



200804575

TRADE UNIONISM, INDIVIDUAL CONTRACTS AND THE MUA'S DOPPELGÄNGER

Christopher Sheil

Australian public debate commonly frames industrial relations as a contest between collective bargaining and individual agreements; between union organisation and freedom of contract. Yet in most workplaces, the alternative to union organisation is not the absence of collective organisation, but collective organisation according to other pressures and limitations upon which individual contracts are merely juxtaposed.

As a case study, the waterfront is scarcely a typical workplace, and it was never more atypical than during Australia's momentous 1998 conflict between the Maritime Union of Australia (MUA) and Patrick Stevedores.¹ On the other hand, the non-union workplace is too rarely theorized, as even critics are often amenable to arguing within the liberal terms of jobs being subject to price signals stimulating individuals to compete in the market. 'Collective bargaining enhances productivity' reports an economist here. 'Family-friendly workplaces are good for business' says a feminist there. Alternatively, the non-union workplace is evacuated as a point of research altogether, on the presumption that the prevailing arrangements will simply be a function of employer power.

¹ This article is drawn from research on a history of Australia's 1998 waterfront dispute (Pluto Press, forthcoming), supported under the Australian Research Council's *Linkage Projects* funding scheme. Note that references to archival material and other sources have generally been omitted, being confined to the work of others, some major primary sources and select points that may be controversial. For helpful comments, thanks to Stuart Macintyre, Peter Bryant, Quentin Beresford, Evan Jones and *JAPE* referees.

Without unions, it is frequently said, managerial prerogative reigns supreme.

Against these assumptions, it may be useful to recall the alternative to unionism that loomed out of the shadows and onto Australia's wharves in 1998. The intensity and extremity of the event is unlikely to be repeated anywhere else, but historians have long recognised the advantages in analysing social relations in the context of conflict. As Eric Hobsbawm once observed, social conflicts 'always dramatise crucial aspects of social structure because they are here strained to breaking point.' Indeed, 'certain important problems cannot be studied at all except in and through such moments of eruption'. Social explosions 'do not merely bring into the open so much that is normally latent, but also concentrate and magnify the phenomena for the benefit of the student, while — not the least of their advantages — multiplying our documentation about them' (Hobsbawm, 1970: 89). Likewise, Marc Bloch always appreciated the value of crises, especially when dealing with commercial interests, 'for the spirit of the secret society is inherent in all corporations ... A good cataclysm suits our business better' (Bloch, 1953: 74).

This article launches straight into the well known story of Australia's 1998 waterfront dispute through the prism of the less familiar history of the non-unionists.² The dispute was the subject of real-time saturation

2 The dramatic highlight of the dispute occurred on Wednesday 8 April 1998, when Australia awoke to the news that Patrick Stevedores, one of the two major corporations whose business it was to move cargo across the nation's wharves, had sacked its 1400 strong unionised workforce overnight, along with 600 casuals. When the axe fell shortly before midnight, the wharfies on duty had been evicted from their posts by security personnel with guard dogs and locked out. Through a combination of court action and social resistance, the workers were reinstated a month later. The dispute was not only the biggest Australian news story of 1998, attracting, for example, more than double the media interest in the ensuing general election. It was one the biggest media events in Australian history. There can be no more universally stark measure of the media engagement than the comparison with the news of the death the year before of the Princess of Wales, Diana Spencer, which is commonly regarded as among the biggest media events in modern history, along with and as a sequel to her fairy tale wedding. The 1998 waterfront conflict featured three times as often as Diana had in Australia's electronic media in 1997, and was the subject of seven times the number of talk-back radio calls. 'Ask Australians what was their country's landmark industrial event during the past 50 years or so', as the *Economist* summed up in October 2004, 'and many will name the waterfront war of 1998.' For background, see *JAPE* No. 41 (Evans,

media coverage and the record is immense, not only prompting a large secondary literature, but also plays, exhibitions, videos, songs, poems and a computer game (Gough-Brady, 2006). Given to dramatic representation, the first movie on the event has already been produced as the television mini-series *Bastard Boys*. Assuming a general familiarity with the much published contours of the conflict, this article outlines the dimensions and composition of the non-union workforce. It then briefly disposes of the concurrent debate over the incomes of wharfies, clearing the way for an analysis of the 'scabs' — the notoriously prejudicial working class epithet for union busters that enjoyed general currency in 1998. The aim is to show that the non-unionists embodied collective traditions, values and ideas, before they proved the point themselves by becoming a spectre, or doppelgänger, of the MUA itself.

Gathering the Storm

Non-union waterfront workers appeared at several stages during the seven months that led up to the wholesale termination of the MUA at Patrick Stevedores on the eve of Easter 1998, on a larger and more threatening scale on each occasion. The stages were reflected in the composition of what became the first organised body of scabs to work on Australia's wharves in 50 years — since 1948, when the legendary Jim Healy led the waterfront union to absorb the P&C (Permanent and Casual) Union that had been created in the 1917 General Strike, and which was revived during the great conflict of 1928 with the Bruce Government (Beasley, 1996; Lowenstein & Hills, 1982).³

The scabs first appeared in a small way in the short dispute at Cairns in September 1997. They next appeared in December, when soldiers were discovered at Melbourne airport, from where Patrick was attempting to

1998; Cawthome, 1998; Wilson, 1998).

3 Jim Healy was the leader of the Waterside Workers' Federation (which amalgamated with the Seamen's Union of Australia to form the MUA in 1993) from 1937 to 1961, the most illustrious period in the union's colourful history. Although no longer a household name, the English-born Healy stands among the outstanding leaders of the world's waterside workers, along with Ernest Bevin in the United Kingdom and the Australian-born Harry Bridges in the United States.

smuggle them to the Arabian Gulf to be trained as wharfies in Dubai. Once uncovered, the Dubai scheme collapsed, but the third stage quickly followed. Forming a continuous open link with the pre-Easter lock-out, in late January 1998 Patrick sub-leased one of its Melbourne wharves — No 5 Berth on Webb Dock — to the National Farmers' Federation (NFF) for the purpose of training non-union waterside workers. The occupation of Webb Dock provoked immediate union opposition, a campaign that was still afoot when Patrick brought the dogs onto its facilities nationwide ten weeks later. What we know of the recruitment story may be briefly told.

The place of the Cairns dispute in the bigger story remains unsettled. The organisation of Cairns is generally regarded as discrete from the Patrick conflict, but the evidence is not clear. This is mainly because the 'Battle of Cairns' concluded so quickly that the forces marshaled against the MUA for the occasion never became fully apparent.⁴ Directly linked or not, by 23 October 1997, five weeks after Cairns, Patrick's plans had crystallised sufficiently for the corporate chief, Christopher Corrigan, to contract with Mike Wells and Peter Kilfoyle to recruit from Australia's defence forces. Wells and Kilfoyle were former army commandos from Victoria, and had been planning the scheme to train non-union wharfies in Dubai with Corrigan since August. With substantial military and security credentials, within six weeks they had effectively recruited a small private army for Patrick. Using a company named Fynwest, advertising in the army newspaper and staging recruitment drives in army barracks, airport lounges and hotel foyers, they sought soldiers with engineering trades and experience in 'surface transport'. During this stage, 76 military personnel were recruited, over half of whom were currently serving, including a captain, 29 warrant officers, 13 non-

4 The Battle of Cairns extended over the week 11-18 September 1997. It was resolved in favour of the MUA following representations from the union to the International Transport Workers' Federation and the ship-owner who was the main user of the port. Two scabs crossed the picket-line and there were more in the wings. The degree of organisational continuity with the later, larger conflict has not been established, although there is much circumstantial and hearsay evidence. Certainly the mass dismissal of the MUA at Cairns Seaport anticipated Patrick's intentions and, at the very least, one of the commandos involved in the Dubai recruitment arranged for an operative to study the Cairns action first hand (Williams, 1998a).

commissioned officers, a leading aircraftman and (only) one army private (Australian Senate, 1998). In the dispute's literature, there is little appreciation of the rank and proportion of the active servicemen within Patrick's troops, both of which were widely misrepresented at the time.

When the Dubai scheme imploded on contact with the national media, Corrigan stepped up negotiations with the NFF, with which he had been in parallel discussion about the waterfront since at least early September, prior to the Cairns conflict. It is not clear whether Patrick had always envisaged the NFF as a front for recruiting non-union labour to supplement the skilled-up soldiers; or whether the rural lobbyist's entry into the preparations realised a fall-back option, following the abandonment of the Fynwest-Dubai scheme. Regardless, the recruitment machinery rolled onwards. The NFF registered three stevedoring companies, signed a sub-lease with Patrick and took possession of Melbourne's No 5 Berth on Webb Dock in the early hours of 29 January 1998. In one of the most deeply pointed provocations of the entire dispute, the principal NFF firm was named P&C Stevedores. Fifty years after the demise of the Permanent and Casuals, this time 'P&C' was said to stand for 'Producers and Consumers'. As the sharp historical jibe suggests, P&C's three directors were steeped in experience of industrial conflict, the waterfront and hostility toward the MUA. The chairman was the president of the NFF, the Victorian farmer turned agri-politician, Donald McGauchie. The other two directors were the NFF's then current and former industrial relations directors, James Ferguson and Paul Houlihan. Three weeks after the occupation, on 23 February, the first scabs to set foot on an Australian wharf since Cairns entered Webb Dock by speedboat.

A few days after the occupation, Wells and Kilfoyle struck an agreement with Corrigan to 'sign over' the 76 Fynwest soldiers to the NFF and to keep supplying trainees, who continued to be drawn from the ranks of servicemen. During this stage, the NFF also recruited from regional areas, although it should not be imagined that the workers were all 'boys and girls from the bush'. There were farmers among the NFF scabs, or at least some sons and daughters of real farmers, but the proportion is unknown. As the NFF also recruited through advertisements in metropolitan newspapers and among the ranks of the urban unemployed.

it is possible that most of P&C's non-unionists were from the cities, and not only those in Australia. By all accounts, P&C had great difficulty in securing crane drivers and other specialists such as ship load planners, canvassing as far afield as New Zealand, Germany, Canada and the United States. As the storm clouds gathered, Patrick finally flew in British specialists solicited through advertisements in *Lloyd's List* and interviews at the Director's Club in London's Pall Mall (Williams, 1998c).

After terminating the MUA on 7 April, Patrick contracted 353 workers from the NFF's operation. The stevedore also contracted with Ganelect Engineering Services for maintenance, and its Fynwest-NFF labour force was further supplemented with 120 workers hired through KSK Contractors, which also kept another 80 men in the wings. KSK's director was Bruce Townsend. Already known to the labour movement as 'Australia's No 1 Scab' (Dally, 1998), Townsend had led the convoy that occupied Webb Dock. When the non-union workforce began moving onto Patrick's facilities in Melbourne, Sydney, Brisbane and Perth on 8 April, they initially came by boat and, in Sydney, by helicopter. Sporting a scorpion tattooed on his left arm, believed by the union movement to be packing a gun and describing himself to reporters as 'an all round nice guy', the incongruously bespectacled Townsend also supplied fuel, trucks and boats for the Melbourne operation — including boats called 'SCUD', which he explained was an acronym for 'Some Cunt's Unlucky Day' (Dally, 1998; Linnell, 1998).

In sum, Patrick recruited an alternate workforce around 550 strong, although not too much should be made of precise numbers, for there were frequent comings and goings at the margins. At least two of the serving soldiers who went to Dubai, for example, returned to active duty. Apart from the British fly-ins, and perhaps a few specialists from other countries, most of the Fynwest-NFF recruits were drawn from Victoria, New South Wales, Queensland and Western Australia, in roughly equal proportions, whereas most of the KSK scabs were from Tasmania. We may also conclude that the recruitment and training process took approximately seven months, from September 1997 to the eve of Easter 1998, although this does not preclude the likelihood of significant practical preliminary steps. The collective identities of the non-unionists

were defined by the circumstances of the stages in the recruitment process, which layered their composition into sub-classes. The phenomenon was nicely captured by Houlihan (1998) in comments to the H. R. Nicholls Society shortly after the dispute. 'We recruited basically three groups of people. We recruited firstly the farm boys, second the military who went to Dubai and, thirdly, what the military so affectionately refer to as the riff-raff.'

The Labour Market

The incomes of wharfies were the butt of perpetual polemical assault from Patrick, the Howard Government and the media throughout the conflict. Supplying a material measure, when placed against the non-union earnings, it is apparent that the MUA's wage levels *per se* were not a substantive issue in the dispute. According to the Productivity Commission (1998), the basic annual award rate for wharfies was \$25,000 to \$36,000. At \$72,000, average earnings were considerably higher, primarily because the average was driven by some specialists and supervisors able to earn up to around \$100,000 in the busiest container terminals. Crucially, this was because of shift work and up to 45 hours or more overtime a week — a harsh but elementary condition frequently overlooked in the media, and a working week that was a long running concern within the union.

By comparison, under a 12-week contract, Patrick undertook to pay a premium \$4,760 per week for each of Townsend's men who worked, and \$3,010 for each kept on standby. Equivalent to an annual rate of \$150,000 to \$250,000, this was, as the MUA's barrister, Julian Burnside, remarked in the Australian High Court (1998: 84), 'a little over the odds, even for the waterfront'. The rate offered to New Zealand and British wharfies was equal to \$100,000, with the latter also paid a \$10,000 completion bonus — promised 'tax-free' according to Pamela Williams (1998c). In their recruitment drives, Wells and Kilfoyle touted 'around the \$100,000 per annum mark depending upon skill and experience'. Leaving the recruitment and management fees apart, the Fynwest agreements provided for the soldiers to be paid between \$66,000 and \$85,000 for a 35-hour week, incorporating shift, weekend and other

allowances, but excluding overtime. The stipulation that the 35-hour week was to be averaged over a year would have allowed closer rostering against shipping traffic, implying fewer permanent workers and more casuals in peaks, not lower wages.

Indeed, once the conditions that applied at the nexus of the military and civilian labour markets are taken into account, it is apparent that Fynwest's non-unionists stood to enjoy incomes comparable to the highest paid wharfies for working considerably fewer albeit more random hours. The scab recruitment was greased by the practice of Australian military personnel being abruptly retired after 20 years service or so on life-time indexed pensions. To maintain the physical operational capacity of the forces, a soldier in his late 30s could retire with an income beginning at 35 per cent of his final pay rate, an officer in his mid-40s on around 50 per cent (Anderson, 1997: 105-14). In other words, the annual incomes of the military scabs comfortably reached \$100,000 and more once we adjust for their pensions. Together with the generally frustrated and expensive international search for crane drivers and other specialists, this suggests that the MUA's highest earning members broadly received the going rate, when the global spot market was actually put to the test. This is not to say that Patrick did not necessarily drive a bargain for itself with Fynwest, only that Wells and Kilfoyle knew their business, which turned on leveraging the buffer the military pension provided in placing soldiers in civilian jobs. For Patrick, Wells and Kilfoyle, the effective incorporation of the military pension took advantage of a public wage subsidy, tumbling down a far from level playing field.

The first conclusion is that the scabs had little to do with free-market forces undercutting the much publicised incomes of wharfies, as may have been imagined from reading the daily press at the time. At best, cutting wages was a long-term sub-goal in the 1998 dispute, wherein wharfies' earnings principally served as a polemical weapon for attacking working conditions. Leaving the aim of breaking the MUA aside, the design of the non-union alternative supports the view that the point of contention in 1998 was not relative incomes but the perennial waterfront issue of distributing savings from reorganising permanent manning levels and shift arrangements; just as these were the issues that

were also reflected in the dispute's final settlement. This is to say, in 1998 'P&C' still really stood for 'Permanent and Casual'. To the extent that 'efficiency' was a genuine concern in 1998, a more efficiently organised workforce will, of course, remain a more efficiently organised workforce, regardless of income distribution.

Making Wharfies

This was not simply a contest between trade unionism and the alternative of opening jobs to the free-for-all of the marketplace. In practice, on the ground, the 1998 dispute was between two forms of organised labour, as Patrick's extensive organisation shows. The Fynwest-NFF body was the outcome of a positive intervention to create a highly specific, interdependent labour ensemble; a non-union double of the core of the MUA's membership, collectively organised under its own common conditions. The singularity of the alternative workforce was nicely captured by Patrick's barrister, Roger Gyles, when he pleaded with the High Court (1998: 63) to be mindful that 'the evidence is that this is the first alternative which has appeared in living memory. If this fails, there will be no other.' More compelling, the movement in the wake of the organisation supplied a textbook affirmation of the tendency toward unionism that arose from the collective experience of waterfront work.

After moving onto Patrick's terminals on 8 April, the day after the MUA was sacked, the scabs worked until the afternoon of 4 May, the day the High Court brought down its judgement in favour of the union — a period of 27 days. During this time, movement toward the formalisation of the implicit collective links between the non-unionists into explicit organisation occurred at two levels, official and informal. Christopher Corrigan may have harvested an apparent bargain with the Fynwest agreements; but the movement shows that he also bought more than he had bargained for in the undissolved relations beneath the contractual surface. A crucial consideration was that, from the collective perspective of the soldiers, their pensions were effectively put in service of supplementing their immediate incomes to realise other benefits. The most important was the 'permanent position' and 'excellent career opportunity' promised by Wells and Kilfoyle in their advertisements and

recruitment meetings. One of the savage ironies of 1998 lies in the observation that a key — perhaps *the* key — organising tool used to forge the non-union alternative was the offer of secure employment, the very union value that Patrick was aiming to destroy. So strong was the attraction of a permanent job with prospects, some of the former soldiers quit other jobs and sold businesses, cars and houses. Some of the serving soldiers cut their military careers short not to miss the chance. To encapsulate, the acute contradiction was that, as Patrick advanced on the MUA, by indirectly trading in such collective expectations, the company was effectively remaking a version of the union anew in its wake.

At the official level, the longer the Patrick scab operation remained on foot, the more it tended to replicate the original P&C — a process that occurred, ironically, as the NFF diplomatically phased out the provocative 'P&C' as the public identity of its operation in favour of 'PCS'. Over the entire dispute, the apogee of public expressions of anti-unionism in general from the actual organisers of the alternative labour force was reached when Mike Wells lashed out against 'union mongrels' and swore revenge upon the exposure of the Dubai scheme. Thereafter came a steady drift in the opposite direction. On the morning following the MUA's sacking, Corrigan owned that Patrick did not have a problem with unions 'per se'. After the scabs were removed from the wharves, McGauchie conceded the ongoing presence of the MUA in floating the idea that the NFF's recruits 'could be working alongside union labour'. When the union reclaimed the waterfront and the dispute's final settlement loomed, Houlihan formalised the drift by approaching the Transport Workers' Union and the Australian Workers' Union to discuss agreements for the Fynwest-NFF workers (Marris, 1998). The approaches were doomed. The P&C, in the historical sense of the initials, was not to rise again. On 16 June, six days after Houlihan's union approaches were reported in the press, all the scabs were sacked.

More substantial was the informal movement. The scabs were not individuals united only as 'much as potatoes in a sack form a sack of potatoes', to recall Marx (1869: 478-9). On the contrary, the soldiers had 20 years experience of a collective that hallowed legends from past battles, prized discipline and laid claim to the terms 'comrade' and 'rank and file' in much the same way as did the union movement. Whereas

trade unions expressed the common interests between workers, or a horizontal sense of solidarity along class lines; military unity expressed a relationship of loyalty in return for protection; the vertical solidarity between paternalistic commanders and deferential subordinates that had been integral to the calling since the Middle Ages (see Bloch, 1961).

Mike Wells (1998) swore that Corrigan sought military personnel because he thought they 'would learn quickly and be able to train others'. Pamela Williams (1998a) has suggested that he was also attracted because soldiers 'would understand the need to keep their mouths shut'. According to Helen Trinca and Anne Davies (2000: 55), he believed they 'could be expected to be disciplined and take orders' and would be 'tough enough to handle the dramas of a dispute'. All this implies that Patrick aimed to capture collective public investment in the soldiers, to which we can add the attribute of an implicit capacity for violence, aside from the wage subsidy. More important, these views overlook the condition for realising such benefits, as the traditional loyalty of soldiers had always depended upon their superiors maintaining their own fealty. With sanctions against combination (defined as mutiny), in return for adherence to the military code of discipline, commanders incurred an obligation for the welfare of their subordinates, in addition to their responsibility for leading operations. This dual obligation had no civilian management equivalent, and it is why the armed forces have been described as a 'uniformed welfare state' (Anderson, 1997:12). If military leaders failed in their welfare obligations, they ultimately forfeited their right to loyalty from their troops, which is what happened to Patrick.

The Fynwest Disputes

The full circumstances in which the soldiers found themselves dawned at different times on the different individuals and gradually bubbled over into collective disaffection. The first sign that the Fynwest workforce was at the mercy of a businessman prone to unilateral discretionary judgements privileging his own interests occurred when Corrigan publicly disowned his Dubai operation. From the shadows, he just watched his show blow up. Privately, this led to discord between Corrigan and Kilfoyle. Publicly, it led to the first rebellion by the

soldiers. 'We have been sworn to secrecy' said one former member of the Special Forces, briefing the media on his sense of betrayal. 'They have said 'You're here, shut your mouth'' he said, opening his mouth in Dubai to complain that 'we have been told a lot of bullshit'. Threatening to sue, he reported that the men had been told that the three-year contract they had signed was 'not worth the paper it was written on' and appealed to the MUA for help. The irruption was a harbinger.

Mollified by return flights and continuing pay packets, the next dispute broke out when P&C occupied Webb Dock on 29 January, announcing, as this did, that Fynwest was redundant. Had it been feasible, almost certainly the Dubai veterans would have been disposed of at this point. Patrick's public disowning of the Dubai scheme had destroyed Fynwest's future, for it meant that further public association between the soldiers and the stevedore risked damaging Corrigan's credibility, which was crucial for his campaign against the MUA. The catch-22 the businessman had made for himself was that sacking the soldiers would have been the surest way to send them to the press, sparking the very publicity that he wanted to avoid by disposing of them. The tension came to a head two days after the occupation of Webb Dock at a meeting in Corrigan's Sydney office. 'From a political point of view', Corrigan told Wells and Kilfoyle of the Dubai story:

everybody needs this to go away. It's become politically bad news. Now I agree with you it's not right, but it doesn't matter whether it's right or wrong. You only have to read the press, they constantly want to link these things up and get Patrick in the middle of it say. Patrick's is the common thread through here. What they're trying to do is to link everything up to this giant conspiracy leading up to the Government. What they want to do is link the whole shooting match up ... I believe the only way, we've got to get rid of that this [sic] is for you have to step out of the loop (Wells, 1998).

In a measure of the distrust that generated perhaps the most extraordinary document from the 1998 dispute, this meeting was taped by Kilfoyle. Wells and Kilfoyle accepted that the NFF 'don't fuckin want a bar of us'. More remarkable, the transcript 'shows the former commandos collectively bargaining to secure the jobs of the Fynwest workforce.

The demotic character of the ex-military leadership was explicit. Kilfoyle warned Corrigan that he would 'start a problem' if he allowed the NFF to pick and choose individuals from his 76 'problem children'. 'Joe didn't get a job, what the fuckin hells wrong with him', he ventriloquised. 'Why, what's going on here. He hasn't got a job, am I next?' he continued, mirroring the argument that the MUA and the ACTU were making publicly about the wider dispute. 'That's the problem you have with a large body of men', he underlined. As Corrigan pressed to rid himself of unacceptable recruits, Kilfoyle interrupted Wells with further testimony to the solidarity of his workers:

Let me just say this before you start Mike, this is how close they are — because they are military people, what they are doing amongst themselves in different States, they're laying down their own adventure training, keeping everyone together and saying hello and keeping everyone up to date, they have meetings and bloody barbeques. The Perth guys have gone ... for adventure training for a weekend altogether. Perth guys are doing their own hydraulic training now. One of them is a hydraulics' teacher, so he's running some of them through. That's how close they are across the board. Chris you've got to think you're not dealing with normal civvies here, you're dealing with soldiers. Albeit they're ex-soldiers, they are still indoctrinated into certain ways of thinking. It's like this, to put it crudely, if Mike and I were fighting and you stuck your nose in, we'd probably both turn around and clobber you and then go back to fighting because you're an outsider so to speak. That's bond for you. If you know what I mean? (Wells, 1998).

Distinctions drawn, Wells and Kilfoyle agreed to assist Corrigan in signing the soldiers over to the NFF companies and to continue recruiting. But within a week they had also begun liaising with the ACTU and the MUA, drawn by their mutual distrust of the stevedoring chief and now recognising their common interest in minimising the risk of violence on the picket lines. In less than six months, the ex-commandos had come a long way. 'We understand you are from a union family with runs on the board' Kilfoyle told the leader of the MUA, John Coombs, on their meeting, as if to offer tribal greetings. 'Well, I come from a military family too' (Williams, 1998b). Coombs and the ACTU leader, Greg Combet, were 'mongrels' no more.

Wells and Kilfoyle continued to be marginalised as the wider conflict progressed. Their sense of betrayal deepened and disputes over payments culminated in them combining with the Victorian Branch of the Australian SAS Association, whose President made representations to Patrick on their behalf. Turned away, they offered to sell their documents tying Patrick with Dubai to the ACTU and the media, before passing them to the *Age*, which published them the day the MUA reclaimed the wharves. Kilfoyle explained the Fynwest dispute with Patrick to the press, citing his fealty to his troops and meanwhile reminding us of the deep involvement of the government in the conflict:

We are not people who blow whistles. We know things that would sink governments and we'll die with those secrets. We're only talking now because we have been so badly discredited. My interest was to try to recover the money because a number of guys who had got involved in this thing quite innocently have now been drummed out of the service. Patricks have refused to compensate them for the loss of their career and the Federal Government and Patricks have not stood by them (Davies, 1998).

Limiting and conditioning their public action, only betrayal justified betrayal short of death in this ex-uniformed moral economy, which might be characterised as being regulated according to a modern form of collective vassalage. Such workplace relations may have functioned in principle, but only on condition that the employer effectively incorporated the collective welfare role of the military, or a union. In a sequel to the story about wages, when the soldiers' dream of realising permanency disappeared as they went into conflict with Patrick, their implicit subsidy had also been withdrawn. In bargaining with Corrigan, Wells proposed 'a year's payout' for the soldiers and offered to sell him the Dubai documents for an amount that would have given each recruit \$100,000.

The Australasian Stevedoring Guild

With their leaders out of the picture, the final stage in the informal movement occurred among the Fynwest recruits and about 150 of the

wider body of NFF scabs after they were sacked. The completion of their disaffection was marked by the formation of the Australasian Stevedoring Guild to pursue their grievances. Much of the balance of the guild also comprised former soldiers. The NFF scabs were paid along a range that was \$20,000 less than the Fynwest recruits, but there is no reason to imagine that the soldiers among them were not also predominantly former commissioned, warrant and non-commissioned officers, who enjoyed decent pensions and harboured collective expectations of lives on the waterfront comparable to their comrades. Outside the military ranks, more general conditions conspired to encourage combination, broadening the guild to embrace a proportion of the non-military scabs. Several sources suggest that some of the other non-unionists were ex-police and former prison guards, who might be expected to share collective workplace ethics akin to the military. Apart from this, prior to their sacking, traces of the civvies are scant, and generally suspect as confected public relations. Even so, what has been left to us is consistent with a collective experience that led inexorably to union organisation.

To generate sympathetic human interest stories, the NFF embedded a journalist, Carmel Egan, as a Webb Dock trainee. Egan (1998) was typical of the media in misrepresenting the wages that wharfies were paid for operating 'Spielberg-inspired' straddle-carriers. Yet, in fashioning herself as one of the first outsiders to have 'worked on the Australian wharves since World War II' and a foot soldier in 'Australia's last great industrial battle of the century', she capitulated to more than journalistic theatricality. Filtering her experience from 'Behind the lines at Webb Dock' through News Limited tabloids that implicitly aimed to discount waterfront work, her description of the training as 'neither difficult nor easy' nonetheless echoed the ambivalent mix of pride and self-deprecation with which wharfies had traditionally held their jobs (Sheridan, 1994: 266-67; Davis, 2003: 35-6; for example). Just as the perilous waterfront workplace bred the mutual co-operation that wharfies lives had always literally depended upon (Montgomery, 1987: 97; for example); in operating a portainer crane swinging containers from a height of 50 metres, Egan also found herself feeling 'responsible for the safety of people working on the wharf far below; for the truck and straddle drivers loading or off-loading containers; for pedestrians and the

dogger directing my movements over a ship and for the people working in dangerous conditions in the holds below'. Just as wharfies derived identities from workplaces apart from the everyday routines of most citizens (Miller, 1969; Winslow, 1998: 8; for example); this 'new-age waterfront worker' fell into describing 'the alien world of shackles, safe working-load lifts, slings, hoists, sheaves, flanges, mousing, hambone wedge sockets and hook blocks.' As if she had been reading up on wharfie history, Egan found that the 'infamous men from Dubai' had 'everyday dreams and simple ambitions of full employment, camaraderie and a good wage'. In what could have almost been a lift from the stories of John Morrison (1984), she concluded that the scabs 'could be anybody's neighbours. Anybody's friends'.

A similar consciousness presses in the other scraps of the non-union experience. When the MUA exposed concerns about the training, the NFF produced a young woman 'with a science degree' who had grown up on a dairy farm driving trucks, tractors and forklifts. She not only bridled at the MUA's criticism but echoed legions of her predecessors in explaining that she preferred working on the waterfront to the 'boring' alternative (Sheridan, 1994: 267; Lowenstein & Hills, 1982: 177). 'We can argue our own cases and stand on our own two feet' boasted one non-unionist of the independent capabilities of the scab collective, displaying delegate qualities. A former officer told of 'a level of mateship he did not expect to find outside the army'. After the MUA pilloried the slow working pace of the scabs (which was around half the union crane rate), he insisted that his 'workmates had been improving their productivity rates every day'. Such special pleading could have been plucked from almost anywhere over the past century. Technical innovation and capital intensification had transformed dock work over the prior 50 years, but some realities persisted. Becoming 'qualified' may have been a start; mastering the waterfront still took years and output remained a collective yield (see Hobsbawm, 1964; for a discussion post-containerisation, see Wellman, 1995).

'What are they like?' one group of scabs asked a reporter of the workers outside the gate. 'Like family men', he replied. 'Just like us', they nodded. Over Easter, one team leader had boasted of 'the bond being formed' between his workers and the 'great team spirit being built'. After

the sacking, another non-unionist bitterly recalled how they 'were told that as a group there was strength in staying together'. 'All hell broke loose' when the NFF told the scabs they were sacked, twinning the MUA's pre-Easter response to wholesale termination. 'In every city', according to Trinca and Davies (2000: 265-6), the NFF 'confronted bitter and confused workers'. Preordained, the motion now took its toll in formal independent organisation. 'We must all remain united together on this issue' went a newsletter from the former non-unionists soliciting \$50 for a fighting fund, 'all we need do is take a leaf out of the MUA's book by sticking together and remaining united'.

A Nexus of Social Treaties

Looking back on the history of the 1998 scabs, it is not difficult to recognise a story that conforms to much longstanding labour historiography. 'What we have later thought of as the 'unions' proper', H. A. Turner wrote, 'were commonly either simple formalizations of certain natural links between the workers, or merely superficial structures.' These superficial structures were 'erected on a much more durable foundation — the habit of association between workers of a settled occupational group' (Turner, 1962: 86). True enough; the military recruits had a habit of association that had settled over 20 years, behind which stood centuries. What Turner's definition overlooks is that the catalyst for finally formalising the 'natural links' within a 'superficial structure' in this case was the unsettlement of the 'more durable foundation'. Insofar as it embodies class consciousness, unionism springs from cultural as well as economic relationships, as E. P. Thompson has argued, articulating not only an identity and solidarity of workers between themselves; but also 'a solidarity *against*' (Thompson, 1963: 531, emphasis in original). 'I feel for him ... and the others', one MUA member said of his unemployed brother who had worked for Patrick. 'They would be feeling exactly as we were when we were hounded out by guards and dogs. They must be feeling betrayal; it is one of the hardest things a man has to live with, being made redundant' (Price & O'Brien, 1998).

What of those who did not join the guild? Some went home. Not needing

a job, they had become involved because of their separate solidarities with the government's or the NFF's causes. 'Unions definitely have their place in society' said one sacked 28-year old son of a cattle grazier from near Dubbo, 'but personally I believed that the MUA had way too much power' — the past tense suggesting revision, of some kind. Presumably the non-union 'pharmacists' and 'university students' — if they really existed — also went back to their day jobs, having satisfied their youthful keenness to 'taste adventure' (as Egan wrote), holidaying in other people's misery. All up, about 150 or so of the NFF's recruits melted away, most perhaps preferring to forget or just keep to themselves.

Least troublesome were the 200 KSK 'riff-raff', whose solidarity was specifically designed to match the MUA. The reliance on Tasmanians, Bruce Townsend explained, was a result of deeply embedding his recruitment practices within interdependent personal relations. 'I only hire people I know or who are recommended by the client or someone who works for me', he said. 'No wimps, no thugs, no booze and no drugs.' If one of his workers was sacked, so, too, was the man who recommended him. 'That way I don't get any yo-yos.' Identifying with the manly waterfront traditions ('There's nothing wrong with dealing with hard men.'), Townsend was never going to turn against 'the forces of heartless capitalism', as Corrigan parodied his own public depiction. His only regret was in not delivering Patrick a 'crushing victory'. What of waterfront work? 'It's a piece of piss', said the tough guy. Still, even a 'scab herder' had to rely on collective organisational principles as an employer. With a third of his workers not entitled to have their contracts paid out, Townsend also took a leaf out of the MUA's book in making a deal to spread the wages evenly, because he wanted 'a reliable workforce on call' (Dally, 1998; Linnell, 1998; Hughes, 1998; Gillard, 1998; Webber, 2002).

Terminated in June with \$10,000 to \$25,000 compensation and devastated in their expectations, the former non-union activists convened a national meeting of the Australasian Stevedoring Guild on 1 November to formulate their claims against Patrick, Fynwest, the NFF and the Commonwealth of Australia, as four of 36 respondents (in their various legal and natural identities) they held to be responsible. Seeking \$100

million in compensation in the Federal Court, they claimed that their employers had been negligent and had induced them to join the operation with false, misleading and deceptive conduct. Above and beyond their individual contracts, they claimed that they were collectively promised a 'job for life' which 'would be an excellent career for them'; that they had been told that they 'would have nothing to worry about', that 'large bonuses would be paid' and that their salaries were 'likely to increase quickly after commencement'. They cited this public P&C statement insisting that they 'would not be used as a substitute labour force for union workers', and that public NFF testimony to its 'long-term commitment' to a 'stevedoring company offering services and competition with other companies'. They pointed to the government documents implying complicity. Maintaining that they had always been told they were an 'alternative' — not a 'replacement' — workforce, they complained that the dispute's perpetrators had always intended to use them as 'strikebreakers'. As a consequence, it could have been expected that they would 'suffer derision and have their earning capacity generally, or in the waterfront industry, seriously impaired' — a prospect about which they had not been given any way of informing themselves (Federal Court of Australia, 1999).

The case dragged on, with the Commonwealth being ruled out as a respondent on legal technicalities and Patrick seeking to have the matter struck out because the individual circumstances were too different to justify a class action. In this parallel universe to the MUA, on 19 October 2001 the court ruled that there was a case to be heard, for the class action did not depend on what was said to the scabs individually, but on what had not been told them collectively. With the prospect of Patrick needing to prove that it had informed the scabs of what it was alleged to have planned to do in the main MUA conspiracy case, in February 2002 the stevedore settled out of court. The settlement was 'without admitting liability' and conditional upon the court ordering the amount to 'remain confidential', but heartless Patrick had no compunction in issuing an Australian Stock Exchange announcement to reassure the capital market that it had only paid out \$8 million, about half of which went to legal costs, leaving less than \$20,000 per worker.

Australia's 1998 waterfront dispute was an event in which the

government and the employer aimed to teach uppity labour a lesson, but no party was so thoroughly instructed as the scabs. Reputedly, two former non-unionists committed suicide in the wake of the conflict. A third blamed himself for losing his wife in a motor accident because he was away looking for work. Another had two of his daughters attempt suicide. No doubt he was also not the only scab to be shocked on finding that one of his mates at the local football club, with whom he had gone on frequent joint family holidays, walked out of the club when he saw him after the dispute, and never spoke to him again.

More broadly, the episode highlights the superficiality of the principle of freedom of contract. All labour is socially embedded by virtue of its human character, and the deliberate exclusion of unions from workplaces in the name of individual contracts does not also mean the exclusion of non-contractual organisation, as is often supposed. The waterfront may have been a 'nexus of contracts', as Christopher Corrigan, the NFF and Ronald Coase (1937) would maintain; yet this was, and would always be, merely an overlay on a wider 'nexus of social treaties', to adapt Oliver Williamson's (1989) phrase — whether embodied in the collective expectations, principles and discipline of former military personnel, or in kinship, neighbourhood, profession or creed, to paraphrase Karl Polanyi (1944: 171). In reflecting on the story, one former non-unionist dug into the very Australian roots of his stand. 'Now, looking back' he said in 2001, 'I sometimes wish it was somebody else, but my training says, well, you stick up for your mates, and somebody's got to take the lead, and my wife probably disagrees with me, but that's the way I have been brought up over the years' (Bannerman, 2001).

To avoid exaggeration, in resorting to a 'guild' the workers blurred their edge in adopting an ancient class ambiguity, as they adapted to an unstable co-existence of diverse principles derived from different traditions in their association, without the habits and customs of unionism. Still, as Thompson (1963: 9) wrote, a 'consciousness of class arises in the same way in different times and places, but never in just the same way.' As an aside to a discussion in 2004, the secretary of the Queensland Branch of the MUA mentioned that the dispute had raised the military's awareness of the waterfront and some soldiers had subsequently started in the Brisbane port. 'They're good workers', he

said, 'and the very first thing they always do is join the union.' Big Jim Healy, who had himself served on the Western Front in the Great War, would have been pleased.

References

- Anderson, D. (1997), *The Challenge of Military Service: Defence Personnel Conditions in a Changing Social Context*, Background Paper 6, 1997-98, Parliamentary Library, Parliament of Australia.
- Australian Senate (1998), *Examination of Additional Budget Estimates Supplementary Hearings 1997-98*, Additional Material Received, Volume 9, Defence Portfolio, Foreign Affairs, Defence and Trade Legislation Committee, Parliament of Australia.
- Bannerman, M. (2001), 'Strikebusters take compensation claims to court', *7.30 Report*, ABC-TV, 20 June.
- Beasley, M. (1996), *Wharfies: The History of the Waterside Workers' Federation*, Sydney, Halstead Press in association with the Australian National Maritime Museum.
- Bloch, M. (1953), *The Historian's Craft*, New York, Vintage.
- Bloch, M. (1961), *Feudal Society*, London, Routledge and Kegan Paul [Paris, 1940].
- Cawthorne, P. (1998), 'Dilemmas raised by the MUA dispute', *Journal of Australian Political Economy*, No. 41, pp.7-22.
- Coase, R. (1937), 'The nature of the firm', *Economica*, Vol. 4, November, pp. 386-405.
- Dally, S. (1998), 'Union busters', *Mercury*, 15 April.
- Davies, J. (1998), 'They shouldn't have goaded us', *Age*, 8 May.
- Davis, C. J. (2003), *Waterfront Revolts: New York and London Dockworkers. 1946-61*, Urbana, University of Illinois Press.
- Egan, C. (1998), 'Behind the lines at Webb Dock', *Herald Sun*, 13 March.
- Evans, R. (1998), 'Damned rots and god's reforms: The language of the docks dispute', *Journal of Australian Political Economy*, No. 41, pp.1-6.
- Federal Court of Australia (1999), *Robert George Batten and Anthony Wayne Grahame v CTMS, Fynwest, Wells, Kilfoyle, Patrick et al*, QC 177 of 1998, 12 November.
- Gillard, J. (1998), 'Union-buster cries poor', *Mercury*, 13 May.
- Gough-Brady, C. (2006), *Docks Dispute*, A 'docugame', funded with assistance from Film Victoria.
- High Court of Australia (1998), *Patrick Stevedores Operations No 2 Pty Ltd and ORS v Maritime Union of Australia and ORS*, M29/1998, transcript, Canberra.

- Hobsbawm, E. J. (1970) 'From social history to the history of society', *On history*, London: Weidenfeld & Nicolson, 1997.
- Hobsbawm, E. J. (1964), 'National Unions on the Waterside', *Labouring Men: Studies in the History of Labour*, London, Weidenfeld & Nicolson, 204-30, 1986 edition.
- Houlihan, P. (1998), 'Comments to the H R Nichols Society', 8 December, Unpublished.
- Hughes, J. (1998), 'Patrick praised as a good client', *Australian*, 9 June.
- Linnell, G. (1998), 'Meet the man in demand on the docks: admired winner or agent provocateur?' *Age*, 10 April.
- Lowenstein W. & Hills, T. (1982), *Under the Hook: Melbourne Waterside Workers Remember*, Melbourne, Melbourne Bookworkers in association with the Australian Society for the Study of Labour History.
- Marris, S. (1998), 'Farmers woo unions', *Australian*, 10 June.
- Marx, K (1869), 'The Eighteenth Brumaire of Louis Bonaparte', in Karl Marx & Frederick Engels, *Selected Works*, Vol. 1, Moscow, Progress Publishers [1969].
- Miller, R. C. (1969), 'The Dockworker Subculture & Some Problems in Cross-Cultural and Cross-Time Generalizations', *Comparative Studies in Society and History*, vol.11, pp. 302-14.
- Montgomery, D. (1987), *The Fall of the House of Labor: The Workplace, the State, and American Labor Activism, 1865-1925*, New York, Cambridge University Press.
- Morrison, J. (1984), *Stories of the Waterfront*, Melbourne, Penguin.
- Polanyi, K. (1944), *The Great Transformation: The Political and Economic Origins of our Time*, Boston, Beacon [2001 edition].
- Price, M. & O'Brien, N. (1998), 'On opposite sides of the divide, brothers find no joy in shifting fortunes', *Australian*, 22 April.
- Productivity Commission (1998), *Work Arrangements in Container Stevedoring*, Research Report, Canberra, Ausinfo.
- Sheridan, T. (1994), 'Australian Wharfies 1943-1967: Casual Attitudes, Militant Leadership and Workplace Change', *Journal of Industrial Relations*, June, pp. 258-84.
- Thompson, E.P. (1963), *The Making of the English Working Class*, London, Penguin, [1991 reprint].
- Trinca, H. & Davies, A. (2000), *Waterfront: The Battle that Changed Australia*, Sydney, Doubleday.
- Turner, H. A. (1962), *Trade Union Growth, Structure and Policy: A Comparative Study of the Cotton Unions*, London, George Allen and Unwin.
- Webber, N. (2002), 'Scab chief's tight ship', *Herald Sun*, 13 June.
- Wellman, D. (1997), *The union makes us strong: Radical unionism on the San Francisco waterfront*, Cambridge, Cambridge University Press.

Wells, M. (1998), 'Affidavit', 6 May, includes 'Transcript of tape of meeting 31/1/1998 at the Sydney office of C Corrigan at Patrick Stevedores offices with Chris Corrigan, Michael Wells, Peter Kilfoyle' (MUA Papers).

Williams, P. (1998a), 'Postcards from Dubai: the disarray in Corrigan's camp', *Australian Financial Review*, 31 August.

Williams, P. (1998b), 'The minister, the mercenaries and madness at Webb Dock', *Australian Financial Review*, 1 September.

Williams, P. (1998c), 'The dogs of war', *Australian Financial Review*, 2 September.

Williamson, O., Aoiki, M., & Gustafson, B. (1989), *The Firm as a Nexus of Treaties*, London, Sage.

Wilson, S. (1998), 'Union mobilisation and the 1998 maritime dispute', *Journal of Australian Political Economy*, No. 41, pp. 23-36.

Winslow, C. (ed) (1998), *Waterfront Workers: New Perspectives on Race and Class*, Urbana, University of Illinois Press.

**Australian
OPTIONS**
left discussions for social justice and political change

*Not everyone likes
Australian
OPTIONS
but we think
you will!*

Australian OPTIONS is an independent subscriber owned quarterly publication which looks at major issues in Australian Society from a left perspective. Ongoing debate occurs through a readers page.

Contributors include: Pat Dodson, Dee Margens, Elliott Johnston QC, Hugh Stretton, Ian Lowe, Mary Kalantzis, Frank Brennan, Barbara Pocock, Max Bound, Eva Cox, Rev Ian George, Frank Stilwell, Frank Barbaro, Evelyn Scott

Subscription Rates: 1 year, 4 issues - \$20 (Concession 15)
2 year, 8 issues - \$40 (Concession 30)

See our website www.australian-options.org.au for subscription form and other information. Send to Reply Paid 431, Goodwood, SA, 5034