

Clayoquot: Issue isn't the trees

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By John Hinde

THOSE WHO have been watching the PBS special on the early American civil rights movement could only be struck, as I was, by the parallels between this legitimate, non-violent protest movement and the protests occurring today at Clayoquot Sound.

Ironically, as government and media seem hesitant to admit, the main issue at stake here runs much deeper than concern for trees, just as the civil rights movement was not about lunch counters; rather it is about power and the security of our democratic institutions and freedoms.

With the continued mass-arrest of non-violent protesters, we could be in Alabama or Mississippi of the 1960s, where black (and white) men and women were arrested and brutalized simply for exercising their democratic right to free expression.

The absurd court procedures are also an attempt to degrade and to demoralize the individuals involved and to destroy opposition.

Indeed, the powers that be, ostensibly the government, but in reality Big Business, have managed to make political expression illegal and have forced hundreds of law-abiding citizens (whose opinions do not seem to count) into civil disobedience.

This attempt by that unholy triad, the multinational logging companies, the unions and the government, to marginalize, stigmatize and humiliate opposition is both a base manipulation of force to protect their interests and a violation of civil rights.

The silence of the multinationals on most issues here is also striking; but, as usual, silence says a lot. By keeping quiet on this existential question, they have helped to polarize the debate, reducing it to a confrontation between loggers and environmentalists — who are often absurdly and insultingly compared to terrorists — in order to manipulate public opinion.

They argue that by stopping loggers from destroying the forests, the environmentalists are abusing the loggers' civil rights.

This is not true.

Not only is there no guaranteed right to work — just ask all those laid off in the manufacturing sector in Ontario after the Free Trade Agreement — but jobs in the forest industry are not eliminated by environmentalists or by environmental concerns, but by the multinationals.

It is a gross error to assume that the multinationals are concerned with the well-being of the men and women employed today in the forest industry. These companies continually reduce the number of employees through increased mechanization and production rationalization, but they nonetheless still continue to make enormous profits. These high profits, not jobs, are the concern of the multinationals.

That the controversy over Clayoquot Sound has racist overtones, can also not be overlooked. Have the natives been consulted about the exploitation of their land? Has native opinion ever been the concern of the unholy triad, except when it interferes with profit margins?

Just as slavery was in the interest of landowners of the American south, we too have become enslaved into disastrous economic and environmental policies by the major landowners of this province, the multinationals.

Rather than promote a mixed economy of industry, commerce and manufacturing, the governing powers have only promoted the exploitation of natural resources.

The economic history of British Columbia, from the maritime fur trade, through coal, fishing and forestry, has been characterized by short-sighted, but short-term and highly profitable, exploitation of natural resources, until that resource, be it beavers or trees, has been eliminated.

The entire process begs the question, who has the power in this province and country? The people? Clearly it is Big Business. Just as they oblige the government and the courts to arrest activists who protest against their interests, Big Business can dictate economic and political policy.

But what will happen when, the profits having been made, the trees having been cut, the multinationals skip town.

What kind of legacy will they leave? Nothing but a third-world wasteland.

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Mass protests are part of our democratic tradition

The mass trials of the Clay-quot demonstrators are a test of our democratic values.

Justice John Bouck is reported in the *Times-Colonist* of Sept. 25 as saying, "Democracy and the rule of law are being challenged by mass defiance." It is the writer's view that Judge Bouck, with all respect, is venturing a personal or political opinion rather than stating any legal principle or policy. Indeed, picketing and mass demonstrations, even illegal demonstrations, have an important place in our democratic traditions.

Supreme Court Justice Peter Cory recognized this in dealing with an illegal strike and picketing by nurses in Alberta. In his dissenting opinion, he stated: "Further, in considering the nature of criminal contempt, courts should have regard to the values enshrined in the Canadian Charter of Rights and Freedoms and in particular, the protection of freedom of expression . . . the offence must not be so broadly defined that it threatens other values important to Canadian society."

He went on to refer to Charter Section 2 guaranteeing freedom of speech and freedom of assembly, two closely related liberties, and emphasized the importance of picketing and demonstrations as part of the political process.

English jurist Lord Denning also advocated the importance of

peaceful protest and demonstration in democratic societies. In *Hubbard v. Pith*, he noted that, in 1891, the Court of Common Council in London affirmed "the undoubted right of Englishmen to assemble together for the purpose of deliberating upon public grievances."

Lord Denning said the right of peaceful assembly included the right to demonstrate on matters of public concern. This right is reflected in the Bill of Rights of 1689, a part of Canadian constitutional law, and is guaranteed in the Charter under freedom of speech and freedom of peaceful assembly.

The American Supreme Court has found freedom of assembly to include a right to "sit-in," to demonstrate and to communicate effectively.

Many Canadians believe the right to peaceful demonstration to be an essential supplement to the parliamentary process, particularly in times when the electoral process appears to be unresponsive to local needs and concerns. Far from the highway to anarchy, demonstrations are seen by many Canadians as a legitimate and treasured common law right and constitutional freedom.

The limits to constitutional rights must be carefully drawn

and a blanket prohibition of demonstrations is clearly unconstitutional.

It is worth giving careful consideration to the question of whether the wording of the Clay-quot injunction is so broad as to violate constitutional freedoms — and whether the criminal contempt powers are so broad and discretionary in their outlines as to be an unjustifiable limitation on the right to demonstrate, to peaceful assembly, and to petition government for redress of grievances.

American case law suggests that the right to dissent through effective demonstration may be abridged if it presents a "clear and present danger" — such as violence. Otherwise, it is arguable that the right to demonstrate is constitutionally protected even when it is apparently illegal; for example, where a demonstration or parade takes place without a permit or in violation of an ordinance, by law or court injunction.

If the ordinance or other restrictive rule is itself illegal or unconstitutional, it cannot serve as a basis for restraining the right to petition for redress of grievances. This was the basis of Cory's dissent in the *United Nurses of Alberta* case.

Courts should be slow to

abridge the right to demonstrate, an exercise of a political right to dissent. It should not be assumed that a trespass, violation of the injunction or other breach of law in itself provides justification for limiting a basic constitutional and political right. Limitations must be justified. The onus is on the Crown to show that the limit as described is necessary and justifiable.

Vague and broadly worded injunctions or other legal rules may also be constitutionally invalid because their wide scope can have a "chilling effect" on the exercise of democratic freedoms. For example, including words such as "tends to obstruct" in an injunction or ordinance may be fatal to the validity of the whole order.

The Clayquot mass trials undoubtedly impose an enormous stress on the defendants. Crown counsel and the judiciary must be under strain, too. On the positive side, the trials present Canadian courts with a rare opportunity to recognize the immemorial right to demonstrate and petition for redress of grievances.

These ancient privileges and immunities surely cannot be subject to a simple, civil injunction pumped up to criminal contempt.

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