The History of Western Australia's Constitution and Attempts at Its Reform

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This article traces Western Australia's constitutional history from 1829 to 2000. It outlines the main features of the modern constitution adopted in 1889/1890 and shows how since 1899 there has also been a separate Constitution Acts Amendment Act, the two never having been consolidated. It argues that apart from a flurry of minor changes between 1890 and 1904, constitutional changes have been few, the most significant being reform of the Legislative Council in 1963.

WESTERN AUSTRALIA'S first Constitution was a British statute enacted on 14 May 1829, just two-and-a-half weeks before Captain Stirling and his party completed their long voyage to the Swan River. It provided for 'the Government of His Majesty's Settlements in Western Australia, or the Western Coast of New Holland', and empowered the appointment of three or more persons 'to make, ordain and establish all such Laws, Institutions, and Ordinances, as may be necessary for the Peace, Order and Good Government of His Majesty's subjects and others within the Settlements'.[1] This provided a statutory basis for the establishment of a Legislative Council, but the necessary Order in Council to proceed with this was delayed until November 1830, and then took five months to reach Stirling, so it was not until 7 February 1832 that the Legislative Council met for the first time.[2]

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1. 10 Geo IV c 22.
2. 'Order in Council' *Swan River Papers* (Perth: Battye Library, 1 Nov 1830).

Nevertheless, Western Australia had been granted its first Council much more rapidly than the older penal colonies of New South Wales and Tasmania and before South Australia, Victoria or Queensland.

In the early years the Legislative Council was made up of the Governor plus four officials, who also constituted the Executive Council; all legislation was initiated by the Governor, but its rules of procedure were otherwise much as today.[3] In 1839, in response to public demand, four non-official members were added to the Council, but they were nominated by the Governor rather than elected.[4]

In 1850, the Australian Colonies Government Act empowered the Western Australian Legislative Council to transform itself into a two-thirds elective body provided this was requested by one-third of householders and that the colony became financially self-sufficient.[5] The latter condition was met in 1856 (except insofar as Britain was responsible for maintaining the convicts who had by then been introduced), but not until 1865 did a petition with the requisite number of signatures request an enlarged and partially elective Council.[6] After an interim compromise arrangement this was finally achieved in July 1870.[7]

Initially the Legislative Council was 18 strong, with three officials, three non-official members nominated by the Governor, and 12 elected members, though by 1886 it had increased by stages to 26, though still roughly two-thirds elected. The Governor himself was no longer a member but could veto legislation.[8] The Executive was not responsible to the Legislature, though it had to get its supply Bills through the Council, which was sometimes difficult. This was the era of what was referred to at the time as 'representative government' as opposed to 'responsible government'. Public demand for the latter, which in effect meant for full self-government, gradually built up during the 1880s, although it was fuelled as much by a desire to be free of British restrictions on the colony's freedom to raise loans to finance public works as by the liberal sentiments regularly voiced by the young Stephen Henry Parker, who was arguably Western Australia's first constitutional reformer.[9]

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3. See 'Letters Patent and Commission of Captain James Stirling RN' in E Russell *A History of the Law in Western Australia and Its Development from 1829 to 1979* (Perth: UWA Press, 1980) App IV, 336-350.
4. Instructions from Glenelg to Stirling, Colonial Office Despatches (Perth: Battye Library, 7 Mar 1837); Legislative Council Minutes (3 Jan 1839).
5. 13 & 14 Vict c 59, s IX.
6. Legislative Council Minutes (18 Aug 1865).
7. 'An Ordinance to provide for the establishment of a Legislative Council, the division of the colony into electoral districts, and the election of members to serve on such Council', No 13 of 1870. See also RD Lumb *The Constitutions of the Australian States* 3rd edn (Brisbane: Qld UP, 1972) 38.
8. The 1870 Constitution is embodied in a WA statute: 33 Vict No 13.
9. On the movement towards responsible government, see B de Garis 'Constitutional and Political Development: 1870-1890' in D Black (ed) *The House on the Hill: A History of the*

A new Constitution was drafted by the Council in the late 1880s, adopted in 1889, and finally enacted by the British Parliament in 1890. British legislation was required because the Constitution desired by the colonists did not fit the parameters laid down by the Act of 1850 which empowered the Council to redefine itself; consequently the Western Australian Constitution Act 1889 came into force as a schedule to a British Act of 1890.[10]

The 1889 Constitution was and remains a fairly simple document.[11] It provided for a 30-member Legislative Assembly and a 15-member Legislative Council, the latter to be nominated rather than elected for six years or until the population reached 60 000. Property qualifications were set for both electors and members of the Assembly and potentially for the Council. The British government would have preferred the Council to remain nominated indefinitely, as the House of Lords was, but deferred to local wishes. Of course an elected Council is not necessarily more democratic, particularly if based on a property franchise or weighted voting system, because a nominated upper house can potentially be brought to heel by government threats to flood it with new members, as happened to the Lords in 1911, whereas an elected upper house is relatively immune to government pressure. And so it was that within a few years Western Australia's Legislative Council was a more powerful body than the House of Lords.

The powers of the Assembly and Council were from the start identical, except that money Bills could only originate in the Assembly and had to be recommended by the Governor, which in practice meant the Executive. In other words, private members could not initiate Bills to spend money.

No provision was made for resolving deadlocks between the two Houses. This was the preference of the British government, which believed that it would force the two Houses to work together, as in a sense it has.

One unusual provision inserted by the British government, which was concerned about the colonists' treatment of the Aborigines, was that an amount equal to one per cent of the colony's annual revenue was to be provided each year to the Aborigines Protection Board, which would continue to be responsible directly to the British government.[12]

Although the colonists' demand had been for 'responsible' government, and it was well understood at the time that the key feature of what later generations have

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Parliament of Western Australia: 1832-1990 (Perth: WA Parliament, 1991) 41-62. See also CT Stannage 'Electoral Politics in Western Australia: 1884-1897' (unpublished Masters thesis: UWA, 1967).

10. 53 & 54 Vict c 26.
11. Constitution Act 1889 (WA).
12. Ibid, s 70. See also PW Johnston 'The Repeals of Section 70 of the Western Australian Constitution Act 1889: Aborigines and Governmental Breach of Trust' (1989) 19 UWAL Rev 318.

come to refer to as the Westminster system of government was an executive drawn from the legislature and responsible to its lower house, this was and is at best sketchily implied by the Constitution. What we normally call Cabinet ministers are quaintly referred to as 'principal executive offices of the Government liable to be vacated on political grounds' and were initially limited to five, one of whom had to be drawn from the Legislative Council;[13] that the other four had to be drawn from the Assembly was not stated though obviously intended. The holders of such 'offices', unlike Members of Parliament, were to be paid, and on first accepting a commission were required to resign their seat (which implied that they held one) and re-contest it at a by-election.[14]

The Constitution also makes no reference to the Cabinet, though major responsibilities are assigned to the Governor in Council, which is defined as the Governor acting with the advice of the Executive Council,[15] which in practice means the Cabinet, though the Constitution itself does not say anything about the Executive Council either; nor is there any reference at all to the office of Premier. Some of these deficiencies were remedied by the Letters Patent issued to the Governor, but these lack the status of the Constitution.

Section 73 required any change to the Constitution of either House of Parliament, though not to other sections of the Constitution, to pass both Houses with an absolute majority.

To a 21st century eye, the 1889 Constitution seems rather fragmentary and unsatisfactory but it has to be remembered that it derived from a British model that was itself unwritten, and that it was and is not much different from the Constitutions of the other Australian colonies/states. Moreover most observers would probably agree that it has worked pretty well.

Major alterations to the Constitution since 1889 have been few, in part no doubt because the Labor Party, the most consistent advocate of change, has never had even a simple majority in the Legislative Council, let alone an absolute one. And although the Council has for most of its life been made up of individuals with much in common with members of the Liberal Party, or its Country/National Party allies, until recent decades Councillors were keen to assert their independence of party, and wary of constitutional change, so that non-Labor governments have not necessarily found constitutional change easy, either.

Nevertheless, the Constitution has in small and sometimes significant ways been evolving almost from the time of its enactment. As early as 1893, population growth engendered by the gold rushes triggered the clause which made the Council

13. Ibid, s 28.
14. Ibid, s 29.
15. Ibid, s 74.

elective rather than nominated and electoral changes were adopted to reflect this. The Council was to be based on seven provinces, each electing three members for six year terms, with one member from each province retiring every two years. Elected Councillors were to be at least 30 years of age.[16]

The Constitution and Electoral Acts of 1893 also abolished the property qualification for Assembly members, though not Councillors, and introduced something close to manhood suffrage for the Assembly, though property-owners retained the privilege of voting in every constituency in which they owned property, which in the case of Alexander Forrest was alleged to be every constituency in the colony.

Even before its first election the Council flexed its muscles vis-à-vis the Assembly, and JW Hackett secured Forrest's agreement to a constitutional amendment on the subject of money bills.[17] Initially the Council had been compelled to accept or reject these but could not amend them. From 1893 onwards, however, it could suggest amendments to the Assembly, which put it in an even more powerful position.

In 1896 further amendments increased the size of the Assembly to 44 and added a new three-member province representing the goldfields to the Council.[18]

All these changes were introduced by Premier John Forrest, primarily in order to placate the rapidly growing population of the goldfields. This set a pattern for the future; significant constitutional change has rarely been introduced by its strongest champions but rather has been conceded by reluctant governments in the face of a slow build-up of public support.

Another very significant constitutional change came in 1897 when the British government unenthusiastically accepted the abolition of the Aborigines Protection Board and repeal of section 70 of the 1889 document, which had guaranteed one per cent of consolidated revenue for Aboriginal purposes.[19] Having allowed the colony to become responsible for its own affairs, Britain found it difficult to maintain this exception. So, thereafter, Aboriginal welfare was the responsibility of an Aborigines Department, which reported to the local parliament.

In 1899 Forrest introduced a Constitution Act Consolidation Bill, but between the first and second readings he changed his mind about the best way to proceed and explained that instead of incorporating all previous changes into a consolidation of the 1889 Act, the Bill would be redrafted as a Constitution Amendment Bill, so preserving for posterity the 1889 Act as piece of statutory heritage. In explanation

16. Constitution Act Amendment Act 1893 (WA) s 6.
17. Ibid, s 23.
18. Constitution Act Amendment Act 1896 (WA).
19. Johnston above n 12.

he said simply that he had come to understand that this was a more constitutional way to proceed and more in accordance with precedent.[20] There have been suggestions that he had an ulterior motive, but at the time no one showed any interest at all in the change of strategy. It has had significant effects, however, as ever since we have had a Constitution Act and a Constitution Amendment Act, both of which have been amended from time to time and neither of which makes much sense to the ordinary reader, either in isolation from the other or even when they are read together.

Legal complications include the 1982 High Court ruling that the need for changes to some parts of the Constitution to be approved by an absolute majority applies only to the original Act and not the Amendment Act.[21]

The 1899 Act also, after amendments in committee, increased the Legislative Assembly to 50 members and the Legislative Council to 30, at which size they rested for over half a century. The rapid increase in seats in the 1890s was because areas of population growth on the goldfields and in Perth were given representation but existing seats were mostly left untouched, entrenching the wide disparities in the size of electorates which still characterise Western Australian electoral politics.[22]

Other 1899 changes reduced the term of the Assembly from four years to three, bringing parity with all other colonies in this respect, and conferred the vote on women, a notable decision made earlier in the session and incorporated into this Act.[23]

In 1900, in the last significant change before Western Australia became a State in the new Commonwealth, payment of members was introduced;[24] and in 1904 plural voting was abolished.[25]

So in the first 14 years of self-government the pace of constitutional change had been hectic. This is not surprising given that these years were also the most turbulent period of socio-economic change in Western Australia's history. Other factors were that the men who had shaped the Constitution, and then administered it, took advantage of their new freedom to act without the restraining influence of London; and that the political party system was still in its infancy so that there was more flexibility in political deal-making than was later to be the case.

For most of the 20th century, constitutional change moved more slowly. Of course almost every year brought some sort of constitutional issue to the fore, and

20. *Hansard* (LA) 29 Aug 1899, 1033 ff.
21. *Western Australia v Wilsmore* (1982) 149 CLR 79, 83.
22. There have been several attempts to redress this inequality over the last 20 years: see *Burke v WA* [1978] 2 WAR 248; *McGinty v WA* (1996) 186 CLR 140; *Marquet v A-G (WA)* (2002) 26 WAR 201.
23. Constitution Acts Amendment Act 1899 (WA); Electoral Act 1899 (WA).
24. Payment of Members Act 1900 (WA).
25. Electoral Act 1904 (WA).

numerous private members bills seeking constitutional change were briefly debated before lapsing or being defeated. But actual changes were more rare.

In what may be loosely grouped together under the heading of electoral reforms of constitutional rather than merely technical significance, the first major innovation was the adoption of preferential voting, on an optional basis in 1907 and compulsorily from 1911.[26] Voting itself did not become compulsory until 1936, for the Assembly, and 1963 for the Council, but from 1911 those who chose to vote had to fill in all preferences. The first election after this system was introduced was a Labor landslide, but in the longer run it encouraged minor parties. Interestingly, Western Australia led the Commonwealth Parliament with preferential voting and followed it with compulsory voting.

In 1920, the Attorney-General ,TP Draper, pushed through a measure to enable women as well as men to be elected to Parliament – and promptly lost his seat to Edith Cowan in 1921, a cautionary tale for all constitutional reformers.[27]

In 1947, in a long overdue change, the practice of compelling newly appointed cabinet ministers to resign and recontest their seats was finally dropped.[28] Testing public opinion about new Ministers was of some value in the pre-party era, but that had long gone.

The biggest upheaval came in 1963, when adult suffrage was conferred upon the Legislative Council; Council voting became compulsory; and the age qualification for election to the Council was dropped from 30 to 21.[29] All this meant that the membership qualifications and franchise for both Houses were now identical. As part of the same package the Council provinces were reshaped into 15 two-member constituencies with six year terms, so that one Councillor from each province retired every three years and elections for both Houses could be held simultaneously.

A qualification to the statement that voting became compulsory is that Aboriginal voters were exempted from this requirement. That and other special provisions concerning Aboriginal voting were removed in 1984 on the initiative of Arthur Tonkin, Minister for Electoral Reform in the Burke government.[30]

Labor had been seeking Council franchise reform for half a century before 1963 and the cause had latterly been championed by Ruby Hutchison, whose most recent private members Bill on the subject had been strongly attacked earlier in the session by Arthur Griffith, the Leader of the Council.[31] However, following a turnaround in Council opinion the government decided to give ground, and Griffith himself

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26. Electoral Act 1907 (WA); Electoral Amendment Act 1911 (WA).
27. Parliament (Qualification of Women) Act 1920 (WA).
28. Constitution Act Amendment (Re-election of Ministers) Act 1947 (WA).
29. Constitution Acts Amendment Act (No 2) 1963 (WA).
30. H Phillips 'The Modern Parliament: 1965–1989' in Black above n 9, 233-234.
31. *Hansard* (LC) 29 Aug 1963, 722-728, 919.

introduced a comprehensive package of reforms along much the same lines as Mrs Hutchison had espoused,[32] which was then adopted with little debate; ironically, Hutchison was in hospital and unable to vote for the changes she had long sought.

In 1970 the voting age in Western Australia was reduced to 18 and three years later 18 year olds also became eligible for election.[33] This left malapportionment of votes between electorates as the last big electoral issue.[34] Premier Brian Burke's 1983 appointment of a Minister for Parliamentary and Electoral Reform was in part a reflection of this concern,[35] and it has continued to be a Labor priority ever since.

Two major constitutional changes occurred in 1987. The first of these was the adoption of four year terms for both Houses, a return to the 1889 practice in the case of the Assembly, and an interesting marker of changing community attitudes to electoral frequency. A hundred years ago frequent elections were seen as democratic, now they are seen as a waste of money and a barrier to stable government. For the Council this change meant that the period in office was reduced from six to four years and all Councillors would be elected simultaneously rather than on a staggered basis, a first for an Australian upper house. The second change was the introduction of proportional representation for the Legislative Council, making the Council somewhat like the Australian Senate and much more open to minor party success. These changes were initiated by a Labor government but succeeded only when they attracted National Party support.[36]

A second major area of constitutional sensitivity in the 20th century was the relationship between the two Houses, especially with respect to money Bills. Trouble first flared up in the period 1902–1906 and came to a head in 1906–1907 over the Perth Town Hall Bill, leading the Council to bring its Standing Orders into conformity with those of the Senate rather than the House of Lords.[37] At the heart of the dispute was the Council's belief that it was entitled to 'press' amendments even though they had already been rejected by the Assembly. In 1919 a legislative attempt to ban the pressing of amendments but placate the Council by also banning the 'tacking' of non-financial clauses onto money Bills, was defeated.[38]

In 1921 the Mitchell government had more success with a Bill which banned tacking and banned the Council from amending Bills so as to 'increase any charge or burden on the people, whilst allowing the Council to initiate legislation with

32. *Hansard* (LC) 26 Sep 1963, 1343; Constitution Acts Amendment Act (No 2) 1963 (WA).
33. Phillips above n 30, 194, 204.
34. See *Burke v WA* above n 22; *McGinty v WA* above n 22; *Marquet v A-G (WA)* above n 22.
35. Phillips above n 30, 233.
36. Acts Amendment (Electoral Reform) Act 1987 (WA).
37. D Black 'Financial Relations Between the Two Houses: 1890-1990' in Black above n 9, 432-435.
38. R Gore 'The Western Australian Legislative Council 1890-1970: Aspects of a House of Review' (unpublished Masters thesis: UWA, 1975) 100–101.

minor financial provisions.[39] But the Council did not agree to a ban on 'pressing' amendments and three years later further amended its Standing Orders to entrench this 'right' insofar as it could.[40]

For several decades following the early 1930s clashes between the Houses on this issue became less frequent and less heated but from 1966 to 1969 conflict between the Houses came to the boil again and resulted in several pieces of legislation being lost. There was talk of legislative change to the relevant clause in the Constitution, section 46, and later of seeking judicial interpretation of it, but nothing was done.[41] In 1973 matters became more serious when the non-Labor majority in the Council threatened to block the Tonkin government's Supply Bill in order to force an election; but in the end it backed off.[42]

Against this background academic lawyer Professor Eric Edwards was in 1984 appointed a Royal Commissioner into Parliamentary Deadlocks but his recommendation that the power of the Council over money Bills should be limited to a one-month suspensory veto, the New South Wales practice, met little favour and was not adopted.[43]

Further serious conflict over money Bills occurred in 1989–1990, in the context of the Rothwells collapse[44] and what was then becoming known as the WA Inc phenomenon, with the Opposition again threatening to block Supply unless the Labor government met its conditions.[45] But on these occasions though the Liberals and Nationals each had their moments of hanging tough, they seem not to have been ready to go over the parapet at quite the same time, and constitutional crisis never resulted. So the constitutional basis of relations between the Houses has not changed since 1893.

There has also been little change, except in a few rather technical respects, to the limited provisions covering the Executive. The phrase, 'principal executive offices of the Government liable to be vacated on political grounds', is still part of our Constitution, though the number of such offices has been increased from time to time and now stands at a maximum of 17.

An interesting development towards the end of the 20th century was the successful move by Charles Court in 1978 to entrench major provisions in such a

39. Black above n 37, 437.
40. Ibid, 439.
41. Ibid, 443. See also JR Roberts 'The History of Money Bill Disputes' (Parliamentary Paper, Jan 1967).
42. *Hansard* (LA) 8 Aug 1973, 2413, 2419-2420; *Hansard* (LC) 15 Aug 1973, 2689; *Hansard* (LA) 22 Aug 2973, 2967.
43. WA Royal Commission *Report on Parliamentary Deadlocks* (1984–1985) Vol 1, 34, 74-75.
44. *Report of the Inspector on a Special Investigation into Rothwells Limited* (Perth: WA Govt Printer, 1990).
45. Black above n 37, 444-446.

way as to make their amendment more difficult, though history suggests that this was hardly necessary. His Amendment Act of that year requires that alterations to the powers or composition of either House or any reduction of their size, and any alteration to the clause governing the amendment of the Constitution, must be approved not merely by both Houses but also by a referendum of voters.[46] These changes were apparently sparked off by Labor talk of abolishing the Legislative Council and leaving the position of State governor unfilled, though in his second reading speech Court went further, alleging a 'long-term Labor Party goal of destroying State Parliament in the interests of centralising all Government in Canberra'.[47] It is hard to believe that any Western Australian government could have contemplated such a step, but the constitutional temperature on both sides of politics was high in the 1970s, following the Whitlam government and its dismissal.

Given the difficulty all Commonwealth governments have faced in securing positive outcomes to constitutional referenda, future change to those aspects of the Western Australian Constitution caught by this 1978 provision seems even less likely than in the past.

Also requiring mention here is the passing of the Australia Acts 1986 as a result of which, among other things, the British Parliament, from which its authority had originally been derived, ceased to have any power over the Western Australian Constitution.[48] This was the last stage of a long process of emancipation of Australia from British tutelage and was seen by the public at large as more symbolic than substantial in character. Australia's courts and parliaments were already long since fully independent for all practical purposes. However, even a brief perusal of the legal literature suggests that the full implications of this complex legislation for our Constitution, and its relationship to the Australian Constitution, though yet to be tested,[49] may prove very significant.[50]

In other ways too, Western Australia seems to have moved into a new era so far as constitutional change is concerned, at around the time of the centenary in 1990 of the coming into force of the 1889 constitution. A number of factors contributed to this.

One was the changing position of indigenous people in Australian society and increased community sensitivity to their previous marginalisation, leading to calls for constitutional recognition of prior Aboriginal settlement.

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46. Acts Amendment (Constitution) Act 1978 (WA).
47. *Hansard* (LA) 22 Mar 1978, 308.
48. See PW Johnston 'Freeing the Colonial Shackles: The First Century of Western Australia's Constitution' in Black above n 9, 313-341.
49. Note that certain aspects of the Australia Act have been discussed in *Yougarla v WA* (2001) 207 CLR 344; *Marquet* above n 22.
50. On this topic, see (1990) 20(2) UWAL Rev (Special Issue).

Another was the sudden emergence of a lively debate about the possibility of Australia becoming a republic; whilst this debate is centred on the national Constitution, and to date has borne no fruit, it has obvious implications for the role of State governors, not something often discussed over the previous 100 years.

Then again, the advent of proportional representation in the Legislative Council encouraged parties such as the Democrats and the Greens to contest State as well as federal seats, with considerable success. In the medium term, at least, it seems unlikely that either of the major parties can in future hope to hold a majority in both Houses, with obvious implications for issues concerning relations between them. Moreover, as parties which cannot realistically hope to govern, the Democrats and the Greens have widened the political agenda by focussing on issues of special salience to them. They are also parties with a relatively well-educated and often idealistic grassroots membership which has more direct influence over their parliamentary representatives than is the case with Labor or Liberals. Through these newer parties, through Republican lobby groups, and from indigenous leaders, proposals for constitutional change are now coming up from the community as well as down from sitting politicians.

I must be careful not to overstate my case, though; the public at large remains deeply uninterested in constitutional issues, except briefly and at moments of political crisis.

The evolving constitutional agenda was well set out in the Report of a Joint Select Committee on the Constitution, chaired by John Kobelke, published in 1991.[51] That report canvassed all the issues I have discussed as well as some others, such as the possible incorporation into the State Constitution of a Bill of Rights,[52] and the possible introduction of citizen-initiated referenda. The latter concept, incidentally, was strongly pushed in 1913 by Labor Attorney-General Thomas Walker, without success,[53] and 90 years on public interest stills seems negligible.

The Select Committee Report for the most part simply set out for public consideration the pros and cons of various constitutional proposals, but it also made a couple of definite recommendations. One was for the establishment of a Joint Standing Committee for Constitutional Reform, to promote public awareness and bring forward reform proposals. Another was for a draft Consolidated Constitution to be brought forward and submitted to a referendum, thus finally marrying the Constitution Act 1889 and the Constitution Acts Amendment Act 1899.

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51. Joint Select Committee on the Constitution *Final Report* (Perth: WA Parliament, 1991).
52. For more recent discussion of the possible incorporation of a Bill of Rights into the Constitution, see G Watson 'Why the Western Australian Community Needs a Bill of Rights' *Bill of Rights Forum* (Perth: WA Society of Labor Lawyers, 2 Aug 2003).
53. *Hansard* (LA) 5 Dec 1913, 3415; (LA) 9 Dec 1913, 3508; (LC) 17 Dec 1913, 3978; (LC) 18 Dec 1913, 4038.

Charles Court, interestingly, toyed with that possibility in 1963, when bringing forward a Bill to reprint the two Bills in consolidated form, but separately. In language rather reminiscent of Forrest, he mused that a single consolidated Act might be preferable but on balance he had decided to stick with two.[54] Perhaps sometime soon another premier may come to the opposite conclusion, and the preparatory work has already been done by the all-party 1991 Committee. But the expense and effort of a referendum over a consolidated document which simply sets out the constitutional status quo more clearly may be hard for any government to justify, and once innovations are incorporated consensus is likely to evaporate and a positive outcome may become hard to achieve. So we will have to wait and see.

In 1998 the government of Richard Court showed signs of flirting with constitutional change and organised a series of public Constitutional Forums as a lead-up to a proposed Constitutional Convention. The convention did not materialise though the concept has cropped up again in recent times. Again, we will have to wait upon events, a clear signal that it is time for the historian to step back and let others take up the baton.

54. *Hansard* (LA) 30 Oct 1963, 2183.