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AYNSLEY KELLOW*

The Dispute over the Franklin River and South West Wilderness Area in Tasmania, Australia

INTRODUCTION

On July 1, 1983 the High Court of Australia upheld the constitutional validity of the 1983 World Heritage Properties Act [1983],¹ a statute which halted construction of a hydro-electric power scheme in the area of wilderness in the southwest of Tasmania. The decision was notable both because it represented an extension of Commonwealth power within the Australian federation and because of the fact that it preserved an important area of temperate wilderness. The focus of this paper is on the latter aspect.

The High Court ruling was the final stage in a long and bitter struggle between those who wished to see development in the South West and those who wished to preserve the area further from such encroachments. While the focus of the dispute was the dam proposal, also at stake were the forest and potential mineral resources of the area. The successful campaign by the preservationists—the Tasmanian Wilderness Society—involved both extensive lobbying of politicians and bureaucrats at both the state and Commonwealth levels and direct, non-violent protest action, including a much-publicized blockade of the dam site once construction commenced. The conflict over the development of the South West strained the Tasmanian political system to the breaking point. It resulted in a year-long deadlock between the two houses of the Tasmanian legislature; a referendum aimed at resolving the deadlock saw one-third of the ballots cast spoiled as an act of protest; a Cabinet minister was sacked over the issue; the governing party was forced to an early election (an election it lost) after losing a confidence motion because of the issue; action by the Commonwealth government to protect the area placed the Australian federation under stress.²

The halting of construction of the hydro scheme and the preservation of the South West wilderness was an important victory for the conservation movement in Australia, and, indeed, for the cause of wilderness preservation worldwide. After all, if an affluent nation such as Australia was

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1. World Heritage Properties Act of 1983, No. 5 (Austral. 1983).

2. Commonwealth v. Tasmania, 46 A.L.R. 625 (1983).

not prepared to set aside areas of relatively pristine wilderness for posterity, the case for less affluent nations to do the same would be severely undermined. Nevertheless, the degree of strain on the political system evident in this case highlights the magnitude of the forces which can be mobilized by wilderness preservation issues, and calls into question the ability of political institutions to resolve them at all—let alone resolve them so as to result in wilderness preservation. This was a classic development versus preservation battle, with exploitation of the state's hydroelectric resources being seen by many Tasmanians as necessary to the economic well-being of the state, and wilderness preservation as an unaffordable luxury. These were political factors which could not be overcome within the state despite a vigorous, well-organized campaign which struck a responsive chord with a broad spectrum of Tasmanian society. The Franklin River was saved only because of a successful campaign at the national level, and even then the victory must be regarded as fortunate, relying as it did upon an extension of Commonwealth powers which occurred principally as a result of this case.

While the case therefore illustrates a successful campaign to protect a wilderness area, it also draws attention to many of the problems which must be overcome by all advocates of wilderness preservation and reminds us just how difficult a task this can prove to be. These difficulties relate especially to the nature of the benefits and costs involved in development versus wilderness issues, and the implications these have for the representation of various interests in the policy process. The Franklin case highlights the point that interests pushing for development are often already incorporated into social institutions—or the “regime” governing natural resources.³ Pro-development values (and, indeed, values which favor one kind of development over another) can be deeply embedded and find expression in implicit or explicit assumptions which bias the information available to policymakers. Wilderness preservation is thus a cause which must be fought in a reactive rather than pro-active manner, and fought against powerful, institutionalized interests. Moreover, wilderness tends to be a “lumpy” good, so that an area must be preserved *in toto* rather than the compromise of limited development within the area being possible. Compromise solutions are thus not readily attainable, save compromises which involve long-term costs which must be weighed against the immediate gains (in this case, the costs of the entrenchment in office in Tasmania of a government with values hostile to the environmental cause).

3. O. YOUNG, *RESOURCE REGIMES passim* (1982).

The Case History

It is difficult to state precisely when the conflict over the Franklin and Lower Gordon Rivers in the South West wilderness area of Tasmania began. The report recommending a dam on the Gordon River below its confluence with the Franklin was produced in October 1979, but the conflict goes back at least as far as a similar conflict over the Gordon Stage One project in the late 1960s and early 1970s.⁴ This earlier scheme involved the inundation of beautiful Lake Pedder, regarded by many as the jewel of the South West.

Even this initial conflict over the exploitation of the South West wilderness had its roots in earlier times, however. For example, the faith in the ability of cheap hydro-electric power to provide economic riches for a marginal state with a marginal economy (which underlay both these controversies) dated back at least to the 1930s. This policy (known as "hydro-industrialization") underpinned the perceived necessity for all power development projects in Tasmania, because two-thirds of electricity generated was sold to energy-intensive industries—principally pulp and paper production and metallurgical processing (aluminium, ferro-manganese and zinc).⁵ In terms of a more specific starting date for the Gordon Below Franklin project, we can point to initial survey work in the South West being commenced by the state Hydro-electric Commission (HEC) in 1948-49.

The Hydro-electric Commission of Tasmania is a semi-autonomous public corporation which traditionally has enjoyed such a degree of autonomy that the prefix "semi" would be regarded by many as inaccurate. The HEC was deliberately insulated from political interference by its enabling statute, so that while the state government guaranteed its debt, it had little control over its day-to-day affairs.⁶ It had to obtain parliamentary approval for new construction projects, but since this meant both houses of parliament (including an upper house, the Legislative Council, which was not organized on party lines) the government (formed by the majority party in the lower house, the House of Assembly) was never really in command of the HEC. The Minister in Charge of the Hydro-electric Commission was answerable in the House for its actions, but the

4. See Davis, *Waterpower and Wilderness: Political and Administrative Aspects of the Lake Pedder Controversy*, 31 *Aust. J. PUB. ADMIN.* 21 *passim* (1972).

5. For discussion of "hydro-industrialization" and the political economy of Tasmania see P. THOMPSON, *POWER IN TASMANIA* (1981); Kellow, *Electricity Planning in Tasmania and New Zealand: Political Processes and the Technological Imperative*, 45 *AUSTL. J. PUB. ADMIN.* 2 (1986); Davis, *Tasmania: The Political Economy of a Peripheral State*, in *THE POLITICS OF DEVELOPMENT IN AUSTRALIA* (B. Head ed. 1986).

6. See Herr & Davis, *The Tasmanian Parliament, Accountability and the Hydro-Electric Commission: The Franklin River Controversy*, in *PARLIAMENT AND BUREAUCRACY* 269-70 (J. Nethercote ed. 1982).

HEC was effectively immune from ministerial direction. Moreover, the HEC was perceived as being an important agency promoting economic development, both by attracting industry with cheap electricity⁷ and by providing jobs in the construction of power schemes.

Despite this traditional support, the political climate confronting the HEC at the time it commenced investigations into the hydro-electric potential of the South West was to undergo considerable change by the late 1970s when it sought parliamentary approval for the Gordon Below Franklin scheme. In 1950 there was little concern for the natural environment in general or for the largely unexplored South West wilderness in particular; there was, however, concern over an undersupply of electricity at a time when the product was gaining market penetration because construction programs had been interrupted by World War II.

Substantial concern for nature conservation commenced in Tasmania soon after, however. The Lake Pedder National Park was established in the South West in 1955, but it was not until 1962 that a coalition of community groups, the South West Committee, was formed to push conservation interests in relation to the area. A year later the Commonwealth government provided financial assistance to the Tasmanian government to build a road into the area. It was this road which provided access for the construction of the Gordon Stage One project, unveiled in a report to Parliament in 1967, at a time of electricity rationing brought about because of severe drought. The label "Stage One" clearly signaled the intention of the HEC to pursue subsequent development of the lower Gordon River.

There was considerable controversy over the Gordon Stage One project. Pressure brought to bear by numerous groups resulted in the formation of a South West National Park in 1968, but few other concessions were extracted by the conservationists. There was little difference between the positions of the Liberal and Labour parties on the issue at the level of state politics, and there was more difference within each of these parties at the state and federal levels than between the two at either level. This lack of real choice for voters encouraged the formation of an environmentally-oriented party which is regarded as the first "Greens" party (the United Tasmania Group) to contest the 1972 state election. The pro-wilderness forces also formed a nationwide lobby group (the Lake Pedder Action Group) to press for intervention by the Commonwealth government. With the Tasmanian government being unresponsive to the demands of the conservationists, the Commonwealth became their last hope, despite the fact that the impoundment which would inundate Lake Pedder

7. The other Australian states must rely primarily on more expensive thermal electricity generation. For an overview, see G. McCOLL, *THE ECONOMICS OF ELECTRICITY SUPPLY IN AUSTRALIA* (1976).

was rapidly filling. The Commonwealth, however, lacked effective constitutional power to protect Lake Pedder from the encroaching waters and it could do little more than establish an inquiry and subsequently offer full financial compensation to Tasmania to save the lake. The Tasmanian government declined the offer of compensation and resented the attempt to meddle in state affairs.⁸

Thus Lake Pedder was lost and electricity planning within the state became politicized for the first time. The next power scheme (on the Pieman River in the North West) slipped through Parliament virtually unnoticed in 1971, while conservationists were preoccupied with Lake Pedder. Nevertheless, the Pedder experience ensured that there was extreme vigilance in the conservationist camp in the late 1970s, with battle lines clearly drawn and a close watch being kept for further HEC plans for the South West. The Tasmanian Wilderness Society, the main protagonist in the later struggle, was formed in the wake of the Pedder battle in 1975. The legacy of the Lake Pedder struggle set the scene for the subsequent Franklin conflict in another way. In November 1975, the state Minister for National Parks appointed a South West advisory Committee to look at the region, and this body focused attention on values in the region other than hydro-electricity. In 1978 in its final report, this committee recommended extensive national parks in the South West, with some development to be permitted in "conservation zones."

The plans the HEC had for the South West were tabled in Parliament in October 1979,⁹ and contained a recommendation for a so-called "Integrated" hydro-electric scheme which involved a dam on the Lower Gordon River below its confluence with the Franklin, to be followed subsequently by a dam on the middle Franklin through which would be diverted the waters of the King River from a neighboring catchment. While the Gordon Below Franklin scheme, with an annual energy output of 172 MWav (average load in megawatts),¹⁰ was small by world standards, it was significant in the Tasmanian context, because total demand in the state was then slightly less than 1,000 MWav. The report canvassed a number of alternative proposals, the most important being a 2 × 200 MW coal-fired thermal station and the so-called "Separate" hydro-electric development (which involved a dam on the Gordon River above its con-

8. For an overview of the history of conflict over the South West, see Davis, *The Struggle for South West Tasmania*, in INTEREST GROUPS AND PUBLIC POLICY; CASES FROM THE AUSTRALIAN STATES (R. Scott ed. 1980).

9. HYDRO-ELECTRIC COMM'N, REPORT ON THE GORDON RIVER POWER DEVELOPMENT STAGE TWO (1979).

10. With subsequent investigation, the output of the Gordon Below Franklin was increased to 181 MWav. The expression "MWav" is a convenient way of expressing the output of a hydro-electric scheme; it refers to the average load (in megawatts) the generating plant can meet throughout a year under average streamflow conditions.

fluence with the Olga River, to be followed by a dam and power station on the King River through which the waters of the Franklin would subsequently be diverted). The report, which also examined electricity demand and the social and environmental impacts of the main contending schemes, represented an improvement over previous HEC reports, largely because the Premier, Mr. Doug Lowe, had told the HEC in 1978 that it should not regard approval for its preferred scheme as certain.

After the release of the report the Premier established a Coordinating Committee on Electric Power Development to receive the public response to the HEC document, which, he hoped, would then be considered by a joint Select Committee of both houses of the Tasmanian Parliament. Another report from the National Parks and Wildlife Service recommended the declaration of a wild rivers national park in the area affected by both hydro schemes proposed. Development and conservation interests were thus set on a collision course.

One impediment to attempts to avoid or resolve the looming conflict was the independent status of the HEC, and the extremely attenuated degree of accountability which existed. This was a problem which the Lowe government had sought to counter in 1978 by proposing to place the HEC under ministerial control; the HEC opposed this move, and was supported by the Legislative Council. The compromise adopted was to establish (in early 1979) the position of Director of Energy and an Energy Policy Unit within the Premier's Department. The HEC resented this alternative source of policy advice, but appeared to accept its existence.

In May 1980 the Coordinating Committee released its report, in which it recommended construction of a thermal station, followed subsequently by the Gordon Above Olga which had formed the first part of the non-preferred Separate Development. The Committee reached this conclusion primarily on the grounds that it expected load growth to be *faster* than that forecast by the HEC (due to greater industrial expansion); the long lead time of either of the two hydro proposals ruled them out as being unable to be commissioned soon enough to meet this demand.

Both conservation groups and pro-hydro groups had made submissions to the Coordinating Committee but, with it becoming apparent that the HEC might not get its own way, the pro-hydro interests began to organize on a scale never before seen. In April 1980, at the instigation of the Tasmanian Chamber of Industries, the thirteen major bulk consumers formed a group to seek support for the HEC's preferred option. Soon after the release of the Coordinating Committee's report, a group representing HEC employees, the Hydro Employees Action Team (HEAT), was formed to protect the jobs of those employed in hydro construction. The relationships between this group, the HEC, and the bulk industrial users were not entirely clear, but HEAT enjoyed at least the tacit approval of the HEC, because employees were forbidden by law from making any

public statements concerning HEC affairs without the consent of the Commissioner.

The Government also came under pressure from the union-dominated organizational wing of the Labour Party, with an unsuccessful attempt to bind it to the HEC preferred Gordon Below Franklin scheme occurring at the meeting of the party's State Council on July 5 and 6, just prior to Cabinet consideration of the matter.¹¹ The alignment of political forces in favor of the HEC therefore included the industrial consumers who benefited from any oversupply of electricity by being able to purchase the surplus at cheap rates and unions whose members relied on hydro construction for employment. This alignment of capital and labor is not too unusual with "pork barrel" or distributive policies, but like many such issues in the environmental age, the conflict was socialized and this coalition ran into concerted opposition from the conservation movement. The issue grew into one which could be regarded as redistributive, because it eventually embroiled the whole of Tasmanian society. The problem was that the political system was one involving disciplined, responsible parties, but the parties were organized around the traditional Left-Right conflict between haves and have-nots and proved inadequate to cope when this new conflict displaced questions of distributive justice.¹²

The Cabinet met to consider the issue on July 8, 1980 and took the unusual step of inviting both the HEC (together with the Secretary of the Premier's Department and an officer from the Energy Policy Unit) and Dr. Bob Brown, Director of the Tasmanian Wilderness Society to address it. Lowe has since disclosed that he outlined the following five options to the meeting:

1. The Integrated Development recommended by the HEC.
2. The Gordon Below Franklin followed by smaller hydro schemes outside the catchment of the Gordon and Franklin rivers.
3. A thermal/hydro development program consisting of a 1 × 200 MW station followed by the Gordon Above Olga and then smaller hydro as the need arose.
4. An all thermal development program.
5. The Gordon Above Olga followed by smaller hydro schemes outside the South West wilderness area.¹³

Lowe recalls that options one (integrated development) and four (all

11. For a description of the machinations within the Labour Party and a history of the ALP in Tasmania, see R. DAVIS, *EIGHTY YEARS' LABOR* (1983).

12. I have discussed these aspects of Theodore Lowi's theory of policy types in Kellow, *Political Science and Political Theory*, 16 *POLITICS* 33 (1981), and examined its implications for the functioning of the policy process in Westminster systems of government using cases of environmental policy in Kellow, *The Policy Roles of Bureaucrats and Politicians in New Zealand*, 19 *POLITICS* 43 (1984). See also Lowi, *American Business, Public Policy, Case Studies, and Political Theory*, 16 *WORLD POL.* 677 (1972).

13. D. LOWE, *THE PRICE OF POWER* 114-16 (1984).

thermal) were ruled out at an early stage of the twelve hours of deliberations which occurred that day, and the HEC briefing convinced the Cabinet that option three (coal-fired thermal) was likely to be less economically viable than the other suggested hydro options. What is clear from Lowe's memoirs is that employment was ultimately the deciding factor—which is understandable given that much of the pressure on his government was coming from trade union sources. When the HEC admitted that the Gordon Above Olga would provide more jobs during construction than would the Gordon Below Franklin, Lowe believed he had found the compromise that would ensure employment while limiting damage to the South West wilderness.

The Cabinet adopted a package of proposals which included construction of the Gordon Above Olga, an energy conservation strategy, development of the coal industry (including oil to coal and electricity to coal conversions in industry), a review of electricity pricing policy, establishment of a Wild Rivers National Park on boundaries that would allow construction of the Gordon Above Olga, and conversion of the Bell Bay oil fired power station to coal. This last measure had been recommended by the HEC in an interim report produced in June 1980, just prior to the Cabinet deliberations. The HEC managed to have the conversion of its only thermal station at Bell Bay considered at the same time as, but as a separate issue from, the issue of the next new power development program. This was a considerable coup by the HEC in defining the alternatives for the politicians, who at no time were presented with information about an important option: the construction of a new thermal station as a replacement for oil-fired generation at Bell Bay *and* as a means of meeting the next increment of load growth. The economics of this option compared favorably with hydro and the option had the added advantage of providing flexibility to meet low or high load growth more cheaply because it involved a higher proportion of variable costs.¹⁴

While initially regarding these proposals favorably, the Wilderness Society soon decided to hold firm against *any* further hydro-electric development in the South West. The HEC issued a news release shortly after the government decision to proceed with the Olga was announced. Pointing out the shortcomings of the decision, the HEC stated that it would operate within the constraints to ensure the best possible result. But the constraints on the HEC were minimal, and it still regarded "the best possible result" as being approval for the construction of the Gordon Below Franklin. As Premier Lowe later lamented, the Chief Commissioner of the HEC, Mr. Ashton, regarded it as not only proper but as his

14. See Kellow, *A Neglected Option in Tasmania's Power Debate*, 14 SEARCH 306 *passim* (1983/84).

duty to lobby the upper house to convince it to correct the government's "mistake." The Legislative Council had appointed a Select Committee to consider the issue, and the HEC provided it and the public with much information and argument in favor of its preferred option, including (during October 1980) material which conflicted with the government decision to review pricing policies; any price increase would, of course, lead to slower demand growth. The HEC continued to base its analyses upon load forecasts which took no account of the announced conservation and coal substitution policies, and even made claims that there would be difficulties in finding finance for the Olga scheme.

Lowe's relationship with Commissioner Ashton by this stage had deteriorated to the point where most communication between the two occurred in writing. The HEC was not giving the Premier the courtesy of prior notification of its activities in lobbying the Legislative Council and Lowe only heard indirectly that the HEC was preparing a report for the Select Committee on the effects of a decision to forego the potential of the Franklin. Even more ominous was the fact that the Liberal opposition (long the sole source of *any* political questioning of the HEC's activities) was beginning to exploit the widening gap between the government and the HEC, using the power of the Legislative Council and the opposition to the government scheme among the non-Labour majority of independent members, many of whom had past Liberal party affiliations.¹⁵ The allies of the HEC and the Liberal Party were linked in a new pressure group formed just after the government decision, so that the HEC was effectively closer to the opponents of the government than it was to the government itself, and Premier Lowe later recounted that he often found himself in the position of having material unknown to him or just presented to the government in the hands of the opponents of the government's policy.

Matters really began to heat up after the Bill authorizing the Gordon Above Olga scheme was introduced on November 13, 1980. Satisfactory progress through the government controlled House of Assembly occurred (as expected), but the concerted opposition lay in the upper house. An opinion poll taken at this time revealed that 56 percent of the population supported the government decision while only 30 percent were opposed, but the Legislative Council, elected on very undemocratic boundaries, was well insulated from the winds of popular opinion. The report of the Legislative Council select committee, which favored the Gordon Below Franklin by five votes to two, was tabled on December 11. Opinion in the upper house was clearly against the Olga and for the Franklin scheme, and this meant the government was in trouble because the Legislative

15. For a description of the Tasmanian political system, see W. TOWNSLEY, *THE GOVERNMENT OF TASMANIA* (1976).

Council in Tasmania is one of the most powerful upper chambers known. (It can force the government to the polls by denying supply, but can never itself be dissolved, and is elected with staggered six year terms; three members stand for election for each of five years and four in the sixth to make up the nineteen members. The will of the electorate as a whole can never be reflected in the composition of the Council, which remains a conservative bastion.)

The action of the Council in considering the Olga Bill was unprecedented. The details of the scheme being approved were contained in a schedule to a Bill and the government leader in the upper house got wind of the fact that the chairman of the Select Committee intended to move an amendment substituting details of the Franklin scheme for the Olga scheme in the schedule. Such a motion was not admissible because it constituted a negating of the intent of the Bill. A ruling to this effect was given by the President of the Council, but the Committee Chairman put a motion dissenting from the President's ruling, a motion which was supported by thirteen members (a majority). This was the first time in the history of the Council that a considered ruling by a President had been overturned. The amendment was thus put and carried, and the resulting deadlock could not be resolved by the ensuing conference of managers of the two houses.

The two houses of Parliament remained deadlocked for the remainder of 1981, but several significant events occurred during the stalemate. Firstly, in February 1981 important archeological discoveries were made in Kutakina Cave in an area of the Franklin catchment which would be flooded by the Gordon Below Franklin dam. This site contained important evidence indicating human habitation had occurred in the area much earlier than previously thought to be the case, and this gave a specific focus to the claims that the South West was of special scientific significance. This discovery reinforced the declaration of the Wild Rivers National Park on April 30, 1981,¹⁶ and strengthened the basis for a nomination by the state government in August 1981 of most of the South West for inclusion on the UNESCO World Heritage List. The nomination for World Heritage listing was forwarded by the Commonwealth government in January 1982 and was to form the basis for Commonwealth intervention under the external affairs power a little over a year later.

While the discoveries in Kutakina Cave and the nomination for World Heritage listing would ultimately strengthen the hand of the Commonwealth, the position of the state government was being undermined from within. While Premier Lowe decided to tough it out in the face of the Parliamentary deadlock, his government began to crack under the strain.

16. The Park was proclaimed under the National Parks and Wildlife Act, No. 4 (Tas. 1970).

During 1981, Lowe continued to face opposition from trade union elements in the Labour Party and, encouraged by this, Harry Holgate challenged for the leadership in June 1981. Holgate lost by thirteen votes to eight among the Parliamentary Labour Party, but the pressure on Lowe's leadership continued at the State Council meeting of the Labour Party on July 4, when the Parliamentary party was virtually instructed by the party machine to resolve the issue by means of a referendum. The party nevertheless did not support wholly the factions favoring a capitulation to the HEC and, having survived the State Council meeting relatively intact, Lowe reshuffled his Cabinet on July 7, demoting the challenger Holgate and promoting some of those who had been loyal.

The Labour Party caucus decided on September 16 both to adhere to its earlier decision to build the Olga scheme and preserve the Franklin River (though now only by the narrowest margin of twelve votes to ten), and that the matter should be decided by a referendum. This latter decision was carried by seventeen votes to five. While the Parliamentary Labour Party had not envisaged (nor considered) that a "No Dams" option would be included on the ballot paper, Lowe told a press conference that he believed that when the Cabinet decided the precise form of the ballot it would be a genuine exercise in democracy and a No Dams option would be included. Holgate and others in the faction opposed to Lowe (which included the Hydro unions) claimed that this was a misrepresentation of the Parliamentary Labour Party decision, and a Cabinet meeting the next day decided that there would be no No Dams option. This decision was a harbinger of doom for Lowe's premiership, and he fell on November 11, 1981, to be replaced by Holgate. Lowe resigned from the Labour Party and sat on the cross-benches in the House as an independent, and was followed the next week by government whip Mary Willey. This cost the government its majority in the House of Assembly, so that it could be defeated and forced to the polls if it lost a confidence motion.

The referendum, without a No Dams option, was held on December 12, 1981. Only three members of the Cabinet campaigned for the Olga scheme with any conviction; the HEC and its allies mounted a strong campaign for the Franklin dam, while the Wilderness Society urged voters to spoil their ballot papers with a write-in No Dams vote. Of the votes cast in the referendum, 47 percent were for the Gordon Below Franklin, 8 percent for the Olga, and an incredible 45 percent were informal (with 33 percent being marked with No Dams).¹⁷ Because the result (on the basis of legitimate votes cast) favored an option counter to official government policy, Premier Holgate sought from the Governor and was

17. See Newman, *Tasmanian Referenda Since Federation*, REPORT OF THE ROYAL COMMISSION INTO THE CONSTITUTION ACT 1934, app. T (1982) (Hobart, Tas.).

granted a prorogation of Parliament until March 26, 1982. When Parliament reconvened, however, the Holgate government fell, failing to survive the first day of the session. An election was set for May 26, 1982, and, when the poll was held, the Liberal opposition was swept to power in a landslide after promising to authorize the Gordon Below Franklin.¹⁸ There was by this stage no difference between the two parties—both promised to build the dam—but the Labour Party had by now lost all credibility. Conservative pro-dam working class voters combined with traditional Liberal voters to return the first Liberal government ever to govern in its own right.¹⁹ Upon election, the Gray Liberal government secured legislation authorizing the Franklin dam.

The controversy had, however, transcended Tasmanian state politics by this stage, because the conservation movement had succeeded in making the preservation of the Franklin a national issue. One immediate success for this campaign was that the Commonwealth Senate had in September 1981 appointed a Select Committee to enquire into the matter.²⁰ What was not clear was whether the Commonwealth had any constitutional power it could exercise to intervene in a manner which would be any more effective than had proved the case over Lake Pedder (should it indeed decide to act). The Constitution gave power over land-based resources to the states, but the power of the Commonwealth to act under the external affairs power of the Constitution was enhanced by the decision in *Koowarta vs. Bjelke-Petersen* in May 1982.²¹ Meanwhile, preliminary work on the construction of the Gordon Below Franklin commenced.

The Fraser (Liberal) government was reluctant to act against the Gray government, despite strong pressure to do so coming from supporters of all parties on the mainland and the release of the report of the Senate Select Committee in November 1982, a report finding that likely slower demand growth would permit a moratorium on any power development in the South West for three years.²² Nevertheless, the Western Tasmanian Wilderness National Parks (drawn up on boundaries that would permit

18. See Smith, *The Tasmanian House of Assembly Elections, 1982*, 17 POLITICS 81 (1982).

19. The Liberal Party held office as a minority government from 1969 to 1972 with the support of a minor party.

20. In recent years no party has controlled the Australian Senate, and the balance of power has been held by the Australian Democrats, who have won enough support to win seats in the multi-member, state-based electorates at least partly on the basis of their stand on environmental issues. In this case, the establishment of a Select Committee was guaranteed by the support of the Democrats and the Labour Party (then in opposition), but the move drew considerable support from the government ranks as well.

21. *Koowarta v. Bjelke-Petersen*, 56 A.L.J.R. 625 (1982). The legal aspects of the case are covered in *THE SOUTH WEST DAM DISPUTE: THE LEGAL AND POLITICAL ISSUES* (M. Somorajah ed. 1983) (Univ. of Tasmania, Hobart).

22. SENATE SELECT COMM'N ON SOUTH WEST TAS., REPORT ON DEMAND AND SUPPLY OF ELECTRICITY FOR TASMANIA AND OTHER MATTERS (Nov. 1982) (Austl. Gov't Printing Serv.).

construction of the Olga scheme but not the Franklin) were included on the World Heritage List on December 14, 1982. This gave the Commonwealth constitutional power to act under the external affairs power of the Constitution, but this power had only been clarified by the *Koowarta* decision over aboriginal affairs in May 1982 and there was thus a degree of uncertainty over whether it would apply to environmental matters in general, and Australia's obligations under the World Heritage Convention in particular. Prime Minister Fraser, being an avowed supporter of both the environment and state's rights was caught in something of a cleft stick.

The Wilderness Society had successfully extended its support beyond the shores of Tasmania in an attempt to make the fate of the Franklin a national electoral issue. An early example of the success of this campaign came in elections for the House of Assembly of the Australian Capital Territory in May 1982 and in a by-election for the federal seat of Flinders in Victoria in December 1982; in both cases the Wilderness Society campaigned for a No Dams write-in and succeeded in both cases in persuading about 40 percent of voters to express their opposition by marking their ballot papers in this way. This success encouraged the formation of a National South West Coalition which could claim the support of 500,000 voters nationally. Despite these events, Fraser refused to intervene to stop the dam, but neither did he prevent the World Heritage nomination from proceeding.

The National South West Coalition mounted a very newsworthy blockade against the construction of the dam over the Christmas-New Year period of 1982-83, taking advantage of both the good weather and the traditional Parliamentary recess to provide a thankful news media with interesting copy. The carefully managed blockade did little to halt work on the dam site but kept the issue to the fore with a succession of daily arrests, including the Wilderness Society leader Bob Brown and international botanical personality David Bellamy. The Commonwealth government chose simply to try to defuse the issue at the federal level by offering Tasmania compensation (to the tune of \$500 million²³) if it declined to build the dam. Mr. Fraser then called an early election for March 5, 1983. As had been the case with Pedder, carrots proved insufficient and, with the Labour Party at the federal level being opposed to the dam, the Australian voter was presented with a clear choice.

The Hawke Labour government was elected in the March 5 poll, having

23. This sum consisted of the cost of a coal-fired station plus a fuel subsidy for 25 years. It amounted to less than \$500 million in present value terms and included a hedge in favor of the Commonwealth if demand growth was less than the HEC had forecast.

promised to halt the dam. While the wilderness lobby campaigned hard in marginal electorates, the impact of the single-issue campaign has been estimated at only about 1 percent of the 3.6 percent swing to the ALP.²⁴ Nevertheless the incoming Hawke government perceived that it owed an obligation to these voters and it discharged this obligation by passing (with the aid of the Democrats in the Senate) the World Heritage Properties Conservation Act 1983. The validity of this legislation was confirmed in the ensuing litigation, with the High Court decision being handed down on July 1, 1983. Although it was not legally obliged to do so, the Commonwealth subsequently provided Tasmania with compensation totaling about \$290 million.

Wilderness Values and the Policy Process

Throughout the conflict over the Gordon Below Franklin dam, the quality of the information available to policymakers and the public alike left much to be desired. The project analyses prepared by the HEC included a number of assumptions which favored its preferred scheme over other options.²⁵ In a political climate that favored development over conservation, it was not surprising that less-than-rigorous demand forecasts were produced and the inputs into the project (particularly jobs) were regarded as benefits. Our main concern here, however, is with the failure to incorporate wilderness values into the policy process, so that the seemingly "objective" analyses of costs and benefits associated with the project and the alternative projects all ignored the destruction of wilderness which, certainly judging by the political response, was valued highly by many people both within Tasmania and on the Australian mainland.

Although a draft environmental impact statement was prepared along with its 1979 Report, the HEC made no attempt to value the cost of wilderness loss in its appraisals of power development program. In mitigation, it must be pointed out that the HEC was only required by law to undertake narrow financial analyses of direct money costs in reporting to Parliament. Such an approach, however, assumed that Parliament would vest in the HEC without charge the right to dam rivers and use land in order to construct a hydro-electric scheme.²⁶ Such an evaluation was not an inadequate basis for decisions by politicians about whether to give these rights to the HEC. The problem for the politicians lay in establishing—even approximately—how much society would be willing to pay to preserve a wilderness area. A number of techniques have been devel-

24. Warhurst, *Single-Issue Politics: The Impact of Conservation and Anti-abortion Groups*, 60 CURRENT AFF. BULL. 19 *passim* (July 1983).

25. See Kellow, *Public Project Evaluation in an Australian State: Tasmania's Dam Controversy*, 55 AUSTRAL. Q. 263 *passim* (1983).

26. The HEC does not have to pay water rents, as do many hydro-electric utilities elsewhere.

oped by economists and one of these, the derivation of a threshold value for wilderness which would make the cost of two alternatives equal,²⁷ was employed by a team from the Australian National University headed by Hugh Saddler.²⁸ After performing an analysis which used HEC cost estimates they derived a threshold value of about \$700,000 at a 5 percent discount rate and about \$150,000 at a 10 percent discount rate. These figures corresponded to the present annual benefit from wilderness preservation which (on HEC cost estimates) would make the present value of the full Integrated Hydro Development and Thermal Development programs equal. The analysts left it to the politicians to decide whether wilderness benefits exceeded these thresholds, but, pointing to a survey showing that 75,000 visitors to Tasmania stated wilderness-related attractions as a reason for their visit, suggested implicitly that the threshold was exceeded on values related to tourism alone.

The political process is one means of correcting for market failures, but it too has its limitations, relating particularly the imprecise transmission of preferences via both electoral and interest group politics and a well-established tendency for voters to understate their preferences for public goods (including environmental goods).²⁹ The inexactitude stems from the fact that voters usually vote on bundles of issues rather than express their preferences on single issues, but in this case a referendum was held on this single issue, so an estimate of the social valuation of wilderness can be gauged—at least as at the time of the referendum in December 1981. The referendum results provide a rare opportunity to assess willingness to pay for wilderness, because (unlike opinion surveys which ask people to state willingness to pay) those voting in the referendum would have accepted that they had to live with the consequences of their “valuations.”

We know from the votes cast that eight percent of Tasmanians thought the preservation of Franklin River was worth at least the additional cost of the Gordon Above Olga, and that a third of voters thought it worth at least the extra cost of a coal-fired thermal station (implicit in a No Dams vote). If we were to assume that the public accepted the HEC cost estimates, were aware of the cost differences, and were capable of performing a rough present value calculation, we can put at least a ballpark estimate on the willingness of Tasmanian society at this time to pay to preserve the Franklin River. Even at this time, with support for the Gordon

27. Krutilla & Cicchetti, *Evaluating Benefits of Environmental Resources with Special Application to Hell's Canyon*, 12 NAT RES. J. 1 *passim* (1972).

28. H. SADDLER, J. BENNETT, I. REYNOLDS & B. SMITH, *PUBLIC CHOICE IN TASMANIA passim* (1980).

29. This, of course, is because of the problem of the free rider, discussed at length in M. OLSON, *THE LOGIC OF COLLECTIVE ACTION* (1965).

Above Olga at rock bottom among those who favored some hydro development, the sum bidden in the referendum exceeded the difference in cost between the Gordon Above Olga and the Gordon Below Franklin.³⁰ Had this valuation of wilderness to be destroyed been included in the HEC cost estimate for the Gordon Below Franklin, the Gordon Above Olga would have been preferred on economic grounds. Interestingly, this suggests that there are problems with attempting to decide such issues by means of referenda, and that the valuation of wilderness implicit in the Lowe government's Gordon Above Olga compromise—derived by inexact political means—was probably an accurate reflection of Tasmanian society's willingness to pay for wilderness preservation.³¹

The failure by policymakers to make explicit any valuation of wilderness was an omission which quite clearly contributed greatly to the divisive conflict over the Gordon Below Franklin. The research by Saddler *et al.* for the National Parks and Wildlife Service³² and a multi-objective planning exercise prepared by Professor John Burton (chairman of the earlier Commonwealth inquiry into the flooding of Lake Pedder) for the Directorate of Energy³³ constituted the only attempts by government agencies to overcome this deficiency, and, while they appear to have influenced the decision of the former Lowe government to opt for the Gordon Above Olga scheme, these analysts were not treated with anything like the reverence accorded to the HEC's financial analyses.

This shortcoming was exacerbated because Tasmania had already made an implicit valuation of the externalities involved with a thermal option by the adoption of the Environment Protection Act 1973.³⁴ This law made necessary additional direct financial costs in the case of a thermal station—a higher exit stack than would otherwise be necessary, electrostatic precipitators, cooling towers, and ash disposal being the major cost items. This inconsistent treatment of environmental costs which did not appear

30. See Kellow, *Politics, Economics and Non-Market Items*, 47 AUSTRALIAN FORESTRY 148, 151 (1984). The present value difference between the two hydro schemes can be taken as \$38.8 million and that between the Gordon Below Franklin and thermal development programs at \$150.1 million. Weighting these values according to the votes cast gives a revealed valuation of wilderness of \$52.6 million ($[0.08 \times \$38.8m] + [0.33 \times \$150.1m]$)—just enough to justify the extra cost of the Gordon Above Olga. This result holds regardless of how one interprets almost 24,000 votes which were declared invalid.

31. One is reminded by this divergence between voting preferences and willingness to pay of the paradox of voting. See K. ARROW, *SOCIAL CHOICE AND INDIVIDUAL VALUES* (1951).

32. See H. Saddler, J. Bennett, I. Reynolds & B. Smith, *supra* note 28. Somewhat curiously, national parks in Australia are a concern of state governments (a legacy of their dominion over land-based resources under the constitution), so the National Parks and Wildlife Service was a state government agency.

33. J. Burton, *Proposals for Future Power Development in Tasmania*, (1981) (unpublished report for the Tasmania Directorate of Energy).

34. Environment Protection Act, No. 34 (Tas. 1973).

as costs in the market perhaps best explains the failure of the Tasmanian political system to settle the issue with minimal conflict.

CONCLUSION: THE SPOILS OF VICTORY

While the South West wilderness area has been preserved, one consequence of the victory for environmentalists has been that a government which has minimal regard for environmental values was entrenched in Tasmania. The fiercely parochial Gray Liberal government was swept to power in 1982 and re-elected in 1986 largely because of the way in which voters saw it as supporting the HEC throughout and standing up to Canberra. It has subsequently won a victory against the environmentalists on the issue of export woodchipping and has continued a confrontationist approach to the Commonwealth government. While this situation will not persist forever, there is ample opportunity for the Tasmanian government to do considerable damage to wilderness areas outside the World Heritage area. This result has been part of the costs of winning a total victory with regard to the South West, but only by means of Commonwealth intervention.

The environmental movement was offered a compromise early on in the debate over the Franklin. The Lowe government decided on a compromise which included the Gordon Above Olga, and thus limited destruction at the margins of the wilderness area. The Bill authorizing the Gordon Above Olga was blocked by the Legislative Council, but support for this compromise was not forthcoming from the environmental movement and both Premier Lowe and the Olga scheme had been thoroughly undermined by the time the referendum to resolve the Parliamentary deadlock was held. What might the result have been if the environmental movement had moved its support fully behind the Olga option? It is arguable that the Olga might have carried the day on the referendum—opinion polls certainly indicated considerable support for the government's stance in early 1981. Would Legislative Council and HEC intransigence continued in the face of a popular mandate for the Olga? The result might have been the Olga (with a small encroachment on the South West), but also the continuation in office of a government that was more sensitive to environmental issues than any before or since in Tasmania.

Moreover, while the preservation of the Franklin was, indeed, an impressive victory, it must be borne in mind just how fortunate the Franklin decision was. It is highly doubtful whether the incoming Hawke Commonwealth government would have been bold enough to take on the Tasmanian government on such an important issue unless it was confident of winning (especially so early in its term of office). Otherwise it is likely the Hawke government would have treated the issue in much the same

way as its Fraser government predecessor—with a token gesture (once elected) and a plea that it had done all in its power to prevent the Tasmanian folly. Without the previous decision in *Koowarta* confirming an extension of the external affairs power, it is highly unlikely that the Hawke government would have taken such decisive action. Additionally, of course, it must be remembered that Fraser called the March 1983 election early. The additional damage the HEC would have been able to cause to the South West in an additional year might have made the area not worth saving.

Federal action to save the Franklin was not, therefore, guaranteed (nor guaranteed to succeed) at the time the Wilderness Society declined to support the Lowe government's Gordon Above Olga compromise in mid-1980. There had been no decision in the *Koowarta* case. Malcolm Fraser was still Prime Minister, the archeological find in Kutakina cave had not been made, and the hope of Commonwealth salvation was slender indeed. The environmental movement essentially gambled for all the remaining South West wilderness or nothing. The fact that it won should not be allowed to obscure the fact that it was a near-run thing and that the odds in favor of this result at the time the bridge of compromise was burned were very long indeed.

This underscores two points. The first is that successful campaigns to preserve wilderness sometimes require boldness if objectives are to be achieved. The other point to stress is that political campaigns based upon such brinkmanship are extremely high-risk undertakings, sometimes involving long term costs which must be balanced against immediate victories. But then, as Lord Keynes once remarked, in the long run we are all dead—and so is the wilderness. It is difficult for those seeking to preserve wilderness areas to compromise without accepting a slow, gradual nibbling away at the margins—a death of a thousand cuts.

The policy process often relies upon compromise for its smooth functioning. This case draws attention to the fact that wilderness preservation issues can unleash powerful forces in society, that compromises are not readily found and that existing political institutions are likely to be found wanting. If the wilderness areas remaining in the world are to be protected, means will have to be found of incorporating wilderness values into the earliest stages of decisionmaking. Because of the political imperatives in favor of development, that calls for something akin to a paradigm shift in society. The Franklin victory, despite its immediate consequences at the state level, can be seen as having helped start that process at the national level in Australia.