

Flogging a dead horse? Neo Marxism and Indigenous mining negotiations.

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Abstract

Historically, Indigenous Australians have been marginalised, both economically and politically, in mineral development processes in Australia. The Australian state structures the interaction between Indigenous people and mining companies through general legislation and policies, and is therefore a key determinant of the mineral negotiating environment. This paper examines the state's role in the negotiations for the Century Mine in the Gulf of Carpentaria, and argues that recent neo Marxist theories offer the most cogent theoretical explanation of the state's behaviour. It contends, that despite a noted tendency to consign Marxist theorising to the history books, analysis of the behaviour of the state in the Century negotiations provides critical evidence of the continued relevance of neo Marxist theories of the state.

Introduction

Whilst it is important to acknowledge that it is actors who make history, the parameters of their capacity to act is ultimately set by the structured context in which they find themselves (Hay 2002:54)

There is a significant train of thought within the discipline of political science that argues Marxism no longer provides a useful framework for analysis. It stands accused of being too extreme (O'Sullivan 2003, 52), belonging to a past era, (Gamble 1999,1), an anachronism (Hay 1999, 153), of having nothing to offer contemporary social science in the way of explanatory capability (Marsh 2002, 163), and finally, that any attempt to review the developments in Marxist theory of the state is an exercise in 'flogging a dead horse' (Hay 1999, 152). Despite the current global financial crisis, several authors have recently dismissed the theoretical utility of Marxism, arguing that it 'no longer offers any claim to define an alternative fundamental way of structuring society' and that 'Marxist analysis has dried up' (Dryzek and Dunleavy 2009, 98). However it is imperative, given the changes in contemporary capitalism under the aegis of neo liberalism and globalisation, and the recent global financial crisis, that we have a viable and intellectually robust critique of capitalism available.

The central aim of this paper is to affirm the utility of a neo Marxist approach for theorising the role of the state in Western capitalist societies. It does so via an interrogation of the state's behavior in a recent case study of mineral development in the Gulf of Carpentaria, North Queensland, Australia – the Century negotiations. The paper is based on doctoral research carried out during 2001-2004, which employed a case study methodology to examine the behaviour of the Australian state in a mineral negotiation process involving Indigenous people.

Information was obtained from various sources, including interviews with government and mining personnel, Indigenous people, anthropologists, lawyers and employees of ATSIC. The data obtained from the interviews was augmented with documentary evidence, including company reports, various media and government reports, and available academic analyses of the negotiations, in order to triangulate and verify the interview data.

The paper is structured in the following manner. It begins with a brief overview of the historical role of the Australian state in mineral development processes involving Indigenous people, in order to provide an historical background for the discussion of the Century negotiations. It then reviews recent neo Marxist theorising on the role of the state in western democracies, primarily focusing on the work of Jessop (1990, 2000, 2001, 2002) and Hay (1999, 2002) and their strategic relational approach. Following this, a comprehensive overview of the state's behavior in the Century negotiations is presented. Utilising the central tenets of the strategic relational approach as a critical lens, this paper argues that the state acted to promote the interests of capital, subsequently marginalising the interests of Indigenous people in the region. The analysis concludes with a confirmation of both the utility and the vitality of a neo Marxist analysis of the state for contemporary political science.

States, Indigenous People and Mining

States play a key role in the definition and control of resources (Howitt 2001, 143). They establish property rights, enforce commercial contracts and regulate the behaviour of the private sector in such areas as company and environmental law (Bell 2002, 2). States define the terms on which resources will be accessed, produced, transported and marketed (Howitt 2001, 139). In short, states shape the institutional framework within which resource development occurs and, as

such, are a major determinant of the constraints and opportunities faced by the various actors involved in resource development (Hay and Lister 2006, 11). In Australia, due to the federal nature of the Australian polity, several arms of the state are involved in determining the terms and conditions under which mineral development occurs, including Federal, State and Territory governments, the judiciary, and various other statutory bodies and agencies. Under the principle of crown ownership, Australia's State governments can claim an interest in almost all sub-surface minerals, which entails the rights to allocate exploration and mining titles, and to require various fees and royalty payments (Howitt, Connell and Hirsh 1996, 14). The Australian state is thus a key player in mineral development, and its behaviour has significance for determining the negotiating environment in which mineral development takes place.

The literature on Indigenous peoples and mineral development in Australia is replete with case studies of mineral developments in which Indigenous Australians were marginalised, both in the decision making process, and from the potential benefits accruing from resource developments on their traditional lands (see, for example, Roberts 1981, Chase 1990, Lane 1993, Lane and Chase 1996, Dixon 1990, Howitt 1979, 1989, 2001, Harman and Head 1981, and O'Faircheallaigh 1991, 1996a, 1996b, 1996c, 2000, 2002, 2005, 2006). The Queensland and Western Australian governments, those states with the largest mining industries, had continually rejected any form of recognition of Aboriginal land rights that may have given Aboriginal people control over mineral development.

The period during which the Century negotiations occurred, 1987-97, saw significant judicial and legislative changes in relation to Indigenous land rights in Australia. These changes,

including the High Court's *Mabo* 1992 decision¹ and the *Native Title Act* 1993 (NTA)², substantively altered the bargaining power of Indigenous people in relation to mineral developments on their traditional lands. There were also changes in the corporate culture of mining companies, with mining company executives declaring a commitment to improved community relations with Indigenous peoples (Brennan 1998, 22; Howitt 2001, 261). Significantly, changes of government at both the Federal and State levels also occurred during the negotiations. The Century negotiations thus occurred during a transformative period in Australian history during which the power of the Australian state was challenged in relation to mineral development and land use decision making involving Indigenous people. What follows is a review of recent neo Marxist theorising of the state that will inform the ensuing analysis of the role of the state in the Century negotiations.

Contemporary Neo Marxist State Theory

Recent neo Marxist state theorising emerged from the seemingly intractable debate between instrumentalists, represented by the work of Milliband (1973) and structuralists, represented by the work of Poulantzas (1973, 1978). Whereas instrumentalism saw the state elites as acting to protect the capital accumulation process, which then ensures the ruling capitalist class remain dominant, structuralism argued that it is the underlying structures within a capitalist economy that ensure the dominance of capitalism, not the state nor state elites. In the structuralist approach the state required autonomy from the capitalist classes if it was to forward the interests of capital in general (Marsh 2002, 160). For Poulantzas (1978, 66), the state acts as a 'factor of cohesion

¹ This decision gave common law recognition and protection to Indigenous rights to land, 'native title', which the Court held existed prior to British acquisition of sovereignty (Tehan 2003, 533). The decision overturned the popular belief that Australia was terra nullius at the time of settlement (Pearson 2004, 84).

² The Native Title Act (1993) NTA, was the legislative response to the *Mabo* decision. The Act was designed to establish processes by which native title could be recognised and protected, to validate existing non-Indigenous interests in land and to create a system to accommodate the ongoing grant of title to non-Indigenous interests. It established a compensation regime for those Indigenous people whose native title had been extinguished after 1975, and also established the National Native Title Tribunal (NNTT) to mediate and process native title claims.

between the levels of social formation', not always acting in the interests of particular capitalists, but always in the long-term interests of capital. Recent neo Marxist state theorising sought to move beyond the debate between structuralists and instrumentalists. The works of Block (1987), Jessop (1990, 2001, 2002) and Hay (1996, 1999, 2002, 2006) have been pivotal to the recent developments in neo Marxist state theory.

Fred Block (1987) argued that if the free market capitalist ideology were left to reign supreme with no state intervention, capitalism would be unsustainable.³ The state, through its state managers, is obliged to protect national economic and political interests, promote social harmony and maintain the conditions for accumulation and profitability. Block contends that there are structural mechanisms that ensure capitalism remains dominant, and that these structural mechanisms operate independently of any political consciousness on the part of the ruling class. Rather, it is the structural position of the state managers in a capitalist society that forces them to achieve some consciousness of what is necessary to maintain the viability of capitalism. They are reluctant to offend business confidence because they are conscious of the need to sustain capitalism. It is in their interests that the capitalist system is sustained because their power and positions are contingent upon the continuation of the existing capitalist system (Block 1987, 16; O'Sullivan 2003, 40-41).

For Jessop (1990, 267), the state is a dynamic and constantly unfolding system with 'multiple boundaries, no institutional fixity and no pre-given formal or substantive unity'. Its given form at any time in a particular national setting is always contingent - always influenced by historical

³ Given the recent crisis in global capitalism, which engendered massive intervention by the American state in American economy, Block's insight now seems particularly prescient.

and institutional circumstances (Kelly 1999, 109). The state is thus inscribed with the outcomes of past strategic struggles between social forces (Marsh 1999, 327).

Central to Jessop's perspective on how the state's behaviour may be theorised is the strategic relational concept, which focuses on the notion of strategy. Strategy is the intention to realise certain outcomes and objectives. However, for that action to have any chance of realising such intentions, it must be informed by a strategic assessment of the relevant context (Hay 2002, 129). All political action takes place within a pre existing structured context that is a result of historical and institutional circumstances, and this context is strategically selective – it favours certain strategies (and actors) over others (Hay 1999, 170). Thus, these structured contexts, both past and present, are not level playing fields and advantage certain players while simultaneously disadvantaging others.

Disadvantaged players can, however, formulate strategies based on their knowledge of the structured context. They can overcome the problems of a strategically selective context through their own agency. Agents are, in a sense, bearers of structural positions, but they interpret those structures. At the same time, structures are not unchanging; they change in part because of the strategic decisions of the agents within the structure (Marsh 1999, 331). Agents can affect their circumstances by engaging in strategic calculation about the structures that strategically favour the other players in the context (McNulla 2002, 281). This is an important point for it suggests that those players disadvantaged by the strategically selective terrain can mediate this disadvantage through their own strategically selective behaviour, based upon their knowledge of that terrain. This implies a dynamic relationship between the actor (individual or collective) and the context in which they find themselves, in which agency is affected by knowledge (Hay 2002, 132). Thus, knowledge of the terrain is crucial in this perspective.

This knowledge, however, is contingent. It can be mediated by hegemonic discourses. Hegemonic or political discourses are articulated in such a way as to provide strategic benefits (Kelly 1999, 113). They have the ability to influence the strategy of the various actors by mediating their knowledge of the constraints/structures that act upon them. Because the strategic behaviour of the actors is subject to their knowledge of the strategically selective terrain and the constraints it poses for them, hegemonic discourses about that terrain can, and do, influence what is knowable about that terrain. Thus their agency or power to is subject to two levels of selectivity – the strategic or structural and the discursive (McNulla 2002, 285).

Jessop and Hay acknowledge that political action always takes place within contexts that are discursively constructed in particular way. They employ the notion of *discursive selectivity* to explain the power of hegemonic discourses and how they can influence the strategies available to the actors within a policy domain (Jessop 2001, 161; Kelly 1999, 113). They contend that discourse and ideas are fundamentally important aspects of the social and political world as they can directly affect individual action or agency, and because of the dialectical relationship between structure and agency, they can therefore also affect structures.

In summary, the strategic relational approach argues that the historical and institutional realities that inform the character of the state at a given point in time create policy contexts that favour some actors, and some policy options, over others. These policy contexts are therefore not level playing fields and can be both discursively and strategically selective. Utilising these theoretical insights on the role of the state in western capitalist societies, this paper now turns to the behaviour of the state in the Century negotiations.

The Century Negotiations

The Century Mine is a zinc/lead mine located in Far North West Queensland, 250kms north west of the regional centre of Mt Isa, and 150kms from the Gulf of Carpentaria. The mine is located on Lawn Hill pastoral lease, close to the Aboriginal community of Doomadgee. The mining project included a plan to convey the mineral concentrate in slurry form via an underground pipeline, 300kms to the port of Karumba in the Gulf of Carpentaria, from where it would be barged to ships further out in deeper Gulf waters (O’Faircheallaigh 2005). The project potentially affected a wide range of Aboriginal people in the region, including coastal and island communities that potentially could be affected by any adverse environmental impacts associated with the loading and transshipment of concentrates. The Gulf of Carpentaria is a remote monsoonal region, subject to seasonal cyclones, with poor road access, limited infrastructure and high unemployment. The region was, in the words of the Queensland Premier,

an economic basket case - it was like going to some long lost frontier, some outpost in the wilderness (Borbidge, *Pers. Comm*, 2004).

Century Mine was seen a major economic boon to the area, with officials estimating \$429 million in annual output, and a total of 1,340 jobs for the region, making the mine the largest single economic activity in the southern Gulf region (Crough and Cronin 1995, 3).

The Gulf is one of the most sparsely populated regions in all of Queensland (Crough and Cronin 1995, 10). Of major significance for the negotiating environment were the economic and cultural characteristics of the Gulf Aboriginal population (Smith and Altman 1998). In the early 1990s the Mt Isa region had an Aboriginal population of approximately 6000 people, whose life expectancy ranked amongst the lowest of all Queensland regions. Sanitation and water supply were inadequate or non-existent and there was an acute shortage of housing. Aboriginal people in the region had the lowest educational qualification rates of any Queensland region.

Employment skills and experience were low, and most employment was through the Community Development Employment Projects (CDEP) scheme, which is a major employer of Aboriginal people in remote Australia (Smith and Altman 1998, 7; Martin 1998, 4).

The region also has a particularly violent history of dispossession (see Trigger 1982 and Roberts 2005) with many documented accounts of settler violence towards Indigenous peoples throughout the early period of colonisation. Several authors have documented the harsh authoritarian missionary practices at Doomadgee (see Trigger 1992, Cowell 1996, Harwood 2002), which together with extreme levels of isolation and deprivation, and a high degree of institutionalisation, saw the Aboriginal population of Doomadgee described in a government report of 1950, as the 'most severely restrained in North Queensland' (cited in Trigger 1992, 71). This was the physical, cultural, social and economic context within which the Century negotiations occurred.

The Behaviour of the Australian State Throughout the Negotiations

Under the Australian federal system, State governments are responsible for management of land use issues, and the issuing of mineral leases. As Century mine is located in far North West Queensland, the Queensland Government had major jurisdictional power in these negotiations. The literature on the historical treatment of Aborigines in Queensland illustrates the denial by successive Queensland governments of any inherent Aboriginal right to land (see for example Kidd 1997; Roberts 1981; Lane 1993; Lane and Chase 1996; Howitt 2001). The Century negotiations occurred during a period that saw a Labor Government elected in Queensland for the first time since 1957. There was great expectation that treatment of Aboriginal interests would change, as the Goss Labor Government had been elected on a platform of land rights. However Holden and Pearson (1993) argue that there remained a fundamental ideological

opposition within the new Goss Labor Government to the idea that Aboriginal people have any inherent right to land. They argue that the Goss Government was ‘essentially racist, suspicious and extremely uncomfortable in its dealings with Aboriginal people’ (1993, 194). In Queensland a pre-structured context therefore existed in which Indigenous people had been historically and institutionally marginalised.

Despite a change of government in Queensland in 1996, its approach to the Century project remained constant.⁴ Both the Goss Labor Government and the Borbidge National/Liberal Coalition Government were committed to making the project happen. Wayne Goss, the Labor Premier, constantly reiterated his Government’s commitment to the project in media articles:

There is one thing I would like to do before I leave this job. It is to see a major project like this go...Queensland is about to see its third wave of mining activity ... this is the big picture, the stuff dreams are made of (cited in Morley 1995).

Similarly, when asked if his conservative government supported the development of the mine, Premier Borbidge claimed:

It will be the biggest thing to happen to the northwest of the State and will provide the catalyst for more development throughout the region, which remains one of the last great prospective areas on earth (cited in Emerson and Fagan 1997).

Responsibility for the Century project lay with the Office of the Co-ordinator General (OCG), a powerful economic development agency located within the Department of the Premier, Economic Development and Trade (DPETD). As lead Queensland Government agency, the OCG had constant dealings with the mining company. The manager of the mining company

⁴ This is a recurring theme throughout the Century negotiations. At both the Federal and State levels of government, the ideological commitment to the mine’s development remained constant, despite changes of government at both levels.

Century Zinc Lead, (CZL) Mr Ian Williams, offered the following appraisal of the actions of the OCG:

the person in charge of OCG thought we were being too wimpy and we should just tell them [the Aborigines] to bugger off and get on with the job (Williams, *Pers. Comm.* 2004).

Interviews with senior OCG staff revealed a dominant pro-development institutional agenda:

there was a down turn in economic development in the early 1990s and the Goss government were concerned with getting on and doing a lot of economic development of the State. The OCG was quite autonomous and we were just told to get on with doing business (Potter, *Pers. Comm.* 2004).

When asked if there was a strong development agenda within the Goss government the officer replied, ‘absolutely’ (Potter, *Pers. Comm.* 2004). Another senior OCG employee confirmed the Queensland Government’s commitment to development:

Development is jobs and every State government agenda is to keep people happy by providing jobs (Clague, *Pers. Comm.* 2004).

The personal philosophy the leader of OCG, Mr John Down was to provide jobs at any cost, ‘I would be prepared to slash and burn to make sure that at the end of the day the population had jobs’ (Gillespie 1993).

The Queensland Government continually refused to issue s.29 notices under the NTA, which would have triggered the Right to Negotiate (RTN)⁵ process and resulted in a six month negotiation period with the native title claimants affected by the granting of the mineral lease, even though the mining company continually asked the government to do so. Without the s.29, the company had no security of tenure over the mineral lease. The Queensland government

⁵ This RTN provision under the NTA was triggered when certain permissible future acts, such as mining, were proposed on native title land (Tehan 2003,538, Brennan 1998,16, Kauffman 1998). This ‘*right to negotiate*’ provision was considered one of the key elements of the NTA, and has been claimed as one of the most significant rights Aboriginal people won in the native title debate (Bachelard 1997, 21)

insisted that pastoral leases extinguished native title and refused to issue the s.29 notices for fear of setting legal precedents with these negotiations that might have facilitated the interests of Aboriginal people in future mining negotiations. The Queensland Premier verified the Government's desire to avoid setting precedents:

I guess we were cautious because the native title situation was not clear then ... this was a High Court inspired political time bomb, the fuses were still going and we had to weigh that up against getting this project up and running – there was certainly a degree of caution – no one had been down this road before and we were being careful in terms of precedents (Borbidge, *Pers. Comm.* 2004).

The refusal by the Queensland government to issue the s.29 notices eventually harmed the interests of the mining company because the negotiations for Century dragged on for a considerably longer time than necessary, at a substantial cost to CZL. The Queensland government, with its desire not to set any precedents that might facilitate the interests of Aboriginal people in future mining negotiations, at times acted in ways that actually harmed the specific interests of CZL, much to the chagrin of the mining company.

The Queensland government also proposed enabling legislation⁶ to circumvent the NTA and weaken the native title rights of the Gulf Indigenous communities in order to facilitate speedy development of the mine. It regarded the rights of the Indigenous people in the region as an impediment to the development of the mine, rights which could simply be legislated away. After the High Court had decided that the native title claim of one of the traditional owner groups, the Waayni peoples, must be accepted, the negotiations were forced to be undertaken via the RTN process of the NTA, and the s.29 notices were eventually issued. This resulted in a further delay

⁶ This legislation was to be similar to the based on legislation enacted for the McArthur River mine in the Northern Territory, a \$250 million dollar zinc silver lead mine, which ensured security of title for the project proponents. In effect the legislation suspended the native title rights of the Indigenous people in the region.

for the mining company, who had a deadline to provide the minerals to a smelting company in Buedel, Holland. The Queensland government's refusal to issue the notices, its desire not to set any precedents that might impede future development, and its zealous desire for enabling legislation to bypass native title rights, are clear evidence of its commitment to the mine's development.

While major jurisdictional power in the Century negotiations lay with the Queensland government, the Federal government had a large impact on the context within which the negotiations occurred (O'Faircheallaigh 2006, 10). The nature of native title and its implications for the property system of Australia were unclear after the Mabo decision until the Keating Labor government enacted the *Native Title Act* (1993). The Act encountered substantial opposition, particularly from the mining industry, which first sought to prevent the introduction of the Act, and then lobbied the Commonwealth government to amend the Act, arguing it was unworkable and an impediment to development (Healy 2002, 15). In the words of Sholtz (2006, 144), 'the NTA provided a national framework that forced governments, miners and pastoralists to pull up a chair for Aboriginal people in a wider land management bargaining table'. Thus Federal Government legislation substantially altered the terrain on which mineral negotiations occurred.

There was a definitive change in the role of the Federal Government in the negotiations after the election of the Howard Liberal Coalition Government in 1996. The Howard Government was elected on a platform that included proposals to amend the NTA, so as to reduce the impact of native title on miners and pastoralists (Bartlett 1997, 50). It continually pointed to the controversy over Century as justification for these amendments, with the Federal Minister for Resources and Energy, Senator Parer, stating that:

the government would examine the lessons of Century and take steps to ensure they did not recur (cited in Burton 1996).

As the negotiations stalled and it seemed that an agreement could not be reached Senator Parer proclaimed:

The failure of these negotiations destroys the arguments of those who maintain the existing negotiations provisions in the Native Title Act work and send a dangerous message to investors (cited in Anon 1997).

Prime Minister Howard continued to threaten amendments to the NTA to remove any unnecessary impediments to economic development.

In 1997 at the height of the Century negotiations, the Federal government introduced amendments to the NTA into parliament, the *Native Title Amendment Bill 1997*. Brennan (1998, 37) argues that this showed the government had set a course to wind back any statutory rights granted to native title holders and to withdraw the Commonwealth as far as possible from land management issues, which it wanted returned to the States. Thus, key Federal legislation, the NTA, that had facilitated Indigenous agency and enhanced their bargaining position in mineral negotiations, was to be amended. The *Native Title Amendment Act 1998* (NTAA),⁷ enacted in 1998, after the Century negotiations, substantially weakened the position of native title claimants and holders (O’Faircheallaigh 2005, 10).

Other elements of the Australian state, including ATSIC and the National Native Title Tribunal all played decisive roles in these negotiations. While space precludes a discussion of each of

⁷ The act received widespread condemnation, both at home and abroad for compromising Indigenous rights (Altman and Rowse 2005). Australia was brought into international disrepute and was asked to explain its changes to the *Native Title Act* to the United Nations Committee for the Elimination of Racial Discrimination (CERD). Australia is the first western nation asked to explain its human rights position to the committee (Healy 2002).

their roles separately (for more detail, see Howlett 2007), their actions ultimately served to facilitate the development of the mine, despite the fact that many Indigenous people in the region had expressed their objection to the mine. The High Court however acted autonomously from the other arms of the state. Several decisions it handed down throughout the negotiations, in particular the *Mabo(1992)*, *Waayni(1995)* and *Wik(1996)* decisions improved the bargaining positions of the Indigenous people in the Gulf region, enabling them to eventually reach a substantial \$60 million agreement with the mining company. While the power of the High Court is vulnerable to the will of the Australian Parliament, and its capacity to judicially intervene is circumscribed by the Australian Constitution (Bachelard 1997, 71), its decisions in this case were of major significance and altered, for a time, the structural context of the negotiations. However these decisions could be subject to reversal or diminution by legislative acts of the Parliament, as was the case when the Howard government enacted the *Native Title Amendment Act 1998* (Patapan 2003, 112).

The proposal to develop the mine caused tension and disagreement within the Aboriginal communities. For some Aboriginal people in the region the mine represented the only opportunity to redress the marginalisation and poverty that characterised the regions' history:

The reality is this mine is going to go ahead whether we like it or not, and if we are not careful we will lose what they have offered us now (Anon, 1996).

Murandoo Yanner, the leader of the Carpentaria Land Council (CLC), offered the following assessment of the attitude of the majority of Indigenous people toward the development of the mine:

We were determined to stop them. We didn't want them. We wanted to send them back to England. WE DID NOT WANT THEM. We would be happier without them. That was our first aim and our total aim, to stop them, but we also had a back up plan. Even if we lose we have to

lose well because it was a big agreement. But we primarily truly 100% wanted to wipe them out and not have them here (Yanner, *Pers. Comm.* 2005).

Indigenous people did not passively accept the actions of the state and the mining company. They continually developed strategies to counteract the state's actions regarding facilitation of the mine.⁸ Their active opposition to the project saw the original offer from the mining company of \$100,000.00 per year for the life of the mine, grow to a \$60 million agreement over a twenty year period. Several authors have documented the degree of agency shown by the Indigenous people in the Gulf region during the negotiations, with several commenting specifically on the transformative power of the Indigenous agency in the Century negotiations (Lane and Cowell 2001,165; Howlett 2010). Trebeck (2007, 541, 545) extensively documents the means used by the Indigenous players to compel the mining company to respond to their demands and how they were 'able to position themselves as legitimate and powerful' in these negotiations.

A critical component of effective agency is knowledge of the policy terrain. Murandoo Yanner was a university educated Indigenous actor who was familiar with the history of mineral development in Australia and its marginalisation of Indigenous people. He actively worked to counteract the power of the mining company and the state at every opportunity, deliberately employing tactics to delay the negotiations. The CLC also sought assistance from fellow Indigenous people more experienced in mineral negotiation processes. They used the media and the legal system in a variety of ways that are indicative of high levels of Indigenous agency. Their agency thus had had a critical effect on the final outcome of the negotiations.

⁸ These strategies included appealing to the High Court in the Waayni decision, utilising the various legislative frameworks available to them, such as the *Native Title Act 1993* and the *Aboriginal and Torres Strait Islander (Heritage Protection) Act 1984*, using the close relationship between the mining company and the Queensland government to achieve National Park gazettal for Lawn Hill, and finally, disingenuously participating in the UGRAC (United Gulf Regional Aboriginal Corporation) process while simultaneously using it as a tactic to delay the negotiations. (UGRAC had been set up in 1995 to act as a representative structure in the negotiations with the mining company and strengthen the negotiating position of the Indigenous people in the region) (Blowes and Trigger 1999, 92). For further examples of how Indigenous people exercised their agency in these negotiations, see Trebeck 2007, Howlett 2007, and Howlett 2010.

Not all Indigenous people were educated, however, nor had access to knowledge about mineral development, who it privileges, who it marginalises, and ultimately, who benefits from it. Given the social statistics of the region, the low literacy levels and lack of employment opportunities, it can be argued Indigenous people's capacity to access and interpret the intricacies of a mineral negotiation process was thus limited. This was confirmed by Yanner who claimed that the high rates of illiteracy in the Gulf meant many Indigenous people were disadvantaged in the negotiations:

Ask the signatories today what is in the agreement today and they can't tell you - so that must speak volumes. I am not making fun of them for not reading and writing but if they made a fully informed decision they should at least know in detail some of the agreement (Yanner, *Pers. Comm.* 2005).

Their knowledge was also constrained by the promulgation of two dominant discourses - a pro development, pro mining discourse and an anti Mabo, anti Aboriginal rights discourse. The hegemonic pro-mining discourse posits development in general, and mining in particular, as a positive thing, good for all citizens and thus deserving of support and approval. It often resonates with claims of morality and civilization (Trigger 1998), and is deeply infused with European notions of progress and development (Escobar 1995). In this discourse, mineral development renders the landscape "*productive, civilised, and familiar*" (Trigger 1997, 166), and Indigenous rights to land, and to participate equitably in mineral developments on those lands, are construed as a direct challenge to national cohesion (Howitt, Connell and Hirsh 1996, 14).

Media representations of Century mine constantly promoted the mine as economically important to the nation

The Century Zinc Mine is clearly in the national interest and will result in major economic benefits, particularly for Aboriginal communities in the Gulf (Miranda 1996).

The Queensland government, and later in the negotiations, the Federal government, constantly promoted a pro mining discourse in which mineral development was posited as positive and beneficial for all,

Century is a project of national significance that has been held up long enough – basically we wanted a reasonable outcome that got the project up and running (Borbidge, *Pers. Comm.* 2004).

I mean here is a valuable resource, properly and sensibly developed, that will give great returns to the Aboriginal community involved (Prime Minister Howard, cited in OMalley, and Johnstone, 1998).

An anti Mabo, anti Aboriginal rights discourse simultaneously posited the Mabo decision as a threat to the nation. This discourse evoked fears about security of property rights and future economic development, constituting recognition of Aboriginal rights to land as a direct impediment to future prosperity. Hugh Morgan's⁹ contributions are an extreme example of the tone of this discourse:

Mabo is a challenge to the legitimacy of Australia. The free, prosperous and dynamic nation that our forbearers built ... is irremediably tainted (cited in Russell 2005, 283).

This anti Mabo discourse was widely promoted in the media and surveys revealed that a majority of the Australian population believed the Mabo decision constituted a real threat to the security of their property ownership (Goot 1994).

The combination of these discursive influences had a significant effect on the final outcomes of the negotiations, for they unambiguously favoured the interests of the state and the mining

⁹ Hugh Morgan was executive director of Western Mining Company. Russell claims he was by far the fiercest and loudest critic of the *Mabo* decision (2005, 282).

company. Not only was the structured context reinforced by historical and institutional distribution of resources and interests, it was also reinforced by the combination of a pro mining, pro development discourse and an anti Mabo, anti Aboriginal rights discourse. This particular structured context was underpinned by an ideology that posited the development of the mine as the legitimate option and the rights of Aboriginal people as an impediment to the legitimate option. The agency of Indigenous people was constrained and inhibited by the combination of a historically and institutionally influenced context that favoured the agency of the state and the mining company, and by an ideational construction of mining that favoured those same players. The agency of Indigenous actors was thus, in this case, constrained by a combination of structural and discursive factors. The capitalist structural, material and ideational reality that informed this mineral development context ultimately favoured the agency of the state and the mining company.

In summary, most elements of the Australian state were definitively in favour of the mine's development. The Queensland government, with major jurisdictional and bureaucratic responsibility in these negotiations, had a unified and coherent approach to the Century negotiations that was distinctly pro development. At times it acted in ways that actually harmed the specific interests of CZL in order to protect the future interests of capital. The Federal government was also in favour of the mineral development, particularly the Howard Liberal Coalition Government which was determined to wind back any rights granted to Aboriginal people by its predecessors, the Keating Labor Government. The Federal government was also concerned to protect the future interests of capital. And while Indigenous people continued to exercise their agency throughout the negotiations, their agency was circumscribed by a combination of structural and discursive factors that favoured the agency of the state and the

mining company. This paper now returns to the central tenets of neo Marxist theory with these critical insights on the Century negotiations in mind.

The Utility of a Neo Marxist Approach

Neo Marxist state theory contains powerful explanatory capacity for the state's behaviour in the Century negotiations. The OCG as state managers were clearly concerned with ensuring economic performance. Officers within OCG agreed that there was a strong development agenda within the Queensland Government throughout the negotiations, and saw their roles as ensuring economic development so as to ensure employment. The behaviour of the OCG thus supports Block's thesis on the role of state managers as custodians of capital.

Another fundamental argument of neo Marxist theory is that the state requires a degree of autonomy from individual fractions of capital if it is to ensure that the long-term interests of capital prevail (Poulantzas 1978). This autonomy explains how the state could function as the custodian of capital, yet seemingly act against the interests of individual fractions of capital. During the Century negotiations the state acted autonomously of, and at times against, the interests of the CZL in order to protect the long term interests of the mining industry in future negotiations.

The Australian state, as it was during the Century negotiations, was inscribed with the outcomes of past struggles between the mining industry and Indigenous people. Until the Century negotiations, it had historically favoured the interests of the mining industry over Indigenous interests. The institutional and historical context within Queensland was also one that clearly favoured mineral development. Mineral negotiations processes, as strategically selective terrains, favour those actors who have greater access to resources. These resources can include financial resources, technical resources and access to expertise and information. Both mining companies

and the state have access to substantial financial resources (see O’Faircheallaigh 2006, 7). In the Century negotiations they were able to utilise these extensive resources to coordinate travel over vast land areas to communicate with Aboriginal people and constantly promote the benefits of the mine to the disparate Aboriginal groups in the region. Conversely, O’Faircheallaigh (2006, 4) argues that Aboriginal people were, and still are, seriously deficient in the financial, organisational and technical resources required to equitably engage in large scale resource development negotiations. This was therefore an uneven playing field, a strategically selective terrain which favoured the strategies of the mining company and the state.

With several significant High Court decisions, particularly the *Mabo* and *Waayni* decisions the contours of this uneven playing field were altered, for these decisions challenged the fundamental property laws of Australia which underpinned the mineral industry’s access to land. These decisions enhanced the Indigenous bargaining position, favouring their strategic behaviour. There was thus greater scope for Indigenous people to exercise their agency in the Century negotiations due to these High Court decisions. They were able to shape the outcomes of this particular mineral negotiation to a greater extent than in previous negotiations. The unevenly contoured terrain that had previously favoured the strategies of the mining company and the state was thus reshaped. However the agency of Indigenous people was also subject to discursive selectivity, in particular the hegemonic pro mining and anti Mabo discourses.

The agency of Indigenous people was thus influenced by two factors in the Century negotiations. The reality that the state had historically and institutionally marginalised the interests of Indigenous people in mineral development processes determined a policy context where the agency of those promoting the mine, the state and the mining company, was selected for. In neo Marxist terms, it was an unevenly contoured policy terrain that favoured certain outcomes over others. Discursive forces also constrained Indigenous agency, mediating their knowledge about

mineral development processes and constructing their agency as anti development and anti Australian. The power of discourse to influence the agency of actors in policy domains, and therefore mediate the outcomes of policymaking, is a critical component of recent neo Marxist theory, and one for which the Century case study provides much evidence.

Conclusion

Neo Marxist state theory is not determinist, for it refuses to accept that policy outcomes are simply the result of structured inequalities within capitalist societies. It does however acknowledge that these structured inequalities, such as access to resources, political power and knowledge can interact to *constrain and shape* policy outcomes. There is clear evidence from this research that neo Marxism offers a cogent explanation of the state's behaviour in the Century negotiations. State managers under the aegis of the OCG, continually acted as custodians of capital. The Queensland government acted primarily in the long term interests of capital (even when simultaneously acting against individual fractions of capital). Finally, the complex interaction of historical and institutional factors combined to result in a strategically selective terrain that favoured the interests of capital over the interests of the others players in the Century negotiations. This strategically selective terrain was also subject to the constraining influence of hegemonic discourses that favoured the interests of the state and the mining company. Thus the behaviour of the state in this case study of mineral negotiations is an obvious exemplar of the central tenets of recent neo Marxist theorising, as detailed earlier,

While caution must be exercised when making generalisations from a single case study, the findings from this case confirms a historical pattern of state behaviour in relation to Indigenous people and mineral development that has also been confirmed by recent research (see O'Faircheallaigh 2006, Ritter 2002, Bartlett 2004). Contemporary neo Marxists, such as Hay and

Jessop, argue against making any general theoretical claims about the role of the state in future negotiations. They claim that to do so would negate the central tenets of the strategic relational approach: the contingency, indeterminacy and unpredictable nature of political and social processes (Hay 2002, 259). However, given the findings from this case study, and recent research, it seems disingenuous to completely deny the predictive capacity of neo Marxist state theory for future studies of the role of the state in mineral negotiations involving Indigenous people. Neo Marxist theories of the state offer a cogent and comprehensive explanation of the state's behavior in the Century mineral negotiations and provide a robust framework for a contemporary critical analysis of capitalism and the state in western capitalist societies.

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