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ACTIVISM AND THE ACADEMY

NICOLE ROGERS

While attending a conference in 2006, I was struck by a question directed towards a panel of activists from an audience comprised almost exclusively of academics. A member of the audience asked earnestly what she and others could do, as academics, to support activists. I was puzzled by her assumption that academics and activists fall into two distinct categories but then, in my view, any distinction between academics and activists is an artificial one. Yet, artificial as it may be, an 'apartheid of knowledges' is 'deeply entrenched' in the academy.¹ Conquergood describes this as 'the difference between thinking and doing, interpreting and making, conceptualizing and creating.'²

I have always been quite clear on one important point: an academic career is far more compatible with activism than is employment in a mainstream law firm. I became an academic because I was an activist. In 1991, I was retrenched from a conservative country law firm shortly after participating in the Chaelundi forest blockade. I was at the blockade on a week's holiday when the police arrived in late July, and the confrontation commenced in earnest. I regarded this as a fortuitous coincidence; my employers, at least one of whom had connections to the National Party, appeared to view my involvement quite differently. In 1992, I sought refuge in academia. At the Southern Cross University School of Law and Justice, which was established in 1993, I and a number of others have managed to incorporate activism into our academic careers, and retain a strong commitment to social justice principles and environmental ethics in our teaching, research and service to the community. In this article, I draw on my own experiences at the university's School of Law and Justice to explore some of the diverse ways in which the legal academy can support and accommodate activism.

The context of activism: 'a cultural fact' 3

The main campus of Southern Cross University is in Lismore, on the far north coast of New South Wales. It is located close to the site of the Terania Creek blockade, widely considered to be the first environmental blockade in Australian history, or the first time the environment movement utilised non-violent direct action.⁴ The blockade took place in a volatile social context. In the 1979 blockade, the so-called 'new settlers', who had eschewed urban and often highly privileged middle-class professional lifestyles in pursuit of an idealistic and utopian dream, directly challenged the work practices and livelihood of loggers who viewed the Terania Creek basin as yet another work environment. The 'new settlers' proved to be, as Watson comments, 'formidable opponents': highly articulate and with a range of diverse skills in research and media communications. They made their own commercial and documentary, distributed postcards, posters and leaflets, and conducted media interviews. They had chosen to embrace the 'religion of ecology' and according to Watson, imbued with a corresponding sense of self-righteousness, they consistently failed to grasp the impact of their activities on the working life of their opponents.⁵ The blockaders achieved an unprecedented degree of success. Images of protesters being dragged away by police to the accompaniment of songs and chants, and the public response, galvanised the

hitherto recalcitrant Wran government into action. The logging operations were immediately stopped and an inquiry established.

When I first joined Southern Cross, and during the early years of the School of Law and Justice, the North East Forest Alliance (NEFA), 'a group of fully strapped, usually exhausted, dedicated activists saving old growth forests', was active on the far north coast of New South Wales. NEFA, as activist Andy Kilvert put it, was 'a cultural fact of the North Coast.'⁶ In 1991, through the establishment of the Chaelundi Free State, the organisation had made strategic use of militant direct action. A test case involving sections 98 and 99 of the National Parks and Wildlife Act 1974 (NSW) successfully prevented the logging of Chaelundi State forest: an old growth forest unforgettably described by Justice Stein as 'a veritable forest-dependent zoo'.⁷ The floating population of Chaelundi was diverse. Journalists, lawyers, musicians, artists, farmers and, most colourfully, punks and ferals represented for veteran activist Ian Cohen a new generation of activists.⁸ Instead of the hand-lettered welcoming sign with which the organisers of the Terania Creek blockade overtly repudiated aggression and enjoined their fellow protesters to 'come in peace and love and help save the forest',⁹ newcomers to the Chaelundi Free State were greeted with a depiction of cartoon celebrity Bart Simpson, defiantly waving his fist and attached to a speech bubble containing the words 'Fuck off loggers'.

NEFA's blockades occurred intermittently throughout the 1990s and into the next decade on the north coast. However, the most controversial of NEFA's performances was the invasion of the Sydney offices of the NSW Forestry Commission by a group of NEFA activists in November 1992. The media, commented one activist, went into a 'feeding frenzy'. Described by another participant as 'a cross between a siege and a bloodless coup', the invasion borrowed heavily from the 'romantic cult of revolutionary action' to which many political activists have proved susceptible.¹⁰ The activists were enacting a simulated revolution, replacing an existing government department with their own People's Commission for the Forests. Activists chained themselves to desks and filing cabinets and used office equipment to disseminate information about the occupation, the new Forestry Charter, and the installation of the People's Commission. After some hours, they were removed by police.

Teaching about activism

Thus, blockades and a 'bloodless coup' formed the colourful backdrop against which I, and a small group of other academics, began to teach law at Southern Cross in 1993. Our classes were enlivened by the enthusiastic participation of north coast activists, one of whom later became a permanent member of the academic staff of the law school.

When teaching the Tasmanian Dams case¹¹ I have always shown the blockaders' documentary *The Franklin River blockade*. The arrival of the barge provides the most moving segment, offering insight into the emotional lives of the protesters and their intense experiences of comradeship, endurance and bravery. When the barge lands on Hydro-Electric Commission property, the faces of the blockaders, still floating in their yellow duckies, record their raw grief. Stubbornly, they bear witness. The unmistakable figure of Bennie Zable, described by Ian Cohen as an 'icon of Australian protest', towers over the scene in his characteristic costume: gas mask, hood, white

gloves, black robe inscribed with the words 'Consume, Be Silent, Die. I Rely on Your Apathy.' Some protesters cry. Then, blockader Lisa Yeates begins to sing. Her strong voice rises bravely above the scene of mute despair.

In my early years teaching Constitutional Law, Lisa would come to my classes with her guitar and sing for the students after showing the documentary. The images, and Lisa's songs and stories, provide a powerful counterbalance to the legalistic reasoning of the judges. Margaret Thornton has pointed out that, in the process of constitutionalisation, the 'distinctive private or subjective features' of each case are 'sloughed off'.¹² Although the High Court could hardly fail to be aware of the political significance of the Tasmanian Dams case, the judges took great pains to ostensibly distance themselves from the political issues and maintained, with the conviction of committed legal positivists, that they were deciding the case purely on its legal issues.¹³ Indeed, the judges had refused to view photographs of the Franklin River, pictures which had 'turned the Franklin into an icon and a household name',¹⁴ lest such images 'inflame the minds of the Court with irrelevancies'¹⁵ and corrupt their otherwise purist examination of the scope of the external affairs, corporations and race heads of power.

John Corkill, a NEFA coordinator who brought many successful legal challenges against the Forestry Commission in the 1990s and briefly became the self-installed People's Commissioner for the Forests in November 1992, regularly attends lectures and workshops in our introductory unit, Legal Process. John always contributes a guest lecture on the North Coast Environment Council case,¹⁶ on which he worked as an activist. This case is one of a sequence of cases on standing requirements for public interest litigants, and Greta Bird and I use them to teach the doctrine of precedent. In workshops, we show the protesters' documentary *Forestry Siege*,¹⁷ which depicts the NEFA activists' temporary takeover of the Forestry Commission offices. In the documentary, the atmosphere in the office appears relaxed; shabbily-dressed activist performers struggle with recalcitrant fax machines, talk on the telephones, play guitars, and even eat cornflakes. 'The only thing I've ransacked is the chocolate biscuits', announces one as he lounges behind an office desk. In a later interview, Andy Kilvert contributed an amusing anecdote about a woman who telephoned the office to enquire about the safety of her husband, a Forestry Commission employee. 'There's just been a bloodless coup,' he explained, 'but it's all sorted out now and working under a new administration.'¹⁸

John, however, conducts himself in the documentary with the aplomb of a senior bureaucrat and with characteristic intensity. For John, then and now, both the comic and dramatic undertones of the protest are irrelevant. The action was intended to drive home an important message about the Forestry Commission's mismanagement of State forests, and he is filmed as he cites particular examples with characteristic fluency for the reporters and journalists who were, no doubt, anxious to focus on the more sensational aspects of the protest.

John addresses students after the documentary, discussing the media's response and the legal aftermath. Although certain representatives of the state quickly labelled NEFA activists as 'terrorists', the legal performance which followed did not have a particularly punitive outcome for the defendants. The siege took place in more innocent times, when activists could storm a government building with relative impunity and without

encountering any substantial obstacles, and the term 'terrorist' could be bandied about without evoking memories of the smoking ruins of the Twin Towers. We use the documentary to raise questions about the founding moments of legal systems and the legitimacy of authority, but the documentary and John's lively presentation also directly feed into the next topic of statutory interpretation. We ask students to consider whether the NEFA activists would now be charged under Australia's new anti-terrorism laws. Students throw themselves into this discussion with gusto, earnestly scrutinising provisions of the Security Legislation Amendment (Terrorism) Act 2002 (Cth) and speculating on parliamentary purpose with the assistance of extracts from Hansard debates and the transcript of the Senate Legal and Constitutional Affairs Committee inquiry into the legislation.

John also plays a key role in the teaching of Public Interest Advocacy, an elective offered in our summer school. This unique unit is designed to teach the skills and techniques of activism, and its introduction in 2003 led to an outraged response from the then National Party member for Page, who called for it to be removed from the university syllabus.

Teaching as activism

Teaching as activism does not simply involve the incorporation of material on activism, or the involvement of activists. By teaching as activists, a number of us seek to heighten our students' awareness of social justice, gender, cultural, political, ethical and environmental issues. Yet what sort of teaching experiences inspire students to become activists, engage in actions directed towards sustainability or highlight and address social injustice? In teaching as activism, in activating students, we want them to experience deep learning which has a lasting impact on the way in which they view the world, but this cannot be achieved by what Duncan Kennedy describes as indoctrination or preaching, by somehow compelling students to change their world view. Such an approach is not only counter-productive but, indeed, can be described as 'professionally illegitimate'.¹⁹ Instead, deep learning is best achieved by '[active student engagement] with topics of social importance in personally meaningful ways.'²⁰

I have always regarded the teaching of Environmental Law, a unit I wrote, developed and have taught since the inception of the law school, as a form of activism. The School of Law and Justice is the only one in Australia to make Environmental Law a core unit. This arose from our recognition of the fundamental importance of the environment, environmental law and environmental ethics, and the strong level of interest in environmental activism in the north coast area of NSW. While I introduce students to the philosophical underpinnings of Environmental Law and present an ongoing critique of existing environmental laws, one principal teaching aim is to educate and empower students as activists. Therefore it is a practical unit in which I set out the legislative framework and identify the (unfortunately underwhelming) opportunities for public participation and public challenge. In particular, the written assignment is designed to stimulate an interest in activism and to ensure that students actively engage with topical and socially relevant issues.

Students are required to make contact with a community or environmental group, and find out about a local environmental problem. They must provide legal advice on the

problem to the group. For some students, there are insurmountable difficulties in locating an environmental problem or even a community group, and consequently permutations on this topic are tolerated.²¹ For others, the real life experience advising a group of environmental or community activists can be both empowering and exhilarating. When students start discussing the appropriate content of a written disclaimer, I know they have been liaising with an actual group and that the legal advice may play a small or even significant role in assisting the community take legal action on particular environmental issues. Such community-based problem-solving requires students to consider law in context, inspires students to reflect on the concept of justice, and most importantly of all, is conducive to deep learning.²²

Our law school has a proud history of educating activists. One of our graduates and, in fact, a University medalist who was a NEFA activist before she commenced her law degree, became one of two solicitors at the Northern Rivers branch of the NSW Environmental Defender's Office when it opened in Lismore in 2006. Another law student took the audacious step of initiating a common informer suit against the then Prime Minister, John Howard, in an attempt to have him disqualified from continuing to sit as a member of parliament. In fact, the idea of using section 44(i) of the Constitution against Howard was first canvassed in animated student-led discussion during a 2003 Constitutional Law lecture, shortly after Howard committed Australia to supporting the US invasion of Iraq. Fascinated by the subversive political potential in such an action, I then undertook research²³ which subsequently inspired the law student to prepare and lodge a statement of claim in the High Court registry. This trajectory of events is not uncommon; Frances Olsen acknowledges the important role played by lawyers in planning and often orchestrating actions which trigger test cases in constitutional law in the United States.²⁴

Does teaching as activism somehow contravene our responsibilities as academics? Leftwing academics with avowedly 'radical' viewpoints can be, and sometimes are, accused of indoctrination and bias; advocacy of such viewpoints is frequently portrayed as an overt politicisation of the classroom while the reinforcement of conservative political viewpoints is not. Yet there is no such thing as political neutrality in education.²⁵ There is a vast difference between academic commentary and activism which requires physical commitment, 'embodied practice', on the part of its participants. Such performances strip us of any artificial pretence of objectivity. of conservative political viewpoints is not. Yet there is no such thing as political neutrality in education.²⁵ Michael Coper, previously Chair of the Australian Council of Law Deans, has acknowledged that 'knowledge is never neutral or value-free' and that a critical perspective and law reform ethos are entirely compatible with 'free academic enquiry' in a law school.²⁶ Encouraging students to think critically is not indoctrination, and providing students with alternative viewpoints to mainstream or conventional perspectives is not inimical to our academic responsibilities. Indeed, the right of academics to 'contribute to social change through freely expressing their opinion of state policies' is expressly protected in the 1997 UNESCO Recommendation Concerning the Status of Higher-Education Teaching Personnel; the same document identifies a duty on the part of academics to 'ensure the fair discussion of contrary views'.

Our law students are unusually receptive to critical perspectives on law and society. Very few come from privileged backgrounds and only a minority share the characteristics of Margaret Thornton's 'benchmark men'. I have found that students

who espouse conservative views have to defend them because other students will challenge them, loudly and heatedly.

Academics as activists

I reiterate here my opening statement that academics can be activists. However, for many academics, there is a gap between theory and practice, even for individuals such as the Critical Legal Studies scholars who ostensibly dismiss theory or what Duncan Kennedy has succinctly described as ‘abstract bullshit’ in favour of ‘small-scale, microphenomenological evocation of real experiences in complex contextualized ways in which one makes it into doing it.’²⁷ Ironically, Kennedy himself chose not to support the protest of a colleague who took an unpaid leave of absence from Harvard Law School because there were no African-American women in the Faculty; he stated that this was not ‘his way of bringing about change’.²⁸ Indeed, certain activist strategies suggested by other Critical Legal Studies scholars can be seen as less than radical; acts of ‘moral terrorism’ in the workplace which include the disruption of faculty meetings or ‘subversion by memorandum’²⁹ have only a limited political impact. Many academics with radical or leftwing views prefer to remain, as Antonio Faundez put it, ‘revolutionaries in the abstract’³⁰ — fighting their battles in ‘the library and the archive’.³¹

This point was forcibly made at a symposium on ‘Law and liberty in the war on terror’, held in 2007 at the University of New South Wales. At this symposium, a conference participant approached the then Attorney-General Philip Ruddock with a warrant accusing him of various war crimes and attempted to make a citizen’s arrest. The activist was removed from the campus, arrested and subsequently charged with unlawful entry on enclosed land. To my astonishment, the overwhelming majority of conference participants, many of whom had published critical commentary on the negative impact of the government’s anti-terrorism legislation on human rights, displayed no concern for the plight of the activist. It was only at the insistence of one participant, Michael Head, that a conference organiser agreed to speak to the police and ask that charges not be laid. When Head later attempted to ask questions about the incident at a session entitled ‘Prohibiting speech as a national security strategy’, he was treated in a peremptory and dismissive fashion. One of the many ironies here was that an image of a gagged man had been used to promote the conference. I felt at the time, and still feel, that most legal academics in their defence of human rights privilege free speech in the form of decorous commentary over activism and direct action. There are, however, significant benefits from the enactment of critique. Academics who participate in activism escape the traditional cerebral restrictions of the academy, the stultifying impact of dry theory. We are no longer simply observers and recorders. There is a vast difference between academic commentary and activism which requires physical commitment, ‘embodied practice’,³² of its participants. Such performances strip us of any artificial pretence of objectivity.

Furthermore, in participating in performances of embodied resistance, we are changing the emphasis from text to performance, in a discipline in which certain texts are reified as sacred. Activist academics find themselves working within the performance paradigm, which ‘insists on face-to-face encounters instead of abstractions and reductions’. Performance studies scholar Dwight Conquergood asserts that when

‘performed experience becomes a way of knowing’, we open ourselves up to new forms of knowledge, understanding and critical inquiry.³³

Most significantly, critique through performances of embodied resistance is arguably more effective than academic critical commentary in changing law and policy. Robert Cover, an academic legal theorist who was also an activist, made this point in the following passage:

The community that writes law review articles has created a law — a law under which officialdom may maintain its interpretation merely by suffering the protest of the articles. The community that disobeys the criminal law upon the authority of its own constitutional interpretation, however, forces the judge to choose between affirming his interpretation of the official law through violence against the protesters and permitting the polynomia of legal meaning to extend to the domain of social practice and contract.³⁴

Cover is discussing activism as law-breaking. Yet we, as legal academics committed to supporting activism, often find ourselves as neither outlaws nor insiders; instead, we bridge the gap between activists engaged in acts of civil disobedience and the representatives of the state policing them. For approximately a decade, a number of academics from the Southern Cross Law School adopted the role of legal observers in NEFA blockades, policing the actions of the police on behalf of NEFA activists during forest blockades. Legal observers in NEFA blockades are in an anomalous position, neither outsiders nor insiders, as they attempt to negotiate with police and bear witness to interactions between police, loggers and protesters. The role of NEFA legal observers was formalised in the 1998 Forest Protests Protocol, an agreement signed by the NSW Police and NEFA,³⁵ but at my first blockade at Chaelundi, when I was still a solicitor and had not yet entered the academy, I was unclear about the parameters of my role as police liaison officer. Lacking both experience and confidence, I stood on the sidelines as the protest unfolded and assiduously recorded the details of all arrests in a notebook. For some reason, this instilled confidence in the blockaders, who frequently expressed relief at having their own lawyer present. In fact, my presence as legal observer continued to instill confidence and even, bizarrely enough, intimidate irate opponents in subsequent blockades. My role had its most powerful impact at a blockade in 2001, at which the senior police officer turned out to be one of our graduates. I also remember a group of timber workers, who had defiantly staged their own counter-blockade at Mebbin State forest, dispersing in haste when they read the red letters ‘Legal Observer’ on my t-shirt.

In such a role, we are clearly identified and even occupy a privileged position by virtue of our legal qualifications and professional status; we are, in this sense, separate from the NEFA blockaders. Indeed, Nancy Polikoff, an American legal academic who has represented activists engaged in acts of civil disobedience and passionately identifies with their cause, believes that we cannot be both lawyers and activists. She has written that:

Civil disobedience activists misbehave: they break the law, breach decorum and disregard order. Lawyers behave: they uphold the law, maintain decorum and cooperate in preserving order. I cannot be in both groups at the same time.³⁶

Legal observers at NEFA blockades facilitate and support activism, but are not themselves engaged in law-breaking and civil disobedience. I am most familiar with this role. However, I have also directly participated in protest events and performances.

The protest I shall discuss here, a breastfeeding protest in a Ballina courtroom in 1994, arose directly from my experiences as an academic. As I was pregnant in my first year of teaching law students, and breastfeeding an infant in my second, I was acutely aware of my body in an environment in which, supposedly, the body is or should be erased. Far from being disembodied as an academic, I spent three years as a leaking conduit of maternal nourishment. To my astonishment, my mothering body was a highly visible and disruptive force in the academy; in anonymous feedback, students expressed displeasure at my attempt to combine private and public roles as breastfeeding mother and lecturer. Consequently, my impulse to organise the protest after a magistrate suggested that a young breastfeeding woman leave his courtroom arose from a very personal sense of outrage.

In the protest, we were challenging the authority of the magistrate to exclude a lactating mother from the public sphere. In fact, as a lawyer, I found that I had to fight a deep-rooted reluctance in thus contesting his authority; I found myself procrastinating outside the courtroom, afflicted by a politically incorrect cowardice which the other non-lawyer mothers did not share. It was, however, a liberating experience to enact my disdain for such policing of the public sphere of law. We were challenging the authority of that specific magistrate. On a more theoretical level, we were challenging the exclusionary policies which keep such environments child-free and reinforce the public/private dichotomy. We were contesting the exclusion of the family and the qualities associated with it, such as 'caring, affectivity and corporeality',³⁷ from the public sphere. However, instead of undertaking this through written critique, we were performing our critique. The breastfeeding protest constituted a 'corporeal intervention' by mothers, including myself. Activists use their bodies to '[choreograph] an imagined alternative'³⁸ and we were no exception.

My participation provided me with the raw material for my first publication³⁹ and subsequently for part of my doctoral thesis, thus demonstrating that participation by academics in activism is often a valuable form of ethnographic fieldwork. Furthermore, it was an empowering experience which enriched my teaching and my working life as a feminist academic.

Conclusion

Activism has, of course, attendant risks. Activists may experience not only the punitive impact of criminal laws but also tedious and stressful civil litigation designed to deter them from further activism, such as the lawsuit instigated by Gunns Limited against twenty defendants involved in environmental direct action.

Yet activism can also be highly rewarding, not least because it provides academics with insights into law from an outsider perspective and these insights can be shared with our students and inform our research. Academics who engage in activism find that participation in such performances of embodied resistance shapes and influences our theoretical critiques.

So, to return to the question posed at the conference in 2006: we can, as academics, support activists by writing commentary and delivering speeches. We can also, as academics, be activists, and allow the experience of activism to enliven and enrich our roles as teachers and researchers.

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