

A Political Economy of ‘The Hobbit’ Dispute

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Abstract

This article analyses the “Hobbit Dispute” in terms of a political economy of the global film industry and its connections in New Zealand. It explores the dynamics of the inter-relationships between New Zealand and the globalised world economy, the international film industry and production companies, and the domestic employment relations system. These are proposed as framing the political and legislative processes that occurred in the local film sector, bringing a number of consequences for the domestic labour movement.

Introduction

This article analyses briefly the Hobbit Dispute in terms of a political economy of the global film industry and its connections in New Zealand. Its thesis is that in a globalised world economy, a key actor (Sir Peter Jackson) in a global industry, “contingently”¹ located in New Zealand, engaged in a nexus with international companies in that sector to secure the subordination of both the domestic political order, and the domestic employment relations system, to the needs of that sector and that actor. In this subordination, the domestic political order, subordinated to and in thrall of both actor and sector, took advantage of its subordinated role to achieve a weakening of the domestic labour movement.

Employment Relations and Economic Openness

New Zealand has long confronted a condition of its creation as a settler state and its location as a peripheral economy, that is, how it is to integrate into the global economy. This was as true in the early export days, as it was in the import substitution phase, and is now in the trade and investment openness phase. The debate about openness to the international economy impinges on the employment relations (ER) legislation that New Zealand has introduced over the past 120 years. New Zealand is generally thought to have been through three phases of employment relations legislation since the 1840s. The first, simplistically, was the “adaptation of UK legislation” approach up to the early 1890s. The second was the radical departure involved in the creation of the arbitration system in the 1894 Industrial Conciliation and Arbitration Act (ICAA). The third, from 1990, was the introduction of a “market-driven” ER model in the Employment Contracts Act (ECA) 1991, as subsequently revised by the Employment Relations Act (ERA) 2000. The 1894 legislation was path breaking, yet we often emphasise two aspects of its operation – its tripartism and its stability – and understate a third, important dimension. The 1894 legislation, emerging as it did from the aftermath of the 1890 Maritime Strike, was also intended to provide industrial peace for a successful export economy. The links between the legislation, trade and

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global integration are explicit. This is equally true for the ECA and the ERA; both are predicated on the view that ER legislation should support a successful globally-integrated economy.

On Analytical Frameworks

The argument underpinning the following discussion understands that the global film industry, through a cycle of mergers and acquisitions, and accompanying restructuring, has substantially “massified” and, in the process, has become subject to increasing financial performance expectations, often driven by investors with no “creative” interest in the sector (see Arsenault and Castells, 2008). Massification involves larger organisations commanding greater power in decision-making and operating across national boundaries in a comprehensively global fashion. Financial performance expectations have grown in parallel.

This reconfiguration of the sector over the last 20 years or so has also involved a reconfiguration of the relationship between the sector and the state. On the one hand, the global film industry, often now configured within far broader media interests, is part of an apparatus wielding considerable political leverage, even in the largest nation states. On the other, the size and scale of productions within the global sector make them an attractive proposition for nation states wishing to become preferred production locations (often in the hope of longer-term spin-offs).

Hence, Warner Bros. and MGM appear in New Zealand as key players in that restructured sector, acting on a supplicant state and, most importantly, with a key agent of that global sector in a powerful position within New Zealand. It is, for the New Zealand labour movement, an almost perfect storm.

The Demands of Global Capital: Warner Bros. and MGM

Warner Bros. and MGM constitute key actors in the global film sector, operating to the imperatives demanded by massification and expectation of financial performance. However, large and important they may be, the pressures created by massification and expectations were significant.

For both Warner Bros. and MGM, the earning potential of the two films is massive, as an effect of the success of *The Lord of the Rings* trilogy². MGM needed a successful completion of the two films as it faced on-going restructuring difficulties. By 2010, the studio faced mounting debt, bankruptcy and was also the site of a major battle between two potential “white knights” (Carl Icahn, who owned large amounts of MGM debt and proposed a merger of MGM with his own Lionsgate operation, and the preferred Spyglass Entertainment). MGM was rescued as a result of a debt-restructuring arrangement and successful Hobbit films would help to consolidate a firmer future for the embattled major. Warner Bros. faced different challenges. With the end of the Harry Potter franchise, Warner Bros. were looking for a new “tent pole” film success. Both companies needed a relatively prompt completion and launch of the two Hobbit films and were, by late 2010, already concerned about delays in the production schedule.

Thus, both majors were simultaneously dependent on the success of the two films and were concerned that they be completed promptly. Moreover, they were keen that they be delivered by Sir Peter Jackson as Guillermo del Toro had walked away from the production as a result of delays. This placed Sir Peter Jackson in a powerful position in the international nexus surrounding the project. It was his capacity to

deliver the films, on time and at high quality, that defined the project. In this sense, both Warner Bros. and MGM were both supplicants in and drivers of the events that surrounded the two films.

Analytically, the arrangements between the two majors, Sir Peter and related companies are *au fond* based on commercial integration. They are not a potentially fraught engagement between two competing fractions of capital – one nationally-based and the other globally-based, but rather they are about arrangements within a global fraction or sector, which happens to be, in part, located in New Zealand. Equally, they are not about a managed clash between New Zealand and globalisation or globalised culture, and that of New Zealand. Rather, it is an arrangement between elements of the global sector based in New Zealand engaged in the sector and the wider sector, all facing the performance expectations noted previously.

The Role of Sir Peter Jackson and Associates

Bearing in mind the imperatives driving the two majors for which the films were to be made, Sir Peter's role became pivotal in many ways. For the majors, he could deliver the successful films. He was vital for them. For the New Zealand Government, and in much popular discourse, his success and that of the penumbra of film-related operations that has grown up in Wellington have become touchstones of cultural and commercial success in the film world. Knighthoods, the chairing of review panels on the New Zealand film industry, popular and commercial adulation have all followed. There is a sense that Sir Peter has been elevated to a status unachieved by most successful business people, perhaps more akin to that of Sir Edmund Hillary and a handful of sporting figures, beyond reproach and in some ways untouchable. For people working in the industry, he has been hugely successful in establishing and completing projects that have provided jobs and income.

That status has, however, not been achieved unchallenged. Sir Peter himself has been in legal dispute on occasion with his international partners. Actors have taken legal action against Sir Peter's production in relation to residuals and, above all, there was the Three Foot Six versus Bryson case, in which Sir Peter's preferred employment arrangement – that of a contractor – was challenged successfully in the courts. One can only speculate on the significance of this legal reverse for Sir Peter but, given the outcome of the Hobbit Dispute, it is reasonable to assume that Sir Peter's operations were more comfortable with contractor-based arrangements, and are supportive of the amendments made to the ERA 2000 by the Key Government.

In analytical terms, Sir Peter and his associated operations (Weta etc.) are fully integrated into the global film sector. They depend on opportunities forthcoming from that sector. They are driven by the global dynamic of that sector, rather than by any domestic economic imperatives. In this, the domestic respect for Sir Peter and his associates is a secondary factor, no doubt appreciated personally, but providing no significant leverage in the global sector. Where such leverage does occur is in the relationship with the New Zealand state. As noted above, Sir Peter's reputation and commercial power, and that of the wider Wellington Film sector, provide direct access to the highest levels of New Zealand Government and is able to exert considerable influence on Government, in terms of the configuration of the domestic sector and of the form and allocation of government subsidies.

It is important, therefore, to understand that the nexus of operations around Sir Peter is not to be understood as a marginal domestic sector directing itself outwards into the global sector. Rather, it is an

integrated element of the global sector operating, sometimes, in New Zealand. Thus, the Government's relationship with that nexus is *de facto* arrangement with a powerful force within that global sector.

The Role of the Government

The role of the Key Government was defined by three factors – its ideological position on openness, its weakness in the face of the alliance of the global film sector, and its serendipitous use of the Hobbit Dispute to further its anti-Labour movement agenda.

We need spend little time on the first factor. The Key Government is committed to free trade and openness to Foreign Direct Investment (FDI). In general, this it is little different from previous Governments, though it does differ on some key issues. For example, it is open to privatisation and the prospect of further foreign ownership of New Zealand assets and is explicitly open to increased involvement of FDI in mining and other economic exploitation of New Zealand's natural resources.

In terms of the global film industry, the New Zealand Government is a supplicant. For many years, and through multiple governments, New Zealand has sought simultaneously to build a domestic film sector for national identity reasons, and become a technically proficient and cost-effective site for international productions. It has undertaken reviews of the sector, has a subsidy model in place comparable with those offered by other countries and sees wider publicity and tourist advantages in a strong film and TV production sector. The Wellington complex is complemented by the west of Auckland TV and film operations. The two imperatives do not necessarily sit easily together. A creative sector, wanting to put a New Zealand mark on international film culture, may not be moved by, for example, the opportunities offered by "Spartacus"³. And in a context in which Government funding is limited and rationed, tensions between the fully-integrated global operations of Wellington and the domestic "creative" sector could be anticipated.

However, in the case of the Key Government, a simple approach was adopted. Any threat to the production of *The Hobbit* films was a threat to the New Zealand film sector. In this, the status of Sir Peter played two different roles – first, that of national icon, offended by the unions, and to be sympathised with; second, agent of the global film sector, able to call shots both internationally and, because of his sectoral power and his personal status, domestically. With a Government ideologically committed to business and openness, the combination of factors became irresistible and, of course, eminently newsworthy. In every sense, political support for Sir Peter and his films made sense to the Key Government.

Here, the third factor came into play. The Key Government came to power in an aura of pragmatism. One of its first initiatives was the Jobs Summit, a tripartite meeting, which seemed to promise a break from National's ideological commitment to neo-liberalism in the 1990s. Two years later, that aura has dissipated. Under the guidance of Minister Kate Wilkinson, the views of the business sector have been enacted into legislation. There has been an inexorable erosion of employee rights over the two years, and a concomitant rise in the power of the employer. The pendulum of power is swinging back to the employer with further movement in that direction expected should National remain the dominant power in Parliament after November 2011. In this context, it is hardly surprising that the Key Government should not only take the side of the global film sector in the matter of *The Hobbit*, offering further

generous subsidies, but should also feel comfortable with the amendments made to the ERA in relation to employment in the sector.

Thus, analytically, the New Zealand state simultaneously conceded, financially and legislatively, to the global film sector whilst taking the opportunity to further its ER liberalisation and attack the domestic trade union movement.

The Role of Unions

Let us begin by establishing a principle, perhaps first developed in extended form in the modern period by Levinson (1972), and subsequently subject to considerable discussion. That principle is that trade unions, facing the development over a century or more of FDI and globalised capital, must develop equivalent international institutions and practices. It is a principle that rests, for example, at the heart of the ILO, the international organisation charged with the protection of international labour standards, and an organisation to which New Zealand belongs. New Zealand's membership of the ILO requires it to adhere to the "core" labour standards defined by the ILO in 1998 in the "Declaration on Fundamental Principles and Rights at Work". They endorse the use of international action by trade unions in support of extended collective bargaining and the right to organise⁴. Of course, such an endorsement says little about the practical difficulties – organisational, resource-wise and political – that such action entails.

In this case, therefore, international involvement in The Hobbit Dispute should have been expected and, if not welcomed, understood as acceptable and proper. It should not have been condemned in the chauvinist manner used by some (see number seven in Notes section). Moreover, in this case, it was to be expected that domestic and international unions would work together and draw on each other's resources, as would the resources of the domestic peak union body (in this case, the NZCTU) also be called on.

A second principle enshrined in the ERA is the right of employees to make collective claims in bargaining with employers, provided that they are employees. Such collective claims need not involve a subsequent collective agreement as outcomes might be included, and frequently are, in an array of individual agreements. It is equally possible that, where contractors are involved, collective discussions outside the provisions of the ERA might usefully be conducted around industry standards⁵. There is nothing improper in any group of employees or contractors making reasonable representations to employers or those offering contracted work. This is an important principle, overlooked in most of the popular coverage of the Hobbit Dispute, for it casts light on a history of attempts to engage in discussion of conditions in the film and TV sector over many years. The Hobbit Dispute was not a sudden, new catastrophe. It was one incident, albeit a big one, in a chain of events going back to 2009 and beyond, in which the domestic union, Equity, had campaigned for the certainty of a standard performers' contract. It is also clear that employers, in general, were not interested in standard conditions and, at times, according to Equity, threatened to recast if pressure for such conditions persisted.

Operating under these two principles, the performers' contract offered for *The Hobbit* gave grounds for further discussion. First, they appeared to sidestep best-practice arrangements that were agreed between SPADA (representing the domestic film industry employers) and Equity, codified in 'The Pink Book'. Second, there were questions to be considered around residuals⁶, an issue that had arisen previously in relation to *Lord of the Rings*. The arguments put against such a negotiation are not strong. First, the inability of unions to negotiate a deal for any previous film production does not invalidate further

attempts to do so. Second, the argument that the negotiation should have been with SPADA, not *The Hobbit* production, flies in the face of the enterprise and project focus of New Zealand bargaining. Where else in New Zealand is industry bargaining promoted by employers, one wonders? Third, the argument that a specific, Hobbit-based negotiation would undermine the rest of the sector attracts the same comment made in relation to the second argument above.

Finally, there is the thorny issue of union tactics. There is no doubt that a combination of circumstances, in part of its own making, did harm to the union case. The FIA-MEEA-Equity link was rarely understood by commentators, who tended to adopt the xenophobic tone of Sir Peter and the Government⁷. The legitimacy of international union involvement when dealing with Warner Bros. and MGM, and their New Zealand nexus was substantially lost in popular coverage. This set the tone for coverage of union involvement, such that the problem-solving approach attempted by the NZCTU was also substantially lost, an outcome exacerbated by some unfortunate exchanges that captured popular attention. Thus, at key stages of the dispute (for example, when the boycott threat was withdrawn), the bona-fides of union announcements could be challenged by both employer and Government regardless of the truth of the matter. For the NZCTU, this was galling in two senses. First, what they understood to be true was being flatly denied by others in the media. Second, media and political coverage conflated all elements of union involvement into one presence when, in fact, one had to distinguish, particularly, between the International Federation of Actors (FIA) and the Media Entertainment and Arts Alliance (MEEA) on the one hand, and the problem-solving intervention of the NZCTU, on the other.

Analytically, we see the trade union movement, operating domestically and internationally, seeking to mobilise “equal and opposite” power to that wielded by the film majors and their nexus in Wellington. Moreover, the unions were attempting to act in this way in the face of a Government alliance with the employer/investor parties. The difficulties in imposing that “equal and opposite” power, however legitimate, are clearly shown by the Hobbit example.

Telling the Story

We can now tell the story, schematically, as a political economy.

i. The Domestic Context

The Hobbit Dispute arose in a country in which openness to external investment was long established, and in which successive Governments had promoted the benefits of FDI. They had also promoted, at different times and in different ways, sectoral development in the cultural industries, in part for reasons of “national identity”, and in part to promote diversification of a commodity-bound economy. In general, popular discourse accepts the argument that the advantages of FDI outweigh the disadvantages, although reservations abound around issues such as land sales and privatisation into either domestic or international hands.

Importantly, New Zealand’s ER system has been systematically governed by measures that promote economic openness. The extent to which openness was tempered by domestic concerns – the ICAA might be presented as embodying a greater level of “national identity” than, for example, the ECA – is open to debate, but it is incontrovertible that an underlying historical rationale for the New Zealand ER system has been to promote successful trade and improved productivity in a global economy.

These events were also taking place in an economy and political order deeply enmeshed in the dilemma of declining economic fortunes. The New Zealand economy has performed relatively poorly in the long years since the early 1950s. New Zealand has forged a dominant view that the structural adjustment model is the correct way forward for economic policy. The fundamental macro-economic stabilities required by neo-liberalism are a shared political vision. There are differences on the margins – taxation policy, for example – but that consensus shares a view that New Zealand’s future lies in improved productivity and competitiveness in global markets.

The Government in place at the time of the dispute was conservative, anti-trade union and pro-FDI. It took an uncomplicated view of the dispute. The Hobbit production was important for investment in the sector, for the on-going performance of the domestically-based film industry, for the technical skill base, for tourism and for New Zealand’s international reputation. It was, as one would expect, also under the thrall of Sir Peter’s (and his wider associates) domestic and international reputation. It was predisposed to a view that the unions were in the wrong in attempting to gain standard conditions for the domestic sector. There was little Government interest in taking the union case seriously. The Government placed investment issues ahead of its commitments to global labour standards

The unions involved initially were in a weak position. Equity membership was not high. There had been a history of attempts to improve conditions which had foundered on the basis of employer opposition. The majority of the technical staff in the sector was not unionised. The prevailing ideological perspective in the domestic sector was unitarist, and echoed the approach of much of New Zealand’s employer group. The dispute took place against the background of a longer-term crisis for the union movement, which began with the introduction of the ECA 1991. Union density in New Zealand had halved under the ECA, and the ERA 2000 had had only a marginal positive impact on that density. Union relations with the government were worsening.

The NZCTU’s strategy might be understood as a combination of “critical engagement” and rebuilding the movement. The former accepted that a national peak body should engage robustly and where possible, constructively with Government. The latter accepted that without higher density and presence, such engagement would not be backed up by the power to act.

Sir Peter and his wider associates have gained immense popular recognition domestically. The particular success of *The Lord of the Rings*, and the international recognition of the creative and technical skills that had agglomerated in Wellington, placed his wider operation in a unique position in New Zealand. He and his associates were, in many ways, on a pedestal, understood somehow as national icons. Two key aspects of this position are particularly important. First, despite that status, *The Lord of the Rings* had come under some scrutiny around residuals, and the Bryson case had gone against the employer argument. In terms of performers and technicians, the film sector in New Zealand had important ER challenges that remained unresolved, particularly around the issue of contractor status.

Second, and this is fundamental, Sir Peter and his wider associates were powerful, even dominant, figures in the global sector. Majors such as Warner Bros. and MGM looked to Sir Peter and his wider team for commercial success. His creativity along with that of his associates’ was a powerful resource in the global sector. Indeed, as argued above, this resource was a global resource residing in New Zealand, not a domestic resource with some international status. The Wellington film operation is an archetypal example of a global, networked operation “accidentally” in New Zealand, but equally capable of being located elsewhere, and regularly undertaking commissions on a global scale.

ii. *The International Context*

The global film sector was going through a simultaneous process of “massification” as media empires spanning film and other sectors consolidated through mergers and acquisitions. Two consequences followed from this. First, expectations of strong financial performance grew; for it was expected that massification would lead to improved cost advantage. Second, as operation massified, their global reach and engagement grew. The sector was also not universally successful. The famed MGM was just clinging to existence in 2010 as it sought a white knight. It needed further international success as a matter of survival. Warner Bros. were in better shape, but needed a “banker” or “tent pole” production to pick up the slack created by the end of the Harry Potter series. *The Hobbit* films were, for both, important prospects, long delayed because of funding difficulties and, potentially, not going to be made. This was a developing crisis for the majors, a crisis that could be resolved by Sir Peter producing two successful films. The majors needed Sir Peter to repeat his *The Lord of the Rings* success.

iii. *The domestic-global nexus*

The domestic and global contexts came together in the dispute. We should recognise that other scenarios were possible. The unions might not have chosen to take action on *The Hobbit* production, in which case, the films would have been made with the agreed subsidies and the rewards and conditions laid out by Sir Peter in his September 2010 statement. However, the unions did act, in a manner which, as we have argued above, was appropriate. It would be inappropriate only if one believed that international capital could act internationally but not the workforce affected by that capital.

The dispute was conducted in an environment reminiscent of battle in which dust and smoke cloud the observer’s vision. The essentials of the dispute tended to be lost in a confusion of statements and actions. We suggest that the essentials are as follows:

- The majors resolve funding problems associated with the production and look urgently to Sir Peter to take over from Guillermo del Toro to finish the two films
- The international unions, already waging an international campaign on a number of fronts against a “massifying” global film sector, identify the production as a target, recognising that there is a history of difficulty around residuals and conditions in New Zealand productions. They launch their campaign
- The majors become concerned immediately because they fear disruption of the production. Sir Peter, in particular, and his wider associates, respond aggressively and foster the idea that unions will lose the production for New Zealand⁸
- An array of actions follow, in part promoted by the domestic employers, designed to create an anti-union response. This is helped by the weakness of the union movement in both technical and performer sectors and also reflects a longer-established anti-union approach by employers in the film and TV sector in New Zealand. Mis-steps by the union movement contributed to its weakness
- The Government and the NZCTU step in, both seeking to broker a constructive outcome. This was an opportunity for a successful tripartite outcome. Unfortunately, the Government takes a politically-contingent, anti-union view, thus allying itself with the sector’s unitarist traditions. Government also sees the potential political advantages of weakening a union movement already under attack, and gaining the kudos of “brokering the solution”

- A three party axis comprising of the majors, Sir Peter, and the Government constructs an outcome that is strikingly successful for the allies. The majors receive higher subsidies and the prospect of the films being completed on time. Sir Peter and the domestic sector are favoured with the amendment of the ERA. The Government gains the kudos of brokering a solution and, not to be underestimated, an opportunity to attack the union movement at an institutional and personal level. It was, as suggested above, a perfect storm for the unions
- Government is comfortable with the amendment not only because of its contingent aspect, but also because it conforms to its commitment to openness in the global economy. For Government, it is a signal of New Zealand's flexibility towards FDI and the global economy.

Conclusions

It is rare indeed to observe such a textbook case of national interests being so comprehensively subordinated to the interests of international capital and its domestic agents. It is even more remarkable that this happened in an economy, which purports to be advanced, developed and conscious of its international commitments. The excision of a sector of the workforce from the legislation open to the majority of workers in an economy is an extraordinary outcome, all the more so given the speed in which the amendment was passed and the evident lack of any real understanding of its seriousness in many political quarters⁹. As we argued at the time, if the domestic film industry deserves special ER arrangements, what is the logical argument to oppose demands by, for example, Fonterra for a special ER regime? At about 20% of New Zealand's exports by value and 8% of its GDP, its case for a special ER regime would be far stronger than that of the film industry. Is it the case that, henceforth, special pleading by employer groups is to be the measure of the New Zealand ER system? These are indeed challenging issues.

Notes

¹ By "contingently", we mean that the production units based in New Zealand are based here, in a sense, accidentally, and will move productions elsewhere on the basis of costs and control of labour conditions. In other words, the sector in New Zealand sets a price at which its "New Zealandness" is to be sacrificed for improved profits elsewhere. In this sense, "New Zealandness" is a coat to be worn when useful and discarded when not.

² Indeed, one might speculate why the much slighter book is being made into two films and come to the conclusion that two high-earning films are better than one.

³ Spartacus is a 13-part television series for the American network, Starz Entertainment. It is the latest television project by (American) producer, Rob Tapert; it was confirmed in early November that the third season would also be filmed in Auckland, New Zealand (Herald Online, 2011).

⁴ Such is the clarity of this commitment, one wonders if a complaint to the ILO about the ERA amendments made in relation to The Hobbit might not be in order. The amendment, in its explicit exclusion of a particular group of workers from opportunities to bargain available to others, seems to fly in the face of this commitment.

⁵ This argument is sustained in the absence of any public scrutiny of the advice on this matter offered to the Government by its own legal advisers, made available, we are told, to the firms involved in the dispute but not to the unions or the New Zealand public.

⁶ The returns to performers, writers etc. that result from repeat performances of a work in which they have an interest.

⁷ Sir Peter, in his statement of September 2010 “I can’t see beyond the ugly spectre of an Australian bully-boy, using what he perceives as his weak Kiwi cousins to gain a foothold in this country’s film industry. They want greater membership, since they get to increase their bank balance” (as cited by Burgess and Hunt, 2010). John Key says “They’ve (the union) done some real damage to the way that they view New Zealand and on that basis, I can’t guarantee that the movies will be made as a result of the negotiations we have with them” (as cited by Channel 4, 2010).

⁸ We cannot know how serious the threat of a relocation of the production was. Those suggesting that it was, have a vested interest in that argument and vice-versa applies. Our view is that relocation was never a serious issue, and the “loss of jobs” argument was an important red herring.

⁹ It is a *de facto* excision, given the attitudes and behaviours of employers in the sector, who are unlikely to take up the opportunity for collective bargaining that they can trigger under the amendment.

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