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AIR POLLUTION IN ALBERTA : THE ROLE OF THE GOVERNMENT AND THE STATE

by

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The undersigned certify that they have read, and recommend to the Faculty of Graduate Studies for acceptance, a thesis entitled, "Air Pollution in Alberta : The Role of the Government and the State", submitted by Denise M. Young in partial fulfillment of the requirements for the degree of Master of Arts.

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ABSTRACT

Concerns for the environment have increased over the years. There are indications that cause for such concerns is well founded. The purpose of this study was to look at the response to environmental threats in the province of Alberta. The focus was on the role of the government and the state in protecting air quality through the use of legislation such as the Alberta Clean Air Act.

Analysis was based on a combination of historical data and content analysis of Alberta Hansard. It was argued that in order to understand air pollution control in Alberta it was necessary to place that control in an historical context. Alberta as a province has been heavily reliant on resource development. It is that same development which is also one of the major sources of air pollution. The Alberta government and state, which have been traditionally aligned with industrial needs, have emerged as largely responsible for protecting the environment, creating the potential for industrial demands to be considered before environmental demands. Environmental protection has been left in a rather precarious position. Overall it was felt that one particular variant of Marxist theory, Chambliss and Seidman's (1982) dialectical paradigm, best explained the historical evolution of air quality control in Alberta.

Once the historical setting was developed, qualitative

thematic content analysis was used to analyze government discussions of air quality in Alberta Hansard. Although this study did not use a strict hypothesis testing model, some generalizations can be made from the analysis. It was argued that Chambliss and Seidman's specification of the concept of relative autonomy, distinction between the government and the state, notion of symbolic law and general conception of the evolution of law in capitalist societies had emerged as particularly important in explaining air pollution control in the Alberta context. Unfortunately information on the introduction of the original Clean Air Act of Alberta was limited, but subsequent proposed and passed amendments would indicate that the circular process of a contradiction between environmental quality and industrialization, leading to conflicts which are resolved by changes in legislation, which lead to further conflicts, applies to the case of Alberta. This is supported by looking at enforcement action which would indicate that the legislation is largely symbolic and is predominantly in the hands of the state. This allows the government to pass purportedly stringent legislation and to maintain legitimacy while the state does little by way of enforcement activities to interfere with the needs of capital.

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DEDICATION

To Sheryl

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CHAPTER I

INTRODUCTION

A. The Problem and Its Relevance

Recently the Canadian public has put environmental concerns at or near the top of most lists of current concerns (Emond, 1985 and Law Reform Commission of Canada, 1985). According to a Canadian Environmental Advisory Council (1985) publication, 86% of Canadians favour maintaining environmental laws over easing them to achieve a higher rate of economic growth; 83% favoured protecting the environment over relaxing the laws in order to obtain cheaper goods and services and 64% favoured doing more to protect the environment even if the cost was measured in loss of jobs. There are good indications that cause for such concern on the part of the Canadian public are well founded. For example, a recent report found "that almost all of the food eaten in southern Ontario is contaminated with toxic chemicals" (Barber, 1986:42). Yet, the response to the degradation of the environment has been relatively slow and ineffective. The purpose of this study will be to look at the response to environmental threats within the province of Alberta.

The problem, stated at its most general level, arises from the same question asked by Elliott (1981). That

question is, "why pollution?" (Elliott, 1981:1). If pollution is of such a great concern to the Canadian public in general, and to the Alberta public specifically (Kelly, 1982), then why has the problem continued to grow? According to the Canadian Environmental Advisory Council (1985) many of the environmental issues which we will face in the future have already been identified, but they will continue to increase in complexity and intensity. If we are aware of many of the problems we face today and will face in the future, what has been done to address these problems? It is expected that environmental programs will be one of the most important functions of government in the future (Canadian Environmental Advisory Council, 1985). Questions related to the pollution problems today are timely indeed. We appear to be moving steadily down a path toward environmental destruction. We must ask ourselves how we got on that path and, if it is not too late, how we will get off that path.

One of the ways that governments in Canada have tried to address the pollution problem is through the introduction of pollution control legislation. Various pieces of legislation have been introduced at the federal, provincial and municipal levels. Over the years the federal government's involvement in the environment has been shrinking, which has left more responsibility for the protection of the environment at the provincial level (Crerar, 1986). This study will look at the management of

air quality within Alberta. The point of focus will be the historical origins, evolution and enforcement of Alberta's Clean Air Act, one particular piece of legislation brought forward by the provincial government in an attempt to manage air quality within Alberta.

Alberta's Clean Air Act was chosen as a basis for analysis for two main reasons. First, acid causing emissions have been recognized as one of the world's foremost pollution problems by environmental experts (Phillips and Pretash, 1985). Acid causing emissions are often the byproduct of industrial activity. The development of hydrocarbon reserves in Alberta are extremely important to its resource based economy. The development of these reserves are also one of the largest sources of acid-causing emissions (Phillips and Pretash, 1985). Acid-causing emissions, which eventually result in "acid rain", have been linked not only to the continued destruction of the natural environment, but also to human health (Phillips and Pretash, 1985). Alberta's Clean Air Act is the legislation which deals with atmospheric emissions (Phillips and Pretash, 1985), therefore it is an extremely important piece of legislation in Alberta's resource based economy. Second, although management of air quality in Alberta is governed by more than two dozen legislative and policy documents, the Clean Air Act is the principal piece of air quality legislation (Gordon and Free, 1985). Both the federal and the provincial "Clean

Air Acts are the primary enabling documents on which most air quality regulations and policies are based" (Gordon and Free, 1985:12). Since most aspects of environmental management come under provincial jurisdiction, and the provincial Act allows the Environment Minister to regulate standards and to enforce them (Gordon and Free, 1985), Alberta's Clean Air Act is one of the most important pieces of air quality legislation within Alberta. If it is assumed that Albertans are concerned about the state of their environment then it is important to look at one of the major pieces of legislation developed by the government to protect that environment.

B. Research Design

This study will be an attempt to test the explanatory power of Chambliss and Seidman's dialectical paradigm in the context of air pollution control within the province of Alberta. According to Denzin (1978), "(a)ny method that attempts to collect, record, and analyse documents from the past and to weave these documents into a meaningful set of explanations is historical" (Denzin, 1978:240). Therefore the methodology used will be historical analysis. The initial question asked was "why pollution?". This study will piece together an historical picture of attempts to address the air pollution problem in the province of Alberta.

According to Mills (1959);

> To fulfill their tasks, or even to state them well, social scientists must use the materials of history. Unless one assumes some trans-historical theory of the nature of history, or that man in society is a non-historical entity, no social science can be assumed to transcend history. All sociology worthy of its name is "historical sociology". (Mills, 1959:146)

According to Williamson et al (1977), elements of a society have a history. If we want to "... fill out and expand our understanding of contemporary social arrangements we must look at the transformations through which we have already passed" (Williamson et al, 1977:260). Mills has taken the argument even further by saying that the proper study of "man" should look at an intersection between biography, history and social structures (Mills, 1959). The importance of history to the present analysis, or the placement of the problem of air pollution in Alberta in an historical context, cannot be overemphasized. It has been argued that it is very important to situate "... social processes in time and place" (Tilly, 1981:52). Although one of the main areas of interest to this thesis is in the legislative strategies which have evolved in order to manage environmental (especially air) quality in Alberta, a discussion of the historical factors that led to the government and the state assuming a certain role in environmental protection is essential for a more complete understanding of environmental protection in Alberta.

In an attempt to place air pollution in an historical context this thesis will include a discussion of Alberta's

political history, of the history of the relationship between business and the government and of the historical importance of the resource based economy. The point of how these factors relate to air pollution in Alberta will be elaborated. The thesis will then move to an historical discussion of the evolution of environmental legislation and the environmental movement. Once the historical stage has been set the thesis will move to a qualitative thematic content analysis of the Legislative debates in Alberta Hansard in order to demonstrate the role of the government in protecting air quality in Alberta through more recent history. Finally, the role of the state and the government in protecting the environment will be further developed by looking at the enforcement of air pollution legislation in Alberta.

According to Chambliss (1986) there is a fundamental contradiction between industrialization and environmental quality. This contradiction is of particular interest in the Alberta context. As previously mentioned, Alberta's economy is largely resource based. The industrial development of hydrocarbon reserves forms a major portion of its economy. At the same time, there has been some demand on the part of the residents of Alberta to improve environmental quality. The dialectical model would predict that this basic contradiction should result in conflicts between various interest groups in Alberta and that those conflicts should be temporarily resolved by the

introduction of legislation. Also, the legislation should be in the interests of the profit structure of the largest firms and at the same time should "placate" the wants of groups demanding intervention in the industrial process. There should also be evidence of intra - class conflicts and of some power on the part of the polity and of "non-ruling" classes to have an effect on the resolutions of conflicts. These predictions will be tested by looking at the evolution and enforcement of air pollution control in Alberta. Overall, it is hoped that this historically detailed look into the problem of air pollution will not only contribute to the literature and to the continued theoretical debate within the sociology of law, but also to the task of isolating the factors which impede the protection of the environment in Alberta.

CHAPTER II

THEORIES OF LAW AND SOCIETY

A. Theoretical Framework

Generally speaking, there are two main and opposing theoretical approaches in the sociology of law used to study the origins of law. These are the consensus/pluralist and the conflict/Marxist approaches. Before discussing each of these positions one general point should be made. Law does not just magically appear. According to Elliott (1981), it "is often seen as something separate from society - that is an independent, self-enclosed system or discipline" (Elliott, 1981:2). This view of the law clouds the fact that law is a reflection of its social setting. According to Rock (1974):

> Laws do not arise full-grown, children of the dragon's teeth. They do not enjoy an uncomplicated and unproblematic relationship with the settings and intentions of their original drafting. Rather, they undergo natural histories whose unwindings shape them in ways that were never anticipated by their first authors. Indeed, the "final" form of the law could never have been foreseen because it accommodates conflicts and understandings that had never been imaginable at first. (Rock, 1974:10)

It is precisely this social origin and evolution of law that is of interest to students of the sociology of law.

What then are the social origins of law? The consensus/pluralist position in sociology can be traced to

Durkheim's analysis of laws and their relationship to social solidarity (Gunningham, 1974). (1) Durkheim recognized two types of social solidarity that have emerged through history. The first type is mechanical solidarity. Mechanical solidarity is the type of solidarity that is predominant in less developed societies. Since Durkheim's model implies an evolutionary development of societies, mechanical solidarity was found to be predominant in more primitive societies, characterized most notably by little specialization in the division of labour. The collective or common conscience in these societies is based on a consensus on shared beliefs and morality, which is usually religious in nature (Caputo et al, 1989). Law, in these societies, "... is almost exclusively penal ..." (Durkheim, 1933:78). An action becomes criminal when it shocks the common conscience (Durkheim, 1933).

The second type of solidarity, organic solidarity, is found to be more predominant in complex and highly differentiated societies. As the roles in society become increasingly specialized, "(i)t is the division of labour which, more and more, fills the role that was formerly filled by the common conscience" (Durkheim, 1933:173). The division of labour gives rise to restitutive laws (Durkheim, 1933). In societies characterized by organic solidarity the role of the state becomes increasingly important. Not only do individuals have more contact with the state but it increasingly " ... is entrusted with the

duty of reminding us of the sentiment of common solidarity" (Durkheim, 1933:227).

In societies characterized by organic solidarity, the division of labour takes on a moral value. It makes the individual realize his/her dependence on society, which in turn allows each individual to check and restrain behavior to maintain social solidarity (Durkheim 1933). According to Durkheim, the rules of society must be just, and for the rules to be just the external conditions of competition must be equal (Durkheim, 1933). If the division of labour occurs spontaneously, rather than in some forced manner, "... social inequalities exactly express natural inequalities" (Durkheim, 1933:377). People are then rewarded relative to the agreed upon worth of their contribution (Caputo et al, 1989). Classes emerge in society and are tied together by their interdependence through the morality created by the division of labour. Law functions to keep the elements of society together and to maintain order and solidarity (Caputo et al, 1989). A consensus emerges based on the moral value of the division of labour.

Although the focus of Durkheim's position was based on consensus, he also recognized the potential for conflict in society. Conflict was viewed as being the result of some pathology which caused an imbalance in the society. This would occur, for example, under the forced division of labour, where social inequalities did not express natural

inequalities, or in a state of anomie. In general though, conflict was not considered as endemic in society and consensual order could be restored by the development of a spontaneous division of labour (Gunningham, 1974). The focus of Durkheim's position was then on consensus rather than on conflict.

Modern consensus theorists view society as being based on a general consensus of values among its members. (2) The role of the state is to protect public interest. The state mediates between conflicting interest groups and represents the values and interests of the larger society (Vold and Bernard, 1986). Conceptions of the role of the state are extremely important in differentiating the consensus and conflict positions. Consensus theorists view the state "... as an essentially benign and neutral mechanism, responding to the agendas presented by various interest groups in a context of equal and unstructured competition" (Ratner, 1986:28). The state, which is viewed as legitimate, presides over the conflicting interests, and makes decisions according to generally agreed upon rules (Ratner, 1986). In this sense the state and its legal mechanisms are a "... value-neutral framework within which struggle takes place" (Chambliss and Seidman, 1982:34). Law, within the state, operates with popular consent and neutralizes the power of unequal, yet competing, interest groups so that no one group has the power to impose its will on the rest (Ratner, 1986).

Conflict theorists also view society as being composed of competing interest groups. (3) The important contrast between consensus and conflict theorists involves the conception of the role of the state. Conflict theorists do not view the state as representing the values and interests of the larger society because it is thought that there is no consensus on values and interests (Chambliss and Seidman, 1982). The structures of the state arise out of conflict and those who control the state use the power for their own interests (Chambliss and Seidman, 1986). The state is then itself part of the struggles between competing interest groups (Chambliss and Seidman, 1982), rather than presiding "over and above" those struggles.

The origins of conflict theory in sociology can be traced to the writings of Karl Marx. According to Chambliss and Seidman (1982), Marxist theories of law were almost completely ignored in capitalist countries until recently. Marx found the roots of the legal system and the forms of the state in the material conditions of society (Chambliss and Seidman, 1982). Modern theories of the state are still based on materialist explanations. Two important elements of this materialist base are that the structural source of class conflict is contradiction and a general notion of relations between the productive base and ideological superstructure being reciprocal (dialectical) in nature (Ratner, 1986).

Although Marx discussed various modes of production throughout history, the one of most interest here is the capitalist mode of production. Marx identified two major classes under the capitalist mode of production. These were the owners of production, or the bourgeoisie and the wage labourers, or the proletariat. These classes have antagonistic interests. Owners of the means of production require workers to produce profit and, at the same time, must exploit their workers to create that profit (Chambliss and Seidman, 1982). The course of history then unfolds through class struggle and through attempts to resolve contradictions which arise from antagonistic class interests (Caputo et al, 1989). The ultimate origin of the contradiction is contained in the capitalist mode of production (Chambliss and Seidman, 1982).

The basic contradictions in capitalism emanate from the productive base, or the economic system. This base then has implications in the form of the superstructure. The superstructure, or what was later called "culture", is composed of elements of society such as art, political forms, ideologies and law (Chambliss and Seidman, 1982). According to Marx, the roots of "culture" are found in the material conditions of life, or in the economic base (Chambliss and Seidman, 1982). Although the roots of the superstructure are found in the material conditions of life, Marxist theory is saved from economic determinism by the notion of the dialectic. The base and the

superstructure, and even elements within the superstructure interpenetrate each other (Chambliss and Seidman, 1982). Law, for example, simultaneously affects and is affected by the economic base and elements of the superstructure (Chambliss and Seidman, 1982).

Law, in a capitalist society, develops initially as a response to conflicts which arise out of the initial contradictions in the capitalist mode of production (Chambliss and Seidman, 1982). The state in capitalist society, which is composed of various institutions, exists primarily to facilitate the accumulation of private capital (Caputo et al, 1989). The institution of law, which is part of the state, legitimizes the inconsistencies created by the contradictions in the mode of production, by creating institutions of repression and myths that try "... to harmonize exploitation with freedom, expropriation with choice, inherently unequal contractual agreements with an ideology of free will" (Chambliss and Seidman, 1982:70). Law therefore has at least two main roles; to facilitate the accumulation of private capital and to legitimate the existing order, often by mystifying the inequalities of class relationships (Caputo et al, 1989).

The notion of law as arising from consensus is challenged by the conflict perspective. According to Chambliss and Seidman (1982);

> Since the base and its class struggle in a sense "cause" the superstructure, the culture reflects the class struggle itself. Law, as a part of the superstructure, cannot avoid taking sides in the

> class struggle. It cannot become a neutral consensus of all-of-us, for a society of antagonistic classes knows no consensus. The state becomes a weapon of a particular class. Law emanates from the state. Law in a society of classes must therefore represent and advance the interests of one class or the other. (Chambliss and Seidman, 1982:72-73)

Law, as a "weapon" of the state, becomes part of the class struggle, rather than being a "value-neutral framework" in which to resolve competing interests. From a conflict perspective then, the state and its legal mechanisms do not preside "over and above" the conflict as the consensus perspective would argue, but they are part of that very conflict.

There are many modern variants of conflict theory. Only three theoretical perspectives will be discussed in some detail here. These are the instrumentalist, structuralist and dialectical theories.

Chambliss and Seidman (1982) trace the development of the instrumentalist perspective as a separate paradigm to the publication of C. Wright Mills' **The Power Elite** and Ralph Miliband's **The State in Capitalist Society.** According to Miliband the state consists of many interrelated institutions. These include, "... the government, the administration, the military and the police, the judicial branch, sub - central government and parliamentary assemblies ..." (Miliband, 1969:50). Although the economic elite only make up a proportion of the state elite as a whole, both elites are predominantly drawn from the same classes (Miliband, 1969). This shared

class background gives them something in common. In the case of government for example, although bourgeois politicians may have some disagreements, they share a basic consensus on the nature of social and economic (capitalist) order (Miliband, 1969). Similarly, Mills notes interconnections among elites. Mills identifies a power elite, composed of the corporate rich, the political directorate and the ascendant military (Mills, 1956). The inner core of the power elite "... interchange commanding roles at the top of one dominant institutional order with those in another ... "(Mills, 1956:288). Both authors to some extent identify a ruling elite which determines the constraints over and the resources of other members of society (Chambliss and Seidman, 1982).

Instrumentalist theory tends to view the state, which includes the government, " ... as the hand maiden of the ruling class " (Chambliss and Seidman, 1982:306). The ruling class, consisting mostly of those who control the productive forces in a capitalist society, control the state (Chambliss and Seidman, 1982). The institutions of the state are tools which can be manipulated by the capitalist class (Chambliss and Seidman, 1982). Legal doctrines, such as equality of all people before the law, mystify ruling class interests (Brickey and Comack, 1986).

Although evidence supporting instrumentalist theories has been found in countries throughout the world, most notably the presence of powerful interconnected elites,

instrumentalist theories do have some shortcomings. First, using these theories it is difficult to explain the existence of certain kinds of law. More specifically, it becomes difficult to explain legislation passed that is not in the interests of the ruling class, such as anti - combines or workers rights legislation (Brickey and Comack, 1986). Second, they assume agreement on the nature of ruling class interests, which ignores intra-class conflicts (Chambliss and Seidman, 1982). Third, viewing the law as predominantly a tool of the ruling class not only denies that the law can be used to create substantive social change, but it also denies that the law could be used to check the power of the ruling class (Brickey and Comack, 1986). (Occasionally the law has been used for both.) Finally, there are theoretical objections raised against instrumentalist theories. Even if it could be demonstrated that the state is a tool of the ruling class the theory " ... does not give us a very profound explanation of the relationship, why it exists at this historical period in capitalist development, and how it will change " (Chambliss and Seidman, 1982:307). In this sense it becomes an overly deterministic view of society and history (Chambliss and Seidman, 1982).

The structuralist perspective attempted to overcome some of the problems found in instrumentalist theories while retaining some of the instrumentalist insights. Structuralist theory specifically rejects the idea of law

as merely an instrument of the ruling class (Brickey and Comack, 1986). Under this theoretical position the state is assumed to operate in the best long - term interests of capitalism. The primary long - term interest is the promotion of capital accumulation (Chambliss and Seidman, 1982). Conditions must be created under which capital accumulation is possible (Brickey and Comack, 1986). To do this the state must also perform the function of legitimation of the economic and political arrangements in order to provide the conditions under which capital accumulation is possible (Chambliss and Seidman, 1982). The state must therefore have some autonomy or, as it is termed in structuralist theory, relative autonomy (Brickey and Comack, 1986). This relative autonomy allows for the transcendence of the interests of particular members of the capitalist class while insuring that the long - term interests of capital in general will prevail over time (Brickey and Comack, 1986). The relative autonomy of the state also helps to create legitimacy by lending the appearance that the state functions by representing the interests of everyone, not just the capitalist class (Chambliss and Seidman, 1982).

Structuralist theory addresses the first three criticisms levelled at the instrumentalist perspective. Laws passed that are not in the interests of "the" ruling class may not be in the best interest of particular ruling class members but may be in the best long - term interests

of the ruling class in general and may provide legitimacy to the state in the face of class conflict. Also, structuralist theory allows for intra-class conflict. For example, not all members of the capitalist class may agree on the passage of a particular piece of legislation but, as previously stated, such legislation may serve the best long - term interests of all of the capitalist class. Finally, law has been used to create social change or to check the power of the ruling class. This again could be explained either by the necessity of the state to maintain legitimacy or to check the power of some members of the ruling class to maintain the system for all members in general.

Although structuralist theory overcomes some of the problems encountered in instrumentalist theory, structuralist theory has also had some criticisms directed toward it. Like instrumentalist theory, structuralist theory has been criticized as being overly deterministic. According to Brickey and Comack,

> Since individuals are reduced to merely "agents" of the structure, structuralism cannot explain or incorporate class action which arises from class consciousness; it is the constraints and limitations of structure which determine the direction of society. (Brickey and Comack, 1986:20)

Second, structuralist theory tends to reify the state rather than recognizing that it is individuals who occupy the posts and make the decisions within the state (Chambliss and Seidman, 1982). Third, some structuralists tend to underemphasize the stability of the system, while

others tend to overemphasize it (Chambliss and Seidman, 1982). Examples can be found to counter either extreme position. Finally, the concept of relative autonomy, while being useful, has not been fully developed. The mechanisms of ruling class control, and how these mechanisms lead to relative rather than complete control over the state, remain to be specified (Chambliss and Seidman, 1982).

Dialectical theory addresses some of the remaining problems associated with structural theory. In an attempt to deal with the problem of the reification of the state, Chambliss and Seidman start off by distinguishing between the state and the government.

> We use the word "state" to mean the collectivity embodying those roles, positions, and statuses that career employees occupy. We use the word "government" to mean those whose roles, positions, and statuses have been achieved through election or political appointment. ... These definitions emphasize that the state does not constitute an abstract, noncorporeal entity with a life of its own. It consists of living, breathing, and very human people occupying roles. To explain the behavior of the state as a collectivity we must explain how these various role - occupants behave. (Chambliss and Seidman, 1982:310)

The conception of the state as consisting of individuals occupying roles and making decisions avoids the problem of state reification. At the same time, the distinction between government and state allows for explanations of why the government and the state may act in contrary ways (Chambliss and Seidman, 1982).

The concept of relative autonomy is also addressed by the dialectical paradigm. Relative autonomy refers to "... the power of government or state officials in a particular case to make a decision that goes against the interests of a particular fraction of the capitalist class, usually in order to carry out the interests of the state or government officials as a defined interest group, or to carry out the interests of other classes or strata in society" (Chambliss and Seidman, 1982:311). The individuals who occupy roles within the state or the government have to make choices. These choices are not unlimited but are constrained by, among other things, the rules and sanctions of law (Chambliss and Seidman, 1982). Chambliss and Seidman propose the following hypothesis:

> Where the decision of a role - occupant affects relations of production, the role - occupant will have relatively little autonomy. Where the decision affects the amount of profit (i.e., capital accumulation), the role - occupant will have relatively greater autonomy. (Chambliss and Seidman, 1982:311-312)

According to Chambliss and Seidman, profit maximization requires capital accumulation, yet the conditions that are necessary for profit maximization may threaten system stability. Conflicts arise from this contradiction. (4) Different factions of the capitalist class may disagree with each other, and with members of the working class, on solutions to particular conflicts. In this case the role - occupant would have relatively greater autonomy in decision making. At the same time, all members of the capitalist

class agree on maintaining property relationships and the underlying structure. In decision making in this area the role - occupant would have relatively little autonomy (Chambliss and Seidman, 1982). Contract and property law form the basis of the market economy and of control over the means of production. If the decision making in question involves either contract or property law the role - occupants would be faced with relatively little autonomy. In most other areas of law, where a change in the law will favour one fraction of the ruling class over another, the role - occupant will have relatively greater autonomy in decision making (Chambliss and Seidman, 1982).

Finally, the dialectical paradigm also addresses the issue of why many ineffective laws are passed in response to demands from the mass population. The authors have identified three elements which protect the stability of the system. First, the concept of legal - rational legitimacy, which includes such things as due process and the rule of law, probably works more to control the dissident elements of the ruling class than the masses. Second, the law is cloaked in mystification. This serves as a method to persuade dissidents from all classes to accept the law because it is so far from their understanding. Third, some of the law that has been enacted is symbolic. Symbolic law is enacted law which appears to respond to a demand "... without it inducing in its addressees the behavior that it prescribes" (Chambliss

and Seidman, 1982:315). Generally this is law enacted by legislature but not enforced by the state. Since enforcement decisions usually take place out of the public eye, then a lack of enforcement will have little effect on legitimacy. In any case, law can be passed which purportedly deals with an issue but in the end proves to be ineffective (Chambliss and Seidman, 1982).

B. Production of Regulatory Legislation

According to Chambliss and Seidman's (1982) conception of relative autonomy, environmental regulations would fall into the category of regulations where the decisions made by the role - occupant would affect the amount of profit made by some elements of the capitalist class. For example, the introduction of environmental protection equipment, especially on existing works, is a relatively costly enterprise. The high costs could potentially affect the amount of profit made by the capitalists who are subject to new environmental regulations. In this case role - occupants should have relatively greater autonomy in decision making. This concept will be pursued in the discussion of regulatory legislation.

The rise of the regulatory state and of the corporation occur concurrently (Shover, Clelland and Lynxwiler, 1986). Regulatory law involves government and state control of private economic entities through the use

of laws (Snider, 1987). It is generally considered that there are two types of regulatory law; economic and social (Snider, 1987 and Shover, Clelland and Lynxwiler, 1986). Economic regulation controls things such as prices, rates of profit and the structure of the economy while social regulation controls things such as occupational health and safety, consumer protection and the environment (Snider, 1987). It is important to distinguish between the two types of regulation because the agencies involved with the legislation generally pursue different goals and they have different relationships to production (Shover, Clelland and Lynxwiler, 1986). For example, social regulations focus on the social costs of production and have "little explicit responsibility to protect industry from economic distress" (Shover, Clelland and Lynxwiler, 1986:3). It must be remembered though that both types of agencies are organs of the state and the relationship between them would vary depending on the role of the state. This study will focus on social regulations related to the environment.

The first step in the production of social regulation is the recognition of a social problem. According to Gunningham (1974) the recognition of environmental destruction as a social problem in England could not be explained simply by environmental deterioration. Pollution had been around for centuries, but it was not until the late 1960's that it became an issue of great concern

(Gunningham, 1974). He attributes the rise of concern for the environment to a number of factors:

> ... a worsening environment, increasing affluence (and reaction to this), sharper appreciation of the effects of pollution on health through the use of modern research methods - and partly by the response to these factors by social reformers (either individual moral entrepreneurs or groups) whose efforts have been aided by the tendencies of the mass communications media to sensationalise newsworthy material and disseminate it widely throughout society. (Gunningham, 1974:34)

There was very little working class involvement in environmental issues in the beginning. There was though a strong opposition from those who had "... economic interests in maintaining the status quo" (Gunningham, 1974:39). Once sufficient interest was gathered, and an official agency was established to control pollution, the general public realized that something could be done. Yet, public opinion was usually only effective after a crisis situation (Gunningham, 1974). (5)

Once an issue has been established as a persistent social problem the process of creating regulatory legislation is set into action. The legislation is usually initially opposed by the target elite but eventually it will be sponsored by some sections of that elite (Snider, 1987). The supporting sections are often the larger and more established members of the elite who are able to shape the legislation to protect their own interests (Snider, 1987). According to Paulus (1974), groups in Britain who would be effected by food and drug legislation initially

opposed the legislation. Once adulterated food was defined as a social problem and legislation was inevitable, these groups changed their focus from resisting laws to making or shaping laws which effected them as little as was possible. In the end the consumer would be protected as long as it benefited some interest group (Paulus, 1974). A similar process was noted by Shover (1980). Initially federal surface coal mining legislation was vigorously opposed by the target elite. Industry argued that problems were created by older firms, which were no longer in business, and the passage of legislation "now" would be impractical, unnecessary and undesirable. When legislation could no longer be resisted, larger firms supported weakened legislation which turned out to serve their best interests (Shover, 1980).

In general, the "shaping" of the legislation is part of the bargaining and negotiation process that takes place between various interest groups. The public may or may not be involved in this process. In the case of British food and drug laws, the public was not involved in the shaping of the legislation. The work was delegated to various experts who represented various interest groups (Paulus, 1974). Even if the public is involved, negotiation between various interest groups that do not have equal financial and information resources can become "... a relatively meaningless exercise" (Rankin and Finkle, 1983:39). The process of negotiation was documented by Carson (1980) in

his discussion of safety regulations on British offshore oil installations. According to Carson, "regulations relating to safety emerged slowly through a process of negotiation in which the need to carry the industry's support was crucial" (Carson, 1980:261). The result was that large areas of routine safety were left largely under - regulated (Carson, 1980). In the case of environmental law, "compromise" legislation may not "... reflect ecological necessities ..." (Rankin and Finkle, 1983:42).

The enactment of legislation is not the end of the process. For social legislation to have any impact on the social problem, such legislation must be enforced. Many authors make a distinction between enactment of legislation ("law in the books" Snider, 1987 and Carson 1970 or "black letter law" Rankin and Finkle, 1983) and the enforcement of legislation ("the law in action" Carson, 1970 or "the real rules" Rankin and Finkle, 1983). Even if strict legislation is enacted there has to be a will to enforce that legislation for it to have any great affect on that social problem (Rankin and Finkle, 1983). Snider (1987) notes three characteristics of regulatory law enforcement. First, "nonenforcement is the most salient characteristic of regulatory law enforcement" (Snider, 1987:47). Second, the least sanctioned are the largest and most powerful organizations (Snider, 1987). Finally, when enforcement does occur, sanctions are very lenient (Snider, 1987). Lack of enforcement of regulatory legislation is a

persistent and well documented problem. Two problems associated with the lack of enforcement are that the legislation is either designed in such a way that it is difficult to enforce and / or that there is a lack of will to enforce the legislation. (6) The lack of enforcement of social regulations is very important when looking at the role of the state and its legal mechanisms in a theoretical context. This will be explored in greater detail in subsequent chapters.

According to Snider (1987) the consensus/pluralist school of thought views government regulations as the "... rules or laws formulated by politicians and civil servants which attempt to resolve or prevent conflicts by redressing the balance of power between different interests" (Snider, 1987:39). The state, as a neutral body, introduces regulation to resolve the conflicts. As Gunningham has pointed out, initial pollution control legislation in Britain was not the result of a plurality of interest groups, but of a small number of powerful groups (Gunningham, 1974). In fact, Gunningham says, "there is little evidence of conservationists, moral entrepreneurs or those involved in "expressive politics" succeeding in having their views implemented in legislation" (Gunningham, 1974:78). Public opinion only played a role when the public was aware that there was a problem, and even then it was often in response to a crisis situation, when the

government had to act to maintain its legitimacy as being representative of "society's interests" (Gunningham, 1974).

According to Snider, Marxist theorists view legislation as "... rules formulated by the state which aim ultimately to maintain the power and privileges of the ruling class" (Snider, 1987:39). (7) If this is the case, then why is legislation enacted which is aimed at controlling the behavior of the ruling class ? Answers to this question can be found in the literature. First, as already mentioned, there is a need in a capitalist society for the government and the state to appear to be legitimate (Snider, 1987 and Gunningham, 1974). To do this a government is often forced, for example, in the case of an environmental crisis, to go against the wishes of some factions of the ruling class to protect the long range interests of the whole ruling class (Snider, 1987). Second, even if the legislation has been enacted, there is a reluctance to enforce that legislation, especially against the more powerful members of the ruling class. So, even if there is legislation, such legislation may do very little to interfere with the power and privileges of the ruling class. Finally, at a more general level, conflict is resolved by compromise "not from within the full range of alternatives which represent the interests of the contending groups, but within a narrower span which favours the interests of capital" (Gunningham, 1974:85). (8) The assumption of the rights of private ownership and private

profit are never questioned (Gunningham, 1974). Although legislation is passed which is aimed at controlling the ruling class, this legislation ultimately does not interfere with the power and privileges of the ruling class or the interests of capital in general, but it may have some effect on specific factions of the ruling class.

The literature lends more support to the conflict than the consensus perspective. Yet, as Gunningham points out a " ... monolithic conception of power cannot be completely accepted" (Gunningham, 1974:79). Even the existence of legislation that potentially affects large industry "... suggests that no one group has a monopoly of power" (Gunningham, 1974:79). Using the instrumentalist perspective, which argues for a more "monolithic" conception of power, it would be difficult to explain the existence of social legislation. Structuralist theory addresses the issue of the passage of certain types of regulation that may affect some members of the ruling class but would be in the best long - term interests of all members of the ruling class. It also addresses the need for government and state legitimacy. If there are conflicts over the necessity of legislation, the government may have to pass some form of legislation in order to appear to legitimately represent the interests of all members of society. The government must have a certain amount of autonomy in order to do this. Yet, in order to specify how that autonomy works we must turn to the

dialectical paradigm. Since the passage of environmental legislation may affect the profit made by certain members of the ruling class we can assume that the government role - occupants would have some autonomy in the passage of social regulation. This would, in part, explain the passage of a multitude of social regulations in the last two decades. Also, the distinction between the state and the government is very important when looking at enforcement of legislation. If social legislation is largely symbolic, which according to the literature it appears to be, then we can begin to explain why the government passes legislation which is not enforced by the state. This concept will be explored further in subsequent chapters.

According to Chambliss the dialectical paradigm "... sees law creation as a process aimed at the resolution of contradictions, conflicts and dilemmas which are inherent in the structure of a particular period" (Chambliss, 1986:30). Environmental protection raises a fundamental contradiction between industrialization and environmental quality (Chambliss, 1986). In the short term, profits can be made in industry by not implementing pollution control devices, but in the long run this will not be in the best interests of capital (Chambliss, 1986). (9) Out of this basic contradiction arises conflicts between various interest groups, some demanding change and others (owners) attempting to maintain the status quo (Chambliss, 1986).

The conflict is resolved by introducing "... legislation that is in fact in the interests of the profit structure of the largest industrial firms and simultaneously placates the demands of those minority groups seeking state intervention in the industrial process" (Chambliss, 1986:38). The created laws will reveal further contradictions and the process will continue (Chambliss, 1986). It is important to note that it is the conflicts which are resolved, not the basic contradictions (Chambliss, 1986). This model also recognizes that there are not only contradictions between classes but also contradictions within classes and that the polity and the working classes are not powerless (Chambliss, 1986). Factions within the ruling class may disagree on the necessity of and on the ultimate form of legislation. Using this model there is no need to accept the notion that one group has a monopoly on power in all circumstances.

It has been noted that Chambliss and Seidman (1982) make an important distinction between the government and the state. Following from this distinction it is necessary to look at the government and the state in order to understand both the emergence and the administration of law. Yet, in order to fully understand the role of the government and the state in controlling air pollution in Alberta, they must be placed in an historical context. It is to a discussion of that historical context to which we will now turn.

FOOTNOTES

Chapter II

1. The theoretical discussion has been divided into consensus and conflict theories. Consensus and conflict theories have been used as "umbrella" terms. Each of these general theoretical positions encompasses a wide variety of more specific theories. The general terms will be used for discussion at a general level.

2. It is assumed that pluralist theories are included in the discussion of modern consensus theorists. Although pluralist theorists recognize that modern societies are composed of competing interest groups, a notion of "collective good" is still retained (Caputo et al, 1989).

3. Conflict theory is taken to include not only conflict theory proper, but also the various Marxist theories. For a further discussion of conflict theories see Vold and Bernard, 1986 and Caputo et al, 1989.

4. See Calavita (1986) for an interesting discussion of the dialectics of law. In her discussion of occupational health and safety law in Italy, Calavita says that this law can be seen "... as the outcome of contradictory political and economic forces" (Calavita, 1986:191). This type of law was seen as only part "... of a dialectical process that both procedes and follows it" (Calavita, 1986:191).

5. For example, The London Fog of 1952 in which 4,000 lives were lost. Also see Paulus (1974) for an interesting discussion of the role major "accidents" played in defining adulterated food as a social problem.

6. For example, see Gunningham, 1974; Carson, 1980; Goff and Reasons, 1978; Schrecker, 1984; Elliott, 1981; Paulus, 1974 and Shover, 1980.

7. It should be noted that this view of legislation is probably more closely associated with instrumentalist than with other variants of Marxist theories.

8. This same process was noted by Shover (1980) in his discussion of Federal Surface Coal Mining Legislation in the United States.

9. If the environment, and eventually the people are destroyed, continued pollution is not in the best long term interests of capital.

CHAPTER III

THE POLITICAL ECONOMY OF ALBERTA AND ITS GOVERNMENTS

A. A Brief Historical Overview Of Alberta Governments

Alberta was originally part of a large land mass which was controlled by the Hudson's Bay Company. This land was transferred to the Dominion of Canada by the Rupert's Land Act of 1868 (Richards and Pratt, 1979). This "... gave the Dominion control over an immense public domain and the raw materials necessary for the creation of a frontier ..." (Richards and Pratt, 1979:15). According to Richards and Pratt (1979), John A. Macdonald's National Policy resulted in the settlement and development of the western prairies as an economic hinterland. The political motivation behind the policy was to strengthen Canada's east-west ties, through settlement and the construction of a national railroad, and to decrease the north-south market arrangements between western Canada and the United States. At the same time this policy benefited eastern financial and business interests by providing an investment frontier. As the west developed and the population increased strains were placed on the budgets of the territorial governments. This was accompanied by an increasing demand on the part of Territorial governments for ownership of the public domain. Western government and citizens increasingly resented

central Canada's control over resources. Eventually Alberta was granted provincial status in 1905, but the resentment of their "quasi-colonial" political status continued (Richards and Pratt, 1979).

> But Westerners of all classes came to perceive Ottawa as an imperial government, a complex of institutions organized by central Canadian elites for the purpose of dominating and plundering the hinterlands. The provincial administration, whatever its political colouration, became the indispensable agent for attacking political colonialism and bargaining with external economic interests. (Richards and Pratt, 1979:17)

The early alienation of the west set the seeds for federal/provincial conflicts throughout Alberta's history. These conflicts have certainly played a role in most political administrations.

Alberta has had four ruling political parties in its history as a province. These parties were/are; the Liberal Party (1905-1921), the United Farmers of Alberta (1921-1935), the Social Credit Party (1935-1971) and the Progressive Conservative Party (1971-) (Leadbeater, 1984). The first Liberal Governments got their support from an emerging Alberta based business class and from farmers (Leadbeater, 1984). The Liberal administrations held exploitation and settlement of the north of the province in high priority (Richards and Pratt, 1979). After a series of costly adventures, such as the development of northern railway lines and the expansion of communication links by establishing a low cost telephone service, the province, which did not have control of public lands and resources,

amassed a huge debt burden (Richards and Pratt, 1979). This large debt burden, and the various scandals that went with it, as well as increased political radicalism, in the form of various "populist" movements, led to the Alberta farmers break from support of the Liberals and to the eventual downfall of their government (Leadbeater, 1984 and Richards and Pratt, 1979). The Liberal era ended and was replaced with the era of the United Farmers of Alberta (UFA).

According to Richards and Pratt (1979), the rise of the populist movement originated in the United States. The populist parties evolved out of the co-operative movement. The populist movement was largely an agrarian protest movement whose "... programs constituted an explicit attack on contemporary corporate capitalism and linked the economic advancement of farmers to fundamental changes in the entire economy" (Richards and Pratt, 1979:21). The UFA, which was essentially an alignment of both left and right wing populists, held power until 1935 when "... bureaucratic co-optation at the top and political apathy at the base..." (Richards and Pratt, 1979:31) eventually resulted in the downfall of the party. The leadership became more entrenched in political elites and assumed a more moderate position. The farmers, with increasing prosperity in the 1920's, began to display political apathy and also became more moderate. Following the droughts and the depression of the 1930's the moderate position of the

UFA was challenged by both left and right wing populists (Richards and Pratt, 1979). This created a split in the party between the right wing of the movement, or the Social Credit movement, and the left wing of the movement, which later emerged as the Cooperative Commonwealth Federation (Leadbeater, 1984). The Social Credit Party found the most support and came to power in 1935 under the leadership of William "Bible Bill" Aberhart (Richards and Pratt, 1979).

William Aberhart was a convert of Major Douglas' economic theories. (1) Douglas' theories saw financial institutions, through their withdrawal of interest from the economy, as a major cause of economic depression (Richards and Pratt, 1979). It was assumed that an addition to the money supply, in the form of "social credit", would be necessary to restore employment (Richards and Pratt, 1979). Although the idea of social credit remained a problem, the party of the same name came to power in 1935 over the more "socialist" alternative. The government attempted to implement "Alberta Credit" through the Alberta Social Credit Act, but this was disallowed by the federal government (Richards and Pratt, 1979). In 1943 Aberhart died and was succeeded by Ernest Manning. Under Manning the party was subject to "bureaucratic co-optation" similar to the kind of co-optation which occurred in the later stages of UFA rule (Richards and Pratt, 1979). The Party backed off from their position of a lack of trust for financial and business interests. In 1944 they won an

election on an anti - socialism and pro - provincial rights campaign (Richards and Pratt, 1979). Their alliances with business completely shifted, from an old Social Credit alliance with the petit bourgeois to a new alliance with United States monopoly capital (Leadbeater, 1984). According to Richards and Pratt (1979);

> Populism, in both its left and right variants, involved strategies by those "at the bottom" to use the state to their advantage. After the 1930 transfer of resources from federal to provincial ownership, however, relations "at the top" between provincial governments and resource corporations, of which those in oil and gas were the most important, underwent major changes in the areas of regulation over physical conservation and production, allocation of exploration and production rights for crown resources, and distribution of economic rent. Although populist pressures impinged on these changes, they essentially involved institutional bargaining between government and various corporate coalitions (the local independents often having divergent interests from the foreign owned majors). (Richards and Pratt, 1979:38)

Even though the Social Credit remained in power until 1971, many of the ideals of the populist movement had disappeared by the late 1940's (Richards and Pratt, 1979).

In the late 1960's a new political movement came on to the scene in Alberta. Alberta had seen rapid changes in the nature of its province since the discovery of oil in Leduc in 1947. First, there was a large increase in the population. For example, in the years between 1941 and 1951 the population increased by 18 percent, a much larger increase than in other prairie provinces (Shaffer, 1984). Second, there was a large growth in the nonagricultural labour force. In 1941, 49 percent of Alberta's labour

force was agricultural, but by 1971 this figure had dropped to only 13 percent (Shaffer, 1984). Third, the change in labour force participation did not involve a major increase in the importance of manufacturing employment. The province had become increasingly dependent on jobs in or connected to the oil industry (Shaffer, 1984). Finally, the province was becoming increasingly urbanized. These factors all played a role in the demise of the Social Credit government.

As previously stated, the Social Credit government under Manning had strong alliances with United States monopoly capital, especially oil related monopoly capital. Manning "... followed a policy based upon a premise that the interests of the petroleum industry and the interests of Alberta were roughly the same" (Richards and Pratt, 1979:171). Much of the provincial revenue came from rents paid by the oil industry to the province. In this way the Social Credit played an essentially passive role in Alberta's economic development by letting the oil industry proceed and collecting its rent (Richards and Pratt, 1979). The new urban middle class, with a labour force of professional, managerial, white - collar and service sector employees, became increasingly dissatisfied with Social Credit ideology and policies (Richards and Pratt, 1979). Aligned with interests in the professional labour force were the indigenous bourgeois, many of whom developed companies in oil related businesses supporting the major

oil companies. The future of these businesses, which earned most of their money in Alberta, was tied directly to Alberta's economic future (Pratt, 1984). These new "... business - professional - bureaucratic elites ..." became very concerned about their future, especially in relation to the impending exit of the major oil companies from the Alberta scene (Pratt, 1984:205). According to Pratt (1984);

> Committed to "Alberta first" in virtually all questions, these elites found many of their aspirations and fears being articulated politically for the first time by the provincial Conservative party, revived by the Calgary corporate lawyer Peter Lougheed and a small coterie of professionals and businessmen in the mid - 1960's. Preaching the need to reduce Alberta's dependence on outside forces, to modernize and diversify the province's oil - dependent economic base, and to enhance employment and investment opportunities for Albertans Peter Lougheed was the embodiment of the values and aspirations of a rising urban middle class impatient for change. (Pratt, 1984:205)

The Lougheed Conservatives were elected into office in 1971, ending decades of Social Credit rule in Alberta. (That same party is still in power today under the new leadership of Don Getty.) When the Conservatives took over, they became more actively involved in directing the Alberta economy than had the previous Social Credit government. Pratt (1984) argues that there are five imperatives of business that have motivated the Conservative government's increased intervention in the Alberta economy. These are;

> ... first, intervene in the market place to secure higher prices and returns for oil and gas producers, thereby creating room for the province to capture part of the windfall through higher royalties - which can in turn be used to subsidize industrial diversification; second, increase its control over the supply and pricing of natural resource feedstocks, so as to gain leverage for the promotion of "forward linkage" effects; third, stand as a bulwark of 'provincial rights,'intervening where necessary to block incursions by the federal government into Alberta's economy, especially into its resource base; fourth, secure local control over transportation routes and systems as part of an effort 'to correct the mistakes of history' and to overcome the disadvantages of geography; and fifth, use the resources of the state to arrange joint ventures between multinational corporations and Alberta based business, thereby increasing local ownership of the economy and giving Alberta companies an entry into high growth industries such as petrochemicals and access to know - how, new markets and technologies. (Pratt, 1984:194-195)

These kinds of imperatives have brought the government and industry into very close contact, which in turn has implications for the governments attitude toward protection of the environment and its role as the main protector of the air quality in Alberta. (2) Since the relationships between government and business are so important in this area it is to that topic which we will now turn.

B. Government / Business Relations

There has been a long history of strong connections between the business community and provincial administrations in Alberta, with the possible exception of the United Farmers of Alberta. The UFA drew most of its support from pioneering rural farmers. Over half of those

elected in the first government led by the UFA were farmers (Leadbeater, 1984). At the time of the UFA rule there tended to be a split between Alberta's poorer and wealthier farmers. Many of the UFA members were the wealthier, more established and better educated farmers, mostly from a white, Anglo-Saxon and Protestant background (Leadbeater, 1984). The UFA also included a segment of urban professionals (Leadbeater, 1984). Although the membership of the UFA were not necessarily wealthy capitalists, it must be remembered that agriculture was one of the most important resources Alberta had at that time. The UFA were certainly some of the more influential members of that resource community. The UFA, despite its image as a reform movement, was "... committed in practice to accepting the framework of private property relations" (Leadbeater, 1984:41). This included a rather strong anti-labour position, especially in relation to rural farm labour which would potentially pose more of a threat to wealthier than to poorer farmers (Leadbeater, 1984). Part of the UFA's downfall has been attributed to an increasing "politico-economic" split between the members and the increasing movement toward more right wing policies by the cabinet leadership. Although the UFA membership may not have been Alberta's most successful capitalists, their rule did not pose any great threat to capitalist private property relations. They also increasingly represented the

wealthier faction of the producers of one of Alberta's most important resources at that time.

Contrary to the UFA, Alberta's first ruling government drew its members primarily from the professional and business strata of early urban communities (Leadbeater, 1984). There were twenty five members in the first Liberal government, which included "... 12 merchants, 5 lawyers, a manufacturer, a financier, a livery stable proprietor, two doctors, and 3 farmers with interests in stock raising" (Leadbeater, 1984:39). Most of these members held a variety of local entrepreneurial interests (Leadbeater, 1984). For example, the first premier, Alexander C. Rutherford, was a lawyer whose interests included the North-West Gas and Oil Company, the Great Western Garment Company, the Vogel Meat and Packing Company, the Bulletin Company, the North-West Mortgage Company and the Star Mining Company, as well as heavy investments in real estate and a position as solicitor for the Imperial Bank of Canada (Leadbeater, 1984). Although an early split also emerged in this government between those who favoured the fast expansion of local capital and those who favoured a slower paced development using eastern Canadian capital, the overall strategy of the government which emerged "... was to use the provincial state to promote and organize capitalist development in Alberta and thereby raise up a substantial business class in the province" (Leadbeater, 1984:43). This involved intervention in the economy,

either directly as in the creation of Alberta Government Telephones, or more often indirectly by guaranteeing the debuts of private companies, such as the various companies building railroads in Alberta (Leadbeater, 1984). It was this intervention which led to the huge debt burden amassed by the Liberals and, with relatively low levels of taxation to offset the burden, eventually contributed to their demise (Leadbeater, 1984).

Two other political players from early Alberta history also deserve mention. Although they were not members of the Liberal government, Senator James A. Lougheed and R. B. Bennett both were heavily involved in national politics and serve as an excellent example of relationships between government and business, especially of the concept of the translocation of elites. The notion of the translocation of elites "... describes the movement of corporate executives into important circles of influence outside the corporation" (Reasons and Perdue, 1981:37). This certainly applies to Lougheed and Bennett. James Lougheed, grandfather of Peter Lougheed, was a very powerful political spokesperson on the local scene, as well as being involved in national politics (Richards and Pratt, 1979). Lougheed made a fortune in Alberta, initially through real estate speculation. He recruited R. B. Bennett as a junior partner in his law firm, a firm which represented many leading corporate interests, including the Bank of Montreal, the CPR and the Hudson's Bay Company (Richards

and Pratt, 1979). The firm also had partial ownership of the Calgary Herald and the Albertan, and they founded companies such as the drilling company which started the Turner Valley oil "boom" in 1914, Canada Cement and Calgary Power (Richards and Pratt, 1979). According to Leadbeater; "(t)he Lougheed - Bennett law firm became, in effect, an organizing centre for the exploitation of Alberta's resources and the takeover of provincial markets and firms". (Leadbeater, 1984:42). Lougheed eventually became a Canadian Senator and Bennett went on to become Prime Minister of Canada.

The relationship between government and business changed under Social Credit rule. The early Social Credit government, under William Aberhart, was quite suspicious of international money interests. This suspicion did not extend to the oil industry. The province, still fighting to reduce the debt load created by previous administrations and not reduced during the great depression, looked to the oil industry for a solution to its problems. Aberhart put out the notice that incentives would be given to oil risk capital (Richards and Pratt, 1979). He appointed Nathan Tanner as Minister of Lands and Minerals and it was Tanner who was the author of most of Alberta's regulations for gas and oil (Richards and Pratt, 1979). (3) Tanner set in place policies and regulations that were very attractive to oil interests. Again, we see the applicability of the concept of the translocation of elites (Reasons and Perdue,

1981). Tanner, who was originally a small businessman, stayed with the government until 1952, when he went on to make a fortune in the oil and gas industry (Richards and Pratt, 1979).

After 1937 the party generally tried to regain "respectability" with larger business interests (Leadbeater, 1984). International finance was quickly being replaced by socialism as the main "enemy" of the Social Credit government (Richards and Pratt, 1979). This change was eventually completed when Ernest Manning became premier in 1943 (Richards and Pratt, 1979). Manning saw the increased development of the oil industry as a possible way of diversifying the Alberta economy away from its heavy reliance on the agriculture industry (Richards and Pratt, 1979). The government searched for risk investment capital. This could not be found in either eastern Canada or Britain, and local industry was too small for that kind of investment, so the Manning administration turned to American capital (Richards and Pratt, 1979). Government investment in industry was never really considered as a possibility. Manning's position on this issue is best exemplified by a quote from Pratt (1984):

> On the other hand, the cabinet also rejected legal advice that it create a crown corporation to shield Alberta's interests: " public ownership is bad in principle, worse in practice," Manning told the legislature, adding that a crown corporation would infringe on industry rights and disturb the province's business climate. (Pratt, 1984:201)

With an ideological bias against public investment and no other immediate alternatives, the Manning administration offered the Americans a stable political climate and promises that the "... government would not get involved in the oil industry and would create a good business climate" (Richards and Pratt, 1979). According to Leadbeater, "(t)he Social Credit leadership, both as a government and as individuals became increasingly tied to these (American) interests" (Leadbeater, 1984). In the mean time development of local capital was generally a subordinated interest (Leadbeater, 1984). One exception to this subordination was the creation of the Alberta Gas Trunk Line Company (now NOVA) which was given a virtual monopoly on the transportation of gas in Alberta. This company, in effect, gave a small group of local corporate interests control of a government created monopoly (Leadbeater, 1984). In general, the Manning administration managed provincial resources like a business, which emphasized private property rights and the creation of a stable investment economy (Pratt, 1984). This business management approach to government extended into the Conservative era.

As already stated, the Lougheed administration came into power supported by the new urban middle class. Some of Peter Lougheed's family background has already been discussed in relation to Senator Lougheed. Following the depression and the bad management abilities of Peter's father, much of the family fortune was lost, with the

exception of an estimated three million dollars (Richards and Pratt, 1979). Peter attended law school in Edmonton, joined the Edmonton Eskimos football team for a brief time and then went on to Harvard Business School (Richards and Pratt, 1978). Eventually he ended up back in Alberta and worked his way up the corporate ladder of the Mannix construction and engineering conglomerate (Richards and Pratt, 1979). The Mannix family "... like the Lougheeds, are an Alberta dynasty - rich, politically influential, and dedicated to the concept of a strong conservative west" (Richards and Pratt, 1979:163). The Mannix group (now Loram), headed by Frederick C. Mannix, is one of the most important and influential companies in western Canada (Richards and Pratt, 1979). It has a variety of interests, among which included the building and operating of Pembina Pipe Lines to gather oil in Alberta (Richards and Pratt, 1979). (4) Peter Lougheed, a close friend of Fred Mannix, stayed with the company until 1962. When he came into power in 1971 he recruited several previous Mannix executives into his government (Richards and Pratt, 1979). The concept of translocation of elites (Reasons and Perdue, 1981) is important for understanding Conservative government rule. Lougheed's style of government was undoubtedly influenced by his experience with the Mannix group (Richards and Pratt, 1979).

Cabinet positions in the Lougheed administrations have been predominantly held by successful businessmen and

prominent lawyers (Pratt, 1984). Leadbeater notes that there has generally been a split between cabinet members and backbenchers in the Tory governments. The cabinet members have tended to be better educated, more from urban areas and have tended to have more substantial business interests than the back benchers. Many of the cabinet members have held senior positions in big business (Leadbeater, 1984). Overall, conservative governments have had very strong business and professional representation.

Compared to the previous government, the Conservative government adopted a rather different attitude toward state intervention in the provincial economy. Lougheed had seen what had happened to resource based communities in the United States when the major industry pulled out and he was determined that it should not happen to Alberta. He argued that the province could not continue to operate on petroleum revenues. It would have to diversify its economy by expanding its industrial base in preparation for the inevitable day when the international oil industry would move out (Richards and Pratt, 1979). Relatively little diversification of the economy had occurred "naturally" so the government took a more direct interventionist approach. This approach, while attempting to prevent the economic stagnation of the west, also was satisfactory to many of the local elites who supported the Conservative government. The narrow resource based economy had often put the west at the mercy of outsiders, especially eastern Canada. A

diversified economic base was viewed as a way to reduce the west's hinterland status and to assure a future for the new elites (Pratt, 1984).

Conservative intervention in the economy has taken place in a number of forms. These include;

> ... oil and natural gas royalties have been increased dramatically; the government has increased its controls over the pricing, marketing, and utilization of energy resources; Alberta has acquired its own regional airline, Pacific Western Airlines; the Lougheed cabinet has created the Alberta Energy Company and has invested equity in the giant Syncrude oil sands project; the government is diverting a portion of its huge surplus revenues into the Alberta Heritage Trust Fund for economic diversification; and the province is attempting to foster its own world-scale petrochemical industry ... (Pratt, 1984:206)

Lougheed government policy has been to first encourage private sector development and, if that is not successful, to move to the public sector (Pratt, 1984). Although the focus has been on capitalist development, either through the "people's capitalism" or through private sector investments, the very activist and interventionist government "... has occasionally given rise to conservative anxieties in a community where property rights and a hatred of socialism are virtually a secular religion " (Richards and Pratt, 1979:216). In any case, uncertainty over Alberta's economic future, and the Lougheed government's attempts to ensure that future, have often meant that the province's business and professional elites have had to set aside their anxieties and support more interventionist policies (Richards and Pratt, 1979). Overall this has

resulted in a strong alliance between the provincial government and local capitalists in an attempt to move Alberta out of its narrow resource based economy, all of which has been justified in the name of private enterprise (Richards and Pratt, 1979). It is to a brief discussion of the general importance of the resource based economy to which we will now turn.

C. The Resource Based Economy

The critical role that natural resources have played throughout Alberta's history has already been implied by the previous discussion. Alberta was created as a kind of resource hinterland. After the transfer of resource control to the provinces in 1930, Alberta governments have relied on resource rents to fill their coffers. This was most obvious in the Social Credit era, especially under the Manning administrations. The resource sectors have not only been important for supplying money to the government but they also have been major employers in the province, first through agriculture related industries and later in oil and gas related industries. Even many of Lougheed's diversification initiatives were focused on forward and backward linkages from the resource base, such as petrochemical development. The resource base has essentially been the hub of most economic, political and, to a large extent, social activity in the province.

The importance of a resource base to Canada in general has long been recognized in this country. According to Elliott (1981), Harold Innis argued that Canada could not just borrow theories of development from other industrialized countries. It would have to have its own theory which recognized the critical role natural resources have played in its history (Elliott, 1981). Innis' theory focused on the importance of staple exports to the Canadian economy. Staples are raw materials, such as fish or furs, which are exported, usually with little or no processing (Shaffer, 1984). (5) Canada has relied on the export of staples throughout its history, from timber, fish and furs in the early days to wheat, fuels and minerals in this century (Shaffer, 1984).

According to this thesis, as discussed by Shaffer (1984), local incomes created by working in the export industry will create demands for more consumer goods. Eventually local businesses will form to meet these demands. Local businesses will also be created to supply the export industry. Eventually local enterprises will become more important and will create an existence for themselves, independent of the export industry. These businesses can then shift to new activities if the particular export industry out of which they "arose" goes into decline (Shaffer, 1984).

The validity of this thesis will not be discussed here. (6) What is important here is that "... the

exploitation of Canada's comparative advantage in successive staples was assumed to be a rational policy for development" (Richards and Pratt, 1979:307). Canada still relies, to a large extent, on the export of staples and, according to Elliott, its laws have emerged to support this staple approach to economic development (Elliott, 1981).

The staple approach to economic development has had serious consequences for Alberta and other "hinterland" economies in Canada which have relied extensively on staple exports to central Canada and to other countries. According to Richards and Pratt; "(n)ot only have successive staple industries been the driving force behind the economic fate of the provinces - both the booms and the depressions - but each staple has in complex ways affected the political and social character of the region" (Richards and Pratt, 1979:305). As already noted, the Social Credit government relied primarily on rents extracted from the production of staple exports. In an attempt to increase these rents it encouraged the multinational oil companies to exploit Alberta's natural resources. Consequently, much of the corporate activity in Alberta focused around these foreign owned oil companies and much of the created profit, if it was reinvested in Alberta at all, was focused on oil related industries (Shaffer, 1984). The result was very little diversification of the Alberta economy (Shaffer, 1984).

On the other hand, the rents collected by the province were very substantial. Many of these funds were reinvested in social services. According to Shaffer this was done "... in such a way as to minimize the redistributional effects" of the created wealth (Shaffer, 1984:182). A capitalist system survives on income inequality. If the money was used to substantially reduce that inequality it could potentially threaten that system. Instead the money was used mostly to expand health care services and universities in Alberta. While an expanded health care system benefits both the rich and the poor, universities primarily benefit the middle and upper classes. In any case, this expansion led to increased employment in the public sector. This in turn contributed to the rise of the nonagricultural labour force. This was the labour force which eventually resulted in the downfall of the Social Credit government. It demanded rapid industrialization, which the Social Credit government did not welcome, so it turned its support to the Lougheed Conservatives (Shaffer, 1984).

Lougheed's push for economic diversification, mostly through industrialization and at the expense of social services (Shaffer, 1984), led to his government's policies of intervention in the economy. Rather than focusing on industrialization in other areas, for example in textile manufacturing, government policy was aimed at "... fostering 'natural' industries - such as petrochemicals and

agricultural processing - out of the province's strong resource base" (Pratt, 1984:206). For a while it looked as though diversification strategies may be successful. The creation of the Organization of Petroleum Exporting Countries (OPEC) and their subsequent policies resulted in a shift of power from the multinational oil companies and consuming countries toward producing countries (Richards and Pratt, 1979). In Canada this resulted in increasing western power. Lougheed's attempts to extend that power resulted in conflict with the multinational oil companies. Multinational oil companies which, like all capital, have "... neither permanent allies (nor) permanent enemies, only permanent interests ..." turned to the federal government for support (Pratt, 1984:212-213). The resulting National Energy Program gave the federal government more control and power over energy resources and production. Also, declines in the price of oil set Alberta into another "bust" phase in the early 1980's. Conditions such as the above took the "wind" out of the sails of the diversification program.

Although diversification strategies were persistently pursued during the 1970's, by the 1980's it became apparent that they were not likely to be successful (Pratt, 1984). According to Pratt;

> Most of the available economic indicators suggest that the Albertan economy has become more, not less, dependent on the primary extractive industries, especially crude oil and natural gas, since the early 1970's; and it is also evident that the dependence of the provincial government itself on revenues from the oil and gas industries has grown. ... There has been little

> if any "structural shift," and any growth in manufacturing and services that is evident appears to be directly tied to the expansion of the primary sector, especially the energy industries. (Pratt, 1984:215)

Even the government has, to a large extent, stopped focusing on industrial diversification. Lougheed has argued that industrial diversification was not the main purpose of the Heritage Trust Fund (Pratt, 1984). In the end the province has remained heavily reliant on its resource base for its economic future.

D. Implications For The Environment

Alberta's history, its reliance on a resource based economy and the relationships between government and business, especially with resource based industries, have all played a role in the government's approach toward environmental management. One of the more prominent concerns for air quality today relates to the issue of acid precipitation or acid rain. Acid rain results from the emission of sulphur oxides (SOx) and nitrogen oxides (NOx) into the air (Phillips and Pretash, 1985). The development of Alberta's hydrocarbon reserves creates acid - causing emissions (Phillips and Pretash, 1985). According to Phillips and Pretash; "(t)he largest sources of such pollutants in Alberta are the natural gas industry, petroleum refining, oil sands production and the heavy oil industry" (Phillips and Pretash, 1985:2). Due to factors such as winds which carry much of these emissions to our

eastern neighbours, low rainfall and alkaline soils which buffer acidity, the effects of acid rain have not been as substantial in Alberta as they have been in eastern Canada (Phillips and Pretash, 1985). Yet, we cannot ignore the fact that we may be contributing to acid precipitation problems in other areas of Canada and we do not fully understand the long term effects of exposure to acid - causing emission on our own province (Phillips and Pretash, 1985). In any case, the "byproducts" of resource extraction and development in Alberta are contributing to the degradation of the Canadian environment and the provincial government has emerged as the body generally responsible for protecting that environment. (7)

The same government responsible for protecting the environment, largely through regulating industry, is also responsible for promoting industrial development (Schrecker, 1984). This creates the potential for serious role conflict, especially in a resource dependent province like Alberta. (8) This problem is compounded by the translocation of elites between the resource based industries and the government. For example, Pratt (1984) discusses Don Getty. Don Getty made millions of dollars in the oil industry in the 1960's. He went from the oil industry to provincial politics. In Lougheed's second cabinet he was given the position of Minister of Energy and Natural Resources (Pratt, 1984). Recently he became premier of the province. Schrecker has noted that at a

general level "... departments with responsibilities for promoting industry, regional development, or natural resource exploitation may find concerns with hazard reduction irrelevant, or even antithetical to their principal objectives and those of their major client groups" (Schrecker, 1984:15). It could be argued that Getty's "work experience" gave him a greater knowledge in the area of resource development. It could also be argued that he would share an ideology with industry and that would make him more sympathetic to the needs of resource development industries. In any case, the potential for role conflict between promoting development and doing so in an "environmentally safe" manner does exist in a case like this and in other cases previously discussed where there are personal connections between government and industry.

Even if government members do not have direct ties to the resource industry, the importance of the resource based industry to the economic, and ultimately to the social, conditions in this province potentially places concerns for the environment in a vulnerable position. Shaffer (1984) has argued that the growing dependence of Alberta on the oil industry, especially for employment, creates serious problems.

> First, it increases the vulnerability of the province to the repercussions of fluctuations in the demand and supply of crude. Second, it reduces the bargaining power of the province in its dealings with the multinational oil companies, who control most of Alberta's oil. This dependence places the companies in a better position to obtain concessions by threatening to

> reduce their expenditures in the province, thereby affecting the level of employment and rate of development in Alberta. (Shaffer, 1984:176)

The vulnerability of the province to fluctuations has been particularly obvious in the recent recession. A slump in the oil industry not only created unemployment but also resulted in cutbacks to public sector spending, especially in the areas of social services. The oil industry slump had an almost immediate effect on the quality of life in Alberta. A quote from Dr. Martha Kostuch (9) nicely describes the relationship between the economy and the environment with respect to the recent recession.

> I quote from James Dunne, "A healthy environment needs a healthy economy; it is a common ground." He says that "A healthy economy and a healthy environment are interdependent. Environment conservation has only been and can only be practiced in an affluent society." The recession has impacted to the environment, and unless something is done soon, these impacts are not just going to last for the recession, but for generations. (Environment Council of Alberta, 1984:9)

A province which is so vulnerable to fluctuations in the demand and supply of oil may end up placing concerns for the environment on the "back burner", especially in bust phases of the economy.

The state of the environment may also suffer with respect to the second problem raised by Shaffer (1984). According to Schrecker (1984), the development of environmental regulatory policy in Canada proceeds on the basis of negotiations between the target industry and the government agency involved in drafting the legislation at

both the federal and provincial levels. (This would indicate that the general process of shaping of legislation outlined by Snider (1987) applies to the case of production of environmental legislation in Canada.) The negotiations are usually conducted in secret. Also, as in the case of the federal Clean Air Act, legislation is often developed based on conclusions of informal steering committees or task forces made up of federal and provincial governments and representatives of industry. The bargaining and negotiation process is present from the initial stages of the drafting of legislation right down to the enforcement stage (Schrecker, 1984).

Legislation created through bargaining and negotiation in which one of the parties has significant power over the other may not reflect ecological necessity. In Alberta, for example, the same industries which produce most of the acid - causing emissions are the ones on which the Alberta economy is so dependent. It is not uncommon for industries to argue that strong environmental protection legislation would threaten their ability to function as an economically viable company in a particular area. (10). In Alberta this may mean that companies are able to obtain concessions in the area of environmental legislation if they threaten to reduce expenditures or to actually pull out of the province if they do not get their concessions. This is an especially viable option for multinational oil companies who have interests in other areas of Canada and throughout

the world. The Alberta government, in charge of such a resource dependent economy, may feel that it has to make the concessions demanded by the industry. It must also be remembered, as already discussed, that Alberta's governments traditionally have not been unsympathetic to the demands and concerns of the resource based industries in the first place. Overall, there is a strong potential that the needs and demands of the resource industries will be placed before the demands for a clean and healthy environment.

The preceding discussion has outlined the history of Alberta government's, the importance of resource based industries to the province and the implications of these things for the environment. In a continued effort to place modern environmental control in an historical context we will now turn to a discussion of the evolution of environmental legislation and the environmental movement.

FOOTNOTES

Chapter III

1. For a further discussion of this economic theory see Richards and Pratt (1979).

2. These implications will be discussed further.

3. It was Tanner who, with the help of various American officials, set up the Oil and Gas Conservation Board (Richards and Pratt, 1979), which will be discussed in more detail later.

4. Approval for this venture was given by the Social Credit government under the Manning administration. Interestingly, Frederick Mannix and Ernest Manning were close personal friends (Richards and Pratt, 1979).

5. The concept of staple export has been extended by others to include primary manufacturing. Primary manufacturing tends to add little value to raw goods and tends to produce fewer jobs than secondary manufacturing (Richards and Pratt, 1979).

6. For critiques of the staples theses see Shaffer, 1984 and Richards and Pratt, 1979.

7. The issue of federal versus provincial responsibility for environmental protection will be explored further in the next chapter.

8. See Reasons (1987) for a discussion of the effects of a resource dependent economy on workers' health legislation in Alberta. According to Reasons some of the weakest workers' health legislation in Canada can be attributed to factors such as "... the rush to extract a highly valued and volatile staple (oil and gas), combined with a free-enterprise conservative government with almost total domination (75 of 79 legislative seats), a low level of unionization, and high level integration of the state with capital ..." (Reasons, 1987:40). These same factors will have implications for environmental regulations.

9. This quote is taken from a speech given during the fourteenth annual joint meetings of the Public Advisory Committees on the Environment and the Environment Council of Alberta.

10. For example, see Swaigen (1980).

CHAPTER IV

CONTRADICTION, CONFLICT AND RESOLUTION: ENVIRONMENTAL LEGISLATION AND THE ENVIRONMENTAL MOVEMENT

A. The Environment - The Early Years

The late 1960's and the early 1970's saw a rapid increase in the passage of environmental legislation in Canada. Yet, concern for environmental quality did not begin in that time period. Much earlier concerns for the environment were expressed in the conservation movement. The conservation issue focused on the wastes of natural resources and the necessity of planning for the future. According to Newton - White (1958);

> On a casual basis the conservation issue has been presented to us for several decades, sometimes soundly, more often with weak and uninspired efforts which damn the cause with their faintness; sometimes with a zeal not wisely expended but too well; quite often with dexterous use of the good old red herring. (Newton - White, 1958:9)

The alarm sounded by the early conservationists is not that different from the concerns raised by environmentalists today. For example;

> In the occupation of any region of the earth the natural tendency of the occupants is to ignore the importance of the very things upon which their existence depends, and to waste and destroy them. ... Our dynamic genius looks only for chances of development and wealth; and these are still quite plentiful. But the processes of destruction are gathering speed, and are on the

> way to becoming uncontrollable if not intercepted. (Newton - White, 1958:5)

And,

> The philosophy of North America has been, and still is, one of exploitation - to get rich quick, largely at the expense of the exploitation of the natural resources. We must not be carried away by a worship of temporary prosperity. We need a planned economy for the future. (McConkey, 1952:1)

Canadian legislation with respect to conservation was passed in the first half of the twentieth century. For example, the Ontario government passed the Conservation Authorities Act in 1946 (Richardson, 1974). Alberta's earliest protection of the environment legislation also developed partially out of concerns for conservation. The Oil and Gas Conservation Act came into effect in 1938 (Energy Resources Conservation Board, 1972). The Act established the regulatory authority for gas and oil development and operations which was called the Petroleum and Natural Gas Conservation Board (Energy Resources Conservation Board, 1972). This board produced regulations relating mostly to safety and conservation, but at the same time the regulations also provided some protection for the environment (Energy Resources Conservation Board, 1972).

The Board's early conservation efforts related primarily to concerns in the Turner Valley oil fields. The problems in the Turner Valley oil fields have been discussed by Richards and Pratt (1979). Natural gas and naphtha had been drilled on the Turner Valley fields since 1914. The fields were under Ottawa's jurisdiction, but the

federal government made little effort to control drilling activity. The result of this lack of control was "... fragmented ownership, unregulated drilling, and the complete absence of enforceable conservation laws " (Richards and Pratt, 1979:46). Many independents drilled in the fields, but they had no market for their gas so they flared it off. According to Richards and Pratt (1979): "Calgarians could sit on their porches on a summer's night and read their papers by the glow of flares thirty miles away " (Richards and Pratt, 1979:46-47). The area became locally known as "Hell's Half Acre" (Richards and Pratt, 1979:46).

Richards and Pratt (1979) see the early conservation regulations passed by the board partly as an effort to reduce wastes of the natural gas resources. Yet, the legislation not only benefited conservation efforts. It was also in the interests of the major oil and gas producers. Oil and gas are considered migratory resources. They will come to the surface in any well drilled in a field. The resources are considered common property until they reach the surface where ownership begins. In an unregulated field this encouraged fierce competition to get the resource to the surface first and to claim as much of the resource as was possible. This led not only to the kind of waste that was evident in the field, but also to the early depletion of resources. Early conservation efforts prevented some of the waste of resources, such as

the flaring off of the natural gas. The prorationing of production also gave an early advantage to the major companies who had markets in which to sell their gas (Richards and Pratt, 1979). According to Pratt; "(t)he rule of capture, market failures, and the need to cartelize an unstable industry and to prevent waste led the state to intervene in order to regulate oil production in the name of conservation, while the fear of federal encroachments and pressures to give priority to local interests were the most important variables influencing the growth of government management of the natural gas industry (Pratt, 1984:202). In this case legislation was created due to a convenient conjuncture of the needs of large industry and the demands for conservation, rather than just being due to the demands for conservation from the public (Pratt, 1984).

Other early Canadian legislative attempts seem to be focused mostly around the conservation of water resources. In 1895 the Federal Fisheries Act was amended to prohibit the dumping of deleterious substances into streams containing fish and of depositing refuse created by logging and the pulp and paper industry into navigable waters (Estrin, 1975). Early provincial legislation focused on the need for sewage treatment systems and a safe water supply. These concerns were often dealt with under Public Health Acts (Estrin, 1975). These acts often held the potential to address other forms of pollution, such as noise, fumes or smoke, but little emphasis was placed on

these issues compared to water and sewage (Estrin, 1975). In Alberta the Department of Health began to work on controlling water pollution in the 1950's. Regulations relating to the control of water pollution in gas plants were put forward at that time (Energy Resources Conservation Board, 1972).

B. Estrin's Phase I

Estrin (1975) traces the changes in environmental pollution legislation from the 1950's forward to two major factors. The first factor was the result of the conflict between property owners' rights and the pressures created by urbanization and industrialization. Property owners were claiming " ... their common law rights to use their property free of nuisance ... " (Estrin, 1975:402). The expansion of urban centers pointed to the need for more centralized government planning which came into conflict with traditional notions of individual interests. Governments had to act to prevent the common law assertion of individual interests which could have interfered with the centralized planning process. In doing so they had to also claim the responsibility to protect the individual interests of their citizens (Estrin, 1975).

The first factor resulted in what Estrin (1975) refers to as the Phase I developments in environmental law in Canada. During this phase statutes which dealt with the

pollution of specific resources, such as air or water pollution, were created. These potentially allowed states and governments to prevent the more blatant pollution problems while, at the same time, preventing individuals from asserting their common law rights (Estrin, 1975). At the provincial level this resulted in the passage of many environmental acts, mostly related to specific resources. (1) According to Estrin between 1956 and 1970 almost every province passed at least two of these acts (Estrin, 1975). At the federal level this same type of legislative flurry was taking place. (2)

C. Estrin's Phase II

The second factor in the evolution of environmental legislation identified by Estrin was " ... the realization in the late 1960's that the survival of man necessitated a halt in allowing industries and government to treat common resources such as air and water as their private sewers and in allowing non-renewable resources to be exploited to exhaustion" (Estrin, 1975:403). This realization seems to be the result of an alarm sounded by the environmental movement. The movement originated out of concerns raised by scientists that humans were headed for disaster if we did not change our attitudes toward the environment. In the United States these concerns were elucidated by, among others, the Ehrlichs and Rachel Carson (Reasons and Perdue,

1981 and Feagin, 1982). According to Reasons and Perdue, the Ehrlichs talked of a "population bomb" which would eventually result in an "ecological doomsday" and Rachel Carson called attention to the use of chemical insecticides and pesticides which were upsetting the balance of nature (Reasons and Perdue, 1981:267). Gunningham singles out the importance of Rachel Carson's work in sounding the environmental alarm in the 1960's.

> The growing concern over pollution was partly a consequence of the moral entrepreneurial activity of a number of individuals, prominent amongst whom was Rachel Carson. Her book, **Silent Spring**, succeeded in arousing widespread interests in pesticides, both in America and Britain, by uncovering and pointing out publically for the first time the facts that link modern contaminants to all parts of the environment. United States government experts have acknowledged that **Silent Spring** prompted the federal government to take action against water and air pollution - as well as against persistent pesticides - several years before it would otherwise have moved. (Gunningham, 1974:30).

The environmental movement quickly spread from the scientific to the public realm. According to Kennedy in Canada;

> Citizens concerned about their neighbourhoods, cottage owners, and long - time conservationists, all of whom had been literally crying in the wilderness about these problems, found they had support of the public and the news media. Pollution horror stories were featured on the front pages of newspapers and in television specials - about DDT, mercury, phosphates in laundry detergents killing off lakes, and a host of other dangers. (Kennedy, 1973:x)

Once protection of the environment became an issue there was increasing pressure on members of the government to do something about "the" issue (Kennedy, 1973).

According to Estrin (1975) this second factor, the emergence of an environmental movement, resulted in what he identifies as a second phase of environmental management. In this phase legislation was passed and administrations were set up which took a more comprehensive approach to environmental management, rather than focusing on specific environmental problems such as air or water pollution. Provinces such as Ontario and Nova Scotia passed comprehensive Environmental Protection Acts. Alberta's development in this phase saw the creation of the Department of the Environment and the Environment Conservation Authority.

By 1973 most provinces had Phase II administrations or legislation, although in some cases the laws consisted of repackaged existing acts that were combined into one so called comprehensive act (Estrin, 1975). In fact, much of the legislation prior to 1974 was not as comprehensive as it first appeared to be. Estrin identifies major procedural and structural criticisms levelled at both the comprehensive legislation and administrations including: the lack of consultation with the public in the drafting of the legal limits of pollution levels by civil servants; the lack of legal means to cause reviews of regulatory standards; the lack of procedure to insure that, in fact, regulations would be drafted; the secrecy of the process involved in approving new pollution sources; and the lack of provisions for impact assessments of projects which may

not directly emit contaminants but none the less would have an impact on the environment (such as the building of airports or highway corridors) or the lack of assessment of things such as policies or programs which do not have a direct environmental impact but which may have indirect environmental effects (such as industrial or tax incentives) (Estrin, 1975).

Despite the fact that many criticisms have been levelled at the legislation and administrations which evolved out of the Phase II approach to environmental management, this phase was an important step toward environmental control in Alberta. Before discussing the Phase II administrations in Alberta a few comments should be made about the Canadian allocation of responsibility for environmental matters. (3) The British North America Act was enacted in 1867. At that time concerns for the environment were not a major issue so the Act did not include clear provisions for either federal or provincial jurisdiction over environmental matters (Gordon and Free, 1985). The result is that in practice all three levels of government (federal, provincial and municipal) are involved in producing legislation which effects environmental quality (Gordon and Free, 1985).

According to Estrin and Swaigen (1978) the first major responsibility for air pollution control in Ontario laid primarily in the hands of the municipal governments. In the 1960's, as it became increasingly obvious that there

was a need for province wide control of air pollution, the provincial government and state began to assume responsibility for that particular medium. In 1967 it passed the Air Pollution Control Act. The federal government entered into air pollution management with the establishment of an air pollution control division as part of the Department of National Health and Welfare in 1969. Also, in 1969 a federal/provincial committee on air pollution was set up. In 1971 the Department of the Environment was established and the Clean Air Act was passed (Estrin and Swaigen, 1978).

According to Estrin and Swaigen (1978), the federal government's role in air pollution control appears to be largely advisory, except in the case of federally controlled works or in interprovincial and international matters. The federal Clean Air Act gave the federal Department of the Environment the power to set various air quality objectives and emission standards and guidelines but, as of 1978, specific emission standards for federally controlled works had not been drafted and national emission guidelines (which were developed by the state, government and industry) and national emission objectives were only raised as suggestions and were not federally enforceable (Estrin and Swaigen, 1978). The only national emission standards which were enforceable involved international agreement on the control of air pollution or where a

significant danger to health was imposed (Estrin and Swaigen, 1978).

In general though, the majority of responsibility for pollution control is vested in the provincial state and government. This includes the responsibility for drafting provincial legislation, enforcing that legislation and of developing preventative programs which will protect the environment (Estrin and Swaigen, 1978). The primary enabling document for the control of air pollution at the provincial level is the Clean Air Act, but the actual management of air quality invokes the use of many more policy and legislative documents (Gordon and Free, 1985). (4) Enforcement of many of the standards becomes possible when they are a part of a licence or permit issued by the Department of the Environment or the Energy Resources Conservation Board (Phillips and Pretash, 1985). Both the federal objectives and standards have had a major impact on the objectives and standards adopted in Alberta (Phillips and Pretash, 1985).

Since the control of air pollution, or pollution in general, rests largely on the shoulders of the provincial government, the establishment of the Department of the Environment and the Environment Conservation Authority were very important steps toward pollution control in Alberta. The Department of the Environment was established by the Social Credit Government in 1971 (Corbett, 1986). Following the defeat of that government in the same year,

Bill Yurko took over the position as the Minister of the Environment. It was Yurko who first introduced the Clean Air Act on a private member's bill as an opposition MLA (Corbett, 1986).

Also in 1971 the old Oil and Gas Conservation Board was transformed into the Energy Resources Conservation Board (ERCB) by the Energy Resources Conservation Act (Energy Resources Conservation Board, 1972). Although the Board had been involved in pollution control prior to this change, the new Act specifically charged the Board "... to control pollution and ensure environment conservation in the exploration for, processing, development and transportation of energy resources and energy" (Energy Resources Conservation Board, 1972:1 - 4). During that same year the ERCB created an Environment Protection Division (Phillips and Pretash, 1985). Ultimate approval concerning matters which affect the environment must come from the Department of the Environment, or more specifically, from the Minister, but the Board maintains the responsibility of "... devising and administering the ways and means required to ensure that environmental standards are met" (Energy Resources Conservation Board, 1972:1 - 4 to 1 - 5). The Board forms a "communication link" between industry and the Department (Energy Resources Conservation Board, 1972). Considering the importance of resource development to Alberta's economy, the Board plays

an essential role in environmental management in this province. It must be remembered though that the Board has been, "(t)raditionally tied to the interests and outlook of oil and gas producers..." (Pratt, 1984:198), which creates a strong potential for a bias in favour of industry in relation to environmental management.

The Minister for the Department of the Environment is responsible for ensuring "... that the environment of the people of Alberta is managed, developed, conserved and improved to satisfy and fulfill their current and future human needs" (Phillips and Pretash, 1985:4). (5) The provincial Clean Air Act, in the case of air pollution, allows the government, through the Department, to make regulations and to ensure that those regulations are enforced by the state. It would appear that this Department was created with the potential to manage the Alberta environment. Yet, looking at the Department and its potential power out of the social and economic context in which it was placed only paints a small part of the picture. Factors already discussed, such as the importance of the resource based industry in Alberta, will play a role in the department's attitude toward the environment and in the power the department has over environmental management in Alberta, especially when it is involved in controlling resource based industries. In any case, the creation of a department which potentially could control the state of the

environment was a crucial step in Phase II developments in Alberta.

The other important Phase II administrative development in Alberta was the establishment of the Environment Conservation Authority. The Authority was created by the Environment Conservation Act (Phillips and Pretash, 1985), which was also passed in the later stages of Social Credit rule in Alberta. According to Phillips and Pretash (1985);

> (I)ts original function was to investigate matters relating to environment conservation, to make recommendations thereon to the Lieutenant Governor in Council, and to coordinate policies, programs, administrative procedures and government agencies pertaining to conservation. To achieve these objectives the authority had a great deal of technical expertise and investigative power at its disposal. During the mid - 1970's, the Authority achieved its purposes and submitted a number of highly influential reports to Alberta Environment. (Phillips and Pretash, 1985:19)

The Act which created the authority provided for the establishment of Public Advisory Committees to work with the Authority. In the early days a committee on the environment was created which was "... made up of individuals nominated by 65 different organizations and representing labour, industry, education, business, the professions, environmentalists and others" (Hunt, 1978:38). These committees, through the Authority, allowed for citizen participation in environmental issues. The Authority had the power to call and conduct public hearings on environmental matters and the power to obtain relevant

information from government employees to review government policies and programs (Hunt, 1978). In some senses the Authority performed the role of an environmental ombudsman (Hunt, 1978). The activities of the Authority reflected its broad mandate.

> The ECA became actively involved in a mix of issues including the restoration of lake levels, the effects of pollution from sulphur extraction gas plants, and the nature and pace of development of particular corridors. It held a major set of public hearings on the environmental effects of coal surface mining. It was instrumental in the passage of several environmental statutes, many of these providing the prototypes for other jurisdictions. (Hunt, 1978:38)

The Authority, with its comprehensive study of environmental management, was a good example of a Phase II administration.

D. Estrin's Phase III and Beyond

Estrin (1975) identified a third phase in the evolution of environmental legislation in Canada which was just beginning to emerge at the time he wrote his article. He places the origin of this phase in the passing of the American National Environmental Policy Act of 1969. This Act included provisions for conducting environmental impact assessments in the early planning stages of proposed projects (Estrin, 1975). Although there were problems with the assessment process in the American Act, the idea behind the Act was studied in Canada. In 1973 both the Canadian

Bar Association and the Canadian Environmental Law Association put forward proposals of what would be necessary for a successful assessment process in Canada. These proposals included, among other things, the importance of the need for public participation in the assessment process, the need for the hearings to be conducted by independent tribunals and the need to ensure not only that the process occurred, but also that it was meaningful. Estrin anticipated the nature of Phase III legislation.

> In Phase III we will witness laws that will require an environmental impact assessment process wherein a demonstratably independent tribunal in an open forum scrutinizes an assessment document and determines whether, or upon what terms, a project, whether private or public, that is likely to have a significant environmental impact, shall proceed. Phase III laws will have, as part of their procedure, statutory safeguards to ensure that both affected and merely concerned members of the public, including public-interest groups such as Pollution Probe or the Sierra Club, have a nearly equalized opportunity - through funding (made available from project proponents or possibly from Legal Aid), early access to information and government officials, early notice of the project, and explicitly granted standing before the tribunal and in subsequent judicial review applications (where taken) - to make as meaningful and knowledgeable a contribution to the process as project proponents are expected to make. (Estrin, 1975:411-412)

Although Phase III type legislation had begun to emerge on the Canadian scene it did not meet the broad objective outlined by Estrin (1975). In many cases the legislation was subject to the same problems observed in the United States. The requirement of assessments tended to be

attached to particular acts (such as the federal Clean Air Act), which did not promote a general assessment process (Estrin, 1975). Also, there were no rules defining whether or not an assessment would be made, whether it would be adequate and the process would be uniform, and whether it would be subject to judicial review (Estrin, 1975). One context in which assessments were taking place at the time of Estrin's review was the ad-hoc committees that had been set up to review particularly sensitive political issues, the most famous of which was the Berger Inquiry into the proposed Mackenzie Valley Pipeline (Estrin, 1975). Estrin felt that ad-hoc Committees, such as the Berger Inquiry, were part of a transitional phase which would eventually lead to routine assessment of all major projects. However, the ad-hoc inquiry approach continued (Swaigen, 1980).

The period of environmental law reviewed by Swaigen (1980) witnessed the consolidation of environmental law as a legal speciality. Sections on environmental law began to appear in legal texts. A few lawyers began to practice environmental law as a speciality. Of the lawyers practicing environmental law as a speciality, the most notable growth occurred in the area of lawyers working for the government or for large corporations, rather than those working for the public interest. Swaigen estimated that there were probably less than a dozen full-time lawyers practicing environmental law on behalf of public interest as of 1980 (Swaigen, 1980).

As already noted, the trend toward ad hoc public hearings and commissions continued. Swaigen (1980) recognized two possible reasons why the ad hoc commissions and public inquiries did not evolve into standard, more established, procedures. First, he says that the governments may have been reluctant, "... to accept that environmental decisions often involve real conflicts and therefore require a specialized forum for resolution" (Swaigen, 1980:445). Second, he notes that other government departments may not have wanted to give up some of their power to the Department of the Environment "... which is traditionally a junior ministry under the authority of a weak minister" (Swaigen, 1980:445). In any case, a standard procedure for dealing with persistent environmental concerns did not evolve.

The environmental impact assessment procedure envisioned by Estrin did not materialize either. By 1980 most provinces claimed to have either adopted or to be considering adopting some form of environmental impact assessment procedure (Swaigen, 1980). Yet, Swaigen describes many of these procedures as "... nothing more than a collection of miscellaneous policies and statutory provisions that do not fit together in any comprehensive or cohesive way" (Swaigen, 1980:451). Two persistent problems associated with the assessment process were; lack of provisions to determine ahead of time which projects would be assessed and lack of authority or clear procedures for

implementing the recommendations of the assessment review (Swaigen, 1980). Although the assessment process could have been a valuable tool in environmental protection, these discretionary aspects limited its potential effectiveness. (6)

One element that is necessary for an environmentally effective assessment review process is citizen participation. There are at least three major barriers to effective citizen participation. First, for members of the public to participate in either the ad hoc inquiries or before the courts, they need funding. Major corporations have immense funds at their disposal to argue that their proposed projects will have a minimal impact on the environment. Citizens groups and private individuals often do not have access to the kinds of funds needed to prepare a good case to defend the environment. In the case of the ad hoc inquiries, funding for citizens groups has often been provided. For example, funding was provided for groups to make presentations at the Porter, Thompson, Cluff Lake, Hartt and Berger inquiries (Swaigen, 1980). In the Thompson Inquiry into the proposed oil transportation pipeline from Kitimat B.C. to Edmonton, Alberta provided funding for fisherman's groups, environmental groups, native organizations and the Kitimat Oil Coalition (Hunt, 1978). Public participation in the ad hoc inquiries have had major impacts on the hearing process (Swaigen, 1980 and Hunt, 1978). Funding for public participation before

permanent boards and tribunals has not been as forthcoming (Swaigen, 1980 and Hunt, 1978). Alberta's Energy Resources Conservation Board has had funds available to it to reimburse part or all of the costs incurred by intervenors who want to participate in their hearings, but the funds are provided after the presentation and at the Board's discretion (Swaigen, 1980). This kind of funding may severely limit the rate a public participation at ERCB hearings.

A second barrier to public participation is access to information. In order to present a well documented case before a board of inquiry, citizens, as individuals or groups, need to have access to the relevant information. As of 1980, only two provinces had passed freedom of information statutes (Swaigen, 1980). The federal government had proposed freedom of information legislation but it had not yet been passed (Swaigen, 1980). Privileged documents can have a major impact on inquiries and boards. For example, during the Thompson Inquiry into the proposed pipeline, counsel was able to produce a government document which pointed to inadequacies of oilspill legislation and the enforcement of that legislation (Hunt, 1978). Although it was first argued that the document was privileged information and was later argued that it was not relevant to the inquiry, Thompson said the document was relevant and it was introduced (Hunt, 1978). The document revealed that the Minister of the Environment had intervened in a case

and prevented the prosecution of a company in an oilspill case (Hunt, 1978). Access to this kind of information is often necessary, and certainly important, to any group trying to argue for protection of the environment.

A third barrier to citizen participation is related to the issue of locus standi, or standing. Standing relates to access to the courts. In order to appear in court it is assumed that a plaintiff should have a real interest in the case. A "real" interest has often been interpreted in the environmental context to mean either direct interference with property rights or of some ability to demonstrate that a proposed development would have more impact on the applicant than on the public at large (Hunt, 1978). This principle has been used to deny groups access to the courts on behalf of general public interest. Swaigen notes that at the level of boards and tribunals usually the right of standing is provided for "... the applicant for a licence, government agencies, and persons with a financial or property interest in the subject-matter of the hearings" (Swaigen, 1980:460). Although citizens have generally been granted standing when they requested it, Swaigen points out that without an explicitly recognized right of standing, access to these boards could be threatened in the future (Swaigen, 1980).

One proposed solution to the issue of uncertainty of standing before the courts was the concept of an environmental bill of rights. Swaigen (1980) describes an

environmental bill of rights as "... a collection of statutory provisions, rules of procedure, and evidentiary requirements, doctrines, rights and duties ..." (Swaigen, 1980:449) which, in general terms, would declare resources a public trust and would give members of the public the right to defend those resources. If citizens had the right to defend their resources they would have standing in the courts. There was more than one attempt to introduce an environmental bill of rights in Alberta. In 1978 one such bill was introduced by the leader of the opposition as a private member's bill (Hunt, 1978).

> Designed to broaden the right of a citizen to sue for environmental degradation, the bill would permit a citizen to lay an information and commence a prosecution against anyone who had breached a standard under legislation such as the Clean Air Act and the Clean Water Act. This would permit citizens to take the initiative when the Attorney-General appears reticent to enforce pollution standards. The proposed law would also permit an individual to sue anyone who is permitting a pollutant to escape onto Crown, county or municipal property and who is thereby damaging the environment. (Hunt, 1978:42)

This proposed legislation would have been extremely useful in the citizens battle to protect the environment. This bill, like others proposed in Alberta and in other parts of Canada, was not passed into legislation (Hunt, 1978). In general, the role of the public in relation to funding and access to information and to the courts was still up in the air in 1980.

E. The Erosion of the Environmental Movement

Some time during the period from 1975 to 1980 the fervour of the earlier movement to protect the environment seems to have died down. According to Swaigen;

> Around 1978, government and industry representatives began to voice concerns that the decline in economic growth and energy shortages would be exacerbated by strict enforcement of environmental standards. The perceived "over-regulation" of industry and commerce, the feared curtailment of production, plant closures as a result of requirements to install pollution abatement equipment, and the length, complexity, and cost of environmental studies and public hearings became common themes of government and industry statements. (Swaigen, 1980:445)

The above kinds of arguments were counterbalanced by arguments from others, such as labour leaders, that the "jobs versus the environment" arguments were not factually supported, and indeed constituted a form of industrial blackmail (Swaigen, 1980:445). Attempts to reduce environmental protection in favour of industry met with strong media and public reaction (Swaigen, 1980). Persistent problems and "accidents", such as acid rain, Love Canal, Three Mile Island and the Mississauga train derailment, kept environmental issues before the public eye and before media scrutiny (Swaigen, 1980). Yet, with all the attention directed at environmental issues, the more broad based environmental movement began to erode.

Of particular interest in Alberta was the broad based environmental group called STOP (Save Tomorrow Oppose Pollution). STOP was founded in 1970 and its first campaign was to create an anti-pollution lobby (Duncan,

1982). STOP was involved in a variety of interests. Its history was documented by Duncan (1982).

> It was a colorful history of puppet shows, dirty picture contests, documentary films that were never released because of their controversial nature, investigations on asbestos, vinyl chloride, sulphur dioxide, PCB's, DDT, lead, food additives, hazardous wastes, recycling, alternative energy, participatory parks (the Mill Creek Story), worker's rights and the multinationals. (Duncan, 1982)

STOP conducted its own investigations into pollution sources, lobbied to bring down the Social Credit government in 1971, lobbied to reduce sulphur dioxide emissions and to increase enforcement in the tar sands development and demanded an inquiry into the possibility of killer fogs and acid rain from tar sands development (Duncan, 1982). Of particular note here was STOP's efforts at lobbying for an environmental bill of rights (Duncan, 1982). STOP was probably the best example of an active, broadly based environmental group in Alberta's history.

In the late 1970's STOP changed its focus from an anti-pollution campaign to one directed more at the nationalization of resources (Duncan, 1982). The group criticized Alberta's energy policy and argued for the necessity of public ownership and development of resources (Duncan, 1982). It is probably a gross understatement to say that STOP would not have been very popular with the Lougheed Conservatives or with industry. It should be remembered that the Lougheed government did not favour public ownership in resource development. In any case,

this relatively small group managed to keep environmental concerns an issue until it effectively disbanded in 1980 (Duncan, 1980). (7) Duncan (1982) isolates the demise of the group to two main factors. These were the lack of funding and "... the realization that after ten years of concerted action to inform Albertans of the importance of environmental protection, the mainstream of the population was unconvinced" (Duncan, 1982:20). Lack of funding is a problem for many groups, and a problem which STOP had managed to get around for many years. It is difficult to ascertain exactly how "unconvinced" Albertans were of the importance of environmental protection, but public opinion polls seem to indicate that Albertans, and Canadians in general, place concerns for their environment fairly high on lists of concerns. Although this probably played a role in the demise of this group, other environmental groups, both within and outside of the state, were also facing difficulties at this time.

Alberta's Environment Conservation Authority was also dealt serious blows in the late 1970's. Actually, the power of the Authority as an independent agency was limited not long after its creation. The Authority originally reported to the entire cabinet, but in 1972 it was decided that the Authority would be placed under more direct control of the Minister of the Environment (Hunt, 1978). The Minister would then have to be consulted before the Authority made inquiries and they would have to get

his/her permission for any banking arrangements and to engage technical advisors (Hunt, 1978). This change was criticized by the Public Advisory Committee as the new Conservative government's attempt to restrain the Authority, but the criticisms were ignored (Hunt, 1978). Even with circumscribed power the Authority managed to submit many influential reports to Alberta Environment (Phillips and Pretash, 1985).

Following "... a series of politically unpopular decisions, the Authority was stripped of its powers in 1977... "(Phillips and Pretash, 1985:19). Two examples of politically unpopular incidents were discussed by Hunt (1978). The first case relates to the public hearing conducted on land use and resource development in the Eastern Slopes of the Rockies. The government had supposedly imposed a moratorium on major developments in this area but during the hearings it came to light that the government had continued to issue coal development permits in the area and had misinformed the public on the issue. This proved to be very politically embarrassing. In the second case, relating to proposed dam sites on the Red Deer River, the government had ignored the advice of the Authority that alternative sites for the dam should be considered and that the sites suggested by the government were not appropriate. The public were also opposed to the suggested sites, so both of these incidents resulted in a lot of bad publicity for the government (Hunt, 1978).

Following incidents such as the above, the government passed legislation which dismantled the old Environment Conservation Authority and replaced it with the Environment Council of Alberta. The government gave various explanations for this change, including that it was necessary because of dissension within the Authority and that its name suggested that it had more power than it actually held (Hunt, 1978), but no matter which argument was accepted the end result was the same. The new Council was no longer constituted of a permanent and relatively independent board. It was replaced by one full-time executive and committees which would be appointed on an ad hoc basis to deal with certain issues (Hunt, 1978). The Council could not call public inquiries. Inquiries could only be conducted at the request of the Minister of the Environment or the government as a whole (Hunt, 1978). According to Hunt, " (t)he environmental ombudsman of 1970, with independent powers of study and inquiry, has become a skeletal agency to be supplied with ad hoc panels at the government's initiative" (Hunt, 1978:39).

F. The Erosion of Legislation

It was also during this period of time that the provincial government amended the Clean Air Act to allow for the issuing of certificates of variance (COV). A COV

allows a company to be exempt temporarily from license requirements or regulations (Gordon and Free, 1985). These certificates are issued when a company is going to violate a license condition or a regulation "... for reasons beyond the control of the owner/operator" (Gordon and Free, 1985:35). In order to be granted a certificate it must be demonstrated that the allowed variation will not create a detriment to property or health and that without a certificate the company would face serious hardships (Gordon and Free, 1985). Damage to the environment is not identified as a consideration in granting these certificates (Gordon and Free, 1985). COV's were usually granted to companies when pollution control equipment accidentally failed, but they have also been used to continue to operate older facilities when it was not economically feasible to upgrade pollution control equipment (Gordon and Free, 1985). In the period from April 1977 to March 1984, twenty four of these certificates were granted for time periods lasting from two days to two years (Gordon and Free, 1985). One quarter of these certificates were issued to the two major tar sands companies operating in northern Alberta (Gordon and Free, 1985). It must be remembered that the original drafting of the regulations and license conditions involved the process of negotiation between the government and the industry. The negotiation process has allowed for factors other than environmental concerns, such as social, political and

economic factors, to be given major consideration in the issuing of permits and licenses in the first place (Phillips and Pretash, 1985). The amendment of the Clean Air Act to permit violations of these negotiated agreements gave even more latitude to facilities operating in Alberta and can be viewed as another set back to the cause of protecting the environment in Alberta.

G. The Environment in the 1980's

Many of the problems identified in the late 1970's still exist today. Some of the problems with air pollution prevention in Alberta, especially in relation to acid-causing emissions, have been discussed by Phillips and Pretash (1985). The National Air Quality Objectives discussed earlier have been adopted in Alberta. In order to construct a facility in compliance with the Clean Air Act, some industries have to apply to the Director of Standards and Approvals Division of Alberta Environment for a permit. The permit has to include a consideration of both legislated and non-legislated (guidelines or objectives) standards. The Clean Air (Maximum Levels) Regulations contain the only legislated standards for air pollutants in Alberta. These regulations include ambient standards for certain pollutants and point-source emission standards for vinyl chloride and polyvinyl chloride plants. (8) Point-source emission standards are not included in

the regulations for other types of operations, despite recommendations that they should be included. Non-legislated standards are issued in permits and licenses. The conditions of the permit or license are negotiated and are determined on a case-by-case basis. Many factors are considered in the setting of these standards. These factors "... include what is being done in other jurisdictions; what the available technology is; what the known health effect of the pollutant is; the economics of implementing a new system; and the time frame in which a new system could be implemented" (Phillips and Pretash, 1985:6). As far as technology is concerned, Alberta has generally adopted the implementation of the "best practicable technology", which takes into account economic feasibility, rather than adopting "best available technology" which does not take economic considerations into account. Overall, the Alberta government still uses a bargaining and negotiation system, which takes into account many factors other than environmental concerns, to establish the standards to be met by each operator.

Phillips and Pretash (1985) also discuss the roles played by Alberta Environment and the ERCB in the 1980's. Alberta Environment is still generally responsible for protecting the environment for the current and future needs of the citizens of Alberta. Part of this responsibility is conducted through administering the Clean Air Act. In 1980 the ERCB was expanded to include a separate Environmental

Protection Division. The ERCB and Alberta Environment work very closely in the granting of permits and licenses to the oil and gas industry. Applications for licenses and permits to operate under the Clean Air Act are submitted to the ERCB. The ERCB then decide whether or not a public hearing will be held. If it is decided that a hearing will be held, a representative from Alberta Environment may sit on the Board at that hearing. This has raised concerns for the potential for conflict of interest since Alberta Environment and the ERCB have different mandates.

At the pre-application phase Alberta Environment has the authority to request that an environmental impact assessment be conducted. The assessment procedure in Alberta has not been standardized in the way that earlier authors had hoped it would. Whether or not an assessment will be conducted is judged on a case by case basis. The policy of Alberta Environment is to request an assessment "... where the potential environmental impact of a project is seen to be significant" (Phillips and Pretash, 1985:9), yet a "significant" impact remains undefined. This rather informal procedure has been criticized. It has been argued that the procedure should be formalized and that the public should have an opportunity for input. If a proposed project has to submit an assessment, the public has no access to that information until it is presented at the ERCB application hearing. Overall, the assessment

procédure has not evolved into a standardized form where full public participation is encouraged.

In the late 1960's and the early 1970's it looked as if protection of the environment would remain a high priority concern. Environmental quality had become a public issue. Environmental activism grew. Legislation was being passed by governments to protect the environment. Governments set up state agencies to oversee environmental protection. Alberta even had what has since been called an environmental ombudsman. Somewhere in the mid to late 1970's the fervour of the earlier movement died down. Although public opinion in the 1980's would indicate that a renewed interest in concern for the environment has developed, much of the earlier momentum of the environmental movement and in the development of legislation seems to have been lost. Certainly some of Estrin (1975) and Swaigen's (1980) projections for the future of environmental protection have yet to be realized. In any case, this time period witnessed the development of government laws and state agencies to protect the environment. In order to help develop a greater understanding of the government it is to a more detailed consideration of government roles and ideology which we will now turn.

FOOTNOTES

Chapter IV

1. For example, Ontario's Water Resources Commission Act, B.C.'s Pollution Control Act (dealing primarily with water pollution) and Ontario's Waste Management Act (Estrin, 1975).

2. Two notable examples of this type of legislation are the Canada Water Act and the Clean Air Act (Estrin, 1975).

3. The issue of federal versus provincial control over decision making in environmental concerns has been a persistent one. For a discussion of the legal basis of federal versus provincial control see Estrin, 1975.

4. See Gordon and Free (1985) Appendix A for a list of these various documents. Also see Schmidt (1975) for a list of general pollution control legislation in Alberta as of 1975.

5. For a more extensive list of the Department's interpretation of their role see Phillips and Pretash, 1985:4.

6. See Swaigen, 1980 and Hunt, 1978 for a further discussion of some of the ad hoc tribunals and of the assessment legislation.

7. This group still legally existed in 1982, but many of the activists left in 1980.

8. Ambient standards refer to the amount of pollutants in the general atmosphere while point - source emission standards refer to the amount of pollutants discharged by a particular facility (Phillips and Pretash, 1985).

CHAPTER V

GOVERNMENT RESPONSE : THE LEGISLATIVE RECORD

A. The Legislative Debates

The role of the government and the state in both the creation and the implementation of law is considered theoretically important. (1) It was decided that one way to understand the role of the government, and to a lesser extent the state, was to look at the Alberta Legislative debates, in the form of the Alberta Hansard. (2) The Alberta Hansard is a complete record of public debates in the Alberta Legislative Assembly. It was felt that an understanding of the government's role in the area of environmental (especially air) quality could be extrapolated from government members actual discussions about the topic.

B. The Sample

Over four hundred pages from the years 1972 to 1986 inclusive in Alberta Hansard were chosen for analysis. (3) These pages were chosen using both the subject and the author indexes. References to the following subjects were included in the analysis; air, air pollution, bills (listed under air pollution), the Clean Air Act, pollution,

pollution control and, at later dates, pollution monitoring, air quality and acid rain. Unfortunately, the popularity of certain reference terms varies over the years. For example, in the early 1970's most references to air pollution and pollution in general were included under the subjects of air pollution and pollution control. In later years less references were listed under these general headings. References were also taken from the author index under the name of the then present Minister of the Environment (MOE). This was done in part as a cross check of the subject references and also in order to supplement the general subject references. More specific references to air quality or pollution control in general could be included using the author index. These references vary over the years as the popularity of certain terms go in and out of vogue, but all are in some way related to air pollution or pollution control in general. (4) Using the author index to supplement the subject index was helpful in locating more specific references, but it should also be noted that it introduces a slight bias toward responses made on behalf of the ruling government by the Minister of the Environment. (5)

Once all of the pages were collected a detailed index of the relevant content on each of the pages was constructed. Since the ultimate intent was to classify the data in themes, any reference that could not be classified into a theme was eliminated. Eliminated references

included things such as the tabling of files or reports and "non-responses" to questions, such as the question will be taken on advisement or will be put on an order paper. Also, all references to enforcement were removed for separate analysis in the next chapter. (6) All remaining references were included in the analysis in this chapter.

C. Data Analysis

The main point of the analysis of the legislative debates was to extrapolate some understanding of the role played by the government in environmental issues from those debates. It was decided that a qualitative thematic content analysis would best accomplish that task. A more qualitative approach to content analysis was used for a number of reasons. First, and probably most important, was the nature of the sample. The sample did not include all references to environmental quality and control included in Alberta Hansard. For example, references to water pollution were not included. It was decided that little would be gained from a careful counting of only one aspect of environmental data. Also, the potential for a slight bias in the sample mitigated against a more quantitative approach. According to Berelson (1952), if the data being analysed are in any way unrepresentative then numerical results may not only be unnecessary, but may also be misleading. Second, it was decided that it would be best

to inductively generate the themes used for analysis. This approach allowed for more variation in themes and generated the kind of flexibility it was felt was necessary for analysis of this type of data. Third, since there was no need to combine these data with any other data in a numerical or statistical form, a careful count of the relative frequencies of certain themes was unnecessary (Berelson, 1952). Finally, it was decided that little would be gained by more strict numerical representations of the frequencies of certain themes in the data, especially since the themes were not mutually exclusive. For example, the same reference could be included under legislative problems and under references to the public if the legislation made public access difficult. The only numerical requirement in this data was that the theme had to occur on a minimum of three separate occasions to be considered a separate theme. (8)

As already stated, the themes were generated inductively from the data. Each of the references in the detailed index was assigned a theme. Since the themes emerged during the analysis, all of the assigned themes were checked for accuracy. Each of the themes were then assigned to a category. The eleven categories had the following titles; legislation - nonenforcement elements, the public, the government, government attitudes, the government and industry, industrial issues, the environment versus the economy, nonenforcement government action,

relations with other jurisdictions, pollution and other themes. These categories were devised more for discussion than for analytical purposes. In other words, they were used as a method to group related themes together to allow for discussion. The discussion of each category includes a list of the themes assigned to the category, as well as some examples to elaborate on the themes. The categories were not discussed in any particular order. It was hoped that this type of analysis would give the reader a summary of themes generated in government discussion of air pollution and pollution control in general.

D. Themes in the Debates

1. Legislation - Nonenforcement Elements

This category includes two themes; legislative changes and reform and problems associated with legislation. (9) The reforms and the problems will be discussed together since they were highly related. (10) An early amendment to the Clean Air Act (CAA), Bill 41 (1972), addressed many of the problems that had been encountered in the implementing of the new legislation. For example, it defined more clearly the roles of the director of standards and approvals and director of pollution control and the procedures for obtaining licences and permits (1972). It also gave the Minister more control of source pollution (rather than just ambient air pollution), which allowed for

the establishing of source standards (1972). Finally, it allowed for the certification of visible smoke readers and made other minor changes to increase clarification of the Act (1972). It was argued that problems in the original Act would be circumvented by these amendments, which would ultimately make the Act more workable (1972).

Although Bill 203 (1973) (introduced by Mr. Notley, a New Democratic Party (NDP) member) was largely an enforcement bill, designed mostly to protect workers who turned in their employers for environmental violations, it was stated that one of the intents of the bill was to increase citizen participation in environmental concerns. One of the major points of contention in this bill was a "guilty until proven innocent" clause, which essentially resulted in the assumption that an employer was guilty until they could prove they were not guilty (1973). The bill was not passed into legislation. Two other bills, which were also largely enforcement bills, included non-enforcement amendments. Bill 73 (1976) created a provision for the director of standards and approvals to attach regulation requirements to a permit or licence. Bill 14 (1982) broadened the scope of the CAA to include the processing and production of inorganic chemicals. Both amendments allowed for more complete application of environmental standards.

Two bills were proposed which were not amendments to the CAA as such, but had implications for the CAA. One was

Bill 74 (1985), an amendment to the Hazardous Chemicals Act, which had some implications for the reporting of spills under the CAA. The second was Bill 214 (1983) (introduced by Mr. Notley, NDP) which was an attempt to pass an environmental impact assessment act. This act would have required every project proponent to prepare and environmental impact assessment, which would be available to full public scrutiny (1983). It was argued that this act was necessary because the ERCB was given control of the assessment process and this did not guarantee that assessments would be conducted or that the public would have access to them if they were conducted (1983). This opposition bill was attacked vigorously by ruling party members using such arguments as; the bill would create unnecessary assessments, it allowed no discretion (if, for example, a similar project was already in existence an assessment would still have to be conducted), it increased costs at a time when restraint was called for and it would drag everything into court (1983). Needless to say, this bill did not become legislation.

In summary, most of the government bills for legislative reforms involved minor amendments to the CAA which functioned mainly as clarification to the existing Act. The two opposition bills (203 and 214) proposed more structural changes to, among other things, increase public involvement in the environmental protection process.

2. The Public

This category includes three themes; costs to the public, general references to the public and public health concerns. References to the costs to the public vary from the general, such as the costs for pollution control will in the end be paid for by the consumer (1972), to the specific, such as costs to the public in the form of sick and dying cattle (1974) or corroding fences (1980). Concerns were also raised in the early 1970's about the extra costs to consumers when pollution control devices were added to automobiles, both in terms of reduced mileage and increased engine wear (1974). There were questions raised as to public costs in relation to the AMOCO blowout at Brazeau, both in terms of the overall clean - up costs to the province and in terms of whether there would be any attempt on the part of the government to recover lost royalties (1978). Finally, the cost to the taxpayer was also used in an argument against Bill 214 (1983).

Most general references to the public, especially in the 1980's, were related to whether or not the public would have access to things such as government reports, studies, hearings and meetings. For example, one member of the opposition questioned whether or not local residents would have input in the Pincher Creek health study (1984). Bill 214 (1983) suggested a need for public scrutiny and involvement in the assessment process. The Legislature was also assured that all Acid Deposition Research Program reports would be made public (1984).

The 1970's debates show more evidence of the image the government had of the public and of what they thought was important to the public. For example (according to Mr. Farran, a Progressive Conservative Party (PC) member);

> There is hysteria, widespread public hysteria on this subject of pollution in the environment. ... Since Rachel Carson wrote that book about 10 or 15 years ago, the hysteria has grown in alarming proportions. (1972:27-34)

According to one member (Mr. Drain, a Social Credit (SC) Party member), "(l)ooking at the Pincher Creek situation and what occurred there as a result of the emission of H2S, how much of it was real pollution and how much of it was psychological pollution was difficult to say" (1974:2226). One member of the opposition (Mr. Notley, NDP) summarized the relationship between the government's perception of public attitudes to environmental issues and government action.

> The Tory caucus between '69 and '71 was obviously committed to the environment and to strong environmental legislation. But between '67 and '71 we had one other very important factor, that is, environmental issues were extremely fashionable. ... Quite frankly, Mr. Speaker, what concerns me is that this government's commitment to the environment strikes me as being rather more consistent to the public interest in the issue than in any deep political commitment by the government. (1980:1304)

This member suggested that even though there was less public concern about the environment in the late 1970's than there was in the late 1960's, protection could not be conducted on the basis of a "Gallup Poll" (1980). (11)

Finally, references to concern for public health have been made over the years in Hansard. Most of the health concerns raised in this sample relate to the Pincher Creek area or, more generally, to concerns about the health effects of the sour gas industry. There have been persistent concerns over health in the Pincher Creek area with few answers as to the source of those health problems. Some suggestions have been made, for example, that there was an excess of ozone in the area (1980), but overall, the cause of the illness has never been successfully traced to the many gas plants in the area. (12) Also, the government was occasionally asked whether certain conditions may have been a threat to health, such as in the case of an explosion at a Dow Chemical plant (1981), but most concerns were related to the sour gas industry.

3. The Government

This category is composed of four themes; references illustrating the government's objectives, roles and policies in environmental quality, relations between various branches of the state and government, criticism of the opposition and general political issues. Government objectives tended to be stated in very general terms such as, to provide meaningful regulations and legislation (1972), a clean environment (1972) or clean air and a clean environment (1974). Government roles and policies in the sample vary from the very general to the specific. At the

general level there were examples such as; the polluter must pay for the consequences of pollution (1972), that the Department would place an emphasis on pollution prevention (1972), that the government would take corrective action if industry was not doing its job (1983) and that the government were the guardians of Alberta heritage, including clean air and water (1983). More specific examples include things such as; if there were emission problems the Department would initiate meetings with the company (relating to Suncor) (1980), that it was not government policy to conduct a study of the decommissioning of a plant (relating to a Pincher Creek plant) (1983), that the Department would flare blowouts to avoid dangers to the people (concerning gas wells near Calgary) (1983) and that the necessity of conducting environmental impact assessments was appraised on a case by case basis and was at the Department's discretion (1983).

Government policy allowed a certain amount of discretion. For example, despite much earlier commitments that an emphasis would be placed on pollution prevention, an Inverness gas plant project was given approval to operate without sulphur recovery equipment (1983). (13) In another example of the use of discretion, the relationship between government policy and employment was raised. (14) In 1977 a policy was constructed for the Eastern Slopes area of the Rockies designating it as a prime protection area. Later changes to that policy were questioned by one

opposition member (Mr. Chumir, Liberal) who inquired as to the reasons for those changes.

> Dr. Webber: Mr. Speaker, I'd like to supplement the answer in that the ERCB came to their decision primarily, as I mentioned, taking into account environmental concerns. ...
>
> Mr. Bradley: Mr. Speaker, to the Minister of Energy. Could the minister advise the house what impact would take place in the 1990's in terms of employment in the Pincher Creek area, particularly the 250 employees of the Shell Waterton gas plant if exploration does not take place to extend their natural gas fields?
>
> Dr. Webber: Well, I think the hon. member makes a good point. I guess that answers the question. (1986:114)

Although the minister went on to assure the Legislature that the environmental considerations were taken into account, this still served as a good example of discretion in government policy where it was deemed necessary. This also functioned as an example of how government policy, in practice, may tend to benefit the environment less than the stated objectives would indicate.

Another aspect of interest in the category of the government were statements that expressed the relationships between various elements of the of the state and between the government and the state. Many of the examples found in this sample refer to either requests for clarification of the relationship between the ERCB and the Department of the Environment (DOE) in environmental concerns or explanations of that relationship. It was decided early in the Department's history that the ERCB would retain some responsibility for pollution control (1972). Occasionally

the ERCB and the DOE would work together to identify problems (1977). At other times their roles were quite distinct. For example, one Minister said that the Department reviewed environmental standards and from these reviews would make recommendations for the ERCB to consider in their hearing process (1980). The ERCB is considered responsible for the drilling industry and for the licensing of gas processing plants (1983). Also, at one point a question was raised as to the possibility of reopening ERCB hearings in light of allegations that environmental information was withheld (1983). The respondent (Mr. Zaozirny, PC) said that he hoped the member was "... not suggesting that the government should interfere with a decision of a quasi-judicial body" (1983:1925). It must be assumed that although the DOE and the ERCB share some responsibilities their actual roles are quite separate. Two examples of other references to relations between state and between state and government bodies are that the health department would not proceed with health studies in the Pincher Creek area until the DOE finished its testing (1983) and that the Department of Industry and Commerce would be working shoulder to shoulder with the MOE (1972).

One example, combining a statement of the relationship between a government and a state body with a critique of the ruling government, was that the government tended to ignore the more important recommendations put forward by the Environment Council of Alberta (1980). Other

criticisms of the ruling government included such things as; the government tended to ignore bills put forward by opposition members (1974), that they focused more on responding to rather than prevention of pollution (1980) and that when members were elected they tended to be "starry-eyed" but once they got into office they tended to end up protecting their department (1980:1300).

Members of opposition parties got their fair share of criticisms from the ruling government. Not surprisingly, many of these comments were directed at the ruling government's perception of socialists and socialist philosophy. Two interesting examples of this occurred in the debates over Bill 214 (1983). Bill 214, the opposition Bill that put forward an attempt to guarantee that environmental impact assessments would be conducted, was apparently modeled after a piece of legislation from Saskatchewan (1983). One Conservative member (Mr. Lysons), after suggesting that the Bill looked more like it was modeled after Cuban legislation, made the following comments (1983).

> Clearly the Bill is intended to mystify industry. That's not strange, coming from that particular corner where the socialists try to be goody - goody two shoes, pretend that they're so great and good and are going to bring in legislation that will solve all the environmental problems, and to hell with making a living. (1983:1617)

Another member (Dr. Reid, PC) referred to this Bill as "... one of the classic examples of the socialist philosophical approach to overregulation, big government, and rigidity

that one could wish to find" (1983:1616). One member (Mr. Chambers, PC) even suggested that the NDP leader "... must make business people and investment people everywhere shudder" (1976:201). Since Liberals tended to be a very rare breed in the Alberta Legislature, at least until the last election, and this province has had a history of mistrust for "socialist" philosophy (Alberta being the only province out of the four western provinces that has not had an NDP government), it was not particularly surprising to find that many of the critiques of the official opposition were directed at socialism.

As well as critiquing the government, there have also been opposition concerns raised over the government's actions, or over certain situations which have been created. One example of these types of concerns was the conflict of interest situation. The joint government and private industry ownership of Syncrude could always be used as an example of a potential for conflict of interest where the environment was concerned. It was pointed out by one member that the government should be frank and recognize that there was a potential for conflict of interest when the government and the people of Alberta had over a billion dollars tied up in Syncrude (1976). Other points of a potential for a conflict of interest were raised when government members had strong relationships with companies, such as Mr. Bradley (PC, later an MOE) sitting on the Syncrude board (1980), or Mr. Purdy (PC) who could "...

take off the MLA hat and put on the TransAlta hat" (1983:1619) to argue against Bill 214. Other concerns raised included such things as secrecy (1984), potential negligence on the part of the Department (1982) and withholding information from hearings (referring to the ERCB hearings in St. Albert already mentioned) (1983). In a rather interesting case, one member of the opposition (Mr. Notley, NDP) raised concerns about political issues being involved in setting emission standards. He read from a federal - provincial report that the decision to allow a certain amount of sulphur dioxide emissions was a political, rather than just a technical decision (1980). He also read from a paper in which the deputy MOE stated that further environmental impact assessment studies would not be referred to the joint federal committee because of the technical and political difficulties that resulted from the Syncrude review (1980). At one point the Minister (Mr. Cookson) responded to these kinds of concerns by saying;

> Mr. Speaker, I wouldn't be quoted properly if I didn't say that many of our decisions are political decisions. That's democracy in action, so I don't necessarily make the distinction between political and technical decisions. (1980:1196)

Overall, the concerns raised by the opposition were not surprising given the earlier discussion of the Conservative Party.

4. Government Attitudes

This category includes three themes; government attitudes toward their own pollution control record,

attitudes toward environmentalists and attitudes toward pollution and the environment in general. Overall, the ruling government seemed to have a very positive attitude toward their record of environmental control. The government seemed generally pleased with its results as far as sulphur emissions and acid rain were concerned (1981, 1983, 1984). For example (according to Mr. Bradley, MOE);

> With regard to this air quality matter, specifically acid rain and sulphur dioxide, in the period from 1974 to 1982 there was a net reduction in sulphur dioxide emissions in the province of approximately 10 percent. This was in a period when the number of plants processing sour gas increased from 77 to 122. This certainly speaks well of what the government has done. (1985:145)

Comparatively speaking, it was assumed that the government did "... a pretty good job here in Alberta" (by Mr. Nelson, PC) in relation to the environment (1985:633). Even the amount of money the government spends on research was taken as evidence of a major commitment to environmental concerns (1976). Overall, the ruling government seemed to be very positive about what it had achieved environmentally.

On the other hand, the government's attitude to environmentalists was less positive. One member (Mr. Farran, PC) criticized the messengers of environmental "doom".

> The very professors who predicted the imminence of doomsday, who preach that through pollution we are all likely to die in 10 to 30 years -- the member from Edmonton Kingsway was quoting from them the other day -- they would be very reluctant to abandon their automobiles for a push bike. They wouldn't want to grow potatoes on a small holding, and take this as a way of life in

> lieu of teaching or grants from the state, education funds from the state. (1972:27-34)

Environmentalists seemed to be associated with fanaticism. For example, the same member quoted above complimented the government's choice of Mr. Yurko as MOE, and the very existence of the Department, as a method of keeping the zealots from taking over and driving everyone back to the trees (1972). This notion of fanaticism came up on other occasions, such as when environmentalists were referred to as "wild-eyed" (1976:202), "bleeding hearts" (1974:234) or as being so extreme as to suggest that cow dung may pollute rivers (1985).

Environmentalists were occasionally viewed as being people who wanted to stop all development (1972), sometimes even against the will of the local people (1983). On one occasion "they" were accused of spreading "scare stories" about the Syncrude development, only to have it pointed out by an opposition member that the "scare stories" were coming from the government's own officials (1976). This same opposition member (Mr. Notley) presented what could probably be considered the only reasonable defence of environmentalists found in this part of the sample.

> But having said that I think that it is very important, Mr. Chairman, that while we discuss the pros and cons of various groups who are promoting pollution control or are very concerned about the impact on the environment, that perhaps we recognize that far from being composed of a group of extremists who are saying irresponsible things, that quite frankly, these groups in the main are making sane statements. (1972:27-36)

It was this same member who also recognized that the environmental groups in Alberta, "... had a great deal of impact bringing public opinion to the point where governments had to move" on environmental issues (1972:27-36). On the whole though, the ruling government tended to have some reservations about environmentalists.

Government attitudes toward pollution and the environment in general reflect the notion that nature would adapt to the environmental hurdles humans put in its way and that many problems would disappear if they could be dispersed enough. The following quotes (by the following speakers in order of appearance; Mr. Farran (PC), Mr. D. Miller (SC), Mr. Cookson (MOE), Mr. Cookson (MOE) and Mr. Lysons (PC)) were some examples of these attitudes.

> That although we harm nature and we can cause damage and there's every reason for real concern, nature is too big to be knocked over that easily. (1972:27-35)

> We must also keep in mind that dilution reduces pollution. (1972:27-41)

> At the present time those large areas are grey - wooded soils of a base nature and, as I suggested earlier, present emission studies have shown that they are essentially improving some of those soils. (1980:575)

> If, for example, they're (tar sands plants) properly dispersed, the cumulative effect in a given area would be far less. (1981:943)

> Nature being what it is and the environment being what it is, as the hon. member for Edson pointed out, the environment adapts. (1983:1617)

In earlier years there was also some notion that the government was overreacting to pollution control (1972) and

that they should be careful not to create "bothersome" regulations (1974).

The rather nonchalant attitude toward environmental pollution on the part of some members was countered by a more concerned attitude on the part of others. For example, it was argued as early as 1972 in the recorded debates that people did not want to believe what others were telling them about pollution and that if we were not careful we would destroy our own life support system (1972). This same point, that we had taken our life support systems for granted for a long time, came up again at a later date (1980). Overall though, the attitude that the environment would adapt was far more common than the attitude that we were taking it for granted and would have to stop taking it for granted.

5. The Government and Industry

This category includes two themes: the relationships between government and industry and the government's attitudes toward industry as reflected in what they said about industry. Probably the most obvious direct relationships between government and industry occurred in their joint ventures, such as Syncrude. This point will not be belaboured, except to note that it was the Conservative government which gave the final approval of the Syncrude project (1972). Government and industry also

had less direct relationships. The early Conservative government suggested that it would not give industry any grants for implementing pollution control equipment, with the exception of the purchase of such equipment for a Procter and Gamble pulp mill, based on a promise made by the previous Social Credit government (1972). The government suggested that it would only help industry in the most extreme situations, such as in preventing the major loss of jobs (1972). (15) The more "hard line" approach of the early Conservative government was quickly replaced by a more cooperative relationship between government and industry. For example, there was more discussion of dialogue with industry in problem areas (1981) and of jointly funded (government and industry) pollution studies (1982, 1983). One important function of the government in its relationship with industry had been to create a stable climate where long - term investment decisions could be made (1984). Overall though, the relationship between government and industry could probably best be characterized as being close, either as partners in business and research, or just in the fact that there was regular dialogue and amenable relations between the two.

One reference combined an example of the government's attitudes toward industry with a more subtle indication of the relationship between government and industry in this province. In this case the MOE (Mr. Bradley) not only exemplifies the generally positive attitude the government

has toward industry, but also seemed to confuse the two in his discussion.

> If you look at some of the other provinces in eastern Canada where the problem of acid rain is said to be, they are not doing as good a job of clean-up from these processing industries as we're doing here in Alberta. In the overall sulphur gas processing industry in Alberta, we generally remove 97 per cent of the sulphur compounds from the tail gases. That is very significant. When you look at the amount of sulphur that goes in and the amount that comes out, in terms of Alberta's situation and the other provinces who have an acid rain problem, I think we're making a significant movement forward in the province, where we've been committed to the removal of these substances for some time. (1983:748)

Generally, industry was considered to have a very responsible attitude toward pollution control. (16) If industry occasionally had problems they could be due to situations beyond their control, such as weather inversions or other industrial upsets (1983). Criticisms of industry were rare. In one case an MOE (Mr. Yurko) complained that the SO2 emission levels in some gas plants were appalling, where ground level concentrations had reached as high as 1.73 parts per million when the standard was .2 (1972). (17) Generally though, the government tended to have a positive attitude toward and a good working relationship with industry.

6. Industrial Issues

This category is made up of three themes; resource and other industrial development, industrial requirements and privacy and free enterprise issues. One aspect of resource and industrial development was the construction of

new plants or industries. For example, the sample included references to the construction of new plants (1972, 1986) and waste facilities (1981, 1982) and to expansion of existing facilities (1983). The sample also included more general references to development, especially resource based development. For example (according to Mr. Chambers, PC);

> Increasing development of our vast heavy oil deposits will be required to meet an ever - increasing market demand and offset the decline in conventional oil production. ... Tar sands development can handle a continually increasing revenue for the people of Alberta, not only directly through royalties, but also indirectly through the large employment payroll and related construction and manufacturing activity which will be associated with this development. (1972:10-33)

At one point the province was trying to encourage local development by suggesting the use of Alberta's lower sulphur coal to produce hydroelectric power in eastern Canada (1984). Sometimes the push for development was questioned, such as by recognizing that resources were limited and that development needed to be controlled (1972), that we should perhaps have a closer look at the effects of sour gas development before we surge ahead (1983) and a warning that we probably do not know many of the long-term effects of the increasing number of chemicals being produced by the developing petrochemical industry (1980). Although new development was encouraged, questions about that development were frequently raised in the Legislature.

Many questions were also raised about the requirements that had to be met by industry in Alberta. Responses to these questions could give a general indication of some of the environmental requirements that industry had to meet in this province. Sometimes these were expressed in relation to specific operations. These included such things as saying that particular companies had been put on a time frame to meet certain industrial requirements (1977,1981), that conditions had been put on an expansion (1983) and that a new plant would have to meet all CAA requirements before it would be given approval to go ahead (1986). Other more general requirements included such things as, all industries required a permit to construct and a licence to operate (1981), it was a licence requirement for many companies to submit extensive amounts of data (1982) and environmental impact assessments were required for projects that could have a significant adverse effect (1983). Generally, the discussion of the requirements in the Legislature amounts to little more than a list of requirements, general or specific, that have been attached to industry.

Comments on industrial privacy and the free enterprise system were relatively rare in this part of the sample. Most of the comments here were rather general references to privacy such as, it was very difficult for individuals to know what was going on at Syncrude (1976), that companies had a right to privacy of certain

(monitoring) data and that a release of that data would be a violation of trust (1983) and that Bill 214 (environmental impact legislation) was, according to Dr. Reid (PC), a "... completely unnecessary and unwarranted employment of the intrusion of government into either the commercial sector or the individual lives of Albertans" (1983:1617). Except for one occasion in this sample where a member pointed out the amount of money the government was putting into the "private" enterprise construction and operation of a particular plant (1985), the assumption of industrial privacy and the treatment of jointly owned developments as private was not questioned.

7. The Environment Versus the Economy

This category includes three themes; the environment versus jobs, industry and growth and the economy in general. As has been pointed out in the literature, the environment was traditionally played off against aspects of the economy. The Alberta Legislative debates indicated that Alberta was no exception to the rule. For example, it was often assumed that if environmental controls were increased jobs would be lost. It has been argued that one of the costs of environmental "fanaticism" may be jobs for youth (1972), that they had very few SO2 problems in Newfoundland, but they also had very few jobs (1976) and that pollution control would result in job loss in general (1972). Interestingly, it was also occasionally argued, to

a largely skeptical audience, that jobs would be created by upgrading pollution control equipment (1972, 1983).

One of the reasons it was assumed that jobs would be lost was that it was assumed that industries would close down if pollution control demands were too harsh. This was particularly noticeable in the discussions over Bill 214, where it was almost taken for granted that if you tried to protect the environment by conducting impact assessments you would essentially stop industrial development (1983). The implications of that type of belief were probably best exemplified by one opposition member (Mr. Notley, NDP) who noted that in the 1960's, when there was little industrialization in the province, there was a strong commitment to tough environmental legislation, but when industrialization increased a lot of that commitment subsided (1980).

Beliefs that industry and the environment had to be in direct competition had implications for the broader notions about the relationship between the economy and the environment. It has been argued that it was not possible to totally reconcile a high standard of living and a clean environment (1972), that SO2 emissions had to be balanced with economics (1981) and that growth brought both difficulties and benefits (1980).

One example (from Mr. Peacock, Minister of Industry and Commerce) combined all three themes in this category.

> We're well aware that in this pursuit of man and his employment and his development, that he has a

> responsibility to his environment and those that come after him. Therefore, we have to feel this thing together - what the industry can stand and how profitable that particular industry is, how far you can go with it, whether it relates to our resource industry; whether it be in coal, or oil, or forest products, where they're capturing something that nature has given them or whether they're in the manufacturing area in which they're creating and developing something with man's ingenuity. So there's a complex problem here of how to relate, how far you can go in pollution control. (1972:35-47)

Overall, there was an element of the Legislature who seemed to believe that the environment was in direct competition with jobs, industry and the economy in general.

This did not mean that a critique of these positions had been entirely absent from the Alberta Legislature. As already noted, it had been argued that jobs would be created by pollution control. It had also been pointed out that while the province had been rushing to develop the petrochemical industry more and more SO2 was going into the air (1980). One member argued that while there may have been short-term "benefits" to the pH levels of northern soils from SO2 emissions that perhaps the long-term disadvantages should also have been considered (1980). It was also noted that Alberta had a tendency to develop the economy and worry later about the affects, as the government had done in the past with the natural gas industry (1981). One member even raised the point that we had to challenge the notion that growth was synonymous with progress (1972). Overall though, the notion of a direct relationship between the environment and the economy was maintained. (18)

8. Nonenforcement Government Action

This category is composed of four themes; research programs and studies, hearings and inquiries, monitoring and environmental precautions. Probably the most common form of government action where the protection of the environment was concerned was the conducting of a research program or study. Right from the time the Conservative government took power in this province, doing studies of "the" problem has been a popular response to environmental concerns. For example, the new government stated they wanted to study problems of urban and resource based development, noise and odour pollution, SO2 emissions and standards for sour gas plants, existing air pollution controls, the Pincher Creek area and the affects of tar sands development (1972). The government had also sponsored many more long-term research programs, either on their own, or in coordination with others, including the federal government (1976), other provincial governments (1981) and industry (1984). Many studies have been conducted in certain areas of the province such as the Pincher Creek area (including the health studies already discussed) where numerous gas plants are located and in the Fort McMurray area where tar sands operations are located. Concerns over sulphur emissions, especially SO2, were probably the most common source for the initiation and conducting of studies and longer term research programs. This was not particularly unusual in a province where the

oil and gas industry, which produced sulphur by-products, played such an important role.

Studies and research are necessary in order to determine the origins, "causes" or solutions to potential or existing problems. On the other hand, studies can also become an excuse for a lack of other kinds of action. Certainly on more than one occasion members of the ruling government have argued that other action, or even other studies, would have to wait until studies in progress were completed. It is important to wait for the results of studies being conducted but, at the same time, the study relieves the government of a certain amount of responsibility for other types of action. If a government chose to stall, for whatever reason, probably one of the best available tactics would be to conduct a study or set up a research program.

The other problem with studies is that they vary in degrees of reliability and validity. Government members may not be fully versed in the process of scientific research and therefore may not have the tools to judge the research. This creates the potential for manipulation, even just in the way the results are presented to the government members. Even if the results are presented accurately questions about validity may be raised. For example, many concerns were raised about the validity of the Snider study of health problems in the Pincher Creek area (1983). Finally, studies funded by industry also

raise concerns for the potential of a certain level of bias. It is interesting that the Alberta government not only allows but encourages industry to fund the very research that could potentially find industry at fault for environmental damage or problems. Many provincial government members seemed to think that industry funding demonstrated industrial responsibility. For example (from Mr. Cookson, MOE);

> Mr. Chairman, I think it's important to put on record for the public in general that industry does become heavily involved in research in environmental programs. I have a document in front of me, entitled Air Quality Management at Syncrude Canada Ltd. It reveals quite clearly some of the work the industry itself is doing as part of its responsibility toward the environment. (1981:1614)

The validity of this type of research was seldom questioned, which created some potential for abuse of this level of trust.

Another form of government environmental action was to conduct a hearing or inquiry. Hearings and inquiries were less common than studies and research. References to hearings and inquiries included requests for public hearings to be conducted (1977, 1983), questions about ongoing hearings (1982, 1983), critiques of ongoing hearings and inquiries (1980, 1983) and comments about the hearing process (1981, 1983). In more recent years there have been unsuccessful requests for hearings into the sour gas industry (1983,1984). One request for an inquiry into the sour gas industry, following another sour gas well

blowout, met with the following response from Mr. Bradley (MOE).

> Both the acid deposition research program, which will be doing extensive research with regard to both biophysical and human health research, and the medical diagnostic review, which is under way in the Twin Butte area, are responses of the government with regard to concerns expressed about sour gas processing in the province.
>
> With regard to the specific, I don't believe any further action is required at this point in time. (1984:1280)

This example was an interesting combination of a request for an inquiry with the government's response of the action taken - studies were being conducted.

Another form of government action was to monitor the problem. In this sample that most often meant monitoring the pollution. This included general monitoring, such as for the creation of the Air Pollution Index (1973), monitoring of transport pollution (1974, 1978) and, most often, the monitoring of industrial pollution. Monitoring of industrial pollution included references to monitoring of specific operations, such as the Western Co-op Fertilizers plant in Calgary (1981). References to monitoring were also included in the discussion of the bills related to the public access to monitoring data. Overall, monitoring was a form of action that had very similar consequences to the study; it was necessary to monitor to collect information but at the same time monitoring of a problem could be used as an alternative to other forms of action.

Finally, members of the government occasionally mentioned environmental precautions. Some references to precautions included questions about the precautions the government was going to take for example, in the construction of a plant (1972) and in the protection of the environment following a sour gas well blowout (1983). Other references included suggestions of precautions that should or would be taken, such as , air pollution devices for cars should be used in urban settings but may not be necessary in rural settings (1974) and that in the eastern slopes of the Rockies there would be no drilling in the tourist season and any uncontrolled flow of gas would be ignited (1986). Other suggestions of precautions included warnings from the government's own departments of dangers if precautions were not taken (1976) and a general warning to be careful because of a lack of knowledge about what chemicals and other things could cause problems in the future (1976). Overall though, there were limited references to environmental precautions in the debates. The focus was more on studying the problem after it had been created, or was in the process of potentially being created, rather than on taking precautions prior to any other action.

9. Relations With Other Jurisdictions

This category includes three themes; inter - jurisdictional pollution, inter - jurisdictional issues and international references. Most of the concerns raised

about the transfer of pollution from one jurisdiction to another were related to Alberta's "contribution" to western Canadian pollution. These concerns were especially raised in relation to the emissions of sulphur in northern Alberta, mostly from the tar sands plants, and the potential that these emissions may cause damage to other areas, especially northern Saskatchewan. Examples of this ranged from questions about the affects of our resource development on Saskatchewan (1980, 1985), the potential for acid rain in the area (1984, 1985) and assurances from the government that there have been little, if any, affects on western Canada from the emissions (1983, 1984). Overall, there was evidence of some concern of the affects of resource extraction on other areas of western Canada (mostly from members of the opposition) and general assurances by government members that the extraction had little affect on our neighbouring provinces.

The theme of inter - jurisdictional issues included examples that related to issues other than the transfer of pollution from one jurisdiction to another. Some of these references related to legislative control over specific pollution concerns. For example, that the burning of stubble in farmers' fields, which on occasion has been a very dangerous pollution problem, was controlled by municipalities (1974) and that anti-pollution devices for automobiles were controlled by federal legislation (1974, 1978). This theme also included some indication of

federal/provincial relations where pollution control was concerned. Some examples were references to a federal/provincial task force looking into pollution matters at Syncrude (1976), federal/provincial research relations (1978), Alberta's contribution to a Canadian agreement to reduce acid rain (1984) and a discussion of Alberta's refusal to sign a draft accord made by federal and provincial environment ministers (1975).

This category also included an example of interprovincial relations over the issue of using western coal to produce eastern power (1984, 1985). It was argued that if Canada, especially eastern Canada, was serious about reducing acid rain, it would make more sense for Ontario Hydro to use western Canadian coal, which had a low sulphur content, than to use eastern American coal, which had a high sulphur content (1984, 1985). The government even formed a task force to look at this issue, but there was a reluctance to increase the use of western coal (1984, 1985). Although there could have been many reasons for the lack of agreement, such as transportation problems and a lack of desire on the part of coal producers (1984), one member (Mr. Notley, NDP) pointed out an overriding concern.

> Mr. Chairman, we can't do much about acid rain if we allow a big province like Ontario to use coal which has a very high sulphur content as its base for generating electricity. Here has been a wonderful opportunity to expand our markets. But what hasn't been said and what needs to be said now is that because of the energy wars of the 1970s, we do not have the kind of close relationship with either the federal government

> or the government of Ontario which would allow us to begin to move into that market for the western coal producers. (1984:561).

The discussion of the use of western coal was also related to the theme of international references, partly because Alberta was competing with coal purchased from the United States market and partly because the issue of acid rain was brought into the coal discussion. Canadians had criticized the Americans for their part in the contribution to the acid rain problem in Canada. The Canadian government even sent a diplomatic note to the United States on the topic of acid rain (1984). Many of the international references were related to the coal or acid rain issues (1983, 1984, 1985). Other international references addressed the more general question of the relationship between competition on world markets and pollution control (based on the assumption that stringent pollution control would make Alberta less competitive on a world market) (1972, 1983) and that it would do little good for Alberta to have even one hundred percent protection of the environment if other countries in the world did not address these concerns (1985). Although very few references fell into this category, these few references would indicate that pollution was of a far greater international concern when we had a product to sell that would reduce pollution than when we had to compete in other areas on a world market.

10. Pollution

This category is composed of five themes; emissions in general, pollution sources, nonindustrial pollution, environmental dangers and accidents. Since many aspects of emissions have already been addressed, this theme will need little elaboration. (19) Most references to emissions, from the early 1970's to the mid 1980's, relate to sulphur or, more specifically, sulphur dioxide emissions. Concerns have also been raised about H2S (1976,1981,1984), NO2 (1985,1985) and arsenic (1983), but issues related to SO2 emissions predominated. As a generalization, opposition members have tended to raise concerns about emission levels while ruling party members have tended to defend or compliment the level of emission control. One MOE (Mr. Bradley) discussed Alberta's emission control record by comparing it to other provinces.

> It should be noted that in terms of SO2 emissions - and these are just some further statistics - Alberta processes 16 times the amount of sulphur of Quebec and Manitoba, three times that of Ontario, and has the second lowest SO2 emission level of any province in the country, the lowest being British Columbia. So the other three emit more SO2 than we do. (1983:850)

Most of the concerns over emissions were related to tar sands and sour gas development. Overall, ruling party members had tended to claim that Alberta has a very high rate of emission control, generally around 97 percent or better sulphur recovery (1981,1983,1984).

Provincial sources of pollution were clearly related to concerns about sulphur emissions. In other words, most pollution sources mentioned tend to be related to the tar

sands industry (Syncrude and/or Suncor) or the sour gas industry, especially to wells in the Pincher Creek area. (20) Other pollution sources mentioned were Western Co-op Fertilizers in Calgary (1982), coal dust pollution (1974), pollution from diesel buses in Calgary (1974) and pollution discharged from the University of Edmonton (1973). According to one MOE (Mr. Yurko);

> I would say, though, that in Edmonton industry supplies about 50 per cent of the pollutants and the automobile about 50 per cent. In Calgary about 85 per cent is attributable to automobiles and only about 15 per cent to industry. (1973:67-3632)

In general, as was noted in the above case, discussions related to nonindustrial pollution tended to occur in the first two or three years of Conservative rule. There was much early concern about automobile pollution, especially in the urban centers (1972,1973,1974). Other early nonindustrial pollution concerns were indoor noise pollution (which may or may not be industrial pollution) (1972), indoor pollution in the form of smoking cigarettes (1974), stubble burning in farmers' fields (1974) and general indoor air pollution (1974). Nonindustrial pollutants were hardly mentioned in later years, with the exception of a brief discussion of motor vehicle pollution (1984) and of farm related pollutants, such as odours (1985). On more than one occasion individually produced pollutants were compared with industrial pollution. For example (from Mr. Drain, SC);

> Now I have an interesting situation where we have a small sawmill operating which produces about 4,000 feet of lumber per day. It has got an emission control order by which it must cease and desist to smoke. So then evaluating the amount of residual waste that comes from this particular operation and relating it to the population in this particular village, if the villagers decided to burn firewood for fuel, they would in effect create more pollution than this particular burner. (1974:1453)

Overall though, concerns about automobile pollution dominate this particular theme.

In the discussions of pollution, questions and comments were occasionally raised about environmental damage. Generally, members of the ruling government had tried to assure the Legislature that there had been little or no environmental damage from industrial activity in Alberta. For example, it was claimed that there were no visible results of pollution damage from the GCOS plant (1976), no evidence of biological damage from acid rain in Alberta (1981,1983,1984) and no evidence of damage to soils in Alberta (1981). Interestingly, while there had been claims of no damage to northern soils, one MOE (Mr. Cookson) made the following comments.

> However, I've said that other factors cause the soils to become more acidic. We also have to address ourselves to that. Agriculture is concerned, and so are we, about the use of certain fertilizers and some farming practices. Even the growing of canola can have an effect on pH. It's one of the reasons, too, why we support and the Minister of Agriculture has responded - funding assistance on freight for the use of liming to bring the soil back to a point where it can be as productive as it was prior to the change in pH. (1982:508-509)

While Mr. Cookson claimed the acidity could be caused by other factors, the acid emissions into the air probably did not help the situation and would have contributed to the soil acidity problems. Despite claims of a lack of damage, concerns have been raised about the possibility of environmental damage (1976). As one opposition member (Dr. Buck, Independent) phrased it;

> But the former Minister of the Environment the hon. Jack Cookson said a little bit of acid is good for the soil. Well, this is true; a little bit of sulphur is good for the soil. But how much is too much? (1985:804)

Concerns about environmental damage were related to the last theme included in this category, accidents related to pollution. One such accident was an AMOCO well blowout (1978). When asked why the Assistant Deputy Minister of the Environment had stated that the report on the blowout would show minimal environmental damage, especially when the Department of Energy and Natural Resources said it was too early to make an accurate assessment, the Minister (Mr. Russell) responded that he had not seen the report, "... but it was fairly easy for Environment personnel to give that assessment prior to the report's being published" (1978:1022). There were actually very few references to accidents and all of them, with the exception of an explosion at a Dow Chemical plant (1981), were related to sour gas well blowouts. At least three references related to AMOCO well blowouts (1978,1983). One reference included a request for an inquiry into the gas industry, following

another gas well blowout (1984) and two related to government responses to blowouts (1983, 1985). Generally, it would appear that the major type of accidents associated with air pollution were sour gas well blowouts.

11. Other Themes

This category includes all of the remaining themes; standards, budgets, costs (other than costs to the public), rights, science and technology and the future. Government members were generally proud of the environmental standards Alberta had adopted, but even so the standards were occasionally under review (1972, 1980). Relaxing the standards had generally not been considered (1973,1982,1986). It had been argued that Alberta had strict standards for SO2, even stricter than Ontario (1986). Although one member referred to the standards as needless and unduly harsh (1976), there seemed to have been an overall satisfaction with the standards Alberta has chosen to adopt. (21) According to one member (Mr. Zip, PC);

> Pollution standards in this province have been raised consistently and very significantly since 1957. The experience in Alberta has been that we are moving toward the lessening of environmental hazards rather than increasing them. (1983:1388)

Very few budgetary items were included in this sample, mostly as a result of the referencing procedure. Two of the budget references refer to monetary amounts, such as the budget total for the Department was $ 121,090,649 (1980). Other references refer to shifts in budget, such

as increasing staff (1972,1974) and a reduction in the air quality budget to 2.5 million (1982). Two points of concern about budgeted items were also raised in this sample. In one case a member questioned the government's choice to spend less than one percent of the Environmental budget on research (1981) and in another case a member (Mr. Gurnett, NDP) questioned cuts to the Environment Council of Alberta (1985).

> The Environment Council of Alberta has done some very important work, and I see that they're going to be looking at a cut of over 11 percent in their budget for the year ahead. I wonder if that's related to the fact that they don't hesitate to criticize some of the directions the government is taking with the environment and it makes it harder to effectively do that job if they don't have the money available (1985:630)

Overall though, specific references to budgetary items were relatively rare.

References to cost (other than to the public) were more common. Early in the Conservative governments's reign the MOE stated a rather strong policy relating to the costs of pollution control. Mr. Yurko argued that the costs of a plant could not be separated from the costs of pollution control equipment and that plants should not be built if they were not economically feasible considering pollution control equipment costs (1972). He also argued that the province would give companies little help to purchase the equipment (1972). Later government members expressed more concern and had a "softer" approach toward company costs. For example, although it was pointed out that Syncrude

could install the best available technology for a relatively small cost, the government said it would be unfair and too costly to them to install that equipment (1980,1981). In the case of the Peace River plant which was allowed to operate without pollution control equipment for two years (the Inverness project), one opposition member (Mr. Notley, NDP) said that the ERCB "... looked at the cost figures for the company and decided that the concerns of the community would be set aside" (1983:748). Also, a large number of concerns were raised about the potential costs that may occur as a result of the opposition bills which would have guaranteed access to monitoring data (Bill 209) and would have guaranteed environmental impact assessments (Bill 214) (1983). Overall, the focus had changed from assuming industry would pick up the costs of pollution control to more concern over pollution control costs to both the government and industry.

There were very few references to rights in this sample. Three early references related more to individual rights. These included, that people now expected they had a right to clean air (1974), that the majority did not have the right to impose their will on the minority in pollution control (1974) and that a bill suggested that the government would have more control over people's lives in their homes, which a member seemed to find offensive (1974). Two later references referred to companies'

rights. In one case it was argued that an access to monitoring information bill would interfere with company rights (1983) and in another case it was argued that Bill 214 was an attempt to infringe on the rights of industry (1983). While little could be made of so few references, it was interesting to note that they follow a similar pattern to other themes of an early interest in the concerns of the people and a later shift to the concerns of industry.

Discussions including the themes of science and technology seemed to break into two time frames - the present and the future. References to present technology and science included; excitement over the rapid evolution of technology in the tar sands area (1976), concerns over the government's choice of requiring companies to use best practicable technology rather than best available technology (1980,1981,1983), beliefs that science and technology would lead to a better understanding of problems (1982) and faith in the work of science (1986). The last example was particularly interesting because it related to a concern pointed out earlier about the government acceptance of scientific studies. In this case a member was questioning the reliability of the choice of control groups for the Snider study of health on the Pincher Creek area (1986). The Health Minister (Mr. Dinning) said that he was not an expert, but that the group which did the work had "... some eminence around the country and I gather

around the world ..." (1986:34). Later, a member said that the "blue-ribbon" group recommended that further studies of that nature not be conducted (1986). That kind of faith in work that may not be fully understood could be a dangerous thing.

A strong faith in science and technology was also demonstrated in terms of the future. For example, it was hoped that technology would solve some of the problems of pollution control devices on automobiles before the government would have to look at them (1974) and that the Alberta Environment Center was working on the problem of removing SO2 from tail gases by developing a new process (1985). Probably the best example of the link between technology and the future (as well as their relationship to economics) occurred in a Minister's (Mr. Cookson) response to a question of whether or not the government assessed the impact of cumulative emissions from the Fort McMurray area development.

> I really can only add to that question by saying that we have taken into consideration the impact of future plants in the general area. We believe that in terms of technology, plants can now be constructed with even tighter controls with regard to SO2, and our own people will be pursuing that in terms of new plants coming on stream. I suppose the question, then, is what the picture down the road will be when perhaps 10 or 15 plants in the general area are producing oil. In a sense that is hypothetical. If we don't come to some sensible arrangement with the federal government, it really is a hypothetical question. But assuming we do come to some sensible arrangement with the federal government in terms of oil pricing, we will continue to explore new areas of technology in order to protect that general area, including the area

> involved in the province of Saskatchewan, because the general direction of the winds in the area I'm describing is from west to east. (1980:575)

Many of the references to the future related to questions about or comments on the number of plants that could be developed in the Fort McMurray area (1973, 1980, 1981, 1984) and the potential danger these plants could cause to the environment. Other references to the future included; that Bill 18 may be needed to enforce automobile pollution in the future (1974) and questions of whether the effects of flaring off sour gas wells would be tested in the future (1986). Overall though, the predominant future concern seemed to relate to the Fort McMurray area, especially SO2 emissions, the potential for acid rain and the number of plants that could be developed in the area. (22)

E. Summary

In the beginning of this chapter it was stated that one way to understand the role of the government, and to a lesser extent the state, in relation to pollution concerns was to look at the government's actual discussions in Alberta Hansard. Although the method of data analysis prevented hypothesis testing in the strictest sense, some generalizations could be made about the role played by the government in protecting environmental quality in Alberta. As a generalization, their role could probably be characterized as being more supportive of industry and of

development than of the environment. This was evidenced by things such as; making only minor amendments rather than more structural changes to deal with the problems of environmental pollution; attitudes that the government has had a good control record, and if there were problems the environment would adapt; stating their objectives and policies in very active or assertive terms while being much more discretionary in terms of implementing policies; cooperating and working very closely with industry; encouraging development; propagating the notion that the environment and the economy were in direct competition; assuming forms of action that had very little affect on industry and tended to be more environmentally reactive than preventative; arguing that industrial activity had caused very little, if any environmental damage; not encouraging or allowing inquiries or hearings into problem industries and having relatively little concern for the future over the problems being created by present development.

The above, being generalizations, leave room for exceptions. Probably the most notable exception was the role played by the opposition members. (23) Some opposition members asked questions, raised problems, criticized the government's actions, or lack thereof, and overall demonstrated more concern for environmental quality than most ruling party members. Unfortunately, this type of analysis did not allow for the answering of the question

of the degree to which demonstrating this kind of concern was part of the role played by opposition members (in other words, to oppose) or was part of a genuine desire to be more protective of the environment.

One clue to the relationship between attitudes and roles can be found by looking at the past history of the Conservative government. Prior to gaining power the Conservative party members were highly critical of the lack of environmental protection offered by the Social Credit government. Some of that concern was carried into the first years of Conservative rule. Rather quickly though, the more "hard line" approach to industrial pollution was softened. This seemed to have coincided with a reduction of public interest in pollution issues. Part of the change in the expressed attitude of the Conservative government may have been related to public opinion but part was also probably related to a change in role. In other words, it would appear that as a member of the opposition the role - occupant had greater latitude to criticize environmental protection policies than as a member of the ruling party. This of course would not necessarily mean that other opposition party members would follow the same course if they became the ruling party. The only way to find out what would happen would be to elect a Liberal or a NDP government. The point here was that government actions were probably influenced by both their role and by party ideology.

This analysis has given us a view of government ideology, roles and attitudes toward air pollution control. This is though, only part of the picture. The next step will be to look at material related to enforcement of legislation. This will give us not only further insight into the government but also some indication of the state response to air pollution.

FOOTNOTES

Chapter V

1. Unfortunately, the debates surrounding the creation of the original Clean Air Act (CAA) were not available in a practical form. Alberta Hansard in its complete form has only been available since 1972, the year after the CAA was passed into legislation.

2. All references to Alberta Hansard in this chapter will be a date, followed by a page number for quotations.

3. The years 1972 to 1986 were chosen because 1972 was the first year Alberta Hansard was published in its present form and 1986 was the last complete year with full references available.

4. For example; emissions of SO2, HS and vinyl chloride, the gas industry and its health affects and environmental law.

5. It is hoped that this bias would not have a great affect on the analysis. It is for this reason that if a page was referenced the whole page was included in the analysis. This allowed for the input of other speakers on that particular topic. Also, if the point of interest extended on to other connected but non - referenced pages, these pages were also included in the analysis. (Twelve pages were added in this manner.) Overall, it was felt that this referencing method allowed for the inclusion of the majority of the relevant debates, but it must be recognized that there may be a slight bias toward the exclusion of debates related to more specific environmental issues in which the MOE was not immediately involved. (If it can be assumed that the MOE represents the government's position then this bias should not be too serious because throughout most of the Conservative government's rule the vast majority of Legislative members have been Progressive Conservative, with as many as 75 out of 79 members having PC affiliations. In this case the government and the Party position would probably be rather similar.)

6. It was felt that since the state and the government's approach to enforcement was so theoretically important enforcement would be discussed separately.

7. If the categories for analysis are not clearly specified or systematized prior to analysis, then the analysis is considered more "qualitative" (Berelson, 1952).

8. This was a relatively random choice.

9. Most of the proposed legislative changes discussed here will also be discussed in the next chapter. Only non-enforcement elements will be discussed here.

10. They are often related because problems could lead to reforms.

11. One reference to the public contained an interesting example supporting Chambliss and Seidman's (1982) notion of the importance of the distinction between the government and the state. The member (Mr. Sindlinger a Progressive Conservative) said;

> In a sense that says to me that the minister and his department are almost a third party between the government and the people of this province. In the early developmental years of this province, it might have been that the flow came from the government trying to develop industry, going through the Department of the Environment to the people. However, those days are gone. I think it is incumbent upon the minister and his department to represent those concerns of the people of Alberta, in regard to the environment, to the government and the things it does. (1981:803)

He goes on to say that the public's environmental concerns should no longer be delegated to a secondary role in Alberta (1981). Although this example is not typical, it certainly is theoretically interesting.

12. See for example 1980:1614, 1983:1192 and 1986:34.

13. Perhaps a less discretionary aspect of this example was that Shell was willing to construct a plant with recovery equipment, but the government received the application from the much smaller company first so they went with that one (1983). This is probably also an example of the Conservative government's preference to work with smaller, local operations if possible, in this case at the expense of the environment.

14. This is also an example of the jobs versus the environment theme, which will be discussed later.

15. These companies were not completely "abandoned". They could get loans from the Alberta Opportunity Fund to install the equipment, they were not taxed on the land or the equipment used for the pollution control and the federal government allowed for an accelerated write-off of the costs of the equipment (1972).

16. For example, see 1972:4-53, 45-80 and 1983: 848, 851.

17. Although this was a criticism of industry it was probably also an attempt by Mr. Yurko to document "... the existing conditions in sour gas plants as we found them as a Government when we took over" (1972:4-55).

18. It should be pointed out that while these critiques are important, they essentially do not challenge the notion that there has to be some sort of balance or tradeoff between the environment and the economy. Basically, these critiques just argue that the balance should be more in the direction of environmental protection.

19. Since these themes are not mutually exclusive, references to emissions have occurred with many other themes, therefore they will only be briefly summarized here.

20. For example, see 1976:203; 1977:148,790; 1980:286,574 and 1981:787,2080.

21. This theme will be explored in more detail in the next chapter.

22. It should be noted that most of the concerns for the area were raised by opposition members.

23. It should be stated again that these were generalizations. Obviously not all ruling party members continually place the concerns of the economy above the environment. Also, not all opposition members did the opposite. Some examples of quotes made by Social Credit members in the early 1970's included in this chapter would indicate that not all opposition members placed concerns for the environment first.

CHAPTER VI

STATE RESPONSE : THE ENFORCEMENT RECORD

A. Enforcement Theory

Chambliss and Seidman (1982) have drawn our attention to the concept of symbolic law. Symbolic law is law "... that seemingly responds to a particular demand, without it inducing in its addressees the behavior it prescribes" (Chambliss and Seidman, 1982:315). This is law which is enacted in Legislature but is not enforced by the state. According to Chambliss and Seidman (1982) most of law creation takes place in full public view but decisions about enforcement usually take place in a less public setting. This is important for notions of legitimacy. The process of the creation of legislation, which is subject to full public scrutiny, could affect the legitimacy of the government. The less public process of enforcement is far less likely to affect legitimacy. In terms of relative autonomy;

> The state nowhere appears so autonomous as in the lawmaking process. It nowhere appears so little autonomous as in the law - implementing process. (Chambliss and Seidman, 1982:316)

If governments pass symbolic law it allows them to exercise their relative autonomy to create law and allows them to maintain legitimacy by claiming to have met the public's demands by passing strong legislation. At the same time

this law has little affect on the relations of production because it is seldom implemented.

Related to the notion of symbolic law is the distinction between "black letter" law and the law in action or the real rules. In relation to environmental law in Canada, a large gap has emerged between the law as it is written and the law as it is implemented (Rankin and Finkle, 1983). According to Rankin and Finkle (1983);

> While the "black letter" of legislation says one thing, the customary, routine activities (that is endless negotiation and discussion) present quite a different message. Though the written environmental legislation in a particular jurisdiction is stringent, industrial and other polluters accurately perceive, on the basis of the routine, habitual and expected behavior of public officials and politicians, that there exists little likelihood of any legal action being commenced against them for the violation of that legislation. The real rule is quite different from the "black letter" legislation. (Rankin and Finkle, 1983:36)

It is then in industry's best interests to ascertain the real rules before they implement pollution control equipment to comply with the legislation. A company that voluntarily complied with legislation that the government had no intention of enforcing could put themselves at an economic disadvantage in relation to their competitors who chose not to comply. The distinction between the "black letter" law and the real rules also creates an advantage for the more powerful polluters who have more resources and are able to shape the rules with their power (Rankin and Finkle, 1983). The smaller operator is more likely to obey

the rules and, ironically, is also more likely to have the rules enforced against them (Rankin and Finkle, 1983).

B. General Enforcement Issues

The real rules are established in Canada, like in other countries, through the process of bargaining and negotiation (Rankin and Finkle, 1983). According to Rankin and Finkle, the conclusion of a series of studies conducted for the Economic Council of Canada states that as far as environmental regulations are concerned the rules are never certain, except perhaps in some symbolic sense (Rankin and Finkle, 1983). Norms of conduct are negotiated and renegotiated continuously until the industry decides to comply or not to comply. The "black letter" law is treated as a departure point for discussion and negotiation rather than as the real rules (Rankin and Finkle, 1983). Although Rankin and Finkle (1983) acknowledge the need for negotiation, they point to the problem that, "(n)egotiation amongst interest groups who are far from equal in their financial and informational resources, however, is a relatively meaningless exercise" (Rankin and Finkle, 1983:39). For example, when arguing that the pollution control equipment needed to reach a certain level of emission control is too costly, industry would probably have more information on the costs than the regulator (Rankin and Finkle, 1983). More financial and

informational resources create the potential for industry to control the negotiation process. The resulting compromise legislation and enforcement may not be a reflection of ecological necessity (Rankin and Finkle, 1983).

Lack of enforcement has many sources. It can come from legislation which is poorly designed so it is ineffective (Stevenson, 1983). It can also come from a lack of political will to enforce legislation which could potentially be effective. As a society we tend to treat harms that are a result of economic activity differently than we would treat harms that originate from other sources, such as being attacked on the street (Schrecker, 1984). We were willing, at least until recently, to tolerate certain kinds of violence in return for economic growth and development (Schrecker, 1984). Since economic crime is treated somewhat differently than street crime, politicians and enforcement officers may perceive there is a lack of public will to fully enforce environmental legislation. (1) Whether the lack of public will for enforcement still exists today, in an era where the general public are concerned about the environment, is questionable. In any case, as long as the government and enforcement agencies perceive a lack of will it will affect their enforcement decisions.

Another indication that there may be a lack of political will to enforce the legislation is that

regulation agencies are usually understaffed and under financed (Rankin and Finkle, 1983). Capital expenditures on environmental protection and management are generally quite low. In Canada they average about .6 percent of the federal and about 2 percent of the provincial budgets annually (Rankin and Finkle, 1983). (2)

Another problem which may hamper enforcement is the lack of training of enforcement personnel. At the field level this may mean personnel who do not know when and how to gather the data needed to meet the strict evidentiary requirements in courts. This may be particularly important since the advent of the strict liability offence in which the defendant has the due diligence defense available. For the strict liability offence the prosecution has to demonstrate that the accused committed the offence but they do not have to prove mens rea (Jeffrey, 1984). If the accused can demonstrate that they took reasonable care the defense of due diligence is allowed. It can be very difficult to gather the evidence necessary to counter a due diligence defense (Jeffrey, 1984), so it is necessary to have well trained enforcement personnel. It is also important to have prosecutors and judges who are if not expert, at least familiar with environmental law. This may be especially important for the presentation and understanding of scientific data that is given as evidence in environmental cases (Rankin and Finkle, 1983). If governments are not entirely committed to enforcing

environmental law, specially trained enforcement personnel are less likely to be available from the field to the court level.

C. Enforcement in the Literature

In Gunningham's (1974) study of pollution legislation in Britain, he noted many of the problems with enforcement of pollution control legislation that still exist today. Barriers to effective enforcement were built right into some of the legislation. Industry collaborated with the government in constructing the bills. For example, Britain's original Clean Air Act was unenforceable so, after persistent criticism, the bill was supposedly adapted to give it more "teeth". Actually, all that happened was the householder had to adapt to smokeless fuels in clean air zones. Industry had used its power to have the legislation drafted so it would have little affect on them. At the same time the Act lulled the public because visible emissions were reduced, mostly by the efforts of the private householder (Gunningham, 1974).

Generally, enforcement of environmental legislation in Britain had been very low. Gunningham (1974) concluded that it was apparent the government was unlikely to create more efficient laws unless under extreme pressure to do so and then probably only in the presence of an environmental crisis. The two major justifications for a lack of

enforcement were that pollution reduction would have its social costs, in the form of a reduction of a standard of living, and that prosecution was not the most effective means to control pollution anyway. It was argued that tactics such as persuasion and negotiation were far more effective than the expensive, time - consuming, unpredictable prosecution approach. (3) Prosecution would place an unnecessary burden on the court system. Gunningham questions these justifications.

> Thus it does not necessarily follow that strict enforcement of legislation would not be an effective means of control in Britain. The odd thing about a claim that a tough uncompromising attitude would clog the law courts is that it is seldom if ever advanced as a reason for adopting a gentle approach to crimes against property. Nor are the arguments of cost, difficulties of enforcement, lack of manpower, used to justify a policy of persuasion rather than strict enforcement against property crimes - perhaps because they attack the moral and economic base of propertied interest groups. (Gunningham, 1974:69)

The members of the state whose job it is to enforce the legislation were more likely to see their role as to help industry continue rather than to stop pollution. The Inspectorate in fact may have lacked any real power to enforce the legislation so it may have attempted to portray the image that it was managing pollution. Gunningham's conclusion on the enforcement of English pollution control legislation was that it would attack the basis of capitalism, for example, profit making and growth, and was therefore not likely. Any compromise would not threaten the basic interests of capitalism (Gunningham, 1974).

Hawkins (1984) has also given us some insight into the enforcement of British pollution control legislation. Hawkins emphasized that law enforcement needs both a moral and legislative mandate. Not all rule breaking or technical violations of the legislation is sanctioned by the enforcement officers. Behavior that is sanctioned is that which is perceived to be negligent or deliberate and that which is conducted by someone who is uncooperative, symbolically assaulting the legitimacy and authority of the agency. Agencies are well aware of the political climate in which they operate and they feel they have to maintain a delicate balance between economic interests and the public welfare. It was important for the officers to preserve their organization so it was necessary to maintain the appearance of activity while tolerating the activity they were supposed to regulate. Regulation implies some tolerance so, "... the issue is not whether to allow some pollution, but how much pollution to allow" (Hawkins, 1984:10). Bargaining was possible because the law was drafted in a way that eliminated the need for formal enforcement. In a social and political climate of ambivalence about the activity they were supposed to regulate, enforcement was largely symbolic. If a case actually went to court it was considered a failure from the agency's point of view. Their goal was to secure compliance, so a prosecution indicated a failure of the compliance approach (Hawkins, 1984).

Although the studies of both Hawkins and Gunningham were conducted in England, many of the same aspects of enforcement of regulatory legislation have appeared in Canada. According to Chappell (1987) the traditional philosophy of enforcement agencies in Canada has been similar to the compliance strategy discussed by Hawkins, the focus being on consultation, with limited prosecutions. Prosecution is only considered a last resort, after negotiation has failed. The problem is that polluters may attempt to delay compliance if the government appears unwilling to use prosecution. Even if a prosecution occurs and a conviction is obtained sanctions tend to be very lenient. All of these things tend to discourage prosecution (Chappell, 1987).

Chappell (1987) lists some of the Canadian barriers to effective prosecution of environmental legislation. First, the strength of our economy relies on a healthy business and industrial sector, especially in single industry areas. This gives corporations a lot of power and influence over governments, especially if that corporation is a branch plant which can threaten to leave the country if environmental enforcement becomes too strict. Governments may compromise to meet business' demands. The second problem, which is connected to the first problem, is that governments are reluctant to commit many resources to monitor compliance and enforce legislation. Investigations may be left to staff who have little idea of how to perform

criminal investigations or to testify in court. Third, although there are limited Canadian data, it would appear that the attitude of Canadian field staff is similar to the attitude discussed by Hawkins in Britain. According to Chappell (1987) one study noted that most field staff had qualifications in engineering and biology. These staff tend to view their jobs as identifying technical problems and defining solutions, rather than as collecting evidence for litigation. These employees tended to view litigation as evidence of their failure to find a solution to the technical problem. Fourth, prosecutors have a large degree of discretion. Ultimate approval for prosecution often rests with senior department members or with the Attorney General, which creates even more possibilities for political considerations being involved in the decision to prosecute. Even if a prosecution is commenced, few provinces have specially trained lawyers to deal with very complex environmental cases. Finally, if the polluter is brought to court and convicted, sentences tend to be very light. One study showed that very few judges would be willing to impose more severe sanctioning in environmental cases (Chappell, 1987). All of these things added together have resulted in very ineffective sanctioning of environmental crimes in Canada. According to one federal Environment Minister the end result is that pollution is probably Canada's most serious white collar crime today and most of the offenders are getting away with it while the

burden is being born by the rest of society (Chappell, 1987).

D. Enforcement in Alberta

The major offences under the Clean Air Act and Regulations are as follows:

1. Operating without a licence or " in contravention of a term, condition or requirement of a licence";
2. Contravention of a term, condition or requirement of a certificate of variance (1b);
3. Failure to comply with an emission control order (1c); and,
4. Failure to report an "uncontrolled release" not authorized by licence (16b). (Franson et al, 1982:54)

According to Gordon and Free (1985), most of the enforcement duties are performed by the Pollution Control division of Alberta Environment, except for the natural gas industry, which is largely enforced buy the ERCB. Neither department expects 100% compliance. A number of factors are taken into consideration before any enforcement action is taken. (4) Once it is decided that some enforcement action is necessary, the enforcement agency can use one or any number of the following enforcement strategies. (5)

1. Staff Discussions

Probably the first course of action would be meetings between members of staff of the industrial facility and the Air Quality Control Branch. This would most likely happen if there was little danger to health and violations were

slight and infrequent. During this discussion the staff would agree on the necessary corrective action and a compliance timetable.

2. Air Quality Directives

A directive is essentially a request for more information on past or present air pollution related activities by the company. Directives are issued under slightly more serious situations, such as when cooperation is starting to break down, when emissions are becoming a more serious concern and when violations are frequent. A directive does not specify future action to be taken. Lack of compliance with a directive would probably result in an emission control order rather than in prosecution. Directives have only been issued since 1982. Nine directives had been issued by March, 1984. (6)

3. Emission Control Order

A control order can specify that a company take certain actions by certain dates. The Director of Pollution Control issues a control order when it is more likely that emissions will have environmental and health effects, when the guidelines have been heavily exceeded and when past commitments to the department have not been complied with. It is an offence to fail to comply with an emission control order punishable by a fine of up to $25,000 or a maximum of three months in prison if payment is defaulted. One hundred and fifty emission control orders had been given out by the department in the period

from April 1972 to March 1984. (7) The Department occasionally issues large numbers of control orders to a particular industry if the whole industry is slow to comply with new regulations. (8)

4. Stop Order

According to Gordon and Free, a stop order is the strongest enforcement tool available to the Department. A stop order requires the authority of the office of the Minister of the Environment to be issued. A stop order can be issued when a company is contravening an act, when it has not complied with an order or a directive and if the pollution endangers human life or property. This order can include a command to discontinue operations. Two stop orders were issued under the Clean Air Act in the period from April 1972 to March 1984. One shut down an asphalt plant which was operating without a licence or pollution control equipment and the other was issued to a rancher who failed to extinguish a smoldering manure pile.

5. Prosecution

Prosecution can result from the major offences under the Clean Air Act and Regulations already listed plus for a failure to comply with a directive or a stop order, for providing false information on a report and for exceeding Maximum Health Regulation emission standards. A prosecution must commence within two years of the offence. A prosecution originates with the engineers of the Air Quality Control Branch and then must be approved by the

head of that branch, "... the Director of Pollution Control, the Assistant Deputy Minister of Environmental Protection Services, and the Deputy Minister of the Department" (Gordon and Free, 1985:48). This must be followed by a final appraisal from the Minister of the Environment and a recommendation to the Attorney General's department for prosecution. A brief is then prepared by Alberta Environment's enforcement officer which is given to the Attorney General's lawyers. The lawyers evaluate the case and, if they decide to prosecute, charges are laid.

The potential penalty available following a successful prosecution varies in relation to the nature of the offense. Construction of a facility without or in contravention of a permit and operating a facility without or in contravention of a licence may result in a maximum fine of $25,000 and if payment is defaulted, a maximum imprisonment not exceeding three months. (Prior to 1982 the maximum fine was $5,000.) Failure to comply with an emission control order could also result in a maximum fine of $25,000. Failure to comply with a directive could net a fine of not more that $5,000 for each day the offense continues and failure to comply with a stop order could potentially result in a fine of $50,000 each day the offense continues, a maximum of 12 months imprisonment or both the fine and the imprisonment. (Prior to 1982 the maximum fine for the latter offense was $10,000 per day.) Other penalties include; a maximum fine of $25,000 for

supplying false information on the reports required by the Act or Regulations, a maximum fine of $5,000 per day ($1,000 per day prior to 1982) for failing to comply with an order to allow an authorized person entrance to a premises for investigation of a pollution source and a maximum fine of $1,000 each day while the contravention continues for failing to report a contravention within the specified time period.

As of March 1984 Alberta Environment had conducted 33 prosecutions under the Clean Air Act. (9) Of the 33, four were unsuccessful and the others resulted in fines ranging from $25 to $7,500, averaging just slightly over an $800 fine per charge. The most common grounds for prosecution were violation of a licence condition and operating without a licence. As of March 31, 1984 there had been only one attempt to prosecute for exceeding emission levels. This was the case brought against Great Canadian Oil Sands Co. (now Suncor) in which the charges were dismissed.

Generally prosecutions are considered a last resort method of enforcement by Alberta Environment so, on the whole, they are quite rare. There are indications that the public consider prosecutions an important enforcement tool. In one Edmonton survey nine out of ten respondents felt that prosecutions should be used on industries that violated air pollution standards. The Department's policy not to prosecute has led the public to believe that the department has been all too lenient, especially when the

industry is involved in setting the standards and in drafting their own licences in the first place. Alberta Environment insists that success should not be measured by successful prosecutions but by environmental quality, and they argue that Alberta's environment is in good condition.

Gordon and Free (1985) outline five obstacles that could stand in the way of successful prosecutions of air pollution violations in Alberta. First, although the company is required by licence to submit their own monitoring data, it is the policy of Alberta Environment not to use that data for prosecutions. The Department has to gather its own data to take to court. The second obstacle is that the data collected has to meet stringent requirements. Third, each limit should have a prescribed method of measurement to avoid problems with introducing this data as evidence. (10) Fourth, the due diligence defense can present an obstacle. The prosecution must always be prepared to counter such a defense. (11) Finally, the outcome of a successful prosecution does little to encourage compliance. Gordon and Free (1985) point out that in one case a company found guilty of not performing stack surveys was fined $500 for each survey they failed to perform while they saved between $1,500 to $2,000 per survey. These kinds of obstacles, added to the other factors preventing prosecution in general, all stand in the way of successful prosecutions of violators of air pollution legislation in Alberta.

6. Certificates of Variance

Although issuing a certificate of variance is not an enforcement tool per se, these certificates are occasionally issued as an alternative to other enforcement action. Certificates of variance were created following a 1976 amendment to the CAA. They allow a company to be exempted, temporarily, from licence or regulation requirements. They are most often used following the accidental failure of mechanisms for pollution control. Detriment to the natural environment is not considered when issuing these certificates. From April 1977 to March 1984, twenty four certificates of variance had been issued pursuant to the CAA. Multiple certificates have been issued to the following companies: Syncrude Canada Ltd. and Cancarb Ltd. (4 each) ; Alberta Power Ltd. (3) ; Inland Cement Industries Ltd., Great Canadian Oil Sands Ltd. (GCOS), Summit Lime Works Ltd., and Coleman Collieries Ltd. (2 each).

There are indications the violations of air quality regulations in Alberta are not insignificant. For example, Phillips and Pretash (1985) report that in 1980 there were more than 1,100 violations of emission guidelines for gas plants while there were no prosecutions in that year. Duncan (1982) reports no less than 223 SO2 violations by Great Canadian Oil Sands Co. in a 21 month period in the mid 1970's. If the number of violations are large, the government should seriously begin to question their

compliance strategy. It is to a more detailed discussion of the government's attitude toward enforcement, as evidenced by the legislative debates, which we now turn.

E. Enforcement Themes in the Legislative Debates

All references to enforcement of environmental legislation were removed from the summary of contents. Each of these references were then assigned to a theme. A total of twenty eight themes were used to categorize all of the references to enforcement. Most of the twenty eight themes were then combined with other themes to create ten more general categories of themes found in the debates. The ten categories were; the role of the government and the state in enforcement, the environment versus economics, legislative changes, difficulties with enforcement and prosecution, violators and the action taken against them, political aspects, standards and action, ideological aspects, the public and nonindustrial pollution. Each of these general categories will be discussed separately, including examples of the themes from the debates.

1. The Role of Government and the State in Enforcement

This category includes two themes; general statements from the members of the government on their understanding of their role in pollution control and general enforcement concerns. There is evidence in the debates that would indicate that the Alberta state and government also follow

a compliance rather than a sanctioning model of enforcement. In response to the question of whether violations of regulations are automatically recommended for prosecution, the Minister of the Environment (Mr. Cookson) said;

> Mr. Speaker, the general procedure through our department is to work with any companies or organizations on the basis of monitoring, submission of their own reports, and our own analysis. The first procedure is to approach that organization and ask them to account for excessive emissions. We do that in co-operation with industry, which I think is the most practical way to function. Then, if we are convinced that because of complications, as in the particular case of Syncrude, where shutting down a major operation would simply result in chaos, particularly in the middle of January at low temperatures, we will issue certificates of variance under which they will operate for a specified period of time. If you reach the point where a company, an organization, or an individual is consistently exceeding the emissions and violates the certificate of variance then the procedure we take is clearly spelled out if we deem it necessary to prosecute. (Alberta Hansard, 1980:1196) (12)

This is a rather typical description of the general enforcement model given by environment ministers over the years. Enforcement of environmental law in Alberta does not rest on sanctioning companies, but rather on gaining their "voluntary" compliance. The government's role (according to Mr. Bradley, MOE) "... is to look quite seriously at improving the quality of the environment of the province" (1983:851). Generally it is believed that the way to improve environmental quality is to co-operate with polluters and to hopefully gain their compliance.

2. The Environment Versus Economics

This category is composed of three themes; environmental quality versus business, jobs and the economy in general. It has been persistently argued, mostly by industry, that strict environmental standards would result in businesses closing down, loss of jobs and ultimately a weakened economy. These same themes turn up in the Legislature, this time argued by members of the government. The problem of playing the environment off against economic issues is exacerbated in a province which relies heavily on the resource based industries, both because a heavy reliance on existing industries and because it is thought that strict adherence to environmental standards will prevent further development. In one case a member of the Social Credit Party (Mr. Henderson, former MOE) tried to introduce legislation (Bill 205) that would allow a local plebiscite to counter a control or stop order if the pollution was of a "local" nature (1974). He argued that;

> Where environmental consequences are local in nature and the viability of a community or employment in that particular community are significantly affected, I don't think it is unreasonable to allow the people in that community to express their opinions as to which they prefer - employment with some environmental disadvantages, or unemployment and a nice environment. (1974:2231)

The legislative amendment that brought in the certificate of variance (Bill 73, 1976) could also be construed as falling into this category. In arguing for the support of this bill a Conservative member (Mr. Bradley, later an MOE) said;

> I recognize that it is often not easy for industry to conform immediately to standards set by government , other than perhaps to shut down their operations and put people out of work. That is not an acceptable approach to me, unless lives are in imminent danger. (1976:1638)

Mr. Notley referred to this amendment as "... a trade - off of environmental standards against economic benefits" (1976:1860). The notion of a tradeoff between environmental issues and economic matters was argued early in the Conservative government's rule, combined with a notion that a tough approach to environmental enforcement could potentially prevent all commerce (1973). The government seems to be particularly sensitive about the tradeoffs when it comes to larger operations in Alberta. For example (Mr. Notley, NDP);

> But when Syncrude began to encounter trouble - financial trouble, that is - all of a sudden we began to see the government backing off environmental issues, making the choice, if you like, between financial success in the short term of the operation and strong environmental standards over the long haul. (1980:1304)

One environment Minister (Mr. Cookson), in response to questions relating to excessive emissions at Syncrude, said that shutting down Syncrude would also mean shutting down many of the social programs in the province (1980). Overall, there seems to be a rather strong belief on the part of the ruling party members that there has to be some sort of tradeoff between environmental and economic concerns.

3. Legislative Changes

Legislative changes, although not properly a theme, has been included in the categories of analysis in an attempt to gain some overall feeling of how legislative changes have affected enforcement over the years of the Conservative rule. Much of the environmental legislation, including the CAA, was enacted just prior to Conservative rule so it was thought that it would be interesting to see what changes were proposed to either help or hinder legislative enforcement. (13)

Eighteen proposed bills were identified as having some relationship to enforcement of environmental legislation. Slightly over two thirds of these bills were proposed by members of the opposition, none of which got past a second reading. The only proposed bill that could be construed as only making enforcement more difficult is Bill 205 (1974), which has already been mentioned. All other opposition attempts to bring in legislation could be viewed as attempts to increase the effectiveness of enforcement. These include: five attempts to introduce an environmental bill of rights (one every year from 1977 to 1981 inclusively) which would clarify the issue of standing and citizen class actions in environmental cases; an early (1973) attempt to introduce a "whistle blower" type of legislation to protect workers if they reported their employers (14); one bill proposed to eliminate the certificate of variance and five bills promoting increased public involvement in enforcement, either by guaranteeing

the public access to monitoring data so that they could check compliance rates themselves (3 bills), by requiring the Minister of the Environment (MOE) to monitor a company upon receiving a petition or by guaranteeing general citizen access to enforcement.

All five of the bills proposed by members of the ruling government were passed into legislation. It was argued by "the" government that all five were brought in to increase enforcement, but it could be argued that four of the five bills included amendments that could potentially limit effective enforcement. Bill 18 (1974), an amendment to the CAA, was introduced to allow for better enforcement. The MOE (Mr. Yurko) argued that inaccuracies in the Act and Regulations made it impossible to prosecute, so some amendments were needed (1974). Included in this bill was an amendment that prosecution must be initiated within two years. Although it was argued that two years may not be enough time to identify a problem, collect the evidence and initiate prosecution, the two year limit to prosecution was included in the legislation (1974). Bill 73 (1976) was also touted as allowing for a maximum degree of enforcement, but it was the same legislation that brought in the provisions for certificates of variance. Allowing companies to legally violate the conditions of their negotiated licences or permits does not really maximize enforcement of legislation (1976). (15) Bill 92 (1983) created legislation which guaranteed public access to

pollution control data collected by companies, but at the same time gave the Minister more control over the release of those data than did the previous legislation proposed by the opposition. Bill 41 (1972) included important elements to make the CAA more enforceable, such as providing for source pollution control which allowed for the establishment of source standards for industry, by certifying certain equipment (visible emission readers) which allowed that evidence to be used in court and by requiring public hearings into stop orders. This amendment also allowed for some pollution control functions to be taken on by other state departments, such as the ERCB, which has a more questionable effect on the enforcement of the legislation (1972). Only Bill 14 (1982), which was passed without debate, seems to have been designed to generally improve enforcement of the CAA. This bill streamlined some of the enforcement procedures, allowed Department officials to amend company's licences without the mutual agreement of the company and increased the amount of fines provided for in the Act by five times (1982).

4. Difficulties with Enforcement and Prosecution

This category includes two themes; difficulties with enforcement and difficulties with prosecution. These difficulties are similar to the ones pointed out by Gunningham (1974) in Britain. For example, some enforcement and prosecution difficulties originate in the

design of the legislation. Bill 18 (1974), which has already been mentioned, introduced changes to the CAA to make prosecution possible. The Minister (Mr. Yurko) also pointed out some legislative difficulties with stop orders. He said;

> I might also say the act reads such that when a stop order is issued, that, in fact, the company doesn't have to shut down. It can continue to operate. The minister's only action then - he doesn't have an army or a force to shut that plant down - is to take it to the Supreme Court of Alberta to get the stop order made effective through the Supreme Court of Alberta. (1974:2228)

The above quote points to another problem associated with enforcement which is a lack of personnel. For example (according to Mr. Yurko);

> But as I have indicated before, we do go down and we see these companies and we lay down the law, but if the company turns right around and doesn't in fact do exactly what we suggest, we don't have a massive department that we can put a person on the spot and have him stay there all day. We're quite short of personnel and we use them to the best possible advantage. (1973:34-1614)

Other difficulties with enforcement and prosecution were raised in the failed attempt to convict GCOS in 1976. This case raised some difficulties with the nature of evidence. First, the company monitoring data was self-incriminating so it could not be introduced in court and second, the method used to obtain the department data was unacceptable to the court (1977).

Although the above kinds of problems contribute to the difficulty of enforcing legislation, it would seem in Alberta that the largest barrier to enforcement and

prosecution are the state and the government's attitudes. Having adopted a compliance rather than a sanctioning philosophy, they seldom consider prosecution as a method of enforcement. There have been almost constant appeals to the members of the ruling government, usually by members of the opposition, to enforce the law. One member of the opposition even proposed the following motion:

> Moved by Dr. Buck:
> Be it resolved that the Legislative Assembly urge the government to increase its commitment to the protection and enhancement of our environment to ensure that hazardous chemicals and wastes, and air and water pollution do not endanger the people of this province together with a rigorous and consistent application of the law. (1980:1299)

Despite numerous criticisms and appeals the government has tended to insist that the non-sanctioning approach is the most effective way to manage the Alberta environment. (16)

5. Violators and the Action Taken Against Them

This category includes five themes; any references to violators, the emission problems they are having, levels of compliance, types of enforcement action taken by the state and the government and general comments about prosecutions. There are many references to violators of provincial regulations. In one general case the Department had compiled a list of violators of air and water standards. The MOE's (Mr. Russell) response to a question about the list was;

> Mr. Speaker, I wouldn't say we've compiled a list of violations. I have asked the department to draw up a list of existing non-conforming industries which don't have licences, and

> undertake a program this year to either upgrade those industries to the point where they can and will be licensed or issue them with certificates of variance or emission control orders. (1977:976)

Russell goes on to say that the list is not the kind of thing he would like to table, that it is made up of older industries located throughout the province but mostly in urban centers and that they would not use the list to prosecute, but to "legalize" (1977). (17)

Probably the two most common violators discussed in the Legislature were Syncrude and Suncor. One particularly interesting discussion related to "... Syncrude's admission that it plans to violate Alberta's Clean Air Act on about 18 afternoons and some 143 mornings per year, when the plant reaches full production" (1978:1319). Considering this admission (which the MOE prefers to call a prediction) a member (Mr. Clark, SC) asked whether the law was going to be enforced. After assuring the member that, yes indeed, the law would be enforced the Minister (Mr. Russell) said;

> But I want to make it very clear - and I know some hon. members won't like to hear this - that the department is working with these pioneering resource extractors in order to try to obtain satisfactory levels of emissions and still keep them going as viable operations. It's not our attempt to try to close these operations down or to harass them in court. (1978:1320)

Even though the legislation has been violated since its inception, members of the Conservative government like to talk about their record of industrial compliance. For example (according to Mr. Bradley, MOE);

> Mr. Speaker, we've had an excellent record in the province of Alberta following the course of our

> enforcement policy, which is in several forms: negotiation, and we do look at prosecution when necessary. The compliance to date with our regulations has been in the order of 95-plus per cent. (1984:1068)

The Minister then goes on to say how much better the compliance rate for Alberta is than the rates for other areas which follow a more prosecution based approach, such as the United States (85%) and Ontario (78%) (1984). (18) Generally, the government seems to believe that the level of compliance they are receiving justifies their enforcement approach.

Many enforcement actions are discussed in the Legislature and tabled in the Legislative Library. (19) Interestingly, the certificate of variance seemed to rather quickly become more of an enforcement tool than it was intended to be. In discussing enforcement one Minister (Mr. Cookson) said;

> Licences are essentially that: they lay out the emission standards. If these standards are exceeded at any point, we have the usual procedure of a certificate of variance for temporary exceeding of limits. We also have the authority of a stop order. (1980:575)

Since so few stop orders have been issued it must be assumed that the certificate of variance is often used as an alternative to other enforcement action. One opposition member (Mr. Notley, NDP) criticized the government's enforcement policy.

> As I look over the evidence, it seems to me that one has to be awfully charitable to conclude that the department has been doing its job in policing the Clean Air Act and the Clean Water Act. I look at some of these examples: 1980, 2,229 air pollution violations by the province's sour gas

> plants; 1981, 139 SO2 and H2S emission violations by Syncrude and Suncor; 1980-81, 357 vinyl chloride monomer emission violations by Dow Chemical and 83 violations by Diamond Shamrock over a 20 month period. Then Suncor, where all but 7 of 43 months, the company was in violation of the limits. ... Mr. Chairman, you can say as much as you like that we have to work with industry. ... When are we going to act? (1982:499)

Even in the face of stinging criticisms the government defends enforcement policy. This becomes particularly obvious when looking at prosecution policy. Even the occasional member of the Conservative party (in this case, Mr. Cook) has criticized the government for the lack of prosecutions.

> Frankly, we do not prosecute in this province. ... What happens at different stages, and what is required for the department to ultimately prosecute? It must be a very, very serious offence, because less than one-half of 1 per cent of all the complaints ever receive the attention of the department in a way that would lead to prosecution. ... As I understand it, the department does not have a routine way of gathering evidence. ... We prosecute so rarely that we don't gather evidence for prosecution. We don't consider prosecution as a very serious tool in our arsenal. (1983:754)

When does prosecution occur? According to one Minister (Mr. Bradley);

> We're going to prosecute if there is a company that is blatantly breaking the law of the province, that has no intention whatsoever to clean up its act, so to say, that disregards the laws of the province, emits all sorts of things and makes no attempt to clean them up on a regular basis or even after a specific incident, breaks a tailing pond and lets things flow into there, doesn't put in the proper equipment, breaks its licences and isn't doing its job. That's basically the approach we take there. (1983:851)

It would appear that prosecution is not only reserved for the symbolic but also the real failure of the compliance approach.

6. Political Aspects

This category includes five themes; general political concerns, the government's efforts to protect industry in general, more specific arguments that pollution was beyond industry's control, references to conflict of interest situations and indications of the relationships between government and industry. Concerns about the political consequences of certain aspects of enforcement are occasionally voiced by the government. For example, Mr. Yurko, in discussing stop orders, said that "... these things are not just issued lightly because the political consequences, as well as the real consequences, are very grave ..." (1974:2228). In another case a member of the opposition questioned whether it was politically astute to have industry monitoring itself (1982).

Another political aspect in the debates was that the government was very protective of industry. In some cases this was demonstrated by them arguing that problems were beyond the control of the company. One Minister (Mr. Cookson) explained violations of emission standards by Syncrude in the following way:

> In some cases it may be due to a flaring of sour gas. In some cases it's due to a temporary shut-down. In some cases it may be due to things which are beyond the control of the plant; that is, the weather conditions at the present time.

> The report does not indicate that the plant is in default. (1980:1218)

In the more general case the protection may take the form of the argument that industries, such as Syncrude, are clean (1977) or that there is no evidence that they have done any harm to health or the environment in general (1981). In a slightly more offensive approach, support of Syncrude has even been linked with patriotism by Mr. Chambers (PC).

> One day, as a result of oil sands production, Canada will once again be self-sufficient in oil. In my view, those who would destroy the viability of the project by attempting to force needless and unduly harsh environmental standards are doing an immense disservice, not only to Syncrude, but to Alberta and to the Canadian nation as a whole. (1976:201)

At a more serious and potentially dangerous level are the relationships between government (and the state) and industry and the potential for conflict of interest. Various concerns of a potential for a conflict of interest have been raised in the Legislature. For example, there have been concerns raised about the potential for conflict of interest when; the same Department is involved in both negotiating and setting the standards and the enforcement (1983) (20) and when the ERCB is charged both with promoting the development and exploration of resources and with controlling the impact of those activities on the environment (1980).

The potential for conflict of interest becomes particularly problematic when the government and industry are business partners. This concern was raised by an

opposition member (Mr. Notley, NDP) in relation to Syncrude.

> Keep in mind that 50 per cent, or 56 per cent, as I recall the Premier saying in the last provincial election, of the profits were to come to us. If we have to chose between profits coming back to the province and insisting on changes in pollution abatement technology which would be very expensive, which route is the government going to take? Mr. Speaker, I say to the members of this House: the concern about a potential conflict of interest five years down the road is not political rhetoric, but is, in fact, a very legitimate concern. (1976:205)

Two years later the issue surfaces again following Syncrude's "prediction" of future violations of the CAA. One of the Minister's (Mr. Russell) responses to concerns raised about enforcement was, "Well, Mr. Speaker, Syncrude is us" (1978:1320). (Interestingly, two of the five MDE's were former Syncrude board members.) When this point was responded to by the opposition member (Mr. Clark, SC) as being "part of the problem", the Minister argued that it was "part of the solution" (1978:1320). He assured the member that there were excellent and ongoing consultations between Syncrude and the Department (1978). In general though, the relationship between government, the state and industry could be summed up as being called very co-operative. (21)

7. Standards and Action

This category is composed of two themes; references to Alberta's high standards and strong legislation and references to standards and legislation versus action. Members of the Legislature are very fond of referring to

Alberta's high environmental standards and strong legislation. This is quite important to the concept of symbolic law. Pointing to strong standards and legislation allows the government to claim they have met the citizens demands to create environmental protection, which in turn contributes to legitimacy. On more than one occasion Alberta's emission standards were referred to as some of the highest in the country. (22) The legislation is referred to using adjectives such as tough and powerful (1981), strong and stringent (1983) and strict (1984).

Although concerns about the quality of standards are rare, they are occasionally raised. For example, concerns were raised by an opposition member (Mr. Notley, NDP) about the elimination of the half hour standard from the CAA. He argued that just using the one and the twenty four hour standards would mean that what had been violations of the standards in the past would no longer show up as violations (1981). On another occasion concerns were raised by Mr. Notley (NDP) about judging standards based on comparisons with other areas.

> But surely, when are we going to sit back and say, inadequate standards, whether they're in Ottawa or the United States or wherever they may be, are good enough for us in this province? Surely we have to heed the warning signals of our own experts who are saying, watch, there is a problem down the road. (1976:205)

Despite the occasional concern, such as the above, most members seem to accept that the province has adopted high standards and strong legislation. This is not particularly

surprising, considering the huge majorities (where the government has held as many as 75 of 79 seats) the Conservative government has had through much of its rule.

In the discussion of symbolic law it was noted that this kind of law was seldom implemented. It would seem that Alberta is no exception to this rule. For example (according to Dr. Buck, SC);

> Mr. Speaker, we have to look at what we are doing in the protection of the environment. We have the Clean Air Act and the Clean Water Act. We have the Hazardous Chemicals Act, Department of Environment legislation, and the Environment Council legislation. So the government has made a lot of noise about environmental commitments, but very little commitment is shown to the implementation of the legislation. (1980:1300)

On another occasion an opposition member (Mr. Martin, NDP) said;

> I believe that the department's credibility would improve immensely if they would just enforce the law. There's nothing wrong with the standards, generally, that we have in the province, Mr. Chairman, but there is a failure to enforce the law. (1983:1156)

This point is probably best summed up by the comment from Mr. Notley (NDP) that "... the best legislation in the world isn't going to do much if it isn't enforced" (1981:779). In general, although most members of the Legislature will admit that Alberta has relatively strong legislation and high standards, members of the opposition are fond of pointing out that the implementation of the standards and legislation is less frequent.

8. Ideological Aspects

This category includes four themes; criticism of opposition parties, arguments promoting industry's rights to privacy and profit, equality before the law and arguments of how technology is improving the environmental situation. Criticism of the ruling party from members of the opposition is often in the form of criticisms of their actions or, in the environmental case, lack of action. For example, one member said that the government's record in environmental issues was of no comfort to Albertans (1985). In another case a member criticized the government for not adopting the kind of tough environmental policies they promised in 1971 (1982). Criticism of the opposition however, often relates more to ideological differences with the ruling party. For example (Mr. Zip, PC);

> In summation, there appears to be an obsession on the part of our colleagues of the left with promoting regulations, as if through regulations the miracles of a perfect society will be produced. I wish to remind my colleagues on the left that the performance of miracles does not belong to men but to God alone. Overregulation of our society is an unpalatable evil, just as overtaxation is a burden that impedes industry and discourages, destroys, and erodes initiatives; a burden we must bear for the sins of the undisciplined few among us. (1983:1388)

In one example, criticism of the opposition was combined by one MOE (Mr. Cookson) with protection of industry's right to privacy.

> Nor do I think it's the intention of the member to end up with possibly a couple of thousand more civil servants galloping around the province ...
> Mr. Notley: Not that either.
> Mr. Cookson: ... poking their noses into private industry, and eventually ... [interjections] I can see it, Mr. Chairman, a thousand more cars

> and a thousand more civil servants. The cars would be coloured pink, and galloping around poking into the constituency of the Member for Vegreville, trying to find out ... It's not hard to understand why the member has trouble getting industry in his constituency, I think they're scared of the place. (1982:507)

In another case a Conservative member argued that the bill proposed by the opposition to allow public access to all pollution monitoring data was a violation of the company's right to privacy (1983). He argued that the data contained privileged information which gave companies a competitive edge in this free enterprise system which, incidentally, works very well (1983).

The right to private profit is also heavily defended by the Conservative government. For example, in one case a member of the opposition argued that the Jumping Pound Shell plant would make $1.5 billion profit from an expansion and, seeing that it would only cost $65 million for the plant to install the best possible technology, would the government insist upon the use of that technology. The response from the MOE (Mr. Cookson) was;

> Mr. Speaker, I hope the member for Spirit River - Fairview is not objecting to companies making a profit. It's the very basis of industry in this province. In our judgement, as far as Environment is concerned, we do not take into consideration the profit picture when we determine how or what standards will be established for sulphur emissions. So relating it to the profit picture is, I think, sort of dragging a red herring into the issue; that is, to make sure we minimize the impact on the environment. (1981:1374) (23)

In one case the private profit issue was turned back on the government by an opposition member (Mr. Martin, NDP) who

questioned the practice of industry monitoring itself when the role of industry "... is to make a buck" (1983:1157). Generally though the right to private industry and private profit are seldom questioned.

Another ideological element found in the debates relates to legal rhetoric. One of the elements of legal rhetoric is that all people have equality before the law. In both criticism and defence of enforcement policy, comparisons are often made between the treatment of environmental and other offenders. For example (Mr. Notley, NDP);

> Mr. Speaker, the remark that somehow all is well with GCOS because [during] less than .5 per cent of their operating time they were in contravention of provincial standards - with great respect to the hon. minister, it would not, in my judgement, be something to boast about if a company were obeying the law only 99.5 per cent of the time. A burglar may be obeying the law 99.5 per cent of the time, but he burgles your house that .5 per cent of the time. [That] makes him less than an honest person. (1976:204)

Or (Mr. Notley, NDP);

> But you know, Mr. Speaker, there is the question of consistent application of the law. We don't say we're not going to prosecute somebody because they've only broken the law two days in the last two years. If we have reasonable evidence to prosecute, we prosecute, because everybody should be equal before the law. That's our system, or it should be our system. (1980:1306)

This issue is raised again in a discussion of the credibility of the Department. The opposition member argued that the people believed big companies could do what they wanted, and that there was some evidence that this was true (1983). He argued that if the government wanted to

change its credibility problem they would have to start going after polluters in the same way they would anyone else who broke the law (1983).

On one occasion a government member (Mr. Bradley, MOE) tried to defend the enforcement policy by arguing that industrial self-monitoring was like "... us driving in our automobiles, and every time we infringe the speed limit on the highway we have to turn ourselves in" (1983:851). (24)

Despite these comparisons to other offences, breaches of environmental regulations are not treated like other "crimes". (25) The government's attitude toward this distinction was probably best stated by one Attorney General (Mr. Crawford);

> The situation is that for what are primarily regulatory types of offences under statutes - that the courts refer to as regulatory, as distinct from criminal law matters - the policy of any department and in this case the policy of the Department of the Environment, is of course very important to the way in which the matter is handled by solicitors of Crown counsel acting on behalf of the Attorney General. ... Totally different guidelines apply to statutory offences under matters which, although they create offences within federal and provincial statutes, the courts have held are primarily matters of civil or administrative law, as the Supreme Court of Canada has remarked. (1984:1067)

He goes on to point out that the main difference between regulatory and criminal matters is that prosecution would not automatically follow a case that could be made, as it would in criminal matters, but that prosecution would be up to the Department (1984). This could be construed as evidence that in Alberta, as in other places, we really do

treat harms that are the result of economic activity differently.

Finally, included in this category, were references to technology. (26) References to technology include things such as saying that old plants have old technology but that new ones will be required to have up to date technology which will help to reduce emissions (1980), that the Department is willing to work with companies for a long time to arrive at a technical solution to pollution problems (1977) and that one plant had up to date technology so any problems must have other sources, such as human failure (1981). One member (Mrs. Koper, PC), in speaking against the opposition members bill for access to pollution control data, said that a change "... we should also recognize is the tremendous improvements - advances, I guess - in science and technology that have enabled us to increase the kind of control we can have over the municipal and industrial pollution of our air and water" (1983:1391). The view that technology and science would solve some of the problems created by growth and development was still in evidence in the Legislature.

9. The Public

This category includes two themes; references to public complaints and more general references to public involvement in environmental issues. Most of the public complaints that were noted in Alberta Hansard were odor complaints. (27) The Department also notes the occasional

dust complaint (1973). In 1980 the Department "... handled over 297 complaints [in the Edmonton area] with regard to odor, dust , smoke, noise and other factors; over 101 in the Calgary area; 114 in the northern area; 62 in the southern and rural area" (1982:486). One Minister (Mr. Bradley) made a brief attempt to describe what happens to public complaints.

> A number of the complaints we receive are resolved fairly quickly. Thirty per cent of the complaints involve areas over which the department has no jurisdiction whatsoever. In a small percentage, no identifiable source for the complaint is found. In about 20 per cent of the complaints, we're working towards resolution of the nature of the complaint. I would say we spend quite a bit of time in our process to attempt to resolve those kinds of complaints. (1983:851)

Attempts to involve the public at the enforcement end of environmental issues are not that common. Most of the references to public involvement, other than public complaints, relate to proposed legislative changes. For example, the public were heavily involved in drafting and promoting Bill 203 (the proposed "whistle blower" legislative amendment) (1973), there were references to the potential for public involvement in both bills (209 and 92) proposed to guarantee public access to monitoring data (1983), Bill 231 was a proposed amendment which would command the Department to monitor a company upon receiving a petition from the public (1984) and Bill 229 was an attempt to pass legislation which would give citizens access to enforcement of standards (1985). Only Bill 92

was passed. On one occasion there was a non - legislative reference made to a cost analysis study conducted by STOP on how much it would cost the public to clean up Syncrude (1981). Overall it would appear that the only relatively effective access to enforcement that the public has is to make complaints to the Department.

10. Nonindustrial Pollution

The final theme extrapolated from the debates is that of nonindustrial pollution. Concerns with pollution generated from other than industrial sources were quite rare. In 1974 there was some concern expressed over automobile pollution. In fact, an opposition member (Mr. Drain, SC) (28) argued that, "(u)nquestionably, when we look at the subject of pollution in the Province of Alberta we find the greatest offender we have is the private automobile" (1974:233). It was argued that legislation which could potentially restrict the removal of pollution devices from automobiles (Bill 18) would be difficult to enforce and would make the government look foolish (1974). (It was also argued that this legislation would include air within buildings.) This legislative amendment was passed, mostly to allow enforcement of the Clean Air Act in industrial settings, but it also created the potential for enforcement on automobiles (1974). The question of enforcement of automobile pollution is brought up again at a later date, at which time the MOE said that they still had not looked seriously into prosecution for automobile

pollution offences. Another reference to nonindustrial pollution in the enforcement debates was a reference to a "right - to - farm" bill (which had implications for the CAA), which was an attempt to limit the ability of non-farming residents in rural areas to take action against farming by-products, such as noise, dust and odors (1985). Overall, there was very little mention of enforcement of nonindustrial pollution in the debates analyzed.

F. Summary

The debates involving enforcement show evidence of many of the same enforcement issues discussed in the literature. It could be argued that much of Alberta's environmental legislation related to air quality is largely symbolic. The CAA is seldom enforced, and when it is the fines are relatively small. There was evidence of bargaining and negotiation, right down to the level of compliance or lack of compliance. Overall, the compliance strategy discussed by Hawkins (1984) effectively describes enforcement activities in Alberta. A sanctioning form of enforcement is only adopted when the behavior is perceived to be negligent, deliberate and/or uncooperative. Taking a case to court is not the goal of the Department. Their goal is to ensure a certain level of environmental quality by securing compliance. Prosecution is the last resort.

Many of the concepts discussed by Gunningham (1974) were also found in the debates. There was evidence of poorly designed and unenforceable legislation, especially in the early stages of environmental legislation in Alberta. There was some evidence of a lack of will on the part of the state and the government to enforce the legislation and of the difficulties involved in prosecution if enforcement strategies were adopted. Arguments of not wanting to "burden" the court system also surfaced, accompanied by some comparison of a lack of concern for burdening courts where private property was involved. Some problems discussed by Chappell (1987) were also mentioned, including arguments by the Department that they were looking for technical solutions to problems and that a large degree of discretion of prosecution lies with the Department and with the Attorney General. Overall, in an economy which relies so heavily on a narrow resource base, it is not particularly surprising to find that air quality legislation is largely symbolic..

FOOTNOTES

Chapter VI

1. In fact Hawkins (1984), in his study of enforcement officials, noted that enforcement officers felt a high degree of social and political ambivalence existed about their enforcement activities.

2. Private expenditures on environmental protection are also usually only a small part of the total budget (Rankin and Finkle, 1983).

3. Both of these arguments from the government have maintained their popularity into the 1980's in the Alberta legislature. These points will be elaborated on in the discussion of enforcement themes.

4. See Gordon and Free (1985:45) for a list of these factors.

5. All of the following discussion of enforcement strategies was taken from Gordon and Free (1985), unless otherwise indicated.

6. Another seven directives have been issued from April 1984 to March 1986 (Annual Report 1984-1985 and 1985-1986, Alberta Environment).

7. Another five control orders were issued between April 1984 and March 1985 (Annual Report 1984-1985, Alberta Environment).

8. Using control orders as a tool for "mass negotiations" accounts for at least 84 of the 123 control orders issued by March 1984 (Gordon and Free, 1985).

9. The Alberta Environment's Annual Reports list another three prosecutions for 1984-1985 and three for 1985-1986.

10. For example, in the 1976 Great Canadian Oil Sands Co. case, data from a monitoring device that took samples every twelve minutes could not be used in court to extrapolate to half hour averages.

11. Interestingly, Franson et al (1982) argue that the due diligence defense is inconsistent with the theory of a licence or permit (i.e. that a company is given permission to operate as long as they do not violate the terms or conditions of a licence or permit), but that the defense still appears to be standing in court.

12. Future references to Alberta Hansard will be a date, followed by a page number for quotations.

13. Legislative changes would be included in this category only if some aspect of enforcement was mentioned in the debates.

14. This is the attempt at legislative change where it was made obvious in the debates that interest groups, most notably STOP, were involved in drafting and promoting a bill presented in legislature.

15. Actually, allowing certificates of variance may have had little affect on field level enforcement because the Minister stated on more than one occasion that provisions for a certificate of variance just legalized common practice.

16. See for example, 1984:1068.

17. Although the Minister prefers to call these industries non - conforming, it is a violation for these industries to operate without a licence.

18. Unfortunately, the Minister never explains how this rate was calculated, nor why he proudly announces at a later date that Alberta, with its much higher compliance rate, has been judged by the Canadian Nature Federation as second only to Ontario in environment and conservation matters (1985).

19. Since many of the enforcement actions have already been discussed this theme will not be addressed in any detail.

20. In this case the Minister responded that this was not a conflict because the Standards and Approvals Division was separate from the enforcement division.

21. A potentially interesting example of the "co-operation" was raised by Mr. Notley when he was asking about discussions between the Department and Syncrude and Suncor. He asked, "What discussion was given to the Suncor priority in a company memo: "To provide Alberta Environment with a defensive presentation to use against political pressure"?" (1980:1511-12). The MOE responded that he was not familiar with the document and, unfortunately it was never brought up again.

22. For some examples see 1983:850, 1984:145 and 1985:145.

23. It is interesting that the Department of the Environment considers profit a "red herring" in establishing standards yet, both the level attainable and

the costs of attaining different levels are considered in setting emission levels (1981).

24. What the Minister left out of this comparison was that you would turn yourself in but nothing would happen to you because the evidence would not be used against you in court.

25. For a discussion of environmental violations as "true crimes" see Law Reform Commission of Canada (1985).

26. This theme was included in this category because it is often part of an ideological argument that many of the "ills" created by growth and development can by "fixed" by technological advances and scientific developments.

27. For example, see 1972:17-7, 1978:1600, 1981:63 and 1986:1295.

28. Mr. Drain was a Social Credit Member for Pincher Creek - Crowsnest, arguably an area that suffers from some of the worst industrial pollution in the province. Mr. Bradley, one of the MOE's, was also from that constituency.

CHAPTER VII

SUMMARY AND CONCLUSIONS

A. An Overview

This thesis was initiated with the question asked by Elliott (1981), "Why pollution?". This attempt to answer this question in the context of air pollution in Alberta focused on the role of the government and the state in environmental protection. It was argued that focusing on the government and the state was necessary in order to make important theoretical distinctions. Modern consensus theorists have tended to view the state and the government as the protectors of the public interest. They are seen to function as neutral mediators between conflicting interest groups (Vold and Bernard, 1986). On the other hand, modern conflict theorists tend to view the state and government as part of the struggles between competing interest groups, rather than as some type of neutral mechanism residing over competition (Chambliss and Seidman, 1982). Consensus schools of thought tend to view law as arising out of some form of consensus reached by members of society. Conflict schools tend to view the institution of law, which is part of the state, as representing the interests of one class over others (Chambliss and Seidman, 1982). It was argued that one particular variant of conflict theory, Chambliss

and Seidman's (1982) dialectical paradigm, was probably the most successful theoretical position that could be used to explain law creation, evolution and enforcement.

Three particularly important aspects of this paradigm in explaining elements of law were; 1) the specification of the concept of relative autonomy, in the sense of suggesting areas in which role - occupants would have greater or less autonomy; 2) the distinction between the state and the government, which avoids state reification while providing explanations of why the state and the government may act in contrary ways; and 3) the notion of symbolic law, which provides an explanation of why certain laws are enacted by the government but are not enforced by the state.

Also theoretically important to this analysis was Chambliss and Seidman's (1982) conception of the evolution of law in capitalist societies. It was noted that in capitalist societies a fundamental contradiction arose between industrialization and environmental quality. Out of this contradiction arose conflicts, which would be resolved by the implementation of legislation. This legislation would placate the demands of interest groups while being in the interests of profit structures. Since it was the conflict that was resolved, and not the contradiction, further conflicts would be revealed and the process would continue (Chambliss and Seidman, 1982). The explanatory power of Chambliss and Seidman's theoretical

framework was then evaluated using the case of Alberta's efforts to control air pollution.

It was also argued that a more complete understanding of the role of the state and the government in fighting air pollution in Alberta could only be gathered by placing those institutions in an historical context. In order to accomplish this task it was necessary to briefly outline Alberta's political history, the historical connections between the government and the business communities, the historical importance of Alberta's reliance on a resource based economy and the implications of these three factors for the environment. It was argued that through most of Alberta's history as a province it has been ruled by governments which have aligned themselves with business interests. This has been especially obvious in relation to resource developments. This alignment has been noted at both the "philosophical" level, such as a belief in and the promotion of private business and private profit, and also at a "real" level, such as in the translocation of elites. The strong alignment between business and government has direct implications for the environment. Alberta is heavily dependent on resource development. The development and utilization of resources, especially oil and gas resources, are responsible for a great deal of Alberta's air pollution. One of the necessary steps in protecting the air quality is for the government to intervene. In this case it is the same government which is heavily

aligned with industry that is responsible for protecting the environment. This creates the rather strong potential for industrial demands to be considered before the needs of the environment.

It was also argued that for a more complete understanding of air quality legislation and protection it was necessary to place environmental quality legislation and protection movements in an historical context. It can be seen that Chambliss and Seidman's notions on the creation and evolution of legislation can be applied to some of Alberta's earliest environmental protection legislation. Demands for conservation in the oil fields were met with legislation that not only calmed the public but was also in the interests of the major producers (Richards and Pratt, 1979). (This particular example also showed signs of intra class conflict between the major and the smaller producers.) Subsequent developments in environmental legislation in Canada also reveal elements of conflicts leading to legislative or administrative changes which tend to placate the demands of the public and do little to interfere with industry for a period of time until new conflicts arise. This rather circular process continues to this day. Earlier demands for legislative and administrative changes showed some evidence of environmental activist involvement, but more recent years have shown a waning in group environmentalist activity.

It was further argued that a more detailed understanding of the government's role in protecting the environment could be gained by looking at the Legislative debates. Since there were too many nonenforcement themes to be individually summarized here, only some of the more theoretically important aspects of the analysis will be summarized.

As a generalization, most passed amendments to the CAA were minor changes designed to increase clarification of the Act. According to Chambliss and Seidman's model, role - occupants would have relatively greater autonomy in passing this kind of legislation. Opposition bills, which were not passed, argued for more structural changes to increase public involvement. The issue of access to monitoring data is particularly illustrative of Chambliss and Seidman's model of legislative reform. Some members of the public were being denied access to monitoring data. An opposition member (Mr. Notley, NDP) proposed a bill to guarantee access to monitoring data, which was vigorously opposed by ruling party members. A similar bill was proposed by the government which recognized public access in principle, but also recognized industry's right to privacy of certain aspects of the data. This bill, which was passed, allowed more government, especially Ministerial, control over access to the data. In essence, the legislation placated the demands of the public while not interfering with the interests of the profit structure.

The analysis of other nonenforcement themes included other theoretically important points. For example, the issue was raised that the Conservative government's interest in pollution as an issue was related to the public's interest, which had waned in the late 1970's. This would indicate that less powerful groups in society can have an affect on environmental protection. Government attitudes also reflect theoretically important concepts. While the government has tended to express rather positive attitudes toward their pollution control record, predictably their attitude toward environmentalists was less positive. Also, government attitudes toward pollution reveal some rather frightening notions, such as the idea that if pollution is diluted enough it will no longer be a problem. Government objectives, roles and policies as stated would indicate a rather active government in the area of environmental protection, but there were indications that they were less active in terms of implementing some policies. In general, the government and the state tend to work closely with industry and will often protect industry. Government members have argued that increased environmental protection would result in the loss of jobs, industry and general decline in the economy. Government action is often restricted to studying the problem. Although it had been argued in the early Conservative government rule that automobiles were a major source of pollution, the most persistent concerns raised

about pollution sources, mostly by opposition members, were related to the tar sands and sour gas industries. The major pollutant discussed was sulphur dioxide. Even though concerns were raised, the government persisted in arguing that little, if any, damage had occurred as a result of industrial and resource development activity in Alberta.

These examples would indicate that the public are not entirely powerless as far as environmental protection is concerned, but that overall the role of the government as a whole would appear to be to protect the interests of capital. Of course, this does not mean that all government members protect the interests of all capital, all of the time. If this were the case critiques of the government by the government (usually opposition, but occasionally ruling party members) would not have occurred. The notion of relative autonomy is particularly important here. Certain government members, especially opposition members, had relatively greater autonomy in their role to critique capital. Overall though, in the environmental context, the government did little to interfere with the needs of capital.

Finally, the chapter dealing with enforcement theory and themes in the debates, calls our attention to the importance of Chambliss and Seidman's (1982) notion of the distinction between the government and the state and the concept of symbolic law. As has already been noted, the enactment of law takes place in a relatively public

setting, usually by members of the government (although members of the state, industry and public may have had input prior to the debate), while the enforcement of the legislation usually takes place in a less public setting, often by members of the state. The members of the government may exercise their relative autonomy and maintain legitimacy by passing law which would appear to control pollution. Enforcement decisions, which are largely undertaken by members of the state, generally do not occur in the public arena and therefore are less of a threat to legitimacy. By passing symbolic law the government can maintain legitimacy by pointing to the stringent laws which have been passed while the state does not enforce the legislation so there is little interference with capital.

A look at enforcement would tend to indicate that environmental legislation is largely symbolic. Enforcement procedures are rarely specifically defined, which allows for administrative discretion. Bargaining and negotiating with the polluter takes place through the enforcement process. The law as it is written is treated as a departure point for negotiation. There are many administrative barriers to enforcement, such as understaffed and under trained personnel. There are also legal barriers to enforcement, which are in some cases built right in to the legislation. Enforcement in the form of prosecution is relatively rare.

In Alberta prosecution is really only considered as a last resort. As already stated, from the passage of the legislation to March 1984, only 33 prosecutions were conducted under the CAA (Gordon and Free, 1985). Only one of those prosecutions was directed toward a company exceeding emission levels (Gordon and Free, 1985). Although the public has expressed some interest in prosecuting offenders, the DOE has insisted that environmental quality, not successful prosecutions, should be the measure of success (Gordon and Free, 1985). It would almost appear that when the relatively private elements of enforcement are brought to the public's attention, resulting in the questioning of legitimacy, the government and the state argue the merits of the bargaining and negotiation approach as an attempt to maintain that legitimacy while not interfering with the needs of capital in the way that extensive prosecution might interfere.

Many of the themes in the Legislative debates related to enforcement issues exemplify principles similar to those discussed in relation to nonenforcement debates. For example, it is pointed out that the province relies on resource based industries and it is argued that adherence to regulatory legislation will have a negative effect on jobs, business and the economy in general. The notion that there has to be a tradeoff between the environment and the economy is often present. Most of the legislative amendments proposed by the opposition were purported to

make enforcement easier and none of these amendments were passed. The government bills, which were passed, were purported to improve enforcement, but most had elements which limited enforcement activities. It was pointed out that probably the greatest barrier to enforcement was the government's (in this case meaning the state and the government) attitudes, with the government insisting that non-sanctioning approaches were most effective in controlling pollution. Government members tended to express feelings of a good compliance record and defended their enforcement policies, even in the face of criticisms. Again, it was noted that government and industry had very cooperative relations. It was pointed out, mostly by opposition members, that the government may have high standards but they are not enforced. Rights to private industry and private profit are seldom questioned. Distinctions were made between regulatory offences and criminal law, arguing for different treatment of offenders. It was also argued that many of the problems created by pollution could be "fixed" by technology and it was noted that probably the public's greatest access to enforcement was in the form of making complaints.

It would appear from the debates, as well as from other government documents, that environmental legislation is largely symbolic. The state takes relatively little

enforcement action while the members of the government argue that they have enacted strong legislation and have high standards. While there was some evidence that the public could have an affect, either in the form of occasional action based on public complaints or, in one case, involvement in the drafting and supporting of a piece of proposed legislation, actual enforcement actions on the part of the state did little to interfere with capital.

Defining the law as symbolic has important implications for sociological theories of law and society. In the beginning of this thesis it was argued that consensus theorists tended to view the state (in this case meaning state and government) as a neutral mediator between conflicting interest groups. If the state was a neutral mediator we would expect the law to be largely instrumental. In other words, once the conflicting interest groups had come to some agreement, the agreed upon legislation would be implemented. On the other hand, if we accepted more of a conflict perspective, which would tend to view the state as aligned with the needs of capital, we would expect more symbolic legislation. This would allow the government to maintain some level of legitimacy while meeting the needs of capital. Therefore, finding the legislation is largely symbolic would seem to indicate more support for the conflict than for the consensus theoretical approach to the sociology of law.

B. Policy and Research Implications

A few important points raised by the Alberta government in defence of their environmental protection policies deserve at least some discussion. It was noted in the debates that one category of arguments against more stringent environmental protection legislation was that enforcement would produce costs in terms of losses of jobs, industry and a decline in the economy in general. A few authors have made important points in relation to these kinds of arguments. For example, in the case of job and industry loss;

> Corporate polluters have for decades used the argument that enforcement of anti-pollution standards will mean jobs will be lost; the plant will have to close down or move elsewhere. This argument has, of course, a very long if not honorable history; it was used against the ten hour day, against child labour laws and against a wide range of other social restrictions we now take for granted. (Schrecker, 1977/8:3)

The author goes on to point out that although the argument has a long history, in times of economic crisis the threat of job loss "... is bound to be the kiss of death for environmental protection" (Schrecker, 1977/8:3). This point is brought up again by another author in his closing remarks to a conference on environmental law enforcement. In this case the author is responding to Mr. Crawford's (Alberta's Attorney General) reluctance to prosecute.

> Is he worried that if one talks about criminal prosecution and the possibility of it being pursued in certain cases, that this will turn off the corporate citizens of Alberta? That they

> will pack up stakes and go elsewhere, take their businesses to Montana or Idaho or wherever? Well, that denies the history of the industrial development of this country which suggest to me that those sort of arguments are bluffs in most instances. The lumber interests throughout the 19th Century always made that argument. If you apply the law to us, if you toughen up on us, then we will leave. (McLaren, 1985:158)

McLaren goes on to say that when the government did tighten up enforcement many of the lumber interests complied (McLaren, 1985).

In a very interesting article, Commoner (1977/8) takes a serious look at the argument that there are "built-in, insoluble conflicts" (or tradeoffs) between energy efficiency, employment and environmental quality (Commoner, 1977/8:4) He compares more traditional energy sources with the "soft energy" option of solar energy production. He argues that industries which are known for the inefficient use of energy (creating the most pollution) are also known for the inefficient use of capital (are the least effective in job creation) (Commoner, 1977/8). On the other hand, solar energy "... will stabilize the price of energy, slow inflation and improve investment planning; it will create rather than destroy jobs; it can turn the country's faltering economy around" (Commoner, 1977/8:9). Finally, Commoner (1977/8) addresses the "tradeoff" arguments with an extremely important point.

> There is only one way in which the familiar arguments that pit jobs against the environment, that put labour leaders on the side of nuclear utility executives, make sense. And that is if we accept the assumption that the alternative to a new nuclear power plant is no new electricity and that the alternative to massive strip mining

> is no new sources of heat. In other words, this argument holds only if we give up the right to choose, among the different ways of producing energy, those which best serve the nation's - and labour's - needs. (Commoner, 1977/8:12)

In the "tradeoff" arguments we can see the importance of Gunningham's (1974) notion that conflict is not resolved within the full range of alternatives but within a narrower range which favours capital's interests. Traditionally, conflict has been resolved largely accepting the "tradeoff" arguments.

Commoner (1977/8) goes on to outline a strategy for solar energy development. The "problem" with Commoner's development strategy is that it would "... challenge the widely fostered notion that private profit is the sole acceptable basis for new productive investments" (Commoner, 1977/8:13). This is, of course, only a problem for those who have major interests in maintaining a certain kind of rhetoric. Schrecker (1977/8) makes some interesting comments about rhetoric.

> We must remember, too, that much of the rhetoric of job creation associated with economic growth is just that: rhetoric. As a great many economists have rightly pointed out, economic growth in capitalist societies really means growth of profit, of the opportunity for profit. Employment is at best a by-product; jobs are eliminated by technology as quickly as it becomes profitable to do so. (Schrecker, 1977/8:3)

In general then, it seems as if many of the arguments for the necessity of tradeoffs between the environment and the economy would have to at least be seriously questioned, if not completely dismissed.

The other major area that should be addressed are the arguments made by the government and the state that a more sanctioning approach to environmental enforcement is less environmentally effective than the adopted compliance approach. Although statistics on the relative effectiveness of a more sanctioning versus a more compliance approach are not readily available, some important points on the relative effectiveness of a more sanctioning orientated approach have been made by Swaigen (1985). First, he refutes traditional arguments made against prosecution. To the argument that "... the command-penality (command-control) model of law is not appropriate for pollution offences" (Swaigen, 1985:4) and that a more administrative procedure is necessary for the type of negotiation and compromise needed in pollution control, he argues that none of Canadian legislation "... places an absolute prohibition on pollution" (Swaigen, 1985:4). The legislation allows for the kind of "flexibility" found in a more administrative approach. Second, to the argument that prosecution is more expensive and time consuming than a more administrative approach, he argues that if persuasion works quickly that would be true. If, however, persuasion does not work quickly, then prosecution is probably no more expensive and time consuming than other methods of obtaining compliance. In Ontario, very few of the cases actually come to the more expensive trial because most of the accused plead guilty

(Swaigen, 1985). To the argument that there is a great deal of uncertainty on the success of prosecutions, he argues that statistics indicate a very high rate of success. Success is more likely when there is some preparation to prosecute, for example, when the investigators and the counsel are experienced. Finally, to the argument that low fines indicate the ineffectiveness of prosecution, he argues that "(j)udging the success of prosecution by looking at the size of the fine is like judging the quality of a wine by the size of the bottle" (Swaigen, 1985:6). He says that just the act of laying the charges results in much pollution abatement activity and that companies are aware that if they come before the courts again there is a likelihood that they will face much higher fines. Swaigen feels that firms are less likely to take the gamble that the agency will ignore future violations (Swaigen, 1985). Many of these arguments against prosecution have been used in the Alberta context. Swaigen (1985) offers some interesting opposition to the validity of these kinds of arguments.

Swaigen (1985) also points out some of the benefits of prosecution. First, he argues that the far off head offices of the many branch plant operations in Canada are more likely to take notice of a prosecution than they are of continued negotiation. Second, prosecution brings "... to light the deliberate and surreptitious activities going on in certain industries ..." in a way that administrative

action cannot (Swaigen, 1985:7). Finally, enforcement enhances the credibility of the enforcement agency with environmental groups, the press, victims and the public in general (Swaigen, 1985). It could be argued that the Alberta environment would profit from these benefits as much as other areas of Canada.

The notion of credibility and of compliance versus sanctioning strategies are touched on by one author representing the views of "the public" at the environmental law enforcement conference mentioned earlier.

> From the public's point of view, negotiation is not an acceptable mechanism to replace enforcement. Negotiation should occur in a public forum to establish standards, but once those standards are set, the negotiation must stop and prosecution must take place for violation of those standards. The government has argued that the negotiation is necessary because of the ongoing relationship which exists between the industry and the government. Some have described it as a marriage situation. Quite simply, if one accepts the analogy, it is time for a divorce. Negotiation as a replacement for prosecution is simply not working. (Kansky, 1985:110-111)

Since members of the public have expressed a certain level of concern for environmental quality, it is perhaps time that the Alberta state and the government took a serious look at their air quality protection policies. There is no telling how much longer the government and the state can maintain their legitimacy by arguing that bargaining and negotiation are the most effective method to control air quality.

According to Chambliss and Seidman's (1982) model, conflicts will rise out of the major contradictions between industrialization and environmental quality. The conflicts may be resolved, but the contradiction will remain. This will, in turn, lead to other conflicts. At first glance this would appear to create a rather gloomy picture in terms of the protection of the environment for the future. In other words, as long as the contradiction exists, and it will probably continue to exist under capitalism, the environment will suffer. This rather narrow interpretation denies the flexibility of the model. Each of the conflicts that are resolved has the potential of improving the environmental situation to some degree. Social regulations, although they have evolved slowly and may be rarely enforced, have resulted in material changes in the quality of life for workers, consumers and the general public where the quality of the environment is concerned. Also, as stated earlier, it must be remembered that complete destruction of the environment is not in the best interests of capital. Keeping all of the above points in mind, at least two areas for further research will be briefly discussed.

First, it has been noted that although the government and the state tend to align themselves with the needs of capital in Alberta and in other capitalist regions, they cannot completely ignore the demands of environmental interest groups and the public in general. The

relationship between public interest in the environment and the state and government response to environmental concerns was mentioned in the discussion of the Legislative debates. If governments are going to be convinced that there is a mandate from the public for pollution control, accurate and detailed national information on public attitudes toward the environment must be available. This could be combined with surveys suggested by Chappell (1987) to determine the public mandate for the government and the state to pursue sanctioning strategies against polluters. This type of information could be collected using a carefully designed national survey. Evidence of a mandate from the public on protecting the environment in general and on their view of using sanctioning strategies in that protection process would be both practically and theoretically important.

The second area of suggested research would have particular relevance to Alberta, but could be applied to other areas. Statistics on the compliance records of sanctioning versus negotiated compliance strategies must be made available. There seems to be an overall "feeling" that methods of negotiated compliance, especially in the almost complete absence of any sanctioning strategies, are not as effective as a more sanctioning orientated approach, or at least an approach that treats sanctioning as a serious option. Still, the Alberta government continues to argue that relying almost exclusively on negotiated compliance is more effective than a sanctioning approach.

These opposing positions must be put to the test. In theory, company monitoring data are available in Alberta. If this type of data are available in other provinces, or even in other areas of the world which have adopted a more sanctioning approach, this information could be compared. If the negotiated compliance method is not as effective, it is essential that environmentalists and other concerned members of the public be able to empirically demonstrate their argument. In the end probably the most important question is "Will there be an environment for tomorrow?". We have to have the above kind of information to make the most appropriate environmental decisions to ensure that the answer to that question is "yes".

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