

TRANSNATIONAL CORPORATIONS AND THE 'MOBILE STATE'

The mobility of money is primarily driven by the needs of finance capital and business in general. The influence of business is apparent when we recognise some corporations have economies greater than most countries. General Motors has an economy equal to the size of Indonesia and close to half the size of Australia's economy.⁷² The actual economic influence of corporate economies is larger than official sales turnover. A 30% stake in a company is generally sufficient to ensure effective control of that enterprise. Consequently, corporations like General Motors can threaten to withdraw direct investment from countries like Australia if they do not receive favourable terms for their investment. Favourable terms could be reduced levels of taxation, or the maintenance of tariffs against import competitors. If conditions are not made favourable further withdrawal of subsidiary investment is another possible threat to the territorial state. Withdrawal of investment may also occur when continued investment is no longer viable through lack of demand for a given product.

However, in many instances, the mobility and influence of private investment is further enhanced by the current trend of reduced state influence in domestic economies. Again, the reduced influence of the territorial state is also evident when individuals invest in their retirement through compulsory superannuation contributions. While this suggests greater autonomy of the individual it also implies less importance in the role of the state. The reduced role of the state in relation to the individual gives scope for greater influence of the corporation over the individual. Isaak⁷³ sums up the contrast between territorial states and transnational corporations when he says:

While multinational companies can invest or disinvest, merge with others or go it alone, rise from nothing or disappear in bankruptcy, the state seems stodgy and stuck in comparison, glued more or less to one piece of territory, fighting off entropy and budget crises, the national community usually assessing the latest foreign attacks upon a condition of declining competitiveness and the vulnerability in its domestic markets.

Transnational corporations primary commitment is to achieve profit. To achieve profit it will employ whatever resources that are required and available to achieve a desired goal. This may mean employing one thousand people in a specific location while simultaneously laying off three thousand workers in another location. It may mean closing a business outlet entirely as it has been assessed as more profitable to sell existing assets as opposed to maintaining them. The consequence of this approach may mean those who are owed entitlements through wages do not receive their full recompense in an effort to protect long term profit and minimise short term loss. The territorial state is increasingly exposed as powerless to fully protect individuals within its territory. The state is left to provide welfare for the unemployed while the corporation rationalises to protect assets and enhance profit.

The capacity for transnational corporations to influence territorial states is clearly evident in environmental tragedies. The Bhopal-Union Carbide case is a classic example of territorial states providing favourable economic conditions for large corporations. Unfortunately, cheaper production costs can promote greater risk to human well-being and increase risk of environmental damage. Chemical leakage caused '...2,500 people (to die) quickly and thousands more perished in ensuing weeks or suffered debilitating illness',⁷⁴

Despite the human tragedy and environmental damage to air, rivers and soils, Union Carbide paid minimal compensation for the destruction that emanated

from its factories. Effectively, the state was left to pay the costs created by an economic externality.

Mansbach⁷⁵ also highlights transnational corporations influencing political ideals. He refers to the example of International Telephone and Telegraph (ITT) using its technology to provide information which led to the overthrow of Allende. Allende displayed leftist tendencies, and if he had accessed control of government after Chilean democratic elections in 1973 it was feared that private industries including ITT would be nationalised. Foreign ownership in other industries was extensive. Rather than focusing on the subversive activities of ITT and other organisations, it is perhaps more appropriate, in the context of this argument, to recognise the tendency of a private corporation to defend its investment and profit.

In the Australian context, we can also look back to the mid-nineteen seventies when the Whitlam Labor Government was dismissed in unusual circumstances. After the stability delivered by a conservative Liberal government during the nineteen fifties to the early nineteen sixties, the Whitlam Government policies can only be regarded as radical. His Government's stance on equal pay for both sexes, and emphasis on increased social welfare are overshadowed by his government's attempt to buy back Australian resources from private foreign interests.

His government attempted to re-organise the minerals industry as a public enterprise⁷⁶. Whitlam wanted to exclude foreign investment from the minerals industry by structuring a public supercompany to extract and distribute minerals domestically and internationally. To do so, he needed to borrow monies from conventional European sources, whose interests co-aligned with the existing foreign investment. Crough and Wheelwright⁷⁷ acknowledge '...the locking out of mineral

corporations, foreign and domestic, from the exploitation of Australia's rich natural resources ... unleashed the "furies of private interests". Private investment was aided by a biased media⁷⁸ and supported by a parliamentary opposition party in forcing a federal election, and the ensuing removal of a government that was attempting to act in the interests of the public before considering the needs of private investment.

Obviously, the removal of the Whitlam Government was more complex than explained here. Issues such as the advice received by the Governor General from a Chief Justice whose previous career as a Liberal politician makes the process of dismissal intriguing. From Whitlam's perspective the ascendancy of Labor Senator Lionel Murphy to the High Court in an attempt to influence the number of High Court judges that were sympathetic to the Australian Labor Party equally politicised the supposedly impartial institutions of Government. Arguably, favourable numbers in the High Court would have permitted a half senate election, as opposed to the eventual double dissolution that occurred. Basically, a half senate election would in all probability have given Labor the numbers to control the Senate and pass supply, thus ensuring the longevity of the elected Labor government.

The point to be made from this experience is that both major political parties utilised or attempted to utilise an impartial political institution for their own gain. The fact that the Liberal party and the interests of private capital "won" the contest is further evidence of the dominant power of private interests over public interests in the Australian experience.

This occurrence, along with Chile's experience highlights the ever reducing role of the territorial state and its ability to act in the public interest. We are moving to the Weberian concept⁷⁹ of reducing the role of the territorial state to '...that

agency within society which possesses the monopoly of legitimate violence...' as long as that monopoly defends the interests of private investment. The individual, in the role of the state is being further alienated from the political, social and natural environments.

Bell and Head⁸⁰ define the state as '...essentially the entire apparatus of formal roles and public institutions that exercise political authority over populations within a given territory'. In the context of the transnational corporation, and the notion of the mobile state, perhaps Bell and Head's definition can be modified to a *controlling* influence over the entire apparatus of formal roles and public institutions that exercise political authority over populations within a given territory.

If you have the capacity to determine the roles and institutions within a given body, it is appropriate to determine that you control that body. In the terms of the mobile state, as well as having formal roles and institutions within the transnational corporation, the transnational body also influences the roles of the territorial state. Therefore, the mobile state determines how the territorial state conducts its institutions by its necessity to create an environment that is conducive to the needs of the mobile state.

The transnational corporation or, when necessary, a conglomerate of transnational corporations now make political decisions that affect the public interest, and determine the welfare of the public. We now have transnational corporations that have economies bigger than most countries making political decisions that affect populations in territorial states as well as the transnational corporation itself.

However, the mobile state or transnational corporation, unlike territorial states, is a profit orientated organisation. If it is not achieving sustained and long

term profits it will analyse its own function as to why this is not occurring. If it determines it has over employed staff in the context of meeting its needs and achieving its goals it reduces its staff to a desired level and leaves the individual to cater to his or her own welfare, or the unprofitable territorial state to cater to the welfare of the unemployed.

As well as transnational corporations and private investment influencing government policy, to enhance private capital's well being, the United Nations institution of the International Monetary Fund has enormous influence over government policy. In fact, it can be argued that International Monetary Fund policy is influenced by private investment's ability to influence governments that determine International Monetary Fund policy.

The International Monetary Fund explicitly advocates contemporary economic theory as the only viable economic approach for governments to adopt if they wish to participate in the global economy. The International Monetary Fund is a major money lender to developing territorial states. However, it stipulates three main conditions that borrowing states must adhere to if they are to receive monetary loans. The conditions are reduced public spending, the removal of public subsidies and the removal of public owned enterprises with greater access for foreign investment⁸¹. The borrowing country must also commit to reducing government debt. Therefore, if a territorial state aspires to develop a standard of living that theoretically improves the lot of its people, it must create conditions that are suitable for transnational corporations.

Furthermore, developing states are sometimes forced to create hardship for its people in an effort to attract foreign investment. The incentive may be cheap labour or minimal environmental conditions in regard to pollution output and

pollution risk. The actual structure of the International Monetary fund determines that the wealthier developed countries have greater monetary input and greater influence over lending procedures. This means that the wealthier countries have a great deal of influence over borrowing countries.

Developed countries like Australia also rely on the International Monetary Fund for support and must adhere to the required policies if it is to continue to fully participate in the international economy. This means transnational corporations influence domestic government policy of developed states and also influence international or global economic policy through influence over the wealthier territorial states and their input into the lending policies of the International Monetary Fund.

Maddox⁸² highlights the issues at a more local level when he recognises:

The ease with which transnational corporations move capital from one country to another, with sweeping consequences for exchange rates, balance of payments, regional unemployment and the like – in short, the ease with which they transport the conditions of economic boom and depression on a global scale – creates problems difficult enough for any government to cope with. Under federalism however, the problems are especially acute, if not insoluble. We have already observed how ruthlessly the states will compete to attract investment by the transnational companies, and in doing so, wear their own budgets desperately thin in the rush to provide cheap energy and infrastructure assistance.

The issue is how to counteract the disparities of unemployment and the marginalisation of social infrastructures created by the activities of transnational corporations. If we are to follow Maddox's line of reasoning that our current structure of federalism determines that more than likely the crisis is unsolvable, then it is perhaps appropriate to look for an alternative federal structure that protects and enhances the welfare of our communities.

REGIONALISM – THE AUSTRALIAN EXPERIENCE

The call for greater regional autonomy is not a new idea to contemporary Australian society. In 1949 Sir Earle Page perceived that:

A federal system with numerous partners is more likely to preserve the democratic system of government. Democratic government, to be efficient and to give content, must not only be government of the people and for the people, it must be within sight and hearing of the people.⁸³

Page advocated a greater number of states as a means of bringing greater democracy to the people through greater input by the people. His implicit goal was to give the people or communities greater control over their own direction. His implicit meaning was greater decentralisation as a means of circumventing the federal-state relationship that does not adequately address regional issues.

However, Maddox⁸⁴ points to the American experience where the existence of smaller states does not necessarily bring government closer to the people. He states that for smaller states to be a viable option '...it is necessary that the actions of Government be seen by the people and that Governments be visibly responsive to expressions of the people's opinions.' This means a greater input by the community into the decision making process. It means smaller communities recognising issues that are important to that community and having the means and access to government to express that need, and also having the means and access to government to act upon that need. Smaller, more autonomous regional governments have the capacity to recognise and understand more fully community needs simply because under an appropriate structure the regional government is closer to its community than the centralised State and Federal governments.

The Whitlam Government attempted to address regional issues in the early to mid nineteen seventies. It did this by asserting its power over state rights in regards to regional issues. It somewhat circumvented the role of the state by dealing directly with regional issues. For example, The Whitlam Government ...created many new administrative regions for directing federal expenditure with local advice. Under the aegis of the Commonwealth Department of Urban and Regional Development a network of regions allocated funds for urban and rural community improvement. The Australian Assistance Plan established a second network of local regions to provide social welfare according to the peculiar needs of each region as determined by local residents.⁸⁵

The Whitlam Government attempted to bring government closer to the people, and more responsive to the people, by creating the opportunity of greater control by local communities over issues that that community perceived as most important within its region. The Whitlam government attempted to implement the ideals of Sir Earl Page, of government '...within sight and hearing of the people.'

To say that the States were concerned with the Whitlam Government's approach is an understatement. The concern of the States and their desire to be rid of the Whitlam Government is apparent in the break with convention of replacing vacant senate seats through death or resignation with political party members from the same party as the vacating senator. By replacing vacating senators with independents who did not adhere to Labor Party principles, the States enhanced the opportunity for the Senate to eventually block supply and force the government to an early election against its own desires.

Maddox⁸⁶ argues that the states were actually better off under Whitlam's regional principles, as it gave greater freedom for State spending in other areas. This may well have been the case, however the states did not react kindly to what was perceived as the undermining of state authority and the general role of the

state in Australian Federalism. The adverse reaction of the states also raises the question of who are the major beneficiaries of the current federal-state structure? Who are the major beneficiaries of the centralised structure?

Invariably, in centralised structures, lobby groups and pressure groups are the means for governments to understand the needs of their constituencies. However, under this system the groups of influence approach government, as opposed to the government going to the community, to assess and understand the needs of that community. In the current environment, pressure and lobby groups of influence are generally dominated by business interests. The very nature of the Australian Constitution and the laissez-faire interpretation of Section 92 determines that business interests in a centralised structure will have a major influence of government legislation and policy.

Pressure group studies during the late seventies found that positions in business pressure groups were linked through individuals having influence and key positions in various groups simultaneously, and that the pressure groups were directly represented on various government advisory boards⁸⁷. Therefore, business has a direct link to government and the centralised decision making process, through a relatively small number of interlocked business representatives. Connell⁸⁸ found '... there were board connections between companies that were rivals or customers of each other, and between manufacturers and their financiers'.

This, combined with private foreign ownership becoming increasingly prevalent in Australian society, makes it understandable that business interests prefer a centralised government structure to enhance government legislation and policy. It is much easier for transnational corporations to conduct business under a

system that generalises community needs, as opposed to the decentralised structure that promotes diversity and greater variations of community needs.

It is easier from the perspective of the decision making process reduced to fewer steps, as well as permitting products to be mass produced for wider audiences. It is conceivable that the transnational corporation views decentralisation as a structure that undermines its profitability and therefore viability, by promoting more diverse local industries that cater to local needs. Basically, a direct link to regional communities by a federal tier of government may not be perceived by business interests as being in its best interests. Costs of production and costs of influence are minimised in a centralised structure.

Perhaps some will argue that current moves to the notion of 'subsidiarity' reflects a move to a more regional approach. Longo⁸⁹ suggests '...subsidiarity, in its broadest context, authorises local or regional actors to act whenever they can *actually* do better than the higher levels of authority.' However, Australia's current move to a more regional approach is undermined by the notion of contractual arrangements, driven by efficiency, as a means to address regional issues.

Carson and Wadham⁹⁰ observe:

In the wisdom of current social policy, new public sector management promotes a search for efficiency and effectiveness in service delivery; first through implementing principles of subsidiarity and second, through the creation of quasi – markets in the public sector. That is, decision making should be devolved to the lowest feasible level of administrative organisation and at the same time government departments should contract with other departments or agencies to deliver specific services funded on the basis of output. Depending on the emphasis in particular circumstances, either local government or non-government agencies are believed to be the most effective level of administration to deliver services...

These two strands of the reconfiguration of the state and state services underpin regionalism and contractualism respectively, but they are in tension.

If a regional government agency or non-agency is not competitive funding is withdrawn. Therefore the agency is driven by the constraints of a budget beyond its control. The agency must deliver an outcome desired by the state, be it the national state or the domestic state, to survive. Therefore its main motivation is not necessarily the needs of the region, but the needs of the state. Carson and Wadham add

...the declared commitment to subsidiarity and regional devolution runs the risk of being limited by shortage of funds and support services. The productivity commission has documented concerns about the extent to which the principle of giving responsibility to local and regional agencies, at the same time as funds for provision of services must be secured through competitive tendering, has had the unintended consequence of reducing funds available to service delivery agencies in rural and regional Australia.

Current contractual arrangements as a means of addressing regional issues are merely an extension of contemporary economic theory. Responsible regionalism should be responsive to the people, or a more representative form of democracy. A true or more responsive regionalism identifies the needs of communities and allocates monies to address those needs without the need to competitively tender. A more appropriate regionalism has the capacity to raise its own financial requirements through local taxes and local utilities.

Furthermore, government agency boards have a direct influence over contractual arrangements. These agency boards are influenced by business pressure groups:

Democratic civic processes are minor elements in the Australian State's model of corporate social capital, which seems to be essentially a top-down model controlled by elites. Regional development boards have chairs appointed by the Department of Industry and Trade, with

membership primarily consisting of representatives of government agencies in the region. This does not constitute representation on the basis of a popular vote, because no one elects regional development board members.⁹¹

Pressure groups that benefit from centralised bureaucracies continue to influence policy perspective through government advisory boards, who currently determine efficiency driven contractual arrangements as the optimal outcome.

REGIONALISM - THE ISSUES

In the Australian framework, individual input into the decision making process by the vast majority of the population is minimal. The only real expression of determination is the opportunity to vote for elected representatives at local, state and federal levels. The nature of our society and its guiding Australian Constitution determines that the most influential levels of government are at the state and federal levels. However, the individual has minimal input into the formation of policy or legislation which directly affects how he or she lives within the local, state and federal communities. The major source of influence is at the level of lobby and pressure groups whose ideals are closely co-aligned with those of the International Monetary Fund and World Bank. Government policy is heavily influenced by domestic business interests and by international business interests. A significant proportion of domestic and international interests are linked through subsidiaries and investment links.

The individual in society is marginalised in self-determination of economic, social, political and environmental well being. These aspects of individual and community well being are dictated by the interests of private investment. Now, private investment may well have individual and community well being as a prerequisite for any decisionmaking processes, or it may not. Private investment may be motivated purely by self-interest or profit. Either way, the individual remains disenfranchised from individual and community well being.

Having recognised the detrimental effects upon the individual and our communities in general, it is also important to once again recognise the good aspects of private investment. Advances in medicine, education, science and

technology are but a few. Without the benefits of modern transport and communication the individual in sedentary based societies in all probability would rarely travel more than one hundred kilometres from his or her existing community, if they would ever travel that far at all. Our indigenous communities may well have travelled distances generally well beyond any sedentary society, prior to European incursion. However the time to do so, when compared to today's modes of travel is difficult to comprehend. In many instances, electronic communication also removes the need for travel. Without technology, to convey a message to someone one hundred kilometres away and receive a reply may take up to twenty days. Through the telephone or internet, communication is virtually instant.

However, technology itself, without an appropriate formalised structure, can exacerbate social alienation and the sense of community. The current ascendancy of the economic environment based on the utilisation of technology is evidence of the breakdown in social, political and natural environments.

Liberalism, and its promotion of the individual in the industrial era has a lot to answer for in the context of these contemporary issues. The concept of liberalism requires the individual to be separated from community in its emphasis on material comfort and accumulation when it is promoted through classic and contemporary economic theory.

State liberalism attempted to address these issues by focusing on the individual in society through government intervention. To a degree it was successful in maintaining a level of community and social well being. However, its record on natural environmental quality leaves a lot to be desired, primarily through ignorance and a preceding alienation from the importance of a sustainable natural environment.

In a general sense, classical liberalism's legacy to state liberalism was the need for the individual to be less reliant on community for perceived well being. In all probability the core feature of liberalism's alienation process is a centralised bureaucracy or government in the administration of rights and laws of the individual, the community and the state.

Centralisation expedites the decision making process in industry and war. However, the very essence of a centralised bureaucracy is to place a barrier between communities and the decision making process. The very nature of centralisation without the counterbalance of an equally important decentralised structure determines that decisions are made by a few rather than by the many.

To be fair to the ideal of liberalism, the emergence and promotion of the Soviet Communist state by those disenchanted with the detrimental effects of state capitalism, and the possible implementation of liberalism, did not provide an adequate answer. In fact, there is a good argument that it was more destructive to the well being of the individual and the environment generally. This is certainly the case through the Stalin era and to a lesser extent, communism's existence from that time until its demise. In fact, it is a good example of a greater emphasis on centralisation making decisions that were totally inappropriate for communities far removed from Moscow. However, communism's theoretical base of Marxism provides a good analysis of the worker only having labour to offer as a commodity. It highlights the centralised features of capitalism alienating the individual. The fact that the practical implementation of Marxist theories created greater disruption to the well being of the individual in society, and in the natural environment, should not be used to detract from the shortcomings of liberalism in a centralised society.

Centralised societies are primarily influenced by those close to the centre. In the Australian context those closest to the centre are private business interests, and it is logical that influence will be utilised to enhance private interests. Those interests are best served by a community that accepts and promotes the accumulation of money or capital by those who have pre-accumulated forms of capital. That is to say, it is easier for private investment to accumulate profit or excess than the individual, by the very nature of private investment utilising or exploiting the individual who seeks a return for sustenance and existence. The circumstance is exacerbated when the individual is subject to centralised decisions without the support or input of a decentralised body that the individual can identify with.

The feature of a centralised bureaucracy overwhelming a decentralised structure, rather than functioning harmoniously with a decentralised structure, can also be argued in the context of anthropocentrism disregarding features of ecocentrism. Anthropocentrism is concerned with the individual having the freedom to exploit resources at anytime or anywhere he or she deems it necessary. It is a view that regards any other life form as an entity that is there to be exploited for the express purpose of improving the lot or well being of humans, and it is best achieved in a centralised structure. The anthropocentrist point of view is one that easily co-aligns with contemporary economics in its call for laissez-faire freedom, regardless of the external costs of any action that others may have to bear, or any degradation to a way of life that previously existed. Its very essence promotes globalisation and the associated need for centralised bureaucracies to ensure its dominance.

Ecocentrism, on the other hand, is based on smaller communities maintaining their economic, social and natural environments in a way that minimises

human impact on the natural environment. It is implied that the responsibility and costs of any action is paid for at the local or regional level, if that action may be detrimental to a broader community sustainability. It is also directly opposed to the concept of a global community and the exploitation of resources by transnational corporations in areas that it otherwise has no interest.

The purist will argue that the ecocentrist places as much value and importance on any other species as the human species, and in a sense it does. However, ecocentrism is also about giving other species as much importance as the human species for the enhancement of human survival. That is to say, the more diverse the ecosystem, the more resources there are available to be utilised by the humans species as well as other species. It is an approach that calls for a balance in our ecosystems that tends to sustain the health of itself. It is a point of view that demands greater awareness of human impact at the community level. It is an approach that generally does not condone decision making thousands of kilometres from the area where that decision will impact. It is also an approach that requires greater control of resources at the decentralised level of community. In the context of anthropocentrism and ecocentrism, once again we see the opposing perspectives clash without respect for the better elements in each concept of existence. Decisions that affect the decentralised community are still made at a centralised level, primarily because the control of resources are maintained at the centralised level.

At a practical level, the opposite ends of the control of resources is best represented by transnational corporations that have positioned themselves to influence political decisions made at the territorial state level. This is in contrast to the isolated individual that only has his or her labour to offer for sustenance,

wellbeing and resource accumulation. Furthermore, the very nature of the uninhibited form of capitalist liberalism demands that there are winners and losers. The winners in the short term are recipients of profit created by transnational corporations, while the losers are individuals who are unable to sell their labour in return for shelter and well being.

Perhaps there is irony in the fact that the Australian Constitution, and its interpretation, determines that such an occurrence is perfectly legal and is embodied in the interpretation of Section 92 of that document. In fact, the history of the interpretation of Section 92 implies that the only real freedom necessary is economic freedom, primarily because all other freedoms are naturally subordinated by economic freedom. In a 1980 High Court decision, Justices Gibbs and Wilson observed:

Absolute freedom of interstate trade commerce and intercourse requires that the citizens of the Commonwealth shall within the framework of a civilised society be free to engage in these things. The difficulty is that the trend of political theory and practice is to develop and strengthen that framework more and more and often at the cost of individual liberty...⁹²

Two aspects of this statement are of interest. Firstly, the retraction of Government influence in political decisions that relate to conventional political theory, over the past twenty years, signifies the emergence of economic freedom reducing the impact of state liberalism. Secondly, The Justices' observation is that individual liberty is suppressed if it is not driven by economic freedom.

Economic freedom is enhanced by the rights of the various domestic states on the Australian landmass. That is to say, at one level the Constitution promotes economic freedom, at another level the states are given the role of enhancing and protecting economic freedom, regardless of externalities that may occur from such actions.

Recognition of the imbalances created by centralised bureaucracies is not new, at least at a social and economic level. Sir Earle Page was aware of the negative aspects of large government becoming removed from the people, and the people removed from the decision making process. He advocated smaller domestic states as a means to address the lack of control individuals and communities have over their lives. However, Maddox pointed out that smaller states do not necessarily mean greater community involvement at the decentralised level. There still needs to be a component that assures greater involvement at the regional level.

Whitlam attempted to implement methods that rectified these issues by, in a sense, circumventing the role of the states. Some would argue that the process was to be consultative between the local, state and federal level. However, the reaction of the domestic states suggests that circumventing their centralised role was a threat to the states and may well have been illegal, according to the Constitution. Regardless of the legality and response of the participating governments, it is worth noting that the implementation of greater regional autonomy required greater authority at the federal level to circumvent state resistance to greater self-determination at the local or regional level.

In a theoretical sense, the attempt to circumvent a part of the role of the domestic states is a shift away from a federal centralised bureaucracy administering authority to domestic state centralised bureaucracies, who then administer authority to the decentralised regional authorities. An aspect of the current approach is that resources are primarily controlled at the domestic state and federal levels. Whitlam attempted to move to a model, be it in a partial form, of a centralised federal government administering authority to a decentralised regional authority. However,

the Whitlam Government still retained control of resources by determining the final release of finances of approved activities.

For the moment, if we disregard the control of resources by the federal level as to how the regional level receives funding, the positive aspect is that the decentralised regional level was given the capacity and encouraged to identify the needs of the regional community. The regional community was given the opportunity to shape its own direction and future. The fact that this approach was short lived may be argued from the perspective of perceived failures, but the reality is that the objection at the domestic state level and the removal of the Whitlam Government at the Federal level cut short any opportunities to develop in a manner that actively promoted greater regional autonomy.

Interestingly

Federalism may be understood to mean a form of governance that admits local government involvement in national decision-making, although the Australian federation, by its very form, does not do so.

...a form of federalism or a federation that assigns responsibilities to local government in national decision-making is more likely to uphold certain values such as democracy and transparency. In theory, federalism reinforces democratic values through the imperatives of local participation and responsibility. Moreover, the decentralisation of state structures through power-sharing and cooperation between different levels of government, arguably increases efficiency as decisions are taken as close as possible to the citizen affected by the measure. Federalism, as an organisational model, "presupposes the spread of subsidiarity".

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That is to say, while Australian Federalism is, in a sense, well placed to enhance the concept of regionalism, it does not fully fulfil regional requirements because there is no constitutional recognition of our regions.

The absence of autonomous power in Australia's local governments is the basis for the off-

made claim that constitutional amendment is required to give recognition to local government as an equal actor in Australia's federal system. However, the Commonwealth's apparent lack of commitment to constitutional recognition of local government makes it difficult for local government to strengthen its role in Australia's federal system. Thus local government remains tied to State and Commonwealth political agendas.⁹⁴

A true regionalism is a regionalism that is based on the needs of its people, it is within sight of the people and is more representative of its people. Any current applications of regionalism are not acting in the interests of those in the regions, but are driven by domestic and national state requirements of efficiency and contemporary economic theory. Regionalism '... requires a jump from continued entrenchment of the concept of regions as peripheral to the urban capitals to a centrifugal concept in which each region (whether rural, urban or suburban) is treated as a centre in its own right. On this view, 'the regions' are not a generic category of backblocks, defined only by their relationship with seven cities, but rather a network of self defining territories.'⁹⁵

Undoubtedly there are many issues and reasons why a more representative and autonomous regionalism is not currently in place in Australian society. The very structure of Australian Federalism, while implicitly tending to regional needs is invariably driven by private interests and its requirement of centralised government as a means to appropriately influence the decision making process. However, the current awareness of natural environment repair requires an autonomous regional approach to identify natural environment needs as well as Federal input into environmental repair and protection. Just as regionalism needs to be recognised in the Constitution to be truly effective, so too does the natural environment.

REGIONALISM AND ENVIRONMENTALISM

To address the major issues of the marginalisation of communities and environmental mismanagement in Australia today it is necessary to develop Page's prerequisite of government of the people, for the people and within sight and hearing of the people. An appropriate and direct method of achieving this outcome is to develop a regional - federal structure that gives greater autonomy and authority at the regional level.

In the context of autonomy and authority at the regional or community level, the defining element is the control of resources. Control of resources implies a degree of ownership and a scope of ownership that encourages the maintenance, well being and sustainability of that resource. To achieve such an outcome, the current institutions that determine our outlook on life, and our way of life need to be modified. They need to be modified into a structure that caters to the needs of the participants in Australian contemporary society. It is interesting that Adam Smith recognised 'Laws frequently continue in force long after the circumstances which first gave the occasion to them, and which could alone render them reasonable, are no more.'⁹⁶

The Australian Government's 1973 Treasury Economic paper, released during the Whitlam period, provides a critical analysis of fundamental changes as to how we should approach the issue of pollution, economic growth and the utilisation of resources. The paper recognises:

Pollution problems are mainly attributable not to economic growth per se, but to the economic conditions under which growth has been allowed to take place. It follows that the proper remedy for pollution problems is not to halt growth or slow it down, but to change the

conditions under which producers and consumers are allowed free and unrestricted use of the 'shared resources' of the environment.⁹⁷

The Treasury paper calls for a fundamental change and implies the implementation of a law that changes the way we utilise resources. It implies laws that minimise pollution output are appropriate if we are to maintain sustainability of our environment and therefore our communities.

To take the Treasury's analysis a step further and apply it to the marginalisation of the individual in our communities, if the words 'pollution problems' are replaced with '*marginalisation of communities*' we again are identifying the major issues of inadequate conditions for the viability of our communities. The issue isn't economic growth itself, but how we apply economic growth in regards to social and natural environment well being. Consequently, if we are to change the conditions or laws that exacerbate community and natural environment well being, we need to change the law at its highest level. It is not appropriate to implement laws that protect the natural environment and enhance community well being at a level below the law that is exacerbating environmental degradation and the marginalisation of our communities. It is only logical that a democratic appeal process will eventually look to the highest law to determine what is legal within the Australian State.

The highest law in the Australian State is The Constitution Of The Commonwealth Of Australia, and that is where the fundamental law that is exacerbating pollution and the marginalisation of our communities is positioned. Specifically, Section 92 of the Australian Constitution is interpreted to promote economic freedom over other freedoms. Consequently laws to protect the natural environment and community well-being need to be implemented at the same level as a counterbalance to the domination of the economic environment.

Eckersley recognises the same issue, perhaps not so much specifically from the perspective of 'economic growth per se', but more from a general economic perspective when he says:

Environmental externalities such as resource depletion, pollution and species extinction are seen as arising not from the operation of 'market forces' or self - interested behaviour for short term gain ... but rather from an absence of well defined, universal, exclusive, transferable and enforceable property rights in respect of common environmental assets.⁹⁸

Although Eckersley expresses concern for environmental issues, the principle of defined property rights is applicable from the perspective of pollution and ownership. Once again the principle of defined property rights must be implemented at the highest level of law to counterbalance the effects of Section 92, or 'economic growth per se'.

Firstly, an act of the Constitution that recognises natural environment quality places the onus on the judicial system to determine the balance between economic freedom and environmental well being. It removes the responsibility for legislative protection from the states and places responsibility at the pinnacle of our law making bodies. In the context of the current federal state and local structure it remains pertinent for domestic states and regions to make environmental policies that are appropriate to current territorial boundaries. However, recognition of environmental quality at the federal level, while interpreted to reduce environmental destruction in the most immediate and direct sense, has the capability to ensure the responsibility of the cost of pollution externalities is placed fairly and squarely with the persons or organisations that cause the pollution. It has the greater potential to ensure the cost of repair is not carried by those who have no influence or input into the venture that caused any environmental degradation.

Another important aspect of environmental recognition within the Constitution is judicial interpretation, not just in the short term, but for the sustainability of the Australian landmass into the next century. The most important feature in the immediate and long term is to provide a balance between the economic environment and the natural environment. It is a means of reducing or inhibiting the current domination of the economic environment over the natural and social or communal environment.

The idea of recognition of the natural environment is not meant to stultify or reduce standards of living. Conversely, it provides the opportunity for greater diversity and creativity in our general communities. Constitutional recognition of the natural environment in the body of the Constitution itself, and not just the preamble, encourages the use of alternative fuels in a manner far more extensive than is utilised at present. An increase in the use of alternative energy reduces the current emphasis on fossil fuels, which are currently major contributors to global warming.

It is a generally accepted fact that the effects of global warming will cause our seas and oceans to rise. It is also a fact that much of the Australian population live in coastal areas. Consequently, a rise in ocean levels has the potential to cause major displacements to the current demography. It is extremely important that, when the gradual impact of the loss of coastal areas becomes more apparent, we have sound environmental practices in place to minimise any ensuing upheaval to domestic populations. Natural environment best practices are enhanced by natural environment recognition at the highest level of law.

An aspect of natural environment abuse that must be addressed is that government centralisation removes the decision maker from the territorial area that the decision will affect. Furthermore, continued centralisation at a domestic state

level marginalises those that live in the affected territorial area. That is to say, decisions that directly affect the health of the natural environment are made by persons not necessarily affiliated with that area. Certainly, advisory committees or individuals may provide recommendations to the decision makers, however such advice is often tailored to the requirements of particular interests. Dorfman⁹⁹ was aware of this process when he recognised:

... the use of benefit – cost analysis is a subject of controversy, and the results are regarded with skepticism. This low esteem is well merited, for few analyses can command respect or confidence. As a result most have come to be paper exercises, undertaken for the record, while actual decisions are made without the guidance accorded by the careful analysis of their consequences.

Accordingly, it is appropriate to promote a greater link to community ownership as a means of circumventing economic decisions that have detrimental effects to the communities. Constitutional recognition of the natural environment provides the necessary law to counterbalance adverse consequences, while a regional – federal structure provides the basis for the practical application of that law.

Whitlam's call for greater decentralisation was apparent when he said:

...our continent should have neither so few State Governments nor so many local government units ... We should have a House of Representatives for ... nation-wide matters, an assembly for the affairs of each of our dozen largest cities and regional assemblies for those few score areas of rural production and resource development outside those cities.¹⁰⁰

Perhaps Whitlam was advocating for a regional - federal structure based of approximately seventy regions. However in the context of this argument a specific number is not important at this point in time. What is relevant is Whitlam's recognition of the frustration caused by federal and state centralised bureaucracies inhibiting government closer to the people.

Whitlam's experiment with specific purpose grants certainly showed that the states can be unofficially circumvented. That is to say, specific purpose grants were passed on to the State Governments as long as they were passed on to local councils or independent bodies for a specific reason. However, vital to this argument for greater community involvement and natural environmental diversity is greater resource ownership or control by regional communities. Such an occurrence is not all that great an extension on Whitlam's attempt to circumvent the current domestic state structure and allocation of resources for specific purposes.

The current Australian Constitution, under Sections 121 to 124 permits the creation of new states. Certainly, greater powers on issues such as education and transport may be centred at a federal level, but greater input can also come from the smaller states or regions on these issues, as there would be greater involvement and understanding of local community needs. Basically, government would become closer to the people while powers of the existing domestic states would both evolve to the federal sphere and devolve to the regional sphere. Such a structure would also retain the capacity to deal with business interests on a level that has the potential to create greater diversity to a vibrant Australian community.

The notions of a new regionalism and constitutional recognition of the natural environment are equally important for Australia's sustainable future. The urgency of environmental repair requires smaller regional units with a greater sense of community to implement that repair at a fundamental level. Conversely, at a Federal level, the need for constitutional recognition of the environment is required to balance the current domination of the economic environment. With this in mind, let us examine the possible economic-environmental balance at the federal level.

The concept of environmental recognition at the highest level of law is not meant to create or imply the dominance of the natural environment over the economic environment. Rather than inhibit the economic environment, the balance with the natural environment will create the prospect of greater innovation within the economic environment. When both the economic and the natural are recognised equally in law, the result will be the economic approach that minimises impact on the environment. Constitutional interpretation will also ensure a common sense approach to the needs of the economic and the needs of the natural. That is to say, interpretation of the Constitution will not permit the economy to be adversely affected by the absolute needs of the natural environment, nor will the natural environment be adversely affected by the absolute needs of the economy.

The reality is that we impact on the environment, and the immediate need is to minimise that impact while maintaining a viable economy in the capitalist framework. From this perspective, it is appropriate to re-visit 1988 and 1990 High Court decisions relating to Constitutional interpretation of Section 92.

Firstly, the 1988 decision to inhibit the importation of crayfish that were considered below the legal size in Tasmania was determined on economic grounds, and economic grounds alone. The decision was not made because the importation of undersized crayfish may have caused the fishing of undersize crayfish in Tasmania. The decision was made on the grounds that the importation of undersized crayfish would have adverse effects on the economy of the Tasmanian crayfishing industry. The adverse effect was the importation of South Australian crayfish, that were of legal size in that state would reduce the economic viability of Tasmanian crayfishermen. The decision respected the rights of intrastate traders over the rights of interstate traders. Even though the decision was one that may yet

be a precedent for future decisions relating to intrastate trade, let us consider what decision may have eventuated if there was constitutional recognition of the natural environment.

It is highly probable that in this instance constitutional recognition of the natural environment would not have varied the decision to ban the import of South Australian crayfish. The critical issue is the impact on the natural environment caused by the import of crayfish. Firstly, the import of crayfish that are considered undersize in Tasmania needs to be assessed from the perspective of impact on the Tasmanian species as well as the economic impact on intrastate crayfish traders. If the import of South Australian crayfish were permitted, a means to protect the livelihoods of Tasmanian crayfish traders in the short term may have necessitated reducing the legal catch size of Tasmanian crayfish. This action may well have detrimental effects on Tasmanian crayfish stocks, which in the long term would threaten the entire Tasmanian crayfish industry as well as the survival of the crayfish itself and other species in the crayfish foodchain.

Another perspective that would need to be considered is the impact on South Australian crayfish. That is to say, if the import of South Australian crayfish into Tasmania, that are considered undersize in Tasmania, were permitted, the detrimental effects on the South Australian crayfish would need to be assessed. This aspect has further implications in the sense that crayfish from other states would be impacted upon if the import of South Australian crayfish was permissible.

Consequently, it is highly probable that the 1988 decision not to permit the import of South Australian crayfish would remain unchanged. In this instance, to permit the import of the crayfish in question would have a detrimental impact on both the economic environment and the natural environment.

The 1990 decision that permitted the sale of alcohol in non-refillable containers without an extra surcharge in South Australia may well have been different if recognition of the natural environment was part of the Constitution. The Bond Brewing Group, was attempting to increase their market share of the South Australian alcohol market using non-refillable bottles.¹⁰¹

In January 1986, Bond began a marketing campaign in South Australia and within two months, had increased its share of the market for packaged beer from less than 0.1 per cent to 4 per cent, at the expense of SAB – whose share of the South Australian market fell from 77.4 per cent to 73.5 per cent.¹⁰²

The South Australian Beverage Container Act Amendment Act, passed in October 1986, required purchasers to pay a fifteen cent deposit on non-refillable beer containers, a five cent deposit was required on non-refillable soft drink containers, a fifteen cent deposit was required for non-refillable low-alcohol wine containers and a four cent deposit was required on refillable glass beer containers.¹⁰³

It is not difficult to argue that the South Australian amendment to legislation could be viewed as a form of protectionism, and to a degree it is a valid argument. However, as approximately twenty two per cent of the market was controlled by the Victorian based CUB the argument is not entirely consistent. Also, in the context of quality of the natural environment, the issue of interstate trade is increasingly diminished.

Added to this is the fact that the cost of producing a refillable bottle was 16.65 cents while the cost of a non-refillable bottle was 16 cents at that time.¹⁰⁴ The nature of refillable bottles implies that production costs are reduced by the very fact that returned bottles determines less need for produced bottles. Not only are

refillable bottles more environmentally friendly, long term production costs are reduced.

The South Australian Government, according to Justices Mason, Brennan, Deane, Dawson and Toohey, claimed that amendments to the 1986 act:

... promoted litter control and conserved energy and resources. According to the (South Australian Government), this effect was achieved by the imposition of a deposit on non-refillable containers in an amount judged sufficient to ensure their return and discourage their use and by providing a refund point – in practice any place of sale – to encourage return and to discourage manufacturers from using such containers. Thus the (South Australian Government) contends that the objects of the legislation were: (1) to promote litter control by forcing non-glass containers and non-refillable bottles into a return system by encouraging return; and (2) to promote energy and resource conservation by discouraging the use of non-refillable containers by imposing a higher deposit and by requiring acceptance of returns at the point of sale... . The special case mentions that the use, return and refilling of refillable bottles generally results in a proportionate reduction in the release into the atmosphere of carbon dioxide from the burning of natural gas in the production of glass containers. However the (South Australian Government) does not claim this is an independent object of the legislation.

In retrospect, an important issue that is apparent under the current constitutional structure is that Section 92 has precedence over state laws. This is also a good example of the economic imperative dominating environmental importance while there is no equivalent natural environment law at the Federal level.

The important aspect of the High Court's judgement was that if the detrimental effects of the South Australian legislation were 'incidental' to the Bond brewing company its decision may have been different.¹⁰⁵ Because the High Court determined that the legislation was primarily protectionist, the South Australian legislation was determined invalid and Bond Brewing was entitled to trade with non-

refillable bottles without being subjected to a higher deposit than refillable containers.

However, with constitutional recognition of the natural environment, protectionism in this instance may not have been an issue. This is because, from an energy consumption perspective, the refillable containers have less impact on fuel resources. Interestingly, in the Bond case, The Chief Justices refer to the minimal saving of fuel sources when refillable containers are used, as opposed to non-refillable containers. 'If all beer bottles manufactured in South Australia were non-refillable bottles, the extra energy consumption in the State would be between 0.06 per cent and 0.12 per cent of the total energy consumption in the state.'¹⁰⁶ How this assessment of energy saving was achieved is not stated. However the Justices state that the minimal saving in fuel resources does not justify the extra surcharge on non-refillable containers.

The Justices add that if the Bond group makes and produces its bottles in other states and reduces South Australian Breweries' market share, then this is further justification for permitting the sale of non-refillable containers as the reduced market share by South Australian Breweries further reduces energy consumption in South Australia. However the decision does not respect that reduced energy consumption in South Australia, because of reduced sales, causes increased energy consumption in other states. Furthermore, even though the amounts of energy saved are around 0.1 per cent, if ten equivalent sized businesses adopted similar business principles because of the decision and made the equivalent energy savings, this amount becomes one per cent. When we consider the number and nature of industries on the Australian landmass it is not difficult to extrapolate this figure into a significant percentage. Also, the High Court decision did not consider

the possibility of reduced pollution emissions that contribute to global warming and continued damage to the ozone layer. There is also the reduced impact of litter and its effects on other species that would have to be considered if there were constitutional recognition of the natural environment.

Current interpretation of The Constitution, determines the impact of economic externalities are not genuinely considered unless the detrimental effects to competing businesses are incidental. However, given the competitive nature of private enterprise, constitutional recognition of the natural environment would provide incentive to utilise resources that reduce human impact on the environment.

Certainly, in one context the South Australian legislation may be regarded as protectionism. If this is the case, it is a form of protectionism that is based on environmental quality. It is a form of protectionism that favours those who reduce the externality of pollution and environmental degradation. In this sense, it is a form of protectionism that protects the natural environment, and promotes local employment. However, in the framework of capitalism, it is not the explicit intention that legislation based on environmental factors enhances local industries. What is important is clarification of the framework that private enterprises must conduct their businesses in. Section 92, combined with constitutional recognition of the natural environment, provides that competitive framework.

Another interesting aspect of the 1990 High Court decision is that we are dealing with Australian enterprises that have transnational status. Therefore, this example provides an outline for transnational corporations dealing within regional structures. It is a structure that provides concessions and incentives for the most environmentally sensitive corporation. It is a means of guaranteeing a level of market share in the short to medium term.

The 1990 case also provides a guide for regions to promote incentives when negotiating with businesses. Constitutional recognition of the natural environment supports that incentive. It is a means of inducing business to invest in a particular region with the guarantee of a market share. In the instance of the Bond case, if the Bond Group desired to compete with equal incentive it would be required to restructure its manufacturing processes that respect the need for environmental quality. The 1990 case, with constitutional recognition of the environment, provides the basis of protecting market share beyond the notion of monopoly. The fact was that there were three brewers using refillable containers, and while each conducted their business under this principle, they were obviously favoured by the South Australian legislation.

If the South Australian example is used to transpose the concept to a more regional focus, the prospect of greater diversity and innovation is enhanced through a greater focus on the needs of regional populations. The diversity is in the greater number of regions providing incentives, under the principles of environmental quality. It promotes the needs of regional populations and respects the regional natural environment. Incentive to base businesses in particular regions can also possibly be enhanced by environmental taxation incentives.

Obviously businesses employ people, in all probability a significant number of local people, as well as interaction with industries that supply the businesses in question. In the context of transnational corporations, a regional structure guided by the need for natural environment quality caters to the needs of its population, in the sense of social well being and social welfare. Social welfare is an aspect that transnational corporations, and private enterprises in general, have rationalised as

being an individual's responsibility, rather than the responsibility of the territorial state.

A regional structure, with federal support, identifies the needs of its populations and provides regional incentives to enhance the social and community welfare of its populations. It is a means of enhancing social welfare through greater regional and federal influence, which also enhances the prosperity of private enterprise. Globalisation needs to be balanced by increased influence at the decentralised regional level as opposed to the current centralised state level.

The need for a balanced regional approach is also apparent in another High Court decision relating to Section 92 of the Australian Constitution. The case in question, a 1976 decision between the North Eastern Dairy Company Limited and the Dairy Industry Authority of New South Wales involved the NSW authority requiring milk sold in that state to be pasteurised in that state.¹⁰⁷ However, once milk is pasteurised it cannot be pasteurised again. This means that the New South Wales legislation was a form of protectionism that had no natural environment enhancements, but was based on the protection of the New South Wales Dairy Industry alone. The High Court decision favoured the North Eastern Dairy Company. Under the guidelines of constitutional recognition of the natural environment, the 1976 decision would possibly also be determined in favour of the North Eastern Dairy Company, thus enhancing the welfare of the North East Victorian region as opposed to the larger economy of New South Wales.

Hanks makes the interesting observation that:

The freedom guaranteed by s 92 is not a concept of freedom to be ascertained by reference to the doctrines of political economy which prevailed in 1900; it is a concept of freedom which should be related to a developing society and to its needs as they evolve from time to time. Section 92 finds its place in a Constitution which was intended to operate beyond the limits of

then foreseeable time - it would be a serious mistake to read the guarantee or immunity which it offers as one which necessarily and rigidly reflects ideas accepted almost a century ago. Instead the section should be seen as a provision whose operation may fluctuate as the community develops and as the need for new and different modes of regulation of trade and commerce become apparent.¹⁰⁸

Hanks' view is an interesting observation and to a degree is correct. However, it is correct only in the context of economic freedom overriding the natural environment. The fact that a benefit is incidental should not be marginalised by the emphasis on trade. If Section 92 is to be truly adaptive to contemporary social and community issues it should be interpreted to protect the natural environment regardless of the incidental or specific purpose of any federal or state legislation or challenges to state or federal legislation.

Current interpretation of Section 92 does not deliberate on the incidental economic effects of legislation, unless the incidental effect hinders intrastate or interstate trade. Recent clarifications of Section 92 concentrates specifically on intrastate and interstate economic trade. Clarifications determine the impact of the 'invisible hand' on local communities and economies. Although Hanks values the interpretative nature of the Constitution and the associated Section 92, the structure of our communities have changed dramatically over the past one hundred years. The expansive nature of our populations has determined that the centralised state and federal spheres of government are no longer adequately structured to serve the communities. This is also apparent in our Constitution. Certainly there is scope for further states in the current Constitution. However, the very structure of government and the Constitution, with its emphasis on majorities from the current states as a prerequisite to additions, inhibits any process in that direction. The institutional structure itself restricts interpretation to the economic realm, and that interpretation

is limited. It is limited because of the imbalance of Section 92 and its inability to encourage regional power or autonomy.

The Tasmanian crayfish case, determined in favour of the intrastate traders, had the incidental effect of protecting an element of the natural environment. The South Australian refillable container case had the incidental effect of inhibiting protection of the natural environment. The milk pasteurisation case had the incidental effect of enhancing the welfare of North Eastern Victorian dairy communities. The point is that the current emphasis on economic freedom between interstate traders and intrastate traders does not adequately cater to the natural environment or our localised communities. Constitutional recognition of the natural environment specifically recognises the needs of the natural environment and implies the importance of regional communities.

Another interesting aspect of constitutional recognition of the natural environment is the scope for interpretation. On this premise it is worthwhile visiting one more previous constitutional interpretation as a means to analyse the broader effects of the necessary constitutional change. A 1978 High Court challenge was instigated by a New South Wales egg producer licensed to keep two hundred thousand hens. The producer, Bartter's enterprises, kept an extra fifty thousand hens for what it claimed was for interstate trade only,¹⁰⁹ and therefore was not restricted to two hundred thousand hens, as directed by the New South Wales licence. The court ruled in favour of the New South Wales legislation '... because production was not protected by the guarantee of interstate trade.'¹¹⁰ The essence of the decision based on the lack of guarantee of interstate trade implies that if there were that guarantee another licensing board would be appropriate.

However, the interesting issue is that if there were constitutional recognition of the natural environment, it is possible it would have influenced the decision or left open the prospect of a further challenge based on the hen numbers of the granted licence. That is to say, even though the original decision may well have been the same, if the High Court in its deliberation expressed concern for the welfare of the hens from an environmental perspective, the avenue for a challenge from another perspective would be created. The essence of this line of thought is the interpretation of environmental quality. Using an aspect of Hanks' definition of evolving interpretation, it may well be possible, with constitutional recognition of the natural environment, that interpretation at some time in the future could incorporate the welfare of other species in a wholistic bioregional approach.

The issue, in this instance, revolves around the welfare of battery hens. It is possible that if challenged in the High Court, interpretation could determine that licences which permit large numbers of hens are deemed inappropriate from the perspective of the welfare of the animal, particularly if the challenge incorporated a smaller and a more regionally focused producer who argued from the perspective of the inhibition to intrastate (intraregional) trade caused by the larger producer. An important element is the economic perspective, just as the natural environment perspective is equally as important.

The egg producer example also follows the theoretical differences between the anthropocentric and ecocentric perspectives. The essence of globalisation requires an approach that places humans at the centre of existence with other species and plant life viewed as resources to be exploited for the benefit of humans. To counter-balance the detrimental effects on local economies, interpretation of the Constitution that recognises benefits of a practical ecocentric perspective or

regional approach has the potential to enhance the sustainability of the natural environment. The balance of economic importance, or the current interpretation of Section 92, in a Constitution that recognises natural environment quality, provides a balance or check to the purist's interpretation of ecocentrism, that is an interpretation that places other life forms before the human species. The practical interpretation of ecocentrism provides the opportunity to encourage regionalism and local economies while respecting transnational corporations and the international economy. The essence of constitutional recognition of the natural environment is the importance of a greater regional approach to our existence as a means of enhancing our sustainability and maintaining our economic well being.

CONCLUSION

Historically, the democratic process has been influenced by the ownership of property. Invariably, the greater the ownership of property the greater the freedom. If Australian society were able to find a means of a more equitable distribution of property that satisfied all participants, a sustainable future may well be more tangible. The primary focus of this paper has advocated for a more balanced approach to property ownership and the use of the natural environment if we are to attain a sustainable future.

The application of a more balanced approach calls for the rationalisation of the institutions of Australian political society as the basis of necessary changes. Specifically, The Constitution requires an amendment that recognises the quality of the natural environment to counter-balance the current emphasis of economic freedom enshrined in Section 92 of The Constitution.

What specific shape that change takes has not been discussed in the body of this paper. The major emphasis has been on the general need to recognise the natural environment as equally important as the economic environment.

However, to open a broad debate, it would seem appropriate that the notion of natural environment quality should be incorporated in the same section as the reference to economic freedom. Consider again the current wording of Section 92 which states: *On the imposition of uniform duties of customs, trade, commerce, and intercourse among the States, whether by means of internal carriage or ocean navigation, shall be absolutely free.*¹¹¹ It is feasible to include, “while preserving the quality of the natural environment”, after the reference to *absolutely free*.

Consider the Section with the added reference to the environment. Section 92 would read “On the imposition of uniform customs, trade, commerce, and intercourse among the States, whether by means of internal carriage or ocean navigation, shall be absolutely free while preserving the quality of the natural environment”. It is important that the Section is interpreted by the High Court in the spirit of the needs of the community at the time of challenge, just as Section 92 has been interpreted in the past. The emphasis of interpretation should be on determinations that enhance the quality of the environment while respecting the importance of a sustainable economic environment.

The main point is the need for constitutional recognition of the natural environment, and a regional empowerment as the optimum means of localising the need for environmental quality. Such a structure would need to adequately address the varying and diverse bio-regions of the Australian landmass. Such a structure would need to incorporate expertise.

What is important is the need for a regional - federal structure that enhances the natural environment and, just as important, counteracts the negative aspects of contemporary economic theory. The negative aspects, other than the detrimental treatment of the natural environment, are the marginalisation of our communities and the reduced social well being of individuals within our communities. This requires the needs of communities or regions to be identified and addressed by the regions themselves, with federal support. Respect for the quality of the natural environment provides incentive for the promotion of industries that respect the needs of regions.

Contemporary economic theory provides an ideal economic environment for the mobility of capital. Under the current structure, the mobility of capital is well

placed to influence policy and legislation of most territorial states, including Australia. The benefits are technological advances that have the potential to improve the material existence of elements of our populations within an appropriate territorial and legal structure. Constitutional recognition of the natural environment, preferably in a regional - federal structure has the potential to address the social well being of our communities that contemporary economic theory does not incorporate in its function. Contemporary economic theory is not to be revered as an all problem solving theory, but is an economic approach, that should be properly utilised to address the sustainability of our natural environment and the sustainability of our communities.

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- ¹ Constitutional Commission, The Constitution Of The Commonwealth Of Australia, Canberra, p. 24.
- ² The argument between whether the arrival of Europeans was invasion or settlement will undoubtedly continue for quite a period of time, if it is ever resolved. History suggests Europeans who arrived were ignorant of the intricacies of Indigenous cultures and were at times ruthless in respect of many indigenous cultures. However, the basis of European arrival was not founded on organised armies conducting structured military campaigns to defeat a recognised enemy. Certainly there were conflicts between Indigenous peoples and armed European civilians who were supported by an English Military during the grab for agricultural lands. Certainly, it was extensive. Certainly, respective Australian Indigenous countries perceive Europeans as invaders. But I have difficulty with the term invasion. I also have as much difficulty with the term settlement, as the Australian landmass was already occupied by many Indigenous peoples. Perhaps the intruding Europeans, through ignorance, had little or no understanding of the Indigenous link to the land. Either way, I find the term 'incursion' a more appropriate description than 'settlement' to describe what has occurred, as I do with the term 'invasion'. Some may say that incursion is another word for invasion, but the word itself suggests a subtle difference to 'invasion'.
- ³ Australian Heritage Commission, The Heritage of Australia, Melbourne, p. 5/1.
- ⁴ Ibid. p5/4.
- ⁵ D. Eisma, Climate Change: Impact on Coastal Habitation, Florida, 1995, p.137.
- ⁶ H. Coombs, The Return of Scarcity, Melbourne, 1990, p. 65.
- ⁷ D. Dillard, Economic Development of the North Atlantic Community, New Jersey, 1967, P. 133.
- ⁸ Ibid., p. 131.
- ⁹ Ibid., p. 133.
- ¹⁰ Ibid., p. 139.
- ¹¹ Ibid., pp. 140-141.
- ¹² J. Caporaso & D. Levine, Theories of Political Economy, Melbourne, 1992, p.43.
- ¹³ Dillard, op. cit., p. 134.
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