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*Procedure Weak or Strong*  
*Understanding the Limits of Political Inquiries*

**Abstract**

The authors contrast two political inquiries in light of Luhmann's system theory of procedure. The article asks whether and to what extent these inquiries can be considered as procedural systems, meaning as distinct frames of action that generate specific meanings and relevancies. Starting from the micro-sociological analysis of interactions in the British "Hutton Inquiry" and the European Union's "CIA Inquiry" the authors reconstruct the specific functionalities of each with regard to their different ways of engaging and enabling self-referential processes of communication, knowledge production, and decision-making. As a system, each merges these three processes into a consistent, relatively strong or weak procedure, but they do so to different degrees. Overall, the article encourages a sociological understanding of the procedural mechanism as well as an empirical qualification and variation of system-theoretical assertions.

*Keywords:* Procedure; System; Parliamentary inquiry; Interaction; Discourse.

*I. A sociological understanding of procedure*

ATTENDANT ON THE GLOBAL "war on terror", Western democracies established a number of political inquiries. Objects of inquiry and discussion are issues such as the decision to go to war in Iraq, the incarceration of "terrorists", the operation of secret detention camps and further alleged instances of misconduct by state authorities. We take these inquiries as a starting point to illuminate their modes of operation from a micro-sociological perspective. We ask how these inquiries process their respective terms of reference emanating from parliamentary or governmental authorities. For example, how do the "Hutton Inquiry", commissioned by the British

government, and the “CIA Inquiry”, commissioned by the European Parliament, operate? We compare the inquiries’ respective modes of operation using the published protocols and documents. We use our empirical results to discuss the analytic question whether and to what degree the inquiries display properties of (self-referential, distinct and integrated) procedural systems, as defined by Luhmann – and as opposed to, *e.g.*, rituals or mere gatherings. The comparison shows that, viewed sociologically, both display certain properties of procedure, albeit to different degrees. On the basis of these results, we aim to give empirical weight to Luhmann’s system theory of procedure. In particular, our results serve to both illustrate and specify Luhmann’s theoretical notion of “procedural systems”.

### *1. On the procedural analysis of political inquiries*

The literature on the operation of inquiry committees is extensive. In political science and constitutional law, political inquiries are discussed with regard to the functions they fulfil within the democratic polity. Accordingly, in this perspective, inquiries serve such purposes as: controlling the work of government (Claveloux 1983; Aberbach 1986; Alba 1995; Baumgarten 2000; Höpfner 2004); containing scandals (Germis 1988); binding public attention (Willems *et al.* 1993); or re-establishing tarnished reputations (Ziemske 1991; Rozell and Wilcox 2000; Blaney 2001). On the whole, there are few sociological works on inquiry committees, exemplified by analyses such as Alexander’s (1989) of the “Watergate” inquiry and Lynch and Bogen’s (1996) work on the “Iran-Contra” hearings. Alexander describes the Watergate hearings’ social function in terms of a ritual renewal and purification of US society. Based on the TV coverage from the “Iran-Contra hearings”, Lynch and Bogen analyse the pragmatics of memory work in the inquiry, including its systematic limitations. The “making of history” thus acquires a dual character: on the one hand, it emerges as the practical and public reconstruction of the history of a secret and illegal weapons deal; on the other, as a historically charged spectacle of recent US history itself.

In this respect, research on committees of inquiry proceeds in an analogous manner to research on procedure more generally. A “procedure” is defined and evaluated in legal terms. An important frame of reference in current legal and political scholarship on procedure is the difference between adversarial and inquisitorial legal systems. In this

line of thinking, procedural designs are evaluated according to the norms of decision and standards of evidence they imply: in adversarial procedure, the search for and submission of evidence, examination of witnesses, and the assertion of claims are dominated by the parties, and decisions are generally reached by way of a “common sense” logic. Inquisitorial procedural designs, on the other hand, rely on an authoritative figure, such as a judge or government official, guiding the “search for the truth” “from above”, and decisions are made according to an administrative logic. Thus, in the adversarial procedure “authority is fragmented and [...] hierarchical control is relatively weak”, while in inquisitorial procedure “legal authority and decision-making is hierarchically organised and disputants [...] play a more restrained role” (Kagan 2006, p. 5).

Considering the prevalence of the adversarial/inquisitorial distinction, it is not surprising that many recent works on the design and operation of procedure focus on the relative advantages and disadvantages of these two procedural types (Kritzer 2004, p. 367, pp. 376-77). Similarly, evaluations of a given procedure often rely on the adversarial/inquisitorial distinction and proceed from there to look at the respective “other” type as a source of innovation (Kagan 2006; Bräcklein 2006). Politico-legal scholarship liberally applies those same criteria to committees of inquiry to argue for a need for reform (Schröder 1988; Ziemske 1991; Morlok 2000; Weisgerber 2003) or to assess the effectiveness and desirability of amendments (Schröder 1989, 2000). There is also much concern with the legal limits of inquiries, *e.g.*, vis-à-vis the executive (Baumgarten 2000; Rozell 2002), the media (Mangan 1994), lawyer-client interactions (Rich 1988; Chud 1999), or private persons (O’Neill 2002). The common denominator of these works is that the analysis of procedure proceeds from the *rules of procedure*.

This “norm-bias” (Vollmer 1996) is not confined to legal and political scholarship; it also pervades sociological or socio-legal thinking about procedure. Commonly, a procedure is evaluated according to normative criteria such as those of discourse ethics (Apel and Kettner 1992; Bal 1994), procedural justice (Epp 1998), public access (Bora 1999), or the acceptance of outcomes (Machura 2001). However, a procedure and its rules of procedure are not one and the same. The former is much more: a “social system” (Luhmann 1969, p. 41), a “partially self-governing, complexity-reducing framework of action” (*ibid.*); a “matrix of possible events that can only occur with their specific meanings in this procedure” (*ibid.* p. 45, translations are my own, JS). Here, Luhmann lays the foundations for a sociological concept of procedure emancipated from law.

Besides separating procedure from legal norms, Luhmann also redefined the relation between the two. *Legitimation durch Verfahren* [Legitimation by Procedure] offers a sociological understanding of legal norms next to a dynamic model of decision. Legal norms are integrated into the operation of procedure as “social systems serving a specific function, which is to arrive at a singular binding decision, and which are therefore restricted in their duration from the beginning” (Luhmann, 1969, p. 41, translation JS). During this limited time, a complex, self-referential microcosm unfolds disengaged from everyday life. Here, nuances and details gain currency which seem irrelevant from the “outside”. The general critique of *Legitimation durch Verfahren* (Treiber 1986; Machura 1993; Röhl and Machura 1997) was rather focussed on Luhmann’s concept of legitimation. By contrast, we consider the crucial innovation to be Luhmann’s sociological concept of procedure (Rosenfield 1998; Ziegert 2002). In this paper, we push this sociological turn by describing procedure as the interplay of self-referential and contingent processes of decision-making, communication and knowledge production. This serves to establish a notion of procedure which does not function as the antonym of informality, but rather as the opposite of ritual (*i.e.*, as contingent). This also serves to qualify other common interpretative frames (Luhmann 1969, p. 175): the procedure is not the same as a single session of the inquiry, or interaction among co-present actors, even if performances do matter a great deal; it is not identical to the rules of procedure, even if these are followed, called upon, or established in the procedure itself; neither is it identical to parliament or the committee dealing with the issue, even if the procedure involves political organisations. Thus, our starting hypothesis reads: participants are only able to act issue-oriented, and their doings can only be reconstructed adequately with reference to the specific procedure in question and its current state. We aim to show that and in how far the political inquiries in question are actually conducted as a (contingent, self-referential and fenced-in) procedure, which in turn unfold their own retrospective and prospective references, roles and demands, as well as “good reasons” and powers of judgement.

We connect Luhmann’s notion of procedure as a social system to three further strands in sociological research:

a) to the ethnomethodological conversation analysis of pre-structured verbal exchanges in institutional settings, such as law courts, doctors’ offices, or parliaments;

b) to ethnographic laboratory studies on the socio-material and discourse-practical organisation of knowledge production and epistemic cultures;

c) to theories of decision-making from the sociology of organisations, explaining the sequential generation of previously contingent, currently binding and prospectively definitive decisions.

Each of these research traditions provides empirical criteria to assess self-reference and autonomy. We ask (a) how participants communicate in the hearings (b) to establish the facts (c) which then provide the basis for a definitive judgment.

## 2. *Do three processes make a procedure?*

Starting from a micro-sociological analysis of question/answer exchanges, we are going to address the inquiries' degrees of self-reference and integration with regard to their respective (self-) enacted knowledges and their (self-) founded decisions. We measure "procedurality" according to the following considerations.

*a) Communicative connections.* Conversation analysis emphasises the sequential structuring of hearings and testimonies. According to this view, meaningful contributions result from successive, coordinated and methodical production. Studies on "talk at work" (Drew and Heritage 1992) in general and, more particularly, "courtroom studies" (Atkinson and Drew 1979) have developed further relevant pre-structuring elements shaping the local course of conversation. Conditions such as "multi-party" figurations, "overhearing audiences", or the "pre-allocation" of turns are important concepts here. In general, conversation analysis requires restraint in interpretation: the aim is to reconstruct the successive construction of meaning by the participants; roles and rules only gain relevance in the course of conversation; even seemingly simple definitions, such as the beginning and end of a hearing are produced by the participants themselves. Luhmann assumes a similar self-reference for procedure in general: "The beginning and the end are markers that are produced by the proceedings, that is, which are identified recursively in the management of the proceedings" (Luhmann 2004, p. 206). With a view to procedurality, this poses the question, whether and in how far participants' retrospective and prospective contributions integrate *one* procedure, and how participants render their contributions as contributions to the procedure. Conversely, one could ask whether the

interrogations are merely disconnected events. This leads us to a first necessary (but not sufficient) condition in our definition of procedure – an integrated communicative process.

*b) Foundation of knowledge.* Ethnographic laboratory studies (Knorr-Cetina 1981, 1999) open the perspective on knowledge processes, which are fed by local, pragmatic tests and examinations. In the context of legal procedure, knowledge is generated by way of eye witnesses, expertise, or “outsourced” investigations (Valverde 2003; Sarat *et al.* 2007). Contributions are documented, certified as facts, and made available for future reference (Latour 2002). The review and fixation of contributions can include the use of notes (Scheffer 2006), protocols (Smith 1985), files (Vismann 2001; Scheffer 2007b), or archives (Lynch 1999), depending on the scope of the inquiry. In this way, the inquiry solidifies its own “case history” (Luhmann 1969, p. 44) and keeps it available for future occasions. Speakers must respond to the current standard of knowledge. In the case of public inquiries, the additional element of an interested audience turns into a knowledgeable and verifying authority. In this sense, the publicity of knowledge processes reminds us of early modern scientific experiments (Shapin and Schaffer 1985; Shapin 1994), the results of which had to pass before an audience of “gentlemen”. Knowledge processes exhibit procedurality to the degree they rely on facts that have been produced and processed internally. The question is whether the inquiries proceed autonomously, *i.e.*, from the facts they generate themselves, or, conversely, whether they follow external postulates. In the latter case, a necessary, but not sufficient condition of procedurality would remain unfulfilled.

*c) Decision-making ability.* The concepts borrowed from the sociology of organisations to analyse decision-making processes focus on a “history of the decision” (Luhmann 1969, p. 40), *i.e.* a space of possibilities that is sequentially narrowed down to a definitive and final decision. Luhmann adds further sociological qualities to this stepwise selection from pre-selections. The self-referential character of the decision-making process immunises the procedure against social differences of rank and status. The decision-makers judge cases according to the participants’ “definitive” and “binding” statements (Wolff and Müller 1997). Participants are held to account for their performances and representations. The contingent character of decisions, paired with the internally-produced criteria for those decisions,

motivates involvement and participation (Luhmann 1969, p. 114). A decision observes behaviour as choice and thus as attributable (*ibid.* p. 44). This formulates another necessary, but not sufficient, condition for procedurality. We will speak of procedure if *one* binding decision emerges at the end of an internal decision-making history. Conversely, procedurality can be disputed if the decision is fixed *per se* or if it is missing altogether.

The processes of communication, knowledge production and decision-making prove to be more or less self-referential. Furthermore, they do not proceed separately, but refer to each other in the course of the inquiries. How can we imagine their concurrence? Communication, knowledge production and decision-making are mutually structuring. Conversational interaction provides knowledge; protocols keep this knowledge available to provide subsequent hearings with new issues and questions; decision-making again utilises communication and knowledge in the form of criteria for judgement and contrasts. These three processual perspectives also indicate in how far the inquiries actually function as an integrated, self-referential, and autonomous procedure. In the following, we attempt to show that and how the inquiries succeed to detach and emancipate themselves – more or less –<sup>1</sup> from their environment as a procedure.

### 3. *Methodical Maxims*

The synopsis of processes of communication, knowledge production and decision-making leads us to some methodical ground rules. Firstly, we take a distanced *and* close-up look at political inquiries. We take a distanced stance towards the exciting political debates and investigations; on the other hand, we close in on the inquiries by looking at their details in a partially microscopic analysis. Both these movements can be formulated as the basic rules of our own procedure (of data analysis): our conclusions grow from process data<sup>2</sup>, which are produced and made available in the course of the inquiries. Analogous to the minimal requirements for an “open” procedure, we do not

<sup>1</sup> On some occasions, Luhmann also reformulates the issue of procedural autonomy – the temporal bracketing of controversial issues, impartiality in factual matters, or disregard to matters of status – in terms of variables.

<sup>2</sup> The transcripts and protocols can be found at: <http://www.the-hutton-inquiry.org.uk> and [http://www.europarl.europa.eu/comparl/tempcom/tdip/reports/default\\_en.html](http://www.europarl.europa.eu/comparl/tempcom/tdip/reports/default_en.html) (accessed October 2007). For the CIA inquiry we quote from the English version of the protocols.

interpret the data from their results. Thus, the question of procedural-ality only emerges after our empirical exploration. As a first step, we are merely concerned to use the interrogations in the inquiries as a starting point to determine how they operate with regard to knowledge production and decision-making.

We will hone this stipulation by way of a contrastive method. The following considerations provide the basis for our selection of cases: a) at first glance, the inquiries are concerned with similar issues. They both deal with matters of the “war against terror” and its legitimacy. b) Both inquiries exhibit a considerable lack of procedural rules. This factor propels the question about procedurality, *i.e.* the degree of autonomy and integration exhibited by the communicative, knowledge-producing and decision-making processes. c) Thus, both inquiries become didactic pieces on the programming of these processes by their operators. d) The inquiries already proved fundamentally different in the first data sightings. Thus, quick exchanges of questions and answers in the Hutton Inquiry provide a stark contrast to the markedly long speeches in the CIA committee.

Further analysis showed persistent differences in the progression, methods, and approach of the respective inquiries. We integrated these differences as features of political inquiries. We identified, ordered and contrasted the respective peculiar elements according to general criteria: inquiry methods, objects of inquiry, integration of the inquiry, impositions and their limits. In this way, we actively produced comparability between our cases (Niewöhner and Scheffer 2008). This results in a typification of strong and weak procedure. The confrontation of the cases served to focus some single characteristics: the questions “How is this there? How is this here?” stimulated empirical-analytical “explication” (Hirschauer 2001). Contrasting the political inquiries serves not only to thicken and explicate; at the same time, it stimulates the “sociological imagination” (Mills 1959), *i.e.*, it served to imagine a certain scope of variation. The contrasts invite us to apply the procedural analysis to further cases (*e.g.*, the German “Visa” committee) and to extend the bases of comparison by adding further facets (*e.g.*, the role of the political public, which is only sketched here). Finally, the contrasts are to be merged and interpreted according to the three criteria of procedurality.

A further methodical ground rule relates to the empirical use of theoretical concepts. We are concerned with using the contrasts in order to operationalise the notion of procedure as a matter of varying magnitudes, or a sum of variables. With respect to our contrasting



cases, this does not culminate in a distinction between procedure and non-procedure, but rather in a relativisation of procedurality. “Strong procedure” and “weak procedure” do not denote ideal types, but rather points in an empirical spectrum. In this way, our analysis also serves as an example of how very fine-grained methodological approaches can contribute to the specification of grand theoretical blueprints. Thus, the empirical variation highlighted by the contrasts strongly invites further empirical work leading to a sociological explication of the notion of procedure.

#### *4. The cases: Hutton Inquiry and CIA Committee*

The Hutton Inquiry was constituted only days after the weapons expert and former UN inspector in Iraq, Dr David Kelly, was found dead near his home. The inquiry was set up on the initiative of Prime Minister Tony Blair in July 2003 at a time of heated debate: anti-war demonstrations were spreading, individual ministers were protesting and resigning, and there was open dissent between EU member states. Immediately before his death, David Kelly was at the centre of a controversy between the Government and the BBC about a dossier on the threat of Iraqi “weapons of mass destruction”. On 29 May 2003, BBC journalist Andrew Gilligan quoted an “unnamed source”, who had claimed that the dossier was changed against the wishes of the intelligence services shortly before its publication. The allegation was that the “sexed up” version of the dossier was meant to legitimise Britain’s decision to go to war vis-à-vis a critical public. The Government denied this. In June 2003, the parliamentary Foreign Affairs Select Committee (FAC) concerned itself with “The Decision to go to War in Iraq”. In the course of this inquiry, clues emerged that Dr Kelly may have been Gilligan’s “anonymous source”. On 18 July, the day after the Ministry of Defence confirmed Dr Kelly was the likely source, he was found dead.

The Prime Minister immediately announced an independent inquiry. The Secretary of State for Constitutional Affairs commissioned the High Court judge Lord Hutton to preside over the inquiry. A “Letter of Appointment”, dated 24 July 2003, defined the terms of the inquiry: “Urgently to conduct an investigation into the circumstances surrounding the death of Dr David Kelly”. In principle, British ministers can establish political inquiries without prior debate or division in Parliament (Ziemske 1991). Such an extra-parliamentary

inquiry does not have judicial powers to summon or swear in witnesses.<sup>3</sup> At the beginning of his inquiry on 1 August 2003, Lord Hutton announced a number of self-imposed procedural standards. He announced a two-stage progression: a first phase “will be devoted to obtaining, in a neutral way, by counsel to the Inquiry, an account of the events which took place by those who took part in them”; a second phase is concerned only with “persons whom I have notified of possible criticisms”. The latter are recalled and cross-examined by counsel for the various parties (BBC, Government, Kelly family) (Hearing transcript Ht., 01/08/03, 21-22).

The inquiry encountered extensive media interest. In Luhmann’s terminology: as a public issue, it was a “breakthrough” (1971, p.18), *i.e.* it quickly became “part of public opinion in the sense of our concept; it appears in daily press reporting in a way which presupposes that everybody knows the history of the issue” (*ibid.*; translation JS). In the course of the inquiry, the press quoted extensively from the protocols, constructed preliminary scores, and speculated about possible outcomes. A surge of critical voices about the inquiry can only be found on the day after Lord Hutton published his final report. Criticism focused on fixation on detail and political blindness:

Lord Hutton failed to put this row into its full context, or to recognise that Mr Gilligan had touched, albeit inaccurately, on a real issue. [...] That issue, essentially whether Mr Blair was justified in committing Britain to war, remains. [...] Lord Hutton could not, and did not, deal with these questions. But doubts over the justification for war will remain long after Hutton will be forgotten (*The Times*, 29/01/04, 19).

We compare the Hutton Inquiry to the “Temporary Committee on the alleged use of European countries by the CIA for the transport and illegal detention of prisoners” (TDIP). It was set up by the European Parliament (EP) as a “temporary committee” according to Article 175 of the EP’s rules of procedure on 18 January 2006 (P6\_TA-Prov(2006)0012). Parliament was unable to agree on the competence of regular committees of inquiry (Kipke 1989; Shackleton 1998; Dreischer 2004) – as, for example, in the case of an “alleged violation of community law”. The terms of reference defined tasks (“to collect and analyse information to find out whether the CIA”), the general course of action (“will liaise and cooperate as closely as

<sup>3</sup> This was the legal situation until 2005 (*cf. Tribunals of Inquiry [Evidence] Act 1921*). According to the new *Inquiries Act*, ministers can also commission inquiries with

corresponding judicial powers. Parliament must merely be “informed” about the composition, chairperson(s), and terms of the inquiry.

possible with the Council of Europe”), time frame (four months plus a possible extension) and composition (“46 members of the European Parliament”) of the inquiry. By comparison, the EP’s rules of procedure (II, Ch. 2, Art 42-48) specify the proceedings and operation of inquiries only generally. Implementation is left to the committees themselves. The CIA Committee discussed its proceedings and mode of operation at its second meeting on 13 February 2006.<sup>4</sup> It agreed on “general principles” (Working document n°1, 14/02/06). The work programme contains a “provisional calendar of meetings” until the first preliminary report, as well as suggestions for invitations (a list of persons and institutions), delegations and special reports.

The appointment of the inquiry was preceded by various judicial inquiries in member states and by unsuccessful queries to the European Commission and the Council of Europe (E-2203/05 and E-2204/05). After the *Washington Post* published an “investigative report” on 2 November 2005 and the Council of Europe initiated an investigation, the EP applied for the appointment of a special committee. This committee began its work on 26 January 2006, without much press coverage. Ten months later, the committee published a final report, which focused, next to a political assessment of the results, on the work accomplished and on assessing its cooperation with various governments, international institutions and organisations.<sup>5</sup> The EP agreed on the committee report with slight changes in wording on 14 February 2007 (P6\_TA-PROV (2007)0032).

As determined in its first work programme, the committee did not only conduct hearings, but also sent delegations and analysed flight and satellite data. The committee cooperated with further public institutions (*e.g.* the Council of Europe) and with journalists called as more or less knowledgeable informants. The running press reporting was limited to a few highlights: the constituent meeting, the interim reports, important witnesses’ testimonies, and the final report. Public debate would not spark. As a “public issue” (Luhmann 1971, p. 18), the inquiry (unlike its object: the CIA flights) remained in its “latent phase” (*ibid.*).

Press observers, like some committee members, doubted the relevance and probative force of the running investigations. The final report, published on 28 November 2006, on the other hand, was showered with praise: the press wrote about a “new confirmation”

<sup>4</sup> Cf. Press Release, 14/02/06: MEPs outline plans to probe CIA flights and detention centres, EP Press Service, first paragraph.

<sup>5</sup> Specific insights were summarised in working documents (n° 7 and 8), which are referred to in the report.

(*The New York Times*, 29/11/06) and “serious circumstantial evidence” (*Washington Post*, 29/11/06). Some commentators called for “a forceful EU response” (*The Times*, 29/11/06) or “continued investigations” (*Taz*, 24/01/07, own translation). According to *The Independent* (29/11/06), however, the inquiry showed “little new”.

In the following, we turn to the goings-on in the committees. We probe and contrast the inquiries’ unique characteristics with reference to shared problems: How do they process their terms of reference? How do the inquiries produce knowledge? How do they reach decisions? We relate our contrasting empirical answers to the problem of (kind and intensity) of procedurality. In the conclusion, we will at once strengthen and weaken the contrast of strong and weak procedure through the notion of interplay. It can be shown that participants, as well as audiences and sponsors, do at times invoke the respective other procedural register – and thus pit formal requirements against each other.

## *II. How do committees of inquiry proceed?*

The Hutton Inquiry and the CIA Committee seem to fulfil analogous functions, which in turn seem to correspond to descriptions of their tasks from political science: revealing “misconduct”; re-establishing “public trust”; calming “scandals”. The inquiries’ respective legal designs also display some similarities: both are temporary institutions with special competence and without major case-spanning structures or effective means of coercion. Conversely, a look at the actual hearings reveals fundamental differences.

### *1. Lists of questions and series of questions: strong and weak modes of questioning*

Question: How do committees of inquiry investigate?

Answer: by way of questions. While the EU-committee works off lists of questions, the Hutton Inquiry displays dynamic question/answer exchanges. The following excerpt is from the interrogation of journalist Andrew Gilligan on the second day of the inquiry. Queens Counsel (QC) James Dingemans, counsel for the inquiry, is questioning Gilligan on the notes he produced after his informal interviews with his informant, the weapons inspector Kelly:

- 1 Q. You wanted to read into that your questions. Was there any question that provoked the first note on BBC/7/57?
- A. Yes. We started by talking about other things and then we got on to the dossier; and I said: What happened to it? When we last met
- 5 you were saying it was not very exciting. He said: Yes, that is right, until the last week it was just as I told you. It was transformed in the week before publication. I said: To make it sexier? And he said: Yes, to make it sexier. [...]
- [6 lines omitted]
- 10 Q. Then there is the entry that is just a single word, "Campbell". Was there any question that gave rise to that entry?
- A. Yes, it was something like: how did this transformation happen?
- Q. Right.
- A. And then the answer was that, one word.
- 15 Q. And he just said "Campbell"?
- A. Yes.
- Q. And what question led to the next entry?
- A. Well I was surprised and I said: What, you know, Campbell made it up? They made it up? And he said: No, it was real information but
- 20 it was unreliable and it was included against our wishes.
- Lord Hutton:** May I just ask you, Mr Gilligan, looking at the first paragraph, you put the question: Was it to make it sexier? And Dr Kelly replied: Yes, to make it sexier?
- A. Yes, to make it sexier, yes, so he adopted my words.
- 25 **Lord Hutton:** Now are you clear in your recollection that you asked how was it transformed, and that the name Campbell was first spoken by Dr Kelly?
- A. Yes, absolutely.
- Lord Hutton:** It was not a question by you: Was Campbell
- 30 involved in this?
- A. No, it was him. He raised the subject of the 45 minutes and he raised the subject of Campbell.
- (Ht, 12/08/03, 25-27)

Formally, the following course of interaction can be identified: a request (1-2) elicits a short narration (3-8). After a short digression, the QC invites Gilligan to continue his reconstruction of the course of the interview (10-11). The respondent then expands on his previous answer and the interrogator specifies the response (14-15). This is followed by another invitation to continue the narration (17), before the chair intervenes and has Gilligan confirm his answer to the initial question by repeating it (21-23).

Lord Hutton's "May I just ask you" (21) suggests to the witness that this issue was of relatively minor importance. The respondent takes up his own repeated answer and delivers a "telltale" reformulation ("He adopted my words", 24). Lord Hutton now has the answer to the second request confirmed (25-27). The next enquiry suggests expanding Gilligan's "admission" in response to the previous suggestive question to further parts of the interview (29-30).<sup>6</sup> This sets up the conclusion: If Andrew Gilligan suggested a specific formulation to his informant once, why not a second or third time?

The CIA Committee does not display those "exciting" question/answer-dynamics. This kind of dynamic is unlikely because questions are commonly asked in rounds. In such a round of questions, every committee member has the opportunity to ask (a block of) questions in their allotted time. On the chair's initiative, questions can also be collected.

We can observe the effect of this organisation in the following example. A member is questioning Mrs Mariner, the representative of the organisation Human Rights Watch:

First of all, you said that it is the task of this committee to find out what the governments have known about things that may or may not have been going on. It would be very useful if you could help us ask the right questions. That brings me to the issue of the definition of torture [...]. If we ask whether these renditions or extraordinary renditions have led to people being taken to countries where they were tortured, is that not the wrong question? If the United States or the CIA uses a different definition of torture, then they are obviously going to say "no". Perhaps we should rephrase the questions.

Secondly, regarding Romania, there is a report by a Romanian NGO, OADO, which says that no evidence was found of the existence of any prison camps or prisons on Romanian soil. I would like to hear your opinion on that report.

Thirdly, and this is a more general question, what is the role of the US Congress in all this? Do you have regular contacts there and how do they see this matter? (VR, 23/02/06, 11).

The questioning results in heterogeneous blocks of questions, which the respondent then works off. The collection of questions does not aim to evoke discrepancies by repetition or to dramatise by "zooming in" on details. Questions like "Can you tell us something

<sup>6</sup> Here, we see the combination of what Holly (1981) calls "hard and soft strategies" in interrogations. Some soft strategies are: seemingly harmless questions, the full weight of which will only be obvious later, distrac-

tions and repetition of single statements. Hard strategies are: marking discrepancies, confronting answers with investigative results or other witnesses' discrepant answers, or demanding opinions.

more about those facilities [offshore prisons]? We are they or were they and what proof, evidence or clues are there as to their existence?" (VR, 21/03/06, 5) seek to elicit *further* information.

Next to their lists of questions, members also deliver assessments and evaluations on the factual situation:

You keep talking about sources, about facts, about a plane which went to key destinations linked to terrorism. While I grant that many of the things you say may be true, and that the Americans most probably did not behave in the way we would expect them to, I just want to ask you if you yourself are really convinced by all the things you found out or do you, like me, still have some small doubts as to the credibility and veracity of the things we are talking about. Do you think it is all true or do you still have some doubts about the facts? (VR, 21/03/06, 6).

Confronted with a variety of questions and evaluations, respondents have a wide margin to structure their answers according to their own requirements. In this, they are not required to follow a certain order or even to respond to every question. Omissions, sometimes with reference to time constraints, are the rule. Some questions remain unanswered.

The committee receives answers that connect facts, indications, and assumptions. At the same time, the respondents position themselves politically and with regard to the contents of the question. Thus, journalist Stephen Grey attempts to use, *e.g.*, reservations ("we do not know", "my understanding is") and extensions (speculation and generalisation: "it knew"), as well as external evidence, to match his information to the question at hand:

There are still question marks as regards the involvement of British intelligence. *We do not know* the extent of complicity of European Governments [...] in these practices or how much they knew [...]. *My understanding is* that the British Government has been opposed to the practice of rendition although it has been aware of it. *It was aware* of these activities but tried to keep a distance from them. [...] One could *quote* the former Foreign Affairs Minister, Chris Mullin, who raised suspicions that the British Government was involved in providing information to the Americans (VR, 21.03.06, 7 emphases added).

The journalist's talk encompasses facts, indirect knowledge, suspicions and nescience. This variance is not the only contrast to the Hutton Inquiry. The CIA Committee further allows for respondents to assist in specifying problems and questions. Respondents themselves ask questions, plead for information, or formulate accusations.

This provides a first impression of how "asking questions" is done in the respective inquiries. Accordingly, the EU Committee conducts its hearings as negotiations between relatively co-equal colleagues.

Respondents experience relatively large degrees of freedom to shape their own contributions. In the Hutton Inquiry, on the other hand, the logic of interrogation with decisive default answers dominates the questioning. Those different modes of participation relate closely to the question of how the individual hearings are integrated into the overall inquiry and how the former work to integrate the latter by way of prospective and retrospective connections.

*2. Statements or issues: on the operation of memory and internal connections*

The hearings involve different forms of remembering and connecting. Besides hearing protocols, the EU-committee also produces interim statements and “working documents” containing topical and situational reports. The protocols do not feed back into the hearings. They do not serve to “pin down” respondents. Inconsistencies (*e.g.*, incorrect quotes or contradictory dates) are neither registered nor addressed. The rapporteur complains about the committee members “forgetfulness”: “It seems almost as if each hearing is our first” (VR, 21/03/06, 16). However, this way of utilising documents does not only imply forgetfulness, but also a specific way to remember.

In the EU-committee, memory is not focused on statements but rather on issues. It provides issue-oriented connections within a heterogeneous field of indications. Connections are not only made to issues that arise in the committee itself. *E.g.*, a committee member asks Mrs Mariner for ulterior investigative results: “I wonder whether you have reached a different conclusion from that drawn by the investigations carried out in Sweden and whether you are familiar with their contents” (VR, 23/02/06, 9).

These issue-oriented connections do not impose a binding force on respondents; they do not confront the latter with telltale inconsistencies. Instead, the connections serve to establish indications or leads, which are then followed further. We can observe this relation to procedural history in the way that members mark “wrong answers”. Rather than representing contradictions, “wrong answers” are marked generally *ex ante*:

Finally, you said that the governments of these two countries [Poland and Romania] provided the CIA with exclusive use of sites. What sites were these? I would ask you to stick to the facts, since, if the site in question is the airport at Szymany in Poland, it is widely known that this is a civil facility which can be used by anyone who so desires and there was nothing exclusive about its use (VR, 23/02/06, 6).



In this line, the rare instances when witnesses are recalled do not serve to test earlier answers, but rather to collect further information and to provide updates on relevant issue areas. The prosecutor Spataro formulates this in his second appearance:

I think it would be useful for you – this is what I have grasped from the summons to this meeting – to be brought up to date on the most recent developments in the investigation subsequent to what you learnt in the last hearing, approximately seven months ago (VR, 09/10/06, 1).

The British inquiry also establishes connections and continuities across several hearings, in line with one of our criteria for procedural-ity. However, in the Hutton Inquiry, memory is not structured topically. Here, connections are made between statements rather than between issues. The Hutton Inquiry interlocks speakers and utterances; it proceeds by way of authorised and attributable statements. This is precisely the purpose of the verbatim protocols, produced by stenographers during the hearings. The protocols serve as the authoritative medium to fix utterances as statements “en detail” and to keep those statements available for further hearings (Antaki and Leudar 2001).

In the Hutton Inquiry, repeated questioning makes connections to earlier statements possible. Witnesses are confronted with statements from the first round of hearings. The inquiry culminates in cross-examinations, in which witnesses have to relate to “their own statements”. See this extract from the Government lawyer’s cross-examination of Gilligan:

**Mr Sumption:** On the last occasion that you gave evidence to this inquiry, Mr Gilligan, when you were asked what you had said to Ms Wilson, you replied – the question was: “Question: In the early morning broadcast you have referred to the Government knowing that the 45 minute claim was wrong before it was put in. Did you put that allegation to the Ministry of Defence press officer?” Your answer was: “I do not believe I did put those specific words, no. As I say, I cannot remember exactly what I said. I gave them an outline of the story but I cannot remember exactly what I said to them.” When you gave evidence to Ms Rogers this morning you produced a complete string of precise statements about what you had said. What has happened since that last occasion to wake up your memory on this point? (Ht, 17/09/03, 55).

Connections to earlier answers emphasise the Hutton Inquiry’s self-reference. The inquiry itself produces – in public – the facts and contrasts meant to substantiate and legitimise the final judgement. At the same time, the close retrospective connection to statements marks sharp boundaries to external “hearsay” and “speculations”. Only what emerges from the inquiry itself counts as evidence. By contrast,

the issue-oriented structuring of the EU Committee aims at exploration. It is open to more or less vague and indirect indications to a complex set of issues. It collects and sifts findings from a conglomerate of inquiries.

### 3. *Culminations and extensions: what “drives” the inquiries*

In the questioning of Gilligan, the interrogator attempts to entangle the witness in his own statements by use of “cunning questions”. This style of questioning relies on the verbatim protocols of earlier hearings. These provide the basis to reveal inconsistencies, or, alternatively, to strengthen a favoured version. The following interrogation by the Inquiry QC, Mr Dingemans, deals with the newspaper article in which Gilligan directly accused Alastair Campbell, the Prime Minister’s director of communications and strategy, for the “transformation of the dossier”:

1 **Q.** Did you have any contact after your Today broadcast with Dr Kelly before you wrote this article?

**A.** No, I did not. I tried to speak to him but had not been able to get through, although not specifically to talk about this but to see  
5 how the thing had gone down, the broadcast.

**Lord Hutton** You say you had not got through. Did you try his home number?

**A.** Yes.

**Lord Hutton** And what, there was no reply?

10 **A.** There was an answer machine.

**Lord Hutton** Did you also try his mobile?

**A.** I cannot remember if I tried his mobile or not, I am afraid. I may have done.

**Mr. Dingemans** When did you do this?

15 **A.** I am not precisely sure when, but not very long after the broadcast.

[5 lines omitted]

**Q.** Did you make any other attempt to contact Dr Kelly before his death?

20 **A.** No. I mean, in the later stages I very badly wanted to speak to him; but I knew – you see, after the furore blew up I knew that the risk might be that I would compromise him by trying to phone him. In fact, I did try to phone him once from a phone box and again I just got the answerphone and I did not leave a message again.

- 25 **Q.** So your evidence is that you did try to contact him?  
**A.** Yes, I did try to contact him twice. The – as I say, once before the main sort of fuss about my story blew up and then once after. [8 lines omitted]  
**Q.** But you have already mentioned phoning from a public phone  
30 box, you tried that once. Did you try it again?  
**A.** No, I only tried it the once.  
**Q.** And why, if, as you say, you were keen to talk to him, did you not try again?  
**A.** Because I was worried that any attempt to contact him might  
35 be – you know, might compromise him.  
(12/08/03, 116-118).

Instead of focussing on the content of the article, the questions concern Gilligan's contacts with his informant. The enquiries are concerned to establish what became of Gilligan's call to Kelly (9); when exactly he called (14); which numbers he dialled (6, 11); and whether he had tried again (32-33). The questions investigate more and more details. Incidentally, they render "vague" answers more precise (*e.g.* 10/11). The facts of the matter in question become increasingly detailed, and their pertinence is hardly discernible for observers and witnesses alike. The following confrontation finally reveals the full force of the questions. Accordingly, the "inscrutable" questions circle around an inconsistency between Gilligan's current testimony and his own previous comments to the FAC. The QC quotes extensively from the latter:

- Q.** Can I take you, in that respect, to part of the evidence you gave to the Foreign Affairs Committee? It is FAC/3/35. This was the second time you gave evidence. [...] Can I just take you to the middle answer:  
40 "Let me just make this absolutely clear. The source did not say either that Mr Campbell did not insert or that he did insert it, I have never claimed otherwise. The claim was that the 45 minute claim was inserted 'against our wishes', against the wishes of the source, and that the claim had been transformed in the week before it was published at  
45 the behest of Alastair Campbell (I imagine you meant the dossier rather than the claim there). That is entirely consistent with everything I have said, it is entirely consistent. There is no difference between what I said to you before and what I have said now. It has been interpreted in the media to say that we reported that  
50 Mr Campbell inserted the 45 minute claim, that may be the case but we reported it neither way. We said, or the source said, that the transformation had occurred in the week before it was published at the

behest of Alastair Campbell. That is the claim we have always made and that is the claim that the source has always made and that is the claim the source continues to make.” Had you contacted Dr Kelly?  
 55

**A.** No, and I think that was a mistake saying “continues”. I mean, it was a – the atmosphere at that session was extremely fraught and I – you know, I – I was not – it was not the best performance I have ever given in front of a committee.

60 (12/08/03, 118-120).

“And why, if, as you say, you were keen to talk to him, did you not try again?” (32-33). This culmination establishes one side of the inconsistency; the flip side is provided by an earlier statement introduced from a previous inquiry. This results in a contrast which seems to take Gilligan (as well as the “casual” observer) by surprise: the statement “That is the claim the source *continues* to make” (54-55) presupposes further contact between the reporter and his informant. However, Gilligan has denied such further contacts until this point. Gilligan finds himself in a quandary: he is forced to correct at least one of his earlier statements.

The Hutton inquiry culminates in questions of credibility and responsibility. The unfolding communication climaxes in knowledge tests that gain decisive character. At the same time, the decisions connect to witnesses’ “free” representations, *i.e.* those for which the individual witness is responsible. This strength in bringing seemingly irrelevant details to the fore, however, also entails a highly visible liability: the inquiry risks getting lost in details.<sup>7</sup>

Involving witnesses by culminating in details is directly opposed to the operation of the EU Committee, which expands and diversifies its issue-oriented investigation. Rather than inducing respondents to repeat their statements and contrasting those statements, the committee sifts new information and attaches new leads to these. The leads are meant to specify “nebulous speculations” and transform them into justified suspicions. By “collect[ing] and analys[ing] information” (terms of reference), the committee investigates “whether” specific legal infractions happened. The collected indications are combined to provide scenarios. The goal is to establish an overall picture which can instruct further, more precisely directed inquiries. The rapporteur, Claudio Fava, provides an exemplary expression of this “drive” in his question to Khaled al-Masri:

<sup>7</sup> Thus, Twining sees a systematic connection between a procedure’s attention to detail and its focus: “A quasi-judicial procedure can produce extraordinary detail and openness, but at the almost inevitable cost of narrowing the issues” (2004, p.38).

First of all I should like to ask a few questions – brief but quite numerous – because, as you will have realised, what we need to do is try and collect a good many details, facts and hard evidence about your experiences and your story (VR, 13/03/06, 7).

These “what else” type of questions indicate the procedural “drive”: what *else* happened, when, where, etc. The investigation does not bracket hearsay or speculation, but mobilises these. In this line, a “victim”, Mr Kurnaz, is also asked for “second-hand knowledge”:

Do you remember anything that you ever heard from any other detainee, directly or indirectly – this is not a court so it can be just an indirect comment – regarding the detention of someone in Europe before the transfer to Guantánamo? In this case I would not only be talking about transport, but positively the detention anywhere in Europe before the transfer to Guantánamo (VR, 22/11/06, 5).

Indications can ground further research. The corresponding request “It would be very useful if you could help us ask the right questions” (VR, 23/02/06, 11) would indeed never be asked in the Hutton Inquiry. The CIA inquiry performs extensive searches. It does not falsify the submissions made by “guests”. The openness of the inquiry makes it difficult to integrate diverse epistemic standards, to establish stable and sustainable selections, and thus to provide for a systematic conclusion. Rather than concluding by “answering the question” posed by the terms of reference, the inquiry simply concludes within the time frame set by parliament.

#### *4. Actions and conditions: the objects of inquiry*

Differences with regard to the integration, self-reference and delineation of the two procedures do not only correspond to different methods of inquiry, but also to different objects. The EU Committee asks whether something possibly happened. To formulate the problem in this way, a general initial suspicion is sufficient. The suspicion is fed by “superficial knowledge” – hearsay, individual fates and fortunes, indications, etc. The reverse of this superficial knowledge is not to be seen in (false) statements that can be attributed, as in the Hutton Inquiry, but rather in nescience with all its side effects, such as mere suspicion and secretiveness. Appearing before the Committee, the European Council’s investigator, Dick Marty, qualifies the object and knowledge of the inquiry as follows:

I repeat and confirm that all of these facts do not constitute overwhelming proof, but they are sufficiently disturbing as to warrant an investigation and a response

from European civil society in the absence of a clear response from European governments (VR, 23/02/06, 47).

In order to initiate an inquiry, parliament must first recognise a deficit in information (Kipke 1989; Höpfner 2004), which cannot be remedied by queries to other public bodies. As a consequence, committee members are often left in the dark. They speculate on an object that is still gaining shape. Thus, Dick Marty responds to a member's question "From your vantage point, where do you see things which we as a committee should be doing here?" with the comment: "It seems to me that you have already received certain pieces of information today which could be reasons to put a whole series of questions to representatives of particular countries" (VR, 23/02/06, 49).

The "incidents" the inquiry addresses operate as indications for "deficiencies". Instead of (attributed) actions, the inquiry is concerned with (deplorable) circumstances. The investigations aim to define and illuminate these circumstances and to evaluate them politically. Such an inquiry is rather far removed from determining facts. The CIA Committee aims at general clarification, political and moral judgement, and preparing general recommendations (EP Rules of Procedure, Art. 175 f., App. VIII). The rapporteur expresses these aims: "It is our job to evaluate the data we have gathered [...] and to form our political opinion on that basis" (VR, 21/03/06, 16).

The questions in the Hutton Inquiry investigate the "circumstances surrounding the death of Dr David Kelly". It is to be established who is (generally and to what extent) responsible for his death. The inquiry assumes *and* reconstructs causality. Actions have an immediate or indirect effect on subsequent events. The inquiry is tasked to attribute occurrences as actions and actions as causes. On this dimension, the Hutton Inquiry can be likened to investigations in a penal court. Testimony is taken from eye witnesses of the events in question. Statements – *e.g.*, "I was slightly after, you know maybe 10 or 15 minutes late. He was waiting when I got there." (Ht, 12/08/03, 16) – do position a witness relative to the event in question. The witness expresses that there was indeed a meeting on which he can provide inside information. Additionally, beyond witnessing, actual participation is evaluated according to norms such as reasonableness and accuracy (see final report, p. 3). In this way, the inquiry constructs and evaluates the past as a chain of *actions* and *consequences of actions*. The following questions (Ht, 12/08/03) establish a chain of actions in Gilligan's work as a reporter:

Does that support the reporting that you have set out at page 4? (p. 72, l. 21-22).

And if it is not entirely supported by what Dr Kelly had said [...], why did you not go back and check it with him? (p. 73, l. 4-7).

Was this allegation ever withdrawn at any time before Dr Kelly died? (p. 73, l. 13-14)

These questions do more than inter-link actions; they also serve to evaluate those actions in light of the established links. They establish a connection between Gilligan's "careless" reporting and the "unnecessary" escalation of the conflict:

The lawyers have a distinction between mistakes and fraud, and this was effectively a charge of fraud, was it not? (p. 73, l. 25 - p. 74, l. 1).

This story was picked up and reported worldwide. [...] What was picked up and reported worldwide in some of the reports was the allegation of express bad faith, was it not? (p. 74, l. 14-17).

The questions assemble actions like chain links. This produces a causal chain, starting with Gilligan's interview with Kelly and ending in Kelly's act of desperation. The conclusion attributes a partial liability for Kelly's death to Gilligan, due to his "misinterpretations", his "hasty reporting", and his "failure to issue a correction". The conclusion suggests: Had Gilligan (among others) acted differently, Dr Kelly would possibly still be alive. This substantive reasoning on personal guilt provides a sharp contrast to the broad strokes used to draw a picture of "alarming" or "deplorable" conditions in the CIA Committee.

##### *5. Informants and eye witnesses: the epistemic subjects*

Committees of inquiry investigate antecedent conditions or occurrences by way of interrogation. The selection of witnesses varies, depending on the object of the inquiry. Thus, in order to close a chain of actions, including possible attributions of responsibility, the Hutton Inquiry mobilises *eye witnesses*, *i.e.*, mainly persons who observed incidents immediately. Expert witnesses, who provide classification and evaluation of these observations, are of secondary relevance. The category of eye witnesses becomes double-edged when statements feed into hardly-straightforward truth tests and moral assessments.

Lord Hutton's witness list grows out of a hypothetical chronology of the events leading up to Dr Kelly's death. This chronology provides

a basis for the order by which witnesses are called in.<sup>8</sup> It provides clues as to the pertinence of individual witnesses. The eye witnesses selected by Lord Hutton can be arranged in concentric circles in relation to Kelly's last actions as a weapons expert (not as a private person): the innermost circle includes those who had contact with Kelly shortly before his death (*e.g.*, Gilligan or Kelly's immediate superiors). The next, wider circle contains persons who are expected to give information on political decisions "in the Kelly affair" (*e.g.*, government ministers or advisers). The outer circles are constituted by witnesses (*e.g.*, his widow or a psychiatrist) who have only indirect knowledge of his professional activities and can give information on his behaviour, the state of his health, or his personal plans and ambitions.

A close "causal" proximity to the weapons expert Kelly also implies a high potential for a witness to be deemed responsible for the investigated "circumstances". With its logic of causal and moral attribution, the inquiry procedure anticipates that witnesses might attempt to hide or downplay their responsibility. Thus, the investigators' task is to elicit information on the witnesses' own involvement. The approach used in the Hutton Inquiry resembles the testing of hypotheses. In the course of the inquiry, the preliminary chronology – including its causal assumptions – is tested and/or modified.

By contrast, the CIA Committee relies on cooperation. It invites "Guests" (*cf.* work programme, protocols) for "discussion" or an "exchange of views". The "guests" are often interested in clarification on their own part; they *want* to contribute and to bring their own interests to bear on the investigations. Thus, the following question to the European Council's rapporteur, Mr Marty, is symptomatic:

Therefore, quite specifically: from your vantage point, where do you see things which we as a committee should be doing here? Where can we help you and vice versa? Do you have any practical suggestions as to which experts we could invite and question, which would then assist both your work and ours? (VR, 23/02/06, 49).

The committee expects "guests" to help in reconstructing a general perspective. They appear as informants, similar to natives in relation to "their culture". The hearings operate as discussions, exchanging and synchronising both factual knowledge and assessments. In this logic, "victims" are also asked for "second-hand" assessments and information beyond their own immediate experiences. Their contribution to clarification is crucial to the inquiry; personal involvement is

<sup>8</sup> See the "opening statement" of 01/08/03, 15-16.



rather distracting. The informants are not chosen according to their proximity to some act, but rather according to possible insights in possible occurrences. The “work programme” lists a selection of informants and assigns those to general categories (“representatives of institutions”, “journalists”, “witnesses”, “victims”, etc.). This list is completed in the course of the hearings. The incomplete and vague “guest list” corresponds to a certain lack of previous knowledge.

The chair introduces each guest to the committee. The protocol notes each guest’s name and function. At the beginning of the hearing, the chair assigns general competencies. Thus, *e.g.*, Mr Kurnaz is *also* questioned as “a witness of what was going on in Guantánamo” (VR, 22/11/06, 5), while the journalist Grey appears as an expert: “He [Mr al-Masri] also said he had passed this information on to the press, so I imagine that you too know about it, as a specialist in the matter. My question is: what do you think of his version of events?” (VR, 21/03/06, 12). The invitation is based on an ascribed inside or expert knowledge, which in turn frames and stimulates the questioning. The relatively relaxed setting in the committee allows guests (here, *e.g.* the journalist Grey) to position themselves by way of evasive (“I do not want to respond to”), qualifying (“I want to try”), or definitive (“I am in no doubt”) statements:

*I do not want to respond to your comments because it is up to you to make the politics. I only want to try and help with what you want me to help with, which is to present the facts and what I know. [...] I am not here to criticise what the Americans are doing. [...] However, I am in no doubt that this sort of treatment does occur [...]. I know that because the people [...] told me so* (VR, 21/03/06, 6-7, emphases added).

Sometimes, ascribed knowledge and actual answers diverge. Guests tend to disappoint expectations or to justify their invitation. In the EP’s CIA committee, there is a tacit, general imperative for cooperation. Appeals are made to conscience, integrity, and character. Answers “provoke” moral reprobation if and when they “cover up” or “conceal”. In contrast to the Hutton Inquiry, reprobation does not establish *personal* but rather *political* responsibility, which is “attached” to states, institutions, or interest groups.

### 6. Impositions and rejections

Both inquiries establish particular procedural roles (witnesses and guests) with their respective limited degrees of freedom. These roles impose “presumed participant or member knowledge” (Scheffer

2002) and a demand for cooperation. Thus, the EU Committee oftentimes does more than ask for information, demanding additional assessments and judgements. The demand to have an opinion can be experienced as imposing, particularly if it is to be announced in public. In this perspective, Grey's refusal in the previous example appears as marking an imposition: as a journalist, he refuses to position himself "politically" in public. The following statements deal with the impositions that accompany public presentations. Each statement mobilises the respondent's external role demands – either to devalue the information given by the respondent, or to enhance its value:

Mr Murray, you are a former Ambassador of the United Kingdom. Do you think it is right to come here and breach all these confidences in the way that you have? [...] If you are engaged in this extraordinary and public breach of confidence, how can we trust anything else that you say? (VR, 20/04/06, 11).

Another committee member, obviously a political opponent of the first, reacts with an "upvaluing" question:

Mr Murray, as a career diplomat myself and former ambassador, I would like to say that you do honour to the profession of diplomat and of diplomats of the European Union who uphold human rights, and are not cynical (*ibid.*).

A further imposition relates to the fact that the CIA Committee relies on cooperation with other institutions and inquiries. Many "guests" are invited as representatives of public institutions and are thus bound to secrecy and loyalty. External membership obligations (*qua* public service law or professional ethics) come to conflict with the internal role of "guest". In this line, the protection of sources forms a "hard" professional-ethical boundary for journalists. In the following example, this boundary stirs up fantasies on behalf of the questioner about what the respondent might have concealed, or might have to conceal:

Mr Grey, I want to ask you about your sources. I know you are not going to reveal these to us, but you talked about the flight log information and said that your source had been people involved in the network of prisons and coercive interrogation. You therefore imply that you have spoken directly to direct sources of information (VR, 21/03/06, 7).

The prosecutor Spataro delimits another boundary. He resists the double imposition of "merely" having to comment on speculations in his role as prosecutor:

I shall refrain from replying to the question as to whether it is likely or probable that the Italian services could have had knowledge of what subsequently occurred, since the work of a Public Prosecutor is not based on assessments of probability. I work on the basis of evidence. Each one of us as a member of the

general public and as an analyst may have his or her own opinions, but in this formal setting I can only confirm that we have no evidence (VR, 23/02/06, 35).

Analogously, invited public servants refer to public service law and official secrets, members of parliament to a parliamentary code of honour, and members of other inquiry committees to ongoing proceedings. They all confront the committee with external boundaries of acceptability. The same holds for the “High Representative for the CFSP” (Common Foreign and Security Policy, of the EU). Mr Solana cannot cooperate:

I am here before the European Parliament, which is an institution, and I am speaking on behalf of the institution I represent. I have come to you to say what I am able to tell you. Outside, as a member of the public, I will be able to tell you exactly what I think, but here before you, who represent European sovereignty, I, as a representative of an institution, have to tell you that which I am able to tell you given my responsibilities (VR, 02/05/06, 7).

In competing with other membership roles and loyalties, the committee encounters narrow limits. It cannot presume cooperation – and yet it must, since it lacks other powers.

In the Hutton Inquiry, it is relatively more difficult for witnesses to elude the dynamics of questioning with reference to imposing questions. Nevertheless, questions can be marked as imposing and rejected. Sometimes, this move can succeed when witnesses refer to the procedural “drive”. Thus, the committee’s attention to very minute details strains witnesses’ mnemonic capacities (possibly excessively). Witnesses regularly point out the limits to their memories (Lynch and Bogen 1996). Answers such as “I cannot remember the exact words I used” (Ht, 12/08/03, 56) effectively obstruct follow-up questions:

**Q.** Did you put some of the specific allegations that you made in the broadcast? In the early morning broadcast, the 6 o’clock broadcast, you have referred to the Government knowing that the 45 minute claim was wrong before it was put in. Did you put that allegation to the Ministry of Defence press officer?

**A.** I do not believe I did put these specific words, no. As I say, *I cannot remember* exactly what I said. I gave them an outline of the story, a summary of the story.

(Ht, 12/08/03, 62, emphases added).

Rejecting a question as “imposing” sometimes requires justification. Thus, Gilligan refers to a lapse of his short-term memory: “I cannot remember exactly what I told her because it was a mobile phone conversation and I did not take notes of that conversation” (Ht, 12/08/03, 56).

Another imposition relates to the procedural aim of assessing responsibility. Witnesses can repudiate ascriptions of responsibility by claiming limits due to their inferior organisational status: “For discussions on the sort of practice of the Today Programme, then you would need to talk to higher level people than me. I am only a reporter” (Ht, 12/08/03, 140).

Furthermore, witnesses can themselves appear as impositions to the British inquiry when they provide speculations rather than first-hand knowledge. They elude the imposing operation of the procedure by changing to another register of knowledge. Thus, Gilligan scantily fills in gaps in his memory with general considerations. His speculations culminate in counter-accusations. Here, Gilligan discusses when the government might have disclosed Dr Kelly’s identity:

**A.** As I say, the argument that was made that that statement [by the BBC] obliged the Government to provide clues to Dr Kelly’s identity is incorrect, because they were already providing clues of his identity to The Times before the statement was even issued.

**Q.** You have no knowledge of that.

**A.** Well, I mean, it is simply how newspapers work. A newspaper deadline is roughly 6/7 o’clock in the evening; and The Times had this information for its relevant day’s edition so it must have been provided on the afternoon or early evening of the 8<sup>th</sup>. So there was no – you know, so that provision of clues started before the Government spokesman on the 9<sup>th</sup> had started on the afternoon or evening of the 8<sup>th</sup>. (Ht, 17/09/03, 65).

Gilligan bypasses the preference for eye witness accounts with expert assumptions. The call to order “You have no knowledge of that” relates to the Hutton Inquiry’s requirement that statements must be founded in immediate cognisance, *i.e.* in participant knowledge. In contrast, Gilligan here “merely” delivers assumptions instead of an eye witness account.

### *III. Discussion: strong and weak procedures*

The Hutton Inquiry and the European Parliament’s CIA Committee are procedures. In both cases, we find a certain degree of integration, delineation, and autonomy, which in turn allows us to conclude a measure of procedurality. Both cases pronounce judgement on a factual situation, delimited by the terms of reference – *i.e.*, they display properties of procedural systems, as defined by Luhmann.

Beyond and below this general characterisation, however, we find different *degrees* of procedurality, relating to the procedure's respective degrees of autonomy, self-reference and binding. We suggest defining these degrees as strong or weak procedure. Based on the processes of communication, knowledge production and decision-making we described, the Hutton Inquiry and the CIA Committee prove to be relatively strong or weak procedures. What can be defined as rather strong or rather weak, then, is the self-reference of each procedure, or the autonomy, integration and binding of each. As this discussion shows, micro-sociological and discourse-analytical tools can be well adapted to observe the social processes involved in "doing procedure", leading to a more fine-tuned theoretical tool kit than that generally provided by system theory without abandoning the latter's major theoretical foundations.

The Hutton Inquiry is integrated by participants' far-reaching retrospective and prospective connections. The communicative process includes a multitude of individual hearings. Witnesses are interrogated repeatedly, confronted with "their statements" and entangled in contrasts and culminations. The participants' performative freedom decreases in the course of the inquiry and is increasingly replaced by participants' own internal commitments. This dynamic suggests a strongly integrated procedure. This is contrasted by the hearings in the CIA Committee, which accumulate contributions and integrate them according to issues. The respondents experience relatively loose internal role commitments in the course of the inquiry. Speaking to the committee, they remain true to their external functions, and they report on circumstances beyond their own immediate responsibility. Loose role constraints and a low threshold for external role commitments suggest a weak procedure.

In relation to the process of knowledge production, the difference of strong and weak is equally striking. The Hutton Inquiry develops and administers "hard" tests of knowledge, including the possibility of a witness failing the test (*e.g.* by becoming caught in contradictions). It claims a monopoly regarding the terms of its investigation and refrains from "prevarications" by reference to media coverage or inquiries by other institutions. The CIA Committee provides the opposite example of a weak procedure with a rather decentred, distributed knowledge process. The EU Committee members ask their "guests" for informal cooperation without commitment, even to assist in formulating questions or to suggest further sources of information. Their inquiry encompasses internal and external findings. A lack of previous

knowledge and an open knowledge process do not allow for exclusive tests of knowledge. This in turn suggests a weak procedure.

Further dimensions of procedural strength or weakness can be developed with regard to the decision-making process. The CIA Committee debates a “reasonable suspicion” meant to justify further investigations into the conjectured occurrences. It does not raise questions of personal guilt and responsibility. The Hutton Inquiry, on the other hand, does negotiate individual protagonists’ involvements and actions (amongst other aspects), such as those of the journalist in question. On this note, a strong procedure already suggests admissions of guilt in its decision-making process. As a public tribunal, it has a particular capacity to “hold” persons “responsible”, and also to “vindicate” or “clear” them. Its limited capacity for judgement, in particular, leaves a weak procedure as the object of much sneering, while a strong procedure commands respect.

The Hutton Inquiry draws hermetic boundaries and claims autonomy. As a strong procedure, it unfolds a separate sphere of meaning. Only in this sphere, contributions can prove their meaning, their effectiveness and practical relevance. By comparison, the CIA Committee remains discernibly more permeable and less binding. It hardly constrains participants. It does not produce a sharply delineated “horizon of experiences for the procedure” (Luhmann 1969, p. 40, translation JS). Thus, the opposition of strong and weak does not rely primarily on (“weak or strong”) degrees of formalisation, nor on stages in a development (“from strong to weak”), nor on our own quality criteria (“pro strong”). The contrasts rather denote degrees of self-reference. Our comparison also reveals the homogeneity of the inquiries, *i.e.*, their composition of interdependent, non-isolable variables. The Hutton Inquiry and the CIA Committee are both homogenous arrangements. Taken by themselves, each is quite effective, but also specialised and limited. In the final section, we sketch how the procedures do also appear as heterogeneous.

#### *IV. Outlook: interplays of strong and weak*

Observers and participants sometimes criticise inquiry procedures in light of the respective other procedural type. They reproach a weak procedure for not producing probative force, which can usually only be achieved by a strong procedure. They reproach a strong procedure

for lacking the big picture, which is usually provided by a weak procedure. In this outlook, we concern ourselves with the interplays we observed between strong and weak procedure: the indication of missing “strong” elements in “weak procedure” and vice versa. Next to embedding the inquiries in larger horizons of time and meaning, the interplays underline both participants’ and observers’ strategic orientation and re-orientation. We observed these interplays on three levels:

- 1) the participants and their actions;
- 2) in the press and what could be called a “bad awakening”;
- 3) in the sequence of various inquiries on the same issue area.

Participants in a weak procedure sometimes utilise the standards of knowledge of a strong procedure. “Speculations” are declared improper by referring to the lack of binding statements, engaged witnesses, or precise documents. In these cases, the logic behind the interplay is that such (“speculative”) information cannot provide a basis for accusations. Also, the “witness” can dismiss speculative questions by borrowing from the strong procedure: “Please ask specific questions!” An informant sticks (only) to details in order to discourage further “weak” follow-up questions. In a strong procedure, participants also use these interplays: a witness attempts to give general opinions and is rebuffed; the witness acts as an informant in order to defuse the “strong” interrogative situation. There are also members on “weak” committees commenting negatively on their own inquiry: “Where is the evidence! All mere assertion!” The interplay also serves the political struggle. At this point, we claim that every procedure maintains a repertoire of ways of speaking, ways of remembering, and strategies. At the same time, each procedural type finds provocations in the respective other procedural repertoire. According to procedural rationality, doing one kind of procedure involves leaving the other.

According to our first impressions, press reporters and commentators tend to follow the respective procedure’s implied methodical, epistemic, and normative socio-logic. They adopt the inquiry’s concerns and interests, its “drive”, the concept of knowledge, etc. This faithfulness to the object of their coverage holds as long as there are news to be reported from the inquiry, *i.e.*, as long as it is possible to speculate on “a conspiracy” or on the “question of personal responsibility”. Indeed, each procedure entices media reporting in its very own way: once, the “big picture” is evoked, and once the “closely

personal” comes to the fore. Once, Lord Hutton is lauded for his artful questioning and forensic instinct; the CIA Committee, on the other hand, legitimises reckless conspiracy theories. Reports on “strong” procedure take up quotes and document the exchanges of words in detail; reports on “weak” procedure take up speculations, spin them out and even outdo them. This seems to lead to the conclusion that procedure and press go hand in hand. However, our preliminary survey of the reports suggests another hypothesis: The unity of procedure and press reporting dissolves quickly when an inquiry slows down or is completed. The press suffers a “bad awakening”. They react with biting criticism: the “weak” inquiry is criticised for not delivering evidence; supposedly it lost itself in “generalities”. Or, conversely: the “strong” inquiry cannot see the wood for the trees; it lost itself in details. The interplay dictates its own conclusions: the inquiry should have analysed the big picture in detail and integrated the details into the big picture. It should have proceeded strongly *and* weakly at the same time.

Against this background, a third interplay is easily overlooked: inquiry procedures alternate. They follow in sequence: a weak procedure follows a strong one, and vice versa. This interplay may be owed to said press campaigns. Consequently, published opinion demands the respective other type of procedure – sometimes successfully. The reasons for the interplay are more varied. Our short analysis is sufficient to show that a weak procedure can prepare a strong procedure. The former produces the classifications, connections, and foci the latter requires. However, a weak procedure does not do so alone. It often operates in a complex situation characterised by other governmental and non-governmental initiatives conducting their own research. A weak procedure can provide foundations for a strong procedure by connecting a multitude of inquiries, similar to the “grand tour” (Spradley 1980) in ethnography meant to prepare focussed observation. The weak procedure brings up facts and responsibilities which were not discussed before. In these cases, law courts – the mainstay of an almost archetypical strong procedure – may take over. Similarly for a strong procedure: it creates demands for a weak procedure. It entices curiosity about the “grand narrative”, about the position of an act or event in an encompassing political complex. It is this alternation that we currently witness for both topics: the Iraq war is today being investigated by a parliamentary committee in a weak fashion, whereas the weak CIA inquiry is followed by a number of strong court proceedings in EU member states.



In this way, the interplays of strong and weak procedures remind us of the career of issues in public debates (Luhmann 1971). The weak procedure puts an issue on the agenda. It aims to reveal some circumstantial knowledge and to point out impending scandals. If a certain density of information is reached, single issues can sometimes be transformed into problems of responsibility and taken up by a strong procedure. This is currently happening regarding the topic of "illegal detentions by the CIA". In reverse, a strong procedure calms the excitement of public opinion. The public and the media await the verdict. Subsequently, the "broader picture" that was left out due to the strong procedure's high degree of selectivity is reactivated in a weak procedure and fed back to public attention. Further studies are certainly required on the complex interplay of public opinion, procedural work, and democratic control.

Looking at the three interplays, our procedural analysis suggests the following conclusion. Every procedural type has its "strengths" and can fulfil only certain functions: political mobilisation or legal criminalisation. From this perspective, the (press) criticisms we cited in the beginning can be seen as categorisation errors. One inquiry is not the same as another inquiry, and with regard to different standards of knowledge and demands for clarification they cannot be. However, this insight must remain preliminary, as a short glance at German committees of inquiry can show. Here, the "secret service committee" and the "inquiry committee on visas" seem to cultivate the interplay: at times witnesses are called, then informants; evidence is sought next to opinions; sometimes the inquiry culminates in determining responsibilities, and sometimes in political speculation. Also, we deliberately left out those manipulations, strategies and dynamics that could be interpreted as strengthening or weakening a procedure. To clarify these further implications of a sociological analysis of procedure, additional cases and ethnographic condensations are required.

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### Résumé

Prenant deux grandes enquêtes politiques, les auteurs se posent la question de savoir si elles peuvent être considérées comme des systèmes procéduraux au sens de la théorie de Luhmann, c'est-à-dire des cadres d'action bien distincts porteurs d'interprétations et de conséquences spécifiques. L'un des cas se situe en Angleterre « l'enquête Hutton », l'autre « l'enquête CIA » dans l'Union européenne. Un travail microsociologique rapporte les manières de fonctionner de l'une et de l'autre aux modalités de construction des processus internes de communication, de la production de connaissances et de la prise de décision. Il ressort que chacune produit bien, au carrefour de ces trois processus, une procédure cohérente, plus ou moins forte et qui fait à quelque degré système.

*Mots clés* : Mécanisme; Système; Enquête parlementaire; Interaction; Discours.

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### Zusammenfassung

Die Autoren nehmen zwei große politische Umfragen zum Anlaß, um zu erkennen, ob sie als prozedurale Systeme im Sinne der Luthmannschen Theorie begriffen werden können, d.h. als Handlungsrahmen verschiedener Interpretationsansätze und mit besonderen Konsequenzen. Der erste Fall ist die englische Umfrage „Hutton“, der zweite die CIA Umfrage der europäischen Union. Eine mikrosoziale Arbeit fördert die Handlungsweise der einen und anderen zu Tage: Aufbau interner Kommunikationprozesse, Wissenserarbeitung und Entscheidungsfindung. Am Kreuzpunkt der drei Prozesse entsteht in jedem der beiden Fälle ein kohärenter, mehr oder wenig starker Wirkungsmechanismus, mit unterschiedlichen Ausmaßen. Letzterer sollte sowohl soziologisch als auch auf seine empirische Befähigung und als Variante systemtheoretischer Aussagen begriffen werden.

*Schlagwörter*: Mechanismus; System; Parlamentarische Untersuchung; Interaktion; Rede.