Chapter 4

Precarious Federalism: The Tasmanian Dam Case, the Corporations Power, and the 'Inevitable' Drive Towards Centralism

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1 Introduction

The controversy over damming the Franklin River in South-West Tasmania and the subsequent High Court litigation remain firmly part of the Australian national consciousness, despite occurring more than 30 years ago. On a popular level, the affair launched Bob Brown into national prominence, caused the demise of at least two governments,[1] and included Australia's largest ever civil disobedience campaign. Among lawyers and legal academics, the constitutional significance of *Commonwealth v Tasmania*[2] (*Tasmanian Dam Case*) is justly famous. By upholding the legislation the Commonwealth had passed to stop the dam, the case has been described as 'most dramatically'[3] expressing the centralist trends in High Court jurisprudence dating back to the *Engineers Case*.[4] A former head of the Commonwealth Attorney-General's Department, Mr Pat Brazil, suggested that 'the forces of centralism' were the real victors in the case.[5]

Today, the centralising impact of the *Tasmanian Dam Case* seems as if it was inevitable. As original governmental records relating to the case have now been released by both the National and Tasmanian archives, the time seems appropriate for a re-examination of that assumption. I will argue that, in fact, nothing in the surrounding circumstances made centralism inevitable.

1 Greg Buckman, *Tasmania's Wilderness Battles: A History* (Jacana Books, 2008) 45-9.
2 (1983) 158 CLR 1.
3 Scott Bennett and Sean Brennan, 'Constitutional Referenda in Australia' (1999-2000) Research Paper No 2 *Department of the Parliamentary Library*, 1, referring to (1920) 28 CLR 129.
4 *Amalgamated Society of Engineers v Adelaide Steamship Co Ltd* (1920) 28 CLR 129.
5 Address by Mr Pat Brazil, Secretary to Attorney-General's Department, at the Federal Law Review Dinner, 24 April 1985: TAO: AGD1/1/1274.