundamental contradiction of capitalism's political and economic equilibrium can best be fostered when every owner of a unit of value (be it labour or capital) can successfully exchange it as a commodity within the market. Herein lies the point of balance between economy and politics within the capitalist society. It can simply be understood in terms that people will acquiesce and be supportive of the system as long as they are able to participate within it.

Both O'Connor and Offe argue that de-commodification is a structural feature of late capitalist development. The commodity form of labour tends to lose its exchange value as capitalist development proceeds because the anatomy of capitalism becomes dominated by the dynamism of a capital intensive monopoly sector, whereas the labour intensive

private sector becomes less functionally relevant, and more vulnerable to cyclical market crisis.

The central thesis being argued within the emerging critical theory of the capitalist state is that the self-corrective mechanisms of market capitalism working on the exchange of commodities (goods, labour and capital) become increasingly incapable of organising social life. Labour and capital which are thrown out of commodity form find it difficult to be re-integrated without state help. As the state depends on accumulation which in turn depends on an expanded ability for an exchange of commodities, as units of value, then the common denominator of state activities is to guard the commodity form and ensure as far as possible an expanded exchange of commodities in labour capital and goods. The state in late capitalism has more and more to adopt interventionist strategies which entail expenditure in an expanded state budget, as O'Connor describes, in order to administratively re Commodify units of value displaced by capitalist development. The process of administrative re Commodification underlies the growth in state budgets and the rise of fiscal crisis, and importantly indicates the increasingly important role for the state in regional development politics in areas like Scotland confronted by oil development. The contradictions of the late capitalist state are built on the tendencies for increased taxation and state regulation as the apparatus of state management grew on the one hand, and became increasingly incapable of meeting economic and political expectations of the electorate on the other. In short, state intervention and involvement in the economy and society politicises and subverts the market's normative system of possessive individualism. It becomes increasingly visible that exchange relationships are sustained by political and administrative acts of the state. The labour and capital relationships become increasingly dependent on political rather than market criteria.

It is these underlying tensions therefore that provide an understanding of the economic and political background of many of the large public inquiry controversies, particularly in the context of North Sea oil and gas development. The strategic importance of many onshore development projects can be comprehended, I would suggest,

precisely in terms of the wider fiscal and social contradictions analysed by Offe and O'Connor. These contradictions provide a framework within which the specific tensions of the state and public enquiry system can be located. I will work through these and specify a place for the public inquiry within this process.

Both Offe and Habermas have argued that the forms of reaction adopted by the Capitalist state to resolve the tensions and dilemmas I have discussed are largely unworkable. The use of bureaucratic means to develop a direct productive role in the economy for the state is inefficient and inflexible. It can lead only to what Habermas describes as a 'rationality crisis'. Greater central planning of the economy can be in conflict with the essentially private nature of investment and development decisions within capitalism. The option of increasing public participation in decision-making can lead to the subordination of capitalist interests to popular-democratic and working-class interests. The real issue is that although these devices are largely contradictory in terms of some functional notion of 'the needs of capital', they are variously adopted because the state cannot have a prior vision of 'functional imperatives'. The basic tension within the state between accumulation and the need to justify its workings in terms of social and political legitimations remains a dynamic contradiction through which an understanding of capitalist society and its institutions can be achieved. However, it must be seen less in functionalist terms than within the framework of the dialectical concept of politics I have been alluding to.

Bob Jessop assists here in complementing this general perspective in relation to the state by stressing that the capitalist state is a set of 'institutions and apparatuses of political representation and intervention'. The element of administrative power and intervention is constrained by the fact that

"Democracy is an aspect of the institutional structure of the state: in the context of capitalist societies it refers to the legal entitlement of 'citizens' to participate in the determination of policies to be executed by the state in its capacity as sovereign legal subject and to the conditions of existence of such participation (eg. freedom of speech, freedom of association, free elections). Citizenship involves the

institution of individual juridical subject endowed with specific political rights as well as obligations and the extension of this legal status to all adult members of society without reference to their class position or other attributes. Popular-democratic struggle in capitalist societies is concerned with extending the scope of citizens rights of participation to include more of the 'people' within the category citizens, and to institute the legal conditions appropriate to democracy. Moreover because formal democratic institutions do not guarantee that control by the 'people' popular-democratic struggle also encompasses struggle to establish and maintain the social conditions in which such control is realised." (50)

It is therefore important to retain the idea that the state consists of a 'contradictory unity' between 'institutions and apparatuses of political representation and intervention'. The recent debates about corporatism have highlighted this tension. Jessop has argued that corporatism, while not a new mode of production and political system, is a distinct mode of political interest mediation. The emergence of direct management relations between the state, organised labour and big business over the running of the economy has resulted in what Habermas has described as the 'refeudalisation of the relations of production'. The state uses private interests as part of its management structure bypassing the public sphere. A distinct corporate sector of politics has emerged. However, while the strategic economic interests are integrated within an emerging corporate sector there remains a pluralist sector which functions as a forum for various pressure group politics within the public sphere. As Alan Cawson suggests:

"The interpenetration of groups and the state apparatus develops unevenly according to the changing requirements for capitalist reproduction at different stages of development. It is most highly developed and institutionalised where co-operation is most indispensable in the pursuit of collective goals such as stable prices and regulated income growth in the post-war period, and least developed in sectors where market mechanisms can continue to operate, sometimes alongside direct state provision." (51)

The 'contradictory unity' between 'corporate' and 'pluralist' sectors of politics can be formulated in terms of a tension between the categories social investment and social consumption contained in

O'Connor's work. Saunders has usefully suggested that this tension can be understood as a contradiction between different levels of the state.⁽⁵²⁾ Whereas central government has a concern with social investment and the direct productive support of private interests as an integral part of the centralised management of the economy, local government is more concerned with social consumption policies.

So reformulating the core dialectical relationship between power and participation as modes of political engagement, it is possible to understand it as, first, a contradiction between two sectors of politics determined largely by the strategic needs of capital reproduction (relations between big business and organised labour will be part of a 'corporate sector', pressure groups operating in issue areas of non-strategic economic significance will be part of a pluralist sector) and secondly between different levels of the state (between central and local government over social investments and social consumption).

However, the overall process is incomplete.

"The imperatives of rationalisation and planning which characterise the advanced capitalist state impose specific requirements for interest representation and legitimacy participation. Apart from the need to regulate the economy, the trend towards corporatism can be observed in land-use planning, local governmentand in many other areas of established public policy." (53)

The separation of 'corporate' and 'pluralist' sectors of politics is really only an analytical separation. The degree of corporatism in contemporary society is growing with the complexity of the economy into areas hitherto not considered to be economically strategic. However there is also emerging a struggle between popular pressures for democracy in decision-making which pulls the opposite way to the demands of economic planning. This is particularly the case in areas of politics such as land-use planning and the environment, where the political units are local action groups, amenity societies and pressure groups which are more accustomed to tackling local planning authorities than multi-national companies

and central government seeking to sponsor developments that have implications for national economic policy.

The real dilemma with respect to the big public inquiries in the context of large scale North Sea oil and gas projects, is that they are located on the seams of an overlap between issue areas and pressure groups derived from the 'corporate' and 'pluralist sectors', and between centralised planning for national objectives and local government planning for local spatial and social needs. The economic, environmental and planning issues relating to all of the case studies to be discussed blur the neat distinctions drawn in the recent discussions. Local planning issues have taken on strategic national-economic significance.

With respect to the public inquiry system it emerges as a unique institutional apparatus that sits on top of the contradictions referred to. It contains within it the contradictions of attempting to resolve the conflict between issue areas and interests determined at the level of corporate relations with the state and between concerns that are sponsored by popular democratic pressure groups concerned with local issues and the environment. It also has to resolve the contradiction between a planning system that is designed to determine needs at the local level yet process development applications considered to be of national economic significance by central government.

The real issue emerges that the public inquiry system is itself an embodiment of the contradictions referred to. It at one and the same time seeks to be 'an instrument of government' and also an institutional mechanism for allowing democratic participation in planning matters. Underlying all the major planning controversies processed by the public inquiry instrument is the explicit tension between corporatist and democratic forms of interest mediation. Prior to most major inquiries there are, as an integral part of large scale development projects, corporatist style exchanges between the state and the developer outwith the public sphere. These private meetings and relations are often defended in terms of commercial security but such 'private' exchanges concern those who wish the public sphere to

be the main arena of open evaluation of projects and the determination of public policy. The public inquiry instrument can often be a brief 'democratic' stage that intervenes in an ongoing corporatist form of processing planning applications.⁽⁵⁴⁾ The state often prefers to incorporate vociferous objectors' organisations into direct discussions out of the public sphere after the completion of a public hearing. I will illustrate this factor with reference to the case of the Moss Morran controversy. This is just to underline that the fundamental tension between corporate planning and democratic accountability remains an essential element of the contemporary planning public sphere and gives rise to large scale public criticism coupled with official concern about inefficiency.

It therefore must be emphasised that the central feature of the public inquiry institution and of politics more generally is the dialectical tension between power and participation as modes of political engagement. The idea of there being a 'legitimation crisis' or a 'contradiction' of the state highlights the necessity to retain a notion of social and political action, and importantly, retain a conception of the political process which acknowledges the real institutionally secured rights for people to participate. Forms of participation are secured by administrative and legal rights which hinder the arbitrary use of power.

It is often the exercise of participatory rights or the attempt to extend them that generates the 'contradiction' or the 'legitimation' problem. Without some form of political life within the public sphere or without the concept of a pluralist sector to challenge the actions of the corporatist state, there would exist no problem. However, the issues are not straightforward and in the following chapters I will seek to outline how these tensions discussed here work themselves out within the specific institutional setting of the public inquiry system, in particular within the phenomenon of the 'Big Public Inquiry'.

CHAPTER 2.

NATURAL JUSTICE

The emerging critical theory of the State discussed in Chapter 1 stressed how the capitalist state is essentially defined by the fact that it is excluded from direct control over the organisation of the accumulation process. From the work of Claus Offe, James O'Connor and Jurgen Habermas, ⁽¹⁾ a distinctive theory of the Capitalist State has emerged which seeks to conceptualise the structural interconnection between the accumulation process and state policy formation.

The Capitalist State is structurally oriented towards the support and reproduction of the capitalist accumulation process upon which all state power and political programmes ultimately depend, and as such it has a class-specific bias because State policy and intervention strategies will have an institutional self-interest in a healthy capitalist economy. However, two important issues arise as part of this perspective. First, the operation of democratic political processes tend to conceal the fact that State action and policy is crucially dependent upon the accumulation process and not on the political preferences of individuals or groups involved in the political process. Secondly, if this general perspective is extended to the political-administrative use of public inquiries as an instrument of government, then the public inquiry can be seen as a political-administrative process within which there is a tension between an instrumental function to process and mediate major planning issues relating to the location of industry and an expressive function to legitimise decision-making by allowing participation and a public hearing to any individual or group affected by planning schemes.

The public inquiry system, as an instrument of government, is ostensibly "used by the State as a method of determining its own actions, and of informing the Minister's mind". The main issue

arising from my mode of analysis is to demonstrate that the public inquiry instrument conceals the actual basis of the decision-making process by facilitating controversial industrial projects as part of the overall accumulation cycle while fulfilling its legal and normative requirement to provide a public hearing to give legitimacy to decisions actually determined by criteria related to the structural needs of capital.

My premise is that through a critical theory of the State it should be possible to understand the workings of the public inquiry system as an integral part of the wider accumulation process.

I argued in Chapter 1 that 'power' and 'participation' are inextricably linked together in the modern political process. Indeed, my argument suggested that a normative concept of democracy has been historically institutionalised and once certain rights and conventionally accepted norms are secured they create a set of immanent standards against which political institutions must be, and are, judged and constrained. The public inquiry system, therefore, should be understood within this general mode of analysis. It represents the institutional embodiment of basic popular, judicial and administrative rights for access to the political-administrative decision-making apparatus on matters of planning and development. However, while the public's legally secured right of access to the political-administrative process can be understood as an integral mechanism of the State's interest in accumulation, it can never be totally determined by it. If we presume that the public inquiry instrument is geared towards assisting the accumulation process, then opposition forces working through the planning process, in order to legitimise effectively, must necessarily have freedom to occasionally interfere with the efficient attainment of this goal. If this were not the case then 'planning democracy' would be unlikely to generate any level of public participation in decision-making at

all. Therefore, the crucial question is what features of the current public inquiry system will ensure that the accumulation goal is not damaged? The answer may well lie in the nature of both the legal foundation of public inquiries and the form participation takes within them. In this chapter I will examine how the idea of 'natural justice', as a foundation of the legal and democratic nature of the public inquiry system, operates to condition the democratic process.

Legal and procedural structures may be viewed as selective mechanisms which assist in the overall task of minimising the degree of compromise that industrial and economic goals must make to the demands of public participation in decision-making. The problem which a comprehensive theory of the public inquiry system must satisfactorily resolve is the fact that the public inquiry instrument, theorised as a dimension of political-administrative State action, may be structurally geared towards facilitating the accumulation process but is also situationally exposed to the presentation of crucial information or evidence which may inhibit or prevent an inquiry decision being made in favour of capital. A decision by both a Secretary of State and an inquiry Reporter may find against capitalist development for reasons that cannot be anticipated by a purely structural perspective. Organised opposition against a development may also be a crucial determinant of policy outcome and decision-making, but more fundamentally, it must be recognised that all administrative action within the liberal-democratic state is legally subject to judicial review. The structural theory of the Capitalist State must be accepted as providing the framework within which the bias and constraints on decision-making must be located, but such a perspective, of itself, is inadequate either to explain the anomalies in the system where capital projects are prevented or to account for the special relationship between the law and public administration in a capitalist society constitutionally founded on liberal-democratic traditions.

Following Offe, ⁽²⁾ we may say that the capacity for the State to act in favour of the accumulation process, by facilitating major industrial location and planning proposals, depends upon a 'dual determination of political-administrative power'.

- (a) by its material content, the use of political power in general is controlled by the course and further requirements of the accumulation process;
- (b) by its institutional form, the power to decide on major planning proposals is determined by the rules of natural justice.

What is now of interest is how even the situational features of inquiry procedure can themselves be interpreted in terms which facilitate the structural bias of the system, while also fulfilling their legitimatory functions of ensuring formal 'justice'.

Natural Justice

The key issue that I wish to give emphasis to here is the difference between 'formal legal conceptions' of 'natural justice' and what we might describe as 'common-sense conceptions'. Whereas the very concept of 'natural justice' is held to parallel and be derived from socially generated 'moral principles', it has become a rather imprecise and insecure legal principle relating to formal judicial assumptions about what constitutes a 'fair hearing' and 'bias' in administrative law.

It is often overlooked, especially in structural theories of the State and economy and within the more reductionist variety of Marxism, that historically state action has been operative within both the confines of the rule of law and "communal, reasonable use conceptions of property rights". The work of E.P. Thompson on the rule of law and the 'moral economy of the crowd' is instructive for asserting this important relationship. ⁽³⁾ Thompson's general argument is that the legal process must be taken seriously as an arena of social struggle within which the working class and other

popular-democratic interests have managed to secure rights over the centuries. To this extent we can understand Thompson as providing the working class complement to the building of democratic and political rights described by Habermas in relation to the bourgeoisie. Law within this perspective is not treated as being a mere sham, a tool of manipulation by the dominant class. For Thompson, 'class struggle was expressed and mediated through the forms of law';

"If the law is evidently partial and unjust, then it will mask nothing, legitimise nothing, contribute nothing to any class hegemony. The essential pre-condition for the effectiveness of law, in its function as ideology, is that it shall display an independence from gross manipulation and shall seem to be just. It cannot seem to be so without upholding its own logic and criteria of equity; indeed, on occasion, by actually being just."

(4)

Now this is a very important corrective to economic reductionist perspectives on the 'law'. It provides an important guiding framework within which to theorise the relationship between State political and administrative action and the public inquiry instrument. The concept of 'natural justice' is the foundation of all political-administrative action within the liberal-democratic tradition of the British State, and can only be understood, I submit, within the perspective illustrated by Thompson. His analysis of the 18th century crowd reminds us of the distinction between 'the rule of law and the rule of absolute arbitrary force'.⁽⁵⁾ Rural people in the 18th century doggedly clung to popular and communal conceptions of justice and invoked the elaborate texture of customary consumer protection regulation as a moral basis for violent collective action to enforce a "just price" in the sale of grain. Thompson points to how the poor have often articulated their needs and grievances in terms either of the law or commonly understood rights, even on the gallows.⁽⁶⁾

Similarly, the rules of 'natural justice', in the history of public administration, can "be traced back to medieval precedents, and, indeed, they were not unknown in the ancient world." (7) The concept of 'natural justice' as it relates to administrative action is based on common conceptions of justice requiring impartial adjudicators and fair hearings. Wade argues that "in their medieval guise they (rules of natural justice) were regarded as part of the immutable order of things, so that in theory even the power of the legislature could not alter them". (8) The history of public law and administration locates this important principle at the level of everyday meaning and testifies to its significance. In 1610 Chief Justice Coke actually declared that "an Act of Parliament would be void if it made a man judge in his own cause or was otherwise against common right and reason". (9)

In a famous textbook case *City of London v. Wood* in 1701, Chief Justice Holt stated "it is a very reasonable and true saying, that if an Act of Parliament should ordain that the same person should be party and Judge.....it would be a void Act of Parliament." (10) The idea informing these comments was that "natural justice, natural law, and law of God and common right and reason were all aspects of the old concept of fundamental and unalterable law". (11)

What is sociologically interesting about the phenomenon of 'natural justice' (in relation to my argument in Chapter 1) is the fact that common conceptions of justice provided the initial impetus for ad hoc institutional forms. The origins of the public inquiry system have been located as far back as the reign of Henry VII as part of the early enclosure movement. Although Wraith and Lamb say that "in earlier centuries enclosure had been carried out by various methods, often by agreement, sometimes with harshness, seldom with any objective appraisal of conflict of interest", (12) it is also the case that the affront to common conceptions of reason and fairness gave rise to various forms of justification, which occasionally meant public meetings and early unsophisticated

forms of public inquiry being held. Of course, more often than not, overt violence and 'rough and ready' justice was delivered.

However, what is also noticeable about the enclosure movement is the lengths that were often adopted to justify action. The period from 1745-1845 is particularly worth examining. This period was probably the height of the enclosure movement and the device of a Private Bill was used frequently to obtain Parliamentary approval for land enclosures. It was a form of petitioning Parliament for the right to enclose land, often sponsored by a village. It represented the need publicly to justify the change of use proposed for an area of land, often requiring a majority support from the affected locality. It contained within it the requirement that enclosure Commissioners examine the strengths and weaknesses of the application. Importantly, a legislative process which was often cumbersome and costly in time and money prevented the arbitrary power of vested interests and local gentry from depriving commoners of use rights on common lands, at least without first having to participate in formal, legal and administrative processes.

The pressures publicly to justify acts of enclosure in accordance with the concept of 'natural justice', culminated in the Enclosure Act of 1801 with a code specifying the need for the "proving of the several facts".

"And whereas disputes may arise concerning the boundaries of parishes, manors, hamlets and districts, to be divided and inclosed....
Be it enacted....."

(13)

As Wraith and Lamb state:

"What was enacted was an ad hoc commission of inquiry, whose meetings were to be publicly advertised according to the custom of the time and place, and to whom anyone could make "

"representation or complaint on the basis of maps and plans which also were to be publicly displayed".

(14)

The important point to emphasise is that up until 1845 when the General Enclosure Act was passed, the important constraint upon arbitrary power and action was the requirement to justify intentions first through local public hearings and secondly through Private Bills submitted to Parliament as the recognised arena for processing 'the people's will'. The acceptance of 'common rights of reasonable use' as a normative standard underlay the legal requirement of the Private Bill. However, from 1845 onwards ironically we begin to see both the emergence of the public inquiry system as we know it in contemporary society and also the beginning of a shift in the interpretation of the concept 'natural justice' away from a concept of 'common right and reason'. The 1845 Act contained the legislative device known as the Provisional Order which came to replace the Private Bill. Whereas the latter was an application to Parliament the former was an arrangement whereby the State executive effectively took over control of such applications. The executive of government in the form of a specific ministry received the application for a Provisional Order to change the use of land and it was the ministry not Parliament that appointed an inspector to investigate the application. This created a problem about 'natural justice' and accountability that would reveal itself in the 20th century.

The interesting point about the General Enclosure Act of 1845, the Public Health Act of 1848 and the Local Government Act of 1858 was that they signalled, by the use of Provisional Orders, the intervention of the State as executive directly into the area of the quasi-judicial control of planning. This change took place at a time when the enclosure movement had almost finished. Only common lands of outstanding natural worth remained. The middle and upper classes were beginning to recognise the impact of industrialism and commercialism on their lives. Previously it was

the lower classes who had experienced the full negative force of the enclosure movement, but by the mid 19th century it is possible to argue that the beginnings of the contemporary conflict between development and preservation can be found with the middle class concern to preserve leisure habitats and avoid the worst of urban decay. The concept of 'natural justice' related increasingly to the highly circumscribed notion of the individual's right to be heard on matters affecting their lives and property (rooted in the bourgeois conception of argument and reason identified, for example, by Habermas). The concept of 'natural justice' came to relate increasingly to the idea of an individual's right to be heard. What actually happened was the transformation of the idea of public inquiries as forms of adjudication rooted in the public sphere, as they had been under the system of Private Bills prior to 1845, into 'instruments of government' by the emphasis given to the audi alteram partem principle and the gradual neglect of the nemo iudex in causa sua principle; whereas the former relates to the provision for individuals to be given an opportunity to be heard, the latter relates specifically to the issue of impartiality in adjudicators. (15) The historical prominence of the former principle as the core of 'natural justice' in public administration coincided with the use of Provisional Orders rather than Private Bills and the shift of planning and development control from Parliament to the Executive. The concept of 'natural justice' also at this time began to be disconnected from a set of principles built on actual living practices. It began to be an imprecise notion no longer materially located in 'common-sense' understandings but became instead increasingly connected with some abstract idea of reason to be interpreted by lawyers and public administrators.

The concept of 'natural justice', the public administration textbooks inform us, has fundamentally changed its role within the modern state. Its task is no longer to destroy enacted law but has become a mode of fulfilling enacted law.

"Its basis now is in the rules of interpretation. The courts may presume that Parliament, when it grants powers, intends them to be exercised in a right and proper way. Since Parliament is very unlikely to make provision to the contrary, this allows considerable scope for the courts to devise a set of canons of fair administrative procedure, suitable to the needs of the time". (16)

It is clear that commonly understood conceptions of justice have become one step removed from the community public sphere which gave them life. They are now under the control of legal interpreters. What is or is not a valid interpretation of an unbiased and fair hearing must be passed through and processed by the elaborate network of legalistic structures which constitute the judicial review of administrative action. However, even though the conception of 'natural justice' is no longer informed directly by the conceptions of the ordinary man and now articulates a formal legal judgement of 'fair' administrative action, it is also quite clear that it must still relate to 'common right and reason' in order to retain some force. Or must it? Thompson is right to argue that a blatantly biased interpretation or use of the law will legitimise and mask nothing. The vast legal apparatus does provide a general countervailing force against arbitrary administrative power and is an important element for understanding the actual operation of the modern State (a fact that some contemporary analysis of the modern State fail to grasp, in particular the structuralist Marxism of Althusser and Poulantzas). (17) However, as I hope to show, the legal interpreters can both fulfill the dictates of the principles of 'natural justice' and also leave them unfulfilled in terms of a 'common conception of natural justice'. By examining the progress of the 'natural justice' concept, we are also charting the development of the public inquiry system and its growing unpopularity for adjudicating major planning controversies. We will also be reaching an understanding of the legitimation crisis the system is now experiencing. It is my intention to illustrate further on how the inadequacies of the institution and the principles upon which it is founded are generating modes of political action

within the public sphere of planning which may not threaten the public inquiry system or the State, but certainly testify to a major disjunction between 'formal' and 'common-sense' views of administrative justice. However, I must demonstrate my argument by examining the concept of 'natural justice' within the development of judicial review of administrative action in the 20th century.

The idea of 'natural justice' has become recognised as the British equivalent of 'due process' ⁽¹⁸⁾ The first decisions in which the rule applied to administrative cases as a modern legal concept were in the 19th century. The audi alteram partem rule became the most prominent legal principle sustaining 'natural justice' against the growth of central and local administrative authorities in the 19th century. The legal significance of the rule can be illustrated by the specific cases of legal precedent upon which the principles of natural justice were evoked in order to cancel out or set aside administrative acts which were considered to be in breach of the basic principles of an unbiased adjudication and/or a fair hearing.

Whereas earlier examples of the principle related more specifically to common rights and reasonable use and to the expectation that a person be judged by an independent adjudicator, that is, someone unlikely to receive a direct benefit from the outcome of a decision, (the nemo iudex in causa sua principle) later examples seem to have hinged more specifically on either the issue of prior notice of a hearing or the issue of failing to give an individual a fair opportunity of answering the case against him (the audi alteram partem rule). This coincided, as I mention above, with the development of public inquiries as 'instruments of government'. An important textbook case can be cited. Under an Act of 1855 it was established that no one could erect a building in London without giving seven days notice to the local board of works. The board was empowered to demolish any building failing to comply with the Act. One builder did fail and the local authority demolished his building. However, the builder

subsequently was able to claim damages against the local authority in *Cooper vs. Wandsworth Board of Works* (1863) where the local authority claimed their action was purely administrative but the court took the view that they had no power to act "without first asking him (Cooper) what he had to say for himself". The judges involved in the case variously referred to "the plainest principles of justice" and to the "violation of natural justice", (19) The emphasis was on audi alteram partem and not on nemo iudex in causa sua, as it has been for all subsequent judgements relating to public inquiry decisions.

The cases under which the rules were applied at the end of the 19th century were instrumental in confusing the relationship between what was and was not administrative action and establishing when administrative action became judicial. The *Cooper vs. Wandsworth* case, for example, was taken as representing a paradigm case of a local authority acting judicially. Quoting Justice Byler from the case "it seems to me that the Board were wrong whether they acted judicially or ministerially. I conceive they acted judicially, because they had to determine an offence, and they had to apportion the punishment as well as the remedy." (20) The confusion arose because lawyers were attempting to extend legal considerations into administration and submit the latter to the former instead of viewing natural justice as applying to both legal and administrative spheres distinctly. It was never clear whether public inquiry procedures should follow judicial practices. This very confusion was to lead later to tendencies which seemed to err first in one direction, allowing administrative action greater arbitrary power, and then in the other. The first half of 20th century was characterised by uncertainty about the relationship between the law and the State's administrative practices. Specifically, the controversy regarding the uncertain meaning of 'quasi-judicial' within public inquiries, led to the virtual release of the State and administrative action from judicial control from the 1920's until the late 1950's, while

still paying lip service to the idea of 'natural justice'. It allowed a host of interpretative accounts justifying what can be understood as the temporary abandonment of the rules of 'natural justice'.

"The state of the law at the outbreak of the First World War can be briefly restated. Judicial tribunals empowered to deprive persons of their liberty, impose financial burdens on them and ascertain their legal rights had to observe the audi alteram partem rule. So had arbitrators and government departments when called upon to decide questions of law and fact in situations resembling *lites inter partes*." (21)

However, from 1920 onwards this general view changed. In an important case involving an alien deportation, the Venicoff case, the Home Secretary claimed that he was "exercising purely executive functions, importing no duty to act judicially." The courts supported this view, as de Smith states in reference to the Venicoff case:

"The court laid emphasis on the amplitude of the Secretary of State's discretion, the context of emergency and the impracticability of giving prior notice in such a case; the impact of the deportation order on personal liberty was treated as an irrelevant consideration, and the feasibility of requiring a hearing after the order had been made but before it had been executed was not canvassed in the judgements." (22)

The textbooks refer to a substantial period in British administration in the 20th century when there was the "debilitation of the rules of 'natural justice'. There was talk about the 'path of deviation' when *audi alteram partem* lost its force as a defence against political-administrative tradition. (23)

Four general principles subsequently arose which conditioned the courts' role in relation to administrative action during the thirty five years up until the publication of the Franks Report on public inquiries in 1957. First, emergency situations like wars or the general strike meant the government took upon

itself unusual powers over people and property. The courts were generally reluctant to scrutinise the exercise of powers which some lawyers and judges no doubt thought were expedient and necessary. Keith Middlemas, for example, points to the growing concern and interest within government at the time of the 1920's for 'opinion management'.⁽²⁴⁾ The seeds of corporatist bias which by-passed the public sphere, and so shielded government policy and decision-making from public scrutiny, were firmly sown at the end of the first world war. Middlemas refers to the victories felt to have been won in the British Cabinet 1920-22 by manipulative strategies, stating "it was clear government was shifting away from reliance on coercion to a much subtler concept of imposing its values by persuasion and political education".⁽²⁵⁾ Such strategies were no doubt aimed at the judiciary as much as the wider public.

Secondly, the audi alteram partem rule as a common-law standard applied by courts to administrative decision-making, was further undermined by a view of ministerial power which tied it to Parliament as the responsible controlling institution rather than the law. The Ministers' responsibility to Parliament was seen by some courts as protecting them from judicial review, and hence not requiring the courts to set minimum procedural standards to be observed in the decision-making process. Thirdly, the extension of the former points meant that there was an implicit assumption that the role of the courts in relation to administrative process should be one of rigorous self-restraint. Fourthly, the dominant legal opinion up until the 1950's was that the Secretary of State's actions were executive not judicial, being concerned with the administration of public policy rather than the adjudication of legal conflicts. In the Electricity Commissioners (1924) case, Lord Justice Atkin stated "certiorari (and prohibition) would issue to any body of persons having legal authority to determine questions affecting the rights of subjects, and having the duty to act judicially."⁽²⁶⁾ Now what this actually meant was that it was unnecessary to adhere to the principles of natural justice by the implication from the nature and effect of the powers exercised, but only if there was "an obligation to follow a judicial-type procedure." This was a strange judgement for it was precisely

this issue that had not been clearly determined with respect to public inquiries. An individual's rights could be violated in any case without the necessity of a judicial procedure. This surely highlights my general line of argument that 'natural justice' came to be interpreted narrowly in terms of formal legalistic processes rather than in terms connected with a wider social sense of justice

The general movement away from a definition of 'natural justice' rooted in common-sense and reasonable use towards a narrow procedural interpretation continued throughout the 1930's and 1940's. There was however an attempt in the areas of public health, housing and town planning legislation to spell out the procedural conditions under which enforcement powers were exercisable. By specifying procedural rules, the common-law was seeking clearly to demarcate those cases where the rules of 'natural justice' should apply. Two significant points arise from this development. First, the law, in its customary fashion, attributes rights conforming to legally defined categories of people, either as owners, lessees and occupiers (in some cases). An acquiring authority, for example, in cases of compulsory purchase, had to give public notice to those defined within the statutory rules, individually. Those who had not been given an explicit right to prior notice or opportunity to be heard "found difficulty in persuading the courts that implications affording ~~them~~ such a right ought to be read into the enabling Acts." (27) The wider implications of this point will be discussed later in relation to the legal exclusion of third party interests. A brief mention should perhaps be made, however, that the law's individualistic focus fails to acknowledge the violation of 'natural justice' for those not included within the formal legal categories or those interests that might be threatened at a collective or community level. Secondly, the law made a rather artificial division specifying when a Minister was acting administratively and when acting judicially. In general, a Minister was considered to be acting "purely administratively" and not compelled to take account of the rules of natural justice,

unless objections to a scheme or project had been made. In compulsory purchase schemes, for example, the period up to the posting of notices to execute work was considered not to require quasi-judicial practices. However, Ministers were able to advise and consult with local authorities on building and planning matters, indicating their approval of a particular scheme in advance of objections. These exchanges were often based on privileged access to government documents from other Ministerial departments which were not available either to be examined by the public, or more to the point, questioned by objecting parties. Discussion by Ministers and Local Authorities could continue on matters indirectly related to the planning proposal even after objections had been lodged. The consultation with other government departments was allowed to continue without public participation even after the conclusion of the public inquiry or tribunal. And, further, it was not until the post-Frank era of 1958 onwards that inspectors' reports were made public after the decision had been made. These were blatant dilutions of the rules of natural justice while formally recognising them. By acknowledging only procedural forms rather than just content the courts and administrators 'had their cake and ate it too'.

Many public inquiry hearings, specifically those under the New Towns Act 1946, illustrate a further example of how formal interpretations of natural justice predominate. For example, under the New Towns movement the government was both initiator and confirming authority of draft orders specifying sites for new towns. In *Franklin v. Minister of Town and Country Planning* (the Stevenage Case) it was objected that 'natural justice' had been violated because the Minister had not called for evidence in support of his own draft order (A draft order defines the exact area on the map that the proposed town should be sited.) (28) It was held to be an invalid claim because the public inquiry was concerned about the objections to the draft order not the order itself.

The judgement was eventually sustained by the House of Lords. The Minister's actions were deemed to be "purely administrative" and, interestingly, 'natural justice' would only have been violated according to the House of Lords judgement had the Minister failed to consider the inquiry report or the objections. Again it was underlined by the lawyers that natural justice only really applies to the extent that judicial procedural requirements are specified by statute. Significantly the nemo iudex in causa sua principle was not cited in a case where it seemed most pertinent.

The content of the rules of 'natural justice' does not actually specify how they should be fulfilled. For example, lawyers extending the judicial experience into administrative procedures, have argued that the rules of 'natural justice' do not actually require public hearings, nor do they require a verbatim transcript, oral hearings, or that the decision be made by those who heard the evidence, nor do they actually require legal representation, cross-examination, rules of evidence nor that the decisions be based on evidence. It seems obvious that this allows great scope for judicial interpretation of the concept. The entitlement to be heard, format of a hearing and the conduct of a hearing are unspecified by the very principle which provides the basic yardstick of our political administrative practices.

Wraith and Lamb allude to a distinction which seemed to inform many of the Law Lords' minds up until the late 1950's. That distinction seems to have been that between 'acting in a judicial spirit', which seemed to mean only that a Minister be guided by some vague notion of judicial fairness, and 'acting judicially', which meant being required to act within a court of law which followed strict judicial procedures. A Minister was held to be adhering to the principles of 'natural justice' if the former principle was followed. So there was no requirement for formal procedural rules to be followed for the decision to have a concern for public openness or debate. The emphasis was placed on 'trusting the Minister to act in a judicial spirit'; it was not necessary,

it seems, that such a 'spirit' be demonstrated publicly. Some judges followed this interpretation while others were concerned that there should be a substantive demonstration that 'natural justice' had not been violated; Wraith and Lamb state

"The courts continued for some years to play variations on the theme of the administrative and judicial concepts, and the extent to which procedures should reflect one or the other. The lower and higher courts differed from one another in particular cases to an unusual extent. In the Stevenage case,.....it was possible for three courts to reach three different conclusions as to whether the Minister and his officials had been, or indeed whether they ought to have been, free from 'bias' or not". (29)

In the period up until the Franks Committee Report in 1958 the area of the judicial review of administrative action was chaotic. However in the Post-Franks period there has been the virtual abandonment of judicial review in terms of the case law characterising 1920-1950.

"During the first half of the twentieth century the courts were concerned to ensure that the procedures followed before, during and after a public inquiry did not violate the rules of natural justice. From the 1960's onwards procedures were to be governed more and more by rules laid down in statutory instruments, and the courts were only to come into the matter on appeal, if it was alleged that the rules had not been observed". (30)

What this actually meant was the reduction of 'natural justice' in public inquiries to a strict procedural interpretation of the audi alteram partem principle. The principle of nemo iudex in causa sua was reduced to the issue of bias in adjudicators in terms of pecuniary interest or personal involvement. It had been virtually abandoned in public administration in any case, with, it seems, the assumption of the integrity and virtue of modern



lawyers and state administrators. The important point to emphasise is that 'bias' within law can only be effectively attached to an individual legal subject. Procedural structures and institutional systems of state policy and decision-making are not included within this aspect of the laws' purview.

The very imprecision of the audi alteram partem rules can be viewed as part of the tendency towards a preference for a varying interpretation of the concept of 'justice' by modern lawyers and administrators in the post-war period. The rules were certainly not a rigid set of norms with a fixed content, but neither were they so variable and open to interpretation as to allow their arbitrary use. This seems to be exactly how they were applied throughout most of this century. The crucial distinction between 'formal' and 'common sense' views of natural justice can be seen to be particularly underscored by the use of inflexible procedural principles after 1960. The 'creative' interpretation of the principles of audi alteram partem in the 20th century was possible only after a political climate had been created in which 'common right and reason' presented less of a collective challenge to the interpretation of law than an individualistic one. Audi alteram partem affected only individuals as the bearers of individual rights in cases affecting their private property. As planning controversies came increasingly to involve those without a legal right of participation within the public inquiry system (third parties) and embroiled them in controversies with wider political implications, the force of common sense conceptions of justice have again come to challenge the system more and more - a point which will be discussed in detail later. Common conceptions of justice or injustice need collective involvement in an issue to enable them to emerge, just as the concept of the 'moral economy' suggests in Thompson's study of the 18th century crowd. It is only when the public inquiry becomes an instrument mediating in controversies where the participants are no longer individual objectors or complainants but community action groups or pressure groups, that the disparity between formal legal rights and procedure and commonly conceived views of 'fair administrative' practice becomes apparent. My argument is aimed against the

complacency of the administrators of the public inquiry system who today maintain that the vast majority of cases involving a public inquiry are without controversy, or are adequately accommodated by the existing structure and procedure. (31) These cases are without exception those that involve only two parties, often one of the parties being an individual appellant. The law in these cases individuates and obscures common relationships between people. (32) For example, members of a community who are subject to compulsory purchase orders as part of an urban renewal programme will relate to the planning authority through the public inquiry as individuals, with their compensation and problems assessed on the basis of the specificity of the individual case; 'natural justice' in such cases will be exhausted by the evaluation of justice as it meets an individual's circumstances and individual perceptions. The community case is a level of consideration very rarely addressed by local public inquiries. In such a system the formal requirements of 'natural justice' are easily fulfilled because of the control over procedures held by lawyers and administrators, with virtually no challenge possible from what amounts to an administratively divided community. This issue has been crystallised in the controversy over the legal right of third party interests.

Third-Party Interests and Rights

The public inquiry system operates under a common myth. Wraith and Lamb point out, for example, "a popular assumption has arisen over the years that a planning inquiry is an occasion when everybody affected by a development has the right to debate what ought to happen, and that the Inspector should award the verdict to the winners". This is far from the reality of the situation. The architects who have fashioned the current system over the years have interpreted the role of public inquiries "to control development in the public interest, not to confer new rights on members of the public." (33) This has been the general view taken of public

inquiries, under the Town and Country Planning Legislation, particularly. The legal basis of the planning system does not allow a legal right to make representation at a public inquiry to anyone who does not have a direct interest in a planning proposal. This situation has been highlighted in recent years because there has been public pressure which has challenged the assumption that public inquiries are arguments between people with a legal interest (i.e. an appellant or project developer and the local planning authority). Recent events in planning controversies have revealed the true legal status of public participation in public inquiries to the public when they have observed on the media people being physically removed from umpteen inquiries by policemen acting at the request of the inspector. The controversies involving the English motorway scheme led to disruptive scenes of this kind. ⁽³⁴⁾ A recent public inquiry held in Ayr into proposals by the Atomic Energy Authority to test the geological suitability of rock near Loch Doon as a repository for radioactive waste, was again the scene of some disruption when the inquiry Reporter reminded protesting members of the public that their participation in proceedings was at his discretion. The implicit threat of being removed from the hall should the hearing not remain orderly had a quietening affect on many third party interests. John Tyme's motorway opposition campaign frequently forced the inquiry Inspector to issue the threat that he would, 'hold the public inquiry in private session'. A contradiction with greater irony would be hard to find. Further on in this thesis I will discuss the controversy surrounding Shell/Esso's proposals to build a petrochemical complex in Fife. Following the public inquiry into this development proposal, and the approval by the Secretary of State for Scotland, local objectors as third party interests challenged the Secretary of State's decision on legal grounds, although they did not in fact have a secured legal right to do so. My main interest, therefore, is to point out that it is possible for effective third party public political pressure to force a full participation within the planning system even when there is no legal basis for that participation.

In 1957 a major public inquiry controversy took place into a proposal by an Essex landowner to develop his land by quarrying chalk. It became known as the 'Chalkpit case' and it is significant because it highlighted the situation of third party interests. At the public inquiry a vast amount of technical evidence was submitted by neighbouring farmers alleging that chalk dust would be injurious to their crops and livestock. The Inspector at the inquiry agreed with this view and refused the application only to have it overturned by the Secretary of State nine months later. The reason for the final approval of the application was due to extra information received by the Minister from the Department of Agriculture after the conclusion of the inquiry. This information was not made available to the third party objectors. The adjoining landowners applied to the High Court to challenge the Minister's decision on the grounds that there had been an infringement of the rules of natural justice with the ultimate hope that the courts would set it aside. The court, in fact, failed substantively to give any consideration to the appeal at all because as third party interests the applicants had no legal status. Wraith and Lamb underline the point that "they had only appeared at the inquiry because the Inspector had exercised his discretion in their favour, and they were aggrieved only in a general and not in a legal sense". (35)

It is worth emphasising again at this juncture that in the post-Franks period the courts can only ensure that the rules of natural justice are 'formally' applied. As long as a Minister has complied with the formal procedural rules which constitute the legal conception of 'natural justice' then his decision following a public inquiry is unchallengeable. The narrowly conceived procedural rules in no way articulate a broad consensual view of what is fair. Third party interests in recent inquiries have increasingly rejected this legalistic and narrowly conceived view of natural justice. Since the Chalkpit case the public, through various action groups presenting evidence at public inquiries, have issued a constant

challenge to the system. People have understood the idea of fair procedure and 'natural justice' in terms which includes their right to full participation and recognition within the planning system. They have understood 'natural justice' in terms which insist that all information relevant to a development proposal and the process of deciding upon its merits be made public. They have also insisted upon the right to challenge the current view of what constitutes 'natural justice' in the appeal courts, albeit unsuccessfully.

In a seminal paper on public inquiries Derek Senior makes the following remark which is worthy of quotation:

".....it now seems to be taken for granted, everywhere outside Whitehall, that the (Chalkpit) appeal inquiry was primarily the trial of a dispute between a third party and the appellant and that the inspector was acting as Judge, whose verdict could not in justice be reversed until the third party had been given a chance to rebut the 'evidence', factual or advisory, that prompted the reversal". (36)

However, on considering the general hostility of the public to the inquiry system, and implying a divergence between common-sense views of fair procedure and that which formally obtains in the planning system (excluding a legal status for third parties) he reflects on,

"the power of public opinion, without benefit of legislation, to transform in ten short years the whole nature and function of a piece of governmental machinery, merely by misconceiving its purpose..... A public institution is not what its creators intended, or the law lays down, that it should be but what it has become in the public mind." (37)

What Senior is describing is the force of pressure emanating from ordinary people over the past twenty years challenging the formal conceptions of fair procedure because it does not relate

substantively to how people generally conceive of the concepts 'justice' or 'fair'. The reaction of the public has effectively altered the reality of public inquiry procedures, although the legal basis remains unaltered. This in itself is surely of sociological significance. This theme will emerge further on when I examine the formulation and presentation of opposition to a development proposal of Shell/Esso's in Fife. There I will examine and describe how local people viewed the planning process and determined their political strategy in relation to those perceptions. They had to overcome formal procedural structures which seemed to restrict the scope of evidence and be somewhat removed from their sense of fairness.

The issue of third party interests goes to the heart of the problem this thesis is examining. There is an assumption that there is something which is identifiable as 'the public interest' which can best be safeguarded by political-administrative decision-making processes removed from the public sphere. ⁽³⁸⁾ It is clear that the system of planning inquiries has been built on the idea that its task is to be informed by and listen to the public but not be persuaded by public debate and scrutiny. However, public inquiries give the appearance of being a forum for public influence and participation in policy formation. The public inquiry system straddles the line between the state and the public sphere. It confuses and mystifies its own institutional boundaries. Out of this confusion arises a major affront to common-sense conceptions of justice. People have become increasingly critical of the system and have believed the main remedy for the existing malady lies in some form of procedural change.

The Question of Institutional Change and Natural Justice.

There arises a major paradox within the planning system; public inquiries are supposedly designed for the mediation in planning conflicts relating to the pattern of land use in a given locality,

yet many of 'the Big Public Inquiries' in recent years have hinged on matters relevant to national policy and national economic development. Many people involved in planning inquiry controversies have felt frustrated by the inability to address or influence wider public policy issues relating to development proposals.

The Franks Committee on Tribunals and Inquiries in 1957 highlighted the problem in this way:-

"From the point of view of the citizen what begins in many ways like an action at law, with two or more parties appearing before a judge-like inspector and stating their case to him, usually in public, is thereafter suddenly removed from public gaze until the ministerial decision is made. Often the main factors seem to have counted for little in the final decision. New factors - they may have been considerations of broad policy - have come in so that the final decision does not seem to flow from the proceedings at the inquiry". (39)

One reason why major public inquiries generate so much confusion in the public's mind is because they have tended to address large development issues which have never been rigorously incorporated within a national level policy. For example, North Sea Oil and gas development particularly lacks a national level policy for development both onshore and in the North Sea. There are no unambiguous policy guidelines on land use relating to North Sea development that have been subjected to a rigorous public and parliamentary debate. Further, it has been argued, that there appears to be a lack of confidence among the public who tend to believe that policy formation and review is secretive, even to the point of negating Parliamentary Control. (40) Therefore the large public inquiry has more and more come to be seen as one way in which influence can be exerted by the ordinary public on public policy. However, even within the existing planning framework there is a built-in structural constraint on the interrogation of government policy. Civil servants, for example, occasionally submit policy statements as part of public inquiry evidence but they are not permitted to answer questions

relating to those policies. This invariably means there can be no challenge made against the assumptions underlying government statistics, forecasting and the methodologies which inform the construction of public policy. The large and hard fought Motorways opposition campaign led by John Tyme frequently encountered the official refusal to disclose the method whereby different pricing structures and traffic forecasts underlying proposals were made. In a House of Lords Debate on the motorway controversy Lord Foot (Chairman of the Dartmoor Preservation Association) highlighted the issue with reference to an inquiry in Plymouth in 1974.

"We were presented with a multiplicity of forecasts and extrapolations as to what would be the traffic-flows in the years 1980 and 2000 coming from all kinds of different sources. Plymouth City Council had their own extrapolation which differed fundamentally from those of the Department of the Environment..... one witness from the Department of the Environment was in favour of one extrapolation, while another was in favour of a different one. It is absolutely intolerable that objectors to a scheme who say 'there is no need for this' should not be allowed to challenge not the policy, but the assumptions of that which the Department of the Environment choose to make". (41)

Indeed the extent to which national level policies should be openly discussed in local public inquiries has been a central issue in recent controversies and one of the main contradictions of the use of local inquiries for large scale projects and schemes with national importance.

Without national guidelines on major development programmes a confusion arises between national and local levels of the problem with the result that national dilemmas have been given priority in a decision making process supposedly constituted to deal only with local planning issues. The public inquiry instrument therefore in itself becomes a device for limiting the access of the public to the central policy questions. By using the local public inquiry instrument to process major technological and

industrial developments rather than a more broadly constituted system, the State is able to shield policy formation from public scrutiny yet give the appearance that an open and democratic forum has been created for public discussion. The public inquiry becomes an instrument for the management of public opposition to State action (state action can be understood more broadly than simply Government action - it incorporates the vast machinery of political administrative processes involved in the formation and operationalising of public policy on an ongoing basis).

Not surprisingly there has been a vigorous criticism of the public inquiry system as it applies to large scale development and planning issues over the last thirty years. The major public inquiry controversies connected with North Sea Oil and nuclear power have intensified that criticism and re-opened a debate about institutional structures. (42)

Recent concern about public inquiries has arisen despite two 'official' attempts to reform the system. First, the Franks Committee on Public Inquiries sat from 1955-1957 and established standards and guidelines for public inquiries which still apply today. For this reason they are worth examining. Secondly, the 1971 Town and Country Planning Act allowed for the use of a Planning Inquiry Commission. It is of interest why a PIC format has, to date, never been used in a major planning controversy.

The Franks Committee

The public concern about the fairness of the public inquiry system between 1920-1955 culminated in a Royal Commission being set up to investigate the system and make proposals for change. The committee began its work in 1955 and published its Report in July 1957. (43) The Council on Tribunals and Inquiries Act dated the 1st August 1958 more or less incorporated the recommendations of the Franks Committee. The early publication date is revealing both

about how urgently it was felt that the public inquiry system should be rescued from the public criticism being made about its flagrant violations of 'natural justice', and also how narrowly the problem must have been interpreted to get agreement about proposed reforms so quickly.

The most basic point that emerged from the Report was that the public inquiry process can be divided into three distinct periods; before, during and after. It considered the only problem with the system related to the periods before and after the inquiry hearing. It was satisfied with the procedures during the inquiry as long as basic principles of 'openness, fairness and impartiality' were observed. So as a general rule it recommended that proceedings should be public; legal representation should be unrestricted; questioning of parties and witnesses should be freely allowed.

However, there were more obvious areas of disquiet which the Committee believed required attention. It was felt that far better notice should be given to people who would be adversely affected by a proposal. Not only more advanced warning but more information should be available so that people knew the case they had to answer. It also stressed that such information should clarify the relationship between a particular planning proposal and the wider context of ministerial policy, although it supported the view that public inquiries should not be used to discuss and criticise public policy. After the conclusion of the inquiry the Committee favoured the now customary practice of publishing the inspector's report. A standing supervisory body called the Council on Tribunals was also to be set up. There was to be a right of appeal on fact, law, and merits and supervisory jurisdiction by the courts should be reasserted after the confusions I have discussed above.

Perhaps one of the most interesting facts which emerged from the Report was the recognition that the screening of public policy criticism from the public within the public inquiry did not mean that decisions could not at least be based upon facts agreed by

all parties to an inquiry. In other words, not only was the Inspector's report to be published but all participants within the inquiry were to be given the opportunity to challenge the interpretation or recording of facts in a draft version of the report. This proposal was adopted only in Scotland. It was felt to be impracticable in England due to the greater volume of inquiries. New evidence received after the closing of a public inquiry was to be circulated to all parties who were to be given the right to make their observations known. However, again the ambiguous issue of 'policy matters' was to be excluded from such practice.

The Franks Committee served to underline the gross violations of the 'natural justice' principle which characterised most of the period up to the 1950's, and indeed many of its recommendations, which were later embodied in the 1958 Act, seemed reasonable. However it singularly failed to understand the political problems of planning in a broad perspective (it failed to allow third parties a legal status while effectively recognising this need), and more generally it failed to anticipate circumstances where a local public inquiry would be inadequate to mediate in conflicts with complex national political and economic implications. It is precisely the emergence of what the Outer Circle Policy Unit call the phenomenon of the 'Big Public Inquiry' that was not anticipated by the Franks Committee, but which has given rise to wide concern about public participation and control in contemporary society. ⁽⁴⁴⁾ It is a phenomenon that has generated concern that major issues of public safety and the environment may not be subjected to the broad based public scrutiny they require. In other words, the current concern lies in the fact that the 'Big Public Inquiry' is based on the same effective procedures as a controversy about the siting of, for example, a fish and chip shop, and it is being used where a broader based and more rigorous system is required. The ideas of 'participation' and 'natural justice' now articulate a more general issue of political and legal control within our political system. The overall structural balance of power

between the State and the public sphere becomes of central theoretical significance; it is the structurally generated space for public control and involvement in decision-making which is now at issue and the infringement of 'natural justice' as it pertains to whole communities whose existence can be threatened by major development proposals, be it oil development or nuclear power.

The Planning Inquiry Commission.

The political dilemma which is emerging is one of how to process planning issues of growing scale and complexity with the existing institutional instrument of a Big Local Public Inquiry. It confronted the Government many times in the 1960's with the conflict over a natural gas processing plant at Bacton in Norfolk, a hovercraft terminal at Pegwell Bay in Kent and the third London airport at Stansted. These controversies culminated in the publication of a Government White Paper 'Town and Country Planning' which was published in June 1967. Among other issues discussed in the White Paper it was stated that:

"The Government are also reviewing the procedures for cases that raise wide or novel issues of more than local significance. When issues of this sort arise, the ordinary public local inquiry is not satisfactory either as a method of permitting the full issues to be thrashed out or as a basis for a decision which can take into account a whole range of practicable alternatives".

(45)

The result of this concern was the inclusion of a procedure known as the Planning Inquiry Commission in the Town and Country Planning Act of 1968 which was later embodied in sections 47, 48 and 49 of the Town and Country Planning Act 1971 or the 1972 Act for Scotland.

The legislation set general guidelines when a PIC might be appropriately used. There are two grounds upon which a Minister can bring into being this special inquiry procedure. Paraphrasing section 48(2) of the 1971 Act, a PIC can only be set up when the Minister concerned concludes;

- (1) that there are considerations of national or regional importance which require evaluating but that proper evaluation cannot be made unless there is a special inquiry for the purpose; and
- (2) that the technical or scientific aspects of the proposed development are of so unfamiliar a character - so new, so strange - as to prejudice a proper determination of the question of whether or not the development should be permitted unless there is a special inquiry for the purpose.

The customary single inspector would be replaced by a team of investigators consisting of a chairman and not less than two or more than four other members (This is specified by section 47(2) of the Act.) The interesting factor which emerges from this new procedure is that consideration of alternative sites for a development can be incorporated within the Commission's remit. Under the local inquiry procedure the specific site under the planning proposal is the only one the developer or the inspector has any obligation to assess. Neither the planning authority nor the Minister can compel the developer to go elsewhere or even give consideration to alternative sites. With the PIC it would be possible to institute a series of local public inquiries into specific alternative sites. Additionally a PIC can be created after first holding a local public inquiry which may identify issues of such complexity that thereafter it might be better to consider them within a broader decision-making framework. The structure of the work undertaken by a PIC would fall into two stages. First, there would be a broadly based assessment of the proposal on the basis of "evidence provided by the providers of the scheme, the local planning authority, government departments and interested individuals and organisations, including the amenity societies". Second, the public inquiry system would become operative and the presentation and defence of evidence would then be assessed by the Commission taking anything up to two years after the initial proposal was made.

Now it is clear that the time, cost and the broad based approach to assessing issues, would be unlikely to endear the Planning Commission to Government. The only example of a procedure similar to a PIC was the Roskill Commission into the third London Airport. The involved use of a cost-benefit analysis of all quantitative and qualitative matters led to severe criticism, all of it justified. (46) The result is that several planning controversies have technically qualified to be considered by PIC, including many oil related developments, yet the procedure remains unused.

The reasons why it has never been used have been framed in terms of flaws in the procedure. Peter Shore, as Minister of the Environment in 1978, suggested that stage one of the procedure would prejudice stage two. Preliminary conclusions arrived at after initial consideration would be bound to prejudice the local public inquiry stage. This presupposes that many development issues are somehow not prejudiced by the government's published policy preferences and in the case of motorway and North Sea Oil development sites, have not been prejudiced by sequences of public inquiries establishing or excluding many issues of principle. In the case of Motorway schemes the snake effect of an incomplete motorway section can hardly be said to have no implications for future inquiries. This objection only requires procedural re-organisation which would allow stage two matters to be part of the thorough-going public debate which would normally be stage one. Shore's reasoning seems rather odd. However, as the PIC would be constituted as a Royal Commission it is generally argued that evidence presented to such a forum should not be subjected to cross-examination. The issue of subjecting public policy to criticism and determination outside of Parliament is again one crucial issue cited. Yet another interpretation of the PIC is that it still cannot actually enforce consideration of alternative sites if a developer doggedly refuses to make a series of separate applications. It can incorporate an alternative site analysis but it is still conditioned by the site specific proposal of the

developer, and requires a cooperative attitude from the development applicant.

Consequently, it has been suggested a PIC would not effectively advance beyond current procedures. A recent research project on public inquiry procedures and the problem of PIC asks "Whatever happened to the PIC? Apart from Peter Shore's 1978 speech we have little to go on in terms of public statements. We can only speculate".⁽⁴⁷⁾ This is not my view. It is necessary to adequately theorise the issues in broader terms. Public statements are often post hoc rationalisations for inhibitions on action of a broader complexity. They are very often indications of what Peter Berger would call 'bad faith'.⁽⁴⁸⁾ Procedures are created by politicians and administrators and can be altered or renewed by them. However what is required is to understand the political-administrative use of procedures not simply as enabling structures which allow participation within the planning system but also as instruments of power and control. In the next chapter I wish to integrate the different strands of my discussion in terms of my original theme; that power and participation are mutually constraining processes within the political-administrative system.

Concluding Remarks

It is clear that the idea of 'natural justice' has more than a symbolic status within contemporary public administrative practice. It crystallises, for me, the essence of the problem being confronted whenever the nature of the contemporary public sphere is being analysed. 'Natural justice' in contemporary society provides both a principle of participation in and exclusion from the political-administrative process. It is founded on the inter-connection between moral and legal principles of 'fairness' and justice. It has, as I have argued in this chapter, become an object of formal manipulation by lawyers and administrators, yet it also provides a standard against which public administrative action must legitimise itself. No matter how much the concepts of 'fairness, openness and impartiality' are appropriated by lawyers and administrators for

formal procedural interpretation, they also have meaning in terms of 'everyday common-sense', and it is this fact that gives rise to the problems currently being experienced by the local public inquiry system. The example of the Motorway campaign in England throughout the 1970's illustrates the dialectic contained within the concept of 'natural justice'. It was no use whatsoever for inquiry inspectors or Ministers of government to plead that they were rigorously adhering to procedural rules established by Franks. If that meant the exclusion of whole areas of information and important issues from public discussion, then the objectors resorted to a vast array of strategies of disruption in order that their case was fully heard. John Tyme's book Motorways versus Democracy is a detailed account of the rejection of formal concepts of administrative procedure and fairness. Tyme describes the anger and frustration of ordinary people confronted by a planning system that seemed to be organised to prevent open public discussion rather than facilitate it.

"For it is my conviction that so long as institutional protection is absent only ordinary, common-sense people banded together, people untainted by sick dreams of the great technocrats, can halt the drive towards social and political disaster." (49)

Tyme goes on to dedicate his book,

"To all those who have had the courage to stand up (or sit down on the floor) and be counted, who by their actions constituted a bright candle in an otherwise darkening world." (50)

Not all opposition campaigns are as vociferous or as disruptive as Tyme's. Nevertheless, the dialectic of power and participation contained within the public inquiry system, and revealed by the Motorway campaigners is inherently present in the public inquiry system as a whole. The main axis of conflict within the inquiry system has been the different conceptions of how justice can be obtained.

There are as I have already mentioned two distinct elements within the rules of 'natural justice'; the principle of nemo iudex in causa sua which specifies that an adjudicator be disinterested and unbiased, and the principle, which is most prominent in contemporary public administration, audi alteram partem which specifies that parties to an inquiry be given adequate notice and an opportunity to be heard. These distinguishable principles, I would argue, are manifestly contradictory within the present system. Whereas the latter clearly refers to procedures, the former, whether acknowledged by the courts or not, more substantively raises questions about what constitutes a 'fair hearing'. Contemporary opponents of the system have argued that very often the State is both judge and jury in its own trial. And it could be argued that the structural relationship that I have posited between the nature of State action and the needs of the accumulation process at the beginning of this chapter do not make public inquiries neutral instruments of government. (51) The question of interest and bias is, it seems, too difficult to substantiate judicially. As de Smith indicates;

"One may predict that if an objector sought to impugn, for example, a structure plan on the ground that the Secretary of State was biased or likely to be biased..... The courts would apply a test not dissimilar from that laid down in the Stevenage Case.....They would quash the plan if the objector were able to show either that the Secretary of State had irrevocably decided to approve it before he went through the motions of considering the objections and the report of such persons as he had appointed to a public examination of the issues, or that he had acted in bad faith for an improper purpose; but such allegations are exceedingly difficult to substantiate". (52)

Even in such cases as Stevenage, referred to above, there is a withdrawal from the nemo iudex in causa sua principle and refuge taken in the purely procedural principle which is itself difficult to prove unfulfilled.

It is impossible to use the process of judicial review of administrative action to argue that there is what Offe calls 'a dual determination of political power' because, as I have already mentioned, the law can only relate to legal subjects not institutional systems. It follows therefore that there will be no recognition of the special structural relationship between the structure of State action, policy formation and the needs of capital accumulation. Arguments relating to these relationships will therefore not be recognised nor admitted either as relevant for the proceedings of a local public inquiry or for appeal to the courts as criterion for a violation of 'natural justice'; procedural form, not content, is the sole yardstick of whether 'natural justice' has been met.

I believe, that the principle of nemo judex in causa sua logically implies the determination of decision-making power rooted within a public sphere separate from the State. It logically implies adjudicators who are not part of the political-administrative structure of the State nor bound by the purposes of State action. Further if interpreted in a way which recognised that bias can inhere in the structure of institutional systems and not just in the personal frailties of individual administrators or lawyers, then the nemo judex in causa sua principle could make a difference to quasi-judicial procedures. The nemo judex in causa sua principle supports the very important idea of the public inquiry system as separate from the control of the State, as an institution distinctly of the public sphere rather than an instrument of government. It is in fact a principle that would tend to negate the public inquiry as an instrument of government, especially when it is the State that has a direct interest in the issues being decided. The ideas of 'disinterest' and 'unbias' are central to the principle. Whereas audi alteram partem is more manifestly satisfied by the fulfillment of formal procedural principles nemo judex in causa sua is not.

However, this distinction is only made in order to underscore the contradictory nature of the concept 'natural justice', and to assert that underlying the sociological contradiction I will be discussing there lies a significant contradiction within jurisprudence partly caused by the neglect of one principle and the total emphasis placed upon the other. This tension will be theoretically explored in the next chapter where I will only be sociologically formulating a tension that, I would argue, is already rooted in the very constitution of British political administration. The idea informing my argument is that the neglect of the nemo iudex in causa sua principle is inextricably linked to the principles of control and power in society. By exploring the institutional discourse sponsored by public inquiries in pursuit of 'natural justice', the underlying principle of control and power in contemporary industrial society can be made visible.

CHAPTER 3.

THE CLASSIFICATION AND FRAMING OF KNOWLEDGE:
THE CONSOLIDATION OF AN ANALYTICAL FRAMEWORK

"I believe that as a result of our inquiry processes we can make better informed decisions which fit the facts and which fit into national, regional and local objectives; second, our inquiry system enables us to hear and to have answered the legitimate anxieties of people who have the right to express their concern; third, the public examination of these large questions assists us in achieving a measure of consent when final decisions are made..... My concern is to try to strike the right balance between efficiency and speed in decision-making on the one hand and on the other to satisfy myself on the issues and to see to it that the public are convinced of the fairness of the decision-making system".

(Peter Shore, as Secretary of State for the Environment during a visit to the Selby Coalfield 1977. Quoted in F. Sandbach (Environment, Ideology & Policy p.116.)

At this point I wish to highlight the theoretical implications of the analysis I have offered in the last chapter. There is a need to explore theoretically the tension alluded to in Peter Shore's statement between efficiency and speed and that of the public's assurance of fairness. So far I have been working towards a dialectical concept of politics consisting of the contradiction engendered by two distinct levels of social-consciousness. Whereas power politics articulates the structural and systemic properties of institutions which subordinate individual action and participation within the public sphere, participatory politics articulates the created and creative space which concerted social action can make within the public sphere.

The politics of power is rationalised in terms of efficiency and expediency. I have tried to show how the evolving judicial concept of 'natural justice' similarly corresponds to the procedural demands of an administrative system controlled by formal legal and political-administrative personnel. 'Natural justice' no longer has meaning in terms of common-sense but is formally interpreted by the judiciary and administrators to refer to formal procedural structures. By contrast the politics of participation viewed in terms of normative rights of access to the political process for ordinary people corresponds with a level of social consciousness rooted in everyday social situations. I referred to 'common-sense' views of 'natural justice' to express the situational interpretation of norms and procedural fairness. In short, power and formal conceptions of 'natural justice' are dialectically opposed to participation and common-sense conceptions of natural justice. This statement leaves the analysis at an unsatisfactorily simplistic level.

The problem which I have isolated, and which confronts people when they become embroiled in the public inquiry system, is the appearance of an institutional process which is founded on 'natural justice' but **only** appears to allow a full participation by people in its work. Public inquiries supposedly defend the right of people to be heard without bias on matters affecting their daily lives, property or rights. While agreeing with Thompson's important comment that "if the law is evidently partial and unjust, then it will mask nothing, legitimise nothing, contribute nothing to class hegemony",⁽¹⁾ I hope I have demonstrated that 'natural justice' as interpreted by the courts and administrators gives the appearance of fairness but substantively fails to 'fulfil its own concept'. To use Adorno's concepts referred to in Chapter 1, people are led into an institutional situation where it is difficult to transcend identity thinking; 'natural justice' does seem to uphold "its own logic and criteria of equity". However, the possibilities for rational identity thinking are never totally foreclosed.

The tendency for people to perceive a difference between formal and common-sense concepts of 'natural justice' must always remain.

This general tension between power and participatory concepts of 'natural justice' is embodied in the idea of 'inauthenticity'. The most sustained application of this concept is in Amitai Etzioni's The Active Society.⁽²⁾ Etzioni pursues the institutional and human ingredients of a society where the 'societal superstructure is immediately responsive to human needs.' He talks about 'authenticity' existing "where responsiveness exists and is experienced as such". The idea of authenticity requires that social actors be conscious, committed and hold a share of the societal power. However, he suggests it is "the fate of inauthentic man that what he knows does not fit what he feels, and what he affects is not what he knows or is committed to do".⁽³⁾ The important idea which Etzioni is seeking to develop relates to situations where institutions give the appearance of responsiveness when their basic condition is manipulatory and unresponsive. He distinguishes between outright alienation and inauthenticity. In the former case there is no confusion, the institution is blatantly partial.

"Objectively both alienating and inauthentic conditions are excluding, but inauthentic structures devote a higher ratio of their efforts than alienating ones to conceal their contours and to generating the appearance of responsiveness.
(My emphasis) (4)

Inauthenticity is precisely the concept which unambiguously incorporates the perspective on 'the law' which E.P. Thompson adopts. It conceptualises clearly the problem of a public inquiry system within which 'natural justice' is founded on procedural forms rather than the content of discourse. Inauthenticity encapsulates the problem, both theoretical and political, of an institutional system that seeks to straddle the boundaries between the state and the public sphere; a system giving the appearance of a quasi-judicial process while remaining controlled by the political-

administrative centres of state power. The concept of 'inauthenticity' articulates the denial of nemo iudex in causa sua in practice while formally acknowledging it in principle.

The idea that institutions are not blunt and blatant instruments of manipulation is secured by employing the concept 'inauthenticity'. The consciousness of people and their commitment to political and social action is a central feature of the concept. When objectors cause a disturbance within a public inquiry; when they accuse the inspector of conducting 'a farce'; when they believe that the decision is a foregone conclusion decided by the Secretary of State over golf with the managing director of a large oil company, they are well aware of the 'inauthenticity' of the institution they are participating in. However, 'inauthenticity, once perceived, can lead to wider forms of political action over the very unresponsiveness of the system, and is likely to be a spur to action rather than passivity. This is a problem for the planning system. The institutional dilemma it faces is founded on the administrative task of both allowing yet limiting participation by the public. It must use procedural and administrative devices to control the participatory process whereas the public, formed into action groups and pressure groups, will seek to challenge the use of administrative power in the planning system to limit their participation. This is particularly the case where large developments and contentious ecological and political issues are being decided. The planning system consistently attempts to absorb protest without seeking to resolve the underlying causes of the protest. Now this general dilemma can be understood more broadly by presenting 'inauthenticity' as embodying not only a tension between power and participation or formal and common-sense concepts of 'natural justice' but also as two mutually contradictory modalities of grounding decision-making; one which follows the logic of a systems rationality and one which follows the logic of a discursive rationality. I propose to illustrate this first through the debate between the systems theory of Niklas Luhmann and the critical theory of Jurgen Habermas, ⁽⁵⁾ and then through the educational sociology of Basil Bernstein, which, I will argue, converts that theoretical debate into an analytical tool.

Luhmann Versus Habermas

The debate between Luhmann and Habermas turns around the question of how modern political-administrative systems can resolve legitimation tensions; either by an open and free discoursing public within authentic public institutions or by 'procedures' which seek to eliminate complicating claims on the political-administrative system while at the same time assuring the public that efficient decision-making is proceeding.

Luhmann to a large extent pursues a similar project to Habermas. He is concerned about the question of how and to what extent the concept and function of public opinion has changed. Luhmann, like Habermas, argues that there is a discernible difference between the early bourgeois public sphere and the present situation in advanced capitalist societies. Whereas Habermas argues that a "collective social function must be found for public opinion." Luhmann rejects this as an impossible solution for a society particularised into specialised systems.

The general premise of Luhmann's approach is the belief that the complexity and the pace of change in advanced industrial societies is so great that a decision-making process is now required which can respond immediately to issues and conflicts. The traditional means of arriving at a consensus about political questions have become obsolete.

"If the social system of a society is highly complex, the legitimation of political power can no longer be left to a presupposed morality..... A power is legitimate which admits and even institutionalises its own process of legitimation. In addition it must be guaranteed that obligatory decisions are accepted as a premise of behaviour without prior specification of the decision." (6)

The controversial nature of Luhmann's theory lies in his abandonment of moral concepts such as good, truth or justice. He strongly asserts that decisions should be disconnected from the collective values and motivations of the political community. It should be

'procedures' utilised in arriving at a decision rather than the underlying principles involved in the decision which should be acceptable to the public.

There should be, in other words, a complete separation of the legitimacy of a decision from its factual or moral content. The controversial nature of Luhmann's theory should not blind us to its theoretical usefulness for providing one side of the administrative mechanism of public inquiries. Luhmann's work is also valuable because he theorises the administrative action of the state from the position of its 'steering' role. He points up the rigidity and structural constraints systematically used to manage and limit the participatory claims of groups on the state. Unlike Parsons' structural functionalism Luhmann presents a functional structural theory of political-administrative systems. The structures and boundaries of systems are not given as they are in Parsons work. Instead the structures and boundaries of the system become amenable to functional analysis. The central administrative task of any system is how to maintain its structure in the face of threats, problems and demands from a complex environment. System maintenance and practice are intrinsic to the very theory of what a system is. Put differently, systems theory becomes one with the practice of maintaining a given system in relation to its environment which will always be more complex. Functionalist theories in sociology have always lost their force by an inability clearly to specify a systems boundary and unambiguously identify the system's goal states. However for Luhmann this very difficulty is what distinguishes his systems approach. He takes the problem of the inner-outer relationships between a given system and its environment as the focus for political analysis and as the central political dilemma facing the complex administrative institutions of late capitalist societies. Given his basic premise that modern societies are characterised by their growing complexity, then the structure of a system must exclude more states than the environment can assume

in order to 'survive' and continue to fulfil its tasks. The weight of Luhmann's analysis suggests consciousness about political administrative strategy in coping with a system's external relations. The inner-outer relationships are manipulated in accordance with options and problems confronting the system.

"According to this usage, complexity is a measure of the number of events and states of a system (self-complexity) with their stabilised boundaries, systems form and maintain islands of lesser complexity; the order of a system is less probable than that of its environment. It is a condition of self maintenance of a system that it can assume sufficiently many states to enable it to adapt to the changing events in the environment. Its self-complexity must suffice to permit system maintaining reactions to changes in the environment that affect the system". (7)

The idea which emerges from this systems analysis is the fact that Luhmann understands system self-maintenance in terms of the ability of the system to master and control that portion of the world that is actually relevant to the persistence of the system. Complexity reduction becomes the crucial task involved in self-maintenance. Now this complexity reduction is accomplished first by the very formation of institutional structures; all institutions in Luhmann's perspective are "congealed reduction of world complexity". To some extent an institution need only exist to reduce the complexity of its environment because it crystallises in its very structure accepted modes of operating and secured expectations about institutional behaviour. This is in fact similar to the argument I have also made, particularly in chapter 1 with respect to rights of participation (Luhmann too holds to a 'communication concept of power' but quite different to that of Habermas). The second mode of complexity reduction depends upon the inner-system processes themselves. A major paradox arises in this second mode because system maintenance at one and the same time requires the reduction of the complexity of its environment while also heightening its own self-complexity.

For example, Luhmann unlike most other systems theorists accepts "meaning" must be incorporated within his systems analysis but in such a way that it becomes functional for the system; "meaning" becomes a way of heightening self-complexity rather than setting limits on the system by complicating matters. In other words, "meaning" becomes the integration of information and knowledge to add to the armoury of possible actions for the system. (8)

The paradox for Luhmann lies in the fact that "meaning" reduces complexity by enabling the system to be flexible and adjust to new "meanings" but he tends to downplay the fact that it also increases complexity by heightening the administrative dilemma of deciding between increasingly varying alternatives for action. In other words, 'complexity reduction' does not necessarily lead to greater decision-making efficiency and unless 'procedures' can convince the public that they can actually deliver efficiency in decision-making then their legitimacy will be threatened. Political-administrative systems in the real world are unlikely to be flexible enough to fully incorporate all the demands made upon them. 'Inauthenticity' arises therefore because the criteria for excluding demands is the inability of the system to cope with some information rather than its rejection after a wide evaluation of all issues. Luhmann acknowledges that only systems with high levels of internal complexity will be efficient and flexible enough to ground legitimacy. (9)

However, this problem is surmountable in empirical terms by the growing functional importance of science as the leading sub-system in modern society. It becomes a 'sense system' reformulating demands in a form capable of processing by the political-administrative system. The important point about scientific modes of reasoning is that they be compatible with a systems rationality. For example, communication between different systems (i.e. economic political and scientific) for Luhmann depends on what he calls the "actualisation of shared sense". So there must evolve both a 'language' which becomes the mode of

communication between the different 'systems' and a mode of excluding 'non-shared sense'.⁽¹⁰⁾ Science is regarded by both Luhmann and Habermas as the dominant 'sense system' in advanced industrial societies - it takes on a leadership role. However, they interpret its role differently.

The project for society as Luhmann sees it is to achieve an altered conception of politics. The task is to 'link scientific self-investigation to structural selection'. The decision-making process must therefore either become dominated by scientific experts or the public must formulate their demands in terms approved of by the political-administrative centre and must rely on experts processing their claim in terms of system needs. Most political-administrative systems in industrial society seek to resolve the dilemma created by their inability to achieve 'inner states of heightened complexity', and hence resolve their credibility crisis, by seeking to ground legitimacy on scientific-technical rationality rather than in terms of traditional democratic, normative and common sense perspectives. Efficiency and rationalisation become competing bases for grounding legitimacy with those based on democratic traditions. Whereas scientific-technical modes of reasoning are viewed by Luhmann as aiding the operational flexibility of systems, I prefer to see them instead as a mechanism of complexity reduction for a system seeking to avoid the complicating issue of basing decisions on normative criteria. "Meaning" which is not resolvable by technical criteria therefore has to be excluded.

Within the planning system two related processes are operating:

(a) Political-administrative systems operating in a complex environment must adjust their internal decision-making structures to a state of "heightened complexity" to enable decisions to be made quickly and efficiently and generate confidence in the "procedures" not the underlying principles of the decision.

Local public inquiries are unable to adapt to a changing and complex economic, political and technological environment. A system with a low state of internal complexity is currently being used to deal with highly complex problems. However, what Luhmann fails to highlight in his analysis is that institutional systems with inflexible structures and low levels of inner-systemic complexity actually decrease complexity by acting as 'blockages'; their very simplicity blocks out complicating demands and problems by diverting that energy elsewhere. There is a reservoir of political frustration created by the inability of 'radical' information, knowledge or 'unshared sense' to penetrate the system. This 'blocking' process is a political and administrative option used by the state whenever the local public inquiry rather than a Planning Inquiry Commission is used, or whenever public inquiries are restricted to the consideration of specific remits relating to highly circumscribed technical issues which systematically exclude normative issues and 'radical' information and knowledge.

(b) The dilemma of how to control this diverted political frustration can be partly resolved if the problems created for decision-making by the introduction of complicating moral values can be excluded so that the distinction between good and bad become meaningless in administrative terms. If legitimation can be based on the assumption that choices are technical rather than political; if it can be assumed that the ends of 'efficient' decision-making are more important than the means; if 'complexity reduction' can be presented as being an essentially apolitical dilemma confronting all social systems, then the idea of an expanded form of public participation can be rejected. Luhmann is presenting us with a clever conservative sleight of hand. The dominance of science and technocratic modes of reason are discussed as if they are an integral part of the process enabling systems to heighten their selective capacity. However, it is the 'procedures' that are supposed to legitimise the system not the 'sense system'. In fact the 'procedures' are often inadequately adapted to their tasks in actual administrative systems

and technical vocabularies are used as a legitimatory device to conceal an inability of the system to absorb and handle complicating demands. Technical vocabularies become instruments of complexity reduction obfuscating many moral, social and political issues. So (a) frustrates and diverts political action and (b) seeks to depoliticise that frustration by converting politics to administration and truth to scientific validation.

The political-administrative system must seek to transform conflicts in society "from an immediate conflict into a regulated verbalised struggle for influence on decision-making centres". This is done by channelling conflicts towards specific decision outcomes by processes similar to public inquiries:

"At the beginning, real uncertainty with regard to the result has to be structurally guaranteed, this means power has to be suspended in order that participation can be motivated at all. The participants have to assume roles which require complementary behaviour, as, for instance, to be answerable for their position they also have to be requested to give binding accounts of their position of which their opponents can depend. Only in this way can a process of controversial communication occur in which issues can be defined better and alternatives can be eliminated to the extent that the final decisions can take place with a minimum of selectivity and, therefore with little social impact". (11)

In this quote Luhmann is describing a framework for decision-making which contemporary public inquiries seem to adhere to. It is premised on the idea that debate must move towards the reduction or shaping down of complex arguments, of limiting and closing off alternative formulations of problems which might be dysfunctional for the objectives of the political systems as a whole, or put differently, demands which are not in accordance with the existing hierarchies of power controlling the political system are systematically screened out.

Habermas develops his argument from a similar position of symmetry between participants in a decision-making forum, but deviates markedly on the direction in which discussions should flow. There are two essential notions in his approach to free communicative action; first, his basic model reposes on the idea of a consensus of truth arrived at through argumentation, and second, the notion of 'an ideal speech situation' which is counterfactually based on the background assumption that there are no structural limitations placed on the selection and use of 'speech acts'. As the parameters for obtaining a free communicative process are established, Habermas provides us with a methodological aid for examining the actual 'systematically distorted communication' in public institutions. (12)

Within Habermas' formulation policy and decision-making should be based on submitting information, policies and statements to discursive validation in an authentic public sphere. In order to be certain that any consensus arrived at is 'true' and 'genuine', conditions must exist to permit a progressive radicalisation of the argument. There must be "the freedom to move from a given level of discourse to increasingly reflected levels." In addition to discursively evaluating theories, problematic statements, and norms there must also be the opportunity to "call into question and modify the originally accepted conceptual framework..... There must be the freedom to reflect on the systematic changes in these conceptual systems in an attempt to reconstruct the progress of knowledge (critique of knowledge) and to reflect on our need structures on the state of our knowledge and our capabilities (cognitive-political-will formation)" (13) Participants in this type of discourse must accept the force of the better argument. It is through argumentation and reason that a true from a false consensus can be distinguished, Habermas argues. He uses the 'ideal speech situation' to posit the structural parameters within which this distinction can be made possible. There has to be a forum free from constraint where all participants can "at any time initiate and perpetuate a discourse", or "put forward or call into question, ground or refute

statements, explanations, interpretations and justifications so that in the long run no opinion remains exempt from consideration and criticism". The discourse must be open to those participants who are "truthful or sincere in their relation to themselves and can make their inner nature transparent to others." Finally, all participants should be free "to command, to oppose or permit or forbid so that one sided binding norms are excluded and formal equality to initiate discourse is made practical". (14)

In reality, Habermas' general analysis has led him towards uncovering the wider social forces dominant in advanced industrial societies that have distorted forms of discourse and obfuscated the underlying potential inherent in all speech acts for a non-distorted communication. The direction of this analysis has been towards revealing the one dimensionality of Luhmann's position, specifically by locating the irreducible significance of social interaction and practical reason in social development.

In Toward a Rational Society Habermas argued that throughout the 19th century the development of science and technology relentlessly challenged non-technical concepts of progress at both a practical and ideological level. Industrialism and secularism changed the basis upon which people gave meaning to their world and made sense of it. It changed the basis of legitimacy and authority in terms of both meaning systems and the legitimate means to be used to resolve problems. Science and technology became interdependent. The productivity of labour was augmented in a systematic rather than sporadic way as it had been done in the past. In other words, technology and industrial development became what Habermas calls 'scientised'. (15)

With the institutionalisation of science as a guiding base for technology, economic growth has come to depend upon a scientised technology.

"As long as the productive forces were visibly linked to rational decisions and instrumental action of men engaged in social production, they could be understood as the potential for a growing power of technical control and not be confused with the institutional framework in which they are embedded. However, with the institutionalisation of scientific-technical progress, the productive forces have assumed a form owing to which men lose consciousness of the dualism of work and interaction..... The quasi-autonomous progress of science and technology then appears as an independent variable on which the most important single variable, namely economic growth, depends. Thus arises a perspective in which the development of the social system seems to be determined by the logic of scientific-technical progress. The immanent law of this progress seems to produce objective exigencies, which must be obeyed by any politics oriented towards functional needs.....then propaganda can refer to the role of technology and science in order to explain and legitimate why in modern societies the process of democratic decision-making about practical problems loses its function... This technocracy thesis.....can also become a background ideology that penetrates into the consciousness of the depoliticised mass of the population, where it can take on legitimating power."

(16)

With respect to this phenomenon, Habermas' work advances beyond either Weber or Lukac's in understanding the broad processes of rationalisation and reification in capitalist development. They failed to notice that an accompanying development to the transformation of the organisational and procedural principles of the capitalist state and economy was the alteration in what Habermas chooses to call 'ultimate values'. By this idea he means that ethics, norms and values become significantly altered in terms of their legitimacy appeal in a society that increasingly comes to be dominated by instrumental reason. By adopting the categorical dualism between work and interaction, Habermas has been able to show how there are two irreducible components of social evolution, the former developing through the generation and application of technical rules and the accumulation of technical and scientific knowledge, the latter developing through the accumulation of knowledge

about social and moral consciousness, and reflexivity about society and its symbolic systems. There is great critical potential in this mode of analysis because Habermas has been able systematically to integrate the instrumental or technical sphere of the scientised productive forces with the sphere of social consciousness at a theoretical level and importantly, illustrate the eclipse of the latter by the former. Through this intuitive separation it is possible to see that one of the major problems with contemporary industrial societies is not the overarching societal domination of Weber's rationalisation, Lukac's reification, or Marcuse's one dimensionality as such, which all attempted to conceptualise in their different ways the emerging force of instrumental or technical modes of reason, but the real problem is the universalisation of technical reason at the expense of moral or normative structures.

Scientific and technological practices are rooted in the need for human beings to "seek their own self preservation and emancipation from material necessity". (17) However, that basic human practice can become repressive if not contained to its proper domain and seeks a universal application to all things and all relationships as suggested by Luhmann's thesis. It is precisely this tendency that is at work when a technological concept of progress comes to be seen as being synonymous with all forms of 'rational' social development. The sphere of social consciousness and reflexivity about social development, which Habermas conceptualises in general terms as emanating from public 'communicative interaction', is subsumed within a philosophical and legitimatory movement that downgrades meaning and justifications not grounded in scientific or 'purposive-rational' action (instrumental reason). Yet that dimension of social development conceptualised as 'practical reason' by Habermas can not be easily and totally reduced to economic and technological development. Habermas' categorical dualism builds into a dialectical Marxist model the original idea of 'truth claims'. Men do not develop and acquire their humanity solely through sensuous human activity but acquire moral and social consciousness about material forces which they seek to control and criticise. (18)

The dialectical tension therefore between institutional power and participatory claims on decision-making, and access to the political process more generally, is incorporated within the categorical dualism which forms the foundation of Habermas' social theory. The real problem for him, and the problem that this thesis is focusing attention on, is the public and institutional space existing in our society within which highly complex scientific and technological issues can be subjected to an examination by criteria derived, in theoretical terms, from the sphere of social interaction and symbolic consciousness rather than by an exclusive legitimacy appeal to an instrumental reason located in the technical sphere of work.

The political issue for Habermas is therefore a question of the 'renormalisation' of complex scientific and technological decision-making. This becomes a significant problem because science and technology have become the dominant and institutionalised form of conceiving of progress, and the empirical-analytical approach to problem solving has become, at least for public and institutional purposes, the only legitimate way to proceed in evaluating issues. Science is also increasingly becoming the 'sense system' shaping the communication process in the public inquiry system in ways echoing Luhmann's thesis.

Only those who can address themselves to solving technical problems will be accredited with legitimate status as 'experts'. The real problem which this presents to society is that issues of an essentially political, and therefore, of a socially conflictual nature, will tend to be discussed in a way which separates questions of technical utility and efficiency from wider social and moral content. It will often be the case that those people who wish to offer a radical re-appraisal of a project based on novel non-technical solutions will be truly innovative. They challenge the parameters of conventional wisdom in much the same way that 'paradigms' in science are challenged by those not party to the conventional scientific wisdom. The acceptance or non-acceptance

of solutions to technological or industrial dilemmas are therefore as much to do with entrenched political, economic and social interests as scientific methodology or the safety of a specific technology, as Kuhn has argued.⁽¹⁹⁾ However, as I will hope to demonstrate further on in this thesis, there is plenty of evidence that accepted scientific and technological solutions to problems are resistant to novel criticism to the extent of a tendency to ridicule any person or solution which does not operate within the dominant industrial, economic or technological paradigms.

Critical discourse is therefore a central feature of Habermas' Social Theory. His entire theoretical project relates to the concept of an open and unrestricted public sphere as the ultimate way to ground interests and subject instrumental reason to a form of social control. The salient issue in all cases is to establish the principle that particular interests can be made generalisable. Distorted communication as a form of ideological manipulation presents particular interests as universal without publicly and openly subjecting them to the scrutiny of public debate. The general concern which the critical theory tradition has voiced is the depoliticising effect which instrumental reason has on the public sphere; its tendency to de-legitimize non-technical views and forms of rationality. This tendency is, of course, clearly articulated by Luhmann's approach to political analysis and contained within his normative critique of modern political systems.

Discussion

Both Habermas and Luhmann adopt a communications concept of power but their concept of 'communication' is quite different. Luhmann's underlying concepts of power and legitimacy are ultimately grounded in the logic of a 'systems rationality' which forms the core of his political analysis. Communication in Luhmann's analysis only makes 'sense' as a means towards obtaining efficient relations between discrete systems. Legitimacy is grounded in the efficiency

of procedures rather than in the social and moral content of meaning. Public opinion within Luhmann's perspective only has the status of a phenomenon that can be manipulated to increase system stability. ⁽²⁰⁾ He rejects the idea, which is central to Habermas' social theory, that public opinion can be an emergent phenomenon of rational discussion and debate which can have a political effect due entirely to its genesis in communal agreement. Public opinion is a concept narrowly associated with a pre-existing consensus by Luhmann and therefore he insists that it can only be understood as the product of 'provocation by those with necessary authority'.

The relationship between formal concepts of 'natural justice' and common-sense concepts discussed in Chapter 2 and the Habermas-Luhmann debate can now be pointed up. There is a discernible tension within current public administration between 'procedural' forms of legitimacy (natural justice as a right to a formal hearing) and discursive forms of legitimacy (natural justice as a right to an open and independent debate about issues). The two legal principles discussed in chapter two could be said to exemplify a tension between the highly centralised control of the public inquiry system on the one hand, and devolved control of the system from the political-administrative centre on the other. The systems theory presented by Luhmann suggests that the public inquiry should be based on a formal procedural concept of 'natural justice' which does not interfere with the 'efficiency' of the system's instrumental role while fulfilling its expressive role by assuring the public that their opinions are at least being considered. The current interpretation of the audi alteram partem principle seems to support a 'systems rationality' by restricting the concept of 'natural justice' to a formal procedural issue rather than one of normative violation. Habermas' social theory suggests the opposite. He conceives of a discursive form of rationality that is grounded in an 'ideal speech situation'. If the nemo iudex in causa sua principle was broadly interpreted to take account of institutional bias rather than simply individual bias then the public inquiry

system would be more likely to sustain open access to issues and participants, and importantly, be autonomous from the machinery of government. Herein lies the main issue. Luhmann and Habermas adhere to different models of knowledge. For Luhmann science is the dominant 'sense system' which forms the communication language in decision-making systems whereas Habermas places greater emphasis on social and normative criticism within public institutions that are genuinely open. Their views about the state and the public sphere also differ. Luhmann regards the state as the centre of control of complex systems concerned with steering functions which seek to minimise the role of public opinion and debate because these are considered disruptive in a complex society. For Habermas, the state is a set of political apparatuses of intervention and representation that should be responsive to influence and direction by public opinion and debate.

At this point there is a need to convert the dynamics of the Habermas-Luhmann debate into a framework of analysis that connects the principles of control and power implied within their debate to structural relationships within the public inquiry institution. Their debate implies particular rules about the relationship between different forms of knowledge and statuses of knowledge. It also implies that power to initiate consideration of issues, themes or information should lie at different levels of the political-administrative hierarchy in the determination of policy and decision-making. As their respective positions are to be treated as dialectically related but integral features of the public inquiry system, it will be useful to condense the Habermas-Luhmann debate into one coherent theoretical structure. For this reason I think it will be convenient for analytical purposes to relate this debate to the vocabulary of classification and framing of knowledge initiated by Basil Bernstein.

The discussion I have been engaged in has implicitly suggested that there is an inextricable connection between institutional structures,

political processes and the principles of social control and power that shape forms of discourse within public inquiries, Bernstein's educational sociology has explored these interconnections in a unique way that can assist my analysis.

The Classification and Framing of Public Inquiry Knowledge.

My starting point is Basil Bernstein's seminal paper 'On the Classification and Framing of Educational Knowledge'. (21) Bernstein starts his paper by emphasising that "how a society selects, classifies, distributes, transmits and evaluates the educational knowledge it considers to be public, reflects both the distribution of power and the principles of social control". It is my argument that this applies equally to the selection, classification and evaluation of knowledge within the public inquiry setting.

The concepts of classification and framing developed by Bernstein are fundamental to his and my own analysis and require a full explication.

First the concept of classification. This refers not to what is classified but to the relationship between the contents of units of knowledge (one might consider this simply in terms of discrete subject areas or expertise) and categories of people with kinds of knowledge (scientists, businessmen, lawyers, public inquiry reporters or laymen). So classification refers to the principle of the relationships between categories, or as Bernstein originally formulated this idea, to "the degree of boundary maintenance between contents of different realms of knowledge!"

To quote Bernstein on the educational experience, and inserting my own appropriate categories,

"Any social phenomenon is fundamentally a structure of contextualised meanings. From this point of view, a school (Read public inquiry) creates a particular structure of meanings. At one level we have groupings of teachers, ancillary staff and pupils (professionals, technical and lay people). These inter-actions take place in a context - a building, or complex of buildings. Communication of diverse kinds goes on between teachers, between pupils, between teachers and pupils (between participants within a public inquiry) When we look more closely, we find rules which underlie the diverse sets of specialised meanings which regulate the inter-actions and practices.....These rules create criteria, standards whereby persons acts, communications are evaluated compared and grouped....."

(22)

The notion of classification refers to the crucial area of boundary relationships as constitutive of meanings in particular institutional settings. These relationships obviously imply some form of power in order to maintain and transform the boundary relationships between different kinds of knowledge and statuses of knowledge. This problem is handled by the concept of framing.

Framing refers therefore to the principles which underly control of the relationships between categories. In the educational sphere framing refers simply to the power implied in a given pedagogical relationship between teacher and taught. In that context framing refers to what may and may not be transmitted in a classroom. It articulates the power to determine the criteria of relevance, the pace at which knowledge can be transmitted and the selection and sequence of relevant ideas and concepts. Bernstein states that "framing refers to the controls on what is made available, how it is made available, when it is made available and the 'social relationships' ". (23) This can be readily applied to the public inquiry setting if we transcribe the relevant categories. Whenever Bernstein discusses the school I will conceive of the public debate as a communicative process.

The short hand concepts of collection codes, which refers to strong classification and strong framing, and Integration Codes, which refers to weak classification and framing, can also be readily utilised within the public inquiry setting. The idea of codes in educational sociology is well established. Ralph Turner refers to 'organising folk norms' in his paper on 'sponsored' and 'contest' mobility. ⁽²⁴⁾ There he was seeking to conceptualise the dialectical inter-link between particular constellations of class relations and the structures of regulating principles in educational systems. Thus the degree of openness or closure in social mobility and class relations has both a determined and determining effect upon the way in which school and examination systems are organised. These 'folk norms' represent an implicit normative structure 'reflected in value judgements about selection strategies and even pedagogical relationships'. Bernstein talks about codes in a way similar to Turner. Education is founded on codes which contain the "underlying principles shaping curriculum, pedagogy and evaluation." Language and knowledge are both contexts within which Bernstein seeks to link patterns of individual experience and behaviour not only with the structure of the group, but also with 'organising concepts' or 'themes' inherent in its sub-culture. He suggests that

"The concept code refers to the transmission of the deep meaning structure of a culture or sub-culture: its basic interpretation rules". ⁽²⁵⁾

And also that:

"Imbedded in a culture or sub-culture may be a basic organising concept, concepts or themes, whose ramifications may be diffused throughout the culture or sub-culture. The speech forms through which culture or sub-culture is realised transmit this organising concept or concepts within their gestalt rather than through any one set of meanings." ⁽²⁶⁾

The idea of codes is therefore to be understood as an expression of basic interpretative rules or concepts that generate an overall structure of classification and frames of knowledge and meaning; these codes are of course, transmitted, as Bernstein suggests 'within their gestalt rather than through any one set of meanings'.

Relating these concepts to Habermas' concern about the 'scientisation of technology and public opinion', it can be said that the dominance of certain forms of instrumental reason will tend to generate patterns of boundary maintenance in the classification and framing of knowledge which rigidly insulate areas of expert or esoteric knowledge and secure the status of a technical intelligentsia. Those with 'scientific' knowledge will tend to be attributed greater status in society in those contexts where policy is being formed or decisions made. In the terminology of Bernstein's educational sociology, I would argue that a collection code represents the dominant code in advanced industrial societies. One might suggest that Luhmann's thesis favours the dominance of a collection code. A collection code however represents only one organising principle. It articulates an approach to science, technology, politics and social change conceptualised by the idea of technological progress and a 'technical intelligentsia'. The idea of an integration code in Bernstein's work articulates non-technological concepts of progress as at least a meaningful complement to technological problem resolution. It will express in a very general way, the weak classification and framing of knowledge generated by the inter-penetration of areas of knowledge and statuses of knowledge so that scientific, technical and everyday common-sense questions will be seen as inextricably linked with the political and social choices facing industrial societies. ⁽²⁷⁾ The Luhmann-Habermas debate clearly highlights the theoretical, normative and political opposition between these two conflicting codes. The academic conflict between Luhmann and Habermas, in the specific context of the public inquiry system, will express itself clearly in the way public debate is structured. It will take the form of a particular pattern in the classification and framing of knowledge considered to be important by the Minister and Reporter.

An important point to be made at this point is that the wider social support for collection and integrated codes will tend to alter in different political contexts. The idea of an underlying collection code in society at one and the same time expresses a generalised power and dominance accruing to an instrumental mode of reason but it may also be politically challenged or supported by action groups from time to time. For example, lay objectors without credentialled status will obviously have an interest in the greater degree of participatory involvement in public inquiries implied by an integrated knowledge code. However faced with a collection code they may attempt to offer their challenge on the level of competing credentialled 'expertise'. The two dominant codes will obviously be expressed with different degrees of priority, and I will be seeking to analyse some major public inquiries in terms of this framework in Part 2.

The codes imply distinct power principles underlying the relative status accruing to different levels of expertise. The collection code will tend to favour a distinctly hierarchical form of relationships within which the knowledgeable and the professionals will determine the parameters of relevance of knowledge rather than objectors without credentialled status. The idea of framing in relation to public inquiries refers to the power to determine what is to be known and who will be allowed to initiate consideration of particular themes or issues. The complexity reduction of knowledge and information favoured by Luhmann's systems approach to rationality, which seems to be generally institutionalised as the dominant feature in existing public inquiry procedures, will be founded on strong classification and framing informed by science as the leading 'sense system' so generating an overall collection code. One would expect therefore a strictly hierarchical organisational structure within the inquiry setting starting at the top with the Reporter and Technical Assessor charged with the task of containing discussion to a highly specific remit issued by the Secretary of State, down through credentialled technical experts to the lay public. Discussion within such a forum would be channelled

through the formal legal representation at the public inquiry whose task it would be to shape the evidence so that it addressed the inquiry remit directly. The lay public who are often allowed space at the end of most public inquiries to express opinions, tend to do so either as a written or spoken statement without cross examination. Their status and their evidence will be distinctly insulated and isolated as a qualitatively different type of input to the proceedings. An important distinction should be made relating directly to this last point. That distinction is between what I call engaged debate and disengaged debate.⁽²⁸⁾ The former operates within the parameters of official remits, the latter does not.

The discursive rationality implied by Habermas' 'ideal speech situation', obviously favours weak classification and framing in order to facilitate public participation in decision-making and wide ranging and radical discussion which will be capable of offering a broad analysis and criticism of the foundations of the knowledge offered in evidence. One might object that Habermas' perspective would encourage a disengaged debate which might lead to anarchy and frustration in making decisions. This is so only to the extent that within the logic of his framework, the State would not have the power to determine what is relevant through its control of remits in the manner currently practiced. Instead remits or problematic issues must emerge from public debate and consultation rather than be imposed by the State. An integrated knowledge code would facilitate this process. The weak societal power of integrated codes is the focus of Habermas' ongoing critique of industrial capitalism.

Now if both Luhmann and Habermas are understood as providing the polar positions in the classification and framing model, then by using Bernstein's concepts to analyse case studies of public inquiries, we are also converting the Habermas-Luhmann debate into a form easily used for empirical study. My analysis can be informed by the complexities of their debate yet not be constrained to work totally within its theoretical boundaries.

This overall framework can further be used to identify the relationship between the public inquiry and its discourse in relation to the demands placed upon proceedings by commercial and production interests on the one hand, and wider social and ecological interests on the other. It can be asked, to what extent does the state assist the needs of industrial applications at the expense of opposition interests in terms of the classification and framing of knowledge established by technical remits and inquiry procedures? For example, strong vertical framing within the public inquiry may be combined with weak lateral classification and framing with respect to the inquiries' relationships with industry and government economic policy, but strong lateral classification and framing with respect to the ecologist movement. This will manifest itself in a greater willingness of public inquiries to acknowledge the relevance of technical and commercial criteria, while down-playing environmental and ecological criticisms of industrial schemes.

A particularly useful element of the classification and framing perspective is that general and sometimes very gradual changes in either dimension operating independently can assist in identifying points of stress and transformation in the power and principles of control within the public sphere. For example, public pressure to open up public inquiry procedures in terms of framing, to allow a greater control and initiative to public participation, will obviously challenge the principle of strong classification with respect to the relationships between different categories of expertise, discourse, forms of knowledge and ultimately in the relationship between public inquiries and the State. It is also instructive to retain a perspective that identifies two quite separate but significant dimensions of public institutional practice. Changes in the classification of knowledge, for example, while retaining strong framing could identify a movement towards an Inquiry Commission structure. The State could alter dimensions of institutional practice for ideological and power reasons, giving the impression of greater consideration of issues yet retaining hierarchical control principles. The idea

of a Planning Inquiry Commission is to allow for a greater scope for considering controversial and complex issues. By instituting a commission structure that is not necessarily site specific in planning matters, there is obviously a recognition that a weaker classification of knowledge can often be beneficial in resolving major planning controversies. Most opposition groups involved in major public inquiries in Scotland have attempted to establish an Inquiry Commission to examine their particular controversy. What is often overlooked by opponents of industrial development is that the institutional practices of the public inquiry have these two dimensions of equal significance and that within the Inquiry Commission structure it could be argued that framing is strengthened further in comparison with that which obtains in conventional inquiry hearings. For example, the Roskill Inquiry into the third London Airport closely resembled a PIC and it was notorious for forcing all evidence into a cost benefit framework. Only information and knowledge that could be quantifiably compared within a cost benefit analysis was recognised by the Commission. One might describe it as an exercise in bowdlerising all non-technical knowledge.

The Outer Circle Policy Unit idea of a Project Inquiry, consisting of different stages of open discussion moving towards an agreement about specific issues, could be interpreted as an attempt to weaken the strength of classification and framing. Yet even that proposal is less radical than it first appears because the balance of power between the State and the public sphere is very much in favour of the former. The first stage of the Project Inquiry would still be responding to a remit set by the Secretary of State. There is no mechanism either within the planning legislation or within our existing Parliamentary system that could decide the parameters of that remit other than the government Minister concerned with the planning application. This issue illustrates quite clearly that the basic problem regarding participation and democracy in public inquiries must be seen in a wider political perspective. The issue of general government policies for development and planning combined with

institutional reform of the inquiry system may be needed and may require a wider social and political movement than so far seems to have emerged in recent years. It is against such a wider political objective that local action group activity may be judged.

The preceding outline is presented diagrammatically in Figures 1 and 2. Figure 1 attempts to bring together the varying forms of procedural structures that together manifest specific principles of social control. Figure 2 is an attempt to relate the general parameters of Figure 1 to already existing institutional forms. The difficulty with all typological devices is that dynamic and independently varying dimensions of institutional structures are frozen. Public inquiries by their nature are very dependent upon the social and economic stakes at issue plus the character of the participants to determine their form. However, I would argue that they are not as empirically variable in terms of the criteria I have presented as one might intuitively think.

Cells 2 and 3, in Figure 2, perhaps need further explanation. As there has never been a formally constituted Planning Inquiry Commission nor a Project Inquiry it could be argued that it is pure speculation to characterise them in terms of weak classification and strong framing. Well this is not so. The procedural structures of both institutional forms have been clearly set out by the Town and Country Planning Act 1971 (1972 in Scotland) for the PIC and by the Outer Circle Policy Unit document on The Big Public Inquiry ⁽²⁹⁾ for the Project Inquiry. In both cases the emphasis is on retaining strong framing by rigorous, highly ordered presentation of 'the best specialist knowledge' while adopting a flexible attitude about what issues may have a bearing on the controversy in question, and indeed, what is to be considered problematic within a wider, less site specific remit generated by the relevant Ministerial department. Neither institutional form entails a major redistribution of power nor a constitutional alteration to allow greater devolved power to institutions within the public sphere. Community meetings by

Figure 1

TYPOLGY OF PROCEDURAL STRUCTURES

CLASSIFICATION

Strong	Weak
<p>1) Collection Code (Pure) 2) Specific Remit 3) Positional status Hierarchy based on Technical Knowledge and Legal Rights 4) Strong Institutional Mediation of Power. 5) Power Located at Political-Administrative Centre of State, Control with Reporter (1)</p>	<p>1) Integration Code (Impure) 2) General Remit 3) Positional status Hierarchy based on both Technical and Non-Technical Knowledge (Specialist) and Legal Rights. 4) Strong Institutional Mediation of Power. 5) Power located with Commissioners or Adjudicators with Relative Autonomy from State. (2)</p>
<p>1) Collection Code (Impure) 2) Specific Remit. 3) Personalised Status, non-hierarchical structure based on Technical knowledge and Third Party Interests as well as Legal Rights. 4) Weak Institutional Mediation of Power. 5) Power located with 'experts' and professional lawyers controlled by Reporter. (4)</p>	<p>1) Integration Code (Pure) 2) No Remit; debate generates problematic issues. 3) Personalised status non-hierarchical structure based on Technical and non-Technical Knowledge (specialist and everyday) and Third Party Interests and social and moral Rights. 4) Suspension of Institutional mediation of Power. 5) Power disseminated. (3)</p>

Strong.

Weak

FRAMING

Figure 2

TYPOLGY OF INSTITUTIONAL FORMS

CLASSIFICATION

	Strong	Weak
Strong	<p>'Big Public Inquiry'</p> <p>(1)</p>	<p>1) Planning Inquiry Commission</p> <p>2) Project Inquiry.</p> <p>(2)</p>
Weak	<p>1) Structure Plan Inquiries. Small Local Public Inquiries.</p> <p>(4)</p>	<p>Community Meetings.</p> <p>(3)</p>

Commentary

The public Inquiry system probably can be characterised by cells 1 and 4. It is difficult to identify an institution for cell 3 but a community meeting probably comes closest to the idea described in Fig. 1, cell 3 which corresponds to Fig. 2, cell 3.

contrast are more ad hoc forms. They are often a response to immediate events which determine the focus of debate rather than a constitutionally generated remit. Even where local community councils or residents' associations sponsor community meetings they are by their nature loosely structured affairs depending to a greater extent on a judicious chairman and common-sense to retain order in proceedings. Issues are very often identified and generated by general debate rather than pre-given by an institutional remit.

Now given that a general framework of analysis has been generated it is important to re-state the central dilemma of the public inquiry system prior to a closer examination of significant major inquiry controversies.

From my argument so far it is clear that a crucial problem within public inquiries is the pre-eminence likely to be given to the evidence, first, of 'experts' as opposed to laymen, and secondly, to 'technical' as opposed to non-technical 'experts'. The difficulty is actually two-dimensional in this simple sense: ordinary non-technical objectors, I will argue, are discounted because they are both lay-persons and also not equipped to grapple with highly complex technical issues. The weight placed upon collection codes in the classification and framing of knowledge is not conducive for stimulating a sense of 'fairness, openness and impartiality' in those participants in public inquiries who fail to get non-technical evidence acknowledged. For the sake of brevity I would suggest two modes of reasoning or styles of argument can be identified within public inquiries which are actually far less distinct than most public institutions would accept; I will name them (a) the scientific/theoretical mode of reason (Collection Code) and (b) the social/common-sense mode of reason (Integrated Code). My general argument will be that contemporary industrial societies have effectively institutionalised a collection code underlying the uses of scientific and technological knowledge which assumes that science describes and explains the world in ways foreign to common understanding. The dominance of

a collection code is founded on the assumption that scientific methods of enquiry are uncoupled from everyday life by employing both a distinct language and methodology (hypothetico-deductive) which establish their own criteria for distinguishing between sense and nonsense or truth and falsity. Characterising a social/common-sense mode of reason from the standpoint of the dominant collection code, it is assumed to be based on values, norms and habits of interaction which express subjective interests of a social, political or economic kind. An Integration code, as an underlying principle of knowledge, is believed to be founded on the 'negotiated' consequences of interacting vested interests rather than on some idea of 'scientific objectivity'.

The problem with this approach to the uses of science, technology and everyday knowledge is that it ignores the extent to which they do in fact overlap and inter-penetrate each other. Each mode of reasoning can be, and often is, treated as a distinct and insulated 'paradigm' admitting only a specific kind of criticism based on mode specific rules. Demands for justification by the scientific/theoretical mode of reason of the social/common sense mode are not recognised or are discounted as meaningless and vice versa. However, Kuhn has shown how values, ideologies and political commitments are integral features of the development of science, whereas Habermas is important for asserting that social, political and economic interests must also be subjected to rational critical discourse; values, norms and interests should be capable of discursive validation.

The question arises therefore, do public inquiries actually support and reproduce the dominance of collection codes? The environmental and planning dilemmas confronting contemporary society are inextricably bound up with value choices which can not be discursively examined if all problems are treated as technical ones resolvable only by technical criteria alone. Even if one were to accept the dominant public conception of science as a description and explanation of an 'objective reality', is there ample recognition that science cannot assimilate all social and moral questions that might be

relevant for making decisions about industrial development?

The public inquiry system has to straddle a line between being a genuinely open institutional space within the public sphere and being an administrative instrument of the state. The tension created by the inquiry system's dual role will be the object of study in the second part of this thesis.

In the case studies that follow I will seek to examine both the internal impact of the classification and framing of knowledge within the public inquiry process, and the external effect in terms of the wider process of the formulation and presentation of opposition. Given that I am hypothesising a high degree of disenchantment with the inquiry system because of its closed or collected form of classification and framing of knowledge and information, I will be enquiring into the consequences which result for opposition groups and action groups intent on formulating and presenting a wide-ranging opposition to development within the local public inquiry system. I have pointed to the need to retain a conception of the possibility of action springing from the perceived disjunction between formal and common-sense concepts of justice. So in what follows I will be interested in examining that distinction as a product of local action group involvement in recent large public inquiry hearings into North Sea Oil and gas onshore development.

INTRODUCTION

"The main point to bear in mind is that, although Scotland is an industrialised country, the North Sea discoveries have been made off the more rural and sparsely populated areas. Consequently there has arisen a range of problems related to the marrying of the oil industry with the traditional economic and social structures of these areas. In the main the crucial factors are the scale of the developments relative to the size of the communities affected and the lifetimes of the various developments."

(D.I. Mackay and G.A. Mackay
The Political Economy of North
Sea Oil. pages 111-112).

In this part of the thesis I will focus attention on specific case studies involving major public inquiries into North Sea oil and gas onshore developments.

In a letter from the Permanent Under Secretary of State at the Scottish Development Department dated the 20th February 1975, accompanying SDD circular 14/1975 to Town and Country Clerks and local authority Chief Executives, it was stated:

"Where contentious issues calling for an inquiry arise, it is important that the inquiry serves efficiently as a means of open investigation of the issues to be considered in arriving at a proper balance between the various competing interests". (1)

It is precisely a test of this objective that the following case studies will seek to evaluate. The general objective of the SDD circular 14/1975 stated:

"The fundamental purpose of the procedure outlined in this Memorandum is to achieve the objectives of openness, fairness and impartiality recommended by the Franks Committee on Administrative Tribunals and Inquiries in 1957. While at the same time conducting the inquiry process speedily, efficiently and inexpensively, without detriment to the rights or interests of any of the parties. No code of guidance can be expected to cover all contingencies which may arise but a Reporter appointed to hold an inquiry should exercise his discretion, in determining the procedure which should be followed in circumstances which are not envisaged by this Memorandum, by reference to this fundamental purpose".

(2)

The memo seems to encapsulate the kind of dilemma that I have theoretically discussed in previous chapters. It seeks to reaffirm the general principles of the 1957 Franks Committee, yet it gives an indeterminate discretion to Reporters to shape inquiry procedures both in terms of their organisation and the selection and control over evidence.

Paragraph 5(d) of the letter makes it quite clear that there does exist an implicit tension between what I would call reductive and discursive approaches to the evidence. It emphasises:

"The importance of the role of the Reporter in directing proceedings" and it continues

"It seems to the Secretary of State that he (the Reporter) should not necessarily be a silent listener to the proceedings (My emphasis) he should be free to seek any clarification he deems necessary or to direct questions to issues which he thinks will be important to the Secretary of State's decision, but which may not have been adequately covered in the evidence".

This statement can, of course, be interpreted in different ways. It could be argued that the Secretary of State may initiate consideration of issues which are broader in scope than those generated by a specific planning application. Or alternatively it could be interpreted in terms of what Luhmann describes as "complexity reduction", the focusing attention and discussion on narrowly conceived technical and economic issues.

Indeed the very circulation of the 14/1975 memorandum should be understood in terms of the latter interpretation. It was circulated after three lengthy public inquiries into North Sea oil onshore developments at Dunnet Bay in Caithness, Delny in East Ross-shire and Drumbuie in West Ross-shire, which was the 'straw that eventually broke the Camel's back'. Those inquiries were long by usual standards; the 1969 application by Grampian Chemicals to establish a petro-chemical complex on a site near Nigg Bay led to a public inquiry begun in Dingwall on the 27th February which was not completed until the 2nd April (although the inquiry did not sit continuously); the application by Chicago Bridge Ltd to carry out rig construction on a site at Dunnet Bay led to a public inquiry begun in Thurso on the 11th April which was not completed until the 5th May (again the hearing was not continuous after the 27th April); the Drumbuie inquiry into Mowlem-Taylor Woodrow's application to build concrete oil rigs on a site at Loch Carron was continuous for 46 days. If placed in the context of these major public inquiries Circular 14/1975 takes on a different complexion. The third paragraph of the accompanying letter starts "the inquiry procedure has recently been criticised as being in some cases too lengthy, too combersome, too formal and too expensive". It should be asked too lengthy, combersome, formal and expensive for whom?

Certainly a lengthy public inquiry can be a costly expense for many objectors under the existing system. There is virtually no provision for meeting the costs incurred by opponents, or indeed for developers out of public funds. ⁽³⁾ However, that is unlikely

to have been the source of concern and 'criticism'. The reason behind the circulation of the memorandum and the attitude to planning procedures implicit within its official discourse can, I believe, be traced to the government's anxiety about North Sea oil onshore development at a time of national economic crisis throughout 1973 and 1974.

At that time the Conservative government under Edward Heath was constructing the Coastal Sites Bill which was an excellent example of expedient state intervention which sought to 'abrogate' planning procedures which might slow down the appropriation of oil. The government of the day preferred to think of their Bill as a device for "accelerating" planning procedures.

The world oil crisis created a climate of concern, possibly even panic, within the Conservative government of the day. It was preoccupied with the subject of procuring the oil from the North Sea in quantity as soon as possible. To achieve this objective the Coastal Sites Bill was to be forwarded as a national Bill presented by the Secretary of State for Energy to enable the Government to acquire, using an "accelerated" procedure if necessary, land which was urgently needed. Gordon Campbell made it clear in the House of Commons on the 31st January 1974, speaking as the Secretary of State for Scotland, that the Bill was explicitly aimed at permitting an early start to the construction of concrete platforms at Drumbuie. This was made clear while the actual Drumbuie public inquiry was in progress. The Secretary of State acknowledged that "the parties at this inquiry may well fear that this announcement of Government intention has substantially changed the basis on which the inquiry has been proceeding and it may be that they would wish to seek an adjournment to give an opportunity to reassess their position".⁽⁴⁾ The whole purpose of the Bill was to 'avoid delays in the planning process' at a time when the proposed industrial developments in the Highlands were of 'vital national interest'. The social and economic disruption of local communities was to be the sacrifice in favour of hurried legislation to allow oil development to bypass

the existing framework of planning procedures. The defeat of the Heath Government short-circuited that piece of legislation and it was not taken up by the succeeding Labour administration, but it was enough in itself to reveal an impatience with the planning inquiry system within the Scottish Development Department. One can not avoid concluding that the public inquiry system was considered by many in the Scottish Office to be a troublesome hurdle in the way of securing essential industrial projects quickly; a hurdle that had to be endured but which might be hurried along and possibly weakened in the name of greater efficiency and informality.

The cases I propose to examine will all seek to analyse a particular tension within the public inquiry system throughout the 1970's between an administrative system seeking to reduce length and formality while also attempting to be fully discursive and open. I will focus on the public inquiry instrument as the centre of a controversy surrounding the apparent irreconcilability in planning between administrative efficiency and 'natural justice'.

It seems to me to be a mistake to view the public inquiry hearing in isolation. It can exert an influence which shapes the wider political and intellectual perspectives of people involved in development issues. Whenever a major development project was proposed, the task of mobilising local people, local petitions, demonstrations and the formation of action groups, had as its object the task of ensuring a recorded public debate. That could only mean a local public inquiry hearing within the confines of the existing planning legislation.

The emphasis which I want to give therefore is that the planning process, in the context of major oil and gas onshore developments throughout the 1970's, invariably involved a public inquiry at the centre of the controversy which should be viewed as a system which embraced the totality of the opposition process. (5) Once the option was taken by individuals and interest groups to fight a public inquiry there were obvious implications for the input to formulating

and presenting an opposition case. The type of information and knowledge that could be utilised had to adapt to the logic and limitations of the local public inquiry system.

It will therefore be my intention to examine the public inquiries both internally in terms of the themes and debates which they sustained and externally in terms of local attitudes and the organisation, formulation and presentation of opposition.

Mention should be made at the outset of the fact that it is often easy to criticise decisions that were taken in the past. Hindsight is the kind of exact science that can overlook the real dilemmas that confronted those people charged with the task of making difficult choices in difficult circumstances. I think that in all the cases to be discussed there were difficult decisions which had to be made. However, if an institutional apparatus is to be evaluated with a view to its future role and function then past decisions must be examined with respect to how they might, at least, have been arrived at more openly and democratically. They certainly must be critically assessed in terms of how far they gave an adequate evaluation of competing interests and views.

My general orientation to the public inquiry case studies is informed by the value problematic stated explicitly in Chapters 1 and 2. I believe that public inquiries are an embodiment of basic participatory rights which have been secured historically allowing people certain claims to be heard on matters which adversely affect them or the public at large. I do not think the institutional space which exists for public participation in public inquiries is adequate to ground a genuinely democratic and open resolution of the technological, development and sociological conflicts which arise.

The case studies have been researched to a varying degree of detail. The discussion of the Nigg Inquiries (1969 and 1975), the Dunnet Bay Inquiry (1973), and the Drumbuie Inquiry (1974) are all based on

an examination of the inquiry transcripts, and the documents and productions relating to the inquiries. There was not an opportunity to attend those public inquiries. However the account of the Moss Morran inquiry is based on attendance at the public inquiry, examination of all relevant documents and interviews with principal participants (See Appendix 1 for a discussion of the problems of social enquiry relating to this controversy). I also monitored events from the initial planning applications made by Shell and Esso at the end of 1976 until the Secretary of State made his final decision at the end of 1979.

In each of the case studies to be discussed different themes will be highlighted. In general, Chapters 4 and 5 will be examining the way the public inquiry system systematically excludes issues as part of its routine process of taking evidence. Whereas Chapter 4 will generally review dominant themes in the four large public inquiries held in the Highlands (Cromarty 1969 and 1975, Dunnet Bay 1973, Drumbuie 1973-74), and seek to point up the operation of the classification and framing of knowledge and information in the context of the impact of oil on sparsely populated areas, Chapter 5 will be more specifically concerned with describing how the classification and framing of knowledge affects subjective views about the public inquiry. Chapter 5 is therefore particularly concerned with the relationship between the experience of participation in the public inquiry and the participants perceptions of 'openness, fairness and impartiality' or 'natural justice'. Chapter 6 is a further development of themes highlighted in Chapter 5 on the Moss Morran controversy. It will focus attention on the formulation and presentation of opposition through the organisation of a local action group rather than within the public inquiry setting. I will be seeking to show that there is a correlation between the feelings expressed by action group members of general acceptance of the public inquiry held in Fife, described at the end of Chapter 5, and the 'technocratic' form taken by their organisation of the local opposition campaign. Again the degree of acceptance of the specific public hearing and the 'technocratic bias' of these personnel at the core of the Action Group, will be understood within the general theoretical framework set out, particularly in Chapter 3.

The theoretical vocabulary developed in the first three chapters should be understood as a general orienting framework within which I can place my observations of the public inquiry case studies. My theoretical framework is therefore aimed towards the limited task of revealing the structures of power and the principles of social control operating within the public inquiry system by using the model of the classification and framing of knowledge to make them visible.

CHAPTER 4

OIL DEVELOPMENT AND THE HIGHLANDS

'Cromarty: the Scramble for Oil'

The first point to make regarding the two major public inquiries in East Ross-shire is that they took place in a context of an established industrialisation process led by the siting of the British Aluminium works at Invergordon in 1968, and amidst a 'scramble' for property and land for speculative industrial projects to cash in on the riches to be gained from the forthcoming oil boom. It was quite clear at the time of the Grampian Chemicals application to build an oil refinery, that the real dilemma confronting local people and the planning authorities was not 'development or no development.' Rather the issue was one of the scale, timing and appropriateness of Grampian's project for an area that was under threat of being completely swamped by industrial projects and developments. (6) However, it must also be said that at the time Grampian made their application the promise of an oil boom in East Ross remained vague. Local appetites for work and money had been encouraged by British Aluminium and a growing support was given to local politicians who wanted to give a full commitment to attracting oil developments into the Cromarty Firth area. Grampian Chemicals can therefore be seen as a forerunner of companies that would promise much to the area and deliver nothing. A company profile might clarify this point.

Grampian like many speculative industrial outfits at that time, were formed two months before their planning application. To quote from the public inquiry reports:

"Grampian Chemicals was formed as a limited Company in January 1968 with a nominal share capital of £100 of which 55% is owned by Planet Oil and Mineral Corporation and 40% by Mr. Eain Mekie..... Grampian's registered office is the address of a firm of solicitors in York Place, Edinburgh. Its business to date has been transacted from a residential flat at.....

...3 Wilton Court, London. Its staff consists of the Chairman (Mr. Mekie), Dr. Jenkins and Mr. Morrison. It has no other employees." (7)

The statement goes on to say that the Planet Oil Company from Dallas, who were Grampians associates, had only been in existence for two years and "like the Grampians Chemical Company, it has not yet built or managed a petro-chemical complex". The major mystery surrounding the application was whether or not they actually had a viable project with capital backing and technical expertise to ensure the safety and feasibility of the oil complex. Without proven expertise in petro-chemicals there was also a doubt about whether they had sources of crude oil and markets for their product. The late 1960's and 1970's were noted for the number of similar speculative consortia and projects in the Highlands that were taken seriously on face value by governments and local authorities eager to get oil out of the North Sea and converted into money as quickly as possible. It is in such a context that the public inquiry system becomes the front line planning institution to facilitate a public and measured consideration of the full implications of such speculative industrial projects.

Grampian Chemicals 1969 Public Inquiry.

The public inquiry was held because of an amendment to the Ross and Cromarty Development Plan (amendment No. 6). Given the proposed change of land use from prime agricultural use to industrial use there was a statutory obligation on the local authority to hold a public inquiry. Due to the sensitivity of the project the application was called in by the Secretary of State for Scotland. (8) What was particularly striking about the 1969 public hearing was the fact that 89% of the land proposed for a petro-chemical site was regularly used as arable land. East Ross-shire in fact is a very untypical area of the Highland Region. For example, the North of Scotland College of Agriculture and Hunting Technical Services Ltd submitted reports pointing out the

uniqueness of the climate, altitude, geology and soils of the area, comparing it favourably with East Lothian and stated that Lothian was "considered to be some of the best land in Scotland." (9)

In relation to Ross and Cromarty as a whole and adjacent counties the report said:

"This region is of outstanding importance containing the majority of the tillage, crops and grass, and livestock with the single exception of sheep. Almost all the high output, high value production in the county of Ross and Cromarty takes place in this one-third of the area."

(10)

So prime farm land and four crofts were under threat. It was an interesting case study to examine the public inquiries success in balancing the longstanding agricultural base of the area against the new industrial promise of oil. Issues and conflicts that were to arise in future planning controversies in other parts of the Highlands and Scotland, were first raised at this early hearing.

There was no organised local opposition beyond several individual objectors who, for the most part, were either long established residents or middle class professional people who were not reliant solely upon the local economy for employment. There were important questions relating to the nature of local 'development', which were to be central to future public inquiries, but which were not yet fully thematised in 1969. (11) The controversy was posed eagerly in terms of industry versus agriculture. No one seemed to be arguing against the idea of industrialising the Cromarty Firth area beyond those middle class objectors who had thought of the area in terms of retirement and amenity. Grampian were promising local people and the local authority immediate employment in the construction industry and a future long term promise of ancillary industries which would typically be expected to grow around a major refinery complex.

However, two important issues arose. First, was there an alternative site that would allow the industrial project to develop without necessarily damaging irreparably the agricultural base of the area? Second, could the statements, promises and evidence of Grampian Chemicals be taken seriously given their speculative financial base and lack of expertise in oil refining. These were important questions. How they were resolved by the inquiry I consider helps to clarify some of the major difficulties in the planning process. Could the local public inquiry process adequately arrive at a decision based on a relational idea that would seek to maximise the effectiveness of the competing criteria (industrial and agricultural) without damaging either. (12) (A relational idea is conceptualised as a technology, a design or concept which explicitly seeks to reconcile competing concerns about production, the environment and the local community social structure)

The public inquiry sat to address the narrow remit relating directly to amendment Number 6 of the County Development Plan. Wider issues could be forced on to the inquiry agenda only if there were individuals or organisations willing to challenge the parameters of the inquiries remit vociferously. There was obviously a lack of a vocal opposition from the locality beyond those middle class objectors I have referred to and as a consequence many issues relating to the long term feasibility of the Grampian consortium were not raised. For example, it could have been asked was this really a viable industrial project or a sophisticated form of land speculation? Given the admitted lack of expertise in managing and operating an oil refinery what guarantees about safety and pollution could be given by the Company? What credence could be put on statements of great urgency for the project made by Grampian and the promise of future economic growth stemming from their proposed development? It appeared these were issues beyond the terms of reference of the inquiry and they were ignored.

The mode of argument developed by the Reporter in making his recommendations was indicative of a form of 'critical compromise' generally adopted in relation to all subsequent North Sea oil projects. What seems to have been argued at Dingwall in 1969, and elsewhere later, was 'lets be safe than sorry in terms of development; there is no sound reason for believing that anything will ever transpire from this planning application, but we had better not be too precipitate so we must suggest a compromise site or set down some conditions and hope for the best because we can not be too fussy about what industries we can attract to Scotland'.

The objectors at the Grampian inquiry, mainly through the evidence of the Highland Agricultural Executive Committee, effectively forced the public inquiry Reporter to give serious consideration to an alternative site because of a breach to the Town and Country Planning Regulations 1966 (Regulation 5) which required prior consultation with the appropriate agricultural executive committee before preparing or amending a 'development plan'. The Reporter admitted in his summing up that "there can be no question that at the time the planning Committee on the 6th December 1968 decided to deal with Grampians applications by way of a further amendment, no consultation of any kind had taken place with the Highland Agricultural Executive Committee." (13) This issue was judged by the Reporter to be minor, insisting that even plans at an advanced stage of preparation could still have allowed consultation. He did however recognise a failure by the County Council to allow 'an exchange of views' and he was forced to conclude that legal proceedings could technically be raised to quash the amendment if passed by the Secretary of State.

This legal 'difficulty', combined with the controversy which might surround the giving of outline planning permission to transfer prime agricultural land for a speculative industrial project seemed to concentrate the mind of the Inquiry Reporter forcing him to seriously consider the feasibility and costs of siting the petro-chemical plant on reclaimed land at Nigg Bay. The weakness of the planning process is that a developer can not be forced to consider another site and Grampain were not keen to consider Nigg Bay.

Grampian argued against the alternative site in terms of (a) cost (there would have been little apparent difference in the costs of reclaiming Nigg Bay, but Grampian probably had difficulty enough raising the initial development capital.)⁽¹⁴⁾ (b) the time factor (a specious objection given the speculative nature of their plans)⁽¹⁵⁾ (c) and the lack of space for ancillary industrial development (The Nigg area would not have prevented ancillary industrialisation and again Grampian were unable to provide tangible evidence that they even knew of companies awaiting the outcome of their planning application before eagerly joining them).⁽¹⁶⁾

The Reporter eventually recommended the amendment should not be approved and that a policy decision be made to reclaim areas of Nigg Bay. Now the public inquiry probably arrived at the right decision by default. If the agricultural lobby had not possessed the resource of a legal technicality to pursue should the amendment be approved, then I am uncertain that the same conclusions would have been reached.

However, all such matters were to prove irrelevant. The Secretary of State over-ruled the Reporter and argued that a wider perspective, looking beyond the Grampian Chemicals application, required amendment 6 to go ahead and the agricultural land at Delny and Pollo to be re-zoned for industrial use to act as an encouragement to industry to locate in the Cromarty Firth area. It was clear that the Scottish Development Department was not really concerned about the status and viability of Grampian or indeed of the discourse which constituted the public inquiry hearing. Their main concern was to 'gear up' the Cromarty Firth area for North Sea Oil Developments first and foremost. If Grampian's project materialised all good and well' if not then large tracts of land would already be committed for industry when or if it came. The limited nature of the local public inquiry system was revealed. First, the breadth of considerations was hampered by a narrow remit without any opportunity seriously to investigate the applicants and their project. Secondly,

nothing that flowed from the public inquiry seemed to count in the Secretary of State's 'wider perspective'. The public inquiry seemed to have been addressing itself to the wrong set of issues. The real issue was effectively one of a new county development plan, not the particular issue of Grampian Chemical's application. Further, there was no recognition given by the Secretary of State that his 'wider perspective' could well have allowed an industrial project to proceed, involving complex technological issues, without an adequate consideration of its technical and economic merits. The distinction between decisions about land use strategies and decisions about particular technological projects on part of that land is important, and requires careful and separate consideration.

Both the public inquiry and the Secretary of State effectively legitimised a speculative company and project without seriously enquiring into their status. Grampian refused to reveal information about their financial backing, their sources of raw materials or what were to be their proposed markets. Little consideration was given to the nature of the technology and its compatibility with the environment beyond an unquestioning acceptance of promises that levels of pollution should be and would be kept within certain unspecified limits. The amendment was not challenged by the agricultural executive and the areas of land were re-zoned for industrial use.

The issues which were undeveloped at the 1969 public inquiry were sharpened by oil developments in the area in the first part of the 1970's which set the scene for a larger and more contentious public inquiry in 1975 which more clearly thematised the issues about 'development'.

I think a brief review of the land deals and speculation in the Cromarty area during the first part of the 1970's is important as a prelude to a closer examination of the 1975 public inquiry into an application by Cromarty Petroleum to build an oil refinery at Nigg Bay.

George Rosie's investigations into land deals in the Cromarty area in the 1970's quite clearly indicate the importance attached to East Ross by international businessmen and speculators. (17)

The good sheltered anchorage of the Firth, the reasonably good road and rail links and a series of flat peninsulas jutting out into the Firth, lying within easy towing distance of the major North Sea oilfields, meant; "Land which for generations had belonged to local gentry, farmers and distillers, suddenly passed into the hands of a tangle of international companies based in London, Edinburgh, Italy, Idaho, Houston, or New York". (18)

Some of Rosie's examples are worth mentioning because they provide a context for the 1975 inquiry, bearing in mind the nature of the Grampian Chemical Company and the fact that they never proceeded with their plan to build an oil refinery.

First the case of Mr. Munro's 143 acre Balcomie Farm. That land was sold to a firm called Brital Marine for £135,000 and they subsequently sought planning permission from the local council to 'construct offshore structures' at a site at Evanton, previously part of Balcomie Farm. Permission was given for this project fairly promptly because Brital had maintained that they had substantial backing from Richard Dunstan (Hull Shipbuilders) and three Italian engineering companies, Micoperi, Saiperi and Interconsult. However, it became clear through time that the association between Brital, Dunstans and the Italian companies was fairly tenuous. The Italian's actually denied that they had ever had a formal relationship with Brital and admitted only that they had held some very preliminary discussions with them. They publicly withdrew from Brital's plans as did Richard Dunstans. So after only one year Brital sold their land for £2,000 an acre and made £150,000 profit.

A similar case of land dealing resulting in no concrete industrial project occurred in 1973. Arthur Munro-Ferguson, owner of the Novar Estates held land on the edge of the Cromarty Firth which was apparently considered ideal for a deepwater port, storage and an industrial site. Munro-Ferguson joined a company set up by Sir James Lithgow, the Glasgow shipbuilder, which was named for local appeal the Evanton Development Company. So sitting on prime land, with Lithgow providing the appearance of engineering and industrial respectability, the Evanton Development Company attracted the attention of two American financiers from Houston. They eventually bought into Evanton Development and collectively they renamed their organisation, again retaining a local flavour, the Highland Resources Incorporated. This company in turn became Highland Deephaven before Munro-Ferguson sold his land to the company of which he was a director for £836,900. In a matter of months from his initial association with Lithgow, Munro-Ferguson vastly increased the value of his land through speculation. No industrial projects have ever materialised on that site.

Similarly Taylor-Woodrow bought up land at Alness and obtained permission to build oil rigs of the concrete type which were later to become controversial at the Drumbuie inquiry. No industrial project materialised. Mid-Continent, an American supply and service company, bought land adjacent to Taylor-Woodrow but nothing has yet materialised from them either.

What was striking about the wheeling and dealing in the Cromarty Firth area throughout the 1970's was the number of small, under financed, and largely speculative companies, that flooded the area creating false hopes and resulting in a positively confusing situation for the local authorities trying to plan for future development. So starting with Grampian Chemicals and continuing through a series of land deals in the area in the early part of the 1970's there emerged yet another speculative development company that directly links Grampian to the Cromarty Petroleum project and the inquiry of 1975.

Through a network of companies stemming from a partnership between a Lincolnshire businessman, John Foulerton and the merchant bankers Edward Bates, a property company known as Cromarty Firth Development Corporation was established. It proceeded to buy up thousands of acres in the region paying out nearly a £1 million to Grampian Chemicals for their land at Delny and Nigg. In under two years Cromarty Firth Development spent £4 million. They were joined by former Highland and Island Development Board personnel (leading to parliamentary questions, and controversy) and publicised ambitious plans for development throughout the Cromarty Firth area.

None of these plans came to fruition and Cromarty Firth Development became over extended and embarrassed by the huge interest charges incurred financing their land deals. This predicament meant the selling of the Delny and Nigg sites yet again to a company called Alphaclass Investment Developments recently set up at the offices of McRobert and Sons, Solicitors, 91 West George Street, Glasgow. ⁽¹⁹⁾ That development company became miraculously transformed into the Cromarty Petroleum Company. It had subsidiary status from National Bulk Carriers, a giant American Company, but its financial base was similar to Grampian Chemicals, £100 capital. They submitted plans to build an oil refinery on the Nigg point and the progress of that inquiry and its decisions are very instructive.

Cromarty Petroleum's 1975 Public Inquiry.

The public inquiry opened on the 11th February 1975 and continued until the 21st April 1975. The specific remit for the inquiry was clearly stated on the opening day; "The question at issue was whether the Secretary of State for Scotland would make an Article 8 Direction to enable the Council to grant planning permission in principle to Cromarty Petroleum Limited subject to certain conditions." ⁽²⁰⁾ Those conditions related to safeguards against pollution, visual amenity and noise and vibration from the operation of the plant. In addition conditions would be set down relating to the form and timing of the construction programme, and highways and public access

within the area of the application. The central features of the remit continued: "The inquiry was not about whether or not there should be a refinery somewhere else, as there was no proposal to build one elsewhere. This enquiry is about the zoning of land for heavy industry." (21) So the remit sought to direct the inquiry to the specific issue relating to 'crude oil storage, intermediate and finished products storage above and below ground, a marine terminal facility, refinery process area and associated administrative buildings' on a particular site and no other." (22)

Now the immediate problem which this presented to the objectors was the fact that they could not expect to be successful in arguing that site X would be better suited to the proposed project if the developer insists that the chosen site Y may not be perfect but for a variety of commercial reasons that is the site they insist on using. (23) Given the difficulty in such planning matters to get a developer to consider an alternative site, there is nothing that anyone can do to force a developer seriously to consider locating elsewhere. A developer can always suggest some fundamental problem with an alternative site often based on unchallengeable commercial criteria which they will either refuse to make public or partially conceal. So the onus is very much on the objectors to make an overwhelming case that the planning application for the site contained in the remit is absolutely unsuitable. If they can not make such a case then they are more than likely to lose the public inquiry stage of their opposition campaign.

A whole series of fundamental questions are excluded by the initial construction of the Secretary of State's remit and it can be used like a fly swat at any time during the inquiry proceedings to snuff out a line of questioning which is considered too far beyond what the Reporter considers to be meaningful. (That of course, does not mean that it would necessarily have no bearing on the application).

The possibility of concentrating the inquiry on the exploration of relational ideas which might inter-connect the technological, commercial, environmental and social factors integral to a particular industrial project, are consequently destroyed by the forcing of complex issues into the narrow framework provided by the Secretary of State's remit. On top of the remit there is imposed a series of commissioned technical and environmental impact reports which in turn force inquiry time to consider a narrow exploration of the specific technological problems involved in the planning application. The nature of the technology advocated by the developer will invariably be taken as given. The question therefore quickly becomes transformed from, 'should this project be allowed at all', to 'what ways might it be assimilated into the existing environment'. And even with respect to this latter emphasis there is a tendency for the inquiry structure to be inadequate because the degree of assimilation of a project into the existing environment is always in terms of what Kuhn might call 'secondary' rather than 'primary' elaboration. By this distinction I mean that the remit and report system imposes constraints upon the science and technology review, relating directly to the assimilation of the project in terms of explicit, already given, criteria and dimensions of assessment (secondary elaboration) rather than an examination of more basic premises and underlying assumptions about the technology (primary elaboration). Secondary elaboration relates to 'how' questions. Kuhn refers to the process of treating scientific and technological problems as 'technical puzzles' where the underlying rationales are not questioned, and competing 'solutions' are compared along similar explicit unquestioned working assumptions. (24) Primary elaboration by contrast occurs in relation to 'why' questions. It will seek to dislodge the rigidity of 'mental sets' that take criteria as given. The nature of the scientific and technological assumptions of an industrial project will be looked at in terms of its legitimate status as 'the only way to proceed'. I am suggesting that remits and the technical report system combined with the local inquiry structure favour 'secondary elaboration' of problems of technology/environment relations rather than 'primary elaboration'. (25)

The Contending Interests

In support of Cromarty Petroleum's application were the Ross-shire County Council, the HIDB and a local Action Group called support Cromarty Oil Terminal (SCOT).

SCOT was effectively led by Liberal Councillor John Robertson who was also a local farmer who had made a great deal of money in the late 1960's by selling off his farmland around Nigg Bay. The Sunday Times of the 13th August 1972 said of Robertson that he is "one of the architects and beneficiaries of what is happening at Nigg - the rocks come from a quarry on his land - and he holds a substantial vision of more prosperity to come because of the natural benefits and strategic advantages his home ground enjoys as a jumping off place for the best lump of the North Sea". Robertson had consistently led the pro-development lobby around the Cromarty Firth area. This was unsurprising given that he was on the right side of the water to benefit directly from development, unlike those representing the Cromarty Refinery Opposition Workers (CROW), who were led by Ross and Cromarty District Councillor for the Black Isle areas of Cromarty, Rosemarkie and Fortrose, Hamish Stuart. Both SCOT and CROW were limited vehicles for the competing interests of local politicians representing both sides of the Firth. SCOT drew its support predominantly from those areas around Evanton, Alness and Invergordon that were the centres of development and proposed development, populated to a large extent by people who were incomers to the area, either from Central Scotland or other distant parts of the Highlands. The District Councils in those areas were in large measure in favour of an expanded industrial base and were keen to augment the limited base already started by British Aluminium, M.K. Shand and Highland Fabricators. CROW were firmly based on the Black Isle farming communities and pulled in small local businessmen and tradesmen who felt threatened by the strain on local skills and labour. Those who were dependent on the tourist trade, and a variety of objectors defending the environment and amenity, also supported CROW.

The first point to be made about both organisations is that they were very limited in terms of the kinds of activities they became involved in. Both organisations concentrated their efforts on petition collecting and of course formulating and presenting their case at the public inquiry hearing. A closer focus on their respective cases will provide a useful starting point for an examination of the public inquiry.

John Robertson leading the arguments in support of Cromarty Petroleum took an aggressive stance. He objected to there being a public inquiry at all, because most of the objections were, in his view, irrelevant. The real debate, he argued, took place six years previously when Grampian Chemicals had forced an amendment to the County Development Plan through the Secretary of State's intervention. Robertson insisted that the issues which CROW were raising should properly have been aired at that time saving the ratepayers £70,000 - £80,000 (their share of the 1975 public inquiry bill). The area around Nigg had been zoned for industrial purposes like the one being proposed by Cromarty Petroleum and so there was nothing further that needed to be debated except a discussion about the overall planning conditions for the project. (26) SCOT made an issue of their own petition with about 6,000 signatures supporting the project. "The aim of SCOT was to say that they wanted to see that Plan implemented..... The weight of objection to the refinery did not lie to any variation implicit in the alterations to the Development Plan, but to the mere implementation of the Development Plan itself". He continued:

"The Development Plan provided for an oil terminal and whether or not the risk of spillage was a modest one, as described by expert witnesses, or the horror comic holocaust the Nature Conservancy tended to indicate, was not a matter of substance". (27)

Robertson focussed much of his evidence on the technical debates which related to pollution which he considered eminently controllable. However, during his cross-examination by objectors, Robertson, along

with the evidence he led of his two fellow SCOT members, the real personal conflicts in the area emerged,

Robertson objected to questions relating personally to him being addressed to other witnesses. In particular he considered questions relating to his land ownership and land deals and his association with the Grampian Chemicals as improper and wholly irrelevant. (28)

It emerged also that he considered the opposition to be unscrupulous: in July 1976 he wrote in a County Council note which was published at the inquiry that "opposition to the refinery was a thing of anonymity and shadows which gave every sign of being promoted by some undisclosed agency for its undisclosed ends." Very dramatic words tacitly aimed at B.P.'s interest in the competition from the refinery but also revealing a major division within the region between pro - and anti-development lobbies. More significantly Robertson and SCOT were hostile to the public inquiry system altogether and revealed an impatience with those who wanted to use the public inquiry instrument to question the nature of development in the area more broadly or who were seeking to question the status of the developer. He made a defence of Cromarty Petroleum and their project in general platitudinous terms. SCOT were generally hostile to any attempt to examine their status. That was considered "irrelevant" or "sinister time wasting".

SCOT's view was eventually given support by the Reporter during the sixth week of the public inquiry in relation to the evidence being led by the Nature Conservancy Council (NCC). The NCC argued that land on the nearby Nigg Point was a recognised nature reserve and they believed an oil refinery was objectionable and threatening to that reserve. The land in question, the NCC argued, had a formal status as significant as the land zoned under Amendment No. 6 for industry, and they were seeking a reversal of the approval given for an oil terminal. Robertson sought clarification from the Reporter "that the Conservancy submission, seeking a reversal of the approval given for an oil terminal was not valid, and that the inquiry was only concerned with conditions to

be attached to it". The Reporter replied that "my interpretation is that the matter of oil storage for the terminal had been determined in Amendment No. 6 to the County Development Plan".⁽²⁹⁾ The issue was only one of conditions attached to a refinery, not whether it should be established. However, in response to Robertson's rejection of the Conservancy's evidence, in terms that it "was nonsense from start to finish and totally irrelevant and I can not understand why they were represented at the inquiry", the Reporter at least pointed out that "they have as much right as you, Mr. Robertson, to give their opinion at the inquiry". One could perhaps take this as an indicator, at least informally, that the Reporter took a wider view of the hearing than SCOT. The Reporter indicated further, however, the selective function that he has in directing evidence. He stated to the NCC that "I am not trying to prevent examination of evidence, but I am asking whether the inquiry should keep to important principles and not to the almost pernicky details of the number of birds involved."⁽³⁰⁾ This was related to the birds on the nature reserve that would be affected by the refinery. The NCC could not accept that their "pernickity details" were not relevant to the issue, but this was of no consequence. The Reporter had indicated his thoughts on the matter and had undermined the basis of the NCC's argument.

The main theme to emphasise is that SCOT were insistent that discussion should be contained to the basic narrow remit of the inquiry; the consideration of the conditions to apply to a refinery, not its establishment. The Reporter was obliged to support that line. The task of attempting to make a case against the refinery development was difficult enough given such a narrow technical remit. The main issues relating to the development had to be raised within a very confined set of parameters which made the opposition case extremely difficult.

The case marshalled together by CROW had to be more substantive than SCOT's. The supporters organisation had, after all, Cromarty Petroleum to field the relevant expert witnesses to deal head on with the technological, commercial and pollution issues. CROW

had to prise open some small space within which to force the ecological, social impact and economic levers which might at least convince the Reporter, if not ultimately the civil servants in the Scottish Development Department and the Secretary of State for Scotland. The preceding evidence made it quite clear that the points at issue were particularly narrow. The establishing of an oil refinery was not in question so CROW had to concentrate on the three main areas which could still affect matters. First, the management and organisation of the plant, secondly, the social impact on a sparsely populated area and thirdly, the commercial prospects for another refinery in the United Kingdom.

However, particular mention must first be made of an intervention by the Reporter during the fourth week of the inquiry that had partially stifled CROW's other important line of argument - that of questioning the status of Cromarty Petroleum and the viability of their proposed project. This particular exchange is worth pointing up as an example of the tendency towards strong framing within the local inquiry format. I say tendency towards strong framing because in the example below it was significant that the Reporter intervened and re-affirmed his preference for a very focussed or engaged debate. He stated an interest in encouraging a discussion of "planning issues" relating directly to the remit, but he did not actually prevent a line of questioning, and importantly, he recorded that exchange in his summary report. What is significant is that the lawyer leading the cross-examination was allowed to raise the issue but not pursue it. CROW did not raise the question of Cromarty Petroleum's status in their own evidence, so subtly the Reporter's intervention was effective. (31)

Kirkwood QC led his cross-examination of E.D. Loughney, Managing Director of Cromarty Petroleum, by asking about the ownership and origins of Cromarty Petroleum, their relationship to National Bulk Carriers and the fact that all three of the Company Directors lived in America. Kirkwood then requested Loughney to inform the inquiry about the nature of their Share Capital. As I have

noted above, Cromarty Petroleum was a speculative association of three individuals variously associated with subsidiaries of National Bulk Carriers; Universal Tankships Inc. who owned 98 £1 shares and Sea Tankers Incorporated who owned 2 £1 shares. The Share Capital of the Company was £100. Now their objective was to persuade Universal Tankships to put up about £30 million towards the estimated cost of the refinery in 1975 of £150 million. That money had not been guaranteed. They were relying to some extent on the United Kingdom government grant of 20% on plant, machinery and buildings. The substantial amount of capital required to meet the balance of costs for the project would have to be raised on international money markets, which they conceded were very uncertain. When pushed by Kirkwood QC on the precarious financial base of the Company and asked about guarantees for the project particularly with the history of land dealing in mind Loughney replied: "I can not give a firm undertaking that the refinery, if permitted, would be built. There was a possibility that we might not go ahead and I can not give an assurance that the site might not be sold to a third party". (32) At this point the Reporter intervened: "I question, Mr. Kirkwood, the relevance at a planning inquiry of such matters concerning Cromarty Petroleum's share capital, the ownership and origins of the Company, their relationship to National Bulk Carriers, or indeed the fact that all three directors live in America". Kirkwood's explanation for his line of questioning in terms of the previous Grampian Chemicals Inquiry was unimpressive as far as the Reporter was concerned:

"I appreciate that local people do not want a repetition of the Grampian fiasco but I do not want to have points, once made, prolonged. I question whether the matter of the directors of the Company is properly a planning issue." (33)

So the definition of what was or was not a "planning issue" was once again narrowly circumscribed. The whole issue of the status and viability of Cromarty Petroleum was however, in my view, of crucial relevance. There was a recent history of land dealing on the back

of promises for ambitious industrial projects, as I have indicated above. The area was undoubtedly very strategic for North Sea Oil developments and there was consequently a premium on industrial land. It was of paramount importance that Ross and Cromarty Council break out of the continuing circle of land speculations which resulted in tying up important zoned land forcing its price up and leading to no tangible employment. The only people who seemed to have been making money were the land speculators. Now one way of ensuring at least a partial restraint on this process was to make absolutely sure that Cromarty Petroleum was a probable future employer.

Kirkwood QC for CROW revealed something about this process of restricting land use in relation to Cromarty Petroleum. Loughney admitted through cross-examination that he and his associates insisted upon a condition being imposed on the land at Delny when still owned by Cromarty Firth Development Ltd. When they bought their Nigg site, Cromarty Petroleum made it a condition of their land deal that the Delny land, part of the only major site in Britain that had already been zoned specifically for oil refining, stemming from Grampian Chemicals' 1969 application, should not be sold to a competitor for that purpose. That information was very revealing about the kind of practices that should properly have been considered "planning issues" of wider significance and perhaps part of a broader remit to examine development and planning in the area. Such issues could not be, and were not, pursued by the objectors.

CROW led their evidence through a Mr. Steven Berridge, senior partner of Berridge International Consultants, Leicester. (Berridge had been a Chief Chemist at Esso's refinery at Fawley) and Mr. G. Kemp, a political economist from Aberdeen University, who were presented as 'experts' to counter the evidence given by Dr. Ian Fells, Reader of Fuel Science at Newcastle University and Professor Alan Tait, Professor of Economics at Strathclyde University who had been 'expert' witnesses supporting Cromarty Petroleum. These 'experts' were offering opinions both about the management of the refinery and its economic viability. ⁽³⁴⁾ What became clear was that both sides

accepted there was no economic justification for additional refining capacity in the United Kingdom at that time. There was therefore a decision to be made about a refinery based on speculations about future market trends. One possible short run benefit that could be estimated was the number of construction jobs created. However, there was dispute about the exact numbers that were likely to be drawn from the local area and the more fundamental issue then arose about social impact of essentially migrant labour. The inquiry forum seemed to provide a poor context within which a genuinely discursive exchange could take place on the important social and economic issues.

The local economy was obviously an area of concern to fishermen, farmers, and hoteliers dependent upon the tourist trade. There had been an earlier recognition of the importance of the agricultural base of the area during the 1969 Grampian Chemicals Inquiry. It was therefore another crucial test for the inquiry system, and ultimately with the Scottish Development Department, to weight the economic base of the Cromarty Firth area and surrounding country in agriculture, fishing and tourism against the potentially unfulfilled promise of oil. The traditional industries created both a social and cultural stability within the area that could not easily accommodate the demands of industrialisation. The agricultural land zoned for industrialisation around Delny and Nigg in the Amendment No. 6 had already indicated the attitude of the Secretary of State to agriculture in relation to North Sea oil industries. The issue of marine pollution did not figure prominently in the 1969 inquiry because the planning proposal had originally been made for an inland site at Delny. However in the 1975 inquiry all the main Highland Fishery Boards made strong presentations against Cromarty Petroleum under the banner of CROW. Oil spillage around the Cromarty Firth would be a critical factor. The local salmon, sea trout, sprat fishing and offshore fishing industries had existed for many centuries but it was generally recognised that fishing and oil refineries were generally mutually exclusive. The oil refinery, for example, was freely admitted by Cromarty Petroleum to have a possible life

existence of only 40 years. The fishery and agricultural lobby did not consider that to be a fair trade off for the destruction of the traditional industries of the area. What would the Reporter and the Secretary of State make of such a choice?

The tourist industry was seasonal and many hoteliers who had complained about industry in the past had done so very much with an air of 'for God's sake don't make the servants too expensive'. The issue for tourism in the Cromarty Firth area was one of survival or death. Once an oil refinery was built at Nigg then Cromarty village, for example, would inevitably become irretrievably lost as a tourist attraction. However, the real difficulty was how can such a case be made at a major public inquiry into an industrial project. One way was certainly to demonstrate the financial gain to the area, something like £4 million each year. Such figures could be demonstrated by numbers of visitors in hotels, something in the region of 800, 000 visitors.⁽³⁵⁾ There could also be an argument made for growth and investment.⁽³⁶⁾ These lines of argument were presented but appeared insignificant against the vast sums of money promised by Cromarty Petroleum.

Adrian Varwell, the Social Development Officer for Ross and Cromarty, and sociological researcher on the Aberdeen University Impact study at Invergordon, gave evidence on behalf of the council which highlighted probable points of strain on the local communities should the refinery project materialise. But what was obviously an important issue did not have one supporting production out of 28 tabled by the County Council. Within a range of highly technical reports tabled by both the technical experts and the environmentalist lobby, hardly any mention of the issue was made beyond a short appendix to the Council Impact Study written by Varwell. CROW failed to give much weight to the wider social impact of the refinery, beyond immediate economic impact. One feature of the social impact debate was the obsessive focus on quantitative matters relating to the provision of social workers and the like. This was obviously an important issue, but one that quickly became seen as 'the social impact problem'.⁽³⁷⁾

Now these important issues: fishing, agriculture, tourism plus economic viability and social impact, were not dealt with in any way which could lead to substantial conclusions one way or another. A striking feature of the local public inquiry system is the tendency to structure evidence around specialised knowledge and experts rather than issues. Argumentation is not so much discursive as adversary. The strong hierarchical organisation of status means credentialled 'experts' relating directly to the narrow remit predetermine the parameters within which debate can take place. Objectors who wish to play the 'technology game' must compete to a large extent on the terrain already established by the developers given and unquestioned technology. This point I have already discussed in terms of 'secondary' and 'primary' elaboration of technical problem resolution. (I will develop this theme particularly in Chapter 6 in relation to the organisational constraints placed upon local action groups, and below in the context of the Dunnet Bay inquiry.)

What this all leads to is a situation where neither the natural or the social scientific effects of the proposed project are adequately debated. No possible facility exists within the inquiry setting to encourage the resolution of difficult scientific and social problems. A statement of 'reasonable' sounding arguments and data are assembled which seems to allow, first, the Reporter to take a shot in the dark about which are more reasonable, and secondly, given the technical stalemate and engineered inconclusiveness of the proceedings, the Secretary of State seems to be able to carve out a space within which to adopt a 'decisionistically' expedient political stand and confer honours in accordance with his already existing political and ideological strategy. This interpretation can be explored by examining the conclusions reached by the Nigg Inquiry Reporter and the Secretary of State's decision.

Conclusions and Decisions

Mr. Maycock, the Reporter at the 1975 inquiry, like his predecessor in 1969, found against the applicants and recommended that the

Secretary of State for Scotland withhold his permission. Maycock concluded that there were major objections to the proposed development because of:-

- (a) The impact it will have on the landscape of Easter Ross;
- (b) The risk it would introduce of a major oil spillage, or a series of minor spills, having a cumulative and perhaps irreversible effect on wild life in intended national Nature Reserves of international importance;
- (c) The effects which such spills and any publicity relating thereto can have on the population in, and visitors to, the area;
- (d) The short and long term effects which the development and its associated activity can have on the fishing industry;
- (e) The inhibitions and limitations that a privately owned marine oil terminal designed to service only one industrial development and constructed at Nigg Point, a key location in the context of the Cromarty Firth, may impose on the future development of the Firth as a port. (38)

Having outlined these major reasons for recommending rejection of Cromarty Petroleum's plans, the Reporter rather fudged the issue by admitting that he did not think such objections, of themselves, were insurmountable. (This added to the vacuum created by the inquiry process itself.) The real reasons he offered for rejection were, first, he considered the lifespan of the refinery of 40-50 years rather poor value for the impact it would have, and second, the applicants had failed to demonstrate that there was an economic need for the refinery, at least not sufficiently urgent to warrant pushing aside the major objections.

Now this conclusion, like the earlier 1969 Reporter's conclusion, does demonstrate that it is possible to win at the public inquiry stage even though fundamental issues relating to the status of Cromarty Petroleum were ignored by the Reporter.

There were important issues that required a broader based and more extensive enquiry into how sparsely populated areas should respond to North Sea oil. However, neither the political will existed in government to wait for such considerations, given the desperate need for oil, nor was there an adequate administrative apparatus in existence other than a PIC, to facilitate a wider enquiry into North Sea oil onshore development. Nevertheless, after two public inquiries, two Reporters had found in favour of the objectors. What would the Secretary of State's view of the matter be?

The first point to be reiterated is that where there is a lack of agreement about an issue, and the inquiry system is not constructed to obtain an agreed conclusion about complex issues, then the Secretary of State can accumulate 'inconclusions' to provide a legitimate basis for taking decisive action in accordance with his own or his department's perceived interest. A closer examination of the Secretary of State's response to his Reporter's conclusions demonstrates this:

"On fishing, the Secretary of State's conclusions from the Report is that the issue is not clear cut. (My emphasis).....while noting the view of the Reporter that certain steps could be taken which might reduce the ill effects and agreeing that these require further investigation, the Secretary of State takes the view that there is conflict between two major interests but that he should not allow the possibility of some damage to fisheries to be an over-riding consideration." (39)

Continuing along similar lines, the Secretary of State admits:

"The objections about possible oil spills raise difficult issues.....Because of the importance of this issue a marine pollution assessor was appointed for the inquiry. The assessor concludes that none of the issues which could be decisive were clear cut." (40)

Remaining on this theme the Secretary of State uses the lack of agreement about marine pollution in relation to tourism to underscore his viewpoint. Particularly important is the way predictions about

future tourism are difficult to quantify accurately so this allows the Secretary of State to adopt an aggressive sceptical stance:

"The Secretary of State agrees that these considerations (oil pollution, risk to wild life, spoiling of beaches) are of great importance, though he is not convinced that the potential effect on tourism would be as great as has been suggested." (41)

The Secretary of State fills the vacuum with a particular opinion where it can be seen to be legitimated as 'reasonable' and possibly 'responsible' fulfillment of an administrative duty to decide.

Some alternative lines of legitimating 'official discourse' are, first the 'snake effect' argument:

"As regards landscape, the Secretary of State accepts that the structures at the refinery...would be conspicuous and, particularly when viewed from the Black Isle and Cromarty, a major intrusion in a landscape which is still primarily rural. It should be borne in mind however that industrial developments have already taken place at Invergordon and Nigg. In the Secretary of State's view these developments have already affected the character of the area." (42)

Second, there is the 'trust on public servants' form of legitimation:

"The Reporter takes the view that a privately owned marine terminal at Nigg Point could inhibit the future development of the Cromarty Firth as a port. The Cromarty Firth Port Authority has powers under the Cromarty Firth Port Authority Order Confirmation Act, 1973 to control the use and development of the port." (43)

The question remains unanswered by the Secretary of State about the likelihood of the Port Authority actually using its powers, particularly in relation to public ownership and the development of facilities.

Third, there is the 'true of any major project' form of legitimation. Here the unusualness of the proposed development is played down in terms of its likely effects upon the locality. The sparsely populated nature of the Cromarty Firth is de-legitimated as 'special'. For example, while agreeing with the Reporter that there would exist;

"considerable economic and social difficulties through overloading of the existing local labour force during the construction of the refinery andthe limited amount of permanent employment - about 400 jobs - would have a relatively short life, suggested as 40 to 50 years," (44)

the 'official discourse' continues:

"the Secretary of State gives rather different weight to these factors. He agrees that there would be likely to be some economic and social disturbances during the construction period of the refinery, but this is likely to be true of any major project....." (45)

Fourth, the Secretary of State can quite simply 'pull rank'. This is precisely what he did ~~with respect~~ to the Reporter's assessment that the refinery's expected life of 40-50 years was too short.

"The Secretary of State does not agree with the Reporter's assessment.....In his view, this period, spanning two generations, is long enough to make an important contribution to the development of the area." (46)

In his overall concluding remarks the Secretary of State makes clear that "the arguments in this case are finely balanced". The coast is clear to overturn the public inquiry Reporter.

The 'official discourse' constituting the Secretary of State's letter announcing his final decision acknowledges that a major legitimation

task of justifying the over-turning of the inquiry Reporter's recommendations has to be undertaken. In general the 'official discourse' of all Scottish Office Planning Circulars tacitly accepts, and institutionally seeks to propagate, the Habermasian concept of an 'ideal speech situation' by having a public inquiry in the first place. As Luhmann observes about institutional practices like public inquiries: "at the beginning, real uncertainty with regard to the result has to be structurally guaranteed, this means power has to be suspended in order that participation can be motivated at all." So in order to impose an institutional form on underlying conflictual relationships the idea of an open forum, which will be dominated by rational discourse rather than naked administrative or economic power, is presented to the public.

The public inquiry is, to reiterate my earlier argument, founded on the public's acceptance that discourse will prevail and facilitate 'natural justice' in the way suggested by Habermas:

"Discourse can be understood as that form of communication that is removed from contexts of experience and action and whose structure assures us: that the bracketed validity claims of assertions, recommendations, or warnings are the exclusive object of discussion; that participants, themes and contributions are not restricted except with reference to the goal of testing the validity claims in question; that no force except that of the better argument is exercised; and that, as a result, all motives except that of the co-operative search for the truth are excluded". (*Legitimation Crisis*, p106)

The 'legitimation' problem which confronts the Secretary of State in any case where the inquiry Reporter's recommendations are ignored, is to repair the balance to any possible 'legitimation deficit' which might arise as the public come to see, at least in their terms that the public inquiry was not concluded on the basis 'of the force of the better argument'.

Having adopted a series of justificatory devices to enable the Secretary of State to appear 'reasonable' in disagreeing with his Reporter, the second task is to reconstitute the relationship between the central decision-making centre and the locality. The obvious area within which this relationship can be repaired is through the conditions to be established controlling the development by Cromarty Petroleum. Several different processes are at work. First, in order to save his Reporter and technical assessor from complete humiliation the Secretary of State will often recognise the usefulness of his Reporter's observations about environmental and safety controls. However in the case under discussion this practice did not follow. The Reporter at the Nigg 1975 inquiry, rightly in my view, suggested that conditions and controls attached to Cromarty Petroleum's specific project should, if allowed by the Secretary of State, apply only to that company. Meaning of course that any other possible applicants should be looked at independently on the merits of their project and technology. The letter published by the Scottish Development Department simply states: "The Secretary of State does not consider it appropriate for him to make this a condition of his direction". Presumably this was meant to indicate that the zoning of the land for refining purposes was the real objective as it had been in 1969.

However, the letter goes on to outline the areas of pollution control desired by the Secretary of State, so creating an impression that his decision was not based on a 'narrow' assessment of industrial advantage. More pointedly he assures:

"Nothing in this letter precludes the planning authority from exercising their powers under Section 26 of the Town and Country Planning (Scotland) Act 1972 to impose on the grant of planning permission such additional conditions as they may think fit."

And in order to assure the other authorities who have an interest in the application:

"Any planning permission which the Regional Council may give does not exempt the applicant from obtaining other necessary consents, including any required from the Cromarty Firth Port Authority."

(The letter concludes by rejecting all claims for expenses incurred fighting the public inquiry).

Given the amount of time spent on the public inquiry hearing, not to mention the rehearsal of many of the issues in 1969, it was not surprising that the second disagreement between a Secretary of State and Inquiry Reporter led many local people to feel particularly disenchanted with the whole institutional process of the public inquiry. Even local Conservative M.P. Hamish Gray remarked in the local Ross-shire Journal that "It seems amazing that the Secretary of State should have agreed to hold a public inquiry if he had no intention of accepting the recommendations". He added though that "I have no quarrel with his decision, however".

Hamish Stuart, Chairman of CROW, presents an example of how the legitimacy effect of the Secretary of State's decision letter can often have the desired result of re-assuring objectors that the ultimate decision was taken for sound and justifiable reasons. His reaction to the decision indicates a separation of the inquiry process, which appeared to him to be well organised, "fair", "open" and "impartial" from the nature of the decisions reached by the inquiry. (A distinction found in other cases, notably in Fife, as I will discuss in Chapter 5). He commented that, "we (CROW) do not feel too greatly disappointed. The issue was finely balanced". An indication that CROW lacked confidence in their own case perhaps. The Secretary of State's approach certainly seems to have assured many of the objectors that the inquiry system was capable of arriving at such a conclusion; that the issue was 'finely balanced'.

Stuart commented in the Ross-shire Journal that CROW fundamentally disagreed with the logic of the Secretary of State's decision.

"In the long term the decision will serve only to worsen a situation in an area which had come to depend on one construction project and then another..... Eventually the cycle must end, and the ending of it must be worse than had the project fallen".

The charitable attitude to the public inquiry system is partially explained by a climate in which the general acceptance of the industrialisation of a rural area had become established. The feeling that fundamental arguments against industrialism had not been adequately examined by the inquiry hearing was not strongly felt. The impetus for a wider opposition movement against Cromarty Petroleum did not exist.

What is difficult to understand is the absence of wide-spread reaction against the whole inquiry system particularly in those instances where the Reporter's recommendations in favour of the objector's case are over-turned by the Secretary of State. There were undoubtedly economic indicators which suggested to local people that the Cromarty Petroleum project would not be realised for some time. The company in their own admission had a great deal of work to do to organise the money for the refinery. Many local objectors used to the unfulfilled employment promises from other projects just did not think the refinery would materialise and therefore there really was not any point in pursuing a campaign against it. The impetus to extend opposition against the project was therefore comparatively weak. The opposition was revealed in the end to be a basically half-hearted attempt to ensure stringent conditions would be set down to control the refinery rather than prevent it becoming established in the first place. There was no social base for CROW outside the leadership of the Cromarty district council, but most important of all, the public inquiry system had in itself managed to assure people that they had fully exercised their right to be heard, and everything was satisfactory and fair.

DUNNET BAY AND DRUMBUIE

Sandwiched between the two East Ross-shire public inquiries were two controversies which raised even more serious questions about the adequacy of the planning system effectively to scrutinise large scale industrial projects in sparsely populated Highland areas. The public inquiries at Dunnet Bay in 1973 and at Drumbuie 1973-4 were both concerned with the construction of oil rig platforms in remote Highland areas. They provide important information about the local public inquiry system in a context where the potential scale of impact from a proposed industrial development would have been unusually extreme in relation to its proposed operating environment. Nowhere in Scotland was the quotation from Mackay and Mackay cited above more appropriate than at Dunnet Bay and Drumbuie. The problems related to the "marrying of the oil industry with the traditional economic social structures" of the Highlands seemed to many to be irresolvable in terms which might defend small Highland communities. Faced with the pressure of a government intent on encouraging oil development at all costs, evidenced by the Coastal Sites Bill, the public inquiry instrument became the most important means through which local people and objectors could formally challenge the oil developments and express their objections. The public inquiry instrument was nowhere under closer examination. It is perhaps important to state again that the public inquiry system did provide a focus for objections. The controversies that surrounded the development proposals for Caithness and West Ross-shire became publicly available because of the institutionally guaranteed right for people to voice their views about the major impact on their communities in a local public inquiry. Nevertheless beyond marking out development controversies for the public imagination, the public inquiry system provided little genuine opportunity for local people and environmentalist groups to halt what seemed to be an inexorable process which seemed to subordinate all interests except those of oil. The Drumbuie Inquiry seemed to represent an exception to the rule prevailing elsewhere in Scotland.

However, if examined more closely Drumbuie represents the ultimate in irony; an apparent total victory by local objectors winning both the inquiry and the Secretary of State over to their view yet the very type of development rejected within the Drumbuie inquiry was accepted simultaneously without any inquiry for a site six miles away. I will examine the important issues of Drumbuie below. First, I want to point up the strong classification and framing of knowledge in the context of Highland development by examining some central themes from the Dunnet Bay public inquiry.

Dunnet Bay.

The controversy surrounding a proposal by Chicago Bridge to carry out oil rig platform construction on a site at Dunnet Bay, Caithness, was far more clearly centred on environmental conservation than any of the other main public inquiries into oil development. The main objecting groups to Chicago Bridge's plans were the Conservation Society, The Association for the Preservation of Rural Scotland, and The Scottish Wildlife Trust. There was evidence from the Natural Environment Research Council and the Nature Conservancy. The central issues revolved around the application for planning permission to change the use of 103 acres of land forming part of the foreshore and the sand dunes behind Dunnet Bay which was part of the Caithness County Development Plan as an area to be developed for tourism and recreation. The specific site area required by Chicago Bridge was noted as of 'great landscape value' in the Development Plan. In addition the area had been designated of 'special scientific interest' and officially notified as such under section 23 of the National Parks and Access to the Countryside Act of 1949.

Chicago Bridge were an American Company incorporated in Illinois but they had been operating in Britain for the previous 19 years building containment vessels for nuclear reactors, space simulation chambers and a variety of other types of steel vessel for industrial

use. (47) Their main argument was that there was no other suitable site available for the construction of oil platforms and it was in Britain's 'national interest' to allow essential oil related development to proceed unhindered. This was an interesting theme because having pleaded 'national interest' for their project, and the unavailability of alternative sites, they were given planning permission only then to decide that there was indeed an alternative site in Ireland. No oil related development has ever taken place at Dunnet Bay. Nevertheless it provides a useful case study of the way in which priorities were set at the height of the oil scramble in the early 1970's. And it is particularly revealing about the way the public inquiry system failed to relate meaningfully to technical and non-technical criteria in assessing development projects. Two pieces of evidence offered by the North Coast Conservation Group of the Conservation Society are worth looking at; that given by Ian Carter, an Aberdeen University sociologist, who questioned the very concept of 'development' in the context of a sparsely populated Highland area, and John Busby, (a frequent public inquiry witness in Scotland) who challenged the dominant technology and engineering paradigm being used by Chicago Bridge. Both pieces of evidence directly engage the central issue of the Dunnet Bay controversy and provide a clear example of the classification and framing of knowledge that operated at the time of the so-called 'oil boom' years.

The Conservationist groups identified the main problem for the objectors at the Dunnet Bay inquiry as trying to make their case "in spite of the inquiry remit". The inquiry remit required "a quantifiable assessment of the relative merits of allowing an industrial project to proceed in an area of high amenity and scientific interest." However, Dr. John Smith (Aberdeen University Geographer) leading evidence for the objectors thought that there was "great difficulty in trying to quantify the value of amenity and scientific interest". He continued that "I think this is where conservationists and any reasoned person is at considerable difficulty and disadvantage at this public inquiry, because it is not possible to put a monetary value on aspects of the landscape". (48) Smith identified a further

limitation placed upon the conservationist case by pointing to the difficulty of getting decision-makers to acknowledge "aesthetic arguments against evidence on wage levels and so on". (49)

It was precisely the nature of the taken for granted assumptions about such apparent 'hard facts on development' that Ian Carter sought to challenge in his evidence. The real issue was, what concept of 'development' was assumed by the inquiry and the decision-makers?

At the time Carter gave evidence at Dunnet Bay he had recently been working on the application of the Andre Gunder Frank thesis on Third World underdevelopment to the Scottish Highlands. Carter's view was clearly divergent from the conventional wisdom of the time on regional development policy. As he made clear in one of the many articles he wrote at the time of the Dunnet Bay inquiry

".....any view of the Highlands as an area that the various revolutions in agriculture, industry and technology have passed by, is patently mistaken. The Highlands are not independent of such processes - they are the result of them. A number of consequences follow from this on Frank's assumptions. Any attempt to strengthen the links between the Highlands and the 'modern' economy through a large-scale exploitation of indigenous Highland raw materials..... will increase the underdevelopment of the area by reinforcing the satellisation of the Highlands". (50)

While the debate about underdevelopment models and regional policy in advanced industrial societies has moved beyond Carter's position of the early 1970's, the general principle that 'underdevelopment' is the result of an active social process of interaction between competing economic sectors and spatially organised centres of activity rather than a static 'condition' remains. At the Dunnet Bay inquiry the Frank model of underdevelopment was presented to challenge the implicit model of development based on manufacturing industry, and high technology as the only way to overcome the stagnation of 'agricultural backwardness'.

Carter opened his evidence by outlining what he considered was the historical problem of Highland communities becoming over-reliant on single industries, particularly those where ownership and control lay outside the region. He illustrated this by reference to the early 19th century Kelp industry and the trade in black cattle. The relevance of this historical perspective must have escaped the assembled hearing, because no reference was made to it in the Reporter's summary report nor picked up in cross-examination. However, it was important information to present to such an inquiry. It was aimed towards underlining the need for a wider perspective on the subject of 'development' and to examine the traditional assumptions about what constituted development in the Highlands. It was seeking to challenge the relevance of applying economic models in an undifferentiated way regardless of historical, cultural and economic context. (51)

The crucial problem for Dunnet Bay, according to Carter, was the potential for attracting second phase employment into the area for wives and children, and the damage that might be done to the local employment structure should Chicago Bridge be allowed to proceed with their plans. Carter insisted that typically there was "no overall concept of development" informing conventional regional policy and suggested that a comparative look at other countries and regions would clearly illustrate his main thesis. Chicago Bridge would be operating in a more extreme economic context than even developments in the Moray Firth, Easter Ross and in the North East. In those areas there had discernibly been negative aspects to oil development. As investment and industrial activity 'developed' in the oil sector other sectors of the local economy had contracted, social services were placed under strain, housing became a major problem both in the public and private sector, and the degree of 'dependence' of the local economy on international centres of control increased.

The specific argument against Chicago Bridge fell into two parts. First, in economic terms Chicago Bridge would not be able to generate industrial benefit to the local economy because it would be involved in an activity at the end of the production chain. Oil supply work would be preferable for its potential to stimulate activity in other economic units. There would also be an unusual strain on local employment both in terms of attracting labour away from already existing employers and also in terms of increasing wage levels, possibly at the cost of the survival of some local employers. "If there existed skilled jobs in the building and construction industry prior to Chicago Bridge then it is quite likely that there would be none when they had gone." (52) Second, like all sparsely populated areas experiencing rapid industrialisation, there were many social problems to be confronted. Migrant labour and labour camps would be one problem given the lack of local labour available. Inadequate and very short courses in welding for locals proposed by Chicago Bridge would not, in Carter's opinion, be the answer. The experience of such courses for the Nigg yards had revealed this. (A brief remark Carter made about the increased competition for local girls should planning permission be given was given some prominence in the Reporters summary of evidence to the neglect of much of the substantive evidence offered by Carter. This might be an indication that his evidence was very much disengaged debate not considered to be of direct relevance to the inquiry.) (53) The totality of Carter's evidence was pointing to the likely harmful economic and social consequences of locating an oil rig site at Dunnet Bay and asking in what sense would it constitute development.

The cross-examination of Carter was largely beside the point. His main argument was that Caithness required a diversified economic base at the very least; that diversification he argued should not be narrowly interpreted nor should it ignore dependence on one single industry which is controlled outwith the local economy. Carter was sensitive to the need to understand the importance of a broad concept

of diversification and pay attention to the location of decision-making power. He was questioned about unemployment if Chicago Bridge were not to locate in Caithness. Cullen Q.C. for the local planning authority separated the question of unemployment from the wider totality of economic processes and problems of the area, (so proving Carter's point that he lacked an 'overall concept of development'). He was puzzled by the suggestion that some forms of employment might actually be bad for the area. And had not Dounreay benefitted Caithness in terms of employment and providing diversification? Carter's response was to argue that all Dounreay had done was divert attention away from the regions underlying problems. Carter responded.

"The first report of the Highlands and Islands Development Board contained a statement that they interpreted their remit to develop the Highlands by concentrating on tourism, forestry and manufacturing industry. Over the years there has been a disproportionate concentration on manufacturing industry". (54)

Cullen Q.C. responded by suggesting that the success in establishing manufacturing industry in the Highlands by the HIDB was halting emigration. There was of course no recognition of Carter's wide argument about metropolis satellite relations, Carter's response to Cullen was to emphasise that;

"the HIDB is staffed by people who have been trained in planning schools who tend to regard manufacturing industry as modern and other kinds of economic activities as somehow less modern. There is a disparity between the HIDB's ideology and its actions". (55)

This thesis was given no recognition in the evaluation of the evidence. The dominant concept of 'development' was, as suggested by Carter's statement, that any form of manufacturing industry was all that was required to contribute towards the development of a regional economy. Dounreay was frequently cited as an example of a

boost to the local economy which was also used as an example of the beneficial effect for the area if Chicago Bridge were to proceed. Assuming a similarity between Dounreay and Chicago Bridge in terms of their economic effects, the Reporter questioned Carter;

Reporter: Would you not agree that Dounreay has benefitted conditions in Caithness?

Carter: I think several people at this inquiry are consistently and mistakenly, talking about Dounreay as if it was a manufacturing industry. It is a public utility and research agency which is controlled from the political centre. It is easier to protest about its run down than it would be with a multi-national company like Chicago Bridge.

Reporter: Are you suggesting that even Dounreay has been bed for Caithness? (My emphasis)

Carter: I would have been against the location of Dounreay in Caithness on the same principle that I am opposed to oil rig construction in Argyll, Inverness, Ross-shire, Sutherland, Caithness, Orkney and Shetland, Banffshire, and some areas of Galloway. I would have been against the development of Dounreay because it is against the principle that one should not have a large proportion of the labour force employed in one activity.

(56)

Carter did concede that Dounreay had obviously some 'benefits' for the local economy but he insisted repeatedly that it diverted attention away from underlying problems. His main criticism however was that diversification was required and while he admitted to being not competent to say how that might be achieved, the Chicago Bridge project would, he believed, make the resolution of that problem more difficult. By concluding his evidence by suggesting,

"the worst thing that could happen to the HADB is that their pretensions should be matched by their achievements", he summed up his position and made it clear that his views would find no echo in the Reporters assessment. The orthodoxy of traditional economic models of development informed the underlying classification of knowledge.

John Busby had been the first director of the Centre for Industrial Innovation at Strathclyde University and was at the time of the Dunnet Bay inquiry an environmental consultant. He was particularly concerned about the problem of relating engineering and technological problems to their operating environments. Busby was, in other words, concerned to resolve technological problems within a framework that would be sensitive to environmental issues. His evaluations were based on the location of a relational idea that could generate an open relationship between the classification and framing of knowledge. Busby stated his view clearly:

"We have to apply our minds a bit more to superior technology to avoid the impact of these sorts of large developments on the environment, and I think that often the polarised interests could be reconciled by applying better engineering technology.I am suggesting that engineering design skills can be used to attain environmental ends." (57)

The thrust of Busby's evidence was a sustained criticism, explicitly of Chicago Bridge and implicitly of the public inquiry system. He wanted to make a case for an alternative method of building oil rig platforms so that the environmental concerns being discussed could be obviated. However, he was well aware that he had to offer his evidence in a situation where the technology involved in the project was ironically both problematic yet accepted as a given beyond the inquiries remit to examine. The local public inquiry system therefore becomes uniquely shackled. The specific remit directed attention towards the engineering scale of Chicago Bridge's project but within a local public inquiry there is no institutional mechanism for scrutinising it thoroughly. In particular, Busby was

concerned by the way Chicago Bridge were supporting their case by reference to the successful use of the same technology in Dubai as that proposed for Dunnet Bay. It was merely assumed that the same technological solutions could be used to resolve engineering problems irrespective of the economic and environmental context. The starting point was incorrectly based on a pre-existing engineering paradigm. (In classical form, it was a case of Kuhn's notion of secondary elaboration at the total expense of considering primary elaboration).

Busby illustrated his argument with reference to the weather. He suggested that discussions are often led in such a way that the elements, (in this particular case the problem of working in high winds,) are never considered in terms of whether or not the project should be sited in a particular location at all. The technical difficulties are always generated by the need to adjust the project to the existing elemental factors that might effect construction, namely high winds. The problem is very rarely framed in such a way that non-technical or aesthetic factors of the environment force similar re-consideration of the given engineering model. The relationship between technology and the environment is typically a selective one in which the emphasis is how to overcome the difficulties set by a given site in terms of secondary rather than primary elaboration of the engineering paradigm. Discussion at the inquiry therefore spent some considerable time on the subject of the difficulties in working through winter months when the wind speeds at Dunnet Bay are normally very high. The site and the technology were therefore treated as an unquestioned variable which at the very most would have to undergo minor modification. The more general recreational and scientific value of the area were not even treated as independent variables that might effect work practices. There was never any conception of the problem in terms of finding a solution that was not mutually exclusive between development or no development. Busby started from the opposite direction. He argued that the existing use of the area ought to be preserved, while also recognising the inevitability of the oil related industries seeking rural sites to construct platforms.

A relational idea should therefore be found, he argued, to preserve as far as possible the environmental, economic and sociological factors at issue. Busby sought to provide an engineering solution to the apparent irrefragability of the evidence offered by Chicago Bridge on the one hand and Ian Carter and the Conservationists on the other.

Mr. Kouka, Vice President of Chicago Bridge, had earlier specified the conditions that their site would have to meet to be compatible with their technology. He described Dunnet Bay perfectly. Patrick Kelly, as employee of the company systematically excluded alternative sites because of the failure to meet the criteria described by Kouka. Significantly both of them rejected the Clyde estuary because of the height clearance of the Erskine Bridge. However, these criteria used for selection were based on the premise that the objective was to find a site location that fits the requirements of the pre-existing and unalterable technology. At no point in this site selection process were the engineers centrally involved let alone anyone knowledgeable about the environment. The technology had already been established and no effort was expended on examining alternative forms of constructing the oil rig platform to accommodate environmental constraints. It was precisely this approach to the problem that Busby challenged:

The Scandinavians, for example, had already been using the idea of floating docks for assembling oil rig structures, using 50,000 ton second hand oil tankers to avoid spoiling rural areas. So Busby suggested;

"An alternative method of building the platform which would cause less damage to the environment, would be to sub-contract the manufacture of parts to existing shipyards on the Clyde and assemble the parts in a sheltered sea loch. This would also save the company between £1 and £2 million and save time in construction because work can start as soon as the contract is awarded". (58)

He went on to describe how the severe weather conditions at Dunnet Bay would, on his calculations, impose costs on production. Winds of between 21 and 30 mph would blow 60% of the time, and as Kouka had admitted, lifting would not take place in winds of above 20 mph, so lifting would be interrupted 50% of the time. The answer, Busby argued, lay in subcontracting the prefabrication work to existing shipyards where welding and heat-treatment facilities were covered. The technology to re-assemble the parts in a sheltered lock were described in terms of the existing Scandinavian practices and,

"The company save the £3 million to develop the site, against which the pontoon would cost £1 million". (59)

Holiday accommodation in the Dunnet Bay area could be used to house the smaller work force. In particular, he stressed that his method of construction both recognised the economic need to develop oil related work in Britain while also accepting the main thrust of Ian Carter's evidence. Under his sub-contracting method employment would be generated in those areas of West Central Scotland where idle skills were available and the greatest need existed. As most of the labour would be imported under Chicago Bridge's method there was little loss to local opportunities by adopting his suggestions.

Busby's evidence was too radical for the Developer or the Reporter to accept. The Developers lawyer challenged Busby on the practicability of his suggested method of construction, taking great pains to emphasise to the Reporter that Busby had no actual experience of the design or construction of marine structures. Mackay Q.C. stated:

"Mr. Busby's suggestion that a land site need not be used is answered by Mr. Kouka who said that it would not be practicable to join the members together while floating and it would not be possible to have adequate quality control. Mr. Busby has no experience in the design or construction of marine structures and it would be out of the question to find his proposals feasible (my emphasis). The objections ought not to be sustained." (60)

A crucial point for emphasis arises here. The principles of framing in the public inquiry relates to credentialled status to initiate consideration of what is to be known. In response to Busby's suggestions Kouka totally dismissed the whole idea of using a floating system to assemble parts constructed on the Clyde very much in terms of Busby's lack of status; he did not have the 'right' to be heard on such matters. Busby was classified as a "Planner" and told by Kouka "in my view planners should not presume to decide in advance what method should be used for constructing oil production platforms." (61) But was this not precisely what Chicago Bridge were doing assisted by an inflexible and inadequate public inquiry system that was incapable of exploring Busby's method? Having conceded in cross-examination that there ought to be competition between different methods of construction, Kouka dismissed Busby's evidence because he believed Chicago Bridge "already had" the best method and Busby's suggestions were from someone not acknowledged 'professionally.' Perhaps the true reason for rejecting the sub-contracting idea was revealed by the Developers lawyer who stated that his clients would be particularly concerned about a method of construction that was "exposed to delay by industrial action". He suggested that 'volatile' industrial relations on the Clyde could hold up the entire project if there was a strike in one of the sub-assembly units. Busby's reply was to "spread the sub-contracting around because the parts for the structure are all the same". This was not considered an adequate response.

Neither Carter's evidence nor Busby's attempts to resolve the technology/environment conflict, were particularly impressive as far as the Reporter was concerned. He made little mention of Busby's evidence in his conclusions, accepting unquestioningly the views of Chicago Bridge. Busby's method may well have been faulty and in the last analysis inappropriate as a solution to the problem. However, it revealed the inadequacy of the whole planning system, dependent totally on a project presented by a private developer and processed by an inflexible local public inquiry

that could acknowledge evidence only if given by someone conventionally credentialed,

Permission was given to Chicago Bridge to build their oil rigs. They decided however that an alternative site did after all exist in Ireland. The beauty of Dunnet Bay, and its qualities as an environmental resource, escaped the ravages of oil development, but not because of arguments accepted within an effective process of public debate but simply by pure chance. The local public inquiry system was totally incapable of thoroughly examining all the issues. The dominance of what I call a collection knowledge code meant it was extremely difficult for objectors to penetrate the strong classification and framing of knowledge which informed the Developer, the Reporter, and one must assume, the Secretary of State for Scotland.

The exact reverse of the Dunnet Bay situation took place at Drumbuie, and it is to that inquiry that I will now turn.

Drumbuie: "David and Goliath in Scottish Rural Development?"

Maurice Broady described the Drumbuie inquiry as a "David and Goliath contest"

"What the Crichel Down inquiry was in the 1950's, the Drumbuie inquiry may well turn out to be for the 1970's. In a David and Goliath contest, it has indicated the importance of considering factors of scale in the planning of remote rural areas."

(62)

Broady, as an 'expert' witness for the objectors, was probably overcome by the euphoria of the immediate victory in the public inquiry battle to notice that, contrary to his view of David slaying Goliath at Drumbuie, West Ross-shire lost the war. Drumbuie, in retrospect, has become less known for the proving of the public inquiry system as a defence mechanism against bad development in rural areas, than as a classic example of how the procedures of a

public inquiry have no wider implications beyond the immediate planning applications. Further it illustrates how public inquiry decisions can be cynically disregarded by the Secretary of State in terms of informing related decisions.

The main interest that I have in the Drumbuie case has less to do with the specific planning applications made by Mowlem-Taylor Woodrow to build concrete oil rig platforms, or the specific arguments for and against those applications (they were similar to those rehearsed at Dunnet Bay) and more to do with the underlying reasons for rejecting the applications in relation to events which occurred elsewhere. Drumbuie in my view was not as significant a public inquiry, as I think, is generally regarded. It was long and costly and apparently gave the impetus for a great deal of official examination of inquiry procedures. Much of the activity in my opinion was promoted less by the specific events of Drumbuie and more by the obsessive scramble for oil and governmental anxiety about offshore benefits that might be lost abroad. Moss Morran, which I will discuss in detail below, was far more interesting and in terms of local action and controversy, far more vociferous. Drumbuie in fact was a public inquiry held at the wrong time, and set to consider the wrong planning application.

In April 1973 John Mowlem & Co. Ltd. and Taylor Woodrow Ltd jointly made an application to construct concrete oil rigs on 240 acres of land at Port Cam, Drumbuie, sparking off much local opposition, while Howard Doris, a French Company aiming to do the same thing, were simultaneously surveying a site near Loch Kishorn six miles away relatively unnoticed. The land sought by Taylor Woodrow was owned by the National Trust for Scotland and was inalienable. It would have required an Act of Parliament to allow its use as an oil rig construction site. However while highly technical arguments were being rehearsed and attacked first at Balmacara and then in Edinburgh over Mowlem-Taylor Woodrow's scheme at Drumbuie, Howard Doris continued with plans to set up a site at Kishorn unhindered by the public inquiry at Drumbuie and without any public scrutiny of their scheme, except that given by local planners and the

Scottish Office. The victory at Drumbuie was a hollow victory because it sat for 46 days apparently rejecting the case for industrialising Wester Ross while the Secretary of State contradicted that decision by allowing Howard Doris to set up an identical scheme only six miles away. It is the very fact that the Kishorn Development went ahead that indicates that the classification and framing of knowledge which obtained at Drumbuie did not defend the rural community, as optimistically proclaimed by Maurice Broady. Closer examination will indicate that the victory at Drumbuie was a pyrrhic victory founded on the real fact that it was legally and politically far more difficult to allow the Mowlem-Taylor Woodrow scheme to go ahead than reject it. By examining the 'official discourse' of the Secretary of State's decision the underlying classification and framing of knowledge can be discovered.

As with the case of the Nigg inquiries, 'official discourse' becomes a crucial area for analysis where the task is to make underlying knowledge codes visible. It is founded on the implicit assumption of an 'ideal speech situation' as I have mentioned. In those cases, for example, where there is either a discrepancy between the inquiry Reporter and Secretary of State, and the legitimation deficit has to be made good where the appearance of administrative power over democratic participation becomes blatant, (the case at Nigg) or where it appears that democratic participation has been effective at both levels of argumentation with the state (apparently convincing Reporter and Secretary of State), 'official discourse' can be analysed to hunt for the underlying reasons why objectors arguments were accepted when theoretically it was not anticipated. This latter case applies to Drumbuie.

Like Burton and Carlen, I am in this case conceptualising 'official discourse', in terms of a "paradoxical process whereby Official Discourse has simultaneously to constitute an ideal addressee to whom justification can be made and negate a specific material situation which engendered that discourse....." (63) The State effectively tries to reconstitute an ideal conception of justice or

at least, in the case of public inquiries, generate the view that the decisions made can be discursively validated and were based on a 'sincere' attempt to make a 'fair, open and impartial' judgement. We saw above in the case of the Nigg inquiry of 1975, that the State justifies the imbalance between the power and participatory modalities in decision-making by adopting an 'official discourse' that does indeed seek to justify legitimization threatening decisions. 'Official discourse' becomes a form of "distorted communication" in Habermas' sense, which seeks to repair the legitimization deficit between the public inquiries instrumental and expressive function. It is in short an ideological mechanism around which the dual determination of political-administrative power operates; 'Official Discourse' operates to make the non-public and non-discursive determinants of decisions opaque.

The letter of decision issued by the Scottish Development Department on behalf of the Secretary of State summarised the main issues of the Drumbuie inquiry; ⁽⁶⁴⁾ there was not an alternative U.K. site for building the structures proposed by Mowlem-Taylor Woodrow; the Department of Trade and Industry had stressed the governments feeling of urgency in the 'national interest' that such structures should be built in the U.K.; however there would be a great deal of noise and visual impact; the pattern of living of the area would be changed irreversibly and there would be an effect on the local social structure; there would be dislocation of the local economy; there was an inadequate infrastructure; and the disputed land was in law 'inalienable' by virtue of the Schedule to the National Trust for Scotland Order Confirmation Act 1935.

These were the issues that were debated in the inquiry and which had to be sorted out. Now I would argue that in the case of the Drumbuie inquiry there are two main factors that should be isolated in order to reveal the true basis of the decision-making criteria.

- a) The governments Coastal sites Bill.
- b) The inalienable status of the land in law.

I have already discussed the Coastal Sites Bill above. It was an expedient measure by a Conservative government aimed at bypassing the planning system "to allow an early start to work at Drumbuie". Indeed the Secretary of State for Scotland effectively invited the participants at the inquiry to give up the Drumbuie public inquiry because they would effectively be wasting their time. However, coupled with an overt and unabashed attempt at negating planning procedures and the public inquiry, it was belatedly recognised by the government that if the "inalienable" status of National Trust Land could be over-ridden by an Act of Parliament then a harmful precedent would be established. Who would give over land to the National Trust in future if it might be used for industrial or commercial purposes? That was an important issue which the government through the Scottish Office resolved by making it appear, ironically, that Drumbuie was in fact a 'triumph' for local objectors and the local public inquiry system. Through the 'official discourse' the Secretary of State set out the reasoning for his decision not to grant planning permission to Mowlem-Taylor Woodrow, giving the appearance that the debate within the inquiry had been crucial while being silent about allowing Howard Doris to go ahead at Kishorn a few miles away on land not owned by the National Trust.

There were six main sections in the decision letter. An examination of the 'official discourse' that constituted that letter is revealing about the obfuscation practiced by the Scottish Development Department.

The objective of 'official discourse' in the Drumbuie case was to disallow the planning application while at the same time not undermining the decision relating to Kishorn. The Secretary of State having decided what he wanted, his civil servants went about constructing his reasoning for him.

In general the Secretary of State concluded:

".....that there could be economic advantages to the United Kingdom from construction of the Condeep design at Port Cam..... The construction of such platforms in the United Kingdom may not be crucial to the extraction of oil from the North Sea, but if a significant proportion of work of this type has to be carried out abroad, with the probable consequent loss of associated orders, the foreign exchange burden would be considerable."

(65)

So while the underlying fear is revealed, the Secretary of State goes on to give the impression of concern about the social, economic and infrastructure problems for the Drumbuie area that would result from the Mowlem-Taylor Woodrow scheme. So, he goes on, with respect to noise and visual impact;

"It was clear at the Inquiry (the Reporter concludes) that the project would involve considerable noise disturbance for the community of Drumbuie".

(66)

The Secretary of State it should be noted emphasises that 'the Reporter concludes'. He continues with this emphasis for the important reason that he wishes to begin to structure a case for Kishorn by implication;

"The Secretary of State has noted also the Reporter's view that Stage 2 Construction would compound the visual effect, particularly in the wider context, beyond the limits of acceptability. Against this the Secretary of State has had to keep in mind visual amenity alone cannot in every case (my emphasis) take precedence over all considerations".

(67)

Moving on to the controversial social effects upon the area.

"The Reporter concluded that the whole pattern of living in the area would be changed irreversibly by the introduction of the applicant's work force. The way of life of the existing community would not survive the impact and this was, in the Reporter's opinion, too high a price to ask of the people of South West Ross. ...the Secretary of State takes the view that change is a feature of any living community....but while accepting the Reporter's conclusion in the present case that the inflow of population would give rise to difficulties, the Secretary of State does not accept a general argument that the area as a whole would necessarily be incapable of absorbing incoming of population" (My emphasis)

(68)

Further, with respect to the local economy

"....the Reporter accepted....that the project was prospectively of limited duration...dislocation of the local economy might be followed by.... unemployment at the end of the life of the project. The introduction of a project of this type into such an area is bound to affect local wage rates and the pattern of economic development. However, although he is aware of the problems of this kind which have arisen in areas already affected by oil-related developments, the Secretary of State does not regard this by itself as an argument for limiting development" (My emphasis) (69)

Again on the question of infrastructure, the emphasis was on the untypical nature of the strain on infrastructure and the view that while it was perhaps a major problem it was "of itself" not an insurmountable obstacle to development in the area. My view is that by the evidence of the 'accumulated uncertainty' manufactured by the 'official discourse', the Secretary of State indicated quite clearly that he disagreed with the findings of his Reporter. One can only speculate, but on the evidence of his 'official discourse' and the fact that Howard Doris went ahead with a similar development at Kishorn, the only thing that stopped Mowlem-Taylor Woodrow

winning planning permission from the Secretary of State was the legal problem of the 'inalienability' clause attaching to the National Trust land. What is particularly interesting is the way the decision letter tries to downplay this issue in the context of the wider balancing act of evaluating the arguments.

"The Secretary of State considers that he should not leave out of account the inalienable status of the land, and he has therefore made allowance for this factor on making his decision...upon a judgement as to the weight to be attached to the many factors involved.... planning permission should not be granted."
(70)

Maurice Broady concedes that the 'inalienable' status of the land was probably crucial, albeit that he optimistically argues that Drumbuie was a successful case of community action.

".....the decision was perhaps chiefly due to the fact that to have allowed this development at Drumbuie would have raised the difficult and politically sensitive question of the inalienability of land bequeathed to the National Trust".
(71)

The Drumbuie case should not be treated as a case of 'successful community action' because it was not. The political sensitivity attaching to the National Trust land was an abstract one in relation to the real material impact that oil development would have had, and has had, in the West Highlands. The fact that it was not social, economic and infrastructure issues that informed the decision reveals the true classification and framing of knowledge at Drumbuie.

Conclusion

Without exception the case studies of the major Highland public inquiries discussed here illustrate the failure of the planning system to adequately protect sparsely populated areas from inappropriate large scale industrialisation. One significant way in which this failure manifested itself was in the repeated attempt to resolve conflicts of interest within a narrow institutional framework that was unsuited to the task of balancing the need for crucial onshore oil development with the undoubted social and environmental damage that would be its inevitable consequence in small isolated Highland Communities. Arguments concluded in terms which expressed concern about traditional industries and established community social structures, or which opposed industrial development through the vocabulary of conservation and environmental protection, found a decision-making system unable, it seems, to decipher the message. In Luhmann's terms there was no 'actualisation of shared sense' between the Secretary of State and local action groups.

In the next two chapters I wish to explore in more detail how the public inquiry system operates to effect (a) objectors and participants perception of the system by a close examination of the Moss Morran inquiry, and (b) how the public inquiry system effects the formulation and presentation of opposition in locally formed action groups. The Moss Morran inquiry has been one of the most controversial of the recent 'big public inquiries' in Scotland. It presents a useful case study of community mobilisation because it was an inquiry controversy which was by far the most vociferous in recent years. There was less acceptance of the public inquiry system in Fife than there was in the Highlands, but even so, the inquiry system works seductively as we will see.

INTRODUCTION

Moss Morran: The Context of the Controversy

The basis of the Moss Morran controversy lay in the strong local reaction against proposals by Shell Expro UK and Esso Chemicals Ltd., to build natural gas liquid and ethylene plants on a site in Cowdenbeath in Fife, and in addition, to build and operate a tanker terminal on the north shore of the Forth which would receive processed feedstock by pipeline from Moss Morran to Braefoot Bay for export. The Moss Morran site at Cowdenbeath has been designated for industrial development since the 1950's and is situated in the heart of an area plagued by industrial decay and high unemployment. However the proposed tanker terminal at Braefoot Bay lies in between Dalgety Bay to the west, which is predominantly a private enterprise new town development, and Aberdour to the east, an old established village sometimes used as a holiday centre. Needless to say the main opposition to the oil companies' proposed developments have come from the middle class areas by the Forth.

The Moss Morran controversy in actual fact is a conflict with many dimensions. In addition to the generalised conflict between industrialisation and the environment, the specific conflicts over the Moss Morran and the Braefoot Bay sites of the Shell/Esso project give rise to a conflict between two communities distinguished along essentially class lines, although the question of the Cowdenbeath Gray Park community's opposition slightly complicates the neatness of this formulation. In an article in The Observer (10.7.77) Brian Wilson describes Shell/Esso's bid to establish a petrochemical complex in Fife as "a textbook example of how different communities have conflicting reactions to development proposals of the kind proposed for Moss Morran and Braefoot Bay."

Dalgety Bay has a population of about 5,000 and it has been described as the only 'private enterprise new town under construction in Britain'. Something in the region of ninety five percent of the houses are owner occupied. The theme of the hoarding at the entry to Dalgety Bay proclaims the main idea behind its location;

'beautiful homes by the Forth'. This projects the notion of a residential suburb in a location well placed for the leisure pursuits of a coastal resort. It is founded on the idea that sailing and walking can be an integral part of the community's commercial appeal. However the centre piece of this leisure resource, the Forth and Braefoot Bay, is now being earmarked for a large industrial jetty to load highly inflammable natural gases onto large tankers. Similarly the appeal of Aberdour is founded on the idea that the village is a refuge against the excesses of urban living. The yacht clubs and the beach form a central aspect of a leisure oriented way of life dependent to a large extent on the water surrounding the Braefoot Bay inlet. The immediate concerns of the people of the Aberdour and Dalgety Bay end of the project have obviously been focused on the possible impact and change to a 'house-investment-leisure way of life' which might result from the introduction of a major petrochemical complex. The motivations of home ownership as a major financial investment, and a leisure oriented concept of the local environment, are not conducive for stimulating a broader concern for industrial development and economic regeneration. Those are concerns of a qualitatively different realm. The local village communities of Dalgety Bay and Aberdour, and the surrounding environment, are seen by locals as a resource to live with rather than to work on. It is obviously perceived as an environment to reside in and relax in rather than where one is industrious and 'develops' the landscape into something qualitatively and quantitatively different. The balance and separation between work and leisure should be viewed not only as a difference in activity but also as a way of relating to the environment, especially the immediate residential environment.

By contrast the main site of the project at Moss Morran is near the town of Cowdenbeath where the majority of the population experience a quite different social reality. It is an area of Fife where the unemployment figures are traditionally high and were in excess of 18% of the working population, even at the time of the controversy in 1976. The area was once heavily dependent on the mining industry but the nearest productive pits are now ten miles away from Cowdenbeath. Obviously the immediate concerns of the local people are generally

determined by their daily anxiety about work rather than leisure, and industrial development which might create jobs rather than viewing the environment as something to be appropriated for aesthetic consumption. Cowdenbeath itself is not particularly attractive and there is no specific environmental quality about the area which could inspire a reaction against industrialism. Since the 1950's Moss Morran has been recognised as a possible industrial site with a potential to accommodate large scale industrial development. Even though it is an area which has never been officially designated for industrial purposes in any development plan there have been projects such as heavy engineering, oil refining and bonded warehousing associated with the site in recent years.

The Immediate History Of The Planning Application

The political concern for overcoming Fife's economic recession has been the central factor concentrating the minds of all local politicians. Regardless of political party, the majority of local politicians have taken a public stand on the commitment to bring industry and jobs to Fife. The public management of this identity was the crucial factor which subsequently led to the lack of formal political support for the opposition groups against the Shell/Esso project.

In March 1976 a German consortium was reported to be interested in the Moss Morran site. This consortium was represented by a Herr Philip Schmidt. The so-called 'German connection' was eagerly pursued by local District and Regional councillors who made several trips to Germany before the whole affair began to look decidedly fraudulent. Schmidt had no backers, and indeed the very legality of his activities were under some doubt. There was obviously some concern about reputations and about the efficiency and effectiveness of local politicians to actually bring a major industrial project to Fife.

Meanwhile Shell Expro UK were fighting a public inquiry at Peterhead to enable them to build their NGL plant. However, due to difficulties over the harbour (the official oil company reason) Shell suddenly

withdrew from that inquiry and it was never completed. Shell were later publicly censured for their conduct, and they had to meet the bill for wasting public money at the Peterhead Inquiry. Full costs were awarded to the objectors. *

July 1976 they shifted their attention to Moss Morran, partly because the 'German debacle' had drawn their attention to the site as a possible alternative to Peterhead. With some already existing public and political legitimacy for a petrochemical development, the Fife sites must have appeared slightly less of a hurdle to the oil companies intent on gaining planning permission quickly.

The interest of Shell and Esso in Moss Morran following on so soon after the failures of the German debacle obviously contributed to an early commitment to the whole idea of a petrochemical plant for Fife among local politicians. In November 1976 Shell Expro announced that they would be submitting a planning application to build an NGL plant at Moss Morran and associated tanker terminal facilities at Braefoot Bay. In January 1977 Esso Chemicals Ltd., also announced their intention to seek planning permission for a possible ethylene plant and in March of that year followed up their first application with an application for permission in principle for downstream development. It was at this time that the opposition movement started to form and become extremely vociferous.

* See Robert Moore The Social Impact of Oil: The Case of Peterhead. Routledge & Kegan Paul, 1982 for a discussion of the original Shell application to build an NGL plant in Peterhead. Moore propounds several theories about the reasons underlying Shell's withdrawal from Peterhead. The most likely reason seems to be a combination of bad advice to Shell from the Scottish Economic Planning Department about the Peterhead harbour and poor forward planning and research on the part of Shell themselves. Moore suggests other theories including covert pressure to move the project to Moss Morran because it was an area of high unemployment. Interviews with Regional planners indicated some contact with Shell after the "German debacle" but they doubted whether anyone could pressure the oil companies to do what they didn't want to.

CHAPTER 5

PARTICIPATION AND DISCONTENT IN THE PUBLIC INQUIRY:

THE CASE OF THE MOSS MORRAN CONTROVERSY

In this chapter I want to look back to Chapter 2 and examine the theme of 'natural justice' in the empirical setting of the Moss Morran inquiry, and look forward to my description of the formation of the local opposition groups in Fife by setting out the structural inequalities of the inquiry which, I believe, partly sustained their commitment to resisting Shell/Esso beyond the public inquiry. To recap my argument in chapter 2, I conceptually distinguished between 'common-sense conceptions' of justice, rooted in the situational experiences of, and interpretations made by, people in their everyday lives, and formal legalistic and administrative conceptions of justice, grounded in the 'elaborate network of legalistic structures which constitute the judicial review of administrative action'. My argument was that this fundamental distinction can help explain legitimation deficits within the public inquiry system. Formal conceptions of 'natural justice' articulate the institutional reality of the public inquiry institution controlled from the administrative centre of the state and procedurally structured in accordance with formal legal views of 'fairness', 'openness' and 'impartiality'. The power realities of the formal conception of 'natural justice' can be dissonant with 'common-sense' views held by lay people who interpret justice in accordance with their situational interest in participating as much as possible in the making of decisions which might affect their lives. A legitimation problem in the public inquiry system could arise if the formal conception of 'natural justice' is judged by 'common-sense' notions and found wanting.

Political actions, and wider social movements for change to the Inquiry system, are to a great extent dependent on the success or failure of the institutional system actually to appear to be just and to actually appear to be "fair, open and impartial". We are to a very large extent within the realm of situational perceptions. So this chapter will concentrate on both the public expression of disenchantment with the local inquiry system by participating

objectors in formal settings, and also to the individual private interpretations of the local inquiry system. Why, for example, do people who seem to be perceptive about the shortcomings of the public inquiry system not make more effort to challenge it either during the course of a hearing or outside in a wider movement for reform? These are important orienting questions which guided my analysis of the Moss Morran controversy. I will concentrate on the actual public inquiry in this chapter and leave the wider political and organisational issues for the following chapter.

I will present my argument in the vocabulary of classification and framing which I also introduced in chapter three. It is a presumption throughout my presentation, as it was in the case of the Highland Inquiries, that there exists in all major public inquiries a tension between the systems rationality of strong classification and framing and the discursive rationality of weak classification and framing. I will divide my account by first presenting a description of the procedures and evidence of the public inquiry and second the individual perceptions and accounts of the public inquiry process.

Background Issues

There were several general factors involved in the Moss Morran public inquiry that were important for placing the controversy in context. First, it was government stated policy to encourage the conversion of North Sea gases into high value added products, either for downstream manufacture (plastics based products and the like), or for export as the raw material for manufacturing industry. The fractionation of natural gas liquids into propane, butane, and ethylene was considered by the Government in 1977 to be of paramount importance if the country as a whole was to get maximum benefit from, and efficient use of, a scarce North Sea resource. It was therefore a background assumption

at the outset of the public inquiry that the government and the Secretary of State for Scotland would obviously give some priority to a project, like that being proposed by Shell/Esso, which would contribute to the realisation of government North Sea policy. Local objectors were extremely sensitive to this underlying pressure. Second, the public inquiry began with the general knowledge that there were at least two credible alternative sites to those chosen in Fife, albeit that the time and money needed to prepare one of them was problematic. Shell had already partly fought a public inquiry for their project at Peterhead. Laboratory tests on the structure of the Peterhead harbour completed in Holland had alerted Shell to the fact that a new harbour would effectively have to be constructed if they were to proceed with their plans in Peterhead. The problem hinged on the time and money that would be needed for this. Shell had already undertaken commitments to supply an American source with fractionated gas products within a certain time period. It transpired in the Moss Morran inquiry that financial penalty clauses were attached to that commitment and Shell were obviously not keen to prolong their project any longer than necessary. The cost involved in building a new harbour was also considered to be prohibitive. However, as far as objectors were concerned, Peterhead was a feasible alternative site. There were sites at Nigg which were available, as I have already indicated in the previous chapter. Nigg did appear to many people to be ideal for both Shell and Esso's purposes. The site was already zoned for petrochemical development and it was removed from centres of population. This in itself, one might have thought, was enough to commend it to the SDD if not the oil companies in comparison with Moss Morran and Braefoot Bay. The problem that Shell/Esso saw was the difficulty of getting labour and accommodation in an area already heavily under strain, especially with the oil rig yard. The costs of laying a pipeline from the land base at St. Fergus to Nigg would probably have been similar to the cost of laying such a pipeline to Fife and the time factor involved in such a project would also have been similar to that proposed for Fife.

The third important factor forming a background to the controversy was the concern for safety. Knowledge of major disasters at

Flixborough and in America had caused general concern in the local communities and press. This concern was intensified when a plant designed, financed and partly built by Shell, similar to that proposed for Fife, exploded in the Persian Gulf State of Qatar only three months before the start of the Fife inquiry. In that explosion seven people were killed and many injured. The irony of that case was that Shell had stressed the significance of their Qatar plant design at the Peterhead Inquiry and had boasted how they had built storage tanks in Qatar "according to BS 4741". A year later on the 3rd April 1977 those very same storage tanks exploded.

The fourth and most significant factor was the fact that local objectors, having regard for the issues I have mentioned, pressed continually and unsuccessfully for a Planning Inquiry Commission (PIC). Many people not even involved in the planning controversy felt that there was no more appropriate case for a PIC than the location of a major petrochemical complex. As I indicated in Chapter 2, all the criteria for a PIC were met by the Shell/Esso planning applications. In addition it was public knowledge that the siting of petro-chemical plants along the eastern coastline of the United States had been halted. A moratorium had also been called on the siting of chemical and gas developments near to populated areas in many middle eastern countries. Also there had never been a systematic policy developed for Britain on siting dangerous industrial plants. It was believed, especially by local objectors, that the Shell/Esso project presented an ideal opportunity to conduct a rigorous and far reaching investigation of the technology and chemistry of gas fractionation as a prelude to developing an overall national policy. The objectors were therefore pressing for the setting up of a PIC. They were convinced that only such an institutional framework could investigate the complexities of the Shell/Esso proposals and a local public inquiry was considered to be very inadequate by comparison. Knowledge of the Highland inquiries had not instilled much confidence in the local inquiry system. The site specific nature of all planning inquiries, whether they be local or PIC's, was obviously a problem overlooked by the objectors, but many locals felt that a PIC would at least be able to force a wider consideration of alternative sites than a local public inquiry. The

refusal to use a broader framework was interpreted by many local objectors in Fife as the primary example of the formal infringement of the community's 'natural justice'. As I have discussed in Chapters 2 and 3 the use of a local inquiry system can be understood in the terms set out by Luhmann's system theory; complexity reduction and incorporation of conflict and dissent into a narrowly prescribed framework. 'Natural justice' however does not attach to third party interests nor communities, and in terms of formal administrative criteria, 'natural justice' is not infringed by forcing people to argue their case within the confines of a local public inquiry rather than a PIC. However, local people did not adopt such a formalistic perspective. The system for them was unjust, certainly not considered to be open and above board and, given the government's publicly declared support for NGL fractionation projects, certainly not impartial. So given these four important background factors the public inquiry process began with local people already feeling that the principles of Franks had been infringed. Petitions and letters were consistently sent to the Secretary of State urging that a PIC be set up.

In a letter dated the 22nd March 1977, Dugald Eadie wrote to the Secretary of State as Chairman of the Dalgety Bay end of the Action Group saying that the Shell/Esso project:

".....highlights the need for a thorough and objective investigation into all aspects of the proposed developments, in particular the safety and environmental aspects. We believe that such an investigation will only be possible through the machinery of a Planning Inquiry Commission.... As you are no doubt aware there is a great deal of cynicism about the effectiveness of the normal public inquiry procedure and we trust that you will be prepared to break new planning ground by ordering a special inquiry and thereby showing that in the eyes of your Government, people matter more than profits."

Eadie's plea followed up an earlier, legalistic appeal from Dik Mehta, the Aberdour Chairman, on the 24th February 1977 which had directed the Secretary of State's attention to Section 44 of the Town and Country Planning (Scotland) Act 1972 which detailed the appropriate criteria for setting up a PIC.

There was a lack of success in these attempts to get a PIC set up. The Joint Action Group were left in the position of having to face up to the reality of fighting a local public inquiry in a fairly short period of time. The Secretary of State for Scotland announced in May that a local public inquiry would take place starting on the 13th June 1977. The Joint Action Group were then faced with the problem of having to organise their case with very little time, considering the complexities of the issues involved. A PIC would have lightened their responsibility to research and present the critique of the Shell/Esso project and would probably have delayed the start of the investigation by several months. The Action Group however pursued the only reasonable strategy open to them, to press for the inquiry to be put back. They requested a two months postponement. The Secretary of State only gave them a fortnight's postponement; the enquiry was to start on the 27th June 1977 and would be scheduled to last three to four weeks. There was, however, added pressure placed on the participants in the inquiry with the statement that it was hoped by the Secretary of State that matters could be expedited, if possible to complete in a shorter time period than that allowed for. The disparity between the Action Groups aspirations and what they actually achieved prompted Joint Action Group Chairman Dik Mehta to state in the local press:

"It is difficult to escape the feeling that everything is being carefully planned to make it as difficult as possible for the objectors to present their case effectively..... There should be full allowance for the fact that objectors have limited resources and time to prepare their case. Sadly, it appears the boot is firmly on the other foot and no opportunity is wasted to put the boot in where it hurts."⁽¹⁾

It became clear that both the failure to obtain a PIC and later failure to obtain at least a postponement to the start of the local inquiry, contributed to a general feeling within the Forth Communities that there was no point in having a public inquiry at all. They felt there was not going to be any 'justice' accorded to them. They were convinced the public inquiry would be a charade, purposely structured to weaken their case.

The pre-inquiry meeting convened by Mr. Bell, the inquiry Reporter, on

the 3rd June 1977 was therefore to be the first formal opportunity for objectors to confront the realities of the local inquiry system and articulate their distrust of it.

The Pre-Inquiry Meeting

Prior to the commencement of all major public inquiry hearings a pre-inquiry meeting is convened by the inquiry Reporter. Mr. Bell convened such a meeting for participants in the Moss Morran inquiry in Dunfermline Town Hall on the 3rd June. The objective of the meeting was informally to set an agenda for the public inquiry, and record the names of those who would be either exercising their right to speak, and in the case of third party interests, those who wished to request the inquiry's discretion to be allowed to speak. The meeting was not however arranged to create a feeling of informality. The hall was arranged in a formal court-room way. Each grouping or interest was given instructions on its allotted area within the hall; the spatial allocation of the pre-inquiry meeting was to be the arrangement that would be retained for the public inquiry itself.

The Reporter used the pre-inquiry meeting to assert his authority and indicate the nature and purpose of the public inquiry; he stressed that it was not as formal as a court of law, yet he asserted his intention to oversee an efficient and speedy inquiry. Its objective was to provide the Secretary of State with informed evidence about the applicant's proposals. An important factor relating to the nature of the inquiry procedure was significantly established at that early meeting. Mr. Bell stated that it was customary for the applicants (Shell/Esso) to state their case first and thereafter the various parties would cross-examine the oil companies' specialist witnesses before calling their own witnesses in support of their case. So following this procedure, Shell and Esso would commence their case, followed by sympathetic organisations such as the Forth Ports Authority and the local authorities and the objectors would present their case and witnesses last. Independent witnesses such as the Cremer and Warner consultants and the Health and Safety Executive were to be called at the convenience and discretion of the inquiry. Evidence was therefore to be presented

around specialised knowledge and experts. This format was presented by the Reporter as the only conceivable way of proceeding. Yet when I questioned Mr. Bell at a later date he admitted that there was no necessity to structure the public inquiry in this fashion. He said that it would have been possible to structure the proceedings around major issues. This would have had the advantage of allowing a more open discursive process to evolve and would have avoided the common difficulty found at many public inquiries of cross-examiners missing questions or points with one witness and finding a general unwillingness or refusal by the Reporter to recall the witness at a later stage to answer questions that might not have emerged at an early stage. Mr. Bell's attitude was that he would have considered structuring the Moss Morran inquiry around issues rather than expert witnesses if any of the parties had requested it. This, however, obscures the real issue. Parties at the pre-inquiry meeting were not informed that the procedure of the inquiry could be organised around issues and Mr. Bell presented his suggestions about inquiry procedure by stressing that "it is customary to allow the applicants to proceed with their case first." It is also fairly obvious that the time and cost factor is paramount in the Reporter's mind when conducting a major controversial hearing. The objective was obviously to expedite matters and with as little cost as possible. So organising proceedings around experts meant that there was a controllable process of cross-examinations which would more likely commend itself to the Inquiry Reporters' Office and the Scottish Office than the radical innovation of organising evidence around issues. The advantage of a legal type of format for inquiry Reporters lies in the criteria that can be adopted to legitimate interventions; the form and content of a question is far more easily controlled than perhaps the uncertain and possibly damaging interruption to a flow of argument and debate. If debate is organised around issues then the criteria for the Reporter's interventions and control over the debate is less clear. The simple guidelines employed by Reporters, that cross-examiners should not give evidence and should restrict their questions to the remit of the technical expert, can be very inhibiting for an open public discussion. However it provides easily identifiable criteria and a legitimate excuse for a Reporter's intervention should the official parameters be over-stepped.

Having agreed the format of the inquiry without any initial controversy, the Reporter set out the limits of his own tolerance. He warned against repetition of evidence (what is or is not considered to be repetition is solely judged by the Reporter) and repetitious cross-examination. He was particularly concerned that prolonged and "unnecessary" questioning of witnesses might lengthen the public inquiry unduly. The Reporter then interpreted his job as being strict when necessary and to prevent time wasting taking place. He would, he added, be concerned to conduct an inquiry that 'addressed itself to the remit given to him by the Secretary of State'. This, of course, excluded many issues that were to be of concern to the objectors.

The oil companies were represented by top barristers. Shell were represented by the then Dean of Faculty and current Lord Advocate for Scotland, Lord Mackay. He indicated the witnesses Shell intended to call (9 witnesses; 2 were also to be assigned to Esso). Esso, represented by Mr. I. Kirkwood Q.C., announced they would be presenting 7 witnesses in addition to Shell and 2 of them would also give evidence for Shell. The information was then given by the oil companies that they planned to take 16 days to complete their evidence. The Reporter was disconcerted by this information, given that he had hoped the whole inquiry would be completed in just over three weeks. By the time proceedings had come round to the objectors tension had discernibly crept into affairs. The atmosphere of the meeting was highly formal. It was obviously constructed to suit the lawyers and many lay objectors were visibly intimidated by the process. The objectors had experienced a series of failures in their attempts to widen the basis of the public inquiry. They had received repeated refusals to hold a PIC and the one concession given to them, a fortnight's postponement, seemed to many of them to have exacerbated their difficulties by pushing the inquiry into the middle of the school summer holidays - a point that many objectors with family responsibilities and holiday plans felt to be particularly devious of the Secretary of State. The final blow came to them, of course, when the oil companies announced their proposed plan of presentation.

The Action Group were angered by what they believed was the oil

Companies' apparent contempt for the objectors and again requested that the public inquiry should be postponed. They requested a two months delay to prepare a case in response to the vast case being organised by the oil companies. This was immediately refused by the Reporter, who announced a willingness to sit continually into mid August if an end to the inquiry was in sight. He stated that he could not in any case give consideration to a postponement until the public inquiry had commenced. Dr. Edmunds, representing the Conversation Society, angrily interrupted, claiming that sitting into August "already found in favour of the oil companies because there was a disproportionate amount of time to be devoted to their evidence. This public inquiry has already decided the issue. It is a farce." (2)

The Action Group pursued their criticism of the inquiry format by pointing out the increased burden that would be placed on objectors in terms of the cost of hiring legal counsel and arranging leave from work. The Reporter was prompted to remark that the oil companies were indeed "indulging in overkill." He requested them to reconsider the timing of their case. However, he was not able directly to instruct them to shorten their presentation and would have been unable effectively to control the number of technical experts to take the stand. Ironically the main burden of his remedy was aimed, not at the oil companies, but rather at the objectors and their cross-examinations. The Reporter stressed that the only way the objectors could realistically hope to shorten the proceedings was to;

"...contain your questions to relevant issues and avoid time wasting repetition. It has been my experience at other inquiries that it is the objectors and not the applicants who are the main culprits for prolonging matters unnecessarily."

So two important forms of constraint were at work on the objectors. First the administrators were intent on keeping down the length of the inquiry as far as possible and the Reporter would be seeking ways to realise that objective, and second the oil companies' presentation "overkill" had the effect (whether intended or unintended can only be speculation) of constraining the objectors' cross-examinations because of the limited time and money available to objecting parties to pay

for legal assistance and advice.

A sense of the strong classification and framing of knowledge and information was evident at this early meeting. The sense of injustice felt by objectors prior to the public inquiry was increased by the events of the pre-inquiry meeting. The objective of a meeting to set an agreed agenda and timetable for the inquiry in an informal and cooperative environment therefore ended with bitterness and distrust. Indeed the last words of the pre-inquiry meeting, and those which were to set the scene for the public hearing to come, were uttered by the Joint Action Group Chairman, Dik Mehta:

"I hope, Mr. Bell, that this inquiry will be completed within four weeks. I am convinced, after listening to the exchanges at this meeting, that the objectors' requests for a planning commission were correct. It is the firm opinion of the Dalgety Bay and Aberdour people that a 'Commission' is a far more appropriate instrument for dealing with this highly complex technological project than the inquiry procedure we have been discussing here today. The applicants are proposing a hazardous industrial process and a local public inquiry, which is already turning into a farce, is most unsuitable. Unless the oil companies' evidence is reduced in proportion to the time allocated for objectors to give their evidence, then I am permitted to inform you that the Joint Action Group will have to consider withdrawing from the public inquiry altogether."

After assurances from the Reporter that their case would be given a "sympathetic and fair treatment" the meeting was adjourned with the objectors totally unconvinced.

The most basic insecurity felt by objectors was the belief that no matter what transpired in the public inquiry, the ultimate decision would not flow from the proceedings. Even if the objectors were to win the public inquiry they were well aware that the Secretary of State could over-rule that decision. Many members of the Action Group expressed views that can only be described as extremely pessimistic about the outcome of their campaign, especially having attended the pre-inquiry meeting.

The Public Inquiry

On the opening day of the inquiry there were to be demonstrations outside the Town Hall. The objective was to gain as much publicity for the Action Group as possible and convey the public image of a highly organised and vociferous opposition movement. It was believed that such a display would act as a warning to the officials and oil company personnel that the objectors were not prepared to be intimidated. In actual fact the demonstration was relatively small. It consisted of mainly women and children, no more than 30 in number, waving home-made banners and posing for press photographers. There was no attempt to extend the demonstration into the Town Hall to disrupt the inquiry proceedings. After half an hour most demonstrators dispersed and only a small number remained quietly at the back of the Hall to listen attentively to the first morning's proceedings. It was clear from the outset that the inquiry hearing would be conducted in a quiet and uncontroversial way.

Shell commenced their evidence by presenting their UK Managing Director. The objective was to provide witnesses who would speak to general policy matters and then move to the finer technological detail with later witnesses. Having spent some time going through his precognition and trying to assert the view that Shell was a 'moral company', William Bell, Shell's Managing Director, was then cross-examined by Joint Action Group Chairman, Roger Harris, who was particularly keen to establish in public the flawed nature of the local public inquiry system at the outset of proceedings.

Harris - You may not be aware that there is a widespread public feeling that what we might be going through here is in fact just a rubber stamping charade, in that you have some prior agreement with the Government. Would you confirm that that isn't in fact the case?

Mr. Bell - I can assure you from this side there is no suggestion of a charade and I can only assure you that there is no prior agreement with Government at all.

- Harris - In that case can I ask whether Shell/Esso will be prepared to stand by the results of this public inquiry, whatever the Secretary of State might have to say about it following the public inquiry?
- Bell - I think the answer has to be yes. But on the other hand, I am not familiar or sure whether there is any further process that one goes through.
- Harris - Can we accept your answer "yes"?
- Bell - Can you give me an example?
- Harris - There is a very clear case. If this public inquiry finds in favour of the objectors, are Shell/Esso prepared to accept the findings of the public inquiry, because this hasn't been the case in the past?
- Reporter - I think the question is aimed at the distinction between my making a recommendation that I oppose the application, but the Secretary of State differs.
- Bell - No, I would certainly want to go by the Secretary of State's findings. (3)

This predictable statement from Bell, and the exchange initiated by Harris, is in one sense insignificant. It could have been anticipated and reveals nothing of real interest, it might be argued. However it quite clearly demonstrates the not insignificant fact that the public inquiry, of itself, was not regarded as having any morally binding force on interested parties to adhere to its findings, yet those parties were still prepared to continue with their participation. Administrative and economic expediency will always be used by major applicants as reason enough to go ahead with their project regardless of whether it can be justified in the court of public debate. It is because of this that the proceedings are, it could be argued, ritualistic to the extent that this major contradiction is obscured

by the trappings of the formal processes of the inquiry. However, our conception of 'ritual' must be understood here in the context of the tension between power and participation characterising the local public inquiry system. The notion of ritual in the anthropological literature can have connotations of overly integrated social practices and behaviour which does not fit well with the conceptual vocabulary I am employing of a contradiction between 'formal' and 'common-sense' views of justice. The important question is how can a public inquiry appear to be a "rubber stamping charade" to objectors and yet also act to integrate their thoughts, feelings, and behaviour enough to passively participate in the proceedings? I have already indicated that objectors participating in the Highland inquiries were not particularly discontented. Steven Lukes' conception of 'political ritual' can assist here. He defines ritual in the following way as:

"rule-governed activity of a symbolic character which draws the attention of its participants to objects of thought and feeling which they hold to be of special significance.... political ritual should be seen as reinforcing, recreating and organising representations collectives....that the symbolism of political ritual represents, inter alia, particular models or political paradigms of society and how it functions. In this sense, such ritual plays....a cognitive role, rendering intelligible society and social relationships, serving to organise people's knowledge of the past and present and their capacity to imagine the future....it helps to define as authoritative certain ways of seeing society....it deflects their attention from other forms since every way of seeing is a way of not seeing. I suggest that we should go beyond the somewhat simplistic idea of political ritual expressing-producing-constituting value integration...and instead take up the fertile idea that ritual has a cognitive dimension.... within a class-structured, conflictual and pluralistic model of society." (4)

Lukes is concerned that rituals be understood as ways of exercising power "along the cognitive dimension". A whole series of questions are posed by him about who prescribes the rules, specifies the objects of thought and holds the rituals in special significance. Lukes argues that the 'concept of political ritual' can be applied to many institutions not normally thought of as being rituals, and interestingly he states: "Most obvious of these are the elaborate and public forms of judicial and quasi-judicial activity."⁽⁵⁾ He goes on to talk more specifically about the law rather than the

"public forms of quasi-judicial activity" that interest me. Murray Edelman however has written specifically on the ritualistic in administrative practices (in his case business regulation). The regulation of business by state administrators is often justified under the values of public interest, fairness, and the protection of rights which sustain "an impression that induces acquiescence of the public in the face of private tactics that might otherwise be expected to produce resentment, protest and resistance."⁽⁶⁾ The dialectical tension arises because 'participation' is used to enforce rights which ordinary people believe are their possession to control decisions which affect their lives, yet that very participation is often used as a means to passify, incorporate and generally exercise 'power' by shaping the way people come to see and make sense of the administrative process.

What is crucial is that we are talking about perceptions, not actual institutional mechanisms that prevent injustices or the like taking place. Harris's charge of 'charade' was predicated on his perception of the symbolically flawed nature of the public inquiry system. Yet it did not appear to be sufficient in itself to encourage the objectors to abandon their participation in the 'ritual' or seek to destroy it by disruption. The interesting question, therefore, that emerged from that early exchange was what factors pertaining to the public inquiry system encourage objectors to continue their participation even though they have concluded that it is unfair, fraudulent, or in their own words, "a charade"?

What became clear from subsequent lines of questioning by the objectors was that they did actually participate fully in the inquiry. They sought to put as much pressure as possible on the witnesses and to argue their case fully with due deference to the Reporter and his procedural instructions. It is my view that there are definite stages of disenchantment with the public inquiry which must take place sequentially. Harris's exchange took place before any serious attempt was made to fight the inquiry. In short, the cognitive must always have a firm material or institutional location. Participants in public inquiries must actually experience the futility and failure of their

ritualistic participation before the conditions for a negative reaction are created. There will obviously be a tension between what appears to them (in the public inquiry case an apparently open, fair and impartial quasi-judicial setting controlled by an apparent impartial adjudicator assisted by 'experts' and lawyers) and what they intuitively feel. (This is a charade, the decision has already been made.) The connection between these two dimensions of perception, and the thing that resolves the tension between them, is experience.⁽⁷⁾ It is therefore a journey through these stages of disenchantment that must first be travelled before final verdicts on the inquiry system are made by participants. Those verdicts must be based on the individual experiences of the classification and framing of knowledge as it affects particular contributions of evidence and cross-examination.

The inexorable force of an inquiry system that insists on strong classification and framing of knowledge therefore can have two consequences for objectors opposing a large company. First, they can experience a growing feeling of inadequacy as they struggle to handle the increasingly complex technological detail. They may attribute blame to themselves because they accept the terrain of technical debate to fight on unquestioningly and sense that they are inadequate to compete while the inquiry is fair. Second, they can feel disenchantment with the system because it excludes systematically issues that they wish to pursue and so a sense of the 'inauthenticity' of the system grows as the stages of disenchantment grow. Both experiences were found among the Joint Action Group in Fife. So political ritual is ultimately rooted in the classification and framing of public inquiry knowledge. The concept of power that lies behind the collection code of narrow technical remit and strong classification and framing stifles the opportunity of lay objectors to reality test their understanding of what is significant and what they think should be of central concern to the public inquiry. At that point a contradiction between formal and 'common sense' conceptions of justice surfaces, destroying the 'taken for grantedness' of the inquiry process, and exposing a contradiction between the ritualistic and symbolic in the public inquiry and its actual procedural mechanisms. The public inquiry as a symbolic structure and as an

institutional mechanism are experienced as disconnected. A process of disenchantment rather than a process of social integration can be expected to follow. (8)

Several examples may be cited to demonstrate the 'disenchantment' with the public inquiry in the evidence process. First, there were several attempts made by the objectors to broaden the discussion by questioning the oil company technical witness about the underlying moral and qualitative factors involved in the project. In the first example the oil company witness doggedly refuses to participate in an exchange which lay beyond his remit. Harris for the objectors pursued a line of questioning around the theme of 'conscience'. He had already forced the Shell Expro Managing Director to admit that they were intent on adhering only to a political decision from the Secretary of State and were not, of course, prepared to be bound by the Reporter's decision alone. Harris perceived his task as pursuing his 'debunking' role further by pressing Dr. Jack Taylor, the Shell General Projects Manager, on the subject of an employee's conscience. What would his career chances be if he were to reveal a moral aversion to Shell's plans?

Harris - Can you tell me what would be the situation if you, as an individual felt it against your conscience by carrying this through to complete the destruction of the Forth Estuary, if that was your view as a matter of conscience, what would your position be if you put forward that view publicly?

Taylor's initial reaction to such a question was to look for cues from both his company's lawyers and the Reporter as to how, or if, he should respond to such a question. After a long hesitation he requested a clarification of the question.

- Harris - If one of your staff got up at an inquiry and made it clear that it was against his conscience to carry this development through, what would be your attitude as his employer towards him?
- Taylor - I would be astounded to begin with because I would find it very difficult for an employee, who is familiar with all the facts involved, to arrive at that conclusion.
- Harris - You don't think that would affect his position in the company or his future promotion prospects?
- Taylor - No, it is not the job that I am asking him to do. If he performs in his job that is fine.
- Harris - You wouldn't consider he wasn't performing in his job if at this inquiry he said that he thought that this development was wrong?
- Taylor - It is a hypothetical case I find difficult to envisage; but if that occurred, no. (9)

The form in which Harris pursued this line of questioning demonstrates a lack of commitment to its purpose. It was either extremely naive or extremely inept. Taylor did not have any difficulty deflecting the attempt to disarm him and he required no assistance from the Reporter. It was an important line of questioning however, and should have been pursued far more extensively. The real issue was whether the Shell

company could publicly justify their project in relation to the competing non-technical values that were challenging them. To avoid an exchange on such matters does not legitimise the oil company's purely technical orientation but merely highlights the narrow discourse sponsored by the inquiry. The Reporter, by failing to request a consideration of such matters, was consistently seeking to move proceedings along towards matters that directly related to the remit. To argue that "matters of conscience" are not relevant in a major public inquiry, as many people at the inquiry privately stated and the Reporter implicitly acknowledged, is an argument that points up the inadequacy of the system and the dilemma of a decision-making process which seeks to depoliticise debate. The real issue is not whether it was realistic for Harris to expect a genuine response and exchange with Dr. Taylor on such qualitative matters, but rather that such a line of enquiry should seem so out of place, preposterous or naive in the first place at such a major inquiry. Why should wider social and moral themes be excluded? It could be objected that it was the way in which the topic was raised that was the problem. Non-technical issues require a more subtle inclusion into the debate, and Harris did not pursue his line of questioning with any skill. However, it is quite clear that no justification beyond the technological soundness of the project was considered relevant by the Secretary of State's terms of reference. The questions of wider social and moral significance were treated as an unexamined premise upon which the Secretary of State was to make decisions of a purely technological nature. The remit provides for a technological exchange of evidence only. The oil companies' 'moral position' which had frequently been extolled at the Moss Morran Inquiry was left unchallenged and unspecified. Indeed their own statements prior to the inquiry, and contained in their precognitions, were aimed towards assuring the public that Shell and Esso were an Internationally known and reputable company that adopted a 'moral position' with regard to the communities that host their plants.

However the purpose behind their rhetoric became questionable whenever they failed to explain more fully the implications of the issues that they themselves introduced into the controversy. It appeared that, 'non-technical concepts' were to be accepted without question. A prime example of this was found in Mr. Bell's (Shell Managing Director) precognition. He talked about the "responsibility" that Shell accepted to act with "fairness" and even "generosity" towards local people who might be disturbed by the development. Bell talked in terms of Shell's willingness to give 'unreserved guarantees' to local people. However when questioned about this in the inquiry there was little information revealed about what exactly the status of these 'guarantees' was.

Mehta (Objector) - Can we take this as a guarantee by Shell that they will purchase all houses in the Dalgety Bay and Aberdour area where the owners of the houses can be shown to have justifiable grounds of complaint, and that you will do so at the full market value of the properties disregarding the nuisance that you may be causing and the effect on house prices that may have resulted?

Mr. Bell (Shell) - No, what you can take is that we will give a full and fair investigation and we will then have to find out just how justified the complaint is and what the various remedies might be, but I certainly do not go so far as to say that irrespective of the outcome of the machinery by which this complaint might be investigated that we will give the full purchase guarantee at market value.

Mehta - If, having established that a complaint was justifiable, would you then be prepared to purchase at market price?⁽¹⁰⁾

After some hesitation, Bell declined "to give such an undertaking in a public inquiry". His precognition also stated Shell's willingness

to "anticipate" complaints but he was unable to elaborate on what this might mean. I assume that this was a code word for communicating that the design of the plant would be such that complaints might be unnecessary or would not arise. Shell were using rhetoric without first anticipating a need to clarify what it should mean to objecting parties. The Reporter again failed to request Shell to provide a more detailed statement about the guarantees they were offering. Such 'negotiable' matters were not to be discussed at the public inquiry. They were matters that were to be discussed between the local authorities and the oil companies at some future date. This much was made explicit by the Reporter. The fact which remained was that the public inquiry was constituted for the purpose of examining the technical and spatial matters relating to planning not its social political and normative aspects. But if such matters were not to be subject to public scrutiny and debate at a public inquiry then it would be highly unlikely that they would be openly discussed anywhere in the future. Without subjecting such matters to the public inquiry's scrutiny, and the Secretary of State's consideration, it is unlikely that Shell and Esso would ever have to detail what they actually meant by 'guarantees' in such a way that they might act as a constraint on their future action. The issue of such unspecified 'guarantees' and checks on development was to arise again.

No clearer example serves to illustrate the narrowness of the evidence process than the exchange between the Action Group advocate (Booker-Milburn) and Den Hartog of Shell. It points up more clearly than the example of Harris's cross-examination on the 'conscience' theme the refusal of 'expert' witnesses to move beyond their technical remit into the potentially hazardous area of 'moral' issues.

Booker-Milburn - Which comes first, money or human life? (11)

Den Hartog hesitated, and the discomfort of having to place the technical issues alongside the non-technical led him to seek guidance from his colleagues and his advocate. Booker-Milburn intervened - "I would not have thought you would have needed to wait to answer that?"

- Den Hartog - I should say what comes first is quality of human life. Quality of human life, which may mean in certain cases that a certain amount of risk has to be accepted by the community to be prospering. And I think if we were not there doing anything our country, the countries we live in, this world we live in, would not have the same quality of life as we have now.
- Booker-Milburn - Well, I appreciate that if I get into my car to drive the benefit I get is that I get here in comfort quickly, but if I set up my house in Aberdour, and along comes Shell and sets up a petro-chemical complex, I didn't ask for it, I don't want it, it is of no benefit to me, is that not a justifiable way of looking at it?
- Den Hartog - May I refuse, Mr. Reporter, to answer this sort of question? I thought my terms of reference here were as a technical man.
- Reporter - I think you have been very forthcoming in your answers already.
I think you have got more co-operation out of this witness than perhaps you expected. (The last remark was aimed at Booker-Milburn). (12)

There was obviously little mileage in pursuing such themes with the oil witnesses. The Reporter also showed an unwillingness to direct the discussion towards a serious consideration of such qualitative, even if

somewhat ambiguous matters as "quality of life". The possibility of developing this line of questioning as part of a wider examination of the oil companies' international performance was never tried. The only attempt seriously to explore the relative weighting between technical, economic, social and environmental factors in a major inquiry had been the use of cost benefit analysis by the Roskill Commission into the third London Airport. Such a method, with all its inadequacies, was never seriously countenanced at the Moss Morran inquiry. The solution there was far more simple: ignore the issue completely and concentrate on describing the technology to be used in the petro-chemical complex!

However, there was a category of witness supporting the Shell/Esso projects that could be challenged far more effectively (at least for public consumption within the inquiry) that was the non-employee witness. Three witnesses speaking in favour of the project came in for particular attack by objectors: the landscape architect, the planning consultant who picked the site, and the Convenor of Fife Regional Council. The remits of these witnesses seemed to be firmly located beyond the technical sphere and, due to their exaggerated respect for the technical domain of debate, many members of the Action Group singled those witnesses out for particular attention. Of particular note was the challenge made against Robert Steedman, a partner in a prestigious firm of architects. Among the awards his firm had received was a premier award in the Business and Industry Awards of European Heritage Year for landscaping the B.P. tank farm at Dalmeny on the opposite side of the Forth.

The advocate representing Shell led Steedman's evidence by prefacing his questions with a list of accolades conferred on Steedman for his work. Quoting the assessor's remarks about his work at Dalmeny:

"The assessor stated that the siting, the concealment of the plant by brilliant landscaping, the burying of the pipelines to the tanker terminal, and the extreme care taken over safety and prevention of pollution are worthy of the highest praise." (13)

Cross-examining for the Action Group, Robert Carnduff fastened on to the theme of the distinction between the architects achievements and the subsequent condition of his sites under-production conditions. Referring to the Dalmeny site, Carnduff enquired:

- Carnduff - Have you looked at this recently?
- Steedman - Not in the last year.
- Carnduff - So, in fact, your knowledge of Dalmeny is largely based on the original scheme of things and not on the present state of affairs?
- Steedman - I drive past it regularly too.
- Carnduff - On the motorway?
- Steedman - Yes.
- Carnduff - Are you aware of the land slips taking place on the southern face at the present moment?
- Steedman - No.
- Carnduff - Are you aware of the extent of grass cover at the plant at the present moment?
- Steedman - Yes, that is sheep, a lot of it (hesitatingly)

Here, Steedman conceded that B.P. were using sheep as a way of keeping the grass down: this was a practice of course that was not supposed to happen according to the original plans.

Carnduff - And as you observed the problem with the trees also seems to be the sheep. Did the trees form an important part of the scheme?

Steedman - We wanted trees, yes, 5,000

Carnduff - How many are there with leaves on them today?

Steedman - I have not counted them.

Carnduff - I counted them this morning and there are none - this may not be within your control, but it is within the control of the operators of the plant and it would appear they deem sheep to be a more satisfactory method of keeping the grass down than any other method. I wonder if you know how Shell and Esso intend to cut the grass within their areas where you are proposing tree planting?

Carnduff went on to point out that deciduous trees had been planted at Dalmeny meaning, of course, that they afforded no cover for the tank site during the winter. Steedman had not considered this matter in relation to Braefoot Bay. More pointedly Carnduff pressed Steedman on his own report, specifically his failure to establish how his plans would fit in with Shell/Esso's production.

Steedman - I never thought of production, I wrote that (the report) and Shell and Esso have not amended it.

Carnduff - I am sure that Shell/Esso have very much in mind, that if there is a conflict between production and visual aspect, production must hold sway. Is that not likely?

Steedman - I should think that it is likely.

The whole issue was then raised that landscape conditions were legally complied with by BP at the planning stage but subsequently ignored at the production stage. Steedman had also conceded that some visual aspects of landscaping may be subordinated to production exigencies at Braefoot Bay. Steedman could only counter that "many issues have yet to be considered". He could not answer the question on how he could ensure his landscaping conditions were not violated when the Braefoot Bay terminal was operational.

Carnduff - It seems there are an awful lot of points which have not been considered and yet you are being asked, Sir, (Reporter) to form an opinion on a scheme which seems to include most of its points not fully considered and this bothers me a great deal because I can't argue at any later time than now.

Harris took over the cross-examination of Steedman and pursued, yet again, his concern that all decisions be made with a 'clear conscience'. Steedman's hesitation in answering Harris on "matters of conscience" was due to what he admitted was "uncertainty about philosophical questions". The final dethronement of Steedman came when he admitted, that as the landscape architect for the project, he was "unsure of the zoning status of the land surrounding Braefoot Bay".

Harris - Well, as a member of the general public that would not give me a great deal of confidence in your firm, if, going to a major project of national importance like this, you hadn't taken the trouble to find out what the official zoning of land was. (14)

The cross-examination had succeeded in penetrating beneath the rhetoric of Steedman's awards and status to reveal the reality that landscaping is hardly an adequate counter to the realities of petrochemical production. The conditions controlling the visual aspect of major industrial plants are invariably violated under production conditions. Further crucial areas of knowledge were unconsidered by the oil companies and the specialist architect did not indicate a grasp of basic knowledge about the site which would have inspired at least a modicum of confidence in his abilities in the eyes of the objectors.

The evidence and cross-examination of Professor Alexander McIndoe, the planner who selected the site, provided a second opportunity for objectors to express scepticism about 'expertise'. McIndoe had been involved in many of the major inquiries, first representing the developers and then representing the objectors. He had spoken in favour of Chicago Bridge's project at Dunnet Bay yet had supported the objectors at Drumbuie. He was a particular target for the objectors because it was felt that planning and the selection of sites was an area where technical expertise can be more readily challenged owing to the subjective factors that must inevitably be incorporated within the choices planners make. McIndoe had also turned down the Action Group preferring to support Shell/Esso. This factor in itself did not endear him to the objectors.

Early in his evidence McIndoe issued a challenge to the objectors: "If anyone can tell me where they think an alternative site might be, I will tell them why I would reject it in advising my clients".⁽¹⁵⁾ McIndoe was determined to establish his 'expertise' on all matters relevant to site selection. A particular theme running through his remarks was a distinction between the professional 'expert' and the public. This first emerged when questioned on his view on the adequacy of the public inquiry instrument, specifically on its efficacy for revealing the detailed merits and demerits of alternative sites.

McIndoe stated quite categorically that the inquiry system was adequate but with respect to alternative sites that was an area of specialist knowledge best handled by "professionals". Mr. Young, the solicitor representing Donibristle Investments, questioned McIndoe further.

Young - Do you think in the circumstances that we have here, that the objectors to Shell's proposals at Braefoot Bay can provide an adequate test?

McIndoe - You are putting the question, you are criticising, let me say this in an absolutely serious way. The objectors sought to retain me and had they been successful in doing so the case might have been better presented. You have got to have a lot of highly specialised knowledge and experience for this. I think the objectors have done very well, I have listened with great interest over the last ten days. (16)

The patronising remark at the end of McIndoe's statement serves only to emphasise his belief in his own 'professionalism' and 'expertise' and the implicit rejection of laymen who would be presumptuous enough to challenge it. He was further questioned on the Edinburgh Airport inquiry as part of a general question on public inquiries. That inquiry cost objectors vast sums of money to no avail. McIndoe used this topic to point up his view that professional knowledge can be crucial.

McIndoe - There was never a case against Turnhouse. I was asked to appear on both sides and I refused because there was never a case against it. Some people have said if you can't win Turnhouse you won't win anything, but objectors have won half a dozen of the really major onshore projects, they won Drumbuie, Portkill and won the Cromarty inquiries.(17)

The import of his remarks was that the 'expert' can determine the feasibility of a project, and hence its likely success or failure in

a public inquiry before opposition is embarked upon. By implication the Edinburgh Airport objectors wasted their money. By implication so too were the Dalgety Bay and Aberdour Action Group, because "there was no alternative site" according to McIndoe. He had been remarkably successful in picking the right side to be on in most of the major inquiries which only underlined his arrogant and aggressive stance aimed towards 'de-authorising' or 'de-legitimising' the objectors on these planning matters. McIndoe fully embraced a belief in 'professional expertise' in a way that none of the oil company employees had done. When Mr. Jamieson of the Joint Action Group finally challenged McIndoe's 'professionalism' then the tension I earlier remarked upon, a de-legitimation tension, clearly revealed itself.

Mr. Jamieson was a particularly sceptical member of the Action Group and he in particular had been concerned to question the oil company 'experts' from a position of what I can best describe as 'naive enquiry'. Jamieson adopted a rather facetious stance when questioning witnesses. He appeared on the one hand to be recognising their status but on the other explicitly seeking to question that status by asking (im)pertinent questions which he described as "the kind of question the ordinary man in the street would wish to put". Jamieson's cross-examination of McIndoe clearly demonstrated a clash between his lay common-sense and the taken for grantedness of McIndoe's professional status.

Throughout the inquiry the assumption that the Moss Morran/Braefoot Bay sites had been chosen because they were surveyed as the best possible choice had gone unquestioned. However, Jamieson wanted to know what actually constituted a 'proper thorough survey'. He wanted to know what was meant by that phrase and whether the alternative sites suggested by the Action Group and others at Both Kennar (near Grangemouth), Kinneil Kerse, East and West Weymss, Hunterston, the Cromarty Firth and the two alternative sites near to Braefoot Bay, Trinlaymire and St. David's Bay, had all been given the same 'thorough survey' as that given to Moss Morran, and Braefoot Bay. McIndoe became irritated when Jamieson continued to press him on this

issue. Jamieson eventually established that McIndoe chose the Fife sites, not on the basis of thoroughly surveying a number of possible sites, but by fitting together the oil companies' site requirements with Scottish Development Department coastal planning guidelines.

The Braefoot Bay area fell within the "preferred development zone" in the SDD guidelines but it was also a site which was designated as not necessarily available for development. This meant that any development proposed would not automatically be approved but the onus was on someone to oppose development and demonstrate that development would be bad. * It was the kind of area that placed the burden of argument on others, not the developer. McIndoe therefore commended the Moss Morran/Braefoot Bay sites to his oil company clients who then 'thoroughly surveyed' them. Having surveyed the preferred sites McIndoe and the oil companies set about justifying that selection by identifying reasons which they could argue ruled out alternative sites. Once the general arguments were constructed against alternative sites, then a 'thorough survey' would not be required.

This procedure was considered highly dubious by Mr. Jamieson who kept questioning McIndoe on his ability to undertake a 'thorough survey'. The Reporter, lending assistance to McIndoe, restated his earlier challenge that people should identify an alternative site and McIndoe would say why he could not recommend it. The Reporter was anxious to move Jamieson towards a more specific planning issue. He indicated that he was satisfied with the survey of alternative sites and was troubled by Jamieson's repetitive stance which the Reporter concluded was time-wasting.

* See Scottish Development Department 'North Sea Oil and Gas'. Coastal Planning Guidelines' (The Blue Book) where the distinction between preferred 'Conservation Zones' and 'Development Zones' is explained.

Mr. Jamieson - I wish only to establish whether or not a proper thorough survey was done of alternative sites.

McIndoe - I carried out this survey and for the first time in my life I am hearing the suggestion I don't know how to carry out a survey comprehensively and properly. (18)

It was clear that as far as the Reporter was concerned the site survey issue was not to be allowed to continue and Jamieson was eventually requested to address himself to another set of questions. However, to many people among the objectors this was clearly a case of the Reporter restricting discussion of a highly significant issue. From the Reporter's point of view it was quite clearly not an issue. The alternative sites all had major obstacles which prevented their selection and the fact that they had not been surveyed in the same way as the chosen site was largely beside the point as far as the Reporter was concerned. He obviously believed their detracting features rendered such 'thoroughness' redundant. However, it is questionable whether all of the alternative sites should have been ruled out. The sites at Cromarty, Bothkennar and Kinneil Kerse were all acknowledged as possible alternative sites by the oil companies themselves. (19)

Adrian Grant representing the Conservation Society began his cross-examination by critically commenting on McIndoe's style of giving evidence in which he made many aside remarks which seemed to have gone unchallenged by the Reporter and others. Grant was particularly concerned to draw the Reporter's attention to these asides.

Grant - It is interesting that the asides that you make, and I hope that the Reporter is very conscious of the asides that you make which normally go unchallenged..... For example, you said that it would be adverse to national energy policy not to have these things at all. Now as far as I understand it

we are in the middle of a great debate about energy and we are about to have a White Paper, so either there is some covert relationship between yourself and the Minister of Energy and you have already decided this and debated it, and it is in itself a public relations exercise, or else you don't have the right to say that...(20)

Reporter - You are really making a speech rather than putting a question.

The Reporter's intervention demonstrated the ease with which discussion and debate is constricted and easily interrupted within the formal evidence format of presenting and organising information. Grant's line of enquiry was reformulated for him by the Reporter, "He is challenging your statement that this accords with energy policy; could you substantiate it? Your claim that this is in accordance with the Government policy on energy."⁽²¹⁾ The reformulated question allowed McIndoe to defend his statement easily by referring to Production R/1 which was a letter to the Reporter from the SDD of the 1.6.77 stating Government preferred policy with respect to oil and gas. What it avoided, of course, was the status of the very concept of 'national energy policy' at a time of general debate in politics and society. Grant was concerned that the statements included in production R/1 might be treated as a conclusive, sacrosanct and objective statement of what government policy finally was. The reification of issues in policy documents obscures their partial and conflictual nature. Grant however failed to open up discussion on 'national policy' except to indicate that there were "significant groups" in society who seriously challenged the unquestioned assumptions about oil and gas production. However, it was clear that production R/1 was being treated by McIndoe as a conclusive statement of government policy and by implication debate had ceased. The Reporter and the SDD took a similar view. It is likely that production R/1 was used as a yardstick against which the Moss Morran/Braefoot Bay developments would be measured in terms of policy fulfillment. What was clear at the inquiry was that production R/1 and its contents were not to be debated. However, it was surely worthy of greater attention than was

given to it. It was a document whose background assumptions hung over proceedings but were hardly ever alluded to far less questioned. Grant never succeeded in drawing out its provisional status and so its damage was allowed to go unstopped.

McIndoe was never challenged directly by the Reporter in the course of giving his evidence. The Reporter was more discernibly irritated by Grant's belligerent style, particularly on the occasion when he questioned the 'factual' status of McIndoe's figures about future job numbers associated with the NGL and ethane developments. The Reporter again intervened to stop Grant making points and insisted that he restrict himself to formulating questions. This took place even though the format according to the Reporter was "not to be as formal as a court of law". The Reporter seemed curiously unwilling to support Grant's important theme throughout his cross-examination that many of the productions and 'facts' were highly speculative and provisional. To restrict cross-examination at all times to posing questions about those 'facts' rather than engaging in a debate about their construction inevitably leads to frustration and anger in the cross-examiner who constantly fails to get any formal recognition that his or her perspective has a status worthy of equal recognition to that of the 'expert' witness. The status of evidence should be determined by its ability to be discursively validated. Only by such a mode of grounding its worth will evidence be capable of re-assuring objectors. If objectors are allowed only to present evidence within a predetermined lowly position on the hierarchy of credibility then their evidence will, from the start, be considered in a different light to that of the technical expert. Evidence should be presented in such a way that debate about its underlying principles and issues should be allowed to follow. As Habermas suggests, an 'ideal speech situation' requires the possibility of a "radicalisation of the argument". That can only be achieved by freeing the cross-examiner from the formal constraint of posing questions only.

There was a general controversy throughout McIndoe's evidence about the status and relative worth of 'experts' and 'the public'. This was highlighted particularly in the cross-examination led by Grant

who had observed that McIndoe selectively used 'public opinion' as a legitimacy concept when seeking to give 'authority' to his general statements yet 'de-authorised' lay opinions when his 'professionalism' or 'expertise' had been challenged. McIndoe, for example, had referred to some unspecified concept of 'public opinion' when he argued that the public were in favour of the Moss Morran end of the project and that many were also in favour of the Braefoot Bay development on the basis of their perception of its 'undoubted economic and industrial merits'. The 'public' were being used selectively in a supportive role for his argument when it suited him yet when it came down to evaluating the merits of the technical and planning issues, McIndoe believed that this was "only for professionals". In reply to the charge that he played 'expertise' and 'public opinion' off against each other to suit his particular arguments McIndoe stated,

"I am sorry, the point I am trying to make is this: there are 397 objections, I think, and there were not many of them with reference to Moss Morran, and those which were, there is no very strong objection; this is an objection that is not unnaturally concentrated, not confined but concentrated, at Braefoot, and on the experts. What I said was if the experts have the facts, which the lay public rarely have, if the experts have the facts then, if they are professional men giving us sound and genuine opinion, I think on the whole they should carry more weight than members of the public who don't have the right facts." (22)

It was precisely the question of what constitutes the 'right facts' and 'professional status' that was at issue. The inquiry, through the intrusions of the Reporter, failed to recognise the provisional nature of the 'facts' and indeed the 'expertise'. When Booker-Milburn asked McIndoe, "Who decided whether something is of national economic importance?" and got the reply, "People with knowledge." then the difficulties confronting objectors at the Moss Morran hearing were revealed with great clarity.

The almost total reliance on 'expertise' expressed by Sir George Sharp (Fife Region Convenor) and Dunfermline Provost Les Wood, representing the local authorities, underlined the attitude of allowing privileged status to professional 'expert' knowledge. Sir George Sharp stated strongly in reply to a charge that the Fife Region, in supporting the

Shell/Esso project, were clutching at straws, that "the Region is not clutching at straws, the Region is comprised of responsible elected members and officials who view objectively any suggestions for development". Sir George firmly believed that the combination of Shell/Esso's 'expertise' and the 'wisdom' of the Secretary of State for Scotland, then Bruce Milan, would ensure the safety of the NGL/ethane project. Provost Wood, in turn, had deflected questions on the health risks from carcinogenic agents such as P.V.C. and vinylchlorides which would inevitably be emitted as a by-product of petrochemical industry, by expressing a total reliance on both the "technical people" advising him, and the Cremer and Warner consultants. Both politicians did not believe there would be any safety problem otherwise their advisers would 'surely' have informed them. This apparent strategy of naive faith in 'expertise' was difficult to dislodge by objectors who could only rely on the perceptiveness of the general audience and the Reporter to note the weak foundation upon which policy decisions in Fife about major technology developments seemed to rest.

The objectors had little faith in the competence of the local authority representatives and one way in which they chose to demonstrate this lack of competence was over the issue of the land purchase option agreed between the local authorities and Esso under the Community Land Act. At the time of the public inquiry Esso had not finally decided to go ahead with their cracker project and were seeking outline planning permission in principle only. Sir George Sharp, as Fife Region Convenor, stated confidently that an option to buy back land from Esso, at its current use value as agricultural land, was protected by the Community Land Act 1975 should Esso decide not to proceed with the Ethane cracker within a four year period. Beside the fact that Sir George publicly contradicted the general local authority line that the project would only be viable if both NGL and ethane cracker were built, he also had failed to acquaint himself with the exact nature of the agreement entered into by the local authorities; the option had not been as he presented it to the public inquiry. Dik Mehta, a lawyer by training and co-chairman of the Joint Action Group, had investigated the relevant sections of the Community Land Act 1975 which covered such options. His attempt to de-legitimate Sir George

on this issue was met by some resistance from the Reporter, who was reluctant to acknowledge Mehta's line of questioning. Mehta pointed out that the relevant legislation enabling public ownership of development land under the 1975 Act made it clear that the "price the local authorities will have to pay to Esso will be the cost to Esso subject to inflationary indexing or the market value at the time when the option is exercised, whichever is the lesser. Buying out at market value of the time must mean the market value as industrial land (my emphasis), but by that time it will have the benefit of planning consent for industrial use."⁽²³⁾

Reporter - I don't know how much further you can take this to help me Mr. Mehta. It may well be with your professional knowledge you could have advised the Council better than they have been advised, but the relevant fact that I draw from this production (Community Land Act, 1975) is that in the event of Esso not proceeding with their development, the Regional Council has the option to acquire the land, and what bargain, whether they have made a better bargain than they could have done or a worse bargain is not going to influence my recommendation to the Secretary of State on what is before this inquiry.....the fact that there is machinery for allowing public ownership of the land should the development not proceed is relevant, but the actual details of the bargain, unless the bargain is so very bad that there is no prospect of any local authority ever implementing it, apart from that extreme case it would not be relevant. (24)

Mehta raised again that there was in fact a real issue if the local authority could only purchase "at the inflated industrial value which, of course, they will never be in a position to do financially." The Reporter was not convinced that this was an issue and Mehta was therefore discouraged from taking the matter further at that point. Content that he had at least revealed the lack of awareness of the issue by both Sir George Sharp and the Reporter, he decided to raise the issue again with the Fife Regional Planners, who Sir George considered to be the "experts in such matters"; the "experts" he relied upon.

When the planners representing the three local authorities took the stand Mehta again raised the issue, William Taylor, (Fife Regional Director of Planning) admitted that Mehta was correct and Sir George's evidence, that the land could be bought at its current agricultural use value, was wrong. Esso would therefore be able to sell the land at its full industrial market value, which would include planning permission. The planners also admitted that it would be highly unlikely that the local authorities would ever be in the financial situation to afford to purchase the land and Esso would then be free to sell the land to whomsoever they chose. The Reporter with some reluctance allowed Mehta to underline the fact that the land values issue was a highly significant one. Mehta's view was that the issue came within the Reporter's statement that the bargain struck in such land purchase agreements was the interest of the public inquiry because the "bargain is so very bad that there is no prospect of any local authority ever implementing it." The attitude of the Reporter to this issue can be indicated by the reference to it in his summary report; in section 8.68 the Reporter simply alluded to the fact that William Taylor, "on advice and information received was satisfied as to the terms in that regard."

An important issue was avoided. Esso had not presented details of their Cracker project, and on the basis of very limited information, outline planning permission would attach to land which could then be sold to another party at a future date without the detailed factors of their industrial project being available for public scrutiny in a public inquiry. Public funds would be unavailable to allow local authority ownership and control of the land. It is perhaps arguable that the land purchase option of itself was insufficient to stop the project, but it was an issue that required Esso to be more specific about their proposals and clarify the likelihood of their proceeding with ethane production in Fife. Only on the basis of further information could the public, the local authorities, the Reporter and the Secretary of State know whether the land issue would be important or not. In fact the world market overproduction of ethane made it look highly unlikely that the ethane Cracker would ever be built and certainly not within the four year period envisaged at the inquiry. The issue raised

by Mehta was therefore highly significant and prematurely curtailed. Sir George Sharp's reliance on his "experts" did not contribute to his status within the inquiry. They had revealed that his knowledge was limited and that he was yet another part of the symbolic structure of the oil companies' supporting evidence. The favour and assistance he received from the Reporter did little to appease many objectors who saw matters from their standpoint as yet another crucial issue being swept under the inquiry carpet without adequate recognition from the Reporter.

Dik Mehta concluded his pursuit of the land purchase theme by suggesting that Esso regardless of their ethane project will likely make a trading profit if the public inquiry led to outline planning permission:

Mehta - Then Esso would be free to sell the land elsewhere (other than to the local authority) with the benefit of the planning consent which was granted?

W.Taylor - Correct.

Mehta - Would this not be the reason why Esso have been so keen to take up options which they acquired for the purchase of the land and not the explanation which had been given to us before of their earnest intention to proceed?

W. Taylor - I wouldn't be able to answer that on the basis of my knowledge. A lot of factors may relate to why Esso have taken or have not taken up options. It might be entirely dependent on the time scale for which individuals are prepared to give options.

Mehta - But they could make trading profits on the operation in the circumstances I have just described to you?

Taylor - They might, I would need to know the details.

Reporter - I don't think I want to know the details, you have conceded they might. Carry on.

Mehta - The local authority have lost the benefit that the Community Land Act was designed to afford the Community in cashing in on the development value of land created by planning consent. (25)

This was the fundamental issue and one which the Reporter was not keen to acknowledge.

The Technology Debate

In addition to the 'de-legitimation' tensions in the evidence process and the classification and framing of knowledge around specific non-technical themes there was the issue of the technology safety which contributed greatly to undermining objectors confidence in the inquiry. Again the issue had to be understood in terms of the classification and framing of knowledge. The fundamental issue was one of what would or would not be admitted into the 'credible technology failure scenario'. What would provide the public inquiry's model of the likely safety hazards?

The most prominent issue was related to the potential for an open flammable cloud of vapour resulting from an escape of refrigerated liquid hydrocarbon (propane or butane). What was problematic was the 'credibility' of such an event occurring. The objectors acquired the services of Professor D.J. Rashbash (Professor of Fire Engineering) and Dr. D. Drysdale, a specialist in hazardous petrochemical fires, and they argued that an open flammable cloud explosion over Aberdour or Dalgety Bay was the single most important hazard in relation to the Shell/Esso project. Further, Rashbash and Drysdale concluded that such a disaster was highly possible and that Shell/Esso, Cremer and Warner and the Health and Safety Executive had all dangerously understated its likelihood. The difficulty revolved around the refusal by Shell/Esso and Cremer and Warner to accept the credibility of such an event happening given their insistence that the design and operation of the plants would be exemplary. Rashbash's opinion was that the risk of an open flammable explosion should be reduced to a probability of occurring less than once in a million years. He criticised both the oil companies and Cremer and Warner for failing to attempt to quantify the potential risk.

Discussion in evidence and cross-examination therefore concentrated largely around the methods of calculation and the assumptions used in estimating the effects of spills of hydrocarbons and the subsequent open flammable cloud explosion. There were obviously differences involved in the calculations made by the respective fire hazard experts, but little recognition that the academic and highly confusing technological discussions were crucially dependent upon the variable of human error. For example, the inquiry spent some considerable time hearing about the estimated times calculated for a vapour cloud to travel. While the developers were refusing to accept that this

event would ever happen, Rashbash and Drysdale seemed to be engaged in an abstract theoretical exercise in building hazard models.

The Moss Morran inquiry setting, like the Highland inquiries before it, curiously seemed inappropriate for examining such issues, ironically, as it had been set up as the central part of its work and was generally considered by the Reporter to be central to the issues to be considered. So on the one hand science and technology rather than other non-technical themes were systematically placed on a pedestal by the underlying collection code organising the proceedings, yet the inadequacy of the inquiry format and restricted terms of its reference reduced this central theme to a bizarre and highly abstract academic debate between highly specialist experts. Much of their evidence, which was given a special place in the hearing, was largely beside the point because the finer details of the effects of an explosion were not the issue but rather whether such an event can be adequately prevented. The whole issue was doomed to frustration by the lack of space and time available in a local public inquiry to thoroughly explore the quantitative risks of an explosion. The real risk which emerged from the public inquiry was that there was no basis for deciding the technology debate other than by the unacknowledged selection of crude sectarian criteria which were based on the expedient need for employment and the uncertainty about the future economic gains from downstream manufacturing developments. However, such criteria also paradoxically reintroduced unacknowledged economic and sociological factors as the true basis of the decision-making process. The technical experts on fire hazards effectively confused the basis upon which the issues were actually to be resolved. The public inquiry could not provide the time to thoroughly investigate and research the crucial fire hazard issue which at the very least required a wider scientific and technological constituency to adequately examine the problems. A public inquiry with one technical assessor and a host of partisan technical 'experts' was not really adequate. So the central exchange between the Cremer and Warner consultants and Rashbash and Drysdale was essentially obfuscatory; there was certainty that an explosion near or in the Braefoot Bay plant would be lethal and the likelihood of such an event was effectively incalculable given the

highly variable human factors that provided the weak link in any safety system. There could be no decision based on purely scientific and technological evaluation. The decision inevitably had to be based on different qualitative criteria while appearing to be based on sound scientific knowledge and information, due to the technocratic constitution of the public inquiry. It was precisely this fact that some objectors perceived. They viewed any risk of an explosion as reason enough to locate the project away from populated areas. The fact that the scientific evidence forwarded by the Action Group was considered sufficient to establish at least the possibility of an explosion meant any decision in favour of Shell/Esso should only be firmly based on a wide investigation which eradicated any possibility of risk. Their concern was again framed in a desire to see a PIC constituted to examine the issues more widely. The failure of science to eradicate their fears, coupled with a sense of the public inquiry's inability to ensure proper consideration of the technical themes, exacerbated their disenchantment with the local public inquiry system.

Throughout the inquiry there was a significant disagreement about the safety of the technology. The oil companies insisted throughout that there would be no novel technology used in the Moss Morran/Braefoot Bay project. While conceding that much of the technology was highly advanced, Shell and Esso insisted that they had a vast experience of building and operating NGL and Ethane plants. The objectors were focused on the high number of major petro-chemical explosions and fires around the world and argued throughout that the safety of Shell/Esso's technology was highly problematic. They relied largely on the apparent statistical frequency of explosions and could not, as such, adequately present a detailed technological challenge to the Shell/Esso experts. So as the objectors were unable to provide such expertise then the issue of the novelty of the technology tended to go by default. This was yet another area where the constitution of the public inquiry around 'expertise' was paradoxically weakened by the absence of a structured place for a high level critical input from 'expertise' not attached to the applicants' case. If the objectors at a major public inquiry fail to gather the requisite information and

'expertise' then a critical technology evaluation simply can not 'inform the minister' who is left with a partial technology evaluation.

Yet another area where the local public inquiry format reveals its inadequacy occurs precisely when novel technological solutions are offered. A Conservation Society witness (John Busby who had appeared at the Dunnet Bay inquiry) with a background in engineering and the manufacture of chemical products suggested an alternative layout for the plants to minimise the hazard risk, specifically the proximity of the flare stack to the plant and the plants to each other. He suggested a linear layout or at the very least a lazy S. His evidence was received with much hilarity as it had been at Dunnet Bay and after hostile questions by the oil companies' lawyers the evidence was promptly ignored. The Reporter's conclusions made no recognition of the argument that the technology might be considered novel or that the plant design might be re-assessed. To give such recognition would require the oil company experts to give a wide re-assessment to their designs and working assumptions. The public inquiry forum seemed an inadequate place to ensure that such a process would take place.

In order to gain an impression of the cumulative impact of the public inquiry process on the participants, it is necessary to examine the perceptions of the system as revealed by the main objecting parties and the oil companies involved in the inquiry.

The Public Inquiry: The Aftermath

Following the completion of the inquiry all the principal participants were interviewed. The objective was to obtain an understanding of the varying perspectives on the public inquiry from the main participants, especially the oil companies and the main objectors.

The Oil Companies' View⁽²⁶⁾

Jacobs, Shell's public relations man, opened his account by stating that his company was pleased at the way the public inquiry had gone. In his view Shell and Esso had won the argument in "an open and impartial public setting". The oil companies were therefore expecting

to win the public inquiry. The Reporter, he believed, would find in Shell/Esso's favour but they fully expected the Secretary of State to allow their development even if the public inquiry went against them. Jacobs supported this view in terms of the "soundness of our project for both the local and national interest". Whether or not more subtle pressures were being applied can only be matters of speculation. As far as the oil companies' public relations sections were concerned, victory would fall to them because of 'reasoned argument'. That was their story and they were sticking to it. Jacobs would not accept that any other constraints or pressures were or could be exerted on the Reporter or the Government.

The case presented at the public inquiry by Shell/Esso was effectively organised by their lawyers who set down guidelines about types of information required, types and statuses of witnesses, and indicated the kinds of arguments that might impress the Reporter. The structure and presentation of the case was therefore largely taken out of the hands of the oil company representatives. The oil companies simply had to find the appropriate witnesses and information when called for.

It was felt that many of the lines of questioning from the objectors were both irrelevant and extremely naive. Roger Harris (Joint Chairman of the Action Group) was particularly mentioned for his insistence on raising 'moral' issues and implying that the 'experts' representing the oil companies' case were attending the inquiry under duress. Harris was considered to be a time-waster. Jacobs indicated that every man who spoke for the oil companies was convinced about the integrity of the project. "No pressure has ever been placed upon an individual in my company who thought a project was impracticable or dangerous", argued Jacobs. Such differences are ironed out, he said, at the early stages of planning. If someone remains unconvinced about a project or lacks full commitment after the internal debates and conferences have ceased, then, said Jacobs, he is simply moved to another project. It was obvious that Shell/Esso would not select witnesses who felt unable to defend their project in public, but he was evasive about the import of Harris' question which was raising the underlying tension between commercial pressure and technological

safety. On the question of 'morality' which had confronted the Shell witness Den Hartog, Jacobs said he and his colleagues were particularly annoyed at that line of question. He doubted whether it should have been tolerated at all.

"The morals of an individual or the morality of an argument are irrelevant in a public inquiry. We were interested in the technical issues. There were too many irrelevant questions about philosophies and morals."

Jacobs pointed to the evidence given by John Busby for the Conservationist Society regarding a linear or lazy S design layout for the plant. That was, for the oil companies, an example of the failure of the objectors adequately to challenge the oil companies' technological proposals. "I believe John Busby's evidence did more harm than good for the conservationists' case. He shifted about on unfirm ground with his arguments which were largely unworkable and facile", said Jacobs. If Busby is compared with the Shell/Esso 'experts', according to Jacobs, then the "integrity and knowledge of our people is clear to see". Jacobs did concede that the Action Group had performed well and some of their information was impressive. He conceded that a strong Action Group "kept the oil people on their toes" but he was satisfied with the public inquiry instrument and deflected questions about its appropriateness for processing highly complex technological issues. He was not worried about the planning system and the fact that, had there not been a well organised Action Group, their project might have been passed by default. This was not an issue for him. He believed in the NGL project and assumed that its virtues were evident, "otherwise the local authorities would not have supported it". There was therefore no recognition that the form of institutional mediation in planning was significant and there was a blind faith expressed about the possibility of local politicians and planners to perceive the nature, effects and worth of an industrial development independently of public inquiries. Indeed Jacobs indicated that public inquiries are perhaps a necessary but troublesome hurdle for industrialists, and while convinced that the Moss Morran inquiry was fair and well conducted by the Reporter, he implied that it tended to "make a principle out of frustration", to use Luhmann's terminology, by time wasting.

It was clear from Jacobs' comments that the oil companies were more specifically concerned with the Action Group, and the possibility that they would engage in various methods external to the inquiry to hinder the project, than they were with the public inquiry system. The problem, as Jacobs saw it, lay outside the inquiry process. He was specifically concerned at the way exogenous factors might impinge upon the evaluation of their development. For example, following the start of preliminary tests in Mortimers Deep (tests that Shell/Esso indicated would take place when giving evidence), Donald Stodart, acting as both an objector and Chairman of the Regatta Committee, wrote to Jacobs complaining that the tests would disrupt local sailing and sent copies of the letter to the Reporter and the local press. He followed this up by sending a further letter to the Reporter detailing an incident at the Cowes regatta when a Shell tanker interrupted the sailing. These incidents were considered to be irritating and not to be taken particularly seriously. But Jacobs argued that it was indicative of a situation tantamount to subjudice where objectors "were trying to influence the Reporter after the public inquiry had been completed".

There was a very real concern expressed by Jacobs that the planning system is imprecise at "the margins". The inquiry could be re-opened at any time and an Inquiry Commission could technically be set up even after the time and expense incurred fighting a local public inquiry. This formal uncertainty combined with a vociferous Action Group intent on manipulating the system and possibly bending the system to their aims, was the real concern. Jacobs was insistent that the concern of Shell/Esso was not in terms of any uncertainty on their part about their project, but rather that the Action Group would seek to disrupt and slow down the progress of their planning application. In particular there was concern that "a minority of hot-heads will resort to damaging plant and machinery and inveigle mothers and babies to sit down in front of bulldozers". However, Jacobs expressed the general view that the public inquiry had satisfied local objectors by allowing them at least the opportunity to express their opinions. This he believed was only "right and proper", and he continued, "if the Reporter is over-ruled by the Secretary of State in favour of our scheme

there will no doubt be an accusation that the decision is 'political', however the arguments and issues have been publicly recorded now and most people who attended the inquiry will know the decision will be based on the weight of evidence presented by us at the public inquiry". There was therefore great confidence on Jacobs part that Shell/Esso had in fact won the technical arguments and that the project did make economic sense. There was no recognition that between the oil companies and the Government anxiety to realise a commercial project, the concerns of the objectors, the local communities and the environmentalists might be squeezed out, particularly as neither the deliberations of the inquiry nor the Reporter would be binding on the Secretary of State.

The Regional Planners' View

I arranged a meeting with Mr. William Taylor, Depute Chief Planner for Fife Region, and Mr. Peter Sutie, his second in command and number 3 in the overall hierarchy of planners in Fife under Mr. Maurice Taylor. William Taylor had given evidence at the public inquiry speaking for the Regional Council. Fife Regional Planners contributed the majority of the input into the Fife Regional Report and had the main responsibility over the Shell/Esso project. Our discussion ranged over the historical background and difficulties surrounding the Moss Morran site and the planning system in general and the place of the public inquiry instrument within the planning system in particular.

Taylor stressed the technical nature of their work initially, emphasising that their main task is to identify land for specific purposes. For example, since the 1950's the site at Moss Morran had been regularly considered as an area where industrial development might take place. Having regard for the drainage, terrain, and identifying, for example, the potentially high foundation costs for any building, was the job the planners undertook; whether to build on that site having regard to these technical matters was an issue for private industrialists and local and central government politicians. He recognised that there is an inevitable political content to planning matters but he was quite clearly indicating that he was a 'technical person' providing information only for a subsequent political choice

to be made elsewhere. Both Taylor and Sutie expressed the view that there was a lack of clarity among the public about the planners' role in major development controversies like Moss Morran. They are always confronted by the difficulty, as far as they see it, of far more political influence being attributed to planners than actually exists.

There was some urgency felt about utilising Moss Morran, particularly because the Cowdenbeath area had such a high unemployment rate. However the problem of finding a site on the Forth to complete a petrochemical scheme was always recognised by the planners as the single most difficult issue because it would entail re-zoning agricultural and leisure use land for a controversial industrial use. Both Taylor and Sutie freely admitted that the real problem was that the local public inquiry instrument was totally inadequate to handle the level of controversy raised by using Braefoot Bay and Mortimers Deep as a tanker terminal handling dangerous petrochemicals.

Both planners thought the Moss Morran inquiry had been "extremely competent and fair". They believed the lay public expect "too much openness" from public inquiries. Taylor stated, "Whenever a major development is being arranged there are always highly confidential commercial and technical issues that must be protected from premature public awareness". The Moss Morran site had to be tested for its feasibility and normally, they said, a general technical and commercial audit has to take place before a developer can publicly declare any interest in a site. Taylor and Sutie admitted that very often planners, local politicians and Scottish Office officials know about these arrangements and the interest being shown by a developer well in advance of the general public. The real problem identified by Taylor and Sutie is that the public want too early an involvement or participation in such controversial development issues. "They want to object to something before it even gets proposed." And even within the public inquiry, the planners believed there had to be areas of information which had to be protected from public knowledge. They commented that the Action Group were naive in expecting clear answers to some of their searching questions about "commercial viability". Taylor and Sutie were not particularly troubled by Esso's application

which was seeking only outline planning permission in principle. Their view was that such an application had to wait to clarify the commercial viability of the project judged by uncertain market conditions. Planning permission would allow a company to respond to market viability quickly. They recognised however that the overall issue about the desirability of an NGL plant without an ethane cracker was one that had to be examined, but they argued that was a separate issue from whether a public inquiry should process outline planning applications in principle without an assurance that the project will materialise.

The planners also rejected the criticism of public inquiries in terms of their formality. There had to be order and structure to the proceedings. They recognised that there was a legitimate concern about the increasingly influential role being played by lawyers in the big controversial public inquiries. William Taylor agreed that an arrangement which structured evidence around identifiable controversial issues rather than expertise would be desirable. He sympathised with cross-examiners who were stuck with a witness unable to answer the question posed and a Reporter unwilling to allow the re-call of another witness who would be able to answer the question. So the planners recognised that order and structure were necessary for any form of public debate or inquiry but the form and nature of structural constraints need not be as restricting as current local public inquiry practice.

The planners thought that the most justifiable criticism made by the Joint Action Group at the Moss Morran public inquiry was about the confusion characterising the planning system which "used a local public inquiry to hear objections of national significance. The situation often arises whereby local people debate issues which have an element of national interest attached to them". William Taylor argued that there was a need to distinguish between 'national' issues that were "national by precedent" such as the case of National Trust inalienable land desired for development as in the Drumbuie case. That kind of issue can be dealt with adequately, Taylor argued, by a local public inquiry. However, the issue at Moss Morran was of a different

order. The issue there, regarding national policy on North Sea gas, had immediate economic and commercial importance with national level political implications. It had been government policy to encourage conversion of North Sea gas to high value added products and that was not an issue that could be appropriately dealt with within the confines of a local public inquiry. There was the additional issue which concerned the objectors over the safety of the technology involved in the project and the safety risks attached to the siting of the plants near to populated areas. That issue could have national implications. However it was not an issue for the planners who took the technology issue as a given. Throughout the Moss Morran inquiry the technology issue was never recognised by any party, other than the Joint Action Group, as novel, so therefore no wider implications were attached to it. Presumably this was the view also taken by the Scottish Office. The planners believed the Action Group had not grasped the 'real' national issue, that surrounding national gas and oil policy. Only the Conservation Society adequately centred their evidence on that issue, but the Action Group did not pursue it. They tended to see the only national issue as that of the safety of the technology and consciously distanced themselves from the Conservationists, weakening their case and isolating the Conservationists.

It was clear that the Fife planners wished to adopt the role of pragmatists. Their skills were to be regarded as technical ones. They insisted that their role in the Moss Morran planning application was purely "professional and organisational", applying technical planning knowledge to the production of easily understood reports upon which political decisions could be made. Their view of public participation was very much conditioned by their professional self image. They conceded that the public had legitimate concerns about the planning system but there was nothing radically wrong with the form of public participation that currently exists. They tended to see the problem with public inquiries less in terms of public access and participation, which if anything they saw as encroaching too early into delicate planning controversies like Moss Morran, and more in terms of a need to locate the most appropriate level of public

debate for planning issues with national implications. The Moss Morran controversy clearly did contain national level issues in terms of gas policy and the safety of petrochemical technology. Some form of inquiry commission would, therefore, seem the most appropriate vehicle through which to arrive at an appropriate destination whereby local and national issues could be thoroughly balanced and debated. However, the Fife planners in the end seemed to be perfectly satisfied with the Moss Morran inquiry, partly, it would seem, because they did not view the problematic issues as those centering on the technology. The planning issues relating to Braefoot Bay were whether it would be appropriate to re-zone the area for industrial purposes given its current limited use for leisure. The planners tended to accept that the use of Braefoot Bay as a tanker terminal was, in the circumstances of high unemployment and industrial decay, fully justified. While they were more than willing to discuss the deficiencies of the planning system and the public inquiry instrument in general, they seemed to feel satisfied that the Moss Morran inquiry had not suffered from those general deficiencies and had adequately covered and publicly debated the crucial issues as they understood them.

The Action Group's View

The Action Group obviously did not share the level of satisfaction with the public inquiry which was expressed either by the oil companies or the planners. However, the general attitude towards the public inquiry varied. Some participants felt that the Reporter had been "fair and efficient", while others felt he had interrupted too often and occasionally positively helped the oil companies' case by failing to recognise important themes being raised by the objectors. This latter criticism seemed to focus less on the Reporter actually stopping information being given, which he rarely did, but rather on the indications he made at the inquiry that certain themes "were not helping him" or were irrelevant and did not engage the remit. The Reporter often dissuaded cross-examiners for the objectors from pursuing particular lines of question. He tended not to do this in an overtly authoritarian way and as a consequence many members of the Action Group felt frustrated rather than directly critical of the public inquiry or the Reporter. Herein lies a major paradox.

Messrs Helm, Sutcliffe and Jamieson from the Aberdour end of the Action Group revealed a contradictory view which illustrates this point. In their view Mr. Bell, the Reporter, was a "fair man". He generally conducted the inquiry fairly, although Jamieson had particular comments to make about his report and interpretation of evidence. There was however a unanimous feeling that while the inquiry was "fair" it was also a "political charade" and a "farce" whose purpose was "purely to legitimise a decision which had already been taken prior to the start of the inquiry". It was said by many Action Group members interviewed that they intuitively felt that their participation in the public inquiry would be a waste of time but they kept hoping that perhaps it would make a difference. Once the inquiry was completed they realised that their first feeling had been correct.

Jamieson was particularly angered by the public inquiry process. He complained that Esso should not have been allowed to participate in the inquiry seeking only outline planning permission in principle. Without presenting the inquiry and the public with any detailed information about their project, he believed Esso had "got away" without having to provide details of their future development which effectively meant that their end of the scheme was beyond public discussion and beyond any possibility of the public stopping them. Further he thought the format for presenting evidence allowed the oil companies to "shuffle their witnesses like playing cards". They consistently "passed the buck" in Jamieson's view and by sticking to their "so-called" area of expertise they made cross-examining difficult for objectors who could not attend the inquiry on a daily basis because of business or domestic constraints. The whole system was in general considered to be too inflexible and not adjusted enough towards the difficulties confronting objectors. Particular witnesses came in for criticism. Professor McIndoe was accused of "consistently refusing to answer straight questions with straight answers". Jamieson in particular felt a lack of support from the Reporter in his cross-examination of McIndoe. The Reporter was criticised for a failure to support lines of questioning which were considered to be important to the objectors' case. However, this never seemed to amount to a full-

scale condemnation of the Reporter who seemed to retain credibility in the eyes of most objectors.

Helm and Sutcliffe commented on how imbalanced the Moss Morran inquiry had been in terms of technical expertise. The Action Group were lucky to have had so many local people with some knowledge of the NGL project. However, detailed knowledge had been lacking, with the exception of Professor Rashbash and Dr. Drysdale. They commented, "the cost of expertise was loaded in favour of Shell and Esso. It is difficult for groups such as ours to find the money and time to present all the relevant facts." Jamieson added that the real failure of the inquiry, in his view, had been that rather than publicly exposing sound technical facts about the Shell/Esso scheme all it had done was "bring out inferences and implications". In particular, Jamieson had complained at the inquiry and subsequently about the draft report from the Reporter that the evidence was replete with conditionals and uncertainties. The oil company experts, Cremer and Warner and the Reporter seemed to be content with phrases like "there should be no air pollution problems", or "damaging levels are unlikely to be reached" or "smell is unlikely to present a problem".⁽²⁷⁾ These were in his view all indications of a lack of scientific and technical rigour which the inquiry needed. It never managed to resolve any of the significant technological or nuisance issues. For Jamieson "either something is or is not". He was concerned that uncertainties were passing as unquestioned "facts" in the Reporter's draft report.

"What is a fact? Some sections of Mr. Bell's report give the impression that the items included under his heading of 'findings in fact' were agreed by all parties. This is just not so. They were agreed only by the Reporter and the privileged 'experts' at the inquiry without taking objectors' views on board."

It was also a strong impression that the best the Action group could provide in technical expertise was still inadequate properly to examine and debate many of the technological issues. They, of course, consistently framed this in terms of a request for an inquiry commission. They appeared to recognise the limits of their technical case although they all seemed to be totally convinced that their viewpoint was correct; the technology was dangerous and Shell/Esso had not

thoroughly ensured a level of safety from their plants sufficient to warrant siting their scheme near to populated areas. Helm and Sutcliffe said they believed the main block on their opposition campaign through the public inquiry was that they were constantly forced to prove their argument against the oil companies. They argued that throughout the inquiry it had been made fairly clear from comments made by the Reporter and by the construction of the remit, that the NGL and ethane cracker project were presumed to be feasible unless the objectors could prove otherwise. So by implication, they believed, the inquiry assumed that the technology, the commercialism, and the financial benefits for the area were presumed unless they could be challenged and disproved by the Action Group. This obviously placed far too much of a burden on local objectors with their lack of time, finance and expertise.

However, having identified possible prejudices to their case emanating from the institutional structure, very often the main brunt of the objectors' criticism seemed to be aimed towards the oil companies who were portrayed as the main *bête noir* of the controversy. An interview with John Cowie, the founder member of the Dalgety Bay Action Group, revealed a distinction which I found many objectors shared. Cowie said,

"I draw a distinction between the public inquiry and the public inquiry system. I think the public inquiry in Dunfermline was very fair as a procedure. The Reporter conducted the inquiry efficiently and well. The planning system is very unfair. Local people opposed to large multi-national companies are kept in the dark. It is difficult getting basic information out of them, and there is no financial help given to local groups to assist them in putting their case together."

Cowie was particularly critical of the secrecy that surrounded the initial interest in Moss Morran by Shell. The oil companies had been less than forthcoming in their public meetings held in 1976 and 1977 in Dalgety Bay and Aberdour. The planning system in Cowie's view seems to favour development from the outset.

It is worth pointing up that Cowie was instrumental in framing local opposition to Shell/Esso in technical terms. He is a scientist and

was particularly concerned with the safety issue which had been given a privileged place within the inquiry as part of the major technology debate. Helm and Sutcliffe similarly had been interested in the technical arguments surrounding the issue of tanker design, and the technical issues surrounding sailing hazard. That too had been a central feature of the technology debate and they agreed that the public inquiry itself had been 'fair'. Jamieson, who adopted a slightly more idiosyncratic stance and was less of a 'technical man', had tried to expand the discussion of planning issues in the inquiry. Along with Aberdour joint chairman, Roger Harris, they had tried to raise 'moral' issues and pose 'common-sense' questions that were awkward to answer. They were less satisfied with the public inquiry. Harris had frequently issued the charge that the inquiry was a 'farce' and he and Jamieson were less willing to make the distinction drawn by Cowie and shared by many of their Action Group colleagues.

Cyril Burt, another active member of the Joint Action Group, conceded that he thought the actual public inquiry procedure was 'fair' in itself. Burt argued further that it was difficult opposing Shell/Esso on a purely local level. He wanted an inquiry commission to enable the national issues to be raised and he criticised the Reporter for not allowing more recognition of the national dimension to the controversy. However, the main problem for Burt was a sense of frustration that the objectors had not been able to mount a more effective inquiry case. He was placing part of the blame, therefore, on himself and his colleagues as much as he was on the system that contained their opposition campaign. The public inquiry itself was considered to be 'fair' it seemed because it allowed "everyone to express a viewpoint". There seemed to be no perception of what lay beneath the appearance of an 'open, fair and impartial' public inquiry. In particular, the main activists involved in formulating and presenting the Action Group's case were all relatively satisfied that their central arguments had been expressed and publicly recorded. There was no recognition that the public inquiry instrument is an integral factor which shapes and constrains not only the knowledge and information debate in the inquiry but the total opposition movement.

Mr. Carnduff was critical of the inquiry remit, "What was at 'issue' was predetermined by the SDD. There was no discussion of artificial harbours, hardly any recognition of national policy issues and that meant there was little opportunity to talk meaningfully about alternative sites." However, he again accepted that the public inquiry procedure had been 'fair'. His main criticism was aimed towards the oil companies who he considered gave misleading information about future employment figures and dangerously under-estimated the risks to the local community from their tanker terminal. Carnduff was himself an oil employee working for BP at Grangemouth and had been, in his own words, "less concerned with environmental issues". He was satisfied that the main technological issues had been expressed in the inquiry. He tended to see the controversy solely in terms of the 'safety of the technology' which seemed to have been well discussed in the inquiry. His main criticism was not that the inquiry had failed to discuss the issue but that it was too 'local'. He wanted the same issues to be discussed in a national context, it would appear less because he believed such a forum would be more thorough, but strategically it would take the focus off Braefoot Bay. This seemed to get to the heart of the general view held by the Action Group; their concern for an inquiry commission was predominantly strategic. They were satisfied that the crucial issues had been debated in the local public inquiry. It was also the case that such a viewpoint coincided with a concern solely with the technology issues.

Dik Mehta, the Joint Action Group Chairman from the Dalgety Bay side of the opposition movement, underlined this view. "The Inquiry Commission objective was largely strategic. The main technological issues were more or less adequately handled in the local public inquiry." Mehta's view seemed to imply that the case against Shell's NGL plant design, as 'not a well proven design' given the Qatar disaster, was made adequately at the inquiry but the local context for evaluating that information was constraining. In other words, there was a direct link between the idea of the technology being unpredictable and siting the plants away from populated areas, and the need for an institutional structure which could ensure an evaluation of other possible sites, and make the issue less site specific to Fife.

Then the pressure could really be lifted from Braefoot Bay. So again the Action Group seemed to be fairly satisfied with the public inquiry in terms of the 'technology debate' which was in reality their only concern but they preferred a nationally based institutional structure to assess other sites rather than investigate the technological arguments 'more thoroughly'. Mehta admitted that much of their information was obtained by "pure chance" and in a completely unsystematic way. However he was confident that they had in fact uncovered all the relevant facts and had presented them well at the inquiry. He disagreed with any suggestion that the Action Group, rather than the public inquiry system, had failed to identify the crucial issues.

The Action Group activists within the public inquiry had all concentrated their efforts on the safety issue to the almost total exclusion of other issues. Dik Mehta made their position clear:

"Most of us in the opposition committee agree that it is generally a better principle to have a wide spread of individuals and interest groups opposing Shell and Esso rather than one large umbrella organisation controlling everything. In actual fact, many of us are not against petrochemical developments as a basic principle. Our concern is solely with the safety risk to our community. We do agree with some of the aims and arguments of the Conservation Society but we think they were much better presenting their own case unfettered by us."

Mehta, being concerned mainly with the technology issue, was therefore able to give a qualified approval to the Dunfermline inquiry; qualified in the local/national terms I have indicated. Mehta, like others, made the distinction between the public inquiry and the public inquiry system. Having fought the Edinburgh Airport runway extension as part of an Action Group who spent over £25,000 and won a public inquiry that was later over-turned, he viewed the problem as located at the level of the planning system as a whole. He did concede that even within the local public inquiry process there is only an "illusion of participation", but, it seemed, not because there was anything intrinsically flawed in the inquiry procedure but because of the overall planning context in which it was placed.

This tension identified by the Action Group obviously seemed to sum up their experience of the inquiry system with the exceptions of Jamieson and Harris. This view, however, was not shared by the Conservation Society which had sought to introduce themes from outside the limited inquiry remit.

The Conservation Society

Adrian Grant had experienced hostility and resistance to many of his lines of questioning during the public inquiry and very little recognition of its relevance. Both Edmunds and Grant had been frustrated in their attempts to broaden the scope of the remit from the outset. Both agreed with the general line of criticism about the 'localised' focus of the inquiry. They did not readily submit to the argument that an Inquiry Commission would necessarily have helped their case. Arguments relating to the use of scarce resources of national importance was a governmental level issue. The whole controversy was therefore misconceived. The real debate should first have been focused on a national oil and gas policy. An issue which could not be resolved within the planning sphere but instead should have been under consideration at a national political level. They also believed that virtually no recognition was given to environmental factors at the inquiry. The whole emphasis was so heavily loaded towards essentially redundant discussion of technological issues that largely missed the point. Edmunds was particularly concerned about the health risks attaching to emissions from the petrochemical industry that would grow and eventually hope to attract downstream plastic works. In other words, the concept of 'safety' was too narrowly conceived.

Both were concerned to a greater extent than the Action Group about the procedure of the inquiry. Grant had come up against frequent warnings from the Reporter about his tendency to "make speeches" rather than simply ask questions only during his cross-examination of witnesses. Edmunds was critical of the bias towards the oil companies in terms of the procedure being aimed towards satisfying their timetable rather than the objectors. They were not satisfied with the Moss Morran Inquiry and did not accept the kind of distinction drawn by many Action Group members. They had, of course, experienced far more frustration

because the issues that they believed were crucial were not fully recognised by the Inquiry format. Edmunds had found many errors and misconceptions in the Reporter's draft report to which he had responded.

"There appears to be under-reporting of points made in cross-examination of supporters as against the frequent mention of objectors "conceding" points made when they were cross-examined. E.g. paras. 10.3 and 10.4, also 10.12, contrasting with complete absence of points on possible market and ecological difficulties caused by a world "outburst" of disposable plastics if all proposed ethylene plants were to go ahead throughout the world, made by me in questioning Mr. Pott. The same applies to points made against other objectors, which I have not time to go into further. There is a complete absence of mention of my main Statement of Evidence, dated June 1977, on the Conservation Aspects. In view of the heavy weighting of resources, but no numbers, of supporters as against the objectors, it would seem only fair that more than the present 76 pages for objectors' points should be allowed, when one compared that number with the 253 pages for supporters' evidence. Therefore my statement should go in largely unabridged, it being only 1½ pages. Other omissions included the lack of reporting of the Swedish chemical expert's statement that the Stenungsunde plants constituted a "rape of the archipelago", although evidence is included from Professor McIndoe and George Sharp about the alleged lack of their environmental impact, based on a visit lasting only a day or two. As you know, objectors were not taken on this visit, although their money as rate-payers was used for it, so the least you can do is to present every bit of their handicapped case." (28)

This quotation crystallises the critical view of the inquiry held by the Conservationists. It clearly indicates an awareness of the way in which information is shaped by the system in a way not expressed by the Action Group.

The Gray Park Committee

The experience that the Gray Park committee had of the public inquiry was brief. Messrs. Carrie and Fitzsimmons gave evidence on one day only. They admitted to being quite ignorant about public inquiries, the planning system and most of the issues discussed at the inquiry. Their main criticism of the public inquiry procedure was reserved for Cullen QC representing the Regional Council for his aggressive questioning of Mr. Fitzsimmons. They both felt that the process had been extremely intimidating and while the Reporter had

done much to re-assure them and make them feel at ease, Cullen had been particularly annoying. Carrie and Fitzsimmons felt that their position was self-evidently just. The community was being unfairly threatened and they resented being cross-examined as if they were in a court of law. Beyond such personal observations about their experience of giving evidence the Gray Park people were generally unopinionated about the public inquiry system. Some members who had not attended the actual inquiry did repeat the general view that they did not think that the inquiry would make any difference; Shell/Esso would inevitably win. However, their main concerns did not focus on the inquiry system as such. Their main battle, as they saw it, was with their local authority over housing. The public inquiry did not seem to them to be a crucial variable in their calculations. Most of them accepted that Shell/Esso would build their NGL plant and ethane Cracker. The real question for them was what negotiated settlement could they win for their local community.

It is perhaps worth noting that there was an obvious difference between the Gray Park Committee's style of opposition to Shell/Esso and that of the Joint Action Group. Social class, education and linguistic competence had a significant part to play in this. The formality of the public inquiry itself did little to assist the Gray Park people to present their case as best they could. They undoubtedly felt more at ease engaging familiar targets in debate about their case, such as their local council and council representative, than getting heavily involved in a public inquiry that seemed to require skills that many of them lacked. Important issues are raised by this regarding how it is possible to represent working-class people at a public inquiry that will inevitably call for debating and analytical skills that few working-class people will possess. Suffice it to say that an integrated knowledge code, similar to that suggested in my analysis, would contribute something towards the re-evaluation of views and arguments not based solely on technical credentials. Working-class participants in public inquiries organised around an integrated knowledge code would objectively be less disadvantaged than at present but the question of what will motivate them to participate in a process of public discourse is a large one, although this is not an issue confined to working-class people.

Concluding Remarks.

In general, as the classification and framing in the public inquiry favoured a collection code it followed that those participants in the inquiry concerned pre-eminently with technology issues and related themes were more willing to allow a qualified pass mark for the actual local public inquiry procedure. The Joint Action Group's views support this observation. They generally seemed to be satisfied with the inquiry procedure because it did, to a greater or lesser extent, recognise their main input in the 'safety of the technology' issue and they were less bothered about the Reporter or his interventions. The Conservation Society represented the alternative view. Their concerns were delimited as outside the inquiry remit, as disengaged debate, from the outset. Those Action Group members such as Messrs. Jamieson and Harris who had been thwarted in their wide ranging cross-examining of technical witnesses, and who sensed a lack of support for their intentions from the Reporter, were also more hostile to the inquiry procedure than the 'technocrats' within the Action Group.

It is quite clear that the local inquiry procedure is conceptually and politically separated off from other perceived deficiencies in the planning system by many participants and as a consequence a great deal of acceptance of the system follows. The disenchantment that grows about the planning system appears limited among those people steeped in the technological debates. Even those who do feel more aggrieved with the planning system as a result of their experience in giving evidence, and in cross-examining opponent's evidence, tend to personalise their criticisms in terms of the deviousness or unscrupulousness of the oil companies and their personnel, as many Action Group members tended to do.

There was no perception of the principle of power underlying what I have termed, the classification and framing of knowledge. Even the Conservationists who seemed to be the most articulate critics of the inquiry procedure, viewed the problem in terms of the wrong institution or institutional sphere handling the problem: the problem was one caused by a failure to decide upon a national policy at government level, true enough, but they saw nothing at work shaping knowledge and information within the inquiry setting. Edmunds criticism of the draft report was of a stylistic nature. It was the omission of certain 'facts' from the report that concerned him, not the epistemic principles informing the construction of these 'facts'.

I am perhaps expecting too much of participants. I do not think it is a case of participants failing to experience the principles of classification and framing at work in the inquiry as such. Rather they fail to connect the inquiry procedure to the wider system of power which it forms a part. They do not formulate the problem at a level that requires a wider political movement to change the system. Burt of the Action Group made it clear in a BBC Current Account programme on Moss Morran in 1977 that, had the Action Group their time again, 'we would fight a far less civilised and much more dirty campaign'. However that did not seem to lead to any conception of future action aimed towards changing the system that they had just experienced as unfair. This can be partly explained by exhaustion after fighting a long battle and a big public inquiry. It can also be explained partly, I believe, because many Action Group members actually thought the inquiry procedure was 'fair'. It appeared to them to be satisfactory and not something to be changed as such. The feeling that the public inquiry procedure was 'fair' succeeded in establishing a confusing and 'contradictory consciousness' about the whole public inquiry system.

Their *formulation* of the problem in terms of the strategic division between local and national institutional structures avoided the underlying reality of collection codes as opposed to integrated codes shaping the principles upon which the controversies were to be decided. Planning Commissions and even Parliamentary forums would likely adopt a similar principle for classifying and framing knowledge as that used in the local inquiry.

The Action Group's continued obsession with getting the public inquiry re-opened or establishing an inquiry commission was indicative of their failure to penetrate beneath the appearance of 'openness, impartiality and fairness' to an underlying reality requiring a concerted effort for change. So where does this leave the distinction I have drawn between formal and common-sense concepts of justice? It is quite clear that all participants in the public inquiry make sense of proceedings at the level of 'appearances'. The inquiry process does allow a structured input from anyone who wishes to 'express a view'. The views of objectors are presented with little or no cross-examination at the end of the inquiry hearing and are consequently never directly confronted by the Reporter and never 'appear' to be directly rejected, although they very often are in reality.

Perhaps a more complex explanation can also be offered. The Action Group members who formulated and presented the opposition case against Shell and Esso very quickly shaped their opposition to engage the central issues determined by the Secretary of State's remit. That formulation took place obviously prior to the public inquiry hearing and the Action Group went prepared with a set of arguments and a collection of productions that were determined on the one hand by the dictates of a planning system geared towards a collection code in the classification and framing of knowledge, but on the other hand was constructed by the Action Group's own work and

deliberations. It was both determined by and determining of the practices that took place in the local inquiry because it represented the Action Group's version of the controversial issues, but a version that had been subtly determined by the technocratic bias of the public inquiry system. So most members of the Action Group were content that the public inquiry had been 'fair' because they misrecognised these two **elements of the formulation** and presentation of their case when discussing the **actual** public inquiry procedure; what the inquiry 'appeared' to want discussed became synonymous with what many Action Group members themselves wanted discussed because they tended to perceive the issues as narrowly resolvable technical dilemmas. I will develop this in the following chapter when I examine the formulation and presentation of opposition.

As far as the Conservation Society was concerned they were more generally critical of the public inquiry system. They saw no particular virtue even in the public inquiry procedure. First, their case was by its nature generalised; it was one which sought to articulate the environmental arguments that are not, by their nature, controversy or site specific, as were the Action Group's. Their case was uncompromising to the inquiry remit. The Conservationists were more aware that the issues they were forcing the inquiry to consider were disengaged debate with respect to the inquiry remit and they experienced resistance to their views as a result. Unlike other objectors, the Conservationists did receive some hostile cross-examination of their evidence. At the level of the localised format, the

Conservationists viewed matters similarly to the view expressed by the Action Group. However their feelings should not be understood in terms of an affront to a 'common-sense' concept of justice. They tended to view the local public inquiry form of processing the issues as premature, that is the issue was essentially 'political' and not planning in the sense that policy decisions were required before an inquiry could become meaningful. Decisions had first to be resolved politically in terms of national policies before they could effectively enter the planning sphere. This was a particularly narrow conception of 'politics', but one firmly held by Dr. Edmunds and expressed also by Adrian Grant.

It is observable that wherever there is a lack of an agent to assist participants to perceive the underlying realities of the system then it is difficult for ordinary objectors to articulate their concerns fully. The nature and complexity of the planning system seems to engender a 'sense' that something is not quite 'fair', but it seems that the Joint Action Group and the Conservation Society in Fife were unable to concisely identify the problem. We can talk about this perceptual problem in terms of 'common sense' because it contained a sense of grievance with the public inquiry system that was intuitive rather than substantive. Indeed the public inquiry procedures and the processing of the planning application all adhered to the formal dictates of administrative practices. It was still sensed however as somehow unfair in the eyes of those participants objecting to the Shell/Esso scheme; the system may not have been 'unfair', but it was not 'fair' either.

There will always be a legitimation problem with the public inquiry system so long as it takes no account of the matters that objectors

consider important in the construction of the agenda and the remit. In purely formal terms the public inquiry is an instrument of government, but as I have argued, it is also an institution of the public sphere straddling the boundaries between the state and civil society. The dialectics of power and participation enshrined in the very structure of the public inquiry contains the kernel of the contemporary problem with the system. It is of little use government officials, politicians and lawyers articulating formal views of what is 'fair' and 'open'. As Senior has remarked, "a public institution is not what its creators intended, or the law lays down that it should be, but what it has become in the public mind". Similarly it is of little use telling people in Dalgety Bay and Aberdour or members of the Conservation Society that the Secretary of State was satisfied with the conduct of the inquiry and the deliberations emanating from it when the public think it has singularly failed to consider significant issues that are felt to be important and neglected.

In the following chapter I will examine the influence of the inquiry system on the formulation and presentation of the opposition movement. It will be shown that the public inquiry system embraces not only what is said within the hearing, but how it is constructed outside the public inquiry.

CHAPTER 6

THE FORMULATION AND PRESENTATION OF OPPOSITION TO
SHELL/ESSO IN FIFE: AN EXAMINATION OF THE RELATIONSHIP
BETWEEN THE ORGANISATION OF LOCAL OPPOSITION AND THE
PUBLIC INQUIRY SYSTEM.

In this chapter I will report on a study undertaken to observe the effect of the public inquiry system on the formulation and presentation of local opposition. The objective will be to describe the inter-relationship between the organisation and style of opposition of the local Action Group in the Moss Morran controversy and the constraints imposed upon the organisation by the input requirements of the public inquiry. This chapter therefore seeks to extend the argument made in chapter 5 regarding the association between a technical orientation to the controversy and a high level of acceptance of the public inquiry system.

The Moss Morran controversy represents a good example of the way in which the public inquiry creates a system of political incorporation of opposition. I will describe the 'instrumental philosophies' of the main contending interests and the connections between them. I will suggest that the local opposition groups, particularly the joint Action Group representing Dalgety Bay and Aberdour, failed to transcend the constraints of the system and therefore not only failed to challenge Shell/Esso as effectively as they might but also contributed little towards reforming the public inquiry system that some individual members felt was in need of radical change.

The argument I will make is that the controversy can be characterised by an overall process of attrition: a heated and vociferous community based reaction, and a counteraction by the oil companies and local authorities in the early days leading up to and focusing on the public inquiry hearing, but thereafter a slow wearing away of public community activity surrounding the development proposals. There has been both an occupation and vacuation of the public sphere during the course of the planning application.

The Dalgety Bay/Aberdour Action Group and Gray Park.

The prime mover of the community reaction was Dalgety Bay resident John Cowie. It was he who had pursued an interest in B.P.'s activities on the Forth several years before the Moss Morran issue broke. He had written to the newspapers about liquid gas petroleum tankers travelling up and down the Forth to Grangemouth and had sought some assurances from B.P. about the danger risk to the communities on the north bank of the Forth.

Cowie had also become conscious of the possible ramifications from Shell's initial interest in the Moss Morran site in the summer of 1976. He was of the opinion even then that a Natural gas liquids fractionation plant at Cowdenbeath would require a tanker terminal on the Forth and that could only mean either St. David's Bay or more likely Braefoot Bay. His concern led him to write letters to the press and generally discuss the matter in the local community. He was often accused of scaremongering and 'trouble-making', and his connection locally with the Scottish National Party had resulted in a 'reputation' going before him for 'stirring things'. It was public knowledge, for example, that Regional Councillor Davidson (a local supporter of the NGL & Ethylene project) considered Cowie to be 'prematurely causing anxiety about Shell on the basis of unfounded rumours' around about late 1976. (1)

Initially Cowie found some support for his concerns within the Dalgety Bay Residents' Association. This led to a group of individuals with some technical knowledge of petrochemicals setting up a sub-committee to examine the idea of an NGL plant and tanker terminal on the Forth. Cowie along with fellow residents Dugald Eadie and Eddie Norman, who was an industrial chemist, set about collating information about Shell's project and activities and then later produced a technical report for the purposes of convincing Dalgety Bay people that there was a matter of concern that required their concerted action.

Meanwhile Cowie had produced a leaflet which was delivered to all the houses in Dalgety Bay pointing out the dangers of an NGL plant and terminal. That leaflet was then obtained by Aberdour resident Roger Harris who distributed it in his own community, much to the consternation of some members of the local ratepayers association. Ill feeling generally characterised the official relations between the two communities at this time. Some Aberdour people, in particular those in the Ratepayers Association, believed Cowie was 'sticking his nose in where he had no business just to cause trouble.' (2) This was based on the assumption that Cowie had distributed his leaflet, which he had not in fact done.

It was on the basis of these initial moves to generate concern within the two communities by the Forth that the first stirrings of concern became open. It should be stressed that a great many people were both ignorant about the Shell proposals and quite unperturbed by them when they were informed of the possibilities of a petrochemical complex on their doorstep. This equally applies to many Action Group people who became involved in the opposition campaign at a later stage (Chairman Dik Mehta for example was not involved at all in the early days). The concern and community reaction which grew subsequently was very much something that evolved and changed in the months leading up to the public inquiry. It needs to be emphasised also that had it not been for the efforts of a few concerned individuals then the whole planning process would have been far advanced before

local people became aware and involved in the issue. There is a striking absence of an institutional mechanism which can involve the public in major planning developments at an early stage. The whole procedure at the present time is geared to presenting the public with an already established scheme to which they can express approval or objections. It is only when official planning applications have been made, (with all that implies about 'informal' discussions between politicians, industrialists and the government development departments behind 'closed doors') that the public are even given basic information about the planning proposals. The acceptance of this situation as 'reasonable' was behind the Aberdour Ratepayers Association (RPA) refusal to make official objections to the principle of a petrochemical development in the area. Chairman of the RPA Mr. Lochtie had intervened to curtail discussion about the Shell/Esso scheme at an RPA public meeting because he felt that it was premature to object to something which had not yet been officially proposed. Mr. Lochtie was an active trade unionist and admitted to me that he was in favour of the project because he was concerned to bring work to the area. He had travelled to Glasgow prior to the RPA meeting to meet Shell representatives and they had influenced his attitude. As long as assurances could be given about safety then he was in general support of the scheme.

The early differences of opinion about the likely danger to the communities from Shell's plans led to some heated public meetings in both communities. In the case of Aberdour, a series of semi-private meetings among some local people were arranged because the RPA refused to initiate any official action at all. ⁽³⁾ Some local people had felt that the very idea of a petrochemical complex should be opposed and opposition had to start immediately with or without 'official' backing by existing local organisations.

Out of a series of public and private meetings two Action Groups emerged; the Dalgety Bay Gas Project Action Group and the Aberdour Ratepayers Association Action Group Sub-Committee. Both sets of

objectors were essentially autonomous organisations but they had sought 'official' public identity to legitimise their claim to speak with a community mandate. Existing community organisations (Residents Association & RPA) were used for initial organisational objectives only. The two groups were effectively rooted in community members outwith those organisations prior to the Shell/Esso proposals. Community mandates had been more of a concern for the Dalgety Bay people than the Aberdour group. The latter group were more informally organised and communications were based far more on an 'unofficial' grapevine than in Dalgety Bay which was a newer and more heterogeneous community. Public meetings were more likely to be called in Dalgety Bay than Aberdour. The structure of informal communications which had been built up over the years in Aberdour was obviously missing in the relatively new environment of Dalgety Bay. The two groups worked independently yet they kept communications between them open. There were few formally constructed meetings between the two action groups. They collected information about petrochemical hazards, collected money for the campaign, distributed leaflets and an occasional newsletter up until a few months before the public inquiry.

Many members involved in the opposition campaign described the relationship between Dalgety Bay and Aberdour in terms of the former providing technical information while the latter provided the management drive. (4) People such as Cowie and Norman from Dalgety Bay knew a great deal about the chemical processes involved from their professional work, and Aberdour Action Group Chairman Burt, a bank manager, Roger Harris, a managing director of a clothing firm, Peter Drum, a public relations man, and John Sutcliffe; a managing director and leader of the yachting interests, were able to contribute resources of knowledge and facilities which were crucial for organisational functions. In addition, the joint Action Groups were able to draw on Mr. Carnduff, who worked for BP at Grangemouth, and Mr. Stodart a marine architect knowledgeable about tanker design. Overall both groups had the basis of an exceptionally well organised opposition campaign.

The communications system within the opposition campaign became very informal. Meetings in local pubs, or telephone conversations characterised the communication structure. As the months passed from November 1976 until about May 1977 certain individuals became more involved centrally. The core of the opposition campaign became occupied by those who were able to contribute some major technical or organisational ability to the objectors' case. It was at such a comparatively late stage that the Joint Action Group Chairman Dik Mehta came to the fore because he was a lawyer and would be needed to lead their case at the approaching public inquiry. And it was also around about the same time that the groups publicly became a 'Joint Action Group'. A strict division of labour was instituted in order that the public inquiry case could be adequately prepared and the Action Group began a process of 'autonomisation' which I will describe below.

The community nearest to the Moss Morran site at Cowdenbeath is Gray Park made up of 64 council houses and flats about 1½ miles from the main site. The people living there did not display a consistent attitude towards Shell/Esso's plans. Their opinions about the project ranged from general approval in 1976 to hostile opposition by the time of the public inquiry hearing.

Overall their campaign, if that is what it can be called, was characterised by little public activity founded on a small financial base, and only one day of representation at the public inquiry. There was a dogged reliance on some notion of their ultimate rights as council tenants which they felt must be considered in the last resort. However, I discerned an outer shell of blustering and bluffing about fighting to the end in front of the T.V. cameras, which was the stance taken by the committee members. A more realistic acceptance of the realities of the situation was expressed by residents not directly involved in the Committee. I will discuss this more fully below.

The Other Interests

The opposition to Shell and Esso can be neatly divided into groups operating under the umbrella of the Joint Action Group and groups articulating a broader environmental case outside the ambit of the local objectors' parties.

The yachting interests were the main group which sought an independent voice within the overall campaign being organised by the Action Group. Indeed it could be argued that it was the sailing interests, particularly in Aberdour, which helped sustain the ongoing campaign. Messrs. Helm and Sutcliffe who were leading figures in the sailing fraternity were also central figures in the organisation and construction of the local Action Group case. It would be justified to argue that the single main concern for the Aberdour end of the opposition campaign after safety was the possible curtailment of sailing activities on the Forth. The sailors decided to develop their case almost as a sub-committee of the overall joint Action Group campaign because they wanted to play down the impression that they were defending a middle class minority leisure pursuit against the need for jobs. They contributed money to the opposition campaign but drew on the pool of funds for their own purposes even though presenting a common face with the Action Group to the public.

A similar strategy was hoped for by the Conservation Society. The society had been in a process of decline in Fife, and Kirkcaldy doctor, Dr. Edmunds, was virtually the sole representative of the society in the area. The depleted resources of the Conservation Society meant they had hoped to present their case at the public inquiry under the leadership of the Action Group's legal counsel. However, the case being forwarded by the Conservation Society was felt by their legal representative Mr. Booker-Milburn to be too 'radical' to be associated with the manufactured 'reasonableness' of the Action Group. It was quite clear that the issues about national oil and gas policies, re-injecting the gas back into the sea until a policy for its use was decided upon, and general concerns

about industrialisation and the environment, were themes which were politely listened to but were never on the inquiry agenda and quite clearly overstepped the bounds of the limited inquiry remit.

The Royal Society for the Protection of Birds made a token appearance at the inquiry, and along with other national bodies such as the National Trust for Scotland, they failed to become actively involved in the controversy. Indeed the RSPB withdrew their objections half way through the public inquiry.

The Oil Companies' 'Moral' Position

At an early stage in the study it became clear that the oil company representatives had made an impact in the local communities by their presence in local hotels, and from being identified in the local press. Local people would refer to the 'oil companies' public relations boys " and were conscious of their 'smoothness'. There was a distrust of these oil representatives because of the role that oil reps involved in public relations work were popularly believed to play, namely, smoothing down the rough surface of opposition to instil a feeling of forthcoming benefit to the community; local people seemed to be aware that they were being courted and were equally unimpressed. From early contact with people in both Aberdour and Dalgety Bay it was clear that the oil companies were not overtly seeking to convert local people to their project in any simple sense. It is the way of planning controversies that views tend to become fairly entrenched, especially in the early stages when plans have not been published and imaginations can have a free play. So it was interesting to ask the oil representatives what they thought their job was, and more pointedly, what were they attempting to achieve as local representatives of Shell and Esso in Fife?

A meeting was arranged with Mr. Aylwin of Esso Chemicals Ltd., and Mr. Jacobs of Shell Expro UK Ltd., at Esso's rather makeshift small office in Stafford Street in Edinburgh. Indeed the type of accommodation which a large company such as Esso Chemicals was forced

to occupy was indicative of the hurried adjustment to events that the company had made in surveying Fife for their proposed Ethylene plant. (5) It is not without significance that the office suite was generally empty of furniture, telephones were deposited on the floor and there was only one secretary and Mr. Aylwin holding the fort for Esso Chemicals in Scotland. Mr. Jacobs similarly recounted his own situation. Shell had been first onto the scene in Fife and as they too had no established office in Scotland they had to appoint him to the task of setting up an office to handle all problems which might arise locally. What were they seeking to achieve and what were the local problems they had to resolve?

Jacobs of Shell said that his task was quite clear. He aimed to be a focus for the media and for local people. He thought it was important that some visible representative of the company, especially such a large company as Shell, should be on hand in the local community to answer questions relating to his company's project. Public meetings had to be organised and he undertook that job. Additionally, he thought it extremely important that key individuals with political, economic and opposing interests should be met and engaged in an ongoing dialogue about the proposed development. Jacobs had arranged a number of formal and informal meetings with different people in the area. When he first arrived in the area he had opted to stay in the Aberdour Hotel for three months and this in particular had enabled him to meet and talk to local people in the bar and on the streets and in shops.

With respect to grounding this series of activities, Jacobs stated that there was a clear cut reason why he was involved in the kind of work he was doing and why Shell had considered it to be important; namely that Shell were above all else a 'moral company!' It was stressed that once Shell had lodged their planning application they had no further legal obligation to remain in the area. However, as a large company which had to operate in many different locations all over the world it was considered important by the Shell company, he said, to follow a 'good neighbour policy'. What was not clear

from Jacobs' statement was whether Shell's 'moral' position and 'good neighbour' policy were adopted as part of a public relations strategy because to overtly behave in any fashion other than apparent concern and interest for the local people's well-being would be politically and tactically damaging to them. Jacob's suggested that Shell, as a leading company in world business, had a responsibility not only to its share-holders, but also to the environment and communities within which it operated its industrial plants. Neither oil representative would accept the interpretation of their activity as 'public relations' and insisted that 'moral', legal and business responsibilities did not give rise to contradictory company behaviour. It is not clear exactly how the different elements of a large company's ideology and its commercial practice can be related without some problems of 'lack of fit'. However, both Jacobs and Aylwin discussed the issue of the company's 'morality' as if the matter was self evident. Aylwin suggested that the issue was very clear; both Esso and Shell had demonstrated their 'integrity' and that there was no contradiction in a "good company bringing a good project" to a community so that everyone could benefit. Employment and economic growth would be generated within the local community, he argued, and the oil companies would be able to develop a worthwhile and profitable industry developing Britain's North Sea resources. Both men felt that all interests would benefit from a major petro-chemical development in Fife, both locally and nationally.

However, when the actual subject of liaising with local communities was pursued it became clear that the role which the oil representatives had to fulfil had a much more distinctly strategic and tactical function than they would admit. Both men were very conscious of the difficulties involved in communicating an 'accurate' and 'honest' view of the proposed projects to local people. There was a great deal of so-called 'rumour mongering' going about local pubs and shops in Dalgety Bay and Aberdour. The oil companies wanted to combat 'inaccurate' accounts of their projects. They were concerned to ensure people knew the 'truth' about the proposed projects,

'nothing more and nothingless". They felt ideas were circulating about the proposed NGL and Ethylene projects which were conveying completely the wrong view of the nature of the development; many locals were unsure exactly what an NGL or Ethane Cracker were and many people were confusing the Shell/Esso project with proposals for an oil refinery development. People were apparently having visions of gigantic oil slicks in Aberdour harbour and smelly, noisy industry which would spoil the whole environment around the North shore of the Forth. Jacobs and Aylwin saw it as their task to correct this skewed view of their companies' project in order that good relations between their companies and the local communities could be forged for future co-operation. They also considered it important to combat some of the more inflammatory ideas being disseminated by the opponents of the project in order that the opposition process did not 'get out of hand' based on sheer propaganda.

Both Shell and Esso believed that the best way forward in a situation of a major planning controversy was to rely on sound judgement based on 'reason' and argument about the 'facts' of the development. Once local people were made aware of the exact nature of the development through public meetings and exhibitions then both Shell and Esso were confident that they would come to see that the oil companies were not seeking to "exploit and rape" their local environment for no return. The local landscape on the Forth would be altered, possibly altered irretrievably, but they did not accept this would destroy the area entirely. The extent of the impact, they believed, could only be assessed by a close examination of their plans and what was actually going to be proposed, but both Jacobs and Aylwin said they had been confronted by ignorance about the nature of the development and an unwillingness by local people to be open to reasoned argument about the projects. Their function was "to organise a response to that type of blind rejection to their project."

Jacobs recounted the case of a woman who had objected vehemently to him at the company's exhibition in Aberdour about the development but had also enquired about the possibility of Shell being interested in

renting her second house for incoming executives. This type of person was considered hypocritical, and there were believed to be many like this according to Jacobs, but revealingly, he did admit to admiring this attitude of "taking hold of chances as they became available." And it was that type of underlying attitude which he believed needed to be brought out by the oil companies and cultivated. Neither of the oil representatives would accept the popular view that local people were entirely against the project anyway and they believed that many betrayed an ambivalent attitude which could perhaps become adjusted towards an acceptance of the development should it eventually come to Fife. It was up to the oil companies to convey the idea of personal benefit to those who would 'adjust' to the needs of the oil companies. So it was clear that both Alywin and Jacobs had as their objects to ensure the oil companies' case was not lost in an avalanche of opposition 'propaganda newsletters', and to establish a presence in the locality as a public focus.

By way of broadening the discussion about the oil companies' stance in Fife it is instructive to introduce the distinction which Daniel Bell draws between an "economising mode" for judging a society's needs and a "sociologising mode". Despite the rather clumsy terminology Bell provides a useful conceptualisation of the shift in the public orientations of large corporations regarding their performance in industrial life. To state Bell's thesis briefly: the free market as the most efficient mechanism for the allocation of scarce resources among competing ends has come into question. Society has become "uglier, dirtier, trashier, more polluted and noxious". The 'externalities' of industrialisation have brought forth a "new criticism" which is creating the situation whereby the large corporation is becoming subordinate to a new mode of economic rationality, namely the "sociologising mode". Sociological factors are now crucial in the valuation of commercial processes and there is an explicit "effort to judge a society's needs in more conscious fashion, and to do so on the basis of some explicit conception of public interest."

"The theoretical virtue of the market is that it co-ordinates human interdependence in some optimal fashion, in accordance with the expressed preferences of buyers and sellers (within any given distribution of income). But what ultimately provides direction for the economy, as Veblen pointed out long ago, is not the price system but the value system of the culture in which the economy is embedded.....Accordingly, economic guidance can only be as efficacious as the cultural system which shapes it". (6)

It is the growing awareness of this 'new criticism' and the development of what amounts to a dominant managerial ideology of our time revolving around the notion of the 'public interest' which rationalises the mode of activity of the oil companies and against which Shell and Esso's statements about corporation 'morality' must be assessed.

One can only speculate about the links between the multi-national oil companies and the government. However, it is highly likely that both Shell and Esso were clear about their main task; to court the local politicians, and in particular, focus their efforts on convincing Fife Region and the Scottish Development Department that the NGL and Ethane projects were 'essential' for the 'national interest'. Both oil representatives frequently used the terms 'public interest' and 'national interest' freely. They obviously believed that the interests of the oil companies and the country as a whole were synonymous. There was never any intention of the oil company representatives, therefore, of being genuinely open to the views of the local objectors. They were quite clearly treated as a problem to be 'handled'. Shell/Esso were obviously prepared only to exert a minimal effort on that task. Jacobs admitted that he was certain the oil companies would win the public inquiry and would get permission to build their plant from the Secretary of State. Thereafter, he believed, the opposition would evaporate.

The significant fact about the oil companies pre-inquiry activities was the way they forced the local opposition groups to frame their response within a technical framework not of their choosing. The

exhibitions and public meetings sponsored by Shell/Esso obviously sought to present their project consistently as a scheme to be admired technically. The local objectors therefore had to respond to an already established technical terrain upon which to engage in debate. This process was exacerbated by a local public inquiry system disinclined to encourage a broader evaluation of issues.

The Formulation of Opposition: The 'Autonomisation' Process.

The major paradox of the opposition to Shell and Esso in Fife was the relative weakness of local opposition in reality despite its appearance as an extremely well organised and broadly supported campaign in the effected communities. It was a campaign which brought forth many compliments from environmentalist groups and the media. The major comment that was made of the whole controversy was that there was nothing else that any group could possibly have done that was not done by the local Joint Action Groups from Dalgety Bay and Aberdour; ⁽⁷⁾ that it was a major indictment against our planning democracy that the locals still did not manage to prevent the development. Indeed the level of organisation was extremely polished and sophisticated. The literature produced by the Action Group was of a high quality with expensive packaging and professional presentation. Their handling of both press and television was similarly very professional. The Moss Morran controversy was given a wide national and even international coverage. The technical research was excellent and well presented at the public inquiry. So why at the end of the day did the Secretary of State for Scotland allow the NGL and Ethane Cracker projects to go ahead? The short answer can be formulated in general theoretical vocabulary along the lines I have already indicated; there are complex structural relationships between State and economy which predetermine issues by working through a series of institutional mediations like public inquiries which contain, shape and manage complex controversies insuch a way that legitimises and obscures the fact that it is not democratic public participation and the rules of 'natural justice' that determine decisions but rather the structural

needs of capital accumulation. This was undoubtedly the case at one level. Economic crisis, high unemployment and the promise of producing and fully utilising a high value added resource were all criteria that were not conducive to a liberal consideration of the niceties of public participation and local objections. However, the real issue for local people was never about such basic economic and industrial dilemmas. The main thrust of local opposition was about safety and the environment. It had never been formulated in terms which would challenge the priorities of government economic policy or question the necessity of the project in the first place (although they did question the need for an ethane cracker given the existing and projected market demand for such a product). The real issue for local people was simply the siting of the two plants. Perhaps it is here that the paradox can be located; the Action Group took a far too parochial perspective on the issues in so far as they viewed the opposition process as something to be waged locally, and crucially, they allowed the local public inquiry system to determine both the form and content of their opposition campaign. Perhaps I can illustrate this theme best by describing how the Action Group organised their public inquiry case in relation to other forms of possible activity and other opposition groups.

The Joint Action Group was the central opposition group around which other groups revolved. The Gray Park residents and the Conservation Society were distinct, with their own problems and arguments to make, but together with the Dalgety Bay and Aberdour people they formed the core of the opposition movement. The relationship between these different elements of the local objectors reveals a great deal about the tactical orientation of the joint Action Group and their willingness to submit to the input requirements of the local public inquiry system.

The period leading up to and including the public inquiry into Shell/Esso's proposals can be characterised by a process of autonomisation which is a concept I will use to orient my description of the formulation

of the opposition campaign. The concept of autonomisation refers to a process that was discernible to me whereby the local Action Group became increasingly separated from identification with its community based support. This was facilitated by an accompanying process that I can best describe as 'personalisation' as the opposition became presented as being synonymous with an inner elite of publicly known individuals who came to be viewed as the opposition, particularly by the media, rather than simply representing the wider community constituency. This observation is, I believe, consistent with the theoretical argument that I introduced in chapter 3 where I suggested that a dominant feature of the local public inquiry system is the tendency to 'reduce complexity' in the manner prescribed by Luhmann. The systems rationality of the local public inquiry system therefore exacerbates the tendency towards autonomisation by forcing objectors to address themselves to the highly technical issues of the planning application to the neglect of other important non-technical themes. The result of this was that increasingly technical expertise became the main input requirement for direct involvement at the centre of the opposition campaign. Public debate was removed to the realm of the 'expert' and discourse within the community and between the community and the decision-makers was by-passed. As the gap between an Action Group formed out of technical expertise and knowledge and a community of largely lay people widened, the Action Group became identified as the opposition and initiated actions and strategies autonomously. Without there being any semblance of a Community directed campaign two dangers arose. First the important link between the community and the Action Group became weak. The question about the exact nature and extent of the community support for the Action Group became questionable when it appeared that only a handful of committed individuals were organising and sustaining the opposition movement. A major strategic and organisational weakness presented itself to the Action Group; a mass community support for the campaign was no longer visible nor could it be relied upon to retain enthusiasm and commitment to the opposition objective. Second, the administrators politicians and the representatives of the oil companies were able to discard the opposition as increasingly the work of 'middle class agitators'. Without the pressure of a

mobilised community of nearly 8,000 people the Secretary of State and the administrators were less likely to compromise.

It is important to stress again that both the Dalgety Bay and the Aberdour sections of the Joint Action Group grew out of existing community organisations. In the case of Dalgety Bay, the Residents Association had provided a base and in Aberdour the Ratepayers Association. However, what was clear initially was the broad community wide interest in the Shell/Esso proposals. Over 400 local people had actually written letters of objection to the Scottish Development Department and many more had attended public meetings and public exhibitions. At early meetings, as I have indicated above, the concern among all local people was to organise their campaign in such a way that those fronting the Action Group would be seen publicly as speaking legitimately on behalf of local people, with a community mandate.

However, the 'mobilisation phase' of the campaign was relatively short lived. The period from September 1976 until the end of January 1977 was the first phase characterised by confusion about who and what was being proposed for the area. There were initial fears about the full implications of an NGL plant and a general level of community activity was obviously aimed towards clarifying questions, finding out information, writing letters to the press and organising public meetings as part of a collective act of re-assurance rather than a constructive attempt to resolve these confusions.

The Dalgety Bay end of the opposition campaign, spurred on by John Cowie who was feeling at least pleased that his pet hobby-horse had been given some kind of recognition, organised a community sense of urgency far more quickly than Aberdour. On the 24th September 1976 a Resident Association newsletter was issued promptly on the back of initial press reports that Shell/Esso were interested in Moss Morran, with Braefoot Bay as the likely terminal site. With an impressive summary description of the proposed project the Dalgety Bay Residents stated:

"We think that as a community we should object on two grounds. Firstly, that it means we would have a Flixborough-type hazard on our doorstep, and secondly, that it is highly undesirable that any spot near deep water in the Forth should be used indiscriminately for developments of this kind. It is an example of the worst kind of 19th century industrial vandalism. It would make much more sense both environmentally and commercially to concentrate development of this kind in a few centres". (8)

The newsletter went on to call for "information and expertise". It was the gradual dominance of the technical experts even at such an early stage of the opposition campaign which started the process of distance between Action Group and Community. Subsequent newsletters and activities, such as exhibitions, were aimed towards formulating objections on grounds that would fit the input requirements of the local public inquiry system. (9) The Action Group were involved inevitably in trying to mobilise an interest and concern in local people about Shell/Esso's project, which consisted initially of exhortations to write official objections, but they were also faced with the task of organising and constructing a case and marshalling information that would be effective at the level of technical argumentation, and crucially, of guiding and leading local opinions towards the 'right kind' of objections. (10) So my argument is that a major dilemma or contradiction revealed itself at an early stage between the demands of social and public mobilisation on the one hand, with the need to encourage as visible and active a participation as possible by local residents, and the need for highly specialised technical knowledge on the other, which of its nature tends to exclude participation to those who have the technically relevant esoteric knowledge .

The inevitable outgrowth of this contradiction was that the early concern for community meetings and community mandates in phase one of the opposition campaign gave way to a more individualistic and zealous campaign by an inner core of committed people with technical knowledge in phase two from early 1977 until the public inquiry, continuing in this pattern after the public inquiry.

The political issue which this process of autonomisation highlights can best be understood in the terms I suggested in chapter 3; there was a strong association between the dominance of a collection knowledge code in the public inquiry and the prominence of 'technocrats' in the Action Group. For example, the political dilemma that faced the joint Action Group was how to sustain a broad campaign which fully engaged the oil companies and the Scottish Office in debate and argument while also mobilising support for their other actions within the local community. The problem of achieving a balance between these two tasks was not assisted by uncertainty about the extent of ongoing support and interest by local people who seemed to be less and less involved in the issue. While it may have been desirable to fuse discourse and action to form a balanced strategy, the increasing emphasis placed upon technical expertise within the Action Group led them to become preoccupied with a technical discourse at the expense of other forms of activity. The significant feature of this development was the belief that reason and argument alone were the main resources upon which to rely in the fight to stop the Shell/Esso project. The strategy of organising a campaign beyond the local community quickly became subordinate to the compulsive requirement to gather more and more technical data to use in the public inquiry against Shell/Esso. Out of this situation the 'technocrats' and the 'intellectuals' came to form not only the main combatants at the public inquiry, but more significantly, the core of the Action Group. Their interest lay overwhelmingly in the complexities of the plant technology and the argumentation process per se. They seemed to lose sight of the broader non-technical issues that were concerning local people, particularly leisure and the environment and they took no view on the criticisms that might be made of the public inquiry system, except to continually press for a PIC on strategic rather than critical grounds.

Now to argue about the technology of Shell/Esso's project seems to me to imply a particular logical structure, namely, that what is problematic is the question of whether or not an NGL and Ethane plant can be assimilated into the local environment. By arguing

forcefully against the safety and reliability of the technology, the Action Group implicitly accepted the terrain of empirical science as the ground upon which to fight. It is an acceptance that the issues are debatable and resolvable in accordance with some notion of 'rational' technical criteria. The issue, however, had always been one of the politics of site selection and at a basic level about relative values and priorities. It really did not matter to local Dalgety Bay and Aberdour people that it could be shown statistically that the proposed plants were unlikely to explode. For even if they were completely safe the local people just did not want a petro-chemical complex sited in their locality.

The dominance of the 'technocrats' in the Action Group also led to the contradiction of their broader aim of forcing the Secretary of State to hold a Planning Inquiry Commission. The Action Group had quite rightly pointed out that legislation had specifically set up the PIC framework for controversies like the Moss Morran affair. The Action Group also rightly argued initially that only a PIC could ensure the breadth of consideration of all the issues involved. They did not have the expertise, they argued, to fight a public inquiry involving complex technological issues. However, that is precisely what they tried to do. It is commendable on one level, but perhaps politically and strategically limiting on another. They inadvertently undermined one of their main objections to Shell/Esso, that of the threat to their communities 'way of life', by concentrating on the technical arguments, and more significantly, they became fully incorporated within the local public inquiry system by actually making the local inquiry structure work by forming the 'opposing team'. The Action Group was therefore caught up in a classic dilemma of reproducing the system, of which it was often critical, by virtue of its participation in it. Anthony Giddens has recently contributed to a greater understanding of this dilemma by emphasising the importance of "time - space relations inherent in the constitution of all social interaction".

"According to the theory of structuration, an understanding of social systems as situated in time - space can be effected by regarding structure as non-temporal and non-spatial, as a virtual order of differences produced and reproduced in social interaction as its medium and outcome." (My emphasis) (11)

It is therefore not an issue about whether the Action Group should have participated in the inquiry, rather it is an issue about the grounds upon which they participated, or were compelled to participate, given the nature of the system. The real point to be made is that the local public inquiry system forces the local objectors into a particular framework of opposition, one which is easily controlled by the political administrative centre, and one which they inevitably recreate by forming an indispensable part of the institutional mechanism that makes public inquiries work, namely the public and the objectors. So unless the constraints of the local public inquiry system can be broken then opposition will be institutionalised in accordance with the systems dictates.

Perhaps one possible course of action for the Action Group that might have been anticipated was the adoption of a wider organisational strategy involving the mobilising of local people to more direct forms of action. A campaign of civil disobedience might have been anticipated, given the anger felt by some local residents about the Shell/Esso scheme. (12) Cyril Burt had after all stated on a BBC television programme that "had the Action Group their time again then they would fight much more dirty and much less fair". Some effort could have been expended on courting the national environmentalist groups for greater levels of assistance and support. In short one way to transcend the institutional constraints of the local public inquiry system would have been the adoption of a far more radical approach which sought to extend the campaign beyond the locality and on other fronts than simply the public inquiry. However, the attempts by the joint Action Group to do this were less than successful.

The Gray Park Overture

The first attempts at organising a campaign beyond the Dalgety Bay and Aberdour areas was an overture by the Joint Action Group to the Gray Park community nearby the main Moss Morran site. The Gray Park people were faced with a potentially far more disruptive prospect than those people living near Braefoot Bay. They were threatened by the certainty that if the project went ahead their whole community would be destroyed. The houses were only 1½ miles from the main Moss Morran site.

I met and interviewed the Gray Park Committee on several occasions and also spoke to many of the residents. The Committee had been hurriedly formed by two local men Mr. Hume and Mr. Harvey. They had, by pure chance, read a local press comment about the technical impact report by Cremer & Warner which stated that the Gray Park people would almost certainly have to move to accommodate the NGL and Ethane plants. They also learned at the same time that they only had three days remaining to make formal objections.

Initially the Gray Park people had favoured the proposed project. They were all working-class people who had experienced unemployment both directly and indirectly and they welcomed the possibility of new work coming into their area. At the public meeting on the 15th February 1977 held in Dumfermline Town Hall, the Provost, Councillor Les Wood, had presided over a meeting which had left the residents assured that they could remain in their houses if they wished. Wood stated that "generous compensation would be paid and a new community would be created if there was any possible danger to Gray Park residents from the Shell/Esso project".⁽¹³⁾ Wood reported on a trip he had made to the petro-chemical complex at Fowley where, he said, new houses had recently been built (3 years previously) near to the perimeter of the complex. They were valued at £20-25,000 at that time. He also assured them that noise and inconvenience to residents from construction work would be rigorously controlled to minimise the disruption to those residents who wished to remain in Gray Park.

Not surprisingly the Gray Park people had become acquiescent in their attitude and rather complacent about possible threats to a community which, for many of them, had been the only place they had ever lived. There was a three generation family living in the street, and others had lived there for periods of up to 40 years. The local council had recently completed a renovation programme in the street which had meant people living in temporary caravans while the houses and flats were modernised and decorated at substantial cost to the local council. It was generally believed the Council would not spend money on improving houses they intended to knock down. However attitudes quickly changed when the Cremer and Warner report was published.

The Gray Park community was an obvious Group for the Joint Dalgety Bay and Aberdour Action Group to join with. They had, it appeared, a common objective to stop the Shell/Esso project and whereas the Action Group could provide intellectual and financial support for their case, the Gray Park people could provide a symbol of solidarity and a strong emotional lever against those 'who would contemplate dislocating a 'defenceless' and long long established working-class community for the short-term profit of multi-national capital', as one Action Group member had stated to me. ⁽¹⁴⁾ The failure of the connection partly lies in the nature of the Gray Park community itself but also in the nature of the Action Group campaign and the people involved in it.

The first thing that occurred to me when talking to the Gray Park people was that they were generally undecided about what it was they wanted; did they want to remain in their present houses with a community intact, albeit living beside a potentially dangerous petro-chemical complex, or to use the opportunity to gain some compensation money and a new house elsewhere with the possibility of the community dispersing? It also emerged that the 'community spirit' to often proclaimed was perhaps less pervasive than first appeared.

The small committee in Gray Park, like the Action Group by the Forth, seemed to have slightly different priorities to the rest of the people on the street. For example, one young couple I spoke to had only recently been allocated a house in Gray Park and had only lived there for two years. They reported two other young couples in the street who were in a similar situation. They all had young children and generally "felt different from the rest of the street". They felt as if they were outsiders. Everyone was friendly enough and would say hello but the younger couples had little social contact with the more established people who formed the committee. They actually wanted to move from Gray Park. First, residents with children tended to welcome the idea of a move to an area where their children would have better access to school. The Gray Park street is quite far removed from Cowdenbeath. The younger couples also hoped that a move would mean getting a house rather than the flat they presently lived in. The couple I spoke to positively favoured the Shell/Esso project. The husband was then employed at Rosyth Docks and had been looking for work nearer Cowdenbeath for some time. They had friends in the building trade who they believed would benefit from the construction work. Their attitude to all work had been shaped by their knowledge of friends and relatives who had experienced unemployment in their area for years. Since the mining industry contracted work had been scarce and they believed work was far more important than "people sailing fancy boats down at Braefoot Bay."

A young unemployed man, Mr. Skelton from 43 Gray Park, annoyed the committee by publicising the fact that some residents were in favour of the Shell/Esso project and wanted to leave Gray Park. Skelton made a voluntary statement to the local Cowdenbeath and Dunfermline Press. He and his neighbours Mr. Blakely from number 48 and Mr. King from number 22 had all refused to sign the Gray Park petition. It also emerged that some older residents also refused to sign the petition. Mr. Hume and Mr. Harvey stated to me that they "were all outsiders anyway" and implied that they were not to be taken seriously.

It is in the light of these underlying facts that the Committee should be assessed and the difficulties of the Joint Action Group's overtures should be understood.

The immediate concern of the Gray Park Committee was that their own case would be subdued within the avalanche of sophisticated rhetoric coming from the Joint Action Group. They had a basic fear that their efforts to take the centre stage would be prevented. The Gray Park Committee members had been galvanised into public action and on the whole they were enjoying the local noteriety the controversy had given them. Mr. Hume in particular had said that the Gray Park people would never be moved and that "they would resist eviction in front of the television cameras". Two other factors seemed to convince the Committee to reject involvement with the Joint Action Group. First, they believed the Dalgety and Aberdour people were "different" from Gray Park people. They were relatively well off and did not have as much to lose as Gray Park. People both in Gray Park and in nearby Cowdenbeath distrusted the motives and goals of the Dalgety Bay and Aberdour objectors and the Committee did **not** want to be "tarred with the same brush". Secondly, several people in Gray Park as well as the Committee disliked the style of campaign that the Joint Action Group were organising; they felt there was too much show and publicity and they did not feel comfortable about actions like the procession the Joint Action Group had staged for the press and television at Braefoot Bay. It became clear that the Committee were unsure what the reaction from local Gray Park residents would be to a connection with the Joint Action Group. As I have indicated there was far less resolve in Gray Park to fight Shell/Esso than was publicly presented and the Committee realised that to join with the Joint Action Group would exacerbate the divisions and conflicts that existed.

So Gray Park defended their independent voice but effectively organised themselves into a Committee to ensure that the compensation paid for moving to an alternative area was acceptable, and if possible, to try and ensure the Community was kept intact for those who wanted to remain in it. Their campaign was really to make a public claim for those goals at the public inquiry and ensure a public record of them. The realities of their situation as council tenants also confronted them. A refusal to move could, they believed, mean being struck off the Council housing list. They lacked the freedom and autonomy that owning property would have given them, as they believed it had given the Joint Action Group people. A fight for compensation and a reliance on basic rights as tenants was the only ground they had to stand on, and they could not risk confusing that fact by incorporation with an Action Group who were making a quite different case.

The overture by the Joint Action Group to Gray Park therefore proved to be fruitless. Several attempts were made to convince the Gray Park Committee to change their minds but they were all unsuccessful. The failure of the overtures meant no effective contact at all between the two opposition groups. It was a pattern that repeated itself in connection with the Conservation Society who were the main opposition group voicing the environmentalist and ecological argument. In that case the Joint Action Group were more directly to blame for the dissociation which resulted.

The Conservation Society and the Action Group.

The Conservation Society is a national organisation which has three main environmentalist concerns; the conservation of natural resources (oil and gas being particularly crucial concerns), and the prevention of pollution to the environment and a broad concern about population growth and food production. It was the Edinburgh and East Scotland branch which became involved in the Moss Morran controversy through the initial work and concern shown by a Kirkaldy NHS consultant in bacteriology, Dr. Edmunds. He had been the founder member of the Fife branch of the Society. However, throughout the latter part

of the 1970's the Society had been slowly winding down in Fife through a lack of interest. However, prior to the Moss Morran controversy a few younger people had become involved in the Society leading to some internal differences in philosophy and political orientation.

During my interview with Dr. Edmunds he related to me the first appearance at a meeting of a young activist in the Society named Adrian Grant. Grant later became involved in the public inquiry. At a meeting of the Society being held in Kirkcaldy, Grant questioned the relevance of matters then under discussion and made suggestions about strategy "that were generally unpalatable to the older members." Grant viewed ecological matters in intrinsically political terms and wanted the Conservation Society to adopt a more overtly radical stance. Dr. Edmunds by contrast said "the philosophy of the Conservation Society has traditionally been different to that which guides other ecological groups. Some groups espouse values which I consider border on anarchy. I see the philosophy of the Society as expressing a concern for traditional values. The Society is aimed towards encouraging moderate methods of preserving our environment within a more orderly and disciplined society." (15) Dr. Edmunds went on to say that he was against the values of the radical commune movement that he had confronted within the broad ecological movement, but he was also eager to stress that he considered his own opposition to continual growth was not conservative in our present materialist and consumerist society. In summing up the Conservation Society, Dr. Edmunds insisted that it was, and always had been, apolitical in terms of the conventional conception of the political spectrum. He totally rejected the view put forward by some of the Society's younger members that the problems of the environment and the world's scarce resources could be resolved by political will and a radical redistribution of political power. He reiterated his view that order and discipline were required in both the development of science and society.

Adrian Grant represented a different breed of activist in the Conservation Society. He had offended older members of the Society

at his first appearance at that Fife meeting of the Society by calling younger members out of the Hall before the meeting had been concluded. Grant was the Chairman of the Scottish Section of the Society. He could not accept the apolitical view adopted by Dr. Edmunds and took a radical anti-growth and de-industrialisation stance which was not shared by a major section of the local society.

Now the important point to draw out is the fact that the Joint Action Group had early contact with the Conservation Society and sent members to 'sit-in' on Society Meetings and in turn Dr. Edmunds had travelled to meetings in both Dalgety Bay and Aberdour. The various strands of Conservation Society philosophy were therefore revealed to the Joint Action Group at an early stage. Early contacts had been followed up and Dr. Edmunds related to me an enthusiastic account of a meeting held on the 11th January 1977 in the Staff Club of the Kirkcaldy Victoria Hospital about Moss Morran which had been attended by leading members of the Joint Action Group, Messrs. Harris, Jamieson and Burt. At that meeting an investigative visit to Grangemouth was arranged and John Cowie, another leading Action Group member, accompanied a party of Conservation Society activists to the oil refinery to see the extent of the development and learn first hand about its problems and the environmental difficulties it presented to the local area.

As far as the Joint Action Group were concerned the Conservation Society seemed to offer a useful source of specialist knowledge. Many of the Society's views were new to Action Group members and some admitted to finding even Dr. Edmunds rather radical, let alone Adrian Grant. However, the initial contacts and meetings had led both the Conservation Society and some members of the Joint Action Group to believe that their respective cases would be presented at the public inquiry as an integrated part of the Joint Action Group. The Conservation Society in particular had welcomed this move because they lacked funds and were pleased that the Action Group barrister would be presenting their case. However other members of the Joint Action Group took the view that to associate too closely with the

Conservation Society would give the impression that local objectors were anti-industry and they wanted to focus concern on the safety issue. In conjunction with the Action Group barrister Booker-Milburn, the Joint Action Group waited until the opening of the public inquiry before publicly announcing that they would be presenting their case independently from the Conservation Society, much to the distress and annoyance of Dr. Edmunds who had single handed prepared their case purposely without the input of the more radical Grant. Dr. Edmunds in particular stressed the fact that the arguments he made at the public inquiry were effectively tailored to dovetail with the Action Group. He stressed that he was in fact far more 'radically' anti-growth and anti-industrialism than he appeared at the inquiry, Grants views notwithstanding.

Grant did however make many interventions to cross-examine, as I have already indicated in the last chapter, and argued that the gas fields should be closed down until a national policy was constructed. His views also took a far more overtly critical view of our overall value system. John Busby speaking for the Conservation Society also offered suggestions for a radical design of plant layout which must have seemed to the more conservative participants in the inquiry as largely beside the point. However what is significant, I think, is again the revelation that those who favoured a narrower technical focus for objections and public debate were dominant within the opposition movement. Those who were interested in a wider remit and more expansive debate (the very things that would have been hoped for in an Inquiry Commission, had it been set up) were isolated within the opposition movement and institutionally differentiated as an integral feature of the public inquiry system. The Action Group barrister shaped and advised on presentation in such a way that the focused technical arguments dominated the opposition case.

The wider political connection with the ecological movement was therefore short lived. The Joint Action Group having failed to join up with Gray Park and having consciously decided to dissociate themselves from

the Conservation Society more and more developed their own insular campaign and idiosyncratic initiatives.

The last possible movement towards extending the Action Group campaign to join other opposition groups came with attempts to meet and co-operate with Farmers in Angus who were shaping up to oppose the proposed pipeline from St. Fergus to Moss Morran. Cyril Burt, one of those who had courted the Conservation Society initially, made early contact after the Angus Farmers had initiated a correspondence. The objective for some members of the Action Group was to become directly involved in advising and working to oppose the route of the pipeline as a way of extending their opposition beyond the locality. This contact however never fully materialised because, I would argue, the Action Group had become totally incorporated within the local public inquiry system. They were more and more concerned to fight their opposition to Shell and Esso through the existing planning framework. The information they sought was always conditioned by the need to present highly technical information that would either force the Secretary of State finally to agree to a Planning Inquiry Commission or at the very least re-open the local public inquiry at a later date. The foresight and the political will was lacking in the Action Group to organise on a wider front.

The subject of civil disobedience had been raised by some members of the Joint Action Group as a possible last resort strategy. However, the support for such action was believed to be very limited and it was never a subject that was actively on the agenda. The immediate post-inquiry activities were as always to continue to gather technical information. John Helm, a member of the Aberdour sailing lobby and active Action Group member, had suggested disrupting the public inquiry along similar lines to the strategy adopted by John Tyme and the motorway opposition group in England. That strategy had been rejected by the other active members of the Action Group. Helm made it clear to me during an interview that the problem of the borderline between law and illegality had troubled the Action Group. He had personally been in favour of more 'creative'

tactics and his suggestion of painting the rocks on the Braefoot Bay shore white to disrupt marine tests was one of a number of strategies he thought the Action Group might have adopted. It was admitted by Helm and others I interviewed in Aberdour and Dalgety Bay, that such initiatives were not mandated by their communities nor were any of their particular initiatives. There came a point where the mandate to act and respond to events and circumstances was assumed. The members heavily involved in the Joint Action Group were developing their own strategies and taking their own initiatives. If sitting in front of the bulldozers was undertaken then that would be down to individuals making their own decision whether or not to participate.

The main line adopted to extend the campaign was that of 'publicity and public relations.' As the information gathering exercise continued following the conclusion to the public inquiry, the Action Group decided to produce some sophisticated literature to publicise the issues involved, as they saw them. The photocopied newsletters were replaced by three publications that were expensively produced and professionally laid out.

One of the Action Group activists was a Mr. Drumm who happened to be a Scottish Office, public relations officer attached to the Scottish Development Department. Drumm admitted that he had been involved privately with the opposition movement but for obvious reasons relating to his career he was unable to be publicly associated with the Action Group. He had received reminders about his position at his place of work. Drumm's expertise and advice on publicity material was evident in producing the publicity material. A newspaper format entitled The Daily Horror was published detailing explosions, photographs and short reports about highly inflammable gases from around the world. A short booklet called Hostage to Hazard was professionally produced detailing the Shell/Esso proposals, the main argument against the project made at the public inquiry, and an analysis of the evidence which recommended again, the setting up of

a Planning Inquiry Commission. Hostage to Hazard was sent to members of Parliament to elicit their support with the words "these proposals affect a large area of Scotland. Next time it could be your constituency." A further publication was made of a booklet called Nought for your Heritage which concerned the environmental impact of the proposals, particularly on the historic Inchcolm Abbey on an island off the shore of Braefoot Bay. The booklet was aimed to "stir the consciences of all those bodies such as Churches, the National Trust for Scotland, the Department of the Environment, the political parties and all those other bodies entrusted with the preservation of our heritage and our environment - and who have so far remained disturbingly quiet - to make their protest." The particular effect of these publicity initiatives were relatively hard to gauge. They had the additional boost of attracting media attention. What seems to have happened is that knowledge about the Shell/Esso project was extended, and perhaps made a little more clear, presented in the way it was by the Action Group literature. The reputation of the local objectors was undoubtedly enhanced. They attracted many comments about their campaign, mostly favourable, praising their stamina and organisation. However, it is questionable whether an expensively produced booklet sent through the post to a member of parliament was the most effective way to go about stopping the Shell/Esso project.

Given their complete incorporation within the planning inquiry system, the best strategy that the Action Group adopted in the post-inquiry stage was to press for a re-opening of the inquiry by introducing new technical material. This was the favoured strategy of those remaining activity in the opposition movement who were on the whole those who had technical knowledge about petro-chemicals of one sort or another. The keen local helpers had retired to the sidelines at an early stage and once the public inquiry had been concluded there seemed to emerge two main strands of the campaign left; the technology critique and the legal manoeuvre. First, the greatest effort was made to collate technical information that could force the Secretary of State to re-open the public inquiry even if he would not force the setting up of a Planning Inquiry Commission.

The most significant development of the post-inquiry period was the discovery that radio waves were being considered a hazard at the St. Fergus Gas Plant near Peterhead. The nearby naval base at Crimond had caused some alarm when it was reported in the press that naval radio signals could be a potential ignition source. The Joint Action Group were on to this piece of news in an instant and transformed a small news item of a technical nature into front page headlines. They gathered their own data on the Forth area and submitted a report directly to the Secretary of State arguing that structures of plants proposed for Moss Morran and Braefoot Bay might attract energy from radio waves being transmitted either by ships on the Forth, or more likely from the Independent Broadcasting Authority transmitter at Barns Farm behind the Braefoot Bay site. The Secretary of State was about to reach the conclusion that the Shell/Esso project should be allowed when the Action Group report forced a delay and an in depth investigation of the radio waves issue. The Health and Safety Executive were instructed to investigate and so the final decision about the project was delayed. In addition to this move a local Dalgety Bay resident who had not been directly involved in the campaign passed on an American report to the Action Group on the siting of NGL plants. That report was exclusive to the Action group and to their credit they got the maximum media coverage for the report which stated clearly that a high level policy decision had been taken in Washington not to site any NGL plants near to centres of population. The report also questioned the need for new Ethane Crackers given the over capacity of Ethane worldwide. This report was again submitted directly to the Secretary of State with a request that the public inquiry be re-opened to enable an open consideration of the findings of the American report.

In both cases the reports succeeded in delaying a final decision. The Secretary of State finally agreed to instruct the IBA to move their transmitter at the oil companies expense. The American report was however effectively ignored.

Following the failure to get the inquiry re-opened on technical grounds the Action Group adopted a second manoeuvre that of taking a legal action to get the project stopped. In 1980 in Harris versus the Secretary of State for Scotland there was an attempt to use the courts to negate administrative decisions. This issue goes back to my discussion in chapter 2 where I revealed that the only basis an objector can have for requesting the courts assistance, in what are considered administrative matters, is in a case where the lawyers decide that there has been a breach of the rules of 'natural justice'. The whole concept of 'natural justice,' as I have already argued, is so formally defined by lawyers that its violation is virtually impossible to prove if formal access has been given to the planning procedures and there has been an agreed format for exchanging information and participating within the public inquiry. The decision made by the State Minister is virtually unchangeable.

The recourse to law by the Action Group was their particular gesture to publicise the need for reform of the public inquiry system. As a gesture it was probably doomed to failure and probably fruitless because they failed to recognise the need to organise on a wider basis. Their interest in reform has become muted since it now appears that they have lost the war as the bulldozers move into prepare the sites in Fife. It is now questionable whether there is any political will left to seek an ongoing strategy to force a serious re-consideration of the local public inquiry system, especially its use for considering highly complex technological issues with national implications.

Concluding Remarks.

It is clear that it can not be expected that people directly fighting to defend their own immediate interests will take a wider perspective. It is perhaps more pertinent to question the role of the national environmentalist organisations and the political parties for their failure to initiate a broader consideration of institutional change to the public inquiry system. There has obviously been lacking an

organisation to act as a catalyst to bring disparate Action Groups together. The problems of local private troubles must be made into what C.Wright Mills calls 'public issues'. The public controversy surrounding the local public inquiry system must begin to have a particular political direction, preferably as part of a wider consideration of the re-distribution of power in our society from institutions of the state to those rooted in the public sphere.

It is unclear though how any radical alteration can take place to the system of political administrative institutions that serve us until there is a co-ordinated attempt to identify the major structural problems inhibiting genuine public participation and influence in the local public inquiry system. That movement, it seems to me, will have to be initiated by those directly confronting the 'inauthenticity' of existing institutional practices, and it must lead ultimately to a broader movement for change. The containment of action and opposition to the local communities directly affected is likely to retard a wider social and political movement emerging.

The real issue is again one of establishing as a procedural principle, that decisions and debate must be subjected to an institutionally secured public scrutiny. The overwhelming impression that I was left with having observed the formulation and presentation of opposition to Shell/Esso in Fife is how paradoxically the very constitution of the local public inquiry system tends to remove discussion and decision-making from the public sphere. The fact that the ultimate right to decide on planning issues lies with the appropriate Government Minister is fairly clear. What is often overlooked is the fact that the process of 'autonomisation' that I have described has the effect of ultimately by-passing the local community public sphere in two related ways. First, by the necessity to code input for the local public inquiry in terms of a collection code which recognises 'expertise' above all else, the layman is informally kept out of the central debates, and more politically

debilitating, kept out of his or her own community action group. The central figures involved in the Moss Morran opposition movement were all people who were bearers of some esoteric technical knowledge or skill. Secondly, once the processes of 'autonomisation' and 'personalisation' had occurred the Action Group initiated actions and engaged in dialogue about the Shell/Esso project directly with the Secretary of State. Once the public inquiry had been concluded there was no longer any institutional mechanism that existed to sustain an ongoing publicly oriented debate. The result of this was that a kind of 'corporatist' exchange became established between the major interests. The general public were no longer privileged to participate in these debates and the decisions that might flow from them. The strategy of information exchanges and consultations which bypass the public sphere is one which the central government seems to favour as a means of representation. It tends to be less protracted and certainly less costly than re-opening a public inquiry. It could be argued, and I make that argument strongly, that ironically the period after the local public inquiry was probably the Action Group's most productive period. They were able to get both the Secretary of State and the oil companies to seriously re-examine their assumptions about safety. The Action Group did in fact discover enough new information to warrant the re-opening of the public inquiry. The fact that it was not re-opened seems to me to indicate a preference by the Secretary of State for direct correspondence and dialogue with the local objectors without the added complication of open public scrutiny. The radio waves issue was one which had not been raised in the public inquiry and one which deserved an open and extensive examination. It was an issue that met the criterion of being 'new information' and for that reason alone the public inquiry should have been re-opened. The refusal to re-open the inquiry down-graded it as an institutional mechanism. Its worth is taken increasingly into question when it is assiduously avoided by the Secretary of State.

Having shaped down the range of issues to those relating specifically to the technological controversies, which were admittedly extremely important, the local public inquiry system fails to provide a forum for adequately exploring those controversies. This problem is not helped by moving from an apparent mechanism of public openness to one of private correspondence and government sponsored investigations which are not genuinely accountable to public questioning and discussion.

Why was the local public inquiry system not capable of identifying the radio waves issue in the first place? Why was there not a broader international examination of comparative policies towards the siting of petro-chemical plants? The obvious answer seems to be that despite administrators and politicians alarm over the time and cost of large public inquiries, the public hearings that have been set up to consider oil and gas development have been far too restrictive in terms of time and remit. One could be forgiven for thinking that there was a contempt for the public inquiry instrument by government. The Planning Inquiry Commission is obviously not preferred by Government because of the expansion it would entail in the classification and framing of knowledge and information. However, most of the major public inquiries held in Scotland have technically qualified to be set up as a PIC, the fact that they have not been is further evidence of the overwhelming preference towards the system rationality I have already discussed and the tendency to control Action Groups by 'corporatist style' exchanges as far as possible.

The reform of the public inquiry system must therefore be based on a recognition of the wider political constraints and obstacles but perhaps more importantly, it must be based on a reflexive stance by objectors and Action Groups of what the system does to the formulation and presentation of their own opposition campaign. The preoccupation with institutional discourse must inevitably give way to wider forms of political action. Unless an Action Group or collection of Action Groups re-focus their attention away from their individual battles to the greater 'war' which confronts them it is unlikely that a social base can be established for genuine reform, far less radical

transformation of the local public inquiry system. The controversy about the local public inquiry system seems to cease with the final decision issued by the Secretary of State. Very little momentum of a cumulative nature remains to press for a change to the system before the next controversy arises. It is to the necessity for institutional change that I now turn in the final chapter.

CHAPTER 7

TOWARDS A CRITICAL SOCIOLOGY OF THE PUBLIC SPHERE

In Toward a Rational Society Habermas poses a very important question which precisely identifies the central issue confronting any attempt to reform the public inquiry system; namely, "how is it possible to translate technically exploitable knowledge into the practical consciousness of a social life-world?" (1) The way in which this issue is currently resolved in the public inquiry system is to treat all knowledge as synonymous with scientific and technical understanding. The dominance of collection knowledge codes effectively excludes knowledge derived from the "action-orienting self understanding of social groups".

Exactly why this situation has arisen in industrial society has concerned thinkers before Habermas. Georg Simmel, for example, addressed this issue in his development of 'formal' sociology. (2) Central to Simmel's sociology is the distinction between the content and form of social life. The content of social life is constituted by a variety of individual drives, motives, interests and purposes. Also included within this concept of content is the raw idea of technology and work shorn of their social form which Simmel understood as the materials which build up to constitute 'sociation or social forms'. Such contents "are factors in sociation only when they transform the mere aggregation of isolated individuals into specific forms of being." He goes on :

"In accord with our purposes, we give these materials certain forms and only in these forms operate and use them as elements of our lives." (3)

As the above quotation describes, social forms are the outgrowth of human purposes, intentions and needs which Simmel understood as serving social existence.

The problem he identified was that:

"these materials, these forces and interests, in a particular manner remove themselves from the service of life that originally produced and employed them (my emphasis) They become autonomous in the sense that they are no longer inseparable from the objects which they formed and thereby made available to our purposes. They come to play freely in themselves and for their own sake; they produce or make use of materials that exclusively serve their own operation and realisation." (4)

In the same piece Simmel discusses how cognition, as a content of social life becomes autonomous. He goes on, "exact knowledge of the behaviour of things is, in fact, of extraordinary utility for the maintenance and promotion of life. Yet cognition is no longer used in the service of this practical achievement: science has become a value in itself. (my emphasis) It quite autonomously chooses its object, shapes them according to its own needs, and is interested in nothing beyond its own perfection." (5)

The extension which Simmel makes to this idea of the 'autonomisation of contents' assists in broadening the problem from that of technology and the dominance of instrumental reason in public institutions to a second problem level, that of institutional forms themselves. He developed the idea of the 'autonomous form'. For example, I have been pointing to the transformation of the concept of 'natural justice' from the embodiment and expression of a commonly perceived sense of justice to a formal legalistic term determined by formal legal and administrative criteria. I would argue that 'natural justice' is a content of sociation in Simmel's sense which is realised only through institutional forms such as public inquiries. However, rather than the content determining the form the reverse has taken place and the 'common-sense' underpinning to the notion of 'natural justice' has been eclipsed. Simmel suggests that just as contents such as technology and science become autonomous so to do forms like institutional structures. "The forms in which this process results gain their own life, it is freed from all ties with contents. It exists for its own sake of the fascination which,

in its own liberation from these ties, it diffuses". (6)

In public inquiries this process is evident. Rather than a means to obtain public participation and enlightenment about collective problems containing technological, environmental and sociological dimensions, public inquiries become straight jackets into which issues, arguments and knowledge must be fitted and distorted by 'scientism'.

The 'autonomisation of the institutional form' conceptualises the difficulty confronting attempts to make public inquiries more open and responsive to the needs, wishes and purposes of those people most affected by large industrial developments. In the remainder of this chapter I want to suggest how the critical theory of Habermas can clarify the conceptual difficulties involved in relating 'technical' to 'practical' forms of knowledge. I will examine Habermas' thesis on knowledge constitutive interests and suggest that implied within the theoretical problem of how to reconcile 'technical' with 'practical' forms of knowledge interests there is a suggestion that the emerging politicisation of the ecology movement throughout Europe could well be the location for a unified theory and practice aimed towards changing decision-making structures in industrial society.

Knowledge Interests and Decision-Making Processes

In Knowledge and Human Interests Habermas sought to "radicalise epistemology by unearthing the roots of knowledge in life". The thesis was argued that there are distinctive "cognitive strategies" which are rooted "in the natural history of the human species." Substantively this guiding idea led Habermas to develop a trichotomous model of human interests, structured activities and sciences all located in the human species' efforts to produce their existence and reproduce their "species being". As an extension of a critical reformulation made of Marx's concept of 'sensuous human activity', Habermas identifies the irreducible domains of work and interaction

and develops this insight by arguing that there are three anthropologically rooted strategies for interpreting life; the practical, the technical and the emancipatory. These different interests unfold in distinct activities and media namely language, work and power which are in turn located within three identifiable sciences which correspond with these interests and structured activities; hermeneutics, empirical - analytic science and critical theory. Each science contains a different set of criteria for distinguishing objectivity and truth. Therefore the main focus of Habermas's critique of Luhmann is that he failed to locate his analysis within a framework that encompasses the practical and hermeneutic moments in life experience. Luhmann's analysis is one-dimensional, setting political and ideological objectives in the guise of a greater realism yet failing to incorporate the real significance of language and power as important mediating resources within all human societies. While Luhmann eschews the very idea of the public sphere as out-dated and idealist, he fails to appreciate that the moral concepts which he considers so irrelevant do actually represent a major obstacle to the complete destruction of the public sphere because they are rooted in anthropological interests and are not an historically specific and ephemeral ideological aberration.

It may be objected that Habermas' insistence on finding categorical distinctions which other thinkers do not acknowledge results in a false set of distinctions where there are none. It is argued that Habermas is wrong to conclude that the empirical-analytic sciences are guided solely by an interest in technical control and that his concept of instrumental rationality and scientific method is too narrow, particularly since it appears that he fails to incorporate many insights from the post-Kuhnian philosophy of science. My interpretation of Habermas however is grounded in the institutional analysis of an actual political-administrative system, namely the public inquiry. From that position it is clear that while Habermas may be wrong if he is arguing that there is something intrinsic to the empirical-analytic sciences that guides them towards technical control, (over nature and social phenomena), historically, and in terms

of contemporary public appearance, it seems that instrumental reason takes on an imperialist position in relation to other ways of knowing. As Richard Bernstein observes "It is a fiction....to suggest that there are categorically different types of inquiry and knowledge, but it is not a fiction to see how the battle of competing technical, practical and emancipatory cognitive interests continue to rage."⁽⁷⁾

The battle referred to by Bernstein takes a particular form within public inquiries and one dominant interpretation of science and technological method is, at least for public consumption, clearly evident. The cognitive interests identified by Habermas represent what I believe are distinguishable political positions in the power struggle over the classification and framing of knowledge in public. The empirical-analytic sciences are historically being shaped in a direction unsympathetic and hostile to emancipatory interests, if this is conceptualised in terms of the classification and framing of an integrated knowledge code in contemporary society. If enclosed within an integrated code, the guiding interest lying behind the empirical-analytic sciences could conceivably be directed in a more emancipated direction, that is, aimed towards the articulation of hermeneutic with nomological knowledge. Similarly, it must be acknowledged that the same emphasis must be applied to the other cognitive interests identified by Habermas. There is nothing inherent within hermeneutics and critical theory which guides them towards emancipation. The whole problem of what can motivate people to seek co-operation and overcome distorted communicative forms is a very difficult problem not so far dealt with by Habermas and beyond this piece of work to resolve. However the question I wish to address is what institutional form can relate the cognitive interests in a way which might contribute to the resolution of that problem.

Habermas' work on knowledge interests has recently been subjected to criticism by Russell Keat in terms of the knowledge constitutive separation of object-domains and the problem of applying hermeneutic categories to the technical sphere.⁽⁸⁾ Keat's criticism can be

confronted and used to clarify the issue I am concerned with.

In figure 3, derived from Russell Keat's critique of knowledge interests, Habermas is represented as developing his theory of knowledge constitutive interests in relation to distinct object-domains on the foundation of his categorical dualism. Despite this formulation by Keat of discrete parallel elements, Habermas acknowledges that work and interaction are only moments within an analytic complex

"instrumental action is embedded in communicative action (productive activity is socially organised in general). But I see no reason why we should not adequately analyse a complex i.e. dissect it into parts." (9)

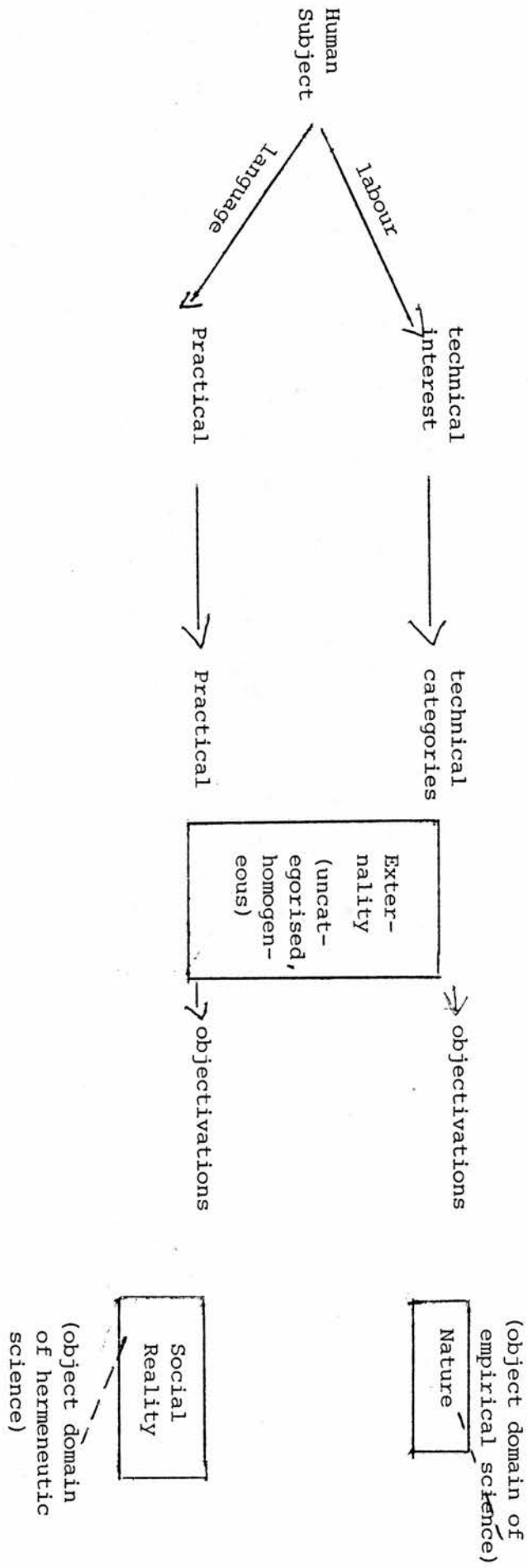
He therefore acknowledges both the interpenetration of work and interaction and the fact that it is not a question of one type of action that is governed by norms and the other by purely technical and instrumental criteria. The conceptual distinctions are drawn depending on which aspects or components of a complex predominate. This view of Habermas' project is rejected by Russell Keat. In his diagram he constructs a critique which seeks to illustrate an interpretation of knowledge constitutive interests which he claims allows Habermas

"no philosophical space for claiming that the ontological differentiation of nature and society is objectively, non-interest-constitutively based, he at the same time denies the possibility of a 'hermeneutics of nature that is an objectification of 'nature' (as, say, a teleological or communicative realm) by the practical rather than the technical interest." (10)

Keat goes on to criticise Habermas for implicitly endorsing a dichotomy between subject and object "and hence, between a science of the subject and a science of the object". This criticism is based on the following passage from Knowledge and Human Interest where Marx's materialist rejection of Hegel is endorsed by Habermas.

FIGURE 3

ILLUSTRATING THE TECHNICAL AND PRACTICAL INTEREST/
 THE EMPIRICAL-ANALYTIC AND HERMENEUTIC FRAMEWORK
 IN KEATS INTERPRETATION OF HABERMAS.



Source:- Russell Keat The Politics of Social Theory
 Basil Blackwell, 1981 page 82

"Marx, on the contrary, does not view nature under the category of another subject, but conversely the subject under the category of another nature. Hence, although their unity can only be brought about by a subject, he does not comprehend it as an absolute unity. The subject is originally a natural being instead of nature being originally an aspect of the subject, as in idealism. Therefore unity, which can only come about through the activity of a subject remaining in some measure imposed on nature by the subject. The resurrection of nature cannot be logically conceived within materialism, no matter how much the early Marx and the speculative minds in the Marxist tradition (Walter Benjamin, Ernest Bloch, Herbert Marcuse, Theodor Adorno) find themselves attracted by this heritage of mysticism. Nature does not conform to the categories under which the subject apprehends it in the unresisting way in which a subject can conform to the understanding of another subject on the basis of reciprocal recognition under categories that are binding on both of them".

(11)

The criticism being made by Keat is that Habermas can at the very most develop only an interest-relative concept of truth because he ties all knowledge to underlying cognitive interests grounded in human life and its reproduction. The difficulty that such a position holds for developing a critical theory of the public inquiry system is that it appears that logically Habermas' work provides no basis for conceptualising the control and direction of technical interests and categories within the object-domain of science and technology by recourse to practical interests and categories derived from the social sphere.

Habermas has already responded to this line of criticism in Theory and Practice.

"In previous investigations I have brought out the connection between knowledge and interest without making clear the critical threshold between communication which remains tied to the context of action and discourses which transcend the constraints of action. To be sure the constitution of scientific domains can be construed as a continuation of the objectifications that we undertake in the social life-world prior to all science. But the claim to objectivity genuinely raised by science is based on suspension of the pressure of experience and decision

and it is only this that permits a discursive testing of hypothetical validity claims and thus the generation of grounded knowledge. Against the objectivistic self-understanding of the sciences, which refers naively to the facts, an indirect relation to action can be shown for theoretical knowledge, but nothing like a direct derivation from imperatives of life practices (which I never asserted in any case).... The interests which guide knowledge preserve the unity of the respective system of action and experience vis-avis discourse; they retain a latent nexus of theoretical knowledge to action throughout the transformation of opinions into theoretical sentences and their translation back into action-orienting knowledge. But in no way.... do they affect the difference between validity claims which are recognised as a matter of fact and those which are rationally grounded." (12)

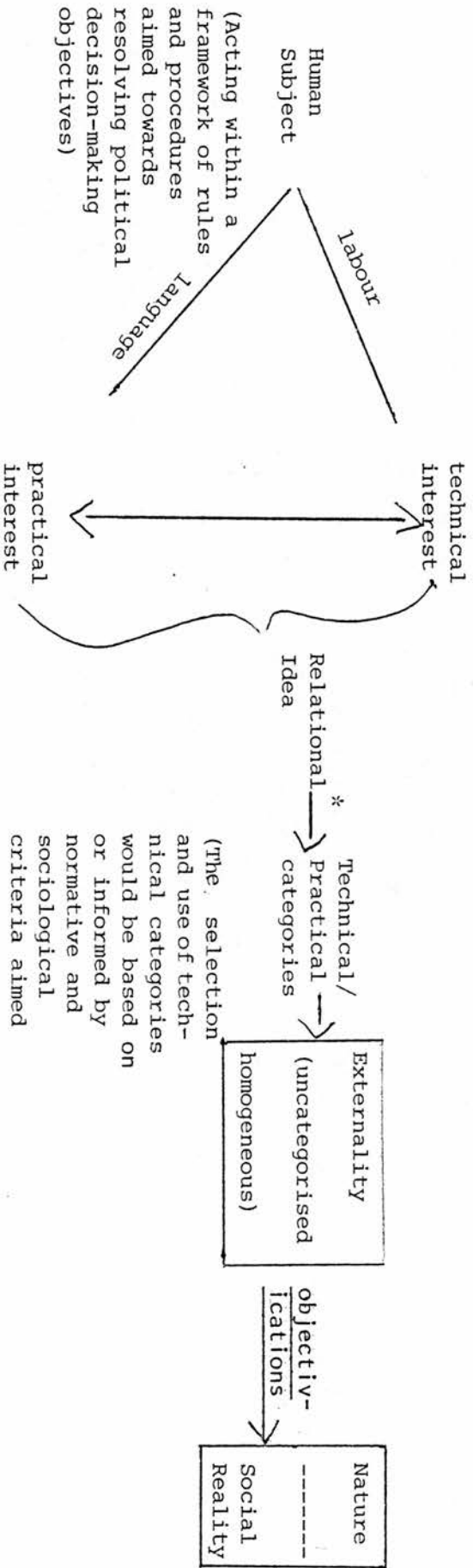
As Thomas McCarthy makes clear, Habermas wants to keep separate "the constitution of the objects of possible experience" and "the argumentative vindication of validity claims!"⁽¹³⁾ In his 'Post-script to Knowledge and Human Interest.' Habermas argues:

"The objectivity of experience could only be a sufficient condition of truth..... if we did not have to understand theoretical progress as a critical development of theory languages which interpret the scientific object domain more or less 'adequately'. The 'adequacy of a theory language is a function of the truth of these theories (theoretical statements) that can be formulated in that language. If we did not redeem these truth claims through argumentative reasoning, relying instead on verification through experience alone, then theoretical progress would have to be conceived as the production of new experience and not as the reinterpretation of the same experience. It is therefore more plausible to assume that the objectivity of experience guarantees not the truth of a corresponding statement, but the identity of experience in the various statements interpreting that experience." (14)

My preference is to interpret this problematic issue within the context of Habermas' overall political framework aimed towards the realisation of an authentic political public sphere. This aim must seek to institutionally control science and technology by an integrated rather than collected knowledge code to enable the full efficacy of communicative reason to direct and shape technical categories so that

FIGURE 4

INTEGRATED KNOWLEDGE CODE: THE EMANCIPATORY/CRITICAL INTEREST



(The selection and use of technical categories would be based on or informed by normative and sociological criteria aimed towards modifying their cognitive interests to make them sensitive to both nature and social reality.

The continuity between nature and social reality has to be conceived of in terms of a balance between human society and its ecological environment.

The real political mapping together of technical and socio-economic issues must be acknowledged in the emergence of a critical social ecology whose object domain is both nature and social reality and their inter-relationship.

* A 'relational idea' is conceptualised in terms of a model, concept or solution to a development problem which is founded on the assumption that social, cultural and environmental factors are not subordinate to the dictates of technical and industrial requirements, and further, that developments should be planned in such a way as to maximise the effectiveness of both 'technical' and 'practical' interests while minimising the degree of compromise either has to make to the other.

the objectification of nature and social reality, while separable processes, can nevertheless be unified by an enlightened human subject. My version of this is based on a public political process framed within a public inquiry that seeks to modify the practical and technical categories in accordance with a relational idea unifying the technical and practical interest (See Figure 4.)

In figure 4, for example, I do not conceive of the human subject in the abstract, as Keat does, but I locate the subject within an institutional framework consisting of a system of rules and procedures that are geared towards seeking an enlightened articulation of the 'practical' with the 'technical' interests. The logic of this framework is to conceive of both nature and social reality as constitutive of an object domain for a synthesis of a critical theory of society and technology with a critical social ecology.

However, I do not underestimate the difficulties involved in establishing such a concept. Critical theory seeks to provide analysis and concepts with practical intent. It is therefore necessary to begin to connect the theoretical concerns of this thesis with the wider political problems of their realisation.

The Public Sphere, Social Movements and the Reaction Against Instrumental Reason.

The central political hiatus in critical theory since its creation by the Frankfurt School has been the absence of an addressee for its analytical insights. Horkheimer and Adorno, for example, concluded very early in their work that the working class was no longer the historical agent for transforming capitalism. ⁽¹⁵⁾ The lack of an identifiable class or group to which critical theory might address itself has been a major point of criticism levelled at the contemporary work of Habermas and his associates. However, the criticism is misconceived. The appeal being made by contemporary critical theory is not to an ungrounded reason as many of its critics have suggested. ⁽¹⁶⁾ Habermas in particular has been concerned to

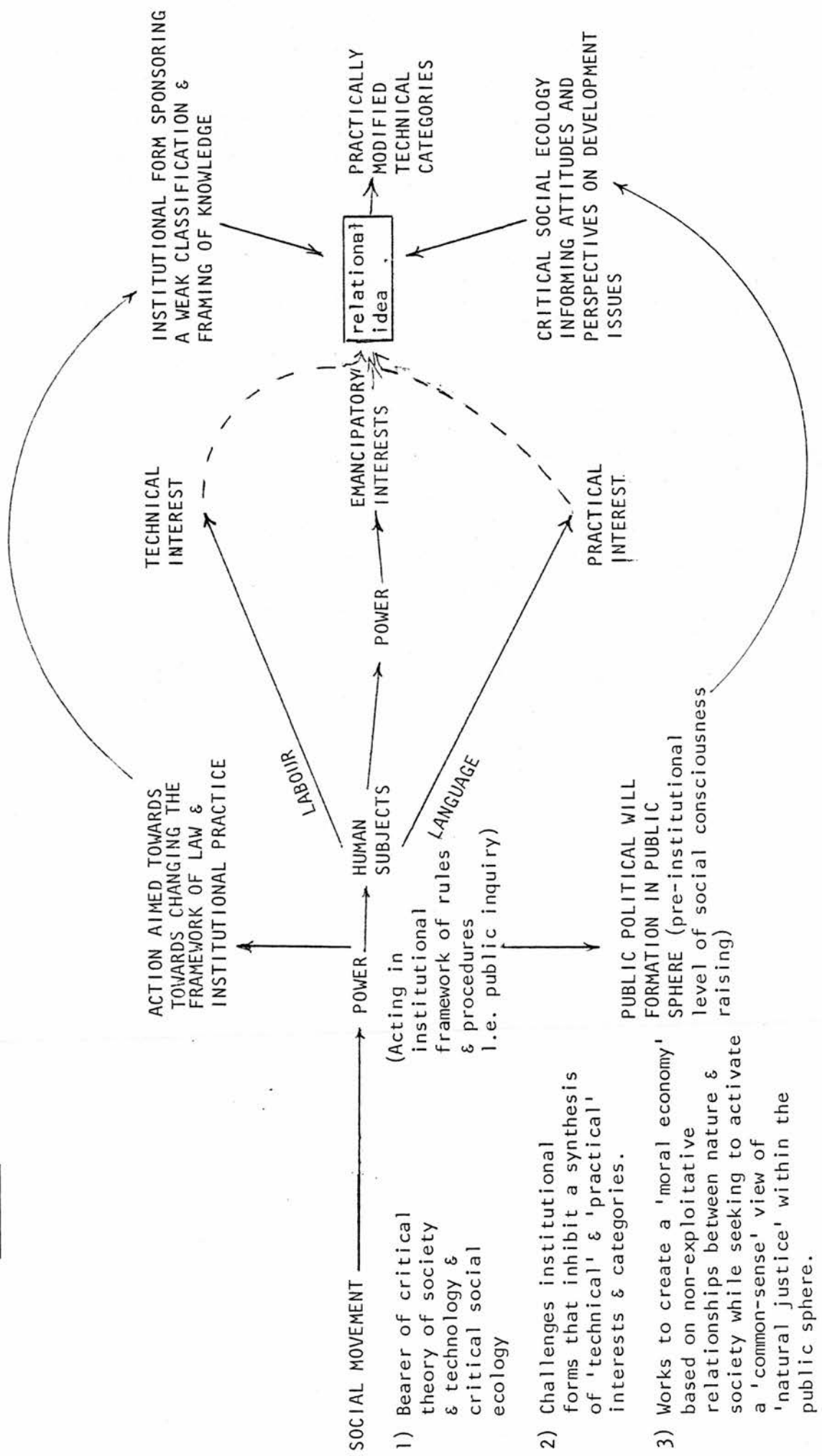
uncover the potential for reason and understanding that is inherent in the structure of speech itself but which is often obscured by ideological distortions in contemporary social and political institutions. The objective of Habermas' project is to demonstrate that a non-relativist concept of reason and legitimation can be established through argument within an open and unrestricted public sphere. The appeal is therefore to the inherent potential of self-reflection and dialogue to reveal truth and distortion rather than to a specific social group. Nevertheless, there is in addition an emerging recognition by Habermas and others that many of the values and objectives of critical theory are influencing contemporary grass roots movements, and an addressee for a critical theory of capitalism may be found in some of the new social movements offering a challenge to advanced capitalism. In the area of planning and the environment, for example, a criticism of capitalist industrialisation is being formulated by groups protesting about the ecological destruction of the environment and the proliferation of civilian and military nuclear power.

Habermas has recently acknowledged the potential inherent within these emerging social movements for seeking radical political and economic changes in capitalist society.

"If we ask ourselves what these various movements of protest have in common, I would say that they reveal an increasing sensitivity towards, and readiness to rebel against, secondary dysfunctions of capitalist growth. There is a rising awareness of the 'infiltration' of capital into areas of life which until now were shielded from it by tradition, and within which the values of capitalist society.....were not hitherto dominant. Such currents do not represent the classical potential for protest delineated by Marxism, although workers are naturally also involved in them. Their social composition is heterogeneous."
(17)

It is due to these observations that Habermas has re-assessed his argument about the de-politicisation of the public sphere. In Legitimation Crisis he suggested that the public sphere is again becoming a "conflict zone". Richard Weiner has suggested that Habermas has now adopted a position whereby;

FIGURE 5



- 1) Bearer of critical theory of society & technology & critical social ecology
- 2) Challenges institutional forms that inhibit a synthesis of 'technical' & 'practical' interests & categories.
- 3) Works to create a 'moral economy' based on non-exploitative relationships between nature & society while seeking to activate a 'common-sense' view of 'natural justice' within the public sphere.

"The public sphere is understood as emerging inter-subjectively out of the communications of participating subjects having intentions of creating new institutions and practices, historical consciousness and a sense of collective identity they are bent on developing. These communications.... negate the legitimacy of the already instituted channels of political decision-making and bypass them in their struggle to develop a more rational quality of life for the social whole..... The emphasis is on the communications and intentions that become embodied in innovative practices manifested in contemporary grass roots movements." (18)

The concept of the public sphere expressed by Habermas recently is one in which social movements act as the bearers of "new normative principles" and provide a "qualitatively new framework of experience" for people. (19) The connection between his persistent concern with the concept of the public sphere and his recent excursions into language and communication is made explicit by this interest in social movements; they create a public space within them for argument about the "validity claims of legitimacy and authority", and crucially, he argues they could have a significant role to play in changing public institutions and decision-making structures. (20)

I am therefore suggesting that the ecology movement and the peace movement, as central groups within a wider social movement against what Habermas calls the "secondary dysfunctions of capitalism", could be the grounding for a new link between the theory and practice of a critical theory of the public sphere. (See figure 5). Whether or not one can attach meaningful labels to emerging social movements and bodies of thought is less important than acknowledging that both critical theory, and the ecology and peace movements, share a political position which rejects the dominance of instrumental forms of rationality and the unfettered growth of capitalist industrialisation. For the want of a more appropriate label, one might call the emerging perspective a 'critical social ecology'. Its ingredients seem to be, first, the extension of the idea of ecology beyond environmentalism

to embrace the social, political and economic foundations of a new knowledge which seeks to integrate nature and social reality, and secondly, the conception of new institutional decision-making structures as an integral feature of the challenge to the hegemony of instrumental reason in late capitalist society. Murray Bookchin has recently articulated this idea:

"The ecological project conceived as a project of a radical social ecology would thereby provide the bases for a rich critique of prevailing ideologies - bourgeois and socialist alike - that would transcend the traditional 'radical' critiques of political economy. It would open the way for a discussion of new forms of organisation (for example the affinity group), new forms of struggle (direct action, conceived as self-management, not merely the occupation of nuclear power plant sites) new forms of citizenship (self-activity, viewed as forms of self realisation). The ecological project, so conceived would provide the social gymnasium for shedding the sense of powerlessness that threatens to reduce the public sphere to a bureaucratised substitute for all forms of human consociation". (21)

In relation to the specific issue of reforming the local public inquiry system in Britain, I am suggesting that local action groups must begin to get 'plugged in' to the wider based movement that I have described if radical changes are to be realised. In the case studies that I have described there was little evidence that locally based action groups were capable of providing a social base for a wider reform movement or indeed that they even wanted a change to the existing public inquiry system. Without exception, the controversies at Cromarty, Dunnet Bay, Drumbuie and at Moss Morran, ceased with the final decision made by the Secretary of State for Scotland. The question is, what hope, if any, is there that a wider social movement, rooted in the ecology and peace issues, will emerge in Britain and try to change the political administrative structures that currently exist in the direction my analysis has suggested?

There are two distinct issues involved in answering this question. First, a great deal will depend on the degree of unity or conflict internal to the grass roots movements. It has to be acknowledged that groups concerned about ecology and the nuclear issue hold distinct views about the problems and solutions confronting advanced capitalist society. ⁽²²⁾ It is therefore highly likely that any challenge to alter the decision-making structures of the capitalist state will come only when the struggles and conflicts within these movements have been settled in favour of those factions on the left. Secondly, a great deal will depend on the willingness or success of the major political parties to integrate the concerns of the grass roots movements. This latter issue raises an important point about whether or not the success or failure to 'parliamentarise' the issues raised by the broad ecology movement will strengthen or weaken their objectives.

The Politics and Ideology of the Ecology Movement

Muller-Rommel has recently pointed to the quite distinct ideological composition of the various ecology parties throughout Western Europe. ⁽²³⁾ In his review of the origins of such parties he identifies three types. First, there are small socialist parties that existed prior to the development of the environmentalist movement in Europe which have traditionally incorporated ecological issues within their political programme as part of their broad critique of capitalist industrialism. Secondly, there are parties described as 'post-materialist' that have been consciously formed to appeal to an environmentally conscious electorate. These parties attract support from liberal and conservative electors as well as from people with socialist leanings. The ecology party in Britain is of this type. Thirdly, many Western European societies have a tradition of liberal and agrarian based political parties that have represented the environmentalist cause for some considerable period within the formal political structure. Examples cited by Muller-Rommel are the Centrum party in Sweden, the Democrates '66 in the Netherlands and Venstre in Norway. While it is clear that the broad environmentalist

movement attracts support across the traditional political spectrum, and is therefore difficult to classify on the ideological left-right axis, it is probably the case from the evidence produced by Muller-Rommel that those parties who take a broad view of ecology as something more than environmentalism, direct their critique against capitalism. These are groups or parties that have a concern about the relationship between environmental destruction and the economic and political processes that characterise capitalism.

In terms of the social class composition of these parties here again the issue is not clear. The ecology movement in general is often characterised as being middle class but Cotgrove has recently shown that simply to view the ecology and peace movements in this way will tend to give the impression of a greater degree of conservatism than actually exists. ⁽²⁴⁾ In terms of occupation many members and supporters of the broad ecology movement may well be in non-manual and professional jobs but their location in terms of the overall productive process tends to be marginal. Cotgrove argues that:

"....we have identified a group of individuals with a distinctive ideology....environmentalism is an expression of the interests of those whose class position in the 'non-productive sector' locates them at the periphery of the institutions and processes of industrial capitalism. Hence their concern to win greater participation and influence and thus strengthen the political role of their members. It is a protest against alienation from processes of decision-making and the depoliticisation of issues through the usurpation of policy decisions by experts, operating within the dominant economic values." ⁽²⁵⁾

Cotgrove's position is similar to that of Alvin Gouldner who argues that a distinct 'new class' has emerged in advanced industrial society which is separate from the traditional propertied bourgeoisie, petty bourgeoisie or the proletariat. ⁽²⁶⁾ However this 'new class' is internally divided between a technical intelligentsia and humanistic intellectuals. It would be wrong however to conclude that the

broad ecology movement consists of only humanistic intellectuals who are opposed to the dominant values of capitalism. Muller-Rommel's data leads us to the view that the ecology movement attracts the support of many members that Gouldner and Cotgrove might describe as part of the technical intellegentsia of the 'new class'. Indeed Muller-Rommel concludes that many of the 'post-materialist' parties of his type 2, similar to the ecology party in Britain, have attracted older and more conservative supporters who have been unable to pursue their interests in environmental issues through the mainstream political parties. It is therefore likely that a significant factor determining the future potential of the ecology movement to seriously challenge political structures in capitalist society will depend upon internal conflicts between their competing factions.

The argument suggested by Gouldner however is that the 'new class' has a common interest in a "culture of critical discourse" which unites its various factions. Gouldner argues that the 'new class' shares a common socio-linguistic and educational background and an interest in applying reason to the resolution of social and political problems. While designating the 'new class' a "flawed universal class" because of its unrealised potential to replace conflict and violence with discourse and reason, Gouldner nevertheless argues that it may be "the best card history has yet dealt". The problem with this line of argument is that in pinning so much hope on the 'new class', he ignores its tendency to exacerbate the division between intellectuals and ordinary people. And it is likely that divisions will emerge in the ecology movement between those who want to make wider connections with working class political action and those members of the 'new class' content to engage in a technical discourse with those holding political-administrative power. A great deal will depend therefore on the direction of protest that the broad ecology movement takes. An issue raised by this subject is the future relationship between the broad ecology movement, including the peace movement, and political parties. The crucial point here is whether or not the problems initiated by the

grass roots movements are taken up by the large political parties seeking to 'parliamentarise' the ecology issue. (27)

Ecology and the Parliamentary System

The dilemma that confronts all grass roots movements is whether they can achieve significant institutional change by staying outside the formal political process or whether by joining the parliamentary system through the electoral process or by support for a large political party, they compromise the radical nature of their objectives.

There is some evidence that environmentalist groups have actually brought about greater levels of public participation in science and technology policy formation. The evidence is however not decisive either in support of pressure group politics or parliamentary politics. Dorothy Nelkin, for example, has examined various experiments in public participation in Sweden, Austria and the Netherlands. (28)

In all of the case studies looked at by Nelkin a combination of direct action and electoral support for parliamentary candidates led to specific attempts by government to set up more open and democratic decision-making structures. However, the evidence also seems to suggest that the failure of such experiments to meet the full demands of the radical wing of the ecology movement was partly to do with the political compromise inevitably imposed upon all parties prepared to engage in formal political participation. Nelkin suggests, for example, that 'study circles' in Sweden designed to improve public participation in planning contributed to greater levels of support for the government's science and technology policy. This could hardly have been the intention of the ecology parties who considered those policies to be bad. With a lack of a clear set of objectives on the part of the ecology parties it seems that many radical objectives can easily be submerged in governmental responses aimed at 'formal' rather than 'substantive' participatory schemes.

It may well be that the choices confronting the ecology movement in the 1980's and beyond are limited. For example, in a modern complex state with corporatist tendencies is it feasible for the ecology movement to restrict itself to pluralist pressure group politics? As Cawson points up, the modern state typically consists of two sectors of politics, a corporatist sector involving the main functional groups for the management of the economy and a pluralist sector dominated by pressure group politics focusing on Parliament. ⁽²⁹⁾ The only way the ecology issue is likely to force itself on to the political agenda is through the main party system. The question is, of course, about reform rather than revolution. The radical programme suggested by my analysis would realistically have to be enclosed within the potential of a social democratic party of the left to achieve institutional change.

The relative success of the ecology movement in the rest of Europe compared with Britain seems to be conditioned by the willingness of major parliamentary parties to take up the ecology issue initiated by grass roots movements. While some scepticism may be justified with respect to the changes effected by the Scandinavian countries in increasing public participation in planning, it has to be conceded that the strength of parties such as Venstre in Norway, and Centrum in Sweden (regularly collecting about 20% of the vote at general elections) has kept the issue of 'democracy and planning' firmly on the political agenda. Similarly, the success of the more radical form of ecology party, namely Partito Radicale in Italy, in getting a number of candidates elected to the national parliament, has been instrumental in opening up debate about public control over the proliferation of civilian and military nuclear power. The situation in Britain is quite different. The low level of representation of the ecology issue at government level in Britain compared with the rest of Western Europe is undoubtedly due to the absence of a system of proportional representation. This is a question which I do not wish to consider except to note that the possibilities for electoral reform are perhaps greater in contemporary Britain than ever before. ⁽³⁰⁾ However, another

crucial reason why ecology has not become a significant political issue in this country has been the traditional support of the labour and trade union movement for economic and industrial growth policies. These policies have always been rejected by the ecology movement but now there is some evidence that the traditional hostility of the Labour party to 'middle class environmentalism' is being modified.

Cotgrove for example indicates quite clearly that the degree of difference between trade unionists and environmentalists is narrowing.

"....like the environmentalists, they too give high priority to non-economic goals and values. In short, trade union officials reject a crucial element in the dominant social paradigm - the simple hegemony of economic values. They, like the environmentalists, see the need for the public interest to override market mechanisms." (31)

This kind of relationship between traditional parties and movements of the left and the grass roots ecology movement is an important one because of the need to ensure that institutional change in the area of planning is shaped by the input requirements of ordinary working people. It is perhaps worth referring back at this point to the case of Gray Park and the Moss Morran controversy. It was apparent in that case that working class people who lacked education and articulateness were completely lost in the stilted informality of the public inquiry hearing. It is difficult to conceive of a decision-making system located within the public sphere, and geared towards open debate, that will not rely upon linguistic skills and the ability to discuss complex and often abstract ideas. Ultimately there have to be forms of representation for people who are incapable of participating in discursive processes like public inquiries. However, part of the problem is not the possession or lack of 'middle class qualities' but the rigid adherence to a limited concept of competence and relevance. The Gray Park representatives at the Moss Morran hearing lacked status because of the way the existing system is premised on credentialled expertise. The kinds

of political changes desired by radical grass roots ecology groups are those which open up decision-making processes to allow an integrated knowledge code to become established. What will transpire in the future is difficult to predict but I would suggest that if the radical elements within the emerging grass roots movements establish links with the political left in politics, then it is conceivable that the kind of changes my analysis has been pointing to can be realised.

Appendix 1

THE OBJECTIVES AND PROBLEMS OF STUDYING
THE MOSS MORRAN CONTROVERSY.

When my research project began in 1974-75 it was my intention to focus exclusively on the large public inquiry controversies in the Highlands. The objective was to study the public inquiry system in the context of North Sea oil onshore development and contribute towards the sociological understanding of the social impact of oil. However, the main public inquiry hearings that I wished to examine had already been completed by the time my research was begun; Grampian Chemicals in 1969, Chicago Bridge and Mowlem-Taylor Woodrow in 1973-74 and Cromarty Petroleum in 1975. However, I was fortunate to receive a research grant from the SSRC North Sea Oil Panel in 1977 to examine the 'Formulation and Presentation of Opposition to Shell/Esso in Fife'. This afforded me the opportunity to study the Moss Morran controversy in greater depth than the Highland inquiries. In particular, I was able to interview the participants in the controversy .

Ideally the task of observing the development of the Shell/Esso controversy should have begun during the period between July 1976 and November 1976 when Shell first announced they would be submitting an official planning application. At that time the controversy was just emerging, and my enquiries could have been based on an understanding of how knowledge and understanding of the NGL project first became known. However, my research into the local opposition against the oil companies did not begin until May 1977 when many of the issues and personalities central to the controversy had already become established. The major task of my research was to produce an account of the ways in which arguments, opinions and feelings about proposed industrial development are formulated, organised and presented, but I had to recognise a crucial period had already elapsed before my sociological investigation had begun. The oil companies had just completed

their tour of the locality presenting their exhibition of the proposed plans for the NGL and ethlene plants when I first entered the research area at a local Action Group exhibition. I was faced with the task of reconstituting the events which surrounded the public debate between the local people and the oil companies in the midst of being immersed in the local opposition exhibitions, which obviously placed a very partial interpretation on the issues. The arguments and the problematic issues were however coming to fruition around about May 1977 when my research began, and I do not consider the initial delay seriously hampered my project.

Initially the objectives of my research project were to understand the interrelation of competing views about the Moss Morran development, and to give some consideration to the notion "way of life". This concept had been bandied about at many development controversies. I was convinced initially that there was a need for information, as opposed to assumptions and suppositions, about what is meant by the phrase 'way of life' as used by many of the parties at various Highland public inquiries. It was an interest in these informal processes therefore which guided my enquiries at the beginning of the research project. I gradually placed decreasing emphasis on the concept of 'way of life' because it seemed to me less significant in Central Scotland than it had been in the Highlands (see Appendix 2).

However, it was always my intention to place the public inquiry hearing at the centre of the controversy in so far as it provided a focus for the actions and debate about the proposed development plans. The Action Groups and other objecting parties seemed to me to be very much geared to presenting their objections to Shell and Esso in the public inquiry forum and obviously the character and procedure of that instututional system would have in impact on this task. As I have mentioned above, the planning system in general had fallen into some disrepute following the controversial decisions that had been made at other planning hearings, particularly in the Highlands.

The local people were concerned about the potential for making their case fully within the existing local public inquiry system. So obviously the public inquiry itself could not be relegated to some position of insignificance, and my interpretation of this part of my research in terms of a concern for information about informal processes, rather than the formal processes of the public inquiry system, had to be made with the above qualifications in mind.

At the outset it was decided that the methods of enquiry to be employed in the research should obviously fit the needs of my research objectives and the limited resources I had at my command. Two factors should be emphasised. Neither the object of studying informal social processes nor the financial provision for my research required that a formal questionnaire be compiled and administered. The focus of attention therefore had to be sharply delimited in order that I could make some meaningful observation of the political interaction. I decided to concentrate my efforts on the parties who would be participating in the public inquiry. It did not appear to me to be possible to widen the scope of my research activities to systematically tap the views and personalities that might be peripherally involved in the controversy. For example, initially there were some people in Cowdenbeath who had shown some public interest in the proposed development to the extent of commenting at public meetings or writing to the local press. In addition there were many people in the locality of Dalgety Bay and Aberdour who were obviously involved in the controversy because they would experience the impact of any development that took place and would have opinions about that impact. However, I had to make the decision to concentrate my efforts on the 'semi-official' expression of those concerns purely because of my limited time and the inability for me to tap all those opinions and feelings without a more expansive research strategy.

The methodology utilised to gather information falls simply into three categories; primary and secondary literature search and analysis, participant observation, and a series of loosely structured interviews with principal social actors.

The kinds of data available to me have been varied. I obtained from the Scottish Office (SDD) letters which had been written either to the Secretary of State for Scotland or the local authorities by objectors and various interested organisations. The Action Groups provided me with community newsletters, and published newspapers and brochures which they had prepared at intervals during the controversy. The oil Companies, the Conservation Society and the Local Authorities also provided me with different kinds of circulars, technical reports and correspondence. In addition to that kind of material I referred to local and national newspapers, and the productions and transcripts of the public inquiry hearing. Overall it was possible to gain quite a comprehensive view of the various dimensions of an evolving and changing public controversy from these kinds of data. This material can be used to trace out the development of thinking on the subject of the gas project. Views expressed initially at early public meetings or in letters to the press were founded on uncertain knowledge and information. People were groping towards an understanding of the complex issues and the wide ranging implications of Shell and Esso's plans and this uncertainty can be identified in the early productions and public statements made by local opposition groups. Tape recordings of those early public meetings were acquired from an individual objector, and it was possible to trace the beginnings of the reaction through to its mature public articulation. By 'plugging in' to the ideas, assumptions and style of debate as exemplified in the letters, brochures and other literature referred to, a discernible pattern of change was observed in the organisation of the opposition campaign by local people which I have described in Chapter six.

At various times it was possible to observe the activities of the local opposition groups at exhibitions, public meetings and at protest marches. There was no similar opportunity to observe public meetings organised by the oil companies or attend any of the oil companies' exhibitions because the research project was begun too late, as I have explained above. The description of my research activity in terms of 'participant observation' must be strictly qualified however. At all times when I was observing or talking to opposition

groups at meetings or other events my identity as a sociological investigator was established. I did not at any time, for example, attempt to take the part of the groups or individuals I was studying. This would not have been possible in any case. The central methodological dilemmas of participant observation were not overcome satisfactorily in so far as I was able to employ that method of observation at all in the strict sense that it is used in the standard sociological literature.* I use the term 'participant observation' in the context of this thesis to refer to the fact that at various crucial points in the research I attended, and was therefore to some extent, involved, in events and meetings and that further I observed the social processes of those events and meetings for the purposes of this research project.

Following the conclusion of the public inquiry hearing I undertook a series of interviews with principal actors who were involved in the controversy. These interviews were additional to those interviews and discussions I had undertaken before and during the public inquiry period. The major difference was that I sought to question the principal individuals more systematically than I had managed to achieve in the period prior to the public inquiry.

Overall the methods used in my research were conditioned by the financial and resource limitations but also importantly they were determined by the fact that I was attempting to gain some leverage on the informal social processes involved in the formulation and presentation of an opposition case. One also has to adapt to the types of information that are immediately accessible to the researcher. This is precisely what I tried to do.

The initial problem that I was confronted with upon commencing my research was the unwillingness of the local objectors organisations to talk to me in the period immediately prior to the public inquiry hearing. Having introduced myself and my research project by letter the local Action Group discussed me at their meetings and decided to assign one of their members to liaise with me. It was made quite clear that this arrangement should not be interpreted by me as

* See Arthur Vidich and Joseph Bensman Small Town in Mass Society Princeton University Press, 1968, 2nd edition and Colin Bell and Howard Newby Community Studies Allen & Unwin, 1971.

indicating the local objectors unwillingness to co-operate with my research more fully at a later date after the public inquiry. I was able to meet and talk to some of the principals involved in the opposition movement by simply turning up on their door step or engaging them in conversation at the various public occasions that drew them out, such as the public exhibitions they held about the oil companies' plans.

It should be stressed that there are significant problems involved in gaining the co-operation of local objectors fighting a complex public inquiry. For example, requesting them to share scarce time and effort to discuss matters in the midst of their preparations for the public hearing can be resented. There are two problems therefore which seem to be particularly emphasised when studying local political interests involved in the public inquiry process (a) disquiet about the researchers confidentiality and discretion once in possession of strategic information, this was especially problematic in the eyes of the local objectors I studied because I was simultaneously in contact with the oil companies and people in the S.D.D. at New St. Andrew's House; (b) how to gain co-operation without being intrusive at a time when the very people being studied are very busy grappling with the task of preparing a highly complex case without, it should be added, any public assistance at all in the way of financial resources and research facilities.

It was due to this problem of non-access to the local Action Group members in the period prior to the public inquiry that I undertook some informal questioning of local residents in the communities of Dalgety Bay and Aberdour, and in the Gray Park Community near to the main site for the development at Moss Morran.

Surveying Local Opinion

The object of the exercise in door knocking was to listen to the opinions of as many and as varied a collection of people as I could in the Dalgety Bay, Aberdour and Gray Park communities. I attempted to make

the exercise as systematic as possible, but I was more intent on reaching people who were not necessarily deeply involved in the organised forms of opposition. I was initially able to talk to people who attended the Joint Action Group exhibition in Dalgety Bay such as the larger shore houses, the co-ownership houses and the relatively small area of council houses, to find out if there was any difference, no matter how subtle, between those with a large private investment in their property and those with a comparatively small investment. Predictably the private house owners were more actively against the development proposals and were more than willing to talk about the issue. The council tenants were more taciturn and treated me as they might a 'door to door salesman'. This made it difficult to gain any impression of their feelings. Unfortunately, due to an earlier victory by members of the Residents Association, there is no public house in Dalgety Bay where one might seek out potential conversationalists. However, it came across that most of the council tenants were either in favour of the project or unconcerned one way or another. One council tenant, Mr. Bill Ford, was actively campaigning in favour of the project, although his efforts were limited to petitions and interventions at public meetings and on the whole he failed to gain any significant support. I talked to 28 people by this method in addition to my interviews with Action Group members.

Aberdour proved to be more uniformly against the Shell/Esso development, although I did find people who were basically in favour of the project as long as firm assurances could be given about the safety of the plant at Braefoot Bay.

In both communities I found a great deal of ignorance about the nature of the Shell/Esso project. Many people seemed to be under the impression that what was being proposed for Braefoot Bay would be similar to an oil refinery. The differences between an oil refinery and an NGL plant are quite significant in terms of their potential pollution effects and I got the impression that people were objecting to some rather vague idea which collapsed the ideas of oil, gas and

industry and treated it as being synonymous with either Teeside or the Clyde. I am not suggesting that the Shell/Esso plants would not cause some environmental pollution, but the difference between a constant aroma of hydrogen sulphide often to be found at the Grangemouth oil refinery and a comparatively smell free atmosphere normally associated with NGL and Ethane plants, could have influenced people's views about the project had they been aware or informed about the differences. The communication process within the community about the scheme was revealed at an early stage to be lacking. In addition to those people who expressed opinions about the project that were uninformed, there were many people who relied totally on the circulating Action Group literature for their critical perspective on the issue; often people would speak passionately against the proposals and with dogmatic certainty about its dangers, however, when pressed it was invariably revealed that their sole source for information was the odd newsletter pushed through their letter box by the Action Group.

Ignorance about the Shell/Esso project and the planning process was particularly found in the Gray Park community. There was a distinct difference of view expressed to me by residents when I first spoke to them in May than subsequently came to be the 'official' Gray Park view. I undertook a similar 'door knocking' exercise in Gray Park in addition to arranging a series of systematic interviews with the six residents forming the Gray Park Committee. I managed to talk with twelve residents by door-knocking.

Many Gray Park residents expressed approval of the development proposals when questioned in private. With three exceptions they thought the development would be beneficial for the area of Cowdenbeath. Most people were totally ignorant about the nature of the NGL and Ethane plants being proposed and had received no information from any source regarding this aspect.

Research Irritations

A major research dilemma confronted me near the beginning of the research. I discovered that I was competing with a host of other researchers

seeking to observe and tap the same information from essentially the same people as myself.

Several postgraduate students were involved in various projects concerning both the opposition groups and the planning process. In one case a researcher from Stirling University sent out a batch of questionnaires to principal members of the opposition campaign and other interested parties. Despite wide publication of my project in SSRC newsletters circulated to most institutions of Higher Education, and the inclusion of my research project in the registry of research into North Sea oil developments produced at Aberdeen University, I found that my competitors were ignorant of my existence.

The Moss Morran controversy had received a great deal of media publicity and had obviously become an ideal focus for a variety of research projects. The problem was how to deal with a classic research problem, that of contamination of the subjects being studied. There is obviously a limit to how much co-operation people will give to a researcher and how many questions they will answer.

It was decided to co-operate as far as possible in exchanging information, and in the case of the Stirling researcher it was agreed to undertake some joint interviewing. This arrangement proved to be very beneficial because it allowed a more comprehensive coverage of issues using the method of extended interviewing or conversation. Joint interviewing is particularly suitable when one is conducting a structured conversation rather than a formal interview with a questionnaire; the momentum of the conversation can be maintained and the risk of missing some point is lessened when notebooks can be compared afterwards. It is regrettable however that the Moss Morran controversy was being over-studied.

The Public Inquiry.

The public inquiry continued for a period of three weeks. I attended the hearing on a daily basis, normally spending about four to five

hours per day listening to the proceedings. I relied upon both the precognitions of evidence and the inquiry transcripts and summary report for the recording of the specific arguments and evidence. During the inquiry I concentrated on the communication process in accordance with the theoretical framework I had developed; viewing the inquiry process as an instrument of government of the political-administrative centre which sought to resolve the dilemma of its 'instrumental' function of shaping down the complex arguments to enable a technical resolution of the issues, and its 'expressive' function in allowing an open and expansive hearing of views in accordance with the principle of 'natural justice'.

My view of the inquiry process was that conflict and tension would arise in the inquiry proceedings around the problem of the inquiry remit to embrace a broader theoretical and factual exploration of the issues, i.e. the political economy of the oil companies and broader safety and ecological issues. I was interested in observing the mechanisms and the process whereby the communication process is managed so as to address the specific remit rather than to allow the discursive approach favoured by objecting parties.

The Structured Interviews

In the period immediately following the public inquiry hearing I arranged a series of more systematic interviews with principals involved in the controversy. I selected my interviewees in relation to the public inquiry; I delimited the focus of my study to those who participated either in the public inquiry or preparation of material for presentation at the public inquiry. I arranged interviews with members of the Dalgety Bay/Aberdour Joint Action Group, members of the Aberdour Ratepayers Association, Yachting interests, private objectors, the Conservation Society, Gray Park Committee, Regional Planning Officials, Representatives from Shell Expro and Esso Chemicals Ltd.

The interviews with the objectors' organisations, with the exception of the Conservation Society, were jointly conducted by myself and the Stirling researcher. I interviewed the oil company personnel and the planning officers by myself and exchanged information on these interviews with the Stirling researcher who had obtained some interviews with selected local councillors.

The format for the interviews was that of an extended structured conversation. Most of the interviews were in the homes of the interviewees. The planning officials and the oil company representatives were interviewed in their own offices. The object of the interviews was to go armed with a series of questions to structure and guide my discussion with the interviewees but to allow the conversation to flow and so record as much detail and information about the formulation and organisation of the various campaigns without being intrusive or to over structure the discussion.

Following each interview conducted by myself and the Stirling researcher a comparison of our respective notes was made and we discussed the information in our possession. We filled out our notes and underscored points to be raised with future interviewees, especially when we were in possession of information about the future interviewee which we wanted to corroborate. Arguments raised by one party would be used to raise issues or questions to confront other parties with. For example, descriptions of events or organisational structures and functions offered by one person belonging to the Action Group, for example, would be presented to another in order that they could comment on it or offer a quite different description or understanding. In this way it was hoped that our notes could be constructed in the form of a dialogue between the parties. This procedure proved to be fruitful and it was made more easy by the fact that two rather than a single interviewer were conducting the discussions.

Appendix II

ON THE CONCEPT 'WAY OF LIFE'

Perhaps the most significant comparative issue to isolate in discussing the Moss Morran issue in relation to other similar controversies in the Highlands, is that of the threat to a community's 'way of life'. Obviously the case of the Drumbuie public inquiry, for example, was expressive of a conflict which was fundamentally based on the 'way of life' of a sparsely populated community. And similarly the case of the Shetland Islands highlighted important issues about a community's 'way of life' which embraced a broad social and cultural tradition. Clearly the Moss Morran issue did not represent a situation where similar established social and cultural practices were under threat. The community of Dalgety Bay is populated by a fairly mobile middle class set of people who are well integrated into the market oriented industrial society of central Scotland. Aberdour is essentially a residential community of either retired or middle management people commuting to Edinburgh. What comes to mind, regarding the threat to a 'way of life' in a situation of possible large scale industrial change, is the distinction between collective and privatised dimensions of the phenomenon. The situation which faced the sparsely populated communities of Wester Ross was a sudden and irretrievable change to a set of collective social and cultural practices that people lived. The threat to this set of collective practices and traditions was conditioned by, and delimited by, the peculiar coalescence of geographical, demographic and historical factors which resulted from a sparsely populated environment which was no longer to be a sparsely populated community. The types of social gatherings, informal social networks, the freedom of multiple occupational sets, were directly and historically an outgrowth of the isolation of the region. The overlap between these different dimensions of life were finely tuned. By contrast the social and economic factors which condition the lives of the residents of Dalgety Bay and Aberdour I discovered tend towards the creation of a privatised life style, especially in Dalgety Bay. The possible disruption to a 'way of life' in such a social context is slightly more impervious to sociological analysis.

The experience of the Gray Park community is the closest aspect of the Moss Morran case that throws up similar collective threats to a particular 'way of life'. The heterogeneity of interests which makes for a comparatively more privatised life style in Dalgety and Aberdour is less evident in the midst of the working class collectivism of the Gray Park street.

I would underline the notion of a 'lived way of life' in connection with this discussion. The particular features of the Dalgety Bay and Aberdour communities' 'way of life' which could be affected by the building of a tanker terminal is their leisure patterns. Activities connected to the boating or yachting pursuits on the Forth, or walks by the shore around Braefoot Bay could be interfered with. However, changes to the community with respect to work patterns, sudden overload on the area's infrastructure, and the social and psychological conflict attendant on the influx of large numbers of migrant workers or people with different cultural habits, is unlikely to happen. But it was precisely these kinds of problems which confronted the people of Wester Ross, Dunnet Bay, * Easter Ross, and the Shetlands. I would therefore suggest a further distinction between a broad impact on 'way of life' and a partial impact.

Certain consequences result from these differences. It seems apparent to me from my initial research and thought on this subject in relation to the Moss Morran controversy, that the people of Fife affected by the proposed project do not spontaneously relate their fears or experience of the issue in terms of a threat to a 'way of life'. It will not seriously interfere with the way they actually live their lives. This of course, is not the case in the Highlands where the disruption of the Kishorn site has had a broad impact on all the dimensions of the lives of the local indigenous population.

* The proposed oil platform construction yard which was the subject of a major public inquiry involving Chicago Bridge did not materialise. However, the threats to the community were perceived by local people.

FOOTNOTES

INTRODUCTION

1. The public inquiry instrument has been used in a wide range of political-administrative contexts and supported by a variety of legal acts. The inquiries being examined here are those held under the planning legislation. For a description of the range of subjects into which public inquiries have been held see R.E. Wraith and G.B. Lamb, Public Inquiries as an Instrument of Government, Allen & Unwin, 1971
2. Robert Moore, The Social Impact of Oil: The Case of Peterhead, Routledge & Kegan Paul, 1982
3. George Rosie, Cromarty: The Scramble for Oil, Canongate, Edinburgh, 1974
4. To their credit, social scientists were quick to point out the negative side of oil development and initiate research into the social impact of large scale industrial schemes in sparsely populated areas. Aberdeen University established the Institute for the Study of Sparsely Populated Areas and became a centre of great activity in researching the problems of oil development in the Highlands. Often the foresight of the social scientists was not matched by the State and the funders of research. See Robert Moore, 'Sociologists Not At Work - Institutionalising Inability: A Case of Research Funding' in G. Littlejohn et al (Editors) Power and the State, Croom Helm, 1978
5. The scramble for oil in the 1970's led to a great deal of land speculation in the Cromarty Firth area and great expectations about potential industrial development. I will discuss this area in Chapter 4. Recent events have shown that the early excitement about East Ross-shire has been unfounded. British Aluminium closed down early in 1982, so destroying the main industrial base for the area. After several abortive plans to develop a petrochemical plant at Nigg (I will discuss the two large public inquiries into this site in Chapter 4) an announcement was made on the 16th August 1982 that a consortium called, Highland Hydrocarbons and Davey International jointly plan to build a plant to manufacture low lead petrol. It will be a capital intensive project and few jobs will be created in the area in the long term.
6. Gordon Brown (Editor) The Red Paper on Scotland, Edinburgh University Students Publications Board, 1975.
7. People and Planning: Report of the Committee on Public Participation in Planning, H.M.S.O., 1969
8. David Pearce, Lynne Edwards & Geoff Beuret, Decision-Making for Energy Futures, MacMillan, 1979
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9. One interesting exception within sociology has been the work done by Frank Burton and Pat Carlen on Royal Commissions, Departmental Committees of Inquiry and Courts of Inquiry into law and order issues. Frank Burton and Pat Carlen, Official Discourse, Routledge and Kegan Paul, 1979. They only devote about half of this short book to the analysis of official reports. The gist of their ideas on this subject can be more economically obtained from their article, 'Official Discourse', Economy and Society 6, 1977
10. See H.W.R. Wade, 'Are Public Inquiries a Farce?', Public Administration, Vol.33, Winter, 1955. Wade adopts the complacent Time ad to Wraith and Lamb, op.cit. A recent example of rather dismissive attitude to public inquiries in the context of North Sea oil development is David Taylor, 'The Social Impact of Oil' in G. Brown (editor) The Red Paper on Scotland, EUSPB, 1975

Footnotes. Chapter 1.

1. See Robert Pranger The Eclipse of Citizenship New York, 1973 for a discussion of the idea of the 'two politics'.
2. Max Weber Economy and Society (Edited Gunther Roth and Claus Wittich) Bedminster Press, 1968 and also From Max Weber (Edited H.H. Gerth and C. Wright Mills) Routledge and Kegan Paul, 1948.
3. Richard Sennett The Fall of Public Man Cambridge University Press, 1977.
4. Hannah Arendt The Human Condition University of Chicago Press, 9th Edition, 1974.
5. Amitai Etzioni The Active Society The Free Press, New York, 1968.
6. Daniel Bell The Cultural Contradictions of Capitalism, Heinemann, 1976.
7. Jurgen Habermas Strukturwandel der Oeffentlichkeit Berlin 1962. A condensed version of the central argument from this book can be found in Jurgen Habermas. 'The Public Sphere: An Encyclopedia Article' New German Critique, 3, 1974.
8. Richard Sennett op.cit. p.5.
9. C. Wright Mills The Sociological Imagination Oxford University Press, 1959.
10. Amitai Etzioni 'The Neo-Conservatives' Partisan Review 1977. See also Nigel Ashford 'The Neo-Conservatives' Government and Opposition Vol. 16, 3, 1981 pp 353-369.
11. G. Almond and S. Verba The Civic Culture Princeton University Press, 1963.
12. Daniel Bell op cit p.25.
13. Daniel Bell op cit p.245.
14. C. Wright Mills The Power Elite Oxford University Press, 1956.
15. C. Wright Mills op.cit. p.320.
16. See Gillian Rose The Melancholy Science: An Introduction to the Thought of Theodor W. Adorno MacMillan, 1978.
17. See Max Horkheimer and Theodor Adorno Dialectic of Enlightenment Verso, 1980, for a discussion of the 'culture industry'.
18. Herbert Marcuse One Dimensional Man Routledge & Kegan Paul, 1974.
19. See Max Weber op cit. and Jurgen Habermas. 'Hannah Arendt's Communications Concept of Power' in Social Research Vol.44, No. 1. 1977.

20. Talcott Parsons Sociological Theory and Modern Society New York: Free Press, 1967 See particularly the Chapter 'On the Concept of Political Power'.
21. Hannah Arendt On Violence New York: Harcourt, Brace & World, 1970. p44.
22. Hannah Arendt On Violence p.41.
23. Hannah Arendt The Human Condition p.180.
24. Margaret Canovan 'The Contradictions of Hannah Arendt's Political Thought' Political Theory, Vol. 6, 1. 1978.
25. Hannah Arendt On Revolution, Faber and Faber, 1963, p.280.
26. Hanna Pitkin 'Justice: On Relating Private and Public' Political Theory Vol. 9,3, 1981.
27. Hanna Pitkin op.cit. pp. 338-339.
28. Arendt's thesis is based on the assumption that an active discursing public within a free public sphere was an historically specific phenomenon now passed. Her work displays an element of pessimism more absolute than even the more extreme writings of the Frankfurt School. The pessimism implied in her political argument is coupled with an elitism which disparages the labour movement and the issues of social welfare. See Margaret Canovan 'The Contradictions of Hannah Arendt's Thought' Political Theory Vol. 6. No. 1, 1978. and also Margaret Canovan's The Political Thought of Hannah Arendt Methuen, 1974. Arendt's position is made clear in her book The Human Condition.
29. Jurgen Habermas 'Hannah Arendt's Communications Concept of Power' Social Research Vol. 44, 1. 1977.
30. Jurgen Habermas Strukturwandel der Oeffenlichkeit op cit. So far this book remains untranslated into English.
31. There have been several criticisms of Habermas' study of the public sphere in Germany aimed towards discrediting it as 'conservative' and 'romantic' history. For example, Wolfgang Jager Offenlichkeit und Parlamentarismus; Eine Kritik of Jurgen Habermas argues that the model of the public sphere used by Habermas has no firm historical basis. Jager seems to wish Habermas' thesis to assimilate all historical circumstances. Peter Glotz Buchkritik in deutschen Zeitungen Hamburg 1968 argues Habermas is only able to argue in terms of a 'disintegration of the public sphere' because he first idealises the circumstances of bourgeois culture in the 19th century. Both critiques fail to understand the theoretical purpose behind Habermas' project and the fact that he differentiates between the public sphere as a general model and as a work of strict historical analysis. Cf. Jean Cohen 'Why more Political Theory' Telos No. 40, 1979 and Peter Hohendahl 'Critical Theory, Public Sphere and Culture' New German Critique No. 16, 1979.

32. Gianfranco Poggi The Development of the Modern State Hutchinson 1979.
33. See Reinhard Bendix Nation Building and Citizenship New York: Doubleday & Company 1969.
34. Poggi op cit. pp 77-78.
35. Poggi ibid p. 78.
36. Poggi op cit. p. 81.
37. Poggi op cit. p. 82.
38. This interpretation of Habermas' project is precisely the one ignored by Jager and Glotz. See footnote above. (31).
39. Many contemporary Marxists fail to appreciate that Habermas' analysis of the bourgeois public sphere is aimed towards a rejection of bourgeois conceptions of freedom. He seeks only to recover emancipatory moments which have been secured by the bourgeoisie in order to understand how they might be incorporated into a new socialist project. His argument of a disintegration of the public sphere embodies the view that in late capitalism, public debate is severely limited 'proceedings are public', not generated by public action and control. He is not a late bourgeois ideologue as argued by Ulfe Milde 'Burgerliche Offenlichkeit' in Mattenklott & Sherpe (eds.) Westberliner Projekt Kronberg, 1974.
40. Cf. Margaret Canovan The Political Thought of Hannah Arendt Methuen, 1974 and also her 'The Contradictions of Hannah Arendt's Thought'. op cit.
41. Jean Cohen 'Why More Political Theory' Telos, 40, 1979.
42. Jean Cohen op cit. p 76 and p. 78
43. Daniel Bell The Cultural Contradictions of Capitalism. op cit.
44. The analytical separation of work and interaction is fundamental to an understanding of Habermas' social theory. The sphere of social interaction and communication represents an irreducible dimension to a categorical dualism within Habermas' epistemology. Understanding and symbolic interaction are subject to distortion but never totally eradicated as a meaningful component of human action
45. Cf. T.H. Marshall Class Citizenship & Social Development New York 1964. Also Bendix op cit. Chapter 3 pp 66-126. The public inquiry system can be placed within the historical and political movement aimed towards securing spheres of public emancipation and democratic rights. Chapter 2 will discuss this aspect of the public inquiry more explicitly. I will argue it is an institutional form generated by popular views of 'natural justice' and represents guaranteed rights for access to the political-administrative process on matters affecting individual rights in planning and development.

46. E.P. Thompson Whigs and Hunters Allen Lane 1975.
47. Cf. Jurgen Habermas Legitimation Crisis Heinemann, 1976 & James O'Connor The Fiscal Crisis of the State St. Martins Press, 1973. and Claus Offe & Volke Ronge 'Theses on the Theory of the State' New German Critique 6, 1975 Claus Offe 'The Theory of the Capitalist State and the Problem of Policy Formation' in L. Lindberg et.al. Stress and Contradiction in Modern Capitalism London: D.C. Heath 1975 and also Claus Offe 'Structural Problems of the Capital State' German Political Studies 1, 1974
48. James O'Connor op cit. p.7.
49. Claus Offe and Volker Ronge 'Theses on the Theory of the State' New German Critique, 6, 1975.
50. Bob Jessop 'Capitalism and Democracy: The Best Possible Shell?' in Gary Littlejohn et al. Power and the State Croom Helm 1977 pp 10-15. The quote is taken from a condensed abstract of the article provided by the author.
51. Alan Cawson 'Pluralism, Corporatism and the Role of the State' Government and Opposition Vol. 13, 2, 1978, p. 192. There are issue areas such as the environment, health and safety, and local planning that will still be largely characterised by a pluralist style of politics. Whereas large scale issues related to regional development policy may be incorporated within 'corporatist' style politics at national and regional level.
52. Peter Saunders Social Theory and the Urban Question Hutchinson 1981. While recognising the fact that the local and central government functions do not fit neatly into the division of social consumption/social investment, Saunders emphasises the interesting point that local government is largely concerned with social consumption which tends to generate pluralist forms of politics. See R. Friedland et al. 'Political Conflict, Urban Structure and the Fiscal Crisis' International Journal of Urban and Regional Research Vol. 1. 1977 where it is argued that "local governments are often important loci for popular participation because they are structurally accessible..... The relative visibility of local government.... make them a more susceptible target of political opposition than other levels of the state". pp 449-451.
53. Alan Cawson op cit. 196-197.
54. See Robert Moore The Social Impact of Oil Routledge and Kegan Paul, 1982 for a detailed discussion of the planning process in Peterhead in relation to North Sea Oil development.

Footnotes Chapter 2.

1. Cf. Claus Offe and Volker Ronge 'Theses on the Theory of the State', op cit. and James O'Connor, op. cit., and Jurgen Habermas, Legitimation Crisis op cit.
2. See Claus Offe and Volker Ronge, op. cit.
3. See E.P. Thompson 'The Moral Economy of the English Crowd in the Eighteenth Century', Past and Present, No. 50, Feb. 1970 and E.P.Thompson, Whigs and Hunters, Allen Lane, London, 1975.
4. E.P. Thompson, Whigs and Hunters, op.cit., p 263.
5. E.P. Thompson, 'The Moral Economy of the English Crowd in the Eighteenth Century', op. cit.
6. See Thompson's account of William Gates defence against the Black Act of 1723. The Act contained the provision to condemn an accused person if, after 40 days, they did not surrender for trial in accordance with the public notice which had to be posted proclaiming the charge against them. Gates claimed to be illiterate and therefore incapable of responding to a written notice charging him of a crime. He refused to co-operate with the legal ritual of his trial. He claimed his conviction was unjust even on the gallows. See Thompson. Whigs and Hunters, pp. 162, 173-175, 268.
7. H.W.R. Wade, Administrative Law, Clarendon Press, 4th Edition, 1977, p 387.
8. H.W.R. Wade, *ibid*, p 397.
9. H.W.R. Wade, *ibid*, p 397.
10. H.W.R. Wade, *ibid*, and also pp. 424-427.
11. H.W.R. Wade, op.cit., p 398.
12. R.E. Wraith and G.B. Lamb. Public Inquiries as an Instrument of Government. Allen & Unwin, 1971, p 18.
13. R.E. Wraith and G.B. Lamb *ibid*. p.18.
14. R.E. Wraith and G.B. Lamb *ibid*. p. 18.
15. S.A. de. Smith Judicial Review of Administrative Action. Stevens, London, 1973 for a discussion of these legal principles pp. 134-245.
16. See Louis Althusser: 'Ideology and Ideological State Apparatuses' in his Lenin and Philosophy and Other Essays New Left Books, 1971 Where the distinction between public and private spheres of life is treated as internal to bourgeois law.

17. H.W.R. Wade, op. cit., p 398. Lord Denning's Richard Dimbleby Lecture on 'The Misuse of Power', BBC 20.11.80 is a contemporary reminder of the significance of the issues I am discussing here. Denning's criticism of the press for 'abusing their powers' and his argument that the judges should have the power to declare unconstitutional and invalid any acts of Parliament which are thought bad brought together the two important themes that concern me in this thesis, namely, the sole power to determine the criteria of right and justice by lawyers as opposed to the public force of debate within the public sphere of which the press and television are important media. Denning urges us to a situation where "someone must be trusted, let it be the judges". The parallel with Lord Coke 400 years ago, made by Denning is false. Then, the sense of 'natural justice' and 'common reason' which informed reactions against laws was based on traditional rights of use. Common-right and reason articulated everyday living practices. Denning's argument is a claim that judges be allowed to be the final arbiters of justice, rather than the court of public opinion. He is advocating 'Denning's sense of justice', not 'natural justice'.
18. See Bernard Schwartz and H.W.R. Wade, Legal Control of Government: Administrative Law in Britain and the United States, Clarendon Press, Oxford 1972.
19. See S.A. de Smith, Judicial Review of Administrative Action, Stevens & Sons, London, 1973, p139, Cooper v. Wandsworth Board of Works (1863) 14 C.B (NS) 180, 194.
20. H.W.R. Wade, op.cit., p428
21. S.A. de Smith, Judicial Review of Administrative Action, op.cit. p. 142.
22. S.A. de Smith, ibid. p.142.
23. See S.A. de Smith op.cit. and H.W.R. Wade op.cit.
24. Keith Middlemas, Politics in Industrial Society: The Experience of the British System Since 1911, Andre Deutsch, 1979.
25. Middlemas, op.cit. p. 153.
26. S.A. de Smith, op. cit., p.144. R.V. Electricity Commissioners (1924) 1 K.B. 1971, 204-205.
27. S.A. de Smith, ibid.
28. Franklin v. Minister of Town and Country Planning (1948) A.C.87. See de Smith or any textbook on Administrative Law for a discussion of this classic case.

29. R.E. Wraith and G.B.Lamb op. cit. pp 32-33.
30. R.E. Wraith and G.B. Lamb op. cit. p.33.
31. A recent report by the Outer Circle Policy Unit, The Big Public Inquiry Council for Science and Society, June 1979, argues that, "for the local purposes for which it was first designed, the public inquiry system continues to work well" p2. This rather complacent position is echoed in the standard public administration text on the subject Wraith and Lamb op.cit.
32. One of the dominant features of the State is the way the appearance of 'neutrality' is founded upon the recognition or non-recognition of categories of people and groups. For example, one distinguishing feature of the capitalist state is its non-recognition of social classes. Often essential conflicts of interest between labour and capital are mediated through the courts as relationships between named individuals. It can be said the state and the law is constantly classifying and re-classifying or composing different categories of legal subject which has a formal status in law rather than relates to a sociological category of grouping. The case of 'third party' interests in public inquiries is a classic example of how this operates within the sphere of administrative law.
33. R. Wraith and G. Lamb Public Inquiries as an Instrument of Government op. cit. pp 253-265 for a discussion of third party interests.
34. John Tyme Motorways Versus Democracy Macmillan, 1978
35. Wraith and Lamb op.cit. p 176
36. Derek Senior Architects Journal 22 June 1961.
37. Senior, Ibid.
38. The centralised control over decision-making by the political-administrative centre of the state rather than in the public sphere, is underwritten by the presumption that administrative agencies apply the law and that the formation of the law, not its application, is a proper issue for public controversy. I am grateful to Gian Poggi for drawing my attention to this point.
39. The Franks Committee on Tribunals and Inquiries Cmnd. 218, 1957 quoted in Jeremy Rowan-Robinson 'Some Legal Aspects of the Public Inquiry System' mimeo, 1980.
40. See Jeremy Rowan-Robinson 'Some Legal Aspects of the Public Inquiry System' mimeographed paper read at the Planning Exchange, Glasgow, April, 1980.

41. House of Lords debate of 2nd July, 1976 quoted in Francis Sandbach Environment, Ideology and Policy Basil Blackwell, 1980, p117.
42. See D. Pearce et al. Decision Making for Energy Futures Macmillan, 1979 and Outer Circle Policy Unit The Big Public Inquiry op.cit.
43. Franks Report Cmd. 218, 1957.
44. Outer Circle Policy Unit op.cit. The Report suggests the concept of a project inquiry. This idea is based on establishing a forum to address "all foreseeable economic, social and environmental complications and repercussions of the project, including its benefits, and its costs and risks of all kinds" prior to more site specific public inquiries. Concern is expressed in the Report that using just a 'Big Public Inquiry', rather than a new concept of institution, is likely to lead to public disquiet and lack of confidence in the decision-making process.
45. Town and Country Planning, Cmd. 3333, June 1967
46. See Peter Self Econocrats and the Policy Process Macmillan, 1975.
47. Lynne Edwards and Jeremy Rowan-Robinson 'Whatever Happened to the Planning Inquiry Commission?' Discussion Paper 4, 1979. University of Aberdeen, Department of Political Economy.
48. See Peter Berger Invitation to Sociology Penguin, 1963 pp 164-165 for a discussion of the concept 'bad faith' originally thought of by Jean-Paul Sartre.
49. John Tyme op. cit. preface
50. John Tyme ibid.
51. By the term 'fair hearing' the administrative law books refer to the pre-determination of decisions and whether Reporters or Judges have bias. The critical problem with respect to public inquiries is how can they fulfill the principle of nemo iudex in causa sua while remaining 'instruments of government'. Would a 'fair hearing' in terms of this principle not require the public hearing (a) to be conducted by an adjudicator independent from the State, as in many Commissions of Enquiry examining evidence about government actions retrospectively i.e. the Franks inquiry into the Falklands Conflict, and (b) more crucially, should findings and conclusions emanating from public inquiries not be binding on Ministers, at the very least in moral terms? If public inquiries were genuinely open forums, where evidence and information was freely available for public

scrutiny, then there could be no Ministerial claim to reserve the right to decide on wider information available only to government Ministers. A freedom of information Act would seem to be a minimal requirement to ensure this. The problem of policy objectives is difficult to prove but nevertheless generally accepted as common practice in major inquiry controversies. The case studies discussed later in this thesis all suggest that the large Scottish public inquiries into North Sea oil related developments did little if anything to deviate the central government from its main policy objectives.

52. S.A. de Smith Judicial Review of Administrative Action op.cit. pp. 222-223.

Footnotes Chapter 3.

1. E.P. Thompson Whigs and Hunters op.cit. p.263.
2. Amitai Etzioni The Active Society, Free Press, New York, 1968
3. Etzioni op. cit., p. 620.
4. Etzioni op. cit., pp 619-620.
5. Jurgen Habermas and Niklas Luhmann. Theorie der Gesellschaft oder Sozial Technologie: was leistet die systemaforschung? Frankfurt, 1971. Luhmann's perspective is presented in English Translation in Niklas Luhmann The Differentiation of Society Columbia University Press, 1982. Habermas' Legitimation Crisis represents a recent response by him to Luhmann's thesis. See also Peter Hohendahl 'Critical Theory, Public Sphere, and Culture: Jurgen Habermas and his Critics' New German Critique 16. 1979 for a brief discussion of the salient themes in the Luhmann-Habermas debate.
6. Niklas Luhmann Legitimation durch Verfahren Neuwied, Luchterhand, 1969 pp 30 & 38. Quoted in Claus Mueller The Politics of Communication Oxford University Press, 1973 pp 137-138.
7. Habermas and Luhmann, op cit. pp 147-148 quoted in Thomas McCarthy The Critical Theory of Jurgen Habermas Hutchinson London 1978 p 224.
8. Within Luhmann's perspective 'meaning' or 'sense' is never "garbaged out" but stored within the system so expanding the horizons of possible interpretative schemes. It seems that the sole criterion for determining choices within a system is that of the system's 'survival'. However, there appears to be an overt political and ideological issue here within a thesis that presents system analysis as an essentially technical apolitical process. First, there is confusion within Luhmann's argument, as there often is in actual administrative systems, about whether it is system survival or the functions it performs which is the crucial issue, i.e. complexity reduction surely has to have some justification independently from the perpetuation of an administrative system. How can 'complexity reduction' be determined without first conceptualising what the systems boundaries are and therefore its tasks and objectives? Secondly, the conservatism of Luhmann's thesis, and of the workings of political-administrative systems in the modern capitalist state, lies in the emphasis given to the fulfillment of institutional survival rather than the appropriate and democratic achievement of institutional success in meeting society's needs. It is not clear to me that they are the same thing. I will return to this theme in the final chapter when I will suggest that Luhmann is offering us what Simmel would have understood as a justification for the 'autonomisation of the institutional form'. See Kurt Wolff (editor) The Sociology of Georg Simmel Free Press, 1950, pt. 1 ch. 3.

9. The logic of Luhmann's position leads to the rejection of legitimacy being grounded in political values or in terms of criteria independent from the system imperatives of the administrative process. Confidence in the ability of an administrative system to deliver a decision rather than what decision is the significant issue for Luhmann's political analysis.
10. See Friedrich W. Sixel 'The Problem of Sense: Habermas versus Luhmann' in John O'Neill (Editor) On Critical Theory Heinemann, 1977 for a useful discussion of these themes.
11. Niklas Luhmann 'The Sociology of Political Systems' German Political Studies. Sage, 1, 1974, p 111.
12. See Jurgen Habermas 'Towards a Theory of Communicative Competence' in H. Dreitzel (editor) Recent Sociology No. 2. MacMillan 1970 and Thomas McCarthy op cit., Chapter 4.
13. Thomas McCarthy op cit., pp 306-307.
14. Ibid pp 306-310.
15. Jurgen Habermas Toward a Rational Society Heinemann, 1971.
16. Jurgen Habermas Ibid p 105.
17. See Jurgen Habermas Knowledge and Human Interests Heinemann, 1972 for the full argument establishing his thesis on 'knowledge constitutive interests'. The significance of the argument made by Habermas in this work in relation to his debate with Luhmann, is that it is asserted that human beings have a deep rooted interest (i) in technical mastery over nature (ii) intersubjective communication and (iii) emancipation from constraining and debilitating social structures. These 'quasi-transcendental' interests have an anthropological primacy in our very species being. Luhmann's thesis is built on the first cognitive interest and ignores the two remaining interests. There are problems with Habermas' argument which would require a separate project to discuss. I will return to this theme in Chapter 7. See John B. Thompson and David Held (editors). Habermas: Critical Debates Macmillan, 1982 for a collection of critical appraisals of Habermas' work and a reply from Habermas defending his work.
18. See Albrecht Wellmer Critical Theory of Society Seabury Press, 1974 and Trent Schroyer 'The Re-Politicisation of the Relations of Production' New German Critique 5, 1975 for appreciative accounts of the analytical power of Habermas' version of critical theory.
19. For a particularly illuminating discussion of the sociological, philosophical and political content of Thomas Kuhn's analysis of scientific revolutions see Margaret Masterman 'The Nature of a Paradigm' in Imre Lakatos and Alan Musgrave (Editors) Criticism and the Growth of Knowledge, Cambridge University Press, 1970 pp 59-90. Masterman maintains that Kuhn uses the concept of scientific 'paradigm' in twenty one senses which can be grouped as metaparadigms (i.e. where 'paradigm' is linked to a set of

a set of philosophical speculations, beliefs or assumptions), sociological paradigms (i.e. where 'paradigm' is linked to the idea of socially recognised achievements and like a set of political institutions or an accepted judicial decision) and finally as artefact or construct paradigms (i.e. where 'paradigm' is like a form of technology, apparatus or instrument or even textbook or report which forms the unquestioned basis for scientific thought). The political element in scientific work and evaluation implied in this interpretation is crucial if one accepts the Kuhnian approach to a critical analysis of the uses of science and technology. This approach seems particularly germane to an analysis of public inquiries where entrenched attitudes about technology and development are seriously questioned.

20. See Niklas Luhmann 'Offentliche Meinung' Politische Vierteljahresschrift Vol. 11, 1, 1970. This is an article on public opinion by Luhmann in which he understands it as the product of "instability, contradictions and the need to know". It is the "expression of a complex social system not a unitary social body, as it might seem". From this perspective 'public opinion' is the object of those institutions charged with the task of 'leading opinions' or 'opinion management'. It is a phenomenon to be controlled or "re-institutionalised into the structure of communication". Only by controlling public opinion from above can its destabilising effects be minimised.
21. Basil Bernstein Class, Codes and Control: Towards a Theory of Linguistic Transformation Routledge and Kegan Paul, 1975
22. Basil Bernstein op. cit. 'Aspects of the Relation Between Education and Production' pp 175-176. op. cit.
23. Basil Bernstein op. cit. 'Aspects of the Relation Between Education and Production' p. 176. op. cit.
24. Ralph Turner 'Sponsored and Contest Mobility and The School System' in Earl Hopper (Editor) Readings in the Theory of Education Systems Hutchinson, 1971, See also Dennis Smith 'Codes, Paradigms and Folk Norms'. Sociology Vol. 10, 1, 1976.
25. Basil Bernstein 'A Critique of the Concept of Compensatory Education' in his Class, Codes and Control Vol. 1. Paladin, 1973, p 223.
26. Basil Bernstein 'A Socio-Linguistic Approach to Socialisation with some reference to Educability' in his Class, Codes and Control Vol. 1. Paladin, 1973 p 189.
27. Without wishing to anticipate my concluding argument, I should indicate that I consider the area of radical ecology to be an important form of knowledge concerned with establishing an integration code in contemporary industrial societies. I envisage a form of radical ecology informed by critical theoretical categories as the logical response to the dominance of Collection knowledge codes. Some examples of the ecological

literature of relevance here are Barry Commoner The Closing Circle Johathan Cape, 1972, Andre Gorz Ecology as Politics South End Press, Boston, 1980 and Ken Coates (Editor) Socialism and the Environment Spokesman, 1972. See also Stephen Cotrove Catastrophe or Cornucopia Wiley, 1982, for a general discussion of the importance of this emerging environmentalist/ ecology movement. I would differ from these writers overly narrow interpretation of ecology as environmentalism. I conceive of an integration code much more broadly in terms of the articulation of political, normative and social ethics with the purely technological and the environmental.

28. The extent to which a public inquiry Reporter will incorporate non-technical information into his evaluation is difficult to demonstrate. However, it is clear that the published inquiry remits indicate explicitly the kinds of information desired and the criteria that will be used to determine relevance. Further the published summary reports issued by the inquiry Reporter indicate clearly the kinds of evidence and arguments that were considered significant and they are always those that engage the specific themes of the Secretary of States remit. That does not indicate, however, that those were the most relevant or powerful arguments offered. The distinction I am drawing here between engaged and disengaged debate represents the core of the public inquiry system's 'inauthenticity' in the sense discussed by Etzioni. It highlights the mystification and hypocrisy of a system of political administration that appears tolerant of a wide range of opinions and arguments to the extent of structuring an input in proceedings to record them, yet totally disregards them because of their prior disqualification by a narrow remit that negates disengaged debate by definition before the inquiry starts.
29. Outer Circle Policy Unit. The Big Public Inquiry op cit.

Footnotes Introduction to Part 2 and Chapter 4.

1. Letter from R.D. Cramond, Permanent Under Secretary of State at the Scottish Development Department, to the County Clerk, Town Clerk and Chief Executive of Local Authorities dated 20th February 1975, page 1, paragraph 2. This letter accompanied SDD circular 14/1975. Memorandum of Guidance on the Procedure in Connection with Statutory Inquiries SDD Ref. RE 37376 TBL

2. Letter from R.D. Cramond, p.1, para.1

3. See R.E. Wraith and G.B. Lamb, Public Inquiries as an Instrument of Government, Allen & Unwin, 1971, Chapter 7, pp.288-294

4. Quoted in A.W. Bradley and C.M.G. Himsforth 'Planning, Compulsory Acquisition and Administrative Law Consequences of North Sea Oil' unpublished paper read at Worcester College, Oxford, September 1975. See also Hansard 31st January 1974

5. The number of major public inquiries will vary from year to year. Information given to me for 1973 and 1974 by the Scottish Development Department, 9.9.75 is as follows:

<u>Type of Inquiry</u>	<u>1973</u>	<u>1974</u>
Article 8's and Development Plan Amendments	27	30
Planning Appeals	176	237
	<u>203</u>	<u>267</u>

It should be noted that the Article 8 and development plan amendments are invariably major inquiry hearings.

6. For a discussion of this see Adrian Varwell 'Highlands and Islands Communities' in Maurice Broady (ed) Marginal Regions, Bedford Square Press, 1973 and David Taylor, 'The Social Impact of Oil' in Gordon Brown (ed) The Red Paper on Scotland, EUSPB, 1975

7. Public Inquiry Report from F.W.F. O'Brien to the Secretary of State for Scotland into proposed Amendment No. 6 to Ross and Cromarty Development Plan SDD Ref. DE31533 BL, Page 13

8. The statutory duty is contained in the Town and Country Planning (Scotland) Act, 1972

9. Public Inquiry Productions Numbers 41 and 51, Dingwall, Feb-April, 1969

10. Public Inquiry Report (Amendment No.6) page 11

11. Later public inquiries, most notably at Dunnet Bay and Drumbuie, were the setting for some discussion about what 'development' actually meant. This issue will be discussed more fully in relation to the case study of Dunnet Bay.

12. Could the public inquiry system adequately examine all issues, given its tendency for strong classification and framing of knowledge? My concept of a 'relational idea is similar to the interpretation of Thomas Kuhn's concept of 'paradigm' by Margaret Masterman 'The Nature of a Paradigm' op.cit.

13. Public Inquiry Report of F.W.F. O'Brien, SDD Ref. DE 31533 BL(51) Part II
14. Public Inquiry Report of F.W.F. O'Brien, SDD Ref. DE 31533 BL(45) pp. 23-25.
15. Public Inquiry Report, SDD Ref. DE 31533 BL(49) p.25
16. Public Inquiry Report, SDD Ref. DE 31533 BL(59) pp.5-7 of Part II
17. George Rosie, Cromarty: The Scramble for Oil, Canongate, Edinburgh 1974
18. George Rosie, op.cit. p.8
19. The County Development Plan Amendment No.6 zoned land at Delny for an oil refinery following the Grampian Chemicals affair. The land at Nigg Bay was at that time zoned only for oil storage and purposes related to and compatible with oil refining. This was, of course, because Grampian preferred not to site their refinery on reclaimed land at Nigg and so never applied for permission to build their refinery on that land only store oil. However, the land at Nigg zoned for industrial purposes was effectively designated for an oil refinery in all respects except name. The Delny site eventually was sold to Cromarty Petroleum and the Cromarty Firth Development Company went into liquidation.
20. Mr. David Edward Q.C. for the County Council, 11th February 1975 at public inquiry at Dingwall, Ross-shire.
21. Edward Q.C., public inquiry 11th February 1975
22. Edward Q.C., public inquiry 11.2.75
23. See footnote 19. Given the status of the Nigg site Cromarty Petroleum were unlikely to look elsewhere.
24. Thomas Kuhn, The Structure of Scientific Revolutions Univ.of Chicago Press 1970
25. 'Secondary elaboration' encourages strong classification and framing whereas 'primary elaboration' encourages weak classification and framing.
26. Robertson was referring to the status of the Nigg area for oil storage and purposes relating to a refining complex at Delny. See footnote 19. However, the land at Nigg had not officially been approved for an oil refinery even though it could be argued that to use the site as an oil terminal for loading tankers and storing oil was as bad or no worse than erecting an actual refinery on the site.
27. John Robertson, for SCOT, public inquiry, Dingwall on Wednesday 19.3.75.
28. During the second week of the inquiry Mr. Ian Kirkwood, Q.C. for CROW questioned Mr. George Pease, Chief Planning Officer for the Regional Council on the pressure Robertson was mounting to get Cromarty Petroleum's project accepted by the Council. A significant exchange in the inquiry had annoyed Robertson;

- Kirkwood, Q.C. "Was someone pushing strongly for planning permission as soon as possible?"
- Pease "Yes, there has been pressure. Several members of the Council were anxious that it should proceed."
- Kirkwood, Q.C. "Was any individual particularly active in this respect?"
- Pease "Apart from the Company?"
- Edwards, Q.C. for the Council "This is an unfair question to put to an official of the County Council."
- Reporter "This is not a court of law. We are trying to ascertain facts. It is quite in order for a direct question to be put to the witness. He did not need to answer."
- Kirkwood, Q.C. "Was the local member, John Robertson, active in pursuing the proposal?"
- Pease "I think he is certainly anxious to see it develop."

The questioning went on to Robertson's connection with Dr. John Jenkins, previously with Grampian Chemicals and now a director of Cromarty Petroleum. It was also revealed that they had set up a company J. & R.C. (Hyken) Ltd., whose registered offices were Castlecraig, Nigg, Robertson's home. That company was formed to carry out the business of manufacturing and refining of chemicals compounded from solid liquids or gases. Robertson was obviously financially committed to the refinery project, as well as politically. Underlying implications were left dormant at the inquiry and the proceedings moved on with innuendo remaining.

29. Public Inquiry, Dingwall, 20.3.75
30. Ibid.
31. The interventions by inquiry Reporters are significant in two ways. First, they contain discussion to remits and so exclude the public articulation of themes which fall outside of the remit but which may nevertheless be of crucial significance for the matter under consideration. Second, by intervening, the Reporter can give recognition to an issue as either worthy or unworthy of attention. By rejecting a line of argument the Reporter disposes of a need for the Secretary of State to respond to it, or incorporate it within his deliberations. However, by allowing an issue to be placed on the agenda the Reporter obliges the Secretary of State to recognise it, even if only to give a public rationalisation for ultimately dismissing it.
32. E.D. Loughney, Public Inquiry, Dingwall on 5th March 1975
33. The Reporter, public inquiry, Dingwall, 5th March 1975.
34. One striking feature about the evidence offered by the respective economic 'experts' was their different orientations to present and future circumstances; Fells for CP doggedly argued that the existing over capacity in refining was not a basis for future calculations of demand whereas Kemp took the exact opposite view, focussing his argument very much on the existing over capacity. Tait for CP emphasised

34. (contd.) the multiplier impact on the local and national economies whereas Berridge and the objectors were at pains to stress the public costs in grants and infrastructure for the refinery, and the increasing safety and environmental costs for the locality as the plant aged. The evidence remained essentially at a level of 'a matter of opinion', instead of being rigourously examined and the most adequate explanation pursued.
35. Mr. Sandy Smith, public inquiry, Dingwall, 4th April 1975.
36. Mr. David Rutherford, public inquiry, Dingwall, 4th April 1975
37. Throughout his evidence on the 19th March 1975 Adrian Varwell focussed on how the construction of the refinery could be phased to alleviate the social impact on the locality. He advocated an increase in cash aid for social services from central government. What he did not question was the desirability of the project in terms of the existing social structure and patterns of social life, nor did he seriously present a critical comment on the inquiry's concepts either of 'social impact' or 'social development', particularly in terms of the long-term prospect of unemployment in an area over-reliant on oil with the traditional economic base destroyed.
38. Letter signed K. Newis, Scottish Development Department, dated 1st. March 1976 to the Chief Executive of Highland Regional Council, informing him of the Secretary of State for Scotland's decision about Cromarty Petroleum's application. See also Mr. G.W. Maycock's public inquiry report file P/PP/12/RC/89/2/3
39. Letter by K. Newis, point 5, page 2.
40. Letter by Newis, point 7, page 3. Similar remarks are made about the over-capacity controversy in point 8, page 3.
41. Letter by Newis, *ibid.*
42. Letter by Newis, point 4, page 2.
43. Letter by Newis, point 6, pp. 2-3
44. Letter by Newis, point 9, page 3
45. Letter by Newis, point 10, pp. 3-4
46. Letter by Newis, point 11, page 4
47. The status of companies seeking oil rig sites in the Highlands were quite different from that of Grampian Chemicals or Cromarty Petroleum in East Ross. Most oil platform companies had technical experience of constructing steel or concrete structures and a sound financial base. Chicago Bridge was no exception. They were a well established company who still operate in Britain today.
48. Transcript of Dunnet Bay Public Inquiry, Vol.12, pp.2108-2109
49. Transcript of Dunnet Bay, Public Inquiry, Vol.12, p.2114

50. Ian Carter, 'The Highlands of Scotland as an Underdeveloped Region' in Emanuel de Kadt and Gavin Williams (editors) Sociology and Development, Tavistock, 1974.
51. See Ian Carter, 'Economic Models and the Recent History of the Highlands', Scottish Studies, Volume 15, 1971
52. Transcript of Dunnet Bay, Public Inquiry, Volume 12, p.2162
53. Transcript of Dunnet Bay, Public Inquiry, Volume 12, p.2156. Compare this brief remark made in the course of about 2 hours evidence with the interpretation by the Reporter, Mr. Taylor in 31 lines of summary, ".....a large work force from outside causes evil social consequences (my emphasis) such as crime and competition for girls". p.26 in Mr. Taylor's summary report of evidence.
54. Transcript of Dunnet Bay, Public Inquiry, Volume 12, p.2190
55. Transcript of Dunnet Bay, Public Inquiry, Volume 12, p.2190
56. Transcript of Dunnet Bay, Public Inquiry, Volume 12, pp.2198-2199
57. Transcript of Dunnet Bay, Public Inquiry, Volume 12, p.2203
58. Summary Report of Dunnet Bay, Public Inquiry by Mr. R.R. Taylor, pp.26-27.
59. Ibid., p.27
60. Summary Report of Dunnet Bay, Public Inquiry by R.R. Taylor, pp.34-35
61. Ibid., p.54
62. Maurice Broady, 'The Drumbuie Inquiry: David and Goliath in Scottish Rural Development', Community Development Journal, Vol.10, 2, 1975, p.79
63. Frank Burton and Pat Carlen, 'Official Discourse', Economy and Society, Vol.6, 1977, p.378
64. Letters from the Scottish Development Department, Edinburgh to John Mowlem & Co. Ltd., Brentford, Middlesex, dated 9th August 1974, signed by K. Newis (SDD Reference P/PP/2/RC/3/9)
65. Ibid., p.2
66. Ibid., p.3
67. Ibid., p.3
68. Ibid., p.3
69. Ibid., p.3
70. Ibid., p.4
71. Maurice Broady, op.cit., p.86

FOOTNOTES CHAPTER 5

1. Dunfermline Press, 10th June, 1977
2. Quotations are taken from notes recorded at the pre-inquiry meeting.
3. Transcript of Moss Morran public inquiry, volume 1, p.148
4. Steven Lukes 'Political Ritual and Social Integration', Sociology, Vol. 9, 1975, p.301.
5. Murray Edelman, The Symbolic Uses of Politics, University of Illinois Press, 1964, p.56
6. Murray Edelman, *ibid.* See Dan Sperber Rethinking Symbolism, Cambridge University Press, 1975 and Abner Cohen, Two Dimensional Man, Routledge & Kegan Paul, 1974 for a further development of symbolism in the political process.
7. See Dan Sperber, *op.cit.* on this theme.
8. Jurgen Habermas, Legitimation Crisis, Heinemann, 1976, pp.97-101
9. Transcript of Moss Morran public inquiry, volume 2, p.238
10. Transcript of Moss Morran public inquiry, volume 1, p.84
11. Transcript of Moss Morran public inquiry, volume 2, p.364
12. Transcript of Moss Morran public inquiry, volume 2, pp.364-365
13. Transcript of Moss Morran public inquiry, volume 3
14. Transcript of Moss Morran public inquiry, volume 3
15. Transcript of Moss Morran public inquiry, volume 9, p.1644
16. Transcript of Moss Morran public inquiry, volume 9, p.1668
17. Transcript of Moss Morran public inquiry, volume 9, *ibid.*
18. Transcript of Moss Morran public inquiry, volume 9, p.1732
19. With the benefit of hindsight in 1982 it is now possible to see that the Cromarty Firth area would have been ideal for Shell/Esso, albeit that the gas gathering pipeline has been shelved for the time being. British Aluminium has closed and there is a question mark hanging over the future of oil rig construction at Nigg. Unemployment is now critically high in the area and the worst fears about temporarily industrialising sparsely populated areas for short term economic benefits are now being realised.
20. Transcript of Moss Morran public inquiry, volume 9, p.1748

21. Transcript of Moss Morran public inquiry, volume 9, ibid.
22. Transcript of Moss Morran public inquiry, volume 9, p.1754
23. Transcript of Moss Morran public inquiry, volume 13, p.2360
24. Transcript of Moss Morran public inquiry, volume 13, p.2362
25. Transcript of Moss Morran public inquiry, volume 14, p.2688
26. I arranged a meeting on 12th September 1977 with Shell's public relations officer responsible for the Moss Morran project, Mr. Derek Jacobs. (All of the technical experts who had given evidence at the public inquiry had flown off to other parts of the world immediately the inquiry had been completed). Mr. Aylwin of Esso unfortunately was unable to attend the meeting. Jacobs assured me that he was able to relate the impressions of the inquiry from Esso's point of view as well as Shell's. He considered that they had a 'joint' view of events. With respect to specific questions about whether Esso were intending to proceed with their Cracker, Jacobs assured me that these could not be answered for some considerable time and Mr. Aylwin would be unable to enlighten me on that issue even if he had been present. So content with the knowledge that my task was to gain 'impressions' of the public inquiry from the oil companies' perspective, I was resigned to the fact that I was unlikely to get access to any of the technical people without a great deal of time and travel expense being incurred, so I listened to Mr. Jacobs account, aware that to a large extent it had to be accepted as a personal perspective.
27. Letter from Mr. Jamieson to the inquiry Reporter, Mr. Alexander Bell, York Place, Edinburgh, dated 11th October 1977
28. Letter from Dr. Edmunds to the inquiry Reporter, Mr. Bell, Edinburgh, dated 5th October, 1977.

Footnotes Chapter 6.

1. This information was obtained from tape recordings given to me by John Cowie of public meetings held in Dalgety Bay and Aberdour in 1976 and 1977. Oil representatives were participants at some of these public meetings.
2. Chairman of the Aberdour Ratepayers Association Mr. Lochtie was particularly incensed by the leaflet incident. His concern was based, I suspect, at the emergence of a local social movement against Shell and Esso that was outwith the existing community institutions and control by local officials like himself.
3. Due to the official resistance to setting up an Action Group under the auspices of the RPA, many Aberdour people convened meetings in houses and pubs to organise a response to Shell and Esso. These meetings were arranged on a word of mouth basis but were technically open to anyone who was interested and heard about them.
4. Action Group members who were interviewed from both communities agreed with the description offered here. Although Carnduff and Stodart were Aberdour residents and were significant contributors to the technical understanding of the project the spread of knowledge between the two communities was fairly balanced. Mr. Diess, the Treasurer and Judy Hope, press relations, were Dalgety Bay residents who knew little about the technical issues, whereas Burt and Mehta came to know quite a bit about the technical issues through time.
5. It is important to note that Shell Expro UK Ltd and Esso Chemicals Ltd were separate companies from their larger parent corporations. Shell Expro had been formed in 1964 to manage Shell UK's petroleum and production interests. Esso Chemicals Ltd was formed in 1965 as an affiliate of the Exxon Corporation of the United States. As separate companies they had no Scottish Offices in their own name.
6. Daniel Bell The Coming of Post-Industrial Society Heinemann, 1974, p 279.
7. This was a frequent remark made on television, radio and in the newspapers.
8. Dalgety Bay Residents Association newsletter dated 24th September 1976.
9. There was obviously some discussion within the two Action Groups about what strategy they should adopt. People such as Cowie, Norman and Mehta, who were involved at the core of the Action Group, immediately formulated their objectives in terms of ensuring a public inquiry was held. Most activists shared

their view and the main activity became geared to preparing a case for presentation at the public inquiry with all that implies about the kinds of information and expertise that would be effective.

10. Many Action Group newsletters were aimed towards informing the community about the details of the Shell/Esso scheme in terms of the technological safety issue. They explicitly suggested to locals what issues would be the most effective to adopt in letters of objection and in participation within the public inquiry. Perhaps the realism of the Action Group members about the public inquiry system revealed by this stance adopted in the newsletters obscures a lack of knowledge and interest by certain key members of the Action Group in broader non technical issues.
11. See Anthony Giddens Central Problems in Social Theory, MacMillan, 1979, p3.
12. I am not advocating civil disobedience as an effective strategy. However, the significant difference between the oil related public inquiries in Scotland and John Tyme's campaign against motorways in England, was the latter's specific challenge to the public inquiry system. The disruption to the motorway inquiry arose because Tyme and his various accomplices did not accept the public inquiry instrument in the way most objectors in Scotland seem to have. Tyme was an unusual person in the fact that he was willing to work full time to co-ordinate action throughout the country. No such person has so far emerged in Scotland. The main contrast between Tyme and the Fife objectors nevertheless remains, the former's willingness and ability to organise his campaign on a national basis, involving the co-operation of the disparate objectors groups and organisations from different localities, and the latter's determination to wage a discursive battle solely within their local public inquiry.
13. Dunfermline Press, 18th February, 1977.
14. Related to me by Mr. Jamieson of Aberdour in an interview in John Sutcliffe's house in Aberdour in September, 1977.
15. Related to me by Dr. Edmunds in an interview held in his home in Kirkcaldy 6th October, 1977.

Footnotes Chapter 7

1. Jurgen Habermas Toward a Rational Society, Heinemann, 1971, p53.
2. Kurt Wolff (Editor) The Sociology of Georg. Simmel Free Press, 1950.
3. Ibid, p.41.
4. Ibid, p.42.
5. Ibid, p.41.
6. Ibid, p. 43
7. Richard Bernstein The Restructuring of Social and Political Theory, Methuen, 1979, p223.
8. Russell Keat The Politics of Social Theory, Basil Blackwell, 1981.
9. Jurgen Habermas 'A Postscript to Knowledge and Human Interests' Philosophy of Social Sciences, 3, 1973, p186.
10. Russell Keat op.cit. p.81.
11. Jurgen Habermas Knowledge and Human Interests, op.cit. pp32-33.
12. Jurgen Habermas Theory and Practice Heinemann, 1974, pp 19-20.
13. Thomas McCarthy The Critical Theory of Jurgen Habermas, Hutchinson, 1978, p294.
14. Jurgen Habermas 'Postscript' op.cit. p.180.
15. See David Held Introduction to Critical Theory, Hutchinson, 1980 for a discussion of the work of Horkheimer and Adorno.
16. See John Thompson and David Held (Editors) Habermas: Critical Debates, MacMillan, 1982 and Goran Therborn 'Jurgen Habermas: A New Eclectic' New Left Review, 67, 1971.
17. Jurgen Habermas 'Conservatism and Capitalist Crisis' New Left Review, 115, May/June, 1979, p.74
18. Richard Weiner Cultural Marxism and Political Sociology Sage, 1981. p 120.
19. Jurgen Habermas, Communication and the Evolution of Society, Heinemann, 1980.
20. Ibid., pp95-129.
21. Murray Bookchin 'Review of Andre Gorz Ecology as Politics' Telos, 47, 1981, p.177

22. See Steven Cotgrove and Andrew Duff. 'Environmentalism, Middle Class Radicalism and Politics' Sociological Review 28, 1980 or Cotgrove and Duff. 'Environmentalism Values and Social Change' British Journal of Sociology, 32, 1, 1981.
23. Ferdinand Muller-Rommel. 'Ecology Parties in Western Europe' West European Politics, 5,1, 1982
24. Steven Cotgrove Catastrophe or Cornucopia, John Wiley, 1982,
25. Ibid, p.95
26. Alvin Gouldner The Future of Intellectuals and the Rise of the New Class, MacMillan, 1979
27. See Dorothy Nelkin and Michael Pollak 'Political Parties and the Nuclear Energy Debate in France and Germany' Comparative Politics. 12, 2, 1980.
28. Dorothy Nelkin Technological Decisions and Democracy, Sage, 1977.
29. Alan Cawson 'Pluralism, Corporatism and the Role of the State' Government and Opposition 13, 2, 1978. For a fuller statement see his Corporatism and Welfare Heinemann, 1982.
30. See Enid Lakeman Power to Elect Heinemann, 1982.
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