

Loggerheads over old growth forests: Growing civil society against state crime and the timber wedge

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Introduction

This article describes and analyses an Australian civil action taken by environmentalists against a number of loggers, the Construction Forestry Mining and Energy Union (Forestry Division) and the Secretary of the Victorian Branch of the Forestry & Forest Building Products Manufacturing Division of the union. The case is important on a number of levels. It illuminates a pattern of highly differential law enforcement where direct action and civil disobedience by forest protestors are subject to strict law enforcement whereas assaults and threats against protesters by loggers are frequently ignored. The analysis of the civil action as part of a pattern of discriminatory law enforcement against environmentalists is in line with environmental criminology that focuses on aspects of offending and criminalisation, as well as victimisation and official responses to victimisation (Williams 1996). Civil actions may represent an attempt to deal with criminal acts where state agents are implicated as perpetrators or collaborators or where victims are in a vilified or criminalised category that works to place them outside the protection of the criminal law (see McCulloch 2002 for a discussion of civil actions against police).

The civil action examined in this article is significant because it illuminates the challenges that confront labour and environmental movements in forging partnerships and working constructively together to challenge corporate power and exploitation. It highlights the way that the jobs/environment dichotomy creates a wedge between the aspirations of workers and environmentalists and undermines coalition building to the longer-term detriment of both movements. Conflict between social movements — an important subset of civil society — threatens the strength, resilience and effectiveness of civil society. The strength and resilience of civil society is of relevance to criminology because civil society is a critical mechanism for identifying, censuring and minimising state crime and crimes of the powerful more generally, particularly corporate crime (Cohen 1993; Green & Ward 2004). While there is a wealth of literature discussing the complexity of civil society, this article, in line with the writings of state crime scholars, uses a broad understanding of civil society as encompassing a diversity of spaces, actors and forms existing between the large scale bureaucratic structures of state and the private sphere of family, friendship and intimate others. Civil society is made up of various pressure groups, social movements, non government organizations, voluntary and religious groups and academic institutions (see Green & Ward 2004:4, 9). The article describes other campaigns and instances where

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labour unions, environmentalists and other social movements have worked together successfully to challenge corporate power, particularly exploitation of and crimes against the environment and labour.

The article concludes by arguing that globalisation and the neo-liberal policies that accompany it create new imperatives for labour and other social movements like the environment movement to form strategic alliances. These alliances are necessary to counter the strategic advantages delivered to corporations via 'new exit options' and the emergence of the 'national competitive state' (Hirsch 1997:45) which increase opportunities for corporate crime and exploitation (Goodman 2004; Teeple 1995; Green & Ward 2004). Coalitions across social movements need to be based on respect for difference and the articulation and recognition of complementary interests that target corporations as the primary adversary in efforts directed at preserving the natural environment and achieving justice for workers. The inability or unwillingness of unions, or sections of the union movement, and the environment movement to work together delivers a 'divide and rule' advantage to corporations that can only aid and abet corporate and state crimes in the 'race to the bottom' in terms of both environment and labour standards.

McFadzean & Ors v Construction, Forestry, Mining & Energy Union & Ors [2004] VSC 289 (19 August 2004)

The civil trial involving 11 plaintiffs and 15 defendants commenced in the Victorian Supreme Court in February 2004. The plaintiffs were environmentalists and the defendants loggers, the Construction Forestry Mining and Energy Union (CFMEU) (Forestry Division) and the Victorian State Secretary of that division of the union. The action arose out of events which took place between Sunday 24 and Friday 29 January 1999 in the Otway Ranges State Forest, Victoria. During this five day period the plaintiffs claim that they were prevented from leaving the forest by the defendants. All plaintiffs sought damages for false imprisonment and public nuisance. Some also made claims in relation to assault and/or battery (Casey, Statement of Claim, *McFadzean & Ors*, Supreme Court, 20 December 1999). The background to the case was a long-running campaign to stop the logging of native rainforests in the Otway state forests, near Beach Forest and Apollo Bay, west of Melbourne, and a history of animosity between environmentalists, loggers and the forestry division of the CFMEU. The trial of the matter was heard over 64 days, took evidence from 43 witnesses and produced a judgment in excess of 400 pages.

On the 19 August 2004, the Supreme Court ordered that the union and loggers pay six of the plaintiffs a total of \$133,250 in damages for mental distress and in two of these cases additional damages for minor assault. The court rejected the claim for false imprisonment. Both sides claimed victory and vindication. The Wilderness Society Campaign Manager, and lead plaintiff in the case, Gavan McFadzean, said the judgment 'indicated the right of environmentalists to be in the forest and to be part of the campaign to protect the forests'. The CFMEU senior national Assistant Secretary was reported to have said that the decision was a 'victory for working people'. It was also reported that he said that the court 'had dismissed 90 per cent of the protesters' claims' and that he had drawn attention to the fact that the Wilderness Society had earlier paid \$45,000 to settle a counter claim by loggers, who lost income during the dispute (Gregory 2004:3). While both sides emphasised the positive aspects of the outcome of the case to their cause, the litigation was costly to each side in terms of time and money. Legal costs in a case of this magnitude are likely to total millions of dollars and the union and environmentalists would necessarily have spent an

enormous amount of time in court and in preparation for the trial. A more intangible cost to be reckoned with is the break-down in communication and cooperation between progressive parts of the union movement and environmentalists, a topic taken up below.

There was a great deal of dispute in the case about many of the facts, although there was broad agreement about some facts and circumstances. However, there was even less common ground about the implications of the facts in terms of moral culpability. In setting out and critically examining the perspectives of the loggers, the union and the environmentalists it is not my intention to definitively articulate the rights and wrongs of each side or to score them in terms of a moral hierarchy. My aim instead is to attempt to clearly articulate and logically address those perspectives so that in future they may be better understood, negotiated and, where appropriate, modified in the face of convincing critique. It is also my view that articulating and understanding difference is a crucial step in developing strategies to overcome or work around differences towards mutual objectives.

Future rescue: greens on the front line

Environmentalists in Australia and globally have a long history of non-violent direct action in forests and other natural or wilderness environments. The aim of these actions is to physically impede logging or other work that is seen as destroying, endangering or threatening the environment. These direct actions are typically part of broader campaigns which involve lobbying governments and soliciting public support through the media and education and providing information in other forums. Perhaps the most-well known campaign of this type in Australia was the extended blockade of the Franklin River in the central Tasmanian highlands in the early 1980s against a planned hydro-electric dam (see Brown 2004:17–35).

Protest actions in forests involve environmentalists physically entering or blockading sections of forests that are being logged or due to be logged. In order to carry out these activities in what are sometimes inaccessible and remote areas, base camps are often set up to provide shelter and basic facilities for protesters. Environmentalists' protest activities in forests commonly include 'tree sits' where one or a number of people take up residence high up in a tree for an extended period of time, thus stopping it, and often the trees surrounding it, being cut down. Protest activity may also include 'lockons' which involve protesters physically attaching themselves to immovable objects so that they can't be moved without substantial effort and special equipment. These activities interfere with, delay or halt logging operations either because it is impossible in the circumstances for loggers to enter the area to be logged or because to do so would endanger the lives of the protesters. Environmental protesters see these actions as necessary in the face of the immediate, and what they see as irreversible, damage to old growth forests under unsustainable logging practices, supported by governments unsympathetic to environmental concerns. Apart from broader arguments about sustainability, quality of life, endangered species and biodiversity, environmentalists see these actions as a necessary part of intergenerational justice and undertake much of the direct action forest protest under the banner of 'Future or Forest Rescue' (Grech c.1999; Bleyer 2004:66; Brown 2004).

Forests as a workplace and source of livelihood

Loggers and their representative union are primarily interested in the forests as a work place. The financial return for work earned by loggers depends on the extent to which they can harvest trees. The actions of environmentalists blockading or engaging in other direct action protests results in reduced opportunities for work and loss of income. This is

particularly so in rainforest areas like the Otways where the weather means that work is necessarily seasonal. In line with the loggers' view of forests as income-producing assets, rather than public or wild spaces, forest protests are perceived, from a forest worker and union point of view, as 'workplace invasions' (Grech 2000:3). Jane Calvert, the State Secretary of the Forestry Division of the CFMEU, a defendant in the action, argues that:

For as long as this debate is fought out on the front line of our workplaces, then there's going to be real difficulties in finding those alliances [between unions and environmentalists]. You're attacking workers. You can't have it both ways. You can't have a desire for an alliance with the trade union that protects and organizes those workers, and at the same time [be] right in their face disrupting their right to a living income (quoted in Cameron 2000).

On a broader level, the campaigns of environmentalists against logging in old growth forests are seen to threaten the viability of logging as an occupation. This is particularly threatening for workers who don't see themselves as having other marketable skills and who may be second or third generation loggers. In some small towns and communities, economic activity and social life revolves around logging so that the actions and concerns of environmentalists are seen to threaten the viability not only of an occupation but also a way of life and a settled location (*McFadzean & Ors v Construction, Forestry, Mining & Energy Union & Ors* [2004] VSC 289, 19 August 2004). The issue and arguments surrounding jobs, economy and environment are returned to in greater detail below.

Another point of contention between forest workers and their union and environmentalists relates to organisational structure. The green movement, and particularly environmental activists, operate primarily as autonomous individuals or through affinity or friendship networks, unlike unions which operate on a representative basis. It is difficult for unions to negotiate or make binding agreements with environmental activists because no one person or organisation is authorised to act as representative of what are essentially autonomous groups or individuals. The nebulous structure of green protest groups is a source of frustration for union representatives attempting to negotiate with green groups. The time and energy put into such negotiations are likely to be seen as a waste of time where agreements are ultimately made only on behalf of those directly involved rather than the broader movement. In addition, there is a feeling amongst some union representatives that the green protest movement's lack of structure is used as a screen to ignore agreements or to refuse to make agreements (Grech 2000:5–6). This perceived inability to negotiate effectively with environmentalists, apart from frustrating union officials, may contribute to a vigilante mentality amongst individual loggers and union organisers, a tendency evident in the case study described below.

Workers and greens at loggerheads in Victorian forests

By early 1999, the year of the incident giving rise to the civil action, loggers in Victoria were frustrated by the actions of environmental protesters in the Otways and other sites around the state, particularly East Gippsland. The activities of protesters were interfering with logging activities and affecting income. A number of meetings were held in the vicinity of the Otways attended by loggers, community members and the union. The meetings canvassed the issue of forest protests and the loss to livelihood that the loggers were suffering as a result. The meetings discussed various things that the loggers could do because they were 'at their wits' end'. The loggers felt the police and the Department of Conservation and Natural Resources were failing to protect them in the way they wanted and they wanted 'to try something a bit different' (Walters 2004:5, 56). The tactic discussed, and which ultimately led to the civil action, was a union supported 'picket'. The picket would be directed at blockading the blockaders. The 'picket' was subsequently put

in place with the assistance of the union when the plaintiffs set up camp in an area of the Otway state forest. Environmentalists allege that for five days they were held hostage, assaulted, threatened, humiliated, terrorised, deprived of sleep and tormented. The defendants denied that they acted willfully to cause harm, fright and terror to the plaintiffs, and argued that 'the plaintiffs were assured that the picket was a peaceful protest'. The State Secretary of the union maintained that the picket was conducted according to a (unwritten) union protocol which directed: no violence, no alcohol, a clear chain of command and obedience to police directions. While denying the allegations of violence, threats and harassment, a number of the defendants were straightforward in expressing their antipathy towards forest protesters. One said 'my concern was, like my work mates, how they were losing so much money and how the greenies annoyed them so much and it's not fair how the greenies can get away with it, how they do it'. Another said 'they just annoy the shit out of you and it gives you the shits'. One stated simply that '[t]hey make me sick them greenies, just watching it, looking at them. I hate them' (*McFadzean & Ors v Construction, Forestry, Mining & Energy Union & Ors* [2004] VSC 289 (19 August 2004:para. 571, 570, 356)).

While the nature of the behaviour of the loggers and the union representative on the picket were in dispute there was no dispute about the fact that the protesters were prevented from crossing the 'picket line' which blocked the only cleared track out of the forest. Jane Calvert agreed that the protesters were told clearly that:

[W]e don't wish you to pass through the picket line. However else you may go, is a matter for you, but not through the picket line, unless you agree that you are not going to come back to this coupe unless you agree to desist from these activities (*McFadzean & Ors v Construction, Forestry, Mining & Energy Union & Ors* [2004] VSC 289 (19 August 2004:para. 152)).

The environmentalists were told they could leave if they signed an agreement promising not to engage in any future forest protest activity

Police officers were present at the intersection at all times. A number of plaintiffs gave evidence of having made a variety of requests and complaints to policemen who were on duty at the time, and of there being no positive response. The judgment records that:

[s]o far as any plaintiff had referred to the police it was in terms of bitter disappointment. The plaintiffs felt that the police were siding with the loggers. This added to their sense of anger, frustration and betrayal (para. 2353).

There was dispute between the parties about whether walking out through the forest was a practical option. The protesters argued it was too difficult a journey, that they were scared of loggers 'patrolling' the forest, and that they were concerned that their property, particularly their vehicles, would be damaged or destroyed if they left it behind. The judge rejected this evidence and found that the protesters could have chosen to walk out through the forest at any time in the five days.

A picket line or vigilante action?

There are a number of features that differentiate the 'picket line' set up in the forest from the typical industrial picket. An industrial picket is usually made up of union members. It is not clear how many, if any, of the loggers on the picket were union members. The court did not hear evidence from any logger who was at the relevant time a member of the union and the Secretary of the union was unable to indicate to the court anybody on the picket line who was a union member (Walters 2004:12). There was very little union presence in the

Otways until the involvement of the State Secretary of the Forestry Division of the CFMEU in the events leading to litigation in January 1999. It seems likely then that the 'picketers' had little familiarity with the industrial activities of unionists. Union members on a picket generally join together to stop non-union labour breaking or undermining the effectiveness of a strike for improved wages or conditions or from taking the jobs of union workers in the event of a employer lockout. Unionists will not usually cross a picket line. In the case of the Otways incident the 'picket' was not primarily an expression of solidarity amongst workers but rather an expression of hostility towards the environmentalists. As one logger put it, the concerns over the green protesters were such at the time that 'they would have joined the devil' (Walters 2004:2).

A picket is considered a form of political communication or protest. In law, the right to engage in this collective activity is balanced against the right of non-union labour to cross the picket line in order to work and the right of employers to conduct their business without interference (Baker 2001). In the case of the Otways' picket, the loggers were asserting their right to work against the right of the environmentalists to engage in protest or to be in the forests, since at the time of the blockade the environmentalists were not engaged in protest action but had set up a camp in a public forest. In the case of the Otways picket then, the usual order of asserted rights in the picket situation was reversed, as the workers were 'picketing' against the right to protest in favour of the right to work. Alternatively it could be argued that the loggers were asserting the right to protest against the rights of the protesters to protest (or to be in the forest). In any case the 'picket' was an unusual one and outside the standard parameters of an industrial picket. A picket against protesters is atypical.

Given the usual configuration of a picket and the interests involved, 'picket' activity is not generally supported by employers. It is clear however that employers in the timber industry are at least understanding of the actions taken by loggers against environmentalists. In 2000, after further allegations of violence against environmentalists in the Otways the *Age* newspaper reported that the executive director of the Victorian Association of Forest Industries, Graeme Gooding, said 'he did not know "who was harassing who" but he could understand how workers got fed up with losing income when [logging] coupes were blockaded' (Miller 2000).

Another unusual aspect of the picket line was the degree of respect the police displayed towards it. As Baker points out, historically police actions against picketers in Australia have usually been 'swift, uncompromising and ruthless' (2002:41). More recently there have been occasions where employers and governments have been dissatisfied with the police response to picketers and argued that they should have acted more decisively to break a picket line. Police were criticised on these grounds during the 1998 docks dispute (Trinca & Davies 2000; Baker 1999). In 1998 Victoria Police, for the first time, joined Victoria Trades Hall Council (Hubbard 1998). The affiliation of the Police Association with Trades Hall was accompanied by a protocol for action and communication particularly in times of industrial disputation. The affiliation of the Police Association and the protocol are no doubt features of an improved relationship between unionists and police and a more neutral policing of industrial picket lines. Nevertheless the passivity of police in the face of what the court determined was the willful infliction of harm on the plaintiffs by the defendants during the course of the 'picket' appears to extend beyond the role of police as 'independent keepers of the peace' referred to in the protocol (Police Association c.1998). Indeed, police took an active part in facilitating the outcomes sought by the picketers. When the father of one of the environmentalists walked into the camp to bring in supplies and check on the welfare of his daughter, he and the friend who accompanied him were required to sign an

undertaking 'never to engage in any form of protest at a coupe +/- against a Forest + and Forest Products/CFMEU worker and their workplace' before being given 'safe escort by the CFMEU through the picket line and out', it being too late and arduous to take the return journey through the forest. One of the police officers present witnessed the statement with his signature (Walters 2004:58–60). Police responsible for charging and investigating acts of violence reported by protesters often live in the same small towns as loggers and are likely to share their antipathy towards protests and environmentalists more generally (The Wilderness Society 2000; Cameron 2000).

While the union, through its State Secretary, used the language of industrial action to defend the actions of the loggers and suggested that the 'picket' was a counter protest action, the environmentalists directly involved, and more broadly, saw it as part of a pattern of threats and assault by loggers and inaction by police. After another violent clash between environmentalists and unionists in the forest, a spokesperson from Friends of the Earth criticised the union and its representatives for 'continuing to equate non-violent direct action, which is generally disciplined, clear and focused, with mob violence' (Walker quoted in Cameron 2000).

Taking a stand against violence in the forests

In late 1998, one of the loggers, who took part in the later 'picket' and was named as a defendant in the action, struck an environmentalist on the back of the head with an axe handle. He was later convicted of this offence but not charged in relation to another incident on the same day where he was alleged to have similarly attacked another environmentalist. Around the same time, the base camp of protesters in the Otways forest was reported to have been 'smashed up' (Walters 2004).

In early 2000, shortly after the writ relating to the Otways incident was issued, *Green Left Weekly* newspaper reported that:

[T]he longest running blockade of logging operations in East Gippsland was brutally attacked by 50 men wielding axes, sawn timber and iron bars. The camp at Goolengook was destroyed and 13 environmentalists were injured (Cameron 2000).

Two months later the *Age* newspaper reported that five conservationists were taken to hospital after loggers and their families clashed with protesters blockading a contentious water catchment area in the Otways (Miller 2000).

In his latest book, leader of the Australian Greens, Senator Bob Brown, describes being assaulted, shot at and threatened by loggers during various campaigns in Tasmania. One of these incidents is somewhat reminiscent of the environmentalist's version of events leading up to the civil action. Brown writes that while touring contentious dam works as a new Member of Parliament in Tasmania in 1983:

The touring MPs were met by scores of workers brandishing lumps of wood and abusive placards directed at me. With the HEC [Hydro Electric Commission] Commissioner standing by, a circle was drawn around me on the ground and I was warned that if I stepped outside this I would have my 'bloody brains knocked out'. I stepped out and the two police officers present intervened and I reluctantly agreed to their request to leave the scene (2004:30).

Brown argues that in the case of violent incidents directed at environmental protesters, police generally turned a blind eye and refused to act or prosecute and that '[w]orldwide, violence has been a hallmark of the logging industry's attitude to those who want public forests protected' (2004:183, see also 187–202).

While violent crimes against environmental protesters tend to be ignored by police the activities of forest protesters, by way of contrast, are strictly regulated, to the point of being criminalised (Brown 2004:184). A recent article by Bleyer (2004), for example, sets out the wide range of criminal charges available to deal with civilians entering state forests in Victoria and the frequency with which these charges are brought. According to Brown: 'Breaking the law in order to protect monetary interests is considered a much less serious offence than breaking it to defend living ecosystems, wild beauty, or the rights of future generations' (2004:186). The underpolicing of environmental protesters as victims and the overpolicing of them as offenders is typical of the discriminatory policing afforded those low on the social hierarchy (see Cunneen 2001, for example, on the policing of Indigenous Australians).

In response to violence, official indifference and persecution, environmentalists in Australia and internationally have pursued civil actions against the authorities and instigators of violence. Civil actions, although costly and time consuming, have the advantage of being private, thus allowing remedies and consequences to be pursued outside of the more fully state-controlled criminal justice system. A forest protester successfully sued the Managing Director of Risby Forest Industries after being assaulted by loggers in a Tasmanian forest in the mid 1980s (Brown 2004:183). In the mid 1990s, seven environmental activists issued civil actions against Victoria Police after police used painful pressure point holds, including potentially lethal pressure point neck holds against them during a non-violent blockade of the Department of Conservation and Natural Resources. The protesters were compensated and the matter settled out of court (McCulloch 2002:178; McCulloch & Clayton 1996). Forest campaigners in the United States, Darryl Cherney and Judi Bari, took civil actions against the police and Federal Bureau of Investigation after a bomb exploded in their car in 1990. They were charged with putting the bomb in the car themselves as part of a plan to engage in environmental sabotage. The charges were dropped because of lack of evidence and the couple sued, claiming that the attempt on their lives had never been properly investigated. A civil jury found that they had been the victims of a frame-up and awarded damages of US\$4.4 million. Cherney commented that he and Bari 'were the victims of terrorism, but because the FBI and the Oakland police disagreed with our place on the political spectrum, they accused us of bombing ourselves' (quoted in Brown 2004:197).

The plaintiffs involved in the Otways incident maintain that the litigation was 'necessary' because it provided a forum for environmentalists to say: 'We will no longer tolerate this kind of aggression and violence by timber workers' (McFadzean quoted in Cameron 2000). McFadzean also argued that the 'case was a case of civil liberties and people's rights to be in the forest' (envirotalk 2004).

Timber the wedge: fissure in the red/green alliance

Trades Hall Council Secretary, Leigh Hubbard, said the legal action, 'regardless of its merits, was regrettable as it would not engender co-operation between environmentalists and the union movement' (Shiel 2003). Dave Kerin, then organiser with the Electrical Trades Union and a convener of Earthworker — an organisation established to bring unions and environmentalists together — expressed concern that the 'the trenches are being dug so deep they [environmentalists and unionists] can't even bayonet each other' (Cameron 2000).

An 'atmosphere of mistrust' arose between those in Earthworker who primarily identified as unionists and those who primarily identified as environmentalists after the statement of claim in the litigation was issued in late 1999 (Grech 2000:3). In the aftermath

of the litigation, four years later, the group remains effectively in abeyance. The decline in the activities of Earthworker is a loss to both the labour movement and environmentalists. In 1999, New South Wales Greens MLC, Lee Rhiannon, praised Earthworker for launching an industry plan 'From Fossil Fuels to Renewables', in response to 'the fact that Australia emits more greenhouse gases per capita than and [sic] other country'. She wrote:

For too many years the cry of environment versus jobs has kept natural allies apart. In Australia this has been seen most sharply in the forest dispute with many people blaming 'selfish greenies' for the loss of their jobs. The demand of jobs AND environment is now being played out with environmentalists and unionists not just supporting each others campaigns but integrating their work for job security and environmental justice (Rhiannon 1999).

A primary aim of Earthworker is challenging the jobs/environment dichotomy which they argue is 'nothing more than another divide and rule tactic of the corporate hegemony'. The idea of jobs *and* environment is captured in the title of a conference organised by Earthworker in 1998: 'No Jobs on a Dead Planet'. In 1999, Earthworker presented workshops at a week long 'Future Rescue' camp organised by a loose collective of grass roots anti-logging activists. The Earthworker workshops centred on the 'pivotal idea of challenging the "jobs versus environment debate" promulgated by industry interests' (Grech c 1999).

Although timber issues were considered difficult because it is an area where environmentalists and workers are in strenuous disagreement, in September 1999, Earthworker had discussions with the Forestry Division of the CFMEU with regard to more sustainable forest work. These discussions, which were considered to be the beginnings of constructive dialogue, centered around: the need for a saw log rather than woodchip based industry; radial saw timber; independent environmental audits; focusing on corporations as the real enemy; and looking at the prospects for hemp production (Grech 2000:4). The issuing of a Supreme Court writ in December 1999, however, served to harden resolve on both sides and efforts at dialogue in relation to sustainable forest work came to a standstill (Grech 2000:5).

Earthworker's efforts to bridge the red/green gap over the cleft of environment and jobs follows in the footsteps of a number of socially-active Australian unions, particularly the Builders Labourers Federation (BLF), which was deregistered and later amalgamated as the Construction Division of the CFMEU in 1994 (Ross 2004:18). In May 1999, Earthworker organised a public meeting featuring the former Secretary of the New South Wales BLF, Jack Munday, maintaining that many of its objectives are similar to those of the BLF under Munday.

History of union alliances with environmentalists and other social movements

In the early 1970s, the New South Wales branch of the BLF was widely recognised as one of the most progressive and militant unions in the country. One unique part of its activities was green bans which tied up construction valued at almost \$3 billion (Ross 2004:168-9). These bans were designed to preserve sites of social, historical, cultural and/or environmental significance against what was viewed as inappropriate development. Although this type of activity was most intense in New South Wales, the bans were implemented nationally (Ross 2004:169). The Victoria Market and the Regent Theatre in Melbourne are two Victorian locations preserved through BLF green bans (Ross 2004:282). The BLF green bans built on a tradition of solidarity with a range of social movements

(Ross 2004:189). They were famous (or infamous from the point of view of employers and the governments that opposed them) for backing Black rights in Australia and overseas, and other solidarity actions in favour of causes such as gay workers and neighbourhood struggles against development and the like (Ross 2004:27). In the early 1980s, the BLF placed bans on the then proposed new night lights at the Melbourne Cricket Ground after residents raised concerns about their effects. Similarly, after being approached by local residents, the BLF placed a holding ban on the construction of the Grand Prix race track in the early 1990s until the government agreed to talks with residents (Ross 2004:111).

In the mid 1990s, the Mining Division of the CFMEU launched an unprecedented international campaign opposing mining giant Rio Tinto's aggressive actions to maximise profits by de-unionising its workforce, disregarding environmental safeguards, and ignoring the rights of Indigenous people. Alliance building was a key to the strength of the campaign which from the beginning aimed to force the transnational not only to respect trade union rights but also to adhere to environmental standards and respect local people (Rhiannon 1999; Goodman 2004). The CFMEU stressed the need in the campaign for 'a broad and long-lasting alliance with human rights groups, environmental organizations, indigenous peoples and churches' (Goodman 2004).

Other unions have also sometimes been able to harness their members' strength to defeat potentially disastrous developments. The Maritime Union of Australia, for example, fought against dumping of waste from ships in Australian waters. Victorian Trades Hall supported the Werribee residents' action group that opposed a toxic waste dump and imposed union bans on the building of the dump (Infoxchange Australia 2004).

Cooperation is becoming more common between progressive groups in North America and across Europe. In the United States, environment and labour organisations joined forces to launch the Alliance for Sustainable Jobs and the Environment. This body was one of the driving forces behind the anti-globalisation protests in Seattle in 1999 (Rhiannon 1999).

Certainly there are many points of intersection in the interests and experiences of trade unionists and environmentalists. Many of the environmentally hazardous practices of corporations put workers on the front line at risk. The impacts of environmental degradation and pollution are not distributed equally: '[t]here are direct parallels between the unequal distribution of consumption and the unequal distribution of exposure to environmental risks' (White 2002). Even the violence experienced by environmentalists as a result of their stance against corporate exploitation of nature is mirrored in the violence that workers' rights activists encounter internationally. Each year thousands of union activists are arrested for carrying out legitimate union activities and hundreds are killed. Indeed, Teeple argues that: '[I]f the degree of persecution is a measure of the significance of the resistance, trade unionism remains by far the most important of all the present social movements' (1995:149, 115).

Challenges to red/green alliances

In the immediate context of violence and tension in forests where loggers work, the biggest challenge to any worker/environmentalist alliance is the different view of the primary characteristic of the forest: work place or wild space. In addition to this, there are cultural differences between workers, unionists and environmentalists, particularly in the way that environmental groups and unions are structured. The more fundamental and basic challenge however is the jobs/environment dichotomy. Industrial unionism is predicated on the idea that production can and should be maintained, and where possible expanded to ensure continued employment for workers. Environmental risk may be acknowledged, but rarely

as a constraint on expanded production (Goodman 2004). The union project, although challenging the level of capitalist profits, does not generally challenge the capitalist system itself which relies on continual expansion. As Starr points out:

Seeking improved wages and working conditions refutes the moral and social legitimacy of infinite corporate profits but does not reach beyond the corporate form — or the corporate job, the ‘modernization’ paradigm of growth as the basis for social welfare, or excessive consumption as the foundation of the economy (2000:93).

Even where it can be demonstrated that the jobs/environment dichotomy is false and that alternative and more sustainable industries or projects are likely to lead to more jobs, employers and governments are likely to stick to the established industry. Brown argues, for example, that although the campaign to dam the Franklin was run on a slogan of ‘Jobs, job, jobs’, the economics indicated — both prospectively and retrospectively — that more jobs would be created by not damming the Franklin (Brown 2004:31–3). Employers profiting from unsustainable or environmentally damaging production are unlikely to support alternative arrangements because they create more jobs. A corporation’s primary objective is profit, not ensuring the maximum number of jobs for workers across a number of industries or sites. The nature of politics is such that corporations engaging in unsustainable or environmentally damaging production have the ability to distort government policy in their own interests. Even where more jobs are likely to be generated through conservation of old growth forests, via tourism and other activities, corporate interests in favour of woodchipping are likely to prevail over the interests of the future beneficiaries of alternative industries (for example, for arguments about the economics of logging old growth forests, see Greens 2004). Corporate interests are usually well resourced, concentrated and politically well connected and therefore powerful, whereas the future beneficiaries and those speaking on their behalf are relatively diffuse, less well resourced and, by comparison, politically marginal (see, for example, Brown 2004:88–100). In addition, governments, because of the nature of politics and in particular the election cycle, are always inclined to maximise revenue in the short-term rather than longer-term. In these circumstances husbanding resources for the future and the benefit of successive generations is likely to count for relatively little in the calculation of political tactics and advantage (Brunton 1999 cited in White 2002).

Workers and their union may take on the perspective and arguments of government in relation to jobs and the environment uncritically. As argued above, the productivist assumption underlying union activity will not readily predispose unionists to many of the arguments of environmentalists and may make them suspicious of *all* green arguments, even where they are job enhancing. In relation to the forest debate, the antipathy towards environmentalists by loggers felt in the immediate context of the forests may result in these groups being targeted as ‘the problem’ in terms of job security and livelihood even where other issues, for example advances in technology or structural problems in the industry, are likely to have a far greater impact on employment and income. In a broader sense:

the problems generated in and through capitalist restructuring are also reflected in the scapegoating of green activists, immigrants, and indigenous people, who the media frequently portray as impeding the immediate job prospects of workers in industries associated with resource exploitation (White 2002).

New imperative for social movements to work together under conditions of corporate globalisation

While the case study described in this article is not directly related to issues of state or corporate crime, it is nevertheless relevant to this issue because civil society is significant in minimising these crimes. The significant conflict between social movements that form an important part of civil society undermines the ability of civil society to name and challenge state and corporate crime.

Although challenges exist in building cooperation and alliances between unions and environmentalists, the nature of globalisation and the neo-liberal policies that accompany it create new imperatives for alliances across social movements. Without such strategic alliances, the power of corporations and states which embrace corporate interests under neo-liberal policies provides opportunities for corporate exploitation and corporate and state crimes that represent the extreme end of such exploitation. Countering the strategic advantages that accrete to corporations as a result of the increasing global mobility of corporate capital requires social movements to work together. As Hirsh, along with the many other critics of corporate globalisation argues:

The reproduction process of globalized capital is based on playing entire nations, classes, groups and regions off against one another, which in turn, leads to ever widening and deepening social-political inequalities (1997:52).

Goodman, in a similar vein, argues that:

national class compromises in the 'global North' have been overwhelmed by the new drive for 'global competitiveness', pitting workers against workers in the 'global market' for capital ... At the same time, increased rates of exploitation and global diffusion of industrialism have accelerated the rate of exhaustion of societies and environments, leading to crises of reproduction (Goodman 2004).

Movements need to be international in scope and connected across sites of domination in order to obtain leverage against the advantages of global capital. Nationally-based and separate or divided labour movements and environmental movements are readily outflanked by global corporate capital (Teepie 1995:113–17; Hirsh 1997; Goodman 2004; Starr 2000).

Discussing tactics used against Rio Tinto in the fight to maintain labour standards a CFMEU, Mining Division spokesperson argued that:

Whilst an ability to recruit and organize is central to the effectiveness of any trade union, it is no longer sufficient to ensure reasonable bargaining power in dealing with multinational corporations and, by extension, the competitive pressures they bring to bear ... so the CFMEU has 'gone global' against Rio Tinto's attacks on workers rights. In one sense it has been hard because it involves campaigning and communicating in ways we are not used to. In another sense it has been easy as we have discovered that Rio Tinto faces opposition from scores of trade unions, environment groups and human rights and aid organizations internationally (Goodman 2004, quoting CFMEU).

While corporate globalisation provides new imperatives for labour and environmental movements to work together, movements and civil society more generally are under pressure as a result of neo-liberal policies. The neo-liberal agenda has reconfigured previously existing institutional arrangements between government and the non-government players in democratic policy processes. Hardt and Negri outline how civil society traditionally performed the role of mediator between 'the immanent forces of capital and the transcendent power of modern sovereignty' (2000:328). Noting Hegel's account of

civil society as a mediating force between 'the self-interested endeavors of a plurality of economic individuals and the unified interests of the state', they argue that civil society no longer serves this function because the structures and institutions that constitute civil society are 'withering away' (328).

Labour market deregulation under globalisation has undermined the power of trade unions (Hyman 2001; Peetz 1998). Governments and neo-liberal think-tanks and commentators have engaged in a 'hostile, negative and often emotional campaign' to undermine non-government organisations (Maddison et al. 2004:viii). Non-government organisations (NGOs) have been vilified as unrepresentative, elite and acting on behalf of special interests to the detriment of the mainstream. Publicly-funded NGOs that are critical of public policy are threatened with, or fear withdrawal of, funding or other financial penalties, such as loss of charitable status for tax purposes, if they express dissenting views. In these circumstances, it is increasingly difficult for NGOs to express opinions contrary to or critical of, government policy or action (Maddison et al. 2004; Sawyer 2002; Marden 2003). The exposure of universities to the market under neo-liberalism has also impacted on the ability of academics to express dissenting opinions and engage in critical research (Walters 2003; Tombs & Whyte 2003:3-45; Marginson 2004). The 'war on terror' is likewise decreasing the space for an active civil society (McCulloch & Pickering forthcoming 2005). The neo-liberal policies that are undermining social movements and civil society are simultaneously delivering great advantages to corporations as states compete to deliver the most conducive environment for corporate profits (Hirsch 1997).

The importance of civil society in minimising state/corporate crime

The ascendancy of corporate power over national regulation, the power of unions and the censure of non-government organisations creates an environment conducive to corporate crime. The accelerated exploitation of environment and labour which accompanies corporate globalisation takes on the characteristics of state crime when it is accompanied by state corruption, state terror, and systematic and organised breaches of human rights by the state in the service of corporate interests. Green and Ward (2004) point out, '[v]ery frequently, deviant state actions intersect with the criminal actions of corporations to produce massive human rights and environmental violations' (28). Civil society is the key to minimising state crime and the crimes of corporations that states frequently facilitate and participate in (Green & Ward 2004). Civil society is made up of associations like trade unions and the environmental movement which are independent of the state and corporate interests and capable of challenging corporate and state power, exploitation and crime (Green & Ward 2004:4). The strength of civil society depends on the strength of these movements.

Under conditions of globalisation, the social movements that form the basis of civil society need to work together and form alliances in order to counter the power of corporations and the states working in the interests of corporations without regard to the well-being of citizens. Serious conflict between social movements, such as that exemplified in the violence in the forests and by the circumstances leading to the civil action and the litigation between the CFMEU (Forestry Division) and environmentalists serve to undermine civil society and thus undermine the capacity of civil society to challenge and censure state and corporate exploitation and crime.

Conclusion

This article has described the tensions and violence between workers and environmentalists over the logging of old growth forests and a long-running and bitter civil action involving the Forestry Division of the CFMEU and environmentalists. The inability to negotiate the jobs/environment dichotomy promoted by corporate interests underlines the hostile relationship that has developed between forestry workers, the union and environmentalists. The civil action by environmentalists was initiated to challenge the pattern of violence of loggers and the failure of police to deal with such violence. The civil action was also taken in defense of the right of protesters to be in the forest and to undertake protest action without the threat of vigilante violence. Forest workers and their union, on the other hand, view the protest actions of environmentalists as 'workplace invasions'. In an immediate sense, in terms of the outcome of the case, the civil action resulted in partial victory for the union, forest workers and the environmentalists. The environmentalists were paid damages for intentional torts inflicted by loggers but the court found against their claim of false imprisonment.

Whatever the merits of the case and however the outcome is viewed by the direct participants, the animosity generated and intensified between movements through the civil action represents a loss to both movements. In particular the halt to the dialogue and work across movements developing through Earthworker, and the potential of this to form productive alliances, assists in ensuring that corporate capital will escape the powerful challenge that a coalition of unions and environmentalists can bring both to the exploitation of workers and the natural environment. Despite the setback represented by logger violence and the break-down of the dialogue between movements, the history of solidarity activities by unions, particularly in respect of environmental causes, demonstrates that such alliances are both possible and productive. Sections of the environment movement are also anxious to form broad-based alliances. Cam Walker from Friends of the Earth maintains that:

The progressive elements of the environmental movement will need to seek formal alliances with trade unions and with other progressive sectors, and more and more we are going to have to disengage ourselves from the more conservative elements of the [environmental] movement. We are witnessing the development of an environmental justice movement: people who are left, who are progressive, who are concerned about ecological sustainability and social justice (Cameron 2000).

Conditions of globalisation provide a fertile environment for state and corporate crimes against the environment and workers. Crimes against the environment disproportionately impact on workers, less well-off members of the community and future generations. Exposing and challenging these crimes requires the combined resistance of social movements. In this context, however difficult, social movements will need to find ways to work together across differences, if challenges are to be effective. The civil action and its background demonstrate that civil society has to be seen, as Antonio Gramsci, noted 'not so much as a given guarantee for democratic processes than as a complex and contradictory political battlefield' (cited in Hirsch 1997:55).

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