

**CONSTITUTING THE AUSTRALIAN ENVIRONMENT: THE TRANSITION OF  
POLITICAL RESPONSIBILITY FOR THE ENVIRONMENT IN AUSTRALIA FROM  
STATE TO FEDERAL GOVERNMENT, 1974 – 1983**

by

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## Abstract

Between 1974 and 1983 the Australian federal government, responding to the increasing demands of grassroots activists, passed a series of legislation that successfully altered the federal relationship in Australia by transferring political responsibility for the environment from the state governments to the federal government in Canberra. To better illustrate this process, this thesis will utilize Tasmania as an emblematic case study. The first part of this thesis is a social history that analyzes the development of environmental consciousness in Tasmania. This analysis spans from the cultural impact of the extinction of the thylacine (*Thylacinus cynocephalus*) on the island populace and culminates in the well-documented protests against the damming of the Serpentine and Franklin Rivers. This analysis will illustrate the failures of the state government to address public concerns and how this facilitated the transition of the focus of lobbying from the state to the federal level. The second part of this thesis is a legal history, looking at the legislation that was passed during this period that facilitated the transfer and explains the constitutional basis and effectiveness of the legislation. Through these two separate studies, this thesis will expand the existing Australian historiography, which has largely kept political and social analyses of the environmental movement separated, by integrating the two historical narratives. This thesis offers three contributions to Australian historiography. First, this research shows that the constitutional reformation that occurred under the governments of Gough Whitlam, Malcolm Fraser, and Bob Hawke was driven not by government initiative but, rather, by grassroots demands, and illustrate a need to further integrate the studies of social and political history so as to better pursue the *histoire totale* of Australia. Second, this thesis also helps contribute to the still nascent study of extinction's socio-cultural impact on human societies with its particular emphasis on the extinction of the thylacine as the genesis of Tasmanian environmentalism. Third, it offers a detailed legal dissection of the federal government's early environmental legislation and the constitutional foundations for Canberra's acquisition of this responsibility.

## **Preface**

This thesis is an original work written in its entirety by the author, Blake Allen. A large portion of Chapter Two has been published. Allen, Blake. “The Laws of Nature, State or Federal?: A Legal History of the Informal Transition of Responsibility over Environmental Policy in the Australian Commonwealth, 1974 – 1983.” *Graduate History Review* 5, no. 1 (2016): 23 – 45. All of the research is original.

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I also thank my fellow students, Andrew Geistlinger and Mustahid Husain in particular, for creating a professional environment which proved to be integral in formulating the greater scope of my topic, in reigniting my passion for academic work, and most importantly in completing this thesis.

Special thanks are of course also owed to my parents, who have supported me throughout my years of education, and have been a foundation of moral support, offering me encouragement and more chicken-based meals than a single coup could possibly provide.

Lastly, I wish to also thank Dr. Blythe Nilson, from whom all of this ultimately stemmed.

## **Dedication**

This thesis is dedicated to Dr Ben Nilson, for seeing the potential in a wildly ambitious student, and to my parents David and Anna Allen, for the exact same reason.

## **Chapter One**

### **Introduction: The Headwaters of Constitutional Change**

The history of environmentalism in Australia is marked by two remarkably similar movements, both of which emerged from the island-state of Tasmania and occurred within a decade of each other, but which produced two considerably different results. Organized protests against the damming of the Serpentine River in 1972 brought environmental issues and concerns into the forefront of Tasmanian state politics yet ultimately failed to prevent the damming project. A mere six years later in 1978 a similar project was planned for the Franklin River but was this time met with intervention from the Australian federal government that, following a subsequent High Court battle, resulted in the project's cancellation. Both the Serpentine and Franklin River campaigns were paramount to the birth of not only modern environmental politics in Australia, but also in the restructuring of the federal relationship in Australia during the latter half of the twentieth century.

The gradual transference of political responsibility for the Australian environment was itself a response to a widespread change in the public's social attitudes concerning the country's cultural relationship with its native ecosystems. Between 1974 and 1983 the Australian Federal Government in Canberra enacted a series of legislation that was designed to gradually transfer authority for environmental policy away from the state governments and towards itself. Driving this radical policy initiative were changing public attitudes towards the environment in Australia, similar to those experienced abroad but which were in Australia, also forcing political parties to embrace platforms which effectively advocated for a new federal relationship in the country. Therefore, the question of environmental protections in Australia, and whether the federal government actually had (or should have had) any responsibilities concerning this growing issue, is more than a mere reflection of the changing social values in the Australian public. It is also an

example of one of the means through which several Australian governments representing both of the major political parties (Labor and Liberal) sought to restructure the division of federal responsibilities and, to a limited degree, federal powers in Australia. That this informal transition was pursued by three consecutive governments, representing both of the country's main political parties, proves that there was a bi-partisan understanding of the need to reform the federal relationship in Australia during this time.

This was an uncharacteristic development in a country that has traditionally valued state rights, and one that would have initially been regarded by some in Australia as unconstitutional. This policy was first adopted by the Labor Government of Gough Whitlam as part of a strategy to end more than two consecutive decades in opposition and was heavily legitimized by the increasing grassroots demands for greater environmental protections in the country. For this reason this paper will look at political developments in Australia through the perspective of these movements, in order to better understand this constitutional evolution as a by-product of what was first and foremost a cultural evolution. Additionally, this paper will utilize the island-state of Tasmania as its specific case study for two specific reasons. The first of these is that the state itself has a rich history of environmental politics that is unique to Australia. The historical review conducted by this paper suggests the island-state to have been the first in the country to have experienced the socio-cultural development associated with the emergence of environmental politics, which this paper proposes stems from the complicated cultural relationship that the islanders have had with its native fauna. Of particular importance to this narrative is the relationship of Tasmanians with the thylacine, an endemic predator unique to Tasmania whose mid-twentieth century extinction clearly exerts a cultural change on the island that makes the

politicization of environmental concerns possible on Tasmania. This will be addressed in the first half of this study.

The second reason for Tasmania's selection as this paper's case study is that unlike contemporary developments in larger mainland states like Victoria and Queensland (which will also be briefly touched upon in this paper so as to better contextualize Tasmania with the rest of Australia) Tasmania is again unique in Australia for experiencing the intense politicization of environmental issues, resulting in the emergence of an alternative political party, at the state level first before these issues spill over onto the national stage. Because of this Tasmania offers us an explanation of why environmentalists during this time ultimately reject state government as an effective means to address environmental concerns. And while the second chapter of this paper will break from a regional case study to analyze the legality of national legislation, this legal review will conclude with the precedent set by the well-known Tasmanian Dams Case. This precedent not only firmly establishes the right of Canberra to put forward environmental policy that supersedes the policies of state governments, but it again sees the island-state of Tasmania further illustrating the federal-state divide concerning environmental policies.

Using an interdisciplinary approach, this thesis aims to challenge the existing environmental historiography, at both the national and state (Tasmania) level, that interprets the early environmental movement of 1974 – 1983 as *reactionary* in nature, a protest against a perceived abuse within the existing political system. Rather, this thesis puts forward an alternative, and previously unexplored, interpretation of the early environmental movement in Australia as an act of *political reform*, a protest which aimed to fundamentally change the

political system itself.<sup>1</sup> This will be done by conducting a legal analysis concerning the constitutionality of federal environmental policies set in Australia during this time and contextualizing this study within the socio-cultural developments that put pressure on Canberra to pursue such policies. Ultimately such an approach will reveal the greater goal of environmentalists at this time to change the very structure of federalism in Australia in order to better combat state governments that embraced weak and/or inefficient policies regarding environmental protection.

#### *A Note on the Study of Environmental History and Environmental Politics in Australia*

It is not unreasonable to say that there exists within the academic traditions of Australia a notable divide between the study of environmental history and environmental politics. Australian environmental history has largely followed the global historical tradition of veering away from political history to better emphasize social history.<sup>2</sup> To this degree then modern environmental history in Australia has largely concerned itself with the transformations caused by human activity on the Australian environment.<sup>3</sup> And while studies have been published concerning the socio-cultural impact of the environment on the Australian psyche and thinking by notable historians such as Libby Robin and James Boyce, little of it has gone so far as to explore the impact of such intellectual developments on the practice of Australian politics.

Consider two of the most comprehensive monographs concerning the history of environmentalism as an ideology in Australia, “Ecological Pioneers: A Social History of

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<sup>1</sup> This distinction is modeled off Peter Burke’s distinction of Political Revolts (identified here as ‘reactions’) and Political Revolutions (identified here as ‘reforms’). Peter Burke, *History and Social Theory* (Ithaca: Cornell University Press, 1993), 30.

<sup>2</sup> Burke, *History and Social Theory*, 19.

<sup>3</sup> Stephen Dovers, “Australian Environmental History: Introduction, Review and Principles” in *Australian Environmental History: Essays and Cases*, ed. Stephen Dovers (Melbourne: Oxford University Press, 1994), 2 – 16.

Australian Ecological Thought and Action” by Martin Mulligan and Stuart Hill and “A History of the Australian Environmental Movement” by Drew Hutton and Libby Connors. Mulligan and Hill’s work spans the whole of European settler history in Australia and addresses the complicated development and diversity of (mostly European) attitudes towards the environment in Australia. And while this work provides an excellent breakdown of the different theoretical approaches that were taken towards environmental preservation, focusing mostly on the development of attitudes towards conservation, ecological management, and the fostering of an ‘ecological sense of place’, this monograph does little to address the application of these ideas into Australian politics.<sup>4</sup> For example, the book’s coverage of the Tasmanian Dams Case, which set the precedent that allowed for Canberra to set environmental policy that superseded the policies of the states, makes no specific reference to the World Heritage Properties Conservation Act, which not only protected the Franklin River but also served as the foundation to the previously mentioned precedent.<sup>5</sup> Hutton and Connors work, in contrast, is more interested in the direct political impact of environmentalists but, even then, doesn’t go so far as to consider the institutional transformation which the movement had on Australian politics but rather focuses instead on individual case studies and resolutions. Hutton and Connors ultimately come to the conclusion that the adoption of environmental policies by all of the major political parties in Australia has resulted in the transition of environmentalism from the political fringe to its inclusion in mainstream politics in the country, but still fail to explore the legislative difficulty which federal political parties faced in trying to first set environmental policies.<sup>6</sup>

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<sup>4</sup> Martin Mulligan and Stuart Hill, *Ecological Pioneers: A Social History of Australian Ecological Thought and Action* (Oakleigh: Cambridge University Press, 2001), 304 – 305.

<sup>5</sup> Mulligan and Hill, *Ecological Pioneers*, 256 – 257.

<sup>6</sup> Drew Hutton and Libby Connors, *A History of the Environmental Movement* (Oakleigh: Cambridge University Press, 1999), 263 – 264.

While the study of environmental history has frequently divorced environmentalism from the significant political developments which it helped to initiate the study of environmental politics in Australia has instead frequently divorced the political movement from its socio-cultural context. By the 1980s ‘green politics’ had become identified as a branch of ‘progressive politics’ in Australia, with most studies focusing specifically on the Green Party (the institution which often monopolizes the focus of ‘green politics’). For example, Sean Scalmer recently penned a historical survey of the Labor and Green parties for an edited volume published through Monash University Press. It is focused largely on distinguishing the uniquely decentralized political structure of the Green Party and its discernible grassroots approach to campaigning, against the more centralized structure of the Labor Party and its more traditional approach to political campaigning.<sup>7</sup> However, when it comes to the titular issue of ‘political reform’ the emphasis for centralization of political authority in Canberra is ceded largely to the Labor Party, with the influence of environmental campaigners (the forbearers to the Green Party itself) overlooked. This results in the frequent minimization of discussions concerning the environmental policies set by other major parties, as noted by Felicity Wade who asserts that environmental policies are best set and environmentalists best represented by the Labor Party rather than the Greens. However the basis of her argument lies mostly in the more sizable electoral representation of Labor and, despite some historical context, Wade fails to make reference to the institutional reform which Labor established at the behest of environmentalists which paved the way for the setting of a federal environmental policy.<sup>8</sup>

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<sup>7</sup> Sean Scalmer, “Progressive Voting, Party Organization, and Political Reform: A Historical View” in *How to Vote Progressive in Australia: Labor or Green*, ed. Dennis Altman and Sean Scalmer (Clayton: Monash University Press, 2016), 37 – 53.

<sup>8</sup> Felicity Wade, “Burying Margaret Mead: Environment and the Labor Party” in *How to Vote Progressive in Australia: Labor or Green*, ed. Dennis Altman and Sean Scalmer (Clayton: Monash University Press, 2016), 140 – 162.

This thesis introduces a new interpretation to Australian environmental history, constructing a narrative that regards the environmental movement as an agent for institutional change rather than a reaction to existing policies. For this reason, this thesis will be divided into two chapters. The first of these deals almost exclusively with historical developments inside Tasmania, looking at both the cultural appropriation and the subsequent politicization of the island's unique ecosystem. This process not only helped to develop a distinctive regional identity within the country, but also served as a means for mobilizing public discontent with the state government. The second chapter of this thesis will look at the key pieces of legislation passed between 1974 and 1983 that made the transition of responsibility for the environment possible. This latter section will be a legal analysis, concerning itself specifically with the constitutionality of the legislation that was passed to better understand how the federal government under three successive Prime Ministers was capable of manipulating the constitution to its favour. This kind of approach will help to synchronize the field of Australian environmental history with Australian legal history, and better contextualize the environmental movement within the political history of the country. The greater purpose of such a study is to help researchers and policy makers alike better appreciate both the political force which environmental issues can level against state governments as well as the interpretive flexibility which the Australian constitution allows for the setting of a national environmental policy.

## **Chapter Two**

### **From the Forests of the Night: Environmental Consciousness at the Grassroots Level and its Politicization**

As Australia emerged from the Second World War both the Liberal and Labor Party began to introduce legislation that expanded the scope of Canberra's power over social security, and following the federal government's defeat in the High Court in the 1945 Pharmaceutical Benefits case (*Attorney General (Vic) ex rel Dale v. Commonwealth*) both parties also committed themselves to pursuing an amendment to Section 51 Article 23 of the Constitution. The amendment, which was ratified through a national referendum in September 1946, expanded Canberra's responsibilities to social security from only old age pensions to include provisions for maternity, widows, children, unemployment, and access to pharmaceuticals.<sup>9</sup> This bipartisan movement reflects the first real attempt at significant legislative reform that would result in a dramatic expansion of federal powers in Australia and, in many ways, mirrors the environmental movement addressed in this thesis. But while most Australian historiography provides a detailed analysis of the internal politics which accompanied this change in federal social policy, historian Melanie Oppenheimer notes that very little historical commentary has been made of public pressures, both from unions and voluntary groups, concerning the expansion of Australia's social services and their influence on the writing of government policy and the pursuit of a constitutional amendment to better ensure said policies.<sup>10</sup> Indeed, the failure to look at the interplay between social and political history in Australia is common, and not surprisingly this omission to the history of social security in Australia is also true of the history of environmentalism in the country.

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<sup>9</sup> John Murphy, *A Decent Provision: Australian Welfare Policy, 1870 – 1949* (Surrey: Ashgate, 2011), 224; John Roskam, "Liberalism and Social Welfare" in *Liberalism and the Australian Federation*, ed. J.R. Nethercote (Sydney: Federation Press, 2001), 267 – 286.

<sup>10</sup> Melanie Oppenheimer, "Voluntary Action and Welfare in Post-1945 Australia Preliminary Perspectives," *History Australia* 2, no. 3 (2005): 82.1 – 82.16.

To analyze *political* developments and attitudes towards the environment without also considering those of the *public* is a fatally flawed approach. The successive attempts by three different Prime Ministers from both main political parties at centralizing environmental authority in Canberra suggest that there was a considerable shift in popular opinion towards this issue on the continent during this period. This transition resulted in a considerable degree of public support and political pressure for a significant change in environmental policies, which fell in line with changing attitudes towards the federal relationship. Frustration, stemming from these changes in the public's attitudes regarding the environment and also from the perceived unwillingness of state governments to address the public's environmental concerns, pushed the populace to grant Canberra an electoral mandate for federal reform. It is therefore important to consider the development of public attitudes as a political catalyst, and as a means of better understanding both the environmental movement's early success and failures.

In order to achieve this, this first half of this study will be divided into two separate sections. This first section will contain four key arguments. First, it will consider a social analysis of the Australian public's perceptions, both political and otherwise cultural, that resulted in the emergence of what can be regarded as 'environmentalism' (or as would be a more accurate description during its earliest phase, 'proto-environmentalism') among the general public. Secondly it will consider the nation's political history, analyzing the impact of environmental thought on the electoral process in Australia particularly during what will be referred to as the *early transition period* (1974 – 1983). The assumption here is that in a liberal democracy such as Australia, elections can be understood as an expression of public attitudes. However, because this paper promotes the notion that Tasmania was the birth place of Australian environmentalism, both of these two arguments will themselves be further divided into two

separate arguments. The first and most extensive of these will look at the uniquely Tasmanian origins of both Australian environmental thought and the impact of such thinking on electoral mandates, with the second part of these subdivisions touching upon the diffusion of such thoughts across state lines and into mainstream Australia. Such analysis will allow us to better understand the motives and pressures that Canberra faced in the establishment of national environmental policies.

### *The Thylacine and the Origins of Tasmanian Attitudes regarding their Environment*

The accelerated rate at which environmental consciousness developed in Tasmania in relation to other Australian states is due in large part to the socio-cultural impact that the 1936 extinction of the thylacine (*Thylacinus cynocephalus*, sometimes referred to as the Tasmanian Tiger) wrought on the island-state. Its status as a large and easily recognized apex predator, its negative association with Tasmanian husbandry, and its role as an international symbol of Tasmania ensured that its disappearance was highly noted by the public. The capacity of human activity to cause such severe impacts on the ecosystem as to drive an animal of such notoriety into extinction gave the island's citizens little option but to reassess their relationship with their environment. In contrast to this, while human activity on the Australian mainland also wrought considerable devastation on its ecosystems, it lacked the extinction of a culturally visible species to fully illustrate the complete extent that the impact of human activities had on their environment (the sole exception to this point, arguably, would be the near eradication of the koala that will be addressed in the second half of this section. However, the fact that the latter species managed to avoid extinction explains the lesser impact it had on Australian society).

This hypothesis regarding the thylacine's impact on the Tasmanian psyche fits the mold of contemporary scholarship regarding environmentalism that distinguishes between two specific historical periods, or 'waves', of environmental consciousness. The first of these, which results in a form of 'proto-environmentalism', occurred during the mid-nineteenth century and was marked by the transformation of the perception of the wilderness as a space of terror and savagery into a space of spiritual importance and leisure.<sup>11</sup> A largely cultural transition, this wave was achieved most notably through the literary development of romanticism, often popularly encapsulated by the works of William Wordsworth and other 'Lake Poets', among other artistic influences. The end result of this in Europe was the emergence of the 'back-to-the-land' movement, which sought an individual freedom that could be gained through rural life while promoting the role of aesthetics in society (i.e. the 'purity of the wilderness' versus the 'uncleanliness of industrial cities'). While there were few industrial cities for people to escape from in the largely agrarian colonies of Australia, these ideals and values were still reflected in the works of the bush poets and other artists of the period.<sup>12</sup> Derived from this movement was an understanding of the importance of individuals in reconnecting with the forces of nature in moulding a nation (the English farmer versus the English industrial worker for example as the ideal citizen).<sup>13</sup>

Australian environmental historian Kevin Frawley has constructed a more detailed breakdown of this development that is less generalized and more directly applied to the Australian experience itself. Frawley's model employs three distinct periods that he summarizes

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<sup>11</sup> Peter Coates, *Nature: Western Attitudes since Ancient Times* (Los Angeles: University of California Press, 2005), 127.

<sup>12</sup> Mulligan and Hill, *Ecological Pioneers*, 16 – 17.

<sup>13</sup> H.B. McCullough, *Political Ideologies* (Don Mills: Oxford University Press, 2010), 259 – 260. Eminent examples are also provided from beyond the British Empire in Germany, Mexico, and the United States. Establishing this as an international principle.

as pioneering, the wise use of resources, and modern environmentalism. This kind of regional distinction is important to note as the Australian environment is significantly less depleted than the European environment at the time of European arrival and because settlers arrive in Australia already exposed to this mode of European thinking. In order to accommodate this different reality, Frawley largely breaks the first phase of environmentalism into two separate periods, noting that in the first period settlers believe the wilderness to be inexhaustible while the second period marks an early awareness of the impact of European activities on the environment. In both models the final periods are largely the same.<sup>14</sup> This thesis will largely make use of the more standard model for the development of environmentalism due largely to the distinctiveness of the Tasmanian experience from that of the mainland (as will be discussed shortly), but when the mainland is brought into this analysis Frawley's model will be considered as having greater relevance.

Through this movement nature ceased to be something that was feared and instead became an institution that not only made the individual more human (and masculine) but also played an eminent role in the formation of the national/regional identity, a notion that is of particular importance in regards to Tasmania.<sup>15</sup> This transition was even noted by conservationists of this era. For example, at the turn of the twentieth century Henry Osborn, the founder of the New York Zoological Society, noted that "in every part of the English-speaking world the principle of conservation is taking firmer hold on public opinion, as shown both in

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<sup>14</sup> Kevin Frawley, "Evolving Visions: Environmental Management and Nature Conservation in Australia" in *Australian Environmental History: Essays and Cases* ed. Stephen Dovers. (Melbourne: Oxford University Press, 1994), 55 – 76.

<sup>15</sup> Examples of this can be found for Germany in Radkau, Joachim, *The Age of Ecology: A Global History*, trans. Patrick Camiller (Cambridge: Polity Press, 2014), 19 – 20; England in Ramachandra Guha, *Environmentalism: A Global History* (New York: Longman Press, 2000), 6; and the American great plains in Mark V. Barrow Jr., *Nature's Ghosts: Confronting Extinction from the Age of Jefferson to the Age of Ecology* (Chicago: University of Chicago Press, 2009), 118 – 121. For an Australian example of this see Marin Mulligan and Stuart Hill, *Ecological Pioneers: A Social History of Australian Thought and Action* (Oakleigh: Cambridge University Press, 2001), 48 – 53.

expression in literature and action in legislation”.<sup>16</sup> In Tasmania, this transition emerges as an overlap of both the social construction of the ‘Vandemonian identity’ (the less-than-civilized image of colonial Tasmania, then called Van Diemen’s Land)<sup>17</sup> with the extended period of time over which Tasmanians began to reinvent the image of the thylacine and their relationship with their own wilderness.<sup>18</sup>

The Vandemonian identity can be largely regarded as a by-product of the ‘Tasmanian gothic’ literary tradition. Like its ‘gothic’ counterpart in Europe, Tasmanian gothic established a narrative of the ‘civilized world’ (expressed on the island as white, European-settler communities) versus the uncivilized forces which constantly surround civilization (expressed in Tasmania as the very wilderness itself). In this regard Vandemonians are both products of the wilderness they emerge from, and the heroic conquerors of said wilderness.<sup>19</sup> Also furthering this development was the fact that unlike the prominent dry scrub ecosystem of the Australian mainland, the lush forests of Tasmania were more similar to the prominent ecosystem of England, establishing an ecological familiarity with the settler community which greatly eased the diffusion of these European ideas such as the gothic literary tradition into Vandemonian society. This was a key factor in the more rapid development of Tasmania’s environmental sensitivity in comparison to the mainland.<sup>20</sup>

As historian James Boyce illustrates in his book *Van Diemen’s Land*, a seminal work on the construction of the Vandemonian identity, there is a notable distinction between the

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<sup>16</sup> Henry Fairfield Osborn, “Preservation of the World’s Animal Life”, *American Museum Journal* 12, no. 4 (1912), 123 – 124.

<sup>17</sup> James Boyce’s particularly noteworthy monograph “Van Diemen’s Land” is a particularly detailed analysis of this social construction, for a detailed outline of his thesis and work see: James Boyce, *Van Diemen’s Land* (Melbourne: Black Inc, 2008), 8 – 11.

<sup>18</sup> David Owen, *Tasmanian Tiger: The Tragic Tale of the Thylacine* (Baltimore: John Hopkins University Press, 2003), 4; 136.

<sup>19</sup> Amanda Lohrey, “The Greens: A New Narrative,” *The Rest of the World is Watching: Tasmania and the Greens*, ed. Cassandra Pybus and Richard Flanagan (Sydney: Pan MacMillan Press, 1990), 90.

<sup>20</sup> Lohrey, *The Rest of the World is Watching*, 90.

interactions of the early settler population in Tasmania and that of their counterparts on the mainland. In fact, Boyce goes so far as to suggest that the Tasmanian experience provides an alternative narrative to Australian settler history, suggesting rather that the Tasmanian settler experience is more akin to that of the North American settler than his mainland counterparts in Australia.<sup>21</sup> For example, if we contrast the early settler experience in Tasmania with that of the early settler experience in New South Wales (the only state in Australia to have an older settler history than Tasmania) we see that the abundance of bush meat ensured that early Tasmanians were never exposed to food scarcities and that wild harvests remained a staple of the Tasmanian experience long after the development of a stable agricultural industry on the mainland.<sup>22</sup> The average Tasmanian settler's persistent interaction with the Tasmanian wilderness and their reliance on it for survival created a stronger association between the wilderness and Tasmanian settlers than existed on the mainland where food security was built upon more successful agricultural endeavours.

Boyce also identifies the emergence amongst settler communities of this valuation of the environment on the rather unique relationship that emerged between Tasmanian settlers and the Tasmanian Aborigines which is also distinguishable from settler-aboriginal relationships on the mainland. Boyce claims that Aboriginal Tasmanians played a key role in the development of the Vandemonian identity, and notes that while the official colonial government's policies towards Aboriginal Tasmanians was similar to those of the mainland colonies, frontier settler communities quite frequently formed amalgamated communities (not always voluntarily) and that European settlers frequently adopted Aboriginal clothing, diets, and customs in order to better adapt to the Tasmanian wilderness, as is best illustrated in the sealing communities of

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<sup>21</sup> James Boyce, *Van Diemen's Land* (Melbourne: Black Inc., 2008), 252 – 253.

<sup>22</sup> Boyce, *Van Diemen's Land*, 3 – 5; 114.

northern Tasmania and the Bass Strait islands.<sup>23</sup> It is specifically this intimate relationship with Aboriginal communities on the islands that helps to further construct the image of the ‘Vandemonian’ as separate from other Australians among the continent. Boyce provides further evidence to this claim by citing an 1840s visitor to the island from Victoria who notes that Vandemonians and Sydneysiders could be easily distinguished from each other by their apparel, with the Vandemonians frequently utilizing Aboriginal-inspired baggage.<sup>24</sup>

This sort of cultural appropriation, as well as this form of self-identification, also helps to explain the deep-rooted popularity of the Labor Party in Tasmania (which is an essential component to the rise of environmental consciousness in Tasmania), despite the relative lack of a sizable industrial class on the island at the start of the twentieth century. Labor rose to prominence on a promise to ‘tame the wilderness’ with industrial projects (the most important of which, hydro electric developments, will be addressed later). ‘Taming the wilderness’ is a common motif adopted from the mainland but it fit comfortably with the Tasmanian tradition of drawing sustenance and a distinct image of self from the wilderness. Ironically then, it is the very success of Tasmania in controlling the environment that sparks the emergence of environmentalism itself, for the Vandemonian identity cannot exist without a wilderness for Vandemonians to draw from and interact directly with, subsequently creating an urban-rural division in the construction of the Vandemonian as either someone who has conquered the wilderness (largely centred in rural Tasmania) and someone who lives in tandem with the wilderness (largely centred in urban Tasmania). The thylacine’s extinction is a crucially important component to the evolution of this process, as it creates a stark transformation in the

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<sup>23</sup> Boyce, *Van Diemen’s Land*, 101 – 103; 114; 119 – 121. Specific attention is drawn to the adoption of animal skin clothing similar to aboriginal dress, the building of temporary structures in the bush, and traditional hunting practices (particularly as concerns seabird harvesting) learned from Aboriginals.

<sup>24</sup> Boyce, *Van Diemen’s Land*, 119.

relationship of agriculturalists with the environment. Hydro projects by contrast escape the ire of the public because individual mountain lakes, located far from human settlement, can be dammed largely out of sight and their environmental impact is not directly felt. The rapid disappearance of the island's apex predator however is a much more visible example of environmental transformations and is therefore understood as a much more prominent threat to the Vandemonian identity itself, as will be further unpackaged by this thesis.

The thylacine was initially cast by Tasmanian settlers as an agricultural pest, an image that unfortunately remained prevalent in rural communities well into the twentieth century and was the chief contributing factor to its extinction. This view was particularly prevalent in the north-west of the island where fraudulent claims of its predation on local sheep stocks were used as a scapegoat for the failure of the Van Diemen's Land Company (VDLC) in the region. Operating in the thick bush along the periphery of the Tarkine forest, the majority of VDLC settlers were former convicts from urban England, who were completely inexperienced at shepherding. They struggled to adapt to the Tasmanian environment (there was particularly great confusion surrounding the seasonal reversal of the southern hemisphere) and were regularly plagued by bush rangers (outlaws) and feral dogs<sup>25</sup> – this was a somewhat extreme version of the otherwise typical colonial Tasmanian experience. That the thylacine bore a physical similarity to the dingo (*Canis lupus dingo*) of the mainland made it a perfect candidate as a scapegoat for the agricultural incompetence of early settlers. The frequent predation of dingoes on mainland sheep stocks had branded the animal an agricultural pest of great notoriety on the continent, and even the term 'dingo' had entered the Australian vernacular as a label for an individual who embodied

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<sup>25</sup> Phillips Valmai, *Enterprising Australians* (Kensington: Bay Books, 1984), 22.

cowardly and/or sneaky characteristics<sup>26</sup>. The transfer of these attributes to the thylacine came about naturally and at times, such as when the colonial legislature debated the introduction of a bounty on the animal, it was even referred to as the ‘Tasmanian Dingo’.<sup>27</sup> An undeserved moniker since doubt has always existed as to the thylacine’s guilt when it comes to sheep deaths at the time, with most contemporary accounts reassigning this guilt to the island’s feral dog population at the time. For example, a 2011 study that looked at the skull structure of thylacines found it likely incapable of taking down any prey that was larger than 5kg, making sheep unlikely prey for the species.<sup>28</sup>

As was the case in other parts of the world, these deeply rooted views became increasingly challenged by the previously mentioned new modes of thinking about the environment. Literary romanticism arrived in Australia in the mid-nineteenth century shortly after its emergence in Britain, and is popularly embodied in the work of the ‘bush poets’ such as Adam Lindsay Gordon. Accompanying this literary tradition was the emergence of learned societies, the earliest of which in Australia was founded in Tasmania, and by 1843 the island became the location of the first branch of the Royal Society to be formed outside of the British Isles.<sup>29</sup> Within ten years of its founding the Tasmanian Royal Society had become so widespread that it warranted two separate headquarters, one in Hobart and a second in Launceston.<sup>30</sup> Both the popularity of romanticism on the continent and the considerable growth and influence of

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<sup>26</sup> Bruce Moore, *Speaking our Language: The Story of Australian English* (Melbourne: Oxford University Press, 2008), 11 – 12.

<sup>27</sup> “Tasmanian Dingoes” under Parliamentary Proceedings, *The Mercury*, November 5<sup>th</sup>, 1886.

For further evidence see Owen, 7; 12 – 13; Carol Freeman, *Paper Tiger: A Visual History of the Thylacine* (Leiden: Koninklijke Brill, 2010), 33 – 35; 158 – 160.

<sup>28</sup> M.R.G. Attard, U. Chamoli, T.L. Ferrara, T.L. Rogers and S. Wroe, “skull mechanics and implications for feeding behaviour in a large marsupial carnivore guild: the thylacine, Tasmanian devil, and spotted-tailed quoll” *Journal of Zoology*, 285, no 4 (2011), 292 – 300.

<sup>29</sup> Lloyd Robson, *A History of Tasmania Volume 1: Van Diemen’s Land from Earliest Times to 1855* (Melbourne: Oxford University Press, 1983), 357 – 358.

<sup>30</sup> Robson, *History of Tasmania Vol. 1*, 357 – 358.

learned societies on Tasmania served to greatly popularize the study of natural history among Tasmanians. Consider the works of Tasmania's Louisa Anne Meredith for example, one of the most popular Tasmanian writers of the mid-nineteenth century. Her works, particularly "*My Home in Tasmania*", "*Some of my Bush Friends in Tasmania*", and "*Tasmanian Friends and Foes: Feathered, Furred, and Finned*", were so well received by the public that she was awarded a civil list pension for her contributions to art, science, and literature in Tasmania.<sup>31</sup> The most internationally recognizable and influential of the Tasmanian Royal Society's members is the naturalist-illustrator John Gould. In his seminal work on the continent, *Mammals of Australia*, Gould warned that many of the country's large mammals were facing the threat of extinction and advocated for their protection.<sup>32</sup> Gould was particularly insistent on protecting the thylacine, noting that "in all cultivated districts the animal is nearly extirpated".<sup>33</sup> This idea that wildlife needed to be 'protected' in order to stave off extinction stemmed from the environmental movement in America before being adopted by learned societies in Britain (where both Gould and Meredith had been exposed to it), where it was then subsequently spread across the world via Imperial institutions.

Further abetting this idea of species protection promoted by the learned societies were zoological parks, which played a role of particular importance in Tasmania where they provided the island's population the rare opportunity to interact with native species that had previously been labeled "dangerous" (specifically thylacines and Tasmanian devils) in a somewhat playful manner that ran counter to their otherwise popular image. At the Beaumaris Zoo in Hobart for example, founder Mary Roberts would frequently enter the exhibits of her hand-reared thylacines

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<sup>31</sup> Patricia Grimshaw and Ann Standish, "Making Tasmania Home: Louisa Meredith's Colonizing Prose" *Frontiers: Journal of Women's Studies* 28, no. 1 (2007), 1 – 17; Tim Bonyhady, *The Colonial Earth* (Melbourne: Miegunyah Press, 2000), 131.

<sup>32</sup> John Gould and William C Gibson, *The Mammals of Australia Volume 1* (London: J. Gould, 1863), 60 – 61.

<sup>33</sup> *The Best of Gould's Mammals*, edited by Joan M. Dixon. (Sydney: MacMillan, 1977), pg. 48.

and invite guests, especially visiting dignitaries, to join her with the animals.<sup>34</sup> The notion that thylacines could be safely ‘tamed’ was already established among the island’s learned societies by the time Ms Roberts had opened her zoo. In 1842 Ronald Gunn, editor of the *Tasmanian Journal of Natural Science*, acquired three young thylacines and hand reared them finding the animals to be quite tame in disposition and noting that “far from being a vicious animal at its worst, and the name ‘tiger’ or ‘hyena’ gives a most unjust idea of its fierceness”.<sup>35</sup> By blurring the distinction between the thylacine as a carnivorous predator and as a tame pet, Roberts helped to create a generation of Tasmanian urbanites who had newfound appreciation and interest in the island’s fauna, a notion that can be corroborated by the first hand experiences recorded in David Owen’s monograph “*Tasmanian Tiger*”. Consider for example the account of Ms Ruby Lorkin, writing in 1981, who recalled a tale her grandfather had told her that occurred “during a depression” in which he had been forced to leave his home and take up prospecting around the Savage River. Lorkin’s grandfather remembered fondly how his camp had been visited nightly by a thylacine and that he would stay up to watch it with great interest, adding that he “did not think tigers were a savage animal any more than a house dog”.<sup>36</sup> An anecdote reflective both of the public’s changing attitudes and growing curiosity surrounding their ‘native dingo’.

By the turn of the twentieth century the thylacine had become subject to powerful iconography in Tasmania and had emerged a controversial, but prominent international symbol of the island. In the same way that they had helped to change public attitudes in Tasmania, zoological parks had been at the forefront of building this association between the thylacine and the island of Tasmania internationally. Public curiosity and scientific demand for the animal in

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<sup>34</sup> Owen, *Tasmanian Tiger*, 127 – 128.

<sup>35</sup> Ronald Gunn, “Notes on natural history.” *Papers and Proceedings of the Royal Society of Van Diemen’s Land* 2 (1852): 156 – 157.

<sup>36</sup> Quoted from Ruby Lorkin in September 1981. Owen, *Tasmanian Tiger*, 158 – 159.

mainland and international markets had become so great that by 1909, the last year in which bounties were issued, a trapper could expect payment of £25 for a live specimen by external zoological parks while the state bounty scheme was still only offering £1 per specimen.<sup>37</sup> As the rarity of the animal increased so did its value. The last thylacine to die outside of Tasmania had been purchased by the London Zoo for £150.<sup>38</sup> This commercial phenomenon served to remold the local, rural perspective towards the animal by establishing for the first time in the state's modern history a commercial value on the thylacine and providing economic incentive for the organism's continued survival. An editorial in *The Mercury* commenting on the presence of a thylacine in a South Australian zoo reflects this sentiment, claiming that the "tiger is a valuable animal [in monetary terms], and worth all the attention bestowed upon it"<sup>39</sup>. By 1909 two separate exporting agencies had emerged in order to meet the demands of external menageries (one in Hobart and a second in Wynyard)<sup>40</sup> while Launceston became the centre of a thriving tannery industry of which thylacine pelts had become a particularly popular product both on the island and beyond.<sup>41</sup>

Naturally, as the thylacine became increasingly associated with the island of Tasmania its image was increasingly appropriated by local businesses to portray a sense of 'localism'. The well established Cascade Brewery was the first company to take advantage of this association when it erected a highly visible statue of the animal over its corporate office building in Hobart while simultaneously using an awkwardly placed image of a thylacine, along with the image of

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<sup>37</sup> Eric R Guiler, *Thylacine: The Tragedy of the Tasmanian Tiger* (Melbourne: Oxford University Press, 1985), 55 – 58. See Table 4.1

<sup>38</sup> Guiler, *Thylacine*, 57 – 58.

<sup>39</sup> *The Mercury*, May 9, 1893.

<sup>40</sup> Guiler, *Thylacine*, 59.

<sup>41</sup> David Quammen, *The Song of the Dodo: Island Biogeography in an Age of Extinction* (New York: Touchstone, 1997), 285.

its brewery at the base of Mount Wellington, in a promotional poster from 1870.<sup>42</sup> Cascade would again use the image of a thylacine for promotions and on the label of its premium product released in 1987. However, while the brewery had used the image of the thylacine to promote a local relationship with Tasmanians in the 1870s, in the 1980s it was used to build upon the image of Tasmania as a progressive and environmentally oriented state, using the slogan “out of the wilderness” to imply that their product had a ‘natural purity’ that was unmatched by rival products brewed in a more urban environments.<sup>43</sup> The image of the thylacine was also used, not surprisingly, by many of the organizations that had taken up the mantle of advancing environmental consciousness among the Tasmanian public and environmental responsibility from Hobart throughout the early twentieth century. Among such institutions were the University of Tasmania and several learned societies, including the prestigious Royal Society of Tasmania and the more informal Tasmanian Field Naturalist’s Club.<sup>44</sup> By 1919 the branding of the thylacine with the island had reached international renown when the state received a new heraldic symbol from King George V, depicting a shield representative of the island’s major industries that was supported by two thylacines. Almost seventy years later the thylacine was again utilized for the stylized logo of the Tasmanian State Government.<sup>45</sup> This kind of association between a community and the unique organisms of its surrounding environment fits the model of what has been identified since the late 1980s as Australian eco-nationalism<sup>46</sup>, but this development occurred at an accelerated rate in Tasmania in relation to the rest of the

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<sup>42</sup> Freeman, *Paper Tiger*, 230 – 231.

<sup>43</sup> Owen, *Tasmanian Tiger*, 165 – 166.

<sup>44</sup> Freeman, *Paper Tiger*, 238 – 239; 232 – 234.

<sup>45</sup> Freeman, *Paper Tiger*, 234 – 235; Owen, *Tasmanian Tiger*, 164.

<sup>46</sup> John Fiske, Bob Hodge, and Graeme Turner identify Australian eco-nationalism as the “positive changes in the Australian’s relationship with the landscape” in conjunction with a “recent cultural shift towards Australianness”, implying the importance of the unique native environment to the Australian sense of self. John Fiske, Bob Hodge, and Graeme Turner, *Myths of OZ: Reading Australian Popular Culture* (Boston: Allen & Unwin, 1987), 49 – 50.

country.<sup>47</sup> This phenomenon was seemingly due to the novelty of a popular Australian mega fauna being endemic only to a single region of the continent (or in this case, a single state), creating a discernible, natural distinction between Tasmania and the Australian mainland.

It is worth pausing here to deconstruct and expand upon this concept of ‘eco-nationalism’, so that we can better understand both the broader picture of how environmentalism became part of the political consciousness of the Australian public, and the more specific case study of why environmentalism had accelerated success in Tasmania. The term itself was first coined in 1996 by Jane Dawson in her study of how nationalist resistances in the Soviet Union, particularly those of the Lithuanians and the Ukrainians, incorporated public concerns over the safety of nuclear power projects into their dialogue of cultural revival.<sup>48</sup> Central to this concept is the abandonment of the idea that ‘industrial progress’ was acceptable at the cost of national aesthetic and/or wellbeing. In essence, by resisting the policies of industrialization Lithuanians and Ukrainians were capable of culturally distinguishing themselves from Russians through the embracing of environmental values. This is of course similar to developments in Tasmania at the turn of the twentieth century where a revision of the ‘Vandemonian identity’, that continued to embrace the Tasmanian wilderness as a cultural feature, was used to distinguish the island from its mainland counterparts.

As a thematic concept, this overlaps with the prominent Australian environmental historian Libby Robin’s study into the development of ‘ecological consciousness’ in Australia. Robin claims that in the immediate post World War II period ‘patriotism’ and ‘industrial

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<sup>47</sup> Fiske et al, *Myths of Oz*, 49 – 50.

<sup>48</sup> More specifically, her study points to the comparatively poor construction and safety procedure and protocols employed on nuclear power projects in areas that were prominently non-Russian versus areas that were prominently Russian. This dialogue was used to foster a public belief that the Soviet state cared less for the well-being of ethnic minorities than it did for the Russian majority. Jane I. Dawson, *Eco-Nationalism: Anti-Nuclear Activism and National Identity in Russia, Lithuania, and Ukraine* (Durham: Duke University Press, 1996), 162 – 164.

progress' became synonymous with each other. Therefore, because ideals of conservation stood in the way of development, conservation (and by extension environmentalism) could not be seen as an aspect of Australian 'nationhood'.<sup>49</sup> Rather, the environment had to be incorporated into the national consciousness before the public could be persuaded that its defense was important for the nation. Not only do we see the earliest development of an 'ecological consciousness' in Tasmania, but we also see the essentials of what can be accurately termed as 'eco-nationalism' emerging in the state.

There was a very similar, albeit slowed development on the mainland involving the koala (*Phascolarctos cinereus*) during this time, centred specifically along the 'boomerang coast', the southeastern arc that runs from Adelaide to Brisbane. Unlike the thylacine, the koala wasn't regarded as an agricultural pest, but it does possess dense, waterproof fur that quickly became a very profitable export for Australia to Canada and Scandinavia, where the fur was highly regarded, somewhat ironically, for its insulating properties.<sup>50</sup> The industry began in the 1870s, around the same time that the Cascade Brewery first began appropriating the image of the thylacine, and grew so rapidly that an estimated two million pelts had been exported by 1924.<sup>51</sup> Despite the emergence of this industry however, the koala had also begun to be adapted as a sort of cultural symbol in mainland Australia during this time, much like the thylacine had in Tasmania, but beginning in a rather unorthodox manner through children's literature. The first popular use of koala imagery is in the 1899 publication of the Australian children's classic "*Dot*

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<sup>49</sup> Robin's study was focused on the Little Desert in Victoria, but is nevertheless still relevant to Tasmania. Libby Robin, *Defending the Little Desert: Ecological Consciousness in Australia* (Melbourne: Melbourne University Press, 1998), 134.

<sup>50</sup> Frederick Lewis. "The Koala in Victoria", *Victorian Naturalist* 51 (1934), 73 – 76. Lewis, who is himself the Chief Inspector of the State's Fisheries and Sport Department, personally recalls being informed that koala fur was the only fur which would "keep out the cold, wintery blasts" of northern Canada.

<sup>51</sup> Ann Moyle, *Koala: A Historical Biography* (Collingwood: CSIRO, 2008), 125.

*and the Kangaroo*”, in which a talking koala is portrayed as comical but friendly.<sup>52</sup> The more notable adaptation of the koala however, is that of the iconic anthropomorphic ‘Bunyip Bluegrass’ from “*The Magic Pudding*” (1918), arguably the most influential of all children’s literature in Australia and one that remains notably popular today.<sup>53</sup> The term “arguably” is used because as Stephen Jackson points out, others claim “Blinky Bill” to be the most influential and popular of Australian children stories.<sup>54</sup> Regardless, it should be noted that the titular character of Blinky Bill is also a koala. The purpose of the koala in such stories was clear. Much like how the thylacine had been used to help brand the locality of Tasmanian products koalas were used on the mainland (the species is not, nor has it ever been, found in Tasmania) to distinguish Australian children’s fables from those of Britain, producing a sense of locality. Not surprisingly, Australian businesses followed this trend as a means of branding themselves in much the same way. Some of the earliest examples of Australian businesses incorporating koalas into their logos to express a sense of national identity include Dr Blue Gum (1916), a eucalyptus oil company; The Perdriau Rubber Co (1916); and Gumlypta (1919), an agricultural chemicals manufacturer.<sup>55</sup>

While both the thylacine and the koala were symbolic of a cultural locality and subject to extensive hunting throughout the late nineteenth and early twentieth centuries, what distinguishes the mainland Australian relationship with koalas from the Tasmanian relationship with thylacines was the reaction of both state governments and public organizations towards the exhausted populations of each species. In Tasmania we see a clear, albeit ultimately ineffective progression towards a practice of environmental preservation. The island’s learned societies, as has already been mentioned, began to make an active push for a network of effective wilderness

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<sup>52</sup> Stephen Jackson, *Koala: Origins of an Icon* (Crows Nest: Allen & Unwin, 2007), 144 – 146.

<sup>53</sup> Jackson, *Koala*, 147 – 148.

<sup>54</sup> Jackson, *Koala*, 149 – 151.

<sup>55</sup> Jackson, *Koala*, 154.

reserves with the stated goal of providing a protected area for the marsupial carnivore while the Tasmanian government ended its bounty on thylacines in 1909 due to the animal's extreme rarity.<sup>56</sup> Along the boomerang coast we see a much different attitude taken towards koalas for an extended period. Even as late as 1934 the Chief Inspector for the Victorian Department of Fisheries and Sport, Frederick Lewis, was warning that with the population anywhere between 500 and 1000 individuals the species was perilously close to extinction in the state.<sup>57</sup> Despite this however, natural historian Ann Moyle notes that there existed "scant" lobbying for the koala between the 1880s and the early twentieth century.<sup>58</sup>

Because of this, koalas weren't subject to any state protection until 1910 in New South Wales, 1921 – 1926 and again from 1928 onwards in Queensland, and 1939 in Victoria while in South Australia the koala had become extirpated by the early 1920s.<sup>59</sup> But ultimately, nothing better showcases the reluctance of mainland Australia to adopt more modern environmental policies than the relapse of the fur trade in Queensland between 1926 and 1928. By this point in time Queensland had become the only state with a viable population of koalas (and as such the only state where the industry still operated with any noteworthy presence). Between April and September of 1919 an all time record of approximately one million koalas were harvested, mostly for domestic use, finally prompting a protest from the public against the industry. Despite this the resulting legislation that protected the threatened species for eight years was ultimately retracted by Brisbane, once again under pressure from the public, in order to alleviate the effects of a drought-driven economic downturn, resulting in an additional 600,000 koala pelts being

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<sup>56</sup> Owens, *Tasmanian Tiger*, 114 – 117. That three VDLC bounties were still collected in 1914 in Woolnorth is reflective not of government or even public attitudes but rather of the persistence of thylacine prejudices in the island's most extremely isolated rural communities.

<sup>57</sup> Lewis, *Koalas in Victoria*, 73 – 76.

<sup>58</sup> Moyle, *Koala*, 125.

<sup>59</sup> Moyle, *Koala*, 125 – 126.; Raymond Evans. *A History of Queensland* (Melbourne: Cambridge University Press, 2007), 168.

legally collected.<sup>60</sup> It should be noted that the fur industry remained problematic in Tasmania, but regulations surrounding rare species were upheld by Hobart forcing trappers to operate in secret by setting snares at night and hiding pelts in hollowed logs and rock crevices at cache sites in the wilderness.<sup>61</sup> While koalas, much like kangaroos, do become a prominent cultural symbol, because the species is found across several states its symbolism is one of national identification, that is to say, one that distinguishes Australia from the rest of the world. The thylacine by contrast enjoys a regional association that helps to distinguish the state of Tasmania from the states of the mainland, giving the symbol a more distinct resonance amongst the public on the island and more intensely driving the development of an environmental awareness.

Naturally, any kind of cultural association with the natural world such as this will result in changing public attitudes towards interaction with the surrounding environment. This is reflected in Tasmania at the turn of the twentieth century when the island legislature began to face ever increasing pressure from citizen advocacy groups, most notably the Tasmanian Game Protection and Acclimatisation Society (established in 1895) and the Tasmanian Field Naturalists' Club (1904), to establish nature reserves for the protection of native species.<sup>62</sup> These were coupled in 1914 by calls from Theodore Thompson Flynn, a respected professor at the University of Tasmania, to establish a reserve specifically for the protection of thylacines.<sup>63</sup> A decade later these calls continued to be echoed in Tasmanian media outlets. For example, the Launceston Daily Telegraph published a noteworthy article in 1924 in which it observed the negative impact human activities on the island were beginning to exert on the populations of its native species and argued that the existing legislation used for protecting the environment should

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<sup>60</sup> Moyle, *Koala*, 126 – 127; Evans, *History of Queensland*, 168; Jackson, *Koala*, 211 – 215.

<sup>61</sup> Simon Cubit, *Snarers and Cattlemen of the Mersey High Country* (Launceston: Regal Press, 1987), 34.

<sup>62</sup> Robert Paddle, *The Last Tasmanian Tiger: The History and Extinction of the Thylacine* (Melbourne: Cambridge University Press, 2002), 169 – 170.

<sup>63</sup> Paddle, *The Last Tasmanian Tiger*, 170.

be redesigned with the preservation of native species in mind rather than focusing on recreational or commercial uses. In making this argument the article utilized the endemic and easily recognized thylacine as a signature species that was worthy of such protection from the state (In a show of complete ignorance towards the concept of irony this same edition of the Daily Telegraph also argued for the eradication of seals from the northern coast of the island to help boost fish stocks).<sup>64</sup>

These examples highlight the considerable development of the early environmental movement in Tasmania in relation to the rest of the country. Despite being the last Australian state to formally establish a national park, it is the only state to have had said parks established by pressure from ‘common associations’ (such as bushwalking clubs and hunting societies) rather than by learned societies or by royal decree, providing additional evidence for the considerable development of the public’s environmental consciousness.<sup>65</sup> Furthermore, Tasmania was also the first state to issue park legislation that was focused on environmental preservation rather than ‘national recreation’.<sup>66</sup> If we are to put these examples into the context of Kevin Frawley’s historical analysis of Australia’s ‘evolving visions’ concerning the environment then it becomes evident that the demands of the Tasmanian public are anywhere from twenty to forty years ahead of the national average. This is to say that by the 1920s we already begin to see influential, albeit modest transitions in public attitudes from Frawley’s ‘second era’ of environmental consciousness, concerning national development and wise use (which on the mainland occurs between 1860 – 1960), to Frawley’s ‘third era’ which is described as ‘modern

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<sup>64</sup> 12 September 1924. Launceston Daily Telegraph.

<sup>65</sup> Debbie Quarmby, “The Politics of Parks: A History of Tasmania’s National Parks 1885 – 2005”. (PhD Diss., Murdoch University, 2006), 77 – 78.

<sup>66</sup> Quarmby, *Tasmania’s National Parks*, 77 – 78.

environmentalism'.<sup>67</sup> Indeed, much of the early environmental legislation in Tasmania, as is to be expected by this point, is notably more progressive in its intent than its counterparts on the mainland. This leads us into the second portion of this historical analysis – the development of a public mandate, reflected in national elections, that desires a federal responsibility for the environment rather than state responsibility.

#### *Development of Public Demands for greater State Responsibility of the Environment*

Despite the early development of a natural reserve system on the island, the practice of permitting extractive economic activities in these reserved areas became an increasingly contentious issue for Tasmanian voters. Kevin Frawley notes that this conflict between the use of reserve systems for development purposes instead of strictly for purposes of conservation became the driving force behind the transition from the second to third eras of environmental thought in Australia.<sup>68</sup> In reaction to the public demands for a reserve system for protection of the state's native flora and fauna, the Tasmanian government enacted some of the most progressive legislation concerning environmental conservation of its time.<sup>69</sup> Examples of this include the early incarnation of the Rocky Point Reserve that was designated specifically for the preservation of the island's only known population of Red Honeysuckle (*Banksia serrata*) as well as the establishment of the Scenery Preservation Board in 1915 which was modeled off of a similar, surprisingly progressive, institution in New Zealand.<sup>70</sup> But while both the Tasmanian Liberal and Labor Parties proved willing to enact progressive legislation, they also routinely

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<sup>67</sup> Kevin Frawley, "Evolving Visions: Environmental Management and Nature Conservation in Australia" in *Australian Environmental History: Essays and Cases* ed. Stephen Dovers. (Melbourne: Oxford University Press, 1994), 66 – 70 (Analysis of the aspects of the Second Era); 70 – 74 (Analysis of the aspects of the Third Era).

<sup>68</sup> Frawley, *Environmental History*, 60 – 61.

<sup>69</sup> Greg Buckman, *Tasmania's Wilderness Battles* (Crows Nest: Allen & Unwin, 2008), 178.

<sup>70</sup> Tasmanian Government Gazette 19 November 1912; *The Mercury* 30 July 1915.

showed themselves weak in resisting the pressure to make concessions of protected lands for the purpose of resource extraction.

Consider the rather erratic history behind the establishment of Tasmania's first national park – Mount Field, whose initial creation seemed to be an impressive step towards a highly progressive state environmental policy, supported by both major parties. Mount Field was the product of a campaign spearheaded by Leonard Rodway of the Tasmanian Field Naturalist's Club, but the project also found favour from the highly respected independent politician (and future State High Court Chief Justice) Herbert Nicholls. Nicholls in turn was able to secure support from the former Liberal Premier Elliott Lewis (1899 – 1903, 1909 – 1911) who guaranteed the reserve's establishment under the then-Liberal government of Albert Soloman.<sup>71</sup> All of this was achieved despite vocal opposition from the island's forestry sector that was interested in the region's impressive strands of *Eucalyptus regnans*, Mount Field and the Florentine Valley being the largest reserves of this favored tree on the island. Shortly following the approval of the reserve's creation the state Labor Party under John Earle secured power from 1914 to 1916 through a no confidence motion. During this time Earle not only upheld the reserve's establishment but significantly increased its total size from 2200 hectares to 11,000 hectares – again, much to the dismay of local forestry interests.<sup>72</sup> While this initially appeared to be a sizable victory for the island's early environmentalists the integrity of the park's parameters was soon compromised when successive governments in Hobart submitted to forestry interests. This began in 1934 when the Nationalist Government (the precursor of the Liberal Party) of John McPhee passed the Florentine Valley Wood-Pulp and Paper Industry Act, granting the Derwent Valley Paper Co the right to harvest lumber from forest reserves directly adjacent to the north-

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<sup>71</sup> Buckman, *Tasmania's Wilderness Battles*, 180.

<sup>72</sup> Quarmby, *Tasmania's National Parks*, 83 – 84.

west and south-east borders of the park in exchange for the construction of a second processing plant on the island.<sup>73</sup> Already an unpopular concession, Hobart again compromised the integrity of the park almost ten years later when it was revealed by the Hobart Mercury, Tasmania's largest newspaper, that the Labor Government of Robert Cosgrove was in discussions with Australian Newsprint Mills (the successor of Derwent Valley Paper) for legal access to strands of *Eucalyptus regnans* inside the boundaries of Mount Field National Park.<sup>74</sup>

Public reaction to this was swift and highly vocal, resulting ultimately in a Royal Commission issued by the state that, when released in May of 1946, found that the industry and its corresponding government department was riddled with corruption (even the Minister in charge had been found to have accepted bribes from saw millers). Despite these findings however, the concession of a part of Mount Field National Park to Australian Newsprint Mills was legally approved in 1949, an unlikely surprise since by this point in time there had already been five other concessions made yearly to the island's national parks network between 1939 and 1943 for resource extraction in Cradle Mountain (in 1939 for mining and again in 1940 for Hydro-Electric development), Freycinet (in 1941 and 1942 for mining), and the Hartz Mountains (in 1943 for forestry).<sup>75</sup>

As the case of Mount Field National Park exemplifies, the progressive ideals of the Tasmanian state government were consistently undercut by the ideological priorities of both major state parties (that can often be simplified during this period as industrial development in the case of Labor and agricultural interests in the case of the Liberals). Further evidence of this can also be found by revisiting the previously discussed early inklings of eco-nationalism in the

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<sup>73</sup> The Florentine Valley Wood-Pulp and Paper Industry Act 1932, Schedule 3 (Access to adjacent areas of the National Park); Article 5 (Obligations).

<sup>74</sup> Buckman, *Tasmania's Wilderness Battles*, 73 – 74.

<sup>75</sup> Buckman, *Tasmania's Wilderness Battles*, 75 – 76.

country, where the successful rehabilitation of the koala can be attributed in large part to the involvement of the federal government. The thylacine, in contrast, was doomed to extinction, despite a consistent push for progressive initiatives, by the state-centred mentality that dominated Tasmanian politics and the lack of interest that Canberra showed in its preservation. Not only does this development contribute to the public's mistrust in the state government's ability to competently protect the island's environment, but it explains how the state that was most willing to adopt progressive environmental policies could also have such little success in its early applications.

In an act that foreshadowed the transition of environmental responsibility, the federal government in 1923 reacted to the mounting concern over the future of the continent's native fauna by utilizing its commerce power and issuing a ban on the export of pelts from threatened native fauna "unless the consent, in writing, of the Minister of State for Trade and Customs has first been obtained".<sup>76</sup> Despite noteworthy opposition Canberra remained steadfast on this policy up until recently, even preventing the export of live specimens to overseas zoos or for scientific study.<sup>77</sup> To facilitate this process (and in keeping in part with the state-centric mentality of Australia) the Tasmanian government was asked by Canberra to form an 'Advisory Committee re Native Fauna' that would recommend certain species be protected by this proclamation. On the Australian mainland the koala, through public-pressure, found itself recommended for protection but in Tasmania the committee found its recommendations that the thylacine be protected under this federal pseudo-law blocked by "rural-rump" conservative parliamentarians.<sup>78</sup> Further hindering the committee's ability to counter this opposition was the

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<sup>76</sup> Proclamation relating to the Exportation of Animals and the Skins Thereof, Customs Proclamation no 89, December 5<sup>th</sup>, 1923 (published in the *Commonwealth Gazette* no 85, December 6<sup>th</sup>, 1923).

<sup>77</sup> The Argus, "Koala Export Ban", October 13<sup>th</sup>, 1938.

<sup>78</sup> Paddle, *The Last Tasmanian Tiger*, 174 – 175.

lack of involvement from Canberra in listing the thylacine as a species of top concern, the trans-boundary distribution of koalas monopolized the federal government's attention leaving the regionally isolated thylacine to be completely ignored by both Canberra and the national media.<sup>79</sup>

These difficulties were further compounded in 1929 when the conservative government of Premier John McPhee (which was largely supported by the state's rural and agricultural lobbies, that still viewed the thylacine as a threat to their livelihoods) successfully argued that the committee, whose concerns were of a federal nature, should be replaced by a Tasmanian directed and staffed body – the Tasmanian Animals and Birds' Protection Board.<sup>80</sup> As Paddle argues, this “administrative shift of responsibilities” severed the political independence of the Advisory Committee by having its members selected by Cabinet and approved by the Governor.<sup>81</sup> That said however, it should also be noted that the failure of the Tasmanian Animals and Birds' Protection Board to rehabilitate the thylacine population is not in itself a complete condemnation of its work. The Board was highly influential in establishing many of the present reserve systems on the island including Ben Lommand, Cradle Mountain, and Macquarie Island. By the 1950s the Board also became a key figure in restructuring the functional purpose of the state's reserve systems when it introduced the concept of “fauna reserves”.

These successes aside, the failure to save the thylacine and the controversies that erupted over the concessions to the state's national parks marked the genesis of public mistrust in the state government's ability to enact effective environmental policies.<sup>82</sup> Former Lake Pedder protestor Richard Jones cites institutions such as the Save the Derwent Committee as manifestations of these frustrations. He regards these organizations, which began to multiply

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<sup>79</sup>Paddle, *The Last Tasmanian Tiger*, 174 – 175.

<sup>80</sup> Paddle, *The Last Tasmanian Tiger*, 181.

<sup>81</sup> Paddle, *The Last Tasmanian Tiger*, 181.

<sup>82</sup> Richard Jones, “A New Movement for Social and Political Change” in *The Rest of the World is Watching: Tasmania and the Greens*, ed. Cassandra Pybus and Richard Flanagan (Sydney: Pan MacMillan Press, 1990), 39.

greatly during this time, as the only logical options remaining for the community when the state government showed no interest in their concerns.<sup>83</sup> So when Hobart dammed the Serpentine River and drowned Lake Pedder in 1974 it effectively also dammed the Rubicon, forever reorienting the Tasmanian public away from the state government and giving them justification to give a greater mandate to Canberra.

The Hydro Electric Commission (HEC) had grown in tandem with the resource extraction sector in Tasmania since the early twentieth century and its influence in Tasmanian government has been both immense and very much on public display. Its restructuring as a government commission rather than a department in 1929 placed the total management of the state's hydro-electric works in the hands of the HEC while also granting the Commission the right to take over municipal hydro-electric schemes and raise government-backed loans to fund development projects. It should be noted that Hobart attempted to make several provisions for Parliamentary oversight but the authority granted to the Commissioner (Article 27, Section 6) and the limited ability of the HEC to make and enforce rules that are "inconsistent with the Act" (Article 30) largely restricted Hobart's full ability to regulate the Commission.<sup>84</sup> This ensured that not only would the HEC have a *de facto* monopoly on the exploitation of the state's water ways but that the Commission would be significantly autonomous from Hobart. The HEC capitalized on this autonomy and the consideration of the Commission's opinion quickly became a routine part of state legislation. In reaction to this critics of the HEC took to referring to the Commission as the "Hydro Industrial Complex", in what was a fairly appropriate comparison to

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<sup>83</sup> Jones, *the World is Watching*, 39.

<sup>84</sup> The Hydroelectric Commission Act 1929, Article 26 (Transference of Management of Hydroelectric Works); Article 27, Section 1 (Monopoly on State Hydroelectric Projects), Article 29 (Submission of Loan Approvals to Parliament).

the Military Industrial Complex of the United States.<sup>85</sup> The influence of the HEC ultimately culminated in 1978 when it successfully lobbied the Premier to remove a critical minister, with members of the Tasmanian Upper House echoing the Commission's calls claiming that the HEC was staffed by "experts" and that the minister "really knows nothing about them".<sup>86</sup> As regards Lake Pedder, in 1955 the Tasmanian Parliament approved the creation of Lake Pedder National Park (whose drowning it would subsequently approve less than ten years later) only after the HEC had reported to Parliament that it had no intention to pursue any development on the basin in the next two decades.<sup>87</sup> The very impetus for a Lake Pedder National Park had been driven almost entirely by the demands from civilian organizations, the earliest of which had been issued by the Country Women's Association in 1947.<sup>88</sup> In light of this then, the announcement of the HEC's intentions to dam the Serpentine River in 1962 caught the Tasmanian public by surprise.

Public interest groups continued to group together to better respond to state government policies. Corresponding to the HEC's announcement in 1962 of its intent to dam the Serpentine River was the formation of the South West Committee, an association of bushwalking clubs and naturalist organizations that lobbied for better environmental conservation policies and whose internal structure depended very heavily upon public participation. This organization, albeit highly limited in effectiveness, was representative of the increasingly vocal concerns that the public had over the island's environment. By the 1960s the South West Committee had begun to take the shape of a more organized group, and launched a series of public movements as a better means to interact with the state government. In this manner, the committee attracted greater

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<sup>85</sup> Bob Burton, "Wilderness and Unreasonable People," in *The Rest of the World is Watching: Tasmania and the Greens*, ed. Cassandra Pybus and Richard Flanagan (Sydney: Pan MacMillan Press, 1990), 79.

<sup>86</sup> Doug Lowe, *The Price of Power: The Politics Behind the Tasmanian Dams Case* (Melbourne: MacMillan Press, 1984), 86; Burton, *the World is Watching*, 80 – 81.

<sup>87</sup> John Burton et al., *Lake Pedder Committee of Enquiry: Final Report* (Canberra: Australian Government Publishing Service, 1974), 99 – 100.

<sup>88</sup> Robson, *History of Tasmania Volume 2: Colony and State from 1856 to the 1980s* (Melbourne: Oxford University Press, 1991), 549.

attention across the island when it formally proposed the establishment of a fauna reserve of unprecedented size in the vastly unpopulated south-west of the island (hence the committee's name).<sup>89</sup> Expectations had been contained as the Scenery Preservation Board had become effectively neutered through political appointments by this point in time. One such appointment of considerable note is that of Sir Allan Knight, Commissioner of the Hydro Electric Commission from 1946 – 1977 and member of the Board during the Lake Pedder controversy. For this reason the Board was largely resistant to the proposal of new nature reserves for fear of crossing hydro and natural resource interests in the state.<sup>90</sup> Much to their surprise however, the Labor Government of Premier Eric Reece enthusiastically embraced this proposal, specifically as a means of diverting the public's increasing disapproval over the HEC's damming proposal in the Serpentine Valley.<sup>91</sup> That Hobart's embrace of this proposal was nothing but an act of utility for the Reece government is blatantly apparent.

Reece rejected the Committee's request to be included in the South West National Park investigation committee, whose membership was restricted to representatives of the Forestry Commission, HEC, and Department of Mines – ensuring that the interests of resource extraction were not to be compromised by the establishment of the new park.<sup>92</sup> The exclusion of the South West Committee from the review process and the blatant conflict of interests represented on the investigation committee resulted in what Greg Buckman refers to as a “token corridor of protected land”.<sup>93</sup> The park was a third the size of what had been proposed by the South West Committee and excluded areas of particular importance in the region including, in addition to

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<sup>89</sup> Buckman, *Tasmania's Wilderness Battles*, 193 – 194.

<sup>90</sup> Roger Green, *Battle for the Franklin* (Maryborough: Fontana Press, 1981), 42.

<sup>91</sup> Buckman, *Tasmania's Wilderness Battles*, 193 – 194.

<sup>92</sup> Keith McKenry, “A History and Critical Analysis of the Controversy Concerning the Gordon River Power Scheme” in *Pedder Papers: Anatomy of a Decision* ed. Australia Conservation Foundation (Melbourne: Australia Conservation Foundation, 1978), 15; Robson, *History of Tasmania Vol 2*, 549.

<sup>93</sup> Buckman, *Tasmania's Wilderness Battles*, 194.

Lake Pedder itself, the Precipitous Bluff region in the east (rich in limestone deposits) and the Melaleuca region in the west (which was rich in tin), both of which were valued by the mining industry along with most of the forests along the eastern border that were valued by the logging sector.<sup>94</sup> What's more, the park had successfully distracted the attention of the state's environmentalists, allowing for the HEC to table its Serpentine Valley proposal in 1967, a full year before the South West National Park was officially proclaimed.

This kind of increasingly confrontational approach to the steadily growing number of public environmental interest groups in Tasmania only resulted in the formation of more opposition groups. Shortly following the HEC's submission yet another environmental organization, the Save Lake Pedder National Park Committee, was founded by Peter Sims. A member of the South West Committee himself, Sims founded his rival committee because he felt that the South West Committee had shifted too much of its intention on expanding the South West National Park to effectively protect Lake Pedder itself. While perhaps more effective than the South West Committee, Sims' Committee was no more successful in halting the flooding of the lake, but its initial success is further evidence of steadily changing attitudes among the Tasmanian public. In the wake of its founding the Save Lake Pedder National Park Campaign was able to collect 10,000 signatures, the largest petition that had as of then been produced, and present them to the state parliament (bear in mind that the population of Tasmania at this time was only 400,000, meaning that Sims was able to capture the support of a significant portion of the state in the span of roughly a month).<sup>95</sup> The petition was ultimately rejected by the

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<sup>94</sup> Buckman, *Tasmania's Wilderness Battles*, 194.

<sup>95</sup> Drew Hutton and Libby Connors, *A History of the Australian Environment Movement* (Melbourne: Cambridge University Press, 1999), 119; Kevin Kiernan. "I Saw my Temple Ransacked," in *The Rest of the World is Watching: Tasmania and the Greens*, ed. Cassandra Pybus and Richard Flanagan (Sydney: Pan MacMillan Press, 1990), 21.

Tasmanian attorney-general on the grounds that it was “in conflict with government policy”.<sup>96</sup> Reece himself even noted in his interview with Roger Green that there was an unexpected amount of pushback against the Serpentine Dam project, and that he had received multiple petitions in addition to Sims’, one of which contained 7,000 signatures.<sup>97</sup> Nevertheless, the Reece government indicated its intent to green-light the project, despite the state’s lack of funds needed for its construction. Reece was able to get Parliament to authorize the project in only two days and sought to mitigate this financing problem by introducing an unpopular entertainment and stamp duty while petitioning the federal government for financial assistance in the form of a \$47 million dollar grant.<sup>98</sup>

Public outcry against the dam became ever louder when Hobart passed legislation that placed the responsibility for both administration and policing for the entirety of the South West Region of the island under the temporary authority of the HEC, until construction of the Middle Gordon dams was complete.<sup>99</sup> In taking a page from the Reece government, the HEC sought, but ultimately failed, to mitigate criticism against the drowning of Lake Pedder by permitting an expedition team made up of scientists from both the Hobart and Launceston Museums to spend two weeks in the area in 1967 surveying the relatively unstudied environment. However, the HEC also ensured that nothing critical of the damming project emerged from this expedition by excluding any botanists from the team and only permitting the excursions findings to be published through the HEC itself.<sup>100</sup>

Before moving beyond this point it’s important to address a historiographical issue in the traditional writing of the Lake Pedder campaign. A key component to modern environmentalism

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<sup>96</sup> Hutton and Connors, *Australian Environment Movement*, 120.

<sup>97</sup> Green, *Battle for the Franklin*, 29.

<sup>98</sup> Robson, *History of Tasmania Vol 2*, 549 – 550.

<sup>99</sup> Robson, *History of Tasmania Vol 2*, 549 – 550.

<sup>100</sup> McKenry, *the World is Watching*, 16.

is an abandonment of romantic ideals as a driving force for the movement as was witnessed in the environmental movements first wave, and replacing them with an awareness and concern, if only vaguely, of the ecology of a specific region. While it is rarely presented in a negative light, the motivations for the Pedder protests have often been suggested as romantically naïve. Historians frequently cite the importance of photographers, particularly Olegas Truchanas, as instrumental in rallying support for the Pedder campaign – inadvertently implying that it was the desire to preserve the distinct ‘natural beauty’ of the Lake’s whiskey-brown coloured water and iconic pink-quartz sand, rather than any real concern for the integrity of the unique environment of the Serpentine Valley, which was the driving force behind the conservation movement.<sup>101</sup> There is much truth to this narrative and the transition from the first to second waves of the environmental movement were not immediate and the romantic notion of natural beauty helped to garner greater support from the public. Even the Tasmanian government seemed to believe that at the root of these protests was concern over the romantic and aesthetic value of the lake rather than its ecological significance to the island's environment, which is why it attempted to justify the project by claiming it would result in the ‘expansion of the lake’ rather than the ‘drowning of the lake’. Premier Reece himself has even defended his government’s actions by claiming that “although it [the Serpentine River damming] did away with the lake itself, [it] has created in its place a place of great beauty that is easily accessible” adding that “It [the Serpentine River damming] doesn’t take away anything of the character of the South West with

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<sup>101</sup> Examples of this narrative can be found in the various different formats of those writings which address the Pedder Protests including: Martin Mulligan and Stuart Hill, *Ecological Pioneers: A Social History of Australian Ecological Thought and Action* (Oakleigh: Cambridge University Press, 2001), Patrick McCully, *Silenced Rivers: The Ecology and Politics of Large Dams* (London: Zed Books, 1996), 287; 244 – 245; Buckman, *Tasmania’s Wilderness Battles*, 24; Robson, *History of Tasmania Vol 2*, 449, Hutton and Connors, *Australia Environment Movement*, 119. Even Gough Whitlam himself has maintained this narrative in his own writings. Gough Whitlam, *The Whitlam Government 1972 – 1975* (Markham: Penguin Books, 1986), 530.

the exception of the small lake that was there, and it gives access to a region that people didn't have reasonable access to before"<sup>102</sup>

However, as the HEC's reluctant concession to the protestors allowing a scientific expedition into the region would indicate, the serious concern over the fate of the valley's ecology was at the core of many of those involved in the movement. A key argument in the push to initially have the Pedder area declared as a national park in the mid-1950s had been that Lake Pedder was believed to have had a greater number of endemic species than any other lake in the whole of Australia.<sup>103</sup> And while the region was still largely unstudied at the time of the damming, the studies that followed confirmed this belief, as a multitude of new species were identified. Among these discoveries was a host of invertebrates such as the Lake Pedder planarian (*Romankenkius pedderensis*) and the Lake Pedder earthworm (*Hypolimnus pedderensis*) – both of which were officially identified in 1974 and were later assumed to be extinct following the damming, along with a distinct species of small fish – the Pedder galaxias (*Galaxias pedderensis*), identified in 1968 and now extinct in the wild.<sup>104</sup> It is within the realm of reason to assume that a multitude of new plant species likely would have been identified too had botanists been included in the expedition to the lake. It therefore should be noted that because of this the Lake Pedder protests, by incorporating concerns reflective of both the first and second wave of environmentalism, became the transition point between the two periods and marks the birth of modern environmentalism in Tasmania from a theoretical as well as a practical

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<sup>102</sup> Green, *Battle for the Franklin*, 29.

<sup>103</sup> William J Lines, *Taming the Great Southern Land: A History of the Conquest of Nature in Australia* (Berkeley: University of California Press, 1991), 222.

<sup>104</sup> While the Lake Pedder earthworm remains extinct the Lake Pedder planarian was rediscovered along a few isolated rivers in the Hartz Mountains in 2006 but remains red listed by the IUCN due to its severe habitat restriction as critically endangered. G.N.R Forteach and A.W Osborn, "Survival of Endemic Invertebrates of Lake Pedder and Lake Edgar Subsequent to Introduction" in *Records of the Queen Victoria Museum*: 116 (2012); I.A.E Bayley, et al, "Lake Pedder: Its Importance to Biological Science" in *Pedder Papers: Anatomy of a Decision* ed. Australian Conservation Foundation (Melbourne: Australian Conservation Foundation, 1972), 41 – 49.

perspective. This is a similar conclusion to that reached by Robyn Eckersley who identifies two strains of interconnected environmental thought in Tasmania during this time – which he labels as “Anthropocentric Greens” (which are reflective of the first wave of environmentalism) and “Ecocentric Greens” (reflective of the second wave).<sup>105</sup>

The public did have one final opportunity to showcase their dissent of the Middle Gordon Scheme (as the Serpentine Project was by now officially known) to state politicians when in 1969, a full two years after the HEC had presented its project to the state parliament, Labor was narrowly defeated in the Tasmanian election and replaced by a Liberal-Centre coalition headed by Angus Bethune. While the Reece government had presided over a notable period of industrial and urban growth the Liberal campaign, that had included sentimental statements towards the fate of Lake Pedder and concerns over the influence of the HEC on legislation, had proven just effective enough to unseat Labor.<sup>106</sup> During the campaign Bethune himself had at one point referred to the autonomy of the HEC from the Tasmanian government as a “state within a state”. Meanwhile Kevin Lyons (Centre Party) had demonstrated his unfamiliarity with the work of Mary Shelley while warning Tasmanians that, as regards the HEC, that they may have “given birth to a Frankenstein monster that will one day devour the body that established it”.<sup>107</sup> While sympathetic, the Liberals made no actual promise to halt the damming of the Serpentine River, and their lament for the fate of Lake Pedder ultimately proved to be little more than lip service to the electorate.

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<sup>105</sup> Robyn Eckersley, “The Ecocentric Perspective”, in *The Rest of the World is Watching: Tasmania and the Greens*, ed. Cassandra Pybus and Richard Flanagan (Sydney: Pan MacMillan Press, 1990), 69 – 70.

<sup>106</sup> Hutton & Connors, *Australian Environment Movement*, 119; Robson, *History of Tasmania Vol 2*, 549.

<sup>107</sup> Les Southwell, *The Mountains of Paradise: The Wilderness of South-West Tasmania* (Camberwell: Les Southwell Pty, 1983), 16; Kevin Kiernan, “I Saw my Temple Ransacked,” in *The Rest of the World is Watching: Tasmania and the Greens*, ed. Cassandra Pybus and Richard Flanagan (Sydney: Pan MacMillan Press, 1990), 23.

Construction of the Middle Gordon scheme not only continued following the election of the Bethune government but the administration also rejected public demands for a plebiscite on the fate of the lake and endorsed an additional HEC project on the Pieman River.<sup>108</sup> The HEC's influence it appeared was immune to any changes in the state's government and above the popular opinion of the Tasmanian public. As Greg Buckman points out a seemingly overlooked statement made in 1980 by the Commissioner of the HEC, Russell Ashton, seems to reflect this. In light of the Franklin River protests Ashton warned that "if Parliament tries to work through popular decisions we are doomed in this state and doomed everywhere" – illustrating why by this point in time the environmental movement had taken to referring to the Commission as the 'Electric Kremlin'.<sup>109</sup> Adding to this point, the highly celebrated Tasmanian novelist Richard Flanagan has summarized the HEC's eclipse of power in the state throughout the twentieth century by saying that "the Tasmanian Parliament has never been a significant force in Tasmanian politics".<sup>110</sup> Both statements reflect a sense of disillusionment with the island's public and political submission to the HEC.

In 1972 Kevin Lyons resigned his seat, effectively ending the Bethune coalition government and forcing a state election in which Reece and the Labor party were returned to power after both the Liberals and Labor had declared that Lake Pedder was a matter for the HEC and not an election issue – it appeared that so long as the environment wasn't on the table, Tasmanians preferred Reece to Bethune.<sup>111</sup> There are two notable events that distinguish the 1972 state election as the specific point at which there was a fundamental transformation in the politics of environmentalism in Tasmania. The first is the establishment of an environmentally

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<sup>108</sup> Robson, *History of Tasmania Vol 2*, 551.

<sup>109</sup> Buckman, *Tasmania's Wilderness Battles*, 40.

<sup>110</sup> Flanagan, "Masters of History" in *The Rest of the World is Watching: Tasmania and the Greens*, ed. Cassandra Pybus and Richard Flanagan (Sydney: Pan MacMillan Press, 1990), 125.

<sup>111</sup> Green, *Battle for the Franklin*, 55.

minded political organization to contest the election as an alternative choice to either the Liberal or Labor party while the second is the redirection of environmental lobbying groups away from Hobart and towards Canberra. Both points are import as they are interconnected catalysts that grant the federal government the legitimacy to pursue the informal transition of responsibilities for the environment in Australia, as can be demonstrated not only in Tasmania, but in other states too.

### *Political Mobilization of Environmentalists at the State Level*

While the Pedder protesters were unsuccessful at swaying the opinion of any state parliamentarians; the independent MHA Louis Shoobridge being the sole exception to this, the movement did have exceptional success at swaying public opinion against the Serpentine Dam.<sup>112</sup> This is particularly well exemplified by a late 1971 poll conducted by the island's largest newspaper, *The Mercury*. When asked "should Lake Pedder be flooded to provide more power to the state?", the paper received 1,209 responses from its readers with only a miniscule 37 responding 'yes'.<sup>113</sup> Only ten years after this poll, the Tasmanian Wilderness Society (another citizen-based environmental lobbying group) was able to boast that it had a larger membership than that of both the Tasmanian Liberal and Labor Parties combined.<sup>114</sup> While this opinion poll is certainly lopsided and more indicative of urban Tasmanian attitudes than rural Tasmanians, the near unanimity of the opposition opinion is nevertheless remarkable and near unprecedented to this day. Despite the steadily changing attitudes of the Tasmanian public, Hobart still showed no intention of reversing its policies regarding the environment, resulting in even greater public

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<sup>112</sup> Kiernan, *the World is Watching*, 23 – 24.

<sup>113</sup> Kiernan, *the World is Watching*, 23 – 24.

<sup>114</sup> James McQueen, "More than a River", in *The Rest of the World is Watching: Tasmania and the Greens*, ed. Cassandra Pybus and Richard Flanagan (Sydney: Pan MacMillan Press, 1990), 42.

frustration with Hobart's refusal to acquiesce to popular opinion. And as regards Shoobridge, his own riding of Queenborough is itself of some interest and worth touching upon. It was, and continues to be, held by an independent since 1856 – a fact which may go some way to explaining both parties' willingness to ignore Shoobridge's impassioned pleas that Lake Pedder be saved.

This disregard from Hobart pushed several of the most vocal protesters to form the Lake Pedder Action Committee (LPAC), yet another metamorphosis in the organizational approach of the Lake Pedder protesters. The LPAC is deserving of its distinction from other Lake Pedder protest organizations for two key points, the first of which is its activity outside of the state (that will be discussed in greater detail in the following section regarding environmental lobbying at the national level), something which up to this point had not been considered by protesters. The second key point, which is most import to this particular section, revolves around the extensive grassroots networks and organizations cultivated by the LPAC which resulted in its transition into an official political body, developed for the purposes of pushing for greater political influence inside of the state.

The publically-oriented structure of the LPAC allowed the organization to reach a greater number of Tasmanians and to better push its agenda. Town Hall meetings had been the primary means through which the LPAC had engaged the public. This format allowed the group to speak directly to large numbers of the public who were in turn given a platform to voice their concerns, creating a populist narrative in which the LPAC could claim it was more representative of the Tasmanian public than either of the major parties. This kind of open-to-all format also allowed members as well as those in the public who may have otherwise been reprimanded for associating with the movement the protection of what could be claimed was a visible distance

from direct involvement. For example, Olegas Truchanas, whose iconic photography was integral to drumming up public support for the Lake Pedder campaign, was an employee of the HEC and was therefore not permitted to speak out directly against his employer's plans at the town hall meetings where his photographs were displayed to the public. Instead the photographs were shown to a score of classical music as Truchanas stood off to the side, allowing him to claim that he had no direct involvement in the organization but was rather just showcasing his art to an interested audience.<sup>115</sup> The open secret concerning the involvement of Truchanas in the LPAC and the fact that other HEC employees were willing to risk their own careers to 'speak out' against the HEC not only further fueled the populist image of the LPAC, but helped to further tarnish the image of the HEC. More importantly, it granted the LPAC a degree of transparency in its decision making process that contrasted against the popular image of the decision making processes of the state Labor and Liberal parties.

The LPAC emerged as a familiar institution with the Tasmanian public virtually overnight through its extensive efforts to better engage the public in the damming controversy. Frequent town halls were held, predominately in the urban centres of Hobart and Launceston, to properly gauge the public's opinion and allow Tasmanians to voice their concerns in an open venue. Through this system of grassroots activities the LPAC was able to circulate yet another petition (which like the others was also fated to be ignored by the legislature), so as to once again reaffirm to the state government the public's opposition to the damming project. The second petition, this time signed by 17,500 state citizens, was presented to Hobart in July of 1972, in conjunction with an additional, smaller petition signed by 184 state scientists, some of whom had been involved in the 1967 scientific expedition to the lake, requesting that another, more detailed

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<sup>115</sup>Richard Flanagan, "Return the People's Pedder!", in *The Rest of the World is Watching: Tasmania and the Greens*, ed. Cassandra Pybus and Richard Flanagan (Sydney: Pan MacMillan Press, 1990), 205.

scientific survey of the area be undertaken before the flooding was complete (while the petition was first circulated by the LPAC before the state election was called they were not presented to the legislature until after the election where they were presented to Eric Reese rather than Angus Bethune).<sup>116</sup> Leading this charge was University of Tasmania biologist Richard Jones who helped to spearhead the political reorganization of the Tasmanian environmentalists, claiming that the movement had been left with no other option but to seek political power in order to have its concerns addressed by Hobart.<sup>117</sup> When Kevin Lyons unexpectedly resigned his seat forcing the 1972 election the well organized LPAC was able to quickly restructure itself into a registered political party under the title of the United Tasmania Group (UTG).

Despite the UTG being mostly remembered as a left-wing party, it was quite successful in selling itself to both conservative and liberal elements of the Tasmanian population. The celebrated Tasmanian author Richard Flanagan asserts that there is a pervasive nature of conservative thought that is dominant in the island's politics, resulting in the two main parties frequently running on surprisingly similar platforms. In fact, shared policies between the Liberal and Labor Party were so common in this particular election that the UTG coined the term "The Laborial Party" in order to paint its opposition as a singular entity that the then-editor of the *Mercury* even admitted was an apt term, pointing out that "most Labor politicians in Tasmania make Bjelke-Peterson [the hard right Premier of Queensland] look like a Communist".<sup>118</sup> In fact, the UTG's founder and president Richard Jones came from a conservative background having come to Tasmania from Queensland where he had been a paid member of Bjelke-Peterson's

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<sup>116</sup> Kiernan, *the World is Watching*, 26.

<sup>117</sup> Flanagan, "the People's Pedder!" in *the World is Watching*, 197.

<sup>118</sup> Flanagan, "the People's Pedder!" in *the World is Watching*, 199.

Queensland Country Party at a time when the Premier had sought to permit industrial mining in the Great Barrier Reef.<sup>119</sup>

The express goal of the UTG was to capture three or four seats so that it could hold the balance of power in the state legislature and exert pressure on either party to adopt better environmental policies, a strategy that would continue to be utilized by future incarnations of the UTG. Among its most prominent candidates at the time were former MHA Alfred White (Labor) and former MLC Ron Brown (Independent), that not only helped garner attention from both the media and the public but greatly served to quell any discourse of the UTG being ‘politically inexperienced’.<sup>120</sup> However, there were several issues, both internal and external, that hampered the success of the party. The UTG remained significantly decentralized, something that was likely the result of the speed at which it was forced to organize following the collapse of the Bethune Government. Candidates were largely free to espouse their own political positions so long as they fell within the somewhat vague guidelines laid out by the party’s constitution, referred to as “The New Ethic”. Among the most important of these unspecific guidelines was its intent to prevent the “misuse of power for individual or group prominence”, a statement that was quite rightly assumed by Tasmanians to be directed at reigning in the autonomy of the HEC from the state.<sup>121</sup> It was this foundational promise that prodded the HEC to weigh into the election and throw its financial might against the new party.

As could be assumed from previous discussion of the organization’s influence in Tasmanian politics, the HEC proved to be a formidable voice against the UTG during the 1972 state election. More accurately, it could be said that the HEC overstepped the morally acceptable

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<sup>119</sup> Flanagan, “the People’s Pedder!” in *the World is Watching*, 199.

<sup>120</sup> Buckman, *Tasmania’s Wilderness Battles*, 25 – 26.

<sup>121</sup> United Tasmania Group, “The New Ethic” in *The Rest of the World is Watching: Tasmania and the Greens*, ed. Cassandra Pybus and Richard Flanagan (Sydney: Pan MacMillan Press, 1990), 34 – 36.

boundaries in which a crown institution should be allowed to engage in an election. It is an assertion that is impossible to measure, if not solely because the HEC legislation does not prevent the HEC from attempting to influence state elections. However, the assertion is easy to defend as the HEC did quite publicly and forcefully voice its formal objection to the UTG during the 1972 election. Using government funds, the Commission ran multiple full page ads against the UTG in major Tasmanian newspapers and on the final day of the campaign an official HEC announcement claimed that should the UTG gain the balance of power in the election it would result in a higher rate for electricity.<sup>122</sup> The HEC cited the prevention of the Serpentine Dam's construction as the cause for this, which was not true by admission of their own reports to the Legislature up to that point in time.<sup>123</sup> While this initially seems to be an overreaction to the challenge posed by what was ultimately an untested, loosely organized third party that had yet to have any of its candidates elected, it exemplifies what was at the very least a legitimately perceived threat to the HEC by the UTG.

The HEC was not the only political body that had difficulty dealing with the more formal environmental opposition. Throughout the election Labor had great difficulty directly criticizing the policies of the UTG, which is not surprising considering much of the public support for the new party had been siphoned from those who had traditionally been Labor Party supporters. When pressed to comment on Premier Reece one of the principle organizers of the UTG, Kevin Kiernan, anecdotally suggested that he represented the mentality of the Labor Party's 'old guard' – steadily being phased out by a younger generation of Labor voters (as reflected in the national branch of the party with the rise of Gough Whitlam). Kiernan further suggests that Reece had considerable difficulty comprehending the value that the public had now begun to ascribe to the

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<sup>122</sup>Kiernan, *the World is Watching*, 25.

<sup>123</sup> Kiernan, *the World is Watching*, 25.

environment.<sup>124</sup> Indeed, many of Reece's own personal statements concerning how the enlargement (the term that was officially used instead of 'flooding' by the state government) of Lake Pedder had, if anything, only added to its aesthetic value fit Libby Robin's model for the development of 'ecological consciousness' in Australia that was discussed earlier. It's a belief that appears to be genuinely held by the former Premier and it is one that completely disregards the region's ecological integrity.<sup>125</sup>

While the UTG ultimately failed to have any representatives elected in the 1972 state election, it did manage to leave a lasting legacy on state policy making. The positive reception that the ideas put forth by UTG candidates received from the public did not go unnoticed by Eric Reece and Angus Bethune as during the campaign both the Liberal and Labor Parties had adopted several of their policies regarding education and the development of a tourism industry.<sup>126</sup> The adoption by both parties of these new policies inspired by the activist organization severely curtailed the UTG's potential for growth, and the sudden deaths of three of its most influential members, two of which occurred under highly suspicious circumstances, put the party in something of a leadership drought and effectively brought its operations in Tasmania to a near standstill. The party contested the 1976 state election but lost a full third of its support from the election five years prior (approximately 2,500 votes), disbanding shortly thereafter.

Following the drowning death of Olegas Truchanas in January 1972, organizers Brenda Hean and Max Price set off in September to launch a sky writing campaign in Canberra (reflecting the increasing attention being paid by the environmentalists towards canvassing Canberra for the political support they could not find in their state governments). Flying in Price's personal aircraft the pair failed to arrive in Canberra and neither the remains of the two

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<sup>124</sup> Kiernan, *the World is Watching*, 31.

<sup>125</sup> Green, *Battle for the Franklin*, 28 – 29.

<sup>126</sup> Flanagan, "the People's Pedder!" in *the World is Watching*, 198.

organizers nor the plane were ever recovered. The story became a national sensation, further adding to the national exposure being granted to the environmental movement in Tasmania. Evidence suggests criminal mischief as both Hean and Price had mentioned to friends and family that they had received ‘threatening phone calls’ prior to their departure and the hangar at Hobart airport that housed Price’s Tiger Moth aircraft showed evidence that it had been broken into prior to the departure.<sup>127</sup>

When the results of the 1972 and 1976 state elections are broken down by ridings, the full impact of the UTG losing such enigmatic and dedicated leaders becomes highly visible. Because the UTG largely lacked a singular, coherent platform popular support for candidates was largely driven by both personal charisma as well as recognisability. In the riding of Bass, for example, where the iconic and popular environmental activist Bob Brown stood for office the UTG only experienced a three vote drop between 1972 and 1976. Compare this with the riding of Franklin, where in 1972 Brenda Hean had stood for office, helping to capture 8% of the vote. In the election following her mysterious death the UTG managed to capture only a quarter of the support it had managed five years prior. Similar explanations can be applied to yet another two of the island’s five electoral ridings. The western riding of Braddon, which was the location of the most contested environmental issues in Tasmania at the time, had delivered the UTG its second largest result. But a complete lack of willing candidates five years later meant the entire riding went uncontested in 1976. Denison by comparison, the riding which incorporates Hobart, saw 1.2% drop in support following the retirement of Sir Alfred White, a former Labor MHA and Attorney-General who had contested the riding in 1972 following his knighting in 1971.<sup>128</sup>

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<sup>127</sup> Buckman, *Tasmania’s Wilderness Battles*, 28.

<sup>128</sup> House of Assembly Election Results, 22 April 1972 (Hobart: Tasmanian Electoral Commission, 1972); House of Assembly Election Results, 11 December 1976 (Hobart: Tasmanian Electoral Commission, 1976).

While the UTG collapsed as a political organization following the 1976 state election environmental activists retained communications with each other and remained active in the state, contesting elections under a self-described banner of ‘green independents’ (a loosely tied political group that would in 1992 restructure themselves as the Tasmania Green Party). However, the electoral success of the independent greens was hindered by the founding of the Australian Democrats by spurned Liberal MP Don Chipp, a popular former-Liberal Minister in the national parliament, after he had been overlooked by Fraser for a cabinet position. A centre party which specifically aimed to capture the votes of demographics which had been ignored by the major parties of Australia (such as environmentalists), the Democrats contested both federal and state elections and ran, in part, on a strong environmental platform.<sup>129</sup> At both the national and the state level these platforms included such proposals as the creation of a national park in the south-west of Tasmania and ending the issuing of woodchip licenses to sawmills.<sup>130</sup> During the 1979 state election the Democrats managed to capture 9,000 more votes than the independent greens as well as a seat in parliament during the 1982 state elections.<sup>131</sup> In 1986, with voters less enthusiastic of the Democrats’ performance as a minor faction in both the state and national parliament, the party’s vote share began to drop. Bob Brown, largely viewed as the *de facto* leader of the green independents, had approached the Democrats seeking a merger of the two factions into the ‘Green Democrats’ in order to further advance an environmental platform, a discussion which continued at the national level until 1991.<sup>132</sup> However, the merger was ultimately unsuccessful. The green independents overtook the Democrats in the Tasmanian

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<sup>129</sup> Elim Papadakis, “The Environment” in *New Developments in Australian Politics*, ed. Brian Galligan, Ian McAllister, and John Ravenhill (Melbourne: MacMillan Education Australia Pty Ltd, 1997), 204 – 205.

<sup>130</sup> Papadakis, *New Developments*, 204 – 205.

<sup>131</sup> House of Assembly Election Results, 18 July 1979 (Hobart: Tasmanian Electoral Commission, 1979; House of Assembly Election Results, 15 May 1982 (Tasmanian Electoral Commission, 1982).

<sup>132</sup> Mulligan and Hill, *Ecological Pioneers*, 263.

legislature in 1986 by winning two seats before capturing one representative in all five of the Tasmanian electoral ridings in 1989.<sup>133</sup>

The green independents had continued to grow their support on the island by capitalizing on the failures of both the Liberal and Labor Parties to solve the island's ever growing social and economic issues. By the time of the 1989 election Tasmania had the highest level of unemployment in Australia and those who were fortunate enough to be employed were part of the least educated work force in the country and worked jobs that produced the highest rates of industrial accidents and deaths while paying the lowest wages in the Commonwealth.<sup>134</sup> Running as a social democratic party, the Greens broadened their platform to include a greater focus on worker rights and job creation – directly challenging Labor for its core voters. The gamble proved successful and not only did the green independents secure the balance of power in the state legislature following the 1989 election, but polls showed that the majority of Green voters in 1989 appeared to be working class.<sup>135</sup> Further assisting the Greens in procuring public support was Premier Robin Gray's close ties to the resource extraction sector, which the Greens were able to successfully mould into a narrative of collusion. This narrative was strongly reinforced when Gray dissolved the legislature and called for state elections in 1989, issuing his press release on stationary not from his own office, but rather from North Broken Hill, the largest woodchip and paper mill company in the state.<sup>136</sup>

As environmentalism became established as a means of protest against the traditional conduct of state politics it forced the traditional Tasmanian parties to adopt ever expanding

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<sup>133</sup> "House of Assembly Election Results, 8 February 1986" Tasmanian Parliamentary Library; "House of Assembly Election Results, 13 May 1989", Tasmanian Parliamentary Library.

<sup>134</sup> Richard Flanagan, "Masters of History" in *The Rest of the World is Watching: Tasmania and the Greens*, ed. Cassandra Pybus and Richard Flanagan (Sydney: Pan MacMillan Press, 1990), 124 – 125.

<sup>135</sup> Flanagan, "Masters of History" in *the World is Watching*, 127.

<sup>136</sup> Flanagan, "Masters of History" in *the World is Watching*, 125.

environmental policies as a means of counteracting such protests against them, referred to colloquially by the public as the ‘greening of the party’. Greening served two purposes. On the surface it reflected the public’s concern over the state of the island’s environment, but it also reflected the willingness of the parties to sever their ties with the resource extraction industries and counter the rampant corruption in the state government. Lance Armstrong (Green Tasmanian MHA from 1989 – 1996) notes that during the 1989 election both parties displayed ‘late greening’, by which he means only addressing environmental issues midway through the campaign trail. And while both the Liberals and Labor were prepared to embrace many of the same environmental policies espoused by the green independents the failure of both parties to promise to shut down the controversial Wesley Vale Pulp Mill symbolized their unwillingness to actually tackle issue of corruption and corporate influence.<sup>137</sup>

However, the fact that the Greens were able to capture large swaths of Labor voters should not be read as the Greens directly mirroring the policies of Labor, as has often been implied. In commenting on the signing of the Labor-Green Accord Michael Lynch, a Green candidate who had ran in Denison in the 1989 election, noted the extraordinary difficulty in finding common ground between Labor and the Greens, saying simply that the Greens have “little in common ideologically” with Labor.<sup>138</sup> Rather, the then-leader of the Green Party Bob Brown explains that the Green Party decided to utilize marketing techniques in order to better present their platform to the Tasmanian public, making use of direct-sell catalogues and ads,

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<sup>137</sup> Lance Armstrong, “A Personal View” in *The Rest of the World is Watching: Tasmania and the Greens*, ed. Cassandra Pybus and Richard Flanagan (Sydney: Pan MacMillan Press, 1990), 139.

<sup>138</sup> Michael Lynch, “Uncharted Territory” in *The Rest of the World is Watching: Tasmania and the Greens*, ed. Cassandra Pybus and Richard Flanagan (Sydney: Pan MacMillan Press, 1990), 148.

market research, and especially high quality photography to capture the public's attention, essentially marketing the wilderness as a Tasmanian commodity.<sup>139</sup>

As had been the case since the Lake Pedder protests photography became the principle means for environmentalists to market their message to the public. Much has been written of the media's use of 'messianic imaging' when discussing prominent Green leaders Bob Brown and Christine Milne, creating what some have implied to be a cult of personality in the Green Party.<sup>140</sup> The image of Brown being attacked by loggers at a protest or the image of Milne standing alone in the wind at Wesley Vale remain iconic images of twentieth-century Tasmania, and certainly played a role in at least capturing the public's attention. Adding to this, Richard Flanagan and Cassandra Pybus note that by 1975 with the posthumous publication of "The World of Olegas Truchanas", the seminal collection of the photographer's life work, environmentalists began to gradually assume the role of "cultural interpreter" in Tasmania.<sup>141</sup> Should there be any doubt over the effectiveness of the Tasmania Green Party's use of photography as a means to appeal to voters one need look no further than the impact of Peter Dombrovskis' iconic photo of the Franklin River, "Rock Island Bend". Used for a series of full colour ads in the state's major newspapers on the eve of the 1983 federal election, it is often cited as having played an influential role in the vote. When the Federal Labor Party found itself facing re-election in 1990 it used this same image in a series of ads touting their party's environmental legacy.<sup>142</sup>

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<sup>139</sup> Richard Flanagan and Cassandra Pybus, "Green Images" in *The Rest of the World is Watching: Tasmania and the Greens*, ed. Cassandra Pybus and Richard Flanagan (Sydney: Pan MacMillan Press, 1990), 157 – 161.

<sup>140</sup> Flanagan and Pybus, *the World is Watching*, 161; 168.

<sup>141</sup> Flanagan and Pybus, *the World is Watching*, 160; Marion Wescombe, "From World's End the Greening Begins?" in *The Rest of the World is Watching: Tasmania and the Greens*, ed. Cassandra Plybus and Richard Flanagan (Sydney: Pan MacMillan Press, 1990), 189.

<sup>142</sup> Flanagan and Pybus, *the World is Watching*, 161.

But despite holding the balance of power, the green independents were significantly limited in their ability to deliver on their platform. Marion Wescombe penned a particularly pessimistic article commenting on the first year of the Labor-Green Government in Tasmania, noting that even while holding the balance of power much of the green independents' platform was likely to be unachievable due simply to both the financial constraints of the state and ideological differences between the two parties.<sup>143</sup> Some of the most fundamental pieces of the Green Platform mentioned in Wescombe's list include upgrades to the state's septic systems, introduction of marine parks to the Parks and Wildlife Service, coastal management plans, incentives for businesses to preserve tracts of land, and a state environmental audit.<sup>144</sup> This pessimism towards the environmental movement came at a time when environmentalists in Western Australia and New South Wales had followed in Tasmania's wake and pushed their own state governments to implement similar platforms in their own states.

Despite these limitations however, the greens had proven to be more successful in preventing the damming of the Franklin River than their forbearers had been in the fight to save Lake Pedder. In returning to the earlier discussion of the role of the 'Vandemonian identity', Australian literary scholar Amanda Lohrey has suggested that a key element to the success of the environmentalists in saving the Franklin lies in their appropriation of the Tasmanian gothic. Lohrey notes that in the aftermath of the failure to save Lake Pedder green politicians in Tasmania changed the emphasis of their policies, which brought them more in line with the traditional structure of the Vandemonian identity mentioned earlier. Whereas in the fight to save Lake Pedder environmentalists had largely stressed the aesthetic value of the lake, in the fight to save the Franklin River there had been a heavy focus on the costs of the proposed dam.

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<sup>143</sup> Wescombe, *the World is Watching*, 181.

<sup>144</sup> Wescombe, *the World is Watching*, 181.

Environmentalists had argued that the money could be better spend on schools, hospitals, and roads – i.e. the further development of ‘civilized Tasmania’, keeping the ‘uncivilized Vandemonian wilderness’ not only intact but in contrast to Tasmanian society.<sup>145</sup> This is best exhibited in the platform that the green independents ran on during the 1989 state election that placed a greater emphasis on a more scientific understanding of the environment while largely abandoning the traditional romantic ideals that had driven the party’s founding. By not breaking with Labor policies but rather bringing these policies in line with both the Vandemonian identity and, by extension, the principles of environmentalism we get a sense of why the Green party has been so successful in courting the vote from people who have traditionally supported the Labor Party.<sup>146</sup> For this reason Amanda Lohrey has noted that some critics have referred to this as a political sleight of hand as the party’s eco-centric goals are hidden behind the veneer of what appear to be industrial policies.

### *Environmental Lobbying at the National Level*

Richard Flanagan has claimed that “all environmental issues in Tasmania had to become national and international issues: there was no other hope of resolving them to the advantage of the environmentalists”.<sup>147</sup> Prior to the LPAC’s founding the Pedder protesters had first attempted to bring national attention to the controversy in Tasmania in the early 1970s by approaching the Australian Conservation Foundation (ACF), only to find it a somewhat lethargic institution that was completely unwilling to engage in the Lake Pedder controversy. Undeterred, the LPAC attended the 1973 ACF general meeting and successfully lobbied the delegates to appoint a new

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<sup>145</sup> Lohrey, *the World is Watching*, 96 – 97. Lohrey does of course add that the environmentalists have at the same time ‘updated’ the Vandemonian identity, emphasizing environmental integrity in preserving the Vandemonian wilderness.

<sup>146</sup> Lohrey, *the World is Watching*, 98 – 100.

<sup>147</sup> Flanagan, “People’s Pedder” in *the World is Watching*, 202.

slate of leaders at the foundation that were willing to bring national attention to the plight of Lake Pedder.<sup>148</sup>

The LPAC modeled much of their campaign from the successes of similar campaigns in states that were less environmentally conscious, such as those of the Colong Caves in New South Wales and the Great Barrier Reef in Queensland.<sup>149</sup> Much of the success in these two states could be accredited to interstate pressure put on their respective state governments, and for that reason separate branches of the LPAC were formed in each of the ‘boomerang coast’ states, with the intent to not only put national pressure on Hobart but to make the lake’s fate a national issue. The first step towards this was made almost immediately following the organization’s founding when a television programme produced in conjunction with the LPAC was broadcast nationally to help drum early interest and support in the out-of-state branches. The LPAC was even able to lobby UNESCO to make a public appeal against the damming of the Serpentine River and the flooding of Lake Pedder.<sup>150</sup>

One of the key failings of the LPAC’s interstate network was its failure to present the Australian public with a unified vision of a solution to the Lake Pedder controversy. The main branch of the organization in Tasmania, and arguably the most radical of LPAC branches, advocated the complete cessation of damming in the Serpentine Valley while the Victoria Branch advocated for the Serpentine Dam being built lower along the Serpentine River so as to only avoid flooding Lake Pedder.<sup>151</sup> Despite this and other failings, the LPAC’s efforts with Canberra were not for nothing. The McMahon Government was ultimately induced to offer

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<sup>148</sup> Flanagan, “People’s Pedder” in *the World is Watching*, 202.

<sup>149</sup> Hutton and Connors, *Australian Environment Movement*, 120.

<sup>150</sup> Kiernan, *the World is Watching*, 24 – 26.

<sup>151</sup> Buckman, *Tasmania’s Wilderness Battles*, 25.

Tasmania federal assistance in exchange for sparing the damming of the lake, but this was turned down by Premier Bethune at the Premiers Meeting in February 1972.<sup>152</sup>

While many were quick to dismiss the electoral success of the green independents in 1989 as a fluke of the Tasmanian election system there has been a noticeable upward climb in Green voting at the federal level since they first contested the 1990 election, winning sizable support in Tasmania, Western Australia, and New South Wales and seeing additional growth in two by-elections held that same year in Victoria and the Northern Territory.<sup>153</sup> Accompanying this political swing was a notable change in public attitudes towards the environment outside of Tasmania. A 1989 survey of homeowners across New South Wales reflected similar attitudes that had been showcased in Tasmania, with 80% of respondents favouring an increase in electricity charges and an additional 60% claiming they would be willing to pay up to an additional \$200 per year, provided the new revenue was used exclusively to reduce the impact of greenhouse gases.<sup>154</sup> These changes in national attitudes, coupled with the transformation of environmentalists into a political force capable of holding the balance of power in Tasmania did not go unnoticed by the national parties. And as had been the case at the state level in Tasmania, neither the Liberals nor Labor could ignore the importance of securing support from environmentalists nationally. From the 1972 federal election onwards, environmental policies became a staple of federal parties in Australia – and the period between 1972 and 1983 marks the efforts by three separate Prime Ministers to fully transition responsibility for the environment to Canberra.

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<sup>152</sup> Southwell, *Mountains of Paradise*, 24.

<sup>153</sup> Ian Lowe, “Global Crisis: Danger and Opportunity”, in *The Rest of the World is Watching: Tasmania and the Greens*, ed. Cassandra Pybus and Richard Flanagan (Sydney: Pan MacMillan Press, 1990), 215.

<sup>154</sup> Lowe, *the World is Watching*, 221.

### **Chapter Three**

## **The Laws of Nature: The Constitutional Legality regarding Federal Environmental Policies**

As has just been addressed in the previous section, environmentalists began to emerge in Australia during the 1970s as a strong electoral force. As early as 1972 the steadily increasing pressure that was being placed on Canberra to assume greater responsibility for the environment was increasingly difficult for either party to ignore. However, the exact constitutionality of binding environmental policies and laws set forth by the Australian federal government is, at best, ambiguous. By design, Australia governs itself under a constitution that strives to severely restrict the range of powers wielded by the federal government in exchange for a greater emphasis on state powers. The continued maintenance of sovereign integrity that was first afforded the six colonies (now states) of Australia by limited home-rule in the nineteenth century became a guiding principle of the Australian Constitution, and a necessity for the achievement of Federation in 1901. In matters concerning the Australian environment the Constitution makes no direct reference to it under section 51 (the specified responsibilities of the federal government) which, in accordance to section 107 (designating all unspecified responsibilities to the state governments), would quite clearly make matters of environmental protection solely a state responsibility. However, having capitalized on both the intentional and unintentional legal precedents set by High Court rulings, Canberra has carefully carved for itself the constitutional means to set its own national policies regarding the environment that are capable of overruling state policies and law.

This development occurred over the span of three decades and under the guidance of three separate Prime Ministers: Gough Whitlam (Labor), Malcolm Fraser (Liberal), and Bob Hawke (Labor). This chapter divides these three decades into two distinct periods that are

defined by the effectiveness of the legislation in question. The primary focus of this chapter will be the earlier of those periods, which spanned from 1974–1982 and covers both the Whitlam and Fraser governments. This period is marked by the establishment of a legislative precedent by both governments in setting a national environmental policy, effectively entrenching Canberra’s constitutional capability to do so. The latter of these two periods spans from 1983 to present and was marked by the sustained growth of environmental legislation set by Canberra and upheld by the High Court. This chapter touches on early legislation from the Hawke government passed in 1983 as it delineates the two periods, but will otherwise maintain its focus on the earlier period and the struggle to effectively set the precedents that were built upon by the Hawke government and its successors.

The purpose of this second section is to dissect the legislation passed during these two periods in greater detail, with a specific focus on the way in which the legislation in question was designed to grant Canberra the legal ability to intervene in issues that would otherwise fall under the responsibilities of the states, creative legislating that is made possible in Australia by three key historical developments. The transfer of the power to interpret the constitution is one of these. Originally granted to the Parliament in Canberra under the Constitution,<sup>155</sup> it was decided that this responsibility would be passed to the High Court upon a sober second reflection by Canberra that was then made possible through the Judiciary Act of 1903.<sup>156</sup> Prior to the enactment of this legislation the Constitution only granted the High Court the authority to rule on matters related to international treaties, foreign representatives, and individuals who were

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<sup>155</sup> Commonwealth Constitution, Section 76, Subsection 1.

<sup>156</sup> The Judiciary Act, 1903, Section 78, Subsection B. It should be noted that while this legislation has ceded authority over the interpretation of the Constitution to the High Court it has, against the recommendations of the 1998 Constitution Convention, yet to be constitutionally enshrined. Despite this, precedents have enshrined this responsibility with the High Court, leaving Canberra with little to no influence over the rulings of the court. Rather, this unique feature of the Constitution has been summarized as an “odd fact of history”. Australia Law Reform Commission, “The Judicial Power of the Commonwealth.” *Australian Legal Information Institute* DP 64 (2000), 46.

involved in lawsuits against the Commonwealth or one of the States.<sup>157</sup> Another of these historical developments was the unexpectedly rapid growth of grassroots environmental movements across the country throughout the 1970s (especially in Tasmania and Queensland). As shown in the first half of this paper, these movements gave the three successive Canberra governments in question a clear mandate to expand federal environmental responsibilities.

It should be noted that there does exist a fourth development which played a key role in the transition of responsibility for environmental policies: the international environmental movement. As will be discussed later in this chapter, several key international treaties concerning international commitments for environmental protections, which were themselves the result of pressures from grassroots activists around the world, form an important foundation on which Canberra was able to capitalize on its international affairs power to assert more control over the environment. The legal means by which these treaties provided constitutional legitimacy for national environmental policies will be discussed here, but as this thesis is focused on domestic developments, further unpacking of the historical roots of these treaties will be largely bypassed.

Ultimately however, this mandate to act on environmental issues would have been impossible to pursue without the monumental High Court ruling of the infamous Engineers Case in 1920, which will be the first of these key developments that this section this paper will look at. Better known as *Amalgamated Society of Engineers v Adelaide Steamship Co Ltd*, the case, at the time, was described by the press as concerning “whether the Commonwealth Arbitration Court has the power under the constitution [via Section 51 Article 35] to fix wages & conditions of labour of certain employees of the State government of Western Australia [in contrast to

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<sup>157</sup> Commonwealth Constitution, Section 75.

wages and conditions set by the Federal Government]”.<sup>158</sup> The final ruling rejected the practice (or notion) that the High Court should approach cases with a primary concern for powers reserved, or that could be seen as reserved, for the State and instead ruled that the High Court should read the division of powers as literal. This meant that the federal government could now infringe on state powers so long as it was done in conjunction with its own powers, asserting the supremacy of federal law over state law.<sup>159</sup> While this ruling did not exclusively grant additional powers to Canberra, nor remove powers from the state, it did grant Canberra the freedom to draft legislation that could usurp state powers provided the legislation fell in line with a literal interpretation of the defined powers of Canberra (as set out in section 51 of the Constitution). Prior to 1920 this would have been near impossible for Canberra to do since the High Court maintained an emphasis on state powers and rights during the considerations of their rulings.<sup>160</sup> Admittedly, subsection 9 (quarantine) and 10 (fisheries in Australian waters beyond territorial limits) of section 51 do provide a more direct means for Canberra to set national environmental policy. However, most national environmental policy since the 1970s has been set by the creative interpretation of section 51 of the constitution through the precedent established by the Engineer’s Case, among which there are two particularly prominent powers that form the primary foundation of national environmental policy: the power regarding trade and commerce (Section 51, Subsection 1), and the power regarding external affairs (Subsection 29). For this reason, we’ll consider both of these powers and their associated legislation independently.

### *Political Motivation for the Adoption of Environmental Policies*

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<sup>158</sup> The Argus, 1 September 1920.

<sup>159</sup> Amalgamated Society of Engineers v. Adelaide Steamship Co Ltd, 1920

<sup>160</sup> Cheryl Saunders, “The Constitutional Division of Powers with Respect to the Environment in Australia” in *Federalism and the Environment: Environmental Policy Making in Australia, Canada, and the United States*, ed. Kenneth M. Holland, F. L. Morton, and Brian Galligan (Westport: Greenwood, 1996), 60.

Much has already been said of the intense pressure that was put on political parties, both at the state and the federal level, to assume responsibility for the continent's environment. However, there were additionally some internal pressures within both parties. The Labor Party felt the greatest pressure going into the 1972 federal election as it was seeking to end the twenty-three year period of consecutive Liberal governance (1949 – 1972). Much of Labor's electoral failures during the post-World War Two period were tied to the party's insistence that it maintain a national policy that was oriented towards a working-class base that was increasingly shrinking as the blue collar middle class demographic grew and Australia became increasingly urbanized (moving the party towards the middle class was a highly controversial strategy and one which made Whitlam highly unpopular within the country's trade union which had up to this point been the primary base of the Labor Party).<sup>161</sup> Labor ran in 1972 on a platform that was largely absent of promises to environmentalists. Rather, Whitlam had made ending Australian involvement in the Vietnam War the main focus of the party's platform during the campaign along with establishing a national health insurance scheme and increasing Canberra's influence and spending in education (these last two points signalling Labor's intent to restructure the federal relationship in Australia).<sup>162</sup>

Whitlam had openly concluded that the only way for the Labor Party to achieve its many electoral promises was by means of constitutional manipulation, frequently citing Section 96 of the constitution as a primary means to achieve both educational and healthcare reform

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<sup>161</sup> Tom Bramble and Rick Kuhn, *Labor's Conflict: Big Business, Workers, and the Politics of Class* (New York: Cambridge University Press, 2011), 87; Doug Aiton and Terry Lane, *Digest of Australia's Federal Elections since 1901* (Essendon North: Pennon Publishing, 2002), 105 – 106; Nick Cater, "Hearts and Minds: The Meaning of 'It's Time'" in *The Whitlam Legacy*, ed. Troy Bramston (Sydney: Federation Press, 2013), 52 – 53.

<sup>162</sup> Jenny Hocking, *Gough Whitlam Volume One: A Moment in History* (Carlton: Miegunyah Press, 2014), 393 – 395.

(conditional financial grants to State governments).<sup>163</sup> As has been previously mentioned, Whitlam was hesitant to challenge Tasmania's environmental controversies due to the federal party's ties with the governing Labor Party of Tasmania, but through this use of constitutional manipulation, as will be detailed shortly, Whitlam did successfully challenge Premier Bjelke-Peterson's Country-National Party of Queensland, obtaining almost total responsibility for the Great Barrier Reef from the state government in Brisbane. In 1983 the Labor Party's new leader Bob Hawke, capitalizing on the perception that Labor governments made for better stewards of the environment took advantage of increasing environmental controversies gripping the Australian public's attention in Tasmania (the damming of the Franklin River) and the Northern Territory (the mining of Kakadu National Park) to name only a few. Much to Labor's reward, Hawke ran on a promise for Canberra to assume responsibility for the protection of the Australian environment, making the issue a key piece of the party's platform.<sup>164</sup>

The need to secure a sizable new voting demographic in 1972 was not a problem wholly unique to the Labor Party, but the Liberal Party of Australia was also exposed to very similar pressures. Environmentalists and environmental organizations based in Queensland and concerned for the future of the Great Barrier Reef had first begun to heavily petition the federal Liberal government of Harold Holt in 1967 for Canberra to assume responsibility for the protection of the Reef.<sup>165</sup> But while Holt and his Liberal successors John McEwan, John Gorton, and William McMahon were all sympathetic to the plight of the Great Barrier Reef the party was largely unwilling to challenge Premier Bjelke-Peterson's voracious defense of state rights.<sup>166</sup> But

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<sup>163</sup> Ross McMullin, *The Light on the Hill: The Australian Labor Party 1891 – 1991* (Melbourne: Oxford University Press, 1991), 290.

<sup>164</sup> Bob Hawke, *The Hawke Memoirs* (London: William Heinemann Ltd, 1994), 396 – 397.

<sup>165</sup> Iain McCalman, *The Reef: A Passionate History* (New York: Scientific American / Farrar, Straus and Giroux, 2013), 232 – 233.

<sup>166</sup> McCalman, *The Reef*, 232 – 233.

by the time that the Liberals were returned to power under Malcolm Fraser there was an understanding that the party needed to try and placate the concerns of environmentalists as environmental issues were becoming a greater concern for urban voters (particularly the ever-contentious issue of nuclear power). The Whitlam Government's successful challenge to Brisbane's assertion of responsibility for the Reef falling under the auspices of 'state rights' offered the Fraser Government the constitutional means to adopt a similar view towards responsibility for the Australian environment and uphold its own, similar environmental policies while pursuing new initiatives too.<sup>167</sup>

As has been heavily stressed in this section, as well as the previous chapter of this paper, both the federal Liberal and Labor governments found themselves under extensive pressure from grassroots organizations to assert federal responsibility for the well-being of the Australian environment. Furthermore, both parties had begun to recognize the potential of this initiative to secure a sizable voting bloc. However, the actual transition of responsibility for the environment was no simple matter. Federal control of the environment was largely viewed by state governments as an affront to state rights and its implementation required an intelligent and careful manipulation of constitutional ambiguities and loopholes. The vast majority of federal legislation concerning the environment was passed through the use of two specific articles of power reserved for the federal government under Section 51 of the constitution. The trade and commerce power (Section 51 Article 1) and the external affairs power (Section 51 Article 29). What follows is a detailed analysis of how the Whitlam, Fraser, and Hawke governments were able to make use of these powers to set precedents that resulted in an informal transition of responsibility for the environment from the state governments to Canberra.

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<sup>167</sup> Malcolm Fraser, *The Political Memoirs* (Carlton: Miegunyah Press, 2010), 559 – 560.

*Sec. 51 (1): Trade and Commerce with other countries and among the States*

Matters of trade and commerce are the integral foundation on which the Constitution is built. They formed the driving force behind the push for Federation in 1901 and were the overwhelming focus of the biannual meetings of the Federal Council of Australasia (the predecessor of the Australian Commonwealth).<sup>168</sup> This is prominently reflected throughout the Constitution, specifically through Chapter IV which deals exclusively with matters of finance and trade. At 25 clauses in length, Chapter IV is one of the largest and most detailed chapters in the Constitution and ultimately grants Canberra full power to impose customs and duties, collect taxes, and heavily regulate interstate trade to ensure that “whether by means of internal carriage or ocean navigation, [it] shall be absolutely free”<sup>169</sup> Because of this and despite its traditional emphasis on state powers and rights, the High Court has almost always ruled in favour of Canberra’s power over trade and commerce. This is not to say that there was not a near constant barrage of challenges to the exact extent of Canberra’s authority in the national economy during the first decade of the Commonwealth’s history, but many of the early judicial rulings, such as *New South Wales v Collector of Customs for New South Wales* (1908) and *Australian Steamship Ltd v Malcolm* (1914), enshrined a high degree of federal authority in matters of the Australian economy having to do with trade.<sup>170</sup>

Because federal authority over trade and commerce was usually upheld by the High Court even prior to its ruling on the Engineer’s Case, it naturally emerged almost immediately as a key element for Canberra to establish effective environmental policy. This development first

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<sup>168</sup> Frank Welsh, *Australia: A New History of the Great Southern Land* (New York: Overlook Press, 2006), pg 282; W.G. McMinn, *Nationalism and Federalism in Australia* (Melbourne, Oxford University Press, 1994), pg 90 – 93.

<sup>169</sup> Constitution of the Commonwealth of Australia, Chapter 4, Section 92.

<sup>170</sup> These rulings acted as something of an early precedent before the Engineer’s Case. For example, *Attorney-General of New South Wales v Collector of Customs for NSW* grants Federal legislation authority over State legislatures regarding customs duties vis-à-vis the power over trade and commerce. *Australian Steamships Ltd. V Malcolm* grants Canberra the right to regulate the rights and obligations of people engaged in commerce.

began under Gough Whitlam, who had inherited two particularly prominent environmental controversies: the mining of the Great Barrier Reef in Queensland and the damming of the Serpentine Valley in Tasmania. Whitlam had been elected on a platform that made relatively few promises regard these controversies and as such was uncertain of the full extent to which Canberra could interject. His first legislation on the issue, The Impact of Proposals Act of 1974, was therefore something of an experiment for the development of national environmental policy. It established federal guidelines for the conduct of environmental impact statements (EIS) for commercial operations and projects as well as the procedure in which federal inquiries into such matters would be performed.<sup>171</sup> However, because responsibilities regarding the environment were still regarded as a matter of state policy rather than national policy, the legislation could only be applied to projects that required financing from Canberra.<sup>172</sup> Canberra could use its power to make financial grants to the states (section 96) to strong arm state governments into submitting to a federal EIS or inquiry (as the Whitlam government attempted to do with Queensland in 1975), but these were rarely effective and under Whitlam, both the Queensland and Tasmanian governments successfully resisted federal EIS pressures.<sup>173</sup> Controversy surrounding Whitlam's use of environmental impact statements was not just limited to Tasmania and Queensland. For example, following pressure from a local citizen's group in the Canberra Capital Territory to issue an EIS for the construction of a communications tower being built by Australian Post on Black Mountain, Whitlam took pressure for allowing the EIS to make use of

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<sup>171</sup> Environmental Protection (Impact of Proposals) Act 1974, Section 5, Subsection 1 (Requirement for EIS); Section 14 (Guidelines for Inquiry).

<sup>172</sup> Environmental Protection (Impact of Proposals) Act 1974, Section 5, Subsection 2.

<sup>173</sup> Fraser, *The Political Memoirs*, 559; Greg Buckman, *Tasmania's Wilderness Battles: A History* (Crow's Nest: Allen & Unwin, 2008), 29 – 36.

selectively chosen composite photographs which minimized the impact of the tower on native flora.<sup>174</sup>

Further compounding the difficulties of making EIS legislation binding on state government policies was the fact that many states had already established their own variation of environmental impact statements. Among the most comprehensive of these acts was the State Pollution Control Commission enacted by New South Wales in 1974, but Tasmania had also enacted its own variation of this legislation under the Environmental Protection Act of 1973. These state variations were seldom effective. The Tasmanian legislation, for example, included an exemption that allowed the Mount Lyell Mine, the largest industrial polluter in the state, to continue its practice of releasing industrial tailings into the already heavily polluted Queen River. This omission allowed the Mount Lyell Mine to continue dumping approximately 2,000,000 tonnes of tailing discharge into the Queen River on an annual basis without ever having to file an EIS on its operations.<sup>175</sup> The presence of state variations in environmental impact statements, the majority of which predated federal legislation, made it difficult for Canberra to establish a binding precedent for the use of its own EIS even in the rare cases in which it could be applied.

It is easy to read the early failures of a federal EIS system as evidence of Canberra's inability to protect the Australian environment from state policies, a view that much of the electorate likely held following the tenure of the Whitlam government. However, most of the failings of the EIS system are more attributable to the timidity of Gough Whitlam to intervene in matters of the environment. While the Whitlam government was working to redefine the very nature of Australian federal relations, it found itself limited both by the considerable range of reforms it had sought to enact (with issues such as education and social security commanding

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<sup>174</sup> William J Lines, *Taming the Great Southern Land: A History of the Conquest of Nature in Australia* (Berkeley: University of California, 1991), 233 – 234.

<sup>175</sup> Buckman, *Tasmania's Wilderness Battles*, 157 – 158.

greater focus and attention) and the limited number of ‘friendly’ state governments (only South Australia and Tasmania were under Labor governments at this time).<sup>176</sup> Further weakening the effectiveness of Canberra at this time was Whitlam himself, who was frequently criticized for his difficulties, at times bordering on incompetence, in governing. The veteran political correspondent Wallace ‘Wal’ Brown praises Whitlam as having “rivalled [former Prime Minister Robert] Menzies in his passion for the House of Representatives and ability to use it as his stage” yet adds heavy criticism towards “his parliamentary skills [that] were rhetorical and not tactical. He could devise a strategy and then often botch the tactics in trying to implement that strategy”.<sup>177</sup> This critique, viewed in relation to the full range of his reform promises and limited political allies at the state level, perfectly captures Whitlam’s inability to establish an *effective* environmental legacy in Canberra.

However, rather than reverse these policies Whitlam’s successor as Prime Minister, Malcolm Fraser, built upon many of these pieces of legislation and their potential to set important precedents for Canberra. Admittedly, Fraser made less use of the trade and commerce clause. He did however make use of it to strengthen Whitlam’s existing legislation, especially in regards to the ever growing controversy surrounding the Queensland government’s proposal to engage in mining activities on the Great Barrier Reef. Fraser had witnessed the limitations of this legislation if not properly defended on constitutional grounds, a theory he would put to test early

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<sup>176</sup> Neal Blewett, “Review of ‘Gough Whitlam in and out of Government’” in *Australian Book Review*, no. 346, November 2012. Blewett offers a unique insight into this issue. The Tasmanian-born representative for South Australia in Canberra from 1977 – 1994 served as a high-ranking Minister under the government of Bob Hawke and as High Commissioner to the UK from 1994 – 1998. In his review of Whitlam, who’s policies were dramatically expanded under the Hawke government, Blewett highlights the importance of Whitlam’s poor relationship with the states as a key component to the inevitable failure of his government, noting that Whitlam tried to maintain strong relations with Tasmania and South Australia but that eventually even these labour-controlled States turned on him (South Australia specifically).

<sup>177</sup> Wallace Brown, *Ten Prime Ministers: Life Among the Politicians* (Sydney: Longueville Books, 2002), 120. Brown is a highly distinguished commentator of Australian politics. Throughout his career he covered 17 Federal elections and, as the title of his book would suggest, 10 Prime Ministers serving in the Federal Parliamentary Press Gallery from 1961 – 1995.

into his first term as Prime Minister when his government challenged the mining policies of the Queensland government. Following the recommendations of the EIS that had been instigated by the Whitlam government in 1975 (and boycotted by Premier Bjelke-Peterson) Fraser banned the export of mineral sands in 1976.<sup>178</sup> Fraser achieved this through a provision set up in the Customs Act of 1901 that permitted the Governor-General to ban ‘the exportation of goods absolutely’<sup>179</sup>. It is essential for us to understand the intentions of the Constitution’s authors in regards to this power in order for us to fully appreciate the motivations of the Fraser government and the magnitude of the precedent that this action left. The ability of Canberra to outright ban the exportation of any good is admittedly quite broad and uncharacteristic of the Constitution, even when it falls under the scope of ‘trade and commerce’. Historically, this power was reserved to Canberra in order to prevent the over exploitation of Australia’s resources.<sup>180</sup> Fraser, however, used this power under highly controversial circumstances. It quite clearly had nothing to do with the health of the sand mining industry itself but was rather a measure to cripple the Great Barrier Reef mining industry and to make Canberra’s policy towards the ecosystem effective against state intentions. Because of this it was immediately challenged in the High Court.

*Murphyores Inc Pty Ltd v Commonwealth* became an interesting, if little discussed, example of the legacy the Engineer’s Case has left on the Australian judicial system, and was an essential ruling for Canberra to be able to complete its transition of environmental responsibility. Despite the lease issued to Murphyores by the Queensland government for mining rights on Fraser Island, Canberra had stepped in to halt all further exploration on the island until an EIS (that Queensland was boycotting) was completed. Murphyores responded to this by challenging

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<sup>178</sup> Council Decision 1750 & 1794 (November 9<sup>th</sup>, 1976); Council Decision 2094 (December 17<sup>th</sup>, 1976).

<sup>179</sup> Customs Act, 1901, Section 112, Subsection 2A

<sup>180</sup> Gough Whitlam, *The Whitlam Government 1972 – 1975* (Markham: Penguin Publishing, 1986), 240.

both the constitutional validity of Canberra's actions and of the EIS itself. Had such a case been brought to the High Court prior to the 1920 ruling on the Engineer's Case, Canberra would have almost certainly been overruled due to its clear infringement on a policy that quite clearly falls under state authority. However, Fraser had made this decision via the clearly defined power granted to the federal government by the Custom's Act (Section 112, Subsection 2A), which was passed in 1901 to better clarify the full scope of the trade and commerce power and whose constitutional validity had already been upheld by the High Court in many previous cases. Because of this the High Court unanimously ruled that both the EIS and the government's actions were a valid exercise of the trade and commerce power of Canberra.<sup>181</sup> More importantly, the High Court further ruled that the motivation and/or intent of Canberra's legislation was ultimately irrelevant due to its adherence to constitutional divisions of power.<sup>182</sup> This ruling was not only an early victory for federal environmental policy, but an early lesson in how constitutional powers could be re-appropriated by Canberra to redirect state environmental policy.

Eight years later, Fraser was able to draw upon the trade & commerce power along with the external affairs power and quarantine power of Canberra to set a monumental precedent for the federal government by drafting one of the most effective pieces of environmental legislation in Australian legal history. The Wildlife Protection (Regulation of Exports and Imports) Act of 1982 was passed by Canberra in conjunction with its signing of the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES), that the Fraser government had ratified in 1976.<sup>183</sup> Drawing off the precedent that had been set in the *Murphyores Case* this legislation granted Canberra the sweeping power to regulate/prohibit trade in red listed species (a

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<sup>181</sup> *Murphyores Inc Pty Ltd v Commonwealth* (1976).

<sup>182</sup> *Murphyores Inc Pty Ltd v Commonwealth* (1976).

<sup>183</sup> Wildlife Protection (Regulation of Exports and Imports) Act 1982, Section 5, Subsection 1A.

designation issued by a director appointed exclusively by Canberra)<sup>184</sup>. This legislation dramatically expanded the scope of the precedent set by the Murphyore Case to allow Canberra the authority to set policy regarding the protection of specific species and regulation of pollutants, both of which are cornerstones of environmental policymaking. Successive governments following Fraser took note of this precedent and wasted no time in making full use of it to the advantage of Canberra.

Fraser's immediate successor, Bob Hawke, solidified the transition of environmental responsibility from the states to the federal government. Hawke was swept into power through a decisive electoral victory in 1983 in which he campaigned on what was termed the 'New Federalism' policy. Marketed to the public as a policy that would bolster the economy and increase employment opportunities, Hawke intended to achieve these promises through an aggressive and effective restructuring of the federal system that favored Canberra as policy director and was built upon the kinds of loopholes discussed in this chapter.<sup>185</sup> In fact, in the speech made to the National Press Club in which he introduced the Australian public to this policy initiative, Hawke exclusively identified as one of the two objectives of New Federalism the establishment of a "process to explore and map the areas where co-operation for common objectives is not only desirable but realistically achievable".<sup>186</sup> This same speech also highlights as the second of the two objectives of the New Federalism policy the importance of "establishing in the public mind the urgency of the need to change".<sup>187</sup> Hawke made no attempt to hide his intentions for federal reform and his sizable mandate from the 1983 election gave him the legitimacy to pursue such goals.

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<sup>184</sup> Wildlife Protection (Regulation of Exports and Imports) Act 1982, Section 17 – 18.

<sup>185</sup> Hawke, *The Hawke Memoirs*, 528 – 529; W.G. McMinn, *Nationalism and Federalism in Australia* (Melbourne, Oxford University press, 1994), 282.

<sup>186</sup> Hawke, *Hawke Memoirs*, 529.

<sup>187</sup> Hawke, *Hawke Memoirs*, 529.

In the pursuit of further centralizing authority for the setting of environmental policies in Canberra Paul Keating, Bob Hawke's successor, further capitalized on this precedent set by Fraser under the trade and commerce power by passing the Endangered Species Protection Act. This legislation greatly expanded the scope of the Wildlife Protection (Regulation of Exports and Imports) Act by introducing the concept of an "ecological community" into Australian legislation. Defined as an "integrated assemblage of native species" that "inhabits a particular area in nature", this concept expanded federal protections to entire ecosystems considered to be endangered (again, as assessed by a Canberra appointed director), and granted the federal government the power to supersede state policies and regulations and directly intervene with economic activities (i.e. resource extraction and industrial polluters) that operate in environments under such designation.<sup>188</sup> This section in particular is more interested in the identifications of ecological communities. The act itself is divided into 176 sections each of which go into considerable detail for dealing with responses to activities which may be endangering flora and fauna or otherwise outline the procedures of federal management and recovery programmes. For example, Section 79 reinforces the use and issuing of a federal EIS while Section 117 specifically concerns activities within the Great Barrier Reef National Marine Park.<sup>189</sup> This legislation was further expanded in 1999 by the Environment Protection and Biodiversity Conservation Act, but as this falls outside the early transition period this analysis of Section 51 Article 1 will conclude here, as this paper is only concerned with the establishment of a foundational precedent for future federal legislation to be built upon.

Regulation of internal and external state trade is traditionally viewed as the driving impetus for Federation. Therefore, it comes as no surprise that the trade and commerce power, as

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<sup>188</sup> Endangered Species Protection Act 1992, Section 6.

<sup>189</sup> Endangered Species Protection Act 1992, Section 6. For definition of "ecological community", see definitions under Endangered Species Protection Act 1992, Section 4.

defined by Section 51 Article 1 of the constitution and reinforced by the 1901 Customs Act, is one of the most well defined federal powers in Australia. The interpretive clarity of this clause that stems from both the Customs Act of 1901 and various High Court rulings, many of which predate the Engineers Case, makes this clause of considerable use for Canberra in the setting of national environmental policy.

*Section 51 (29): External Affairs*

There is no other prerogative of Canberra's that has been utilized more frequently and, just as important, more successfully than that of external affairs. The effectiveness of this power in relation to Australian environmental policy stems from the exposure to external attitudes, pressures, and approaches regarding environmental law and conservation that can be applied to the Australian state through the signing of treaties and conventions. In this sense, Canberra's role in external affairs has allowed foreign approaches to environmental politics to become applicable or at the very least, influential in Australia.

Precedents set through international law were the basis of "The Great Barrier Reef: Legal Aspects", a paper presented to the Symposium on the Future of the Great Barrier Reef by former President of the ICJ Sir Percy Spender in 1969. Spender's paper highlights several historical precedents implying that the internal waters of Queensland (and other states) only extend to three miles off the mainland. At the same time, Spender draws heavily upon the Australian ratification of the UN Convention on the Territorial Sea and the Contiguous Zone, one of the four international treaties that emerged from the United Nations Convention on the Law of the Sea (UNCLOS I), as a way to effectively suggest that the Great Barrier Reef is located within *Australian* territorial waters rather than *Queensland's* territorial water, making it subject to

legislation from Canberra rather than Brisbane.<sup>190</sup> Spender derails Brisbane's claim to ownership of the Great Barrier Reef by citing both the legal clarification of the 1855 State Constitutions as being intended to apply only to the mainland of the states in question, effectively nullifying the Coastal Island's Act while simultaneously drawing international precedent to his side by citing a similar Supreme Court Case in Canada regarding British Columbia.<sup>191</sup> Part of what makes Spender's argument so effective is that it does not attempt to impose on Canberra a responsibility for environmental stewardship, but rather manipulates prior precedents and High Court rulings to grant the Federal Government a means to fill this role. To be clear, the territorial distinctions made by the treaties of UNCLOS I are primarily concerned with the exclusive rights of states for economic activity (with one notable exception being the Convention on Fishing and Conservation of the Living Resources of the High Seas). The Spender Paper became an important early guide for Canberra in setting environmental policies and was heavily drawn upon by both the Whitlam and Fraser governments in drafting their own legislation regarding the conservation of the Great Barrier Reef.<sup>192</sup> In Whitlam's own memoirs he personally recounts the importance of a seminar at the University of Sydney given by Spender regarding his paper and his reference to precedents upheld by the American and Canadian Supreme Court are direct references to Spender's paper.<sup>193</sup> Furthermore, Spender's influence was likely not limited solely to Whitlam and the Labor Party's policy makers. As Minister of Science Malcolm Fraser was invited to speak at the same Symposium as Spender, and the Fraser government's policies regarding federal jurisdiction over Australia's territorial waters mirrored Spender's conclusions. Fraser committed the Liberal Party to the conservation of the Great Barrier Reef, proclaiming

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<sup>190</sup> Percy Spender, "The Great Barrier Reef: Legal Aspects" in *The Future of the Great Barrier Reef: Papers of an Australian Conservation Foundation Symposium 3* (1969): 27 – 30.

<sup>191</sup> Spender, *Great Barrier Reef*, 27 – 30.

<sup>192</sup> Gough Whitlam, *The Whitlam Government: 1972 – 1975* (Ringwood: Penguin Publishing, 1986), 530 – 531.

<sup>193</sup> Whitlam, *The Whitlam Government*, 530 – 531.

that “in so far as the Commonwealth has the power, it will use this power to prevent the reef’s being despoiled”.<sup>194</sup>

One of the earliest pieces of legislation passed by the Whitlam government, which was one of the first pieces of legislation passed by the federal government for the purpose of setting an environmental policy, was the Seas and Submerged Lands Act of 1973, that was in essence a second attempt at the Territorial Sea and Continental Shelf Bill that had found fierce opposition from the state governments and forced John Gorton to step down from the Prime Minister’s office. This act complies with UNCLOS I and concedes to Canberra the sovereign control of the territorial sea bed and all of its resources (the issue of great contention) beyond the three mile limit of the state’s internal waters.<sup>195</sup> Naturally, this legislation was met with an immediate challenge in the High Court when all six states challenged its legitimacy in *New South Wales v Commonwealth* (better known as the Seas and Submerged Lands Case). The High Court ruling, while closely divided, was ultimately in favour of Canberra and much like the *Murphyores Case* the following year, it set an important precedent in Canberra’s favour. The High Court ruled that federal sovereignty over the continental shelf, while still a relatively young concept (having only been recognized since 1945) was an established part of international law and therefore within the realm of Canberra’s external affairs power.<sup>196</sup> Seeking to establish a greater degree of clarity in the legal record Chief Justice Garfield Barwick defined the extent of the external affairs power as being applicable to anything “which in its nature is external [to Australia]”.<sup>197</sup>

With the sovereignty of Canberra’s territorial waters, and by extension the Great Barrier Reef, having been firmly established by international and national law the Whitlam government

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<sup>194</sup> Fraser, *The Political Memoirs*, 177 – 178.

<sup>195</sup> Seas and Submerged Lands Act, 1973.

<sup>196</sup> *New South Wales v Commonwealth* (1975).

<sup>197</sup> *New South Wales v Commonwealth* (1975).

was free to enact more blatant conservation oriented legislation. The first and best known of these was the Great Barrier Reef Marine Park Act of 1975 that established the reef as a national park, albeit one administrated outside the scope of the National Parks Authority (that had itself been created in 1975) and under its own Great Barrier Reef Marine Park Authority (MPA). The legislation identifies the whole of the ‘reef region’ as part of the Great Barrier Reef Marine Park but also grants the Governor-General the right to declare any additional territory within the reef area, that may for whatever reason not be included within the original park, a protected area under the MPA.<sup>198</sup> Furthermore, while the legislation does provide for a degree of reconciliation with Brisbane by granting Queensland a shared role in the administration of the MPA, it also shows a degree of awareness to the commercial pressures facing the reef and restricts the activities within the park to those of an educational or recreational nature.<sup>199</sup>

The successful application of federal authority over territorial waters as a means of establishing national environmental policies is one of the most resounding legacies of the Whitlam government and one that was further developed by the Fraser government. For its part, the Fraser government did not seek to do away with the progress of the Whitlam government in restructuring the federal relationship of Australia, but rather sought to better develop Canberra’s authority over the states in Australian politics. Having also utilized the guidelines set out by the Spender Paper the Fraser government moved beyond the mere establishment of marine reserves and pursued a policy that ensured the health of the marine ecosystems. The Environmental Protection (Sea Dumping) Act of 1981 identified specific types of waste that could be considered harmful to the marine environment and banned their disposal in territorial waters while also

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<sup>198</sup> Great Barrier Reef Marine Park Act 1975, Section 30 (Marine Park Area); Section 31, Subsection 1 (Expansion by Governor-General). Section 31, Subsection 2 further clarifies that any expansion of the Marine Park under the Governor-General must abide by the definition of territorial waters set out by the Seas and Submerged Lands Act.

<sup>199</sup> Great Barrier Reef Marine Park Act 1975.

closely regulating the amount of non-hazardous waste that could be released to sea.<sup>200</sup> This legislation doesn't completely ignore the importance of creating spaces for conservation activity, and creates the legal guidelines for the creation of an artificial reef in territorial waters.<sup>201</sup> The High Court ruling in the Seas and Submerged Lands Case had granted full sovereignty of Australia's territorial waters to Canberra, nevertheless the Fraser government sought to further develop this precedent by citing Australia's ratification (and therefore responsibility to uphold) the 1977 London Protocol on the Prevention of Marine Pollution by Dumping of Wastes and Other Matter.<sup>202</sup> This is emblematic, not only of the authority that the external affairs power had granted Canberra, but also the uncertainty that still remained as to its full extent.

The most important aspect of the Sea Dumping Act is that its application is valid even within the coastal waters of the states. One year prior to the Sea Dumping Act, and following Canberra's victory in the Seas and Submerged Lands Case, the states called upon Canberra (in accordance with Section 51, Subsection 38 of the Constitution) to pass legislation clarifying the exact distinction between Australia's territorial waters and the internal waters of the state. The resulting Coastal Waters (State Powers) Act of 1980 uses the same arguments put forward in the Spender Paper to justify a limit of only three miles as the full extent of state 'coastal waters', while reaffirming the validity and full extent of territory granted to Canberra by the Seas and Submerged Lands Act.<sup>203</sup> In Section 1, this legislation uses "any sea that is on the landward side of any part of the territorial sea of Australia" as its definition for 'coastal waters of the state'. This is similar to the precedents and arguments utilized in the Spender Paper when distinguishing state and federal waters in a historical context, and arguing for the legitimacy of federally

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<sup>200</sup> Environmental Protection (Sea Dumping) Act 1981, Section 10A – D.

<sup>201</sup> Environmental Protection (Sea Dumping) Act 1981, Section 10E.

<sup>202</sup> Environmental Protection (Sea Dumping) Act 1981, Section 9.

<sup>203</sup> Coastal Waters (State Powers) Act 1980, Section 4.

controlled waters.<sup>204</sup> However, the Act also clarifies that within coastal waters the state has full authority over the regulation of all industrial, commercial, and recreational activities, seemingly free from any interference from Canberra.<sup>205</sup> It is remarkable, then, that only one year after reaffirming the states' prerogative in their own coastal waters Canberra had once again impeded on state authority when it passed legislation that was valid in both federal and state waters. Nevertheless, the validity of this legislation was guaranteed through the London Protocol and the responsibilities it tasks Canberra with (in this case reducing the dumping of dangerous materials into marine environments).<sup>206</sup>

That obligations stemming from international treaties could now grant Canberra greater authority over state powers became a key component in the legitimization of national environmental policies. The considerable growth in international attitudes towards environmental stewardship that began in the late 1980s resulted in a greater number of treaties for Australia to ratify, allowing the primary focus of the country's national policies to expand beyond the scope of the Great Barrier Reef.

Despite these developments, most environmental campaigns up until this point regarded the federal government (quite rightly) as a powerless ally in the fight for conservation. In his book "Tasmania's Wilderness Battles", Greg Buckman notes that the "key difference" in the failure to fight the Lake Pedder damming versus the successful stopping of the Franklin River dam lay in the failure of the Pedder protesters to approach Canberra, while an early appeal was made by the Franklin protesters to the federal government.<sup>207</sup> In the case of the Franklin River,

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<sup>204</sup> Spender, *Great Barrier Reef*, 35 – 36.

<sup>205</sup> Coastal Waters (State Powers) Act 1980, Section 5.

<sup>206</sup> The Sea Dumping Act even provides a provision that should the Minister be "satisfied" that individual state law is effective enough in meeting the goals of the London Protocol the full extent of the legislation may be eased in those specific coastal waters. Environment Protection (Sea Dumping) Act 1981, Section 9, Subsection 1.

<sup>207</sup> Greg Buckman, *Tasmania's Wilderness Battles* (Crows Nest: Allen & Unwin, 2008), 29 – 30; claim is further reinforced on 45, 57.

Canberra had successfully stopped the Gordon-below-Franklin dam project by invoking its obligations to protect its World Heritage Sites (of which, the national parks of central Tasmania, where the river was located, were collectively listed on the World Heritage List as the ‘Western Tasmanian Wilderness’). The Whitlam government, at the advice of Barry Cohen, Minister for Environment, ratified the UN Convention Concerning the Protection of the World’s Cultural and Natural Heritage (the treaty that created UNESCO World Heritage Sites) in 1974. Cohen had urged the ratification to the Prime Minister due to his belief that federal environmental laws would be less likely to be challenged in the High Court if they were supported by international conventions.<sup>208</sup> The fact that Australia’s World Heritage Areas were designed to serve a secondary purpose as wilderness reserves was an open secret as all three of the country’s first inscriptions, listed by the Fraser government in 1981, were large tracts of potentially threatened wilderness. These include the Great Barrier Reef, Kakadu, and the Willandra Lakes Region – all of which were threatened by mining interests and all of which UNESCO recommended enlarging in order to maintain healthy ecosystems.<sup>209</sup> The national parks of Western Tasmania were added the following year for the purpose of curtailing hydro electric development in the region.<sup>210</sup>

While both the Whitlam and Fraser governments had seen the potential of utilizing international treaties in the pursuit of environmental policies, the extent to which Canberra could protect the environments of World Heritage Sites was at this time still questionable, unchallenged, and most importantly lacking legal clarification. These were the weaknesses the Hawke government sought to address in its passing of the World Heritage Properties Conservation Act in 1983. It was one of the most blatantly daring pieces of federal environmental legislation in Australia it gave Canberra, citing its obligations under international

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<sup>208</sup> Gough Whitlam, *Abiding Interests* (St Lucia: University of Queensland Press, 1997), 101.

<sup>209</sup> UNESCO World Heritage Committee, Fifth Session (October 1981), Title VIII, Section 15.

<sup>210</sup> Whitlam, *Abiding Interests*, 101 – 102.

treaties, the power to make several different kinds of proclamations relating to the conservation of specific sites. Simultaneously, this act also made use of the federal government's corporations power (Section 51, Subsection 20) and the acquisition of property power (Subsection 31) to ban certain activities within designated areas and expand said areas in size. In this regard this legislation was something of a legal masterpiece, drawing three different distinctions of the types of proclamations that could be made, and is worth greater deconstruction.

The first of these types of proclamations, which was easily the most defensible, concerned the protection of World Heritage *nominated* sites under Australia's obligations to international treaties.<sup>211</sup> Should the Governor-General (at the recommendation of the Prime Minister) be satisfied that such sites were at risk of being "damaged or destroyed", then he/she could issue a proclamation with respect to halting the destructive activities occurring within the site (halting the construction of the Gordon-below-Franklin dam in the Western Tasmanian Wilderness).<sup>212</sup> From here, the guidelines for unlawful acts set under section 9 could be used to build a comprehensive conservation strategy for the region through strategic limitations (e.g. the banning of logging to encourage reforestation). In ensuring that there was an accurate reflection of government policies with these proclamations, every proclamation issued by the Governor-General had to be approved by both houses of the legislature in Canberra.<sup>213</sup>

The second form of proclamation was the most controversial and thus the most limited in effectiveness. It applied to sites outside the coverage of the UNESCO treaty, allowing the Crown to identify threatened sites but only granting Canberra the power, under the banner of its corporations power, to ban activities being performed by foreign and/or trading corporations in

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<sup>211</sup> World Heritage Properties Conservation Act 1983, Section 6 (definition of specific properties in question); Section 9 (unlawful acts within designated areas).

<sup>212</sup> World Heritage Properties Conservation Act 1983, Section 6, Subsection 3.

<sup>213</sup> World Heritage Properties Conservation Act 1983, Section 15, Subsection 1.

the area.<sup>214</sup> The third form of proclamation allowed Canberra to expand its reach in a similar manner (as well as ban similar activities) beyond the scope of the UNESCO treaty by allowing the Crown to interfere in sites of “particular significance to the people of the Aboriginal race”.<sup>215</sup> These three tiers of federal intervention in state and private actions effectively granted Canberra a *de jure* power to set its own overriding national environmental policies without the need to rescind any authority from state governments or issue any amendment to the Constitution.

The inevitable challenge laid by the Tasmanian government in the High Court, *Commonwealth v Tasmania 1983* (the Tasmanian Dams Case) resulted in the legality of Hawke’s legislation being largely upheld by a 4 to 3 ruling. Only section 8 (proclamations concerning aboriginal sites) was ruled to be unconstitutional due in part to the race power of Canberra being understood by the High Court to be applicable only to human populations and not cultural sites, but also because most sites which would otherwise fall under the definition set by Section 8 would already fall under the definition set by Section 7 making it a redundant clause.<sup>216</sup> The ruling constitutionally enshrined the World Heritage Properties Conservation Act as the crown jewel of federal environmental policies. More so, its use as a means of further centralizing political authority in Canberra falls perfectly in line with the official platform, on which the Hawke government had campaigned, on reforming the federal relationship of Australia and is one of the most effective means through which this policy was pursued.<sup>217</sup> The Hawke government had been the first to make environmental issues a key aspect of its electoral campaign, and attempted to build on the precedents set by the Fraser and Whitlam governments.

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<sup>214</sup> World Heritage Properties Conservation Act 1983, Section 10, Subsection 2.

<sup>215</sup> World Heritage Properties Conservation Act 1983, Section 8, Subsection 2.

<sup>216</sup> *Commonwealth v Tasmania* (1983).

<sup>217</sup> Bob Hawke, “National reconciliation: The Policy of the Australian Labor Party”, in *National Reconciliation: The Speeches of Bob Hawke*, selected by John Cook (Sydney: Fontana Press, 1984), 32 – 33; Bob Hawke, *The Hawke Memoirs* (London: Heinemann, 1994), 528 – 531.

Some of the most successful examples of this are found with the Ozone Protection Act of 1989 (in conjunction with Canberra's ratification of the Vienna Convention and Montréal Protocol) and the Protection of the Sea (Prevention of Pollution from Ships) Act of 1983, that was built upon the foundations of Fraser's Sea Dumping Act and greatly expand the definitions of 'hazardous materials' and the ramifications of their dumping in marine environments.<sup>218</sup> In fact, the sheer volume of legislation passed by Hawke and successive governments regarding the environment is proof of the firm establishment of environmental policy as a responsibility of the federal government, with the role of state government's environmental policies left increasingly redundant.

#### *Other Avenues for Canberra*

At the beginning of this chapter the trade and commerce and external affairs powers of Canberra were cited as the most important tools at the federal government's disposal for the successful acquisition of authoritative rights regarding environmental policy. However other avenues have been utilized by Canberra to achieve this responsibility. The fact that the World Heritage Properties Conservation Act made use of the corporations and seizure of property powers of Canberra to better affirm federal authority in issues of conservation has already been discussed. Of course various other powers have been creatively utilized by Canberra to provide, at the very least and within a minimum capacity, the ability to interfere in the setting of other environmental policies. There are far too many highly specific (and in the broader picture irrelevant) examples to list in this analysis, but the Australian constitutional scholar Cheryl Saunders notes the taxation power (section 51 subsection 2), corporations power, race legislation power (subsection 26), and seizure of property power as being of particular importance in the

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<sup>218</sup> Protection of the Sea (Prevention of Pollution from Ships) Act 1983.

federal governments repertoire of relevant powers for environmental legislation.<sup>219</sup> Also worthy of considerable attention in Saunders' opinion, due to its surprisingly extensive use by Canberra in this context, is the financial assistance to states power (Section 96), that formed the foundation of Whitlam's States Grants (Nature Conservation) Act of 1974, Fraser's States Grants (Air Quality Monitoring) Act of 1976, and Hawke's Soil Conservation (Financial Assistance) Act of 1985 to name only a few.<sup>220</sup>

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<sup>219</sup> Cheryl Saunders, "The Constitutional Division of Powers with Respect to the Environment in Australia" in *Federalism and the Environment: Environmental Policymaking in Australia, Canada, and the United States* ed. Kenneth M. Holland, F.L. Morton, and Brian Galligan (Westport: Greenwood Press, 1996), 61 – 66.

<sup>220</sup> Saunders, *Federalism and the Environment*, 67 – 70.

## **Chapter Four**

### **Conclusion: Canberra was built on the banks of a Mighty River (that drowned Hobart)**

This thesis began with a simple question, why was the outcome of the Franklin River protests so much more effective than those of the Serpentine River protests six years prior? And the answer that is reached is heavily rooted in the different levels of engagement that were taken by the federal government in both cases. There is no question that the environmental movement in its entirety was a continent-wide movement, but the prominent historical narratives that exist of this movement often identify the socio-cultural developments of Tasmania, Australia's smallest state in both population and land, as the site of the most identifiable and influential movements in this period. Both the Serpentine and Franklin River damming projects are identified specifically as keystone moments in this history of environmentalism in Australia, and suggest that these events had a greater impact on Australian society as a whole than similar movements which began at similar times across the country (such as the Save the Reef Campaign in Queensland, the Green Bans Movements in New South Wales, and the fight to save the Little Desert in Victoria). The reasoning for this is simple: that the Serpentine and Franklin Movements are reflections not only of themselves, but of the effectiveness of policies set by different governments in protecting the environment.

As this thesis has noted, the Serpentine Protestors put the vast majority of their pressure on the state government in Hobart, falling in line with the traditional divisions of federal powers in Australia which, by default, placed responsibility for the environment in the state legislatures. It is fair to say that up until this point these movements could be viewed as nothing more than a public revolt against the failure of the Tasmanian government to uphold its constitutional responsibilities. And again, as this thesis has demonstrated, the failure of Hobart to heed public demands against the Serpentine River project pushed activists to seek federal assistance in their

fight against a similar project six years later on the Franklin River. In doing so, these activists publically requested a change in the federal relationship of Australia, asking for governments to step beyond the traditional separation of federal powers. This ultimately culminated in the 1983 election of Bob Hawke and the Labor Party, which specifically campaigned on a platform of federal reform that championed the Franklin River damming as its top priority. It is this change itself that signifies the transformation of the environmental movement in Australia as one that could be understood as a public *reaction* against legislative inadequacy at the state level, and a public demand for *reform* that sought a fundamental change to the federal relationship in Australia itself.

There are two specific reasons that this thesis selected Tasmania as its specific case study. The first of these is that the state undeniably played a central role, arguably the central role, in the development of modern environmental politics in Australia. But the second point is that in looking at the development of this movement through the two different reactions to the two similar damming projects we see exactly how state governments failed to adequately address environmental concerns and why the environmental movement ultimately advocated for a change in the legislative system itself. This thesis made use of an interdisciplinary approach to better adjust the existing historical narrative so that it better understands this movement not as reactionary in nature, but rather as a force that was advocating for a fundamental change to the legislative process in the country.

### *Understanding Environmentalism in Australia as a Political Revolt*

It should be said that in selecting a specific case study for this thesis there existed a noteworthy alternative to Tasmania, the environmental movement in Queensland. As has been

stated, the clarity of the two distinct approaches environmentalists took to enlisting government action against environmental abuse is what specifically resulted in the selection of Tasmania as the ideal case study instead of Queensland. For example, while university scientists in Queensland had voiced opposition to state policy for roughly the same amount of time as those in Tasmania, activists in Queensland did not begin to engage the public until after the Lake Pedder protests began. Furthermore, Queensland's 'Save the Reef' campaign, which is addressed briefly in this thesis because it initially received greater support from the federal government than its Tasmanian counterpart, at no point lobbied the state government but rather initiated its lobbying specifically at the federal level.<sup>221</sup> The most important distinction between the environmental movements of Queensland and Tasmania, however, is that the development of an environmental political concern and cultural-consciousness can be definitively shown to be far more deeply rooted in the history of Tasmania than in its mainland counterparts, including Queensland.

Much of the first chapter of this thesis is dedicated to looking at the cultural impact of early environmental issues on the island and their role in creating a distinct and identifiable cultural association among Tasmanians, of which the extirpation of the thylacine was quite clearly the most important. It is important to identify this development as an integral part of the historical narrative, allowing us to understand the emergence of environmental politics in Tasmania through the prism of identity politics in Tasmania. Therefore as Tasmania entered the latter half of the twentieth century the state's careless regard for the environmental impact of its activities were construed in the minds of many as an attack against the regional identity that was unique to Tasmania. To better illustrate this, a 2002 campaign which successfully protested the

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<sup>221</sup> Iain McCalman, *The Reef: A Passionate History* (New York: Scientific American / Farrar, Straus and Giroux, 2013), 231 – 233.

large scale harvesting of the old growth Tarkine forest in Tasmania's northwest juxtaposed the well-known image of a dead thylacine and its hunter (known as "Mr Weaver bags a Thylacine") against the backdrop of the Tarkine forest itself. Accompanying the image was the phrase "we used to hunt thylacines too".<sup>222</sup> In commenting on the success of this campaign David Owen draws an even more direct connection between the role that the extinction of the thylacine has played in Tasmanian attitudes towards their environment, noting that "in Tasmania there is seen to be a close correlation between one form of environmental extinction and another".<sup>223</sup> This kind of appropriation is of significant importance to understanding why both the environmental movement in Tasmania become sizable enough to warrant the formation of a political party which would eventually enter into a governing coalition government and why initially, unlike their counterparts in Queensland, Tasmanians first sought regional solutions to their environmental concerns.

### *Understanding Environmentalism in Australia as Political Reform*

As is addressed in this thesis, the government of Gough Whitlam was the first in Australia to introduce legislation that would allow Canberra to assert a national environmental policy that superseded state policy. Initially however, these policies were targeted almost exclusively at Queensland and the controversy surrounding Brisbane's policies concerning the Great Barrier Reef. Several explanations have been provided for the failure of the Whitlam government to address public concerns in Tasmania, such as the friendly relationship enjoyed by Whitlam and Tasmanian Premier Eric Reece and the initial hesitation by Lake Pedder protesters to approach the federal government for help. Despite their initial setbacks, environmentalists

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<sup>222</sup> David Owen, *Tasmanian Tiger: The Tragic Tale of the Thylacine* (Baltimore: John Hopkins University Press, 2003), 160 – 161.

<sup>223</sup> Owen, *Tasmanian Tiger*, 160.

ultimately became a significant political force first in Tasmania and nationally later. By 1983 Bob Hawke's Labor Party was using its aggressive environmental policies as a defining issue for their platform and by the 1990s environmental politics had become the 'third force' in Australian politics. Labor Parties at both the state (particularly in Tasmania and the Australian Capital Territory) and national level increasingly relied on the Green Party to form coalition governments while actively seeking to incorporate environmentalists themselves into the traditional Labor electorate.<sup>224</sup>

This only further demonstrates that this political and cultural phenomenon should be regarded as a pursuit for legislative reform. These fundamental reforms that were initiated by Gough Whitlam and which, in addition to environmental stewardship also concerned the relationship of Canberra with its aboriginal peoples, its educational system, and the healthcare and wellbeing of its citizens completely transformed the constitutional nature of the country.<sup>225</sup> By 1983, more power was invested in Canberra than ever before and the national parliament now had legislative authority over policy areas that had a more direct impact on the lives of Australians than it had ever before held. The success of the environmental movement in Australia results in a fundamentally revised understanding of the Australian Constitution and a significantly empowered federal government. Furthermore, the research presented here, as illustrated by the Tasmanian case study, indicates that what Bob Hawke referred to as 'New Federalism', may not be a uniquely Labor (nor a Liberal) initiative, but rather a natural development of the social history of Australians themselves.

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<sup>224</sup> Sean Scalmer, "Progressive Voting, Party Organization, and Political Reform: A Historical View" in *How to Vote Progressive in Australia: Labor or Green*, ed. Dennis Altman and Sean Scalmer (Clayton: Monash University Press, 2016), 37 – 53.

<sup>225</sup> Paul Kelly, "The Whitlam Legacy" in *The Whitlam Legacy*, ed. Troy Bramston (Sydney: Federation Press, 2013), 385 – 398.

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