

The AMONGST EQUALS story

Tom Zubrycki, 1990

What value do government bodies and commissioning organisations place on a filmmaker's intellectual property and professional creative contribution? When a sponsoring organisation wants to distort history for particular ends, where does the filmmaker stand? Who wins and who loses? When is the filmmaker's integrity on the line? Does the filmmaker fight back or does he/she walk away? All these questions and more bear on a discussion of "Amongst Equals"

Moral and intellectual rights run the risk of being severely compromised when independent filmmakers take on commissioned projects. The story of what happened to this film makes an intriguing, and in retrospect (one year on) - a rather bizarre if not 'Kafka-esque' story.

"Amongst Equals" was not strictly a sponsored project, given that I initiated the idea and promoted it. Yet the legal copyright was vested with an organisation which, despite its highly political composition, started off by acting in 'good faith'. The story starts in 1986 at the time I was finishing the film on the Queensland Electricity Power workers strike "FRIENDS & ENEMIES". It occurred to me then that there was a strong demand for educational A/V materials on the history of the Labor Movement. Nobody had done this kind of 'birds-eye-view before'. It also seemed an obvious subject for prime time television. I was aware of good sources of film archive that would situate this history well in a cultural, political and economic context.

I approached the ACTU with no success, but was able to get the support of Film Australia who in turn obtained funds from the Australian Bicentennial Authority. It's at this point that the problems started. The A.B.A. made a grant of \$200,000 to the A.C.T.U. on condition that Film Australia act as the film's producer. The problem was that the copyright went to the ACTU along with the grant. This meant that the ACTU would have the final say as to the content of the film. I had to answer to an ACTU - appointed committee comprising officials from different unions. A group that was supposedly "factionally balanced".

When it comes to commissioned work, the question of filmmakers rights in all cases gets down to a matter of contractual negotiation between the filmmaker and the commissioning organisation. In this case however, no provision was made for arbitration in case a dispute arose. In retrospect it was naive of me to believe that when it came to the final decisions, the committee would defer to my professional integrity. Yet, I kept reminding myself that the various agreements between the parties clearly stipulated that the film would be a "critical appraisal of the trade union movement in Australia suitable for a general audience on prime-time television." I felt morally responsible to the millions that would be

watching the film on prime-time television. I also thought that the ACTU would respect my professional integrity, which they did not.

During 1987 I went on an extensive research trip around Australia which took three months and consulted with a wide range of labor historians and veterans of the movement, before eventually writing the script. The ACTU Committee was consulted and offered me various suggestions. With some minor changes the script was approved. Later that same year the film went into production.

By March 1988 the films were completed to my and Film Australia's satisfaction. They were edited down to three half-hour segments. The first dealt with the period 1850-1939, the second 1939-1972, and the third covered 1972 to the present. In its edited form, the series diverged very little from that initial script.

The 'rough cut' was sent down to the ACTU. A letter came back with some suggested changes. They appeared to be relatively minor ones which we accommodated by altering the narration. A week later a 'fine cut' was sent to Melbourne. This time, however, we were asked to attend a meeting because new changes were to be proposed. It was at this meeting that the committee expressed their real concerns about the film - ones that were at total odds with the script they had already approved. Specifically, they objected to references to the Communist Party as an organising force amongst unionists during the depression; the portrayal of the Ford strike in Melbourne in 1971 (where migrant workers went out on a 5 week strike because of a simple language-based communication error on the part of their officials); insufficient references to the ACCORD and the arbitration process. Why hadn't these concerns been voiced earlier? We already felt we had compromised some of the narration of the film, but we wanted to draw the line against dropping any actual sequences. I suggested to Film Australia that we employ, as historical consultant, Jim Hagan, labor historian of high repute and the Dean of Arts of Wollongong University. Jim wrote the official history of the ACTU, and his word would surely prevail when it came down to decisions over historical accuracy! We were wrong.

With Hagan's involvement two more re-cuts were done to produce something we all felt satisfied would accommodate the ACTU concerns and also meet the standards of historical accuracy. Personally, I was unhappy with the edit. Repeated requests by the ACTU to 'put things in a more positive light' had the effect of romanticizing the narration. Failure to allow us to do a critical analysis of the ACCORD made Part 3 resemble an info-movie i.e. dangerously close to propaganda for the ACTU.

It was then that Simon Crean became involved. Simon, then ACTU secretary, wanted the total re-structuring of all 3 programs. For him the film "didn't pay enough attention to the last big chapter - the Prices and Incomes Accord". (SMH 15/1/91) For Crean, history was about transition, about placing the future in the context of the present. This all flew against the terms of the original agreement.

Over the three months of protracted discussions, the ACTU seemed to have confused my role as a filmmaker with that of a public relations image-maker. No one was happy with the series, least of all myself. I felt as if I had to look over my shoulder the whole time. My opinions (and those of Film Australia) were confirmed by the ABC who saw the film in mid 1988 just before we got involved in the discussions with Crean. They were keenly interested in PARTS 1 and 2, but suggested certain changes to PART 3, saying it was too uncritical. Naturally the ACTU showed complete disinterest, and the ABC offer eventually lapsed.

By this time, the Australian Bicentennial Authority, dissatisfied with the lack of progress, broke off their contract with the ACTU and withheld the remainder of the money to finish the film, expressing disappointment that the "documentary will not be completed in accordance with our original agreements". Film Australia then tried to wrest the copyright away from the ACTU but without success. By this stage all funds to make further re-cuts had been spent, and the ACTU refused to invest any of their own funds in the film.

Efforts by Film Australia and myself to meet with the ACTU and resolve this impasse failed. At its 1990 August meeting the ACTU executive recommended terminating the contract with Film Australia and re-cutting the film for a proposed video at the "Workers Heritage Centre" in Barcaldine, Queensland. The ACTU even admitted: "this represents a substantial change in direction for the project." I was naturally horrified. Not only did the ACTU want to take me off the project. They wanted to sabotage the film and transform it into something completely different from what had been agreed in the original contracts. i.e a critical history.

At the start of my campaign to rescue the film, I had no intention to resolve the matter from within the trade union movement, so in September 1990 I wrote to individual members of the executive urging them to reconsider their decision. This proved to no avail, and an Executive meeting in December re-confirmed its earlier decision. Even the Left, with notable exceptions, voted to suppress the film. There were apparently more pressing matters on the agenda. In late December I sent, through a solicitor, a letter which contained a compromise suggestion. My idea was that the ACTU make use of the existing film material for whatever purpose they desired, as long as I was able to complete the existing film for the purposes originally intended i.e television. No reply. So in January, I decided to go to the public on the issue and screened the film illegally at the Trade Union Film Festival at the Tom Mann theatre.

I contravened copyright because higher, more important principles were at stake - the misuse of public funds, the rights to intellectual property and the re-writing of history. I got immediate support from a range of public figures. Donald Home, ex-chairman of the Australia Council, wrote me a letter saying: *"Even Stalin found it difficult to force film directors into a pre-ordained grid. Others like Robyn Williams commented how "a sanitized version would be of no particular interest to anybody."* Sylvia Lawson argued how *"Bicentennial funds, originally intended to produce histories which had been repressed and submerged, were being used to promote the ACTU's currently preferred self-images.* Support also came from a variety of unions, notably the BWIU and the PSU. The National Executive of the PSU passed a motion *"expressing concern that the ACTU is being publicly perceived to be adopting censorship and stand-over tactics. ..the film displays positive images of unions and is geared to a level which would have general popular appeal."*

Unfortunately Film Australia attitude can be summed up as the 'pre-emptive buckle'¹. When it became a question of whether or not to support the filmmaker, the organisation abandoned me and flew for cover, there were even implied suggestions that the organisation's annual funding allocation might be put at risk.

A group of supporters - filmmakers, unionists and academics organised a public screening at Sydney's AFI Cinema for February 1. A number of dramatic days ensued where we briefed barristers and prepared ourselves for the possibility of a court injunction to stop the screening. That never took place. One reason was because the Miners Federation agreed to book the theatre in its own name. Having lost that strategic battle, the ACTU contacted the theatre manager demanding a 3 page press release be distributed at the cinema and that a disclaimer be read out prior to the screening. The disclaimer stated: *"the film is not representative of the history of the union movement. It is not endorsed by the union movement and represents only Mr.Zubrycki's narrow romanticised view of our movement"*. 500 people were turned away from the cinema, the doors shutting half an hour before the film was timed to start.

The enormous publicity the film received generated tremendous interest from unions and other organisations. Large numbers of copies started to circulate in each state copied and in turn passed on from person to person. The ACTU severely underestimated not only the ease of video copying, but the enthusiasm with which the 'cause' was taken-up. Quickly they realised they had little power to stop the film's continued circulation.

Confident of a positive resolution, I went down to Melbourne having initiated a meeting in good faith with the top powers of the ACTU. My intention was to explore some conditions for a possible settlement. To be honest I was naive to the psychological power plays and walked into a trap. A document was thrust in front of me by Martin Ferguson which I was immediately asked to sign. It basically amounted to a public confession of certain transgressions I had committed against

the ACTU. I had to apologise and withdraw certain remarks I had made about alleged ACTU censorship and the misuse of public funds. In return I would be given access to the footage to finish the film. But with what? - conveniently they forgot that I had to raise the money to do it.

There were three of them and only one of me, with ACTU president Bob Hogg as the 'impartial mediator'. Three men stood over me, bullied me and made comments like "you've caused us pain, so you have to suffer pain as well". As far as they were concerned, negotiations were under way. Initially I was even refused a plea to phone outside for advice, although later they reluctantly agreed. I was repeatedly told: "unless you agree to sign by tonight, you have no film". Under those circumstances I should have walked out. Stupidly I stayed for the next 12 hours. It was Kafka-esque. I suddenly realised what police verballing was all about. Yet I didn't sign.

The IMPLICATIONS

As historian Anne Curthoys pointed out at an AFI seminar to discuss the film: *"those who commission histories, whether in film or in print, need to respect the integrity of the historian, or the filmmaker, and not attempt to reduce historical work to the immediate needs of politics."* It's clear that the film did not fit with the ACTU's preferred self-image. They wanted to turn their back on the past - one studded with examples of workers taking action to take industrial action to defend and improve their living conditions.

By defining copyright very rigidly in its strict legalistic terms, the ACTU completely denies there is any such thing as intellectual copyright. Moral questions carry no weight as far as the ACTU are concerned. According to the ACTU, only they themselves had final approvals and control over content - these were written into the contracts. They flatly deny any censorship took place. I'm claiming that the attempted suppression of the film constitutes censorship. My original idea was to make a critical appraisal of the trade union movement not an *official* history. I contracted to work for Film Australia and the ACTU on this basis.

In a court of law elsewhere in the world, I would have strong grounds for re-dress. More than 60 countries have such moral rights legislation in place, but Australian law does not recognise anything but economic rights. A parliamentary select committee has concluded that moral rights are alien to Australia's property-based legal system. Yet, surely given the enormous differences in bargaining position between the source of finance and the film-maker there is a compelling need to provide statutory protection to the film-maker.

NOTE: in 2014 the ACTU officially withdrew their opposition to the film. It is now publicly available. Watch the film [HERE](#)