

CONNECTING WITH POLITICAL POWER: Social Movement Activism and Environmental Law

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What can historians of the environment movement offer those interested in environmental law? The two fields are so disparate that we thought we should provide a brief outline of the nature of social movements before discussing interconnections and the common interest in aspects of law reform. Social movements are notoriously unstable and fluid phenomena and their history and influence can only be understood in the light of this temperament. Yet they aim to extend the limits of the social system, which brings them directly into the legal arena. This article briefly outlines the nature of the environment movement and its need to connect with political power. It then discusses some of the environment movement's recent struggles in Queensland in order to highlight the many obstacles that social movements face in their interactions with political power. Even when successful, environmental victories can be undermined by public servants who fail to enforce new environmental laws and standards. We conclude that the environment movement has to fight not only for environmental reform, but also for increased accountability measures.

The Nature of Environment Movement Activity

A superficial glance at the history of environmental activism makes any comparison with the law seem strange indeed. Whereas the legal system has an ordered and linear past, which begins with 'time immemorial', the environment movement has no sustained pattern of historical development. Its growth appears quite erratic, expanding and contracting often irrespective of the state of the Australian environment. Its non-linearity is a prime feature of its past.

Whereas the legal system has a distinct and clear professionally defined membership, the environment movement's membership is marked by a lack of definition and extreme informality. Environment groups come and go, paid up membership fluctuates and active members drop in and out depending on their

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life circumstances, yet a new and sudden environmental crisis can bring large numbers of people on to the streets in protest with dramatic effect.

The legal system is noted for its commitment to coherence — the law should apply to everyone and all have a right to its protection. As with its historical development, however, the environment movement appears to lack geographical coherence. In the 1980s, critics pointed to the fact that the Australian environment movement was probably proportionally strongest in Tasmania, the state with the best and cleanest environment, while comparatively low levels of environmental activity and concern marked industrially polluted suburbs and towns on the mainland.

The legal system is designed to respond with rational decision-making to disputes and conflicts arising from the material economy and society. Yet when historians attempt to link environmental activity to specific environmental threats, there often seems to be no rational or material correlation. For example, the British nuclear tests of the 1950s clearly presented a significant environmental threat, but opposition was extremely muted; in comparison, the smaller threat of toxic contamination from a waste dump in southern Queensland in the early 1990s produced vocal opposition.

The combined effect of these apparent incongruities produced a relatively sophisticated attack on the environment movement in the mid-1990s. Overseas critics claimed that contemporary environmental problems did not really exist — or at least that they had been greatly exaggerated by the environment movement which had created and fomented these alleged problems for its own ends. As proof, these critics pointed to the fact that environmentalists had been predicting impending global catastrophe since the early 1970s, when the Club of Rome published *Limits to Growth*, followed by Ehrlich's book *The Population Bomb* and Barry Commoner's *The Closing Circle*. According to these critics, environmentalists simply create and sustain a catastrophist discourse of which the Bruntland Report in the 1980s and the concerns about ozone layer depletion and the greenhouse effect in the 1990s were the latest instalments.

However, closer analysis of the history of the environment movement reveals that there are logical and rational explanations for this seemingly chaotic pattern of development. The fluidity and instability of the conservation movement are shared by other contemporary social movements such as the women's and Indigenous movements, which share many — if not all — of these incongruities. All draw attention to social problems. They do not create the problem, but grab attention through forms of protest which present a moral critique of society. This role makes them appear prophetic, as they seek to awaken opponents to particular threats. These seemingly irrational characteristics make social movements difficult phenomena to study. It is clear that they can be explained as rational and materialist phenomena, although their growth and expansion are not in a simple cause-and-effect relationship with the problem to which they are a response.

Essentially, successful social movement mobilisation requires three preconditions: the existence of a real material problem; a state prepared to tolerate internal debate; and a social base. Social movements point to

fundamental contradictions in the social system. No matter how moderate individual supporters may be, these contradictions give the movement a subversive edge. Yet movement messages are so simple they readily filter through the social system and contribute a sense of urgency and anxiety around these demands. Social movement activity requires a relatively open state — hence the particular success of social movement activity in Australia — although even in liberal democracies this is not a given, with civil liberties formally suspended during times of crisis and informally during times of repression such as during the Cold War. The final factor is the need for a social base or a group of actors to sustain the diverse and usually uncoordinated series of activities that make up social movements. Theorists are still unclear about the origins of these social groups or political carriers: in the 1960s, Frank Parkin speculated about the role of youth in sustaining protest activity;¹ in the 1980s Claus Offe² pointed to marginalised social categories; while in the 1990s, Jan Pakulski suggested generational radicalism as the social foundation for movement activism.³

A final feature of the social base which was first commented on by a social scientist in the aftermath of the French Revolution was that it is aspirational — people are usually only prepared to engage in social movement activity when they have some hope of success and believe that they can make things better — a factor which complements the idea of generational radicalism. Consequently, although the problem of environmental degradation has been a consistent feature of the past 200 years, the combination of these other factors explains the irregular development of the environment movement, as well as its sense of urgency.

Historical analysis can thus disprove the critics' claim of environmentalists as nothing more than transient doomsayers, although social movement theorists do dispute movements' ultimate purposes. European scholars have tended to emphasise the expressive identity features of social movement activity — the shared symbols, new ways of organising, and the new ideas and styles that movements generate so that their counter cultural values appear as their primary *raison d'être*.⁴ United States scholars, on the other hand, have accentuated their instrumental goals — a view which risks reducing them to interest group status. The Australian environment movement encompasses both ends: it has produced symbolic challenges and mounted political challenges, making it a significant political actor.

Despite critics' attempts to characterise environmentalists as 'off the planet', one of the common features of contemporary social movements is

¹ F Parkin (1968) *Middle Class Radicalism: The Social Bases of the British Campaign for Nuclear Disarmament*, Melbourne University Press.

² C Offe, 'New Social Movements: Challenging the Boundaries of Institutional Politics' (1985) 52 *Social Research* 4, 817, pp 831–32.

³ J Pakulski (1991) *Social Movements: The Politics of Moral Protest*, Longman Cheshire, pp 15–17, 70–73.

⁴ A Melucci, 'The Symbolic Challenge of Contemporary Movements', 52 *Social Research* 4, p 789 at p 810.

their 'self-limiting radicalism.' All contemporary social movements point to fundamental contradictions of our society and economy, but they attempt to fight for their causes on the political system's terms. Members need to feel that they are contributing to something worthwhile and so core activists channel broad moral concerns into meaningful but achievable goals. While engaged in this struggle, social movements renew democratic culture by reinvigorating its processes.⁵ Despite its anti-systemic nature, the environment movement has to connect with political power at some stage to meet its goals and to sustain its support base.

Connecting with Political Power

It is here that this seemingly chaotic popular entity connects with the ordered world of the law. Movement organisations develop carefully constructed campaigns with clear outcomes which inevitably seek to change either government policy or legislation or interpretations of legislation.

Public policy analysts often tend to focus too heavily on the party political, governmental or bureaucratic aspects of policy development. Consequently, they overlook the fact that major legislative or policy breakthroughs have come as the result of intense activity by movements.⁶ This has certainly been the case with much of the environmental reform in Australia over the last 30 years.

The wave of the future, as AJ Brown has noted, seems to lie with stakeholder agreements, and participation in these industry-government-community negotiations has been a priority of the movement in the 1990s.⁷ In Queensland, the most notable are the Cape York Land Use Heads of Agreement between pastoralists, Indigenous people, conservation groups and state government (with the possibility of federal involvement) and the recently agreed Regional Forest Agreement for South East Queensland signed off by the timber industry, conservationists and the state government (and possibly the federal government). In the pipeline are similar stakeholder panels working towards agreements on an Environmental Protection Policy (EPP) for Mining. Vegetation protection guidelines are also being discussed by the Vegetation Management Advisory Committee. However, while liberal democratic ideologies stress the importance of balancing interests and, at the state level, Queensland's Premier Beattie actively promotes such consensual agreements, it is necessary to remember that the success of these agreements is dependent on several key factors. In the case of the Regional Forest Agreement, these included:

- ◊ the pro-conservation work of several key individuals employed by or doing consulting work for the Timber Board;

⁵ J Cohen (1985), 'Strategy or Identity: New Theoretical Paradigms and Contemporary Social Movements', 52 *Social Research* 4, p 663 at pp 668-69.

⁶ A Yeatman (1998) *Activism and the Policy Process*, Allen & Unwin.

⁷ A Brown (1999) 'Forest for the Trees', *The Courier-Mail*, 17 September, p 15.

- ◊ the enormous expertise and workload carried by the Australian Rainforest Conservation Society, and especially by Dr Aila Keto, who has both the ecological and economic expertise to deal with all rational arguments advanced by her industry and government opponents;
- ◊ the campaigning abilities of The Wilderness Society operating on over a decade's mass education and mobilisation on the issue of native forests; and
- ◊ the election commitments given by the ALP prior to the 1998 Queensland state election and given in the knowledge that Green preferences were essential to the winning of government.

It is difficult not to be sceptical about the eventual outcomes in many such stakeholder negotiations. Firstly, it is clear that qualitative advances are made only when a number of factors are present. In the case of the EPP for Mining, these were the expertise of the conservation representatives, the presence of a strong campaign, media focus that looked likely to embarrass the government if it were not seen to be acting, and the threat of the Greens not giving Labor preferences if the environmental regulation of mining were not seriously addressed. Unfortunately, what often happens in such situations is that, once the crisis for the government is over, the process for undermining these gains begins. In the case of the EPP for Mining (and possibly this will happen with the forest agreement), this is currently being done by sections of the bureaucracy.

Stakeholder panels like that for the EPP for Mining provide an opportunity for moving in a positive direction on a consensus basis and there are many examples of the development of cooperative working relationships on industry–government–community panels. However, there are also many which have been disasters for positive environmental outcomes and the EPP (Mining) process reflects many of the problems not only with stakeholder panels but also with the liberal democratic notion that good government is merely about balancing interests. With the interests of a major resource industry at stake, a nervous government unwilling to obstruct the traditional free rein of this industry and a bureaucracy that has become used to a hands-off approach to the industry, environmentalists have always had an uphill battle ensuring the establishment of effective environmental regulation. The only leverage environmental campaigners have in such situations comes in the form of:

- ◊ a mass campaign where it is clear the movement can call on widespread popular support;
- ◊ negotiators on the conservation side with expertise (or access to expertise) so that they are not bluffed by industry or government 'spin doctors';

- ◊ keen media interest in the issue which is likely to cause the government embarrassment if it does not act appropriately in the pursuit of environmental protection;
- ◊ the major party most likely to act being dependent on Green support at a forthcoming election.

In the late 1990s, the movement not only has to match government and industry in terms of expert knowledge — an enormous task — but it also has to be able to apply public and electoral pressure at least equivalent to that exerted by industry.

The Limitations of the Political and Legal Processes

If all criteria are present, there is a good chance of positive environmental outcomes from the stakeholder consultation process because the natural advantages in resources and influence that usually lie with the resource industry and that make rational deliberation a farce are successfully countered. However, if these elements are not present, or are minimal, it is clearly a waste of time, resources and energy for environmental campaigners to become stakeholders and they should remove themselves from the process at the appropriate time. Environmentalists preparing to enter such processes should remind themselves of Val Plumwood's cautionary words:

Models stressing compromise between interest groups have a poor track record on many environmental problems, rarely stopping ecologically destructive activities as opposed to introducing ameliorative modifications which allow major damage to persist while also 'giving something' to ecological interests.⁸

A movement too readily entering into such negotiations without external checks risks becoming incorporated, thereby alienating its supporters. The most dramatic historic example of this was when leading conservationists of the 1960s and early 1970s were too intent on maintaining good relations with government and consequently lost the campaign to stop the flooding of Lake Pedder in South West Tasmania. The leaders were subsequently thrown out of office.⁹ A more recent example is the bitter division caused by the support given by some Australian conservation groups to the Howard government's *Environmental Protection and Biodiversity Conservation Act*. When some groups negotiated on ameliorative aspects of the Bill, other national groups risked funding from and access to the federal government and walked out in disgust at the retreat from federal environmental responsibilities. The

⁸ V Plumwood (1998) 'Inequality, Ecojustice and Ecological Rationality' in JS Dryzek and D Schlosberg (eds) *Debating the Earth: The Environmental Politics Reader*, Oxford University Press.

⁹ D Hutton and L Connors (1999) *A History of the Australian Environment Movement*, Cambridge University Press, pp 118–23.

movement's radicalism — albeit self-limiting — takes it beyond the interest group politics of functionalist sociological models and demands that it is time to return to grassroots activism when too little is being gained by working closely with government.

The very last line of defence against an informed and empowered community (sometimes long after the industry has left that particular line of battle and adopted seemingly safer, more progressive positions) is the regulatory bureaucracy, whose very existence — or so its members seem to believe — is premised on the belief that it is there to facilitate the industry's interests, not control the public's. Quietly and unchecked by adequate accountability measures, government officers allow environmental standards to fall and regulatory boundaries to be crossed.

This contains a very pessimistic message for any efforts to achieve ecologically sustainable development (ESD) if we take the view that this will require not only the introduction of market mechanisms like carbon taxes and environmentally friendly environmental charters from big companies, but also — at the core of the ESD process — environmental regulatory agencies that are well resourced and backed with strong environmental protection legislation. The environment movement has only two alternatives: either accept that state failure (in this case, the capture of the regulators) will always occur and trust in the exercise of the free market modified by environmentally supportive signals being sent to it from various taxation and other financial mechanisms; or fight for a 'regulatory mix' at the heart of which is what its detractors often call 'command and control' measures.¹⁰ As its history shows, the Australian environment movement has repeatedly had to expand and revitalise democratic structures and accountability processes, even while it is fighting environmental campaigns.¹¹

Bureaucratic, Community and Legal Powers

Unfortunately, as Briody and Prenzler have shown, Queensland has always had a very poor record of enforcement of its environmental legislation.¹² To overcome this tradition of non-enforcement, Queensland should have a well-resourced Environmental Protection Authority that regulates the environmental impacts of *all* industries and does not constantly repeat the mantra: 'We are here to be partners with industry, not to wield a big stick.' This EPA should also be a statutory authority and have arm's length independence from government. Secondly, environmental protection legislation should have extensive third-party rights so that individuals and community groups can be consulted and can take legal action against those

¹⁰ N Gunningham and P Grabosky (eds) (1999) *Smart Regulation: Designing Environmental Policy*, Oxford University Press.

¹¹ Hutton and Connors (1999) pp 118–23.

¹² P Briody and T Prenzler (1998) 'The Enforcement of Environmental Protection Laws in Queensland: A Case of Regulatory Capture?', 15 *Environmental and Planning Law Journal* 1, pp. 54–71; B Williams, 'State Mines Department Staff Fought New Air Laws', *The Courier-Mail*, 28 August.

causing environmental harm and not be seriously financially disadvantaged for doing so. Thirdly, there should be right-to-know legislation that gives an informational base for an empowered community. Fourthly, when stakeholder panels are set up as a prelude to the development of legislation or other government policy, every effort has to be made to include *and adequately resource* those less powerful stakeholders who would otherwise lose out to industry and their allies in government.

Social movement activity may appear frustratingly fluid to social scientists and unstable to its critics, but when it seeps into our political and legal structures — not just our moral consciousness — it has reached its goal.

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