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THE NATIONAL DEVELOPMENT ACT 1979:

A CRITICAL ANALYSIS

ANDREW DORRINGTON BOYLE

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ABSTRACT

This thesis analyses the National Development Act 1979. The theories of Claus Offe and Jurgen Habermas are used to analyse the Act as a capitalist state planning process. Two major theoretical distinctions provide a framework for the thesis. These are: (1) the distinction between technical rationalisation and practical rationalisation and (2) the contradiction between accumulation and legitimation. A clarification is made in the concept of legitimation to distinguish between actual or deserved legitimation and nominal or unfounded legitimation. An analysis of legislation, Tribunal reports, Cabinet papers and other documents shows the Act to be a dual planning process: one process occurring in secret and relating to accumulation; the other in public and relating to legitimation. Thus the Act is analysed as a technical planning process through which the state attempts to reconcile accumulation and legitimation.

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ABBREVIATIONS.

BP.	British Petroleum.
CFE.	Commission for the Environment.
COG.	Coalition for Open Government.
CREEDNZ.	Coalition for Rational Economic and Environmental Development in New Zealand Inc.
CRPR.	Committee to Review Power Requirements in New Zealand.
DSIR.	Department of Scientific and Industrial Research.
EDS.	Environmental Defense Society.
EIR.	Environmental Impact Report.
EPEP.	Environmental Protection and Enhancement Procedures.
G-G.	Governor-General.
GWh.	Gigawatt-hour.
ICOP.	Interdepartmental Committee on Petrochemicals.
JEC.	Joint Executive Committee.
LFTB.	Liquid Fuels Trust Board.
MP.	Member of Parliament.
NBR.	National Business Review.
NBR Outlook.	National Business Review Outlook.
ND Act.	National Development Act 1979.
ND Amendment Act.	National Development Amendment Act 1981.
ND Bill.	National Development Bill.
ND Conference.	National Development Conference.

ND Council.	National Development Council.
ND Strategy.	National Development Strategy.
NTEPA.	North Taranaki Environment Protection Association Inc.
NWSCA.	National Water and Soil Conservation Authority.
NZLR.	New Zealand Law Reports.
NZPC.	New Zealand Planning Council.
NZPD.	New Zealand Parliamentary Debates.
NZSFCL.	New Zealand Synthetic Fuels Corporation Limited.
OECD.	Organisation for European Co-operation and Development.
OND.	Organisation for National Development.
PCEPD.	Planning Committee on Electric Power Development in New Zealand.
Petralgas.	Petralgas Chemicals (NZ) Limited.
SPA.	South Pacific Aluminium Limited.
Task Force.	Task Force on Economic and Social Planning.
TCP Act.	Town and Country Planning Act 1977.
Working Party.	Working Party on Environmental Administration in New Zealand.
WSC Act	Water and Soil Conservation Act 1967.

## INTRODUCTION.

The National Development Act (ND Act) was designed to prevent delays in the implementation of major projects by placing them on a fast-track planning process. It became law after being rushed through Parliament in 1979, despite widespread opposition. The long title to the Act describes it as:

An Act to provide for the prompt consideration of proposed works of national importance by the direct referral of the proposals to the Planning Tribunal for an inquiry and report and by providing for such works to receive the necessary consents.

The Act can be applied to any project that is considered to be in the national interest. Application of the Act means that a single Planning Tribunal inquiry considers all the planning consents sought instead of these consents being considered separately by various authorities under different Acts (e.g., Town and Country Planning Act, Water and Soil Conservation Act, Clean Air Act). It has been used twice: for a methanol plant and a synthetic petrol plant, both in Taranaki. It was

to have been used for an aluminium smelter but one of the proponents withdrew from the project. However, despite its limited use it is one of the most controversial pieces of recent legislation.

The synthetic petrol plant, implemented under the Act in 1982, was officially opened on 27 February 1986. It will use four million cubic metres of natural gas per day to produce 4,407 tonnes of methanol which is then converted into 1,680 tonnes of petrol. Total annual production of the plant is 570,000 tonnes of synthetic petrol. It is the first of its type built in the world. The Chairman of the Planning Tribunal inquiry considering the plant said:

It is difficult, if not impossible, to gain any real appreciation of the immensity of this plant. Engineers employed by the applicant conceded it was large even on a world scale (Planning Tribunal, 1981b:7).

The decision to proceed with the plant was the most important decision made by the government in 1981 (Terry et al, 1981:2). Yet because of the ND Act there was no public input into this decision.

This thesis is a critical analysis of the ND Act. For such an analysis it is necessary to consider the economic, social and political framework in which the Act was enacted and used. This framework is democratic capitalism. Within this framework it is necessary to consider the nature and the functions of the capitalist state. To do this the theories of Claus Offe and Jurgen Habermas are used (1).

These theories are presented rather than argued for as the main emphasis of the thesis is on an analysis of the ND Act, not the explication of a theory of the state. The work of Offe and Habermas is presented as a single theory (with an emphasis on Offe), although there are of course differences between them. These differences have not been overlooked in the writing of the thesis but it is felt that discussion of them should not intrude upon the analysis of the Act. The theory is being used to analyse the Act: the Act has not been used to illustrate the theory.

#### THESIS ORGANISATION.

Chapter 1 begins with a section on instrumental and practical rationalisation. These are ideal types constructed by Habermas and are used here to distinguish between two types of planning: instrumental planning, of which the ND Act is an example; and practical planning upon which, it is considered in this thesis, planning should be based. The main emphasis of the chapter is the theories of the state put forward by Offe and Habermas. Of particular importance in the theory presented is the contradiction between accumulation and legitimation. These are seen as necessary but contradictory functions that the capitalist state must fulfill. The contradiction between them is an integral part of the state itself. A distinction is made in the thesis between actual and nominal legitimation: the former is justifiable and

deserved, the latter is merely claimed and has no basis apart from this claim.

Chapter 2 is a selective history of national development in New Zealand that draws out the meaning of "national development" as it has been used in the New Zealand context. One part of this history is the Think Big growth strategy developed by the National Government between 1979 and 1981. This strategy, for which the ND Act was introduced, is covered in more detail in Chapter 3. Its origins and development are traced with an emphasis on the methanol plant, the synthetic petrol plant and the second aluminium smelter. Chapter 3 also looks at the enactment of the ND Act.

Chapter 4 begins with a descriptive outline of the procedures under the Act. This is followed by a section that sets out the scheme that will be used to analyse the Act. The ND Act procedures can be divided into five main stages. These are the application of the Act, environmental impact evaluation, the Planning Tribunal inquiry, the granting of consents and judicial review. The Act is applied to a project by the Governor-General in Council, (this effectively means by Cabinet decision). Following the application of the Act is the process of environmental impact evaluation. This involves an environmental impact report prepared by the proponent, public submissions on the report and an audit by the Commissioner for the Environment, which considers both the report and the public submissions. Once the audit

is completed a Planning Tribunal inquiry is held. This involves some public participation and results in a recommendation being sent to the Minister of National Development on whether the consents sought should be granted. The actual decision is again made by Cabinet through the Governor-General in Council. Judicial review can occur at various stages of the procedures.

However, it is important to analyse the Act in its economic and political context so more than just an analysis of the Act's statutory procedures is required. It is especially important to look at negotiation and planning that occurs between the state and the proponent of the project before the Act is invoked. It is during this stage that the major decisions are made, hence it is called the decisive planning process. Thus the order of events, excluding judicial review (which is considered at the end of Chapter 4), is: decisive planning process, application of the Act, environmental impact evaluation, Planning Tribunal inquiry, granting of consents. However, because of similarities between the decisive planning process, the application of the Act and the granting of consents, these stages are considered together. They all involve Cabinet decisions made in conjunction with the proponent and excluding public input. They are analysed in Chapter 5 and are related to the state's function of maintaining accumulation. The process of environmental impact evaluation and the Planning Tribunal inquiry are also considered together as they both involve public participation. These are analysed in Chapter 6 and are related to the state's function of maintaining

legitimation. Thus the Act is analysed as a dual planning process through which the state attempts to reconcile the contradiction between accumulation and legitimation. Chapter 7 provides a conclusion to the analysis.

In a postscript elements of an alternative planning process are considered. No detailed or concrete process is put forward, but ideas that have arisen from the critique of the Act are developed. The most important of these is that planning should be based upon practical rather than technical rationalisation. Such a practical planning processes could only be worked out through informed public debate. but one example of a more practical approach to planning is the Waitangi Tribunal hearing on the discharge of waste along the Taranaki coast. The postscript concludes with a discussion of this hearing.

Although the ND Act is to be repealed by the Labour Government this thesis was begun when the ND Act was still firmly on the statute books so the present tense has been used for the analysis.